

Jacek SROKOSZ*

Philosophical and cultural basis of the main methods of legal education in the USA

Nowadays one can easily observe common fascination with American culture, American way of thinking and acting, and their gradual dissemination as a part of Globalization or, being more precise, Americanisation.¹ The most Americanised areas include law, understood not only as specific institutions of the American legal system transplanted into other legal systems (the so-called legal transplants),² but mostly as a certain kind of legal culture in its broad sense. That legal culture involves, inter alia, the proceedings of judges (justices) and lawyers, various ways of reasoning and argumentation generally applied by

* University of Opole, e-mail: jsrokosz@uni.opole.pl.

¹ As Americanisation should be understood as the influence which American culture has on culture of other countries, especially on the spheres of popular culture, common customs, media, way of life, business practice or political technique. See broadly: N. Cambell, J. Davis, G. McKay (eds.), *Issue in Americanisation and Culture*, Edinburgh 2004; H. Fehrenbach, U.G. Poiger. *Americanization Reconsidered*, in: Idem, eds., *Transactions, Transgressions, Transformations: American Culture in Western Europe and Japan*, New York – Oxford 2000, p. XII-XIV. The relation between process of Globalization and Americanisation is dealt with in the following: Y. Shimemura, *Globalisation v. Americanisation: is the World being Americanised by the Dominance of American Culture?*, "Comparative Civilization Review" 2002, n. 47, p. 80-91; R. Ondeziel, *Is Globalisation a Code Word for Americanisation? Contemplating McDondalds, Coca-Cola and military bases*, „Tijdschrift voor sociale en economische geschiedenis“, 2007, v. 4, no. 3, p. 84-106; P. Guerline, *Americanization and Globalization: The Power Behind the Words*, "Annales du Monde Anglophone" 2002, no. 15, p. 65-80.

² On the concept of "legal transplants" see: A. Watson, *Legal Transplants: An Approach to Comparative Law*, Edinburgh 1974, and critically: P. Legrand, *The Impossibility of 'Legal Transplants'*, "Maastricht Journal of European and Comparative Law", 1997, v. 4, 111-124.

American lawyers, different approaches to law, the philosophy underlying the American practice of law, and all other elements that constitute the collective identity of American justices and lawyers, such as norms of professional ethics or a conviction that there is a separate category of thinking characteristic of lawyers.

One of the most important elements of the American legal culture is law teaching, which is rather ignored in continental Europe. Law teaching is considered important as illustrated by the generally accepted stance of judge of US Supreme Court Felix Franfurter, who claimed that “the law and lawyers are what the law schools make them.”³ In Poland, a reform of law teaching is advocated by, inter alia, the representatives of legal profession and academics who claim that it is necessary to bring the Polish legal culture closer to American standards. Unfortunately, many of the proposed changes, though some of them based on thorough research,⁴ reflect stereotypical and very general views about American law teaching institutions, ignoring the philosophical grounds as well as the social and cultural context, in which those institutions were developed. The aim of this article is to outline the broadly understood cultural context of the three most popular law teaching methods in the USA: Langdell’s Case Method together with Socratic Method, Clinical Legal Education, and Problem Solving Method. Only when those methods are presented against philosophical and cultural background, will it be possible to assess their applicability in the faculties of law of Polish universities.

Attempting to characterise the context in which particular American law teaching methods came to life, attention should be drawn to certain ideological premises common to each of the methods, that is to those elements of the American legal culture which are universally accepted by all those who deal with teaching law. They include: practical character of teaching law and its close connection with the legal services market, perceiving law more as a certain set of practical actions performed by lawyers rather than as a system of scientific knowledge, and necessity to produce lawyers who are attorneys (barristers) rather than lawyers who are justices (public officials). Each of those features will be accounted for in the paper.

³ J. S. Aurebach, *Unequal Justice: Lawyers and Social Changes in Modern America*, New York 1979, p. 149.

⁴ Proposition of deep reform of model of legal education in Poland, which was most comprehensive and based on profound research of American legal education was put forward by Fryderyk Zoll. F. Zoll, *Jaka szkoła prawa?: czy amerykańskie metody nauczania prawa mogą być przydatne w Polsce?*, Kraków 2004.

