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Legal Education in China today

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1. *Introduction*

Two developments in China since the end of the Cultural Revolution in 1976 are of particular interest to the legal profession in Canada: the revival of legal education and the reform of the legal system.

Legal education in China today has entered its most exciting period since the founding of the People's Republic in 1949. During the academic year 1980-81, China's four institutes of political science and law, and law faculties at eight universities and colleges, enrolled over 2,000 new students in four more law institutes and faculties than in 1965, the year before the Cultural Revolution. The present enrollment in law institutes and faculties is still lagging behind the best years of the post 1949 period; however, after three years' hard work, education in law, which was suspended during the Cultural Revolution, is now being steadily developed.

A conference in Beijing in 1979 led to the establishment of an eight-year National Programme for the Study of Law, covering over one hundred items, including the theory of jurisprudence, constitution, civil code, criminal code, legal procedure, economic law, international law, and the history of the legal system. The conference decided to set up institutes of research in the history of China's legal system, in international law, and other subjects. It also worked out a list of monographs, papers, textbooks, popular readers, reference materials, and dictionaries of legal terms to be completed in the eight-year period. Convened by the Institute of Law of the Chinese Academy of Social Sciences, discussions were held with 129 professors, scholars, experts and jurists from forty-six units, including colleges and departments of political science and law, research institutes, and political and judicial departments in different parts of the country. Their meetings focussed on strengthening the study of international law, maritime law, civil and

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penal codes, legal procedure, and the restoration of the lawyer system.¹

Beijing University is a place of special importance in the domain of legal education. It is one of the oldest and most renowned universities in China: its staff includes many prominent scholars; its students are among the most talented young people in the country today; its library facilities are the best of any of China's post secondary institutions; and its location in the capital, as part of a complex of more than sixty specialized academies, institutes, research centers, and universities, makes it something of the darling of the bureaucrats and policy-makers. Beijing University plays a key role in the current effort to upgrade legal education in China and to improve the socialist legal system within the context of the "four modernizations".²

In the field of law reform, China is now facing a new concern with formal legality, the introduction of legal codes, the relationship of the Party to the legal system, the professionalization of legal work, and obedience to law itself. There is new emphasis on the technicality of law and administration, on the relation between form and content in law, on technical knowledge and scientific study, in short, on law as a means of "regularizing social life, steering society, and safeguarding production and development".³ The country's desire to expand trade is inducing it to create a legal framework that will offer reassurance to potential foreign parties. A joint venture law of 1979 laid out principles applicable to such

1. With the authorization of the Ministry of Education, law faculties have been or soon will be established in Anhui University, Shamen University, Zhongshan University, Wuhan University, Nanjing University, and Yunnan University. Hangzhou University has also been authorized to set up a law department and interest has been expressed in Fujian and Guangdong Universities. Until 1979 there were eleven law faculties in which a law specialty could be studied, including four faculties which existed before the Cultural Revolution: *Guangming Daily*, April 22, 1980, page 1

2. This slogan refers to a ten year programme of development in industry, agriculture, defence, science and technology first announced at the Fourth National People's Congress in 1975. The goal of the programme is to make China a fully modern socialist state by the year 2000.

3. For this phrase and for much of the information in the text above I have relied heavily on the following remarkable articles by Alice Erh-Soon Tay, Professor of Jurisprudence in Sydney University: "Law in Communist China" (1969-71), 6 *Sydney Law Review* 153, 335;" "Smash Permanent Rules": China as a Model for the Future" (1976), 7 *Sydney Law Review* 400; "Marxism-Leninism and the Heritability of Law" (mimeographed), 1980. Hereafter I shall refer to these essential studies as Tay, followed by the volume and page number.

arrangements and the government is working on tax, property, commercial and other laws to develop this sector. China has thus become the second communist nation after Yugoslavia to permit large scale joint venture foreign investment.

Of course the authorities continue to insist on the socialist path, the dictatorship of the proletariat, rule by the Communist Party, and the importance of Marxist-Leninist-Mao Zedong thought. Within this context, the current debate on such questions as continuity in law, the relationship between uniform, codified laws and local, customary laws, indeed the very scope and content of a modern socialist legal system, raises questions of the utmost fascination for Western lawyers. In terms of numbers of people affected, and the interplay of historical, cultural, linguistic, economic, and political elements involved, the country's effort to modernize its (already) extraordinarily complicated legal system is without parallel in modern history.⁴

In this commentary, an effort will be made to sketch a few of the broad trends in legal education in China, with special reference to Beijing University, and to outline briefly the development of the present commitment to improve the nation's legal system. As with most comments on China, which has an extremely long legal tradition, it is prudent to begin with a reminder that the complexity of events and the rapidity of change make these assessments very tentative indeed.

II. *The First Fifty Years: 1899-1949*

Modern legal education, as understood in the West, did not start in China until the end of the nineteenth century. One of the first of the private institutions to teach law was the Pei-yang University at Tientsin, where law was placed on the curriculum in 1895 and a law department established in 1905. By 1916, the department, which taught in English, French and German, had been built up to the standards of a modern law school, but it was closed in 1918 so that its forces could be joined with those of the law school at Peking. In 1915, a law department that became famous as "The Comparative Law School of China" was established in Shanghai as the law school of Soochow University. This school made an outstanding

4. For general background, see C. T. Hu, *China: Its People, Its Society, Its Culture* (H.R.A.F. Press (Yale U.P.), 1968); Wolfgang Franke, *A Century of Chinese Revolution 1851-1949* (Oxford: Basil Blackwell, 1970)

contribution until it was forced to close at the time of the second Japanese invasion of Shanghai in 1937.⁵

At the official level, it was the internal unrest symbolized by the Tai-ping rebellion of 1850-64, the humiliations imposed on China by foreigners, the defeat in the Sino-Japanese war of 1895, and the declared readiness of certain European powers to end extra-territorial privileges once China altered her legal system, that convinced the authorities of the need for reform, including educational reform, in general, and modernization of the law in particular. The Ching Dynasty was forced to make concessions, one of which was the establishment of the University of the Capital City in Peking in 1898. The object of the university was to promote the development of modern science and culture.

