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Jie Gao

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## Article

# Comparison Between Chinese and American Lawyers: Educated and Admitted to Practice Differently in Different Legal Systems

Jie Gao\*

### I. HOW LAWYERS ARE EDUCATED AND ADMITTED TO PRACTICE LAW IN CHINA AND U.S.

#### A. *Legal and Legal Profession History in China and U.S.*

In the first few years after the Chinese Communist Party took power over China in 1949,<sup>1</sup> there was no functional legal system because of the

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\* Jie Gao earned a L.L.B. from Southwest University of Political Science and Law in China in 2003 and a B.A. in English Literature from Sichuan International Studies University in China in 2003. She enrolled in Pennsylvania State University's J.D./MBA program in 2006 and graduated with both degrees in 2010. Combining her knowledge and experience in law and business, Jie works as a partner manager/consultant at Dell's Corporate Headquarters in Round Rock, Texas. She is also a licensed attorney in China, where, between 2003 and 2006, she worked at Tahota Law Firm in Chengdu and Woo Kwan Lee & Lo Law Firm in Hong Kong. Her studies and practice have focused mainly on corporate law, contract law, securities law, mergers & acquisitions, supply chain management and finance. Jie would like to thank her deceased father, Shan Gao, and her mother, Fangyu Liao, for their love and support.

Party's "long established hostility to law"<sup>2</sup> under Chinese Confucian tradition, and because of the Marxist theory, which regarded laws as "a tool of the former ruling classes destined to wither away along with the state."<sup>3</sup>

In the 1950s, communist leader Mao Zedong started a campaign encouraging freedom of thought, and the communist government established its earliest socialist legal system.<sup>4</sup> However, this early legal system was abolished because Mao was tired of divergent ideas.<sup>5</sup> When Deng Xiaoping took power in the late 1970s, he started to rehabilitate the system destroyed by Mao.<sup>6</sup> He initiated the Open Door Policy to enter into the international market.<sup>7</sup> Also, at that time, many laws were passed, and the legal system was reestablished to meet economic development and the Open Door Policy.<sup>8</sup>

Because of the tradition of long hostility towards law and the early political campaigns between 1949 and 1979, there were almost no lawyers in China.<sup>9</sup> Even though the lawyers system was restored around 1980, lawyers were deemed to be the supervisory part of the state.

Several important events after 1979 affected the Chinese legal system, legal-education system, and legal profession.

In 1979, the law schools in universities and other professional schools offering legal training programs were reopened; many who wanted a formal legal education had the chance to do so for the first time. Law advisory offices were also reinstated to provide legal services to the public. In addition, legal research and the publication of national level legal journals resumed in the same year.

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1. Melanne Andromedea Civic, *A Comparative Analysis of International & Chinese Human Rights Law—Universality Versus Cultural Relativism*, 2 BUFF. J. INT'L L. 285, 304 (1996).

2. *Id.* at 245-46.

3. Joseph W. Dellapenna, *The Role of Legal Rhetoric in the Failure of Democratic Change in China*, 2 BUFF. J. INT'L L. 231, 236-37 (1996).

4. Dellapenna, *supra* note 3, at 246.

5. Yujie Gu, *Entering the Chinese Legal Market: A Guide For Lawyers Interested in Practicing Law in China*, 48 DRAKE L. REV. 173, 177 (citing Dellapenna, *supra* note 3, at 246).

6. Dellapenna, *supra* note 3, at 247.

7. Stephen L. Chan, *Differences Between British and Chinese View of Law Forebode Uncertainties For HongKong's People After the 1997's Transfer*, 15 UCLA PAC. BASIN L.J. 138, at 157

8. See Deng Xiaoping, "Carry Out the Policy of Opening to the Outside World and Learn Advanced Science and Technology from Other Countries" (10 October 1978).

