

Forging a Strong Bond between the Socratic Method and Problem-Based Learning in Legal Education

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Abstract

The Socratic method has been, and still is, used extensively in legal education. However, many have criticised the Socratic method as being intimidating for students and not in step with modern legal education. Problem-based learning is seen as being student-centred and can engage the students on a meaningful level as they grapple with authentic problems within their field of study. It is argued that these approaches are both critical and fundamental in legal education and that they share some common ground. The goal of the Socratic method is “to develop legal analysis skills, including analogical reasoning and critical thinking skills; all of which are transferrable to different situations and factual scenarios” [28, p.6]. This is done through inquiry, engagement and aims to foster reflective, critical thinking. In this process jurists are also called upon to be problem solvers using these skills to offer solutions for authentic real-life situations, which is exactly what problem-based learning strives to do [27]. Problem-based learning presents the students with an ill-structured problem. They are then often expected, in smaller groups, to identify and brainstorm ideas and discuss and identify key learning objectives, do some research on these and distribute this information among themselves [27]. Facilitators are then used to guide the students to ensure they don't lose sight of these learning objectives. The Socratic method can be used as a bridge in this process as the facilitator can be involved in the internalisation process which will assist in leading to deeper learning [9]. A measured, yet creative teaching approach will ensure that these two approaches are both utilised in order to forge a strong and effective approach to legal education. This conceptual paper suggests guidelines for the integration of the Socratic method and problem-based learning in legal education.

Keywords: Socratic method, problem-based learning, legal education

1 Introduction

The Socratic method has been used in law schools across the world for more than a century [1]. The traditional Socratic method was piloted by professor Langwell at Harvard Law School towards the end of the nineteenth century [29]. Langwell specifically proposed the case method. The latter entails the technique of “assigning appellate court opinions from which students discern aspects of legal doctrine, analyze that doctrine, and apply it to different scenarios” [29, p.2708]. The traditional Socratic method describes “an approach to questioning whereby the professor asks a student a series of questions designed to elicit information about the reading, material, expose weaknesses in the student's thinking, and lead the student to the ‘right’ answer” [29, p.2708]. The goal of the Socratic method is “to develop legal analysis skills, including analogical reasoning and critical thinking skills; all of which are transferrable to different situations and factual scenarios” [28, p.6]. The combination of the two has been the basis of the traditional Socratic method which has been used for decades.

Students find the Socratic method challenging, but it also equips law students with essential skills such as - legal analysis, critical thinking and verbal skills [20]. These skills will be crucial in the court room, during negotiations and in the lecture room. A lawyer “needs to be able to react to new allegations or novel arguments on the spot” [20, p.125]. The Socratic method excels in that respect. However, the “myriad of skills a good lawyer should be able to master can be best acquired by a mix of teaching styles” [20, p.125].

2. The Socratic Method as Applied in Legal Education

Although the Socratic method of teaching has different meanings for different people, in the context of legal education it basically involves that students analyse cases and the lecturer leads the discussion in class where the lecturer calls on the students to “articulate deeper gradually understanding of a legal doctrine or theory” [18, p.101]. This will be done in a dialogue format, between the student and

the lecturer, with the lecturer leading the discussion with pertinent questions and the student responding to these questions. The questions are probing and aimed at eliciting responses from the students that gradually offer the student greater insight into comprehension of the legal theory and its application in cases. The Socratic method is in essence a manifestation of an inquiry dialectic method where the lecturer or facilitator guides the lecture by means of questions [23]. It assists students in collecting their thoughts based on their understanding as they are assisted by the lecturer [30]. It contributes to critical thinking since the students must continually judge and evaluate and question their thoughts, ideas and arguments, internalise these thoughts and arguments while they are listening intently [17]. The students must do the thinking themselves which is an active way in which to learn how to think. The method aims to foster understanding by developing new insights as well as expose lack of knowledge or limited knowledge [19]. Additionally, the Socratic method requires students to think on the spot and then respond accurately while in the process taking some intellectual risks [18]. It promotes active learning since students must prepare well for class, focus intensely [both student and lecturer] listen attentively, and then express ideas in a “cogent, persuasive, and professional manner” [18, p.102, 29, p.2710]. Such qualities — preparation, focus, listening skills, cogent analysis, and good judgment form the backbone of the fundamentals of successful lawyering [18]. At its most effective this Socratic dialogue requires students to “reason through difficult propositions, confront inconsistencies in their conclusions, and rethink their prior stances” [29, p.2709]. The idea is to train the students to think critically and apply their knowledge in order to solve legal issues. In its most effective form the Socratic method is a shared dialogue where ideas are exchanged and promoted by both parties [7]. In a study done amongst Malaysian educators the respondents indicated that the Socratic method enhances critical thinking as well as communication skills [6]. In 2023 a survey done amongst Boston College Law students revealed that more than seventy percent of the surveyed students indicated that the Socratic method is moderately to very important as part of their education at law school [21].

