

# *Legal Education in China: Reforms and Requirements*

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## **Abstract**

This article argues that two types of pressure, specifically pressure from international competition and pressure resulting from the low employment rate of law graduates, are the major motivations for the new wave of legal education reforms in China. The direction of the reforms is from a single model into more diversified models. However, there is tension between “the universities’ pursuit of academic freedom and featured education” and “the government’s focal investment associated with deliberation and calculation.” In recent years, Chinese legal education reform has placed more and more emphasis on practical skills training, and Chinese law schools are now required to open legal practice courses that must make up no less than 15% of the curricula. The author thinks this developmental trend is correct, but points to a potential problem: the costs of practical skills training, historically borne by mostly courts, procuratorates, and law firms, are now being transferred to law schools. Therefore, reform of the legal education sector in China should be adopted together with reforms in the tuition and fees system, as well as the bar exam, so that planned changes can be applied outside of the academic sector.

**Keywords:** quantitative indicators, diversified models, practical skills training, “3+3” Juris Master special class, reform of the bar exam

## 1. INTRODUCTION: CHANGES IN THE SOCIAL REQUIREMENTS AND ROLE OF LAW IN CHINA

For a long time, China essentially lacked any high-quality professional legal education or training. This was, in large part, due to the absence of a corresponding social requirement for such education. Against the backdrop of a national power that was “above the law” and “guanxi networks [that] were higher than national law,” the outcomes of legal proceedings were decided on the basis of superior officials’ notes, requests from acquaintances, and political or social trends, rather than as a result of “validity and justice.” At this time, points of argument provided by clients and attorneys did not focus on legal knowledge, legal reasoning, or evidence-based persuasion. Instead, public opinion, networks, and authorities’ political standpoints might decide judgments in cases. In such circumstances, distinguishing

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levels of legal education was meaningless. Indeed, regrettably, at this time, legal education appeared dispensable.

Now that the time has come for China to sincerely promote rule of law, the desires of Chinese people to possess legal knowledge, such as knowledge about legal systems, norms, and procedures, are clear. Given the current situation, where Chinese enterprises are actively adopting strategies of global marketing and “walking out of China,”<sup>1</sup> international litigation involving Chinese enterprises is unavoidable. Therefore, the urgent need exists to acquire legal knowledge and expertise in managing overseas legal risks. Likewise, a primary focus of both officials and enterprises is with cultivating Chinese legal experts who can deal with international disputes and make improvements in the quality of Chinese legal education. In addition, it is imperative that China cultivate legal experts with sophisticated skills in the formulation of international policy, with its participation as a responsible state in global governance. Considering the current growth of web-based massive open online course (MOOC) platforms and the recruitment of Chinese students by prestigious international universities, China is aware of the already existing strong global competition in higher education.

When a society is aware of the importance of legal expertise and training, and starts to make efforts in this direction, legal education will naturally enter a “golden age” of development. Although high-quality curricula design has been missing, as a result of blind expansion and an emphasis on quantity rather than quality, legal education in China is now confronted with an “overcapacity crisis,” even while this should be a time of great development. This “overcapacity crisis” is reflected in the following: the employment rate for law graduates is continuing to decline, and has even fallen to the lowest of all social sciences graduates<sup>2</sup>; the judicial system is reducing the number of staff employed in this sector<sup>3</sup>; and small law firms are fighting for their survival. In general, two types of pressures confront the Chinese legal education system, namely pressure from international competition in education and pressure resulting from the difficulties law graduates face in finding employment. The first type of pressure requires that Chinese law schools pay more attention to professional legal education, so as to improve the quality of this education. The second type of pressure demands that Chinese law schools increase the scope of their teaching and foster interdisciplinary teaching practices, so that law graduates can master a broader range of knowledge and, thus, be more adapted to the job market. Within these constraints, the Ministry of Education of the People’s Republic of China (Ministry of Education) is dedicated to furthering a new wave of reforms in the Chinese legal education sector—reforms that entail the cultivation of various types of legal experts, possessing the capabilities needed to deal with different types of legal problems.<sup>4</sup>

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1. As an important government strategy, “Walking Out of China” was officially proposed in 2000 and was written into “The Outline of the Tenth ‘Five-Year Plan’ Regarding National Economy and Development” the next year. Its basic idea is that the state shall, while continuously attracting foreign investment, promote Chinese enterprises to strengthen their outbound investment and cross-border transactions and to participate in global competition.

