

Origin, Alienation and Domestication: On the Case Method Teaching in Law Undergraduate Education

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Abstract—This paper explored how to apply case method teaching in undergraduate law teaching in China through comparative analysis, literature research and practical investigation. It was analyzed that the case method teaching has specific content, applicable scenarios and important significance in the United States where the method originated. However, when introduced into China's law undergraduate education, this method has been alienated in the aspects of teaching status, teaching methods, teaching content and teaching effects, leading to a dilemma. In this condition, in order to realize the right application and domestication of the case method teaching, this paper proposed that based on China's national conditions, conduct targeted reforms by clarifying which curriculum and what time to adopt case method teaching, cultivating qualified teachers, and perfect supporting mechanisms.

Keywords—undergraduate course of law; case method teaching; alienation; domestication

I. THE ORIGIN OF CASE METHOD TEACHING

The case method in legal education was invented in 1870 by Christopher Columbus Langdell, Dean of Harvard Law School from 1870 to 1895. It brings the real jurisprudence made by the court into the class, based on the case, to scientifically cultivate legal talents with comprehensive practical ability.¹ It differs from the traditional teacher teaching method in two characteristics. The one is that it use a lot of real life cases. The other is that the Socratic question-and-answer session runs through the whole process. [1]

US Justice Holmes once pointed out that the life of the law has not been logic: it has been experience.” Taking the cultivation of students’ practical ability as the springboard, the case method teaching makes use of the case report compiling and application. Through the teaching process, teachers and students pose and solve questions by discussions, and arguments, analyze and address issues in practical cases from different levels, angles, and aspects. Students are instructed to think like lawyers. In the case method teaching, teachers are teaching students the basic concepts and theories of

professional courses, while focusing on cultivating students’ analytical skills, thinking and problem-solving capability.²

It should be noted that the case method teaching does not neglect the role of teachers. Instead teachers in the classroom are as important as the judges in the trials of the Anglo-American law courts, and they are mainly responsible for the organization of the class discussion. Specifically, let students get familiar with relevant readings before class. Design the detailed teaching content of the case.³ In the course, the teacher asks the students according to the student’s discussion, controls the discussion process and depth, and concludes in the end. On the whole, there is no such thing as a “correct” answer in class discussion, but more training of students’ thinking ability.

Judging from the effect, the case method teaching has the following important significance:

First, it is conducive to stimulating students’ enthusiasm for independent learning. As the traditional one-way teaching mode is transformed into inspirational discussion mode, students participate actively in teaching activities. Students should preview the legal background, comprehend the case, and raise the legal issues of the dispute. [2] Every student is pushed by the outer pressure to express his opinion in the case discussion, which prompts students to concentrate on learning throughout the process. The transition from passive learning to active learning improves the knowledge learning efficiency and achieves the best teaching results.

Second, it is conducive to enhancing knowledge feedback. The result of learning knowledge is to “use” knowledge, and the use of knowledge can give learners feedback. Law is a discipline that requires practice. Knowledge in the textbook and theoretical literacy is far more enough. Students must learn to apply what they have learnt to practice and solve real-life problems. [3] Only in this way, can law students become excellent legal talents to meet the needs of social development. The implementation of the case method teaching enables the book knowledge to be practiced in the real life, which tests students’ mastery of knowledge, gives feedback to students as

¹ Wang Xiangxiu: American Law Case Method Teaching and Its Enlightenment to China [J]. Career Horizon, 2013(3):79.

² Yang Fei: Re-understanding of the Status and Role of Legal Teaching Methods [J]. Journal of Guangdong University of Foreign Studies, 2007(5): 47

³ Ding Zhihua: A Comparative Study of Two Case Study Teaching Methods in American Law Education, Law Methodology (17), Shandong People's Publishing House

quickly as possible, and can further stimulate students' desire to learn.

Third, it is conducive to improving classroom teaching. Traditional teaching-oriented education emphasizes one-way knowledge transfer, while neglecting two-way communication between students and teachers. With "teaching" and "learning" disjointed, teaching quality is bad. However, the communication between teachers and students is "exam", through which teachers get to know what students have acquired, and make up for the omissions and shortcomings in the teaching process. However, the exam can't be organized every day, and the test paper can't reflect everything. Instead, the constant and timely classroom discussion in case method teaching can greatly improve the efficiency of two-way communication between teachers and students, thus improving the quality of classroom teaching.

