

Bond University

Legal Education Review

Volume 32

Issue 1

2022

A Learning and Teaching Method for the Online Environment that Delivers: Coupling a Soft Socratic Method with a Humanistic, Nurturing Approach

Alex C Evans

University of New South Wales

Follow this and additional works at: <https://ler.scholasticahq.com/>



This work is licensed under a [Creative Commons Attribution-Noncommercial-No Derivative Works 4.0 Licence](https://creativecommons.org/licenses/by-nc-nd/4.0/).

A LEARNING AND TEACHING METHOD FOR THE ONLINE ENVIRONMENT THAT DELIVERS: COUPLING A SOFT SOCRATIC METHOD WITH A HUMANISTIC, NURTURING APPROACH

ALEX C EVANS*

I INTRODUCTION

The COVID-19 pandemic forced many universities around the world to move learning and teaching into the online environment. For many academics, this was their first experience delivering academic content remotely. Even though this is what the circumstances demanded, a specialist recently stated that ‘online teaching is a brand-new skill for many that cannot be learned quickly.’¹ Creating a successful online learning environment requires intentional course design choices. Simply ‘migrat[ing]’ teaching methods used in the face-to-face environment to the online one is unlikely to work.² Instead, ‘teachers ... need to draw upon a range of learning theories to determine the appropriate pedagogical approach for relevant content, to build student skills and recognise the importance of the concept of “place” and “presence”.’³ This raises an important question – what is an effective pedagogical method for law in the online environment?

* Senior Lecturer, UNSW Business School, Sydney, Australia. Human Ethics approval granted by UNSW HC 190004 (specially designed student survey); HC 200551 (all other dimensions of this article). I am incredibly grateful to: Ropes & Gray Professor of Law Alvin C Warren Jnr and Felix Frankfurter Professor of Law Noah Feldman, Harvard Law School, for showing me the soft Socratic Method done exceptionally well and for their immense generosity, kindness and care generally; Jessica Mendoza-Roth, Social Impact Hub, for inviting me to Professor Feldman’s class and for encouraging me to think about this; Professor Alex Steel, UNSW Sydney, for being so generous with his time, guidance and insightful suggestions, and for sharing his experience, and Associate Professor Anne Hewitt, Adelaide Law School, for thoughtful editorial guidance. Thanks to Carlos Piano and Dr Peter Mellor for excellent research assistance, and Professor Chris Evans, UNSW, and Dr Kate Collier for their generous comments on an earlier version of this article. All errors are my own.

¹ Kelly J Baker, ‘Online Learning: Keeping Students Engaged’ (2020) 29(4) *The National Teaching & Learning Forum* 9 citing comments made in a presentation by Bettyjo Bouchey.

² Lillian Corbin and Lisa Bugden, ‘Online Teaching: The Importance of Pedagogy, Place and Presence in Legal Education’ (2018) 28 *Legal Education Review* 1, 16.

³ *Ibid.*

A significant challenge in online learning and teaching is that the student attrition rate is higher than in the face-to-face environment.⁴ This is because ‘students lack the opportunity to interact with others and as a result can become socially isolated and easily lost.’⁵ Consequently, course design which maximises ‘student self-efficacy’ is crucial.⁶ Self-efficacy here refers to ‘people’s judgements of their capabilities to organise and execute a course of action required to attain designated types of performances’,⁷ and it is strongly connected with ‘student motivation and persistence.’⁸ There is a body of material that underscores how important self-efficacy is to the student learning experience.⁹ The literature also indicates that social and teacher dimensions of presence are critical in building student self-efficacy.¹⁰ The meaning of presence is discussed more fully below.

Anecdotally, in my experience both as a student and teacher of law in Australian universities, a common method used in teaching law is to couple the liberal¹¹ and behavioural philosophies.¹² This typically presents in large classes as teaching by transmission with some form of teacher-student dialogue often patterned as a drill or requiring reproduction of information on cue, with verbal rewards and punishment.¹³ However, the student-teacher dialogue is only a small part of the learning experience, both conceptually and in duration. Often the lecture is accompanied by a seminar style class, with smaller

⁴ Demei Shen, Moon-Heum Cho, Chia-Lin Tsai and Rose Marra, ‘Unpacking Online Learning Experiences: Online Learning Self-Efficacy and Learning Satisfaction’ [2013] (19) *The Internet and Higher Education* 10, 10.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid. This is referred to as ‘self-efficacy belief’ in psychology literature, see eg: Mercè Prat-Sala and Paul Redford, ‘The Interplay Between Motivation, Self-Efficacy, and Approaches to Studying’ (2010) 80(2) *British Journal of Educational Psychology* 283, 285. There is a broader body of literature on self-efficacy beyond the online environment, eg, Albert Bandura, ‘Self-Efficacy: Toward a Unifying Theory of Behavioural Change’ (1977) 84(2) *Psychological Review* 191; Albert Bandura, ‘Human Agency in Social Cognitive Theory’ (1989) 44(9) *American Psychologist* 1175 as discussed in Alex Steel, Julian Laurens and Anna Huggins, ‘Class Participation as a Learning and Assessment Strategy in Law: Facilitating Students’ Engagement, Skills Development and Deep Learning’ (2013) 36(1) *UNSW Law Journal* 30, 36.

⁸ Steel, Laurens and Huggins (n 7) 30 citing Albert Bandura, ‘Human Agency in Social Cognitive Theory’ (1989) 44(9) *American Psychologist* 1175.

⁹ Ruth A McKinney, ‘Depression and Anxiety in Law Students: Are We Part of the Problem and Can We be Part of the Solution?’ (2002) 8 *Legal Writing: The Journal of the Legal Writing Institute* 229; Anne Hewitt and Matthew Stubbs, ‘Supporting Law Students’ Skills Development Online – A Strategy to Improve Skills and Reduce Student Stress?’ (2017) 25 *Research in Learning Technology* 1, 3.

¹⁰ Shen et al (n 4) 16.

¹¹ John L Elias and Sharan B Merriam, *Philosophical Foundations of Adult Education* (Kreiger, 3rd ed, 2005) 11, 12, 28-9; Lorraine M Zinn, ‘The Philosophies of Adult Education Inventory’, *LabR Learning Resources* (Web page, 2008), <<http://www.labr.net/paei/paei.html>>

¹² Elias and Merriam (n 11) 13, 86-69, 92-95, 97-100, 105, 109; Corbin and Bugden (n 2) 6-9.

¹³ See Wahida Zraa, Marie Kavanagh and Todd Hartle, ‘Teaching Accounting in the New Millenium’ (Paper, Cambridge Business and Economics Conference, 27-29 June 2011,) 11.

numbers of students, and this provides an opportunity for students to work through problem style questions to practice applying the principles taught in the large lecture to real life situations. However, again, the teaching techniques for facilitating seminars tend to derive from the coupling of the liberal and behavioural philosophies.

This article takes a different approach by focusing on a student-centred soft Socratic method that couples the liberal and humanistic philosophies.¹⁴ I observed Felix Frankfurter Professor of Law Noah Feldman and Ropes & Gray Professor Alvin C Warren Jnr teach using this method at Harvard Law School in 2013, and I then adapted it for the online environment between 2016 and 2018 in postgraduate courses in tax law at UNSW for groups of between 18 and 50 students.¹⁵ The skeleton outline of my method is provided in the attached Appendix.

A Aim and Methodology

The central aim of this article is to provide a preliminary evaluation of the effectiveness of the soft Socratic method described above for the online environment. This article undertakes that evaluation using the ‘four lenses of critical reflection’, which is a tool that Stephen Brookfield outlined in his book *Becoming a Critically Reflective Teacher* to help adult educators with their professional development.¹⁶ The four lenses are: [contextualising within] ‘theory’; ‘personal experience’ (self-reflection); ‘students’ eyes’ and ‘colleagues’ perceptions.’¹⁷ These lenses provide a way for teachers to reflect critically on their own method and the philosophy that underlies it to check the ‘accuracy and validity’ of all ‘teaching assumptions’, both explicit and implicit.¹⁸ Brookfield argued that this is the best way to ‘unearth and scrutinize’ all of our assumptions. Applying Brookfield’s lenses to evaluate the efficacy of the soft Socratic techniques coupled with a humanistic, nurturing approach as a pedagogical method for the online environment has not been done previously in the literature.

It is valuable to provide background on the meaning for each of Brookfield’s lenses.

¹⁴ Elias and Merriam (n 11) 111, 119-20, 124, 125, 127-8; Dave Smulders, ‘Chapter 7: The Nurturing Perspective’ in Daniel D Pratt and Dave Smulders et al (eds), *Five Perspectives on Teaching: Mapping a Plurality of the Good* (Krieger, 2nd ed, 2016) 184-90.

¹⁵ The narrative account of my observations at Harvard Law School and the features of my method will be described elsewhere.

¹⁶ Stephen D Brookfield, *Becoming a Critically Reflective Teacher* (Jossey-Bass, 2nd ed, 2017) 7-9, Ch 4.

¹⁷ *Ibid* 7-9, Ch 4.

¹⁸ *Ibid* 3. Brookfield presented his own taxonomy of assumptions: ‘paradigmatic’ (‘the structuring assumptions we use to order the world into fundamental categories’); ‘prescriptive’ (‘assumptions about what we think ought to be happening in a particular situation’), and ‘causal’ (‘assumptions about how different parts of the world work and about the conditions under which these can be changed’): *Ibid* 5-7.

1 *Theory*

In relation to the first lens ('theory'), Brookfield observed that teachers often dismiss or are 'suspicious of' educational theory, philosophy and research, 'regarding it as the enemy of practice'.¹⁹ However, he argued that theory is important because, among other things, 'it can suggest different possibilities for practice as well as help us understand better what we already do and think.'²⁰ He also argued that this lens 'does something that no other lens can ... it provides us with a coherent and comprehensive explanation of a piece of the world.' He argued that 'more than any other lens' theory:

enables us to stand back and see the big picture. Studying this picture often productively disturbs the familiar interpretative and perceptual ruts we travel in as we try to understand our practice. It opens new worlds to us, stopping us short with the shock of disorientation ... Theory also stops us getting caught in the groupthink that sometimes develops when colleagues talk through a familiar dilemma.²¹

2 *Students' eyes*

In relation to the second lens, Brookfield argued that 'understanding how students are experiencing learning' 'so you can build bridges from where they are now to a new destination' (which he abbreviates to 'students' eyes') is the most important dimension of critical reflection in relation to your own teaching.²² He argued that the only way to build an accurate picture of how you and your teaching method are perceived by students is by obtaining data from students anonymously,²³ and on a regular basis.²⁴ He canvassed various ways of doing this, including asking students what the 'muddiest point' from a particular class or course to date is,²⁵ synchronous voting ('clickers'),²⁶ using social media,²⁷ and 'critical incident questionnaires'.²⁸ Each technique is designed to increase engagement with students.

3 *Colleagues' perceptions*

In relation to the third lens ('colleagues' perceptions'), Brookfield argued that it is helpful to have a colleague who can observe your teaching with a critical eye to help you 'unearth and check your assumptions and open[s] you up to new perspectives about familiar problems.'²⁹ Brookfield valued this perspective highly as he argued that

¹⁹ Ibid 171.

²⁰ Ibid.

