

# Chinese Legal Education System: Yes and No

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## I. Introduction

With more than 5,000 years of history and almost 1.3 billion people, China is one of the world's oldest and largest countries. However, its legal system is quite young and was not established until 25 years ago. There are only about 118,000 licensed lawyers.<sup>2</sup> A rough calculation shows that there is only one lawyer for approximately 11,000 Chinese people,<sup>3</sup> which is far below the 1994 rate of 1:267 in the United States.<sup>4</sup> Among the licensed lawyers in China, only twenty-five percent have received formal higher legal education,<sup>5</sup> which no doubt weakens the legal profession as well as the enforcement of law.

The Chinese government has enacted a series of laws and regulations to facilitate and regulate the legal profession. To become a licensed lawyer in China, a person must, among other things, receive a lawyer's qualification certificate.<sup>6</sup> The judicial departments under the State Council will grant

such a certificate to those who have passed the National Judicial Exam. Generally, the Judicial Exam is open to those who have completed the college level education.

Legal education has played a key role for the development of China's lawyer system in the past decades. However, Chinese legal education and the Chinese legal profession are not so closely connected. The first law degree one can achieve in China is at the undergraduate level. Nonetheless, people with Bachelor's degrees in fields other than law can also take the Judicial Exam and may practice law if they pass. While the quality of Chinese legal profession is still very low, Chinese legal education can do nearly nothing to help improve the situation if law school training is not implemented as a necessary step for an individual to become a lawyer. In addition, if legal education does not focus on the practical aspects of legal training, it will fail to distinguish law graduates from non-law graduates in their future legal careers.

China has been readapting its socialist economic structure to one of a market economy, and turning itself into a country with a law-based system. The entry into the WTO also inevitably urges China to rethink and improve its legal system as well as the legal education system in order to meet the new standard. The aim of this paper is to examine the present legal education system in China and to compare it with the legal education systems of other countries in the world. The paper concludes with suggesting some changes and the reformation of the Chinese legal education system to promote the development of the Chinese legal system on a way toward the rule of law.

## II. Examination of the Chinese Legal Education System

### A. Objectives of Legal Education

After the founding of the People's Republic of China (PRC) in 1949, Chinese legal education, in-

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<sup>2</sup> YU Neyang/WANG Yu, The Number of Licensed Attorneys in China Has Reached 118,000 (Woguo zhiye lüshi da 11.8 wan ren), Chinese Legal Publicity, June 13, 2005, available at: [http://www.legalinfo.gov.cn/moj/lsgzgzzds/2005-06/14/content\\_154886.htm](http://www.legalinfo.gov.cn/moj/lsgzgzzds/2005-06/14/content_154886.htm) (last visited on March 14, 2006).

<sup>3</sup> Reference Ratio of the Number of Lawyers Against the Total Population of Some Countries (Bufen guojia lüshi renshu yu zongrenkou de bili canzhao), Legal Daily, Nov. 7, 2001, p. 7, available at [http://www.legal-daily.com.cn/gb/content/2001-11/06/content\\_26831.htm](http://www.legal-daily.com.cn/gb/content/2001-11/06/content_26831.htm) (last visited on Sep. 2, 2006).

<sup>4</sup> Barry Sullivon/Ellen S. Podgor, Respect, Responsibility, and the Virtue of Introspection: An Essay on Professionalism in the Law School Environment, Notre Dame Journal of Legal Ethics & Public Policy, Vol. 15, p. 118 (fn. 2) (2001).

<sup>5</sup> LUO Qizhi, Autonomy, Qualification and Professionalism of the PRC Bar, Columbia Journal of Asian Law, Vol. 12, p. 33 (1998).

<sup>6</sup> Art. 8 Law of the People's Republic of China on Lawyers (Zhonghua renmin gongheguo lüshifa), promulgated on May 15, 1996, effective from Jan. 1, 1997; revised on Dec. 29, 2001; the revision is effective from Jan. 1, 2002 [hereinafter *Lawyers' Law*], compiled in: The Compilation of the Statutes and Regulations for the National Judicial Exam (Guojia sifa kaoshi falü fagui huibian), China University of Politics & Law Publishing House, 2006, p. 917.

evitably affected by the political movements, also experienced a tortuous history. The objectives of legal education had been changing, which reflected the fact that the law had been utilized as a political tool in China.<sup>7</sup> The professional aim of legal education had long been totally ignored.<sup>8</sup> The law schools, directly administered by the Ministry of Justice (MOJ), have been titled as institutes of “politics and law” until today, although there is no such major of politics in these law schools.

