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## Can Havruta Style Learning Be a Best Practice in Law School?

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SMALL SCHOOL.  
BIG VALUE.

# CAN HAVRUTA STYLE LEARNING BE A BEST PRACTICE IN LAW SCHOOL?<sup>1</sup>

BARBARA PINKERTON BLUMENFELD \*

I. Introduction .....	109
II. Overview and Comparisons of Havruta Style Learning and Collaborative Learning .....	111
A. History, Philosophy, and Practice of Havruta Method .....	111
B. History, Philosophy and Practice of Collaborative Learning Theory .....	119
C. Effects of Collaborative Style Learning .....	124
D. Key Similarities and Distinctions of Havruta Learning and General Collaborative Teaching .....	128
III. Considerations for the Usefulness of Havruta Style Learning in the Law School Setting .....	131
A. Goals of Legal Education .....	132
B. Current Law School Pedagogy and Its Shortcomings .....	134
C. Considerations for Implementing Havruta Style Learning in the Law School Setting .....	136
IV. Conclusion .....	142

## I. INTRODUCTION

Havruta, a unique form of collaborative student centered learning, manages to excite students and to engage them in the learning process.<sup>2</sup>

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1. Dedicated to Jeheskel “Hezy” Shoshani who throughout his life maintained a true joy in both teaching and learning, a thirst for knowledge and love of life. On May 20, 2008, on his way home from his work as visiting professor at Addis Ababa University in Addis Ababa, Ethiopia, Hezy was killed when a terrorist roadside bomb exploded the minibus taxi in which he was riding. Hezy was always a teacher. As one colleague noted, “If you asked him a question, he would ask for your thoughts, making you think and not just accept what another was telling you.” Hezy’s openness, enthusiasm and excitement at every new piece of information and idea was contagious and exemplifies the effects one sees in Havruta style learning. For more about Hezy, see Ofri Ilani, *Elephants Without Borders*, HAARETZ, March 13, 2008 available at <http://www.haaretz.com/hasen/spages/963922.html>.

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2. AHARON LICHTENSTEIN & YEHUDA BRANDES, ACADEMY FOR TORAH INITIATIVES

That alone makes it worth examining, especially when “much has been said and written about how those who have been raised on the lap of the electronic media and the instant gratification that it provides recoil from investing in the study of disciplines that require hard work and promise only a long-term return.”<sup>3</sup> Yet this traditional Jewish method of using pairs to closely study a text seems to be especially compatible with legal education because of its focus on process, a focus which is adaptable to law school training in legal reasoning. The focus of Havruta is also based upon dispute and resolution, another aspect that corresponds with the study of law. Havruta method is not, however, directly transferable without some consideration of the underlying philosophies of learning, teaching and educational goals, as well as an understanding of how it may differ from collaborative learning methods currently practiced in the law school classroom. It is also necessary to discuss the goals of legal education and the current methods of effectuating those goals. With this information, one can consider whether Havruta style learning can and should have a place in the law school classroom.

This paper will briefly describe Havruta learning and general theories of collaborative learning. It will then compare the two, considering the histories, purposes, and principles behind these methods of study. It will then consider their application in the law school setting, discussing whether Havruta would be useful in effectuating the goals of law school instruction. In typical Havruta fashion, this presentation will raise a number of questions—more questions than it may answer. Nonetheless, this paper suggests that an examination of those questions leads to the conclusion that Havruta style learning can and should be incorporated into the law school curriculum.

There is also much that this paper will not discuss, as its focus is on pair style learning that models the traditional Havruta methods found in Yeshiva schools. There are other types of collaborative learning that also deserve similar study. For example, use of groups in ways that do not allow the danger of freeloaders or unequal participation,<sup>4</sup> and use of

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AND DIRECTIVES, NOTES FROM ATID: TALMUD STUDY IN YESHIVA HIGH SCHOOLS 46 (Jeffrey Saks ed., 2007) (Discussing Havruta style learning, the authors state: “The idea that students don’t want to learn and that in the age of electronic media there is no motivation is a mistake.”).

3. *Id.* at 15.

4. For example, in a small class of 10 students I believe I was able to do away with this effect by creating a “group mind” that actually worked together to think through and then write a brief in class. This advanced class attempted to break the often subconscious steps of thinking, connecting and writing into small pieces. In class the group mind worked on one step as they worked each week on the “in class brief.” The students then took the process with

groups whose focus is not on group completion of one identifiable product.<sup>5</sup> These additional areas should be examined at some point, especially in light of the current concern among law schools for practices that will enhance the teaching of law.<sup>6</sup> Additionally, this paper is directed at traditional classroom settings and does not address clinical or similar educational practices.

## II. OVERVIEW AND COMPARISONS OF HAVRUTA STYLE LEARNING AND COLLABORATIVE LEARNING

The fact that Havruta involves students working together may make it appear as simply another form of group or collaborative learning that is practiced in classrooms from grade school through postgraduate universities. However, while there are many similarities, there are also key distinctions in both the goals of the teaching method and in the underlying philosophy. The following brief overview of Havruta and collaborative learning generally establishes a basis for some comparisons and assessment of why Havruta may be an especially successful form of collaborative learning in legal education.

### *A. History, Philosophy, and Practice of Havruta Method*

Havruta study is used by Jews to study Jewish text. It is a method of conducting a close study of a text which requires interpretation and which often involves questions with no one right answer. It is conducted in pairs, hence the name Havruta, which is linguistically related to the Aramaic/Hebrew word for “friendship.”<sup>7</sup>

Jewish tradition instructs that Torah, defined as the corpus of Jewish law and lore,<sup>8</sup> is only acquired in a group and encourages learning in pairs. Two scholars, through discussion and debate, help to sharpen one another’s insight about the text.<sup>9</sup> Medieval Jewish scholars explained

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them outside the class and each week accomplished the same small step on their own as they worked on a separate individual brief.

5. This method has commonly been used for years in such things as moot court and mock trial teams. The fact that it is not new does not mean that it cannot be improved.

6. See ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION, A VISION AND A ROADMAP (2007) (discussing the current focus on best practices).

7. See *Havruta Study Method*, THE CURRICULUM INITIATIVE, <http://www.tcionline.org/ts/peopleofcolorconference/TCIHavrutaWorksheet.pdf> (last visited Dec. 7, 2009).

8. SAMUEL C. HEILMAN, THE PEOPLE OF THE BOOK: DRAMA, FELLOWSHIP, AND RELIGION 320 (1983) (The Torah itself consists of the first five books of the Old Testament (Genesis, Exodus, Leviticus, Numbers, Deuteronomy)).

9. Rachael Gelfman Schultz, *Havruta: Learning in Pairs*, MYJEWISHLARNING,

the benefit of paired learning: "if one makes a mistake, the other will correct him, whereas if one learns alone there will be no one to correct him."<sup>10</sup> Nonetheless, paired study of Jewish text did not become common until the last century. Prior to that, paired study was only one of many possible methods of study in yeshivot (Jewish academies of learning).<sup>11</sup> During World War I, admission to yeshivot broadened<sup>12</sup> and Havruta was seen as a means of helping weaker students who could not keep up with the rest of the class.<sup>13</sup> Today, Havruta has become an integral part of traditional Jewish study and is used in orthodox as well as non-orthodox Jewish schools.<sup>14</sup> Havruta has begun to spread beyond Jewish religious schools to the study of secular subjects.<sup>15</sup> Despite its growing use, however, little research has focused on its process<sup>16</sup> and there is no major study of peer teaching and cooperative learning in Judaic subjects together with secular subjects.<sup>17</sup>

The Talmud is the primary focus of Havruta study. It consists of 63 volumes of biblical interpretation by scholars.<sup>18</sup> The text and commentaries on that text provide an unending dialogue about the meaning of the Torah.<sup>19</sup> The Talmud is a tool to help the student attain

[http://www.myjewishlearning.com/practices/Ritual/Torah\\_Study/How\\_to\\_Study\\_Torah/Havruta\\_Learning\\_in\\_Pairs\\_.shtml](http://www.myjewishlearning.com/practices/Ritual/Torah_Study/How_to_Study_Torah/Havruta_Learning_in_Pairs_.shtml) (last visited June 13, 2008) (interpreting 43 Ecclesiastes 4:10-11;).

10. *Id.*

11. For a summary of historical discussions of Havruta text study, see Elie Holzer, *What Connects "Good" Teaching, Text Study and Hevruta Learning? A Conceptual Argument* (Beit Midrash Research Project, Working Paper, 2006), reprinted in *J. OF JEWISH EDUC.*, Sept. 2006, at 183, 183 n.2, available at [http://www.brandeis.edu/mandel/pdfs/Beit\\_Midrash\\_Paper\\_Holzer.pdf](http://www.brandeis.edu/mandel/pdfs/Beit_Midrash_Paper_Holzer.pdf).

12. *Introduction to NEW HUMANITIES AND ACADEMIC DISCIPLINES* xiii (Jacob Neusner, ed., University of Wisconsin Press, 1984) (Traditionally, only elite Jewish males studied in yeshivot, however, during WWI, Yeshivot was opened to Jewish males of all classes).

13. Gelfman, *supra* note 9.

14. *Id.*

15. See, e.g., Erin O'Farrell & Kimberly Stephens, *Talmudic Study Method Works in Private School, Teachers Find*, THE CURRICULUM INITIATIVE (Aug. 17, 2006), <http://www.thesbf.org/pdf/JTATalmudicStudy.pdf> (discussing the use of Havruta study in 10<sup>th</sup> grade English class).

16. See Steven M. Brown & Michael Malkus, *Hevruta as a Form of Cooperative Learning*, *J. OF JEWISH EDUC.*, Sept. 2007 at 209.

17. E. O. Schild, *Overview: A Policy Prospective in 4 STUDIES OF ISRAELI SOCIETY: EDUCATION IN A COMPARATIVE CONTEXT* 10, 15 (ERNEST KRAUSZ & DAVID GLANZ eds., Transaction Publishers 1989).

18. Netta Notzer, David Zieswine & Haim Sarnat, *Old Thoughts, New Ideas: Comparing Traditional Talmudic Education with Today's Medical Education*, 73 *ACAD. MED.* 508 (1998).

