

Study on Inspiration of Creative Thinking in Legal Education

Ye Ju^{1, a}, Qi Chen^{1, b}, and Wanchun Zhang^{1, c}

¹Faculty of Law, College of Applied Arts and Science, Beijing Union University, Beijing, China.

^ajuye@buu.edu.cn, ^bwltchenqi@buu.edu.cn, ^cwanchunzhang@139.com

Abstract

Creative thinking, which is influenced by internal factors (the way of thinking and personality, etc.) and external factors (knowledge and environment, etc.), is closely related to solving legal issues. Inspiration of creative thinking in legal education can design courses in the direction of solving legal issues and build thinking trace teaching in the aid of visualization tools.

Keywords

Legal education, creative thinking, inspiration.

1. Introduction

Ability of creative thinking is essential to solving issues. If the goal of legal education is to cultivate students to be a legal practitioner who can contribute to society, we need to train them to be a creative thinker. Recently, theories, such as negotiation and visualization tools, which are related to study and teaching on creative thinking has been developed. It is now important for legal education to apply these new theories in area of law so as to train and cultivate students' legal creativity. This article will discuss creative thinking from cognition and action perspective. It will then propose a better way to guide and cultivate students' creative thinking in legal education.

2. Analysis on Defining Elements of Creative Thinking

Creative thinking is a new way of combining or reorganizing known things in order to reach the expected object. It is an unusual and original idea that fits certain standard. In the area of solving legal issues or in the background of legal education, an idea that is inherent in certain areas could be a creative one. Creative thinking is exploratory. It is a process of rethink to habitual thinking method, which is risky. In the legal area, creative thinking is not a big creativity focusing on similar scientific area. It is a method of solving legal issues in certain area. To define creativity, it should include the following elements: (1) the main ability needed by creative practice in certain areas, including mastered knowledge and skills and special gift needed in this area, (2) possessing related skills, including cognitive skill, good working attitude, and enlightening skill of exploring new methods, (3) internal and self-directed motivation of fulfilling tasks.

3. Internal and External Factors of Creative Thinking

There are many conditions for motivating creative thinking. This article will only focus on analyzing internal and external factors. Internal factors focus on brain connection. It is reflected in personality and way of thinking. External factors touch upon external situation outside individual, mainly knowledge and environment. For cultivating creative thinking in legal education, not every factor is indispensable.

3.1. Internal Factors: Personality and Way of Thinking

3.1.1. Personality

Personality that is good for creative thinking includes open, perseverance, forgiveness, self-discipline, motivation, tolerance to uncertainty and affordability of risk, etc. These characteristics has different functions in cultivating legal creative thinking. In traditional law school, the characteristics of perseverance to study and tolerance to uncertainty are encouraged to students while others are not taken seriously. For example, although students are in a blank status at the beginning of studying law, their brain will soon be used to be filled with linear thinking. Also, students' optimism will be restrained by high competitive circumstances. Moreover, it is also a restrain for students who have high inner study motivation in schools that pay more attention on external elements, such as grades and ranking. Therefore, the function of personality is different in different environments.

3.1.2. Way of Thinking

When we are thinking or making decisions, we usually choose strategies with which we are familiar. Everyone has its own preference of thinking strategy. Once certain strategy can solve problems easily, our brain will rely on this strategy on and on. The more we rely on one strategy, the stronger the mind-set is. For example, when students are required to research in a certain database, they will be limited and constantly research in this database. In legal education, it is important to inspire students to think in various ways so as to cultivate creative thinking. For example, except for using analogy, it is recommended to encourage students to try legislative thinking which is to create new rules and process on the basis of breaking old rules so that students could have attitude of seeking for change and making progress.

