

Thoughts on Changing Teaching Focus and Methods of Constitution Course in China

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Abstract

At present, the main problem of constitution course teaching in China lies in the unclear definition of constitution course property, resulting in dislocated teaching of this course. The teaching reform of Chinese constitution course should be started from choosing teaching focus and improving teaching methods. Civil rights can be treated as the center clue of constitution, and teaching the implementation part of constitution shall be emphasized. In addition, during the teaching process, the case teaching method and discussion teaching method shall be introduced.

Key words: Constitution; Teaching; Focus; Methods

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1. MAIN PROBLEMS OF CHINESE CONSTITUTION COURSE TEACHING

It's necessary for students majoring in law to learn the basic theory and specialized knowledge, especially the constitution course as the theory law. However, as pointed out by the American philosopher of law, Edgar Bodenheimer: "If a person is just a craftsman of the law who only knows the rules of trial procedure and masters the special rules of positive law, he can not become

the first-rate law worker" (Bodenheimer, 2004, p.531). Legal thinking ability should contain an accurate grasp of legal concepts, correct establishment and grasp of legal propositions, the capacity for legal reasoning and demonstrating the legal decisions or legal advice that are about to be made. Legal expression ability includes verbal and written expression skills, and is the ability for students majoring in law to express legal opinions on specific facts or issues through the language or text. The ability to ascertain the legal facts means students' capacity to investigate collect, produce, combine, analyze and certify the legal facts. The process of ascertaining the legal facts implies that a legal person uses the law to judge, analyze, confirm and choose facts, and is a opposite and united process of objective facts and legal facts (Zhou & Ni, 2004). The traditional curriculum and teaching of Chinese constitution course does not cover the cultivation of these abilities and qualities.

Currently, the main problem of constitution course teaching in China is the unclear definition of constitution course property which results in dislocated teaching of this course. Firstly, the misunderstanding of system constitution or annotation constitution: causing rigid and mechanical teaching of provisions and systems. The common embodiment includes that the structure arrangement in accordance with the National Constitution Code is set as the teaching clue, constitution is explained according to constitutional system established by the Constitution Code, and constitution theories are introduced with the entry point of constitutional norms and systems. Generally speaking, the above embodiments have a strong pertinence, but are often limited to this level without further excavation of the constitution's inherent cultural connotations and in-depth research of dynamic deep theoretical problems like the historical development, the law of value and theoretical roots of the constitutional issues, hence are one-sided. Secondly, the misunderstanding of political constitution or constitutional

politics: classifying the constitution as the scope of politics, interpreting the constitution with political theories and inspecting the constitutional issues with political vision make the whole system of constitution is full of strong political color. This positioning directly leads to the deviation of the subject and emptiness of legal basic theory, making the course more political but less legal. Thirdly, the misunderstanding of local constitution or transplanted constitution: causing cutting off the contact of discipline development under different systems without analysis, degrading the constitution to the level of Chinese constitution or the subdiscipline of western constitution. Inattention to comparative analysis and the integration and docking of constitutional local resources with transplanted culture brings about a narrow vision of the subject (Zhang, 2003). The misunderstanding of the course attributes makes the constitution course boring and lacking in theoretical depth in actual teaching process, and makes the students feel that they are receiving political preaching, leading to ineffective listening. It has been imperative to change the course teaching of Chinese constitution, and it may as well start from selecting the course's teaching focus and improving the teaching methods.

2. SELECTION OF THE TEACHING FOCUS OF CHINESE CONSTITUTION COURSE

2.1 Taking Civil Rights as the Center Clue of Constitution

The constitutionalism that civil rights must be higher than the state power and the state power should guarantee the service of civil rights should be taken as the center clue of the teaching content of constitution. Therefore, the constitutional concepts such as the protection of civil rights and the limitation of the state power should be highlighted. The establishment of the socialist market economy system made democracy and the rule of law become the mainstream of the times, significantly improved citizens' awareness of their rights, and constantly made new demands for basic civil rights. The Chinese government signed the "International Covenant on Economic, Social and Cultural Rights" in October of 1997 and the "International Convention on Civil and Political Rights" in October of 1998, and ratified the "International Covenant on Economic, Social and Cultural Rights" at the 20th meeting of the Standing Committee of the Ninth National People's Congress on February 28, 2001. This means the Chinese government's recognition of the basic civil rights in the rational principles of constitution. Human right is the purpose of constitutional government; hence in the teaching of constitution citizens' constitutional rights should be the focus for highlighting the priority of civil rights. Firstly, the chapter of basic