19. David A. Frank, *Arguing with God, Talmudic Discourse, and the Jewish Countermodel: Implications for the Study of Argumentation*, 41 *ARGUMENTATION & ADVOC.* 71, 80 (2004); see generally Mark Miller, *Something to Argue About*, *WALL ST. J.*, Feb. 25,

a deeper understanding of its underlying principles.<sup>20</sup> The form of reasoning used in the Talmud is primarily argumentation.<sup>21</sup> A primary objective of Jewish scholars is “to tease out the meaning and purpose of each twist of the argument to learn how to apply the law in new situations—something like the Socratic Method used in contemporary law school classes.”<sup>22</sup> By using a method of study that relies on discussion rather than lecture, apparently contradictory statements may be reconciled as students and teacher discover some subtle distinction and apparently irrelevant statements will be analyzed and some common underlying principle may be discovered.<sup>23</sup> Interlinking and harmonization are two characteristic features of Talmudic study.<sup>24</sup> Havruta learning delights in the saying “Two Jews = three opinions.”<sup>25</sup> This represents that Jewish study shuns obedience to one way or answer and instead encourages a democratic pattern of thought.<sup>26</sup>

The Talmud itself is written as a spiral with the earliest text or argument in the middle of the page, with dialog and responses spiraling outward around it in chronological order.<sup>27</sup> Jewish wisdom similarly proceeds in a spiral that intertwines future and past, it “takes an ancient tradition, gives it a twirl, and comes out somewhere new.”<sup>28</sup> This is one difference between Jewish argumentation and classical argumentation, which has as its purpose a definitive end and the discovery of a unitary truth.<sup>29</sup> That is, classical argumentation might assert that if two men

2005, available at

<http://web.archive.org/web/20051117214646/http://www.opinionjournal.com/taste/?id=110006341> (“The Talmud is believed to have been composed orally and originally handed down from teacher to student by memorization. It combines both law in its purely legal sense and religion (religious observances, rites, etc.), as well as some additional subjects (e.g. agriculture).”).

20. See Notzer, Zieswine & Sarnat, *supra* note 18, at 509.

21. Frank, *supra* note 19, at 80.

22. Miller, *supra* note 19.

23. See Notzer, Zieswine & Sarnat, *supra* note 18 at 509; see also Herman Wouk, *WHY DAF YOMI? Talmud Study*, OHR SOMAYCH, <http://ohr.edu/yomi/wouk/yomid.pdf> (last visited Dec. 7, 2009).

24. Wouk, *supra* note 23.

25. LICHTENSTEIN & BRANDES, *supra* note 2, at 36.

26. See generally *id.* at 37. (explaining that the belief that every person is equal before God, the Torah and truth means that the Talmud, unlike many religious sources, is not authoritative).

27. See e.g., Photo of Talmud, WODPRESS BLOG, <http://djiin.files.wordpress.com/2008/01/talmud.jpg> (last visited Dec. 7, 2009).

28. Frank, *supra* note 19 at 82.

29. *Id.*; see also Dov Gartenberg, *An Introduction to Havruta Study*, RABBIBLOG (Nov. 16, 2005), <http://rabbidovblog.blogspot.com/search?updated-min=2005-01-01T00%3A00%3A00->

disagree, one must be wrong and that once the correct answer is discovered the argument must end. In contrast, Jewish thought believes that those who disagree may “command shards of truth” and that “the process of argumentation, because it has no ending point, must continue.”<sup>30</sup> This concept is physically manifested in the continuous spiral of the text.

The starting point of Talmudic study is the belief that “any text that is deemed worthy of serious study must be assumed to have been written with such care and precision that every term, expression, generalization or exception is significant not so much for what it states as for what it implies.”<sup>31</sup> The Talmudic student, in studying the text, will proceed to raise questions designed to understand its full meaning. The questions often address what the author intended, what underlying principles are involved, how broadly or narrowly to interpret a general rule, what is or can be excluded, and what qualifications are permissible.<sup>32</sup> Thus, in studying the Talmud, students do not simply read a record of text and debates about that text. Instead, the Talmud is a framework for teaching students to think in a manner that examines issues in complex ways.<sup>33</sup>

Students learn to transcend the mere recitation of what others have explained<sup>34</sup> and to continue the process of understanding.<sup>35</sup>

The use of partners to interpret the text enables this process. An active reader studying alone will ask questions and perhaps assume answers, but is unable to actually probe the thinking of the author. However, when working with a partner, each can probe the other’s thinking as they suggest answers to questions and the two together can

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08%3A00&updated-max=2006-01-01T00%3A00%3A00-08%3A00&max-results=50 (“While most of Western thought is primarily concerned with the ‘Answer’, Jewish thought is preoccupied with the ‘Question’. Judaism, through the study of our sacred texts, affirms the dialectic, a search for clarification in a world of uncertainty. Jewish study is all about struggle, searching and questioning.”).

30. Frank, *supra* note 19 at 81-82; *see generally* Joel Lurie Grishaver, *Teaching Torah, in THE ULTIMATE JEWISH TEACHER’S HANDBOOK* 398 (Nachama Skolnik Moskowitz ed., 2003) (“One of the goals of Torah study is to teach two diverse lessons. One, that there is a way that God wants us to see things. God has taught us truth via the Torah. And, two, our job is to struggle to find that truth. The struggle, the argument, and the search purifies Torah and gets it to shine.”).

31. Wouk, *supra* note 23.

32. *Id.*

33. LICHTENSTEIN & BRANDES, *supra* note 2, at 37.

34. *See* JACOM NEUSNER, *ISRAEL IN AMERICA: A TOO-COMFORTABLE EXILE?* 142-45 (Beacon Press, 1985). (“It is not enough for students to master the facts; they must also master how to learn.”).

35. *See Id.* at 142 (“Study of the Torah requires memorization, but it also requires the student to reason.”)

perhaps probe more deeply into the text.<sup>36</sup> Thus, text study in Havruta involves “a slow, meticulous open investigation and deciphering of the text, helping [the] study partner, weighing alternative interpretations, arguing with [the] study partner about possible interpretations and arguing with the content of the text.”<sup>37</sup> The students have a discourse with the text, but unlike a live discourse, cues such as vocal and facial expression are absent, thus leaving the text open to a range of interpretations that the students must discover.<sup>38</sup> The Havruta pair engages in a vigorous dialectic as they struggle together to understand each passage of the text; they must discuss how to apply it to larger issues addressed, and to their own lives.<sup>39</sup>

“[M]inority opinion and dissent are highly valued in Talmudic argumentation.”<sup>40</sup> Havruta students, like all students, come to their study with a conceptual framework; the Havruta discussions require that partners be open to another’s perspective and be self aware of their own limited perspective. Partners must listen to one another and must be willing to revise their misconceptions and preconceptions.<sup>41</sup> Havruta partners must hold three voices simultaneously: the voice of the text, the voice of their partner, and their own voice. In order for the interaction to work, each student must listen to all three and build off the ideas of each by asking questions and trying out different interpretations.<sup>42</sup> This process leads to a rich discussion that both engages the students and leads them to see multiple layers and ideas in the text they are studying.<sup>43</sup> Being required to work with others who may hold a different framework pushes the students to step outside their own point of view for a broader understanding of the concept under study.<sup>44</sup> “The learner is called to articulate his or her own interpretation of the text and, in the presence of the partner’s possible different interpretation, to attend to a

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36. Orit Kent, *Interactive Text Study: A Case of Hevruta Learning* (Beit Midrash Research Project, Working Paper, 2006), reprinted in J. OF JEWISH EDUC., Sept. 2006 at 205, available at [http://www.brandeis.edu/mandel/pdfs/Beit\\_Midrash\\_Paper\\_Kent.pdf](http://www.brandeis.edu/mandel/pdfs/Beit_Midrash_Paper_Kent.pdf).

37. Holzer, *supra* note 11, at 3.

38. *See id.* at 6.

39. *See Gelfman, supra* note 9.

40. Frank, *supra* note 19, at 81 (“One must note, however, that while Talmudic study acknowledges and encourages diverse views, the actual participants are generally fairly homogeneous.”).

41. Holzer, *supra* note 11, at 10-11.

42. *Id.* at 12 (“[E]ach Hevruta[sic] partner is simultaneously engaged in a process of meaning making which encompasses two intertwined but different axes: between herself and her Hevruta[sic] partner and between herself and the text.”).

43. Kent, *supra* note 36, at 5.

44. Holzer, *supra* note 11, at 8.



different view but also to argue for a better interpretation.”<sup>45</sup> A consensus is then reached between all three participants: the two students and the text.<sup>46</sup> As described by one Havruta student, “If you tried to prepare by yourself, you'd be fooling yourself because you'd be limited by your own abilities. On the other hand, another's viewpoint is always a little different and this way it would be much richer, almost like a third viewpoint, a combined result.”<sup>47</sup>

In addition to creating a bond between the students, Havruta also binds the students directly to the learning experience. “You have not just passively absorbed; you have created, you have understood a view, argued for it, transmitted it, defended it. It is now you as much as anything else.”<sup>48</sup> Descriptions of Yeshiva classrooms where students are studying in pairs universally include a sense of energy and excitement.<sup>49</sup> There is a “spirited engagement in which students both listen closely to one another and actively challenge one another and themselves.”<sup>50</sup> While it sometimes may appear as a simple discussion to clarify a point, more often it may look like a serious disagreement as the partners shout at one another.<sup>51</sup> The students become emotionally involved in the study process. This involvement gives the students a sense of achievement and a measure of satisfaction and creates a strong basis for and enhances learning.<sup>52</sup>

In Havruta study, a teacher or Rabbi serves as a guide who shares equally with the students in the quest for knowledge.<sup>53</sup> As one Jewish teacher put it, “I teach Torah, midrash, and mitzvot – subjects that have

45. *Id.* at 12.

46. *See id.* at 13.

47. Gelfman, *supra* note 9 (quoting WILLIAM B. HELMREICH, *THE WORLD OF THE YESHIVA: AN INTIMATE PORTRAIT OF ORTHODOX JEWRY* 111 (Free Press 1982)).

48. M. HERBERT DANZGER, *RETURNING TO TRADITION: THE CONTEMPORARY REVIVAL OF ORTHODOX JUDAISM* 179 (Yale Univ. Press, 1989).

49. *See* DANZGER, *supra* note 48, at 132 (“A bet midrash, or study hall, is not at all the silent contemplative place one might expect. It is full of shouting and vociferous argument, a marketplace of ideas, not an ivory tower.”); Holzer, *supra* note 11 at 12. (“[Students] question each other about what the passage says, or how it relates to its larger context. Usually, there is a lively exchange of ideas, each partner argues for his or her interpretation, as both focus on the written text.”).

50. Kent, *supra* note 37, at 4.

51. *See, e.g.,* Verena Dobnik, *Ultra-Orthodox Jews Give Amish Walking Tour*, MSNBC (Mar. 31, 2009, 8:36 PM), <http://www.msnbc.msn.com/id/29981897/> (“At the [Hasidic Center in Crown Heights, Brooklyn] each day, dozens of men gather to pore over religious books, with little boys dashing around as their fathers fervently debate fine points of the texts – sometimes sounding more like spirited poker players than religious faithful.”).

52. *See* JAMES E. ZULL, *THE ART OF CHANGING THE BRAIN* 218, 226 (2002).