²¹ Ibid 173.

²² Ibid 62.

²³ Ibid 63.

²⁴ Ibid 65.

²⁵ Ibid 102.

²⁶ Ibid 103.

²⁷ Ibid 104-5.

²⁸ Ibid 107-11.

²⁹ Ibid 66.

often a colleague will have shared experience about managing student dynamics and will be aware of behaviours that relate to the institution or history, for example student resistance.³⁰ There is a significant body of literature on the role and value of peer review of teaching, both for formative and summative purposes.³¹ While both are interesting lines for future research and enquiry, this article assumes that the perspective obtained from the peer review process can provide insight on how techniques and methods are received and this is valuable for combining with data collected from the other lenses to evaluate how effective a teaching method is.

4 *Personal experience*

Brookfield argued that the fourth lens ('personal experience') is helpful as it gives 'the gift of empathy that helps us adjust what we're doing to take account of students' blockages and anxieties.'³² He argued that often teachers have forgotten the range of feelings that students experience when learning a subject for the first time, including fear, boredom, and intimidation.³³ He therefore advocated that teachers 'try to learn something that bores or intimidates us in adulthood' as that brings those feelings to the forefront and simulates our students' experience as much as possible.³⁴ Brookfield argued that in doing this, teachers have the opportunity to experience the classroom and different teaching styles anew. He suggested that our observations of 'how we deal with the experience of struggle on a personal level ... certainly gives us some valuable insights into actions we can take with our own students who are struggling with similar feelings.'³⁵

B *The Roadmap*

As there is limited literature on the soft Socratic Method in the face-to-face and online environments,³⁶ and because, anecdotally, the traditional Socratic Method is viewed negatively by teachers in Australia, for the first lens (theory), this article critically analyses the Socratic Method which is the key method in the liberal philosophical tradition.³⁷ It begins by setting out the hallmark characteristics of the traditional method and the key criticisms of it. This article then critically engages with suggestions in literature as to how those criticisms could be addressed as this indicates the contours of a soft Socratic Method. The article then presents a preliminary study that

³⁰ Ibid 67.

³¹ Eg, J Bandy, *Peer Review of Teaching* (Vanderbilt University Center for Teaching, 2015); Daniel J Bernstein, Jessica Jonson and Karen Smith, 'An Examination of the Implementation of Peer Review of Teaching' (2000) 83 *New Directions for Teaching and Learning* 73.

³² Brookfield (n 16) 154.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid 155.

³⁶ See the material in Section II.C below.

³⁷ LabR Learning Resources (n 11).

combines the second, third, and fourth lenses (the student and peer perspectives and self-reflection, respectively). The study uses data from student evaluations completed in 2016 to 2018,³⁸ a more detailed survey of students who completed my courses in 2018, a formal summative peer review that was completed in 2018 and my own personal reflections.

The article considers the method to be *effective* if there is not a high level of disagreement in the data in relation to the following two criteria:³⁹

- the quality of the teaching, and
- that the method encouraged student participation and engagement.

The study is presented as preliminary or indicative for the following reasons.⁴⁰ First, it is not possible for the evaluation to include the mean grade of each student in each cohort in the period of the study as the manner of assessment changed during this time as a meta level change within the university. It is also not possible to extend the study further temporally either: back to when I started teaching remotely in 2014, as I do not have the relevant data from 2014; or forward to 2019 as the university moved from a two semester to a trimester model in 2019 and this discontinuity may affect the quality of the data. It is also acknowledged that there are limitations in using student evaluations conducted by the university in a single course that was taught using this method as there is no control group. There is the potential to develop this preliminary evaluation into a complete empirical analysis in the future.⁴¹

However, before turning to the preliminary evaluation, it is valuable to set out the existing literature on techniques for learning and teaching in the online environment, and also to provide background on the sources of the data that are used in the study.

C *Existing Literature on How to Create a Successful Environment for Learning and Teaching Online*

Due to the COVID-19 pandemic, there is now a swath of literature on the migration of learning and teaching from the physical to the online environment.⁴² Part of that literature focuses on promoting

³⁸ The study excludes data from a course that I taught once in Semester 2, 2017 as a substitute for a colleague as I was not able to set the parameters and alter aspects of the course design required to implement using the method that is evaluated in this article.

³⁹ This technique was used by Danielle Bozin, Felicity Deane and James Duffy, 'Can Multiple Choice Exams Be Used to Assess Legal Reasoning? An Empirical Study of law Student Performance and Attitudes' (2020) 30(1) *Legal Education Review* 1, 3. See also Antje Deckert and William R Wood, 'Socrates in Aotearoa: Teaching Restorative Justice in New Zealand' (2013) 16(1) *Contemporary Justice Review* 70. I am indebted to Professor Alex Steel for taking this approach.

⁴⁰ In the manner of Bozin et al (n 39).

⁴² Rajarama Eri, Prasad Gudimental, Shaun Star, Josh Rowlands, Anit Girgla, Loeurt To, Fan Li, Nhem Sochea and Umesh Bindal, 'Digital Resilience in Higher Education in Response to COVID-19 Pandemic: Student Perceptions from Asia and Australia'

engagement, health, well-being, and effective time management. However, there is very little literature on how to create a successful environment for learning and teaching online.

As described in Section I above, the existing literature on how to create a successful online learning environment emphasizes the importance of ‘place’ and ‘presence’. It is important to set out the denotation for each as they are not intuitive and they are specific to the online context.

‘Place’ involved a teacher being ‘mindful of the culture ... [they] want to create’ and ‘what should “furnish” that space to promote learning and interaction in the online community’,⁴³ with the aim of ‘create[ing] a place where the participants feel they belong - where they fit in and feel confident enough to expose their vulnerabilities.’⁴⁴

In relation to ‘presence’, literature argues that ‘deep learning happens when the three elements - social, cognitive, and teaching presence - interact.’⁴⁵ It is valuable to set out what each dimension of

(2021) 18(5) *Journal of University Teaching and Learning Practice* Article 7; Ida Fatimawati and Adi Badiozaman, ‘Exploring Online Readiness in the Context of the COVID-19 Pandemic’ (2021) *Teaching in Higher Education* 1; Chrysi Rapanata, Luca Botturi, Peter Goodyear, Lourdes Guardia and Marguerite Koole, ‘Balancing Technology, Pedagogy and the New Normal: Post-Pandemic Challenges for Higher Education’ (2021) *Postdigital Science and Education* 1; Kristina Stockinger, Raven Rinas and Martin Daumiller, ‘Student Adaptability, Emotions, and Achievement: Navigating New Academic Terrains in a Global Crisis’ (2021) 90 *Learning and Individual Difference* 102046; Samreen Mahmood, ‘Instructional Strategies for Online Teaching in COVID-19 Pandemic’ (2021) 3(1) *Human Behaviour and Emerging Technologies* 199; Lee-Ann Ewing and Holly B Cooper, ‘Technology-Enabled Remote Learning During COVID-19: Perspectives of Australian Teachers, Students and Parents’ (2021) 30(1) *Technology, Pedagogy and Education* 41; Ronny Scherer, Sarah K Howard, Jo Tondeur and Fazilat Siddiq, ‘Profiling Teachers’ Readiness for Online Teaching and Learning in Higher Education’ (2021) 118 *Computers in Human Behavior* 106675; Roy Y Chan, Krishna Bista and Ryan M Allen (eds), *Online Teaching and Learning In Higher Education During COVID-19: International Perspectives and Experiences* (Routledge, 2021); Margaret Ryznar, ‘Lessons from Teaching Tax Online’ (Paper, Pittsburgh Tax Review [Forthcoming]); Marcelo Dorfsman and Bagriel Horenczyk, ‘The Coping of Academic Staff with an Extreme Situation: The Transition from Conventional Teaching to Online Teaching’ (2021) 29(1) *Education and Information Technologies* 1; Crima Damsa, Malcolm Langford, Dan Uehara and Ronny Scherer, ‘Teachers’ Agency and Online Education in Times of Crisis’ (2021) 121(3) *Computers in Human Behaviour* 106793; Julia Eberle and Joyce Hobrecht, ‘The Lonely Struggle with Autonomy: A Case Study of First-Year University Students’ Experiences During Emergency Online Teaching’ (2021) 121 *Computers In Human Behavior* 106804; Martin Daumiller, Raven Rinas, Julian Hein, Stefan Janke, Oliver Dickhauser and Markus Dresel, ‘Shifting from Face-to-Face to Online Teaching During COVID-19: The Role of University Faculty Achievement Goals for Attitudes Towards This Sudden Change, and Their Relevance for Burnout / Engagement and Student Evaluations of Teaching Quality’ (2021) 118 *Computers in Human Behavior* 106677.

⁴³ Corbin and Bugden (n 2) 16.

⁴⁴ Ibid.

⁴⁵ Ibid 18 citing D R Garrison, ‘Communities of Inquiry in Online Learning’ in Patricia Rogers et al (eds), *Encyclopaedia of Distance Learning* (Hershey, 2nd ed, 2009) 352; Liam Rourke et al, ‘Assessing Social Presence in Asynchronous, Text-Based Computer Conferencing’ (1999) 14(2) *Journal of Distance Education* 50.

presence denotes. They derive from literature relating to both the online and face-to-face learning environments.⁴⁶

Social presence means ‘the ability of participants to identify with the community (eg course of study), communicate purposefully in a trusting environment, and to develop interpersonal relationships by way of projecting their individual personalities.’⁴⁷ Social presence involves both the individual student communicating with the teacher and their peers directly as well as ‘legitimate peripheral participation’ which is, broadly, where students learn by listening and watching others.⁴⁸ This form of participation is ‘particularly important for people entering the culture’ as it prepares them intellectually for their future work, namely it shows practices and norms around how matters are raised, analysed, and handled, and any patterns in discussion.⁴⁹

‘Cognitive presence’ is defined to mean ‘communication that involves critical thinking from which meaning is created’.⁵⁰

‘Teacher presence’ referred to ‘the teacher designing and managing the educational experience and facilitating communication between teachers and students’ in a way that allows students to realize ‘personally meaningful and educationally worthwhile learning outcomes.’⁵¹ A critical part of the ‘online environment ... [is that] students know that the instructor / facilitator is “there” and that there is a high level of ‘interaction with their instructor.’⁵²

This body of literature makes two further points. The first is that emotion is powerful in the online and remote learning environment. Emotion positively influences ‘informal learning networks and [creates] a sense of belonging.’⁵³ Functionally, it can act as a glue that adheres the other dimensions of presence together.

The second point is that, while technological tools have ‘the potential to improve teaching’, they do not necessarily enhance the experience in and of themselves.⁵⁴ Rather, ‘their value depends on what we do with them and why.’⁵⁵ Corbin and Budgen’s article ‘Online Teaching: The Importance of Pedagogy, Place and Presence In Legal Education’ considered a range of technological tools that could be used

⁴⁶ Steel, Laurens and Huggins (n 7) 36 citing John Seely Brown, Allan Collins and Paul Duguid, ‘Situated Cognition and the Culture of Learning’ (1989) 18(1) *Educational Researcher* 32 and L S Vygotsky, *Mind in Society: The Development of Higher Psychological Processes* (Harvard University Press, 1978) 79.

⁴⁷ *Ibid* 18; Shen et al (n 4) 16.