Situated in three buildings in the center of the city, the university got off to a rocky start in January 1899. A change in political climate had reduced enthusiasm for Western-style education, with the result that only about one hundred students showed up for registration. A little more than a year later, the Boxer rebellion broke out: the students were obliged to run for their lives and the book collections went up in flames when the buildings were put to the torch. The institution reopened in 1902, following the defeat of the Boxers. The course in law was of four years' duration. However, "advanced academies" were only then being established in the provinces and few students were qualified for admission to university or to the law course. By 1909 the faculties of the university included classical studies, languages, politics and law, physics, agriculture, engineering, and commerce.

From its start in 1898 until 1912, when the Republic of China was founded, the teachers in the Law Department, all of whom were part-time, were officers of the Ching Dynasty. The staff included the minister of justice and the minister of foreign affairs. The dean was a full-time minister of the government and the students, a small, privileged group, referred to as "masters" by workers, labourers, and peasants, were officers of government preparing to

5. W. W. Blume, "Legal Education in China" (1923), 1 *The China Law Review* 305; Chen Sheau, "Modern Legal Education in China" (1936), 9 *The China Law Review* 142; C. S. Lobinger, "Legal Education in Twentieth Century China" (1944), 4 *Lawyer's Guild Review* 1; For a useful description of the system of education that prevailed until the introduction of schools, colleges and universities on the Western model, see J. D. Ball, *Things Chinese or Notes Connected with China*, E. C. Warner, ed., (5th ed. Shanghai: Kelly and Walsh, 1925)

assume more specialized duties within the administration. The curriculum included the law of the Ching Dynasty, Roman law, and the Confucian classics. The latter embodied the fundamental rules of human conduct accepted over two thousand years to such an extent that they were often quoted in official documents and invoked in the interpretation or application of law. There was no training for a legal profession as it was understood in the West. There were men known as lawyers who acquired knowledge of law either through self-study or by way of apprenticeship, but to the people in general law was unknown and mysterious. Indeed, the Chinese, especially in their private lives, were traditionally governed by ethics rather than by law.⁶

The founding of the Law Department in Peking University was but one part of the larger law reform movement which was aimed at bringing traditional Chinese law into line with at least some of the basic Western conceptions. In 1904 a Law Codification Commission was established, with European and Japanese advisers, to draft new codes, including civil law, civil procedure, and bankruptcy. In 1907, a European-style Judicature Act was promulgated, separating judicial organs and functions. This was the first attempt to put the courts on a systematic basis in line with Western jurisprudence by dividing them into four classes: the local court, the district court, the high court, and the supreme court, with a procuratorate of corresponding rank attached to each of them. Provision was made for professional examinations qualifying persons with university degrees to become judges or procurators. A probationary (articling) period of two years, following graduation from a college of law or political science, became a prerequisite for taking these examinations.⁷

When the Republic was founded in 1912, the name of the university was changed to Peking University. By 1917 the schools of agriculture, engineering, and medicine were no longer functioning in formal association with the university, and the school of commerce was about to cease operations. Arts, science, and law were the only faculties left. Three years of pre-university work was

6. Tien-Hsi Cheng, "The Development and Reform of Chinese Law" (1948), 1 *Current Legal Problems* 170. Substantially the same article appears under the title "A Sketch of the History, Philosophy, and Reform of Chinese Law" in *Studies in the Law of the Far East and South East Asia*, published by the Washington Foreign Law Society, 1956, pp. 29-45

7. Alice Erh-Soon Tay, 6 *Sydney L. R.* 162 ff

required for admission to law, which, as a four year course, was a relatively popular subject. By the late 1920's the university had a total enrollment of 479, of which 36 were women. This latter figure is remarkable in view of the fact that in China a woman's place was exclusively in the home.⁸

The college of law was at that time (1920's) divided into French, German, and English sections. Students elected to study in one of these sections and became proficient in the corresponding language; however, Chinese was the main medium of instruction. Foreign law books had been translated into Chinese. In 1923 the dean of the Peking law college reported that 70% of the text books used in the college were books translated from Japanese texts and that 60% of the instructors were returned students who had studied in Japan. A "great portion" of China's knowledge of Western law came from Germany "via Japan". This habit of borrowing and translating from the Japanese endured to 1949.⁹

During the period 1912-1937, the university was divided into six colleges: science, commerce, agriculture, medicine, arts, and law. The dean of the entire university was the distinguished Yasi Yuan-pej, later the first minister of education under Sun Yat-sen. Most of the law teachers were Chinese scholars who had studied in Japan, the United States, and England.¹⁰ The university was organized on American lines and, since it was thought to be an honour to speak English, many professors, reflecting American influence, prescribed American textbooks and taught law in the English language. The students, admitted to the university by competitive examination set by the institution itself, had studied English from primary school onward and were able to cope. The standard was high.

The process of law reform begun at the start of the century was accelerated by the fall of the Ching Dynasty and the proclamation of

8. Wang Tang (ed.), *China Education Encyclopedia 1895-1949*. (Shanghai: Chung Hua, 1930) pp. 145-147. Female students were first admitted in 1918-1919. Between 1910 and 1930 there was a mushrooming of law colleges in China but many were of indifferent quality and library facilities were very inadequate. After 1927, legal education was placed under strict government supervision: Chen Sheau, *supra* note 5. See too Leo A. Orleans, *Professional Manpower and Education in Communist China* (Washington: U.S. Government Printing Office, 1960) p. 10, who reports that of the 108 institutions of higher learning in 1922, 50 were private, 31 provincial, and 27 national.

9. W. W. Blume, *supra* note 5, at p. 307

10. See generally, Y. C. Wang, *Chinese Intellectuals and the West*. (U. North Carolina Press, 1966)

the Republic in 1912. The Law Codification Commission of 1904 continued its work, a provisional criminal code was enacted in 1912, and a provisional constitution was promulgated in the same year. However, most of the government's energies were absorbed in the suppression of bandits and war-lords and the creation of conditions for a central administration, finally established in Nanking in 1927. Prior to 1927 (the war-lord period) the law of China was in substance the law of the Ching Dynasty.

