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## The Rise and Fall of Chinese Legal Education

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# THE RISE AND FALL OF CHINESE LEGAL EDUCATION

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## INTRODUCTION

Legal education is in crisis. A surplus of law graduates, facing limited job prospects, is flooding the market. The institutions that train them are the focus of biting criticism. Schools stand accused of remaining obsessed with meeting numerical targets that bear limited relationship to actual educational value, of producing academic writing with marginal

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utility, and of failing to prepare their graduates for actual careers.

For an American audience, this may appear all too familiar. Bloggers, mainstream media, and academic publications have raised the problems of American legal education to the forefront of popular consciousness.<sup>1</sup>

Less well understood is that a parallel phenomenon is occurring across the Pacific. In short, the Chinese legal education bubble is deflating.

This may come as a surprise to some. In the late twentieth century, China undertook sweeping legal reforms. Authorities rebuilt courts and law schools that had fallen into disrepair under decades of Maoist radicalism. Officials issued torrents of laws and regulations as they sought to build an institutional framework for the reform era. Private law firms emerged as the state-owned economy withered.

Given these shifts, Chinese legal education seemed to have a bright future. For students, law was one of the most sought-after majors in the late 1990s. Offering prospects of high-paying careers, it was chosen by the best students.<sup>2</sup> For academics, the rapid expansion of Chinese law schools opened up new teaching positions. Central Leaders' decision in 1997 to make "rule by law" a core Party plank promised a key role for legal scholarship in charting the future course of the nation.<sup>3</sup> Politically, a range of Chinese and foreign intellectuals held out hope that law schools might emerge as training ground for ideas and personnel that would lead China in the direction of liberal institutional reform.

However, recent trends have called all of these assumptions into question.

In the past fifteen years, Chinese legal education has grown exponentially. Although law schools, faculty, and students have

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1. See generally BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS* (2012); Richard A. Matasar, *The Rise and Fall of American Legal Education*, 49 N.Y.L. SCH. L. REV. 465 (2004); David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 8, 2011, at BU1; Paul Campos & Deborah Jones Merritt, *Inside the Law School Scam*, <http://insidethelawschoolscam.blogspot.com> (last visited Oct. 16, 2012); THIRD TIER REALITY, <http://thirdtierreality.blogspot.com> (last visited Oct. 16, 2012).

2. See *infra* note 55 and accompanying text.

3. See *infra* note 50 and accompanying text.

risen six-fold, job prospects have not kept pace. Employment rates for law graduates now rank among the lowest in all of higher education. Students are cautioned against selecting law as a major; schools are advised to shrink the size of their law programs.<sup>4</sup>

Top-down policies employed to expand Chinese legal education have generated extremely negative side effects. Since the late 1990s, Chinese authorities have encouraged competition among schools and professors based on success in meeting one-size-fits-all slates of numerical targets, such as the size of school facilities and numbers of articles published. This has pushed schools ranging from national research universities to local teachers colleges to pursue a monotonously uniform development track, regardless of the practical needs of their students. It has produced a boom in building campus facilities in remote suburban areas. It has led professors to churn out large numbers of low-quality academic articles. And it has contributed to a widespread culture of academic fraud, as schools and professors have developed extensive countermeasures to feign compliance with targets set by higher authorities.<sup>5</sup>

Chinese legal education is also facing shifts in the broader political winds. Since the early 2000s, social stability concerns have led Chinese authorities to doubt reforms enacted in the 1980s and 1990s that had emphasized the role of law, litigation, and courts in the resolution of citizen grievances. As a result, central authorities have de-emphasized formal law, court adjudication, and judicial professionalization. And they have revived pre-1978 Maoist court mediation practices.<sup>6</sup>

This Article argues that these trends are collectively prompting a broad reconsideration of legal education in China. Numbers of Chinese law students are beginning to decline. Educational officials have announced that they will limit or close university programs that fail to produce employable graduates. Authorities are backing away from 1990s-era one-size-fits-all models for evaluating law programs. Instead, they are prodding

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4. See *infra* notes 61–81 and accompanying text.

5. See *infra* notes 97–116 and accompanying text.

6. See Carl F. Minzner, *China's Turn Against Law*, 59 AM. J. COMP. L. 935 (2011) (discussing these trends).

schools to differentiate themselves. And Party political-legal authorities have questioned to what extent legal education should be refashioned to correspond to the new official line regarding law and legal institutions in China.

This Article contrasts with much of the existing English-language literature on legal education in China. Existing works have emphasized the large numerical increases in Chinese law students, professors, and schools in recent decades.<sup>7</sup> But they have not fully analyzed the negative consequences of this growth.<sup>8</sup> Nor have they examined the new track that central leaders have now chosen for Chinese law schools.

These trends are important for American law professors and administrators, even absent any deep interest in China. Some of these pressures bear strong similarities to those faced by legal education in the United States. Employment rates have plunged. Student interest is waning. And tighter central government regulation (in the form of restrictions on federal student tuition dollars) is looming. As American legal educators begin to plan how they themselves will adapt in a new era, they may wish to examine the reform track in Chinese legal education.

But China's relevance is even more direct: cold hard cash. Tuition from foreign LL.M. students keeps many US law schools afloat. This dependence is only going to increase. Numbers of American J.D. applicants have declined by thirty-eight percent since 2010.<sup>9</sup> Further declines are likely in coming years. American law schools will likely attempt to respond to these pressures by significantly expanding their foreign LL.M. programs. Many already have. For many schools, China is the single most important market for foreign students. The viability of many US law schools will directly depend on the continued availability of Chinese law graduates willing to spend their money to purchase US degrees.

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7. See Zuo Haicong, *Legal Education in China: Present and Future*, 34 OKLA. CITY U. L. REV. 51, 57 (2009); see generally Ji Weidong, *Legal Education in China: A Great Leap Forward of Professionalism*, 39 KOBE UNIV. L. REV. 1 (2004).

8. See, e.g., Zuo, *supra* note 7, at 57; Ji, *supra* note 7. But see Wang Chenguang, *The Rapid but Unbalanced Growth of China's Legal Education Programs*, 7 HARV. CHINA REV. 1 (2006).

9. See *infra* note 160 and accompanying text.

For scholars of Chinese law and governance, this Article offers a comprehensive look at the institutional incentives that have driven the explosive growth of Chinese legal education over recent decades. It identifies the critical role played by official target responsibility systems used to evaluate Chinese institutions of higher education. Although significantly more influential than the American Bar Association accreditation standards and *US News and World Report* rankings that have similarly driven—and twisted—American legal education, these systems have remained almost completely unstudied by foreign academics.

Last, this Article also argues that the fate of legal education can serve as a bellwether for broader legal and political reform trends in China. Since 1978, Chinese legal education has been intimately tied to questions of institutional reform. In the past three decades, law schools have emerged as a somewhat protected zone for criticism and discussion of contested political issues. Legal academics have emerged as public intellectuals. Many have developed national reputations as trenchant critics of government policies. A conservative backlash against late twentieth century legal reforms has now enveloped the courts and bar.<sup>10</sup> Whether it affects Chinese legal education as well may indicate if it has crested or will continue to spread yet further.

This Article uses multiple tools to examine the growth and retrenchment of Chinese legal education. These include: statistical data on law students, degrees, and schools; historical analysis of changing educational practices; and textual examination of new state policies. It extensively employs Chinese-language sources, including some forty first-hand interviews with a range of deans and professors at ten different Chinese law schools.<sup>11</sup>

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10. One of the more recent examples of these trends: the Ministry of Justice announcement in March 2012 that a loyalty oath to the Communist Party would be made a requirement for admission to the bar. Zhao Yang, *Sifa bu xiafa jianli lüshi xuanshi zhidu jue ding de tongzhi* [Ministry of Justice Issues Notice on Establishing System for Lawyer's Oaths], MINISTRY OF JUSTICE (Mar. 21, 2012), [http://www.moj.gov.cn/index/content/2012-03/21/content\\_3445267.htm](http://www.moj.gov.cn/index/content/2012-03/21/content_3445267.htm).

11. All interviews were conducted by the author. Interviewees were informed of the interview's purpose, its voluntary nature, and the ways the information provided would be used. All consented verbally to be interviewed. Due to the sensitive nature of

This Article is divided into four Parts.

Part I traces the historical development of legal education in the People's Republic of China. It outlines changes over recent decades in official attitudes towards legal education, state policies for managing schools, and employment prospects for law graduates. It identifies how these have contributed to the massive surge in law programs since the late 1990s.

Part II analyzes the current challenges facing legal education in China. These include massive overexpansion, distorted institutional priorities caused by central evaluation measures adopted in the 1990s, and recent Party political campaigns, launched first within the Chinese court system in 2006, which have shown signs of spreading toward law schools and academia.

Part III examines the future course of legal education in China. In particular, it analyzes plans announced by Party political-legal authorities and education officials in late 2011 to reform the course of legal education in China over the next decade.

Part IV concludes with an analysis of these trends.

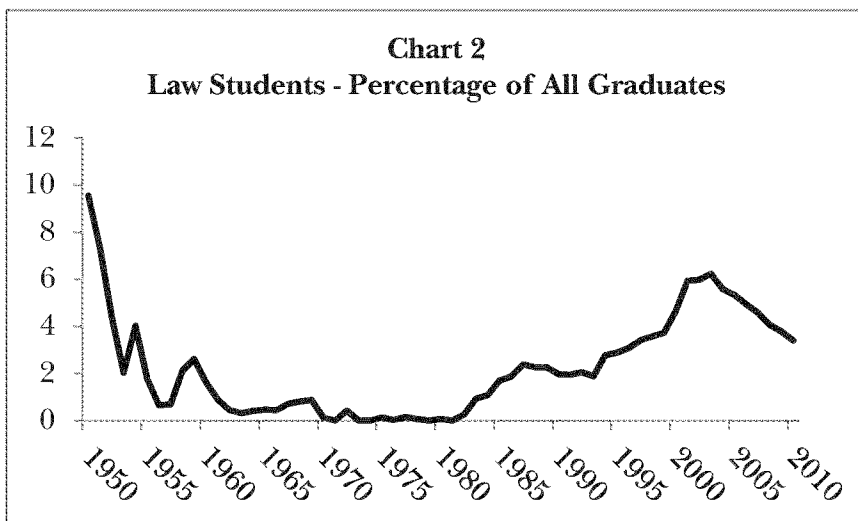
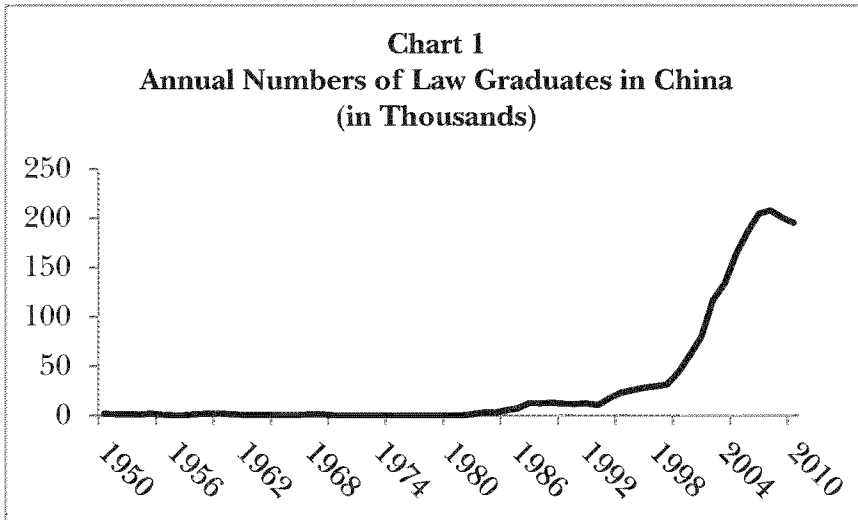
## I. RISE OF LEGAL EDUCATION

The history of legal education in the People's Republic of China ("PRC") is visually represented in the following two charts.<sup>12</sup>

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the issues examined, and to preserve anonymity, only dates and locations of interviews are given. Schools include both national and regional universities.

12. These charts depict total numbers and percentages of law (*faxue*) graduates from institutes of higher education (*gaodeng xuexiao*). Numbers are compiled from the annual Statistical Yearbooks of China, published by the Statistics Bureau of China, and from the corresponding website, where they are reported as *gaodengxuexiao fenke biyesheng shu*. Several notes are in order. First, earlier periods list the field as "politics and law" (*zhengfa*) rather than "law." More recent statistics include political science, sociology, and public security studies under *faxue* in addition to subjects such as civil, commercial, and international law. The former are relatively small compared with the latter. Second, these numbers include both university (*benke*) and junior college (*zhuanke*) students—categories not broken out separately in earlier data. Third, masters and doctoral students are not included. See Table 4 for these numbers. Fourth, this data does not include technical high schools, adult education, or other educational programs. Rather, these statistics give a rough idea of the number of Chinese students studying law in a tertiary education most closely approximating a college degree.



In 1949, Communist authorities founded the modern Chinese state. They established a one-Party political system centered on the Communist Party. They built legal institutions that borrowed heavily from Soviet models. Law was viewed as a utilitarian tool to assist in the socialist modernization of China.

During the 1950s, Party authorities reformed legal education to meet this vision. Existing law faculties were reorganized. Some became politics and law (*zhengfa*) institutes



managed by the Ministry of Justice. These produced graduates to serve as frontline state cadres in government and judicial institutions throughout the new socialist China.<sup>13</sup> Others became departments within comprehensive universities, such as Peking University, focusing on training elite researchers and officials. Naturally, all were part of broader state efforts to create an institutionalized system of higher education, albeit a politicized one under firm Party control.<sup>14</sup> Legal studies consisted of readings of political works, translated Russian-language materials, and new laws issued by China's nascent national legislature.<sup>15</sup>

Law graduates remained few and far between. A poor, developing country, China had limited resources available for higher education. Those that did exist were channeled into fields (such as engineering) directly tied to state efforts to build a centrally planned economy with heavy industry at the core.<sup>16</sup> In contrast, politics and law students represented less than one percent of all graduates during the first thirty years of the PRC.<sup>17</sup>

These limited efforts at building legal education collapsed entirely during the political turmoil that engulfed China from the late 1950s to the 1970s. Central leaders launched leftist campaigns that criticized intellectuals, attacked formal institutions, and fanned the flames of radical populism. This "led to the spread of legal nihilism of despising the law, negating the legal system and ignoring legal education."<sup>18</sup> Courts and government institutions were gutted; the Ministry of Justice shuttered from 1959 to 1976.

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13. See Sarah Biddulph, *Legal Education in the People's Republic of China*, in LEGAL EDUCATION IN CHINA: GLOBALIZATION, CHANGE AND CONTEXTS 260, 261 (Stacey Steele & Kathryn Taylor eds., 2010).

14. See Barry Sautman, *Politicization, Hyperpoliticization, and Depoliticization of Chinese Education*, 35 COMP. EDUC. REV. 669, 670 (1991).

15. See Luke T. Lee, *Chinese Communist Law: Its Background and Development*, 60 MICH. L. REV. 439, 462-66 (1962).

16. In 1957, for example, 56,180 students graduated from Chinese institutes of higher education. 17,162 graduated from engineering programs and 15,948 from teacher training programs. Only 385 graduated from politics and law programs. NATIONAL BUREAU OF STATISTICS OF CHINA, STATISTICAL YEARBOOK OF CHINA 521-22 (1983).

17. DEP'T OF PLANNING, MINISTRY OF EDUC., ACHIEVEMENT OF EDUCATION IN CHINA, 1949-1983, 1988 (1983).

18. Han Depci & Stephen Kanter, *Legal Education in China*, 32 AM. J. COMP. L. 543, 550 (1984).

Political radicalism decimated higher education. Hyperpoliticization resulted in purges of foreign legal ideas and personnel trained abroad. Many law professors, as with other intellectuals, were sent to do decades of hard labor in the countryside.<sup>19</sup> During the most extreme years of the Cultural Revolution (1966–76), almost all universities—and their law programs—were closed. In Shanghai, campus facilities of the East China Institute of Politics and Law were allocated to other uses, including a psychiatric hospital and vegetable storage.<sup>20</sup> Unsurprisingly, total numbers of law graduates fell to near zero.

In the late 1970s, disillusioned with the chaos of the Maoist era, Chinese leaders turned their backs on political radicalism. They pursued sweeping reforms, seeking to build a stable framework to govern China and promote economic development. They reopened schools, launched extensive foreign educational exchanges, and embraced legal reform. Chinese authorities issued hundreds of new statutes and regulations—creating a comprehensive framework of civil, commercial, criminal, and administrative law.

Naturally, these reforms also required reviving legal education. Authorities reopened the politics and law institutes founded in the 1950s. They also resurrected university law programs, increasing the numbers of four-year universities offering law majors, from four (in the 1950s) to thirty-one in 1983.<sup>21</sup>

Revival of higher education fueled intellectual excitement. Textbooks were an eclectic mélange of old Soviet-era materials and assorted reform-era statutes. But legal education was intimately intertwined with politics of the day.<sup>22</sup> Graduates of

19. *Id.* at 553; Sautman, *supra* note 14, at 675–77.

