


## When the criminal procedure is not enough: The teaching of criminal procedural law from an active, participatory and critical methodology

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### ABSTRACT

This article entitled "Procedural Law as a curricular subject in the light of new methodologies" aims to discuss the importance of applying active methodologies to the teaching of one of the most important legal subjects in the curricular structure of the UFPB Law course. To this end, we opted for qualitative research, specifically a bibliographical review based on scientific articles and books published on digital platforms such as Scielo and Google Scholar. Through the use of a methodology that departs from the traditional, it was possible to observe a greater stimulus to the creative thinking of the students, who began to mobilize efforts in order to think about criminal procedure not only in dogmatic terms, but above all by reflecting on its social, political and ethical aspects, confirming their previous concepts or even reshaping them by calling them into question. The following tools were used in the practical application of this methodology: i) art, in the form of literature and cinema, in order to initially engage students in the subject and, together with other materials, broaden their view of the topics covered in class; ii) concrete cases, with a view to developing skills linked to analysis and reflection on the reality of the Brazilian penal system; iii) the production of expanded summaries or scientific articles, through which students can express the conclusions of their reflections, as well as share the ideas debated in their work with their colleagues. It can therefore be concluded that these tools enable students to develop skills that refine their critical view of Brazilian criminal procedure, which is currently under attack from a wave of deniers and conservatives who want to impose an inquisitorial approach that is stronger than Criminal Procedure Law already is.

**Keywords:** Teaching, Criminal procedure, Methodology, Active, Critical, Participative.

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## INTRODUCTION

The crisis in legal education in Brazil is the concern of several theorists and academics, but also of the entire Brazilian society, since it is these students who will become future professionals strictly linked to the guarantee of rights and legal changes in society.

Therefore, such restlessness is responsible for countless debates inside and outside the classroom, in an attempt to find the sources of the problem and solutions to raise the quality of teaching.

When it comes to Criminal Procedure, the debate is even more important. It is known that this discipline is a fundamental pillar in any legal system that seeks to ensure justice and equity. Its importance transcends mere law enforcement; it serves as a crucial mechanism for the protection of the fundamental rights of individuals, the maintenance of the rule of law, and the proper functioning of a democratic society.

However, the complexity of the legal and social sciences often challenges our ability to fully understand the main problems surrounding the Criminal Procedure, which demonstrates the insufficiency of traditional teaching, which takes place strictly through codes and doctrines.

The criminal process needs a tangible, participatory teaching, so that its principles and tools are better absorbed by students. In the words of the jurist Nereu José Giacomolli (2015), "several years of fragmentation, of merely expository instruments and of the absence of a weaving of the various branches of law and knowledge have removed the necessary connection of the parties, evidencing the arduous task of understanding and situating the procedural phenomenon in society and in the legal world".

In this context, this text intends to discuss the importance of applying an active, participatory and critical methodology in the teaching of criminal procedural law. For this, we opted for a qualitative research, specifically, a bibliographic review carried out from scientific articles and books that can be found on digital platforms, such as, for example, *Scielo* and *Google Scholar*.

## CRIMINAL PROCEDURE AS A CURRICULAR DISCIPLINE

Criminal Procedural Law in Brazil is governed by a Code issued in 1941, a time when fascist ideas from Italy were incorporated. Over the years, some reforms have been carried out in order to modernize the Brazilian criminal procedure, attributing the current fragmentary character that confuses the student.

Consequently, the perpetuation of the fragmentation of the criminal procedural norm has distanced legislative interpretation from an integration with the legal system and with other areas of knowledge. The teaching of the subject, therefore, has become a mere repetition of norms without proper context and without a critical reading. (GIACOMOLLI, 2015)



However, the study of criminal procedure detached from constitutional values, the lessons of political science and criminal sociology cannot explain the necessity of its very existence. The understanding of the discipline as a tool that guarantees fundamental rights - which acts through the protection of the individual against the potential abusive power of the State - is indispensable for a critical reading of the Brazilian penal scenario.

In this sense, the absence of active participation in thinking about Criminal Procedural Law reinforces the student's distancing from the subject to be studied, since it will be seen only as a set of rules disconnected from their reality. As stated by Aury Lopes Jr. and Alexandre Morais da Rosa (2016):

"The initial obstacle is to be able to establish a common thread, to adapt the communication to an audience that enters the classroom, many times, as a preconceived image that criminal proceedings serve to generate impunity. Talking about fundamental rights in the first classes can be a mortal sin, because the student-in-the-world is a student with fear, who also suffers from urban violence and who confuses fundamental rights with the protection of impunity."

