

Legal Education In China: A Look At NanDa

INTRODUCTION

One of the most fascinating recent developments in the People's Republic of China (The PRC) must be the reappearance – even promotion – of lawyers and the consequent revival of legal education to train them. For lawyers that development has a special relevance, but the story of legal education has a broader interest as well: its restoration forms an integral part of the current and remarkable effort to rebuild the legal system in China. To that end, the Chinese have since 1979 restored or reinstated the Ministry of Justice and the procuracy, as well as the legal profession; during the same time, the Chinese government has also enacted 47 laws and worked out some 400 administrative decrees and regulations ¹, including a criminal code and code of criminal procedure (1979), a joint venture law (1979), the revised marriage law (1980), a revised Constitution (1982), an economic contract law (1981) and foreign economic contract law (1985), the inheritance law (1985) and the general principles of the civil code (1986). The major objectives of this effort have been to restore order and “socialist legality” to China after the destruction and chaos of the Cultural Revolution, and to provide the necessary legal framework to modernise its economy, in part by attracting foreign technology and investment.

The PRC's success in implementing these legal reforms will, of course, depend to a great extent on its ability to train sufficient numbers of qualified legal workers and at the same time to educate the Chinese people generally about the new laws and legal institutions. The Chinese authorities clearly recognise this, and the need to produce large numbers of such workers rapidly is a frequent theme. Nowadays the Chinese press often reports on the serious shortage of lawyers and highlights the important functions lawyers can serve, or gives the latest statistics on legal education to show the progress made in the last few years. The headlines tell the story: “Farmers flood law offices with queries”, “Lawyers save plant from 3 million *yuan* claim”, “Beijing lawyers help settle family disputes”, “Vital court role of lawyers”, “Lawyer rights a wrong”, “Law office unravels foreign disputes”, “Enterprises sign up legal advice” and

1 “Enforcement of law urged” *China Daily* 12 Apr 1986; “NPC steps up work on economic laws” *China Daily* 3 Apr 1986.

“Shanghai issues emergency call for more lawyers” – to select only a few².

HISTORICAL BACKGROUND

It is difficult to appreciate just how great the current change is without reviewing a little history. In traditional China, at least during virtually all of the Qing dynasty (1644–1911), there was no formal legal education – there were in fact no lawyers, no independent Bar as we understand it, and very few people we would consider legal professionals of any kind³. For the beginning of modern legal education in China, aimed at producing specialists to practise law, we must look to the Republican period (1912–49), particularly to the 1920s and 1930s. By 1936, for example, there were 16 government law schools and 17 private law schools, including colleges of law (*faxue yuan*) at Beijing, Nanjing (then known as Central) and Wuhan Universities, and the Soochow University School of Comparative Law in Shanghai⁴.

That development was ended, on the mainland at least, with the founding of the PRC in 1949; from then on the course of legal education and lawyers followed no straight path, but reflected changing political lines⁵. Although some universities had law departments in the early years of the PRC, legal education had little time to develop before the disruptive political campaigns of the late 1950s (such as the 1957 “anti-rightist” campaign); and during the Cultural Revolution of 1966–67, law departments in the universities either ceased to function entirely or barely operated at all; libraries were closed, no classes were held, and teachers were transferred to other work or sent down to the countryside. For most of that time legal training was virtually non-existent in China – indeed, there were no lawyers, no legal publications, no law⁶.

But in 1977 the law department at Beijing University, the most prestigious university in China, began to operate again on a more regular basis. It was the

2 *China Daily* reports of 27 Nov, 9 Oct, 20 Dec 1984; 13 Feb, 8 Jul, 31 Aug, 28 Dec 1985; and 14 Feb 1986.

3 Perhaps the legal secretaries, who were in the employ of magistrates and other officials, and who advised on the handling of cases and drafted documents for them, might be considered legal professionals. Or the “litigation tricksters”, who advised people on bringing law suits or helped them draft court petitions (but whom the government strongly discouraged). But neither group belonged to a recognised profession and neither had undergone formal and recognised training as preparation.

4 Hugh Chan “Modern Legal Education in China” (1936) 9 *China L Rev* 142 at pp 142-44; also W W Blume “Legal Education in China” (1923) 1 *China L Rev* 305.

5 Jerome A Cohen *The Criminal Process* (1968) at pp 9-18; Jerome A Cohen “Notes on Legal Education” 4 *Lawasia* 205 at pp 210-211.

6 Timonhy A Gelatt and Frederick E Snyder “Legal Education in China: Training for a New Era” (1980) 1 *China L Rep* 41 at pp 41-42; R St J Macdonald “Legal Education in China Today” (1980) 6 *Dalhousie LJ* 313 at pp 326-327.

first to re-open its law department, but it was followed in 1978 by People's University (also in Beijing), and in 1979 by Wuhan University and the East China Institute of Politics and Law in Shanghai; since that time there has been a renewed emphasis placed on legal education and a rapid expansion of various kinds of legal training all over China. In May 1985, there were 31 university law departments and five institutes of politics and law, and together they were producing 3 000 graduates per year; 14 300 law students were enrolled in law departments or institutes, making up 1.2% of the total college enrolment, and some 1 800 law teachers. (This should be contrasted with the previous height in 1957, when there were ten law departments and some 6 100 law students, making up 1.4% of the college enrolment)⁷.

SCOPE OF LEGAL EDUCATION

The term "legal education" might be interpreted very broadly in China today. In addition to the regular university law departments and institutes there are a variety of special programmes, including very brief courses of on-the-job training, as well as cadre⁸ courses established to professionalise judicial and clerical forces and lasting from six months to two years. Other programmes are part-time or "spare-time" – one example being the China Spare-Time Law University, which opened in September 1985 with an enrolment of 35 000 and is to be run for judicial personnel by the Chinese Supreme People's Court⁹. There are still other forms of training, including programmes in local, vocational and night schools, and programmes by correspondence or television universities, which are operated for cadres, paralegals and people with degrees in other fields¹⁰. And it is now also possible to obtain a diploma in law by taking equivalency examinations administered nationally¹¹.