The practical approach to teaching law, the aim of which is to prepare students to enter legal services market soon after they have graduated, is undoubtedly rooted in the tradition of teaching law within the framework of the common law system, both in its more formalised British version as well as much more liberal American one.⁵ The aim of teaching law in English-speaking cultures has always been to prepare practitioners, whose task is to provide legal counselling services and represent the interests of their clients in court or before public authorities. Graduates of law schools were therefore to provide professional legal services, which consisted in solving concrete problems present in the social reality. As a preparation to do so, in the Middle Ages in England, law students were taught in Inns of Court, that is a sort of legal guilds where they could study real legal cases and decisions of judges or other officials.⁶

Such education was more formalized in England, where supervision was exercised over law teaching and admitting lawyers to legal practice.⁷ Meanwhile, it looked totally different in British colonies in America and then in early years of the USA, where there were no constraints as regards providing legal services and no criteria as regards who could be deemed a professional lawyer.⁸ Everyone who had appropriate experience could act as a lawyer.⁹ The most common way to gain such experience was apprenticeship with an active barrister.¹⁰ It has to be noted that until the second half of the 19th century there were no competence verification methods in the USA. As a rule, an apprentice commenced his activity the moment he was convinced his skills were adequate to represent clients in court. Such teaching methods caused a variety of complications, especially when it came to the quality of services. They also reinforced the particularism of law in particular regions of the

⁵ Contemporarily, it still can be perceived. See: S. R. Klein, *Legal Education in United States and England: A Comparative Analysis*, "Loyola of Los Angeles International and Comparative Law Review" 1991, v. 13.

⁶ See: R.M. Stein, *The Path of Legal Education from Edward I to Langdell: History of Insular Reaction*, "Chicago-Kent Law Review", 1981, v. 57, I. 2.

⁷ Although, similarly as in US, law teaching was transferred to schools of law at English universities quite late – in the second half of the 19th century. G. Slapper, *History of Legal Education*, "The Journal of Commonwealth Law and Legal Education", 2011, v. 8, no. 7; p. 12; J. Baker, *An introduction to English legal history*, 4th edn., Butterworths, 2002, p. 171.

⁸ On the beginning of American legal education see: C.R. McMains, *The History of First Century American Legal Education: A Revisionist Perspective*, "Washington University Law Review" 1981, v. 59, I. 3, p. 597-659.

⁹ P.D. Carrington, *Heil Langdell!*, "Law and Social Inquiry", 1995, v. 20, p. 699.

¹⁰ W.R. Trail, W. R. Underwood, *The Decline Of Professional Legal Training And A Proposal For Its Revitalization In Professional Law Schools*, "Baylor Law Review" 1996, v. 48, p. 204.

country. After the American Civil War they turned out not to keep up with the social reality, which was becoming more and more complicated, and the rapid social and economic development of the USA.¹¹

Eventually, in the second half of the 19th century law teaching found its place in university schools of law, and the process of acquiring qualifications to act as a lawyer was formalised and professionalized.¹² Nevertheless, the conviction that legal education should have vocational character, so that lawyers could be prepared to render legal services, remained unchanged. In fact, there can be said to have been certain dogma in the American approach to teaching law and the role of a lawyer in social relations – the primary aim of legal education was to prepare lawyers to provide services on the private market, whereas public service was of secondary importance.

That close connection between legal education and the principles governing the legal services market is related to the second feature of the American approach to law, that is the necessity to educate a lawyer-attorney rather than a lawyer-official.¹³ Producing the former was the only way to interrelate legal education with social practice. In order to become a justice, which was considered the most important of legal professions, one had to first prove his worth as an outstanding attorney or prosecutor. Legal practice was therefore necessary. That requirement stemmed from the crucial role of precedents in legislation. Since justices were, together with the parliament, responsible for law-making, they had to possess outstanding knowledge of law. For pragmatic Americans the only way to verify that knowledge was to assess how well one performed on the legal services market. This is why specialist schools or universities for justices were not established.

The American model of the way to become a justice was totally different from the European one.¹⁴ where the judge was initially to be

¹¹ Winds of social changes in US after Civil War which influenced on American legal education are described in: P. D. Carrington, *Butterfly Effects: The Possibilities of Law Teaching in a Democracy*, "Duke Law Journal", 1992, v. 41, p. 774-786.