In the 1980s, the MOJ and the Education Committee (now it is the Ministry of Education) started to review the goals and objectives of legal education.<sup>9</sup> The legal experts agreed that the main objectives of Chinese legal education should be aimed at the training of prospective legal workers for the legislative and judicial bodies as well as for the practicing areas.<sup>10</sup> Some law schools were also to focus on training legal researchers and professors.<sup>11</sup> The objective of legal education is determined as “to educate excellent socialist legal practitioners and governmental administrators who have firm political belief, behave under lofty ethical standards, and are specialized in law.”<sup>12</sup>

Compared with other countries, this objective is too general. For instance, one of the aims of U.S. law schools is to train students to think like professional lawyers.<sup>13</sup> Legal education is clearly designed as a professional education to train students to become legal practitioners in the United States. In European countries, legal education is aimed at training jurists or judges.<sup>14</sup> Their legal education is clearly oriented at the skills and argumentations, which are needed to rule on court cases.<sup>15</sup>

However, Chinese legal education does not explicitly focus on professional education or distinguish the legal profession from other vocations. Instead, its objective is rather general and broad, including both legal and non-legal factors and offers very little in the way of specific educational goals. Many law students do not expect to practice law after graduation, and may work in non-legal fields. Although Chinese law schools are beginning to break out of their political orientation, they are lacking in specific objectives, which creates huge problems and directly affects the quality of the legal training and the legal profession.

## B. Legal Education Programs

With the reestablishment of the legal and judicial systems in China, formal legal education achieved new prominence. There are two general categories of legal education programs in China: “degree” programs and “non-degree” programs.

### 1. Law Degree Programs

Currently, most countries in the world adopt one of the two legal education systems. In most European countries, law degree studies start right after high school. For instance, in the Netherlands law school programs take an average of four and a half years.<sup>16</sup> In England, it takes three to four years to get a LL.B. degree.<sup>17</sup> In Russia, it takes five years with four years leading to a Bachelor’s degree, and the additional year leading to a Specialist’s degree.<sup>18</sup>

The United States represent the other type of law degree programs. A study on legal education in 1921 identified three components necessary to prepare students for the practice of law: 1) general education, 2) theoretical knowledge of the law, and 3) practical skills training.<sup>19</sup> The American Bar Association (ABA) adopted a proposal that called for pre-law school training to satisfy the requirement of a general education component, and since then, U.S. law students are required to first complete their college training before pursuing their Juris Doctor (JD) degrees.<sup>20</sup> Compared to the teaching of law as an undergraduate subject in European universities, U.S. law students are older and more

<sup>7</sup> SHI Huanzhang et al., Looking Back on Higher Legal Education in the Past Decades, Higher Education Research on Politics and Law (Zhengfa gaojiao yanjiu) Vol. 3, p. 13 (1989).

<sup>8</sup> Id.; see also LIU Qinsheng, Chinese Law Schools and Legal Education (Zhongguo faxueyuan he falü jiaoyu), Higher Education Research on Politics and Law (Zhengfa gaojiao yanjiu) Vol. 2-3, p. 24 (1993); KONG Lingwang, The Objectives of Legal Education (Qiantan falü zhuanye peiyang mubiao), Legal Education (Zhengfa jiaoyu), Vol.1, pp. 1-2 (1985).

<sup>9</sup> LI Weirong/CONG Shending, Review on the Teaching Plan of Economic Law (Jingjifa zhuanye jiaoxue jihua tanqi), Legal Education (Zhengfa jiaoyu), Vol. 2, p. 14 (1986).

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> E. g.: East China University of Politics & Law, The “Ninth Five-year Development Plan” and Long-term Target until 2010 (Dijiuge wunian fazhan jihua he 2010 nian yuanjing jihua), Higher Education Research on Politics and Law (Zhengfa gaojiao yanjiu), Vol. 31, p. 3 (1996).

<sup>13</sup> Yukio Yanagida, Legal Education in Japan: A New Paradigm for Japanese Legal Training and Education – In the Light of the Legal Education at Harvard Law School, Asian-Pacific Law and Policy Journal, Vol. 1, p. 1 (2000).

<sup>14</sup> Erhard Blankenburg, Patterns of Legal Culture: The Netherlands Compared to Neighboring Germany, American Journal of Comparative Law, Vol. 46, p. 6 (1998).

<sup>15</sup> Id.

<sup>16</sup> Erhard Blankenburg (supra note 14), p. 7.

<sup>17</sup> E.g.: The web site of Warwick University Faculty of Law, available at: <http://www.warwick.edu.uk>. (last visited on March 14, 2006); see also: Jane M. Picker/Sidney Picker, Jr., Educating Russia’s Future Lawyers – Any Role for the United States?, Vanderbilt Journal of Transnational Law, Vol. 33, p. 34 (2000).

<sup>18</sup> Jane M. Picker/Sidney Picker, Jr. (supra note 17), p. 34.

<sup>19</sup> Margaret Martin Barry/Jon C. Dubin/Peter A. Joy, Clinical Education for this Millennium: The Third Wave, Clinical Law Review, Vol. 7, pp. 7-8 (2000).

<sup>20</sup> Id.

mature upon their introduction to legal studies. Generally, U.S students have had more life experience prior to their legal education,<sup>21</sup> which is very helpful to their understanding of law, as well as for their practice after graduation.