53. Notzer, Zieswine, & Sarnat, *supra* note 18, at 509.

no beginning or end. As a teacher, I am a perpetual student.”<sup>54</sup> An effective Havruta teacher must have a disposition toward open mindedness in the sense of a genuine desire to give full attention to a variety of views and openness to alternative or new possibilities, as well as self awareness of his or her own preconceptions, and an ability to genuinely and attentively listen to the students’ learning with a wholehearted attention to the matter at hand.<sup>55</sup> Additionally, the Havruta teacher must be open to questions about meaning,<sup>56</sup> and have a tolerance and patience for ambiguity.<sup>57</sup>

The Havruta session may begin with a lecture by the teacher that covers the page of the Talmud or text under consideration that day.<sup>58</sup> The teacher may ask a question asked by the Talmud or one of its commentaries, or may state a problem and raise a question in order to initiate discussion. The Havruta partners try to explain their answers and argument to one another. The discussion will progress from the particular case to more general principles. Sessions are intellectually rigorous and offer all participants the opportunity to clarify their ideas.<sup>59</sup> During discussions between Havruta partners, the teacher or rabbi will also be present for questions and clarification.<sup>60</sup>

Havruta interaction is not ordinary conversation; despite its openness to ideas, there is typically a structured series of moves involved in Havruta study.<sup>61</sup> These include recitation, translation, explanation, and discussion.<sup>62</sup> The partners will read the assigned text together, often out loud to one another.<sup>63</sup> They will react to the text as they question and analyze it in their effort to explain it. They will engage each other with questions about the text, the words of the text, and what the text

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54. Grishaver, *supra* note 30, at 403.

55. Holzer, *supra* note 11 at 14-15.

56. LICHENSTEIN & BRANDES, *supra* note 3, at 44.

57. Holzer, *supra* note 11, at 15.

58. DANZGER, *supra* note 48, at 132. The study requires a daily rigorous routine. In preparation for the lecture and discussion, students will devote an hour or more to reading the page of the Talmud that is scheduled for that day’s discussion. The Havruta partners often prepare together. *Id.* at 277.

59. Notzer, Ziesnwine, & Samat, *supra* note 18, at 509.

60. HEILMAN, *supra* note 8, at 203 (“The rabbi and the haver or partner were always considered similar.”).

61. See Kent, *supra* note 36, at 8-10.

62. HEILMAN, *supra* note 8, at 125. It is worth noting that these movements mirror the activities promoted by collaborative learning generally: oral summary, elaboration, metacognition. See *infra* note 98.

63. Aliza Segal, *Havruta Study in the Contemporary Yeshivah*, ACADEMY FOR TORAH INITIATIVES AND DIRECTIONS, [http://www.atid.org/journal/journal00/segal\\_sum.asp](http://www.atid.org/journal/journal00/segal_sum.asp) (last visited Dec. 7, 2009).

means in broader applications.<sup>64</sup> There is a freedom of thought that is often denied in formal western logic;<sup>65</sup> the students may come to any conclusion, or are free to come to none at all. The involvement of the participants is their “single, most important obligation.”<sup>66</sup>

While Havruta study mirrors other collaborative learning in many ways,<sup>67</sup> there is one aspect of Havruta that is not present in other collaborative learning; Havruta learning has a religious, not secular purpose.<sup>68</sup> Havruta students are on a quest, not to find a particular answer, but to enhance their understanding of the Torah. The act of study itself is a religious act and hence has its own value.<sup>69</sup> It is not only a method of acquiring knowledge generally, it is also a devotional activity that practitioners believe to have a transformative religious impact.<sup>70</sup> Perhaps the reason Havruta is effective despite modern students’ seemingly short attention spans is this religious aspect.<sup>71</sup> Jewish education intends to prepare its students for lifelong religious study.<sup>72</sup> Yet, while this religious purpose sets Havruta learning apart, the actual act of study remains the same. Students use their minds in the context of a social group.<sup>73</sup> The process for achieving the religious purpose involves a growth that is many faceted and includes growth of understanding of one’s self, of one’s partners’ views, and of the learning

64. For a detailed discussion of these four moves of Havruta, see HEILMAN, *supra* note 8, at 125-144.

65. Frank, *supra* note 19, at 75.

66. HEILMAN, *supra* note 8, at 145.

67. See *infra* sections II B, C.

68. See NEUSNER, *supra* note 34, at 137 (“The ultimate goal of Talmudic study is a religious quest.”).

69. DANZGER, *supra* note 48, at 131. “Judaism’s approach to religion is experiential. Acts or religious practices constitute the core, and carrying out these acts – that is, playing the role of practicing Jew – leads one to become Jewish in soul or personality. In this framework, study has two objectives. One is to learn the halakhak [the body of Jewish religious law], the rules that should be followed. Simple observation or experience of Judaism, although important, may be insufficient in new circumstances. Study, which teaches the principles behind the action, is therefore also important for action. Study is also a religious act.” *Id.* at 133; see also HEILMAN, *supra* note 8, at 257; Miller, *supra* note 19.

70. Holzer, *supra* note 11, at 3.

71. See *id.* at 3 (“The time consuming and open-ended nature of Havruta study combined with the close, detailed reading of text may seem to fly in the face of the current trend to satisfy the millennial generation with visual learning and compact, definitive information.”).

72. Leonard A. Matanky, *Orthodox Jewish Education*, in THE ULTIMATE JEWISH TEACHER’S HANDBOOK 31, 56 (Nachama Skolnik Moskowitz ed., 2003) (“The study of Torah is a constant, never ending obligation of every Jew, not only as a practical means to understand and fulfill Jewish religious obligation, but also as a means to grow closer to G-d [sic]. Therefore, the study of Torah, purely for its own sake...is greatly valued and the Torah scholar is revered.”).

73. See NEUSNER, *supra* note 34, at 137.

and argumentation process itself.<sup>74</sup>

*B. History, Philosophy and Practice of Collaborative Learning Theory*

Collaborative or cooperative learning<sup>75</sup> is a philosophy of education and not simply a series of instructional techniques.<sup>76</sup> It makes the assumption that knowledge is not something that is given from one to another, but rather that knowledge is a consensus: “it is something people construct interdependently by talking together.”<sup>77</sup> In collaborative learning students learn to depend on one another rather than exclusively on the authority figure or teacher. “Collaborative learning models the conversation by which communities of knowledgeable peers construct knowledge.”<sup>78</sup> That is, in working collaboratively, students are learning to construct knowledge in the way that it is constructed in the academic disciplines and professions.<sup>79</sup>

Collaborative learning is not new;<sup>80</sup> rather it moves in and out of vogue.<sup>81</sup> In many ways it reflects both the needs of society as well as its view of education and educational goals.<sup>82</sup> Thus, for example, in the

74. *Id.* at 136-37.

75. See JAMES W. GUTHRIE, *ENCYCLOPEDIA OF EDUCATION* 489 (Stephen Y. Heyneman & John M. Braxton eds., 4th ed. 2003) (suggesting that the terms cooperation and collaboration are synonymous because “a truly cooperative context is always collaborative.”).

76. See, e.g., *READINGS IN THE PHILOSOPHY OF EDUCATION* 259-262 (John Martin Rich ed., 1966); Shlomo Sharon, *Cooperative Learning and the Teacher*, in *HANDBOOK OF COOPERATIVE LEARNING METHODS* 336 (Shlomo Sharon ed., 1994); see also NIGEL BLAKE, PAUL SMEYERS, RICHARD SMITH, & PAUL STANDISH, *Foreward to THE BLACKWELL GUIDE TO THE PHILOSOPHY OF EDUCATION* xv (2002) (arguing that systematic philosophical inquiry into educational questions is well established in the U.S.).

77. KENNETH A. BRUFFEE, *COLLABORATIVE LEARNING: HIGHER EDUCATION, INTERDEPENDENCE, AND THE AUTHORITY OF KNOWLEDGE* 113 (1993).

78. *Id.* at 52.

79. *Id.* at 1.

80. See ROBERT E. SLAVIN, *Preface to COOPERATIVE LEARNING* ix (2d ed.1995) (“Collaborative learning has an ancient pedigree.”); BRUFFEE, *supra* note 77, at 4 (“Collaboration in education is not something new under the sun. The recent history of collaborative learning begins in Britain in the late 1960s.”); *Introduction to HANDBOOK OF COOPERATIVE LEARNING METHODS*, *supra* note 77, at ix (“The ‘new wave’ of cooperative learning appeared in the early seventies – following the pioneering work of John Dewey, and later of Alice Miel and Herbert Thelen in the 1950s.”); see also ALIZA SEGAL, *HAVRUTA STUDY: HISTORY, BENEFITS, AND ENHANCEMENTS* 11 (Acad. for Torah Initiative and Directions 2003).

81. Thus, for example, while there are volumes on collaborative learning written post 1970, in a section of over 100 pages on classroom procedures written in the early 1960s, there is virtually no mention of group learning despite extensive presentation of other “widely used activities for teaching and learning.” See FRANK L. STEEVES, *Classroom Procedures*, in *READINGS IN THE METHODS OF EDUCATION* 139 (Odyssey Press, 1964).

82. JOHN MARTIN RICH, *CHALLENGE AND RESPONSE: EDUCATION IN AMERICAN CULTURE* 172-73, 242 (1974) (noting that education serves a cultural function of enabling one

eighteenth and to some extent the early twentieth century, autonomous peer groups were often the only educational resource available to women and some working men.<sup>83</sup> In the 1970s the resurgence of collaborative learning in the educational system was often driven by an awareness of the need to encourage socialization and acceptance of diverse viewpoints.<sup>84</sup> In the 1970s, as cooperative theories began to take hold again, the field developed significantly as specific collaborative learning strategies developed.<sup>85</sup> Educators also began to put forth the idea that collaborative learning furthered pro-social behaviors such as helpfulness, generosity, and cooperation,<sup>86</sup> and that one of the primary institutions for socialization is the school.<sup>87</sup> The idea was to socialize *children*, thus the focus of collaboration theory was and is primarily on lower education.<sup>88</sup> The social benefits of collaborative learning can extend well beyond early education, however. As noted by Kenneth Bruffee in a book addressed to college faculty, "Collaborative learning gives students practice in working together when the stakes are relatively low, so that they can work effectively together later when the stakes are high."<sup>89</sup>

The idea that knowledge is constructed rather than merely imparted

to cope with changing society which differs from earlier agrarian societies); READINGS IN THE PHILOSOPHY OF EDUCATION, *supra* note 77, at 123, 345 ("The confusion over values in our society frequently is mirrored in education. . . Indeed, the connection between societal values and education can be seen as far back as Plato in the Protagoras.").

83. BRUFFEE, *supra* note 77, at 5.

84. See, e.g., Rachel Hertz-Lazarowitz & Shlomo Sharon, *Enhancing Prosocial Behavior Through Cooperative Learning in the Classroom*, in DEVELOPMENT AND MAINTENANCE OF PROSOCIAL BEHAVIOR: INTERNATIONAL PERSPECTIVES ON POSITIVE MORALITY 423 (Ervin Straub et al. eds., 1984) [hereinafter DEVELOPMENT AND MAINTENANCE OF PROSOCIAL BEHAVIOR]; READING IN THE PHILOSOPHY OF EDUCATION, *supra* note 77, at 2.

