

# CHINA'S LAWYERS AND THEIR TRAINING: ENDURING INFLUENCES AND DISCONNECTS<sup>1</sup>

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## I. INTRODUCTION

The legal profession in China is to a great extent a transplant<sup>2</sup> and its training was also borrowed, directly or indirectly, from the West. Yet Chinese law schools have taught law in a formal way for more than 100 years, and China is fast approaching the centenary of its modern legal profession. Both the training and regulation of lawyers have been strongly affected by politics and (after 1949) the Party's views. But with the exception of the Maoist years (1957 to 1977), the legal profession has made great strides, and legal practice in recent years has had more in common with the profession's earlier days.

The Chinese legal profession has experienced extraordinary growth over the last thirty years: from a few thousand lawyers in 1980 to more than 170,000 practicing in China now.<sup>3</sup> At least 600 institutions now teach law to more than 450,000 students,<sup>4</sup> and the bar examination—now almost always required for admission to practice—is offered on an annual basis. Lawyers are now private practitioners, not state legal workers, and they practice in law firms as well as with the public sector. The Lawyers Law, the latest in a line of laws that have governed the profession since 1912, was revised in 2007 and affords, at least on paper, increased protection for lawyers and greater freedom for them to work.

But for all these successes, the future direction of the legal profession is hardly clear. Can the profession move towards greater self-regulation and involvement in higher academic standards? Can the standards for legal training be improved to suit a more globalized legal practice, and will the profession have a role to play in setting them? Will the profession, as some hope, play a transformative role in the Chinese legal system?

This essay examines the post-1979 Chinese legal profession and its training in historical and comparative context. Many parallels may now be found with pre-1949 developments, and that past may support further reforms and innovation. At the same time, other Asian jurisdictions are rethinking their systems of legal education and admission to practice, and international training has become a priority. Can China also meet those challenges? Since 1949 legal education and the profession have been only tenuously connected: lawyers may qualify to practice without a law degree, the profession does not oversee legal education, and legal training has very little connection to practice. For that reason, the first part of this paper discusses Chinese legal education and the second part focuses on the legal profession.

## **II. LEGAL EDUCATION**

### **Legal Education Begins**

Legal reform efforts during the last years of the Qing dynasty led to the founding of many new “law and government schools” because legal talent was thought necessary for the proposed constitutional government. But the most significant development of legal education occurred during the Republican period (1912-1949), with the establishment of professionally-oriented schools and the enactment of legislation in 1912 that for the first time granted official recognition to Chinese lawyers. The early years of the Republic were characterized by experimentation and diversity in education; law was taught in both comprehensive universities and in separate institutes (some forty-nine by 1916). In 1928, the Nationalist government moved to standardize and centralize its control over education, including legal education,<sup>5</sup> based on a European state-controlled model, and sought increased “participation” (*danghua*) of higher education.<sup>6</sup>

During the 1930s, law was taught in departments or colleges of universities, as well as in independent institutes. Following the European model, students were admitted to law study directly from high school on the basis of uniform national examinations; law usually constituted a four-year program, with introductory or general courses required of students in the first year, and students received an LL.B. degree on completion of the program.<sup>7</sup> Law was a popular field of study, with enrollments often dwarfing those in other fields.<sup>8</sup> But the Nationalist government moved to restrict study in “non-essential” subjects such as law. A 1932 regulation prohibited universities from enrolling more students in arts and social sciences than in science and engineering, which the government considered more useful to national development—as well as possibly less threatening to the socio-political order.

Though diploma mills came and went, the best institutions, both public and private, flourished during the 1920s and 1930s. During this period, Peking, Tsinghua, Fudan, Sun Yat-sen, Wuhan and Nankai Universities, for example, offered well-known law programs. Shanghai became a dynamic center of legal education as well as of the profession, with at least eight law schools operating there during the 1930s. Two of the most famous law schools of the day were private: Chaoyang Law School in Beijing and Soochow Law School in Shanghai. Soochow, which was founded by Americans and taught Anglo-American law, was famous for producing lawyers for an internationalized Shanghai, whereas Chaoyang was a mainstay of the judiciary.<sup>9</sup>

Despite increasing government regulation, a great deal of independence in educational thought and a variety of foreign influences (American as well as European) could still be found before 1949. The numbers in law study rebounded in the years after the

Sino-Japanese war: fifty-three schools taught law in 1949, and enrollment reached a high of 155,000 in 1947. Although core subjects were agreed upon, government attempts at curriculum standardization were not wholly successful even before the war, and many schools managed to preserve their character and traditions in the face of official regulation. Standards were always an issue, but the legal training at the best of these schools was good—and they continued to produce a number of distinguished lawyers, judges and law professors who served China’s legal system and international interests well.

### **Revolutionary Education after 1949**

When the Communists came to power in 1949, legal education was drastically affected—and sharply reduced—by the new regime. Although fifty-three schools remained open through 1951,<sup>10</sup> the Communist Party in 1952-53 conducted a complete “reorganization” of the country’s educational system along Soviet lines. All private institutions, including Chaoyang and Soochow law schools, were closed and their teachers and students reassigned. In the new hierarchical and highly centralized system, only a few comprehensive universities were allowed to keep their law departments; areas such as law and finance were assigned to specialized institutes.<sup>11</sup>

In 1952, the government established four institutes of political science and law in Beijing, Shanghai, Chongqing and Wuhan, under the ideological leadership of the new People’s University, the leading comprehensive institution.<sup>12</sup> By 1956, there were six law faculties in universities in addition to the four political-legal institutes (*zhengfa xueyuan*), with the major schools in Beijing, Shanghai, Jilin, Wuhan, Xi’an and Chongqing.<sup>13</sup> The standard curriculum, in a system more limited and controlled than before 1949, included marriage law, land law, criminal law, labor law, and civil law, along with Marxism-

Leninism-Mao Zedong Thought, and the Soviet legal system. All courses carried a heavy ideological emphasis, and indeed the whole legal training system was highly politicized. The Soviet Union served as a direct model for legal study; Russian materials were translated and Russian law professors invited to teach in China.<sup>14</sup>

Although some legal experts trained before 1949 continued to teach, the new system represented a clear break from legal education as it had developed over the previous fifty years. The 1957 Anti-Rightist movement and the Cultural Revolution (1966-76) interrupted and ultimately ended any form of legal education, and for the next twenty years even the limited and politicized legal training introduced in 1952 was abandoned. In theory, two law schools (Peking and Jilin) remained open between 1966-76,<sup>15</sup> but they no longer functioned. As Jerome Cohen reported in 1973, “[t]he first thing to understand about legal education in China today is that there isn’t any.”<sup>16</sup>

### **Legal Education Restored**

The December 1978 Party plenum formally reversed Maoist policies and set China on a course of economic reform and opening to the outside world. Judicial institutions were re-established, and law was now viewed as an instrument of economic development. Legal education was also revived as part of the restoration by comprehensive universities of their broader programs in the social sciences.<sup>17</sup> The unified national entrance examinations were reestablished in 1977-78, and the next decade saw a general expansion of higher education, which included international exchanges. Many Chinese went abroad to study law, as they had also done early in the century.<sup>18</sup> Peking University was the first to reopen its law department, and the political-legal institutes soon followed with four-year programs to train people for the restored courts and procuracy.<sup>19</sup>

During the early 1980s, law was taught in twenty to thirty institutions throughout the country, including university law departments (twenty-three) and political-legal institutes.<sup>20</sup> Law departments were founded or restored in the larger universities, many of which (including Nankai, Nanjing, Wuhan and Sun Yat-sen) had taught law before 1949. Standardized legal teaching materials were produced by the Ministry of Education and the Ministry of Justice, which directly administered the political-legal institutes. Legal training was still heavily ideological: its stated goal was to train people “who possess basic knowledge of the Marxist-Leninist theory of law; are familiar with the Party’s political and legal work, policies and guiding principles; are endowed with political consciousness; have mastered the professional knowledge of law; and are capable of undertaking research, teaching and practical legal work.”<sup>21</sup>