¹² See: R. Stevens, *Law Schools: Legal Education in America from 1850s to 1980s*, Chappel Hill – London 1983.

¹³ A. Radwan, *Edukacja prawnicza wobec wyzwań XXI wieku*, [w:] B. Stoczewska (ed.), *Państwo i prawo w XXI wieku – szanse i zagrożenia (Materiały konferencyjne z IV Międzynarodowej Konferencji Krakowskiej Szkoły Wyższej im. Andrzeja Frycza Modrzewskiego)*, Kraków 2004, p. 194-195.

¹⁴ Also, contrary to Europe, some of justices are elected in general elections (in many states this is the way to elect judges of state judiciary), which makes the American way of selection of judges more democratic than in European countries. More detailed information on selection of judges in particular states can be found on website: http://judicialselection.us/judicial_selection/methods/selection_of_judges.cfm?state=, Accessed: 1 November 2016.

one of many royal officials bound by law and adjudicating cases on the king's behalf. Naturally, the Continental model involved a different way of educating future judges, who were to be prepared to adjudicate specific cases on the state's behalf and in compliance with the law made by the state. Approached in this way, the role of judges resembled the role of officials. They were both bound by law and not able to establish legal rules, with the difference that judges were to be autonomous and independent of external pressures. Obviously, one could first work as a barrister before becoming a judge, but in Europe that was an exception rather than the rule.

Finally, the last characteristic feature of American legal culture (and radically different from the European, continental one) is perceiving law as a certain kind of practical actions rather than as an organized and concise system of legal norms.¹⁵ Undoubtedly, this vision of law stems from the characteristic features of the Common Law system such as precedent law, which, in American conditions, used to play a more important role than statutory law. On the one hand, the law made by justices adjudicating concrete cases could be more flexible and adjusted to the changing social reality. On the other hand, there was an impression that law was a chaotic and random set of judicial decisions rather than an organized and coherent legal system.

The situation changed after a reform of law teaching initiated by Christopher Columbus Langdell in the second half of the 19th century, when a new generation of lawyers was educated. That new generation systematized the decisions of American justices into coherent and logical jurisprudence.¹⁶ From then on, common law started to be considered a set of systematized law-making elements and facts (acts passed by the parliament, precedents, and, to a lesser extent, custom law). Nevertheless, the principles of the American legal system could not be mastered without knowing particular decisions on particular cases. It was not possible to fully understand the common law system without referring to judicial decisions. In many cases, precedents of the Supreme Court or state courts influenced later legislative amendments.¹⁷

¹⁵ Some streams of legal philosophy deny the assumption that law has scientific character and claim that it should be regarded as pure practice – that stance is represented by legal realism in a broad sense. See B. Leiter, *Legal Realism*, in: Dennis Patterson (ed.), *A Companion to Philosophy of Law and Legal Theory*, Wiley-Blackwell 1996; Jerzy Stelmach, Ryszard Sarkowicz, *Filozofia prawa XIX I XX wieku*, Kraków 1999.

¹⁶ T.C. Gray, *Langdell's Orthodoxy*, "University of Pittsburg Law Review" 1983, v. 45; B.A. Kimball, *The Langdell Problem: Historicizing the Century of Historiography, 1906-2000s*, "University of Illinois Law and History Review", Summer 2004, Vol. 22, I. 277.

¹⁷ For example, the Supreme Court in 1954 ordered desegregation of public schools, and in 1973 decriminalized abortion. This activity of courts in public affairs is called "doctrine of

In the common law system, the principles of law and the general theory of particular branches of law were formed by justices who adjudicated concrete cases rather than university professors.¹⁸ The role of the latter was to substantiate, develop, and sometimes adjust the legal concepts formulated in courtrooms. Things looked different in continental Europe, where many acts and legal solutions drew from ideas developed in universities. Those ideas were then implemented by means of legislation and corrected by judicial practice if necessary.¹⁹ Furthermore, in Europe the role of a university professor was frequently combined with the that of a legal practitioner, whose task was to put theory into practice. It can therefore be said that certain solutions of common law were worked out by means of induction, that is an analysis of individual decisions, which made it possible to formulate general principles of law and concrete rules of law. By contrast, in the continental law certain solutions were worked out by means of deduction, that is an analysis of general principles laid down in the theory of law and then passed by the parliament. By means of judicial decisions, individual rules of adjudicating concrete cases were formulated.