85. See SLAVIN, *supra* note 81; see also *Introduction to TEACHING COOPERATIVE LEARNING: THE CHALLENGE FOR TEACHER EDUCATION* 3 (Elizabeth G. Cohen, et al. eds., 2004) ("Most of these strategies, indeed, most of the literature in the area of cooperative learning, focuses on primary and secondary education where, "over the last ten years, cooperative learning has become accepted as one of the 'best practices' in education") [hereinafter TEACHING COOPERATIVE LEARNING].

86. DEVELOPMENT AND MAINTENANCE OF PROSOCIAL BEHAVIOR, *supra* note 84, at ix.

87. Compare *id.* at 423, with READINGS IN PHILOSOPHY OF EDUCATION, *supra* note 76, at 2 ("[W]e are not altogether clear in the United States whether our primary aim is liberal education or vocational preparation, whether essentially we wish to create the capacities of appreciating humane culture or to prepare students for the duties of citizenship.").

88. DEVELOPMENT AND MAINTENANCE OF PROSOCIAL BEHAVIOR, *supra* note 84, at 425 ("[T]he school presents a unique setting for socializing children into the patterns of thought and behavior that society deems worthy of transmitting. Socialization can be promoted at all levels of the school society so that children learn how to live in harmony with other individuals old and young, with groups and within a large social organization."). While there is little written on the use of collaborative learning after high school, see BRUFFEE, *supra* note 77, for a text addressed to college teachers and administrators.

89. BRUFFEE, *supra* note 77, at 1.

is a key underlying concept of collaborative learning. By implication, the concept of knowledge as consensus acknowledges that there are differing views and mandates that dissent must be heard and incorporated into the final consensus that becomes the gained knowledge. This need to acknowledge, listen to and incorporate dissenting views underlies the socialization aspects of collaborative learning. Collaborative learning is a way “to teach the craft of interdependence to students who face a world in which diversity is increasingly evident, tenacious, and threatening.”<sup>90</sup> Collaborative learning advocates see diversity as a way of enhancing the richness of the educational experience; it is something to be worked with, not something to be negotiated around.<sup>91</sup>

Collaborative learning can be accomplished with groups of students or with pairs. Regardless, all successful forms of cooperative learning will have certain elements present. These elements include clearly perceived positive interdependence, considerable face to face interaction, clearly perceived individual accountability and responsibility for the group’s goals, frequent use of relevant interpersonal skills, and frequent group processing of current functioning to improve the group’s future effectiveness.<sup>92</sup> Additionally, all collaborative learning techniques are predicated on the underlying belief that every student has the potential to succeed.<sup>93</sup>

One form of collaborative learning that is likely familiar to many is the basic model of consensus groups. This generally involves a group working on one identifiable task. In this model the teacher does four things: divides the whole class into smaller groups, provides a task for the group to work on, reconvenes the small groups back into one large

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90. *Id.* at 46; *see also* Roger T. Johnson & David W. Johnson, *An Overview of Cooperative Learning*, in CREATIVITY AND COLLABORATIVE LEARNING (Jacqueline Thousand, et al. eds., 1994) (quoting Ashley Montagu), *available at* <http://web.archive.org/web/20080602032559/http://www.cooperation.org/pages/overviewpaper.html>.

91. Mara Sapon-Shevin, Barbara J. Ayres, & Janet Duncan, *Cooperative Learning and Inclusion*, in CREATIVITY AND COLLABORATIVE LEARNING: THE PRACTICAL GUIDE TO EMPOWERING STUDENTS, TEACHERS, AND FAMILIES (Jacqueline Thousand, et al. eds., 2d ed. 2002) *available at* <http://web.archive.org/web/20080602032559/http://www.cooperation.org/pages/overviewpaper.html>; *see also* SLAVIN, *supra* note 80, at 3 (“Cooperative learning can help make diversity a resource rather than a problem.”).

92. Johnson & Johnson, *supra* note 90.

93. Barbara J. Millis, *Cooperative Learning Structures and Techniques*, UNIV. OF TENN. AT CHATTANOOGA, <http://www.utc.edu/Administration/WalkerTeachingResourceCenter/FacultyDevelopment/CooperativeLearning/index.html> (last updated Apr. 27, 2002).

group, and then evaluates the quality of the student work.<sup>94</sup> The likelihood of participation by all students increases as the number of students decreases.<sup>95</sup> Students working in pairs create the least opportunity for diffusion of opportunity and responsibility.<sup>96</sup>

Student pairs, often referred to as dyads, primarily employ one of three techniques: reciprocal peer tutoring, scripted cooperation, or guided peer questioning.<sup>97</sup> In reciprocal peer tutoring students work together to teach each other, alternating between the role of teacher and student. In scripted cooperation partners work together to learn text material. The common process for scripted cooperation involves each partner reading the material, then one partner summarizing and the other partner providing a critique of that summary. The students alternate roles for each portion of the text. Guided peer questioning is intended to promote knowledge construction through higher-order thinking. It is one of the forms of collaborative learning that is more commonly used in higher education.<sup>98</sup> The teacher provides basic prompts from which students develop questions based on the material being studied. This technique can be used in pairs, or in groups where students pose a question and then time is allotted for a meaningful discussion of that question.<sup>99</sup> The process involves the students asking and answering questions guided by question "starters" provided by the teacher. These question starters "serve as a scaffold for students' thinking."<sup>100</sup> The questions should require complex answers, thus requiring the students to prove their own understanding of material in order to answer.<sup>101</sup>

One form of cooperative learning often used in higher education is "think-pair-share." In this activity, the teacher will first pose a question and allow the students a short time to think of the response. After that time the students share their response with a partner or a

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94. BRUFFEE, *supra* note 77, at 28. An example of this from my own teaching experience would be a first year writing class in which I assign the student groups a specific piece of writing to work on, then reconvene the class and discuss or edit each groups' work. In my experience this is usually accomplished over two days with the first day involving breaking the class into groups, assigning the group task, and providing guidelines for the group work. The group writing is completed at the end of the first day. I then compile the work, removing attribution to particular groups. The second class reconvenes the class as one large group and we discuss, evaluate, and edit the writing done by the individual groups.

95. GUTHRIE, *supra* note 75, at 490.

96. *Id.*

97. *Id.* ("This causes students to engage in several activities, all of which promote learning: oral summarization, elaboration, metacognition, and review.")

98. Millis, *supra* note 94.

99. *Id.*

100. GUTHRIE, *supra* note 75, at 490.

101. *Id.*

learning group and conduct a follow-up discussion.<sup>102</sup> This technique is mirrored in one suggested and often employed use of classroom clickers where the teacher poses a question and the students use the clicker to respond, the teacher gives the class immediate feedback on the responses, and then the students break into pairs or groups to discuss.<sup>103</sup> Good “clicker questions” have more than one viable option and test concepts rather than calculations, often targeting common misconceptions or preconceptions, and ask students to apply rather than recite concepts.<sup>104</sup> Yet, in this as in other collaborative models, the goal is for students to arrive at a definitive and preconceived answer or understanding of a concept.<sup>105</sup>

One challenge raised by the use of collaborative learning is how to assess the students’ progress. Unlike traditional teaching in which the teacher is seeking to have the students learn what he or she knows, something which can easily be tested, collaborative learning asks the students to achieve their own understanding which may or may not be the same as that of the teacher, and which can and should further develop the concept the teacher imparts. Yet, even with this alteration, the teacher generally has baseline goals that the students must achieve. If the goal is simply to ensure that the students at least reach a designated level of knowledge about a topic, then assessment may mirror the assessment of individual learning in a traditional classroom. The challenge arises when one is using collaborative learning to teach skills beyond a specified mastery of subject matter—goals such as cooperation and interpersonal skills. There is a difference between simply having students work on a project as a group and structuring groups of students to work cooperatively to achieve a specific learning goal that may or may not include an identifiable end product.<sup>106</sup> A task assigned to a group that could just as easily be assigned to one person may be assessed in the same way that individual assessment would occur. But, if the goal of the group is less identifiable, assessment will be less easy. Traditional

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102. See SLAVIN *supra* note 80 at 132.

103. This method of using clickers was presented at a clicker training workshop at UNM, Dec. 12-13, 2006.

104. *Id.*

105. See, e.g., F. Lyman, *The Responsive Classroom Discussion: The inclusion of all students*, in MAINSTREAMING DIGEST, (Anderson, A.S. ed., 1981); BARBARA J. MILLIS & PHILIP G. COTTRELL, COOPERATIVE LEARNING FOR HIGHER EDUCATION FACULTY, (1997).

106. Johnson & Johnson, *supra* note 90; Stanley Fish, *The Last Professor*, N.Y. TIMES BLOG (JAN. 18, 2009, 10:00 PM), <http://opinionator.blogs.nytimes.com/2009/01/18/the-last-professor/> (statement of Michael Oakeshott) (“There is an important difference between learning which is concerned with the degree of understanding necessary to practice a skill, and learning which is expressly focused upon an enterprise of understanding and explaining.”).



measurement devices assess the result and not the process of learning, and do not assess subjective values or goals that the teacher may hope to impart via cooperative learning. Even the law school examination, which is viewed as a test of students' reasoning abilities, actually tests only that reasoning as it relates to a final outcome or result in a specific hypothetical. It does not test whether or not the student has acquired a good process for learning. Because that actual process is biological in nature,<sup>107</sup> it may in the end be something that cannot be assessed.<sup>108</sup>

### C. *Effects of Collaborative Style Learning*

One thing that is consistently noted by researchers about collaborative learning is the engagement of students in the learning process. These studies generally find that collaborative learning increases student achievement, encourages student involvement, and enhances student motivation to learn.<sup>109</sup> While most studies of the effects of collaborative learning focus on younger students,<sup>110</sup> there is no reason to think that the same or similar effects would not be found when older students practice collaborative learning.<sup>111</sup> Studies reveal that students involved in collaborative learning display high levels of motivation and involvement in the learning experience.<sup>112</sup> The

107. See ZULL, *supra* note 52.

108. This raises the broader question of the purposes served by assessment generally. This paper does not address this question.

109. TEACHING COOPERATIVE LEARNING, *supra* note 85, at 3.

110. See, e.g., SLAVIN, *supra* note 80 (presenting information from studies of students grades 1-12). This focus on pre-college education is likely due to several reasons: first, that is where collaborative learning is most commonly used; second, much of the literature is directed at teacher training and formal teacher training is directed at primary and secondary school teachers; third, it makes sense for collaborative learning to be used with young children if the primary goal of that learning is socialization.