Such a gap in the understanding of the criminal procedure as a guarantor of the subject before the state power is the result of the dissemination of an authoritarian theoretical model to the detriment of a cohesive theoretical approach based on democratic values. Once again, it is possible to perceive the need to link the studies of the discipline to the ideals adopted by the constitutional order of the country, being essential, for this, the rupture with the passive and inert model of learning, which prevents the student from relating legal education to the critical reality that is imposed around him.

In the face of this crisis, one of the proposals made by the academic literature is the creation of teaching methodologies that enable students to actively participate in the learning process, so that information is connected to other interdisciplinary elements, seeking a full understanding of the rules and functioning of the criminal process.

### **AN ACTIVE, PARTICIPATORY AND CRITICAL TEACHING METHOD**

As mentioned elsewhere, in view of the crisis in Brazilian legal education, especially higher education, the effectiveness of the traditional teaching method is increasingly discussed. This is because, although the subjects that make up the curricular structure are transmitted in the classroom, the usual methodology applied lacks greater communication between reality and what is learned in the classroom.

Thus, considering that theoretical and practical knowledge are not being achieved concomitantly, due to the study of the parts dissociated from the whole, it is essential to understand that all disciplines and that all knowledge necessarily need to be articulated. As a result, since



university education is still stuck in this obstacle, students do not understand the meaning and usefulness of the knowledge taught to them in the classroom (SANTOS, 2008a).

Faced with this scenario, the active methodology emerges, whose development took place in the 1980s, with the purpose of responding to the multiplicity of factors that interfere in the learning process and the need for students to develop diversified skills. In this sense, for its implementation, it is necessary that the student and the teacher assume new roles, with the student having a more active role, while the teacher is no longer just the transmitter of knowledge, but a monitor, with the duty of creating learning environments full of diversified activities (MOTA; WERNER DA ROSA, 2018).

Thus, the active methodology is conceptualized, according to Berbel (2011), as a framework of tools that base learning on real or simulated experiences that correspond to the students' life practice, developed in the disposition and resolution of challenges.

In the same sense, according to Soares, Martins and Miranda (2015), it is from the application of this methodology that students who previously acted only as mere spectators, become active subjects in the teaching process, perceiving themselves in the contents.

In this line, it can be seen that the implementation of this type of methodology aims to favor an autonomous motivation of the student, since it aims to arouse the student's curiosity, promoting their greater participation in the learning context.

Thus, according to Berbel, the importance of challenging activities that make sense for the real life of students and for their effective learning is patent, since through this form of teaching, it is possible to expand the possibilities of exercising freedom and autonomy in decision-making at different moments of the process they experience. preparing for future professional practice.

Also according to the author, from the implementation of the active methodology, the students' creative thinking is stimulated at each stage of the process; students are also mobilized for social, political and ethical learning, which contributes to the formation of being a citizen; Students are encouraged to confirm their beliefs, values and previous concepts, or to question them, or even reformulate them, through the new learning.

In summary, this methodology makes it possible to put into practice a problematizing pedagogy, which is why it is undeniably associated with the teachings of Paulo Freire (BERBEL, 1999).

Having made these general considerations, it is worth mentioning, in summary, the various ways in which this methodology can be applied in the practical context, namely: case study, project methods, scientific research, problem-based learning.

In addition, the implementation of the active methodology in the field of higher education is even more necessary, especially if we consider the purposes of this education, otherwise we see what is contained in Law No. 9.394/1996 (National Law of Guidelines and Bases):



Art. 43. The purpose of higher education is to:

I - stimulate cultural creation and the development of the scientific spirit and reflective thinking;

II - to train graduates in the different areas of knowledge, able to enter professional sectors and to participate in the development of Brazilian society, and to collaborate in their continuous training;

III - to encourage the work of research and scientific investigation, aiming at the development of science and technology and the creation and dissemination of culture, and, in this way, to develop the understanding of man and the environment in which he lives;

IV - to promote the dissemination of cultural, scientific and technical knowledge that constitute the heritage of humanity and to communicate knowledge through teaching, publications or other forms of communication;

V - to arouse the permanent desire for cultural and professional improvement and to enable the corresponding implementation, integrating the knowledge that is acquired in an intellectual structure that systematizes the knowledge of each generation;

VI - to stimulate knowledge of the problems of the present world, in particular national and regional ones, to provide specialized services to the community and to establish a relationship of reciprocity with it;

VII - to promote the extension, open to the participation of the population, aiming at the dissemination of the achievements and benefits resulting from the cultural creation and the scientific and technological research generated in the institution.