2. Employment difficulties for law school graduates emerged in 2002; after 2005, the employment rate for law school graduates was once the lowest of all humanities and social sciences disciplines. Please see the special report “Break-through in the Death Place—the Report of Employment for Law School Graduate in 2009” (2009).

3. The purpose of the “staff number reform” in China’s judicial institutions in the last two or three years has been to reduce the number of judges and prosecutors in Shanghai at a rate of 2/3. Please refer to the special report “Shanghai: The Pioneer of the Staff Number Reform” (2015).

4. Please refer to Ministry of Education and the Central Political and Legal Committee of the CCP (2011).

## 2. CHINESE LEGAL EDUCATION REFORMS: DIRECTIONS AND CONTENT

In terms of educational objectives and course content, in China, an explicit distinction has been made between undergraduate and postgraduate legal students. This has resulted in the underdevelopment of higher-level legal education programmes.<sup>5</sup> In general, Chinese law schools have mainly adopted the pedagogic method of “full-class-time teaching,” which involves lecturers “spoon-feeding” students during the entire period of teacher-student contact in the classroom. These lecturers stress the memorization of legal provisions and students providing standardized answers. Reflecting this trend, Chinese legal education is very exam-oriented, lacking in-depth training in technical legal skills or professional qualities. Curricula design and teaching methods are old-fashioned, in direct contrast to legal practices and contemporary social requirements. As a result, Chinese legal education is far behind international levels. The tremendous increase in Chinese law schools has led to a common practice whereby educational capacity is expanded through quantity over quality. The result is a system of Chinese legal education that exhibits characteristics indicative of low-cost production, with a lack of vitality and innovation.

It is therefore necessary that reforms in Chinese legal education reduce educational capacity and return to more suitable scales of delivery. Additionally, clarifying legal education objectives and improving teaching methods are imperative. It is also important that legal education move from a single to more diversified models. These “diversified models” should encourage innovation, with the goals of ensuring educational quality, cultivating different types of legal experts—in accordance with various social requirements—and combining two educational focal points in terms of the breadth and depth of legal knowledge taught. Hence, future developments within Chinese legal education could incorporate the following suggestions.

First, Chinese legal education reform should focus on the cultivation of student competencies in legal reasoning and critical analysis, as well as improving students’ basic legal knowledge quality and sense of legal identity. This can be done by providing modules in topics such as the theory of justice and legal foundations. Although legal concepts might be abstract, they are important to the formation of interpretative legal communities, as well as the creation of legal experts, improvements in legal insights, and the ability of legal practitioners to make comprehensive judgments and decisions.

Second, the design of legal education curricula should be changed with a view to satisfying contemporary social and economic requirements. Therefore, a series of reform measures should include the compilation of better teaching materials and selection of better reference materials, to cultivate a basic legal knowledge base in students. At present, Chinese legal education programmes have only a small number of elective courses, and the scope of these courses is quite narrow. Hence, in addition to 16 core courses,<sup>6</sup> supplementary modules from interdisciplinary courses (especially those closely related to law), as well as practical courses and those on cutting-edge legal topics, should be provided.

5. Cf. He (2006), especially pp. 110–40.

6. On 11 March 2007, the Directory Committee of the Ministry of Education for Teachings in the Discipline of Law in Colleges decided to increase the core law courses from 14 to 16, including jurisprudence, China’s Legal History, Constitutional Law, Administrative Law and Administrative Procedure, Criminal Law, Criminal Procedure, Civil Law, Intellectual Property, Commercial Law, Business Law, Civil Procedure, International Law, Private International Law, International Economic Law, Environmental and Resource Protection Law, and Labor and Social Security Law.