9. Victoria Slind-Flor, *China's Riches Lure Lawyers*, NAT'L L.J., Nov. 29, 1993, at 23, 24.

In 1980, the Provisional Regulations on Lawyers defined lawyers as “workers of the state.”<sup>10</sup> In 1986, the All-China Lawyers’ Association was established and the licensing examination for lawyers was introduced.<sup>11</sup> In 1988, the first law firm was established by five lawyers in Shanghai.<sup>12</sup>

Before the Lawyer’s Law<sup>13</sup> was passed in 1996 to regulate the creation of private law firms,<sup>14</sup> all private law firms had to be approved by the Minister of Justice.<sup>15</sup> The Lawyer’s Law also redefined a lawyer as “a legal practitioner who holds a certificate to practice law and who provides legal services to society.”<sup>16</sup> In the same year, a code of ethics was adopted by the All-China Lawyers’ association.<sup>17</sup>

In 1997, one year after the passage of lawyer’s law, there were 100,000 lawyers and 8,200 law firms in China.<sup>18</sup> As of 2007, there were approximately 118,000 lawyers in China, about 0.8 per 10 thousand populations.<sup>19</sup> During the recession in 2008 and 2009, the number of lawyers did not significantly decline.<sup>20</sup>

By comparison, the United States has had a much longer legal and legal-profession history. Unlike China’s civil system and the dependent

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10. Carlos Wing-Hung Lo and Ed Snape, *Lawyers in the People’s Republic of China: A Study of Commitment and Professionalization*, 53 AM. J. COMP. L. 433, 442 (2005).

11. Weng Li, *Philosophical Influences on Contemporary Chinese Law*, 6 IND. INT’L & COMP. L. REV. 327, 328 (1996).

12. See Yujie Gu, *Entering the Chinese Legal Market: A Guide For Lawyers Interested in Practicing Law in China*, 48 DRAKE L. REV. 173, 191 n.190 (citing Dellapenna, *supra* note 3, at 252).

13. See generally Law of the People’s Republic of China on Lawyers (promulgated by the Standing Comm. Nat’l People’s Cong., May 15, 1996, effective Jan. 1, 1997), LAWINFOCHINA (find at <http://www.lawinfochina.com>) (P.R.C.).

14. Carlos Wing-Hung Lo and Ed Snape, *Lawyers in the People’s Republic of China: A Study of Commitment and Professionalization*, 53 AM. J. COMP. L. 433, 442 (2005).

15. China: New Law May Result in More Private Firms, LAW. INT’L, June, 1996, at 1.

16. Carlos Wing-Hung Lo and Ed Snape, *Lawyers in the People’s Republic of China: A Study of Commitment and Professionalization*, 53 AM. J. COMP. L. 433, 433-34 (2005) (citing RANDALL PEERENBOOM, *LAWYERS IN CHINA: OBSTACLES TO INDEPENDENCE AND THE DEFENSE OF RIGHTS* art. 3 (1998)).

17. See Law Info China, *The Legal System of China*, [http://www.lawinfochina.com/legal/Display\\_6.asp](http://www.lawinfochina.com/legal/Display_6.asp) (last visited Sept. 11, 2010).

18. Cynthia Losure Babaran, *Inspiring Global Professionalism: Challenges and Opportunities For American Lawyer in China*, 73 IND. L.J. 1247, at 1259.

19. See Chinatoday.com, *Chinese Laws and Regulations, Chinese Legal Systems, China Justice System, China Law News*, available at <http://www.chinatoday.com/law/a.htm> (last visited Sept. 11, 2010).

20. Zhong Guo Lv Shi Ye Wu Xin Zeng Zhang Dian Bu Duan Yong Xian, available at [http://www.legaldaily.com.cn/zmbm/content/2010-04/01/content\\_2099095.htm?node=20350](http://www.legaldaily.com.cn/zmbm/content/2010-04/01/content_2099095.htm?node=20350) (last visited Sept. 11, 2010).

role of Chinese lawyers in it, United States lawyers operate in a common-law system and enjoy an independent role in it.<sup>21</sup>

On September 17, 1787, the American Constitutional Convention signed the U.S. Constitution.<sup>22</sup> Unlike the Chinese Constitution, which has only been a guideline,<sup>23</sup> the U.S. Constitution became the primary source of law in the United States.<sup>24</sup> The U.S. Constitution has a central place in United States law and political culture.<sup>25</sup> It also provides a framework for the organization of the federal government and the relationship between the government and the citizenry. The Constitution divides the government into three branches: the executive branch, led by the President,<sup>26</sup> the legislative branch, headed by the Congress,<sup>27</sup> and the judicial branch, headed by the Supreme Court.<sup>28</sup>