Between 1927 and 1935, a period "that may well be called Justinian", the law was greatly changed. The government enacted Six Codes: the Organic Law, the Commercial Law, the Civil Code, the Criminal Code, the Civil Code on Procedure, the Criminal Code on Procedure; and other laws, on companies, insurance, bankruptcy, banking, negotiable instruments, and maritime law, soon followed. Generally speaking, these codes were of the continental type. "The Anglo-American system is no doubt excellent", observed Tien-Hsi Cheng, "but is very difficult to imitate".¹¹ The curriculum in the Law Department included Chinese legal history, the law of the Ching Dynasty, Roman law, the new law of the Kuomintang Government, and, reflecting westernization, elements of the law of the United States and England.¹²

In 1937 war broke out. Peking University was moved to Kunming in Yunnan Province, where it was incorporated with two other universities, Tsing-Hau and Nankai, to form the Southwestern Associated University. This became the center of the December 1st Movement. The name of the College of Law was changed to Law Department and the dean of the department was the famous lawyer Chang Shi-ruo. In 1945, at the end of the Second World War, the university returned to Peking and the Law Department reverted to its old title College of Law. The dean of the university was Dr. Hu Shi.

From 1945 until 1949 there was civil war in China. Although there was little time for education, the Law Department, located at Sha-tan (the sand beach) inside the city of Peking, remained operational in the sense that there were full-time students and professors doing intellectual work. The curriculum was as follows: *First Year*: Principles of Economics; Constitutional Law; Principles of Civil Law; General History of China; Western History in the Last

11. Cheng, *supra* note 6, at p. 186

12. Chen Sheau, *supra* note 5, states that by 1936 there were 16 government law schools and 17 private law schools in China, mostly with different curricula.

Hundred Years; Introduction to the Study of Philosophy. *Second Year*: Liabilities; Rights; Company Law; Principles of Criminal Law; Law of Judicial Organization; Civil Procedure; Principles of Administrative Law; Sociology; Specific Provisions; First Year German. *Third Year*: Detailed Study of Liabilities; Law of Relatives; Law of Bills; Civil Procedure; Criminal Procedure; Bankruptcy; Administrative Law; Public International Law; English Law; Chinese Legal History; Military training. *Fourth Year*: Law of Inheritance; Commercial Law and Maritime Law; Law of Civil Execution; Civil Court Practice; Conflict of Laws; Land Law; Labour Legislation; Regulation of Prisons; Political Science; Military Training; Thesis.

In the period of the Republic, then, Chinese law was becoming western law, based on western models and drafted with the help of western jurists.¹³ The courts were organized on the French model, except that China followed the Anglo-American principle of separating the judiciary from the executive. The Chinese code belonged to the family of the Code Napoleon, the German, and Swiss codes. The elaboration of an adjudicative rather than administrative legal system made some headway, but its impact was severely impeded by the unsettled conditions of the country and the authoritarian rule of Sun Yat-sen and Chiang Kai-shek. From 1912 until its expulsion from the mainland in 1949, the Nationalist Government was primarily attempting to weld China into a single unified state (the struggle against war-lordism and then against the communists) and to expel foreign invaders (the struggle against the Japanese). But, as Professor Tay emphasizes, the leaders were “not thinking primarily of the rights of the individual or of the rule of law over governments”; they were thinking of “the individual’s subordination to the social interest as expressed in law”.¹⁴

In summary, the Republican Government’s writ did not run over much of the country. In wartime conditions, corruption and arbitrary military justice were more common than orderly judicial procedures. Before the people had time to consider the impact of the new laws on their traditional ways of dealing with inheritance,

13. Alice Erh-Soon Tay, 6 Sydney L. R. 164-165. But in the interpretation of the law, judges and lawyers frequently consulted Anglo-American jurisprudence, partly because many of them were trained in American or English universities and partly because of the richness of the jurisprudence as illustrated by concrete cases: see Cheng, *supra* note 6

14. Alice Erh-Soon Tay, 6 Sydney L.R. 165

social and familial relations, divorce, and commerce, courts were being burned, law schools evacuated, and the centers of government moved away from Japan's onrushing military machine. The restoration of the Republican Government at the end of the Second World War was followed by its overthrow by the communists less than four years later. It is remarkable that, in such turbulent times — fifty years of almost continual civil or international strife — the university law departments were able to embark on the demanding enterprise of establishing a scientific legal pedagogy suitable to the needs of the country as a whole.

III. *The Next Thirty Years: 1949-1980*

In the winter of 1949, before China was wholly liberated, the Communist Party, controlling the north of the country, issued an order abolishing the law of the Kuomintang Government. This was done by an "instruction", the abolition of the Kuomintang's Complete Volume of Six Laws, which declared that the old codes were inconsistent with the interests of the people and that the new legal system would be based on the principles, laws, orders, regulations, and programmes of the People's Government and the People's Liberation Army. This document, which reflected the previous twenty years of communist experience in China, established the basic ideas for law in the New China and called for the reconstruction of the legal system on the basis of Marxism, the ideas of Mao Tse-tung, and the new principles of democracy.

During this early (1949-1954) period, when there was a serious shortage of legal cadres and trained personnel, the emphasis was (naturally) on consolidation, purging of the past, expropriation, popularization of revolutionary justice, and the enactment of basic laws on marriage, corruption, and agrarian reform. As Professor Tay observes, there was an understandable reluctance to formalize and systematize legal structures too early in the history of the regime. In the Law Department at the university, the students studied Marxism-Leninism, the laws and regulations of the Communist Party, the "common policy", and land law. Instruction took the form of formal lectures by government leaders to very large classes.¹⁵

15. Legal education was hardly a priority. In the exigencies of the times, the educational priorities were to teach people to read and write, to expand the educational system as rapidly as possible, and to produce an increasing number of