Those two different ways of law-making and two different legal systems had a crucial impact on law teaching. Preparation for the same job looked totally different in two different cultures. In order to gain knowledge and skills necessary to run a legal practice, students from one continental culture had to refer to the sources of law different from those of their colleagues' from a common law country. In continental Europe, what counted was the knowledge from textbooks and legal commentaries written by professors of law who were responsible for the construction of the legal system and its institutions. For this reason, the continental model of teaching was lecture-oriented and required studying from legal textbooks and commentaries. Then that knowledge was supplemented with legal apprenticeship, which served as a preparation for performing one of legal professions. Yet, the most important source of legal knowledge were not judicial decisions but, above all, commentaries on the regulations which served as grounds for issuing those decisions.

Things looked different in the USA, where it was not possible to comprehend the essence of law and its content without knowing single

judicial activism". S. Harwood, *Judicial Activism: A Restrained Defense*, London 1996; Ch. Wolfe, *Judicial Activism*, 2nd ed., Totowa, NJ, 1997; K.M. Holland (ed.) *Judicial Activism in Comparative Perspective*, Macmillan 1991.

¹⁸ See: P.S. Atiyah, *Theory and Pragmatism in English Law*, London 1987, p. 1-43.

¹⁹ J.G. Sauveplanne, *Codified and Judge Made Law. The Role of Courts and Legislator in Civil and Common Law Systems*, Amsterdam-Oxford-New York 1982, p. 1-28.

key decisions or all jurisprudence along with its argumentation and statements of reasons.²⁰ Thus, it was crucially important to study and analyze particular decisions, compare them with others, and derive certain legal rules from numerous judicial decisions scattered all over the judicial system. Although the regulations passed by the legislator were important, priority was given to decisions and their interpretations accepted during the course of court proceedings. This is why it was essential to take a grip on the whole system of decisions.

All the aforementioned features exerted a significant influence on the American methods of law teaching. At the same time, proposals to reform legal education reflected an evolution which started at the end of the 19th century and has been in progress till today. The first, oldest and still most popular method of teaching law applied in the majority of American law schools is the method developed by Christopher Columbus Langdell, a long-standing dean of the school of law at Harvard University starting from 1870.²¹ His method consisted in analyzing selected decisions of appeal courts, presenting the results, and discussing them with other students and the teacher in class.²² This method is also called Case Study, though the name does not refer to the way classes are conducted, but only to the analysis of a specific case conducted by a student. The aim of the analysis of a case is to thoroughly reconstruct facts, to analyse the argumentation of the parties, to reconstruct the fact analysis method and the decision-making process of the court, and to determine the essence of the rule of law produced by the court in the decision. Alone, the presentation and confrontation of one's results with the results of other students during a discussion in class conducted by a professor is called Socratic Method.²³ The job of the teacher was to ask the right questions, voice doubts, change the circumstances of the

²⁰ R.L. Weaver, *Langdell's Legacy: Living with the Case Method*, "Villanova Law Review", 1991, v. 36, p. 554, also W.E. Oberer, *On Law, Lawyering and Law Professing: The Golden Sand*, "Journal of Legal Education" 1989, v. 39, no. 2.

²¹ More on Langdell Biography see: W. Schofield, *Christophus Collumbus Langdell*, "The American Law Register" 1907, v. 55, no. 5.; B.E. Kimbell, *The Inception of Modern Legal Education. C.C. Langdell 1826-1906*, Chapel Hill 2009.

²² Broadly on Case Method see: D. Patterson, *Langdell's Legacy*, Northwestern University Law Review, 1995; C. Kissam, *The Ideology of the Case Method/Final Examination Law School*, "University of Cincinnati Law Review", 2001, v. 70.

