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## Chinese Legal Education: A First-hand Account by a Canadian Law Student

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In an article published in China's leading law journal,<sup>1</sup> Professor Chen Shouyi, the Dean of the Department of Law at Peking University reviewed the last three decades of Chinese legal education. Tentative but steady progress was made after the founding of the Republic in 1949. During the anti-rightist campaign begun in 1957, however, legal institutions came under harsh official attack. Following that, Chinese legal education suffered setback after setback. In the period between 1959 and 1965, it was "on a continuously downward slope".<sup>2</sup> During this time, the Ministry of Justice was abolished, as were all subsidiary departments for the administration of justice. The few law courses in existence were either merged with or completely replaced by political theory courses. When the Cultural Revolution began in 1966, things became even worse:

Legal education and research everywhere suffered complete devastation and extermination. Basically, all political-legal institutes were closed down; legal research disappeared from sight and all teaching materials or library books and reference materials having to do with law were scattered to the four winds. Law teachers and researchers abandoned their work for other jobs or awaited orders.<sup>3</sup>

The Cultural Revolution was "a decade of unmitigated calamity".<sup>4</sup>

It was not until 1974 that a small revival could be seen taking place. The restoration began as an extremely limited one: only one department of law was re-opened, no more than a handful of teachers were involved, students were chosen solely on the basis of ideological purity rather than scholastic merit and their studies were based on a narrow and experimental curriculum.

The re-establishment of legal education began in earnest after the fall of the "Gang of Four" in 1976 and the re-institution of

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\*B.A. Univ. of Alberta (1976); LL.B. University of Toronto (1980).

1. Chen Shouyi: "A Review of Thirty Years of Legal Studies in New China", 1 Faxue Yanjiu [Studies in Law] 1 at 3.

2. *Id.* at 3.

3. *Id.* at 3.

4. *Id.* at 3.

nation-wide university entrance examinations in 1977. Development proceeded rapidly. By 1980, the *China Law Weekly* had announced on its front page that "China's Legal Education has been Basically Restored and is Developing with Great Force".<sup>5</sup> In fact, the first Department of Law to be restored in China is now the largest department in that country's most prestigious university.

Since 1978, Chinese leaders have repeatedly made official statements referring to China's urgent need for legally trained people.<sup>6</sup> They were needed to solve problems left over from the past such as how to redress injustices inflicted during the Cultural Revolution and to provide answers to new legal problems that were posed by China's ambitious scheme for modernization.

The fact remained however, that "the present corps of political-legal cadres lag far far behind the country's needs, both in terms of quality and quantity".<sup>7</sup> Under these conditions, the re-establishment of legal education in the world's most populous jurisdiction is not an insignificant event. It has attracted the attention of many people, both Chinese and foreign. Curiosity exists as to just what a legal education in China entails: what programs are available? what is taught in Chinese law courses? what materials are used? what teaching methods are practiced? to what extent are students exposed to foreign legal concepts?

Until very recently, detailed and reliable answers to these and many other questions were not available to outsiders. It was only last year that a Chinese University (Peking University) finally permitted a Westerner (the writer) to attend classes on a regular basis (for two years) and to room with a Chinese law student. It should be noted that the Peking University department of law is atypical in many respects. It is the first department of law in the whole country to be re-opened and part of China's most prestigious institute of higher learning. It is located in the political, legal,

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5. *Zhongguo Fa Zhi Bao*, [China Law Weekly] August 1, 1980 at 1. See also "China's Legal education is Rapidly Being Restored and is Developing at a Steady Pace", [Guangming Daily], April 22, 1980 at 1.

6. For example, in his report to the Fifth National People's Congress held in February-March 1978 Chairman Hua Guofeng declared: "It is essential to strengthen the socialist legal system if we are to bring about great order across the land . . . We should give wide publicity to the significance of cultivating a sense of respect for socialist laws . . . Cadres should be law-abiding, as should the masses and indeed everyone." See "China's Socialist Legal System" (1979), 2 [Beijing Review] 25 at 29. See also [People's Daily], January 11, 1982 at 3.

7. *Supra*, note 1 at 10.

cultural and educational heart of the country. Moreover, it is staffed by some of the nation's most eminent legal scholars. For these reasons, it may not be representative of departments of law elsewhere in China. Even so, it is hoped that a first-hand description of the law program at Peking University will give readers insights into the nature of Chinese legal education and its future development.

### *I. Programs and Courses*

A new academic degree system was instituted across Chinese universities in late 1981. Accordingly, the Peking University Department of Law (the "Department") now offers three degree programs: a two-year Doctoral program, a three-year Master's program and a four-year Bachelor's program. The graduate class of 1978 and the undergraduate class of 1977 were the first to be awarded degrees under the new system.

To this date, the Department has had no doctoral candidates but it plans to accept one or two in 1982. The Academic Committee of the State Council authorizes only the most eminent Chinese scholars to act as Doctoral supervisors; at present, only three professors in the Department are so qualified. The general format of the Doctoral program will include the writing of a substantial thesis and the presentation of an oral dissertation. The specific requirements are still under discussion.

There are presently 44 graduate students in the Department working towards a Master's Degree. An even number of students are in each of the six graduate specialties: Legal Theory, Legal History, Constitutional Law, Criminal Law, International Law and Civil Law. Each graduate student works under the supervision of one faculty advisor who determines the courses which must be taken and gives general guidance in the preparation of a thesis. Each candidate must submit a lengthy thesis and present an oral dissertation. His performance is evaluated by a committee composed of his advisor, other Department members and at least one outside specialist conversant with his topic.

Since 1980, three streams of specialization have been available to undergraduate students. Students may express preferences but the Department establishes yearly quotas. The largest is the "law specialty"; 150 of the 230 students in each of the 1980 and 1981 classes were placed into this stream. The second largest and the newest is the "economic law specialty" into which 50 students

were placed during each of the two years of its existence. The smallest is the "international law specialty" into which approximately 30 students were placed in each year since 1979.

A new credit system was instituted across Chinese universities in 1981. All courses are assigned a credit value according to importance and hours of instruction. Courses are divided into three categories and a certain number of credits must be accumulated from each category before a student is permitted to graduate.

The first category of courses are those which are compulsory for all Chinese university students. These can be subdivided into "politics" courses, (political economy, philosophy, the history of the Chinese Communist Party and the history of the Communist movement), "culture" courses (Chinese language, foreign language, logic and physical education), and "special" courses, (a graduation essay and, in most departments, a six-week practicum).

The second category of courses are those required by the Department. These differ from specialty to specialty. Students in the economic law specialty must take courses in economic law, international private law and public international law. Students of the international law specialty are required to take courses in the history of international relations, the history of Chinese foreign affairs, international organizations and private international law as well as simplified versions of the economic law and the international economic law courses. In addition, students in both of these specialties must take jurisprudence, history of the Chinese legal system and simplified versions of the following courses: the Constitution of the People's Republic of China, criminal law, criminal procedure, civil law, civil procedure and marriage and family law. The compulsory courses designated by the Department for the law specialty students include the following: jurisprudence, history of the Chinese legal system, history of foreign legal systems, history of Chinese political thought, history of foreign political thought, the Constitution of the People's Republic of China, civil law, civil procedure, criminal law, criminal procedure, criminal reconnaissance, marriage and family law, international private law and shortened forms of the international and economic law courses.

The third category of courses under the new credits system are electives. Students must select a certain number of electives in their third and fourth years. A prescribed minimum of these must be related to their own specialties. Over and above this students are

free to choose from any of the Department's courses and, with the permission of the Department and the outside department involved, students may also attend courses offered elsewhere on campus for credit.

At present, only a limited number of electives are available in the Department. They include courses such as readings in international law, selected topics in international law and international relations and medical jurisprudence. The Department, however, is extremely ambitious in this respect and an impressive array of specialized courses is being planned; it hopes to be offering most of the following electives by 1983: aviation law, law of the sea; space law; the law of diplomatic relations; the International Court of Justice; the law of treaties; foreign commercial law; international trade law; international environmental protection; post-war international relations; international investment; marine pollution; finance and banking; environmental law; natural resources; forestry law; water pollution law; labour law; and the law of factories and enterprises.

In addition to the three categories of credit courses there are three non-credit requirements imposed on all Peking University students. The first is participation in a weekly three-hour long current events class. These are of variable format and content. They range from the rare department-wide mass meeting to the more common class seminar and to the occasional individual study session. Sometimes new government or official policies are explained to students during these classes. At other times, major speeches or reports made by political leaders will be discussed; more often students will be required to study and discuss important newspaper editorials or resolutions of the National People's Congress.