20. Biddulph, *supra* note 13, at 263.

21. Huo Xiandan, *Faxue jiaoyu yu falü zhiye de biange* [Changes in Legal Education and the Legal Profession], in *ZHONGGUO ZOUXIANG FAZHI 30 NIAN 1978–2008* [CHINA'S JOURNEY TOWARD THE RULE OF LAW: LEGAL REFORM 1978–2008] 161, 163 (Cai Dingjian & Wang Chenguang eds., 2008). Total numbers of law graduates from institutes of higher education were divided roughly equally—half came from the universities, half from politics and law institutes.

22. Political shifts on campus enhanced the sense of change. In the late 1980s, Chinese leaders signaled their support for deeper political reforms aimed at separating the Party from the day-to-day management of government. Within universities, this translated into a formal central policy announced in 1988 that supported university president-led management systems (*xiaozhang fuzhezhi*), rather than Party committee-led

that era recall energetic debates between students surrounding the 1980–81 trial of Mao’s wife and her associates for crimes committed during the Cultural Revolution. They also remember their fascination with foreign works available to them on campus.<sup>23</sup> Rapid expansion, openness to Western law, and the possibility for deeper political and social changes generated a flush of interest among foreign observers as well. Some depicted Chinese legal education in glowing terms. As one noted, “legal education is now a star in the crown of the [Chinese] academic establishment.”<sup>24</sup>

This, however, may have been somewhat romanticized. Teaching quality remained uneven, with many professors having been educated over four decades earlier in pre-revolutionary China.<sup>25</sup> Universities labored under financial constraints imposed by tight central budgets that devoted limited resources to higher education. Faculty faced fixed pay structures deviating little from school to school. Limited rewards existed for talented scholars.<sup>26</sup> By the late 1980s and early 1990s, this had resulted in an outflow of academic talent into the more remunerative private sector.<sup>27</sup>

Few such opportunities existed for law students. Just as in the 1950s, 1980s-era law graduates overwhelmingly entered state employment. They had few other options. No private bar existed. Employment prospects in foreign firms remained limited. In contrast, the demand in Chinese state organs for trained personnel was insatiable. In 1983, only three percent of judges, procurators, and justice bureau officials held the equivalent of a junior college degree in law or above. Over fifty-four percent had received less than a month of legal training.<sup>28</sup>

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systems. Yang Dongping, *Chinese Higher Education During the Past Thirty Years*, in CHINA’S EDUCATION DEVELOPMENT AND POLICY 1978–2008, 320, 324–25 (Zhang Xiulan ed., 2011).

23. Interview, in Beijing, China (Aug. 2, 2011).

24. R. Randle Edwards, *An Overview of Chinese Law and Legal Education*, 476 ANNALS AM. ACAD. POL. & SOC. SCI. 48 (1984).

25. Interview, in Beijing, China (Aug. 2, 2011).

26. Interview, in New York, United States (Mar. 28, 2012).

27. Interview, in Beijing, China (July 15, 2011). Few may remember that the noted liberal constitutional law theorist and public intellectual He Weifang actually quit his teaching job in Beijing in the late 1980s because of dissatisfaction with low pay and poor housing conditions, to pursue a business venture.

28. Huo, *supra* note 21, at 164.

Precisely because Chinese legal education remained strongly tied to employment in political-legal organs, it was relatively less popular among students. It did not offer an easy track into well-paid positions in the private sector. Students remained subject to somewhat tighter political scrutiny than other fields. For this reason, as one observer in the early 1980s reported, law is “not a popular choice of candidates for admission to universities; it reportedly often appears as the last preference on the list of departments [that] students include on their applications.”<sup>29</sup>

Massive state demand for legal talent, coupled with the minuscule numbers of university graduates, meant that Chinese legal education in the 1980s was provided by a diverse range of institutions. The Ministry of Justice and political-legal institutes ran short-term cadre training programs on new laws and legal concepts for courts, police, and the procuratorate, ranging anywhere from one to six months in length.<sup>30</sup> Junior colleges and secondary technical schools trained a range of personnel who fleshed out the lower ranks of courts and administrative agencies.<sup>31</sup> Graduates from these programs significantly outnumbered those from universities.<sup>32</sup>

Legal education at institutes of higher education remained relatively limited in scale during the 1980s. Total numbers of law graduates rose from around zero in 1980 to roughly 12,000 in the late 1980s. But they accounted for only two percent of all graduates.<sup>33</sup> Nor was there any substantial increase in following years. Higher education entered a deep freeze following state suppression of the 1989 democracy movement. Chinese

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29. Timothy Gelatt & Frederick Snyder, *Legal Education in China: Training for a New Era*, 1 CHINA L. REP. 41, 58 (1980–81).

30. Gelatt & Snyder, *supra* note 29, at 54–55.

31. *Id.* at 50–51. Numbers of *zhuanke* and *benke* law graduates were roughly equal in the late 1980s. DEP’T OF PLANNING, MINISTRY OF EDUC., ACHIEVEMENT OF EDUCATION IN CHINA 1986–1990 28 (1990).

32. This disparity declined with the expansion of higher education. In 1982, there were 7,000 politics and law graduates from secondary technical schools, six times the number of similar graduates from all institutes of higher education (both *benke* and *zhuanke*). In 1990, although there were 20,000 politics and law graduates from secondary schools, this amounted to less than twice the number of graduates from institutes of higher education. NAT’L BUREAU OF STATISTICS OF CHINA, STATISTICAL YEARBOOK OF CHINA 714 (1992).

33. *Id.*

authorities scrapped earlier tentative moves towards political reform, reintroduced Party committee leadership of schools, and slashed the size of entering classes.<sup>34</sup> In 1993, there were actually fewer Chinese law graduates than in 1987.

All of this changed in the 1990s. Multiple policy shifts contributed to a dramatic expansion of legal education.

First, Chinese authorities decided to rapidly expand higher education across the board.<sup>35</sup> In part, this represented a long-range effort (begun in 1993) to raise educational levels of the working age population. But it also was a short-term stimulus package. Authorities sought to surmount the pressures of the 1997-98 Asian financial crisis by rapidly increasing domestic spending on education.<sup>36</sup> In just two years, between 1998 and 2000, entering classes of first-year students in institutes of higher education doubled, exploding from one to two million. The following years witnessed regular, double-digit percentage growth in numbers of Chinese students and faculty alike.<sup>37</sup>

Second, to carry out this expansion, Chinese authorities altered how they managed academic institutions. They moved away from 1980s-era efforts that ran schools as cogs in a state-planned economy. Instead, they granted school administrators more autonomy to manage the regular operations of their institutions.<sup>38</sup> They also adopted new funding mechanisms. Central authorities significantly increased the resources available for higher education.<sup>39</sup>

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34. See Yang, *supra* note 22, at 257.

35. See, e.g., *Zhonggong zhongyang guowuyuan guanyu shenhua jiaoyu gaige quanmian tuijin suzhi jiaoyu de jueding* [Decision of the Central Party Committee and State Council on Deepening Educational Reform and Comprehensively Promoting Quality Education], CHINA.COM.CN, ¶ 9 (June 13, 1999), <http://www.china.com.cn/chinese/zhuantu/tyzcf/885952.htm>.

36. Yang Dongping, *Gaodeng jiaoyu gonggong zhengce de yanbian* [Changes in Higher Education Policy], in *ZHONGGUO JIAOYU FAZHAN YU ZHENGCE 30 NIAN* [CHINA'S EDUCATION DEVELOPMENT AND POLICY 1978-2008] 251, 262-63 (Zhang Xiulan ed., 2008).

37. *Id.*

38. *Zhonggong zhongyang, guowuyuan guanyu yinfa zhongguo jiaoyu gaige yu fazhan gangyao de tongzhi* [Central Party Committee and State Council Notice on the Issuance of the Outline for China's Educational Reform and Development], LAW-LIB.COM.CN, ¶ 18 (Feb. 13, 1993), [http://www.law-lib.com/law/law\\_view.asp?id=55745](http://www.law-lib.com/law/law_view.asp?id=55745).

39. From 1997 to 2005, total expenditures on higher education in China increased six-fold in absolute terms, doubled as a percentage of GDP, and rose from 17.2% to 31.6% of all educational expenditures. Litao Zhao & Sixin Sheng, *China's*

But they did not simply distribute the increased financial resources equally among schools. Rather, they tied the availability of funds to the success of schools in meeting one-size-fits-all target evaluations aimed at building comprehensive universities of national and international repute. Examples included Project 211 (launched in the mid-1990s) and Project 985 (launched in 1998).<sup>40</sup> These rewarded schools based on subjective and numerical targets—percentages of faculty with advanced educational credentials, numbers of academic publications, scope of academic programs, size of school infrastructure (campus buildings, books, labs and technical equipment)—upon which individual schools were evaluated by educational officials.<sup>41</sup> Success in meeting these targets (or in outperforming other institutions) rendered schools eligible for designation as Project 211 or 985 institutions, and the resulting financial and professional benefits.<sup>42</sup>

The result: frenzied competition between schools. Educational institutions purchased expensive equipment,

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*Great Leap in Higher Education*, NAT'L UNIV. OF SINGAPORE E. ASIA INST. BACKGROUND BRIEF NO. 394 (July 24, 2008).

40. See Yang, *supra* note 22, at 320, 351–55.

41. These systems have been repeatedly revised. For one example, see *Jiaoyu bu bangongting guanyu yinfa 'Putong gaodeng xuexiao benke jiaoxue gongzuo shuiping pinggu fang'an (shixing)' de tongzhi* [Notice of the General Office of the MOE on the Issuance of the Evaluation Plan of for Four-Year University Education Work at Institutes of Higher Education (Experimental)], MINISTRY OF EDUC. (Aug. 12, 2004), <http://www.moe.edu.cn/publicfiles/business/htmlfiles/moe/s3879/201010/109707.html>. For others, see *Higher Education Evaluation Center*, MINISTRY OF EDUC., <http://www.heec.edu.cn> (last visited Feb. 15, 2013).

42. For school administrators, financial rewards are certainly a major attraction for being selected. But money is not everything. Designation as a 211 or 985 school has evolved into a proxy for quality, attracting stronger students and well-known professors. These designations are also linked to other benefits—such as the ability to send top students to masters programs at other schools without having to go through the examination process that others must face (*tuijian mianshi*), or adding additional points to their examination scores. Interview No. 1, in Beijing, China (July 19, 2011). See, e.g., 2012 *Zhuoyue falü rencai xialingying jianzhang* [Information for the Summer Camp for Outstanding Legal Talent], SHANGHAI UNIV. LAW SCH. (June 19, 2012), <http://www.law.shu.edu.cn/Default.aspx?tabid=17684&ctl=Detail&mid=31880&Id=99308> (last visited Feb. 15, 2013). The same desire—for recognition, for administrative preferences that can help the school and professors to build themselves and their institution—are behind the fierce competition to be allocated any of the other administrative rewards that the state can bestow (such as official designation as a *boshidian*—an institution able to issue Ph.D. degrees) even absent concrete financial rewards.

expanded their library holdings, and built sprawling satellite campuses. They opened full slates of academic specialties. Politics and law institutes added mathematics, journalism, and foreign language programs.<sup>43</sup> Local teacher training schools and colleges traditionally run by individual bureaus (postal, water resources, radio, and television) all founded law programs, regardless of whether they had the appropriate resources.<sup>44</sup> Schools engaged in hiring sprees of faculty with advanced degrees (making the late 1990s a very lucrative and attractive time to enter academia). They created mechanisms to reward and push faculty toward publishing larger and larger numbers of academic articles.

Naturally, these developments were not unique to legal education. Similar trends took place throughout Chinese schools. But authorities also took specific steps that increased the demand for law degrees.

Starting in the 1990s, reform-minded central authorities launched a policy of professionalizing China's legal organs. Laws issued in 1995 made a degree from an institute of higher education a prerequisite for newly hired judges and procuratorate officials. In 2001, these (as well as the Lawyers Law) were amended to increase the basic educational requirement to a four-year university degree.<sup>45</sup> Consistent with the new central line, authorities reworked their annual evaluation systems for court presidents and bureau chiefs to place greater emphasis on their success in recruiting individuals with university, or better yet, post-graduate degrees. Graduates from masters programs in law at elite Beijing universities around 2000 found themselves in high demand, with urban courts around China aggressively wooing them for entry level

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43. Interview, in Beijing, China (June 13, 2012).

44. Qiang Zha, *Diversification or Homogenization: How Governments and Markets Have Combined to (Re)shape Chinese Higher Education in its Recent Massification Process*, 58 HIGHER EDUC. 41, 44 (2009).

45. The 2001 Lawyers Law and amended versions of the other laws required either a *benke* degree in law, or any *benke* degree along with "specialized legal knowledge." P.R.C. Lawyers Law (promulgated May 15, 1995, amended Dec. 29, 2001), art. 6, <http://www.china.com.cn/chinese/PI-c/92291.htm>; P.R.C. Judges Law (promulgated Feb. 28, 1995, amended June 30, 2001), art. 9(6), [http://www.gov.cn/banshi/2005-05/26/content\\_1026.htm](http://www.gov.cn/banshi/2005-05/26/content_1026.htm) (China); P.R.C. Procurators Law (promulgated Feb. 28, 1995, amended June 30, 2001), art. 10(6), [http://www.gov.cn/banshi/2005-05/26/content\\_1023.htm](http://www.gov.cn/banshi/2005-05/26/content_1023.htm).

positions.<sup>46</sup> Unlike the 1980s, such state positions were now in high demand. Graduates were attracted by the increased salaries and additional perks provided to urban state cadres beginning in the 1990s—including the opportunity to purchase previously state-owned apartments at low prices.<sup>47</sup>

State employment was also no longer the only option for young law graduates. Systems allocating university graduates to jobs had disappeared by the early 1990s. In subsequent years, Chinese authorities undertook the full privatization of the legal profession. State-owned law firms of the 1980s gave way to private firms in the 1990s. Lawyers changed from government cadres to private entrepreneurs, bearing both the profit and loss resulting from their actions.<sup>48</sup> Some became very wealthy, working for successful domestic Chinese firms or for the increasing numbers of foreign law firms in Shanghai and Beijing.<sup>49</sup> For many Chinese students of the late 1990s, the study of law appeared to open a door to enticing, lucrative job prospects in the private sector.

Ideologically, law was also very much in vogue. In the 1990s and early 2000s, central Party authorities embraced legal reform as a tool to advance their own governance interests. In 1997, they adopted “rule by law” (*yifa zhiguo*) as a core Party slogan.<sup>50</sup> Such central policies opened space for a range of actors to appropriate the mantle of legal reform to advance a range of interests. This included state actors. In the late 1990s, US and Chinese authorities launched rule-of-law exchanges and programs as a means of addressing human rights-related issues

46. Interview, in New York, United States (Jan. 27, 2012).

47. The 1990s witnessed the privatization of the existing housing stock owned by Chinese state agencies and public institutions to existing residents (i.e., their employees) at very low rates. Joyce Man, Siqi Zheng & Rongrong Ren, *Housing Policy and Housing Markets: Trends, Patterns, and Affordability*, in *CHINA'S HOUSING REFORM AND OUTCOMES* 3, 4 (Joyce Man ed., 2011).

48. Ethan Michelson, *Unhooking from the State: China Lawyers in Transition*, 64–66, (Aug. 2003) (unpublished Ph.D. dissertation, University of Chicago), available at [http://www.indiana.edu/~emsoc/Publications/Michelson\\_Dissertation\\_Vol1.pdf](http://www.indiana.edu/~emsoc/Publications/Michelson_Dissertation_Vol1.pdf).

49. Foreign and Hong Kong law offices in mainland China grew from 32 in 1995, to 133 in 2002, and then to 203 in 2006. Sida Liu, *Globalization as Boundary-Blurring: International and Local Law Firms in China's Corporate Law Market*, 42 *LAW & SOC'Y REV.* 771, 778, tbl. 1 (2008).

50. See Jiang Zemin, Gen. Sec'y of the Party, Address to the Fifteenth Party Congress, available at [http://news.xinhuanet.com/ziliao/2003-01/20/content\\_697189.htm](http://news.xinhuanet.com/ziliao/2003-01/20/content_697189.htm).



in a politically more acceptable format.<sup>51</sup> But it also included Chinese citizens themselves. By the early 2000s, a cadre of Chinese public interest lawyers and law professors had emerged on the national stage, adept at fusing savvy media strategies and legal challenges to push for greater institutional and social change.<sup>52</sup> Law was hot.

