

Goals and Objectives of Law Schools: A Brief Discussion of Universals and Differences—China and the United States

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INTRODUCTION

Dean Michael Coper has chaired an innovative and thought provoking planning committee in organizing this conference. The issues which we will be discussing are fundamental to all legal educators, and are the core values which this association is tasked to explore. The most basic is Dean Coper's first question—What are the goals and objectives of a law school?

Such a broad question invites further questions. What are the expected outcomes of a legal education? Do they vary from country to country? If so, are there any universals? If yes, how do we arrive at them? Do differences in goals and objectives inform a different view of the “rule of law”? In this short paper I will only touch lightly on a few of these topics in the context of drawing some comparisons between the two systems I know best: China and the United States.

Much has been written and discussed as to a need to reexamine the role of law schools in the preparation of lawyers for the legal profession. In the United States the most recent thorough critique of legal education

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was the 2007 work by the Carnegie Foundation for the Advancement of Teaching entitled *Educating Lawyers: Preparation for the Profession of Law* (“Carnegie Report” or “Report”).² While praising the ability, particularly in the first year, of American law schools to shape a student’s intellectual ability to deeply analyze within a legal framework primarily through the case-dialogue method, the study also highlights several challenges not met by the prevailing American pedagogy. These are (1) the development of forms of expert practice necessary for competent practitioners—professionalism, and (2) a shared identity, purpose, and values of a legal professional which would serve as the basis for an ethical and community-spirited model of a legal practitioner—ethics.

THE CASE DIALOGUE OR THE LECTURE FORMAT

The Report highlights the signature pedagogy of American law schools: the so-called Socratic or case-dialogue method.³ This contrasts with the distinct tilt among Chinese law schools (similar to their other civil-law cousins) to the lecture format.

This difference raises the obvious question of whether the skills and experiences from one jurisdiction are either relevant or transferable to the other. Are there any universals here? I believe that there are. The most fundamental universal is the expressed belief in educating one’s student as to the “rule of law.” Of course, that leads to a discussion as to the values of each culture and its own perceived meaning of the “rule of law.” Part of that answer revolves around the pedagogical approach employed in teaching law.

While the lecture format is an extremely efficient conveyor of doctrinal knowledge, many have argued that its exclusive use does not develop the skill sets necessary to transform students into actively

2. WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND AND LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

3. The author notes that “signature pedagogy” does not mean exclusive. American law schools are increasingly employing a variety of methodologies. For instance, Harvard Law School under the inspired leadership of its former dean, Elena Kagan, has decided that beginning in 2009-10, all first-year students will take a simulation problem-solving course in which they will grapple with real-world challenges involving complex fact patterns and encompassing diverse bodies of law. In the Summer Law Institute where we have brought together hundreds of law students from Europe, the Mid-East, the United States, Latin America and China for the past five years at the Kenneth Wang School of Law in Suzhou, China, we have employed simulation as the core pedagogy. This program has been highly effective in conveying the doctrinal knowledge of International Business Transactions in a realistic international setting where students must work with and compete against their counterparts from different legal systems and cultures.

engaged legal problem solvers. According to the Carnegie Report, American law schools are exceptionally good at honing the analytical skills necessary to identify issues in a legal context.⁴ Certainly, that has not been the strong suit of Chinese legal education.

Does the use of the case-dialogue method enhance a better approach and understanding of the rule of law? Certainly, many of my common-law colleagues would argue that this inductive analytical process fostered by the case—dialogue method of arriving at principles through facts is essential not only for astute practitioners, but is primary to an acute appreciation of the interplay of fundamental principles and the facts from which all legal issues stem. However, I know that many of my civil law colleagues would disagree, preferring the deductive process of application of principle to facts as more efficient and affording a better framework for deep theoretical legal analysis. This is definitely an area worth exploring.

HOW AND WHEN DO WE TEACH PROFESSIONALISM?

The United States has undoubtedly the most expensive, and, it is claimed, the most rigorous, approach to legal education. It requires a postgraduate education of three years leading to a Juris Doctorate (J.D.) degree. Additionally, the growing trend of having “gap” time between college and law school is also gaining popularity. American law students are, on the whole, older and more educated than their overseas counterparts who are studying for their first law degree. In addition, the overwhelming majority of graduates from an American law school end up in the “law business”⁵—working as lawyers whether in private or public practice.

Education is a state-controlled enterprise in China. The structure of legal education follows much of the rest of the world.⁶ The first law degree is an undergraduate degree (LL.B.).⁷ Additionally, the majority of graduates from Chinese law schools do not end up in the “law business.” Actually, it is a minority (approximately 20%) of each Chinese graduating class who will become lawyers, prosecutors or

4. *Supra*, pp. 23-24.

5. According to the American Bar Association, there were 1,116,967 licensed attorneys in the United States as of June of 2007. There are approximately 140,000 students enrolled in J.D. programs. On a per-capita basis there is approximately one lawyer for every 265 people in the U.S. This gives the U.S. the highest per-capita ratio of lawyers to population in the world.

6. We do note that some jurisdictions (such as Japan and South Korea) are studying and some have moved towards an American model or a version of it.