⁴⁸ Seely Brown et al (n 46) 40.

⁴⁹ *Ibid*.

⁵⁰ Corbin and Budgen (n 2) 18.

⁵¹ *Ibid* 18-19 citing Terry Anderson et al, ‘Assessing Teacher Presence in a Computer Conferencing Context’ (2001) 5(2) *Journal of Asynchronous Learning Networks* 1, 5.

⁵² Corbin and Budgen (n 2) 18.

⁵³ *Ibid* 19 citing Martha Cleveland-Innes and Prisca Campbell, ‘Emotional Presence, Learning and the Online Learning Environment’ (2012) 13(4) *International Review of Research in Open and Distance Learning* 269. For broader discussion in legal literature of emotions and their power to motivate responses, see Eric A Posner, ‘Law and the Emotions’ (2001) 89(6) *Georgetown Law Journal* 1977.

⁵⁴ Corbin and Budgen (n 2) 2.

⁵⁵ *Ibid*.

for various methodologies to support learning in an online environment.⁵⁶ While their work is a valuable contribution to the literature, it did not consider what the optimal level of technology is, or at what point incorporating technology becomes using technology merely for the sake of it. Second, while that article considered how technological tools could be used to support three pedagogical models: behaviourism;⁵⁷ cognitivism;⁵⁸ and constructivism,⁵⁹ it did not consider the soft Socratic method coupled with a humanistic approach. I argue that this is a significant gap in the literature due to the strong tradition in US Law Schools of using the Socratic Method and versions of it and because, based on my own experience at Harvard Law School in 2013, I feel that the soft Socratic Method is an exceptional method for teaching law.⁶⁰

D *Background on the Source of Data for the Preliminary Study*

This section sets out brief background on the source of the data that is used in the preliminary study in Section III. As stated above, the preliminary study includes data from two surveys to show the students' perspective on the teaching method, reports provided by two reviewers as part of a formal peer review process, and my personal reflection.

1 *MyExperience Survey Results*

The first survey is the standard university administered survey (MyExperience survey) that each student is asked to complete to evaluate an individual teacher's delivery towards the end of the course. The MyExperience survey is open for a uniform length of time across the university, usually 3 weeks. It opens around 2 weeks before the end of term and closes in the study week before the exam period begins. The survey is anonymous and a single student's responses are not linked. The MyExperience survey results are aggregated. Each teacher receives an 'Individual Report' for each course they teach after the exam results are released to the students. While the university encourages students to complete the MyExperience surveys, this is not yet mandatory, and anecdotally the response rates tend to be low in the online environment.

The MyExperience survey asks students to respond to three statements:

1. [The Teacher] encouraged student participation
2. [The Teacher] provided helpful feedback

⁵⁶ Ibid.

⁵⁷ Ibid 6-9.

⁵⁸ Ibid 9-11.

⁵⁹ Ibid 13-15.

⁶⁰ This has also been observed by Elizabeth G Porter, 'The Socratic Method' in Deborah Maranville, Lisa Radkte Bliss, Carolyn Wilkes Kaas and Antoinette Sedillo Lopez (eds), *Building on Best Practices: Transforming Legal Education in a Changing World* (LexisNexis, 2015) 101, 103.

3. Overall, I was satisfied with the quality of [The Teacher’s] teaching

For each statement, students can choose between six options on a Likert scale and each option is given the following number of points:

Option	Number of points
Strongly Agree	6
Agree	5
Moderately agree	4
Moderately disagree	3
Disagree	2
Strongly disagree	1

The MyExperience survey also includes two additional sections at the end inviting extended responses. The first section asks students to provide comments on ‘The best features of [The Teacher’s] teaching were’ and the second section asks students to provide comments on ‘[The Teacher’s] teaching could be improved by’.

I applied to UNSW’s Ethics Committee and was granted permission to use the high-level data from the MyExperience surveys from 2016 to 2018 in this article.

2 *Special Survey*

In 2018 to 2019, I designed a special survey to understand which elements of the teaching method resonated with the students and why (‘special survey’). This was an initiative following completion of UNSW’s ‘Foundations of University Learning and Teaching’ (‘FULT’) program, and with encouragement of the convenors of that program.⁶¹ In May 2019, my School within UNSW Business School administered the special survey as a voluntary and online survey for the students who had been enrolled in either or both of the courses that I taught in 2018.⁶² The response rate was approximately 26% (the invited count was 69 and the response count was 18).

The special survey used the same approach as the MyExperience survey – it gave students the choice between the same six options, and those options were weighted in the same way, as set out in Section I.D.1 above.

The special survey asked the following questions, broken down between the following headings:

During 2018, I was enrolled in:

Option 1 – Taxation of Corporations (either the undergraduate or postgraduate stream)

⁶¹ I am indebted to Kristin Turnbull and Associate Professor Marina Harvey, Foundations of University Learning and Teaching Program (FULT), UNSW <www.teaching.unsw.edu.au/ful>.

⁶² Please contact the author for a full report of the voluntary survey.

Option 2 – Taxation of Trusts (either the undergraduate or postgraduate stream)

The discussant component

Required me to be prepared in advance of the Webinar at a fairly deep level

Got me to be more engaged with the material earlier in the semester than I otherwise would have

Overall, I felt the discussant component enhanced my learning experience in this course

Can you please tell us how?

Value of Webinars

I felt comfortable participating in the discussions during the Webinars

I felt included in the Webinars

I found the Webinar recordings helpful

Value of interactions

Interacting with other students on the general discussion forum enhanced my learning

I participated in the discussions on the General Discussion Forum because I was interested and curious in the discussion

I didn't really pay attention to the General Discussion Forum because participation was not assessed

I was interested in participating in the discussions on the General Discussion Forum because the lecturer's views were visible and she was accessible to us as a resource

Describe how / in what ways those interactions helped

Bringing material to life

The discussions on the general discussion forum and on the Webinars challenged my thinking in ways that reading the material did not

Engagement

I engaged more with other students in this course than in the other courses I have completed in the School of Taxation & Business Law

Value

I found the podcasts a valuable resource in this course

Can you tell us why you found the podcasts valuable?

In relation to the podcasts, what else would have improved your learning experience? Eg what would you have liked more or less of?

General question

In relation to the entire course, we would really appreciate any additional suggestions on how your learning experience could have been improved.

The special survey included a Participant Information Statement at the beginning. This described the purpose of the research and clearly

stated how the information obtained from the survey would be used. This included providing data for this article. The Participant Information Statement also clearly stated that by completing the survey, a student was consenting to the terms set out in the statement.

I applied to UNSW's Ethics Committee and was granted permission to use the data from the special survey in this article. UNSW's Ethics Committee approved the text of the Participant Information Statement.

3 *Peer Review of Teaching*

In Semester 1, 2018, my teaching was evaluated through the university's centrally organised peer review process. UNSW selects two or more senior academics from different disciplines to audit a class and provide a written report containing their observations and detailed feedback across nine dimensions. The dimensions are:

Number	Dimension name
1	Students are actively engaged in learning
2	Students' prior knowledge and experience is built upon
3	Teaching caters for student diversity
4	Students are encouraged to develop/expand their conceptual learning
5	Students are made aware of key learning outcomes
6	Actively links theory and practice through research, industry, professional, or discipline examples
7	Uses learning environments, education resources, and techniques appropriately
8	Seeks feedback for students' understanding and acts on this accordingly
9	Other areas as determined by reviewee

The Office of the Vice Chancellor (Education) of UNSW provided two anonymous reports containing the reviewers' comments in late 2018.⁶³

4 *Self-Reflection*

During the period that I was developing the online method, I maintained notes. I wrote these notes, broadly after each class (held fortnightly), reflecting on what strategies and techniques seemed to be effective and to resonate with students from my perspective. These contemporaneous notes as well as the views I hold at the end of this period were incorporated into the study in Section III below.

⁶³ The author is grateful to the two academics at The University of New South Wales ('UNSW Sydney') who completed the author's formal peer review reports and consented to the author including their comments in this article.

II THEORY LENS - LIBERAL PHILOSOPHY AT A METHODOLOGICAL LEVEL

This section begins by setting out the hallmarks of the traditional Socratic Method and then analyses the criticisms that have been made of it in the literature. The article then moves to critically analysing suggestions made in the literature to address the negative and detrimental effects of the method. These suggestions functionally provide the contours of techniques that could be used in a soft Socratic Method.

A *The Socratic Method – What is it? And Some Historical Background*

Although there is ‘no one Socratic method’,⁶⁴ the traditional method involves the teacher selecting a student from the group and calling on them without notice and exhausting that person’s knowledge before moving onto the next student and/or the next topic.⁶⁵ Typically, the questioning moves between the general and the specific⁶⁶ – sometimes the first question is at an abstract level and the ones that follow relate to a practical and applied problem or a specific detail; on other occasions, the structure aims to have the student identify a pattern or, more commonly, a discontinuity.⁶⁷ It has been argued that when executed well, ‘the teacher’s question does not set up or suggest the answer’.⁶⁸ Rather:

The professor ‘plugs in’ to the student’s mental wavelength, making sure, through question-and answer, that the student’s mind is precisely at the point where the existing mental pathways will lead to the wrong answer. The professor’s challenge is to the pathways, not to the bottom-line conclusion.⁶⁹

The method therefore can be used to lead students into cognitive conflict and then to support them to work their way through it. As background, ‘cognitive conflict’ is used in adult education literature to describe the ‘cognitive dissonance’ or ‘mental discomfort’ that is ‘produced when someone is confronted with new information that contradicts their prior beliefs or ideas.’⁷⁰

⁶⁴ Ibid 167.

⁶⁵ Donald G Marshall, ‘Socratic Method and the Irreducible Core of Legal Education’ (2005) 90(1) *Minnesota Law Review* 1, 8; Christian Riffel, ‘The Socratic Method Reloaded: How to Make it Work in Large Classes?’ (2014) 20 *Canterbury Law Review* 125, 129-30.

⁶⁶ Marshall (n 65) 8.

⁶⁷ Ibid 11.

⁶⁸ Marlene Le Brun and Richard Johnstone, *The Quiet Revolution: Improving Student Learning in Law* (LBC, 1984) 283 citing Anthony D’Amato, ‘The Decline and Fall of Law Teaching in the Age of Student Consumerism’ (1987) 37(4) *Journal of Legal Education* 461, 466.

⁶⁹ Ibid.

⁷⁰ Corbin and Bugden (n 2) 11.

The method dates back to ancient Athens.⁷¹ However, relevantly for this article, Christopher Langdell introduced it as a method of teaching Law as ‘a necessary adjunct to the case[book] method of study’ during his tenure as Dean at Harvard Law School between the 1870s and 1896.⁷² Surprisingly, because it later ‘became the almost exclusive tool of American legal educators’⁷³ and outside the US, it is widely regarded as an institution in US Law Schools, particularly Ivy League Schools,⁷⁴ the Socratic Method was not initially ‘warmly received’ in the US.⁷⁵ Students thought it was ‘chaotic’ and class attendance dropped.⁷⁶ However, it later gained widespread popularity as Harvard Law School alumni were hired as Professors at Law Schools across the US due to the ‘perceived superiority of the case[book] method of teaching.’⁷⁷

That traditional Socratic Method was valued because it was seen as critical in training students to ‘think like a lawyer.’⁷⁸ It has been argued that this requires students to read and critically evaluate individual cases within a body of law to develop a sense of what a particular case stands for and what its weight is in that context, and to understand what arguments are persuasive and why.⁷⁹

... the students must learn how to construct, present, and defend such arguments themselves. To do that, they have to ... learn how to listen, hear, understand, evaluate, formulate, and articulate ... [meaning] the ability to communicate clearly, concisely and, if possible, with grace.⁸⁰

I argue that this skill is an art and it takes practice.