Legal education exploded. From a handful of politics and law institutes and elite universities in the early 1980s, numbers of institutes of higher education with law programs increased to over one hundred in the early 1990s. Within fifteen years, they expanded another six-fold—reaching six hundred by 2006.<sup>53</sup> Total numbers of law graduates from Chinese institutes of higher education surged from 31,500 in 1999, to 163,529 in 2005, and to 208,000 in 2008. But legal education increased proportionally as well. In 1988, law graduates accounted for only two percent of all graduates from institutes of higher education. By 2001, this share had tripled to six percent.<sup>54</sup> Further, it was the very best students who were choosing to study law. Between 1999 and 2002, law ranked annually among the top five majors chosen by top-scoring high school graduates on the national college entrance exam.<sup>55</sup>

Consistent with moves towards professionalization, Chinese legal education became standardized and centered on a university model. The 1980s-era diversity of legal educational institutions faded. Beginning in the late 1990s, authorities upgraded secondary technical schools of law and politics to

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51. Paul Gewirtz, *The U.S.–China Rule of Law Initiative*, 11 WM. & MARY BILL RTS. J. 603, 606 (2003).

52. See generally Fu Hualing & Richard Cullen, Weiquan (*Rights Protection*) Lawyers in an Authoritarian State, 59 CHINA J. 1 (2008).

53. Liang Huixing, *Zhongguo de faxue jiaoyu yu rencai peiyang* [*Chinese Legal Education and Training*], CIVIL LAW (Mar. 11, 2009), <http://www.civillaw.com.cn/article/default.asp?id=43425>.

54. *2001 Putong gaodeng xuexiao fenke xueshengshu* [*2001 Number of Students by Field of Study in Regular Higher Educational Institutions*], P.R.C. MINISTRY OF EDUC., [http://www.moc.edu.cn/publicfiles/business/htmlfiles/moc/moc\\_585/200506/7959.html](http://www.moc.edu.cn/publicfiles/business/htmlfiles/moc/moc_585/200506/7959.html) (last visited Jan. 8, 2013).

55. *Zhongguo zui shou gaokao zhuangyuan qinglai zhuanye paihangbang* [*China's Ranking of Majors Most Favored by Top Scorers on College Entrance Exam*], BEIJING DAILY (May 14, 2009), <http://edu.sina.com.cn/gaokao/2009-05-14/1610199849.shtml> [hereinafter *Ranking of Majors*].

institutes of higher education.<sup>56</sup> They shifted administration of the five specialized politics and law institutes from the Ministry of Justice to the Ministry of Education and local governments (to be managed alongside other schools) and upgraded them to comprehensive universities. In 1998, educational authorities promulgated a mandatory core curriculum of sixteen core classes for undergraduate law majors.<sup>57</sup> In 2002, Chinese authorities unified the previously separate entrance examinations for the bar, courts, and procuratorate into a single national test.

Foreign models heavily influenced Chinese legal education as it grew. This was not new. As early as the late 1970s, cooperative legal exchange programs had brought a generation of Chinese legal scholars abroad as visiting scholars and non-degree students. Upon their return to China, they propagated foreign legal concepts among the next generation of students and academics.<sup>58</sup>

Chinese legal academia became highly focused on the West—specifically, the United States. This influence extended from preferred models of graduate legal education to the specific content of legal academic research.<sup>59</sup> Many Ph.D. dissertations in law written in the 1980s and 1990s consisted of nothing more than translated foreign statutes and cases, imported into China. For some scholars, foreign models also provided a convenient springboard to push for deeper reform.

56. Pei Junjie, *Faxue zhongzhuan jiaoyu* [Legal Education in Technical High Schools], in FAXUE JIAOYU DE ZHONGGUO MOSHI [MODAL OF LEGAL EDUCATION IN CHINA] 37, 43–44 (Ji Xiangde ed., 2010) [hereinafter *Legal Education in Technical High Schools*].

57. Sun Yuan, *Faxue benke jiaoyu* [University Legal Education], in FAXUE JIAOYU DE ZHONGGUO MOSHI [MODAL OF LEGAL EDUCATION IN CHINA] 125, (Ji Xiangde, ed. 2010).

58. See, e.g., Randle Edwards, *Thirty Years of Legal Exchange with China: The Columbia Law School Role*, 23 COLUM. J. ASIAN L. 3, 3–7 (2009). Similar exchanges have continued into the twenty-first century. See Yanmin Cai, *Global Clinical Legal Education and International Partnerships: A Chinese Legal Educator's Perspective*, 26 MD. J. INT'L L. 159, 169–70 (2011) (discussing the evolution of Chinese legal education from its origins as a project sponsored by the Ford Foundation); Brian Landsberg, *Promoting Social Justice Values and Reflective Legal Practice in Chinese Law Schools*, 24 PAC. MCGEORGE GLOBAL BUS. & DEV. L.J. 107, 110–11 (2011) (discussing projects run by McGeorge Law School, and funded by the United States Agency for International Development, promoting experiential legal education in China).

59. He Weifang, *China's Legal Profession: The Emergence and Growing Pains of a Professionalized Legal Class*, 19 COLUM. J. ASIAN L. 138, 147–48 (2005).

In the 1990s, Chinese scholars reinvigorated the study of constitutional law, advancing the concept of constitutional supremacy (*xianfa zhishang*) and importing US constitutional law materials, as part of calls for tighter limits on Chinese state power.<sup>60</sup>

In summary, as Chinese legal education entered the twenty-first century, it appeared to face a future full of prospects—growing numbers of graduates, booming employment prospects, expanding academic research, deepening international connections, and the promise of an important role in a nation in which law would be increasingly influential.

## II. CRISIS

This rosy future did not occur, however. Structural shifts have undermined the underlying factors supporting rapid growth of Chinese legal education during the late 1990s and early 2000s.

### A. *Overexpansion and Unemployment*

Job opportunities for new law graduates have plunged. In part, this reflects severe employment pressures among all Chinese college graduates.<sup>61</sup> But it is most pronounced among law students. In recent years, law students have ranked dead last among all college graduates in terms of finding jobs.<sup>62</sup> Unsurprisingly, law programs have been “red-carded” in educational surveys. Students have been cautioned against

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60. See, e.g., Wu Jialin, *Xianfa zhishang shi jianshe fazhi guojia zhi guanjian* [*Constitutional Supremacy is the Key to Constructing a Nation Ruled by Law*], 3 *STUD. L. & BUS.* 14 (1998).

61. Bruce Einhorn & Dexter Roberts, *New College Grads Can't Find a Job*, *BLOOMBERG BUSINESSWEEK* (Oct. 11, 2004), [http://www.businessweek.com/magazine/content/04\\_41/b3903067.htm](http://www.businessweek.com/magazine/content/04_41/b3903067.htm); Yasheng Huang, *What Is A College Degree Worth in China*, *N.Y. TIMES*, Dec. 2, 2010, available at <http://www.nytimes.com/roomfordebate/2010/12/02/what-is-a-college-degree-worth-in-china/reform-chinas-private-sector-14>.

62. From 2008 to 2010, employment rates for graduates (calculated six months after graduation) ranged between 79.5% to 86.7% for university law graduates, and 75% to 79% for graduates with junior college law degrees. Corresponding rates for university graduates with engineering degrees are 93.3% (2010), and 90% for junior college students with tourism degrees (2010). MYCOS RESEARCH INST., 2011 *ZHONGGUO DAXUESHENG JIUYE BAOGAO* [CHINESE COLLEGE GRADUATES EMPLOYMENT ANNUAL REPORT (2011)] 55–56, tbl. 1–2–3 (providing the annual numbers from 2008 through 2010).

choosing to study law; schools advised to shrink the size of their law programs.<sup>63</sup> What explains this?

In the early 1990s, law was an extremely “hot” social science major. At that point, the rebuilding and development of courts, procuratorates, and law firms provided large numbers of job opportunities for legal professionals. Demand outstripped supply. But in just ten years, the employment situation for law graduates has experienced a dramatic turnaround. . . .As a result of the blind expansion in legal education, annual numbers of law graduates now total over 100,000. This scale vastly exceeds actual demand.<sup>64</sup>

This mismatch has dramatically affected public sector employment prospects for law graduates. The boom of the late 1990s and early 2000s has given way to oversaturation. State organs now find themselves deluged with hundreds of applicants for every available position.<sup>65</sup>

Nor has the private sector lived up to the hype of the late 1990s. True, a handful of elite law firms did experience rapid growth during the early 2000s.<sup>66</sup> But Chinese lawyers remain institutionally weak, beset by state pressure and market competition from other actors.<sup>67</sup> Total growth in the bar remains far from sufficient to absorb the massive numbers of new law graduates streaming out of schools each year. Between 2000 and 2010, the number of licensed lawyers rose from

63. *Id.* at 118–21. Examples of other fields receiving “red card” warnings include animation and physical education teaching. Tong Shuquan, *Daxue 20 ge zhuanye jiuqianan donghua faxue zao jinggao* [Poor Employment Prospects for 20 University Majors; Animation, Law Receive “Warnings”], BEIJING DAILY (June 12, 2012), <http://edu.sina.com.cn/gaokao/2012-06-12/0814342895.shtml>.

64. Sun, *supra* note 57, at 106, 111.

65. See, e.g., *Mingpai daxue benke zhengqiang faxueyuan shujiyuan gangwei re zhengyi* [Graduates From Elite Universities Fight for Position as Court Secretary, Incites Controversy] SOHU NEWS (June 24, 2007), <http://news.sohu.com/20070624/n250736266.shtml> (discussing 434 applicants, including those from elite schools, competing for a clerical position on a Beijing court).

66. Xueyao Li & Sida Liu, *The Learning Process of Globalization: How Chinese Law Firms Survived the Financial Crisis*, 80 *FORDHAM L. REV.* 2847, 2851–55 (2012).

67. Sida Liu, *Lawyers, State Officials and Significant Others: Symbiotic Exchange in the Chinese Legal Services Market*, 206 *CHINA Q.* 276 (2011).

117,000 to 194,000—an increase of 77,000.<sup>68</sup> Numbers of new university law graduates in the same period: 824,000.<sup>69</sup>

Of course, one might reasonably raise the question: does this really matter? After all, the study of law in China (as with other civil law countries) has traditionally been an undergraduate, rather than graduate, pursuit. Perhaps it isn't important whether students actually end up practicing law?

But this question misses the key issue. The problem is not that Chinese law students cannot find jobs as lawyers. Rather, it is that they rank at the bottom of *all* college students in terms of finding *any* job, be it public, private, legal, or non-legal. One key reason: more than any other field of study, their education bears no relevance to their actual job prospects. Three years after graduation, only fifty-five percent of university law graduates (and only thirty-seven percent of junior college graduates) report employment “related” to their studies. Again, these are the lowest figures for all fields of study surveyed.<sup>70</sup>

The flood of new law graduates is only one factor behind rising unemployment and underemployment. The mismatch between their skills and the actual demand for their services is yet another. So, while numbers of new graduates have surged over the past decade, some jobs go unfilled for a lack of qualified personnel. Domestic and international firms struggle to locate talent with the right mix of legal and language skills, capable of operating in a fully international environment. Rural courts in western China find themselves unable to attract university graduates to fill gaping vacancies in their rosters.<sup>71</sup>

Naturally, poor quality education also contributes to the difficulty of graduates in finding jobs. Rapid expansion of legal

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68. Ji Fei & Cui Qingxin, *Woguo lushi duiwu renshu jin 20 wan ren* [Numbers of Lawyers in China Approaches 200,000], XINHUA, Nov. 23, 2010, available at [http://news.xinhuanet.com/legal/2010-11/23/c\\_12806164.htm](http://news.xinhuanet.com/legal/2010-11/23/c_12806164.htm); *2001 lushi, gongzheng, tiaojie gongzuo jiben qingkuang* [2001 Basic Information About the Work of Lawyers, Notaries, and Mediators], P.R.C. NAT'L BUREAU OF STATISTICS, <http://www.stats.gov.cn/tjsj/ndsj/2001c/v2204c.htm>.

69. See Chart 3, *infra* note 76.

70. MYCOS RESEARCH INST., 2012 ZHONGGUO DAXUESHENG JIUYE BAOGAO [CHINESE COLLEGE GRADUATES EMPLOYMENT ANNUAL REPORT (2012)], 22021, tbls. 2–2–22, 2–2–23.

71. Wang Chenguang, *Pengbo sanshi zai, zhanchi xiang weilai* [Thirty Years of Growth, Spreading Our Wings and Looking to the Future], LEGAL DAILY (Sept. 1, 2008), [http://news.jcrb.com/xwj/200809/t20080901\\_68080.html](http://news.jcrb.com/xwj/200809/t20080901_68080.html).

education in the late 1990s and early 2000s led to the overnight proliferation of many programs where “everything from the teachers and students to the training actually provided is of low quality.”<sup>72</sup> Even among more highly ranked programs, much of Chinese legal education remains characterized by an academic and theoretical focus that does little to prepare students for actual careers. As one lawyer put it, “I did an undergraduate, masters, and Ph.D. degree in law here in China. All of it was utterly worthless in terms of preparing me to actually work.”<sup>73</sup>

These trends have prompted a reassessment of legal education among students. For many, law has become less attractive as a major. Beginning in 2005, law fell off of the list of most highly desirable majors (chosen by the best performing students on the national college entrance examination).<sup>74</sup>

Simply put: in 2000, law was hot. Now it’s not.

Declining student interest and weaker job prospects, however, have not immediately translated into significant declines in the absolute number of Chinese students studying law. Choice of major is not entirely in the hands of students. Rather, Chinese universities face state-mandated college entrance quotas for particular majors.<sup>75</sup> And since many students would rather attend any university program than none at all, fields of study that are in little demand can still remain completely filled by students for whom they serve as a “safety” choice of last resort.

Nonetheless, changes are underway. Since the early 2000s, Chinese authorities have begun to curtail the relative growth of legal education.

Chart 3 illustrates this point in greater detail.<sup>76</sup> It displays the total number of Chinese students graduating with four-year

72. Sun, *supra* note 57, at 111.

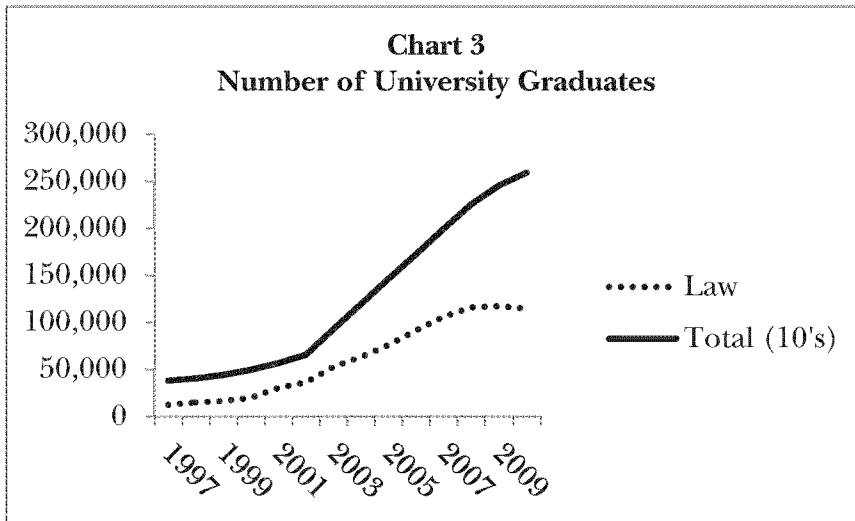
73. Interview, in Beijing, China (July 5, 2012).

74. *Ranking of Majors*, *supra* note 55.

75. For example, the 2011 quota charged the Northwest University of Politics and Law (“NWUPL”) with accepting 201 students from Shaanxi province to study commercial law, 71 to study English, and 35 to study philosophy. See *Xibei zhengfa daxue 2011 nian gaokao zhaosheng jihua zongbiao (zhuan ye fangxiang)* [Master Chart for the 2011 NWUPL Student Recruitment Plan (Majors)], NW. UNIV. OF POLITICS & LAW (May 11, 2011), <http://www.nwupl.cn/zhaosheng/benke/zsjz/2011/05/11/2960.html>.

76. For an explanation of the data sources, see Chart 1, *supra* note 12 and accompanying text.

university (*benke*) degrees in law from institutions of higher education, compared with all university graduates [the latter being divided by ten for the purpose of graphic illustration].



Since the turn of the century, numbers of university law graduates have grown rapidly along with the rest of higher education. They also increased proportionally—reaching 5.7% of all university graduates by 2003.<sup>77</sup> But in recent years, Chinese authorities have begun limiting the numbers of entering law students.

As a result, although the total number of students in institutes of higher education continues to grow, the percentage of them studying law has declined.<sup>78</sup> Out of 2.6 million university graduates in 2010, 4.4% (114,588) received law degrees.<sup>79</sup> This

77. *Putong gaodeng xuexiao fenke xueshengshu* [2003 Number of Students by Field of Study in Regular Higher Educational Institutions], MINISTRY OF EDUC., [http://www.moc.edu.cn/publicfiles/business/htmlfiles/moc/moc\\_593/200507/10487.html](http://www.moc.edu.cn/publicfiles/business/htmlfiles/moc/moc_593/200507/10487.html) (last visited March 11, 2013). Law graduates reached 5.9% of all graduates from institutes of higher education (including *zhuanke* students). *Id.*

78. See Chart 2, *supra* note 12 and accompanying text (giving figures for graduates of all institutions of higher education, including both university and junior college students).