3.2. External Factors: Knowledge and Environment

3.2.1. Knowledge Management

Expertise, to great extent, relies on mastered knowledge. Knowledge can comb and understand problems. It can also help the brain to build frame which is compared and organized through creative thinking. Solving legal issue needs to master both legal knowledge and skills of controlling process. However, legal education now pays too much attention on mastering knowledge which will hinder creation as too much professional knowledge will produce burden and students will have difficulty to free from inherent thought. In legal professional area, judges or lawyers may also has boredom after years of accumulation of knowledge. They might lose the ability of treating problems in new angle. It would cause much more serious mind-set if one keeps using knowledge in certain area. As for gathering and processing information, sticking to the old way of thinking would make it difficult to reach the expected effect. In order to solve problem of attaching undue importance to professional knowledge, many law schools are now trying interdisciplinary education system including general education. This allows law students to study professional knowledge of other disciplinaries and communicate with students from other majors which is good for breaking deadlock of inertial thinking and cultivating creative thinking.

3.2.2. Open Environment

Creative thinking asks brain to connect thoughts that are unrelated. It inspires original idea from subconsciousness. Inspiration of creative thinking needs to be guided by professionals under a relatively safe, free and various environment in one's heart. In setting of physical space, an environment which is informal, open and good for communication is also needed. In order to create free and unbiased environment, rules and authority of community should be eliminated. Or it would end creativity in the beginning. Also, variety has been proved to be able to increase creativity and strengthen the width and depth of thinking. The process of creative thinking is also a learning process in which professional mentors play a significant role. Mentors can provide support to students who are in the process of exploratory or frustrated

study, which can make students be much more optimistic during creative study. Closely follow and mimic mentors' act would further inspire students' creative thinking. Except for the above elements, it is also important to increase study environment outside campus, frustration education environment and environment of discussion class beyond grades so as to diversify teachers and students and increase guiding environment of professional mentors. These are all important elements of creative thinking environment.

Based on above analysis on internal and external factors of creative thinking, legal educators can explore ways of increasing creativity through scientific methods and design better ways of education which can be used in legal education.

4. Study on Course Design Theory of creative Thinking in Legal Education

4.1. Set Basic Standard Based on Students' Ability

First of all, creative thinking course design should set questions in appropriate level. The question set should require students to apply complex brain skill and certain cognitive strategy. The balance point could be found by observing whether students could find and solve issues individually in ways that are not too difficult. Usually, students should master all pre-knowledge and skills for solving issues. Or, the key point of study has to transfer from advanced training of brain skill and cognitive strategy to elementary training of rule application and problem solving. Secondly, creative thinking course design should not set questions outside students' ability. Setting questions outside students' ability would discourage students and make them lose motivation to solve issues unless students' thoughts and research is well guided and in the right direction. Teachers might believe mistakenly that setting questions beyond students' ability would inspire students' passion to challenge, which is a common mistake in legal education. Students would actually be much easier to give up such thinking training in such course design. Certainly, students' abilities are different, which should be considered separately in teaching. Thirdly, creative thinking course design should have inspiration guidance step-by-step. For example, teachers can guide students to divide problems into different tiers and solve one at a time. Such method has been proved to be useful for teachers to provide procedural guidance to students. Such theory explains the progressive process in dealing with legal issues in practice, i.e., confirm problem and goal, research facts, differential and evaluate issues, recognize and analyze routes, make plans and put them into practice. Except for the above three guiding principles, teachers should observe whether students' abilities of solving problems has been fully practiced in educating process. If one can apply these theories and skills into study, the goal of increasing students' abilities to solve problems flexibly would be realized step-by-step.

4.2. Center on the Combination of Theory and Practice

Cultivating problem solving ability should include a series of correlated legal skills which should be increased. For example, lawyers who handle cases need to go through research, negotiation, writing, defense, etc. One way of instructing these legal skills is to provide different skill theories to students. Skill theory is the concentration of certain skills' key features or the general standard of practicing such skills. It can guide practice effectively. Lots of legal skill theories is built on question-oriented rules. Easy to make consistence among goals, activities and evaluations is an advantage. In order to better combine theory and practice so as to reach consistence among goals, activities, and evaluations, it usually would take several times of question testing and screening. After each test, it is important to revise and summary questions and relevant theory so as to make them match each other better, and hence, it would be easier for students to understand. In practice of combining theory and teaching, several things need to be noted. Firstly, theory must come from real problem so as to provide basis that is much closer to practice for question design. Secondly, teachers should not conduct this kind of