Third, students' legal skills should be strengthened by incorporating different teaching methods, such as case, dialogue, clinical teaching, and simulation methods, as well as by holding workshops on dispute resolution. Additionally, Chinese law schools should hire exceptional "professors of practice" who have obtained a wide range of practical legal experience and expertise, and require these experts to engage in systemic teaching and legal research, so that practical skills training will be increased in law programmes. Teachers in substantive and procedural law should also be included, whether through full-time teaching, part-time positions, or open unibus courses, so that students can break through disciplinary barriers and freely apply diversified knowledge and experience when solving practical problems.

Finally, courses in international, comparative, and specific national law should be emphasized, to expand students' international perspectives and ideological depth. Likewise, Chinese law programmes should offer bilingual legal courses, as well as courses taught completely in foreign languages. They should stimulate academic exchanges and co-operation with foreign law schools, allowing more opportunities to study, visit, and research overseas, as well as hire international academic staff. All of these provide important avenues through which the quality of Chinese legal education can be improved.

### 3. HIGH-QUALITY PROFESSIONAL LEGAL EDUCATION: PROBLEMS IN QUALITY, COST, AND TUITION

A series of reform measures focused on improving educational quality and increasing students' choices will undoubtedly increase the costs of legal education in China.<sup>7</sup> As such, Chinese law schools should be allowed to set their tuition fees themselves. However, presently, Chinese legal education focuses on providing education to large numbers at low costs, with official authorities strictly controlling tuition fees to ensure social stability.<sup>8</sup> As a result, a counter-productive cycle occurs. Under the current system, the belief exists that legal education reforms focused on improving quality and increasing students' choices are not worthwhile. Therefore, Chinese law schools continue to maintain a single model of education. If tuition fees were raised, then students and parents will need to be satisfied that there is a significant improvement in curriculum design, teaching methods, and the overall operating system of the university. However, without increased financial investment, reform of legal education will be impossible, and Chinese law schools will continue to be at a disadvantage in competing with foreign law schools to attract outstanding students.

It should be made clear that, in the last ten years, higher education in China has become seriously stressed. Chinese universities, especially prominent universities,<sup>9</sup> are becoming more and more influential. Meanwhile, the Chinese government has invested more and more money into education. These large investments imply that Chinese universities are expected to accomplish correspondingly high academic achievements, and the Chinese government requires such outcomes from universities, explicitly or implicitly. Therefore, the Chinese government has become more serious in its assessments of the costs of education, examining

7. Cf. Sebert (2002), especially pp. 516–27.

8. Please refer to National Education Commission, the National Planning Commission and the Ministry of Finance (1996).

9. There have altogether been near to 200 prominent universities since 1959 until now, among which the most high-profile ones are the 39 nation-built prominent universities designated by the central government in 1998.

university achievements, and enforcing accountability. This is a reason that evaluations of universities and university rankings are currently so popular in China. In 1993, China's Education Reform and Development Outline was promulgated, stating that "to establish quality standards and assessment criteria, local education departments should undertake the evaluation of universities as a regular task." In 2002, the Ministry of Education enacted the (Trial) Program for Evaluation at Undergraduate Teaching Level of General Colleges and Universities, which established new evaluation criteria. Ten years later, the Ministry of Education issued the document *Several Opinions on Overall Improvement of Higher Education Quality*, in which they have been perfecting the criteria for the assessment of quality in the cultivation of talent.

In the Chinese academic sector, the government decides on the allocation of most resources. In order to create a more reasonable and persuasive budget plan, central and local governments naturally tend to allocate funds based on various achievement rates and evaluation results. Since the evaluation of universities is connected to financial investment levels, universities have to adapt to such evaluations to obtain financial support. As a result, administration-led university development in China is embedded in a system of evaluation. To some extent, this evaluation is helpful in improving the management of university performance. Without an evaluation that entails quantitative indicators, Chinese universities would not have achieved such substantial expansion and progress in recent years. Conversely, the connection between budget allocation and evaluation directs how university administration develops. University rankings have thus become not only an incentive, but also a form of hidden power, serving as a baton that directs university development. A tension obviously exists between "the universities' pursuit of academic freedom and featured education" and "the government's focal investment associated with deliberation and calculation." If the government excessively intervenes in or requires undue accountability from universities, then it will ultimately frustrate or destroy the independence and vitality of those universities.