2.1. The Modern Socratic Method

The Socratic method has been adapted and modified by law lecturers [rightly so] which has lead to a modern Socratic method. In the modern method [sometimes referred to as Socratic lite] the same basic ideas of the traditional method are used but this method aims to produce specific knowledge regarding these topics [7]. The modern Socratic method understands that the students are not ignorant but that a deeper understanding of a specific topic needs to be fostered and this is not done only through pure back-and-forth dialogue between the lecturer and the students. The proponents of the modern Socratic method also steer clear from using the Socratic method to ridicule students, to show them how ignorant they are and how far they are from the “perfect” answer. There is also a move away from continuous one-on-one dialogue which characterises the traditional Socratic method. This is achieved by additional activities such as cross-examination and dividing students into groups in which they share dialogue and offer feedback are also used [7]. The Panel system is an excellent example of the modification of the traditional Socratic method [19]. In this method students are divided into groups or panels at the start of the semester. They participate in panel discussions where they are “questioned in Socratic-style dialogue about the assigned material on the days designated to them” [19, p.11]. It requires a deep preparation of the material and thorough discussions with peers as well as the ability to explain the material to your peers [19]. It also challenges the students to identify potential questions the lecturer might ask, and in many cases is similar to preparing for a trial [19]. This approach is also less lecturer-centred and more student-centred although the lecturer remains the facilitator of the process. The fundamentals of the Socratic method remain- it is still a dialogue or discussion where questions and answers are passed back and forth, ideas exchanged and challenged, and knowledge probed which leads to applied and practical knowledge. However, adjustments are made which embrace the challenges of the modern student and their learning experience. If one considers the lecturer’s approach and the manner if which the dialogue takes place, simple adjustments can achieve great changes. The lecturer could relieve some pressure from the student by giving them an option to pass up on a question or maybe guide them with relevant and applicable sub-questions to the main questions to assist the student in gaining greater understanding [20]. The lecturer’s teaching demeanour is crucial in this process. A lecturer will lead the dialogue, but it should be done with the idea of stimulating intellectual growth and deeper understanding and not at the expense of the student’s psychologically wellbeing The lecturer should understand that a student’s answer will often reflect limited knowledge and application and cannot be compared to the answer and insight of a lecturer who has far more experience and knowledge regarding the topic [24].



A lecturer should “be supportive but commanding” [24, p.367]. Focus should remain on the outcomes which have been clearly communicated to the students.

The Socratic method can be particularly useful when it comes to certain law modules such as Civil Procedure or Criminal Procedure. These modules are very structured and are based on set rules, legislation and applications of these aspects for decades in court rooms across the world. These modules reflect established practices in lawyering which has been developed and nurtured through decades of lawyering, and they are still applicable in courts worldwide every day.

2.2. Practical Application of the Modern Socratic Method in Legal Education

Consider a procedure where an attorney approaches the court for an urgent application [be it in civil law or criminal law] in a specific matter. Procedurally and substantively, with an urgent application to a court there are set parameters that have been established through rules, common law and civil law, legislation and case law. Jurists have approached court for decades with urgent applications and will continue to do so in the future. There is established knowledge which has been set and applied for decades. Substantively the arguments might vary a bit depending on the facts of each case, but essentially the procedure, which should be followed for an urgent application is set. Here the Socratic method could be very useful.