From today’s vantage point, standards were low, legal analysis was simplistic—and courses addressed a legal and economic system that has almost totally changed since then. When I taught law at Nanjing University in 1983, for example, the law department had been operating for only two years and the first group of students, who graduated in 1985, were then entering their third year of study. Nanjing offered the standard four-year LL.B. and three-year LL.M. (the first students would finish in 1986 or 1987), and altogether had about 300 students, including the night-school and a two-year training program for cadres. Out of the thirty or so members of the faculty, few had any legal training: one of them had studied law in the 1940s, one in the 1950s at the height of Soviet influence (he spoke Russian), and one was a graduate of the first new law class from Peking University. Most instructors had been reassigned to law from other units of the university: an economics professor had been assigned to teach economic law, a historian became a legal historian, a

specialist in Marxism-Leninism-Mao Zedong Thought taught legal philosophy—and was appointed department head. The law department had little in the way of facilities: a house on campus served as its offices, with a small library (off limits to virtually everyone), and basic, dirty classrooms were shared with other departments.

### **Legal Education Takes Off**

Chinese legal education entered a new phase of development in the years after Deng Xiaoping's 1992 southern tour and the Party's intensified policy of "ruling the country by law."<sup>22</sup> Since then legal education has been characterized by rapid, accelerating growth in every area. Between 1990 and 1999, 121 new schools or departments were founded, for a total of 183; between 2000 and 2005, another 376 were added. Overall, the number of institutions teaching law doubled between 1999 and 2005. The number of students studying law has also grown very rapidly, from 25,000 in 1991 to 449,295 law students in 2005. But this growth has been characterized by unequal development, with law schools mostly to be found in Beijing, Jiangsu and Guangdong, just as they were before 1949.<sup>23</sup>

The goals of legal education, course design and teaching method once again resemble the European civil law model,<sup>24</sup> with law taught primarily as a four-year LL.B. program to students admitted to law study on the basis of national college entrance examinations. Law schools provide a general education in law for undergraduate students, most of whom will not practice as lawyers or even pursue primarily legal careers. First-year LL.B. students take mostly general non-law courses, based on a standardized national curriculum; although students were once assigned to specialized sections, such as civil law, criminal law or economic law, this system has been replaced with general study (*faxue*). In

addition to the LL.B. degree, many law schools are now formally entitled to confer LL.M. degrees and a few to confer Ph.D.s in various legal specialties.<sup>25</sup> Advanced degrees are taught separately from the LL.B., and the LL.M. degree requires three years of coursework. At all levels, Chinese schools usually focus their teaching on codes and statutes, and because the PRC has now adopted a huge body of statutory law and cases do not constitute precedent (nor are they well reasoned), this approach is the standard.<sup>26</sup>

In these areas, as in others, it is not the legal profession, but the state, through the Ministry of Education and the Ministry of Justice, that sets standards and requirements for law study. Thus in 1999, the National Guidance Commission on Higher Legal Education decided that electives should be increased, but also mandated fourteen compulsory courses to be offered in LL.B. programs. The core requirements are now jurisprudence, constitutional law, legal history, criminal law, civil law, commercial law, criminal procedure law, civil procedure law, economic law, administrative and administrative procedure law, public international law, private international law, international economic law and criminology.<sup>27</sup> In 2001, the Ministry of Justice put forward goals of development in its Blueprint for Legal Education, which emphasized enlarging the profession and modernizing the legal education system. Measures included allowing legal education institutions to operate more independently, increasing the number of law students, improving the quality of education through the reform of teaching methods and curriculum, and promoting international exchange and cooperation.<sup>28</sup>

Considering the disruption of the Maoist years and the relatively brief time—only thirty years—since they ended, the Chinese have made remarkable progress toward those goals. Legal educators recognize the improved quality as well as the huge increase in

student numbers and programs: law has (once again) become one of the most popular fields of study, and current professionals are better trained than in the past.<sup>29</sup> The qualifications of faculty members, at least at the more established schools, have risen markedly, with research as well as teaching emphasized and with a Ph.D. required for most full-time staff. Textbooks and scholarship are far more sophisticated and less ideological than anything produced in the past (many scholars today would view some early works as simplistic, even laughable). At least on campus, scholars can speak freely, in marked contrast to the constricted discussions of the 1980s. Facilities, at least at the elite (and better financed) schools, have been vastly improved, with good classrooms and moot court rooms for expanded activities. A few law schools, with Tsinghua's Mingli Building leading the way, now have their own buildings and faculty offices, something that was unimaginable in the past.<sup>30</sup>

Of course few schools can meet the standards of the top institutions, and the dramatic expansion in legal education during the last dozen years has meant lower standards at many of them. The overriding goal of increasing student numbers has been met by increasing new law departments as well as by expanding the number of students at more established schools, which has diluted the quality of education they receive.<sup>31</sup> Faculty numbers have not increased at the same rate, so the law school teacher-student ratio has worsened. The number of students studying law increased by a factor of twelve between 1992 and 2003, but the number of teachers increased only 1.2 times. As a result, the student-faculty ratio has gone from 1:5 in 1992 to 1:29 in 2005.<sup>32</sup> The vast expansion in all of Chinese higher education has also meant admitting more students to established

universities, forcing them to open branch campuses in distant areas, where first- and second-year students, who need the most attention, are often isolated.<sup>33</sup>

From an American perspective, Chinese legal education remains too theoretical, is insufficiently practical and still lacks skills training—in short, it does not teach critical analysis or creative problem-solving. Law schools offer general undergraduate education, not the professional training American legal educators believe is necessary to produce modern lawyers. The lecture system, in part a legacy of China’s Confucian past, allows students to listen passively to professors, then simply memorize the information they receive without challenging the underlying assumptions. Although legal education is much less politicized than during the 1980s, politics may still make a less questioning approach a safer one. Nevertheless, many American and other legal educators would recommend a more active and practical approach to law study.<sup>34</sup>

Of course, other systems offer an LL.B. and general rather than professional education—the list includes England, Hong Kong and Singapore—yet they produce excellent lawyers. But all these jurisdictions require additional professional study for those who intend to practice law, and some also require a professional traineeship before lawyers can obtain a practice certificate. China does require a year of legal internship before graduates can apply for the bar, but the content of this requirement remains murky and it seems unlikely it serves as the equivalent of a professional traineeship in those common law jurisdictions.

Many of China’s top law professors have reached similar conclusions about the need for more professional education and some greater connection to the bar. According to a former Tsinghua dean, for example, “the greatest obstacle facing legal education is the

growing disparity between what is taught in the law schools and what is needed as a practicing attorney.”<sup>35</sup> If some professors suggest teaching the abstract and philosophical, he asks, “[W]hat about professional skills and professional ethics?” Other leading educators recommend that, beyond clinical programs, China needs a closer tie between legal education and the profession—and that, without such a nexus, effective standards can never be achieved.<sup>36</sup> Professional ethics should also be an integral part of a professional curriculum, they maintain, ideally developed by members of the legal profession. Professor He Weifang of Peking University also cites the profession’s negligible influence on legal education as a bar to improvement.<sup>37</sup>

It is true that most Chinese law students will not become practicing attorneys, even if they use their law training professionally. But the Chinese must move towards providing a real legal education for all its legal professions—the disconnect is too great at the moment. To improve lawyers, there ought to be diverse goals of education, perhaps taught on different tracks. Does current legal education prepare graduates for any of them? According to Dean Wang Zhenmin of Tsinghua, there are really three legal professions in China (i.e., lawyers, judges and the procuracy), but none of them has a direct relationship to legal education. He acknowledges that in China, as in most of Asia, it is the government that regulates legal education; in his view, however, there should be more involvement from the profession to make education more useful.<sup>38</sup>

