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Clinical Legal Education and the Reform of the Higher Legal Education System in China

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Abstract

This Article presents an overview of the higher legal education system in China: its structure, purposes, teaching methods, and problems. The Article suggests ways to reform China's higher legal education system, including clinical legal education, one of the new practical teaching methods that has been used by many law schools in China with promising results.

CLINICAL LEGAL EDUCATION AND THE REFORM OF THE HIGHER LEGAL EDUCATION SYSTEM IN CHINA

*Mao Ling**

I. INTRODUCTION

The reforms initiated at the end of the 1970s not only led to rapid growth of the Chinese economy, but also made building a modern legal system and higher legal education system important to the whole society. From the very beginning of China's efforts to strengthen its legal structure, the success of building a true legal system and a rule-of-law society has depended significantly on having a large number of highly-qualified law professionals. As an old saying suggests: "The legal rule itself is not sufficient to make it (keep justice and social order)." That is to say, if there are only legal rules without highly-qualified law professionals, the rule of law is like a castle in the air. Based on this understanding, great attention has been paid to higher legal education, particularly regarding the establishment and development of a modern legal education system in China.

Since 1978, in almost thirty years of building a rule-of-law society in China,¹ the higher legal education system has played a significant role, making great progress. Nevertheless, many problems remain, especially in terms of goals and teaching methods. Therefore, it has become imperative to reform China's existing legal education system in order to meet the exigencies of rapid economic growth and strong public demands for access to justice.

This Article presents an overview of the higher legal education system in China: its structure, purposes, teaching methods, and problems. The author suggests ways to reform China's

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1. The present legal education system in China commenced in 1977 when Chinese universities began to recruit students by National Entrance Examination for Universities after the end of the Great Cultural Revolution in 1976.

higher legal education system, including clinical legal education, one of the new practical teaching methods that has been used by many law schools in China with promising results.

II. HIGHER LEGAL EDUCATION SYSTEM IN CHINA

China's legal education has a long history, which can be traced back to the first unified written law (*Dà Qīng Lǜ*) in the early Qing Dynasty. In the late nineteenth century, with the introduction of Western law, a modern legal education system was established in China and developed rapidly in the first half of the twentieth century.²

The existing legal education system, established with the founding of the People's Republic of China in 1949, has experienced a tortuous journey.³ It is the result of a thirty-year effort to restore, develop, and reform the legal education system. Thus far, the new Chinese legal education system encompasses many forms, levels, and channels of legal education and training.⁴ In that system, higher legal education is undoubtedly the

2. The first national law school in old China was named The Legal-Political School and was founded by the Qing government in 1907. Up to 1909, there were forty-seven law schools with 12,282 law students. The rapid development of the legal education provided meant that more legal professionals were qualified for positions in judicial and governmental agencies.

3. Professor Wang Weiguo once addressed this issue in his article, *A Brief Introduction to the Legal Education*, as follows:

In early 1950s, as a result of merger and reorganization of the law schools left from the old age, a new system of legal education was initiated, which was strongly influenced by the Soviet model. The enrollment of law students was 2,823 in 1956. Then, responding to the political campaigns, the development of legal education was restricted. Anyhow, in 1965 there were still nine law schools with 4,144 on-campus students and 857 graduates. During the Cultural Revolution (1966-1976) almost all the law schools were closed and dissolved, with only two of them survived. In 1971, only the law department of Peking University and the Law Department of Jilin University were allowed to continue to exist, but they could only offer political training to cadres and governmental employees engaged in "law" enforcement and administration while the selection of students mainly on their political merits. In 1976, the legal education was at its last gasp—merely 49 law students graduated and 410 in campus and virtually no law courses were provided.

Wang Weiguo, *A Brief Introduction to the Legal Education in China*, <http://www.aals.org/2000international/english/chinaintro.htm> (last visited Nov. 28, 2006) (presented at the Conference of Legal Educators, May 24-24, 2000).