B Criticism of the Traditional Socratic Method

There is significant criticism of the Socratic Method in its traditional form. The criticisms are substantive and broad-ranging. This section outlines the contours of the main lines of criticism.

⁷¹ Lee Stuesser, ‘A Reflection on the Bond Model of Teaching’ (2009) 21(3) *Bond Law Review* 164, 167; Ryan Patrick Alford, ‘How Do You Trim the Seamless Web? Considering the Unintended Consequences of Pedagogical Alterations’ (2009) 77(4) *University of Cincinnati Law Review* 1273, 1317.

⁷² Alan A Stone, ‘Legal Education on the Couch’ (1971) 85(2) *Harvard Law Review* 392, 406. See also Steven Alan Childress, ‘The Baby and the Bathwater: Developing a Positive Socratic Method’ (1984) *Law Teacher* 95, 96. The casebook method refers to the approach of requiring students to read decisions, to derive the *ratio decidendi* and *obiter dicta*, and analyse how the case fits within the relevant body of caselaw rather than reading commentaries or texts that interpret the caselaw. See also Deckert and Wood (n 39) 75.

⁷³ Stone (n 72) 406; Childress (n 72) 95; Jenny Morgan, ‘The Socratic Method: Silencing Cooperation’ (1989) 1 *Legal Education Review* 151, 152.

⁷⁴ Stone (n 72) 406; Childress (n 72) 95; Morgan (n 73) 152.

⁷⁵ Stone (n 72) 406 citing A Sutherland, *The Law at Harvard* (Harvard University Press, 1967) 178.

⁷⁶ *Ibid.*

⁷⁷ Joel Seligman, *The High Citadel: The Influence of Harvard Law School* (Houghton Mifflin, 1978) 42-3.

⁷⁸ Childress (n 72) 102.

⁷⁹ Marshall (n 65) 6.

⁸⁰ *Ibid.*

1 *Teacher-Centred and Gives Teacher Control*

(a) *The Student Perspective – Models Adversarial Behaviour*

One of the main criticisms is that the method positions ‘the teacher as the centre of attention.’⁸¹ This is because, by asking the questions, the teacher controls the flow of questions, the direction of the discussion and to a great extent the dynamics of the class.

The criticism identified that this control causes several problems. The first is that the traditional Socratic Method is ‘oppositional’ and it models ‘the adversarial process.’⁸² This assumes that the dynamic between the teacher and student is always one of opposition, where the teacher poses an argument that the student is forced to disagree with and then defend the second view. The criticism also assumes that this is an inferior way to construct an understanding of material that is often based on caselaw that, by definition, requires understanding of the two competing views of the parties involved in the proceedings.⁸³ The implicit argument is that it would be better for the discussion to happen and for knowledge to be constructed more co-operatively with greater student involvement and/or control.⁸⁴ It has been argued that a flow-on effect of the adversarial model is that it ingrains in students the idea that ‘manipulating vulnerable people is an acceptable form of professional behaviour’ and the fear is that this is a pattern of behaviour that they will then perpetuate in their professional lives.⁸⁵

(b) *The Teacher’s Perspective – The Method is Demanding and Requires Significant Knowledge*

Some have argued that the teacher’s control of the discussion is problematic for the teacher as, because the teacher does not control the students’ answers, the teacher does not control the whole dialogue.⁸⁶ When compared with teaching by transmission, where the teacher is completely in control of the script and timing, the loss of control in the traditional Socratic Method means that the teacher must be thoroughly prepared for class, ‘know the case better than the students’⁸⁷ and they must be able to be intellectually spontaneous.⁸⁸ The literature implicitly argues that this is challenging.

Interestingly, the literature also made the counterargument. As an example, a US Law Professor is quoted as stating that ‘Any half-way decent academic could walk into a Socratic class with 10 minutes preparation and a few off-the-wall questions for students, whereas

⁸¹ Morgan (n 73) 155.

⁸² Ibid 155-6.

⁸³ It is acknowledged that this point is also made by Morgan (n 73) 162 and also Riffel (n 65) 125.

⁸⁴ Eg, see Morgan (n 73) 158.

⁸⁵ Ibid 153 citing K Klare, ‘The Law School Curriculum in the 1980s: What’s Left’ (1982) 32 *Journal of Legal Education* 336, 341.

⁸⁶ Steusser (n 71) 169; Riffel (n 65) 131.

⁸⁷ Steusser (n 71) 169.

⁸⁸ Riffel (n 65) 131.

preparing lectures was very time consuming.’⁸⁹ However, that methodology (‘a few off-the-wall questions’) is not consistent with my understanding of usual Socratic techniques and is also not consistent with what I experienced at Harvard Law School. There are clearly different views about what qualifies as the Socratic Method and what it entails from a teaching perspective. However, the extent of preparation is likely to depend on the teacher’s familiarity with the techniques and their diligence coupled with their respect for their students and level of care about the learning environment they wish to create for their students.

(c) *Encourages Students to Perform for the Teacher and Reduces Co-Operation Between Students*

A second problem, that the criticism identified as stemming from the teacher-centric nature of the method, arises as the method functionally involves a ‘dyadic’ series,⁹⁰ in that the teacher asks questions of one student (this is one teacher-student pair) before moving onto another student (the second teacher-student pair), and so on. The criticism here comprises several parts. The first part is that it encourages students to perform for the teacher (the ‘performance argument’) and this creates an environment in which students vie for the teacher’s attention.⁹¹ This has been argued to have several negative effects. One is that it does not encourage interactions and co-operation between students (in the dyadic pairing, ‘student-student interaction’).⁹² This has been variously described in the literature as alienating students,⁹³ and more dramatically, as being ‘a tactic for promoting hostility between students.’⁹⁴ It has been argued that this creates a negative learning environment and prevents effective construction of knowledge. Literature has argued that ‘a more effective transfer of legal knowledge’ is likely to occur if students are both asking and answering questions, because of the ‘likelihood of a shared sense of uncertainty and a shared development of confidence.’⁹⁵

2 *Presents Law and Legal Analysis as a Science*

Another problem that the literature cites as being closely connected with the performance argument is that the Socratic Method:

reflects a view of law as a science, as a grand scheme of rules and principles woven by logical deduction into a seamless web ... [that] teaches its receivers to perform a mechanical game and tends to blind them from real insight into how arguments work and decisions are made.⁹⁶

⁸⁹ Morgan (n 73) 153, footnote 10 citing ‘a statement made by a law professor in an Issues in Legal Education class at Yale Law School in the fall semester 1986.’

⁹⁰ Ibid 155.

⁹¹ Ibid 157; Stone (n 72) 407. Stone described that this view emerged from student surveys undertaken in the 1960s.

⁹² Morgan (n 73) 154.

⁹³ Ibid 153.

⁹⁴ Stone (n 72) 407.

⁹⁵ Morgan (n 73) 157. Morgan cited Dillon but without a footnote.

⁹⁶ Childress (n 72) 96.

The mechanical game dimension has been attributed to Langdell and it appears to have been intentional:

Believing that law was a ‘science’ consisting of a cohesive body of clearly discernible ‘principles or doctrines’, he felt that the dialogue was the best way to help the student elicit these principles. But Langdell refused to have these principles laid out before the student; rather, it was necessary that ‘the student judge all material for himself, scrutinize instances closely, accept no other man’s judgement until he had judged its logic for himself.’⁹⁷

While that idea has merit, the literature indicated that the method became problematic because of the way it was applied. For example, one author stated ‘Langdell’s successors began to apply the Socratic Method less as doctrine and more as process; the goal became the development of a particular mental process rather than of a doctrinal view of law.’⁹⁸ The literature suggested that whether the Socratic Method can overcome this problem comes down to the individual teacher.⁹⁹ For example, it has been argued that, when facilitated well, the Socratic Method can help students understand the structure of a legal argument and to learn how to think legally:

First, it would seem that any method which causes a student to think at all would necessarily yield some mental development (unless, of course, the subject has reached his capacity before entering law school) ... The teacher who provides structure in the thinking process is not necessarily sabotaging mental development. Even more basically, a questioning approach *does* cause students to think – sometimes within the established box, often outside it – and that activity is beneficial to an overall effort to think ‘better.’¹⁰⁰

For this reason, Socratic techniques have been argued to produce a student body with a stronger level of skill and mastery compared with pedagogical methods used for teaching Law in England and Australia. One author stated:

There is no question that the Socratic method inculcates in the students an ability and process for dissecting, analysing, using and identifying the key findings in a case. The students learn how to read a case and understand how it can be used. These are abilities that I have found English and Australian students far weaker at doing than their Canadian counterparts – yet they are essential lawyering skills.¹⁰¹

Further, the literature¹⁰² has argued that the Socratic Method, when “‘positively applied”, can help raise students’ awareness of what they are saying and how what they are expressing is understood, promoting a higher level of thinking and critical analysis skills: ‘The method not only causes the student to think; it makes [them] think twice. The

⁹⁷ Stone (n 72) 406 citing A Sutherland, *The Law at Harvard* (Harvard University Press, 1967) 176-7. See also Childress (n 72) 96.

⁹⁸ Childress (n 72) 96.

⁹⁹ Stuesser (n 71) 167.

¹⁰⁰ Childress (n 72) 102.

¹⁰¹ Stuesser (n 71) 167.

¹⁰² Childress (n 72) 102-3.

student is then asked to question [their] thinking and the teacher's.'¹⁰³ However, the literature also argued that 'to the extent that Socratic questioning promotes sloppy thinking by leaving errors and misimpressions untouched it [those errors] should be corrected.'¹⁰⁴ The point here is that, while the Socratic Method provides a student with an opportunity to pursue or defend a particular line of argument, it is important for the construction of knowledge, both by that student and the entire group, that the teacher corrects any errors.

I argue that, ultimately, whether Socratic techniques can strike the appropriate balance so that students understand the relevant doctrines of law and develop the level of critical thought required to elicit and evaluate the principles of law correctly will come down to how the teacher facilitates the class.

3 *The Traditional Method is not Inclusive of Students from Diverse Backgrounds*

A fourth problem outlined in the literature is that the traditional Socratic Method is not inclusive of students from diverse backgrounds. The literature identified this narrowly, arguing that the traditional method 'appears to do nothing to encourage' 'the thoughtful inarticulate student who may require time to formulate a response.'¹⁰⁵ This is a valid and important point. The traditional method would tend to reward the more confident and extroverted students and it is likely to discourage, erode the confidence of and possibly humiliate the naturally quieter student.¹⁰⁶ I argue that, for the thoughtful inarticulate and/or more introverted student, the humiliation that the traditional Socratic Method can bring is likely to compound over the course of the teaching period as the student's confidence could continually decrease which would lead to increased stress, anxiety, and even less mental clarity when trying to think on their feet the next time.¹⁰⁷ Deep learning often requires time, thought, and reflection and the contribution of the more introverted and thoughtful students is valuable here.¹⁰⁸ A deep approach to learning refers to an approach where '[t]he student attempts to make sense of what is to be learnt, which consists of ideas and concepts. This involves thinking, seeking integration between components and between tasks, and "playing" with ideas.'¹⁰⁹ It derives from Marton and Säljö's concept of 'deep-level processing', which

¹⁰³ Ibid. See also Riffel (n 65) 132.