In the educational field, all-out efforts were made to restore educational order, reorganize schools at all levels, and prepare the ground for an expansion of facilities. Post secondary education was systematically transformed in regard to course content, teaching methods, organization, and general orientation in order to meet the needs of national reconstruction. These reforms were in accordance with the basic principle of applying the "advanced experiences" of the Soviet Union to the "actual conditions" in China. Russian experts arrived by the thousands, occupying key advisory positions, while Soviet pedagogy and teaching materials were adopted and translated in large quantities, often without discrimination. Internationally, China was "leaning to one side". Private institutions of higher education were eliminated and political education based on Marxism-Leninism was instituted.¹⁶

As part of the re-organization of institutions of higher learning, and in order to concentrate both teaching staff and material facilities so as to provide more favourable conditions for training personnel, several departments and faculties of Peking University were amalgamated with those of other institutions, including Yenching, the leading private university in China, built by American missionaries in 1916. In 1952 the Law Department and the Political Science Department of Peking University, the Law Department and Political Science Department of Tsing-Hua University, and the Political Science Department of Yenching University were combined into the Peking Institute of Political Science and Law. Located at Sha-tan, where it had been a focus for the revolutionary movement before 1949, it was moved in 1954 to Xie-Yuan Road, in

skilled and semi-skilled workers. For details, see the meticulous article by T. T. Hsiu, "Chinese Legal Publications: An Appraisal" (1969), 15 *Osteuropa Recht* 234-281

16. See especially the admirable study, to which I am greatly indebted, by C. T. Hu, *China's New Examination System: A Critical Aspect of Education in the "New Period"*. 1980 (mimeograph); Julia Kwong, *Chinese Education in Transition: Prelude to the Cultural Revolution* (McGill-Queen's U.P., 1979); Leo A. Orleans, *supra* note 8 at p. 5; K. E. Priestley, "Education in the People's Republic of China: Beginnings" (1952), *The Year Book of Education* 490, reprinted in Stewart E. Fraser (ed.), *Education and Communism in China: An Anthology of Commentary and Documents*. (London: Pall Mall Press, 1971)

One fascinating aspect of legal research in China at that time was the emphasis on combining theory and practice. In the 1950's, researchers at the Institute of Law of the Chinese Academy of Sciences were required to live with the masses while conducting field investigations: they had to eat, live, work and consult with the masses in order to acquire an understanding of the actual social and economic conditions.

the north west suburbs of the city.¹⁷

From 1952 until 1957, there was a full-time course of study in the Peking Institute of Political Science and Law with the following curriculum: *Required Courses*: Fundamentals of Marxism-Leninism; History of Chinese Revolution; Political Economy; Dialectical Materialism and Historical Materialism; Logic; Chinese; Physical Education; Theory of State and Law; Law of the Chinese State; Chinese Civil Law; Chinese Criminal Law; Chinese Civil Procedure; Chinese Criminal Procedure; Administrative Law; Finance Law; Labour Law; Law of Land and Agricultural Co-operatives; International Law; Evidence; Medical Jurisprudence; Judicial Practice. *Elective Courses*: Law of the Soviet State; Roman Law; Soviet Criminal Law; Soviet Civil Law; Soviet Criminal Procedure; Soviet Civil Procedure; Private International Law; History of Political Thought; Judicial Accounting.

In 1954 the government decided that it was inappropriate for a comprehensive university in the capital city to be without a law department, and so the old law school at Peking University was re-established. The initiative behind this decision came from the chairman of the Supreme Court. He argued that Peking University deserved its own law department: law teaching in the People's University, established in Peking in 1950, was insufficient and the teaching of law in China needed (he stressed) to be based primarily on the unique experience and practice of China itself, rather than on the experience and practice of the Soviet Union. As a result, the department was re-established on the campus of Yenching University in the north-west suburbs.

The place to which the university removed, and where it is now situated, was renowned in former days for its gardens and parks, most of which had served as summer residences for members of the imperial house of the Ching Dynasty. In ideological terms, the result of the change was that these old grounds, reserved for the pleasure of aristocrats, later, during the Yenching period, a base for the "cultural aggression" of the imperialists, returned to the hands of the labouring people and became, in 1952, the campus of Peking

17. For a full account of Yenching see Dwight W. Edwards, *Yenching University* (New York: United Board for Christian Higher Education, 1959). Peking University is closely linked to the revolutionary movement in China: it played a prominent part in the May 4th Movement; the earliest Marxist study group was established there; Li Ta-chao, one of the founders of the Chinese Communist Party, was librarian; and Mao Tse-tung did research at the university.

University. The law department faced the difficult task of designing a programme and developing materials for a legal system, partly Russian, partly Chinese, that was fluid to say the least.

After the communist victory, China understandably turned to Soviet models. Chinese law professors began learning Russian and Soviet law professors arrived in Peking to teach in Russian. The Law Department was modelled on its Soviet counterpart. Unfortunately, the possibility of selectively and imaginatively accepting the rich legal experience of China's own past was denied. In the result, Chinese law underwent significant changes under the tutelage of Soviet advisers. Soviet theories dominated all studies and the content of courses was re-organized along the lines of Soviet syllabuses and textbooks. Research was separated from the teaching function, and the social sciences, except for economics, were largely ignored. Several teachers and students questioned whether they were being trained to work in China or in the U.S.S.R., but to no avail.

This extraordinary impact of a foreign legal system represented, at the time, a decisive break in the evolutionary development of the indigenous Chinese legal system. It also gave rise to serious juridical problems. According to the dean of the Law Department at Peking University, "impurity" in ideas, organization, and style inevitably became widespread. Many personnel in the juridical cadre were "rather confused". Senior legal officers who had served the Kuomintang tended to favour the old legal system; many responsible officials were unsure which system — the old, the new, the Soviet — was applicable; some even thought that there should be a division of powers between organs of government; and, due to the exigencies of the times, as well as the incomplete nature of the system, many cases were handled outside the official legal framework. Indeed the legal system was regarded as immaterial and irrelevant: it was seldom used and there was no time to clarify relationships between the Party and the judicial organization.¹⁸

Between 1954 and 1958, the government gave considerable attention to law and the need to improve the legal system. With the promulgation of the constitution in 1954, the Provisional Regulations of 1949 were replaced by new laws on the courts and