4. So far, apart from higher legal education, integrated legal education system in China is composed of vocational, self-study, and continued legal education through correspondence, radio, television, multimedia, and other long-distance means, spare-time courses.

principal part and is the main topic of this Article. This Section summarizes the higher legal education in China, mainly from the perspectives of its institutions, goals, and teaching methods.

A. *Higher Legal Education Institutions in China*

The rapid development of the higher legal education system in China is clearly demonstrated by the current number of law schools and enrolled law students. According to the official statistics of 1998, there were 214 universities that offered legal education among the more than 1,000 universities in China. At that time, there were approximately 80,000 students studying law, comprising 2.5 percent of all students at higher education institutions. The 2001 statistics show approximately 389 law schools or law departments in China capable of providing legal education to about 170,000 law students.

In terms of the institutions that provide full-time academic higher legal education and training to university students in China, there were once four types of universities capable of granting LL.B, LL.M, or LL.D degrees:⁵

- universities or institutes of political science and law under the administration of the Ministry of Justice;
- law departments or law schools at the comprehensive universities under the administration of the Ministry of Education;
- law departments at universities subordinate to other central ministries or commissions;
- law departments or law schools at universities subordinate to local governments.

The first two groups played a leading role in legal education. According to the 1986 statistics, fifty percent of all on-campus students, fifty-seven percent of all full-time teachers, seventy percent of LL.M awarding units, and seventy-five percent of the LL.D awarding units came from institutions in these two categories.

Since 2000, there remain only two types of law schools: those under the administration of the Ministry of Education, and those under the administration of local government. This is a result of the State Council's campaign to merge universities in

5. Wang, *supra* note 3.

order to build the “Powerfulness plus Powerfulness” universities, as well as to make full use of resources.

B. *Goals of Higher Legal Education in China*

Chinese higher legal education focuses on a knowledge-centered education model rather than a skill-oriented education model. Thus, law students lack the capacity to apply legal knowledge to resolve practical problems, and the ability to think creatively. Thus, there has developed heated and serious discussion among Chinese legal academics about the proper goals of higher legal education. Generally, academics propose three different goals: general high education or “academic” education, training legally outstanding persons, and legal professional education or training.

1. General High Education or “Academic” Education

Some legal educators and professors believe that legal education in China should provide quality education for all law majors, or that law schools should be research institutions that train scholars and law specialists in legal theory and doctrine. The type of education envisioned by proponents of this view is referred to as “academic” education. As a part of modern general university education, these proponents believe that legal education should also train legal professionals with a sense of equality, justice, and fairness.

This idea was widely accepted in the first decade after the Cultural Revolution, when the legal system lacked practitioners working for judicial institutions, law enforcement departments, or legal education institutions. To re-supply the paucity of legal professionals resulting from the crash-down of 1966-1976, the goal of early legal education was simply to train future law practitioners or law teachers in social justice, social responsibility, legal theory, and systematic legal knowledge. It is safe to say that providing “general high education,” or “academic education,” during that period built a necessary and firm foundation for the practice of law and the existing legal system. Most legal professionals and law professors, who are now making great contributions to the rule-of-law process, are the products of this type of legal education.

2. Training Legally Outstanding Persons

Some scholars and experts believe that the locus of legal education in China should be to imbue the “legally outstanding persons” (*Falù Jīnyīng*) with a great amount of legal knowledge and high standards of professional ethics. They suggest learning from the educational systems of other countries, particularly Japan’s model of fostering “outstanding legal professionals.”⁶

The idea of training “legally outstanding persons” is the result of strong public demands in the 1990s to combat judicial corruption and court defects at the lower trial level, including litigation delays, high litigation costs, and insufficiently qualified judges. Legal education is deemed to be an effective means to solve those problems and to meet social needs. Thus, these scholars strongly suggest that Chinese legal training foster outstanding legal specialists who are expected to have vast legal knowledge and high standards of professional ethics.