Before the declaration of independence in 1776, there were no law schools in the United States. People who wanted to get legal education went to England and attended Inns of Court.<sup>29</sup> After the American Revolution from 1775 to 1783, the number of lawyers increased quickly because of the relatively low requirements for legal education and admission to the bar.<sup>30</sup>

The first law school grew out of law offices that trained clerks or apprentices.<sup>31</sup> The first law firms with two or more lawyers appeared in the United States just before the American Civil War from 1861 to 1865.<sup>32</sup> This preceded the first appearance of such law firms in China by roughly 120 years.<sup>33</sup>

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21. Chunlin Leonhard, *Beyond the Four Corners of a Written Contract: A Global Challenge to U.S. Contract Law*, 21 PACE INT'L L. REV. 1, at 9.

22. See, e.g., Sherri L. Belknap, *Constitution Day: Developing Habits of Citizenship*, 89 MICH. B.J. 20, 20 (2010).

23. See Jonas Alsen, *An Introduction to Chinese Property Law*, 20 MD. J. INT'L L. & TRADE 1, 4 (1996).

24. See U.S. CONST. art. V.

25. See Gregory Casey, *The Supreme Court and Myth: An Empirical Investigation*, 8 L. & SOC'Y. REV. 385 (1974).

26. U.S. CONST. art. II.

27. U.S. CONST. art. I.

28. U.S. CONST. art. III.

29. See Ralph Michael Stein, *The Path of Legal Education from Edward I to Langdell: A History of Insular Reaction*, 57 CHI.-KENT L. REV. 429, 438 (1981).

30. See John O. Sonsteng, Donna Ward, Colleen Bruce and Michael Petersen, *A Legal Education Renaissance: A Practical Approach For the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 321-24 (2007).

31. See *id.* at 321.

32. Geoffrey C. Hazard, Jr. & Angelo Dondi, *Legal Ethics: A Comparative Study* (Stanford: Stanford University Press, 2004), 39.

33. Chengyan Lu, *Legal Services in China: Facing the WTO*, 20 UCLA PAC. BASIN L.J. 278, at 295.

At the end of 2007, there were 1,143,358 lawyers in the United States, about one lawyer for every 300 Americans.<sup>34</sup> Unlike China, the United States legal industry has been affected significantly by the current recession. Major law firms cut more than 10,000 jobs nationwide within a few months in 2009.<sup>35</sup> On February 12, 2009, Bloomberg reported that 700 jobs were cut at law firms across the country that day alone.<sup>36</sup>

## B. *Legal Education in China and U.S.*

### 1. History of Legal Education in China and U.S.

In 1979, after Deng Xiaoping's new policy of "Socialism with Chinese Characteristics" in China,<sup>37</sup> law schools in universities and other professional schools that offered legal-training programs were reopened.<sup>38</sup> There were reforms taken to change the Soviet Union Model created in the early 1950s.<sup>39</sup> However, even in the mid 1990s, legal education and law were not regarded as important in the shift to a market economy.

From 1986, when the licensing exam was introduced,<sup>40</sup> to mid 1990s, there were 175 law schools, 84,000 lawyers and about 25,000 to 30,000 law school students in China.<sup>41</sup> However, lawyers at that time

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34. See Urska Velikonja, *Making Peace and Making Money: Economic Analysis of the Market for Mediators in Private Practice*, 72 ALB. L. REV. 257, 267 n.66 (2009) (citing Am. Bar Ass'n, National Lawyer Population by State 3 (2007), available at [http://new.abanet.org/marketresearch/PublicDocuments/2009\\_NATL\\_LAWYER\\_by\\_State.pdf](http://new.abanet.org/marketresearch/PublicDocuments/2009_NATL_LAWYER_by_State.pdf)).

35. Andy Vuong, *Big Law Firms Cut Attorneys, Staff in Tight Economy*, DENVER POST, Apr. 2, 2009, at A1, available at [http://www.denverpost.com/theeconomy/ci\\_12050886](http://www.denverpost.com/theeconomy/ci_12050886).

36. Lindsay Fortado and Carlyn Kolker, *Law Firms in U.S. Eliminate 700 Jobs as Economy Slows*, Bloomberg, Feb. 13 2009, available at <http://www.bloomberg.com/apps/news?pid=20601087&sid=aWC1nJ1AQX3I&refer=home>.