The lecturer could set out and produce a scenario. e.g. the bank wants to put up A’s property for sale in execution and A wants to prevent this from happening. The lecturer now wants to determine the students’ knowledge [or lack thereof] and assist the students in gaining greater insight into this specific legal matter. How is this done? From the outset the outcomes should be clear – this class wants the student to have an informed understanding and application of approaching the court with an urgent application. So, through dialogue and by challenging the students with probing questions as well as examples from case law the lecturer assesses the students’ understanding and application. The dialogue the lecturer engages in, or initiates, is not done in a threatening, authoritarian manner with the idea to ridicule the students. The lecturer also guides the student, where necessary, with relevant sub-questions and can allow students to debate the topic in groups or panels. If the modern Socratic method is applied then the Socratic questioning [as found about] would still be maintained, but students might be divided into panels, and they would be questioning each other and explaining to each other while evaluating their own ideas and assumptions regarding the specific topic. Students can be given different roles within a group e.g. lawyer acting on behalf of plaintiff, or defendant, judge, and still through, dialogue and discussion, deepen their understanding and hone their application. Throughout the lecturer should foster an atmosphere which encourages participation and yet still demand active learning and application. The basic tenet is still dialogue and discussion, but it is not as rigid as the dialogue between the lecturer and the student as is the case with the traditional Socratic method. It is vitally important to remember that the lecturer must still act as a facilitator during this process, ensuring that the process remains on course and that the outcomes are reached. However, students take a more active role in the learning process and should also experience less anxiety as when they are confronted by the lecturer on a one-on-one basis as is the case in the traditional Socratic method.

3. Criticism of the Socratic Method

The Socratic method ruled supreme in legal education classrooms for decades but toward the late 20th century the criticism against it had grown substantially. Modern scholars often scoffed at it, referring to it as “more myth than reality” [14, p.114]. Wilensky [29] claims that if the Socratic method is used in the manner as proposed by Langdell’s case method, it does not clothe students with the necessary skills which they need to be a successful lawyer, and Bahudur and Zhang [4] concur that the method could hinder learning greatly if defined and applied incorrectly.

A major criticism against it has been that it is outdated and has not adapted to the experiences of the modern student [14]. Additionally, it is also argued that the method, in its strictest form, causes psychologically harmful effect on students since students are often criticised and humiliated publicly and the approach can lead to low self-esteem amongst students [2,5]. Some scholars also argue that the Socratic method teaches an “abstract and particular skill of case-based legal reasoning” [14, p.119]. It, however, fails to teach a range of other skills a lawyer needs such as cooperation, assisting and representing a client, [Howard 7] and citizenship [12]. Wilensky [29] rightly points out that the ability to connect with clients and attentively listen to their problems is a skill that is neglected by the traditional Socratic method Keene and McMahon [13] add that the method also neglects key

components of a lawyer's skillset such as conflicting testimonies and fact investigating aspects that occur during litigation. It is also stated that the traditional Socratic method often promotes a certain political and social agenda such as male dominance in law [14, 26]. The Socratic lecturer seems to invade a student's space at any given time and does not always consider the students' cultural and diverse background as well as their individual learning styles [4]. The method is also more lecturer-centred than student-centred. A very valid argument as a criticism for the Socratic method is the fact that if it is done poorly, it really spoils the learning experience. The Socratic method demands that the lecturer must be very knowledgeable and well-prepared and if this is not the case, the method fails miserably [6]. Wilensky [29] aptly states that if the method is poorly applied by the lecturer it can lead to more confusion than enlightenment. This is especially true since students will produce correct and incorrect answers during the application of the Socratic method and if the lecturer is not knowledgeable and well-prepared it could be very detrimental to the students.

All of this clearly illustrates that the Socratic method, be it the traditional or modern one, has advantages and disadvantages. It has been used in legal education classrooms for decades and will still be used in decades to come. It should not be discarded, but it is also not the Holy Grail of legal education. It is more effective and applicable in certain teaching scenarios such as the teaching of procedural law modules, than in other modules. It has its place in legal education, but it is argued that its effect can even be further enhanced if it is coupled with other teaching strategies and styles.

