

Part VI Legal Education in China

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PART SIX

LEGAL EDUCATION IN CHINA

A. HISTORICAL DEVELOPMENT OF LEGAL EDUCATION IN CHINA

The establishment of the law schools in 1904 marked the beginning of legal education in China. By 1909, there were a total of 47 law schools with 12,282 students. They consisted of 37% and 23%, respectively, of the total numbers of schools and students at that time. The law school continued to develop after that. During the 1930s, the legal education had gradually been put under the control of the Guomintang Government and its development was inhibited. In 1940, there were a total of 27 universities with law faculties or independent law schools.⁷ After the establishment of the People's Republic of China, legal education continued and further developed in the early 1950s. In 1952, before the "adjustment of colleges and faculties", there were a total of 34 universities with law faculties. With the "destroying the old and establishing the new" movement within the legal field and the 1952 "judicial reform", the state carried out "adjustment of colleges and faculties" in institutions of legal education through the country. After the adjustment, 6 institutions of legal education remained (4 schools of politics and law and two law faculties, namely the Law Faculty of People's University of China and the Law Faculty of the People's University of Northeast China).⁸ Their main task was to provide in-service training to political and judicial personnel. Since 1954, schools of politics and law began to enroll undergraduate students. In 1971, under the influence of legal nihilism of the "Cultural Revolution", all the law schools and law faculties, with the exception of the law faculties of Beijing University and Jilin University, had been disbanded. In the end of 1970s, the Communist Party and state had

⁷ See Fang Liufang, "An Overview of the Legal Education in China", in He Weifang, ed., *The Road of Legal Education in China*, China University of Politics and Law Press, 1997, p.5 & P.15.

⁸ These figures come from the *China Yearbook of Education: 1949-1981*. According to the figures given by the *China Law Year Book: 1988*, there were 8 law schools and faculties after the "adjustment". The other two law schools were the Law Faculty of Wuhan University and the judicial training class of Northwest University.

gradually realized the important of law and restored legal education in China. In 1978, the law faculties of Beijing University and Jilin University and Southwest University of Politics and Law began to enroll undergraduate students. The masters program in Law began in 1979 and doctor's program in law began in 1984. In 1981, a total of 1,731 persons were awarded law degrees. Among them, 1,685 were awarded bachelor's degree and 56 master's degree. By 1989, more than 10,000 persons had been awarded law degrees. Among them, 9,436 bachelors in law, which were 5.6 times those of 1981; and 1,132 masters of law, which were 20.2 time those of 1981. From 1981 to 1997, more than 141,638 persons had been awarded law degrees. Among them, 16,483 have been awarded master's or doctor's degrees in law.⁹

B. CURRENT LEGAL EDUCATION SYSTEM IN CHINA

Since 1979, with the restoration of law schools and faculties and the establishment of new law faculties in some universities,¹⁰ a multi-level and multi-form legal educational system consisting of undergraduate education, special course education and graduate programs has gradually taken form.

1. Legal Education at the Undergraduate Level

According the Higher Education Law of the PRC, undergraduate education is one form of education for academic qualifications. Usually only universities and independent colleges can undertake the task of undergraduate education. The purposes of undergraduate education are to enable students to grasp systematically the basic theories and knowledge required by the branches of learning or specialized subjects offered, to grasp the basic skills, methods and relevant knowledge necessitated by their specialized subjects, and to acquire the preliminary ability of practical work and research in the fields of their specialized subjects.

The length of schooling for undergraduate legal education is four years. There are no

⁹ Source: <http://www.moe.edu.cn/moe-dept/xueweiban/py.htm>. See also Table One in the appendix. It should be pointed out that, because some students in the fields of political science and social science and students who study political education in normal schools had also been awarded law degrees, the actual number of students graduated from law faculties and law schools were actually smaller in number.