China basically follows the European style: the first law degree is the Bachelor of Law, i.e. the LL.B. degree.<sup>22</sup> The admission requirements for law schools are not different from the requirements for any other undergraduate university. The applicants must have completed high school and passed the national university entrance test. For a long time, people beyond the age of twenty-five were not eligible to take the national university entrance test in China.<sup>23</sup> On April 3, 2001, the Ministry of Education (MOE) lifted the age limitation, so that many people, including those who are married, can now take the college entrance test.<sup>24</sup> In any event, each law school has the discretion to set their own admission standard according to the number of applicants available. After four years of studying, the law graduates may work in the courts, procuratorates, public security bureaus, other governmental and administrative bodies, companies, as well as law firms. Some graduates may pursue further law degrees or teach in law schools.

The second law degree in China is the Master of Law, i.e., LL.M. degree. People who have completed four years of undergraduate education are eligible to apply for the LL.M. program, regardless if they received an LL.B., B.A., or B.S. degree or not (in earlier years, even the people who had completed only two to three years non-degree certificate program). The entrance exams are very difficult because there are too many applicants who compete with each other. During the three years of studies, the students must complete required coursework as well as a dissertation. Theoretically, the main objective of legal education in either the LL.B. programs or LL.M. programs is to train students to be capable of dealing with all kinds of cases after they graduated.<sup>25</sup> At the same time, legal education will also create a small number of specialists who will pursue the fields of legal education and legal research.<sup>26</sup> However, there is no division between the LL.B. students and the LL.M. students.

It should be noted that a substantial number of LL.M. students does not have any reference to the legal science during their undergraduate studies. Actually, the job market for LL.M. degree holders is nearly the same as for LL.B. degree holders, but most employers, whether governmental or private, seem to prefer to hire LL.M. graduates.

A person who holds a Master's degree can apply for Ph.D. in Law, the highest law degree in China, by taking a national entrance exam and the exam designed by the individual law school.<sup>27</sup> During the three-year studies, the Ph.D. candidates must complete their required coursework and a paper in order to get the Doctorate degree.<sup>28</sup> Similar to the LL.M. degree holders, not all doctors of law teach law or do legal research. They compete with LL.B. and LL.M. graduates in the legal job market and their chances are substantially greater.

## 2. Non-Degree Programs

Aside from degree programs, there are also non-degree legal education programs in China. The most formal one is the 2 to 3 years non-degree higher education certificate-of-law program.<sup>29</sup> High school graduates who failed to be admitted into a university degree program may apply for such a certificate-of-law program. They learn most of the basic law courses<sup>30</sup> and after graduation, they have the same opportunity as LL.B. graduates to take the bar exam and to practice law, although their entry-level salaries will be a little bit lower than the salary of LL.B. graduates. Since they spent one year less in school than the LL.B. graduates, they may have one more year of work experience, which may diminish the salary differences.

Law schools also offer a number of special training programs ranging in length from six months to a year.<sup>31</sup> These programs are aimed to educate governmental officials and corporate personnel, who have mostly not received prior formal academic training in law.<sup>32</sup> The other type of legal education in China is public legal education that is aimed at eliminating "legal illiteracy" and educating all Chinese citizens, including governmental officials, to understand the importance of the legal system and the purpose which it serves.<sup>33</sup>

<sup>21</sup> Pierre Legrand/John Henry Merryman, *Comparative Legal Studies: A Dialogue*, *American Journal of Comparative Law*, Vol. 47, p. 11 (1999).

<sup>22</sup> E. g.: Admission Information of East China University of Politics & Law, available at: <http://www.ecupl.com/zhaoshengjiuye/zsjybkzs1.htm> (last visited on March 14, 2006).

<sup>23</sup> YANG Hong et al., *China is Improving: The Top Ten News that Mostly Affected People's Life in 2001* (*Zhongguo zai jinbu: 2001 nian yingxiang minsheng de shida xinwen*), *People's Daily* (Renmin ribao), Dec. 23, 2001.

<sup>24</sup> Id.

<sup>25</sup> SHI Huanzhang (supra note 7), p. 9.

<sup>26</sup> Id.

<sup>27</sup> E. g.: <http://www.ecupl.com/rencaipeiayang/faxueboshi.htm> (last visited on March 14, 2006).

<sup>28</sup> Id.

<sup>29</sup> E. g.: <http://learning.sohu.com/zhaosheng/mbgx/bjzhengfa/zhaosheng.htm> (last visited on March 14, 2006).

<sup>30</sup> Id.

<sup>31</sup> Randle Edwards, *Legal Training for China Ventures: Practicing Law Institutes*, *Commercial Law and Practice Course Handbook*, Vol. 339, p. 304 (1985).

<sup>32</sup> Id.