It is therefore suggested that a lecturer should be very clear about the outcomes that they want to achieve in a certain class or module and to ensure that the Socratic method is the most effective technique to meet this goal [19]. Multiple pedagogies which acknowledge the different student learning styles should also be adopted in order to accommodate a wider range of students and ensure a richer learning experience, and feedback from the students must be gained throughout the semester in order to gauge the effectiveness of these pedagogies.[19]. All teaching methods have their strengths and weaknesses. The Socratic method cannot be the only method employed in legal education classes, and the best approach would be a mix of different teaching styles and methods which would accommodate different students [25].

4. Problem-based Learning [PBL]

Problem-based learning [PBL] has not been used extensively in legal education [10]. Maastricht University implemented an entire law degree which reflects a curriculum built on a problem-based learning approach [Moust 15] and recently an Indian university used a PBL approach in a course on tax law [22]. Research on PBL was conducted at a Portuguese university where a problem-based learning method was used in an Erasmus class of International Public Law [16]. However, these examples of the use of PBL in teaching law are few and far between. All of these efforts seem to point to the fact that PBL can be a very useful teaching method in legal education, but application of the PBL method has also highlighted various challenges.

The PBL method encompasses "a student-centred active learning method in which students work in groups, solving complex problems autonomously, deciding which information is relevant, and which skills are needed, without a predetermined right answer" [16, p.436]. PBL enhances students' abilities and skills in the application of knowledge, solving problems, engaging in higher-order thinking, and also assists with self-directed learning [16]. The method seems to assist students in moving from passive listeners to active collaborators and problem solvers and also assists with more risk-taking from the students' side [3].

PBL display five basic characteristics with the first being that the lecturer should introduce authentic problems that are ill-structured at the start of the discussion before the content has been learnt by the students. Secondly, PBL caters for active self-directed learning which must be facilitated by the lecturer. Thirdly, there should be a scaffolding of knowledge building, cooperation and collaboration amongst participants and lastly authentic assessment of the product and the process should occur which should include evidence-based recommendations for resolving problems [8].

The study conducted at a Portuguese university, mentioned above, consisted of a face-to-face module in international law with two hours of contact classes per week with the class comprising 17 students. Two types of classes were conducted in this course: Classes 1,2 and 4 the preparation work for the class was done beforehand [the reading of the chapter, reading case law as well studying problems] on an individual basis, with parts of the class being lecture-based with some discussions of questions or cases being led by the lecturer. In other words, leaning towards the Socratic method. Classes 3, 5 to 7 the students were only expected to read the chapter before class also on an individual basis; the classwork was collaborative with the class divided into groups of three and four students [16]. This



was more towards a PBL approach. In class 5 students were expected to: “present a legal solution to the case. However, roles were assigned to each group of students [petitioner or defendant]; this change was meant to lead students to actively seek a legal pathway to a solution that best served their role. In Classes 5 to 7, PBL activities were conducted” [16, p.441].

The specific PBL activities that the lecturer used during Classes 5 to 7 would be the following: at the start of each class, the lecturer would inform the students of regarding the composition of the various groups and also distribute a list of facts and tasks which should be used for the class activity. The students will then work in groups and analyse the facts, identify legal problems do online research regarding legal and political information, e.g. the applicable law, precedents and legal positions on the specific matter. In Classes 5 and 6 students had to discuss the topics and then do an oral presentation regarding their findings. Each student insisted on doing an individual presentation although it was not compulsory. “Therefore, identifying the legal problems and discussing them was a group activity, but the drafting and presentation of the statement was a task performed individually, by decision of the students” [16, p.443]. In Class 7 the students had to, simultaneously, post answers to questions online in the form of a table. During the latter part of the class the lecturer would put up these results on a screen and discuss the answers.

The feedback from the students regarding the use of the two methods, traditional as therefore more Socratic in approach, one could argue, although the method is not purely Socratic, as opposed to PBL, yielded interesting results. Approximately half the students preferred the traditional method and half the PBL approach [16]. The students who had greater knowledge regarding the topic and better social skills, preferred the PBL approach, which seemed to indicate that a student's confidence plays a substantial role in their preferences. The lecturer also indicated that the PBL approach seems to lead to an improvement of the student-teacher pedagogical relationship since there was meaningful interaction with all the students [16]. Other advantages also seemed to be the fact that the lecturer could intervene if students lost their way and, in this manner, enhance learning. The research also suggests that PBL is “more flexible and allows for the development of skills that would otherwise be excluded from classroom activities or from the curriculum objectives, such as resource research, orality, collaborative work, self-confidence, and self-regulation” [16, p.450].