¹⁰⁴ Ibid 103.

¹⁰⁵ Morgan (n 73) 157. It is noted that literature suggests that this is a broader problem of teacher-centred teaching methods as Keyes and Johnstone described that those methods treat students 'amorously and as though they are homogenous.': Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality and Prospects' (2004) 26 *Sydney Law Review* 537, 539.

¹⁰⁶ See Riffel (n 65) 129-130.

¹⁰⁷ Steel, Laurens and Huggins (n 7) 51 (footnote 116).

¹⁰⁸ Eg, see Susan Cain, *Quiet: The Power of Introverts in a World that Can't Stop Talking* (Penguin, 2013).

¹⁰⁹ Steel, Laurens and Huggins (n 7) 38 citing Graham Gibbs, *Improving the Quality of Student Learning* (Technical and Educational Services, 1992) 2.

occurs when a ‘student is directed towards the intentional content of the learning material (what is signified)’ in contrast with ‘surface level processing’, which occurs when ‘a student directs [their] attention towards learning the text itself (the sign)’, for example, for the purpose of reproducing it in assessments.¹¹⁰ It is unlikely that the traditional Socratic Method would give enough opportunity and space for deep learning for every student in the class.

I argue that this criticism should be extended to students from other backgrounds for whom the traditional Socratic Method could also

¹¹⁰ Ference Marton and Roger Säljö, ‘On Qualitative Differences in learning: I – Outcome and Process’ (1976) 46(1) *British Journal of Educational Psychology* 4, 7–8; Ference Marton and Roger Säljö, ‘On Qualitative Differences in Learning: 2. Outcome as a Function of Learners’ Conception of Task’ (1976) 46 *British Journal of Educational Psychology* 115. See also James Rhem, ‘Deep / Surface Approaches to Learning: An Introduction’ (1995) 5(1) *The National Teaching and Learning Forum* 1. There is a vast body of literature on deep learning and processing, see eg, Henna Asikainen and David Gijbels, ‘Do Students Develop Towards More Deep Approaches to Learning During Studies? A Systematic Review on the Development of Students’ Deep and Surface Approaches to Learning in Higher Education’ (2017) 29 *Educational Psychology Review* 203 and the articles referred to in it, including in particular: M Baeten, E Kyndt, K Struyven and F Dochy, ‘Using Student-Centred Learning Environments to Stimulate Deep Approaches to Learning: Factors Encouraging or Discouraging Their Effectiveness’ (2010) 5(2) *Educational Research Review* 243; J B Biggs and B Rihn, ‘The Effects of Intervention on Deep and Surface Approaches in Learning’ in J R Kirby (ed), *Cognitive Strategies and Educational Performance* (Academic, 1984) 279; M Cleveland-Innes and C Emes, ‘Social and Academic Interaction in Higher Education Contexts and the Effect on Deep Learning’ (2005) 42(2) *NASPA Journal* 241; D Dinsmore and P A Alexander, ‘A Critical Discussion of Deep and Surface Processing: What It Means, How it is Measured, the Role of Context, and Model Specification’ (2012) 24(4) *Educational Psychology Review* 499; D Dolmans, S Loyens, H Marcq and D Gijbels, ‘Deep and Surface Learning in Problem-Based Learning: A Review of the Literature’ (2016) 21(5) *Advances in Health Science Education* 1087; R Edmunds and J T E Richardson, ‘Conceptions of Learning, Approaches to Studying and Personal Development in UK Higher Education’ (2009) 79(2) *British Journal of Educational Psychology* 295; L English, P Luckett and R Mladenovic, ‘Encouraging a Deep Approach to Learning Through Curriculum Design’ (2004) 13(4) *Accounting Education* 461; N J Entwistle, ‘Approaches to Learning and Perceptions of the Learning Environment’ (1991) 22(3) *Higher Education* 201; N Entwistle, *Teaching for Understanding at University: Deep Approaches and Distinctive Ways of Thinking* (Palgrave, 2009); C Gordon and R Debus, ‘Developing Deep Learning Approaches and Personal Teaching Efficacy within a Preservice Teacher Education Context’ (2002) 72(4) *Journal of Educational Psychology* 483; W Lake and W Boyd, ‘Is the University System in Australia producing Deep Thinkers?’ (2015) 57(2) *Australian Universities Review* 54; A Parpala, S Lindblom-Ylänne, E Komulainen, T Litmanen and L Hirsto, ‘Students’ Approaches to Learning and Their Experiences of the Teaching-Learning Environment in Different Disciplines’ (2010) 80(2) *British Journal of Educational Psychology* 269; H P Phan, ‘Deep Processing Strategies and Critical Thinking: Development Trajectories using Latent Growth Analyses’ (2011) 104(4) *The Journal of Educational Research* 283; H P Phan, ‘Interrelations Between Self-Efficacy and Learning Approaches: A Developmental Approach’ (2011) 31(20) *Educational Psychology* 225; L Postareff, A Parpala, S Lindblom-Ylänne, ‘Factors Contributing to Changes in a Deep Approach to learning in Different Learning Environments’ (2015) *Learning Environments Research* 1; M Prat-Sala and P Redford, ‘The Interplay Between Motivation, Self-Efficacy and Approaches to Studying’ (2010) 80(2) *British Journal of Educational Psychology* 283; J T E Richardson, ‘Approaches to Learning or Levels of Processing: What Did Marton and Saljo (1976a) really say? The Legacy of the Work of Goteborg Group in the 1970s’ (2015) 46(3) *Interchange* 239.

present a barrier to participation, including students for whom English is a second language, and students who feel uncomfortable showing knowledge publicly for cultural reasons when called upon by name.

This article argues that the discussion and construction of knowledge would be richer if all students in the class are able to participate fully.

4 *The Traditional Socratic Method May Exclude and Silence Women*

A problem that is connected to the criticism that the traditional Socratic Method is not inclusive of students from diverse backgrounds, but which requires clear separation, is the criticism that, because of its ‘focus on competition rather than cooperation’, the traditional Socratic Method ‘may particularly exclude and silence women.’¹¹¹ Literature has argued that:

Women at Yale Law School have documented the disproportionate frequency with which men speak in classes. I observed a similar pattern. When contributions are controlled by the teacher, and students are expected to bid for attention by raising their hands, women almost invariably lower their hands when someone else is speaking while men are more likely to keep their hands raised – to press their bids for attention. In practical terms, this also means the teacher is more likely to call on those persistently attempting to participate instead of the one who ceased to interrupt while another was talking.¹¹²

Literature argued that this behaviour is likely to be more pronounced when the teacher is male.¹¹³ However, the problem is likely larger than the method of teaching as the literature also argued that ‘the silencing of women appears to occur in classrooms at university, college, and school level, suggesting that a link with a Socratic style of teaching may be misguided.’¹¹⁴ That literature also cited ‘how the construction of casebooks and courses disenfranchises women, by among other things, excluding issues of particular concern to women, and this exclusion is likely detrimentally to affect women’s willingness to participate.’¹¹⁵ This criticism is important. While this article takes this into account, I argue that this problem is a systemic one, that is larger than the learning

¹¹¹ Morgan (n 73) 158. See the article more generally about the issue of silencing women students. See also Lani Guinier et al, *Becoming Gentlemen: Women, Law School and Institutional Change* (Beacon Press, 1997); Lani Guinier et al, ‘Becoming Gentlemen: Women’s Experience at one Ivy League Law School’ (1995) 143 *University of Pennsylvania Law Review* 1; Alford (n 71) 1281-3; Steel, Laurens and Huggins (n 7) 51 (footnote 117).

¹¹² Morgan (n 73) citing PA Treichler & C Kramarae, *Womens Talk in the Ivory Tower* (1983) 31 *Comm Q* 118, 119.

¹¹³ *Ibid* 159 and footnote 29 in it.

¹¹⁴ *Ibid* 159 citing RM Hall & BR Sadler, *The Classroom Climate: A Chilly One for Women* (Project on the Status and Education of Women, 1982) and other material in J Stacey, S Bereaud & J Daniels (eds), *And Jill Came Tumbling After: Sexism in American Education* (Dell, New York, 1974) and D Spender & E Sarah (eds), *Learning to Lose: Sexism and Education* (Women’s Press, London, 1980).

¹¹⁵ Morgan (n 73) 160.

and teaching method that is evaluated in this article, and it also requires broader action.

5 *The Traditional Socratic Method is Paternalistic and Dehumanising*

Another criticism is that the traditional Socratic Method is didactic and paternalistic. It has been ‘attacked as infantilizing, demeaning, dehumanizing, sadistic.’¹¹⁶ Duncan Kennedy most famously portrayed ‘legal educators’ as a group of sadists destroying the mental health of students by means of the Socratic Method. He portrayed law teachers as men who ‘preen’ as they display their ‘brilliance’ and who, with ‘an astounding lack of awareness ... have inflicted emotional harm on their students.’¹¹⁷ This paternalism has been described, rather dramatically, as ‘The prospect of another class is seen as ‘the spectacle of the professor smiling quietly to himself as he prepares to lay your guts out on the floor yet again, paternally.’¹¹⁸

I argue that this approach would likely be distressing and alienating for students and would be unlikely to aid in the construction of knowledge. However, as has been argued consistently in relation to the other lines of criticism outlined above, this problem is directly connected with the way in which an individual teacher facilitates or uses the method.

6 *Overall Conclusion on the Various Lines of Criticism*

All of the lines of criticism above are substantial individually but they create significant fault lines when combined. To ensure that the mental health and confidence of students are protected, I argue that teaching that incorporates any version of the Socratic Method needs to make sure that it brings only the method’s benefits and not the potential detrimental effects that are outlined in the literature. I argue that this requires careful design, thought and execution and a continual mindfulness of the power we hold as teachers.

C *Existing Suggestions of How to Adapt the Traditional Socratic Method or Create an Environment That Fosters Participation – The Soft Socratic Method*

Before analysing techniques that could be used to address the criticisms of the traditional Socratic Method that are outlined in Section II above, and in doing so to soften that method, it is valuable to outline the contours of the existing literature on the soft Socratic Method.

¹¹⁶ Stone (n 72) 407; Stuesser discussed ‘intimidation’: Stuesser (n 71) 169.

¹¹⁷ Stone (n 72) 408 citing Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy: A Polemic Against the System* (New York University Press, 2004) 72-75.

¹¹⁸ Childress (n 72) 98.

