

LEGAL EDUCATION IN MAINLAND CHINA: A GENERAL PERSPECTIVE*¹

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I. Introduction

Legal Education in China in modern sense could be traced back to the end of 19th century in Qin Dynasty almost the same time when the modern Chinese higher education made the start. During the period between 1911 and 1949, China had suffered the Civil War and the War against Japan's aggression. Legal education as part of the Chinese higher education could hardly be carried on normally and constantly. And the random legal education at that time was characterized with European continental law via Japan, which is now most maintained in Taiwan region.

On October 1, 1949 the People's Republic of China was declared to be established by the Chinese Communist Party (CCP) who immediately commenced the so-called socialist legal education. During the 1950s and first half of the 1960s, legal education had been strongly influenced by that of the former Soviet Union and this is the first flourishing period of legal education since the CCP took over the state power in Mainland China.

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However, this good landscape did not last for long. During the period of “Great Cultural Revolution” (1966-1976), the country had been governed by the so-called dictatorship of the proletariat. All law colleges, faculties or departments had been stopped to run and the only exceptions are Peking University, Jilin University and Hubei University and each recruited less than 100 law students each year. Therefore, the nation-wide legal education had been nearly destroyed for those 10 years or so.

In the late 1970s, the new Chinese leadership with Deng Xiaoping as the head introduced the policy called “reform and opening up”². Since then, China’s higher education has undergone a profound transformation in the past three decades. In this context, the legal education has also been enjoying a booming period in its history. The most obvious development in the Mainland China legal education might be summed up in the following three aspects:

Firstly, the number of law schools and student enrolments has been increasing sharply, especially in the past eight years under the wave of universities’ enrolment expansions started in 1999. Secondly, the transition from elite legal education to mass higher legal education has become a trend. Last but not least, the changes and improvements in legal education system and quality are remarkable.

However, we need to acknowledge that China’s fast development of legal education is facing various challenges on different levels, just like the emerging issues of its blowing-up economic development. Therefore, Legal education in Mainland China is again in its crossroad. The following brief report is just to introduce and evaluate briefly the present situation in Mainland China legal education.

II. Organizational Structure and Its Reforms

Let me first illustrate how the higher education including legal education is organized and operated in Mainland China. Under the current education scheme in Mainland China, the higher education system consists of three levels of institutions: (1) universities directly run by the State Ministry of Education or jointly with provincial governments; (2) universities or colleges affiliated with the local governments but under the guidance of the State ministry of Education; and (3) universities or colleges run by private investors or jointly by public universities and private investors (in the form of joint venture).

The higher legal education used to be conducted in those comprehensive universities which are directly run by the State Ministry of Education³ or by provincial

2 Namely, making reforms internally and opening the doors of China externally .

3 Namely, Peking University, Renmin University, Wuhan University, Jilin University, Xiamen University, Nanjing University, Fudan University, Zhongshan University, Lanzhou University, Xiangtan University, Nankai University, etc.

governments⁴ and in those specialized colleges run by the Ministry of Justice. To be more specifically, it was only conducted in a few most prestigious or key universities and the five colleges of political Science and law⁵ which are directly belonged to the Ministry of Justice. Faculties or departments of law in those comprehensive universities have been stressing on the multiple uses or employment of their legal education, while five colleges of politics and law focused on juridical practice or employment as their features of legal education.

The commencement of nation-wide reform of higher education system in 2000 has brought a lot of changes to our legal education system. First, five colleges of political science and Law departed from their affiliation to the Ministry of Justice. One of them (that is, the Chinese University of political Science and Law) is transferred to the direct leadership of the Ministry of Education. Central South College of Political Science and Law is merged with Central South University of Economics which originally belonged to the State Ministry of Finance and transferred to the jurisdiction of the Ministry of Education.⁶ And the rest of them is decentralized and affiliated with the respective local governments.⁷ Consequently, in the following years, almost all the universities or colleges of politics and law are engaged in shaping themselves into comprehensive universities by adding new programs in different fields.

Secondly, With the implementation of decentralization and greater autonomic policies of higher education of Mainland China and inspired by the national strategy of rule of law put forward by the CCP and provided in the Constitution 1982, many specialized universities and colleges which are famous with programs in other fields, such as science and technology, telecommunications architecture, forestry, medical science, oceanic science, educational science, etc, have established faculties of law, or departments of law or law programs. At the same time, other local universities and colleges have also joined this expanding and proliferating movement of law programs.