In his view, Chinese legal education has instead become much too degree-oriented. Chinese schools now offer at least ten different kinds of law degree programs and schools are judged by how many LL.M. and Ph.D. students they enroll. Dean Wang argues that legal education should be professional instead of general education, it should be offered at

the graduate level, and a single law degree program, either the J.M. or the LL.B., should be chosen as the sole path to law practice. In addition, he notes, the bar examination is open to anyone with an undergraduate degree, even if it is not in law. But people should not be allowed to obtain their law training after they qualify: it is like becoming a doctor and then studying medicine. Instead there should be very strict licensing.<sup>39</sup>

### **Future Directions?**

Such critiques reflect the increasing international engagement of China's universities, including its law schools—as well as the increasing market orientation of the economy in which law graduates must seek jobs. More Chinese law professors, at least at major institutions, have studied abroad, and many foreign law professors have visited to teach or do research. This has fostered a more open atmosphere and sparked the introduction of some institutional reforms with outside support, including a Peking University program in Shenzhen that will offer a US degree. Such changes stand in sharp contrast to legal education in Vietnam, where such close exchanges do not yet seem possible.<sup>40</sup> Chinese law schools, for example, have introduced elements of legal education from the US and other common law countries, including moot court competitions (and international mooting), more international and comparative programs, and even clinical education. In 2002, a committee of Chinese clinical legal educators was founded, and by 2006 fifty-one schools had established such courses and joined the committee.<sup>41</sup> Now more than 6,000 clinical courses are offered throughout China.<sup>42</sup> Clinical programs are generally modeled on the US system, which entails teaching skills, fulfilling legal aid needs and building commitment to the public sector (though legal educators may struggle with ways to localize these models).<sup>43</sup>

Even degrees have been somewhat influenced by the American model. In 1999, a new three-year graduate program known as the “Juris Master” or J.M. degree (*falü shuoshi*), based at least in part on the J.D. degree, was introduced.<sup>44</sup> As of 2006, the degree was available at forty-eight schools.<sup>45</sup> But the J.M. compromise—allowing the new degree to exist alongside the LL.B.—has “resulted in chaos to China’s legal education system,” according to one well known law professor.<sup>46</sup> In the Chinese view, the J.M. degree requires another teaching track, because its students have already earned an undergraduate degree in another subject, although they have never studied law. But sometimes LL.B. graduates, not actually the intended market, take the course to improve their chances in the job market, and the J.M. has failed to displace other law degrees.<sup>47</sup> For these and other reasons, the J.M. degree, which initially seemed so promising, has yet to find its niche in either the legal education or legal services market.

Elsewhere in Asia, law schools are assessing their programs anew.<sup>48</sup> Since 2004, both Japan and Korea have moved to reorganize legal education in order to offer, at least to some of their students, more professional training leading to a J.D. degree. In both jurisdictions, the new training is aimed at providing better education for those who want to practice law. It seems unlikely that Chinese law schools will follow in their footsteps any time soon, but perhaps Taiwan’s experience, in which legal educators have faced similar issues (though not yet taken the J.D. leap), might prove instructive. Although Taiwan’s recent political history has taken a very different path, its legal education system shares at least partial origins with China’s. Taiwan has also been heavily influenced by the Confucian pedagogical tradition, and by Japanese educational and civil law methods, along with more direct European models.<sup>49</sup> Taiwan’s four-year general education program

leading to an LL.B. is similar in many respects to China's, and Taiwan too has also vastly (and rapidly) expanded its legal education programs.<sup>50</sup> Some educators advocate more interactive teaching methods, an accreditation system, and training that would better prepare lawyers to engage in international matters.<sup>51</sup> Their discussions are accessible to mainland educators and in fact there has been a dialogue. Their common language and greater interaction has made these views accessible to Chinese educators—and facilitated a dialogue and discussions of common concerns.<sup>52</sup>

China's shared educational roots with Taiwan seem more prominent now, as the history of China's pre-1949 legal education is restored. But that past should itself be of interest to those currently advocating educational reforms. What can the legal education of that era offer today's Chinese law schools? The Nationalist government preferred a centralized system and a standardized curriculum and established law as a four-year undergraduate degree. But the government allowed private as well as public legal education, and many schools still offered specialized courses or retained their individual traditions. China could now do the same: enforce minimum standards but allow schools to make the best use of their own histories and strengths.<sup>53</sup> Indeed, there are already some parallels to the pre-1949 period, with different institutional characters emerging; perhaps Chinese law schools should be encouraged to restore their histories, as some have now tried to do.<sup>54</sup> Such an approach could prove a formidable base for further innovation and for the development of truly professional schools, producing the lawyers China really needs in the twenty-first century.

### **III. THE LEGAL PROFESSION**

#### **Lawyers in the 1920s and 1930s**

The Chinese legal profession, like legal education, was a modern development but had its origins well before 1949. Private lawyers were officially recognized for the first time in 1912 regulations,<sup>55</sup> and bar associations were established in 1913, with mandatory membership. By 1935 more than 10,000 lawyers were registered in China, with the largest concentration in Shanghai, which had more than 1,300 members by 1936; Beijing and Tianjin were also major centers for the profession. But the early Chinese bar was not free to regulate itself or to control admission to practice. Qualifications for lawyers, including educational standards, were set by the Ministry of Justice, which also administered the lawyers examinations and issued their licenses. Bar associations themselves were placed under the direct control of the procuracy. Although the associations were responsible for the ethics of their members, only the procuracy had the power to apply disciplinary action. Some some lawyers objected and argued that this should be within the bar's power, but they did not succeed in changing the rules.

The legal profession in those early days was marked by the diverse backgrounds of its members and the uneven quality of the training many of them had received. Ethics remained a significant a concern, especially in a group that lacked a long tradition of self-regulation and professional standards. The profession grew slowly, especially during the war years, and lawyers were overwhelmingly based in large urban centers. But whatever its shortcomings, the system produced some outstanding legal professionals who played an important role in legal and civic affairs, including legal aid efforts. Indeed, the profession was well enough established that lawyers—whether depicted as villains or heroes—appeared in some of the most famous Chinese movies of the day.<sup>56</sup>

### **People's Lawyers in the 1950s**

The Communist Party had “never looked kindly on lawyers” and in 1949 the Party abolished all regulations on the legal profession adopted during the Nationalist period. The Party closed all law offices and prohibited lawyers from engaging in private practice. During the judicial reform movement of 1952-53, which focused on personnel trained before 1949, a large number of “underground lawyers” were purged. These *hei lüshi*, many of whom had set up offices to do accounting or draw up documents for individuals, were a primary target of the campaign. Accused of corruption and consorting with criminal and counterrevolutionary elements, the underground lawyers were forced to register with the courts and to “confess” their crimes before being punished by the masses.<sup>57</sup>

During the more moderate period following the adoption of the 1954 Constitution, however, a right of defense was recognized, and draft regulations allowing them to offer legal advice or provide a defense were drawn up in 1956. Some 3,000 “people’s lawyers” practiced in urban legal advisory offices as public servants, not as private practitioners, and membership in the lawyers association was voluntary. Requirements for qualification were flexible and the status of lawyers remained unsettled, but their services proved popular.<sup>58</sup> But any further development of the people’s bar, like other aspects of the socialist legal system, ended during the Anti-Rightist movement and the Cultural Revolution.