18. See the important article by the Dean of the Law Department, Shou-yi Chen, "A Review of Legal Education in the New China During the Last Thirty Years," [1980] 1 Study of Law, pp. 1-11

the procuracy, and a sustained effort was made to formalize and regularize the system on the basis of those features common to bureaucratic rationality. Work was begun or resumed on draft codes of criminal and civil law, and on criminal and civil procedure. In 1957, codes on agriculture, manual trade, and commerce were basically completed. The system of legal education, based on Marxism and the thoughts of Mao Tse-tung, was strengthened. Books and articles relevant to China's practical experience were published under collective authorship. Open debate took place on the incompleteness of the legal system, the inheritability of the old concepts, the manipulation of judicial affairs by the Party, and the absence of professional expertise. During this period of "socialist legality," emphasis was on the development of a more complete, coherent legal system, on orderly development according to stabilized policies and rules, and on the desirability of observing the law.¹⁹

Unfortunately, this "blooming and contending" came to an end with the start of the anti-rightist movement in 1957 and the excessively ambitious programme known as the "Great Leap Forward" in 1958. Judges, professors, and other legal workers who had criticized delays in legislation and called for law improvement were repudiated for holding reactionary and anti-socialist views. "Policies" were freely substituted for "laws", for which the authorities had little time. The new emphasis was on "smashing of permanent rules" and the fusion of functions under the leadership of the Party. Since it was thought that everything could be solved by "mass movement", non-judicial bodies were again allowed to handle many kinds of cases; formally declared law was frequently by-passed, and the security forces were given renewed power to impose sanctions. When the Ministry of Justice was abolished in 1959, it became clear that any normal development of the legal system had been frustrated.

In the field of education, the Party decreed that education must serve proletarian politics and be combined with productive labour. Politics, "the soul of all activity", would be allowed to "take command" in all cultural, scientific, and educational endeavours.²⁰ Since everyone was required to contribute to production through

19. Alice Erh-Soon Tay, 6 Sydney L.R. 363

20. Yang Hsi-Feng, "Educational Revolution and Progress 1949-1957," in C. T. Hu (ed.), *Chinese Education Under Communism* (2nd ed. New York: Teachers College Press, Columbia University, 1974) pp. 170-182

physical labour, regular students had less and less time to spend on their studies. The renewed effort to narrow and eventually eliminate the gap between mental and physical labour was at the expense of quality in education, including legal education. By 1960 the national system of education was in virtual chaos.²¹

When, in the late 1950's, Soviet influence was repudiated and Soviet-inspired laws cancelled, the legal system entered a most unsatisfactory stage. Some Chinese laws, such as statutes on the suppression of reactionaries, were in force, but others, such as the incipient civil code, were not. The old law of the Kuomintang could not be taught; Soviet law could not be taught; Chinese law was incomplete. There seems to have been little law to teach and the Law Department in fact was barely operational. The overall educational policy of the day continued to combine academic learning with manual labour. Most students were working in factories or in the countryside. Classes were seldom held. The systematic development of the legal system (and of legal education) came to a halt. "Law nihilism" was once again widespread.

By 1961 the authorities began to re-discover the importance of education in general and of legal research in particular; and in 1962 the ministry of education brought out a new regulation on education. From that date onwards, until the start of the Great Proletarian Cultural Revolution in 1966, there was steady advance. Order and a sense of normalcy returned to schools and universities. Politics continued to take command but due attention was paid to teaching, studying, and research. Educational institutions no longer suffered from undue external influence. The government was once more giving priority to problems of law making, law improvement, and orderly administration.

During most of the Cultural Revolution of 1966-76, when revolutionary enthusiasm and a levelling spirit turned against all legalistic, bureaucratic-administrative, and educational structures and tendencies, with a deliberate smashing of legal organs and educational facilities, the Law Department at Peking, like the law departments in every Chinese university, closed. For an eight year period, from 1966 to 1974, the department just did not operate: there were no classes; there was no research; the departmental

21. C. T. Hu, note 16, above. For careful assessment of early effects of the Great Leap Forward on education at all levels, see Leo A. Orleans, *supra* note 8. For a stimulating discussion of the policies involved, see Donald J. Munro, *The Concept of Man in Contemporary China* (University of Michigan Press, 1977)

library was closed; the main library was nominally open but books were not allowed out on loan; the students were in the countryside or in the factories; professors who had not been purged or otherwise banished stayed at home; intellectual life came to a standstill. According to C. T. Hu, Chinese education was “in the hands of mobsters”.²² In the words of one student who recalls it as a “painful period”, this was a time of “no law, no court, no law department; just mass movement”. In the words of the dean, this was “a period of great disaster for legal education”.²³

The Department reopened in 1974 in the sense that small numbers of professors and students trickled back to work and an experimental three year course of eight or nine subjects was offered. However, the university was still racked by the influence of the Gang of Four and it was not until 1977 that the Department acquired a new life and a new sense of direction. This (very recent) date marks its modern revival. The Department is now dynamic, outward looking, and reform-minded.

IV. *The Beijing Law Department Today*

Today the university occupies a large and impressive tract of land considerably larger than the campuses at Dalhousie and McGill, at least as extensive as the grounds at the University of Toronto, but not as large as the main campus at Manitoba or the University of British Columbia. The university has a total enrollment of 8,000 students, surprisingly low for a capital city of nearly eight million and a country of one billion people. It is divided into twenty-two departments, of which the Law Department is one. There are dining halls, dormitories, facilities for physical education, a fine general library of three million volumes, and a series of delightful walk-ways around the Unnamed Lake. All students, including those from Beijing, live in dormitories on campus. The city itself, destined to be a model for the whole country, is rapidly becoming

22. C. T. Hu, *supra* note 16

23. Shou-yi Chen, *supra* note 18. During this chaotic upheaval there was hostility not only to any kind of rule of law but also to any kind of bureaucratic routinization of anything that would make the demands of the rulers upon the ruled more predictable. To get the flavour of what was happening, see the article “Taking All Society As Their Factory: Peking University’s Achievements in Educational Revolution in the Liberal Arts”, (Feb. 1973) in 5 *Peking Review*, reproduced in C. T. Hu, *supra* note 20, at pp. 224-230. And see especially Jean Daubier, *A History of the Chinese Cultural Revolution*. Translated from the French by Richard Seaver. Preface by Han Suyin (New York: Vintage Books, 1974)

China's most developed city in culture, science, technology, and education.²⁴

The annual quotas for enrollment in the institutions of higher learning are set by the state. All such institutions must participate in the plan and are not allowed to enroll students on their own. During the Cultural Revolution, those who went to university were, by and large, the sons and daughters of peasants, factory workers, and members of the armed forces. They were selected on the basis of ideology, being "automatically" red they were above political reproach, and success in their work unit, in whatever field they were employed.