1 *Existing Literature on the soft Socratic Method*

There is very little literature on the soft Socratic Method and nearly all of it is American. In separate articles, two authors discussed their experience of the traditional Socratic Method as students at the University of Virginia School of Law, and they argued that this had given way to the ‘soft Socratic’ method.¹¹⁹ This view is supported by broader literature.¹²⁰ However, the soft Socratic Method is defined differently across this literature. One definition is ‘hard on the problem, soft on the person.’¹²¹ A second definition described a Professor ‘us[ing] panels of students who were on call for a few days per semester’, ‘toss[ing] each student a few questions’ and ‘at most, the professor would gently guide a student toward the proper conclusion.’¹²² The second definition has become something of a touchstone in later literature.¹²³ Sometimes the soft Socratic Method is discussed as if its constituent elements are self-evident, but those discussions do not refer to an underlying body of literature.¹²⁴ There is one description which outlines, in a handbook style, the best techniques for using a Socratic style – which was functionally a soft Socratic Method in a particular area of law – without tying it to the soft Socratic terminology.¹²⁵

A key piece of Antipodean literature is Stuesser’s article ‘A Reflection on the Bond Model of Teaching’ from 2009.¹²⁶ Unusually in the context of this body of literature, Stuesser defined his teaching method using the terminology ‘soft Socratic’ and he stated that it was ‘intended to create a positive learning outcome.’¹²⁷ The techniques he used were specifically designed to address criticisms of the traditional Socratic Method and they are discussed further below. However, surprisingly, Stuesser did not advocate that Australian universities

¹¹⁹ Stephen M Bainbridge, ‘Reflections on Twenty Years of Law Teaching’ (2008) 13 *UCLA Law Review Discourse* 13, 15; Joyce D Saltalamachia, ‘Podcasts, PowerPoint and Pedagogy: Using Technology to Teach the Part-Time Student’ (2008) 53 *NY Law School Law Review* 893, 894.

¹²⁰ Porter (n 60) 101; Robert Dinerstein, ‘Disability: When, Why and How It Matters and When, Why and How It Doesn’t’ (2009) 18(1) *Journal of Gender, Social Policy & The Law* 79, 100.

¹²¹ Dinerstein (n 120) 100.

¹²² Bainbridge (n 119) 15. It is noted that in 2008, Bainbridge claimed that, rather than a soft Socratic Method, he preferred a lecture-style approach, but in a revised version of the article from 2020, he indicated that he had reverted to using techniques that are hallmarks of a softened Socratic style: Bainbridge (n 119) 17; Stephen Bainbridge, ‘Teaching Remotely in the COVID-19 Era: In Defense of the Lecture (but with tweaks)’ (Web Page, 9 July 2020) <ProfessorBainbridge.com>.

¹²³ Eg Jessica Erickson, ‘Experiential Education in the Lecture Hall’ (2013) 6(1) *Northeastern University Law Journal* 87, 93-4.

¹²⁴ Eg Tonya Krause-Phelan, Joni Larson, Nelson P Miller, Kim O’Leary, Derek Witte and Vickie Eggers, ‘Using a Faculty Inquiry Process To Examine Student Responsibility for Learning’ (2011) 61 *Journal of Legal Education* 280, 287 (Witte ran a controlled experiment. He taught two groups concurrently: he used the soft Socratic approach in the control group and a new method in the other group).

¹²⁵ Porter (n 60) 101.

¹²⁶ Stuesser (n 71) 169.

¹²⁷ *Ibid.*

should adopt a Socratic Method to teach Law because he was considering undergraduate students and ‘many of the [Australian] academic staff are not familiar or comfortable with such teaching.’¹²⁸ However, he encouraged incorporating more active participation into the lecture / seminar format.¹²⁹

The second key piece of literature is Steel, Laurens and Huggins’ article ‘Class Participation as a Learning and Assessment Strategy in Law: Facilitating Students’ Engagement, Skills Development and Deep Learning’ from 2013.¹³⁰ They advocated using the ‘assessable class participation’ method in the face-to-face environment.¹³¹ Broadly, the method involved setting one or more readings for each class, and using class time as the opportunity for students to discuss the content of those readings and their thoughts and responses to them.¹³² While the authors did not classify it as ‘soft Socratic’, the method has the hallmarks of the broad definition from American literature that is outlined above. Despite observing that both American and Australian Law students exhibited signs of distress,¹³³ Steel et al positioned the assessable class participation method as a ‘learning and development strategy’ aimed at leading higher engagement and deeper learning by students, not one that was designed to address the criticisms of the traditional Socratic method nor one that was clearly soft Socratic.¹³⁴ While this could be explained as a mere difference in terminology or semantics, I argue that it reflects a more substantive point – while anecdotally, some Australian academics describe that they use a soft Socratic style to teach law, there is very limited material, at both the theoretical and methodological levels, in Australian literature. Also, as stated above, anecdotally, the traditional Socratic Method has a negative reputation in Australia.

The key piece of literature from New Zealand is Deckert and Wood’s article ‘Socrates in Aotearoa: Teaching Restorative Justice in New Zealand’.¹³⁵ The authors conducted interviews with four students in a course on restorative justice that was taught using soft Socratic techniques to test the effectiveness and impact of the method on three dimensions. First, the authors found a causative link between learning using the method and knowledge retention.¹³⁶ Only one of four students expressed that they felt intimidated and they attributed this to the strong personality of one person in the group.¹³⁷ All four students ‘articulated satisfaction’ with the amount of ‘student-student interaction’ but only two out of four students were satisfied with the amount of ‘lecturer-

¹²⁸ Ibid.

¹²⁹ Stuesser suggested ‘a hybrid Socratic / tutorial course’: Ibid 170-1.

¹³⁰ Steel, Laurens and Huggins (n 7).

¹³¹ Ibid.

¹³² Ibid 32-3.

¹³³ Ibid 50-51. This was later built on in Alex Steel and Anna Huggins, ‘Law Student Lifestyle Pressures’ in Rachael M Field, James Duffy and Colin James, *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Surrey, 2016) 2.

¹³⁴ Steel, Laurens and Huggins (n 7) 41.

¹³⁵ Deckert and Wood (n 39).

¹³⁶ Ibid 80.

¹³⁷ Ibid 80-1.

student interaction.’¹³⁸ Deckert and Wood concluded that they were ‘encouraged’ by their findings.¹³⁹ In particular, they identified that ‘one of the most promising aspects of our findings was the degree to which this teaching method apparently promoted student-student interaction’ and they argued that ‘this was an unexpected finding.’¹⁴⁰ This piece of literature is helpful as it contains a survey and a study of data, but it is not possible to extrapolate robustly from it as the dataset was so small. Deckert and Wood’s article also underscored the point above - there is a significant gap in the literature on what features comprise a soft Socratic Method in Australian and New Zealand literature, and also evaluations of the soft Socratic Method as an effective method for teaching law. More broadly, Deckert and Wood found ‘only isolated and sporadic publications on the use of the Socratic Method and soft Socratic Method in other academic disciplines’, that is, outside Law.¹⁴¹ The reason for this is unclear. I argue that it is likely to be due to a lack of familiarity with the method.

2 *Techniques to address the criticisms relating to the traditional Socratic Method*

Literature contains several suggestions on how to address several of the lines of criticism that were outlined above. This section outlines these on the premise that they provide the contours of a softened Socratic Method.

The first suggestion is to change the group size from large to seminar-sized classes.¹⁴² The implicit reasoning is that most students will be more comfortable speaking and interacting with new material and ideas in smaller groups. However, even using this parameter, the guidance is to focus on the ‘climate’ this creates.¹⁴³ In particular, it is important to ‘model cooperative behaviour and encourage women to speak’ and one way to do this would be to have students form into ‘smaller groups’ or ‘buzz groups’ to work on solving problems together.¹⁴⁴

The second suggestion relates to how Socratic techniques could be used with positive effect within the typical lecture and seminar format that is used in the Australian face-to-face context. One strategy is to call on students by name without previously allocating them to a class in advance.¹⁴⁵ The argument for this was that it was not designed ‘to humiliate or intimidate’, rather ‘it is an invitation to contribute to a joint learning enterprise.’¹⁴⁶ This could be coupled with ‘explaining to them why such questions are being asked ... not to embarrass them but to get

¹³⁸ Ibid.

¹³⁹ Ibid 85.

¹⁴⁰ Ibid.

¹⁴¹ Ibid 76.

¹⁴² Morgan (n 73) 152.

¹⁴³ Ibid 163.

¹⁴⁴ Ibid.

¹⁴⁵ Stuesser (n 71) 169.

¹⁴⁶ Ibid.

them thinking.’¹⁴⁷ However, the teacher’s manner would need to be consistent with this for students to feel psychologically safe and to have sufficient trust in the environment to be vulnerable to work through difficult concepts or questions, and risk making mistakes, in front of a whole class.¹⁴⁸ The guidance was that it was also beneficial to have protections for students when using this technique, such as the teacher undertaking not to call on a student if they tell the teacher in advance or at the start of class that they are not prepared.¹⁴⁹

Another strategy is ‘to nominate a small number of students especially to prepare the reading for the coming week and be ready to lead class discussion on that topic.’¹⁵⁰ This article refers to this as the discussant system. This system is designed to remove students’ discomfort to the maximum possible extent as it means they will only be called upon to discuss material that they have been given notice that they need to read and consider in depth, and they are not on call every class. A further strategy is to ‘give students time to discuss the question with their neighbours first (so-called “think-pair-share”)’ and allowing students to pass on a question if they do not know the answer.¹⁵¹ These strategies could be used across classes, irrespective of size.

A further line of guidance in implementing a soft Socratic Method that incorporates some of the above suggestions is to focus on ‘participation for engagement’, and place ‘participation for mastery’ as a ‘secondary’ aim.¹⁵² The argument is that this allows the students to feel comfortable making contributions even if they make a mistake, and/or require support or correction. This guidance underscores that the most beneficial dimension of a Socratic class is the collaborative construction of knowledge.

The final suggestion is for the teacher to view the students as humans and to facilitate the class in this way.¹⁵³ This can include the teacher: learning students’ names; encouraging student questions and encouraging students to express their individual viewpoints, and seeking student feedback into many aspects of the course experience.¹⁵⁴

With each of these techniques, consistency between what the teacher says about the method and then how they execute it is important.¹⁵⁵ For example, it can be helpful for a teacher to anticipate that students will likely experience some level of anxiety when

¹⁴⁷ Ibid.

¹⁴⁸ For literature on the meaning and importance of psychological safety, see Amy Edmondson, *The Fearless Organization: Creating Psychological Safety in the Workplace for Learning, Innovation, and Growth* (John Wiley, 2019) (Edmondson discussed the connection between modelling vulnerability and creating a psychologically safe environment, and behaviours that create psychological safety on pages 199-200). See also Timothy R Clark, *The 4 Stages of Psychological Safety: Defining the Path to Inclusion and Innovation* (Berrett-Koehler, 2020).

¹⁴⁹ Stuesser (n 71) 169.

¹⁵⁰ Ibid.

¹⁵¹ Riffel (n 65) 129-30.

¹⁵² Steel, Laurens and Huggins (n 7) 33.

¹⁵³ Ibid 52. I am indebted to Professor Alex Steel for reminding me of this and articulating it so simply.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid 53.

participating, to ‘validate the positive aspects of the students’ responses as much as possible’, and to ‘make allowances for students who do not feel comfortable engaging in contemporaneous class discussions.’¹⁵⁶ Each of these suggestions and techniques would help to create an environment that is psychologically safe and where this is consistently signalled.