7. *Legum Baccalaureus*.

judges.⁸ The majority of the first degree graduates normally find employment in the public sector. Most public-sector hires are not on a “law” track, but start at entry-level positions at bureaus in different levels of government. Others go on to work for state-owned enterprises. These usually account for approximately 55%-60% of the graduates. The rest are employed in the private sector or go on for advanced degrees. Therefore, only a minority actually use their legal knowledge or skills as practicing lawyers or judges.⁹

Entrance into the profession has similarities and differences with the U.S. Both systems require passage of a written examination. The bar exam in the United States is a state exam usually administered by the private bar association of the state under governmental auspices or regulation.¹⁰ China’s Judicial Exam is a nationwide exam administered by the Ministry of Justice. One does not need a law degree to take the Judicial Exam in China. One merely needs a bachelor’s degree in any subject. Last year over 320,000 applicants took the exam, making it the second-highest number of examinees for a state exam, surpassed only by the Civil Service Exam with approximately 800,000. As in the United States, most test takers enroll in “cram” courses. In a phenomenon puzzling to legal educators, but attesting to the attractions of bar membership in China, the pass rate for examinees with a non-law related education remained marginally higher (about 1.5% higher) than for those with a law degree. The passage rate in 2007 for all applicants was

8. According to the Ministry of Justice, China has as of 2008 approximately 130,000 licensed lawyers. That equates on a per-capita basis to approximately one lawyer for every 10,000 people in China. However, the numbers are increasing significantly. In 2004 there were 102,000 licensed lawyers. Today’s number represents more than a 27% increase in four years.

9. In fact, in a survey of the mission statements of some of China’s leading law schools (Tsinghua University Law School, East China University of Political Science and Law, Renmin University Law School, Peking University Law School, China University of Political Science and Law) the Chinese word for “lawyer” is never mentioned. Some of the statements express vague notions of making contributions to socialistic legal construction and modernization, while others seek to foster the systematic grasp of basic legal theory.

10. The average bar passage rate among all the states in 2008 in the United States was 71%. The 81,000 plus examinees included approximately 10,000 who either attended non-ABA accredited law schools or law schools outside the United States. Their passage rate was significantly lower—27% for non-ABA accredited law schools and 39% for non-United States law schools, versus 76% for those who attended ABA accredited law schools. The rates per state varied from a low of 54% for the state of California to a high of 89% for Wisconsin. See National Conference of Bar Examiners, Bar Admission Statistics, <http://www.ncbex.org/bar-admissions/stats/> (last visited Aug. 15, 2010).

approximately 22%—a jump from the 15% rate the year before.¹¹ In 2008, the pass rate was higher still, at about 25%.

Unlike the United States, China requires an apprenticeship period of one year before a successful examinee can obtain his or her license to practice. This requirement, similar to that in many other jurisdictions, is quite effective in modeling professional behavior and skill sets necessary to make young entrants into skilled professionals. Outside of private practice a good number of Judicial Exam passers join the government as public prosecutors or judges. As in most civil-law jurisdictions, the judiciary is a professional calling for young graduates who enter the judiciary upon graduation from law school.

Both China and the United States require an accreditation procedure to admit lawyers to practice. Neither American nor Chinese law schools stress the acquisition of professional skills outside of academic ones in their curriculum. China has left that to the practicing bar in its required one-year apprenticeship. This may be efficient given that the majority of its law students do not become legal professionals. However, most American students do end up in practice. The Carnegie Report raises the issue of whether more resources should be devoted to providing American graduates with some of these professional skills during their legal education. This is particularly true given the more advanced age of the American law-student population.

When comparing the two systems, the question arises as to whether Chinese law schools should be providing uniform training with the goal of educating lawyers¹² for practice. As the majority end up in the public sector, would an emphasis on courses in public administration be more appropriate than steeping every student in doctrinal legal courses too specific for their future needs?

11. The Judicial Exam pass rate has been steadily climbing from approximately 11% in 2004 to about 25% rate of 2008. There has been much conjecture in the blogosphere as to the 2009 pass rate. Some estimates place it at a 17%-19% range arguing that it would be lower because of the prior year's high pass rate. If the number of examinees and the passage rate continue to climb, the number of Chinese lawyers will increase exponentially.

12. Actually, the major Chinese law schools do not even consider their goal to be educating lawyers. The curriculum and pedagogy are so theoretically based that one can draw the conclusion that the law schools' goal is to train legal scholars, not practicing lawyers. While the need for more law professors is necessary (China now has over 600 law schools—654 by some count), one should remember the old adage that “we teach in the way we have been taught.” Given that, Chinese law schools may have no shortage of graduates who are perhaps prepared to do research and teach law but who are incapable of educating a cadre of lawyers who can practice at an international level.

INCULCATION OF VALUES AND ETHICS

Another interesting contrast follows from the Carnegie Report's suggestion that American legal education must go beyond training "legal technicians." The education should be much more holistic in turning out an end product which possesses not only academic prowess but a variety of professional, ethical and community values not ordinarily the subject matter of academic training. What is the best approach to inculcate such values into our students?

I've already discussed some contrasts in modeling "professionalism." With respect to developing a sense of ethics, values and community spirit, some of my Chinese colleagues have pointed out that the much criticized mandatory political courses such as Mao Thought, Deng Thought, etc., are precisely meant to inculcate these values and ethics. The purpose of these courses is to convey to the student a sense of civic responsibility, as well as the political and intellectual framework for their future role in society. Many of my Communist Party friends would completely agree with this approach. After all, the essentials taught in these courses express the prevailing organizing principles on which their government and their society are based. Law school education is to make sure that its graduates understand the governing regime which fosters stability through the rule of law within the Chinese context.

However, there is disagreement with this position. There are those who feel that the subject matter of these courses smacks too much of indoctrination in a specific dogma as opposed to an exploration of civil societal values. I know that some of my American and European colleagues may also disagree with this approach. In their minds, law is not merely a tool of a dominant class to ensure stability; rather it is an overarching set of principles to which all should be subject. Law and the way we teach it is a fundamental reflection of who we are and how we perceive our place in this world.