3. Legal Professional Education or Training

Some scholars believe the mission of Chinese legal education should be to provide professional education or training to produce students who are qualified legal professionals. As future judges, lawyers, and prosecutors, students should learn how to resolve all complicated disputes and safeguard justice in order to meet the needs of social, economic, political, and cultural development in China.

This idea developed from China’s thirty years experience with the rule-of-law process and the rapid growth of the domestic and international economy, and especially the enlightenment of the Western legal education system. In the context of legal system reform, including the legal education system reform, learning from the experience of Western countries has been greatly encouraged and has gained the recognition and approval of the government.

As a matter of fact, the goal of legal education is an historical issue. It has varied over time, in relation to China’s traditional legal culture, the social and political ideologies of the day, and the influence of Western countries. Thus, the different

6. See Lingyun Gao, *What Makes a Lawyer in China? The Chinese Legal Education System After China’s Entry Into the WTO*, 10 WILLAMETTE J. INT’L & DISP. RESOL. 197, 217 (2002).

ideas about the goals of legal education result from changing situations in China.

C. Legal Teaching Methods Applied in China

Teaching methods in China's law schools are closely related to the State goals of legal education. To a certain extent, the goal of legal education determines not only what law students should experience and what law professors will teach, but also the types of effective teaching methods that should be applied. Our law faculty pursued the most effective teaching methods from the very beginning of legal education in China.

The general principle of teaching in China's law schools is a "combination of theories and practice": law professors should teach students not only "what (the law says)" and "why (the law says so)," but also "how (the law should be applied)."

China, a civil law country, uses teaching methods different from those applied in most law schools in common law nations. China bases its legal education on professorial lectures and written examinations, which are more suited for the mastery of complicated written statutes. In short, the features of legal teaching methods in China can be summarized in three points: teacher-centered rather than student-centered; knowledge-oriented rather than skill-oriented; lectures on content and logical reasoning rather than problem-solving and creative-thinking.

1. Lectures on Contents and Logical Reasoning

Modern legal education in China has long been influenced by the civil law tradition, including Germany's conceptualistic method.⁷ Because Chinese law is basically written law, concept explanation, and deductive reasoning are still the basic teaching methods widely used in the classroom. Customarily, professors tend to start by introducing and explaining concepts, theories, and certain systems, and then try to illustrate the underlying key points by commentary and analysis of legal theories.

Increasingly, professors like to apply a comparative method, introducing foreign legal systems to deepen students' understanding of certain systems, to convey valuable experiences from

7. *See id.* at 225.

foreign countries, and to improve the ongoing reform in China by comparison with other legal systems.

2. Socratic Method

Chinese law professors focus their teaching on conceptual and logical methods, while being aware of the importance and necessity of using the elicitation method—the dialectic of inquiry. Instead of burying them with lectures, professors inspire their students by the exchange of ideas through questions and discussions in class. Increasing numbers of professors turn class into a discussion by asking questions to arouse the interests of students and to elicit their active and creative thinking.

3. Study of Cases

The case method is widely used by law professors in China. Whenever teaching a legal theory or legal system, professors choose a typical case—especially new or arguable cases—to illustrate how to analyze the facts and the law or theories to be applied. The systematic method of learning to read case facts, collect and analyze factual and legal issues, apply law to the case, and find a solution to the dispute is not only used in legal teaching, but also in examinations. This method is successful because students enjoy discussing cases in class.

4. Moot Court

Compared with other methods, moot court is quite complicated. With increasing attention being paid to the practical legal teaching program, however, law school students have more opportunities to experience moot court, mainly during moot court competitions. Students are divided into different groups with various assignments and have the chance to develop important skills, including the ability to communicate effectively, think analytically, understand key legal principles, and construct sound legal arguments. Under the guidance and supervision of professors, each team of students works together to spot issues, analyze facts, draft documents, and construct legal arguments. The groups prepare collectively and elect their representatives to present their arguments before the court.