I argue that these recommendations are valuable in addressing the most difficult and negative aspects of the traditional Socratic Method. However, they also underscore that there is a significant gap in the literature on a soft Socratic Method as there is currently no literature that evaluates the effectiveness of a soft Socratic Method in the online environment.

III SECOND, THIRD AND FOURTH LENSES: THE PRELIMINARY STUDY OF THE DATA

As stated in Section I, this article presents data collected from the two student surveys, the formal peer review process, and my self-reflection as a preliminary study to evaluate the effectiveness of the soft Socratic method that I adapted for the online environment. This section is structured using the following headings: overall teaching method; discussant component; and the online discussion forum.

A *Overall Teaching Method*

The data collected evidences that, at a general level, the students report a high level of satisfaction when they are taught using my teaching method. There are several sources of information that support this statement. The first source is two graphs.

The first graph is from the MyExperience survey and it shows the overall mean that I obtained in each of the courses that I taught using the method between 2016 and 2018.

¹⁵⁶ Ibid 52-3.

Figure 1
Graph showing the overall mean from the MyExperience survey in each course I taught from 2016 to 2018

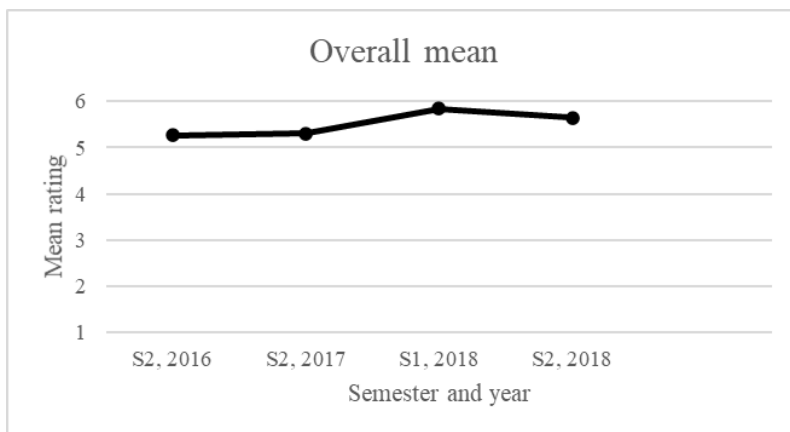


Figure 1 shows that the overall mean for my teaching between 2016 and 2018 was between 5.27 and 5.87 (out of 6). I started using the method in Semester 2, 2016 and refined it in 2017 and 2018 in response to student feedback. It is argued that this is the reason for the marked increase in the mean between 2016 / 2017 and 2018.

The response rates for the individual terms are set out in Table 1 below.¹⁵⁷

Table 1
Table showing the invited count and response rate for each term that I taught between 2016 and 2018

Year and term	Invited count	Response count	Response rate
S2, 2016	30	11	36.7%
S2, 2017	Data not provided in the report	24	Not able to be determined
S1, 2018	38	15	39.5%
S2, 2018	Data not provided in the report	18	Not able to be determined

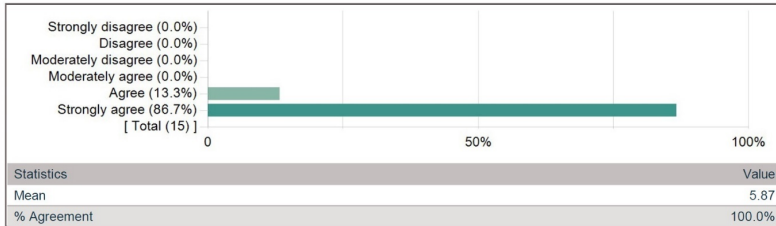
Figure 2 is a bar chart from the MyExperience survey from Semester 1 in 2018. This chart shows the students' responses to the statement – 'Overall I was satisfied with the quality of Alexandra's teaching.'

¹⁵⁷ It is noted that there is no data for Semester 1, 2017 as I was on maternity leave.

Figure 2

Bar chart from the MyExperience student survey from Semester 1, 2018 on the statement ‘Overall I was satisfied with the quality of Alexandra’s teaching’

Overall I was satisfied with the quality of Alexandra Evans’s teaching



Student verbatims from the special survey support the information shown in Figures 1 and 3 above. In the special survey, students stated:

- ‘This method of teaching should be used across all courses [in the School]’
- ‘Alex was fantastic I really enjoyed the course because she was so approachable and encouraged us students to participate’
- ‘Overall I enjoyed [this] subject more than my other subjects. The lecturer felt more involved and committed to our learning outcomes.’
- ‘Loved the way these courses were taught, would love to see it used in more units’

Further support is also provided in the comments that the reviewers made in the formal peer review process, in addition to my self-reflection. This material highlights three key advantages of the method.

The first is that the soft Socratic Method is helpful in providing conceptual scaffolding for each class. The reviewers’ comments show that this happens in three ways.

1. The method helps to contextualise the material that we are focusing on in that particular class within the students’ existing body of knowledge. This lays a clear foundation that can then be built on in class. The reviewers stated:

Reviewer 1 (Dimension 5) – ‘At the beginning of the webinar session being reviewed, the lecturer made students aware of the learning outcomes. As the webinar progressed, she referred to the learning outcomes at key points.’

Reviewer 2 (Dimension 5) – ‘Lecturer emphasized both at the beginning and at the end of the lecture what she was hoping they would achieve in it. Repeated questioning of students to explain how they would apply concepts, then providing answers where they were wrong.’

Reviewer 1 (Dimension 2) – ‘It appeared that the lecturer was building on students’ current knowledge and understanding and taking them conceptually beyond this level.’

Reviewer 2 (Dimension 2) – ‘References back to earlier material covered; students asked about this material; introduction by lecturer of this lecture by reference to how it builds on earlier material.’

2. The method provides a way to move between the conceptual / theoretical and the practical / applied levels. As stated immediately above, this was captured in Reviewer 2’s comments (Dimensions 2 and 5) ‘Repeated questioning of students to explain how they would apply concepts...’ as well as Reviewer 2’s comment (Dimension 6) ‘...practical problems worked through in class.’
3. The method assists in showing students how technical problems manifest in practice and this helps to provide a connection with industry. The reviewers stated:

Reviewer 1 (Dimension 6) – ‘As her presentation progressed, where appropriate, Alex talked about links between research, industry or professional examples and learning. She made efforts to raise students’ awareness of what constitutes the needs or priorities of research or industry or the relevant profession.’

Reviewer 2 (Dimension 6) – ‘Lecturer invited those students who had practical experience to share this with their co-students in the class. Practical problems worked through in class.’

The second advantage that the reviewers’ comments show is that the soft Socratic Method encourages students to engage very actively in class. This is because, using this method, students ask and answer questions. In my experience, this allows the class to move beyond superficial learning and into deep learning and cognitive conflict quickly. It is important to note here that an antecedent requirement is that students prepare more thoroughly for class. In my experience, students are well prepared for class. The explanation from my perspective is that they feel more empowered in class and this helps to build a high level of self-efficacy, and this feeling is sustained beyond formal class time. The other important aspect of participation that the reviewers observed – that ‘several participants took part’ (Reviewer 1) and ‘many responses by a range a students’ (Reviewer 2) – is that a range of students in the group participate. From my experience teaching from using other methods previously, this is unique to this particular learning and teaching method.

The third advantage, based on my self-reflection, is that the soft Socratic Method gives the group an opportunity to construct the necessary legal analysis collaboratively, and it gives the construction of that analysis a clear structure. There is scope for students to test their current level of understanding and then to move beyond this. There is the opportunity for the teacher to correct the analysis where required. This helps the students develop a clear understanding of what the elements of a high-quality legal analysis are and to practice the art of producing that analysis on their own.

B Discussant component

The data provides strong evidence to support the fact that students report high levels of satisfaction specifically in relation to the ‘Discussant Component’. There are several sources to support this.

The first source is a graph from the MyExperience survey that shows the students’ response (in numbers from 1 to 6) to the statement ‘Teacher encouraged active participation’.

Figure 3

Graph showing the mean in each course I taught between 2016 and 2018 in response to the statement ‘Teacher encouraged active participation’

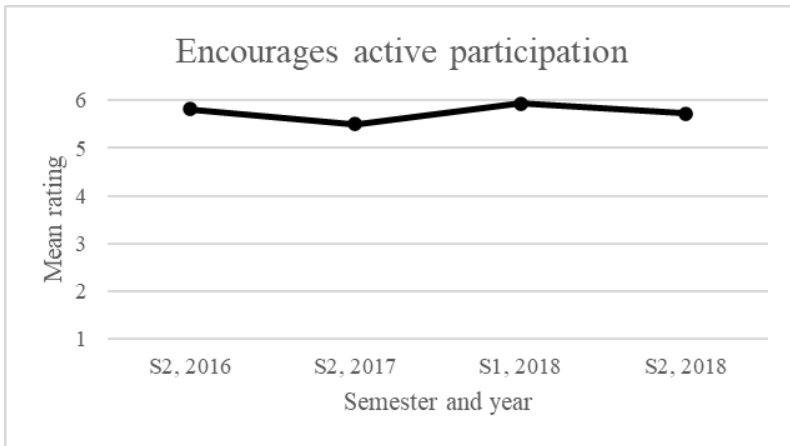


Figure 3 shows that my mean rating in response to this particular statement was between 5.38 (at the lowest) and 5.93 (at the highest), out of 6.

The second source of data is a bar chart from the MyExperience survey from Semester 1 in 2018. This chart shows the students’ responses to the statement – ‘Alexandra encouraged student participation.’

Figure 4

Bar chart from the MyExperience student survey from Semester 1, 2018 showing the students’ response to the statement ‘Alexandra Evans encouraged student participation’

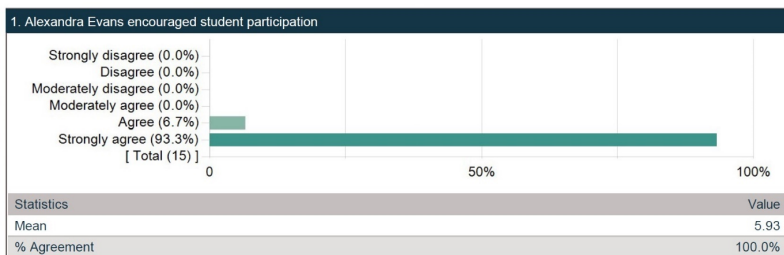


Figure 4 shows that the mean rating to this question was 5.93 (out of 6) with 100% agreement.

Student verbatims from the special survey supported the data from Figures 4 and 5. In the special survey 84.61% of students responded (with a definitive ‘yes’) that they felt the discussant component enhanced their learning in the course. One reason was that the discussant system caused them to be ‘more engaged with the material earlier in the semester’ than they would otherwise have been (84.61% of respondents agreed with this (to varying extents)), and that the discussant system required them to prepare for the class ‘at a fairly deep level’ (84.61% also agreed with this (to varying extents)).¹⁵⁸

When asked why the discussant component facilitated their learning, the students’ comments in the special survey included the following:

‘It made me get a good understanding of the material and the discussion was interesting and meaningful’

[The class discussion] ‘Fleshed out the main ideas and issues [which] enhanced my understanding when applying the course material to problems in a way that is more effective tha[n] just being lectured [to]’

‘I wanted to be able to contribute so thus had to maintain a deeper level of knowledge throughout the course’

‘It made sure you prepared for your week as you were assessed, rather than just listen 3 weeks later. Because other students had prepared, the discussion flowed well and questions were asked, rather than just listen to the lecturer. The assessment created the incentive to be involved.’