At the same time that China is trying to train professionals to staff its legal and judicial services, the Chinese authorities have also considered it essential to educate the public about the new laws and restored legal institutions. This has meant the conducting of mass campaigns, such as those on the "seven big laws" introduced in 1979, on the amendments to the Constitution in 1982, and in

7 Li Ning "Legal Education Surges Ahead" 28 *Beijing Review* 22 at pp 22-23 (6 May 1985). Another report says 32 departments and five law schools. "China Upgrading Legal Institutions" 28 *Beijing Review* 6(18 Feb 1985).

8 A cadre is someone who works in an administrative position with the government or with a mass organisation; he may or may not be a member of the Communist Party, but his job is to carry out Party and government policies.

9 "High court set to open spare-time law school" *China Daily* 9 Sep 1985.

10 For descriptions of these different programmes: Li Ning, *supra* 7 at pp 24-25, 33; also Gelatt and Snyder, *supra* 6 at pp 50-55.

11 "Self-taught to get the chance to graduate" *China Daily* 4 Apr 1986.

conjunction with the criminal crackdown starting in August–September 1983 and re-emphasised (especially against “economic crimes”) in the last two years. Most recently, late 1985 marked the launching of a five-year publicity campaign to educate people on the basics and principles of the new laws and to instil respect for the law generally. It is intended that everyone, but particularly cadres, should be familiar with the laws of the country by the end of 1990, and to that end ambitious programmes have been announced: study groups will be organised, the media will play an active role, and instruction in law will be included in all teaching programmes from primary schools to universities¹².

Viewed in this light, legal education in China today is a broad endeavour indeed, operating on many levels and ranging from the two-week special training course to the country-wide publicity campaign. Although it is important to keep the wider context in mind, this article will concentrate on the regular programmes offered in university law departments and political-legal institutes, for several reasons. The universities especially have a key role to play in setting and maintaining standards of research and teaching and in producing “experts”, even though the numbers they can train are small compared to other programmes. We are also fortunate now to have available both foreign and Chinese accounts of various aspects of law study at the tertiary level (since 1979 or 1980, foreigners have been able to participate in law departments at Chinese universities, either as students or lecturers)¹³. Finally, it may be of more interest to those of us engaged in a similar enterprise in Singapore, either as lecturers or students, to compare the process as it is developing in the PRC. What are the aims of higher legal education in the PRC? What sort of system is being produced, and what are its problems and prospects?

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- 12 An Zhiguo “Legal Studies: A Nationwide Assignment” 28 *Beijing Review* 4 at pp 4-5 (23 Dec 1985); “Cadres Lead in Learning the Law” 29 *Beijing Review* 28 (27 Jan 1986); “The State campaign to popularise legal knowledge” *China Daily* 27 Dec 1985; “Law publicity drive gets into full swing” *China Daily* 17 Feb 1986; “Legal knowledge spread nation-wide” *China Daily* 29 Apr 1986.
 - 13 For two good accounts, both by Canadians at Beijing University: MacDonald, *supra* 6; and Bing Ho “Chinese Legal Education: A First-hand Account by a Canadian Law Student” (1984) 10 *Dalhousie LJ* 32. For Chinese descriptions: Han Depei and Stephen Kanter “Legal Education in China” (1984) 32 *Am J Comp Law* 543; and Wang Tieya “Teaching and Research of International Law in Present Day China” (1983) 22 *Col J Trans Law* 77. For this article I have relied on those and other such accounts as well as on Chinese reports, discussions with other foreign lecturers, unpublished and informal reports, and my own experience in China – in 1982 at a programme in Chinese law sponsored by Columbia Law School at the East China Institute of Law and Politics, and in 1983-84 as a Fulbright lecturer in the law department at Nanjing University. (In May 1985 I returned to visit the law department and to see my students, who were about to graduate – the first Nanjing University law students to do so in some thirty years.)

LAW DEPARTMENTS AND INSTITUTES OF POLITICS AND LAW

A Chinese student reading law might be enrolled in either a law department at a comprehensive university like NanDa or an independent political-legal institute like the East China Institute of Politics and Law. Since 1952, when higher education in China was reformed along Soviet lines, there has been a basic division between universities (*daxue*) and institutes (*xueyuan*); at that time certain important fields of study such as engineering, medicine, and teaching were removed from the universities and established as separate, specialised institutes, while the "comprehensive" universities kept the liberal arts and sciences¹⁴. Certain other specialties, such as law, may be taught in either institutes or universities, so that in China there are now five institutes of politics and law in addition to the 31 university law departments.

Although they are directly administered by different bodies (law institutes by the Ministry of Education or by regional authorities), students take the same examination to be admitted to either institution, both offer four-year undergraduate programs, and their law curricula (being supervised by the Ministry of Justice) are similar. Most commentators have indicated, however, that they serve slightly different functions, with the institutes providing more practical, less academic training and the universities affording the opportunity for pure research: thus, institute graduates are more likely to be prepared for work in the courts, public security bureaux (the police) and the procuracy, whereas university graduates might also go on for postgraduate training or engage in university teaching and research¹⁵.