civil rights and obligations should be set as the second unit of the constitution course teaching, between the first unit of constitution principles and the third unit of the state theory. This unit focuses on teaching the basic civil rights and emphasizes Chinese civil rights shall keep pace with the age and the world. In this way, the problems like lagging discussion of civil rights in several majors' parts of the current system of constitution can be rid of. Besides, the concept of civil rights should be introduced while teaching other chapters. For instance, the limitation of modern state power can be combined with teaching the power and mutual relationship among the state organs. Because power as the product of rights, its legitimacy roots in rights. As the authorized one, state organs are just the executor of the state power. As a result, civil rights should not be intervened and deprived illegally by any state organ, organization or individual; all state powers must exist and be exercised under the premise of being conducive to achieve the protection of civil rights. The emphasis on the partial content of civil rights in the teaching of constitution is helpful to cultivate students' sense of rule of law of actually protecting civil rights and preventing the abuse of state power.

The teaching structure of this part can be arranged as: the first section is the overview (includes the concept definition, characteristics, the subjects and classification of rights and obligations); the second is the historical development (includes the overview of historical development, the specific manifestation of the development of basic civil rights, the issue of human rights, the development of Chinese citizens' basic rights and obligations); the third is the features of basic civil rights and obligations of foreign constitution (include the value mode of rights and obligations, the features of the related provisions of early capitalism constitution, the features of the related provisions of contemporary and modern capitalism constitution, the features of the related provisions of constitution in socialist countries); the fourth is Chinese citizens' basic rights (include right of equality, freedom, democracy, and social rights), right of equality is explained from the three aspects of discrimination, special protection for the weak, and reverse discrimination, right of freedom is explained from the three aspects of personal freedom (taking the chinization of personal protection order system as the breakthrough point), freedom of expression (speech, press, assembly, association, parade, demonstration, appeal, etc.) and freedom of religious belief (state religion, religious special support and the separation of politics and religion, etc.), right of democracy is explained from the three aspects of the right to vote and to be elected, right of supervision, right of initiative and referendum, social rights will be interpreted from the three aspects of right of existence (includes problems of right to material assistance, the minimum living guarantee, social security system, etc.), the property right (includes the development course of the

theory of private property right, the conflicts and balance between public property right and private property right, legal restrictions of private property right, etc.), and the right to work (includes providing responsibility for job opportunities, freedom of selecting a job, right to rest, etc.); the fifth is the basic obligations of Chinese citizens (citizens' duty to maintain the unity of the state and ethnic solidarity, to abide by the constitution and the law, to keep state secrets, to take good care of public property, to comply with labor disciplines, to observe the public order, to respect the duty of social morality, to maintain national security, honor and interest, to defend the country, legally perform the military service and join the militia, to pay taxes legally, and citizens' other duties); the sixth is the features of Chinese citizens' basic rights and obligations (the Universality, realism, equality and consistency of civil rights and freedom).