The study did also point out some challenges with the implementation of the PBL approach. In legal education there is specifically some resistance to the approach, and it is clear that the approach requires time to be effectively implemented. It is suggested implementation should be partial and gradual. The lecturer plays a crucial role in the process, and it is up to the lecturer to be sensitive to the composition of the class, specifically their preferences and diversity. However, the approach will also lead to an increase in the lecturer's workload, but despite this the PBL approach would be a welcome addition to an approach such as the Socratic method. On a practical level, in modules such as civil procedure and criminal procedure, a Socratic method, and dare I say the modern Socratic approach, coupled with a PBL approach can be beneficial to students and lecturers alike.

4.1. Combining the Socratic Method with PBL in Legal Education

A topic such as the one above, an urgent application, can be approached using both methods. Firstly, the outcomes have to be clearly communicated to the students. If one considers the possible outcomes for this activity there could be a few: [a] to display a thorough understanding of the nature of an urgent application and the ability to apply it on a practical level; [b] to illustrate an ability to synthesise ideas and opinions into a cohesive argument and present this argument ; [c] to work cooperatively ; [d] to display an ability to be a self-directed learner ; [e] to develop social skills relevant to lawyering ; [f] to foster and improve communication skills.

So, the lecturer provides the scenario - the problem, which in this case is an authentic problem – a client has approached you with a real legal and personal issues- the bank wants to auction his house. This alludes to the first characteristic of PBL - authentic problems which are posed prior to the learning of all the content.

The lecturer could assist with a few introductory remarks and then can divide the class into groups. Each student could be assigned a specific role, or they could just be tasked with discussing the topic, in their groups, based on the scenario. This would speak to outcomes [c] [d] and [e]. The lecturer could even consider assigning the role of the client to one of the students, which would relate to outcome [e] and [f] as well and would counter one of the criticisms against the Socratic method – the fact that it does not cater for the fostering of other lawyer skills such as empathy, communication and community. The students must be challenged to discuss the topic thoroughly, evaluating opinions



and exchanging ideas through dialogue and discussion. This also reflects another characteristic of PBL – cooperation and collaboration between students and lecturers.

The Socratic method would feature here since outcomes [a] and [b] ask for specific and applied knowledge and application and an urgent application has to conform to certain court rules and common law principles. The students must be able to understand and apply these principles and through critical thinking [a Socratic method staple] dialogue, discussion and research. Here, the lecturer can use Socratic questioning to scaffold the building of the students' knowledge, the latter being another characteristic of PBL. This can be done by specific questions - which legal remedy is applicable here? Why? Can you describe the legal remedy? Which elements must be considered when applying this remedy? The lecturer could put these questions to the group, or alternatively individuals within the group, and through dialogue follow up on the answers and in the process use scaffolding to build the knowledge of the students. A third characteristic of PBL - active self-directed learning – will come into play here. The lecturer must guide and facilitate the process, keeping the outcomes in mind, and if necessary, pose specific questions to the students [Socratic method again]. However, the students in their groups and individually must offer feedback, which in this case will most probably be oral feedback, or the lecturer could ask students to draft the urgent application based on the scenario. It is vital that the lecturer also offers feedback in a timely and effective manner. This offers an authentic assessment opportunity driven by evidence-based recommendations [a core PBL characteristic] since the students must provide a practical example of an urgent application using the facts of the specific case and adhering to the requirements for an urgent application before a court, and feedback is also provided.

This is just a simplified example of blending the Socratic method with a PBL approach to enhance teaching and learning in a legal education classroom. This approach aims to achieve specific outcomes, outcomes related which call for the critical thinking to be utilised in order to gain and apply specific knowledge in addressing a real-life problem. This is done cooperatively while actively engaging with the learning material leading to an authentic assessment. The lecturer as facilitator, scaffolds and guides the learning process through dialogue that involves specific questions and focused feedback.

5. Conclusion

Teaching a legal education module requires an understanding of the outcomes and a multi-faceted approach to teaching and learning. Combining the Socratic method and PBL certainly provides such an opportunity. There is room for both approaches in the teaching of legal education since both serve fundamental objectives of legal education.

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