They had to be nominated and chosen by their work unit and, if selected, they were obliged to attend university even though they might not have wished to do so. They were not always able to follow their preferred studies but were often assigned to a discipline according to the needs of the state.

At present, entry into the university, and directly into the Law Department, is by competitive examination at the end of middle school, roughly equivalent to high school in Canada.

The first nation-wide entrance examination, regionally administered, was held in 1977. This examination stressed the new principles of seeking talent from the widest possible sources and selecting the best of it. More than 5,500,000 applicants took part. Of the 278,000 who were finally admitted, eighty percent came from workers, peasants, the army, army veterans, and revolutionary employees of the state; seventy-four percent were members of the Communist Party and the Young Communist League; and eighty-seven percent, in terms of class background, were from families of workers, poor and lower middle peasants, members of the armed forces, cadres, and revolutionary intellectuals. Close to 30% of the successful candidates were 1977 senior middle school students who had not served in communes or factories. The 1978 entrance examination, centrally administered, lasted three days. There were about six million applicants, of whom slightly more than half were senior middle school graduates of the current year, the rest having come from army workers, soldiers, teachers, cadres, barefoot doctors, and young intellectuals serving or having served

24. For depiction of the university at an earlier stage, see René Goldman, "Peking University," (1961) 7 *The China Quarterly*, reprinted in Stewart E. Fraser, *supra* note 16 at p. 199

in the countryside. Unlike the 1977 examination, no limit was placed on the acceptance rate of the middle school graduates.²⁵

Successful candidates may express preferences as to courses and universities but the decision as to which university they will attend and which courses they will enter is made by the government in accordance with the national need. Students who score highly in maths and physics and in science generally appear to have a better chance; the higher their marks, the more the candidates are sought after by the outstanding universities and technical institutes. It is obvious that the new entrance examinations represent a major change in modern Chinese higher education policies: quantitatively they have produced the largest entering classes since the Cultural Revolution; qualitatively they have reversed the decade-long neglect of academic standards.²⁶

As in other societies, there seems to be a high correlation between the educational background of the parents and the children who are admitted to universities. Many of the children of families with high educational backgrounds are rising to the top of the academic pyramid. The rural students, most of whom have fewer educational opportunities, seem to have less chance when it comes to the entrance examination. In addition, certain middle schools, such as the middle school attached to Peking University, do better than others in getting their students into colleges and other post-secondary institutions. However, we need to remember that China is not alone in struggling with the thorny problem of deciding who should go to university. Even in the United States, where over fifty percent of the relevant age group goes to college, there is continuing controversy over this question.

Students who enter university directly from middle school pay no fees but they get no salary. They are thus obliged to pay for their

25. C. T. Hu, *supra* note 16, at p. 61

26. C. T. Hu, *supra* note 16, at p. 43. See too Beijing Review, July 28, 1980, p. 19: "The shortage of talented people has become a serious problem. Graduates trained by institutions of higher learning in China in the last 30 years total only 2,946,000. The number of people who have received a college education now account for less than 4 per cent of the workers and staff members. This cannot meet the needs of the four modernization programmes. In the last three years, there has been a slight increase in the number of students as a result of the restoration of higher education. Still, the number of university or college students enrolled in 1977, 1978 and 1979 totals only one million. . . . There are over 7 million graduates from China's senior middle schools every year, but from among these, the number admitted into institutions of higher learning every year accounts for only 3 or 4 per cent."

books, materials, and meals, and even these costs can be a hardship for the family. But the Chinese, like the Scotch, will sacrifice everything, or almost everything, in order to educate their children; moreover, it seems that top students who are unable to pay anything can get subsidies. Students who enter university from a work unit — there are now far fewer such students than previously — bring their salaries with them.

Not only are the students work-dominated by choice but the schedule of the university encourages and promotes an on-going effort to achieve academic success. This is revealed by a glance at the normal routine of the typical student: 6:00 a.m.: rising, dressing, physical exercises, breakfast. 7:30: first class (there are four class periods during the morning); each class is 50 minutes, followed by a 10 minute break. 9:45: second exercise period, “our coffee break”, as one student remarked. 11:30: lunch followed by non-compulsory rest period in dormitories. 1:30-4:30 or 5:30: afternoon classes, usually 3-4 classes. 6:00 p.m.: evening meal, followed by individual study, reading, etc., usually in the main library. 10:00 p.m.: library closes; students frequently continue to study, read, discuss in their rooms until midnight. This routine is followed five and a half days per week. There are no classes on Saturday afternoon or Sunday. The library is closed at those times.

The students give their highest priority to academic accomplishment and preparation for examinations. They are very conscious of the fact that they have been given an opportunity to attend university and they feel a heavy obligation to put everything into their university work and to get everything out of it. Their primary object is to equip themselves to build the new China. They are confident, optimistic, and seem satisfied and happy with their lot in life. They do not give the impression of having “missed the boat” in any respect. They have wonderful spirit and they are highly motivated to serve.

The students don't smoke, chew gum or take alcohol. Drug usage is virtually unknown. The men do not wear beards, mustaches or long hair. The women wear very little, if any, make-up. Boys and girls (at present) seldom hold hands or go arm in arm in public. They are tidy, polite, bright, extremely hard-working, and very warmhearted. There is an appealing simplicity about Chinese law students yet they are at the same time subtle, sophisticated and nuanced, the result no doubt of the inheritance of their culture and civilization. They are interested in the West, although, due to lack

of information, they are not very well informed about it. They are anxious to travel. Many speak excellent English.