De-administration of universities would almost certainly lead to the market playing a larger role in the allocation of educational resources. Hence, tuition fees and funds allocated on a competitive basis would become universities' major sources of income. Higher education, especially higher-level professional education, is essentially different from compulsory education, in terms of its levels of tuition fees. Those in professional education are determined by market dynamics of supply and demand—a situation that takes into account factors concerning both university admissions and the employment market. To safeguard equality in educational opportunities, universities should not charge exorbitant, unnecessary tuitions fees. However, if tuition fees are kept artificially low, then this works against improvements to educational quality and the development of China through education, benefitting no one. Instead, now, many Chinese parents prefer to pay high tuition fees so their children can attend law school abroad.<sup>10</sup> There are many reasons for this current scenario, but it reflects dissatisfaction towards Chinese legal education.

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10. According to an analysis by the international talent bluebook *The Development Report of China's Overseas Students* (2012), the number of high-school graduates who gave up the national college entrance examination in favour of overseas education has been increasing at a rate of 20% per annum. According to data from the China Association of International Exchange for Education, in 2014, altogether there were 1.7 million Chinese students who enrolled in colleges abroad, among whom 92% were self-supporting students. In US law programmes, the number of self-supporting Chinese students has also continuously increased.

#### 4. PROBLEMS IN PRACTICAL SKILLS TRAINING

The continental European educational system influences Chinese legal education, and Chinese universities distinguish themselves from those in legal practice circles through their cultivation of qualified professionals. In China, undergraduate education in law focuses on teaching systematic knowledge and critical thinking; postgraduate education focuses on preparing students to be scholars, while judicial colleges and law firms emphasize practical skills training. Since 1990, influenced by the British and US educational models, Chinese law schools started establishing Juris Master (JM) programmes, similar to US Juris Doctor programmes. However, as there is no strict distinction between JM programmes and undergraduate education, in terms of curricula design or teaching methods, students usually receive practical skills training during their internships in courts, procuratorates, or law firms after graduation.<sup>11</sup> As a result, Chinese law schools do not bear either the responsibilities or costs associated with practical skills training for students.

In recent years, reforms within Chinese legal education have placed greater emphasis on practical skills training, and Chinese law schools are now required to open legal practice courses that make up no less than 15% of the total curricula.<sup>12</sup> This developmental trend in Chinese legal education is, in general, absolutely correct. A potential problem, however, lies in the fact that the costs of practical skills training, historically borne by mostly courts, procuratorates, and law firms, are now being transferred to law schools. Against a backdrop of fierce competition, law firms currently lack both the will and resources to provide new staff with practical skills training, and courts and procuratorates do not function in the same way as, for example, French or Japanese judicial institutions. As such, Chinese law schools have to assume the responsibility of providing practical skills training. The question thus arises as to whether Chinese law schools are capable of assuming this level responsibility and satisfying social expectations.

In contrast to British and US models, the continental European model has led to most teachers receiving only legal interpretation education, therefore lacking in practical legal experience. As such, they are unable to impart practical skills to students. Furthermore, lecturers have to juggle heavy research and teaching duties, resulting in a situation where they have neither the time nor energy to engage in practical skills training. Co-operating with practice-oriented departments is one approach to solving this problem. Without stable personnel arrangements, however, this cannot be institutionalized. Training courses run by professors with practical experience might not be systematic, achieving the desired expectation levels. Without attractive and stable institutional arrangements, judges, prosecutors, and lawyers might not be willing to serve as either full- or part-time professors of practice. If appropriate arrangements cannot be made, in terms of both personnel and budgets, then discussions aimed at strengthening practical skills training cannot bear fruit.