### **State Legal Workers in the 1980s**

With the 1978 change in policy and the focus on building a legal system to support economic development, the “lawyer system” was also revived in China. After years of political turmoil, the legal profession had to be rebuilt very nearly from scratch; in the early 1980s there were only a few thousand lawyers, all trained in the early years of the PRC, or even before 1949. The 1980 Provisional Regulations on Lawyers defined them as

“state legal workers” whose job was primarily to serve state organizations, as well as the “lawful rights” of the people.<sup>59</sup> Like their 1950s predecessors, these lawyers practiced in legal advisory offices under the supervision of the judicial bureaus (*sifaju*); fees were paid to the office and lawyers received a salary as employees. The regulations describe lawyers’ work in very simple terms: they were to act as legal advisers, to act as representatives in litigation and to act as advocates in criminal cases. This politicized group was required to “serve the cause of socialism and the interests of the people,” and they enjoyed no substantive independence from the political and administrative control of the state. Educational qualifications were flexible and standards were low: no law degree was required and on-the-job training or experience as judges or procurators was accepted.

Although the regulations provided for the establishment of a lawyers association, lawyers were primarily subject to the supervision of the Ministry of Justice (the MOJ) and the local judicial bureaus, from which they were required to obtain their practice certificates. Economic development and market reforms soon outpaced the provisional regulations. By the late 1980s, the legal profession had begun to undergo a fundamental transition, with supplemental MOJ rules and orders governing actual practice. A bar examination was introduced in 1986 and beginning in 1993 it was offered on an annual basis. The All-China Lawyers Association (ACLA) was established in 1986, and 1988 MOJ provisions introduced a year’s internship in a law office before a would-be lawyer could apply for a practice certificate. In 1988, the same year that the first national regulations on “private” business were adopted, the MOJ approved the establishment of “cooperative” law firms, which would operate outside the state sector. In 1993, partnership firms, now clearly private entities, were also allowed on an experimental basis.

## **Private Practitioners in the 1990s**

When the Lawyers Law was adopted in 1996,<sup>60</sup> it provided for a different model of the profession, reflecting the greater marketization of the economy, the higher demand for lawyers' services and the need for stricter qualifications for admission to practice. The statute now defined lawyers as "practitioners who have acquired a lawyer's practice certificate pursuant to law and provide legal services to the public," and they were required to complete a year of practical training and to pass the bar examination. Once admitted, they practiced in "law firms" (*lüshi shiwusuo*), which could be organized as cooperatives or partnerships, as well as in state-funded organizations. Many provisions of the law, incorporating MOJ measures adopted since the 1980 regulations, recognized the extent to which privatization of the profession had already taken place—but the 1996 law did not, as some had hoped, describe them as "independent professionals."<sup>61</sup>

The 1996 law made membership in the local lawyers associations mandatory (membership in ACLA automatically followed) and required the associations to supervise their lawyer-members. But lawyers were not thereby granted true professional autonomy: on the contrary, the law provided that the judicial bureaus should also undertake "supervision" over lawyers, law firms and lawyers associations. The judicial bureaus could discipline lawyers for various ethical breaches, such as representing both parties in a case, meeting privately with judges or prosecutors and, in the most serious cases, the bureaus could revoke lawyers' licenses. Although the MOJ had already made legal aid (*fali yuanzhu*) a focal point of reforms in legal services, the law now required—not merely encouraged—lawyers to participate in legal aid activities.<sup>62</sup>

## **Independent Professionals in the 21st Century?**

The Lawyers Law has been amended twice since 1996, reflecting greater professionalization and privatization of the legal profession, as well as a possibly broader social role for lawyers. In 2001, the law was amended to require a college degree (not necessarily in law) and to reflect the introduction of the national unified judicial examination, first given in 2002 for lawyers, judges and procurators.<sup>63</sup> The 2007 amendments,<sup>64</sup> according to the MOJ, were intended to provide statutory safeguards for lawyers, specifically to provide protection for their safety, exemption from punishment for views expressed in the course of professional representation, and strengthening lawyers' rights to nondisclosure of client confidential information. Other stated goals included providing better protection for the attorney-client relationship, raising legal ethics standards and the clarifying lawyers professional liability.<sup>65</sup>

But under this lawyers regime the real power to supervise—and control—lawyers continues to rest with the MOJ and the local judicial bureaus. The law still provides that those departments should “supervise and guide lawyers, law firms and lawyers associations in accordance with law” and more generally that “practice by lawyers shall be subject to the supervision of the state, society and the parties concerned.” The MOJ and local judicial bureaus have the authority under the law to “manage” lawyers, which includes organizing them to study Party policies and overseeing their work. This administrative control over lawyers has been repeatedly strengthened, especially during government campaigns. Local judicial bureaus have issued circulars regulating the services provided by lawyers, usually establishing a case reporting system and requiring them to report “major or difficult” cases for approval.<sup>66</sup> Most crucially, the law gives the judicial bureaus, not the lawyers associations, the authority to approve licenses and to discipline

lawyers. Thus the bureaus have the power to issue warnings and fines (up to RMB50,000), and even to suspend the practice of lawyers and law firms for legal and ethical violations. These range from soliciting business by improper means or offering bribes, to disclosing state secrets or adducing false evidence (these last two, which affect the state, are among the most serious).

Law practice, too, continues to be tightly regulated by the state. In 2008, the MOJ promulgated measures governing the organization of partnership law firms.<sup>67</sup> These measures provide detailed rules governing partnership agreements and articles of association, both of which are mandatory—though in other jurisdictions these matters would ordinarily be left to individual firms. Law firms as well as lawyers must submit applications to the local judicial bureaus in order to establish a firm, and file their partnership agreements and articles of association as well as an annual report. Another 2008 enactment, which states that its purpose is to “strengthen the monitoring and administration of the practice of lawyers,” also contains many more detailed regulations on oversight by the judicial bureaus.<sup>68</sup> Even legal aid, which arguably should spring from the volunteer efforts of a profession owing duties to society, is made compulsory for lawyers. Such provisions might of course be viewed as providing a better framework for a well-regulated profession,<sup>69</sup> especially one that lacks a long history of governing itself, but—by the standards of most modern professions—the overall result is an unusually high degree of outside control.

It is true that ACLA and the local lawyers associations are still assigned a role in the supervision of the profession, and membership continues to be mandatory. Lawyers associations are defined as “self-disciplinary organizations of lawyers” with a duty to

“formulate codes of conduct and disciplinary rules” for lawyers and law firms, as well as to punish them for infractions. But most commentators conclude that ACLA is ineffective—it has failed to establish an efficient system to regulate the legal profession’s obligations or to monitor and improve legal education.<sup>70</sup> In any event, ACLA and other lawyers associations are really state-controlled and could not act independently, even if they had greater official power to regulate lawyers and law firms.

Nevertheless the current lawyers regime does offer greater organizational choice as well as greater business opportunities for today’s private lawyers. Lawyers may now practice in special as well as in general partnerships and as solo practitioners, something not officially sanctioned in the past.<sup>71</sup> (The old legal advisory offices were abolished in 2000 and most firms are organized as partnerships.) At the same time, the rapid privatization of practice has placed lawyers under serious financial pressure, and consequently many lawyers must “struggle for survival.” Indeed, in today’s commercialized environment, most firms tend to operate like *getihu* (i.e., small individual businesses). Thus, many law firms impose minimum annual billing quotas, provide few resources to their lawyers and pay them on a commission basis only. Under these circumstances, the pressure to bill encourages lawyers to screen out commercially undesirable clients, however worthy.<sup>72</sup> In addition, most Chinese law firms are small, with fewer than fifty lawyers, and because lawyers often try to advance their interests alone, they lose the dynamics of large cooperating firm.<sup>73</sup> The need for paying clients has also meant that law firms are virtually all based in the cities, as they were before 1949.<sup>74</sup>

But privatization has also promoted the development of large multi-city and even international Chinese firms, whose lawyers have been very successful.<sup>75</sup> Thirty years after

the beginning of economic reform, a small sector of “elite corporate lawyers” has emerged in China, most of them trained in the US, the UK or Germany. Many of them also have work experience at elite American and international firms.<sup>76</sup> Perhaps only a few thousand Chinese lawyers would be able to negotiate foreign contracts and manage transnational deals, and now they must face an increasingly globalized practice, along with challenges from international firms at home. In 2006, the Shanghai Lawyers Association issued a memorandum accusing foreign law firms of engaging in “illegal business activities” by ignoring the rules prohibiting them from practicing Chinese law. The association called on the authorities to crack down on foreign firms in order to “put in order, regularize and purify the Shanghai foreign legal services market.” Chinese law firms were clearly concerned about foreign competition in representing foreign multinationals trying to navigate Chinese regulation in China. At least in this case, strict regulation (of the foreign lawyers) had clear benefits for the Chinese profession—and the Chinese authorities supported rather than restricted Chinese lawyers.<sup>77</sup>

In summary, law practice in China has now been privatized and marketized to a remarkable extent—especially when compared to the legal profession in Vietnam. Despite a high degree of state regulation, that privatization has afforded Chinese lawyers more freedom, more “space” in which to operate (and to make money), even if they have not achieved true professional independence. But the contradictions between their private status and that tight regulation remain, as shown when lawyers, particularly criminal defense and rights lawyers, find themselves challenging the state.