2.2 Putting Emphasis on the Teaching of the Implementation of the Constitution

Governing the country according to law should first be governing the country according to the Constitution, practical implementation of the Constitution is the premise and foundation for China to realize the constitutional government and the rule of law. Understanding of the Constitution should not be merely on the text of the Constitution, apart from the due written constitution, the real constitution and the concept constitution between the two constitutions which realizes cycle should be more concerned so as to let students analyze the unfolding process of the Constitution and form the view of Constitution order. Therefore, the implementation part of the Constitution shall not be ignored owing to the lack of constitutional litigation cases in the practice of constitutional government in China. In China, the key to realize the constitutional government lies not in the formulation of the Constitution, but in the application and implementation of the Constitution. Implementation of the Constitution as one kind of law enforcement is the actual operation and implementation of constitutional norms and principles in the real world. It reflects the actual operation state after the formulation of the Constitution, and is the most basic form that the Constitution adjusts specific social relations. Its direct value objective points to orderly state of legal relationship expected by the constitutional subjects, that is, constitutional order. As to the arrangement of teaching content, the implementation of the Constitution should be paid more attention to, the relevant content can be taught as a chapter, in each part due law analysis should be deepened and relevant cases should also be introduced. There should be certain implementation procedures like other laws for letting students realize the Constitution is the fundamental law, and the Constitution needs application and implementation much more in order to cultivate students' ability to analyze the process.

The specific teaching structure of this part can be set as: the first section is the overview (includes the concept of the implementation of the Constitution, the implementation and realization of the Constitution, the sign and condition of the implementation of the Constitution); the second is the application of the Constitution (includes the concept, content, reason, principle and procedure of the application of the Constitution, the judicial application of the Constitution); the third is compliance of the Constitution (includes the concept, category of the compliance of the Constitution, citizens' and governments' compliance of the Constitution); the fourth is supervision of the Constitution (includes the concept of supervision of the Constitution, the application and supervision of the Constitution, the object, content, target and mode of supervision of the Constitution, unconstitutional sanctions, the history, current situation, development and improvement of the supervision system of the Constitution in China).

3. IMPROVEMENT OF THE TEACHING METHODS OF CHINA'S CONSTITUTION COURSES

The teaching method is a general term of the various ways taken by teachers and students to participate in teaching activities collectively for achieving the established teaching objectives (Zhu & Yi, 2003, pp.347-348). Reasonable selection and proper use of teaching methods is the key to teaching effect. The principal teaching method of Chinese constitution course is classroom teaching. There is always a relationship of subject and object between teachers and students, and all of the content and methods of teaching activities are carried out under the guidance of teachers. In the class, teachers are always accustomed to unfold the lectures in accordance with the basic principles of constitution and the structure of Chinese Constitution. The teaching practice of constitution in these years proves that mere content lecturing often makes students' comprehension of knowledge of constitution stay on the level of textbook and easily be far from the reality. Moreover, in the teaching process, students' attention will gradually decline. It is difficult for teachers to let the students maintain a very high level of attention in the teaching process (Personnel Department of the Ministry of Education, 1999, p.386). With such a teaching mode, although the teachers can ensure the consistency and continuity of teaching content on the theoretical system in the teaching process, they will lead to the lack of effectiveness. Former Soviet Union educator Babanski said: "one of the most important and also the most difficult problem in the maximum optimization procedures of teaching methods is to reasonably choose a variety of teaching methods and to achieve such a combination, that is, under this condition,

to obtain the best teaching effect in the limited time” (Personnel Department of the Ministry of Education, 1999, p.277). Hence, it is necessary to improve the teaching methods in order to stimulate students’ learning enthusiasm and creativeness.

3.1 Case Teaching

Case teaching of the constitution is a teaching method that teachers guide students to master the basic principles of the constitution through studying foreign judges’ judgment and national experts’ analysis on the constitutional cases. It aims to break through the traditional spoon-feeding teaching and to propose that Socratic Method should replace traditional classroom lecturing. The current innovation of higher vocational education mode and concept of law decides the inevitable choice that case teaching (mainly simulating case teaching) becomes the teaching reform of the constitution course (Deng, 2008). In terms of the general principle of constitution, it must be applied to social life after being formulated. Application is the basic form and condition of constitution enforcement, unapplied constitution is only the principles in the level of norms and cannot be transformed to norms in life. The constitution that can’t enter the actual level from due level does not have real vitality, as a result, for the sake of maintaining the vitality of the constitution, the constitution must be applied repeatedly through certain mechanism, the problems that occur in the practice must be solved for achieving the maturity and development of the constitution in the application process. By far, the direct efficacy of constitutional norms has become an international constitutional convention. But in China, because the application of constitution has not formed a system, the adaptation degree of constitutional norms is relatively low. Such a status quo has caused great difficulties to the selection and application of constitution teaching cases. Consequently, some constitutional cases can be introduced into the teaching process.