Compared with either the U.S. or European countries, the legal profession is easily accessible in China. The youngest lawyer in the United States may be around twenty-five years old, with at least one prior degree to their legal education. In Germany, the average age of graduates who have entered into the legal profession after finishing their theoretical and practical studies, and after passing all the required exams, is 30.25 years.<sup>34</sup> However, in China, after four years in an LL.B. program, law graduates may be eligible to work in the court, procuratorates, or law firms. The youngest judge may be only twenty-three years old (after one year of internship or clerking).

### C. Administration of Legal Education

Chinese law schools have been established under the administration of different governmental departments. The MOJ had trained more than half of China's legal specialists in five law schools directly under its administration, which are scattered across China in the cities of Beijing, Shanghai, Chongqing, Wuhan, and Xi'an. The law departments of the major Chinese national and provincial universities train undergraduate and postgraduate law students under the supervision of the MOE. Other Ministries, and some academic institutions, also have law schools or law departments under their own supervision. Even the Supreme Court and the Supreme Procuratorates have their own law schools in which they train the incumbent as well as prospective judges and procurators. Local governments also set up law schools at the local level. There are no private law schools in China.

Through the past two decades, many law schools or law departments have been mushrooming all over the country. About half of the above mentioned law schools or institutes were established after 1984,<sup>35</sup> owing to the urgent need of legal talents. The rapid expansion of the number of law schools brought serious problems. Without uniform administration, the layout of the law schools and their resource utilization became unreasonable.<sup>36</sup> The teaching quality suffered from a lack of qualified law professors.<sup>37</sup> In addition, the financial capacity of the law schools has not been satisfactory, notwithstanding the increases of the government budget.<sup>38</sup> The milk of higher legal edu-

cation is being watered down by the desire of producing more legal graduates within a short period of time to meet the social needs, without having a uniform administration and governance of the law schools.

In the United States, the ABA has been in charge of accrediting law schools as well as bar exams. However, the All China Lawyers' Association (ACLA) does not share a similar authority as its more influential U.S. counterpart. Its authority to regulate the Chinese bar is still limited, and it does not have any say on legal education.

Actually, there's no clear standard for the accreditation of Chinese law schools or for the evaluation of legal education and law degrees. Moreover, to allow students who are enrolled in other majors, such as social science or political science, to receive a LL.B. degree is untenable. Law graduates have to compete with all other non-law degree graduates when taking the bar exam in order to practice law. Going to law school is not a necessary step for a person who hopes to build a legal career; nor is studying in law school advantageous for passing the bar exam if law schools do not deem professional education as its main objective.

Recently, the MOJ has decided to detach the law schools from its control and to hand it over to the control of the MOE or the local education committees.<sup>39</sup> In doing so, it has lost its only authority to govern the law schools. The local education committees may lack in their perception of the uniqueness of law schools and treat them the same as other university departments. The debate on whether law schools should focus on professional education or whether the legal education system should be reformed may be under too big pressure to produce any results.

### D. Teaching Methodology

Common law countries and civil law countries adopt different teaching methodologies in law schools.<sup>40</sup> The early British and American legal education was based on the system of apprenticeships.<sup>41</sup> From the mid-eighteenth century until the twentieth century, most lawyers received their legal

<sup>33</sup> WENG Li, *Philosophical Influences in the Contemporary Chinese Law*, Indiana International and Comparative Law Review, Vol. 6, pp. 329-30 (1996).

<sup>34</sup> Haimo Schack, *National Report: Private Lawyers in Contemporary Society: Germany*, Case Western Reserve Law Review, Vol. 25, p. 190 (1993).

<sup>35</sup> SHI Huanzhang (supra note 7), p. 11.

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> E. g.: East China University of Politics & Law had been under the MOJ until recently and now it is under the co-administration of the Central Government and the Shanghai Local Government (<http://www.ecupl.com/huazhenggailan/hzglxxjj.htm> (last visited on Feb. 22, 2002)).

<sup>40</sup> Stephen M. Johnson, *Legal Education in the Digital Age*, Wisconsin Law Review, Vol. 2000, pp. 86-87 (2000).

<sup>41</sup> Id.

training by reading and copying law books and legal documents under the supervision of other members of the bar. Many states required students to serve as apprentices for five years before the admission to the bar.<sup>42</sup>

The earliest Chinese legal education also took the form of the learning of litigation skills and the students, being called "disciples," learned from the "law masters" through apprenticeships.<sup>43</sup> After 1949, following the former Soviet model, statutes have become the most important authority in the Chinese legal system.<sup>44</sup> Law schools gave up apprenticeship training and began to focus on teaching students the statutes and the abstract legal theories behind them.<sup>45</sup> The traditional teaching methodology at Chinese law schools has been lecturing. Through lecturing, law professors can systematically, completely, and consistently teach students legal theories and laws so that they can obtain more knowledge in a shorter period of time. However, this methodology fails to encourage students to think and analyze legal issues actively and creatively. The legal principles and theories are harder to understand when taught solely through lecturing.<sup>46</sup> Law students graduated "with a vast doctrinal base of knowledge sealed within a context that is not translatable into practice."<sup>47</sup>