²³ See: P. E. Areeda, *The Socratic Method(SM) (Lecture at Puget Sound 1/31/90)*, "Harvard Law Review", 1996, v. 109, no. 5, p. 911-922; C.E. Schneider, *The Socratic Method and the Goals of Legal Education: With Some Thoughts Inspired by Travel*, "Hogaku Kyoshitsu", Sept. 1995, p. 34; A. Kronman, *The Socratic Method and the Development of the Moral Imagination*, "University of Toledo Law Review", 2000, vol. 31, p. 647-648.

discussed case in order to make the students express their opinions quickly, make them justify their positions, and make them take an attitude towards the criticism on the part of other students and the professor. The name of the method originates from the practice of the great Greek philosopher who used to force his interlocutors to discover the truth about a discussed matter by themselves by asking them questions in a skilful way.²⁴

Initially, the aim of the method was to prepare future lawyers-investigators who were to discover certain objective rules present in the social reality and visible in jurisprudence.²⁵ However, it soon turned out to be a perfect way of teaching large numbers of lawyers, which was much more efficient and cheaper than the medieval guild-like method of teaching. In Langdell's method it was not only practical skills that were taught, but also, and to a greater extent, a way of thinking about law and the fundamentals of the identity of legal professions which underlay the expression "thinking like a lawyer".²⁶ Although Langdell was not the author of that expression (it appeared and spread in the 20th century), he laid the foundations for perceiving lawyer's thinking as something distinct and special set against the background of other professions. It is generally considered that Langdell's concept of law perceived as scientific knowledge examined by means of a case study, which led to the formulation of the American common law system, gave birth to American legal formalism which predominated in jurisprudence at the turn of the 20th and the 21st century.²⁷

²⁴ The discussion of values of Langdell's Method for law teaching was depicted by J. Srokosz, *The American discussion on the value of the Langdell's education method of teaching students to "thinking like a lawyer", and possibility of its implementation in Polish legal education*, [in:] *Aktuální otázky právní metodologie*, M. Večeřa, T. Machalová, J. Valdhans (eds), Brno 2014.

²⁵ Langdell was convinced that law is kind of science, and should be analyzed by using scientific methods. M.H. Hoeflich, *Law & Geometry. Legal Science from Leibnitz to Langdell*, "The American Journal of Legal History" 1986, v. XXX; N. Cook, *Law as Science: Revisiting Langdell's Paradigm in the 21st Century*, "North Dakota Law Review", 2012, v. 82, no. 2.

²⁶ This phrase is very often used in American discourse on legal education; however, there is a problem to define what exactly it means. Very often it appears in the class books for the first year law students: E. Mertz, *The Language of Law Schools: Thinking Like a Lawyer*, Oxford-New York 2007; F. Schauer, *Thinking Like a Lawyer: A New Introduction to Legal Reasoning*, London 2009; K.J. Vandevellde, *Thinking Like a Lawyer: An Introduction to Legal Reasoning*, Boulder 2011.

²⁷ R.A. Posner, *Legal Formalism, Legal Realism and the Interpretations of Statutes and The Constitution*, "Case Western Reserve Law Review", 1986-87, v. 37, no. 2, p. 182ff.; The origin of American Legal Formalism is described in: M.J. Horowitz, *Transformation of American Law 1780-1860*, Cambridge-London 1977, p. 253-269. See also: W.M. Wiecek, *The Lost World of Classical Legal Thought: Law and Ideology in America 1886-1937*, New York-Oxford 1998.

The second American method of teaching law, the Clinical Legal Education,²⁸ is not an independent method, for it merely supplements and corrects the drawbacks of Langdell's one. It was developed in the outcome of the criticism of American formalism and Langdell's method by legal realists.²⁹ They claimed that law was only when certain rules were actually exercised, not when they were only hypothetically binding. In this actual view, law (law in action) consisted of only formally binding rules (law in books) which were actually applied by courts.³⁰ Langdell's method of teaching law was not completely dismissed by realists, for it put emphasis on investigating judicial decisions. However, it was accused of being detached from reality and teaching students "thinking like a professor" rather than a lawyer.³¹ For those reasons, realists proposed that the method should be at least supplemented with the so-called clinical education.