ADMISSION TO LAW STUDY

To gain admission to undergraduate study, would-be law students must take the national higher education entrance examinations (re-instituted in 1977); to keep the numbers of test-takers to more manageable proportions, since 1983 candidates have also been subject to preliminary screening before they can sit for the examination¹⁶. To be eligible for the examination, candidates must have graduated from senior middle school or its equivalent, be unmarried, and be under twenty-five years of age¹⁷. The examinations, ordinarily given in July, last for three days. In July 1985 1.76 million candidates took the examinations

14 Jonathan Linger *Education under Mao* (1982) at p 226.

15 I was told this. Also Gelatt and Snyder, *supra* 6 at p 49; *supra* 14 at pp 236-237, 238-239.

16 Suzanne Pepper *China's Universities* (1984) at p 9; Beverley Hooper *Youth in China* (1985) at p 48.

17 Pepper, *supra* 16 at p 11.

and approximately one out of three was successful in gaining admission to higher education. Candidates interested in law take the liberal arts and social sciences division of the examination, which includes sections on politics, Chinese, mathematics, foreign languages, history and geography¹⁸. The examinations are very standardised and by all accounts are intended to test memory and general knowledge rather than analytical ability¹⁹. But passing the examination hurdle is not sufficient in itself: candidates should have a good political record, they must meet health qualifications²⁰, and they must still be accepted by a particular institution and department in accordance with the national enrolment plan. Candidates taking the examinations list their preferences as to the schools and departments they wish to be admitted to, trying to calculate their chances of admission according to the standards of the school, the popularity of the field of study, and the possible number of places available²¹.

NANJING UNIVERSITY

Introduction

During the 1983–84 academic year I was assigned to teach in the law department at Nanjing University in Nanjing, the capital of Jiangsu province. Nanjing University (“NanDa”) was founded in 1902 and has been known by its present name since 1949; it is classified as a “key” (*zhongdian* or “key-point”) school under the direct jurisdiction of the State Education Commission (formerly known as the Ministry of Education.)²² Although not so prestigious as Beijing University, NanDa is certainly one of the best comprehensive

18 “Battle for university places” *China Daily* 11 Jul 1985.

19 Richard A Herman “The Education of China’s Lawyers” 46 *Albany L Rev* 789 at pp 794-795. They would also be very “political” from our point of view. Herman gives sample questions from the 1978 and 1979 examinations: eg for politics questions: “What is the historical mission of the proletariat?” and “Refute the erroneous view that ‘socialism in our country is inferior to capitalism’”.

20 Pepper, *supra* 16 at p 5; Hooper, *supra* 16 at pp 52-53.

21 For more detailed descriptions of the college applications and admissions process: *supra* 14 at pp 226-236; Pepper, *supra* 16 at pp 4-10; Hooper, *supra* 16 at pp 49-53. But under major educational reforms announced in May 1985, universities and colleges will be allowed to enrol some students outside the state plan, including students paying their own expenses or those sent for training by other enterprises. “Reforms aim to reinforce weak links in education” *China Daily* 29 May 1985; Wang Yibing “Tasks Set for Educational Reform” 28 *Beijing Review* 19 at p 21 (23 Dec 1985). And a trial programme now allows the admission of a very limited number of candidates on the basis of recommendations, without their having to sit for the examinations. “University entry rules tighten up” *China Daily* 29 Jan 1986.

22 In June 1985 the Ministry of Education was replaced with the State Education Commission, which has greater administrative scope and power than its predecessor. Wang Yibing, *supra* 21 at p 22. Since 1976, and especially since 1980, the Chinese have returned to the pre-Cultural Revolution system emphasising key schools. Pepper, *supra*

universities in China as well as one of the oldest. NanDa is divided into 15 departments in its two divisions of liberal arts and sciences; and during the time I taught there, it had more than 6 000 students enrolled, both undergraduate and postgraduate, and more than 1 900 teachers and researchers. In addition, NanDa has been active in foreign exchanges and study programmes, and in the fall of 1986 is opening the new Hopkins-Nanjing University Centre for American and Chinese Studies.

In contrast to the University's long history, however, the law department was not re-opened until 1981 and consequently had been operating for only two years when I arrived in August 1983, NanDa's law department was not a casualty of the Cultural Revolution but had in fact been closed for some thirty years. The University had previously offered law courses, but its law department was disbanded during the national reorganisation of higher education in 1952-53. When it was decided to restore the law department at NanDa as part of the effort to re-establish legal education, there was a severe shortage of qualified personnel to draw on, and faculty members were transferred from other institutions, or in some cases simply reassigned from other departments at NanDa itself (my chairman had been brought over from the philosophy department, for example), and the department was consequently very small in its early days. But by 1983, if one included the most junior staff who were not yet assigned to lecture in courses, there were around twenty five members of the law faculty (four of them women). Student enrolment at the three class levels then operating in the department totalled 95, and by Chinese standards a reasonable curriculum was being offered to them. Because of its newness, NanDa's law department was probably more typical of recent educational efforts in terms of its programmes, resources and problems than a school like Beijing University, and for that reason I have relied very heavily on my experience at NanDa.

My own class at NanDa was the class of 1981 (undergraduate classes in China are often designated by the year they enter university, not the year they are to graduate from it). That class was the smallest as well as the most senior in the department during the year I taught there, with a total of 43 students, 27 boys and 16 girls. The oldest student in my class (they were then in their third year of college) was twenty-two years old and the youngest was eighteen; most were twenty or twenty-one and had entered university directly after

16 at pp 20-24; supra 14 at pp 223-224. According to 1980 statistics, out of 675 institutions of higher learning, 97 were officially classified as key. 28 of those key institutions, including NanDa, are financed and administered directly by the national government; they are the most prestigious, favoured in terms of facilities and funding, and they are more likely to be able to recruit students nationally and to have their graduates assigned nationally. China Handbook Series, *Education and Science* (1983) at pp 46, 56-64; supra 14 at pp 223-224. (These statistics seem to change frequently, because schools may be added or reorganised and because it is also possible for a university to be promoted to key status or demoted from it.)

graduation from senior middle school²³. My assignment in the department was to teach the third-year students a survey course covering a wide range of topics in American and international law²⁴.