It is interesting to find that the students do not seem to question the appropriateness of the fact that the government directs them to their first, and often only, job. Those who are not placed immediately are assigned tasks in their local areas until the placement is made; the students consider that this is a form of unemployment until they get their posting. They agree that the initial assignment is a matter for the government to decide in the context of where the need is. After appointment to an initial posting, they do not usually ask for changes to other locations or sub-specialties. Those who do ask do not really expect that the request will be granted. The students believe that their most effective way of contributing to the development of the country is to become highly specialized in their work and to remain in that specialty throughout their lives. Specialization, they believe, is best achieved by remaining in one line of work in one place. Moving from place to place or from job to job does not create real expertise. An example of what might happen to a student in economics is the following: he might be assigned to research work in an institute, to teaching in a university, to the planning department of government, or to work in a factory; as his expertise increases, he might be called on to be an ad hoc adviser to a department of government.

Law students attend a few classes in a low brick structure built in 1920. This building, only occupied by the Law Department in recent years, houses administrative and faculty offices on the first floor and a small research library for faculty, graduate students, and research students on the second floor. The main university library, not far from the law building, contains much of the text book and periodical material used by law students; it is there rather than in the crowded law building that they do much of their work. The department uses classrooms in other buildings nearby. The law library collections are in the early stages of development.²⁷

All students must live in dormitories on the campus of Peking University. Six or seven students share a room. However, at present, foreign students are segregated. They have their own dormitories, where there are only two students to a room, and where

27. See generally Anne F. Thurston, "New Opportunities for Research in China," Newsletter of the Center for Chinese Research Materials, Association of Research Libraries, Washington, D.C., September 1979, p. 6

there are relatively Western facilities. They have their own dining halls. Foreign students can invite a Chinese student to share a room, if they so wish; but they could not accept the invitation of a Chinese student to share his accommodation. The official explanation for this situation is that the Chinese do not think that foreigners would be comfortable sharing the more cramped quarters. Foreign students can invite Chinese students to their dining halls but the Chinese students cannot reciprocate. A fine new residence on campus, exclusively for foreign students, is now under construction. It will have Western-style accommodation, baths and showers, modern dining facilities, reception rooms, and a swimming pool. Many foreign students are disappointed that they are not permitted to live in the regular dormitories and to share more personally in the life of a Chinese student. At the present time, there are no foreign students in the Law Department. This situation will probably change in the next year or two as teaching materials and other facilities become available.

For the students at Peking University, the academic year is divided into two terms. The first term, from September until late January or early February, is followed by "Spring Festival", a three week vacation period. December 25th is a holiday for "foreign experts" but not for students. January 1st, International New Years, is a holiday. The second term extends from the end of February or early March to mid-July. Examinations in each subject are held at the end of each term. The students have a forty-day summer break at the end of the second term. They do not seek employment since, being very hard workers, they need to relax after the strain of the regular academic year. They seem to have two choices: they can go home to rest or they can travel educationally within the country; but they must have a purpose in order to obtain permission to travel.

The professorate is divided into four ranks: assistant lecturer, lecturer, associate professor, and professor. As in the British system, remuneration is more or less the same for each rank throughout the country. It is not clear whether there is a small cost of living allowance attached to posts in the larger centers. Promotion is by a board of professional peers: each teacher is evaluated on the basis of ideological level and political behavior, academic knowledge and teaching competence, with length of service and work record given some weight. The professors are appointed from the ranks of the graduate and post graduate students

whose political as well as academic standing is found to be satisfactory. Apparently it is theoretically possible for a brilliant person who is not a Marxist to hold down a teaching position — to be expert and “low profile” red, perhaps not even red at all — but this would be difficult and is now unusual. In no way could such a person be openly hostile to the regime. The older professors, trained in the 1930’s and 1940’s, several of whom have been brought back into service as a result of the acute shortage of personnel, are not usually party members; the younger teachers often are party members. The role of the professor is primarily to teach. However, his or her advice may be sought by government departments, for which memoranda are then prepared. The professor would not of course be paid for such work: extra remuneration would recognize individualism and an absence of class consciousness.

There is no organization corresponding to the Canadian Association of Law Teachers, the Society of Public Teachers of Law in the United Kingdom, or the American Association of Law Schools in the United States; but since the end of the Cultural Revolution, law teachers in China are now in touch with one another, seeing more of one another, and, importantly, developing contacts with foreign lawyers. Several Chinese law professors are studying in law schools in the West and it is anticipated that their number will increase significantly in the near future.

The law curriculum is established by officials in the ministry of education and the ministry of justice in consultation with professors in the Law Department. The university, let alone the Law Department, is not as free to determine its own teaching and research programmes as are comparable institutions in the West. The ministry for which the department provides manpower plays an important role in curriculum planning in accordance with the principle that higher education must meet the needs of the state. In this regard, it is salutary to recall that in Canada, Britain, and the United States, the organized Bar exercises considerable influence in determining what subjects are to be offered and taken by students who wish to enter the traditional practice of law. What is now important in China is that professors are no longer excluded from the academic planning process.

Since the end of the Cultural Revolution, the government works with, rather than against, or apart from the professors; their views on legal education carry weight and their knowledge and expertise is sought as part of the drive to modernize the system. This represents

one of the most significant changes that has occurred in legal education since 1976.

The programme of legal education exposes the student first to the economic and political system and then to professional knowledge. The curriculum, which is not yet fully developed, is a combination of general knowledge and legal information and technique. The main purpose of the programme is to train the students (the "back-bone" of the future society) in Marxist theory and legal knowledge so that they will be able to assume responsibilities as judges, legal workers, university teachers, and law researchers. The object is to be "red and expert". Political knowledge comes first, then legal knowledge.

Generally speaking, the curriculum is divided into three parts. The first is the basic, theoretical part: law and the state; philosophy, including dialectical and historical materialism; history of the Party; and principles of economics. The second part, the main body of the curriculum, includes the legal system at large; constitutional law; criminal law; procedural law; civil law; the legal history of China and of foreign countries; international law; international economics; commercial law; investment law, and the structure and organization of the court system. The third part of the curriculum is the cultural part: Chinese language; foreign language; physical education. There are three specialities: economic law (50 students); international law (30 students); and, law in general (150 students). A number of basic courses are compulsory for everybody. Those in the specialities take additional courses in the areas designated. It seems that there are a few optional courses in the third and fourth years.