II. ALIENATION OF CASE METHOD TEACHING

Since the reform and opening up, the case method teaching has been introduced into the increasingly popular law undergraduate education. However, subject to various factors, this teaching method has been alienated in China's practice in the following aspects.

First, the case method teaching alleged in the law undergraduate education in domestic higher education institutions is different from that of foreign schools in the teaching status. The case method teaching is at the core of American legal education. It often adopts Socratic question-and-answer, which is based on student discussion primarily and teacher lecturing for auxiliary. It mobilizes students to learn and cultivate students' practical ability. [4] However, in China, the same method turns to be a "cramming" teaching, for the fact that teachers are still dominant and students are passively accepted what teachers delivered. In practice, even if some students have their own ideas, they will often be instructed by teachers to recognize what is "right". Given this, the interaction between teachers and students has become a kind of attachment to some extent for the class, but not the core class content. In this way, students who are still in a state of passive acceptance of knowledge will just view it as an auxiliary way which may or may not be needed. [5]

Second, teaching methods. The essence of case method teaching is to guide students to discover legal principles and rules from the case, so that students can form a legal thinking. On the contrary, in the law undergraduate education in China, examples are used frequently. Cases are often put forwarded after a certain legal article or legal principle to deepen the students' understanding of relevant theory. Although it has similarities with the case method teaching, the two teaching differs a lot in the essence. The case in the exemplification teaching does not appear as the object of the student's discussion, but is an organic part of the teaching content, so it is impossible to become the main line throughout the course. Furthermore, teachers are still the leading role of the curriculum. Having not been familiar with the case and the background, students are difficult to join in-depth discussion of the case. Therefore, the one named case method teaching but deviated from the essence and nature of the teaching is not

conducive to cultivating students' legal practical ability, nor can it achieve the expected teaching effect of case teaching.⁴

Third, teaching content. As the judicial information in the United States and Britain are open to the public, the cases in the case teaching method are generally from the real life, and the results of the referee are also authentic. Therefore, it is feasible to explore the ideas and methods of the judgment through the case. [6] However, in China, the case for law undergraduate education is limited with small quantity and facticity. The same case may be repeatedly mentioned by different teachers in different laws and different situations in four years, and the attraction to students is greatly reduced. Moreover, the domestic case method teaching is full of fictional cases, or the adaptations tailored to meet the needs of the course teaching. [7] This cases which are explicitly subjective can't help students to identify complex matters in practice, and naturally can't train students' practical ability. Additionally, the case is partially disclosed with limited information. With the deepening of the rule of law practice, the publicity of judicial information in China has also increased. This is highlighted by the fact that teachers and students can obtain case information through detailed media reports, and they can also download effective judgments made by courts for analysis on certain website. However, the case information disclosed by the media is often not comprehensive, and the judgment document is only a record of the important content of the case. Under this circumstance, the case discussion still lacks the necessary conditional support and it is difficult to carry out substantively.

Fourth, teaching effects. In the United Kingdom and the United States, the goal of the case method teaching is that students explore what they should learn by the relevant jurisprudence with teachers' guidance.⁵ The British jurist Fuller believes that the law should be seen as a purposeful cause whose success depends on the energy, insight, intelligence and conscience of those engaged in this cause.⁶ What case method teaching should achieve is that makes students as the subject of learning and strengthens students' ability to solve practical problems. This is a shift from the inside to the outside, rather than the push from outside to inside. [8] In the undergraduate teaching of law in China, the so-called case method teaching is still essentially an infusion teaching. Teacher dominates the whole process and the way of teaching from the conclusion to the case make it difficult to fully mobilize students and the teaching effect of the course is generally poor. Under this circumstance, it is impossible to train students to discover, analyze and solve problems.

⁴ Xiao Guoliang: On the Issues that Should Be Paid Attention to in the Law Case method Teaching. *Science & Technology Information*, 2011(4):135

⁵ Zheng Liping, Ning Shiqing: Reform of the Law Undergraduate Teaching Method under the Vision of American Case Method Teaching, *Journal of Beijing University of Aeronautics and Astronautics*. 2017 (4).