Faculty

University teachers in China are divided into four ranks: professor, associate professor, lecturer and assistant lecturer; in NanDa's law department, there were no full professors and only two associate professors, with the majority of the department members being lecturers and the newest graduates beginning as assistant lecturers. Although there was some variation, the usual teaching load in the law department seemed to be one course per semester, which usually involved four hours in the classroom. The new assistant lecturers did not teach at all, but ordinarily had a year or two in training under the supervision of a senior faculty member to prepare lectures for the courses assigned to them. The faculty-student ratio in the department, as at most Chinese schools, was quite good, being about 1:5 or 1:6 (although such figures can be deceptive, since not all faculty members were actually teaching)²⁵.

As a result of the chequered development of legal education, faculty members at most law departments seems to fall into one of several groups: older teachers, even in their seventies or eighties, and thus educated before 1949, often abroad; the middle-aged, in their fifties, who finished their studies during the 1950s and were Russian-influenced; or very recent graduates, products of the revived legal education. Although most of NanDa's younger faculty at least had read law as undergraduates, that was not invariably the case; junior staff members might be transferred from other departments (such as history or economics) to teach, or they might be brought over from the language department to be groomed for law study overseas. Thus, of the four junior teachers assigned to me as "liaisons", two had law degrees, one had read history, and the fourth had read foreign languages. Of the senior staff, at least one lecturer had studied in the Soviet Union (Leningrad University) and several others educated

23 In China, primary school now lasts for five years (six in Beijing and Shanghai), junior middle school for three years, and senior middle school for two or three years. China Handbook, supra 22 at p 27; John Cleverley *The Schooling of China* (1985) at pp 232, 236. The National People's Congress has recently passed a law providing for the introduction of a nine-year compulsory education programme. "Goals set, NPC session ends" *China Daily* 14 Apr 1986.

24 Thus, in the first term, I lectured on, among other things, legal history, civil procedure, contract, torts, agency, partnership, company law, property, trusts and wills. In the second term, I went on to discuss commercial transactions under the US Uniform Commercial Code, specifically sales, commercial paper, and secured transactions; and various aspects of international commercial transactions, including the law merchant, export-import contracts, documentary sales, letters of credit, arbitration, carriage of goods by sea and marine insurance, and some aspects of US customs and trade regulations. The department thought this was not enough topics!

25 In 1980 the overall faculty-student ratio in Chinese tertiary institutions was 1:4.6 – China Handbook, supra 22 at p 46.

in China during the 1950s had studied Russian as their foreign language. Another lecturer, who attended my classes, had been educated entirely before 1949 and was therefore the product of totally different training from his colleagues: he had first studied law in the 1940s at the American-sponsored Soochow University of Comparative Law and graduated from a US law school before starting as a law lecturer in 1949²⁶.

Law School Curriculum

Although tertiary institutions have a certain amount of leeway in developing their courses, the curriculum for law students is fairly standardised throughout China, within guidelines set by the Ministry of Justice²⁷. As in Singapore, the first law degree is an undergraduate one; in a Chinese university, however, law is classified as one of the social sciences, with the result that the law department is simply one department in the liberal arts division and not a separate faculty. Thus, in part the curriculum required of students majoring in law is the same as for all undergraduates; at NanDa, for example, they were required to take courses in philosophy, political economy and history of the Chinese Communist Party – all courses with a high ideological content – as well as general courses in foreign languages, the Chinese language and physical education. (These courses are generally required at universities in China.) Chinese universities have now restored the credit system, under which a student must complete a certain number of credit hours (in both required and elective courses) in order to graduate. NanDa law students were required to take a minimum of 137 course credits, including electives and the compulsory courses set by the law department and the University (this was roughly comparable to credit requirements in other departments).

In addition to the general university requirements, law students must also meet certain course requirements in law set by their department. NanDa's law curriculum was similar to those of other universities, although there are still variations from school to school. Some law departments have now divided their staff and students into different sections, according to academic specialties or majors; Beijing, Jilin and Wuhan Universities, for example, all have separate sections for international law and general (or "domestic") law, and students are able to specialise in one area, with course offerings and requirements varying according to their section²⁸. In addition, since 1980, Beijing University has also

26 During the Cultural Revolution he suffered for his Western education: he was subjected to protracted "examination in isolation" and finally "demoted" to a street market to sell pork! It was not until 1976 that he was returned to his former middle school and only later was he assigned to NanDa – and his legal training finally put to use again. "Shop assistant returns to law school podium" *China Daily* 8 Mar 1983.

27 Macdonald, *supra* 6 at pp 333-334; Gelatt and Snyder, *supra* 6 at p 48.

28 Wang Tieya, *supra* 13 at p 78. Even within these sections there may be further specialisations; thus, according to Wang, Wuhan's international law section emphasises international trade law, and Jilin's private international law.

run an economic law section²⁹, which I have been told is considered the best in the country (the best international law section is at either Beijing or Wuhan, depending on one's source)³⁰. Students reading law at one of the institutes of politics and law may also specialise, usually in their third year; at the East China Institute, for example, specialisation areas include criminal law, civil law, economic law, international law and legal theory.

Although NanDa was planning an economic section, when I taught there the law department was not yet divided into sections, and consequently, except for the few electives they chose outside the department, the law students in each year took all their courses together. NanDa's law curriculum included a variety of courses in the areas of civil law, criminal law and international law, in addition to the general university-wide requirements. The law department also required its students to write a long essay (10 000 characters) in their final year and to complete a period of practical training before graduation; both requirements seemed fairly standard at other law departments.