111. See ZULL, *supra* note 52, at 219, 248 (noting that learning is a natural outcome of experience and that it is the learner who must engage the learning). These concepts are not restricted to any one age group of learners. However, one must also note that primary and secondary education are compulsory, not voluntary which may or may not have some effect on learning. Additionally, collaborative learning may in part owe its success in children's learning to the fact that studies link cognitive development of children to peer interactions and thus collaborative learning at that level removes the unequal relationship between a child and an adult teacher. See Peter Sorensen, *Learning to Teach Collaboratively: The Use of Subject Pairs in the School Practicum*, CANADIAN J. OF EDUC. ADMIN. AND POL'Y (July 1, 2004), <http://www.umanitoba.ca/publications/cjeap/articles/noma/pairs.sorensen.html>.

112. See, e.g., SHLOMO SHARAN & H. SHACHAR, LANGUAGE AND LEARNING IN THE COOPERATIVE CLASSROOM 117 (1988) ("They initiate plans for gathering and synthesizing information from a variety of sources, they discuss the topic with one another, and the subject occupies their interest and attention, even arouses enthusiasm. Heightened involvement, interest and attention contribute greatly to the students' level of achievement.").

involvement results as students are required to articulate and test their ideas with the group. “*Anytime* a learner tests out her ideas, she does it through action, and that action generates learning.”<sup>113</sup> Indeed, the only path of learning that is biologically unproductive is one that excludes the testing of ideas.<sup>114</sup> This is because emotions are involved in the testing of ideas, and when emotions are engaged, learning is enhanced: the learner will engage the learning.<sup>115</sup> Motivational theories of cooperative learning emphasize the degree to which cooperative learning changes students’ motivation and incentives to do academic work.<sup>116</sup> The student’s engagement in learning results in greater academic achievement. Groups in group classrooms are known to conduct activities at a relatively high level of intellectual functioning, a level that is higher than that displayed by students in non-group classroom settings.<sup>117</sup>

Traditional teaching in college and beyond generally involves lecture and recitation.<sup>118</sup> The goal of the lecture is to provide answers and information to the students, and it also promotes the authority of the individual providing those answers (i.e. the teacher).<sup>119</sup> The most common lecture convention involving student participation via questions and recitation is the Socratic dialog.<sup>120</sup> The student’s responsibility in the traditional classroom, even one involving Socratic dialog, is to absorb what the teacher, in one way or another, imparts. Even in the Socratic classroom, the teacher directs the course of dialog with a particular student or students in order to bring the students to a planned level of understanding while the remainder of the class observes and receives. It is the teacher’s responsibility to give defined knowledge to the students and to evaluate how well the students retain it.<sup>121</sup> That is, the learners are not participating in the experience, other than to act as receivers for the discourse. They may learn what the lecturer knows, but will not participate in the process and growth of the knowledge itself.

The collaborative classroom, in contrast, assumes not a one-to-one

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113. ZULL, *supra* note 52, at 218.

114. *Id.* at 219.

115. *Id.*

116. SLAVIN, *supra* note 80, at 17.

117. SHARAN & SHACHAR, *supra* note 112, at 128 (presenting findings from a study of students in eighth grade classrooms).

118. BRUFFEE, *supra* note 77, at 67.

119. *Id.*

120. *Id.*

121. *Id.* at 69. In traditional, whole class learning, “teachers give the orders and students are expected to do what they are told.” Sharon, *supra* note 76, at 338.

relationship between teacher and the class, but instead a relationship between groups of students and between those groups and the teacher.<sup>122</sup> The social conventions of collaborative learning are for the most part unfamiliar to college and post-graduate faculty.<sup>123</sup> Because collaborative learning decentralizes the classroom, teachers no longer engage primarily in the transmission of information to students according to a preset plan,<sup>124</sup> but instead encourage the learners to seek out knowledge and help the groups to plan and participate in the process of discovering that knowledge.<sup>125</sup> Faculty using collaborative learning must be willing to accept that knowledge can be acquired by discussion and consensus, rather than requiring that it be meted out by an authority figure.<sup>126</sup>

While collaborative learning is student-centered as opposed to teacher-centered learning, it does not eliminate the significant role of the teacher in causing the learning to take place.<sup>127</sup> It does, however, require that the teacher be willing to relinquish some authority to the students. Although significant planning and preparation are still required,<sup>128</sup> the teacher's role now becomes one of facilitator.<sup>129</sup> Students must be shown how to exercise responsibility for their own learning in a productive way.<sup>130</sup> The teacher must, of course, also know what the goals and

122. BRUFFEE, *supra* note 77, at 71. The teacher must be prepared to see groups of students as learning entities, rather than thinking of students exclusively as individuals. Sharon, *supra* note 76, at 342. Traditional teachers who move to collaborative learning must change their understanding of what it is they do when they teach; that requires changing the understanding of what knowledge is. BRUFFEE, *supra* note 78, at 98.

123. See BRUFFEE, *supra* note 77 at 28. The classroom conduct will look as well as feel different. The teacher may or may not be at the front of the classroom; many students may be talking at once; indeed, chaos may appear to have taken over. One might think that the teacher has relinquished her responsibilities. But, if the teacher has properly prepared, what one is witnessing is the excitement of learning, taking place in an environment that has been carefully created by the teacher.

124. Sharon, *supra* note 76, at 338 (explaining that the teacher must become "more learner centered and less tied to the transmission of prescribed subject matter.").

125. *Id.* at 339.

126. Collaborative learning requires a view of "teaching" that encompasses much more than standing in front of a class and imparting knowledge. See BRUFFEE, *supra* note 77, at 71-72.

127. Sharon, *supra* note 76.

128. BRUFFEE, *supra* note 77, at 71.

129. Sharon, *supra* note 76, at 338-40. Thus, in many ways, the teacher becomes a negotiator for each group, rather than a director. BRUFFEE, *supra* note 77, at 63. Successful organization of collaborative learning requires an understanding of three kinds of negotiation: "negotiation among the members of a community of knowledgeable peers, negotiation at the boundaries among knowledge communities, and negotiation at the boundaries between knowledge communities and outsiders who want to join them." *Id.*

130. Moreover, in addition to causing students to learn a specific substantive material,

priorities of the class are before she can design and organize the content and approach of the class.<sup>131</sup> Thus, while the teacher's role in collaborative learning is different, it is by no way minimized. The teacher trains students to be in charge of their own learning rather than having learning simply imposed by others. When given this opportunity to exercise responsibility, the students are indeed likely to assume that responsibility and take charge of their own learning.<sup>132</sup> In contrast, if students feel no sense of personal responsibility beyond carrying out or accomplishing a specifically directed task, they are unlikely to be motivated to do more than what they are told.<sup>133</sup>

In addition to the favorable academic results of cooperative learning, there are non-academic benefits as well, the most notable of which is the socialization aspect. Cognitive theories of collaborative learning emphasize the effects of working together as an end in itself.<sup>134</sup> More often than not cooperative learning yields superior academic outcomes for pupils of different ethnic or economic groups who study together in the same classroom.<sup>135</sup> Thus, cooperative learning has been found to be of value for all students, including those identified as at risk, bilingual, and gifted, as well as those identified as "normal."<sup>136</sup>

Despite its many positive effects, there are some drawbacks to collaborative learning. One that is often noted is the danger of a "free-loader," a student who rides on the work of other students in the group. This is most likely to occur when the group has a single major task to accomplish that will result in one final work product.<sup>137</sup> Another study suggests that the amount students learn relates directly to with whom they are collaborating.<sup>138</sup> This study found that while students' level of

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cooperative learning must help students to understand the nature of cooperation. Johnson & Johnson, *supra* note 90.

131. RICH, *supra* note 82, at 246-54.

132. Sharon, *supra* note 76, at 337-38. "Cooperative learning methods strive to have students assume a high degree of responsibility for their own learning, rather than perceiving learning as imposed by others." *Id.* at 337.

133. *Id.* at 338

134. SLAVIN, *supra* note 80, at 17.

135. See SHARAN & SHACHAR, *supra* note 112 at, 112.

136. TEACHING COOPERATIVE LEARNING, *supra* note 85, at 3. ("Cooperative learning encourages mutual respect and learning among students with varying talents and abilities, languages, racial, and ethnic backgrounds. (citation omitted) [C]ooperative learning is effective in reducing prejudice among students and in meeting the academic and social needs of students at risk for educational failure. All students need to learn and work in environments where their individual strengths are recognized and individual needs are addressed.").

137. See SLAVIN, *supra* note 80, at 19.

138. Nancy Wick, *Assertive Partners Can Inhibit Learning When Students Work in Pairs*, UWNEWS.ORG (April 13, 1998), <http://uwnews.org/article.asp?articleID=2749>.

assertiveness did not affect their learning, their partner's degree of assertiveness did. When paired with a highly assertive student, the less assertive student would become passive and thus learn less than other paired students. It was unlikely that the more assertive student would help the less assertive partner. However, when students of similar levels of assertiveness were paired, even two students with low assertiveness, they would both become involved and the pairing would result in greater learning for both students.<sup>139</sup>

#### *D. Key Similarities and Distinctions of Havruta Learning and General Collaborative Teaching*

A key difference between Havruta and most other collaborative techniques is that Havruta values mostly the *process* of study as opposed to evaluation of a final product or arrival at one "correct" answer or level of understanding.<sup>140</sup> Other distinctions include the religious aspect of Havruta and the fact that the student body involved in Havruta is fairly homogeneous. Thus, unlike many of the venues that incorporate collaborative learning, socialization of students with diverse backgrounds is not a primary goal of Havruta study as it often is in other collaborative learning.<sup>141</sup> Havruta learning stresses the importance of listening to other voices not as an end in itself, but because those voices will aid in the quest that students are on. Nonetheless, many of the other noted

139. *Id.* This study was conducted with high school students in a simulation involving problem solving that required dialog and choices about what course of action to take.

140. A brief example from my own experience illustrates the distinction. In my classes I often have students break into groups to work on writing or editing a portion of a document. The students then return and the class as a whole discusses and further edits the result of each group. The essential goal of the group is to complete a definable task, in this case a piece of writing, and to complete that task in the best possible way. A second form of collaborative learning occurs when I have paired students with opposing views on the meaning or application of a case with one another and allowed the students time to explain their position in response to their partner's repeated and detailed questions and challenges. When the whole class reconvenes, the students do not have a definitive product completed; rather, they will discuss how the paired conversation affected their position, defining key points in the discussion with the partner that caused them to clarify, change or solidify their position, ultimately giving them a deeper understanding of their argument. The students are often eager to continue the process with one another after class, perhaps because they have not yet reached a definitive end point. The first of these models (group writing) encourages collaboration, but it also allows student input and engagement to vary. The second method necessitates total involvement of each student as he or she interacts with the partner; it derives much of its strength from methods and techniques present in Jewish Havruta study. The first time I tried this second model I noticed a new excitement in my students and I also perceived some of its similarity to the study format seen in many traditional Jewish schools. Indeed, it was that which gave rise to this paper.