*The Plight of Defense Lawyers*

The difficulties Chinese lawyers face are starkly illustrated in criminal defense work. During the 1980s, most legal work for the newly revived lawyers involved criminal defense, to the extent the 1979 code of criminal procedure permitted it. As “state legal workers,” they could do less for their clients, but their status as state employees also gave them some protection for their actions. Although the 1996 criminal procedure revisions expanded the role of lawyers in the criminal process, the privatization of the profession has weakened their power, especially vis-à-vis the police and procuracy.<sup>78</sup> In addition, Article 306 of the criminal law made “lawyer’s perjury” a crime, giving the procuracy a powerful weapon against defense lawyers who try to introduce evidence contradicting the police. As a consequence, Chinese defense lawyers face a “daily diet of disillusionment and danger.” If their defense efforts offend the police or the procuracy, they risk criminal prosecution, either for tax evasion or corruption, leaking state secrets, or worst of all, for perjury under Article 306. In the view of some commentators, the plight of defense lawyers is “appalling” and requires radical reform.<sup>79</sup>

The 2007 amendments to the Lawyers Law do on paper provide more scope for defense lawyers to act and possibly greater protection for them if they do so. The amended law was intended to address the difficulties they found in meeting with clients, gaining access to evidence and trying to collect evidence independently. But doubts about the treatment of criminal defense lawyers persist.<sup>80</sup> Despite provisions stating that lawyers cannot be prosecuted for opinions they present in court, “except speeches compromising state security, defaming others or seriously disrupting court order,” lawyers are not actually given immunity. According to Teng Biao, lawyers should be exempted from liability from any charges of “malicious libel,” but he notes that the most dangerous and open-ended

exception is “endangering state security.” The result is that Article 37 of the Lawyers Law remains “another trap set for human rights lawyers” in China,<sup>81</sup> a “sword of Damocles.”<sup>82</sup>

To survive in such a difficult environment, lawyers must seek allies, who may include other lawyers, lawyers associations, the media, and contacts inside state organizations. In some cases, ACLA has made efforts to rescue lawyers from charges of perjury, but the higher the political stakes and more powerful the state agency involved, the less likely their support can be effective. Both lawyers and their associations have also relied on the media to publicize cases of lawyers persecution.<sup>83</sup> But the most successful strategy is “political embeddedness,”<sup>84</sup> that is, the close connections lawyers have developed with the police, procuracy and courts through their previous work experience. Now that judges and procurators have returned to part-time law study to obtain a degree in law professors who practice part-time have also been able to rely on their connections with their students, giving them great advantages in surviving the minefield of criminal defense work.<sup>85</sup>

#### *The Emergence of Rights Protection (Weiquan) Lawyers*

Lawyers who handle sensitive civil cases face similar difficulties. The privatization of the legal profession has allowed them some space for “rights protection” legal work (i.e., cause lawyering), but the authorities have also strived to restrict their activities.<sup>86</sup> Many of these lawyers are based in small firms in the largest cities, especially Beijing, and some find law schools to be a very favorable practice site. Indeed, many of the more moderate group, such as He Weifang and Teng Biao, are leading public law professors.<sup>87</sup> But lawyers who represent activists or take on mass cases are often viewed by the authorities as troublemakers or worse.<sup>88</sup> In 2001, for example, Gao Zhisheng was

recognized by an MOJ award as one of the “ten best lawyers in the country,” but after he began taking on the government authorities and making use of the media to do so, his firm license was suspended and ultimately he was arrested and tried on subversion charges. In another well known example, Chen Guangcheng, the blind self-taught “barefoot lawyer,” after a pattern of harassment and persecution, was sentenced to more than four years’ imprisonment.<sup>89</sup>

In recent years, rights protection lawyers have been subjected to increasing pressures, not only from the police and judicial authorities, but also from the lawyers associations supposed to protect them.<sup>90</sup> Thus in March 2006 ACLA issued its the “Guiding Opinions on Lawyers Handling Mass Cases,” instructing lawyers to seek “supervision and guidance” from the judicial bureaus when handling class actions or aggregate cases. The judicial bureaus already have the authority to compel lawyers to follow their instructions and impose disciplinary penalties on them if they do not. But the Guiding Opinion went further and systematized such interference in mass cases of public protests.<sup>91</sup> In the 2008 contaminated milk powder scandal, groups of lawyers mobilized to provide volunteer advice for families seeking redress, but the judicial authorities reportedly warned them against taking on these cases. In Beijing, for example, they were instructed to “be aware of the general picture,” and reminded that they must notify the authorities if they decided to accept any of the milk powder cases. In other jurisdictions the warnings were much tougher.<sup>92</sup>

Lawyers associations have also actively pursued sanctions against their own members who oppose or displease them. The president of the Haidian district branch of the Beijing Lawyers Association described Gao Zhisheng as “one fly spoiling the entire pot of

soup!”<sup>93</sup> and expressed exasperation when some Beijing lawyers offered to defend Tibetans involved in protests.<sup>94</sup> The leadership of the Beijing Lawyers Association reacted harshly when challenged by other lawyer-members who in August 2008 published an internet petition calling for open elections in the association. The association responded with a “Stern Statement” claiming that their appeal was illegal, and two prominent rights protection lawyers were forced to leave their firms after harassment and pressure from the judicial bureau.<sup>95</sup> In early 2009, the authorities closed the firm for six months for “reorganization,” most likely for its representation of dissidents as well as its advocacy of direct elections for the leadership of the Beijing Lawyers Association.

Human Rights Watch and other human rights organizations also view these activities as part of a campaign to intimidate lawyers into refusing politically sensitive cases. Though aimed at rights protection lawyers, these provisions affect the legal profession generally by limiting its independence and legitimizing interference by local governments.<sup>96</sup>

#### **IV. CONCLUSION**

How should we assess the Chinese legal profession and its training at this juncture? There is no denying the remarkable progress the profession has made over the last thirty years. The education offered at China’s top law schools now is worlds apart from that of the 1980s, and today’s privatized lawyers seem to have little in common with the people’s lawyers or even state legal workers of the past. The growth in numbers has been especially dramatic: with over 600 law schools, more than 150,000 lawyers and some 10,000 firms, the profession has moved far beyond its early development. Obtaining a college degree and passing the bar examination are now prerequisites for admission to practice, and the

unified judicial examination was taken by 320,000 in 2008.<sup>97</sup> The Party itself has repeatedly emphasized the need to develop the legal profession as part of its commitment to the establishment of the rule of law.