The second non-credit requirement is participation in physical labour around campus. Possible activities include moving furniture, arranging library books, cleaning up buildings, harvesting wheat on nearby communes and doing minor landscaping. In theory, students must devote one week each term to such organized physical labour but, in practice, they are seldom asked to contribute more than one morning of work every year.

The third official non-credit requirement is participation in military drill. This, however, did not appear to be enforced during the period I was in attendance at Peking University.

## *II. Student Selection*

The Department is presently the most popular department on campus, or as the Chinese put it, law is a very "hot door". The quota for the first year class was increased by the Ministry of Education from 64 in 1978 to 180 in 1979 and 230 in both 1980 and 1981. Although the 1980 and 1981 quotas for the Department were higher than for any other Peking University department, there were still more applicants than positions. In fact, the standards for entrance have become stricter each year. The minimum national entrance examination score required for entrance into the Department is now amongst the highest required by any department at Peking University. In 1981, only those undergraduates who listed law as their first choice of departments had any chance of being selected and of the 70 people who applied for admission into the graduate program, only 20 were accepted.

The "hotness" of the Department is a rather curious phenomenon. A mere three years ago, it was an unqualified "cold door". I have been told that a number of students in the 1977 and 1978 classes applied for admission into the Department only because their marks would not get them into any other Peking University Department. Others were assigned to the Department although law was their third or fourth choice. More interestingly, there exists widespread skepticism that the study of law in China is the study of empty words. Chinese who believe law is a waste of time are not rare, and — at least amongst my own acquaintances — by far outnumber those holding any other opinion. What then, accounts for the Department's undeniable drawing power?

The upsurge of interest in the Department began in 1979. It stands as one testimony to the effectiveness of the massive campaign begun that year by the government to propagandise law. The introduction of the "7 Big Laws" was preceded by an impressive media campaign in China.<sup>8</sup> Indeed, 1980, the year of their promulgation, was hailed as the "Year of the Law" by the foreign press.<sup>9</sup> The trial of the "Gang of Four" in 1981 gave law an unprecedented prominence in the country — whatever Westerners may have had to say about it — and law has continued to receive a

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8. See Peng Zhen (China's chief legal commissar) "Explanation on Seven Laws" (1979), 22 [Beijing Review] at 8.

9. See Jerome A. Cohen, "The Year of the Law and End of Arbitrary Courts" (1979), [Far Eastern Economic Review], at 54-56.

great deal of official attention since that time.<sup>10</sup> Whether the campaign to encourage the “strengthening of socialist legality” has succeeded in Chinese society as a whole is a moot point but there is no denying that it has affected many students now studying law in Peking University. When asked why they decided to study law, the students of the 1980 and 1981 classes typically referred to various ideals emphasized in the campaign, such as the necessity to correct the extreme shortage of law-trained personnel, the desirability of strengthening socialist legality, the need to raise the legal consciousness of the people and the importance of dispelling the poisons left behind by the anarchy and lawlessness of the “Gang of Four” period.

A more practical factor was the general belief that law students would be assigned to very good jobs after graduation. This is not a question of salary, since the initial pay received by all university graduates is uniform. Rather, the major considerations are first, job location and second, job interest. Conventional wisdom, confirmed by this year’s job allocations, was that law graduates would be assigned to Central Government organs — a big plus in terms of satisfactory work — or to other departments located in Beijing, residence in the capital being considered a tremendous perk by almost all students. Also, since the shortage of law graduates was severe throughout the country, the minority who wanted to work elsewhere were confident that their special requests would be answered.

There is no requirement for applicants to the Bachelor of Law program to have a previous degree and almost all of the students apply immediately after graduating from high school. Neither are applicants to the Master’s program required to have studied law before, or for that matter, to hold a degree in any other discipline. The Department uses three basic criteria in making their selections. In order of importance, they are ability, political standing and physical health.

On the first point, ability, some consideration is given to previous work experience. Also, for students applying to study international law, special emphasis is placed on foreign language ability. In

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10. For example, the recent passing of a new Civil Procedure Law and Law on Economic Contracts to be effective on July 1, 1982 was accompanied by many press articles explaining their content and importance. See for example, “The Objective Necessity of the Economic Contracts Law” [People’s Daily], December 25, 1981 at 5.

general, however, the most important factor is the student's performance in the graduate or undergraduate entrance examinations, as the case may be.

On the second point, political reliability, a high ranking administrative officer in the Department told me that careful scrutiny of an applicant's "ideological soundness" is very material in the selection process and will continue to be so in the foreseeable future because, "in China, law and politics are inextricably intertwined". He reminded me that law used to be officially categorized as an "absolutely secret" discipline and that while there has been considerable loosening up in recent years (as evidenced by the very conversation we were having) law was still a "sensitive area". For example, at present "There are some legal documents which can only be seen by Party members". For these reasons, the scores achieved by applicants in the politics and civics sections of the entrance examinations are of more importance to the Department than to other departments. In addition, much consideration is given to the applicant's Personal Dossier, a document which follows every Chinese citizen through his whole life. This written record is kept by each person's unit and contains all his vital statistics as well as assessments of his work and moral habits, made by his superiors and peers. The Dossier records all the important events of each subject's life, including his family history, his educational background, his criminal offences if any and his political merits (such as Communist Party or Youth League membership), and demerits (such as dissident behaviour). Careful attention is paid by the Selection Committee for signs of political unreliability.

### *III. Student Administration*

One of the most striking aspects of Chinese society for many Western observers is the pervasiveness of group life.<sup>11</sup> This phenomenon is readily apparent at many levels in the lives of law students at Peking University.

It is natural that a large part of any university student's life should be focused on his campus. However, a much greater part of a typical Chinese law student's life is spent within the confines of the school than would be normal for a Canadian student. Almost all of

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11. For example see, Orville Schell, "Private Life in a Public Culture" in Ross Terill (ed.) [*The China Difference*], (Harper and Row, 1979) at 27.

the law students live in dormitories located within the university's stone walls, including residents of Beijing who go home only on weekends, if at all. Peking University is a self-contained unit in terms of academic needs, health services, consumer supplies, entertainment outlets and exercise facilities. There is no real necessity to go outside the school walls and, especially on the part of non-Beijing residents, there is a strong tendency not to.

The group orientation of Peking University students is also reflected in the official organization of their lives. Students are entangled in a complicated web of overlapping groups and identify very strongly with many of them.

The most elementary administrative group is the dormitory room. Six or eight undergraduates are assigned to each dormitory room on the basis of sex, year and class. Students are assigned to a room as soon as they arrive on campus. They retain the same roommates throughout their four years of study. There is no Chinese word meaning "privacy" in these dormitories, there is nothing for such a word to describe. The rooms are barely large enough to hold the bunkbeds, desks, stools and bookshelves allotted. By necessity, students soon learn to slide and squeeze through the obstacle course thus created with a minimum of wear and tear on bodies and nerves. Roommates sleep in the same room, eat in the same dining halls, go to the same parties, attend the same classes, write the same exams and hear the same jokes as one another and do not seem to mind doing so for four years. On the contrary, many of my Chinese classmates were positively enthusiastic about the deep and often intense comradeship fostered by these thoroughly communal conditions.

The next largest unit is the study group. Generally, a study group is composed of the students from two male dormitory rooms plus two female students. Allocations to study groups are made by the Department with no student input and are fixed for four years. The study group is the most important logistical unit. For example, textbooks, food coupons, railway tickets, money allowances and movie tickets are distributed by the Department according to study group. Also, small group discussions are organized in almost every course by study group. It is also common for members of study groups to prepare for examinations together by exchanging answers to review questions. Naturally, there is a tendency for the study groups to become cohesive social groups as well. It is the perfect

size for spontaneous volleyball matches and a pleasant number for picnics, outings and skating parties.

Students are further organized into classes according to specialty. A class is made up of approximately 50 people. Class members attend almost all of their classes together. This is the most important unit. Courses are timetabled, examinations scheduled and textbooks ordered by the Department according to class. Moreover, the class is the most all-embracing of the student organizations. A class committee concerned with every aspect of student life is elected each year by the students. Five students are chosen by secret ballot to serve for a school year. There are no special requirements to stand for election, but the posts tend to be filled by Party members. The five elected members subsequently vote amongst themselves to determine who will assume the responsibilities of class monitor, studies monitor, general welfare monitor, social activities monitor and athletics monitor. In addition, each class is placed under the supervision of one staff member. This person is responsible for leading the mandatory current events class scheduled every week and for discipline in general. The class supervisor retains his or her position for the full four years of study and is the Department's most reliable source of information in regard to the students. The supervisor's opinion carries a great deal of weight.