education alone. They should keep in touch with experts and representatives from relevant area to review theory, question and design for the whole course. They should also arrange students to meet with experts regularly. Thirdly, teachers should have legal practice experience and apply them to teaching activities. In the U.S., every legal professor has legal practice experience. Only lawyers and judges who have rich experience can be teachers in universities. [1] The reason for this requirement is not only to ask valid question during class, but also to improve theory cultivation through practice so as to better communicate with students. In the U.S. class, question tests and students' performance can help teachers to identify which standards or rules are better. However, it would be difficult if teachers lack practice experience. Therefore, teachers' own practice experience plays a significant role in creativity cultivation class.

5. Building Thinking Trace Teaching with the Aid of Visualization Tools

5.1. Way of Visualize Thinking and Its System

Visualization tools use different skills to think and deal with information. It is not only a tool, but also a means to improve creative thinking. Law is a major of high application. Visualization tools change the focus of legal education from accumulation of conclusion to methods and process of making conclusions so as to improve students' thinking ability and teachers' teaching effectiveness. In traditional legal education, it is very common that students know relative law provisions, but do not know how to apply. When in practice, they do not even know where and how to start. This situation can be improved by using visualization tools. It is important to distinguish visualized thinking and legal thinking in teaching. Legal thinking is mainly used to distinguish subject's character, comb legal facts, and judge legal relationship, which is good for understanding basic facts. Visualized thinking is used to highlight necessary information and eliminate unnecessary information so as to show the most important part of the case. This can be done by using different colors to represent different parties and using solid line and dotted line to represent legal relationship. This thinking method would go through the whole case. Visualized thinking is used to explain things through visualized experience that outside logics. These things cannot be explained by words or languages. The design and application of visualization is a process of pursuing perfection. It is a tool that can better transfer thoughts and idea. Students can better comb their minds and experience how to apply legal knowledge to solve real problem in practice through visualized tools and therefore to exercise and improve their ability of legal thinking.

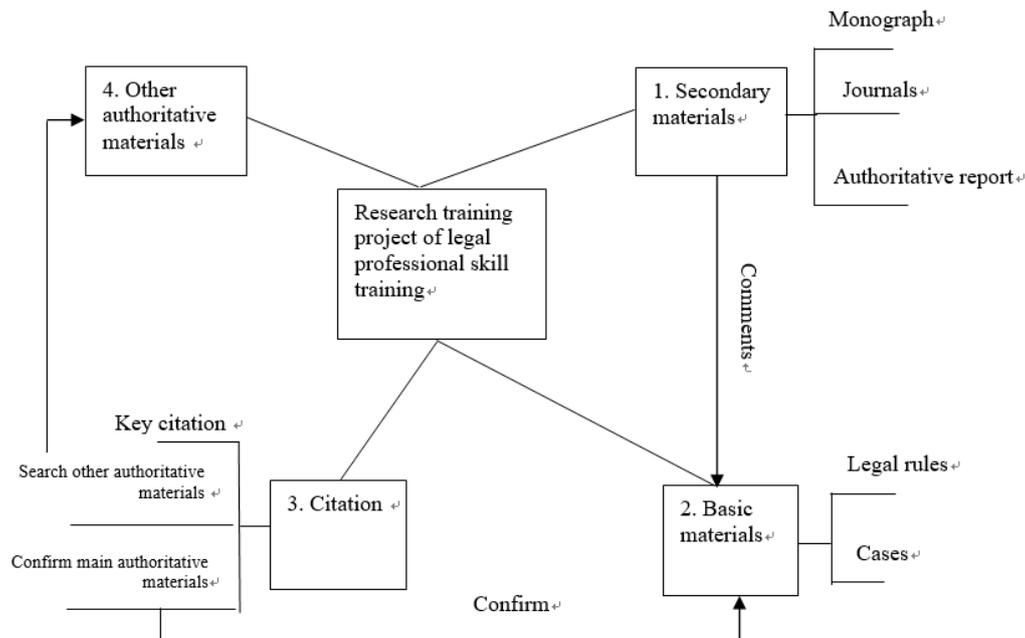
5.2. Explanation and Application of Mind-Mapping Theory

Mind-mapping is invented by British scholar Tony Buzan. It combines image thinking and abstract thinking together. It puts minds on paper by image and lines which highly improves the efficiency of study, thinking, and memorization.[2] In legal area which values the building of mind system, combing legal relationship, recording case progress, and managing individual knowledge can all be done by such tools.