But many challenges remain. Greater effort has been expended on increasing the number of legal professionals than on improving standards and, despite tighter requirements, most lawyers now in practice qualified before the new rules were introduced. Yet the number of lawyers per capita remains very low, and there are still too few lawyers to meet a potentially vast demand for legal services. Lawyers, moreover, are overwhelmingly concentrated in the largest cities and coastal regions, with Beijing and Shanghai the major center for the profession as well as its training. Legal aid programs too have been concentrated in the cities and few functional programs exist in rural areas, where lawyers have difficulty making a living.<sup>98</sup> Even the mandatory pro bono requirements may be evaded, and the pay structure in law firms discourages lawyers from accepting cases from clients without means, whatever their cause.<sup>99</sup> No wonder that “barefoot lawyers,” who are unlicensed and untrained (at least formally), have proliferated in recent years to fill the gap.

Legal education and the profession remain only tenuously connected, and a law degree is still not required to take the unified judicial examination. Despite the provisions of the Lawyers Law and other ethics rules, the lack of professional ethics remains a serious concern —as indeed it has been since lawyers were recognized in 1912. Lacking the traditions of a self-regulating profession and the ideals of principled and independent lawyering, China’s lawyers must also swim against an overwhelming tide of materialism in their society, and must often rely on connections, rather than law, to be successful.

Lawyers may view cultivating their *guanxi* (connections) with judges and legal officials as the worst part of their work, but they believe it is necessary to make them competitive and to increase their business.<sup>100</sup> Lawyers may also wish for enhanced independence, along with the power to define their own duties and ethics. But this heavily regulated and controlled profession remains a top-down creation and seems unlikely to achieve real autonomy under Party rule, especially in what may turn out to be a tighter political atmosphere.<sup>101</sup>

Thus the questions one writer raised in 1980 remain highly relevant—though perhaps unanswered—nearly thirty years later: will all these law graduates eventually constitute a traditional profession with a legalistic perception incompatible with the Party’s political agenda?<sup>102</sup> Will they ever play an independent and transformative role in China’s legal system? Anyone expecting the Chinese profession to play the same role now as American (or Hong Kong) lawyers do must be doomed to disappointment.<sup>103</sup> But perhaps changes in East Asia, especially in Taiwan, where the legal profession shares its origins with that of the PRC, can provide a positive and more likely model. Jerome Cohen has noted the development of an elite legal profession in Taiwan, which emphasized legal ethics long before the most recent reforms. At the same time, Taiwan has also been engaged in reforming its criminal justice system, and specifically the role that defense lawyers may play in it.<sup>104</sup>

Is Taiwan’s experience relevant to China’s legal system, and to its legal profession in particular? Under martial law, lawyers in Taiwan had only limited autonomy. From the 1940s to the 1980s, the government controlled the profession through restricting the numbers who passed the bar examination, indirect political screening of lawyers, and

suppressing dissent, by lawyers or otherwise. Before 1992, all lawyers were required to join a bar association and the associations were subject to governmental supervision.<sup>105</sup> But a few lawyers challenged the government and allied themselves with the developing opposition politics. Lawyers defended arrested activists after the 1979 Kaohsiung incident, and their trials served as a focal point for the opposition; indeed, there was a strong correlation between members of the Democratic Progressive Party (the DPP) and lawyers.<sup>106</sup>

Taiwan lawyers now have substantial influence in political and social reform, and joining the profession has become a goal of the elite and middle class. Although their numbers have increased, Taiwan lawyers remain part of a small exclusive elite, like the legal professions in Japan and Korea. They have dominated politics because they hold the most leadership positions in the DPP—and even though the current President is a member of the Nationalist Party, he too is a law graduate. Thus the process of democratization has increased the profession's autonomy, and the Taiwan story may be viewed as “lawyers advancing claims of professional autonomy at the same time as they pushed for a political cause”; the two goals have significantly reinforced each other.<sup>107</sup> All these factors make it seem unlikely that PRC lawyers could follow the same path without broader social and political change—but the example is there, and with greater cross-straits ties, accessible to members of the Chinese legal profession.

Viewed from a historical perspective, the recent progress of China's legal profession may seem less impressive. Despite their smaller numbers and the serious problems that pre-1949 lawyers faced, they seem to have trod a less restricted path, playing a freer role in the legal (and even political) issues of the day. Those early lawyers faced

issues of quality, of questionable training and of outside regulation—did they do better by these measures than lawyers today? It seems possible that they did: in some respects the current profession has more in common with the people’s lawyers or state legal workers than with the 1930s Shanghai bar. The Taiwan legal profession has gone well beyond those early professional efforts, while the PRC’s privatized and commercialized legal profession has not yet achieved true independence or taken charge of its destiny. Perhaps the praiseworthy efforts of rights protection and other lawyers may point the way forward? Leading legal scholar-activists like Teng Biao and He Weifang have also played the public intellectual role, and at least in their work formed a link between legal education and the profession.<sup>108</sup>

The past could also provide a powerful source of inspiration for them, and Chinese lawyers today could build upon their longer tradition. Indeed, in the last dozen years or so, the legal profession has reclaimed much of its earlier, pre-1949 history. Important lawyers and judges of that era have been rehabilitated, their biographies and achievements restored to today’s China’s lawyers. Works by John C.H. Wu, Yang Zhaolong and Shelley Sun, among others, have been republished and are now accessible to a new legal audience. Law schools, the base for much of today’s rights lawyering, have also reclaimed their ancestors; in 2004, for example, I attended a program at Tsinghua celebrating the life of Mei Ru’ao, an early academy graduate and the only Chinese judge at the Tokyo war crimes trials. Suzhou University and Renmin University also acknowledge their roots in the famed Soochow and Chaoyang law schools respectively, claiming that tradition for the legal profession of today. These legal ancestors may also find broader recognition in Chinese

society: it is not only today's lawyers who feature in current movies, but also their predecessors, as Mei himself did in 2007's *The Tokyo Trials* (*Dongjing Shenpan*).