79. See *Putong gaodeng xuexiao fenke xueshengshu* [2010 Number of Students by Field of Study in Regular Higher Educational Institutions], MINISTRY OF EDUC., <http://www.moe.edu.cn/publicfiles/business/htmlfiles/moe/s6200/201201/>

trend is set to continue. Law students represented 3.8% of entering university students in 2010. They comprised only 2.9% of all students entering institutions of higher education—half the percentage set a decade earlier.<sup>80</sup>

In fact, even total numbers of law students may have hit an inflection point. Since 2009, for the first time in decades, absolute numbers of both Chinese university and junior college law graduates have actually decreased on an annual basis.<sup>81</sup>

### *B. Degree Devaluation*

The rapid increase in the number of Chinese law degrees over the past fifteen years has severely eroded their value. When relatively rare in the 1990s, undergraduate (or even junior college) law degrees sufficed to get good jobs. Now a common commodity, they no longer do.

As with currency, this has driven an inflationary spiral. As massive expansion in the supply of one degree leads to a devaluation in its worth, employers respond by demanding yet higher degrees as entrance criteria. Students are driven to seek such degrees to stay competitive.

Chart 4 illustrates these trends.<sup>82</sup> It displays the number of students entering (rather than graduating from) law programs at institutes of higher education.

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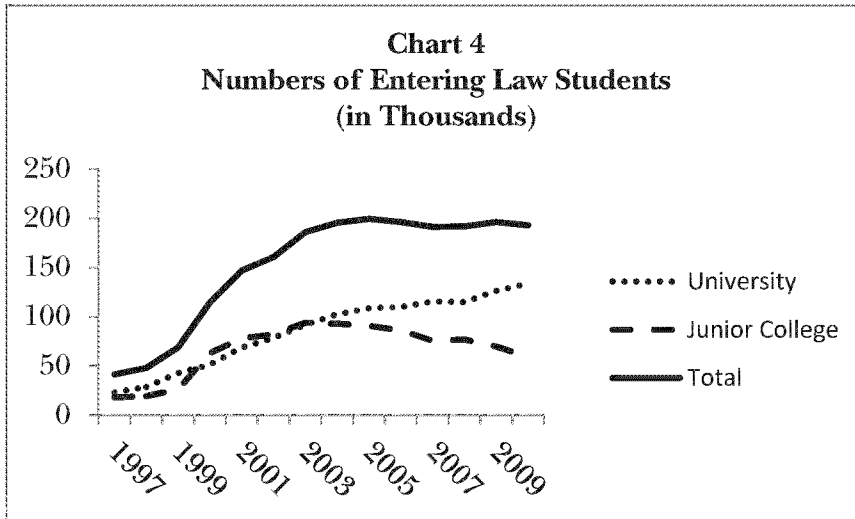
129594.html (last visited March 11, 2013). In 2010, law students comprised 3.4% of all graduates (including both *benke* and *zhuanke*) from institutions of higher education. *Id.*

80. *Id.*

81. See Chart 1, *supra* note 12. Note, however, that there has been an uptick in numbers of students admitted to university law programs in the past two years. See Chart 4, *infra* note 82.

82. For an explanation of the data sources, see *supra* note 12 and accompanying text.



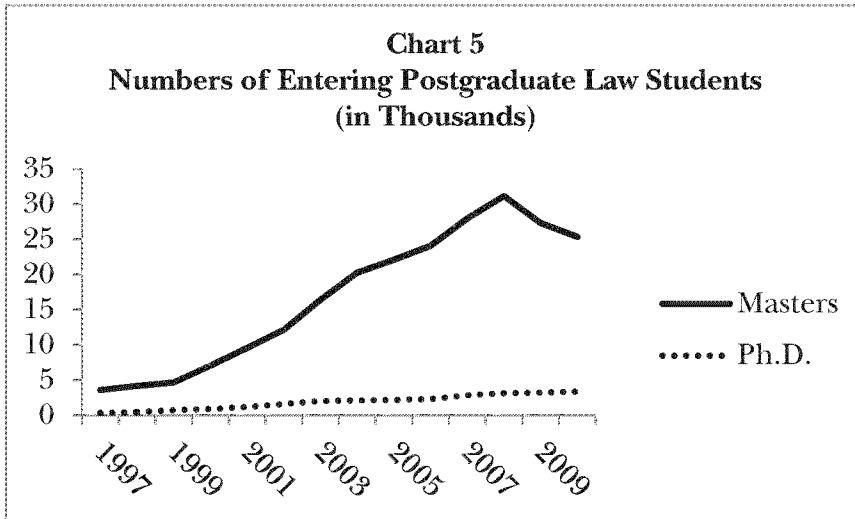


The overall number of students entering Chinese law programs after secondary school has remained almost unchanged since 2004. But there has been a sharp decline in the numbers of students entering junior college programs. This makes sense. Since 2001 legal reforms raised educational requirements for all new judges, prosecutors, and lawyers to university degrees, the value of junior college programs has eroded in the eyes of the state and students alike.<sup>83</sup>

A similar dynamic has taken place with regard to post-graduate legal education. Chart 5 gives the data for two—doctoral and the “academic” master’s (LL.M.—*faxue shuoshi*) programs.<sup>84</sup>

83. Liang Wenyong, *Faxue dazhuan jiaoyu [Junior College Legal Education]*, in FAXUE JIAOYU DE ZHONGGUO MOSHI [MODAL OF LEGAL EDUCATION IN CHINA], 76, 78–79 (Ji Xiangde ed., 2010).

84. *Putong gaoxiao fenxueke yanjiusheng shu [Graduate students in regular institutes of higher education]*, MINISTRY OF EDUC. (2012), [http://www.moe.edu.cn/publicfiles/business/htmlfiles/moe/moe\\_1394/200703/20414.html](http://www.moe.edu.cn/publicfiles/business/htmlfiles/moe/moe_1394/200703/20414.html).



Since the late 1990s, numbers of master's and Ph.D. students in law have increased dramatically. In part, this reflects the general expansion of higher education. But state authorities also enlarged master's programs as a means to absorb growing numbers of university law graduates unable to find jobs.<sup>85</sup>

This is a problem. It is a youth unemployment bulge disguised as an increase in postgraduate education. Rather than solving problems, it merely postpones them. Around 2003, graduates holding master's degrees in law could walk into good positions in urban courts or Beijing universities.<sup>86</sup> But rapid proliferation of these degrees has led to their devaluation as well. This has led to the emergence of media reports such as "Graduate with Masters in Law Seeks Position as Cafeteria Worker."<sup>87</sup>

85. See Yanjiusheng, "Paomou" wei he yue chui yue da [Why the Graduate Student "Bubble" Is Being Blown Bigger and Bigger], XINHUA DAILY TELEGRAPH (July 17, 2012), <http://edu.163.com/12/0717/16/86KMEMR300293NU2.html>.

86. Interview, in Beijing, China (June 13, 2011); Interview, in New York, United States (Jan. 27, 2012).

87. Chen Hui, *Faxue suoshi yingpin canting fuwuyuan* [Graduate with Masters Degree in Law Seeks Position as Cafeteria Worker], CHUTIAN JINBAO (May 14, 2012), <http://cjb.cnhubei.com/huml/cjb/20120514/cjb1733469.html>. The same dynamic exists with regard to doctoral degrees. Beijing universities that once aggressively sought

As a result of this spiral of degree devaluation, many Chinese law students are willing to spend large sums of money on advanced degrees to distinguish themselves from other graduates. Enrollment in foreign LL.M. programs (with tuition ranging up to US\$50,000 a year) has surged. Chinese schools have expanded their J.M. (*falü shuoshi*—or “professional” law masters) programs, charging four times as much in tuition per student as compared with the “academic” master’s degrees.<sup>88</sup> The Peking University School of Transnational Law has recruited students seeking an English-language education in American law (US\$38,000 spread over four years), along with a Chinese J.M. degree.<sup>89</sup>

Of course, for many students, it is unclear whether the benefit produced by these programs justifies their cost. As Matthew Erie has noted, J.M. degree programs remain beset by the same problems—rote memorization and a lack of focus on practical skills—that limit the employability of domestic LL.M. (or undergraduate law) graduates.<sup>90</sup>

Moreover, some of these programs are experiencing degree devaluation as well. Take foreign LL.M. degrees. In the early 2000s, the cost-benefit analysis made rational economic sense—the mere possession of a foreign degree from any American law school rendered students competitive for positions at foreign law firms in China. But as LL.M. degrees have proliferated, their value has eroded in the eyes of both foreign and domestic firms. As one lawyer in a top domestic Chinese firm noted, “An LL.M.,

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domestic Ph.D.’s for legal teaching positions have now adopted explicit policies on only hiring candidates holding overseas degrees. Interviews, in Beijing, China (Jun. 29, 2012).

88. Matthew S. Eric, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 59 J. LEGAL EDUC. 60, 75–76 n.51 (2009); Interviews with various Chinese Law School Deans and Professors, in Kunming, China (Aug. 12, 2011). Launched in 1996, the J.M. was initially aimed at students who had not previously studied law as an undergraduate degree. Modeled along the American J.D. degree, it was supposed to prepare students for professional careers, in contrast to the academic and research orientation of the domestic LL.M. degree. Eric, *supra*, at 67–68.

89. See *Beijing daxue guoji faxueyuan 2013 nian guoji falü shuoshi/J.D. (fei faxue) zhaosheng jianzhang* [Peking University School of Transnational Law, General Regulations on 2013 Student Recruitment for the International Master’s of Law/J.D. (non-law undergraduates)], PEKING UNIV. OF TRANSNAT’L LAW, § 7 (Sept. 2012), <http://stl.pku.edu.cn/cn/ListDetail.aspx?NodeCode=915006002&Id=100000593821377>.

90. Erie, *supra* note 88, at 70–72.

by itself, does not mean that much—just about everyone has one, and it is hard to sense the impact.” In contrast, “if we see a resume with a J.D. (somewhat rare), that person is given a very hard look.”<sup>91</sup>

Nor are foreign degrees alone in experiencing devaluation. Characteristics of the J.M. program suggest that it is also at risk. Chinese deans report that they are being guided to increase the size of their J.M. programs.<sup>92</sup> But the short-term financial incentives of schools in doing so are not aligned with long-term employability of graduates. Further, many graduates from lower-ranked institutions enroll in J.M. programs at higher-ranked schools not because they have any interest in law at all, but merely to obtain (at the cost of elevated tuition) any degree from a more prestigious institution.<sup>93</sup>

Of course, at some point, this cycle encounters limits. Students decide that the economic return on a degree is not worth the investment of time (or money). State authorities voice concerns about educational quality. As a result of these trends, deans report that they are being guided to reduce the size of their (primarily state-funded) academic master’s programs.<sup>94</sup>

Take the China University of Politics and Law, for example. Numbers of students entering academic master’s programs in law surged from 394 (in 2003) to 755 (in 2009). But in the last three years, these numbers have declined by twenty six percent, reaching 556 in 2012.<sup>95</sup> As Chart 5 indicates, this is a nationwide trend.

Degree devaluation has also altered the dynamics within universities. In the late twentieth century, degrees themselves

91. Personal communication from lawyer in domestic Chinese firm, (June 18, 2012).

92. Since 2009, educational authorities have allowed students with undergraduate degrees in law to enter J.M. programs—theoretically expanding the numbers of possible applicants. Interviews with various Chinese Law School Deans and Professors, in Suzhou, China (June 23–24, 2012); Personal Communication from Dean in Chinese law school, (Oct. 14, 2012).

93. See Erie, *supra* note 88, at 74.

94. Interviews with various Chinese Law School Deans and Professors, in Suzhou, China (June 23–24, 2012).

95. See lihujun1981, *2012 Fada shuoshi zhaosheng jianzhang chulai le faxue shuoshi shaosheng renshu xiajiang jin 100 ren* [2012 CUPL Admissions Data Released: Numbers of Academic Masters Students Drop by 100], KAOYAN (Aug. 11, 2011), <http://bbs.kaoyan.com/t3910936p1> (compiling data for the past eight years).

were tickets to good jobs. The national college entrance examination (*gaokao*) served the credentialing function for employment purposes. Pass the exam, you entered college, and you were guaranteed a good job upon graduation. Obviously, this generated intense pressure on high school students (making their lives a living nightmare studying for the exam). But things were quite different once they successfully entered university. Students and professors alike were free from the pressure of needing to study for, or teach to, a specific exam.

This has changed. Degrees are no longer rare. Jobs are. As a result, the employment credentialing function has partially shifted away universities. This is particularly true in the wake of the creation of the national judicial examination (in 2002) and civil service examination (launched in 1994, regularized in 2002).<sup>96</sup> Of course, it still matters whether applicants have degrees from elite universities. But success on the judicial or civil service examinations has increasingly emerged as a key selling point for students entering the job market.

Law professors and students note that this has changed the atmosphere of classes. This is particularly true since 2008, when Chinese authorities began to allow law students who had completed the third year of their university studies to sit for the judicial examination. Students feel pressure to spend significant time during their junior year preparing for the exam. A “cram school” atmosphere has spread on some campuses. Characteristics associated with Chinese high schools—rote memorization for standardized tests, a lack of interest in broader topics outside the exam material—are being imported into university legal education. Further, because schools are increasingly rated on their ability of their students to pass the national judicial exam, some professors report increasing

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96. Yuan Dingbo, *Guojia sifa kaoshi yi li 10 jie, baogao renci chao 300 wan* [Tenth Anniversary of the National Judicial Examination, Over Three Million Applicants], LEGAL DAILY, July 25, 2012, available at <http://edu.sina.com.cn/zgks/2012-07-25/0815350103.shtml>. A limited experiment with civil service examination was held by several bureaus as early as 1989. By the early 2000s, the exam had become regularized, attracting large numbers of applicants (over a million in 2011). *Jiyi: 1994 nian zhongyang guojia jiguan shouci zhao kao gongwuyuan* [Flashback: In 1994, First Civil Service Examination Held For Central Government Bureaus], S. WEEKEND, Nov. 15, 2011, available at <http://edu.sina.com.cn/official/2011-11-15/1711318309.shtml>.

pressure to adjust the content of their classes to teach to the exam.<sup>97</sup>

### C. *Institutional Distortion*

Heavy use by central authorities of target-intensive, one-size-fits-all evaluation mechanisms to develop higher education have created severe institutional distortions.

First, they have encouraged massive overexpansion. Rapid expansion of legal education has not been a carefully considered response to actual student or social demand. Rather, it has been part of an arms race among schools competing for central recognition as (for example) Project 211 or 985 institutions. The same is true for the physical facilities of schools. As one vice-dean complains, “I try ordering quality publications for the library, but the staff just cuts me off, telling me I don’t know what I’m doing if I want to make the targets for numbers of books in the library.”<sup>98</sup>

Second, they have pushed all schools to uniformly model themselves as research institutions, regardless of whether this is appropriate for their students and communities. Institutions ranging from local teacher training schools to national research universities find themselves driven to emphasize the same priorities: increase the educational qualifications of your faculty; generate large numbers of published articles.

Third, top-down evaluation mechanisms have led to an intense focus on “making target” throughout higher education, with highly negative consequences for educational and academic quality. Universities farm out specific numerical targets to individual schools (hire X number of Ph.D.’s this year). Deans do the same to individual professors (produce Y numbers of articles this year), linking success to salary and promotion prospects.<sup>99</sup>

This has resulted in ever-escalating competition to rack up higher numbers. Since the late 1990s, schools have steadily increased numerical requirements facing academics. Take

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97. Interviews, in Xi’an, China (Aug. 7–8, 2011); Interviews, in Kunming, China (Aug. 10, 2011).

98. Interview, in Kunming, China (Aug. 12, 2011).

99. *See id.*; *see also* Interview, in Xi’an, China (Aug. 7, 2011).

publications, for example. In the early 1990s, a single article or two might have sufficed to permit an academic to ascend to full professor status. Now, schools routinely require Chinese academics to crank out multiple articles every year as they ascend from lecturer to assistant professor to full professor, and even afterwards.<sup>100</sup>

As competition has intensified, new quantitative targets have multiplied. For example, since the launch of the national judicial examination in 2002, officials have increasingly made pass rates of graduates an important factor in evaluating schools. Since the early 2000s, schools have increasingly made success in obtaining research grants (*keti*) issued by national or provincial-level governments a requirement for academics to be promoted from one rank to the next.<sup>101</sup>

One might ask—but, isn't this actually *good*? Competition leads to greater production. And it generates a search for new numerical standards for comparison.

But some targets are only loosely related to actual education and research. As one Chinese law school dean fumed, “Some of these things are thought up by outsiders [i.e., administrators who don't understand education]—if you apply our evaluation standards, Japan doesn't have any top-ranked universities.”<sup>102</sup> Other targets (such as the physical size of campus facilities) appear to be motivated by a desire for large-scale projects that generate jobs or political achievements (*zhengji*) that administrators can point to as tangible successes in order to promote their own careers. Still others are driven by the bureaucratic need for indicators capable of being quantitatively measured (numbers of articles, numbers of professors with Ph.D.'s), despite the poor fit between what is being measured and the actual output desired (high quality research and teaching).<sup>103</sup>

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100. See Interview, in New York, United States (Mar. 4, 2012).