⁶ Lon L.Fuller: *The Morality of Law*, Translated by Zheng Ge, The Commercial Press, Page 169

III. DOMESTICATION OF CASE METHOD TEACHING

Based on the original meaning of the case method teaching, on the basis of rationally judging the current situation of law education undergraduate education in our country, we should start from the following aspects to ensure the right application and domestication of the case method teaching in China's law undergraduate education.

First, we need to specify curriculum and class hour of the case method teaching. Based on the current situation of China's legal system and legal research, the curriculums which apply case method teaching should not be too broad or too much. Instead, public law case courses and private law studies can be set according to the tradition division of the public law and private law of civil law countries. Based on the commonalities of public law and private law, the content of different departmental laws is organically integrated. [9] Taking public law as an example, its core focuses on the effective regulation of public power. Through the discussion of public law cases, students can not only consolidate common knowledge of public law, but also open up various departments of public law in the long term (constitution, criminal law, administrative law, the three major procedural laws, etc.). More importantly, students can gradually cultivate the ability to use public law to solve practical problems. As far as the time of course opening is concerned, we believe that China's tradition of statutory law determines that the specific application of law should be based on a certain accumulation of knowledge. In this sense, the knowledge accumulation of law students in China is mainly concentrated in the period from the first grade to the first semester of the third grade. Therefore, case method teaching can truly make sense when adopted in the second semester of third grade or the first semester of fourth grade.

Second, we should work hard to cultivate qualified teachers with the corresponding capabilities. The teacher is the key to implement the case method teaching. Teachers are required to have a solid legal knowledge base, and skillfully use this teaching method. At present, the vast majority of teachers in law majors in China's colleges and universities have graduated from domestic political and law colleges whose knowledge structure is derived from the framework of the traditional civil law system. And their teaching literacy is cultivated in the domestic lecturing environment, so most of them cannot skillfully use case method teaching. Even if some teachers have long been engaged in part-time lawyer work and have practical skills, they are still not capable to effectively carry out case method teaching. Furthermore, the Anglo-American law case method teaching is nurtured and grown in the soil of case law, and its effectiveness has been tested in a highly integrated environment of professional communities such as judges, prosecutors and lawyers. [10] Under this circumstance, how to carry out targeted transformation according to the national conditions of statutory law to meet the special needs of different legal occupations? This is a major theoretical issue, and also a realistic issue that needs constant exploration and practice.

Third, improve the supporting mechanism. The implementation of the case method teaching is a systematic project involving a wide range of issues, which requires a

series of institutional mechanisms. For example, colleges and universities should create objective conditions suitable for the teaching. The traditional classroom layout in which platform and class seats are separate should be transformed into the one geared for interaction and discussion. Teachers are also required to carefully compile cases, guide the class, spend more time and energy, so schools should give them necessary care in class hour calculation, payment, and effect evaluation. The grade assessing of students is mainly from the classroom discussion and classroom performance, and the traditional test paper examination is obviously not applicable, which requires the relevant policies issued by the universities to regulate the assessment. [11] In addition, the judicial information should be further disclosed, and the publication and compilation of real cases should be advanced. The disclosure of case information in American judicial practice provides the necessary conditions for the implementation of the case method teaching. The teaching materials based on the actual events and the typical situations constitute the premise of the case teaching. In recent years, China has made great progress in this respect, but there are still many problems, such as the shortage of information in sensitive cases and the partially disclosed major and difficult cases. Particularly, many judgments are relatively simple and rough, restricting people's access to case information. It should be improved in practice as it has become a disadvantage that hinders the wide spread of case method teaching.

IV. CONCLUSION

China's law undergraduate education shoulders the historical mission of cultivating qualified legal talents for the construction of the rule of law in the country. It is a long-range program for social development and the rule of law. Even though case method teaching is a small part in the undergraduate teaching system of law, it has important practical significance for improving the quality and efficiency, momentum transfer and structural adjustment of the legal talent training in higher education in China. Therefore, by clarifying the curriculum and time using the case method teaching, cultivating qualified teachers with corresponding abilities, and completing relevant supporting mechanisms, we can correct the practice alienation which should be an important issue that legal education workers must face in colleges and universities.

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