And, of course, one cannot forget Party Life, for the Party is nothing if not omnipresent in modern Chinese society. A minimum of three Party members are needed to constitute one Party Branch and roughly speaking, there is one Party Branch in each class. Each Party Branch elects a Secretary as its leader and arranges so-called "organized activities" for its members. These are supposed to take place once a week but, in practice, are convened less frequently. In theory, the purpose of these meetings is to refine ideological thinking through study, criticism and self-criticism. Party members are to discuss each other's points of view on issues of current importance and exchange advice in regard to proper personal behaviour. Party Branches are also responsible for selecting and cultivating new Party members. This last responsibility is taken quite seriously, since Party membership is not only important from a career point of view but brings with it many personal benefits as well.

The groups mentioned above are the most important ones but there are others. Almost all students in the Department who are not Party members belong to the Communist Youth League of China.

Its organized group activities are primarily social but it also engages in “propaganda” or public education projects. There is also a student’s association corresponding to each department and an all-campus umbrella association. In addition, there are a variety of hobby or special interest clubs and an assortment of athletic teams.

It is through these organizations, especially the class unit and the Party network that the Department keeps track of its students and whether they are having academic, personal or ideological problems. The Director of Administrative Affairs of the Department was proud of how well the Department kept in touch with its students in spite of its size: “There are many ways that we can find out about and help a student. If there is something we need to know about him, for example for the job assignment process, we can get information from his class monitors, from his teachers and from his fellow students.” He explained that unlike Western universities, Chinese universities were concerned with students’ morality, political soundness, personal health and emotional happiness as well as their academic performance.

#### *IV. Studying Law: A Student’s Perspective*

##### *1. The Academic Schedule*

The first and second year of the undergraduate program are almost exclusively devoted to compulsory subjects. Most of the elective courses are taken in the final two years. There are about twenty hours of classes per week each term. A special feature of the third year is that students of the Department take part in a six-week practicum in the second semester (more will be said about this below). The last semester of the fourth year is set aside for writing a “graduation essay” under the guidance of a teacher.

The academic year, which is divided into two terms, is very long. The first term begins around September 1 and goes for 20 weeks until the middle of January. The second term usually begins in mid-February and runs for 21 weeks until the first or second week in July. During the first term, October 1 and 2 are set aside each year to celebrate National Day. International New Year’s Day is also a holiday. The only holiday in the second term is International Labor Day on May 1.

Examinations are scheduled for the last two weeks of each term. Classes are terminated a week or ten days early to give the students time to prepare.

Needless to say, the four week long Spring Break and the seven week long Summer Break are welcome respites. In most cases, students simply return home to relax with their families. Trips home for non-Beijing students are subsidized to the extent of one-half the railway fare. A few lucky students may have an opportunity to travel for a week or ten days. If so, unlike foreigners, they do not need to obtain official permission.

## *2. Law Courses: Some General Observations*

It is not feasible to discuss each of the Department's courses at length. What I propose instead is to make some general observations about the classes I attended. In order to impart their flavour in a more vital way concrete illustrations will be given whenever possible.

### *(a). Heavy Ideological Emphasis*

One of the most striking features common to the courses I attended — whether the subject was theoretical or practical, substantive or procedural, domestic or international — was the heavy ideological bent of the lectures and materials. Although the emphasis varied from course to course, all began with a review of how Chinese socialist law conformed to the precepts of Marxist-Leninist-Mao Zedong Thought. As the courses progressed, there were constant references back to this ideological framework.

Marxist-Leninist-Mao Zedong Thought permeates the whole of modern Chinese society and so it is not surprising that Chinese legal thought should also be imbued with it. It finds repeated expression even in specific legislation. For example, Article 3 of the 1978 Constitution<sup>12</sup> declares that “Marxist-Leninist-Mao Zedong Thought is the guiding principle of the State” and this phrase reappears in Article 1 of the Criminal Law Code and again in Article 1 of the Law of Criminal Procedure.<sup>13</sup>

Accordingly, the syllabus for the Constitutional Law course states that “the directing principle of these lectures is Marxist-Leninist-Mao Zedong Thought”. In a similar vein, the Civil Law course syllabus reminds students to “take Marxist-Leninist-Mao Zedong Thought as the guiding light in the study of Civil Law.”

12. The English text of the People's Republic of China Constitution may be found in (1978), 21 [Beijing Review] 5.

13. See (1979), 33 [Beijing Review] 16.

Even the Marriage and Family Law Course is no exception. Its syllabus lists as first amongst the course contents, “the fundamental theories and ideas concerning marriage and the family that are found in Marxist-Leninist-Mao Zedong Thought”.

Chinese law students study Marxist-Leninist-Mao Zedong Thought on a general level in their compulsory jurisprudence course and then reconsider the central ideas within each of their specialized courses. For example, one of the cornerstone ideas of Chinese jurisprudence is that law has a class nature. The discussion of this topic found in the nationally-used jurisprudence textbook, *The Fundamental Theories of Law*,<sup>14</sup> begins with the following assertion:

All of the jurists and thinkers of the exploiting classes, due to their historical and class limitations, have never and are yet incapable of producing a scientific analysis of the nature of law. To the contrary, they have consistently confounded the issues. It was only after the arrival of Marxist analysis that the nature of law received a scientific explanation.

This scientific explanation, as formulated by the classical Marxist writers, (it goes on to say), can be summarized as three points:

1. Law is a reflection of the will of the ruling class.
2. The will of the ruling class is expressed as the will of the state; law is a tool used by the ruling class to carry out dictatorship over the other classes.
3. The material conditions of the ruling class determines the nature of the concrete manifestations of its will and the substantive content of the law.

The textbook then elaborates on these themes by examining how the class nature of law is differently expressed in societies based on each of the slave, feudal, capitalist and socialist economic systems.

The discussions of the class nature of law found in the Criminal Procedure textbook<sup>15</sup> is a typical example of how this central idea is reconsidered from a specialized point of view. First, the general point is stated:

The criminal procedure law of any state under the dictatorship of an exploiting class (this includes any state based on a slave-owning, feudal or capitalist economy) is, at bottom, a

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14. Chen Shouyi and Zhang Hongsheng, [Fundamental Theories of Law] (Peking University Press, 1981) at 177-180.

15. Wang Guoshu, [Criminal Procedure] (Beijing: Peking University Press, 1981).

reflection and expression of the will of the exploiting class; it is one of the tools used by exploiters, a minority, to impose dictatorship over the broad masses of workers and to preserve the existing system of exploitation.

This assertion is then qualified. The Criminal Procedure laws of states in different stages of development reflect class oppression in different ways. When Chinese society was based on a slave-owning economy,

slaves were non-persons with no legal rights whatsoever; they were merely tools of their masters who happened to have an ability to speak. They could be arbitrarily disposed of or even killed by their masters. In terms of criminal procedure law, they had no rights whatsoever.

Even when China advanced into the feudal stage of development, the class bias of criminal procedure law continued to be overt; it served to protect the feudal system of privilege:

The law clearly provided that if a person of the ruling class committed a crime, he would enjoy every kind of privilege and preferential treatment under the law. Further, the amount of privilege and preferential treatment due to a person would rise with his social status and official position. Even the weight given evidence was determined by the status of the person tendering it.

Next, it is said that even though great progress is made when a bourgeois revolution succeeds in overthrowing a feudal order and abolishing its unfair procedural institutions, the new procedural law, in the final analysis, can never reflect anything but the will of a minority class:

For the bourgeois, judicial institutions and procedures really will be democratic, fair and equal, but for the remaining mass of workers, it will be a sham which masks the true reality of class rule.

The text sets out three reasons for this. First, so long as the legislators support private ownership, decisions by judges cannot truly be just since they must “conscientiously voice the selfishness of law and apply it unconditionally. Under such circumstances, the justice of a judicial decision can only be formal and not substantive. The substance has already long been decided by the law”. Second, the officers of courts in capitalist states, from justices of the peace to jurymen, are all themselves wealthy people from the bourgeois class and will therefore “protect their own kind and be the mortal enemies of the poor”. Third, in capitalist states, a person’s social status and rights primarily depend upon his financial position. The

right of an accused person to be defended by counsel is discussed by way of illustration.

It is very clear, the text goes on to say, that if a person is too poor to afford a large number of witnesses or to hire a lawyer clever enough to defeat all of the government's tricks, then the procedures originally created for his protection "will all be turned against him and he will suffer disaster". Hence, an institution which is supposed to protect the many is in reality but another means of bringing them disadvantage.

Even worse are fascist imperialist states, where reactionary governing cabals not only openly abandon the formally democratic, fair and equal trappings of bourgeois justice, but also use

all kinds of illegal trials, trumped up charges, false evidence, forced confessions and other base methods to prove black is white and to frame the innocent. Moreover, they will use a variety of fascist police or secret service organizations to carry out extra-legal despotism and illegal kidnappings, assassinations and other tactics of terror to suppress workers' movements and to persecute peaceful democratic people.