III. *PROBLEMS AND REFORM OF LEGAL EDUCATION SYSTEM IN CHINA*

A. Problems

During the past thirty-year reconstruction and development, the established modern higher legal education system in China has increasingly matured. With social development, modernization of the rule of law, and increased public awareness of more effective legal education methods, however, many problems still exist that prevent the Chinese legal education system from progressing.

The first problem concerns the goal of legal education. The goal of legal education determines the courses that will be taught, the teaching methods that will be employed, and the skills that law students will develop. For a long time, Chinese higher legal education has focused on the knowledge-centered education model rather than the skill-oriented education model. This focus has produced many problems.

For instance, one result of the knowledge-centered education model is that only theory-centered courses are offered, instead of skill-centered courses.⁸ Thus, law students lack the capacity to apply legal knowledge to resolve practical problems, or to think creatively. Moreover, LL.B students in China differ from those in some common law systems because they do not have prior degrees. Knowledge-oriented curricula only offer them the chance to learn legal and vocational knowledge and, as a result, Chinese law graduates may lack the ability to understand the society and to solve social problems. A qualified legal professional should understand both the science of law and the science of society.

In Western law schools, one goal of legal education is to provide professional training. In addition to numerous legal courses, such schools offer a wide range of other courses, includ-

8. According to the teaching plan of the Ministry of Education, China's higher legal education institutions classify the law courses or curriculums into required and selected courses. The Superintendent of the Department of Education has confirmed fourteen required courses (known as core courses) for LL.B students, including Jurisprudence, Chinese History of Legal System, Constitution, Civil Law, Commercial Law, Economic Law, Criminal Law, Civil Procedure, Criminal Procedure, Administrative Law and Administrative Procedure, Intellectual Property Law, Public International Law, Private International Law, and International Economic Law. This provision is now criticized because it gives universities very limited autonomy over course setup.

ing economics, philosophy, sociology, anthropology, ethics, and psychology. Their success provides a good example to learn from and to follow. Therefore, it is significantly important that law schools in China first determine the goals to commit to. They must then decide how to provide a wide range of courses, in addition to the many specialties that will help young practitioners meet the challenges of economic globalization, and bolster China's access to the World Trade Organization ("WTO").

The second problem facing Chinese law educators is that effective, skill-oriented, and student-centered teaching methods are not fully developed or applied. As noted above, the traditional knowledge-oriented goal of legal education, to some extent, prevents law professors from applying those skill-oriented and student-centered teaching methods. As a matter of fact, the problems confronting law graduates are due in part to the knowledge-oriented teaching methods. Without enough practice and training in legal professional skills, almost half of law graduates find themselves unprepared when handling real cases, despite being familiar with legal theories, legal reasoning, legal issue spotting, legal writing, and classroom discussion.

Legal teaching methods are closely related to the goal of legal education. Uniting theory and application, legal education requires teaching students how to learn and use law, and teaching them to solve problems practically.

B. *The Way to Reform*

Reform is customarily regarded as the most necessary and effective measure to solve problems. As a basic institution that provides legal education, higher legal education should keep pace with economic growth and development in China. Reform of the higher legal education system in China is a comprehensive program and campaign, the full and complete discussion of which is impossible in one essay. Instead, the following Section proposes several steps to reform both legal education goals and legal teaching methods.

1. The Way to Reform the Goal of Legal Education: Ideology and Principles

Three guiding principles should be adopted in order to reform China's existing higher legal education.

First, China should build the basic ideology of respecting the rule of law. Legal education is the most effective and efficient way to do this. Throughout history, China never followed the notion of the rule of law. This Western-originated concept was initially considered and accepted within China in 1976. In the past three decades, the rule of law has gradually taken root in society, and the public has gained more awareness of it; but it still has a long way to go. Essential goals of China's higher legal education should be to train law students with independent personalities who embrace the supremacy of law and human rights; who resist any power and social pressures; who have a strong sense of fairness, justice, and social responsibility; and who have a sincere commitment to the legal profession, devotedly upholding its ethics. Without this basic ideology, legal education is like "climbing a tree to catch fish"—a fruitless approach.