NanDa's law curriculum was basically as follows:

First-year courses

First term

Philosophy
Basic Legal Theory
Foreign Language
Physical Education
Classical Chinese
Logic
Political Science
"Moral Education"

Second term

Philosophy
Basic Legal Theory
English
Physical Education
Classical Chinese
History of Foreign Legal Systems
Constitutional Law
"Situation Education"

Second-year courses

First term

Political Economy
Foreign Language
Physical Education

Second term

Political Economy
English
Physical Education

29 Li Ning, *supra* 7 at p 24.

30 All three universities have considerably larger law faculties than NanDa, however: Jilin and Beijing around seventy members and Wuhan over fifty and their law departments have also been earmarked by the national government for special treatment and extra funding.

History of the Chinese Legal System	History of the Chinese Legal System
History of Foreign Legal Systems	Criminal Law
Constitutional Law	Criminal Procedure
Classics of Marxism-Leninism	Civil Law
Political Science	Forensic Medicine
“Moral Education”	“Situation Education”

Third-year courses

First term

History of the Chinese Communist Party
Civil Law
Marriage Law
Economics
Public International Law
Foreign Law
Electives
“Moral Education”

Second term

History of the Chinese Communist Party
Civil Procedure
Criminal Investigation
Forensic Medicine
Private International Law
International Economic Law³¹
Electives
“Situation Education”

Fourth-year courses

First term (first half)

History of Chinese Legal Thought
Labour Law
History of the Legal Thought of Foreign Countries
Roman Law
International Organisations
Electives
“Situation Education”

First term (second half)

History of Chinese Legal Thought
Labour Law
Judicial Documents
Judicial Psychiatry
Environmental Protection Law
Electives
“Situation Education”

Second term

Practical work (Attachment)
Long essay paper

As may be seen from the list, NanDa offered little in the way of very specialised courses (ie international finance, shipping, or banking law) to its students, nor even some courses we might not consider so specialised, such as administrative law, intellectual property law, conflict of laws, or evidence. To

31 Foreign Law and International Economic Law were my courses.

a great extent, of course, this was a reflection of NanDa's limited resources and smaller faculty compared to schools where such courses were offered, particularly to graduate students. It might also result from the many non-law courses that Chinese law students must take in order to graduate, as the course listing clearly shows; after meeting their non-law and basic law requirements, they simply have less time left for specialised or advanced law courses than students in Singapore.

At the same time, however, there was an attempt at NanDa to teach a surprising amount of foreign or comparative law (for four terms), even if, as in other courses, it was dealt with at a very general (and from an outsider's point of view, a very ideological) level³². In addition, as at other schools, the department was eager to offer and emphasise courses in international law, particularly in what the Chinese call "international economic law," a classification that is roughly equivalent to international trade and investment law; thus the students took four terms of courses in international law. In order to gain more exposure to international and comparative law, many universities have also arranged exchanges with foreign institutions or have invited foreign lecturers to teach in their law departments (sometimes full-time, as in the case of American Fulbright lecturers). Since NanDa is located in a provincial capital as opposed to an international city, it was at something of a disadvantage compared to schools in Beijing and Shanghai, which have a resident foreign legal and business community to draw on even without formal institutional exchanges. Even so, the University had managed to arrange exchanges with both German and American law faculties and had visiting Fulbright lecturers in law for two years.

Teaching Methods And Materials

Suitable course materials were scarce when law departments were revived after the Cultural Revolution, but textbooks are now available for most of the basic subjects being taught. The texts most widely adopted by the law departments throughout China, including NanDa's, are part of a series sponsored by the Ministry of Justice and the then Ministry of Education for use in all higher-education law courses; more than 20 titles in the series have been published in the last few years, including, for example, texts for constitutional law, economic law, civil law, criminal law and labour law. The ones my students used were all textbooks rather than casebooks in format; they presented a series of general principles to be learned, plus some elaboration on them, rather than collections of cases for analysis and discussion. The textbooks were obtainable at the department offices and ranged in price from about one to three Chinese *yuan* (about S\$0.65 to S\$2.00)³³.

32 For detailed discussion of the heavy ideological emphasis: Ho, *supra* 13 at pp 43-47.

33 As Bing Ho notes, however, they contain no notes, indexes, footnotes, case lists, references, etc. Ho, *supra* 13 at pp 64-65.

In law study as well as in other subjects, most courses seem to be conducted according to an approved outline, which is rigidly adhered to, and in class the formal lecture method is almost invariably employed. Although the lecturer might ask questions of the students or possibly conduct some discussion, it is rarely spontaneous and there is no equivalent to the small-group tutorial so important in Singapore. Lectures themselves are often very closely tied to the textbooks, so that the students tend to bring their books or statutes to class and then follow the text as the lecturer explains or adds to the material contained therein (or at worst, simply repeats it to them). In my experience, the Socratic or case method is not used to any extent; of course, cases have no binding precedential value in the Chinese legal system and are anyway not always reported or otherwise freely available – they may even be classified. Tutorials would also be likely to require more preparation from the students, but they have little free time outside their required classes and meetings for that sort of intensive preparation on their own (although my students told me that they met in small groups to discuss their studies). Of course, most schools offer practical or clinical experience in the third or fourth year of study, and some schools, like People's University in Beijing, are reported to have initiated at least a limited moot court programme for their students³⁴. Other reports indicate that the Chinese are trying other, less formal teaching methods in their regular courses, and visiting common law lecturers often introduce the case method to their classes – but the dominant method is still the formal lecture³⁵.

Consistent with the general teaching and lecturing approach, examination papers at NanDa tended to be essay in form rather than of the problem-solving kind. Reports as to the significance of student grades varied, so I could not be sure how important they would be to my students' future. Actually, the results of examinations seemed to be more important to the teacher's standing than to that of the students; if the students failed to do well, the fault lay with their teacher, not with them. (It was my understanding that students were virtually never failed, and in my first course, in fact, the grading scale was Excellent+, Excellent, Excellent-, and Very Good – or at least those were the grades my associate assigned the students for their examinations!)