However, lecturing continues to be the main method of instruction at Chinese law schools. Classroom discussions between professors and students are rare, theoretical teaching is the main purpose. Instructions at Chinese law schools are modeled after the teaching methods of civil law countries, but the practical training after law school, which exists in civil law countries, has been ignored in China. For instance, in Germany, university education is confined to the teaching of the theoretical aspects of law, but the German legal education is part of a dual system under which practical skills are taught mainly outside the university.<sup>48</sup>

Realizing the acuteness of the issues, some Chinese law schools began to reshape the teaching pat-

tern to emphasize practice. They are attaching more importance to both theoretical and practical teaching. They are encouraging classroom discussions, moot courts, investigations, writing competitions, dissertation debates, as well as case law analyses. Some law schools have established a mandatory internship system. Other law schools have tried to establish legal aid programs and some of these programs have been transformed into legal clinics. Unfortunately, not every law school has realized the depth of this issue, and even if they have, they are far from successfully rectifying the situation.

U.S. law schools are attorney oriented and most law students will, or at least plan to, practice law after graduation. Thus U.S. law schools can focus on developing attorney skills. In Germany, law schools are targeted to train future judges. Therefore, the law schools provide students with the analytical skills needed to quickly and successfully grasp and adapt to the special problems that will confront them later in practice from a judge's perspective. However, the teaching objective of Chinese law schools is too broad and general, and the graduates may possibly do all kinds of work, including both legal and non-legal work. Therefore, law schools in China do not have a pre-defined and determined target as U.S. or European law schools do. This lacking of a definite teaching objective directly impairs the improvement of the teaching methodology.

### E. Chinese Judicial Exam

The Ministry of Justice of China started to conduct a nation-wide regular bar exam from 1986 and allowed all college graduates (including those who graduated from both law schools and non-law schools) to take the exam. If they pass, they will receive a qualification certificate which makes them eligible to clerk in a law firm. After a one year's clerkship, the person with the qualification certificate may apply for a lawyer's license. The bar exam was first held every two years and later on became an annual exam. This has greatly improved the quality of Chinese lawyers, although many people who have never received formal legal education are allowed to take the bar exam and to practice law after passing it. The All China's Lawyers' Association is a self-disciplinary organization of Chinese lawyers. Nevertheless, it is not comparable to the American Bar Association since it does not have any power to regulate law schools, bar exams, and so on. Even regarding the regulations of lawyers, the Ministry of Justice is the governmental organ that takes charge of the legal profession, and the Lawyers' Association has no say on it.

<sup>42</sup> Id.

<sup>43</sup> WANG Shen, An Inquiry of Chinese Modern Legal Education (Zhongguo jindai falü jiaoyu tanwei), Higher Education Research on Politics and Law (Zhengfa gaojiao yanjiu), Vol. 3, p. 43 (1997).

<sup>44</sup> Id.

<sup>45</sup> Section of Criminal Law & Civil Law/Department of Law/East China University of Politics & Law, Explore Bravely, Practice Actively, and Create New Ways: Experience on Case Law Teaching Methodology (Dadan Tansuo, Yongyu Shijian, Kaichuang Xinlu - Anli Jiaoxuefa Shijian Yu Tihui), Higher Education Research on Politics and Law (Zhengfa gaojiao yanjiu), Vol. 3, p. 54 (1998).

<sup>46</sup> Id.

<sup>47</sup> Barry (supra note 19), p. 39.

<sup>48</sup> Eckart Klein, Legal Education in Germany, Oregon Law Review, Vol. 72, p. 953 (1993).

For a long time, if one wanted to become a lawyer, he must finish college studies and pass the bar exam. However, if one wanted to become a judge or a procurator, he did not even need to take any national exam. Therefore, the problem regarding the low quality of judges and procurators became even more serious. For example, most judges had not received formal legal education or even any college education at all. Demobilized soldiers were assigned to court to work as judges as a way of return for their military service by the government and by the society. There was an internal promotion procedure within the court system, though. It was quite possible that any formal employee of the court, even one who took charge of cleaning the court room, might have a chance to be promoted from the court clerk up to the judge, as long as he or she had worked in the court for sufficient length of time.

In 2001, the Chinese government decided that all the potential judges, procurators and attorneys would be required to take the same national test, which is called the National Judicial Exam. It is the first time judges and procurators are required to take a national exam. The former bar exam was merged into the new Judicial Exam. Starting from 2002, the Judicial Exam has been held for four years and attracted numerous exam takers, although the average passing rate is only around 8-11%.<sup>49</sup> However, those who have not received law degrees are also allowed to take the exam. Having received legal education is still not a prerequisite for being a lawyer in China, which no doubt affects the quality of the Chinese legal profession. Most lawyers learn law through practicing instead of learning it from law schools. Many people think that it is very easy to become a lawyer. One time there was even an advertisement "if you are laid off, take the bar exam."<sup>50</sup>

### III. Solutions

Based on the above analysis, the following solutions are suggested.