Different from all of these are the socialist regimes. In socialist states, such as China, the analysis continues, criminal procedure law

genuinely reflects the will and interests of the working class and the broad masses. It is an important tool in the dictatorship of the proletariat . . . This sets our country's criminal procedure law apart from the criminal procedure laws of states ruled by exploiting classes.

It would be dishonest to suggest that the study of law in the West is free from doctrine and ideology and no such claim is here made. But, of course, freedom from ideology is very much a matter of degree. My personal experience is that the teaching of ideology is for more pervasive in Chinese than in Canadian law schools. There is no denying this general observation but in fairness, two further points should be made. First the ideological training received in Chinese law classes is not one-sided, that is, the teaching of "political" values by no means excludes the teaching of what may broadly be called "legal" values. In fact, Chinese law instruction places a great deal of stress on the importance of legal values. For example, one of the stated objectives of the Constitutional Law course is to "cause students to conscientiously observe and obey the Constitution and law in general". Without exception, there is

repeated criticism in all the courses of the lawlessness which prevailed in the days of the “Gang of Four” and constant reminders of the urgency of establishing genuine socialist legality. In constitutional law, in criminal law, in civil law, in marriage law and in criminal procedure law classes, students are exhorted to “seek truth from facts”, to “take facts as the foundation, law as the yardstick” and to help “strengthen socialist legality”. The days when law students were told to “Smash Permanent Rules, Go 1,000 Li in One Day”<sup>16</sup> have been left far behind.

The second and more important point is that course content is overwhelmingly “law” and not “ideology”; that is, it should not be thought that students are taught political slogans and nothing more. That may have been true during the Cultural Revolution but that is not true anymore. Chinese law has its own philosophical underpinnings and Chinese students must learn them in their law classes — just as we must learn the basic assumptions of Western jurisprudence in ours. There are organic laws in China and Chinese students must study them; like us they must know how their political, administrative and judicial organs are set up and how they are supposed to run. And Chinese law students are expected to be familiar with the substantive laws of their country; like us, they learn about what behaviour the criminal law considers to be illegal, about the rules governing marriage, about what constitutes a legally binding contract and so on and so forth. In short, Chinese students do learn law.

*(b). Generality*

Another feature common to the Chinese law courses I attended was their high level of generality. I expected this to be the case in theory classes, such as jurisprudence, which are by nature abstract. However, I found that even the practical courses were dealt with in a theoretical way.

A partial explanation lies in the fact that much of Chinese law is not yet in place. For example, the Chinese economic system has been radically reformed in recent years and ownership, contractual bargains, inheritance and many other legal relationships are being

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16. Zhang Wuyun, “Smash Permanent Rules, Go 1000 Li in One Day” (1958), 5 *Zhengfa Yan Jiu* [Political-Legal Research] 60. See also Alice Erh-Soon Tay, “Smash Permanent Rules’: China as a Model for the Future” (1976), 7 [Sydney Law Review] 400.

placed on a new footing. To this day, the civil law framework is still not complete and in many areas, there is neither legislation nor an authoritative body of case law. The result is that the civil law course, a course one would have expected to be quite specific and even technical is almost wholly theoretical. In fact, the course syllabus begins with this apologetic note:

Work on our country's civil law is proceeding apace but very little pertinent legislation has yet been enacted. Numerous special regulations are also still in the revision or formulation stage. At present, civil law specialists are engaged in research and discussion over many questions; but, before they are solved, deeper knowledge must be gained from practice and scientific synthesis. Thus, instruction in the present Civil Law course can proceed only at the level of fundamental principles.

Lack of legislation does not completely account for the generalness of Chinese law instruction. Even where there is operative legislation, it is couched in fairly sweeping language, at least by Canadian standards. For example, the entire Chinese Criminal Code has only 192 articles. The Canadian Criminal Code by comparison has almost 800 articles, many of which are extremely detailed and precise or have been rendered so by judicial interpretation. Another contributing factor is the large number of topics taught in each course. For example, consider the Criminal Procedure course; for the most part, it revolves around the Law of Criminal Procedure, which is the omnibus legislation governing the procedure of all three of China's law related organs: the public security organ, the procuratorate and the judiciary. Instruction is also given on the basic principles of criminal procedure law, the history of Chinese criminal procedure law, the law of evidence and enforcement. In addition, a fairly extensive comparative law section is included in the course materials. An even better example is the Civil Law course which encompasses civil procedure, property law, the law of agency, debtor and creditor law, contracts, trusts, torts, insurance, copyright, patents, insurance and succession. Obviously, each of these subjects can be given only cursory treatment.

Finally, it is perhaps unavoidable for someone who has learned his law largely through actual cases, and who nostalgically remembers law school as a parade of tardy millshaft carriers, revolting snails in ginger beer bottles, incensed egg producers and loony Scotsmen to find legal instruction not based on the case method abstract and lifeless. Real cases are seldom analyzed in

Chinese law classes. Decided cases have no binding value in Chinese law, so the need for students to learn and distinguish precedents is largely obviated. Moreover, accounts of actual cases are not very readily available and even if decisions are obtained, they are often cryptic to the point of vagueness. The facts of a case and the reasons for judgment are seldom laid out in the manner expected of common law judges. In other words, there is not only no necessity to study concrete cases, there are also practical obstacles against using them for pedagogic purposes.

(c). *Development of Analytic Abilities*

The Constitutional Law syllabus states that the course instructor's goal is to:

lead students to a proper understanding of the content and spirit of the Constitution, to establish a solid foundation of knowledge to inspire his students, help them synthesize course material, to hold appropriate discussions, to cultivate analytic skills and to foster the spirit of self study.

Similarly, the Civil Law course syllabus admonishes students

to pay attention to uniting theory with practice, to go beyond a mere understanding of phrases and concepts and to put particular stress on the comprehension and study of the fundamental theories and ideas of civil law, with a view to the continuous improvement of analytic and problem solving abilities.

According to my observations, Chinese instructors are far more concerned with presenting a set body of knowledge to their students than with developing analytic skills in their students. Both of these facets of a legal education are, of course, important, but the balance struck by Chinese educators is decidedly in favor of the former. The opposite was true of my Canadian teachers. Their tendency was to dwell on hard cases and grey areas. My Chinese teachers, in contrast, preferred to speak about typical cases and black and white concepts, usually in the abstract.

The treatment given to the problematic notion of criminal causality is illustrative. In both my Canadian and Chinese Criminal law course, it was observed by the professor that the determination of causality is relatively simple in the majority of cases. Some clear illustrations were offered. "A" secretly and purposely gives "B" a dose of poison which he knows is strong enough to kill a horse. "B" drinks the poison and dies. In the Canadian course, the Professor next introduced the distinction between actual and legal cause and then proceeded to mire his students in a deluge of

examples which became more and more difficult to resolve. What if at the moment that “B” drinks the fatal poison, “C”, acting independently, shoots “B” through the heart? What if the poison given by “A” causes so much pain that “B” commits suicide before the poison takes effect? In that case, what if the poison would not have been sufficient to kill “B” by itself? What if the poison administered would not have been fatal if “B” had had a normally healthy constitution, but unknown to “A”, “B” was particularly susceptible to it? What difference does “A”’s ignorance make? What if the poison would not have resulted in death if “B” had been properly treated but he receives negligent treatment from a doctor called in to help? As if “pre-existing weakness”, “superseding cause”, “intervening cause”, “proximate cause” and “substantial factor” were not enough in themselves to drive his students to distraction, the professor then went on to deal with the infamous felony murder cases.

In contrast, Chinese instruction on causation consisted of a number of cryptic rules:<sup>17</sup>

1. A cause-effect relationship is an objective link between social and natural phenomena that exists independently of a person’s will, that is, criminal causation exists objectively and will not change simply because of the actor’s subjective wishes.
2. Cause-effect relationships are relative relationships, that is, all material objects and phenomena are inter-related and condition one another.
3. The relationships which can exist between social and natural phenomena are multitudinous and multivarious. Some are intrinsic, others are only apparent; some are inevitable, others are accidental; some are direct, others are indirect and so on.
4. The link between cause and effect can often be complex: sometimes one act can cause many anti-social harms, sometimes one anti-social harm can be caused by many acts.
5. Criminally anti-social harms can not only be caused by acts but may also be caused by omissions.
6. Causality is a necessary but not a sufficient condition for criminal responsibility.

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17. Yang Chunxi *et al.*, [A General Discussion Of Criminal Law], (Beijing: Peking University Press, 1981) at 131-138.