Law subjects also tend to be covered in much less detail than in the US or Singapore; in some areas more detailed treatment would not be possible because the laws have not yet been enacted or lack supplementary regulations, or the laws themselves are still relatively simple. Thus, as the course listing illustrates, students at NanDa took only one semester of constitutional law and of civil procedure; and even though civil law was taught as a two-semester course, the

34 Li Ning, *supra* 7 at p 23.

35 Tibor Baianski Jr "The dilemma of legalisation" *Far Eastern Economic Review* 10 Jan 1985 at pp 38-39; "A graduated improvement" *Far Eastern Economic Review* 24 Jan 1985 at p 65.

students had to cover a long list of topics that would constitute separate courses of study in Singapore or in most US law schools (for example, debt, various kinds of contract, trusts, property, and wills and inheritance treated in one course along with other topics). In part this reflects the comparative lack of importance of such "private law" subjects in a socialist country (and the absence of a full civil code), and in part the fact that there is less time there to specialise. But I think that it also represents a general approach in which it is not thought necessary to discuss or study legal subjects in the same amount of detail required elsewhere³⁶. In my own courses, for example, I was also forced, by lack of time, to cover complex topics in a very superficial way; to me that approach was highly unsatisfactory, but it seemed acceptable to the students and not out of line with some of their other courses.

Class work may not have been so detailed, but the students at NanDa in fact carried a fairly heavy course load, or at least they spent a surprising amount of time in class or other organised activity. Their classes and required school activities occupied much of six days each week, with only Sunday completely free of classes or meetings. Many students started class at 0730 hrs and then spent a minimum of four to five hours per day in lectures; students commonly had to attend classes in blocks of two to four hours, at least in their first two years. (And at most Chinese universities, class attendance is compulsory.) In addition, students attended compulsory political study meetings (called "moral education" or "situation education") at least one afternoon a week (three or four hours every Saturday afternoon), military drill had been reinstated for the more junior students, and everyone was supposed to engage in some sport or group physical exercise from 1600 hrs until dinner. As a result, many students had their whole day, except for the midday rest, blocked out for them, and only in their final year did they have any real opportunity to pursue research work or independent study.

Terms at Chinese universities are also very long by Singapore (or US) standards: the first term ordinarily starts around 1 September and continues until Chinese New Year (January or February), at which time there is an approximately four-week break to allow students to return home; the second term begins after Chinese New Year and ends by the middle of July, when the long vacation begins; as a result, the university term lasts 20–22 weeks. (The last few weeks of each term are usually devoted to a student reading period for revision and then to examinations, but there is still a seemingly interminable teaching term for both students and lecturers.)

It was my impression, gained as a non-student, that the students were serious and worked hard outside their classes, and that they had little time or opportunity for leisure activities. If they could get a seat at the main library

36 By one account, this was true even at Beijing University, generally considered to have the best and most advanced law department in China. Ho, *supra* 13 at pp 47-49.

after dinner, they studied there in the evening until it closed; otherwise they had to try to work in their hostel rooms, which were shared by six to eight students. (NanDa's law library was very small and open only to the lecturers and post-graduates.) Student living conditions at NanDa, as in the rest of China, were spartan, to say the least. The standard hostel room was furnished with four bunkbeds, tiny desks, and a washbasin, thermos and quilt for each student. Like the library and classroom buildings, the hostels at NanDa were unheated and they lacked hot water, despite Nanjing's chilly winter. Canteen food, though cheap, was of poor quality and doubtful nutritious value; for many students it could hardly have been enough to support their schedule.

Like the majority of full-time students at Chinese universities, my students lived on campus, although they were less isolated than most because of NanDa's location. NanDa was surrounded by the usual high university walls and locked its gates at night, but it was located near the centre of town, which was a short walk from the back gate of the south campus; in contrast, all other major universities seem to be set far on the outskirts of their city, which is usually a one or two-hour ride away on very crowded buses (few undergraduate students could afford a bicycle, which would give them greater mobility and freedom). Even so, NanDa students had little time to escape from campus and work, and compared to US or Singapore students had few social or club activities to divert them (there are now some student dances at NanDa, but that was a form of "spiritual pollution" from the West and thus out of the question when I lived in Nanjing). The university authorities expected students to devote themselves entirely to their classes and study³⁷.

JOB ASSIGNMENTS

Once the students complete the four-year programme, they receive their law degrees (in 1981, the degrees of B A, and Ph D were instituted for the first time since 1949)³⁸, and they can expect their first job assignment. Previously, graduating students did not look for jobs on their own but had them assigned according to a centralised state plan. On the one hand, this meant almost no unemployment for graduates; but on the other hand, students were often assigned without the opportunity to express any preferences, their academic specialty (or performance) might often be irrelevant to their assignment, and the assignments were in virtually all cases permanent. Students suffered agonies in their last term waiting to learn their assignments and were often crushed with disappointment on receiving them. But the Party's May 1985 "Decision on the Reform of the Educational System" announced major reforms in the system (already previewed at certain schools); it is now intended that students, institu-

37 For a vivid description of student life in China generally: Hooper, *supra* 16 at pp 55-75.

38 China Handbook, *supra* 22 at p 53.

tions and employers should have a greater say in the work assignments, that academic performance should be taken into account in the decisions, and that those who have paid their own way will be able to seek their own jobs if they wish³⁹.

Fortunately for them, law graduates are now in short supply and great demand and, however the reforms are implemented, virtually all of them can expect an assignment related to law. As in Singapore, there are a variety of possible types of legal work assignments. Both university and institute graduates might be assigned to work in the courts, the public security bureaux or the procuracy, all of which need trained legal workers. They might also be assigned to a state enterprise or trade organisation to act as "in-house counsel" (my students generally expressed a preference for economic or international trade work over criminal law and police work). Finally, they might be assigned to one of China's 2 700 legal advisory offices, the closest thing to the ordinary practice of law in Singapore. But in China, of course, such offices are all organised by the state and supervised by the state judicial organs; the lawyers employed there are state workers (as the provisional regulations on lawyers make clear) and are paid a salary by the advisory office, instead of receiving fees directly from clients⁴⁰.