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- <sup>1</sup> Many thanks to my colleague Avi Soifer for his comments on an earlier version of this essay.
- <sup>2</sup> Though the early profession had roots in practitioners with late Qing legal training. Ng Hoi Kit, “Cong Mian Shi Huopai Songshi dao” Lüshi [From Contempt of Pettifoggers to Willing Cooperation with Lawyers], *China Law*, June 2010, pp. 42-45.
- <sup>3</sup> *Zhongguo Falü Nianjian* [China Law Annual].
- <sup>4</sup> Dean Wang Chengguang of Tsinghua, in NYU news. Another source gives 559 institutions as of 2005. Zhu Jingwen, ed., *Zhongguo falü fazhan baogao* [Report on China Law Development], Beijing: Renmin University Press, 2007, p. 41.
- <sup>5</sup> Ruth Hayhoe, *China’s Universities 1895-1995: A Century of Cultural Conflict*, Hong Kong: Comparative Education Research Centre, 1999, p. 53.
- <sup>6</sup> “Participation” meant Nationalist involvement in college administration and life, as well as the introduction of the party’s indoctrination programs. Wen-hsin Yeh, *The Alienated Academy: Culture and Politics in Republican China, 1919-1937*, Cambridge: Harvard University Press, 1990, pp. 173-79.
- <sup>7</sup> Hugh Chan [Chen Sheau], “Modern Legal Education in China,” *China Law Review*, vol. 9, 1936, 42-45 pp. 142, 143-46.
- <sup>8</sup> In 1930, some 37% of college students were studying political science and law. In 1918, Peking University had 532 law students vs. 341 in arts and 134 in sciences. Ruth Hayhoe, op. cit. (n. 4 above) p. 67, n. 71.
- <sup>9</sup> Alison W. Conner, “Training China’s Early Modern Lawyers,” *Journal of Chinese Law*, vol. 8, Spring 1994
- <sup>10</sup> Zou Keyuan, “Professionalizing Legal Education in the People’s Republic of China,” *Singapore Journal of International & Comparative Law*, vol. 7, 2003, p. 163.
- <sup>11</sup> Hayhoe, op. cit. (n. 4 above), pp. 73-83.
- <sup>12</sup> *Ibid.*, p. 117.
- <sup>13</sup> Xu Xianming, ed., *Zhongguo Faxue Jiaoyu Qingkuang* [The Situation of China’s Legal Education], Beijing: Chinese University of Politics and Law Press, 2005, p. 12.
- <sup>14</sup> Shao-chuan Leng, *Justice in Communist China*, Dobbs Ferry: Oceana Publications, 1967, p. 98.
- <sup>15</sup> Xu, op. cit. (n. 12 above), p. 20.
- <sup>16</sup> Jerome Alan Cohen, “Notes on Legal Education in China,” *Lawasia*, vol. 4, no.1, June 1973, p. 205.
- <sup>17</sup> Xu, op. cit. (n. 12 above), p. 20.
- <sup>18</sup> Hayhoe, op. cit. (n. 4 above), pp. 118-19, 122-25.
- <sup>19</sup> Timothy A. Gelatt and Frederick E. Snyder, “Legal Education in China: Training for a New Era,” *China Law Reporter*, vol. 1, 1980, p. 44.
- <sup>20</sup> Han Depei and Stephen Kanter, “Legal Education in China,” *32 American Journal of Comparative Law*, vol. 32, 1984, p. 557.
- <sup>21</sup> *Ibid.*, p. 563.
- <sup>22</sup> Zhu, op. cit. (n. 3 above), pp. 34, 37.
- <sup>23</sup> *Ibid.*, 40-41. Beijing has the most law schools (33) and Tibet the fewest (1). P. 53.
- <sup>24</sup> He Weifang, “China’s Legal Profession: The Nascence and Growing Pains of a Professionalized Legal Class,” *19 Colum. J. Asian L.* 138 (2005), p. 146.
- <sup>25</sup> Zeng Xianyi, “Legal Education in China,” *South Texas Law Review*, vol. 43, 2002, p. 712.
- <sup>26</sup> Lingyun Gao, “What Makes a Lawyer in China? The Chinese Legal Education System after China’s Entry into the WTO,” *Willamette Journal of International Law & Dispute Resolution*, vol. 10, 2002, pp. 225-6.
- <sup>27</sup> Tan Cheng Han, et al., “Legal Education in Asia,” *Asian Journal of Comparative Law*, vol. 1, 2006, p. 193.
- <sup>28</sup> Zeng, op.cit. (n. 24 above), p. 715.
- <sup>29</sup> He Weifang, op. cit. (n. 23 above), pp. 138, 145.
- <sup>30</sup> Peking, Suzhou and Nanjing Universities also have excellent new facilities for their law schools.
- <sup>31</sup> He Weifang, op. cit. (n. 23 above), p. 148.
- <sup>32</sup> Zhu, op. cit. (n. 3 above), p. 43.
- <sup>33</sup> 2006 Conversation with Dean Wang Zhenmin of Tsinghua University Law School.

- <sup>34</sup> A frequent comment. See for example, R. MacDonald, "Legal Education in China Today," 6 *Dalhousie L.J.*, vol. 6, 1980, p. 335. Stanley B. Lubman, *Bird in a Cage: Legal Reform in China after Mao*, Stanford: Stanford University Press, 1999, p. 157. William P. Alford, "Tasselled Loafers for Barefoot Lawyers," in Stanley B. Lubman, ed., *China's Legal Reform*, Oxford: Oxford University Press, p. 31.
- <sup>35</sup> Elizabeth Lynch, "Eager for Clinical Education for China," *NYU School of Law News*, 31 January, 2008.
- <sup>36</sup> Zou Keyuan, "Professionalizing Legal Education in the People's Republic of China," 7 *Singapore J. Int'l & Comp. L.* 159 (2003). A point also made by He Weifang, Wang Zhenmin and others.
- <sup>37</sup> He, *op. cit.* (n. 23 above), p. 149.
- <sup>38</sup> Wang Zhenmin, "Legal Education in Contemporary China," *The International Lawyer*, vol. 36, 2002, pp. 1210-11. Similar issues are discussed in Wang Zhenmin, "Zhongguo Gaodeng Faxue Jiaoyu [Chinese Legal Education]," in Wei-Ta Pan and Tz-Ping Chen, *Dongwu Daxue Faxueyuan Jianyuan Zhounianqing Faxue Jiaoyu Xueshu Yantaohui Lunwenji* [Collected Essays from the Symposium on Legal Education Celebrating the Ninetieth Anniversary of Soochow University Law School], Taipei: Soochow Law School, 2006, pp. 695 ff.
- <sup>39</sup> Wang, "Legal Education," *op. cit.* (n. 37 above), pp. 1206-7, 1210-12.
- <sup>40</sup> See Bui Thi Bich Lien, "Legal Education and Legal Profession in Contemporary Vietnam—To Change or Not to Change," in this volume.
- <sup>41</sup> Mao Ling, "Clinical Legal Education and the Reform of Higher Legal Education in China," *Fordham International Law Journal*, vol. 30, 2007, pp. 6-7.
- <sup>42</sup> According to Ira Belkin, program officer for law and rights at the Ford Foundation, in Elizabeth Lynch, "Eager for Clinical Education in China," *NYU School of Law News*, 31 January 2008.
- <sup>43</sup> Note, "Adopting and Adapting: Clinical Legal Education and Access to Justice in China," *Harvard Law Review*, vol. 120, 2007, pp. 2134-2136.
- <sup>44</sup> Zeng, *op. cit.* (n. 24 above), p. 711. Wang Jian, "Zhongguo de J.D.?", in He Weifang, ed., *Zhongguo Falü Jiaoyu zhi Lu* [The Path of Chinese Legal Education], Beijing: Chinese University of Politics and Law Press, 1997, pp. 83 ff.
- <sup>45</sup> Zhu, *op. cit.* (n. 3 above), p. 44.
- <sup>46</sup> He, *op. cit.* (n. 23 above), p. 148.
- <sup>47</sup> Tan, *op. cit.* (n. 26 above), p. 189.
- <sup>48</sup> *Ibid.* James R. Maxeiner and Keiichi Yamanaka, "The New Japanese Law Schools: Putting the Professional into Legal Education," *Pacific Rim Law & Policy*, vol. 13, 2004, pp. 303 ff.
- <sup>49</sup> Chang-fa Lo, "Driving an Ox Cart to Catch up with the Space Shuttle: the Need for and Prospects of Legal Education Reform in Taiwan," *Wisconsin International Law Journal*, vol. 24, 2006, pp. 45-46.
- <sup>50</sup> In 2004, for example, there were 94 law departments in all institutions teaching law, with 61 opened between 1995 and 2004. *Ibid.*, 50.
- <sup>51</sup> Chang-fa Lo, "Possible Reform for Legal Education in Taiwan: A Refined J.D. System?" *Asian Journal of Comparative Law*, vol. 1, 2006, 228-29. See also Joseph L. Pratt, "The Two Gates of National Taiwan University School of Law," *UCLA Pacific Basin Law Journal*, vol. 19, pp. 131 ff.
- <sup>52</sup> For example, see the essays by mainland and Taiwan legal educators in Wei-Ta Pan and Tz-Ping Chen,
- <sup>53</sup> Wang Zhenmin also argues that legal education is too strictly government-controlled; private law schools should be allowed, just as there were before 1949. Wang, "Legal Education," *op. cit.* (n. 37 above), p. 1209.
- <sup>54</sup> As many websites and promotional brochures will attest. See for example, Suzhou University, Nankai University, Renmin University, among many others.
- <sup>55</sup> Though some legally trained specialists advertised their services in the late Qing, just before the establishment of the Republic and procedural regulations allowed them to appear in court just before 1912.
- <sup>56</sup> For example, in *Malu Tianshi* [Street Angel] (1937) and *Taitai Wansui* [Long Live the Missus] (1946), discussed in Alison W. Conner, "Don't Change Your Husband: Divorce in Early Chinese Movies," *Connecticut Law Review*, vol. 40, 2008, 1245 ff.
- <sup>57</sup> Leng, *op. cit.* (n. 13 above), pp. 128; 42, n. 47; 132-34.
- <sup>58</sup> *Ibid.*, pp. 135-139, 143.
- <sup>59</sup> *Zhonghua Renmin Gongheguo Lüshi Zhanxing Tiaoli* [Provisional Regulations of the People's Republic of China on Lawyers], adopted by the Standing Committee of the National People's Congress on August 26, 1980, effective on 1 January 1982.