#### A. Uniform Administration of Law Schools

Many scholars suggest that there should be a coordinating body under the Central Government to govern both Chinese bar and Chinese law

schools in order to harmonize the relationships between them, and to unify their planning and administration.<sup>51</sup> When considering the traditional administration of law schools under governmental departments, and the inadequate quality, experience and self-disciplining capacity of the lawyers' association in China, it may not be realistic for China to copy the U.S. system where the ABA governs both. However, it may learn from the experience of European countries, where the government closely regulates legal studies and the administration of law schools.<sup>52</sup> It should be reasonable to vest this authority in the Ministry of Justice in China. Already with years of experience in regulating the five leading law schools in China, the MOJ is well able to form a uniform legal education system to govern all law schools and law departments in China. Another compelling reason for doing this is because the MOJ regulates the Chinese bar.<sup>53</sup> Authorizing the MOJ to administer both the bar and the law schools will help to form a uniform policy and administrative system for the legal profession. Alternatively, the Chinese government may designate another authority to govern both the legal education and the bar.

#### B. Self-esteem of Law Schools

As mentioned earlier, Chinese law schools do not distinguish themselves from other university departments in either admission procedures or career building objectives. Law graduates are not distinguished from non-law graduates and they have to compete with all non-law graduates in taking the bar exam and to practice law. The self-esteem of law schools must be strengthened in the first place. However, it is the governing bodies instead of the law schools that must do parts of this. If the MOJ (or another authorized governmental organ) is authorized to govern all law schools, the first action it should take is to discontinue granting law degrees to the students who are enrolled in other majors such as social science or political science. Without formal education and training by a law school, these students should not be entitled to receive a law degree when they graduate.

Its second act should be to establish a uniform accrediting system of law schools. The governing body could introduce the ABA re-accrediting sys-

<sup>49</sup> ZHANG Zhiming, The Threshold of the Judicial Exam, Legal Education Website Oct. 12, 2005, available at: <http://www.chinalawedu.com/news/2005%5C7%5Cma83947227172750022128.html> (last visited on Nov. 10, 2005).

<sup>50</sup> LIU Guiming, The Actual Barriers before China's Legal Profession (Zhongguo falü fuwuyue mianlinde xianshi zhangai), China Civil and Commercial Law (Zhongguo minshang falüwang) Dec. 5, 2004, available at: <http://www.civillaw.com.cn/weizhang/default.asp?id=19466> (last visited on Nov. 10, 2005).

<sup>51</sup> SHI Huangzhang (supra note 7), p. 16.

<sup>52</sup> Patrick R. Hugg, Comparative Models for Legal Education in the United States: Improved Admissions Standards and Professional Training Centers, Valparaiso University Law Review, Vol. 30, p. 68 (1995).

<sup>53</sup> The Ministry of Justice of PRC (Zhonghua renmin rongheguo sifabu), A Brief Introduction to the Judicial Administrative Function of the MOJ (Sifa xingzheng gongzuo jianjie), available at: <http://www.legalinfo.gov.cn/joa/introduce.htm> (last visited on March 14, 2006).

tem, set standards of teaching quality, and conduct regular re-accreditation. In taking this step, the quality of the law schools or law departments would be greatly increased. It should also set the basic objectives of legal education, which should integrate practice as an important part in a student's learning process.

The third action should be the establishment of a more reasonable law school setting. Chinese law students are too young. They have no life experiences before entering into law schools. All they have done is merely studying at school and relying upon their parents to pay all of their expenses. They have never earned any money through their own work; they do not own any properties; they do not have their own families. Without life experiences, how can they deal with legal work regarding criminal offenses, domestic relation issues, child support disputes, or contract issues when they graduate from law school at the age of twenty-two? Recently, the MOE lifted the age limit on college admissions. This is a good sign that there may be more mature students to be enrolled in law schools in the near future. The life experiences of law students will not only be for the benefit of their own studies, but also of legal education and the legal profession as a whole.

Therefore, the law school administrations should consider increasing the amount of time it takes to achieve the first law degree by introducing the practices of some European countries and the United States. For example, in the first two years, students may have the opportunity to learn any college courses other than law, borrowing the U.S. practice that requires law applicants to first finish a college degree. The third and fourth year should be focused on law courses, after which the students may get an LL.B. degree. If students want to practice law, they must finish yet another year or two in law school, during which the students will learn practical skills, practice in school affiliated legal clinics, or work in a practicum placement for a period of time under complete supervision and guidance. After finishing a dissertation, the students will receive their LL.M. degree, which should be the basic requirement for anyone who hopes to take the Judicial Exam and to practice law.