The suit of Marbury against Madison in 1803 in America can be first put in the lecture of constitution supervision problems to lead students to think “why the unconstitutional laws are not laws?” At the same time, “Qi Yuling case” can be quoted to let students think how the supervision system of the Constitution is constructed. Besides, in the teaching of basic civil rights and obligations, those cases that the public security bureau in Lanzhou “blocked” the reporter, examinees in Qingdao sued the Ministry of Education and height got discrimination in employment, the cases of Zheng Xueli and William Gerber can be introduced; in the teaching of state theory, the seed regulation in Henan, unlicensed children’s case in Hong Kong, deposit of the representative of National People’s Congress and twice selection of Yueyang’s mayor can be brought in for strengthening students’ understanding of the relevant

theory. In fact, these cases consist of deep legal issues like “the conflicts of constitution rights”, “the combination of reality constitution and written constitution” and “rightful procedure value of constitution”. Analysis of these cases and issues can let students have more intuitive understanding of the constitutional theory and discover profound theoretical basis and reality values of constitution. Quotation of typical and comprehensive cases can not only enrich the teaching methods of constitution and be easy to organize class teaching content and discussion, but also be helpful for students to enhance the understanding of abstract concepts by analyzing specific cases, to improve learning enthusiasm and then to obtain better teaching effect.

Meanwhile, selected constitutional cases should be reorganized for the teaching design. Generally speaking, most of collected cases and issues have tedious content and simple form. In order to unfold the cases in a clear and simple way in the class, details of the selected cases must be simplified in content and be recomposed in line with teaching requirements, in this way, the narrative approach will be more interesting and artistic. In addition, as freshmen have a sole knowledge structure and limited theoretical basis, the teachers should consider how to connect the selected cases and their learned knowledge. Whether to choose the way that only the teachers teach students or teachers absorb students’ opinions to let them join in the discussion? In general, after the teachers give a comprehensive and stereo introduction of the cases, they can organize group discussion and then evaluate on the basis of discussion; simultaneously, if the conditions permit, auxiliary attending activities with strong participation and practice can enhance students’ mutual exchange on one hand, and on the other hand can practice their ability to express. Teachers must comment on the cases after students’ analysis and judgment of the cases. The center of case analysis must be teachers’ comments, in conjunction with students’ personal understanding, and from students’ ways of analyzing issues. Since the students lack solid theoretical knowledge, they always analyze cases via intuitive and emotional understanding, which is easy to deviate from the basic meaning of the legal theory and lack of due “legal knowledge”. Therefore, it’s particularly important for teachers to guide students to get rid of emotional factor to analyze cases from the perspective of science of law. This means a higher request for a qualified teacher’s ability and level, hence teachers must enrich their knowledge and especially improve the theoretical level and the law cultivation, in this way, and they can improve the ability to analyze cases and to teach. Moreover, teachers must clearly make an analysis of cases, fully grasp the knowledge involved in cases and possess certain organizational and responsive capacity for controlling the class flexibly.

3.2 Discussion Teaching

Discussion teaching of constitution is a sort of effective method to realize the innovation of the interactive relationship between teachers and students in the teaching of the constitution course. It refers to that in the teaching process teachers and students carry on the analysis, dispute and summary with the link of one unit's teaching content and then acquire the truth. It is a kind of teaching method suitable for cultivating creative talents, originating from the ideas of the ancient Greek philosopher Socrates and Confucius in China. They usually discussed questions with students, but did not give them the complete answer. They made students to accept their ideas unconsciously by means of asking and refuting so as to enlighten students' thinking. Teachers need to properly lead students to think hard to debate and analyze teachers' questions and put forward new questions, for achieving the interaction between teachers and students and among students. Discussion teaching asks for teachers to be good at using questions to guide students and put forward some controversial and hypothetical issues as to the teaching content. They must also demand students to be bold in proposing practical or hypothetical questions related to the teaching content according to what they read or social reality and using the questions to further analysis. In terms of the reading and looking for materials before the class, in line with the listed books, students actively read, excerpt, think and even search new information, and in the class, they take part in the analysis and discussion, and actively come up with questions in accordance with what they read and think.