Finally, newly emerging private universities and colleges don't want to be left behind this movement. In 2002, China's first Private Education Law was promulgated

4 For instances, Shanxi University, Anhui University, Liaoning University, Heilongjiang University, Henan University, Jiangxi University, etc.

5 Namely, Chinese University of Political Science and Law, Southwestern College of Political Science and Law, East China College of Political Science and Law, Central South College of Political Science and Law

6 Upon the transformation, the merged institution was renamed as Central South University of Economics and Law.

7 East China College of Political Science and Law belongs to Shanghai Municipal Administration, Southwestern College of Political Science and Law to Chongqing Municipal Administration and Northwestern College of Political Science and Law to Shanxi Provincial Government. And they are all renamed as university instead of college one after another.

and it has encouraged to set up their own law faculties to go with the stream.

As a result, it seems that there is no university or college without law programs in present Mainland China. According to the statistic of the Ministry of Education released last year, China had more than 200,000 full time students studying for bachelor's degrees in law at nearly 600 universities⁸, not including those in private universities or colleges in the form of joint ventures. In addition, there are another 200,000 postgraduates pursuing master or Ph.D of Laws in the country.

III. Degree Regulations and Admissions

The curricula of higher legal education in China are divided into undergraduate education and postgraduate education. Educational institutions need to be accredited by the Ministry of Education to confer degrees and diplomas on students.

Generally speaking, there are three levels of degree in law studies: Bachelor's degree of law, Master's degree of law and Doctoral degree of Law. The basic length of schooling for undergraduate study shall be four years. There have been two types of master of law programs: one is the degree of juridical science from two to three years,⁹ the other is named Juris Master (JM) for 3 years which started in 1996 and only a certain number of faculties of Law are qualified to open. Originally there were only eight universities or colleges of law entitled¹⁰ and now 78 institutions have been authorized by National JM Teaching Guidance Committee. Candidates of Master of Juridical Science are mainly recruited from bachelors of law holders (of course also bachelor holders of other disciplines), while JM students are roughly half from bachelor holders of non-legal discipline and half from bachelor of law holders who must be already a member of the juridical community (judges, prosecutors, lawyers or law-related public servants) at least for two years. As for Doctoral degree, the schooling might be various with three minimum to five years or even longer. It depends on the doctoral candidates themselves because some are full time students and others pursue their doctoral degrees on post.

Under the admission system of higher education in China, students are required to pass the entrance examination both for undergraduate or postgraduate studies. The entrance examinations for bachelor of law are state-wide examinations. The exam for

8 *Should Law Educational System Change?* Chinadaily.com.cn October 10 of 2006, <http://www.lexisnexis.com/us/lnacademic/search/homesubmitForm.do>

9 For a long time, all masters programs in Mainland China had been fixed for 3 years. In recent years, the Ministry has encouraged 2 years, at same time shown no objections to those insisting on 3 years. So, it totally depends on regulations of each higher educational institutions.

10 Namely, Peking University, Renmin University, Wuhan University, Jilin University, University of Foreign Trade and Economics, Chinese University of Political Science and Law, Southwestern College of Political Science and Law and East China College of Political Science and Law.

master of juridical science is nation-wide for courses of foreign languages and politics and each university could set up its own exams for specialized courses related. J.M. entrance exams are conducted jointly by those authorized universities or colleges which could arguably be defined also a kind of nation-wide exams. In terms of admission for doctoral candidates, universities enjoy the right of independent recruitment. Entrance exams for undergraduate programs are basically written ones though university might organize oral exams for recruitment of certain specialties. However, the entrance exams for all master and doctoral programs are required to be two phases by the State Ministry of Education, namely written phase and oral phase. In recent years, the Ministry has stressed the importance of oral exams and the scores of oral exams could account 40 % to 60% of a candidate's total scores, especially for the entrance exams of doctoral programs.

In addition, the state also practices self-taught higher education examination system and offers on-job postgraduate studies to students with equivalent education level in all field studies. Students having passed the written examination and the verbal interview will be issued with corresponding certificates of their study.

IV. Teaching Operation

1. Teaching guidelines and Course descriptions

According to the Higher Education Law of the People's Republic of China, higher curricula education should meet the following basic standards for all universities and colleges in the land:

Undergraduate education should enable students to systematically master the basic theory and knowledge necessary for the respective discipline and specialty; master the basic skills and related know-how necessary for the respective specialty and acquire initial capability for the practical work and research work in the respective specialty.