VIII - to act in favor of the universalization and improvement of basic education, through the training and qualification of professionals, the realization of pedagogical research and the development of extension activities that bring the two school levels closer together.

It can be inferred, from the reading of the aforementioned legal provision, that the central objectives of higher education are to promote critical thinking, relate the various areas of knowledge and provide the student with stimuli that favor the search for knowledge and their autonomy.

Thus, based on what has been exposed by the considerations made about the active methodologies and the purposes of higher education, the application of this method in the context of universities becomes salutary, since from its implementation it will be possible to achieve the purposes of higher education and, consequently, provide the student with a more comprehensive teaching experience.

## CRITICAL, ACTIVE AND PARTICIPATORY CRIMINAL PROCEDURAL LAW

As seen, a teaching method that integrates the student in the teaching-learning process enables him to develop a critical awareness that helps him in the construction of his area of knowledge.

The development of a critical awareness makes the individual's action also pass through the filter of criticality and, thus, find better solutions for concrete cases. In this sense, Paulo Freire (1967, p. 105) teaches that "it is characteristic of critical consciousness to integrate with reality, while that of the naïve oneself is its superimposition on reality".

Such critical awareness becomes even more important when the discipline taught is criminal procedural law. Not to the detriment of the other areas of law, but because the criminal process, its structure, its tools and its guarantees are a true democratic thermometer of countries, as widely



propagated in the criminal sphere, that is, the more a criminal procedural system limits the punitive power of the state and guarantees individuals the due and fair criminal process, The more democratic that population will be.

To change the course of criminal procedural law, taking it away from the conservatism and inquisitorial heritage that the Brazilian system inherits from its origins, it is necessary to move away from the traditional teaching patterns and look for ways to apply the already discussed active, participatory and critical methodology in the teaching of this important legal area.

The first solution that emerges is the use of art to debate the general ideas of criminal procedure, especially the procedural systems and the principle of this area of law. Literature and cinema, therefore, are presented as important tools in the daily life of the teacher of the discipline.

In their text, CARVALHO and COSTA (2010, p.10-11) state that it is not only the use of film or for momentary analysis in the classroom, but the use of this tool can generate the use of other resources, "such as complementary readings, legislative or historical research on the subject of film analysis, conversation circles and study groups", This would result in the relevance of "aspects forgotten or not externalized in the classroom or in seminars, giving emphasis to a circle that diffuses these many interpretations engendered by the work" (idem).

Cinema becomes an important tool to the extent that, together with literature, it captures the attention of students, and, depending on the work chosen, it can engage even those students who are not interested in the discipline at all. In times of social networks, marked by low attention spans, cinema can be an important tool to captivate students to this teaching and learning process.

Another tool that can be used is the use of concrete cases, whether famous in the media or of low knowledge, safeguarding the proper data that must be kept confidential. The drafting of procedural documents or even the analysis of evidence related to concrete cases allows students to have a greater interaction with real-life Criminal Procedural Law, the one they will come across when they constitute true operators of the law.

To the extent that the student knows the practical case, the object of analysis, whether it is a test, situation or procedural piece, he will develop skills to observe the object critically, doubting what needs to be better analyzed and, perhaps, changed in the Brazilian criminal procedure.

It should be emphasized, as appropriate, that such tools are not - and should not be used - detached from doctrinal and legislative study. In fact, these new methodological tools seek to improve and make effective the study of doctrine and law, since they need to be studied from a critical perspective and applied to the concreteness of reality.

The study of doctrine, legislation and jurisprudence, the development of critical thinking and practical activities come together to help the student write the criticisms he made during the period in



which he studied criminal procedural law, in the form of an expanded abstract or scientific article supervised by the professor of the discipline.

The expanded abstract/scientific article will improve the students' scientific writing, broaden the critical range, based on the reading of other authors and analysis of specific points of criminal procedural law and, together with other colleagues, will enable the student to debate and exchange ideas and opinions about the Brazilian criminal procedure.

Thus, these tools emerge as important means of circumventing the crisis of Brazilian legal education, especially when it comes to Criminal Procedural Law, which has been suffering a wave of denialism and attacks on the basic guarantees of an accusatory system and, consequently, of a democratic society.

## CONCLUSION

In the quest to overcome the challenges of the traditional teaching of Criminal Procedural Law, it is necessary to resort to a methodology that develops in students the skills to analyze their reality critically. This can only occur from an active, participatory and critical teaching methodology.

This methodology, which deviates from the traditional one, manages to stimulate the creative thinking of the students, in each part of the process, in which they will be mobilized to learn the social, political and ethical aspects of the criminal process, confirming their previous concepts or even remodeling them, by putting them in doubt.