¹⁰ After the restoration of the enrollment in the law faculties of the Beijing University and Southwest College of Politics and Law in 1978, Beijing College of Politics and Law, East China College of Politics and Law, Northwest University College of Politics and Law and the Law Faculty of the People's University of China were restored one after another since 1979. After that, with the approval of the Ministry of Education, law faculties have also been established under Wuhan University, Nanking University, Zhengzhou University, Anhui University, Hubei College of Finance and Economy.

specific provisions concerning the set up of specialties. In practice, the following specialties have been set up since 1980s: law science, criminal law, civil and commercial law, procedure law, economic law, administrative law, international law, criminal investigation, and reform-through-labor. Some institutions of higher learning divide the specialty of international law into two specialties: international law and international economic law and the specialty of procedure law into criminal procedure law and civil procedure law. Since 1990s, some new specialties, such as lawyer law and foreign related law, have emerged. After 1996, some law schools and faculties have carried out experimental reforms on the set-up of specialties by combining two related specialties into one, for example, combining civil law and economic law into civil and commercial law, or combining all the specialties into one, which is externally called the “law science”, but internally the division of specialties still remain.¹¹ The curricula of undergraduate law education include common courses such as foreign language, history of revolution, common knowledge of socialist construction in China and computer science, basic law courses, such as basic theories of law and constitutional law, compulsory law courses, and elective law courses. Generally speaking, the curriculum of undergraduate law education has undergone major changes during the past 20 years. In the 1970s it usually included the following courses: basic legal theories, constitutional law, legal history (including histories of Chinese and foreign legal systems and legal thoughts), criminal law, criminal procedure law, civil law, civil procedure law, marriage law, international law and private international law. In recent years, there has been a great increase in courses in the fields of civil and commercial law, economic law and lawyer’s law, such as courses relating to the enterprises, banking, real estate, intellectual property, lawyer’s business, etc. Some new courses, such as administrative law, administrative procedure law and criminology have also been opened up.

Apart from the above-mentioned courses, an undergraduate student is usually required to do graduation fieldwork. Different universities have different regulations concerning the form of graduation fieldwork. Generally it includes investigation and research, participation in teaching activities, and participation in legal work (such as lawyer’s work, and some of the work in public security organs, procuratorates and courts). The graduation fieldwork is part of the evaluation of the law students.

¹¹ It should be noted that such division of specialties is not reflected in the teaching staff or personnel arrangements, but in the enrollment of students. Usually specialized fields of study are set up under the general specialty in the enrollment plan and these fields of study are corresponding to the specialties before the merger of specialties, Although this methods have been criticized by many people, it is welcomed by the students.

According to Interim Measures for the Implementation of Regulations on Academic Degrees, an undergraduate law student who, upon verification, meets all the requirements of the educational plan shall be allowed to graduate. If the results of examination and graduation thesis (graduation design or other links of graduation field work) demonstrate that he has grasped the basic theories and knowledge and basic skills and acquired the preliminary ability of practical work and research in the fields of specialized subjects, he shall be awarded the bachelor's degree in law. Undergraduate law students who meet the relevant academic requirements but graduated from a college which is not authorized to award bachelor's degrees shall, upon recommendation by his faculty and approval by his college, be awarded a bachelor's degree in law by a nearby institution of higher education which is authorized to award bachelor's degrees.

2. Graduate Programs in Law

Graduate programs include master's programs and doctor's programs. According to the Higher Education Law, universities and independent colleges may undertake master's and doctor's programs. With the approval of the administrative department for education under the State Council, research institutes may also undertake graduate programs. The graduate program for candidates working for MA shall enable candidates to grasp firmly the basic theories in their branches of learning and grasp the systematic knowledge of their specialized subjects, to grasp the skills and methods and relevant knowledge required, and to acquire the ability of practical work and research in the fields of their specialized subjects. The graduate program for candidates working for Ph.D. shall enable candidates to grasp firmly the breadth of the basic theories and the systematic and profound knowledge of the specialized subjects and grasp the skills and methods required by their branches of learning, and to acquire the ability of creative research on their own and of practical work in the fields of their specific branches of learning.

The length of graduate programs in law is usually three years. Originally there were no specific provisions concerning the division of specialized fields in master of law programs. Since 1998, the graduate programs throughout the country have been divided into the following ten specialities: legal theory, legal history, constitutional law and administrative law, criminal law, civil and commercial law (including labor law and social security law), procedure law, economic law, environmental and natural resource protection law, international law (including public international law, private international law and international economic law) and military law. The curricula of masters programs in law are relatively flexible and

have taken into consideration of such factors as the needs of the specialized fields of study and of the society and the availability teaching staff. They consist of common courses, basic courses in the specialized fields, compulsory courses in the specialized fields and elective courses in the specialized fields.

An advisor system has been adopted for the graduate programs in law. The advisors are responsible for the preparation of the study plan of their students and supervision over their implementation, and for advising their students in their study and thesis writing.