As for postgraduate education, apart from mastering solid basic theory of the respective discipline, Master's degree education should enable students to master systematic specialty knowledge, corresponding skills, techniques and related know-how, and acquire capabilities for the practical work and scientific research work of the respective specialty. Whereas Doctoral education should enable students to master systematic and in-depth specialty knowledge and corresponding skills and techniques, and acquire capabilities for independent creative research work and practical work of the respective discipline.

Under the general guidelines in the Chinese Higher Education Law above, the Legal Teaching Guiding Committee of the Ministry of Education¹¹ set up. fourteen

11 It consists of about 45 members who are elected from legal educational institutions and they are all rectors, vice rectors, deans or distinguished law professors. It functions as an advisory for the State Ministry of Education for bachelor of law programs throughout the country.

core courses of bachelor of law programs and respective syllabuses which are compulsory for each legal teaching institutions in the land, namely, Legal Theory, Constitutional Law, History of Chinese Law and Systems, Administrative and Administrative Procedural Law, Civil Law, Civil Procedural Law, Commercial law, Economical Law, Criminal Law, Criminal Procedural Law, Intellectual Property Rights Law, Public International Law, Private International Law and International Economic Law. Recently, another two core units- Environment law and Labor and Social Security law were added in to this long list, which reflects the growing demands of social security and environment protection in China nowadays.

2. Teaching method and its evolution

To a large degree, Chinese legal education inherited the continental law tradition. For a long time, lectures are the major teaching methods in Chinese universities and professors used to focus more on theoretical analysis rather than resolving practical issues. Fortunately, with the establishing of judicial practice bases over the past decades in China, educators have been paying more attentions to practice training of students. Lectures interpreting theory issues through analyzing real cases in class become more and more common now.

As for the practical training, students in Chinese universities are required to do practice work for around three months in the last academic year. Students major in law usually complete their practicum study by attending field works in different level of courts and public prosecutions or private law firms. At the end of the practicum study, students are required to deliver a practice report, which will be counted for 4-6 credits.

Last but not least, since the Ministry of Justice's first introduction of "legal aid" in its Lawyers' Professional Morality and Professional Discipline Standards in 1993, legal aid has always been emphasized as an important component of the overall project of implementing the rule of law in China. In recent years, clinical legal education programs, which are originally financed by Ford Foundation and with the help of some American law schools, have become popular in the Chinese law schools. The goals of this program are not just to build up students' skills in practical work, but also encourage students' commitment to public service and fulfilling some of China's legal aid needs.

3. Textbooks and teaching materials

The textbooks and supplementary teaching materials used in legal education in China are mainly from four channels as follows:

Fist of all, textbooks especially of those fourteen courses are uniformly published by the Higher Education Press affiliated to the Ministry of Education. The editor-in-chief of each book are decided by the Legal Teaching Guiding Committee of the Ministry upon the recommendation by universities and colleges or applications



from professors themselves. These textbooks are usually used for a round of five years. They are recommended by the Ministry, but universities and colleges have their own rights of making choices. So they might be called quasi-official textbooks.

Another kind of semi-official textbooks and supplementary materials were originally organized by the Ministry of Justice and Published by the Law Press which is affiliated to that Ministry. The editors-in-chief and authors of these textbooks were mainly from those five colleges of political science and law and their uses were also mainly recommended for these colleges. Since the transformation and decentralization of the Chinese higher education starting in 2000, the Law Press has continued to republish regularly these textbooks on its own initiative.

The third type is those textbooks and materials organized by some key universities or colleges themselves. They are usually marked as textbooks series of the specific university or college and published by the respective university or college press. The editors-in-chief and other compilers are almost exclusively their own faculty members. Since these textbooks are specific university-featured, they are of special importance especially for those selective courses.

The last sort of legal textbooks might be called privately compiled since they are either on professors' own initiative or on the initiative of presses. Compared with textbooks mentioned above, they might be of limited usage on the surface. As a matter of fact, these self-initiated books are of no less influence than those official-organized ones because editors-in-chief (sometimes only one editor) are key figures in the Chinese legal education (rectors or distinguished professors) and they are capable of promoting the use of these books with their privileges and prestige.

V. National Judicial Examination and Employment

In recent years, bachelor of law holders have been feeling more and more difficult to find appropriate jobs. Since master and doctoral degree holders are more welcome in the Chinese human resource markets, an increasing number of bachelor of law holders pursue postgraduate studies thus making entrance exams for master of law programs and subsequent doctoral programs of law as very competitive as employment markets.