A four-year course of more than twenty subjects has been in place since 1977. The following subjects are compulsory: history of the Communist Party of China; philosophy; political economics; physical education; foreign languages; selected readings of the classics of Marxism; jurisprudence; the constitution of the People's Republic of China; the history of the legal system of China; the history of the theories on politics and law of China; the history of foreign legal systems; the history of Western political theory; civil law; marriage law; criminal law; economic law; civil law suits; criminal law suits; reconnaissance of criminal law; private international law; foreign political system; Western law theories; logic; international law. There are six teaching groups: legal theory; legal history; constitutional law; civil law; criminal law; and international law. Practical training is worked into the curriculum in

that students visit the courts and other institutions several times during their law school training.

The students do most of their learning in class. The lecture method is widely used and students write down what they hear, reading it over and discussing it in small groups, sometimes even memorizing it. Due to the large number of classes, there is no time to prepare for classroom discussion in the tradition of North American legal education. There are a few, but not many, small text-books. Most of the teaching materials are in mimeograph form. In this connection, it is important to bear in mind that the Law Department has only been operational since 1977. However, even in the last three years a new legal literature has begun to appear: there is considerable writing on the criminal law; a major study on investment law is in the works; and a new text-book on international law is expected in 1981. Weaknesses in the system of legal education, at least from a Canadian perspective, include an overloaded curriculum, overwork, insufficient time for personal study, and reliance on a "pure" lecture system. The students would benefit from more time to themselves, more emphasis on independent critical analysis, and more attention to conceptualization.

The curriculum is being revised and expanded. A full year course on admiralty law, based on the statutes and case law of the major maritime powers, was offered (for the first time) to an enthusiastic audience of 130 students and government officials in 1980. An experimental course on legal method, using casebook materials, is compulsory for all entering students. The content of the traditional course on private international law is being expanded to include more than choice-of-law problems, as sometimes tends to be the case in the West. In the nature of things, it is likely to be another year or two before the curriculum "shakes down".

In the domain of international law, there is considerable activity. The International Law Society of China, founded in Beijing in 1980, has already held discussions on international law and human rights, "hegemonism and international law", the legal status of outer space, and problems of the continental shelf. Two of the vice-presidents of this new society, which will soon publish its own journal, are professors of international law at Beijing University; one of them is director of the international law section of the Law Department. The constitution of the society states that its object is, "under the guidance of Marxism-Leninism-Mao Zedong Thought,

to unite with the scientists of international law, strengthen academic activities in this field, and promote the development of China's study of international law so as to serve the needs of the country's socialist modernization and international contacts".²⁸

The students in the international law section read *Lauterpacht's Oppenheim and Schwarzerberger's Manual* from cover to cover. "We happen to have several copies of each", explained the director of the section. The students are assigned topics on which to write essays, which are corrected and discussed with them on an individual basis by the director and other teachers of international law. All aspects of the law of the sea are subjects of priority. There is some interest in the law of international organizations but it has not been formalized. The professors believe that traditional international law doctrine needs to be revised as a result of the greatly expanded membership of the international community, the rise of a multitude of international organizations, and the fact of economic interdependence in the modern world.

What is not yet clear is whether Chinese approaches to international law will be practical, pragmatic, and functional, perhaps even ad hoc, or whether they will reflect a conscious effort to make an intellectual contribution to the theory and doctrine of international law commensurate with China's extraordinary cultural virtuosity.²⁹ As far as scholars in the West are concerned, the new element in the situation is that contact with Chinese colleagues is now permitted by the authorities in Beijing.

The primary task of the law departments at Beijing and in other Chinese universities is to train practical political-legal workers for the courts, procuratorates, lawyer's organizations, public notary offices, other state organs and enterprise units, the foreign ministry, and the universities. A question that naturally suggests itself to a Canadian visitor is whether the role of the law school in China has been thought of in sufficiently broad terms. The task of the law school is not simply to provide practical training and to participate in the immediately relevant projects of legal and social reforms,

28. Beijing Review, No. 11, March 17, 1980, p. 6

29. The 1980 draft of the new nationality law, which rejects dual nationality, was referred to by one of its authors as a purposeful contribution to the international law of nationality. On the subject in general, see the stimulating Convocation Address by Professor Bin Cheng, distinguished son of a distinguished father, *The Role of Law in Society: East and West, National and International*, reprinted from Chinese University Bulletin, Winter 1978, published by The Chinese University of Hong Kong.

important as they are, but also to undertake the painstaking process of building basic theory and method on a solid foundation. Sustained and programmatic commitment to this enterprise requires a fundamental examination of the postulates of the legal discipline in the context of the nation's distinctive situation.

It is encouraging to international lawyers and to many others to note that since 1978 legal education in China has been developing impressively in a social milieu that is itself in a process of change. The concept of "law nihilism" has been repudiated; freedom to debate juridical ideas has expanded; old law schools have reopened and new ones started; publications and translated articles have begun to appear; legal advisory offices have been re-established. Spring has arrived, as the Chinese like to say. For Western lawyers, the nation's examination of its own juridical experiences during this "new period" will throw fresh light on the very basis of legal science itself, especially as it pertains to the processes of modernization.³⁰

In summary, and on a personal note, I would like to applaud the great enthusiasm and dedication of my colleagues in the Law Department at Beijing University and express my appreciation for the unique opportunity to share with them even briefly at an exhilarating and challenging time in the development of legal education in China.

30. See, for example, Peng Zhen, "Explanation on Seven Laws" (1979), 28 *Beijing Review* 8 (No. 28, July 13, 1979); Timothy Kearley, "Criminal Justice in the People's Republic of China: A Selective Annotated Bibliography of Western Language Commentaries" (1980), 8 *Int. Journal of Law Librarians* 103; and of course the distinguished writings of Professor Jerome Cohen of Harvard Law School.

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