141. See generally Segal, *supra* note 63.

cognitive benefits of cooperative learning seem to be equally apparent in Havruta learning. Oral rehearsal, shared by cooperative and Havruta learning, allows participants to more effectively refine their thoughts.<sup>142</sup> Both systems also promote individuals to confront the ideas of others and in so doing be forced to confront and explain their own thinking.<sup>143</sup> Both systems also tend to cause the students to engage in more higher order thinking.<sup>144</sup> These analogous benefits would seem to imply that Havruta style learning can be incorporated into secular studies.<sup>145</sup>

When engaged in the actual learning exercise, Think-Pair-Share and Havruta learning seem especially similar. In both the focus is on the student and the exercise requires all students to be participating in the learning simultaneously.<sup>146</sup> Yet, in both underlying philosophy and effect on the learner there is a significant difference. Think-Pair-Share hopes to have students arrive at an answer to a question.<sup>147</sup> While the teacher using Think-Pair-Share may hope that together the students arrive at a consensus and perhaps even develop their knowledge and understanding further, in the end, in most instances the teacher using Think-Pair-Share is hoping to have her students move on a path towards a known, correct, or identifiable answer. Even in law school, when the Think-Pair-Share involves an examination of a complex legal principle or case holding, the hope is that a consensus will be reached that resolves the question. Thus, a goal of Think-Pair-Share is resolution and closure of a problem, reflecting—whether consciously or unconsciously—the belief that final answers are possible and once discovered will end the discussion. It also inferentially implies that the teacher has superior knowledge (the right answer). This can foster a dependence on the teacher or someone with superior ability rather than on oneself to resolve questions and gather information.

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142. *Id.*; SEGAL, *supra* note 81, at 6-7.

143. SEGAL, *supra* note 81, at 17.

144. *Id.*

145. O'Farrell & Stephens, *supra* note 16 (“Because it engages students and teachers alike with the texts they are studying on an incredibly intimate level, and does so in a remarkably short period of time, chevruta is an outstanding technique for teaching a wide variety of topics, not just Talmud.”). The English teachers in this study stated that “By focusing on the words themselves rather than the historical background or literary theory behind them, chevruta allows students with little or no familiarity with these texts to dig right into them and achieve a level of understanding usually found only in more advanced course work.”

146. Melissa Bailin Bernstein, *Active Learning*, in THE ULTIMATE JEWISH TEACHER'S HANDBOOK 542, 542 (Nachama Skolnik Moskowitz ed., 2003) (“A classroom that is teacher focused will answer the question, ‘What is the teacher teaching?’ In an active classroom, the focus is on the student and the student’s learning.”).

147. *See supra* note 105.

In contrast, Havruta learning is a reflection of the philosophy that learning is all about the quest, not about finding a single final answer.<sup>148</sup> The Havruta teacher does not pretend to hold answers, but rather participates in the quest and the joy of learning with the students. While the teacher may have more knowledge in the sense that he has studied longer and thus is better at the process, he does not have superior answers; indeed, he has no final answers because final answers do not exist. Havruta is a means of teaching the process of the quest as opposed to a way of helping students to find the answer. As such, students do not develop a dependence on another to resolve their questions and problems.

Like Havruta, other collaborative techniques do shift responsibility for learning to the student. In all these methods, the teacher must relinquish some authority, as there is a shift away from a teacher-authority figure imparting knowledge to students who inferentially are inferior in their understanding of the subject. In collaborative learning, the teacher relinquishes some, but not all, authority to impart knowledge. Generally, the teacher has a basic idea of a result that she hopes to achieve in the sense of an articulable and measurable understanding of the subject being taught. This suggests an underlying philosophy that the teacher holds more knowledge or a better understanding of that knowledge by which the teacher is able to properly direct the student centered learning and assess its result. Thus these methods, while stepping away from the traditional model, do not go as far as Havruta, which seems to take the next step away from the traditional teacher as authority figure model of instruction. As noted above, the role of the teacher in Havruta is truly one of a peer on the same quest as the students. The teacher provides instruction in methods to use on the quest rather than authority as to where the quest will lead or what it will find.<sup>149</sup> The teacher models for the students, openness to and a joy in learning.

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148. See DANZGER, *supra* note 48.

149. An illustration of the quest, far removed from Talmud yet most illustrative of this type of pure joy in learning with no preordained result, is the ability of elephant expert Hezy Shoshani to seize the moment and learn from every experience as described in the following short memory: Once when returning from an examination of the cave dwelling elephants of Mt Elgon in Kenya he chanced upon a dead aardvark in the road. Seizing the opportunity to learn more about the anatomy of this species, he gathered the remains and they were later found by his astonished host occupying the best part of a fridge to the exclusion of the food, but science was served and the antbear was brought to American students and anatomists for their better education. Pachyderm No. 44, Jan-June 2008, *A Tribute to Hezy Shoshani*, at 106, <http://www.pachydermjournal.org/index.php/pachy/article/download/41/16> (Last visited Feb. 7, 2011).

Havruta learning also incorporates the social benefits found in general collaborative learning and engages students. However, its focus is on the process and development of the process rather than on specific measurable results. Whether this distinction relates to the effect that these two teaching tools have on the students has yet to be fully determined.<sup>150</sup> But one can nonetheless ask whether the focus on process rather than result matters for the goals of legal education, and if so, which method is better suited to those goals. That is, we must ask: what are the goals of legal education; what results could be achieved by using Havruta in the law school; and whether those results are consistent with the goals.

### III. CONSIDERATIONS FOR THE USEFULNESS OF HAVRUTA STYLE LEARNING IN THE LAW SCHOOL SETTING

In law school we ask students to carry on conversation with text, and to learn to reason from that text. That text is often unclear and open to more than one interpretation. To understand it requires active and engaged reading, not unlike reading in Havruta study.<sup>151</sup> There is rarely one right answer and the study of law is really a study of process. We teach our students how to learn about the law so that they can use it effectively in new and unforeseen situations. Yet, whether intentionally or unintentionally, law teaching is sometimes dogmatic and often fails to engage students.<sup>152</sup> Moreover, law school goes beyond simply a study of text. Law schools are professional schools that are also institutions of higher learning.<sup>153</sup> The norms of both social interaction and text interpretation found in Havruta are directly translatable to law study.<sup>154</sup>

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150. This author has found no empirical studies making this comparison. Such a study would be useful. Nonetheless, this author speculates that a key distinction is the fostering of a dependent or independent approach to problem solving.

151. Grishaver, *supra* note 30, at 394 (“Torah was never engineered to be read for the first time. Its writing style demands an active reader, one who is always manipulating and processing the text.”).

152. See generally STUCKEY ET AL., *supra* note 7, at 1-5; Karrie A. Jones & Jenifer L. Jones, *Making Cooperative Learning Work in the College Classroom: An Application of the ‘Five Pillars’ of Cooperative Learning to Post-Secondary Instruction*, THE J. OF EFFECTIVE TEACHING, Sept. 2008, at 61, 61-62, available at [http://uncw.edu/cte/et/articles/Vol8\\_2/Jones.pdf](http://uncw.edu/cte/et/articles/Vol8_2/Jones.pdf) (noting a resistance in higher education to use collaborative learning and that many college professors still “cling to the notion of expounding knowledge to their students rather than engaging them in discovering such knowledge through active learning”).

153. See WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PRACTICE OF LAW 4 (2007).

154. For a detailed discussion of these norms see Kent, *supra* note 36.



Each student in a Havruta pair has an opportunity to hone critical thinking skills. These include: finding textual evidence for a position, developing metacognitive awareness of one's thinking process, a cultivation of deep listening skills, and an ability to understand others.<sup>155</sup> These are all essential skills for the law student and the lawyer. Unlike collaborative learning, which is implemented largely to teach social skills and acceptance of diverse points of view,<sup>156</sup> Havruta sees these benefits as a secondary though laudable side effect of a deep understanding of the learning process that is developed by the students.<sup>157</sup> If our goal is to confer the skills necessary to conduct a thorough and profound search for an answer by examination of text, then Havruta is well suited to our purpose. If our goal as law teachers is different, then other forms of teaching may be adequate. While Havruta methods would seem to be suited to legal education, before considering use of these methods in law school one must be clear about what the primary aim of legal education is.<sup>158</sup>

#### *A. Goals of Legal Education*

It is essential that any educator think about the goals of the instruction and the best way to implement those goals.<sup>159</sup> The challenge to the teacher is to make the best use of the classroom time allotted in order to achieve those goals. While the primary purpose of law school is to educate lawyers, law schools also create researchers and thinkers without consideration of the business side of lawyering.<sup>160</sup> Some would further add that law school has the responsibility to create socially conscious leaders.<sup>161</sup> The concept of how best to educate lawyers may

155. Kent, *supra* note 36, at 19 (explaining that as pairs of students, through discussion and opposition, generate, explore, and refine ideas about a complex text, the end result will be two separate yet more fully developed ideas); *see also* Wouk, *supra* note 23.

156. *See* Segal, *supra* note 63, at 21.

157. In Havruta it is important to listen to other voices because those voices will help in the quest. This is different than simply finding it an important social value to listen to other voices.

158. *See* STUCKEY ET AL., *supra* note 7, at 40. A lack of such clarity was seen in the 1960s and 70s at the inception of the current trend in collaborative learning: "We are not altogether clear in the United States whether our primary aim is liberal education or vocational preparation, whether essentially we wish to create the capacities of appreciating humane culture or to prepare students for the duties of citizenship." READINGS IN THE PHILOSOPHY OF EDUCATION, *supra* note 77, at 2.

159. Segal, *supra* note 63, at 11.

160. *See* SULLIVAN ET AL., *supra* note 153, at 4; MICHAEL HUNTER SCHWARTZ, EXPERT LEARNING FOR LAW STUDENTS 7 (2d ed. 2008).

161. *Cf.* STANLEY FISH, SAVE THE WORLD ON YOUR OWN TIME (2008) (arguing, primarily in the context of undergraduate education, that while faculty can and should examine

change or be subject to disagreement.<sup>162</sup> However, there are some common themes of what the goal of a law school is or should be. For example, law schools need to prepare students to be effective, responsible practitioners.<sup>163</sup> This preparation includes a core knowledge and understanding of the law and of professionalism along with intellectual and analytical skills.<sup>164</sup>

Lawyers are essentially problem solvers. They are presented with problems that, in some way, involve legal principles and must determine and advise how to resolve that problem in an acceptable manner.<sup>165</sup> While argumentation to prove a desired result is a task of lawyers, there may be more to the skill of argumentation than this alone. Indeed, the goal of argumentation has been open to debate since Plato.<sup>166</sup> In the *Gorgias* Plato provided two possible goals of argument: to find the truth or to win. Talmudic study would provide a third: to continue the argument in order to move understanding and knowledge forward.<sup>167</sup> One question that the law school must ask itself is whether we want to focus on teaching students to win an argument or teaching students to understand the nature of argument itself, or is it both, or perhaps something else entirely. It is this author's position that teaching students the nature of argument in its deepest sense ought to be one of the goals of a sound legal education.<sup>168</sup> That is, the focus should be on the process rather than the end result. It is also this author's belief that a focus on process is what generally makes learning exciting and that a loss of that focus, including a switch to more superficial skills training, results in

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values and beliefs, they cannot and should not teach, develop or propound specific values and beliefs).