The notion was adopted from medicine, where it meant teaching students how to treat by providing medical aid to ill individuals under supervision of a professor-doctor. The transfer of that method from medicine to law stemmed from a conviction that the only way to learn law was to practice it from early beginning by providing legal aid to the poor, in some minor cases, under supervision of a professor who verified and corrected the work of students. Apart from practical knowledge of law, jurisprudence, and factors necessary to obtain specific results, the method showed how to teach students practical skills such as client handling and accessing information.³² And finally, the method combined academia with social-oriented activity, teaching students sensitivity to

²⁸ More on Clinical Legal Education see: E.M. Burg, *Clinic in the Classroom: A Step Toward Cooperation*, "Journal of Legal Education", 1987, vol. 37; J.S. Bradway, *The Legal Aid Clinic as an Educational Device*, "The American Law Review", 1934, vol. 7; *Clinical Education for the Law Students In a Service Setting*, Minoela – New York 1978; A.G. Amsterdam, *Clinical Legal Education – 21th century perspective*, "Journal of Legal Education", 1984, v. 34.

²⁹ See: J. Frank, *Why Not a Clinical Lawyer-School?*, "University of Pennsylvania Law Review" 1933, v. 81, no. 8.

³⁰ This phrases are attributed to Roscoe Pound, who used them in his paper "Law in Books and Law in Action", but it is emphasised that the essence of this distinguishing was more profoundly depicted by Karl Llewellyn. J.L. Halperin, *Law in Books and Law in Action: The Problem of Legal Change*, "Maine Law Review" 2011, v. 64 no. 1, p. 46. See also: R. Pound, *Law in Books and Law in Action*, "American Law Review" 1910, v. 44; K. Llewellyn, *A Realistic Jurisprudence – The Next Step*, "Columbia Law Review" 1930, v. 30, no. 4.

³¹ See for example: H.T. Edwards, *Growing Disjunction Between Legal Education and the Legal Professions*, "Michigan Law Review", 1992, v. 91, p. 34.

³² M. Spiegel, *Theory and Practice in Legal Education: An Essay on Clinical Legal Education*, "UCLA Law Review" 1987, v. 34.

social problems, and pro bono work.³³ As opposed to Langdell's method, the aim of the Clinical Legal Education method was to teach not only fact analysis, legal rules, and argumentation (all in classroom), but equip students with genuine knowledge of how law functions, and teach them how to handle clients properly.

Although the first proposals to implement the Clinical Legal Education method were put forward in the 1920s, it was not until the 1960s and the 1970s that it became more popular, which was triggered by emancipation movements in the USA in the 1950s and the 1960s. Free legal aid provided by students undoubtedly raised legal awareness of the citizens and contributed to the success of those movements.³⁴ Although Clinical Legal Education never won against Langdell's method, it became one of the compulsory courses in the majority of American schools of law.

The last method to be discussed in the paper is the Problem Solving Method.³⁵ The method derived from the criticism of Langdell's method which was accused of educating the so-called "hired guns" lawyers concerned only with legal problems, which was not exactly for the good of the client.³⁶ The advocates of the method claim that the problems, which clients bring to lawyers, are hardly ever only of legal nature. Those problems tend to be more complex, which requires from lawyers not only the knowledge of law, argumentation, and analytical abilities, but also the ability to set goals, together with the client, and plan how to achieve them.³⁷ The traditional way of teaching law was too concerned with legal issues and the lawyer itself, at the same time diminishing the problems of the client, forgetting about proper interpersonal relations with them and about their best interest. The proposals of the new

³³ P. Kosuri, *Losing My Religion: The Place of Social Justice in Clinical Legal Education*, "Boston College Journal of Law & Social Justice", 2012, v. 32, I. 2.

³⁴ J.C. Dubin, *Clinical Design for Social Justice Imperatives*, "SMU Law Review" 1998, v. 51; A. Sedillo Lopez, *Learning through Service in a Clinical Setting: The Effect of Specialization on Social Justice and Skills Training*, "Clinical Law Review" 2001, v. 7.

³⁵ See: M. Moskovitz, *Beyond the Case Method It's Time to Teach with Problems*, "Journal of Legal Education", 1992, Vol. 42; D. Coursin, *Comment, Acting like a lawyer*, "Wisconsin Law Review", 2010; P. Brest, *The Responsibility of Law Schools: Educating Lawyers as Counselors and Problem Solvers*, "Law and Contemporary Problems", 1995, vol. 58; M.N. Mosley, *The reports of Socrates Demise have been greatly Exaggerated, A response to bang goes theory – debunking traditional legal education*, "Phoenix Law Review", 2010, vol. 3.

³⁶ J. Kerper, *Creative Problem Solving vs. The Case Method: A Marvelous Adventure in Which Winnie-the-Pooh Meets Mrs. Palsgraf*, "California Western Law Review" 1998, v. 34, No. 2, p. 353ff.