37. See Shauna Emmons, *Freedom of Speech in China: A Possibility or a Prohibition?* 23 LOY. L.A. INT'L & COMP. L. REV. 249, 271 n.210 (2001) (citing JOHN BRYAN STARR, UNDERSTANDING CHINA: A GUIDE TO CHINA'S ECONOMY, HISTORY, AND POLITICAL STRUCTURE 114 (1997) at 79).

38. Charles Chao Liu, *China's Lawyer System: Dawning Upon the World Through a Tortuous Process*, 23 WHITTIER L. REV. 1037, at 1052.

39. Carlos Wing-Hung Lo, *Socialist Legal Theory in Deng Xiaoping's China*, 11 COLUM. J. ASIAN L. 469, at 470.

40. Li, *id.*

41. Jiamshe Tian & Jialin Xu, Shi Yi Jie San Zhong Quan Hui Yi Lai Woguo Gaodeng Faxue Jiaoyu Shiye Yi Pie [A Glimpse of China's Higher Education in Law Since the Third Plenary Session of the Eleventh CPC Central Committee Meeting in 1978], CHINA LAWS (June 29, 2006), available at [http://www.lawbase.com.cn/law\\_learning/lawbase\\_@1661.htm](http://www.lawbase.com.cn/law_learning/lawbase_@1661.htm); see State Council Information Office of the People's Republic of China, Zhongguo Renqum Shiye de Fazhan [Progress in China's Human Rights] (Nov. 1995), [http://www.gov.cn/zwgk/2005-05/25/content\\_700.htm](http://www.gov.cn/zwgk/2005-05/25/content_700.htm) (last visited

were woefully inexperienced because they lacked formal legal training, and most of the subjects law students were taught were too old to prepare them for the transition to a market economy.

One of the important reasons for the lack of formal training is the Chinese law schools' lack of resources. Since all law schools in China are public schools and law and legal education were not recognized as important component in transitioning to a market economy, one can easily understand why the state did not allocate enough resources to legal education.

As a student in a top-ten law school in China in the late 1990s, I could see there was not enough space in the library for thousands of students. We were required to wake up very early in the morning in order to get a seat in the library. There were not many law books in the library. Almost all students went to the library just to find a quiet place to study. We also needed to go to class at least half an hour before class started because the classroom was not big enough to seat all the students taking that class.

Another reason students wanted to stay in the library during the winter was because the library, jammed with students, was much warmer than our dorms or classrooms. Dorms were even worse: seven or eight students stayed in a 2,000-square-foot room with no bathroom. There were about fifteen dorm units on each floor of a dormitory, and there was only one bathroom on each level. In addition, electricity was cut everyday after 11 p.m.—no exceptions, even though the temperature exceeded 100 degrees Fahrenheit in the summer. For security purposes, students were not allowed to live off-campus.

Law-school students during that time were concerned about how to survive in such miserable living conditions and how to make sure they could actually attend every class. Professors sometimes failed to show up for classes because they went to court or meet their clients. Professors also practiced law because their law school salaries were not enough for them to live in a fair condition. Even though the situation has improved significantly in recent years, Chinese law schools are still not on par with United States law schools.

Conversely, United States law schools have a longer history, provide formal and systematic legal education, and have much more financial resources for students, facilities and faculties.

After the Revolution from 1775 to 1783, the number of lawyers grew quickly because the relatively low requirements for legal education

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Sept. 11, 2010). See also Charles R. Irish, *Reflections on the Evolution of Law and Legal Education in China and Vietnam*, 25 WIS. INT'L L.J. 243, 246 (2007).

and admission to the bar.<sup>42</sup> The first law school grew out of law offices training clerks or apprentices. Litchfield Law School was established by Judge Tapping Reeve in 1784 for the sole purpose of legal education.<sup>43</sup> Other schools such as Harvard University, Yale University and Columbia University thereafter established similar programs.<sup>44</sup> However, law school education was rare in the legal profession. In 1906, the Association of American Law Schools required three years of study at law schools.<sup>45</sup>