162. See STUCKEY ET AL., *supra* note 6, at 1-4.

163. See STUCKEY ET AL., *supra* note 6, at 65.

164. *Id.*, 65-92; See SULLIVAN ET AL., *supra* note 153, at 4-12.

165. The lawyer is required to support her solution, proving that it is preferable to others that may be put forward. Argumentation theories create a logical approach to the problem solving process and allow the lawyer to critically examine a variety of possible solutions and ultimately advance the one selected. Whether advising a client or persuading a judge, the lawyer must argue in the sense that he or she must prove to his or her audience that one of two or more possible resolutions to a problem is superior. Essentially, the lawyer's argument frequently takes the form of a complex definitional proof: the lawyer must determine and prove the applicable legal rule, then prove that the case under consideration does or does not meet the test of that rule.

166. In the third section of the dialogue *Gorgias*, Socrates takes the position that the arguer seeks the ultimate truth, even if that means the arguer does not win, while Callicles takes the position that winning the argument is the ultimate goal because the winner decides what is true.

167. See generally *supra* note 31.

168. Argumentation here is meant to go far beyond the traditional adversarial role of lawyers; it is meant in the sense of a highly refined skill with logic and proofs.

student disengagement and boredom.<sup>169</sup> The process of learning is something that is less easily measured. Learning process may be more art than skill, and is less directly practice-oriented in the sense that one cannot measure ability demonstrated in the learning process by evaluating one's ability to prepare a complaint or communicate with a client. Yet, the underlying process and ability are necessary to fully perform the skills in any given situation.<sup>170</sup>

### *B. Current Law School Pedagogy and Its Shortcomings*

Much of law school involves teaching argumentation as a means of developing critical thinking and analytical skills. Law school classes usually do this in the context of a specific goal: resolution of a case, whether real or hypothetical. Law classes primarily use some form of the Socratic Method<sup>171</sup> with the belief that this case-dialogue teaches students to "think like a lawyer,"<sup>172</sup> and, in many ways it does. Socratic Method gives students a framework with which to discuss legal problems and teaches them how to use existing law to resolve new factual disputes. Seeking to have their students raise their critical thinking skills to the highest possible level, law teachers often turn to Socratic dialog believing that because the Socratic method requires reasoning, that it is the best method for doing so.<sup>173</sup>

Socratic teaching is not a bad method for getting students to reason, but it can actively involve only one student at a time in the dialog.<sup>174</sup> In the Socratic classroom the professor asks questions about cases which the students should have read and briefed; the professor then presents hypothetical scenarios that require students to apply the law to a new situation. While this to some extent develops the students' legal reasoning skills, there may remain the sense that the professor understands better than the students the reasoning involved in the hypothetical; the professor essentially directs the flow and direction of

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169. Thus, for example, after conducting a Havruta style exercise and part of an assignment, I gave my students a questionnaire about the various aspects of the project. Students commented about how engaged they were in the the Havruta exercise, how helpful it was in clarifying their reasoning, and recommended that it be retained for future classes.

170. Thus, for example, to fully counsel a client one must be able to first fully explore the relevant law and how it might relate to the client's situation and desires.

171. SULLIVAN ET AL., *supra* note 153. There is, however, a current desire to move beyond exclusive use of Socratic Method. See STUCKEY ET AL., *supra* note 6, at 132.

172. See generally SULLIVAN ET AL., *supra* note 153, at 50-54.

173. See SCHWARTZ, *supra* note 161, at 16-17.

174. For that one student, the exercise is meaningful: "[b]y speaking in class [as part of a Socratic dialog] you are actively engaging in your own learning, and it is well established that active learners outperform passive ones on every measure of success." *Id.*, at 16.

the conversation and of the reasoning, perhaps closing off some possibilities. The professor, through her questioning, leads the student toward an analysis or answer that the professor may have, or appear to have predetermined to be the best result of the discussion.<sup>175</sup> Socratic method, because it is in essence a form of structured lecture, maintains a sense for students that there is a superior, if not correct, viewpoint held by the professor. In contrast to the approaches of collaborative learning generally and Havruta study in particular, the Socratic method assumes that it is the job of the teacher to ensure that students arrive at the answer or attain the level of knowledge of the professor or some other predetermined goal. At its worst, despite the involvement of students via questioning, the professor ultimately expects students to be passive recipients of knowledge meted out by an authority figure identified as one with superior knowledge on a subject.<sup>176</sup> Even at its best, it can only involve one student at a time in the actual conversation.<sup>177</sup>

Many law professors, aware that Socratic case method may not be teaching reasoning as effectively as might be possible, do modify the Socratic method to improve its results.<sup>178</sup> Many are also aware of the benefits of collaborative learning, as many law teachers use some forms of group work in their classes. Nonetheless, the methods often remain within a box that presents the teacher as an authority figure with some form of answer.<sup>179</sup> Group work in law school often requires the group to complete one definable project,<sup>180</sup> that is, it simply assigns what could be an individual task to a group.<sup>181</sup> For example, students may be asked to work together in preparing a document or a presentation to the class; they may be asked to research a topic together, etc. What students gain in this sort of group work is practice in working with others; it is an example of collaborative learning developing and encouraging pro-social

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175. See SULLIVAN ET AL., *supra* note 153, at 52-53.

176. See, e.g., Kent, *supra* note 36.

177. STUCKEY ET AL., *supra* note 6, at 124 (“Socratic dialogue does not promote active learning, except for the student who happens to be on the hot seat, and perhaps not even then. Other students do not participate in the dialogue but are expected to learn vicariously by watching the interchange. This is not active learning.”).

178. For example, some professors require those not in the “hot seat” to write down their answers. For additional techniques see *Id.*, at 132-33.

179. See, e.g., SULLIVAN ET AL., *supra* note 153, at 109 (explaining basic consensus model group led exercises in legal writing and lawyering classes: the instructor defines the task, provides the scaffold of prompts, allows the group to engage in the activity, and coaches the students in how to improve).

180. For example, moot court briefs.

181. This is the traditional consensus mode of collaborative learning described above. See *supra* note 95.

behavior. But this form of collaborative learning can also result in some of the pitfalls noted by researchers of collaborative learning. The distribution of work may be unequal either because some students choose to be less engaged or because other members of the group dominate, forcing some lack of engagement of other, less assertive students. This sort of group work does, of course, accomplish the goals of having students learn how to work with others, often others with diverse backgrounds and viewpoints. While this sort of group work may satisfy the socialization goals of collaborative learning, it does not push the students to the higher levels of thinking that are more likely achieved with Havruta style study. This form of group work does not give students the freedom and the confidence to believe that they themselves can participate in the creation of knowledge, and that they are equals with their teacher in that quest. For this we can turn to Havruta.

### *C. Considerations for Implementing Havruta Style Learning in the Law School Setting*

Because law, like Havruta study, requires a close reading and interpretation of text, the possible contributions of Havruta study to legal education seem almost self apparent. However, one wonders whether without the religious aspect it is possible to get the millennial generation to exert the time required in true Havruta type learning and to truly engage the students. After all, “[a]t the heart of Jewish education is the interconnectedness and tension between transmission and transformation—to transmit the tradition and to have it be transformed and transforming in the hands, minds, and hearts of each person who is touched by the Torah.”<sup>182</sup> There is however a similar tension in all education in the sense that the teacher desires to transmit knowledge and skill while transforming the student so that the student can use that knowledge independently. It is this author’s belief that when one switches the focus from the transmission of information to the transformative quality of the discovery of information by one’s self, a student cannot help but become both engaged and excited about learning.<sup>183</sup>

While traditional Socratic method does require class participation from the students, that participation often consists of merely passively following the conversation of others. In a class in which Havruta pairs

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182. Cynthia Dolgin et al., *Applying 4Mat to Jewish Curriculum and Instruction*, in *ULTIMATE JEWISH TEACHER’S HANDBOOK* 292, 298 (Nachama Skolnik Moskowitz ed., 2003).

183. Indeed, this is what I see every time I practice Havruta in my classroom.

are conversing, each student has no option but to be engaged with his or her partner. This engagement is often emotional, and, as noted by Zull, such emotional engagement enhances the learning experience.<sup>184</sup> While perhaps appearing similar to Socratic Method, a closer examination reveals the methods have very different affects. Although both employ question and answer, Havruta emotionally engages the entire class simultaneously through the student pairs in the question and answer process. The classroom is full of talking pairs, not one teacher carrying on a directed dialog with one student or a series of students sequentially, wherein the students not involved in the Socratic conversation may become disengaged. In contrast, in the Havruta conversation the student who is one half of the ongoing conversation has no choice but to be continually engaged and thus to take responsibility for her own learning.

While law students must learn to resolve specific cases, this is done in the context of a body of law that is always growing and changing. One can assert that there is no final answer in the interpretation of the law and that the law itself is a never-ending quest involving argumentation and interpretation.<sup>185</sup> This description seems to parrot many descriptions of Talmudic study,<sup>186</sup> suggesting that Talmudic study offers much to the study of law.<sup>187</sup> The lawyer must indeed construct knowledge just as the Havruta partners work together to actively construct knowledge.<sup>188</sup> Moreover, in the Jewish tradition, as in law, consensus and dissent must coexist.<sup>189</sup> It would seem that a Havruta style discussion, in conjunction with the guided questions of Socratic Method, would allow students to both find answers to specific cases and raise their understanding of the argumentation and learning process to a higher level. There are also additional societal goals that may be present,<sup>190</sup> for example we may also want students to learn to be open to diverse viewpoints and understand how to argue about differing views without being argumentative. While such goals are to some extent furthered by Socratic dialogue, that method does not give students the

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184. *See supra* note 114.

185. Indeed, we teach our students that the law is not static but continually developing, through decisions of the courts, through development of statutes and regulations, and through the interaction of the judicial and legislative branches.

186. *See generally supra* section II A.

187. Frank, *supra* note 19, at 85 (“The Jewish tradition offers much to the broader study of argumentation”).

188. *See, e.g.,* Kent, *supra* note 36, at 4.

189. Frank, *supra* note 19, at 85.

190. READINGS IN THE PHILOSOPHY OF EDUCATION, *supra* note 77, at 91 (“Since an educational system has certain relationships with the larger society, we need to determine what these relationships should be.”).

freedom to engage in actual development of the conversation with the text and with a study partner.