After completing the required courses, masters students usually have to do at least one month's graduation field work. Those who have passed the examinations and the graduation fieldwork may write graduation thesis and apply for the master's degree in law. The master's thesis must put forward new points of view regarding the subject of the thesis and demonstrate that the author has the ability to engaged in scientific research work or independently carry out specialized technical work. The defense of masters thesis shall be conducted by a committee of 3 to 5 members. The committee shall, in the light of the circumstances of the defense, decide whether or not to award the masters degree. The decision shall be made by a two-thirds majority vote of all the members of the committee. Those who failed the defense of their thesis may, upon the approval of the committee, be allowed to revise their thesis and defend it once again within one year.

After passing the examinations on their course work, Ph.D. students may apply for the Ph.D. degree. The subjects of examinations include Marxist theories, basic courses and other courses of the specialized subjects, and two foreign languages. Most Ph.D. students are required, as one of the conditions for applying the Ph.D. degree, to publish the results of their research in a high-level publication. The Ph.D. thesis should demonstrate that the author has ability to independently engaged in scientific research work and make creative achievements in their research or specialized work. The defense of Ph.D. thesis shall be conducted by a committee of 5 to 7 members, at least half of them must be professors or experts with equivalent academic titles. Those who failed the defense of their thesis may, upon the approval of the committee, be allowed to revise their thesis and defend it once again within two year.

Apart from the master's and doctor's degree in law, China began a pilot project in 1995 to award professional master of law degree. The degree is a professional degree awarded to persons with specific legal professional backgrounds. It is aimed at training high level legal and managerial personnel in the fields of legislation, administration of justice, notary, adjudication, procuratorial work, disciplinary inspection, business administration, banking,

administrative law enforcement and supervision. According to the Report on the Professional Master of Law Degree, the professional masters of law degree is at the same level as the master of law degree, only they have different emphases. Those who are awarded this degree should have already grasped the basic legal theories and a wide range of practical legal knowledge. They should have a wide-range, complex, and open structure of knowledge and capability. They should be able to combine their knowledge in law, economics, science and technology, foreign language and computer science and independently carry out practical legal work. Both the Judges Law of the PRC and the Public Procurators Law of PRC provide that professors masters of law, like doctors of law, can be directly appointed to the positions of judges and people's procurators.

3. Special Course Legal Education and Non-degree Legal Education

Special course legal education, which belongs to degree education, is usually offered by the law faculties (or law schools) of universities, college of politics and law and high-level professional law schools.¹² Its task is to enable students to grasp the basic theories and special knowledge which the course must offer and to acquire the basic skills and the preliminary ability of practical work in the fields of their specialized subjects. Non-degree legal education is offered by other institutions of higher education.

Since the State Council endorsed the Report on Strengthening and Establishing Local Cadre Schools of Politics and Law submitted by the Ministry of Justice in 1980, cadre schools of politics and law have been established throughout the country. Legal education offered by cadres schools of politics and law, cadres college of politics and law management, radio and television universities, remote law education, night universities, higher legal education examinations for self-taught people, spare-time special law course for employees and various special courses and colleges for professional training have supplemented the undergraduate and graduate education offered by universities and legal research institutions and filled in the gaps in the basic legal education and legal training resulted from the lack the teaching staff, fund, and classrooms in the universities and research institutions.

C. UNIFORM NATIONAL EXAMINATION FOR QUALIFICATION AS LAWYER

¹² After 1996, in accordance with the Higher Education Law, the law faculties and law school of universities have basically ceased offering special course legal education, but mainly provide undergraduate and graduate education.

One of the important achievements of legal education since the 1970s is the training of large number of legal personnel, especially lawyers. China began to implement the system of uniform national examination for the qualification as a lawyer in 1984 to select lawyers from those who have already received legal education and who have the basic knowledge of law. The system is a bridge linking the theoretical legal education and legal profession. In a certain sense, it serves to remedy the defect of higher education in China of being divorced from legal practice and legal profession.

The uniform examination for the qualification as a lawyer was first held in Jiangxi Province on an experimental basis. Similar examinations were held in Beijing and other cities in 1985. The system was implemented throughout the country in 1986. From 1986 to 1992, such examination was held once every two years. Beginning from 1993, it has been held once every year. Up to date, a total of 13 such examinations have been held in China. The 1986 Law on Lawyers specifically stipulates that “The State institutes a system of uniform national examination for the qualification as a lawyer.”