As of 2010, there are 200 ABA-approved law institutions in United States: 199 out of the 200 confer the first degree in law, the Juris Doctor degree.<sup>46</sup> The other law institution, U.S. Army Judge Advocate General's school, provides a special program beyond the Juris Doctor program.<sup>47</sup> Unlike China, where there are only public law schools, private law schools in the United State outnumber public law schools.<sup>48</sup> In addition, the U.S. Constitution is more important to U.S. law than China's Constitution is to Chinese law because it is the supreme law of the land<sup>49</sup> and plays a central role in political culture.<sup>50</sup>

As an international student in a first-tier law school in United States since 2006, I have experienced the difference in resources of that Chinese and American law schools. First of all, my U.S. law school would not admit thousands students if its facility could only accommodate 300. Secondly, there has always been enough space and library resources for students to study and do research. No law school would prohibit living off-campus if there were not enough places for students to live. Thirdly, professors normally show up for class, unless an emergency arises, and give reasons and prior notice to students in the event they cannot attend class. The law school provides students with

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42. See John O. Sonsteng, Donna Ward, Colleen Bruce and Michael Petersen, *A Legal Education Renaissance: A Practical Approach For the Twenty-First Century*, 34 WM. MITCHELL L. REV. 303, 321-24 (2007).

43. Ruth Bader Ginsburg, *Remarks at the Rededication Ceremony, University of Illinois College of Law, September 8, 1994*, 1995 U. ILL. L. REV. 11, 12 n.5 (1995) (citing ROBERT BOCKING STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, 3-4 (1983)).

44. ALBERT J. HARNO, *LEGAL EDUCATION IN THE UNITED STATES: A REPORT PREPARED FOR THE SURVEY OF THE LEGAL PROFESSION* 86-87 (1953).

45. *Id.* at 95.

46. American Bar Association, *ABA-Approved Law Schools*, <http://www.abanet.org/legaled/approvedlawschools/approved.html> (last visited Aug. 14, 2010).

47. See *id.*

48. *Id.*

49. See U.S. CONST. art. V.

50. See generally Gregory Casey, *The Supreme Court and Myth: An Empirical Investigation*, 8 L. & SOC'Y. REV. 385 (1974).



enough resources for in-depth study and enough flexibility to deal with unexpected personal emergencies.

## 2. Law School Admission in China and U.S.

After three years of high-school education, students in China who plan to attend law school must take the National University Admission Examination, a uniform exam that all high-school graduates must take in order to get into college.<sup>51</sup> Students fill out the same application for all majors and designate which schools, including which law schools, they wish to attend.<sup>52</sup> There are usually three or four options for each tier of law school. Each law school admits a limited number of applicants based on the score the applicants earn on the national exam; therefore, this exam score is normally the only criterion for admission.<sup>53</sup> No particular law school requires applicants to submit a personal statement or other essay.

Chinese graduate law schools require prospective students to take a national exam in combination with the exam for the specific law school.<sup>54</sup> The national exam tests the applicants' grasp of foreign language and politics.<sup>55</sup> The particular exam for each law school tests different legal subjects required by that school.<sup>56</sup> Each law school makes its own admissions decisions.

Law-school admissions in the United States are quite different in several respects. Firstly, applicants at American Bar Association accredited law schools must have a bachelors degree, which means law school is at the graduate level in the United States, compared to the undergraduate level in China.<sup>57</sup> Secondly, law-school applicants must take a special test, the Law School Admission Test (LSAT), tailored exclusively to law schools, instead of taking the same exam that non-law-school applicants take.<sup>58</sup> Thirdly, the LSAT score is not the only factor law schools consider in making admissions decisions. Other

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51. Zeng Xianyi, *Symposium: a Global Legal Odyssey Legal Education in China*, 43 S. TEX. L. REV. 707, 710 (2002).

52. *Id.*

53. *Id.*

54. *See* Zeng, *supra* note 51, at 710.

55. *See id.*

56. *See id.*

57. *See generally*, Law School Admission Council, Understanding the Difference between JD and LLM Degrees, available at <http://www.lsac.org/JD/apply/jd-llm-difference.asp> (last accessed Sept. 11, 2010).