In this debate, there are three main tools that emerge: i) art, in the form of literature and cinema, which manage to initially engage students in the discipline and, together with other materials, broaden students' views on the topics addressed in Criminal Procedural Law; ii) concrete cases, which will enable students to develop skills related to analysis and reflection on the reality of the Brazilian penal system; iii) the preparation of expanded abstracts or scientific articles, in which students will be able to express the conclusions of their reflections, in addition to sharing with their colleagues the ideas discussed in their work.

These tools enable the student body to develop critical skills to face the Brazilian reality where the criminal process is currently under attack by a wave of denialists and conservatives who want to impose a stronger inquisitorial line than the Brazilian Criminal Procedural Law already is.



## REFERENCES

1. Berbel, N. A. N. (2012). As metodologias ativas e a promoção da autonomia de estudantes. \*Semina: Ciências Sociais e Humanas, 32\*(1), 25–40. DOI: 10.5433/1679-0383.2011v32n1p25. Disponível em: [\[https://ojs.uel.br/revistas/uel/index.php/seminasoc/article/view/10326\]](https://ojs.uel.br/revistas/uel/index.php/seminasoc/article/view/10326)(<https://ojs.uel.br/revistas/uel/index.php/seminasoc/article/view/10326>). Acesso em: 5 mar. 2024.
2. Berbel, N. A. N. (1999). A metodologia da problematização e os ensinamentos de Paulo Freire: uma relação mais que perfeita. In N. A. N. Berbel (Org.), \*Metodologia da problematização: fundamentos e aplicações\* (pp. 1-28). Londrina: Eduel.
3. Brasil. (1996). \*Lei N° 9.394, de 20 de dezembro de 1996\*. Estabelece as diretrizes e bases da educação nacional. Brasília, DF: Diário Oficial da União.
4. Carvalho, V. de S., & Costa, R. V. (2010). O cinema como ferramenta do ensino jurídico. In \*Encontro de Estudos Multidisciplinares em Cultura, 4\*, Salvador. Recuperado de [\[http://www.vienecult.ufba.br/modulos/submissao/Upload/24760.pdf\]](http://www.vienecult.ufba.br/modulos/submissao/Upload/24760.pdf)(<http://www.vienecult.ufba.br/modulos/submissao/Upload/24760.pdf>). Acesso em: 5 mar. 2024.
5. Freire, P. (1967). \*Educação como prática de liberdade\*. Rio de Janeiro: Paz e Terra.
6. Giacomolli, N. J. (2015). Pensar, aprender e transmitir Direito Processual Penal. \*Jusbrasil\*. Recuperado de [\[https://www.jusbrasil.com.br/artigos/pensar-aprender-e-transmitir-direito-processual-penal/188586888\]](https://www.jusbrasil.com.br/artigos/pensar-aprender-e-transmitir-direito-processual-penal/188586888)(<https://www.jusbrasil.com.br/artigos/pensar-aprender-e-transmitir-direito-processual-penal/188586888>). Acesso em: 5 mar. 2024.
7. Lopes Jr., A., & Moraes da Rosa, A. (2016). Processo penal pop obriga uma nova abordagem de ensino. \*Consultor Jurídico\*. Recuperado de [\[https://www.conjur.com.br/2016-ago-05/limite-penal-processo-penal-pop-obriga-abordagem-ensino/\]](https://www.conjur.com.br/2016-ago-05/limite-penal-processo-penal-pop-obriga-abordagem-ensino/)(<https://www.conjur.com.br/2016-ago-05/limite-penal-processo-penal-pop-obriga-abordagem-ensino/>). Acesso em: 5 mar. 2024.
8. Mota, A. R., & Werner da Rosa, C. T. (2018). Ensaio sobre metodologias ativas: reflexões e propostas. \*Revista Espaço Pedagógico, 25\*(2), 261-276. DOI: 10.5335/rep.v25i2.8161. Disponível em: [\[https://seer.upf.br/index.php/rep/article/view/8161\]](https://seer.upf.br/index.php/rep/article/view/8161)(<https://seer.upf.br/index.php/rep/article/view/8161>). Acesso em: 5 mar. 2024.
9. Santos, A. (2008). Complexidade e transdisciplinaridade em educação: cinco princípios para resgatar o elo perdido. \*Revista brasileira de educação, 13\*(37), 71-84.
10. Soares, S. R., Martins, E. S., & Miranda, D. L. (2015). Problematização e produção criativa: ressignificando o ensino e a aprendizagem na universidade. Salvador, Bahia: EDUNEB, pp. 17-24.