*(d). Policy Questions*

Chinese law is undeveloped in many senses. There are great gaps in the legislative framework which have yet to be filled, such as the enactment of a commercial code. There are some laws which deal with problems outside of the Chinese experience, such as the recently passed law on joint ventures. Others revive concepts put aside for years, such as the right to be defended in a criminal prosecution. Some of the laws enacted are already considered out of date and are about to be revised, such as the Constitution itself. In other words, Chinese law is at a very tentative, probing, experimental stage in its development. In such circumstances, one would expect lively debate in legal circles. This indeed seems to be the case, as witnessed by the changes in line<sup>18</sup> which have occurred in recent years and by the ongoing arguments which have been taken place in the legal journals.<sup>19</sup> How was this reflected at law school?

On topics open to public debate, teachers were quite fair in setting out the different positions. They were not in the habit of turning their classrooms into forums for enunciating their personal points of view. Students were invited to come to their own conclusions.

Where a topic was considered "delicate", teachers consistently adhered to the current Party line. The likelihood of encountering topics closed to discussion depended upon the political sensitiveness of the course. Accordingly, there were practically no limits in the Civil Law course and only slightly more in the Criminal Law course. In contrast, there was a pronounced tendency for lectures to be dogmatic in the Constitutional Law and in the Jurisprudence courses. For example, the leading role of the Party and the ascendancy of Marxist-Leninist-Mao Zedong Thought, not surprisingly, were "inconvenient" to debate. There were occasional clues suggesting that the instructor did not wholeheartedly support the position he was expressing. Many of my Chinese classmates were

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18. Two noteworthy changes which have taken place in the last four years are first that law is an independent discipline and not a part of the study of the State and second, that the principle of equality before the law is correct.

19. For example, in 1979 and 1980, there were over ten articles printed in [Legal Studies] about the principle of the presumption of innocence in criminal law, debating its correctness and whether China should adopt it to not. The majority of writers disagreed with the principle.

very perceptive in this connection and often astounded me with their ability to decipher the “words within words”.<sup>20</sup>

(e). *Exposure to Foreign Legal Concepts*

Interest in foreign law is evident in the large number of foreign or comparative law courses offered by the Department. In addition, comparative observations are sprinkled throughout domestic law courses on an ad hoc basis and I was more than once put on the spot to describe relevant Canadian law. Attention is most often drawn to Soviet law as representative of the socialist legal tradition, to German, French and to a lesser extent, Japanese law as representative of the civil law tradition and to American and British examples as representative of the Common law tradition. In some of the classes, there are also specific comparative law chapters. For instance, the last chapter of the Criminal Procedure course is entitled “Criminal Procedure Law in Capitalist Countries”. Similarly, an extensive part of the Criminal Law course is given over to a consideration of “some theoretical questions in foreign criminal law”. The text included discussions on the following topics:

1. Quasi-criminal disciplinary actions;
2. The principle of “nulla poena sine lege”;
3. Implications of the principle of “nulla poene sine lege”;
4. The retributive and rehabilitative schools of thought;
5. Global tendencies in foreign criminal law.

Chinese instruction about Western law is sorely in need of improvement. Technical points, such as the age of majority in different countries, were usually correctly stated but discussions venturing beyond this level all too often suffered from overgeneralization. For example, the explication of the principle of the presumption of innocence in my Criminal Procedure class was seriously marred by the failure to draw distinctions between the burden of production and the burden of persuasion, between proof beyond a reasonable doubt and proof on a balance of probability and amongst permissive, rebuttable and mandatory presumptions of law. More seriously, when ideological matters were touched upon there was an unfortunate tendency for rhetorical flourishes and question begging assertions — supported only by quotations from

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20. Unfortunately, it is “inconvenient” to give examples.

the works of Marx, Lenin or Mao Zedong, by flimsy evidence or by no evidence at all — to creep into otherwise constructive lectures.<sup>21</sup>

21. For example, consider what Chinese law students learn about the concept of equality before the law in the West. The analysis in [*Fundamental Theories Of Law*] *supra*, note 14 begins by noting that the idea of equality before the law was first championed by the bourgeoisie and had economic origins:

“(It) arose out of the development of the capitalist economy in the Middle Ages. Large scale commerce required that the owners of commodities should have the freedom to carry out exchange on the basis of equal rights. The transition from handicraft to manufacturing required that a certain number of “free” workers could sell their labour to factory owners by contract on the basis of “equal” rights. It also follows from the labour theory of value — which states that the worth of any commodity depends on the amount of labour required to produce it — that commodity exchange necessarily implies that all labour is equal and fundible. However, the need of the capitalist class for freedom and equality was obstructed by feudal institutions at every step. Thus, it was necessary for the bourgeoisie to overthrow feudal rule. For this purpose they had to demand for themselves, in order to enlist broader participation in their struggle.”

The text goes on to explain that the bourgeoisie’s demand for equality gained intellectual respectability because of the support of Enlightenment philosophers:

“Philosophically, the ideas of freedom, equality and human rights originate from the Theory of Natural Rights put forth by Locke, Rousseau and other bourgeoisie writers representative of the 17th and 18th Century Enlightenment Movement. They held that men are born with the rights to life, liberty, equality, the pursuit of happiness, the ownership of property and the opposition of tyranny. The American Bill of Rights and the French Declaration of the Rights of Man were both concrete manifestations of the theory of natural rights.”

The official line on equality in the West is then stated:

“In assessing the principle of equality before the law in capitalist societies or the whole of bourgeois democracy, we must recognize that historically, they represent tremendous improvements over the institutions of the Middle Ages . . . Nevertheless, we should not forget their true nature and their intrinsic limits.”

This is followed by a quotation from the Collected Works of Lenin which is then paraphrased as follows:

“The bourgeois principle of equality before the law and bourgeois democracy as a whole is therefore a narrow, fraudulent democracy. The most fundamental reason is because they are erected on the foundation of private capitalist ownership. Rights under this kind of democracy primarily refer to the bourgeoisie’s rights to property and freedom and equality means the right of the workers to sell their labour by contract, that is, the freedom and equality of the capitalists to hire wage labour. Hence, ‘democracy’ is enjoyed by the bourgeoisie only and in no material way is it guaranteed for the proletariat. In the most fundamental ways, it is a sham.”

The criticism then becomes more concrete:

“The falseness of the principle under capitalist societies can also be seen in the fact that there is no complete equality before the law even in form. The

The Department is aware that the quality of instruction in foreign law leaves much to be desired. Some of the staff have studied abroad but they are few in number and their knowledge is no longer current. Does the Department have any plans to remedy this perceived deficiency? As far as municipal law is concerned, there is undoubted interest in Western concepts and practices, but, according to the Department's head administrator, this is "not a top priority". As far as domestic legal problems were concerned, "China must find her own way". The Department has a much more outward looking attitude towards international law — its traditional stronghold. In fact, where international public law and international economic or business law is concerned, the Department is anxious to gain greater exposure to Western ideas and practices. To achieve this, the Department relies on three main approaches. One approach — the least favored — is to invite western lawyers to lecture in the capacity of "foreign experts" on a long term basis. Last year two American lawyers, both overseas Chinese, were hired by the Ministry of Education to teach courses which included International Investment Law, Admiralty Law and International Business Transactions. There are now no foreign experts teaching in the Department but private arrangements have been made with foreign lawyers residing in Beijing to teach on an ad hoc basis. This term, an American lawyer is teaching American Constitutional Law in the Department on such a basis and rumour has it that another American lawyer may soon be teaching a contracts course.

In order to stay abreast of developments in the outside legal world, the Department also arranges academic exchanges at the

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inequality of sexes, nationalities and races are the most obvious kinds of inequalities which exist. As Engels pointed out, the American Constitution "first recognizes human rights and then affirms the existing system of colored people's slavery; class privilege has been established outside of the protection of the law and racial privileges has been apotheosized. From the drafting of the constitution on, the history of the United States has been a record of cruel oppression against the blacks — from the slavery system of the plantations to the segregation of the post Civil war period to the de facto segregation which exists today. The oppression of races and the treatment of minorities as 'second class citizens' all prove the emptiness of the principle of 'equality before the law' in capitalist societies".

Another concrete manifestation of this hypocrisy is that bourgeoisie law declares on the one hand that citizens have certain freedoms and rights, but on the other hand, sets up all kinds of exceptions and limits which guarantee the continued rule of the bourgeoisie."

faculty level. The visit which Dean MacDonald paid to Peking University in 1980 is an example of this kind of exchange.<sup>22</sup> In the last few years, three or four of the Department's teachers have been permitted to visit law faculties in the West.<sup>23</sup> Upon their return they are customarily called upon to report on their experiences. These short term scholarly exchanges are considered valuable opportunities for the Department to make contacts with outside law departments with a view to establishing long term arrangements for the exchange of ideas and materials.