From the previous examinations we can draw the following conclusions on the system of uniform national examination for the qualification as a lawyer:

(1) The uniform national examination for the qualification as a lawyer is the main way to acquire the qualification as a lawyer.¹³

(2) Those who take part in the uniform national examination for the qualification as a lawyer must have already received certain legal education or undergraduate or higher education in other fields. According to the Law on Lawyers, only those acquired three years legal education in an institution of higher learning, or more education or attained an equivalent professional level, or has acquired an undergraduate education in another major in an institution of higher learning, or more education can take part in the examination for the qualification as a lawyer.

(3) The examination involves all branches of law. It requires the examinees not only

¹³ Before 1986, lawyer’s qualification was acquired through an “evaluation” system. After the implementation of system of uniform national examination for the qualification as a lawyer in 1986, the “evaluation” system still remains in certain areas under certain conditions, namely those who has a senior professional title or is of an equivalent qualification, after evaluation and verification by the judicial administration department, may be granted the qualification as a lawyer. This system was further confirmed by the Plan for the Reform of the Lawyers System, made by the Ministry of Justice in 1993. The 1996 Law on Lawyers restricts such persons to those “who has acquired an undergraduate legal education in an institution of higher learning, or more education, who is engaged in professional work such as legal research and teaching, and who has a senior professional title or is of an equivalent professional level”. Therefore, the uniform national examination for the qualification as a lawyer is not the only way to acquire lawyer’s qualification in China.

to be familiar with the knowledge of laws and regulations, but also to be able to apply these laws and regulations in a flexible manner. The contents of the previous examinations have shown that the examination mainly consists of four parts: the first part is comprehensive knowledge of law, including basic legal theories, constitutional law, private international law, international economic law, the professional ethics and practice discipline of lawyers, the law on lawyers, administrative law, administrative procedure law, and foreign language; the second part is substantive law, including criminal law, general principles of civil law, and civil law theories, intellectual property law, contract law, enterprises law, securities law, tax law, banking law, insurance law, and other economic law; the third part is procedure law, including criminal procedure law, civil procedure law, arbitration legal system, administrative procedure law, the law on administrative punishment and state compensation law; the fourth part is legal business, including comprehensive analysis, case analysis and writing of judicial documents.

4. The examination is especially designed for the granting of the qualification of lawyers. It can not be used as proof of qualification of other legal professions, such as judges or procurators.

D. RELEVANT STATISTICS

Table I. Number of persons awarded law degrees between 1981 and 1998 in China

Year	Bachelor	Master	Doctor	Total
1981	1685	56	0	1731
1982	3194	106	0	3300
1983	3181	105	0	3286
1984	3892	204	0	4096
1985	4828	336	0	5164
1986	5887	607	1	6495
1987	8351	673	6	9030
1988	8799	1109	24	9932
1989	9436	1132	20	10598
1990	10246	1165	34	11445
1991	9639	1246	49	10934
1992	10368	1132	50	11550
1993	7621	1119	44	8784
1994	7665	1321	98	9084
1995	8566	1390	102	10058
1996	9426	1745	135	11306
1997	12471	2276	198	14845
1998		2543	245	

Source: the website of the Office of Academic Degrees of the State Council.

(<http://www.moe.edu.cn/moe-dept/xueweiban/py.htm>)

Note: In China, some graduates in the fields of political science, sociology or political education are also awarded law degrees. Therefore, the figures given above are higher than the actual number of law graduates.

Table II. Statistics of the Five Schools of Politics and Law under the Ministry of Justices: 1986-1997