³⁷ T. D. Barthon, *Creative Problem Solving: Purpose, Meaning and Values*, "California Western Law Review" 1998, v. 34, no. 2.

method were proposed in reaction to the weak points of the traditional method of teaching. According to the advocates of the new method, students studied law back to front, that is starting from judicial sentences. It would be more reasonable, however, to first get acquainted with the client's problem and then refer to judicial decisions and their argumentation. Therefore, it was suggested that teaching law should incorporate discussions, workshops, or role plays as the techniques which teach students interpersonal skills and, at the same time, allow them to practice legal analysis and work out possibly the best solution to the client's problem.³⁸

According to the advocates of the new method, the old one aimed at preparing confrontation and conflict-oriented lawyers who tend to bring cases to court. Yet, lawyers should concentrate on solving the problem and go to court as the last resort. They should first try to find a simpler solution. The role of a lawyer should not therefore be confined to those traditionally understood professional areas. The lawyer should take the role of a versatile advisor rather than a professional plenipotentiary. In this view, the lawyer is no longer a "hired gun", but a personal advisor who co-decides on and bears joint responsibility for setting goals and achieving them. Without a doubt, that concept has a lot in common with the proposal to promote alternative ways of solving conflicts rather than solve every problem in court, especially when it concerns those areas of life where court intervention is inadvisable like, for instance, in the case of family relation issues.³⁹ It also has a lot in common with the more and more popular vision of what the legal services market should be like. It should now offer more complex customer service involving not only legal issues.⁴⁰

The article discussed the origins and philosophical fundamentals underlying particular methods of teaching law in the contemporary USA. The cultural context within which those methods were established and function now, and their ideological justification, will play the key role in evaluating the possibility of applying them in Poland. Certain

³⁸ See more: L. Kloppenburg, *Educating Problem Solving Lawyers for our Professions and Communities*, "Rutgers Law Review", 2009, v. 61, no. 4, p. 1099-1114.

³⁹ C. Menkel-Meadow, *When Winning Isn't Everything – Lawyer as The Problem Solver*, "Hofstra Law Review" 1999-2000, v. 28, p. 905-924. That attitude requires from lawyers a lot of creativity, and from law schools to develop this creativity in future lawyers. Idem, *Aha? Is Creativity Possible in Legal Problem Solving and Teachable in Legal Education?*, "Harvard Negotiation Law Review" 2001, v. 6, p. 97-144.

⁴⁰ On challenges facing legal profession and lawyering see: R. Susskind, *The End of Lawyers?: Rethinking the Nature of Legal Services*, Oxford 2010; T.D. Morgan, *The Changing Face of Legal Education: Its Impact on What it Means to be a Lawyer*, "Akron Law Review" 2012, v. 45.

elements of the American legal culture have already become universal, owing to globalisation processes. Nonetheless, it does not follow that most of them have to or can be transplanted to the Polish reality, at least not in a “copy-paste” manner known from text editors. That unquestioned copying would resemble the famous sociological example of the “cargo cult practices”. For this reason, it would only be, more or less, an official ideological curtain obscuring entirely different legal reality. On the other hand, a thoughtful application and implementation of some of the American solutions could be highly beneficial also to the legal education in Poland, providing that they could fit in with the Polish legal culture. It would have to be a more creative compilation rather than a total transplant of elements of an alien legal culture, no matter how modern and trendy they were.

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PHILOSOPHICAL AND CULTURAL BASIS OF THE MAIN METHODS
OF LEGAL EDUCATION IN THE USA

Abstract: The article aims to provide an overview of the most popular law teaching methods in the USA (Langdell's Case Study together with Socratic Method, Clinical Legal Education, and Problem Solving Method) with reference to the cultural context and philosophical background. First, the characteristic features of the American legal culture with regard to teaching law and ideological grounds of the American legal education are presented. Then the methods are discussed together with the context in which they were developed and the arguments for implementing them.

Keywords: AMERICAN LEGAL EDUCATION, CASE STUDY AND SOCRATIC METHOD, CLINICAL LEGAL EDUCATION, PROBLEM SOLVING METHOD, CULTURAL AND PHILOSOPHICAL CONTEXT