101. See *id.* The rise of *keti*—numbers, funding, links to academic promotion—might offer an interesting opportunity to study the increased “administratification” of academia in China over the past decade.

102. Interview, in Kunming, China (Aug. 10, 2011).

103. Such problems parallel those found in a wide range of systems outside of China as well. See, e.g., Kevin E. Davis, Benedict Kingsbury, & Sally Engle Merry, *Introduction: Global Governance By Indicators*, in GOVERNANCE BY INDICATORS 3, 3–28 (Kevin E. Davis et al. eds., 2012).

Pressure to hit designated numerical targets has helped fuel a widespread culture of academic corruption and junk research. As one professor (and standing committee member in the consultative chamber of China's national legislature) phrased it:

Because existing evaluation systems unilaterally emphasize numbers of articles and length of manuscripts, researchers produce huge amounts of scholarly garbage. Many works are low-quality copies [of other works] or lack any publication value, and have never been read or cited [by anyone]. In order to get published in a given journal, some authors and the organizations that employ them resort to a range of dishonest measures. These include: dropping the actual author of a work and convincing a famous individual or international scholar to allow themselves to be listed as the first author; using material and non-material incentives to buy off an outside evaluator or editor of a journal, or creating interest-based alliances [of scholars], that mutually tout each other to advance, and cooperate to block outsiders and dissenters.<sup>104</sup>

Schools deceive central evaluation teams with regard to other targets. Administrators make side payments to academics at other institutions, falsely report them as their own faculty, and thereby raise their own statistics of advanced degree holders.<sup>105</sup> Some schools falsify employment statistics for their graduates. Others condition issuance of diplomas on the ability of students to present proof of post-graduation employment. This puts students in a "Catch-22" situation. They themselves may need proof of employment to obtain jobs. As a result, students are pushed to falsify evidence of their own employment, thereby allowing schools to report high employment rates.<sup>106</sup>

Markets have developed to capitalize on the economic value associated with targets. In response to official systems that evaluate articles (and the schools where the authors are

104. Ge Jianxiong, *Xueshu fubai, xueshu shifan yu xuefeng buzheng: tanjiu yu sikao* [Academic Corruption, Dishonesty, and Misdeeds: Research and Thoughts], in ANNUAL REPORT ON CHINA'S EDUCATION 123, 125 (Yang Dongping ed., 2010).

105. See Interview, in Shanghai, China (July 21, 2011).

106. See Tan Renwei, *Biyesheng fatie jie xujia jiu ye zhenxiang beijiuye cheng wangluo liuxing yu* [Posting by Graduate Reveals Truth Behind False Employment Statistics, "To Be Forcibly Employed" Becomes Internet Catchphrase], S. METROPOLIS DAILY, July 17, 2009, available at <http://finance.ifeng.com/topic/dxsjy/job/zcyw/20090717/951784.shtml>.



employed) on citation counts, at least one school has developed an internal reward system in which professors who cite articles written by colleagues are paid fifty  *yuan* per citation.<sup>107</sup> Efforts can be even more direct. In the spring of 2012, scandal rocked the Hunan provincial education bureau when it was revealed that officials had engaged in an extensive web of academic corruption that included accepting payments (according to set pricing schemes) in return for favorable target evaluations.<sup>108</sup>

Single-minded focus on making target has led to a pervasive disregard for those components of higher education that are difficult to measure quantitatively (such as actual quality of academic articles) or are not heavily emphasized in the evaluation process (such as teaching). Administrators and law professors have little to no reason to ensure that education has any real world relevance. Nor do they have any incentive to devote any more than the most minimal amount of effort to teaching. Many classes remain no more than warmed-over recitations of statutory provisions, with a dose of abstract Western legal theory thrown in for good measure. As one former law dean notes, “The energy of the schools and professors is no longer on actually teaching students, but rather on obtaining government grants and writing articles. Education is secondary.”<sup>109</sup>

Last, as Chinese deans themselves note, the spread of top-down target management systems has generated a dangerous “administrification” (*xingzhenghua*) of higher education.<sup>110</sup> They have led to a rapid influx of money and power that has imported pervasive corruption and governance problems present elsewhere in Chinese bureaucracy into higher education as

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107. Interview No. 2, in Beijing, China (July 19, 2011).

108. Chen Ming, *Gushou jiaoshou* [Selling Professorships], S. WEEKEND, May 10, 2012, available at <http://www.infzm.com/content/75071>.

109. Interview No. 3, in Beijing, China (July 19, 2011). Naturally, many of these same problems exist in American legal education as well.

110. See, e.g., Gao Xin, *Faxue jiaoyu ying shi jingying jiaoyu* [Legal Education Should be an Elite Education], LEGAL DAILY, May 17, 2012, available at [http://www.legaldaily.com.cn/fxjy/content/2012-05/17/content\\_3580552.htm](http://www.legaldaily.com.cn/fxjy/content/2012-05/17/content_3580552.htm)

(presenting comments from Jiang Ping, former president of China University of Politics and Law); Qiu Chunyan, *Jia Yu: Xingzhenghua shi xueshu de tiandi*, [Jia Yu: Administrification is the Natural Enemy of Scholarship], PROCURATORIAL DAILY, Nov. 19, 2007, available at <http://www.jcrb.com/n1/jcrb1478/ca654893.htm> (presenting comments from Jia Yu, president of the Northwest University of Law and Politics).

well.<sup>111</sup> They have placed school administrators in the position of regular supplicants vis-à-vis the Ministry of Education.<sup>112</sup> This has eroded the limited autonomy that schools have enjoyed since the beginning of the reform period. Chinese academics suggest that this has weakened their role as voices that speak truth to power.<sup>113</sup>

Chinese academics are very negative about these trends. They perceive that this has resulted in a significant decline in the quality of Chinese education since the late 1990s. “The system itself creates moral problems.”<sup>114</sup> “We’ve forgotten what a university is.”<sup>115</sup>

Is this to suggest that all of Chinese higher education is junk? No. Many dedicated teachers remain committed to improving the quality of education. Many young scholars are conducting rigorous, careful research. But the environment around them is toxic. Many in Chinese academia themselves are highly cynical about the products of their own educational enterprise. As one Chinese dean put it, “out of ten law professors, one is great, two are OK, and seven are unqualified.”<sup>116</sup>

#### D. *The Turn Against Law*

Last, recent years have seen a shift in political winds. Starting in the early 2000s, central leaders began to reconsider legal reforms they had launched in the 1980s and 1990s.<sup>117</sup>

Practically, Chinese authorities perceived that some reforms, such as the 1990s-era emphasis on court adjudication

111. See generally Carl F. Minzner, *Riots and Cover-ups: Counterproductive Control of Local Agents in China*, 31 U. PA. J. INT’L L. 53 (2009).

112. See Interviews, in Shanghai, China (Aug. 16, 2011).

113. One notes that the need to curry favor to obtain government grants “deprives you of your sense of pride” as a scholar. Interview, in Beijing, China (July 15, 2011). Others assert that onerous paperwork and procedures associated with obtaining such grants (combined with the limited utility they generate) are an effective tool for state authorities “buy off the time of intellectuals” and prevent them from engaging in political activism. Interviews, in Shanghai, China (June 1, 2012).

114. Interview, in Beijing, China (July 15, 2011).

115. Interview, in Kunming, China (Aug. 12, 2011).

116. Interview, location withheld (June 5, 2011).

117. See Minzner, *supra* note 6, at 948. Some language below is directly adapted from the author’s earlier article.

and a professional judiciary, responded poorly to the needs of a rural China lacking in legal talent. Politically, Party authorities decided to rein in the judges, officials, and public interest lawyers who had sought to deepen Chinese legal reforms as a meaningful, institutionalized check on state power.<sup>118</sup>

Effects of this shift radiated outward. Substantively, Chinese authorities deemphasized the role of formal law in dispute resolution. Instead, they revived Maoist-era mediation institutions.<sup>119</sup> And starting in 2006, Party authorities launched “Socialist Rule of Law” political campaigns that re-emphasized Party supremacy and warned against the infiltration of “Western” rule-of-law concepts.<sup>120</sup>

Authorities attempted to imprint legal education with their new ideological line. Political-legal officials asserted that “Socialist Rule of Law [must] ‘enter schools, classrooms, and minds.’”<sup>121</sup> In 2007, they altered the national judicial exam to include “socialist rule of law” as a major field on which students are tested.<sup>122</sup> In 2009, they published a textbook on the subject<sup>123</sup> and opened university classes on it in 2010.<sup>124</sup>

Such Party policies affected law schools. Central authorities formalized alternatives to regular university law programs to fill positions in local courts and governments. Beginning in 2008,

118. *See id.* at 947–48.

119. *See id.* at 945.

120. Luo Gan *Qiushi fa wenzhang: Jiaqiang shehuizhuyi fazhi linian jiaoyu* [Luo Gan Publishes Article in “Seeking Truth”: Strengthen Socialist-Rule-of-Law Education], XINHUA, June 15, 2006, available at [http://news.xinhuanet.com/politics/2006-06/15/content\\_4703143.htm](http://news.xinhuanet.com/politics/2006-06/15/content_4703143.htm). Such ideological efforts have become regular features within Chinese courts and other institutions, reflected in materials for judges to review in internal political study sessions. Minzner, *supra* note 6, at 949–50.

121. Sun Chunying, *Zhengfawei chutai shenru kaizhan shehui zhuyi fazhi linian jiaoyu yijian* [Politics and Law Committee Issues Opinion on Deepening Socialist Rule-of-Law Education], MINISTRY OF PUB. SEC., Feb 2, 2009, available at [http://www.gov.cn/gzdt/2009-02/09/content\\_1225477.htm](http://www.gov.cn/gzdt/2009-02/09/content_1225477.htm).

122. Li Weiwei, *Shehui zhuyi fazhi linian naru 2007 niandu guojia sifa kaoshi* [Socialist-Rule-of-Law to be Included in the Plan for the 2007 National Judicial Examination], XINHUA, Aug. 25, 2007, available at <http://www.chinacourt.org/html/article/200708/25/261688.shtml>.

123. *Shehui zhuyi fazhi linian duben' jianjie* [A Brief Introduction to the “Reader on Socialist Rule of Law”], XINHUA, Apr. 19, 2010, available at [http://news.xinhuanet.com/politics/2010-04/19/c\\_1243383.htm](http://news.xinhuanet.com/politics/2010-04/19/c_1243383.htm).

124. Zhao Lei, “Shehui zhuyi fazhi” jin jiaocai, jin ketang, jin naodai [“Socialist Rule of Law” to Enter Textbooks, Classrooms, Minds], S. WEEKEND, Nov. 11, 2009, available at <http://www.infzm.com/content/37227>.

they significantly expanded special legal training programs for designated cohorts of demobilized military officers. Directly funded by Party political-legal authorities, these programs are particularly (but not exclusively) run out of the five politics and law schools. Participants generally follow the same curriculum as regular law students, but their educational experience differs in key aspects. They are selected for their excellent service records, are managed (and taught) separately from other students, receive stronger ideological indoctrination, and adhere to military discipline while enrolled. Upon graduation, they are allocated to positions as judges and government officials in rural China. In contrast to ordinary university graduates, authorities perceive them to be more willing to take assignments in impoverished areas, more politically reliable, less likely to leave, and better capable of handling difficult rural disputes that might require a broader range of skills than simply deciding cases according to the law on the books.<sup>125</sup>

Of course, these policies are not without precedent. They reflect a partial revival of practices dating back to the 1980s (and 1950s), when (in an era of limited legal talent) Chinese courts were staffed almost entirely by ex-military officials. But they represent a shift away from policies of the 1990s, which sought to emphasize a regular university law education as the standard career track for entering the Chinese judiciary.

In late 2011, clear signs emerged that Party political-legal authorities sought to reshape legal education yet further to fit their vision of the role of law in China.

In December 2011, Chinese authorities issued a joint directive (discussed in more detail in the next section) creating a new mechanism for rating and evaluating Chinese law programs in institutions of higher education. It charges Party political-legal authorities [in conjunction with the Ministry of Education (“MOE”)] with carrying this out. This marks a

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125. Interviews, New York, United States (Mar. 6, 2012); Interview, in Beijing, China (July 1, 2012); Zhao Lei, *Yi qun teshu de zhengfa xuesheng* [A Group of Special Political-Legal Students], S. WEEKEND, Feb. 12, 2009, available at <http://www.infzm.com/content/23625>. Program participants totaled over 4,000 in 2008. *Id.* Future research might examine whether this is a useful experiment in addressing rural governance, a part of the hardline efforts to tighten control over the state apparatus in restive rural and ethnic areas of western China, or both.

significant shift from earlier policies. Educational reforms of the late 1990s and early 2000s had generally entrusted the MOE with sole responsibility for educational programs.<sup>126</sup> The 2011 plan reverses this, introducing Party political-legal authorities directly in the process of evaluating and funding legal education programs.<sup>127</sup>

New personnel were brought in to manage the China Law Society (“CLS”), the national academic legal association. In late 2011, Chinese authorities designated a political-legal functionary with deep experience in internal security affairs as the CLS Party head.<sup>128</sup> Few American readers are likely acquainted with the bureaucratic intricacies of Chinese politics. But for the purposes of a very rough comparison, perhaps try to picture the former head of a clandestine joint task force responsible for coordinating CIA, FBI, state, and local police responses in the war on terror over the past decade. Now imagine him subsequently named to head a state-run version of the Association of American Law Schools and charged with coordinating academic legal scholarship and exchanges. That is what took place in China.

Last, along with these developments, there were a series of speeches by top Chinese Party political-legal authorities and editorials in the state media. These warned of the ideological

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126. *Guanyu tiaozheng guowuyuan bumen (danwei) suo shu xuexiao guanli tizhi he buju jigou de shishi yijian* [Implementing Opinion Regarding the Readjustment of the Management and Distribution of Schools Belonging to State Council Bureaus (and Work Units)], MINISTRY OF EDUC., MINISTRY OF FIN. & NAT'L DEV. & REFORM COMM. (Jan. 29, 2000), [http://www.gov.cn/gongbao/content/2000/content\\_60667.htm](http://www.gov.cn/gongbao/content/2000/content_60667.htm). Turn of the millennium reforms specifically withdrew the five politics and law schools from the control of the Ministry of Justice (which falls under the portfolio of Party political-legal authorities) and placed them with other schools under the Ministry of Education (“MOE”) and its local branches (which do not). Ji Xiangde, *Faxue jiaoyu Zhongguo moshi de chubu xingcheng* [The Beginning of the Development of the Chinese Model of Legal Education], in *FAXUE JIAOYU DE ZHONGGUO MOSHI* [MODEL OF LEGAL EDUCATION IN CHINA] 34, (Ji Xiangde ed., 2010).

127. *Jiaoyu bu, zhongyang zhengfa weiyuanhui guanyu shishi zhuoyue falü rencai jiaoyu peiyang jihua de ruogan yijian* [Opinion of the Ministry of Education and the Central Politics and Law Committee on Implementing the Program for Educating and Developing Outstanding Legal Talent], MINISTRY OF EDUC. & CENT. POLITICS & LAW COMM., Dec. 23, 2011, art. 3(6) (on file with the author).

128. *Chen Jiping ren zhongguo faxuehui dang shuji (tu/jianli)* [Chen Jiping Named Party Secretary of China Law Society (Photo/CV)], COMMUNIST PARTY OF CHINA, Nov. 16, 2011, available at <http://cpc.people.com.cn/GB/164113/16261541.html>.

dangers posed by the infiltration of Western political, judicial, and legal concepts.<sup>129</sup> And they explicitly indicated a need to politically reform legal education and academia in response.<sup>130</sup> One of these is reproduced in Appendix 1 for some flavor.<sup>131</sup>

### III. RESPONSE

Since fall 2011, Chinese authorities have begun implementing long-term plans in response to many of the trends discussed above.

Some are broad reforms aimed at addressing high unemployment among all college graduates. Educational authorities are encouraging them to consider alternative career prospects (such as enlisting in the military or taking positions in underdeveloped areas of western China). They are strengthening practical skills training—ensuring that all students in professional majors spend at least one semester in an internship. They indicate that they will limit or close academic

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129. See, e.g., Wei Lihua & Jiang Xu, *Sifa shenpan zhong de renmin qinghuai yu qunzhong luxian* [The Popular Mood and Mass Line in Judicial Trial Work], CHINA COURT (June 22, 2011), <http://old.chinacourt.org/html/article/201106/22/455318.shtml> (warning of “a small number of academic authorities and some media that have departed from the [Chinese] national sentiment, and who excessively play with paper” and “scholarly elites who seek to alter the thinking of Chinese judges with Western legal concepts”).