### C. Teaching Methodology

Since China has adopted a civil law system, statutes and regulations dominate instead of cases. Consequently, Chinese law professors face different demands and expectations than their counterparts in common law countries. Considering its own tradition and the uniqueness of the Chinese legal and educational system, it may not be

appropriate for Chinese law schools to copy any of the foreign countries' models. However, it is reasonable and practical for Chinese law schools to simulate other countries' experiences in their schools' own practice, to establish a teaching methodology with Chinese characteristics.

For instance, lecturing has been the main method of legal education at Chinese law schools. Systematic presentation is necessary to give students an overview of each new legal area that they study. But once the students got the whole picture and understood the system of a certain area, the professor may use other teaching methods, such as case analysis, to supplement the presentation. Although there are no published case reports in China, professors may use either real or hypothetical cases and discuss them by using case method techniques. Classroom discussions should also be encouraged, however, it will be challenging for most Chinese professors who are not used to or ready for it. Professors may also consider to invite practicing attorneys specialized in a particular area to be guest speakers. Moot courts should be encouraged while real judges and attorneys could be invited to give advice and comments afterwards.

In order to overcome the deficiency of its lecturing methodology, Chinese law schools should also attach more importance to its current practicum system. Through strengthening supervision, students may be exposed to real world practice and experiences, which will be for the benefit of both the students and their future employers. Law schools should plan well to effectively utilize the practicum programs and to make the experience to an inevitable part of law school curriculum.

### D. Bar Access

One way to improve the quality of the current legal profession in China is to promote the quality of legal education. Another way is to restrict bar access to avoid admission of unqualified individuals. Currently, legal education is not closely connected with the legal profession in China. People who have never had any formal legal education can also work in the courts or procuratorates, or take the bar exam and practice law if they pass.<sup>54</sup> Only a quarter of the currently licensed lawyers, excluding judges or procurators, have received a formal legal education.<sup>55</sup> Through the above analysis, one reason is that many elder lawyers did not have any chance to receive formal legal education due to historical reasons. Another reason is that not all law graduates work as lawyers, but many of them take

<sup>54</sup> Art. 6, Lawyers' Law (supra note 6).

<sup>55</sup> LUO Qizhi (supra note 5), p. 33.

non-legal jobs. A third reason is that not only law graduates, but also non-law graduates, are qualified to take the bar exam and to practice law.

For fifteen years, the bar exam had been open to anyone who had held a Bachelor's degree including law and non-law degrees, or non-degree law program certificates. Although the new Judicial Exam does not allow non-degree law program certificate holders to take the exam, it still allows people who have a Bachelor's degree in fields other than law to take the exam.<sup>56</sup> Even for those individuals who hold a non-degree law program certificate, there is a grace period in some places „where it is indeed difficult“<sup>57</sup> to adopt the above regulation.<sup>58</sup>

It is understandable that China is in urgent need of a large quantity of trained legal personnel within a short period of time and formal legal education may not meet its urgent need in the near future. However, it is not wise to continue the shortsighted activities, which plant seeds of potential problems. China's experiences from the past two decades have already shown the negative effects of these short-run, poorly thought-out, poorly implemented programs, such as the mushrooming of unqualified law schools or law departments, and the low quality of lawyers, procurators and even judges coming from these and other schools. It is time for the government to reevaluate its past practices, to take a broad and long-term view and avoid the short-term benefits from a path that may result in a long-term failure that will prove to be very difficult to cure.

### E. Hiring System in Legal Profession

Like in other civil law countries, law graduates in China may work as judges or procurators, law teachers, in-house counsels, as well as attorneys. The procurators are distinguished from lawyers due to the unique status of the procuratorate. With this background, access to the legal profession in China is more complicated than that in common law countries. People with only non-degree certificates of law, LL.B., LL.M. or a Ph.D. in law, may all compete in the same job market. Anyone of them, under similar situations, may get a job in a court, a public prosecutor's office, a law school, a company, or a law firm.

In a court, the new employees will normally work as law clerks for one year, reporting trial hearings. They have never received any shorthand or other training for court reporters so the accuracy of their recordings is doubtful. But unlike the courts

of appeals in the United States whereby the judges only review the trial records, the Chinese appellate courts try appeals as though they are cases in the first instance.<sup>59</sup> Therefore, the trial court reports are not as important as those in the United States. Therefore, to have a strict trial court reporting system does not seem to be necessary in China. However, the lack of such a system does weaken the quality and the self-disciplining of the trial courts. On the other hand, it is obviously a waste of resource to use a law graduate as a shorthand reporter.

Law professors are a key element of success in legal education. Owing to historical and political reasons, China has a lack of qualified law professors. Furthermore, a significant number of law professors never practiced law and few law professors are familiar with practicing skills. Although some law schools have affiliated law firms and many law professors can work as part-time practitioners while they are teaching, this is not very helpful because practicing part-time no doubt limits the quality of both the law professors' teaching, and their practicing. On the other hand, many experienced attorneys would unlikely return to law school to teach because of the huge difference in income. Also, their expertise does not distinguish them from other less experienced law professors in the law schools. Now is the time to encourage experienced legal practitioners to become law professors, or encourage law professors to practice for several years before returning to teach. It will significantly close the gap between practice and theoretical learning in law schools. The students may attain some practical knowledge in addition to the theoretical doctrines and statutes. The normal flow in the legal profession should be encouraged and facilitated.