Constitution is related to significant theoretical issues like state system, civil rights and rational allocation of state power. In practice, the coverage of this course is broad, covering all aspects of the real life of every citizen and also major institutional problems of philosophy, sociology, political science, economics and other disciplines. By discussion teaching, the teachers or students develop topics in terms of important theoretical issues in the course of constitution such as the political party system, electoral system and human rights issues in China and foreign countries. According to the discussed topics, students read the teaching material, collect and analyze relevant material, develop their own discussion outline and then make a discussion around the discussed topics. The discussion can be done first in a group, and then between groups under the guidance of the teacher, and if necessary in the whole class. At last, the teachers or students make a summary of the discussion. The summary is an induction of the discussion content, which aims at letting students have an overall understanding of the intellectual framework of the discussion and making an analysis of students' advantages and disadvantages in the discussion, for letting students learn visible constitutional knowledge, system and principles, establish the constitutional faith and foster the constitutional idea via active participation and thinking relevant constitutional issues.

Discussion teaching is a teaching process which combines pre-course preparation, classroom teaching and after-course summary and is divided into three stages in the teaching of the course of constitution. The first stage is instructive reading. Before the commencement of each unit, teachers guide students to read some books about constitution and look for related information and materials. Firstly, teachers should collect some materials about constitution in accordance with the teaching content and send them to students. The selected teaching materials should be representative and contain multi-level ideas and thoughts of different schools, or once established case that influenced on important constitutional theory and principle like "the suit of Marbury against Madison". Secondly, teachers should make a multi-level book list and let the students read many books (include domestic and foreign codes of constitution, constitutional laws, constitutional conventions and precedents) to absorb all kinds of information. Lastly, teachers can provide related electronic resource category which includes computer databases, CD-ROM and network resource sites of laws and so on, for encouraging students to make use of advanced retrieval method of legal literature to actively search more relevant materials and information about constitution. In this stage, teachers only act as the "instructor", that is to guide students to take notes, make classified cards, use reference books of constitution, write book reports, correctly retrieve and read existing scientific research materials so as to make full preparation for the classroom discussion.

The second stage is interlacing classroom questioning and discussion, which is the key link of discussion teaching method. Taking questions as the link, the basic feature of this method is students' active participation in the discussion. The classroom questioner can be the teachers or students; both the teachers and students can ask questions till the end, and they can interlace questioning. The academic discussion in class is different from the "intense" debate in the court, mainly critically discussing, questioning, evaluating and exchanging the read and searched materials related to the teaching content of constitution. In the teaching process of this stage, teachers should play the role of an experienced "instructor" but not a pure "teacher" and create more free space for students to develop. While effectively controlling the theme and rhythm, teachers need to reflect their own high academic standards and a new way of thinking, encourage students to boldly question and demonstrate, and praise the students who can destroy the old and establish the new, even if the reason that supports their view is a little shocking or far-fetched, but as long as they can justify they should be encouraged.

The third stage is to summarize and write a summary report, which the further consolidation and thinking of one specific is teaching content of constitution. The comprehensive and systematic analysis and study of the

former two stages may elevate the sporadic and messy perceptual cognition of constitution to systematic rational cognition. Teachers can raise requirements for students with the form of homework or small paper, for the purpose of training and cultivating their habit ability to actively write summary. After they hand in the homework or the small paper, teachers should read in detail, and if necessary arrange time to give individual instruction and instructive analysis and demonstration in allusion to discovered issue in the summary or problems that are vague to students. In such a teaching process, students are the discussion subjects of the whole class, generally it is the students who discover, come up with and analyze questions and search for a possible solution. Teachers play the role of director in the whole process, and carry on the recessive control and guidance for the whole discussion process. Or teachers can put forward questions and let students analyze and discuss questions from various perspectives to look for the best answer, they guide and assist to carry on the discussion and try to create a positive discussion atmosphere which can stimulate students' active participation in learning.

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