130. See, e.g., *Fanrong shehui zhuyi fazhi wenhua tuijin yifa zhiguo* [Allow Socialist Rule of Law Culture to Prosper in Order to Promote Rule by Law], MZYFZ, Dec. 28, 2011, available at <http://www.mzyfz.com/cms/minzhuyufazhishibao/fanfu/html/1248/2012-01-05/content-261805.html> (providing the speech of the deputy secretary of the Central Party Politics and Law Committee, Wang Lequan, to the China Law Society). For those interested in the nuances of Chinese political discourse on legal issues, note the linguistic shift Wang makes in the speech (citing Zhou Yongkang, head of the Party political-legal committee). *Id.* He calls for construction of a “system of discourse for socialist rule of law” (*shehui zhuyi fazhi huayu tixi*) covering the thought, theory, sources, and language of every field of study in law. *Id.*, § 1. That phrasing goes well beyond the generic calls for Party supremacy and “socialist rule of law” seen in recent years. Minzner, *supra* note 6, at 973.

131. Kou Guangping & Liu Dawei, *Faxue jiaoyu yao qihe woguo de fazhi jianshe* [Legal Education Must Accord With National Construction of the Rule of Law], LEGAL DAILY (Jan. 11, 2012), <http://epaper.legaldaily.com.cn/Ezrb/content/20120111/Article112001GN.htm>. The timing, content, language, and location of this op-ed, following mere days after the issuance of the joint directive on legal education and speeches by Party political-legal authorities on the same subject, strongly suggest it was part of a coordinated propaganda rollout.

programs of study that fail to hit sixty percent employment rates for two years in a row.<sup>132</sup>

Authorities are also reconsidering 1990s-era policies supporting the growth of new comprehensive universities. In late 2011, the Ministry of Education (“MOE”) announced a halt to the designation of new Project 211 and 985 institutions.<sup>133</sup> Higher education is still set to grow. But national authorities have indicated that their focus over the next ten years will be on improving the quality of specific academic fields.<sup>134</sup>

Law is one area that has been singled out. On December 29, 2011, the Central Party Politics and Law Committee and Ministry of Education released a joint opinion that will guide the track of Chinese legal education over the next decade.<sup>135</sup>

The opinion identifies three major problems with Chinese legal education: 1) a lack of diversity among existing law schools, 2) a lack of practical skills among law graduates, and 3) an insufficient level of “socialist rule-of-law education.”<sup>136</sup>

The opinion seeks to steer legal education in a new direction. To accomplish this, it creates a new evaluation mechanism. Just as with its predecessors (such as the 211 and

132. *Jiaoyu bu guanyu zuohao 2012 nian quanguo putong gaodeng xuexiao biye sheng jiuye songzuo de tongzhi* [Notice of the Ministry of Education Regarding Carrying Out the Employment Work for 2012 Graduates From Institutes of Higher Education], MINISTRY OF EDUC., Nov. 10, 2011, available at <http://www.moe.edu.cn/publicfiles/business/htmlfiles/moe/s3265/201111/126852.html>. Authorities are also attempting to create new mechanisms to combat fraud on the part of universities seeking to boost their employment statistics. One such proposed measure: encouraging civil society organizations (rather than the schools themselves) to collect relevant employment data. *Id.*

133. *Jiaoyu bu: bu zai xinshe 211 he 985 gongcheng xuexiao* [MOE: No New 211 and 985 Program Schools to be Designated], XINHUA, Dec. 31, 2011, available at <http://edu.sina.com.cn/gaokao/2011-12-31/1140322608.shtml>.

134. *Guojia zhongchangqi jiaoyu gaige he fazhan guihua gangyao 2010-2020* [2010-2020 National Educational Reform and Development Programme], XINHUA, July 29, 2010, available at [http://www.gov.cn/jrzq/2010-07/29/content\\_1667143.htm](http://www.gov.cn/jrzq/2010-07/29/content_1667143.htm). Goals include raising the number of students in institutions of higher education from 28 million in 2010 (a 24% enrollment rate) to 33 million (40%). The number of graduate students is set to increase from 1.4 to 2 million. *Id.*

135. *Jiaoyu bu zhongyang zhengfawei guanyu shishi zhuoyue falü rencai peiyang jihua ruogan yijian* [Relevant Opinions of the Ministry of Education and Central (Party) Political-Legal Committee on Implementing the Plan for Training Outstanding Legal Talent], XINHUA, Dec. 23, 2011, available at [http://news.xinhuanet.com/cdu/2012-04/25/c\\_123029528.htm](http://news.xinhuanet.com/cdu/2012-04/25/c_123029528.htm) [hereinafter XINHUA, *Relevant Opinions*].

136. *Id.* at 1–2.

985 programs), it establishes a privileged designation (here, “outstanding legal talent training program”). Institutions that successfully distinguish themselves on a range of designated criteria receive the designation, linked to additional state resources and privileges.<sup>137</sup> Competition should push schools to adjust their priorities in accordance with the new evaluation targets. During the summer of 2012, law deans at schools across China were indeed scrambling to position themselves in this struggle.<sup>138</sup>

But the new plan differs from late 1990s-era evaluation mechanisms in several important ways. Unlike the 211 and 985 designations, it is specifically directed at law programs, rather than schools as a comprehensive whole. And designations of “outstanding legal talent training” are to be made jointly under the direction of education officials and Party political-legal authorities, rather than the former alone.<sup>139</sup>

Further, it does not list a single set of criteria as to what constitutes an “outstanding legal talent training program.” Rather, it sets forth three different ones: 1) those that are generally focused on improving students’ practical skills, 2) those that train elite students to operate in the global economy, and 3) those that train basic-level legal personnel for the courts and government agencies of rural western China. The plan allows all three types of programs to qualify. Some eighty institutions are to be designated under the first category. Twenty are to receive the designation for their work on globalized legal education; twenty for their work on training rural cadres.<sup>140</sup>

With regard to educational content, the plan seeks to strengthen practical skills. Under the plan, fifteen percent of credit hours must be devoted to practical or experiential education. Clinical, moot court, and internship programs are to be emphasized.<sup>141</sup>

The plan encourages two forms of increased cooperation: between 1) Chinese and foreign law schools and 2) between Chinese law schools and PRC government institutions. Under

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137. *Id.* at 6–8.

138. Interviews, in Suzhou, China (June 23–24, 2012).

139. See XINHUA, *Relevant Opinions*, *supra* note 135.

140. *Id.* at 2–3, 5.

141. *Id.* at 4.



the former, Chinese law programs are encouraged to develop exchange and joint degree programs with elite foreign schools. With regard to the latter, the plan lists a range of specific programs to be launched. One hundred educational training centers are to be established and jointly operated by schools and relevant government bureaus. Personnel are to be shared. One thousand law professors are to be rotated into the government for one- to two-year long stints, in order to obtain practical work experience. A similar number of government cadres are to be rotated into academic legal posts.<sup>142</sup>

Last, the plan explicitly aims at introducing a greater degree of political content into Chinese legal education. It directs schools to organize the editing of teaching materials grounded in “Socialist Rule-of-Law with Chinese Characteristics.”<sup>143</sup> However, the opinion does also call for “selectively” and “with discrimination” importing high-quality foreign legal materials.<sup>144</sup>

Interviews with Chinese law school deans and professors flesh out the extent to which this program reflects a confluence of different institutional interests.

First, it is an effort to trim the some six hundred legal education programs in China, many of low quality and with poor employment statistics. Programs not designated as “outstanding talent training sites” will be gradually marginalized via both market pressures (employers preferring to hire graduates from designated schools) and administrative ones (educational authorities granting designated schools more resources, higher student quotas, and preferential access to post-graduate programs). Elite national universities should prosper, as will the politics and law schools. But many law programs in lower-tier institutions will likely be curtailed.<sup>145</sup>

Second, the new plan attempts to steer Chinese legal education in a more practical, skills-based direction. The emphasis on clinics, the emphasis on experiential education—these reflect a pervasive concern that legal education has

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142. *Id.* at 5.

143. *Id.*

144. *Id.*

145. Interview, in Suzhou, China (June 23, 2012); Interview, in Shanghai, China (June 29, 2012); Interview, in Beijing, China (July 1, 2012).

become too academic, too divorced from reality, and of little actual utility to students or society. Naturally, these moves are an outgrowth of reform efforts pursued over the past decade by different Chinese law schools.<sup>146</sup> For example, the reference to heightened faculty-government exchanges resembles policies launched at the Northwest University of Politics and Law (“NWUPL”). Since 2008, NWUPL has implemented mandatory six-month internships in government for master’s students, requirements for young professors that they must serve in the courts or procuratorate for at least a year as a condition of being promoted, and job exchange programs between senior judges and professors.<sup>147</sup>

Third, the plan also reflects a bureaucratic duel between China’s five traditional politics and law schools and the elite comprehensive universities. Deans and faculty at the former sensed that their institutes had been eclipsed as a result of late 1990s educational reforms. Previously, the politics and law schools had enjoyed a privileged standing as the designated training ground for state cadres in courts, procuratorate, and other legal institutions. As state-allocated employment faded, so did this role. Further, the politics and law schools found themselves increasingly unable to compete for privileges under the MOE-managed 211 and 985 programs, which steered resources to comprehensive, rather than specialist, schools.<sup>148</sup>

Fearing marginalization, the politics and law schools engaged in aggressive lobbying of central authorities during the drafting of the new “outstanding talent” plan. In 2010, the five schools joined together to form the “Legal Alliance” (*lige lianmeng*).<sup>149</sup> The Alliance aims to increase academic exchanges

146. Interview, in Beijing, China (July 6, 2012). Both clinical and experiential education programs have been the focus of extensive multi-year domestic and international cooperative education efforts.

147. Interviews, Xi’an, China (Aug. 7–8, 2011). Success has been mixed. Students complain about difficult living conditions in internship placements at more remote courts, and it has been difficult to recruit more senior professors and judges to rotate jobs. But some young professors report it has been a useful and eye-opening experience to serve for a year as a judge on a local court. *Id.*

148. Interview, in Shanghai, China (Aug. 16, 2011).

149. Tai Jianlin, *Quanguo zhengfa daxue ‘lige lianmeng’ di’er gaofeng huntan juxing* [“Legal Alliance” of Nation’s Politics and Law Universities Holds Second Summit Discussion], *LEGAL DAILY*, July 13, 2011, available at [http://www.legaldaily.com.cn/fsy/content/2011-07/13/content\\_2791881.htm](http://www.legaldaily.com.cn/fsy/content/2011-07/13/content_2791881.htm).

and cooperation between the schools. But it also has another goal: to ensure that any targets set under the new central evaluation process (and the resulting allocation of resources) work to their advantage vis-à-vis the elite comprehensive universities.<sup>150</sup> This is part of the reason behind the shift away from a unitary evaluation system and the return to a focus on training state legal cadres—both of which benefit the politics and law schools.

Last, Chinese deans confirm that different central actors have had a hand in shaping the plan. The Ministry of Foreign Affairs (“MOFA”) is one. During the drafting of the new plan, MOFA reportedly drew attention to the limited level of Chinese representation in the staff of multilateral institutions responsible for drafting international treaties and regulations. The focus on training global legal talent is partly aimed at addressing this.<sup>151</sup>

Party political-legal authorities have also been involved. They supervise the work of the courts, procuratorates, police, and security agencies. They are responsible for handling challenges posed by a rising tide of citizen petitions and protests. They are concerned with the numbers and quality of government and court personnel in western China. This has played into the decision to train rural cadres. They are also ideologically opposed to the spread of Western rule-of-law norms. This has motivated the new political stance towards legal education.<sup>152</sup>

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150. Interview, in Shanghai, China (Aug. 16, 2011). These efforts appear to have been successful. In November 2012, state authorities announced the first batch of schools selected as “outstanding legal talent training programs.” Each of the five politics and law schools was selected. Moreover, each was selected *three* times, as a practical skills program, as a global talent program, and as program for training basic-level legal personnel. While a handful of elite national universities (Peking, Renmin, Qinghua) were designated under both the first two categories, no school (save the five politics and law schools) was designated under all three. *Jiaoyu bu ban’gongting, Zhongyang zhengfa weiyuanhui ban’gongshi guanyu gongbu shoupi zhuoyue falü rencai jiaoyu peiyang jidi mingdan de tongzhi* [Notice of the Offices of the Ministry of Education and Central (Party) Political-Legal Committee on Announcing the Names of the First Group of Centers for Training Outstanding Legal Talent], MINISTRY OF EDUC. & CENT. (PARTY) POLITICAL-LEGAL COMM., Nov. 23, 2012.

151. Interview, in Beijing, China, (July 6, 2012).

152. Interviews in Suzhou, China (June 23–24, 2012); Interview in Beijing, China, (July 1, 2012).

## IV. ANALYSIS

A. *The Chinese Legal Education Bubble Deflates*

In the late twentieth and early twenty-first century, China experienced a rapid, but ultimately unsustainable, expansion of legal education.

Superficially, this parallels developments elsewhere. Take Japan. In the early 2000s, reformers attempted to rapidly shift legal education from an undergraduate model to a graduate one. Numbers of law schools and students expanded significantly. Poor job prospects among law graduates have resulted in declining numbers of applicants, however. Many now regard these reforms as a failure.<sup>153</sup>

Latin America is another example. In the 1960s and 1970s, law-and-development proponents sought to transplant legal educational models taken from the United States as a tool to push for system-wide change. But these efforts meshed poorly with local conditions and were eventually abandoned.<sup>154</sup>

Or look at America. The United States faces a law school tuition bubble. Since the 1980s, tuition has risen dramatically—an astounding 150–400% in constant (inflation-adjusted) dollars.<sup>155</sup> Regulatory capture is a driving factor. As Brian Tamanaha has detailed, as the American Association of Law Schools (“AALS”) consolidated control over the regulatory process for law schools during the twentieth century, it used this power to increase the cost of legal education higher. Graduation from AALS-accredited schools was made a requirement for

153. See Shigenori Matsui, *Turbulence Ahead: The Future of Law Schools in Japan*, 62 J. LEGAL EDUC. 3, 23–28 (2012); Miki Tanikawa, *A Japanese Legal Exam That Sets the Bar High*, N.Y. TIMES, July 10, 2011, available at <http://www.nytimes.com/2011/07/11/world/asia/11iht-educLede11.html>.

154. See generally David Trubek, *The “Rule of Law” in Development Assistance: Past, Present, and Future*, in THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL (David Trubek & Alvaro Santos eds., 2006).

155. Costs at public law schools have increased at a much higher rate than private institutions. For nominal (non-inflation adjusted) figures for tuition and fees, see AM. BAR ASS’N, LAW SCHOOL TUITION 1985–2011, available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/statistics/ls\\_tuition.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/statistics/ls_tuition.authcheckdam.pdf). Increases have significantly outpaced those in undergraduate education. David Segal, *Law School Economics: Ka-Ching!*, N.Y. TIMES, July 16, 2011, at B1.

taking the bar exam in many states. Lower-cost educational competitors, such as night schools, were forced to close or change form to receive AALS accreditation. One-size-fits-all accreditation standards were employed to force almost all American law schools, ranging from elite private institutions to local state schools, to pursue the same development track—more tenured faculty, lighter teaching loads, heavier emphasis on research and writing of academic articles, and expensive investments in library facilities.<sup>156</sup>

All of the above were paid for by steadily increasing student tuition. This was financed by easy access to government-backed loans. Currently, eighty-five percent of US law graduates (at accredited law schools) borrow money to finance their education, graduating with an average of one hundred thousand dollars in debt.<sup>157</sup> These debt numbers have skyrocketed in the last two decades as tuition has risen.

The American law school tuition bubble is thus a consumer credit-fueled one. Massive price increases have been facilitated by continued access to submarket interest rates. This resembles the early twenty-first century bubble in the US housing market.

This dynamic was relatively stable as long as law graduates could obtain jobs to pay back their loans, and as long as popular perceptions existed that law school was a good investment. These are no longer true. Outsourcing and technology have fundamentally shifted the market for lawyers. Nine months after graduation, only fifty-five percent of the class of 2011 had obtained full-time, long-term legal jobs.<sup>158</sup> Even among those, only a small proportion is high-paying jobs with big law firms

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156. See TAMANAHA, *supra* note 1, at 11–68, 126–34.

157. William Henderson & Rachel Zahorsky, *The Law School Bubble: How Long Will it Last if Law Grads Can't Pay Bills?*, A.B.A. J., Jan. 1, 2012, available at [http://www.abajournal.com/magazine/article/the\\_law\\_school\\_bubble\\_how\\_long\\_will\\_it\\_last\\_if\\_law\\_grads\\_cant\\_pay\\_bills](http://www.abajournal.com/magazine/article/the_law_school_bubble_how_long_will_it_last_if_law_grads_cant_pay_bills). These aggregate figures include both public and private institutions. Average debt at the most expensive private American law schools ranges as high as US\$150,000 for 2011 graduates. Debra Weiss, *Average Debt of Private Law School grads is \$125K; It's Highest at These Five Schools*, A.B.A. J., Mar. 28, 2012, available at [http://www.abajournal.com/news/article/average\\_debt\\_load\\_of\\_private\\_law\\_grads\\_is\\_125k\\_these\\_five\\_schools\\_lead\\_to\\_m](http://www.abajournal.com/news/article/average_debt_load_of_private_law_grads_is_125k_these_five_schools_lead_to_m).