58. *See generally* Law School Admission Council, Applying to Law School, The Application Process: An Overview, <http://www.lsac.org/JD/apply/applying-to-law-school.asp> (last visited Aug. 19, 2010).

important factors include letters of recommendation, work experience and a personal statement.<sup>59</sup>

Graduate law schools in the United States require applicants to have a first degree in law, such as a JD, LLB, or the equivalent, from an accredited or comparably recognized law school in the applicants' home countries.<sup>60</sup> No examination is required except that international students who did not get their legal education mainly in English are required to take the Test of English as a Foreign Language (TOEFL).<sup>61</sup> A personal statement and letters of recommendation are also factors law schools take stock of in making admissions decisions.

### 3. Law School Curriculum and Teaching Method in China and the United States

Each law school in China creates its own curriculum. Because law in China is regarded as a social science, law schools create their curricula the same way as other social science curriculums, typically including required courses for all undergraduate students that are not related to law at all.<sup>62</sup> Unlike American legal education, which aims at teaching students how to be legal practitioners, legal education in China has no clear professional objectives: it aims at training students to be law professors.<sup>63</sup>

#### Curriculum

Even though the curriculum of each Chinese law school is unique, the curriculum of Peking University Law School exemplifies the subjects taught in a four-year program:

140 Credits Total

Required Courses For All Undergraduate Students (33 Credits):

1. English (8 Credits)
2. Introduction to Maoism (2 Credits)
3. Ethics (2 Credits)
4. Marxism (2 Credits)
5. Global Economy and Politics (2 Credits)
6. Den Xiaoping's Theory (3 Credits)

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59. *Id.*

60. *See, e.g.,* Duke Law, Application Information for LLM, SJD & Exchange Programs <http://www.law.duke.edu/internat/appinformation> (last visited Aug. 19, 2010).

61. *See id.* *See also* TOEFL, For Test Takers, <http://www.ets.org/toefl/> (last visited Aug. 19, 2010).

62. *Clinical Legal Education and The Reform of The Higher Legal Education System in China*, 30 *FDMILJ* 421, 424 (2007).

63. *Id.*

7. Physical Education(4 Credits)
8. Computer Science (6 Credits)
9. Military theory (2 Credits)<sup>64</sup>

Required Courses For Legal Subjects (58 Credits), listed below, are courses commonly taught in other law schools:

1. Constitutional law (3 Credits)
2. Jurisprudence (3 Credits)<sup>65</sup>
3. Administrative Law and Administrative Procedure (3Credits)<sup>66</sup>
4. Chinese History of Legal System (3 Credits)<sup>67</sup>
5. Civil Law (4 Credits)<sup>68</sup>
6. Civil Procedure (4 Credits)
7. Criminal Law (5 Credits)
8. Criminal Procedure (4 Credits)
9. Commercial Law (2 Credits)<sup>69</sup>
10. Economic Law (3 Credits)<sup>70</sup>
11. Public International Law (3 Credits)<sup>71</sup>
12. Private International Law (3 Credits)<sup>72</sup>

Here is a list of some elective courses provided in most law schools in China:

1. Legislative law
2. Contract Law
3. Family Law
4. Judicial Systems and Legal Practice
5. Maritime Law
6. International Arbitration
7. Corporation
8. Tax Law
9. Criminology
10. Criminal Investigation

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64. Peking University Law School, Required Courses, [http://www.law.pku.edu.cn/jiaoxuearticle\\_one.asp?MID=20071155177695&MenuId=20038207982494&menuname=%BD%CC%D1%A7](http://www.law.pku.edu.cn/jiaoxuearticle_one.asp?MID=20071155177695&MenuId=20038207982494&menuname=%BD%CC%D1%A7) (last visited Aug. 19, 2010).

65. This is not required in United States law schools.

66. U.S. law schools do not typically require this course. *See, e.g.*, The Dickinson School of Law of The Pennsylvania State University, Required Courses, [http://law.psu.edu/academics/jd/first\\_year](http://law.psu.edu/academics/jd/first_year) (last visited Aug. 19, 2010).

67. U.S. law schools do not typically require this course. *See, e.g., id.*

68. U.S. law schools do not typically require this course. *See, e.g., id.*

69. U.S. law schools do not typically require this course. *See, e.g., id.*

70. U.S. law schools do not typically require this course. *See, e.g., id.*

71. U.S. law schools do not typically require this course. *See, e.g.*, The Dickinson School of Law of The Pennsylvania State University, Required Courses, [http://law.psu.edu/academics/jd/first\\_year](http://law.psu.edu/academics/jd/first_year) (last visited Aug. 19, 2010).