Lastly, The Ministry of Education sponsors a limited number of students to do graduate studies abroad. These students are usually expected to become instructors upon their return. Strict quotas are set each year for each Department and rigorous examinations are used to select candidates from amongst the many applicants. Aside from these officially sponsored students, the present regime does not permit many students to study abroad. At this time, there are two students from the Department enrolled in the Masters program at Dalhousie Law School, two in Masters Programs in the U.S.A. and three in Bachelor programs in Japan.

The question of foreign students studying law at Peking University is a different matter. Officially, the Department has never been opened to foreigners. Officials usually cite inadequate teaching "conditions" as a primary reason. The lingering Chinese sensitivity over all things legal is undoubtedly a further factor. The Department's decision to give the writer permission to attend law classes on a semi-official basis was an unexpected breakthrough. Subsequently, the Department allowed four other foreigners — all Americans — to audit a limited number of classes. It does not appear, however, to have a uniform policy, indicating that differences of opinion exist among faculty members. As more Chinese students are admitted to Western law schools, pressure will mount for the Department to open its own doors wider.

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22. Dean Macdonald's visit was also noteworthy for the occasion of the first lectures presented at Peking University by a Western International Lawyer since liberation. See Macdonald, "Legal Education In China" (1980), *DalhousieLaw Journal* 313.

23. Professor Wang Tie Ya is expected to take part in a conference on the Law of the Sea to be held in Halifax this summer.

### 3. *Teaching Methods*

#### (a). *Classes*

The Department's offices are located in a modest building of grey brick some 60 years old. Classes, however, are held elsewhere on campus. Classrooms range in size from mass lecture halls with over 350 seats to small classrooms with fewer than 40 seats. They are all reasonably comfortable but very spartan. Most are outfitted with bare fluorescent tubes, slate blackboards, wooden tables, hard seats, concrete floors, and, contrary to the expectations of many foreigners, no pictures of Chairman Mao. Lecturers speak from raised platforms behind a desk or a lectern. It is not uncommon, especially for those more advanced in years, to be seated. There is always a blackboard and sometimes visual aids such as maps or organization charts are used, but overhead projectors are not in use. Some of the mass lecture halls are equipped with sound systems.

Classes in the law department are well organized but rigid. Students have no say about the contents of the courses offered. At the beginning of each term, a detailed syllabus is issued for each course by the responsible teacher and this is adhered to strictly. The lecture method is relied upon almost exclusively and there is an unfortunate tendency for lectures to degenerate into oral versions of a written textbook. The Socratic method has no currency whatsoever; in fact, it is extremely rare for lecturers to put any but rhetorical questions to the class. The classroom experience is a very passive affair for students, requiring no previous preparation and taxing little but an ability to listen and take notes. In this regard, students are very diligent, especially in the classes where there is no textbook. Students can often be seen writing down everything said word for word.

#### (b). *Discussion*

Spontaneous classroom discussions are not a feature of Chinese law classes. A few teachers make a point of inviting students to come forth with opinions during breaks, but they do not encourage students to interrupt lectures. During class time, students rarely ask even technical questions and it is unheard of to challenge the professor.

In each of the courses, a few class hours are set aside each term as discussion periods. Some of these are held in the class at large, but most take place within the study groups previously described.

Usually the students carry on by themselves, but teachers and assistants are expected to drop by and participate on a random basis.

Neither the classroom discussions nor the small group discussions resemble Canadian seminar classes. They are much more formal. A topic or a case is chosen in advance by the teacher and some questions are posed. Often, supplemental readings are assigned. Students are expected to prepare written answers, or, at the very least, an outline in advance. Sometimes, the answers must be submitted to the professor. During the discussions themselves, it is very often the case that students simply take turns reading to each other from their prepared scripts. I have participated in some very animated debates, some of them verging on the fractious; however, direct interaction or feedback is usually minimal and it appears that little of either is expected. This is not to say that the students always express identical points of view. Teachers however normally make a point of summing up the discussions and leaving the students with little doubt as to which of their opinions are “right” and which are “wrong”.

Discussion topics are always selected by the teacher with no student input. They are generally of two types. In the theory courses such as Foreign Constitutional Law or Jurisprudence, abstract questions are chosen. In the practical courses, such as Civil Law or Criminal Law, discussions are usually based on hypothetical cases. Discussion periods are designed primarily to clarify difficult concepts and are not meant to be forums for exchanging points of view. For example, the three discussion periods set aside in the Foreign Constitutional Law course concerned, respectively, the fundamental principles of constitutional law, the relationship between the executive and the legislative branches and the principles of judicial practice. Some of the discussion topics of the Jurisprudence course included the following: What are the basic principles governing the organization and activities of socialist organs of government? How do the functions of socialist state organs reflect the nature of the socialist states? Discuss the role of socialist legality in the realization of a modern socialist state.

More discussion periods are scheduled in the Criminal Law course than in any of the Department's other courses. Last year, in the course I attended, 14 of the 108 hours of class were set aside for discussions. Basically, these all centered on one or more hypothetical fact situations chosen to highlight concepts raised in previous classes. For example, the first seminar followed the

causality lectures and was based on two imaginary problems. The first hypothetical was as follows:

Nursery worker Wang (female, 30 years old) took 14 of her charges outdoors swimming. On the way, youngster Li (3 years old) lost his footing and fell into a manure pit. Wang was unwilling to jump into the pit to rescue the child and merely screamed for help. Middle school student Liu heard the calls and rushed to the scene. Liu and Wang measured the depth of the pit with a bamboo pole and discovered it was only half a man deep but both were unwilling to jump in. Together, they screamed for help. At last, peasant Zhang heard the commotion and hurried to the pit. He jumped in but by the time he pulled the child out, it was already dead.

The question for discussion was: Is there a causal relationship between the behaviour of Wang and Liu and the death of little Li? Should either of them be held criminally responsible? As the year progressed, slightly more complicated fact situations were presented.

(c). *Grades*

In compulsory courses, students are graded either on the basis of excellent, good, poor and fail or on a scale of 1 to 5 (5 being the highest mark obtainable) and in elective courses, they are graded on a pass/fail basis. The final grade in each course is said to reflect the student's overall performance and the marks obtained in coursework and examinations. Students are not informed beforehand of the exact breakdown of the marking scheme applied in any of the courses.

The amount of coursework is generally very light. If any, its nature varies from class to class and teacher to teacher. Some assignments are devised to test and consolidate the students' grasp of basic concepts. Homework given in the Jurisprudence course is typical of this genre. Students were given a week to hand in written replies to the following three questions: What is the definition of the State? What is the definition of Law? What does the dictatorship of the Proletariat mean? These are not simple questions and theorists have spent years formulating their own versions of the definitive answer. The expectations of the instructors, fortunately, were more modest; answers that succinctly and correctly reproduced definitions given in class were considered adequate. Other assignments were more expansive, requiring students to synthesize rather than repeat class material. For example, students in the International Law course were required to prepare three five-page essays during the

year. Topics included such issues as “Is International Law law?”, “The Class Nature of International Law” and “State Responsibility”.

Yet a third type of coursework emphasizes practical skills. The main assignment for the year in the Criminal Procedure course was a choice of writing either a judgment, a defence brief or a prosecutor’s report based on a complicated fact situation devised by the teacher.

Examination questions are seldom of the problem solving variety favored by Canadian law professors. Closed book essay examinations predominate. Normally, examinations last two to three hours and are made up of three to five compulsory questions. For the most part, questions require little more than straightforward repetition of lecture and textbook materials. It seems that simple memorization is sufficient and, in fact, is the basic study method used by the students. Until recently, Peking University teachers customarily issued study sheets to students some weeks before the examination period. Dozens of review questions would be listed and actual examination questions would be drawn directly from these with practically no changes. This year, the University authorities decided to prohibit this practice in the conviction that it encouraged undisciplined students to cram at the last minute and permitted poor teachers to conceal ineffective teaching practices behind good student grades. The review sheet handed out to students in last year’s Civil Law course and the examination questions therein are typical. There were over 30 questions in total, from which I quote three chosen at random:

1. What is a legal person? In our country, what conditions must be satisfied in order to create a legal person?
2. What are the principle kinds of articles found in ordinary contracts? Describe their respective functions?
3. What is an inventor’s patent right? What is the purpose behind safeguarding an inventor’s patent right?

In some of the smaller classes, such as the History of Chinese Foreign Relations, written examinations are supplemented by oral ones. The kinds of questions asked during oral examinations do not differ from those used in written ones. Generally, the instructor will examine each student individually for approximately 15 minutes. Students will be asked two or three questions and must answer without the help of notes.