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<sup>60</sup> *Zhonghua Renmin Gongheguo Lüshi Fa* [Lawyers Law of the People's Republic of China] promulgated by the Standing Committee of the National People's Congress on 15 May 1996, effective on 1 January 1997. For a discussion of the legislation and the transition to private practitioners, see Albert H.Y. Chen, *An Introduction to the Legal System of the People's Republic of China*, 3rd ed., ch. 8 Hong Kong: Butterworths, 2004; and Randall Peerenboom, *China's Long March to Rule of Law*, ch. 8, Cambridge: Cambridge University Press, 2002.

<sup>61</sup> See the analysis in Lawyers Committee for Human Rights [Randall Peerenboom], *Lawyers in China: Obstacles to Independence and the Defense of Rights*, New York, 1998, for a detailed analysis of the new law.

<sup>62</sup> Benjamin L. Liebman, "Legal Aid and Public Interest Law in China," *Texas International Law Journal*, vol. 34, 1999, p. 214.

<sup>63</sup> Qualifying as a lawyer now requires passing the judicial examination, completing a law firm internship and obtaining a lawyer's license from the local judicial bureau. For a detailed analysis of required qualifications, see Chen, *op. cit.* (n. 59) above, ch. 8.

<sup>64</sup> Adopted by the Standing Committee of the National People's Congress on 28 October 2007, effective from 1 June 2008.

<sup>65</sup> As cited in Jing "Brad" Luo, "Chinese Law on Lawyers Amended: Progress Made and to Be Made," *Chinese Law & Practice*, February 2008, p. 53.

<sup>66</sup> Ping Yu, "Glittery Promise vs. Dismal Reality: The Role of a Criminal Lawyer in the People's Republic of China after the 1996 Revision of the Criminal Procedure Law," *Vanderbilt Journal of Transnational Law*, vol. 35, 2002, pp. 867, 833.

<sup>67</sup> *Lüshi Shiwusuo Guanli Banfa* [Measures for the Administration of Law Firms], promulgated by the MOJ on 18 July 2008, effective on promulgation.

<sup>68</sup> *Lüshi Zhiye Guanli Banfa* [Measures for the Administration of the Practice of Lawyers], promulgated by the MOJ on 18 July 2008, effective on promulgation.

<sup>69</sup> Two members of a Chinese law firm conclude that these more detailed regulations mean that the "administration of law firm and legal practice will be further enhanced, and the environment for attorneys to practice law in China will be further improved." Changchun Yuan and Hongchuan Liu, "China Strives to Enhance the Administration of its Legal Profession," *China Law & Practice*, September 2008, p. 39.

<sup>70</sup> Gao, *op. cit.* (n. 25 above), p. 214.

<sup>71</sup> Measures for the Administration of Law Firms, *op. cit.* (n. 66 above).

<sup>72</sup> Ethan Michelson, "The Practice of Law as an Obstacle to Justice: Chinese Lawyers at Work," *Law & Society Review*, vol. 40, 2006, pp. 10-12, 13-14.

<sup>73</sup> Chengyuan Lu, "Legal Services in China: Facing the WTO," *UCLA Pacific Basin Law Journal*, vol. 20, p. 326.

<sup>74</sup> Statement by Benjamin L. Liebman, given on July 12, 2004 before the Congressional-Executive Commission on China, at [www.cecc.gov](http://www.cecc.gov).

<sup>75</sup> For example, King & Wood, based in Beijing but with many offices and over 645 lawyers; Zhong Lun Law Firm, with 500 lawyers and multiple offices; and AllBright Law Offices of Shanghai with more than 250 lawyers.

<sup>76</sup> Sida Liu, "Client Influence and the Contingency of Professionalism: The Work of Elite Corporate Lawyers in China," 40 *Law & Society Review*. 751 (2006), p. 751, analyzing six elite corporate law firms in Beijing.

<sup>77</sup> Anthony Lin, "Shanghai Bar Association Upset with Practices of Foreign Firms," *New York Law Journal*, 17 May 2006. Mia Prieur, "The Shot Heard 'Round the World: A Brewing Revolution Against Foreign Law Firms in China?," *China Legal Watch*, CCH Hong Kong Limited, 15 June 2006. David Murphy, "Fencing in the Foreign Lawyers," *Far Eastern Economic Review*, 29 August 2002, pp. 26-27.

<sup>78</sup> Sida Liu and Terence C. Halliday, "Dancing Handcuffed in the Minefield: Survival Strategies of Defense Lawyers in China's Criminal Justice System," Center on Law and Globalization Research Paper No. 08-04, pp. 2, 6. See also Fu Hualing, "When Lawyers are Prosecuted... The Struggle of a Profession in Transition," *The Journal of Comparative Law*, vol. 2, 2007, pp. 95 ff.

<sup>79</sup> Jerome A. Cohen, "The Plight of China's Criminal Defense Lawyers," *Hong Kong Law Journal*, vol. 33, 2003, pp. 231-32, 235, 244-45.

<sup>80</sup> *China Law Review*, November 2007.

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- <sup>81</sup> Teng Biao, quoted in “Article 37 of the PRC Law on Lawyers: A New Trap Set for Lawyers,” published by China Human Rights Lawyers Concern Group ([www.chrlcg-hk.org](http://www.chrlcg-hk.org)).
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- <sup>83</sup> Liu and Halliday, *op. cit.* (n. 77 above), pp. 23-24, 26-27.
- <sup>84</sup> Ethan Michelson, “Lawyers, Political Embeddedness, and Institutional Continuity in China’s Transition from Socialism,” *American Journal of Sociology*, vol. 113, 2007, pp. 352-353.
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- <sup>88</sup> Eva Pils, “Asking the Tiger for his Skin: Rights Activism in China,” *Fordham International Law Journal* vol. 30, 2007, p. 1209.
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- <sup>97</sup> Human Rights Watch report.
- <sup>98</sup> According to a report on the Ministry of Justice website, at [www.legalinfo.gov.cn/english/Judicial-Examinations](http://www.legalinfo.gov.cn/english/Judicial-Examinations).
- <sup>99</sup> Liebman, *op. cit.* (n. 61 above), 240, 251-52.
- <sup>100</sup> Michelson, *op. cit.* (n. 71 above).
- <sup>101</sup> Based on a 2001 survey of Guangzhou lawyers. Carlos Wing-Hung Lo and Ed Snape, “Lawyers in the People’s Republic of China: A Study of Commitment and Professionalization,” *American Journal of Comparative Law*, vol. 53, 2005, p. 450.
- <sup>102</sup> Jerome Cohen, “Body Blow for the Judiciary,” *South China Morning Post*, 18 October 2008.
- <sup>103</sup> Or: Is China developing a conception of a legal profession in which the lawyers relationship to the state is not the dominant feature? Liebman, *op. cit.* (n. 61 above), p. 277.
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- <sup>108</sup> Winn, *op. cit.* (n. 104 above), p. 583. Ginsburg, *op. cit.* (n. 106 above), pp. 43-63, 58, 59.
- <sup>109</sup> See interview with He Weifang, in “The Legal Scholar as Public Intellectual,” *China Rights Forum*, no. 1 2005, pp. 70-72.