The regulations also provide the admission requirements for lawyers; although applicants may become lawyers in several ways even without a higher degree, in every case they must first of all be citizens and "cherish the PRC, support the socialist system and have the right to vote and stand for election." To qualify as lawyers, university law graduates must then meet certain other requirements: they must pass an examination; complete two or more years in judicial work, teaching or research in law; and then obtain approval and a certificate from the regional or provincial judicial departments⁴¹. Although there is not now a requirement that lawyers pass a national bar examination, it has recently been suggested that such an examination is needed in order to maintain higher standards and to apply them throughout the country⁴².

39 "Reforms aim to reinforce weak links in education" *China Daily* 29 May 1985; "Upgrading Education Through Reform" 28 *Beijing Review* 16 (10 Jun 1985); "New system matches up graduates and employers" *China Daily* 11 Jul 1985; Wang Yibing, *supra* 21 at p 21.

40 Provisional Regulations on Lawyers of the People's Republic of China Ch 1 Art 1: "Lawyers are the state's legal workers . . ." Ch 3 "Work Organs for Lawyers" describes legal advisory offices.

41 Provisional Regulations on Lawyers of the People's Republic of China Ch 2 "The Qualifications of Lawyers"; and Jerome A Cohen "China's New Lawyers' Law" 66 *ARAJ* 1533 (December 1980).

42 "Testing necessary to qualify lawyers" *China Daily* 28 Mar 1986.

The best (and politically safest) students, at least from the university law departments, might also have the opportunity to stay in academic life rather than being assigned to practical legal work directly upon graduation. The opportunity for such postgraduate study is usually possible in one of three ways. Thus, the student might be assigned to a research institute as an employee, or he might be selected by his department to stay on as a teaching assistant, with the opportunity to obtain further training as he prepared to become a lecturer. Finally, if he passed the two-day graduate entrance examinations given in February and was admitted to a university department, he could enrol as a postgraduate student to work for a master's degree (requiring three years of study) or a doctorate (requiring an additional two years) in law⁴³. NanDa was beginning its postgraduate programme in 1985, first with students specialising in the basic theory of law, but in the future, the department hopes to have post-graduates in legal history, criminal law, civil law and international law. Not many Chinese universities could offer doctorates in law, however; in 1984 I was told that there were only five professors qualified to administer that degree, four at Beijing University and one at Wuhan. (At least seven of my class of 43 were getting research positions or going on for further study.)

PROBLEMS AND PROSPECTS

However viewed, the re-establishment of legal education in China represents a remarkable turnaround, and the Chinese have made great progress since 1978. After a 1972 trip to China, then Harvard law professor Jerome Cohen commented that, "(t)he first thing to understand about legal education in China today is that there isn't any."⁴⁴ Now, of course, there is a great deal: in addition to the many other types of programmes, there are university law departments or political-legal institutes in every province or region but Tibet, Qinghai, and Ningxia, and they are now producing some 3 000 graduates each year⁴⁵. The Chinese have gone from nothing to 36 law departments, have found the faculty to staff them, and have produced a series of student textbooks for most subjects offered. The law department at my own university serves as an excellent example: re-opened only five years ago after a 30-year closure, NanDa has already graduated its first class and is graduating its second, has opened a night law school and operates a two-year training programme for cadres, has increased the number of undergraduate students, and is also beginning to develop an economic law section and a postgraduate programme.

43 It was expected that fewer than one in four taking the February 1986 examinations would actually be admitted to graduate study. "Postgraduate exams set record" *China Daily* 22 Feb 1986.

44 Cohen "Notes on Legal Education in China", supra 5 at p 205.

45 Li Ning, supra 7 at p 22; "Economic boom spurs big leap in legal work" *China Daily* 8 Oct 1985.

Despite their efforts, however, the Chinese may still be unable to meet their goal of producing ever greater numbers of legally-trained people. According to a preliminary estimate, in the next seven years the PRC will need at least 34 000, less than 10% of that estimated need⁴⁶. The university law departments and political-legal institutes cannot be expected to fill such a large gap – thus the obvious necessity for on-the-job training and such a variety of part-time and short-term training programmes. Not every “legal worker” needs the comparatively lengthy and detailed training offered in the regular undergraduate programmes, of course, but relying so heavily on such other forms of training raises the question of standards very clearly. How high is the standard of legal training generally?

The same issues arise even within the universities and political-legal institutes. After years of neglect or destruction of formal legal study, the Chinese have had a very short time in which to reconstruct their higher legal education and few resources to do so on a wide scale – and this has inevitably led to problems with the quality of the teaching staff and law libraries, at least at the newer schools. Lecturers (the oldest ones) may find their training out of date, or they may have received very little legal training at all⁴⁷. A new department like NanDa’s has almost to start from scratch with its law collection; consequently such libraries lack depth (especially in foreign or international law, despite the strong interest in it), have outdated materials, or have few books at all.

A more fundamental problem, however, at least to an outsider, has to do with teaching methods and the quality of instruction in Chinese schools generally, and in law departments in particular. As discussed earlier in this article, the legal training is certainly more general (and ideological), and the method more formal and structured than Singapore or American law students are accustomed to. The lecture system is not necessarily inappropriate or inefficient, especially for an undergraduate programme and a code (rather than common law) country, but its almost exclusive use seems to contribute to the over-emphasis on rote learning: the students memorise what the teachers say and then write it out on their examinations. There is insufficient attention paid to analysing problems, and even if students wished to go beyond their ordinary classwork, they would have little time for independent or in-depth work. Thus, one observer thought that the major failing was not developing “the most essential lawyering qualities, notably, a healthy skepticism, intellectual curiosity and creativeness”⁴⁸. Another concluded that Chinese law students “would benefit from more time to themselves, more emphasis on independent critical

46 Wang Yibing “Updating China’s Education System” 28 *Beijing Review* 15 at p 17 (16 Dec 1985).

47 A PRC legal delegation visiting Singapore in 1985 asked how many of the law lecturers had been trained in law and seemed surprised to learn that, given the number of lecturers on the staff, everyone teaching law here had at least one law degree.