The hiring system of other legal employers should also be changed. For the people who have completed a non-degree certificate-of-law program, the U.S. practice can be introduced: they can work as paralegals, legal assistances, or clerks. Those who have completed LL.B. or LL.M. and have passed the Judicial Exam will be eligible to work as procurators or practicing attorneys. People with Ph.D. in law will work as advanced legal researchers or law professors. The experienced prosecutors, practicing attorneys and professors may be eligible to run for judgeships. In doing so, a continuous and healthy flow of legal experts will begin to run

<sup>56</sup> *The Ministry of Justice* (supra note 53).

<sup>57</sup> Art. 6, *Lawyers' Law* (supra note 6).

<sup>58</sup> *Id.*

<sup>59</sup> Art. 115 ff., *Civil Procedure Law* (Zhonghua renmin gongheguo minshi susongfa), promulgated on and effective from April 9, 1991, compiled in: *The Compilation of the Statutes and Regulations for the National Judicial Exam* (Guojia sifa kaoshi falü fagui huibian), China University of Politics & Law Publishing House, 2006, p.679.



through the legal profession, and the goal of the new Judicial Exam will be truly realized.

#### IV. Summary

Although China has a history of over five thousand years, its present legal system is only in its infancy with merely twenty-five years of development due to the influence of the Confucius philosophy and the ever-changing political policies before the late 1970s. The Chinese government has changed its focus of attention since the early 1980s, moving from destructive political campaigns to constructive economic development in order to transform a non-market economy to a market economy. Law has gained more importance than it has ever possessed in Chinese history. It is incredible that China has established a basic legal system within such a short time. Accordingly, the rapid development of the legal system calls for quality legal education to supply qualified legal talents to serve it. China has adopted many policies that have achieved significant accomplishments in meeting the huge demand of legal workers within a short period of time. However, there are still many problems with the current system and policies.

The entry of China into the WTO commits the Chinese government to focus more on legal construction. Now it is the time for China to review and rethink its legal educational system, and to redesign a long-term plan to let legal education play a key role in Chinese legal construction.

The author suggests that the legal education system can be firstly improved by having a uniform administrative body under the central government to oversee the Chinese bar as well as law schools and law departments all over China. The Ministry of Justice will be the best candidate to take this task because it has been authorized to administer the bar, and it has had years of experience to administer the five leading law schools in China. Such an authority should set a uniform standard for all law schools, adopt an accrediting system and unify the law degree setting, such as prolonging the time to obtain the first law degree. Law professors' academic credential and practice experiences are important to improve teaching quality. Therefore, the flow between law professors and practicing lawyers should be encouraged. Law professors should also be urged to reform their teaching methodology. Although the traditional lecturing method is necessary for students to learn the statutes and the legal theories, case methods and moot courts can be introduced. Importantly, the practicum sys-

tem in Chinese law schools should be fully utilized and supervised.

While improving law schools is one side of improving legal education, regulating the access to the legal profession and the hiring system within the legal profession are the other side of the question. That the new Judicial Exam requires all potential judges, procurators, and lawyers to pass the exam is a significant improvement, but it still allows non-law graduates to take the exam and to do legal work. It contributes to the phenomenon that only a quarter of the licensed lawyer has received formal legal education. It is also suggested that the passing of the Judicial Exam is only a threshold, not a springboard, for a person to become a judge. There should be a natural and reasonable flow among different legal professions. Meanwhile, the hiring system should also be reformed. Law graduates do not fit in the position of court reporters, because without special training, their reports are not accurate; on the other hand, it is a waste of resources. As to those non-degree law program certificate holders, the U.S. practice of working as paralegals, legal assistants or clerks may be introduced. By doing so, receiving formal legal education will be necessary for people to seek a legal career. It will stimulate law schools to self-discipline, to self-respect, and to produce more qualified graduates.

The Chinese government has decided to honor its commitments as a new member of the WTO. With the opening of the Chinese legal market to the outside world, the insufficient number of attorneys in China implies a huge legal service market that has attracted many foreign law firms. Actually, more than half of the top 50 law firms in the world have entered into China.<sup>60</sup> The competition has posed a serious threat on Chinese legal education system. However, there is a reason to be optimistic that Chinese legal education will definitely play an important role in promoting the legal construction in China toward a rule-based legal system.

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<sup>60</sup> *Front* (A Website for Preparation for the National Judicial Exam), Legal Service: Expanding the Market under WTO Rules (Falü fuwu: zai shimao guizhexia tuozhan shichang), available at: <http://www.fronttraining.com/sf/dt.asp?id=171> (last visited on March 14, 2006).