Law graduates, if they choose to work in the Chinese legal community, have to pass two national exams: the National Judicial Examination (NJE) sponsored by the Ministry of Justice and National Civil Servants Exam (NCSE) organized by the Ministry of Human Recourses. The only exception is to become a lawyer who only needs to pass the former exam. In beginning years, the passing rate of the NJE is controlled to be very low and only 8 to 9%¹². In the past two years, the figure

12 <http://www.sifa600.com.cn/2006/1-9/03337.htm>

is raised to about 14% in 2005¹³ and 12% in 2006 respectively, though being still low compared to the dramatically increasing number of law graduates and the NJE takers. Taking into consideration of the wide gap in economic and social development between the eastern and western regions of China, each year the passing score could be lowered down in certain scale for western exam takers.

A survey conducted by Peking University shows that young people graduated from law schools prefer to work in private sectors rather than public sectors¹⁴, but the private sector job markets are neither optimistic. According to a study by the All-China Youth Federation and Peking University, 62% of graduates with bachelor's degrees in law failed to find jobs in 2005¹⁵. And the employment rates of graduates majored in law ranked as second last among all specialties in 2006.

VI. Conclusion: Fast Development but Increasing Challenges Ahead

For the past three decades or so, it is definite to conclude that legal education in Mainland China has experienced a process of quick restoration to ever-fast development in its history. These astonishing results so far reached are not only in terms of the dramatic increasing quantities of legal educational institutions, law students and graduates, academic staffs, textbooks, monographs and research papers and legal teaching and researching facilities, but also in management aspects such as establishment and improvement of legal education advisory and supervisory system, regulation of legal degrees and their authorization, admission system, teaching assessment mechanism, and so on. All these achievements are compatible with the sustained political stability, rapid economic growth, social development and promotion of rule of law in the country through out the years.

However, it is becoming more and more obvious that the Chinese legal education is confronted with ever-increasing and new challenges just as some of its challenges in political reform, way of economic growth, social and environmental pressures. Among various issues to be dealt with in the Chinese legal education, I am here only figuring out the following three points for special attention:

In the first place, the universities' dramatic expansion of faculties (or departments) of law and law students enrolment in the past eight years have threatened the legal educational quality. In recent years, there is a tendency to seek for big scale of education in China. Those colleges have tried every means to

13 http://news.xinhuanet.com/society/2005-11/18/content_3797149.htm

14 Suli, *The Challenge and Opportunity of Legal Education in Present China*, Feb of 2006, <http://cjin.lib.hku.hk/kns50/detail.aspx?QueryID=19&CurRec=17>

15 *Should Law Educational System Change?* Chinadaily.com.cn October 10 of 2006, <http://www.lexisnexis.com/us/lnacademic/search/homesubmitForm.do>

change their names into universities and those universities or colleges which have no tradition of legal education have strived to set up faculties of law. As a result, every university and college, even a science and technology-oriented university is busy building up their own law faculty, regardless of its shortage of academic resources and minimum teaching facilities. As a further consequence of this, the number of law students enrolled and graduates have increased a great deal. A more profound negative effect of this fast expansion is that there is less and less guarantee for the teaching quality. It is further worried that such a dramatic expansion of scale has been already extending to master degree of law and doctoral degree of law programs.

Secondly, the negative impacts of fast proliferation of Juror's Master (J.M.) have so far been neglected by the central government. The JM was said to borrow from the experience of American JD programs, which recruit students with bachelor degrees of other than law and are aimed at producing high legal expertise with compound structure knowledge. Thus, the J.M Program is basically courses-oriented (14 compulsory courses), though degree thesis is also required (its standard is lower than traditional master of law program). Since the quotas for the J.M. recruitment are more flexible and tuition is much higher than the master of juridical science program, universities and colleges have tried their efforts to be authorized to open J.M. Program. And once they are authorized, they would strive for recruiting as more students as they can so as to make more money and win additional subsidies. As a result, J.M. Program is more and more profit-oriented, not to mention the teaching quality.

Last but not the least, as consequence of the two phenomenon above, plus the double exams for access to juridical community, the lower and lower employment rate is becoming a serious problem for the law graduates in China. There must be counter-measures adopted by the central government, such as strict implementation of access of setting up law specialty, regular assessment of legal teaching qualities and cleaning-up of unqualified legal educational units, adjustment of JM programs, etc. Therefore, the further reforms of the legal education in the Mainland China are emergent to some extent and much to be desired.



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