Second, Chinese legal educators should encourage students to be open-minded. Modern legal education must confront the challenges of economic globalization with an open and far-sighted vision, guiding China's reform toward modernization and civilization. Chinese law students should learn both their own and Western legal systems, especially the Western notion of the rule of law.

Third, legal educators should explicitly keep legal professional training as the goal of higher legal education. Equal attention should be paid to knowledge-oriented teaching and skill-oriented training. Professional training should first, ensure that students are exposed to theoretical and critical perspectives on the law by facilitating their understanding of the ideology and spirit of the law, and the way of legal thinking; and second, provide practical skill-training in advocacy, legal research and writing, problem solving, alternative dispute resolution, professional ethics, and personal integrity.

The current situation in China requires that our law students be trained as highly qualified legal professionals. A famous Chinese law educator, Mr. Sun Xiaolou, once defined a qualified legal professional as "both having knowledge of law, humanism and sociology, and having legal professional ethics."⁹ Only those who are provided with training in professional skills and ethics are likely to be qualified legal professionals.

9. See SUN XIAOLOU, *LEGAL EDUCATION* 13 (China Univ. of Econ. & L. 1997).

2. The Way to Reform Legal Teaching Methods: Practical Legal Education

The legal teaching methods that should be developed and applied in law schools are currently topics of heated debate in China. Although there is a common theoretical understanding that professors and institutions should pay equal attention to knowledge-oriented and skill-oriented legal teaching, the latter is not frequently used. This discrepancy stems from a lack of understanding of and limited experience with this type of teaching method. Accordingly, "practical legal teaching" (*Shi Jian Xing Fa Xue Jiao Yu*), which focuses on learning from practice, is greatly encouraged and is considered a way to reform.

Practical legal education emphasizes the skill-oriented and student-centered legal teaching method, which is to train students to learn how to practice law: how to find law, analyze law, interpret law, and use law in the process of dealing with real cases.

There are three steps to strengthen the application of the practical legal education model.

First, improve the two traditional skill-oriented teaching methods: the study of cases and moot court. To reconstruct these two methods, the new idea of students-centered method must be incorporated. Students should play a leading role at every step, with law professors acting only as supervisors and guides. Moreover, considering that these two methods consume comparatively more time, energy, and financial resources, law professors should be encouraged to develop efficient and effective ways to apply them to the teaching and learning process.

Second, the traditional externship prior to graduation program (*Bi Ye Shi Xi*) should be reformed. As a mandatory period of practical learning, the primary purpose of the externship program is to allow law students to put to use the basic legal knowledge previously acquired in law school. The externship period provides students the opportunity to understand and experience practical applications of the law. At present, however, this program does not work very well.¹⁰ Reform of the externship pro-

10. There are three main reasons for the failure of China's externship program. First, there are insufficient externships available to most law graduates. Most of the People's Courts or the People's Procuratorates either do not welcome articling students or do not assign them real legal work; students have no chance to observe or perform

gram to maximize its utility should be seriously considered.

The third step is to introduce a new type of teaching method, which began with the introduction of the student-centered clinical legal education in 2000. This program emphasizes “learning from practice,” which advocates the new ideology of encouraging law students to learn legal theories, professional skills, and professional ethics from practice. Clinical legal education plays an active role in Chinese legal education reform, and consequently has been integrated into the practical legal education program and the curricula of many law schools.

The introduction of the practical legal education model includes the application of some types of teaching methods, as well as the introduction of a fresh, new teaching concept and curriculum, challenging the traditional legal education system. From the beginning of the practical legal education program, many people questioned whether the skill-oriented practical legal education model should be treated as equal to the traditional knowledge-oriented education. With the passage of time, more law schools have recognized the importance and necessity of practical legal education in modern society, and even regard it as a breakthrough from the traditional legal education system. Now, practical legal education is often a required course in the law school curriculum.