158. Debra Weiss, *Only 55 Percent of 2011 Law Grads Had Full-Time, Long-Term Legal Jobs, Analysis Shows*, A.B.A. J., June 19, 2012, available at [http://www.abajournal.com/news/article/only\\_55\\_percent\\_of\\_2011\\_law\\_grads\\_had\\_full-time\\_long-term\\_legal\\_jobs\\_analys](http://www.abajournal.com/news/article/only_55_percent_of_2011_law_grads_had_full-time_long-term_legal_jobs_analys).

that enable graduates to easily repay their loans. Given this, law school is no longer perceived as a rational economic decision for many students.<sup>159</sup> Unsurprisingly, law school applicants have plunged by thirty-eight percent since 2010.<sup>160</sup>

Despite some similarities, China differs from these countries. Unlike Latin America, China's educational problems are not the result of naive foreign development experts and agencies promoting educational models at odds with national needs. Unlike Japan, China's difficulties do not stem from entrenched resistance from the bar to changes in legal education.<sup>161</sup> Rather, top Chinese authorities themselves pushed through 1990s-era reforms. And they did so despite complaints from the bar that the massive increase in law graduates was detrimental to the interests of existing lawyers and the quality of the legal profession.

China also differs from the United States. China does not face a credit-driven student tuition bubble. University tuition has increased in recent years. But the massive expansion in legal education over the past fifteen years has primarily been paid for out of state coffers. Chinese law graduates may feel that they have wasted several years of their lives in public education that inadequately prepares them for the job market. But at least they

159. TAMANAHA, *supra* note 1, at 145–66.

160. Ethan Bronner, *Law School's Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 30, 2013, available at <http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html>.

161. In Japan, efforts to create a new, expensive system of graduate legal education collapsed after judicial authorities (under pressure from the bar) refused to raise the pass rate on the bar exam, undermining the value of student investment in the new degrees and leading to a decrease in the number of graduate law school applicants. See generally Matsui, *supra* note 153; Mayumi Saegusa, *Why the Japanese Law School System Was Established: Co-optation as a Defensive Tactic in the Face of Global Pressures*, 34 LAW & SOC. INQUIRY 365 (2009). The opposite has occurred in China. China has raised the pass rate for the national judicial examination from under seven percent (in 2003) to over twenty-seven percent (in 2008). Chen Qingqing, *Sifa kaoshi tongguo lü chao 20%, bei zhi hanjinliang jiangdi* [Pass Rates for National Judicial Exam Exceed 20%, Result in Claims That Their Value Has Declined], GUANGZHOU DAILY, Sept. 18, 2011, available at <http://edu.people.com.cn/GB/15686176.html>. In part, this is result of pressure from judicial authorities seeking to make it easier for judges to pass the exam. Dai Lang, *Xibu sifa kaoshi tongguo lü tigao huanjie faguan huang wenti* [Pass Rates for National Judicial Examination Raised in Western China, Alleviates Problem of Lack of Judges], SICHUAN NEWS, Jan. 5, 2010, available at <http://cd.qq.com/a/20100105/003997.htm>.

do not face the crushing debt levels that their American counterparts do.

Nor is China primarily a story of regulatory capture. True, as in the United States, one-size-fits-all evaluation models have driven schools to uniformly pursue a research-oriented educational model instead of a more diverse range of approaches that might better respond to social needs. However, this is not the result of capture of the accreditation process by autonomous interest groups.

Rather, China's problems are the result of a state-led crash program to rapidly expand university education since the late 1990s. State targets have pushed schools to model themselves as research institutions. State funding has driven the massive expansion of law faculties and large-scale production of low-quality academic publications. And state quotas have guaranteed continuing student enrollment in law programs, notwithstanding poor employment results for graduates.

How is this possible? China is the greatest economic boom story in history. In just a few short decades, it has shaken off absolute poverty and emerged as the second-largest economy in the world. In part, this has been facilitated by long-term investments ranging from primary education to highway construction. Why would state authorities develop higher education in a manner with such negative consequences?

There are several answers. First—a desire for political accomplishments (*zhengji*) at all levels. Central leaders wanted signature projects (100 world-class universities for the twenty-first century!) that they could tout as their achievements. Ministry of Education and provincial authorities sought specific accomplishments (thirty percent increase in numbers of university students!) that they could point to in their struggle to advance within the bureaucracy. At all levels, this supported the emergence of a “Great Leap Forward” vision of educational development, characterized by rapid growth and immediate successes.

Second, to support this growth, Chinese authorities imported problematic management practices used elsewhere in government—namely, target responsibility systems linked to high value rewards. Law schools and professors found themselves pushed toward hitting specific numerical targets set

from above, regardless of whether these bore any relationship to the actual demands of society or the goals of education.

Third, Chinese administrators and academics sought to directly import foreign models in building their legal educational system. Establishment of law as a separate discipline; emphasis on legal education as best provided in a university (or graduate) setting; heavy focus on academic research and publications; and the actual content of legal education—all of these strongly borrowed from foreign (and particularly American) models. This was understandable. In the 1980s, when Chinese authorities began to rebuild their legal educational system, they were working out of the rubble of institutions destroyed during the Cultural Revolution. They quite naturally sought to replicate elements of what they saw as more developed models. This was the case even if these models led to practical disconnects in the Chinese system (a flood of university-trained educated law students, but vacancies in rural courts) or political disconnects (such as Western-oriented legal academics emerging as critics of the political system).

Such practices—particularly the first two—are not unique to higher education. They strongly resemble practices in China's construction sector: elevated central targets for economic growth coupled with massive state funding for construction projects. These have pushed local authorities to engage in rapid (but uneconomical) infrastructure expansion and development.<sup>162</sup>

As a result, the problems facing China and the United States are both similar and different. America is experiencing a credit-fueled law school tuition bubble—one very similar to the early twenty-first century bubble in the US housing market. China is facing a state investment-fueled legal education bubble—one that parallels the current bubble in its construction sector.

Because China's bubble is not driven by consumer credit, it remains immune so far to pressures that are building in other countries. Unlike the United States (or Japan), seats in Chinese

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162. Michael Pettis, *China's Explosive Debt Growth Can't Continue Much Longer*, BUS. INSIDER, Jan. 23, 2012, available at [http://articles.businessinsider.com/2012-01-24/markets/30658033\\_1\\_infrastructure-projects-capital-requirement-urban-rail](http://articles.businessinsider.com/2012-01-24/markets/30658033_1_infrastructure-projects-capital-requirement-urban-rail).



law schools remain full, driven by the prestige of obtaining university or master's degrees and quota systems that allocate students to law programs. Administrators and faculty remain relatively insulated from the need to deal with the employment problems facing their graduates. The kinds of market-based pressures for change that are starting to force American law schools to rethink educational models (as prospective applicants opt out of studying law) simply do not exist.

But Chinese legal education does depend on a key factor for continued growth: state support. This now appears to be in question. Authorities believe that existing educational models have not produced the desired returns on their investments. As a result, a new period of retrenchment appears to be on the horizon.

Of course, this is not without historical precedent. The People's Republic of China has already experienced major waves of change (both in the 1950s and the 1960s), in which the state reconsidered the role that law and legal professionals should play in society, and reduced support for legal education as a result. As Glenn Tiffert has demonstrated, similar cycles of expansion and contraction also characterized early twentieth century Republican China. State authorities voiced concerns regarding the excessive expansion of legal education, the quality of graduates produced, their job prospects, and their political reliability. In both the 1910s and 1930s, this led authorities to enact sweeping legal educational reforms. They tightened school licensing standards; capped or reduced numbers of law students; and revised educational curricula in accordance with prevailing political winds.<sup>163</sup>

### B. *The New(?) Track of Chinese Legal Education*

As the late twentieth century legal education bubble deflates, Chinese state authorities are reviving earlier educational patterns dating back to the 1980s, or even the 1950s.

Take the decline of relative footprint of the study of law, for example. As the charts in Part 1 indicate, it is the massive

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163. Glenn Tiffert, *Courting Revolution: The Beijing Municipal People's Court and the Birth of the PRC Judicial System (1949–58)* (forthcoming dissertation 2013, University of California, Berkeley).

increase in law students in the last fifteen years (rising to six percent of all graduates by the early 2000s) that is an outlier. In contrast, for much of the 1950s and 1980s, these numbers hovered around two percent. Numerically, the current decline is a reversion back toward these earlier levels.

The same is true for efforts to encourage diversification among law programs. In both the 1950s and 1980s, a wide range of institutions—universities, junior colleges, technical schools, and short-term training programs—provided a variety of different legal educational tracks. Only after the mid-1990s did legal education become relatively standardized on a uniform university model. Current efforts to push schools to differentiate themselves—some training globalized legal talent, others training local cadres—harken back to these earlier patterns.

Tighter links between government and legal education are yet a third example. Revival of the politics and law schools; strengthened links between law schools and government bureaus, training ex-military officers to serve as local legal cadres—all these represent a return of earlier trends that had gone into eclipse since the 1990s.

Such developments suggest a need to nuance our understanding of legal education in China. Not only will it not grow at the same rate as in the past, it may actually be less likely to resemble foreign educational models over time.<sup>164</sup> Instead, it may be reverting back to yet earlier patterns taken from its own history.

Here, a disclaimer is in order. Does this Article suggest that China needs less law, fewer lawyers, and reduced levels of legal education? That this somehow is keeping with a more “authentic” Chinese version of legal education?

No. This Article simply argues that many of the problems confronting Chinese legal education are the result of a disconnect between the specific development track that state authorities have pursued since the late 1990s (Everyone! More students! Higher degrees! More articles!) and actual market demands and social needs. Take a specific example. For rural

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164. For an argument that Chinese legal education will increasingly assimilate features taken from the United States, see Setsuo Miyazawa, Kay-Wah Chan & Ilhyung Lee, *The Reform of Legal Education in East Asia*, 4 ANN. REV. L. & SOC. SCI. 333, 334 (2008).

China, the shift away from vocational and short-term legal educational programs in the 1990s may have been a mistake.<sup>165</sup> China may require fewer master's and Ph.D. candidates versed in the latest legal theories, and more rural legal paraprofessionals capable of handling citizen grievances. Of course, the same may be true for the United States as well.

The effect of existing state plans to rework legal education remains unclear. It is not clear whether Chinese authorities can succeed in implementing their reforms. Many individuals and institutions have vested interests in the existing system. Universities resist shifts that might alter their rankings relative to other schools. Professors hired for their research resist redefining legal education as practical employment training. Such groups agitate against dramatic reforms. Some express doubts that educational authorities will be able to close weaker law programs outright, or even significantly reduce the flow of students into them.<sup>166</sup>

Nor is it clear that current plans will have positive results. Official efforts to build "outstanding legal talent training programs" appear aimed at allowing some schools to flourish, and others to die on the vine. They do so by creating new top-down target evaluation mechanisms around which competition will revolve. These may just replicate existing problems in different form. Sure, schools may no longer be incentivized to pump out large numbers of low-quality academic publications in order to be designated as elite academic institutions by educational authorities. But instead, they may simply be incentivized to pump out large numbers of students into low-quality government internships in order to be designated as elite professional institutions by political-legal authorities.

Key questions about the role of legal education also remain unanswered. Of what use is the study of law in an authoritarian regime that remains deeply conflicted about the role that formal law, courts, and judges should play? Does legal education and research have any independent value, or are university degrees,

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165. Parallel problems exist with regard to 1990s-era efforts at professionalizing rural legal services. *See, e.g.*, FU HUALING, AWAY FROM GRASS-ROOTS? THE IRONY OF RURAL LEGAL SERVICES IN CHINA (May 20, 2012), *available at* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2063115](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2063115).

166. Interview Nos. 2 & 3, in Beijing, China (July 19, 2011).

academic articles, and research grants merely perfunctory boxes for intellectuals to check off as they search to rise toward leadership positions in the bureaucratic hierarchy?

Despite these criticisms, current Chinese state moves are a partial effort to address latent problems in legal education. Officials are curtailing growth in the numbers of the students most at risk of unemployment. They have halted state programs aimed at generating more four-year universities. They are emphasizing more practical skills-based education. They have also set out long-term plans to promote the diversification of Chinese law programs. These are not purely political moves. Some are serious efforts to deal with underlying structural problems—oversupply and unemployment of law graduates, misaligned incentives for schools and faculty—that have direct parallels in American legal education.

### C. *Party Repoliticization of Legal Academia?*

Despite the caveats advanced above, it is also important to recognize that there has been an overtly political cast to legal educational reforms pursued by state authorities—at least through 2012.

As of spring 2012, Party political-legal authorities appeared to have gained a greater voice in legal education.<sup>167</sup> This is

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167. In particular, the central Party conference held in fall 2011 may have witnessed an agreement among top leaders to permit political-legal authorities greater leeway to push their policies in the educational realm. At the conclusion of that conference, central leaders issued a top-level policy statement (guiding the work of all Party organs) on reinvigorating Chinese culture. *Zhongyang guanyu shenhua wenhua tizhi gaige ruogan zhongda wenti de jue ding* [Central (Party) Decision on Several Important Questions of Deepening Reform in Cultural Institutions], XINHUA, Oct. 18, 2011, available at [http://www.gov.cn/jrzq/2011-10/25/content\\_1978202.htm](http://www.gov.cn/jrzq/2011-10/25/content_1978202.htm). One component: fighting moral decay by promoting socialist rule of law (the political line that has emanated from the Party political-legal organs in recent years) in the schools. In the following eight weeks: 1) the Ministry of Education (“MOE”) issued a five-year propaganda plan for 2010–15 calling for extensive propaganda of socialist-rule-of-law concepts in elementary and secondary education, and for making socialist-rule-of-law a component of college entrance examinations, see *Jiaoyu bu guanyu yinfa quanguo jiaoyu xitong kaizhan fazhi xuanchuan jiaoyu de di liu ge wu nian jihua (2011-2015) de tongzhi* [MOE Notice on Launching the Sixth Five Year Plan (2011-2015) of Legal Propaganda in the Educational System], MINISTRY OF EDUC. (Oct. 21, 2011), <http://www.moe.edu.cn/publicfiles/business/htmlfiles/moe/s5914/201111/126492.html>, 2) the MOE and Party political-legal authorities jointly issued their ten-year reform plan for legal education, 3) new personnel were brought in to manage the China Law Society, and 4)

significant. Party political-legal committees are responsible for overseeing efforts to maintain social stability and silence domestic dissent. They are directly responsible for the increasingly hard-line domestic policies pursued since 2005. These range from aggressive harassment of rights lawyers, increased resort to illegal detention of domestic activists, and tighter political controls over courts.<sup>168</sup>

In contrast, since the beginning of the reform era, Chinese legal academia has been deeply linked with liberal reform. Many law professors have spent time abroad. Western institutional and political models have influenced academic writing and research. When Party authorities adopted “rule by law” (*yifa zhiguo*) as a political plank in 1997, many law professors saw this as a green light to engage in more active efforts to push institutional reform. The early years of the twenty-first century witnessed a flourishing of public interest activity by lawyers and law professors, fusing legal challenges, savvy media strategies, and social mobilization to challenge abuses committed by local authorities.<sup>169</sup>

If Party political-legal authorities wanted to force a political retrenchment within legal education, how might they do so?

Here’s one hypothetical possibility. Imagine that the 2009 textbook on socialist rule-of-law and official denunciations of “Western” rule-of-law influence are precursors to more significant moves. In the coming years, educational and Party political-legal authorities collaborate to issue sanitized versions of criminal procedure and administrative law textbooks. Law professors are required to use these in class. Relevant content of the national judicial examination is harmonized with these textbooks. This aligns the incentives of students seeking employment with those of Party propaganda authorities. Efforts by professors to supplement mandatory texts with additional,

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top Party political-legal authorities began issuing politicized broadsides on the need to rectify legal education.

168. Carl Minzner, *China (Country Report)*, in COUNTRIES AT THE CROSSROADS 2011: A SURVEY OF DEMOCRATIC GOVERNANCE 129, 142–43 (Jakc Dizard, Christopher Walker, & Vanessa Tucker eds., 2011).

169. See, e.g., Keith J. Hand, *Using Law for a Righteous Purpose: The Sun Zhigang Incident and Evolving Forms of Citizen Action in the People’s Republic of China*, 45 COLUM. J. TRANSNAT’L L. 114 (2006).

outside materials is increasingly met with bored stares (“Is this really going to be on the exam?”).