#### 5. A PIONEERING TRIAL BY SHANGHAI JIAO TONG UNIVERSITY: “3 + 3” JM SPECIAL CLASS

Since 2009, the KoGuan Law School of Shanghai Jiao Tong University (KoGuan Law) has started to explore educational reform in their law courses. In light of social demands,

11. See Feng (2013), especially pp. 92–6.

12. This requirement is made in the Ministry of Education and the Central Political and Legal Committee of the CCP, *supra* note 4.

KoGuan Law introduced the innovative “3 + 3” JM special class trial programme (“3 + 3” programme) in 2010.<sup>13</sup> The “3 + 3” programme aims at developing legal talent, with a focus on the transition from undergraduate to postgraduate education. Its approach is based on selecting outstanding senior undergraduates to attend professional law courses normally only open to postgraduates. In effect, this means that such students are admitted to the JM programme a year early. As a result, the undergraduate education of those students is thereby shortened to three years, and their postgraduate education is extended from two years to three years, hence the title “3 + 3.” In the “3 + 3” programme, students spend a total of six years acquiring their JM degrees, and they are exposed to a longer period of systematic and professional legal education.

The goal of the “3 + 3” programme is to provide advanced legal vocational education and equip students with practical legal skills, so that they will be competent to work in the judicial system or engage in international legal duties after graduation. The “3 + 3” programme stresses training that covers the following: broadening students’ international perspectives, cultivating students’ abilities in legal analysis and making correct judgments, providing high-quality practical skills training, and improving students’ legal conscience and identity.

The selection of students for the “3 + 3” programme cannot be carried out through the typical Chinese national master’s entrance exams. Instead, it is done through recommendations, based on junior undergraduate student performances. Given the ease of selecting candidates within KoGuan Law, for the first two years of the trial, students in the “3 + 3” programme were only selected from a pool of top-ranked students at KoGuan Law. Taking into account candidates’ grade point averages and comprehensive performance, approximately 15 students were selected for the “3 + 3” programme in the first trial year. Since 2012, the “3 + 3” programme has started to recruit outstanding undergraduate students from other law schools, selecting them during a Summer Camp for Legal Elites held in July and through exam-free recommendations carried out in September. There are now approximately 25 students from other esteemed Chinese law schools who have participated in the programme. Although students from other law schools are only, in principle, admitted to the “3 + 3” programme after they have obtained their bachelor’s degrees, these students can follow a flexible credit system during their studies at KoGuan Law, which allows them to select courses open to those admitted to the “3 + 3” programme a year earlier or later than themselves. With regard to some elective courses, KoGuan Law recognizes up to 15 credits earned during undergraduate studies.

The idea for the “3 + 3” programme has evolved from the reality that, although the capacity of Chinese legal education is large, only a small number of law graduates will become lawyers, prosecutors, and judges; instead, most graduates work in enterprise and government departments. As such, undergraduate legal education should not focus on specific vocational training; rather, well-rounded tuition incorporating a variety of diversified modules is necessary. In-depth, higher-level professional education should be carried out in postgraduate education, and this training should focus on quality rather than quantity, with the number of postgraduate students strictly controlled. Given the currently wide range of vocational requirements for those entering the general job market, legal education provided to attorneys, prosecutors, and judges—whose work requires high levels of professional legal

13. See Ji (2015), especially pp. 269–74.

expertise—should be structured in accordance with the format of “LLB plus JM.” In contrast, education aimed at securing jobs for graduates as legislators, officials, leaders of non-governmental organizations, business consultants, enterprise management personnel, and staff in international dispute settlement bodies—all of which require comprehensive knowledge—should be built into the regular coursework of a JM programme. In terms of the design of similar “3 + 3” programmes, educational objectives should be clear, uniform, and specific, and should aim at producing professional legal experts (especially lawyers), even though graduates may work in other areas. After comprehensive consideration of the programme design, courses available to undergraduate students under the format of the “3 + 3” programme should be reduced to an appropriate level. Simultaneously, the length of study should be shortened, and focus on legal professionalism should be moved to postgraduate study.