Students appeared to attach relatively low priority to the attainment of good marks. One of the most obvious reasons for this is the widely held belief that marks do not affect job allocations. Nor is undergraduate performance felt to be important by students hoping to pursue graduate level studies; as they point out, they will be completely overshadowed by the marks attained in the graduate school entrance examinations. In any event, many students are sceptical about the relation between ability and examination scores. Finally, there exist other status criteria with much more practical significance, such as Party membership.

Students achieving good marks do attract a certain amount of peer respect. My feeling however, is that grades are not a very weighty factor in establishing the student pecking order. This is reflected in the awards system, or rather, the lack thereof. No prizes are given to students for achieving the highest marks in particular courses and no general honours roll is posted. In fact, students simply do not know and do not seem to care very much about how well other students have done on examinations.

There are awards given within the Law Department but academic achievement is not the only or even the most important factor. The most prestigious are the so-called "Three Virtues" awards which are given to students who in the opinion of their peers demonstrate excellence in moral conduct, athletics and academic performance.

*(d). Practicum*

In Chinese law departments, regular coursework and lectures are supplemented by a period of field training. Third-year students are required to spend six weeks working at a basic or middle-level court. Initial arrangements are made by the Department in regard to the total number of students each participating court will accept and the allocation of the students to the court's criminal, civil and economic law sections. Students are invited to state their preferences and the class monitor, who is responsible for making specific assignments, will do his best to accommodate them. Last year, the class of 1978 did their practicums at various courts scattered around Beijing; just under one half of the students were assigned to a criminal law section, less than ten percent to an economic law section and the rest to a civil law section. Students not only worked at these courts full time, but also ate and slept there.

Once they arrive at their designated court, the students are each placed under the charge of one judge to learn first hand the practical aspects of court work. In the beginning they are usually restricted to reading court files pertaining to cases already decided or to cases pending. Students are encouraged to discuss these cases with their supervising judge by whom they are often requested to prepare case briefs or analyses. Soon after their arrival, students are allowed to audit trials; usually trainees attend those presided over by their superior, but are given a fair amount of freedom to select from amongst all the cases being heard at any of the court's different sections. Theoretically, cases dealing with sex crimes or those which involve juveniles (14 to 18 years old) or those which touch on state secrets are tried *in camera*. In practice, however, students have unlimited access; they are hardly ever prevented from auditing the first two types of cases and the last kind of case is extremely rare.

After students have gained experience and confidence, they are permitted to try their hands at everything ranging from doing paperwork to interrogating witnesses during trials. In civil court, students are permitted to do independent work at a very early stage. In criminal court, only the more fortunate students will be permitted to handle a few cases from start to finish, doing everything right up to and including the rendering of a judgment.

It is mandatory for juveniles to be represented by a defence person in criminal proceedings and it is not uncommon for students in criminal court to be designated official defence lawyers. When acting in this capacity, students conduct their cases with almost no supervision. When I asked students how they felt about undertaking such responsible jobs with so little experience and without the legal qualifications strictly necessary, one answered that as there was really nothing very difficult involved, students could perform every bit as competently as real lawyers. And, he pointed out, students have an advantage over lawyers in that they have almost unlimited access to the judges and therefore even greater opportunities to press home their points. Another student argued that delinquents are usually better defended by a legally trained student than by, for example, a relative acting as his defence counsel. Certainly he would be better off than if there was no one to help him at all. He explained that though Article 4.27 of the Criminal Procedure Law provides that courts should appoint defence persons for minors without one, it was a rule that was very often simply ignored.

Faculty involvement with the field work program is minimal. Two faculty members are assigned to make personal visits to the courts to give guidance but students can usually expect to be visited only once or twice. At the end of the field work period, participants are required to submit a short report to the Department dealing with any aspect of their experience. It appears that there is not a great deal of weight attached to these by either the students or the teachers. What is of more significance is the supervising judge's assessment. Each judge is requested by the Department to make a written report on the student's performance which becomes part of the student's Personal Dossier.

Without exception, the students I talked to about their field work experience were very enthusiastic. It was a good break from the regular routine and provided a first-hand opportunity to see original documents and real cases. They could speak with many people involved in several phases of the legal process and find out how judges carried out their duties. It gave them a chance to put their theoretical knowledge into a concrete perspective and enabled them to learn many practical skills.

*(e). Law-related Extracurricular Activities*

An important part of the law school experience for many Canadian students is involvement in one or more law-related activities such as legal aid, law review, law conferences and competitive mootings. These all add unique dimensions to and enrich law school life. The Department in its present metamorphosis is still too new to have developed a rich diversity of such traditions but there are a few outlets for student creativity. In general however, participation in extra-curricular activities is not as broad, as intense or as high profile as in Canadian law schools.

At first glance, material conditions would seem fairly propitious for a legal aid organization to develop: there is a serious shortage of lawyers in the community at large, public service is an important part of the Chinese student's political and ideological training, and, the law is not as technical and formal as in the West. Yet there is no legal aid service organized by the students. When I brought up the subject with friends, the initial reaction was usually enthusiastic support, but this was characteristically followed by expressions of serious doubt as to whether enough students could afford to devote much time to it.

Mooting as we know it does not exist at Peking University. The two closest analogies are a mock trial exercise tried experimentally by the 1979 class this year and an attempt by the Department's student association to launch a debating competition last year. It is unclear whether these activities will be repeated next year.

Legal writing enjoys somewhat more popularity. A Peking University tradition is to hold an annual essay writing contest each spring to commemorate the May Fourth Movement of 1919. Each department issues a list of topics and students are invited to submit essays. Prizes are awarded by each department for the best papers. Participating students are also given opportunities to deliver their papers orally at a special meeting convened for this purpose.

Another Peking University tradition is the blackboard essay. A blackboard located at the centre of the campus is given over to each department for a few weeks each year. A committee of study monitors select one or two short papers for copying onto the blackboard for public attention. This year, the Department's three-week contribution was a comment on a murder case which had been receiving a great deal of attention in the media. The author agreed with the result (guilty, immediate execution) but argued that the charge was incorrect.

A very interesting student project was completed this year by the 1979 international law class. On their own initiative, they printed a collection of essays written by class members pertaining to various international law questions. Eighteen short papers were copied out by hand, mimeographed, stapled together with a title page graced by the calligraphy of the Director of the International Law Program and then distributed to class members. Topics were many, ranging from "The Character and Class Nature of International Law" to "International Arbitration". The project was received with enthusiasm and may yet prove to be the embryo of the law school's first student review.

#### *4. Study materials:*

##### *(a). Textbooks*

There is still an undoubted shortage of good teaching materials today, but the situation has improved dramatically in the past few years. In the Department's early days, students had almost no textbooks or materials. At most, they were issued class syllabuses and given mimeographed materials on an ad hoc basis. This remains

the case in a small number of classes today. On the whole, however, due to a concerted effort within the Department to remedy the textbook deficiency, it now appears that new textbooks are available for a majority of the courses.<sup>24</sup>

For the most part, the textbooks in use at the Department have been written by its own faculty members and published by the Peking University Press. For some of the courses, resort is had to textbooks prepared by the law departments of outside universities. Textbooks published by the People's University are considered especially reliable. For example, the Civil Law course is based on such a textbook. Readings in International Law is the only course which uses a foreign textbook in its original language (J. G. Starke's *An Introduction to International Law*).<sup>25</sup>

In comparing Chinese legal textbooks to ones typically used in the West five differences are immediately apparent. First, although

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24. The textbook situation for the two Public International Law courses is an interesting one. The basic reference work is *International Law* written by Professor Zhou Geng Sheng before 1966. Private copies are impossible to buy at this time, but the library is well-stocked. The textbook is somewhat outdated in a number of areas, such as the law of the sea and the law of space. Nevertheless, it is felt that though supplementation is required, the contents are basically sound. In fact, a new printing is about to be released, so we can expect the influence of this textbook — to date, China's only textbook on international law — to continue.

A joint program was started in 1979 by the Ministry of Education and the Ministry of Justice to provide a uniform set of law textbooks for nation-wide use. Part of this program is the publication of a new international law textbook. The textbook has already been written and is expected to be off the press in the very near future. It is the product of a cooperative effort under the chief editorship of Professor Wang Tie Ya, Director of the International Law program at Peking University and Vice-President of the Chinese International Law Society.

Readings in International Law, a course intended to complement the basic introductory course, is entirely based on a Western international law textbook. Students read J. G. Starke's *An Introduction to International Law* in the original English. A major purpose of the course is to familiarize the students with the legal terms in English and to raise their reading proficiency. Professor Wang highlights the textbook's most important points by lecturing in Chinese.