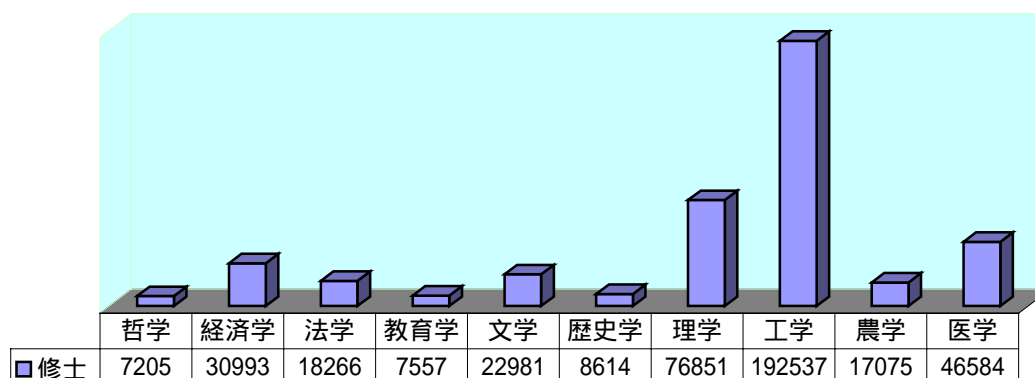
Year	Total Number of students	Gradates	Enrollment	Full-time teaching staff			
				total	Professors	Associate professors	Lecturers
1986	10349	2025	2782	2018	18	149	709
1987	11106	2535	3309	2171	59	394	589
1988	11609	2696	3525	2058	75	384	592
1989	13756	4003	3410	2010	63	392	601
1990	13568	3628	3525	1953	60	366	576
1991	13568	3628	3525	3127	92	471	1293
1992	12994	3838	4228	1932	107	386	896
1993	15683	2986	5823	1805	143	446	811
1994	18469	3857	5747	1934	179	492	956
1995	19050	4962	5509	1986	205	509	970
1996	20091	5092	6226	1926	195	548	881
1997	21401	5215	6488	1933	204	537	868

Sources: China Law Yearbook 1987-1998.

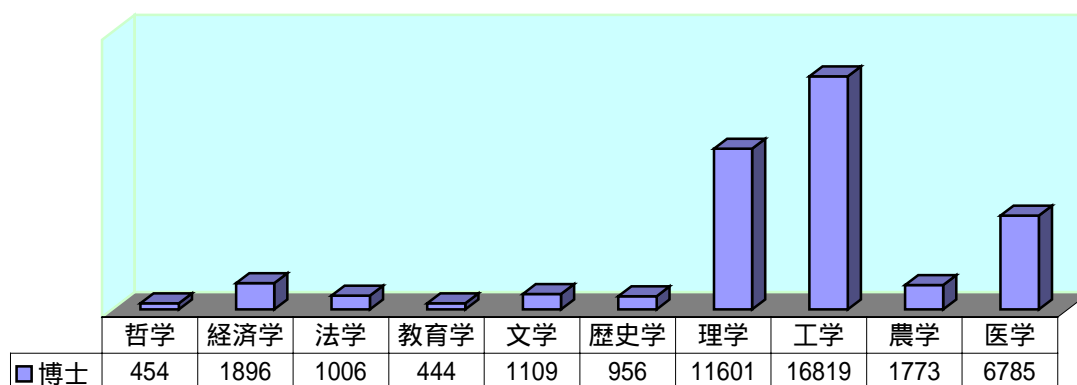
Table III Chinese Institutions of Higher Education Authorized to Award Masters Degree in Law

The First Batch: 8 institutions
Beijing University, People's University of China, China University of Politics and Law, University of Foreign Trade, Jilin University, Wuhan University, East China College of Politics and Law, and Southwest College of Politics and Law
Second Batch: 5 institutions
Xiamen University, Nanking University, Central China College of Politics and Law, and Northwest University of Politics and Law
Third Batch: 9 institutions
Fudan University, Zhejiang University, Helongjiang University, Xiangtan University, Sichuan University, Anhui University, Suzhou University, Shandong University, and Zhengzhou University

Table IV. Number of Persons Awarded the Master ' s and Doctor ' s Degree in China by the Year of 1998:



Masters: Philosophy/Economy/Law/Education/Literature/History/Science/ Technology/Agriculture/Medicine



Doctors: Philosophy/Economy/Law/Education/Literature/History/Science/ Technology/Agriculture/Medicine

Source: <http://www.moe.edu.cn/moe-dept/xuweiban/py.htm>

Table V. Numbers of Persons Taken Part in the Uniform National Examination for the Qualification as a Lawyer and Those Who Passed the Examination

Year	1986	1988	1990	1992	1993	1994	1995	1996	1997	1998	1999	2000
Number of person taken in the exam	15425	92322	More than 80000	Near 8000	More than 88000	More than 116200						More than 182000
Number of persons passed the exam	3707	15523	12756	More than 10000	More than 20000							