Traditional Socratic Method requires pre-class preparation: the student, usually individually, reads and briefs the assigned cases. In Havruta pre-class participation might involve a student reading the cases with a partner, discussing ambiguities in language and principles. The students would be open to one another's opposing views and interpretations and would ultimately arrive at a brief of the case that would exhibit both the traditional elements of a case brief (holding, issue, reasoning, etc.) as well as a consensus understanding of the underlying principles and their possible applications. Perhaps even more effective would be to have this be the first portion of a class, a sort of study hall prior to the class period.<sup>191</sup> This preparatory phase would require direction from the teacher in the form of prompts for questions that the students could ask one another.<sup>192</sup>

The class period, rather than consisting of a dialog between one student and the teacher, would involve debate between Havruta pairs, generated by prompts or hypothetical situations provided by the professor. Havruta student pairs would have the freedom to move the dialog forward at their own pace, each discussing, challenging, arguing, and supporting his or her position on each point. The teacher's job would not be in carrying out the dialog, but in preparing the students for the dialog and creating the prompts that would move it forward. The teacher would be moving from pair to pair, perhaps joining in the discussion momentarily, perhaps answering or clarifying a point, perhaps asking a question to further the thinking process of the pair, or otherwise generally facilitating the movement of the discussions. Each student would be actively engaged in the learning throughout the Havruta style class period out of necessity. Indeed, perhaps as in Havruta, student involvement might become the most important duty,<sup>193</sup> as students cannot sit by passively and simply listen to the professor carry on a

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191. Thus, a Havruta style study hall might be a regular attachment to traditional law school classes. Even in writing classes, rather than having students write together to encourage collaboration, the teacher could instead have students *think* together, testing with their partner the arguments that each will ultimately write on his or her own. This models the academy where faculty share and debate ideas and as such furthers the academic and research related goals of law student training and education. Such pre-class study periods would require longer class periods, more in line with the longer study times in Yeshiva schools. The study, case reading portion could incorporate oral recitation which, as studies show, is a key part of learning.

192. It is this teacher involvement that distinguishes this from a pair of student study partners.

193. See Matanky, *supra* note 72.

Socratic dialog with another student. The engagement will often be emotional, thus promoting learning and metacognition<sup>194</sup> as the student argues to support her interpretation of a case or outcome with her partner. As necessary, the professor could either lecture generally on the topic, or bring the class together as a whole to further the discussion that was begun by the student pairs, either prior to these discussions or after them, .

It is perhaps possible to generate excitement as well as superior learning by adapting Havruta style study to our classrooms.<sup>195</sup> However, implementing Havruta in the law school classroom requires a shift in teaching philosophy and in the power balance between faculty and students. That is, the Socratic dialogue, no matter how effectively used, maintains that there is a teacher whose knowledge is and remains superior to that of the students. The students look to the teacher as the One who knows the Truth. For Havruta style learning to be effective, teachers and students must understand that the classroom is about fostering the ability to conduct a thorough analytical quest. The classroom needs to become not a place for dispersal of information by a power figure, but rather a place to inquire and argue among equals. The students must collectively go beyond mere acquisition of knowledge and come to a deeper understanding of what it means and how it can be interpreted, applied and further developed. There must be a true acceptance that one answer is as good as another if that answer can be supported by a close reading of the available text, that any answer raises more questions that are open to discussion and debate, and that there is no one final answer. This is the understanding of many who conduct Socratic classrooms and, as in those classrooms, the key duties of a Havruta professor include preparation, facilitation and assessment.<sup>196</sup> Preparation must include a plan to convey the Havruta philosophy to the students,<sup>197</sup> as well as consideration of how partners will be chosen or

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194. See HEILMAN, *supra* note 8; GUTHRIE, *supra* note 75; Kent, *supra* note 36, at 19.

195. See, e.g., *The Word is Out: Hillel is Soaring Higher*, JEWISH IMAGE, Jan. 2007, at 1, available at [http://www.hillelyeshiva.org/ourpages/in\\_the\\_news/2006%20-%202007/01January%202007%20-%20Image%20Magazine%20.pdf](http://www.hillelyeshiva.org/ourpages/in_the_news/2006%20-%202007/01January%202007%20-%20Image%20Magazine%20.pdf) (describing a school in which Havruta learning is used for secular as well as religious purposes).

196. Betsy Dolgin Katz, *Teaching Texts*, in THE ULTIMATE JEWISH TEACHER'S HANDBOOK 385 (Nachama Skolnik Moskowitz ed., 2003) (suggesting that, to be a successful teacher of text, one must know the subject matter, know oneself, know the students, have a repertoire of teaching strategies and enjoy teaching). This can apply to teaching of legal texts in the Havruta style.

197. Stephanie Portman, example handout *Hevruta Method: Interactive Textual Introspection*, WESTERN STUDIES,



assigned. Will a student have one partner for the entire semester, or will it change from class to class or topic to topic?<sup>198</sup> If for a semester or lengthy time period, there would have to be periodic evaluation to ensure that the partnership was working effectively.

While, in large part, preparation for the Havruta class will be quite similar to preparation for the Socratic class,<sup>199</sup> it is the implementation of this preparation in the classroom that will be different as well as time consuming for both teacher and student.<sup>200</sup> Teachers might employ technology, but only to the extent that it does not allow the students to become passive learners. Thus, PowerPoint type presentations would not be a best choice; nor would other forms of presentation that place the student in the role of observer. But a teacher could use, for example, clickers that would require some active participation by the students. Clicker questions could form the basis for discussion prompts. This, of course, would require considerable preparation and thought on the part of the teacher prior to entering the classroom in order to ensure that the questions will engage the students and prompt valuable discussion rather than simply seek a correct answer.

There remains the need to evaluate students. In the traditional Socratic classroom, evaluation occurs primarily in the form of a final exam, which represents the teacher's judgment about how well a student has grasped the law and the ability to apply it. There may additionally be some sort of judgment made about a student's class participation. While traditional evaluation methods might still prove useful to some extent,<sup>201</sup>

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<http://web.archive.org/web/20070527040006/http://sun.menloschool.org/~sportman/westernstudies/first/introduction/hevruta.html> (last visited Oct. 13, 2010).

198. Gelfman, *supra* note 9 (suggesting that choosing a partner was like choosing a wife).

199. An example list of questions or prompts used to lead students through text includes the following: What does the text say?; what does the text mean?; what does the text mean to me?; What word or phrase is central to the understanding of the text and why? Carol K Ingall, *Cooperative or Collaborative Learning*, in *THE ULTIMATE JEWISH TEACHER'S HANDBOOK* 354 (Nanchama Skolnik Moskowitz ed., 2003) One can imagine students reading a case and responding to the first question with typical case brief responses—issue, holding, etc. Responses to the second question lead to examination of the meaning of the case as precedent. The third question could relate to the case's meaning to a specific client's problem. And the answer to the fourth question helps the student to focus her analysis and frame her client's argument.

200. See, e.g., Holzer, *supra* note 11, at 3.

201. An examination could still be an effective form of evaluation when using the Havruta method, to the extent it focuses on assessment of the student's critical thinking and reasoning skills. Similarly, memos and papers would still test reasoning abilities. Class participation could also be relevant, but rather than assessing a student's preparedness (since all students would have to be prepared to engage in discussion) the teacher could observe the interactions of the partners, assessing the students' employment of reasoning and solid argumentation in their discussions with their partners. This is not the same as an assessment of a final product

there remains the (unanswered) question of whether it is possible to truly assess one's grasp of the learning or thinking process itself as opposed to the final product that results from the use of that process. If such is not possible, then assessment of student work might consider the process skills that were necessarily employed in producing the final product.

Of course, lawyers must learn how to handle a case that will require certain final products and final answers. This does not conflict with or negate the benefits of Havruta style learning. These final answers are steps along the way of the process of truly deep learning about the law. The memo in the legal writing class, the exam or paper in the doctrinal class, the client in the clinic all require the student to produce products that result from an examination and understanding of the law. The understanding that comes from Havruta style discussion can only make these products better because the student will have thoroughly examined the relevant law and its many implications in the specific case at hand.<sup>202</sup>

Indeed, Havruta style learning can be fundamental in helping students to acquire the independence necessary for functioning as a lawyer. In the traditional classroom, and to some extent, as noted above, in the typical collaborative class room, the teacher, either explicitly or implicitly, is the one with a higher degree of knowledge upon whom the students rely to acquire the knowledge. They are thus dependent on the teacher, either for dispersal of information or for guidance to an adequate answer to a question. In contrast, Havruta allows for the student to be on an equal par with the teacher, and that all are engaged in the same quest together. As such, the student is not dependent upon the teacher, but is instead himself responsible. This fosters an independence that is beneficial to functioning as a lawyer. That is, the practicing lawyer cannot expect to rely upon someone else to lead her to the answers to her client's questions, rather the lawyer must use her own skills to examine the text that exists and use that text along with a well developed analytical process to independently arrive at answers for the specific client. The lawyer must feel comfortable in exercising her own judgment, an ability that Havruta might help to create independently in

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created by a group.

202. Of course, some teaching of specific formats, procedures and methods would need to continue to exist, in addition to the Havruta learning. Worth noting, however, though not the subject of this paper, is the danger that an over emphasis on skills training and outcome based evaluation may diminish the focus on and thus the training in deeper thinking while at the same time sending the implied message that there is one right answer and the primary job of students is to find that answer rather than develop an ability to exercise independent judgment and look to themselves for answers.

the student. Havruta promotes students to be prepared to say "I will find the truth" rather than inclined to say, "you will give me the truth." This independence is a necessary trait of the lawyer and one that we can indeed foster in the law school setting.

#### IV. CONCLUSION

Assuming that in many law school classrooms our goal is to cause students to both understand complex text and develop skill in application of that text to a variety of predictable and unpredictable situations, Havruta learning seems especially suited to the task. There are many benefits seen in Havruta learning that would be equally welcome in the law school classroom. In addition to engaging students in the learning process, Havruta fosters the independence and facility with process necessary for effective lawyering.

While Havruta study probably cannot and should not replace all law school teaching, it can easily be incorporated into nearly all traditional law school classrooms to enhance the current teaching methods employed. The excitement generated by my students during the short exercise that ultimately gave rise to this paper is one small example of its use and its benefits. I would like to imagine law school classrooms that are noisy, that might appear chaotic, in which partners are arguing out the meaning and application of statutes and cases, in which the teacher is not at the front of the class, but moving from pair to pair engaging briefly with each in the form of adding or challenging ideas to assist the pair in its conversation with the text being studied. I would like to see classes in which students are truly engaged in sorting through complex text to understand not only its meaning but their own thinking process as well. I imagine that this would not only be good for law schools, but for the practice of law as well.