Two themes from these comments are worth emphasizing. The first theme is that students want to contribute in class. The students’ comments in the special survey indicated that this was because they felt included. In that survey, 90.91% of respondents agreed (to varying extents) that they felt included in the Webinars, and the same proportion agreed that they felt comfortable participating during online classes. It is valuable to extend the analysis of the data on these two points.

On the first point (that the students felt included), across all the groups I have taught from 2016 to 2018, my experience is that there is now a much higher level of participation from women and from quieter students and greater inclusion of students from diverse backgrounds in the Webinar classes and also more generally, such as in discussions on the online discussion forum. I have taken time and care to accommodate students when they email me individually to discuss how they would prefer to participate in Webinars in advance of their allocated Webinar. In my experience, these students have then made very strong and valuable contributions using their preferred mode of participation and this makes fuller and richer discussions for the group.

On the second point (that the students feel comfortable participating in class), my observation is that the discussant component has helped

¹⁵⁸ It is noted that Steel and Huggins’ work found that the level of preparation by UNSW Law students was lower than Law students in the US: Steel and Huggins (n 133) 5-7. Steel and Huggins attributed this to ‘cultural differences’ between the student cohorts in Australia and the US: (n 133) 14. Steel and Huggins noted a variation between the Juris Doctor and Bachelor of Laws cohorts in Australia: (n 133) 7.

to make the Webinars interactive. While I have a sequence of planned questions that I ask the group, the group determines the pace and scope. I ensure that we work through all material parts of the relevant legal analysis. However, I leave time and space for students to ask questions at regular points in the class. For example, at the start of class, I ask about areas that they are struggling with or would like to work through together, and then when we finish constructing a legal analysis together I ask if anyone has any questions. While I often initiate discussions, often students lead the discussion and interact with one another's points. This dynamic was identified by the reviewers in the peer review process. On the relevant dimension, the reviewers made the following comments:

Reviewer 1 (Dimension 4) – ...Alexandra was encouraging students to become self-directed learners by using the session as stimulus for individual study / learning. At times, she was challenging students intellectually, for example, by asking them additional question/answer/discussion components where students' conclusions must be justified to the teacher and peers. She was trying to help students bridge the gap between their current conceptual understanding and the next 'level' and working cooperatively with students to help them enhance understanding.

Reviewer 2 (Dimension 4) – Many examples of practical issues addressed ... and students asked to work through them. Lecturer provided some answers and promised podcasts detailing more advanced concepts later.

Each group I taught between 2016 and 2018 have worked together far more collaboratively, for example, in supporting and assisting one another both in our Webinar discussion and on the discussion forum. From my perspective, this created a learning environment for the students that is stimulating and challenging, but also happy and one in which they feel psychologically safe. My observation is that more students have demonstrated being comfortable experiencing cognitive conflict and then working their way out of it in front of the class with this method. I have also become more comfortable with asking questions and expecting silence for up to five seconds. In my experience, students need time to process the question, think and formulate an answer.¹⁵⁹

The second theme, which draws on my self-reflection, is that the level of preparation using this method is far higher than the level I experienced when teaching using a teaching by transmission method coupled with asking students a handful of questions in class. As alluded to above, I argue that this is due to students feeling a higher level of self-efficacy.

¹⁵⁹ Other work has previously argued that silence is a normal part of the Socratic Method and that it is important to give students this time to think and process: Riffel (n 65) 128 citing R Reich, 'The Socratic Method: What It Is and How to Use It In the Classroom' (Center for Teaching and Learning Stanford, 22 May 2003); K Tobin, 'The Role of Wait Time in Higher Cognitive Level Learning' (1987) 57(1) *Review of Educational Research* 69, 91; JP Riley, 'The Effects of Teachers' Wait-Time and Knowledge Comprehension Questioning on Science Achievement' (1986) 23(4) *Journal of Research in Science Teaching* 335, 341.

C *Online Discussion Forum*

In Semester 1, 2018, there were 21 threads in the online discussion forum. I posted the initial comment in 7 threads; students posted the initial comment in 14 threads. There were a total of 83 comments on the forum from 15 different students. 31 students were enrolled and completed all pieces of assessment in the course. This is equivalent to 48.38% of the group. However, the special survey indicated that a much higher number of students – 90.91% of respondents – agreed that they paid attention to the discussions on the forum.

The high level of student attention to and engagement on the general discussion forum is interesting because participation on the forum was not assessable. From the student perspective, a key point of value was that it was a place to connect and network outside of class. This is supported by the students' comments in the special survey. 72.73% agreed (to varying extents) that they had engaged more with other students in this course than in any other course they had completed in the program. In my experience, the students' willingness to engage on the online discussion forum is far higher when using the method that is evaluated in this article.

A second point that the students identify is that the online discussion forum provides a place for the group (including the teacher) to engage in dialogue outside class time. In the special survey, 63.63% agreed (to varying extents) that they paid attention to the discussion on the forum because it was interesting. Based on my self-reflection, the students are comfortable discussing challenges that they are experiencing or raising questions on the discussion forum. Often the group of students answers a question well with only minimal input from me. As in the online class environment, this signals that there is a high level of student collaboration and that this learning and teaching method creates a place where students feel psychologically safe. However, it is worth noting the group did seem to desire some level of teacher involvement both based on the data and in my experience. In the special survey, 72.72% of respondents agreed (to varying extents) that they were interested in participating on the forum because the teacher's views were visible and the teacher was available to them as a resource. I was happy to be involved, particularly when the discussion required guidance. I refrained from spoon feeding and generally nudged the discussion in the right direction, for example, suggesting material to consider.

My overall view is that the online discussion form is an important mechanism in allowing for spill-over discussions after class and to continue the construction of knowledge between classes. It is also a more equitable and inclusive technique and one that is more supportive of deep learning than responding to individual student queries by email.

IV CONCLUSION

The Socratic Method is not widely used to teach Law in Australian universities. Anecdotally, Australian academics are aware of the

negative reputation of the traditional Socratic Method and express reluctance to use it either for that reason or because they are unfamiliar with how to facilitate a class using techniques to execute it. However, while anecdotally some Australian academics use a soft or softened version of the Socratic Method, there is very little academic literature on it, either at a conceptual / theoretical level or a practical / applied level, and none of the existing literature evaluates the effectiveness of using soft Socratic techniques in the online environment.

In my experience, a common pedagogical method for teaching law in Australia couples techniques from the Liberal and Behavioural philosophies. This article took a novel approach by focusing on a soft Socratic Method that is underpinned by a humanistic teaching philosophy. I experienced this approach auditing classes given by Professor Alvin C Warren Jr and Professor Noah Feldman at Harvard Law School in 2013. Between 2016 and 2018, I adapted and refined this method for teaching postgraduate courses in tax law in the online environment. This article used the four lenses ([contextualising within] ‘theory’; ‘personal experience’ (self-reflection); ‘students’ eyes’ and ‘colleagues’ perceptions’) from Stephen Brookfield’s ‘Becoming a Critically Reflective Teacher’ to evaluate the effectiveness of my method for the online environment. The article considered the method to be effective if there was not a high level of disagreement in the data in relation to two criteria: the quality of teaching, and that the method encouraged student participation and engagement.

In relation to the first lens (theory), the article provided background on the traditional Socratic Method, including on how it developed in the US. The analysis then turned to the criticisms of the traditional approach. The article argued that this is important as there are various lines of significant criticism, and when combined, they are concerning because they indicate that there is the potential for negative effects on students, including: excluding and silencing women, students from minority groups, and quieter and more introverted students; more generally, causing general distress and also encouraging a competitive environment that is not conducive to the development of the construction of knowledge in a psychologically safe way. The article then outlined the contours of the existing literature on the soft Socratic Method before analysing various suggestions that have been made to address those criticisms. I argued that these suggestions functionally provide the contours of a softened Socratic Method and that this is particularly valuable and important due to the gap in the existing literature on the use of the soft Socratic method in the online environment.

The article then presented data that was collected in relation to the second to fourth lenses (self-reflection, students’ eyes, and colleagues’ perceptions) as a preliminary study. The data included material from standard end of course student evaluations, a specially designed student survey, reviewer comments from a formal peer review process and my personal observations and reflections. The data showed that the method is effective because, based on the criteria outlined above, there was not a high level of disagreement in relation to the two criteria across the

various sources and material used. I argued that deeper analysis of the data reveals that the reason the method is effective is that it creates the place, presence (social, cognitive, and teacher), and self-efficacy dimensions that the existing literature argued is critical to a successful online learning environment.

The study was presented as preliminary due to limits of available data and meta-level changes at UNSW that affected the quality and consistency of the data. A valuable direction for future work is for the preliminary study to be replicated across a time period that does not have such limits. This would enable a full empirical study to be completed.

The soft Socratic Method that was the focus of this article was developed for students studying tax law at the postgraduate level, both full and part-time. It is acknowledged that the pressures for undergraduate students are slightly different to their full-time colleagues. For example, while they may have a similar range of responsibilities in their personal lives, including family commitments, undergraduate students may have more time in the day to devote to studying. The soft Socratic approach that this article evaluated could easily be adapted for this type of student. Further, the method could also be used in disciplines other than law.

It is hoped that this article will assist other academics who are navigating the challenges of facilitating learning in the online environment.

V APPENDIX

This Appendix sets out a high-level overview of the soft Socratic method that this article evaluated. The key features are:

- A discussant system. I assign each student to part of the material and outline the expectations in a course announcement at the start of the teaching period. In that announcement, I emphasize that:
 - in awarding marks, quality and building on the contributions of other students will be rewarded highly.
 - we are here to build knowledge together. This aims to reduce performance for the teacher and encourage student-student dialogue.
- In class, I ask a series of questions. I structure the questions using Socratic traditions. For example:
 - I move between the abstract / conceptual to the practical / specific / applied and, then, often reverse the pattern at the end of class.
 - Where relevant, I ask questions to prompt students to identify a pattern or discontinuity in the law.
 - I do not refrain from asking hard questions. My goal is to push the students as a group into cognitive conflict that is constructive for the building of knowledge, and then support students to work their way out of it together.
- When asking questions, I never cold call on an individual student. I pose the question to myself and the entire class. Students choose when they wish to contribute.
- I welcome students using technology to make contributions.
- When a student answers a question, I welcome their response by acknowledging and praising their contribution before analysing the substance of it further.
- I often invite students to expand on their initial comment or question or I invite the rest of the class to do so. If I ask an individual student a follow-up question, I ask their permission first.
- If the discussion goes off course and requires correction, I step in and do this. I frame this as a learning for the group.
- If students are quiet, I pause and give them time to think.
- If they remain silent, I will model the first few steps in the analysis and ask the students to identify whether I made any errors or if any areas of the analysis could be stronger.
- Questions often come up that we do not have time to work through in class, or that are tangential to the main point, or where the students would like to do more research. We take those questions and discussions to the online discussion forum.