IV. *DEVELOPMENT OF CLINICAL LEGAL EDUCATION IN CHINA*

A. *Overview*

To a certain extent, the introduction of the clinical legal education program in China resulted from the strong demand for higher legal education reform, especially for exploring new legal teaching methods. In September 2000, with the support

lawyering roles. Second, law schools and law faculty do not make clear, detailed, and appropriate educational objectives for externships before sending students out to externship sites. In particular, they do not have a mature plan of how to supervise students or how to make contact with or get feedback from students. Finally, there are no effective standards for evaluating students' work. There is no regular system for law schools to communicate with the externship faculty about the students' progress; in addition, the externship mentors do not bother to make constructive plans for instructing students about their professional development, nor do they have an effective and regular way to supervise or evaluate students' field experience. They only issue a sort of statement certifying that students have worked there for a certain period of time.

from the Ford Foundation and some U.S. law schools, clinical legal education programs were developed in seven law schools: Peking University, Tsinghua University, Renmin University of China, Wuhan University, Zhongnan University of Economics and Law, East China University of Political Science and Law, and Fudan University.¹¹ As a non-traditional course with a new legal teaching method offering a significant ideological and pedagogical change from China's traditional legal education system, clinical programs have been warmly welcomed by law professors and law students. Consequently, more law schools have followed this trend, either by integrating this program into their curriculum, or by applying this pedagogical method to train law students.

Early efforts to apply clinical legal education could be considered merely exploratory. Nevertheless, the official founding of the Committee of Chinese Clinical Legal Educators ("CC-CLE") on July 28, 2002, with approval from the China Law Society, was a landmark indicating that clinical legal education had begun to take root in Chinese law schools. In accordance with its constitution, CCCLE is a non-profit academic body voluntarily attended by clinical legal educators throughout the country, with its mission "to bring all clinical legal educators, administrators and others together to perform theoretical and practical research of foreign and Chinese clinical legal education programs, cooperate and carry out exchange of clinical legal education activities with counterparts abroad and at home, and promote the growth of clinical legal education in China."¹² Under the steering and administration of CCCLE, clinical legal education has grown rapidly, making a number of achievements.¹³ As of June 2006, fifty-one law schools or departments are members of CC-CLE, having established clinical legal education programs and made these courses available to their students; and more than 200 clinical teachers are involved in the application of this new legal teaching method.

11. See Zhen Zhen, *The Present Situation and Prosperous Future of China Clinical Legal Education*, <http://www.law.ucla.edu/> (last visited Nov. 28, 2006) (presented at the Sixth Annual Clinical Conference, UCLA Law, Oct. 7, 2005).

12. *Id.*

13. *Id.*

B. *A Valuable Attempt*

In the past six years, clinical legal education in China has proved to be a valuable attempt to change traditional teaching methods and the legal aid services offered to the society.

Clinical legal education has involved four transitions: students transitioning from passive to initiative/active learning; professors transitioning from lecture-centered to interactive teaching; classroom activities transitioning from listening and note-taking activities to open discussions; and the legal pedagogy/methodology transitioning from commentary, lecture-oriented method to practical, skill-oriented method. Therefore, clinical legal education plays a good supplemental role to traditional legal education, and offers a mirror through which to reflect upon and overcome the shortcomings and deficiencies of traditional Chinese legal education.

Clinical legal students make significant contributions by offering legal aid services, especially to the disadvantaged, in response to strong public demands for social justice. As a platform for combining classroom learning with field training, the legal-aid-oriented clinic not only provides clinical students with a place to deal with real cases and to practice legal professional skills and ethics, but also offers a good opportunity for law students to gain a better understanding of society and the importance of justice and fairness. This especially holds true under current circumstances, where legal-aid resources provided by the government are too scarce to meet societal needs.

The success of clinical legal education in China does not mainly rest on the number of cases clinical students have dealt with, nor with the practical professional skills students have developed. More importantly, law students have shaped the basic ideology of rule of law, have developed a strong sense of social responsibility to promote fairness and justice, and have cultivated a sincere commitment to the legal profession. This is what higher legal education and clinical-oriented practical legal teaching are really about.