Usually, mind-mapping is writing down words in brain randomly after a question has been asked and connecting those words in brain through lines. These words are related to the question and disordered. This thinking pattern can be explained by the way brain works. Under circumstance with no pre-defined logic defining words chosen method, brain can connect all kinds of words freely. After putting these routes on paper, brain will continue to find connections in different concepts with no coded way, and thus to form creative thinking in these connections.

Mind-mapping is an important tool for widening research idea and thoughts. It is a visualized demonstration of tree structure of brain idea. Generally, Mind-mapping put the main idea in center. It then radiates from the center in the form of branches. The branches are subsidiary

ideas. Each subsidiary idea then radiates sub-idea. Mind-mapping usually uses colors, images, and other visualized marks which can help students to understand the content quicker and improve their memory retention level. At display, mind-mapping can show connections and relations between each subject. Such radiative design can help widen minds and improve ability of comprehension and memory. Below is a simple research ability training mind-mapping related to legal professional skill training. By displaying the mind-mapping, it can help students to comb the basic idea and skeleton of the training and improve efficiency.



Mind-mapping can help students find connections between old knowledge and new knowledge which could help them to apply knowledge in a more flexible way in their future legal career. Many mind-mappings can be combined into a more complex one. It can show the research subject in full mappings and explain relations among each research. The invention of mind-mapping can better solve problems in legal education. It is good for breaking traditional thinking pattern, which is blocked, and forming teaching pattern that focus on students

Creative thinking has endless function in legal education. In the changing time, reformation of legal education needs to start from teaching thoughts and teaching methods. Legal educators need to give a bold try and to create new teaching routes. Young students should not be confined to classes, but to understand creation. What actually lacks in current legal education is education of creation, which is the high level spiritual support to legal education. Its lacking would turn legal education to a simple skill learning which does not need universities education. It takes a long time to cultivate creative thinking. Though couple courses would not have effects right away, these courses are necessary for guiding and training students' thinking habit. After serious thinking training, students themselves would have thinking paradigm. They would also have deep professional thinking spontaneously as their thinking ability has been improved. We propose to combine theory and practice. The intelligence of their combination includes not only creation, but also purpose. The purpose is to cultivate excellent legal talents in a creative way so as to promote effectively the development process of country under the rule of law.

Acknowledgements

This article is a teaching-type research result of Beijing Union University Optimization Plan of Strengthen University by Talents, Top Hundreds Plan, Study on Cohesive Mechanism between Civil Redress and Administrative Protection for Online Consumer (Project No., BPHR2017DS03).

It is also a research result of Beijing Union University Study and Reformation of Education and Teaching Project, Exploration of Teaching Reformation on Cultivation of Practical Legal Talents in Fusion of Law and Business Area (Project No., JJ2017Q003).

References

- [1] Ai Erken, Inspiration and Reference of American Legal Education to China under the Background of Ruling Country by Law, Hebei Law Science 2, 10 (2016).
- [2] Gao Yingwei, Application of Mind-mapping in Legal Education, Chutian Law 8, 84 (2014).
- [3] ROBERT F. BLOMQUIST. Thinking about Law and Creativity: On The 100 Most Creative Moments in American Law[J]. WHITTIER LAW REVIEW, 2008, (30): 120 .
- [4] JANET WEINSTEIN. & LINDA MORTON. Stuck in a Rut: The Role of Creative Thinking in Problem Solving and Legal Education[J], CLINICAL LAW REVIEW, 2003, (9):835
- [5] CLIFFORD GEERTZ. Local Knowledge: Further Essays in Interpretive Anthropology [M]. New York: Basic Books, Inc., 2000:245.