According to the design of the “3 + 3” programme, undergraduate legal education should emphasize basic legal courses and other social scientific knowledge, as well as requiring students to develop information-processing and foreign-languages skills. This format incorporates courses in the humanities and professional knowledge to enhance students’ personal character in becoming responsible citizens, and improve their abilities to solve problems, especially in terms of communication and decision-making. Beyond that, postgraduate education under the “3 + 3” programme aims at cultivating a sense of justice and responsibility among students, as well as developing legal expertise, broadening students’ international perspectives, and improving their abilities to think creatively, supporting their development in becoming outstanding legal experts. The capabilities specifically emphasized by the “3 + 3” programme include sorting complex factual relations, identifying the essence of and connections between facts, sourcing appropriate legal texts, cases, and rules pursuant to existing factual relations, applying correctly the law to facts with the aim of satisfying client requirements, dealing appropriately with ethical issues and difficult problems, communicating effectively facts and opinions in both written and oral forms, and completing efficiently and effectively cases. Compared with the regular JM programme, which is modelled on the “4 + 2” format (four years of undergraduate study plus two years of postgraduate study), the “3 + 3” programme can address some of the problems with the “4 + 2” model, specifically the potential waste in time that results from seniors undertaking lax internships during their undergraduate studies. The “3 + 3” model neatly connects undergraduate and postgraduate stages of study with well-planned time management, by strengthening in-depth legal knowledge, devoting six months to students receiving systemic practical skills training, making arrangements for study-abroad options (such as the double-degree programme whereby students can simultaneously obtain a Chinese JM and an American LLM), and carrying out research abroad.

## 6. CONCLUSION: REFORMING THE CHINESE BAR EXAM

Reforms in Chinese legal education should be adopted in tandem with reforms in the Chinese bar exam, so that planned changes can be applied outside of the academic sector alone. It should be stated that the unified system of the Chinese National Bar Exam (bar exam) has made substantial contributions to the formation of the professional Chinese legal community since its establishment in 2002. However, in recent years, Chinese legal education reform has



developed new expectations, especially in terms of systematic legal knowledge education and practical skills training. These goals should be endorsed and reinforced in the bar exam. Additionally, the fact that legal systems support international and global markets should be recognized and reflected in the bar exam. As such, reform of this exam should be made with regard to the scope of the examination itself and the requirements of the examinees. In addition, when appropriate, foreign students should be allowed to sit the bar exam, so Chinese legal education will look more attractive to non-Chinese students. In this way, the overall reputation of Chinese legal education will be strengthened and, thus, provide stimulus to further improvements of this sector.

People sitting the bar exam are predominantly students who have not studied law, and these participants have a high success rate—an unusual situation. This reflects three problems of the system. First, without a distinction in eligibility requirements between law majors and non-law majors, the bar exam is not helpful in further developing Chinese law schools. Second, the fact that the bar exam determines whether participants are able to engage in Chinese legal practice frustrates the goals of legal education—a situation that does not support Chinese law schools in changing their curricula design and improving the overall quality of legal education. Third, without communication and co-operation between agencies that formulate questions for the bar exam and Chinese law schools, the bar exam cannot test whether participants have acquired systematic legal knowledge and are capable of critical legal analyses. Rather, the bar exam encourages rote learning and standardized answers.

To solve the above problems and improve the academic bearing of the bar exam, the agencies responsible for formulating the exam should adjust their approach, and improvements should be made in the way questions are developed. This could be done, in part, by requiring an oral examination, to comprehensively assess participants' abilities. Also, the bar exam should incorporate different types of questions, such as those requiring a mix of short answers and more detailed explanations. Accordingly, the bar exam should be divided into several sub-examinations that could occur on different dates. Only in this way can the bar exam identify participants who are truly learned and genuinely talented. In addition, non-law major examinees should attend a preliminary examination to qualify to sit the bar exam, while law major examinees should be allowed to participate automatically. Finally, only successful participants who have received a predetermined period of practical skills training should be allowed to practise law. Together, these specific measures for bar exam reform aim at safeguarding the reputation and quality of Chinese legal education. The connections and interactions between the bar exam and Chinese legal education are essentially determined by requirements of the professional legal community within China.

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