The major supplementary reference work for the international law students is a Chinese translation of the 1955 edition of Oppenheim's *International Law*. The translation was completed by Professor Wang and an associate, Professor Chen, before 1971, but has only just been published. A limited number of copies were made available to students enrolled in the international law specialty. It was a very painstaking project in which even case names were put into Chinese. There is also an excellent Chinese-English Glossary of terms appended which should prove tremendously useful to Chinese and foreign scholars.

25. J. G. Starke, *An Introduction To International Law*, (8th ed., London: Butterworths, 1977).

there is always a table of contents, there is never an index. This defect, shared by most Chinese textbooks, makes them less convenient for reference purposes than they might otherwise be. The second striking difference is the sparseness of footnotes. Sometimes original sources are mentioned within the text but this, unfortunately is not always the case. This failure is endemic to Chinese legal writing as a whole and is noticeable in periodical literature as well as in textbooks. Law teachers are aware of this problem and when instructing students on the preparation of essays, they often emphasize the importance to good legal scholarship of citing sources. Third, there are no case discussions. A fourth characteristic of Chinese law textbooks is that they are all cooperative efforts. Different chapters are separately authored by different members of the relevant research section of a law department under the direction of one or more editors. For example, a total of nine authors worked on the Criminal Law textbook published by the Peking University. This communal approach reflects the perceived need to produce useable textbooks in as short a time as possible and a preference for communal responsibility. A final characteristic of Chinese law textbooks is that with needless and aggravating frequency, they are classified as “internal documents, restricted publications”. Sometimes this means that they are internal to the responsible department, at other times internal to the publishing university, but at all times they are internal to the Chinese and external to foreigners (like me) — at least in theory. The textbooks used in the Criminal Reconnaissance course, the Civil Law course, the Public International Law course and the Private International Law course are noteworthy examples of books classified as internal documents.

*(b). Casebooks.*

This year, for the first time, a type of casebook was published by the Civil Law Research section of the Department. It is mostly a collection of model cases, but some badly decided cases are also included to illustrate common mistakes. They have been edited and summarized but are not accompanied by comments or criticisms. The actual names of the litigants are almost always used, except in marriage cases where only surnames are revealed. Most of the cases are from lower level courts but there are also descriptions of civil disputes settled by informal means or by more formal mediation procedures. Typically, a precis of the facts and a summary of the

decision reached by the court is provided for each case. The arguments of the litigants, if they appear, and the reasons for judgment are included only in very cursory form. For this reason, these casebooks are only capable of providing general and fairly limited guidance.

The Criminal Law Research section has also put out two collections of cases but these resemble anthologies of detective stories rather than casebooks. One of them deals with criminal reconnaissance cases and the other with criminal cases generally. In both, the presentation of the cases is limited to the investigation stage: how did the case get reported to the police? When and what were the first clues found? what methods were used by the public security organ to solve the case? How were the suspects finally tracked down? Did they confess to the police? Curiously, neither the final determination nor anything about the judicial proceedings is discussed.

*(c). Reference Materials*

In addition to textbooks and casebooks, the Department also issues a set of reference materials printed in book form to each student for each course. Generally speaking, the purpose of those materials is to gather together all of the legislation, regulations, internal documents and administrative decrees relating to the particular subject. Sometimes there are also passages from important speeches and reports by political leaders. Occasionally, there are also translations of foreign law. Sometimes the reference materials have extensive excerpts from law journals. These secondary materials are indispensable. As yet, there is no authoritative cataloguing of legislation and related documents and regulations. For example, the Civil Law Section of the Department has just completed a typical set of materials that should prove invaluable for students and faculty members. Its 1100 pages come in eight volumes. The first two contain all the Chinese regulations, directives and reports having to do with capital construction performance contracts. Three other volumes concern, respectively, copyrights and patents, the law of succession and real estate law. The final three volumes are translations of the complete civil codes of Japan, the Soviet Federal Republic of Russian and the German Democratic Republic.

Normally, textbooks and materials are ordered by the Department according to class and then distributed by academic monitors to individual students through their study groups. Textbooks printed

by outside universities or institutions are sold at cost while those published by the Peking University Press are sold at 70% of the face value. By our standards, books and periodicals are extremely inexpensive and by Chinese standards are quite affordable. A paperback textbook over 300 pages long will cost no more than \$1 Canadian and a year's subscription to *Legal Studies*, China's foremost legal journal, costs less than \$2 Canadian.

(d). *Library Materials*

Aside from their privately owned materials, students can use books in the main library. There are few law books in general circulation; most of them are shelved in the Arts Reading Room for reference use only. The collection there is small but growing. Finally, the Department has its own law library, but only faculty and graduate students may use it.

(e). *Western Materials*

Canadians may be curious about the availability of Western legal literature in China. There is a dearth of legal material in general and Western legal literature is no exception. As mentioned above, there are whole courses at Peking University entirely dedicated to the study of foreign legal systems and there is increasing attention paid to Western law within the framework of domestic law courses as well. Western material is being translated by the Department for the purposes of these classes and the departments of law of other universities are also busy at this kind of work. In addition, printings have been made of a few Western works in their entirety. Starke's *Introduction to International Law* has already been mentioned and rumour has it that a local printing of *Black's Law Dictionary* will soon be available. There are also efforts to translate entire books into Chinese, such as Oppenheim's *International Law*, Akehurst's *A Modern Introduction to International Law* and White and White's *Principles and Cases of Commercial Law*. Less ambitious in scale but no less important, are the translations of papers published in foreign legal periodicals. These can be found in a number of Chinese journals specifically dedicated to the translation of American, Japanese, Soviet and European law articles. The Peking University Department of Law, The East China Political-Legal Institute and the Legal Research Institute of the Chinese Academy of Social Sciences independently publish their own journals of

translations. This is a much needed service as foreign law journals in the original language are not generally available.

### CONCLUSION

Almost four years to date, 64 students began law classes at Peking University. Early this spring, they became the first Chinese students to qualify for law degrees in over a decade and a half. What can be said about the education they received? Beyond the descriptive, very little, at this early stage.

The graduating students have all been given their new career assignments, but, according to Department officials, neither the Department nor the students themselves have been informed of their specific responsibilities. Will the students have a chance to use the knowledge they gained at law school? Was their training sufficiently rigorous to prepare them for their new jobs? Apparently, it is still much too early to say.

In coming to our own conclusions about Chinese legal education, a few points should be kept in mind by way of perspective. We should be cautious about using the same standards to judge Chinese and Canadian legal education. For example, this paper will leave many readers with the impression that Chinese legal training is rather unsophisticated. And, by Canadian standards, it is. In this connection, however, a point which Victor Li makes in his book *Law Without Lawyers* is worth repeating: Chinese law, both by necessity and intent is itself very simple:

With so few legal specialists, the Chinese legal system must, of necessity, be simple in structure, method, and content so that relatively untrained people or even members of the general public can play an active role in the legal process. But the emphasis on simplicity goes beyond this. The Chinese maintain that law *ought* to be simple: How is law to serve the masses if the masses cannot readily understand or easily use the law? This may be making a virtue of necessity, but I think it goes much deeper. The underlying principle is that Law *should* be, and indeed *must* be, broadly based rather than the special province of a group of elite professionals. In that way, law becomes a tool by which the masses can carry out their wishes, rather than a set of rules for the use of the legal profession alone.<sup>26</sup>

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26. Victor Li, *Law Without Lawyers, A Comparative View Of Law In China And The U.S.* (Boulder, Colorado: Westview Press, 1978) at 10.

In other words, for all that Westerners may consider Chinese legal education too elementary, the Chinese, who have a different philosophical orientation towards law, think otherwise.

We should also keep in mind that the purposes of Chinese law schools differ from those of our law schools. This was brought home to me by the interesting fact that none of the law students graduating this year were assigned to work in legal advisory offices, the Chinese equivalent to our law offices. In other words, no graduate was asked to become "a lawyer".

My final point is by way of summary and congratulations. The Department of Law at Peking University has made tremendous progress since its re-establishment. In 1974, the Department was teaching no more than nine courses to fewer than 50 people on an experimental basis. Today, it has an enrollment of over 700 students and offers three degree programs. Over 20 courses are taught and, if all goes according to plan, almost a dozen new electives will be added in the next few years. Five years ago, there were no textbooks at all. Now, textbooks are available for almost every subject and the Department research offices are hard at work preparing new materials for publication. Finally, through its growing contacts with legal institutions both Chinese and foreign, the Department is broadening its horizons and consolidating its strengths. If these impressive advances are any indication of what lies in store for the Chinese legal world, there is good reason for optimism.