At the same time, Chinese authorities tighten controls over academics and schools. Salaries and career advancement are even more closely wrapped around the willingness of academics to produce articles that hew to the politically approved central line. Evaluation mechanisms that designate “outstanding legal talent training programs” give Party political-legal authorities new channels to voice their approval as to the internal conduct of particular institutions. Some law deans, seeking central funding in an environment where money available for legal education is in relative decline, enter into a pre-emptive crouch and begin to apply a range of soft pressure on teachers and academics to tone down their activities. Of course, some older, more outspoken law professors simply ignore such pressure. But younger legal academics, concerned with career pressures and the need to pay for their housing and children’s education, compromise their activities to varying degrees, fall in line with central mandates.

Fortunately, this scenario remains consigned to the realm of imagination so far. Many liberal scholars, while scathingly critical of the conservative direction that Chinese authorities have steered the courts, remain confident that such pressures will not significantly affect higher education. Some assert that Party political-legal authorities will limit their efforts to coordinating the work of schools and government to increase the practical nature of legal education.<sup>170</sup> Others argue that the spirit of liberal reform is too deeply entrenched in Chinese academia, that the concept of socialist-rule-of-law is intellectually bankrupt, and that central leaders are unwilling to undertake higher education reforms that might result in personnel cuts and social protest by laid-off faculty members.<sup>171</sup> Still others state that schools will only nominally comply with whatever political requirements Party authorities ordain, depriving them of any real impact.<sup>172</sup>

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170. Interview, in Shanghai, China (June 29, 2012).

171. Interview, in Beijing, China (June 30, 2011).

172. Interview, in Beijing, China (July 1, 2012).

But some voice concerns. One vice-dean suggests that if central authorities do mandate the use of politically approved textbooks, “this would be a real problem—one difficult for us to avoid in practice, and with a real impact on education.”<sup>173</sup> A professor notes:

At the moment, efforts by conservative elements in the China Law Society just irritate many professors. You can always find ways to write what you actually want in a manner to appear to be mouthing the slogans that they want you to include, thereby satisfying some demand in the relevant grant that you are supposed to be carrying out. But you lose some of your self-respect in the process of doing that. That’s their goal—just to show you who is on top. If they continue these efforts long-term, it will become a real problem.<sup>174</sup>

But rapidly shifting elite Chinese politics now cast doubt on whether these efforts to re-politicize legal education will actually be continued into the future.

In the spring and summer of 2012, internal power struggles bitterly divided top Party leaders. These resulted in the spectacular fall from grace of sitting Politburo member Bo Xilai, following a murder-and-corruption scandal involving his wife and top aides.<sup>175</sup> Rumors spread that Zhou Yongkang, chairman of the central Party Political-Legal Committee, had fallen out of favor with other top leaders as a result of his support for Bo.<sup>176</sup> And in the wake of the once-in-a-decade Party leadership transition in the fall of 2012, central authorities appear to have taken tentative steps to cut back the bureaucratic power of the Party political-legal apparatus, which had ballooned dramatically under Zhou’s chairmanship.<sup>177</sup>

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173. Interview, in Shanghai, China (Aug. 14, 2011).

174. Interview, in New York, United States (Mar. 6, 2012).

175. Jamil Anderlini, *THE BO XILAI SCANDAL: POWER, DEATH, AND POLITICS IN CHINA* (2012). In recent years, Chongqing Party secretary Bo Xilai had made a highly public bid for a position in the top Party leadership on the back of two signature efforts, a populist revival of Maoist propaganda and an anti-crime campaign that ran roughshod over legal norms. *Id.*

176. Damian Grammaticas, *China: Trouble at the Top?*, BBC NEWS (May 15, 2012), <http://www.bbc.co.uk/news/world-asia-china-18070273>.

177. Ben Blanchard & Benjamin Kang Lim, *China Downgrades Powerful Domestic Security Chief Position*, CHICAGO TRIB., Nov. 19, 2012, available at <http://www.chicagotribune.com/news/sns-rt-us-china-politics-reshufflebrc8ai0cp-20121119,0,5893637.story>.

These developments may severely limit the ability of Party political-legal authorities to carry out a political rectification of Chinese legal education. Indeed, disarray at the center introduced an element of caution as early as the late spring of 2012. The rollout campaign for the new “Outstanding Legal Talent” Program was supposed to have been marked by an opening conference in May 2012 in Yan’an—the revolutionary base headquarters for the Red Army during World War II—to be attended by Party political-legal authorities, the top officials of the China Law Society and the politics and law universities, editors of top academic journals, and other legal educators. It was widely expected that this conference, held in a venue with a specific historical heritage, would provide conservative officials an opportunity to push a tougher, more politicized line with regard to legal education. But it never took place. Invitees report that Party authorities decided that to adopt a wait-and-see approach in the wake of turmoil among central leaders. Major political decisions have been placed on hold until after the change in central leadership in the fall of 2012.<sup>178</sup>

Legal education consequently bears watching as a barometer of political change in China. The ability of Party political-legal authorities to affect legal education may be an indication as to whether their influence grows or wanes in the years to come.

#### D. *Implications for US Law Schools*

What does this all mean for American legal education? Well, some changes currently underway in China might actually be worth considering by American educators. Chinese authorities are comprehensively rethinking legal education. They are jettisoning the one-size-fits-all evaluation systems that are at the core of problems in both countries. They are

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178. Interviews in Shanghai, China (June 1, 2012) and Beijing, China (July 6, 2012). An opening conference for the “Outstanding Legal Training Talent Program” was indeed held, but in Beijing, rather than Yan’an. Reports suggest that the content focused primarily on the educational and technical components of the plan, rather than the political ones. Li Na, *Zhuoyue falü rencai jiaoyu peiyang jihua qidong* [Outstanding Legal Talent Education Training Plan Launched], LEGAL DAILY, May 27, 2012, available at <http://legal.people.com.cn/GB/188502/17996815.html>; Interview, in Shanghai, China (June 1, 2012); Interview, in Beijing, China (July 6, 2012).



encouraging a more diverse spectrum of law programs to emerge.<sup>179</sup> Should American law schools do the same?<sup>180</sup>

Chinese developments will have an even more direct impact. American legal education is going over a cliff. Faced with declining numbers of J.D. applicants, US law schools are desperately seeking alternative sources of revenue.<sup>181</sup> Many are turning their eyes to what has been a profitable source of tuition in recent years—international LL.M. programs.<sup>182</sup> China has been one of the most significant sources of students for these programs in recent years.<sup>183</sup>

But this Article calls into question whether simply expanding the numbers of Chinese LL.M. students will ensure the long-term viability of American law schools. The large annual increases in applicants from China that American admissions officers have become accustomed to seeing since the late 1990s are directly related to domestic changes in Chinese legal education: massive growth in total numbers of law graduates, dismal job prospects, and a spiral of degree

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179. *Supra* note 140 and accompanying text.

180. Other Chinese trends that might be worth considering by US schools include: reducing the numbers of entering law students, de-accrediting schools with poor employment prospects and (in the case of the United States, high debt loads), creating new tracks that permit the hiring of faculty with other than academic backgrounds, and encouraging faculty to leave academia for periods of time to acquire practical experience. Naturally, some of these measures resemble existing reform efforts at some US institutions.

181. REVENUE GENERATION STRATEGIES FOR LAW SCHOOLS, HANOVER RESEARCH (Aug. 2011), available at <http://www.hanoverresearch.com/wp-content/uploads/2012/10/Revenue-Generation-Strategies-for-Law-Schools-Membership.pdf>.

182. Christopher Edley, *Fiat Flux: Evolving Purposes and Ideals of the Great American Public Law School*, 100 CAL. L. REV. 313, 329 (2012) (citing “exporting American legality” as a priority in coming years and calling on American law schools to imagine a world in which perhaps half of their students are international). For more information, also see the presidential address by the head of American Association of Law Schools at the 2012 annual meeting. Lauren Robel, Ass’n for Am. L. Schools, Presidential Address (Feb. 2012), available at <http://www.aals.org/documents/newsletter/february2012.pdf> (noting that the number of LL.M. degrees grew sixty-five percent between 1999 and 2009, and stating “[I]ronically, at a time when US legal education is subject to such broad domestic criticism, the global attractiveness of US legal education, and a US law degree have never been higher.”).

183. See, e.g., *Vanderbilt LL.M. Class of 2013: Schools Conferring First Degree of Law*, VANDERBILT L. SCH., <http://law.vanderbilt.edu/prospective-students/llm-program-/llm-class-of-2013-profile/llm-class-of-2013-schools/index.aspx> (last visited Feb. 22, 2013) (listing mainland Chinese graduates as comprising roughly half of the entering 2013 LL.M. class at Vanderbilt Law School).

devaluation that has made foreign LL.M. degrees attractive, despite their expense.

This may be coming to an end. Numbers of students studying law in China appear set to stagnate or decline in coming years. Students choosing to major in law are generally weaker than in earlier decades. There may simply be fewer fresh bodies flowing out of third and fourth tier Chinese schools and into American LL.M. programs.<sup>184</sup>

It is also not clear that LL.M. programs will be as profitable as in the past. As American law schools have printed more degrees, their value has eroded in the eyes of potential buyers. The same spiral of degree devaluation that has affected Chinese domestic degrees is now playing out in US law schools.<sup>185</sup> This has created downward price pressures. Chinese students have become much savvier in negotiating with US schools for reductions in LL.M. tuition. Chinese educators are also pressing for change. At a 2012 conference of US and Chinese law deans, one of the Chinese participants (in the opening address!) warned his American counterparts to cut their prices, or face Chinese schools steering their students to less-expensive LL.M. programs in the UK, Canada, or Australia. At least one Chinese law school has successfully negotiated with an American partner school for a bulk discount rate for its students—thirty percent off in return for delivering a certain number of LL.M. students.<sup>186</sup>

So what is the takeaway for US deans? Is there a future for selling American legal education to Chinese students? Of course. Even under existing state plans, a limited number of Chinese law schools are being steered in the direction of more globalized legal education. Elite schools such as Renmin University are expanding their hiring of recent American law graduates as long-term teachers of substantive law classes offered

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184. Or, at the least, there will be nothing remotely approaching the regular, annual, double-digit percentage increases in potential applicants that US law schools have been accustomed to seeing since the late 1990s.

185. Nor has the spiral of degree devaluation stopped with LL.M. degrees. If you are wondering why your law school has seen surging interest from Chinese students seeking J.S.D. degrees, it is because this is the new battleground for those seeking an edge in competition for academic and government jobs in China.

186. Public speeches at the 2012 Sino-US Law School Deans Forum (June 23–24, 2012).

in English.<sup>187</sup> Programs such as the Peking University School of Transnational Law are exploring new, less-costly means of providing American legal education to Chinese students. Top-tier schools in the United States will still be able to attract outstanding Chinese students. And given poor investment options and an uncertain political climate at home, many Chinese families remain willing to plunk down large sums of money for their children to enroll in an American degree program and spend one year in the United States.

But the era in which Chinese LL.M. students represented a cash cow for law schools, requiring little to no investment or attention, is over. Schools are not simply going to be able to continue to simply open up seats in the back of their classrooms to Chinese students, draw hard lines between LL.M. and J.D. students in terms of providing career services, fail to view LL.M. students as paying customers fully equal to J.D. candidates, and still expect to have an unlimited supply of qualified applicants willing to pay US\$50,000 a year in tuition.

Suppose that you are a dean at a second- or third-tier American law school. If you dramatically expand your enrollment of Chinese LL.M. students to raise revenue, what will happen? Quite quickly, you will face tough decisions between reducing the prices that you are seek to charge (via offering tuition discounts), lowering your admissions standards, or both. This author is personally aware of at least one American law school that has pursued a policy of simply admitting every single Chinese LL.M. applicant.

To be sure, you may still be able to fill seats using that model. There is a lot of money sloshing around in China, looking for a way out. But your student quality and long-term reputation will suffer. For the most exposed American law schools—those facing high tuition, poor employment prospects, declining numbers of domestic applicants—all pretense of selectivity will simply go out the window as they monetize their ability to issue I-20 forms so that international students can obtain visas. Similar economic pressures have led some US

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187. If the downturn in the American legal education market leads to closings of US law schools, expect them to be followed by unemployed law professors seeking new careers.

undergraduate colleges to devolve into diploma mills, generating major corruption scandals.<sup>188</sup>

It is actually difficult to imagine why similar problems will not also occur among the weakest American law schools. Significant demand exists in China for channels to move money and family members abroad. Expensive, low-ranked American law schools are under severe economic pressure. Some already have dubious records of dealing with their American J.D. candidates.<sup>189</sup>

For American law schools, the real challenge in the coming years will be to create reasonably priced programs that actually improve the employability of their graduates—both foreign and domestic alike. This requires investment. It requires analyzing the actual needs of Chinese students and employers. It requires customizing existing programs to cater to them. And it requires mainstreaming Chinese students as fully equal customers of American legal education.<sup>190</sup>

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188. See, e.g., Lily Altavena & Daniel Slotnik, *Degrees (Without the Work) for Foreign Students at a North Dakota University*, N.Y. TIMES, Feb. 10, 2012, available at <http://thechoice.blogs.nytimes.com/2012/02/10/degrees-without-the-work-for-foreign-students-at-a-north-dakota-university>.

189. It also might be worth considering the potential impact on US law schools if Party political-legal authorities should manage to carry through on their promises to take Chinese legal education in a more conservative direction. Several Chinese ministries have contracted with specific American schools to provide legal education programs. These generate substantial income. Could a situation emerge where American schools feel compelled to compromise on their own principles, whether in educational content or programs, out of a desire to save their revenue stream?

190. For example, one key goal of Chinese students coming to the US for a year-long LL.M. program is to improve their language skills. But traditional American law classes are not designed for that goal. In a new environment where some US schools must aggressively compete for Chinese students to survive, how might they modify their curriculum to satisfy that aim and attract qualified applicants?

*APPENDIX 1**Legal Education Must Accord with National Construction of the Rule of Law*

LEGAL DAILY, Jan. 11, 2012

Kou Guangping & Liu Dawei

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*Cultivation of Legal Talent Must Meet Current Demands*

Since the beginning of the reform period, legal education in institutions of higher education has developed rapidly. According to figures published in the 2009 [sic—actually issued in 2008] White Paper on China’s Efforts and Achievements in Promoting Rule of Law, as of November 2008, China has 634 law schools or departments, with 300,000 students pursuing undergraduate degrees in law, 220,000 law students in vocational colleges, 60,000 students pursuing masters programs in law, and 8,500 current law Ph.D. students. Development of legal studies at institutions of higher education in China and the training of legal talent has already become an important force for promoting China’s democracy and rule of law. And they will continue to play an important role in developing the rule of law in China in the future.

However, there are some things within modern legal education that do not accord with traditional Chinese culture and the foundations of Chinese society. Modern legal concepts and legal structures constructed with “rights” (including “freedom” and “equality”) as their core have been excessively influenced by the two hundred year development history of Western powers. These do not closely accord with China’s traditions and social attitudes. In a certain sense, the modern spirit of the law focuses more on protecting “individual” rights, while China’s traditions and basic social attitudes place more emphasis on upholding “collective” interests. In teaching law at

institutions of higher education, establishing a value system based on core concepts of “rights” and “equality” is the foundation of modern legal education. Otherwise, students will not correctly grasp modern legal concepts, nor establish a firm base of legal theory. However, once this kind of value system is permitted to develop unchecked, it has negative consequences. Attaining social stability and harmonious social relationships is not achieved merely by upholding the rights of “individuals” or “groups.” Over the thirty years of promoting rule of law in China, there has been a negative social manifestation of steadily increasing litigation and efforts by citizens to contest their interests and rights. And in recent years, within the legal profession there has emerged the phenomena of regarding “rights protection” (*weiquan*) as higher than all else, with no concern for social stability. Both of these are byproducts resulting from the influence of this value system. As a result, there is a certain discrepancy between the concepts and notions being developed among law students and China’s traditional culture and social realities. Training legal talent that is appropriate for China’s national character and the needs of developing China’s democracy and rule of law this must be made the core of efforts in legal education to train legal talent . . . .

It is worth noting that, as a result of increased international exchanges and accelerated globalization, the influence of Western legal theory and legal education on China’s legal education has gradually increased. This has not only affected the content of legal education, but has also influenced concepts within certain legislation in China (such as the widespread dispute in society created by the “people oriented” Traffic Management Law). Further, in recent years, the majority of new professors have simply gone from school to school, perhaps with some background studying abroad. Add to this the limitations of disciplinary perspectives, and this means that their understanding of China’s social foundations and social realities is incomplete, and they lack a deep understanding of China’s national conditions. The combination of these factors has meant that the law students in school have established a value system and legal concepts that are at some variance with the demands of social reality. Absent an understanding rooted in the overall

situation (*daju*), the national character, and the interests of the nation, a value system based on “equality,” “justice,” and “rights” will frequently have negative consequences for overall social stability and the direction of social values.

The advance of democracy and the rule of law is an irreversible long-term trend of social development. Borrowing and researching foreign experiences and legal concepts of other countries may be necessary to legal education and research. And there may be disputes as to whether the construction of Chinese democracy and rule of law differs from the West. But in light of the actual demands of our national construction of democracy and rule of law, there is basic consensus that the core goals of legal education must be meeting practical needs of society and ensuring that our students are well-trained.