48 *Supra* 19 at p 804.

analysis, and more attention to conceptualization.”⁴⁹ Students themselves complain about the “force-feeding” they say is commonly used and would like fewer lectures and more time for outside reading⁵⁰.

Finally, there is of course no escape from politics or the influence of the Party in the PRC, especially in a sensitive area like law, so that legal education (what is taught and how it is taught) will be affected by the current political lines as well as by the latest policies on education. In the very best schools or at the highest levels there may be debates on policy, but this would be less likely in other situations; it is always safer to follow the “correct line” if one has been determined, which must necessarily discourage creativity and independence, whatever else is done about teaching methods. The heavily ideological emphasis in courses and the time spent in political study and moral education, which is taken seriously at least by the Party cadres, must also seem a waste of good academic time to the outsider.

To a certain extent, the Chinese authorities recognise such problems and would make similar comments themselves. Certainly, they would like to improve the quality of their law faculties and libraries and are making efforts to do so. The necessity for educational reforms generally has also been a frequent theme for the last few years, and schools that do carry out reforms to emphasise high standards and achievement, such as Beijing University, Qinghua University and Shanghai’s Jiaotong University, are frequently held up as models (for allowing joint degrees, changing majors, more electives, fewer classes and more practical work, more choice in job assignments, etc)⁵¹. The educational reforms announced in May 1985⁵², if implemented, would lead to more stress on academic performance, more flexibility and freedom for universities in their curricula and even in teaching and administrative appointments (though they may at the same time grant even more importance to doing well on examinations and thus to cramming). And in a recent article analysing the purposes of the educational reforms, the “traditional spoon-fed method” of teaching, ie rote teaching methods and lack of field work, was again criticised for producing students who lack the ability to think and study independently⁵³.

There are also some indications that political direction may be somewhat less heavy-handed in the future and that the Chinese may allow more latitude to

49 MacDonal, *supra* 6 at p 335. For a student’s conclusions: Ho, *supra* 13 at pp 49-52.

50 “Student urges reform of education” *China Daily* 2 Mar 1984; “Force-feeding of students hit” *China Daily* 5 Apr 1986.

51 “Colleges outline job placement reform” *China Daily* 13 Mar 1985; “Leading university announces changes” *China Daily* 4 Apr 1985; “Reforms give students freedom to nourish” *China Daily* 4 Nov 1985.

52 “Reforms aim to reinforce weak links in education” *China Daily* 29 May 1985; “Education reform” *China Daily* 24 May 1985; Wang Yibing, *supra* 46 at p 17.

53 Wang Yibing, *ibid*.

divergent opinions. A recent article by Gan Zhongdou, vice-chairman of the Chinese Law Society, called for freer discussion in legal studies, while acknowledging that there is not now sufficient freedom of academic discussion among law students and teachers: "constructive criticism and suggestions to improve some of the current state policies and laws" should be allowed. He added, however, that, "Of course, everyone knows that there is no absolute freedom. We have to abide by the principles of Communist Party leadership, socialism, proletarian dictatorship and Marxism-Leninism and Mao Zedong Thought"⁵⁴. It is to be hoped that such statements (together with the revived "hundred flowers" policy) signal a freer atmosphere in universities and institutes, but it will obviously remain within limits.

Perhaps we should also consider the goals of legal training in China before we can draw any final conclusions about the success of its legal education. The "aim of legal education is to train specialists for the courts, legal institutes and schools, and research institutions"⁵⁵ – not necessarily for the kind of practice most of our students enter. Chinese law students must eventually work in their own society, not another with different goals or beliefs – this is the ideology in which they must operate and within which ideas must be expressed. The Chinese themselves frequently make this point. Thus, one commentator wrote that "China's system of legal counsel is consciously tailored to meet its own needs as a developing socialist country. It differs from that of capitalist countries just as China's political and economic systems differ from those nations"⁵⁶. And according to Professor Han Depei, the distinguished former head of Wuhan University's law department:

Generally speaking, our goal is to train students through higher legal education to become people who possess basic knowledge of the Marxist-Leninist theory of law; are familiar with the Party's political and legal work, policies and guiding principles; are endowed with socialist political consciousness; have mastered the professional knowledge of law; and are capable of undertaking research, teaching and practical legal work⁵⁷.

If these aims are listed in their order of importance, then they obviously represent very different priorities.

In conclusion, we might ask whether the developments described in this article will continue: will the Chinese continue to emphasise lawyers and thus legal education? Although there is some resistance to these developments and there can be no guarantees against less drastic shifts in policy (since law is particularly sensitive to political swings), it seems highly unlikely now that any

54 Gan Zhongdou "Free discussion for legal studies" *Ta Kung Pao* 29 Aug 1985 at p 10.

55 Li Ning, *supra* 7 at p 23.

56 He Bian "China's Lawyers" 25 *Beijing Review* 14 at p 14 (7 Jun 1982).

57 Depei and Kanter, *supra* 13 at p 563.

shift on the scale of the Cultural Revolution will occur in the near future. At the moment, with Deng Xiaoping and his pragmatists in power, the stress is on the “four modernisations,” and the “open-door” policy for trade and investment – and therefore on a stable legal framework for development. So long as that continues and the economic reforms show signs of success, the necessity for those with legal training will remain, indeed increase, and legal education will also remain a priority in the PRC.

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