72. U.S. law schools do not typically require this course. *See, e.g., id.*

11. Foreign Constitutions
12. Roman Law
13. Insurance Law
14. International Criminal Law
15. International Human Right Law
16. Labor Law
17. Europe Union Law
18. International Environmental Law<sup>73</sup>

By comparison, the full-time Juris Doctor program of U.S. law schools is only three years.<sup>74</sup> Students usually take required courses their first year. Even though each law school creates its own curriculum, the first-year curriculum is usually very similar from school to school.<sup>75</sup> Unlike the curriculum of Chinese law schools, the curriculum of U.S. law schools typically only features law-related courses. The purpose of the curriculum is to train lawyers.

Below is a list of required courses. If some of the following courses are not required in the first year, they are generally required in the second or third year.

Required courses for first-year law-school students include:

1. Civil Procedure
2. Criminal Law
3. Torts
4. Criminal Procedure
5. Constitutional Law
6. Property
7. Legal Writing
8. Contracts<sup>76</sup>

Using New York Law School as an example, elective courses are provided by specialty areas,<sup>77</sup> which include:

1. Administrative Law & Practice<sup>78</sup>

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73. Peking University School of Law, Academics, <http://en.law.pku.edu.cn/Course/Courselist.asp?MID=2010144284734&MenuId=20091124158039&menuname=Academics> (last visited Sept. 6, 2010).

74. See Carole Silver, *Winners and Losers in the Globalization of Legal Services: Situating the Market for Foreign Lawyers*, 45 VA. J. INT'L L. 897, 900 (2004-05).

75. See Judith Faucette, *How Law School Works, Tips For the Classroom Experience and Exam Preparation*, [http://law.suite101.com/article.cfm/how\\_law\\_school\\_works](http://law.suite101.com/article.cfm/how_law_school_works) (last visited Aug. 19, 2010).

76. See, e.g., The Dickinson School of Law of The Pennsylvania State University, *Required Courses*, [http://law.psu.edu/academics/jd/first\\_year](http://law.psu.edu/academics/jd/first_year) (last visited Aug. 19, 2010).

77. See generally *Elective Courses Listed by Specialty Area*, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/) (last visited Aug. 19, 2010).

2. Business & Commercial Law<sup>79</sup>
3. Clinics, Externships & Simulation Courses<sup>80</sup>
4. Constitutional Law<sup>81</sup>
5. Corporate Law<sup>82</sup>
6. Criminal Law & Procedure<sup>83</sup>
7. Family & Estate Law<sup>84</sup>
8. History, Philosophy, Sociology, & Theory of Law<sup>85</sup>
9. Intellectual Property<sup>86</sup>
10. International & Comparative Law<sup>87</sup>
11. Labor & Employment Law<sup>88</sup>
12. Mental Disability Law<sup>89</sup>
13. Media and Entertainment Law<sup>90</sup>

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78. *See* New York Law School, Administrative Law & Practice, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/administrative\\_law\\_and\\_practice](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/administrative_law_and_practice) (last visited Aug. 19, 2010).

79. *See* New York Law School, Business & Commercial Law, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/business\\_and\\_commercial\\_law](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/business_and_commercial_law) (last visited Aug. 19, 2010).

80. *See* New York Law School, Clinics, Externships & Simulation Courses, [http://www.nyls.edu/academics/jd\\_programs/lawyering\\_skills\\_externships?nav=Section-Academics-JDPrograms,Section-Academics-JDPrograms-Clinics](http://www.nyls.edu/academics/jd_programs/lawyering_skills_externships?nav=Section-Academics-JDPrograms,Section-Academics-JDPrograms-Clinics) (last visited Aug. 19, 2010).

81. *See* New York Law School, Constitutional Law, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/constitutional\\_law](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/constitutional_law) (last visited Aug. 19, 2010).

82. *See* New York Law School, Corporate Law, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/corporate\\_law](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/corporate_law) (last visited Aug. 19, 2010).

83. *See* New York Law School, Criminal Law & Procedure, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/criminal\\_law\\_and\\_procedure](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/criminal_law_and_procedure) (last visited Aug. 19, 2010).

84. *See* New York Law School, Family & Estate Law, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/family\\_and\\_estate\\_law](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/family_and_estate_law) (last visited Aug. 19, 2010).

85. *See* New York Law School, History, Philosophy, Sociology, and Theory of Law, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/history\\_philosophy\\_sociology\\_and\\_theory\\_of\\_law](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/history_philosophy_sociology_and_theory_of_law) (last visited Aug. 19, 2010).

86. *See* New York Law School, Intellectual Property, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/intellectual\\_property](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/intellectual_property) (last visited Aug. 19, 2010).

87. *See* New York Law School, International & Comparative Law, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/international\\_and\\_comparative\\_law](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/international_and_comparative_law) (last visited Aug. 19, 2010).

88. *See* New York Law School, Labor & Employment Law, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/labor\\_and\\_employment\\_law](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/labor_and_employment_law) (last visited Aug. 19, 2010).

89. *See* New York Law School, Mental Disability Law, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/mental\\_disability\\_law](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/mental_disability_law) (last visited Aug. 19, 2010).

14. New York City Law<sup>91</sup>
15. Procedure & Evidence<sup>92</sup>
16. Professional Skills<sup>93</sup>
17. Property & Real Estate Law<sup>94</sup>
18. Public Interest Law & Practice<sup>95</sup>
19. Tax Law<sup>96</sup>
20. Tort Law<sup>97</sup>

There are many elective courses under each specialty area.

As one can see, unlike Chinese law schools, which also require students to study subjects related to political science and English, the curriculum in U.S. law schools is more concentrated on legal education and provides students with specialty areas to focus on. It is also a shorter program: it typically requires three years of full-time study, whereas Chinese law schools typically require four.

#### Teaching Method in Law Schools in China and the United States

Law-school pedagogy in China and the United States differs significantly. This is also a prime reason why Chinese lawyers and law-school students lack critical-thinking and critical-legal-analysis skills, which form an important part of legal education in the United States.

The Chinese legal system is a civil law system.<sup>98</sup> It is not based on case law and analogical, critical reasoning. In addition, there are not

90. See New York Law School, Media & Entertainment Law, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/media\\_and\\_entertainment\\_law](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/media_and_entertainment_law) (last visited Aug. 19, 2010).

91. See New York Law School, New York City Law, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/new\\_york\\_city\\_law](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/new_york_city_law) (last visited Aug. 19, 2010).

92. See New York Law School, Procedure & Evidence, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/procedure\\_and\\_evidence](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/procedure_and_evidence) (last visited Aug. 19, 2010).

93. See New York Law School, Professional Skills, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/professional\\_skills](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/professional_skills) (last visited Aug. 19, 2010).

94. See New York Law School, Property & Real Estate Law, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/property\\_and\\_real\\_estate\\_law](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/property_and_real_estate_law) (last visited Aug. 19, 2010).

95. See New York Law School, Public Interest Law & Practice, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/public\\_interest\\_law\\_and\\_practice](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/public_interest_law_and_practice) (last visited Aug. 19, 2010).

96. See New York Law School, Tax Law, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/tax\\_law](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/tax_law) (last visited Aug. 19, 2010).

97. See New York Law School, Tort Law, [http://www.nyls.edu/academics/catalog\\_and\\_schedule/elective\\_courses\\_by\\_specialty\\_area/tort\\_law](http://www.nyls.edu/academics/catalog_and_schedule/elective_courses_by_specialty_area/tort_law) (last visited Aug. 19, 2010).

enough resources in Chinese law schools. Because many law-school professors in China teach more classes than their peers in U.S. law schools, lengthy class discussion can be eschewed.

Moreover, in Chinese culture, students should respect their teachers;<sup>99</sup> therefore, students do not usually challenge assumptions embedded in the rules taught by their professors. Instead, students passively receive large amounts of information and memorize it in order to deal with short-answer and multiple-choice questions on exams. Furthermore, students in China are taught that there is only one correct answer to a specific question. Unlike Chinese law-school students, U.S. law-school students do not uncommonly respond to questions with, “It depends.”

As a previous law-school student in China and a current law-school student in the United States, I faced many difficulties adjusting to my first year at a U.S. law school. I knew, based on my experience in China, that students listen to their professors and take notes; that professors spend most of their the time lecturing the class; that it is very rare for students to ask questions in class; that professors spend most of their classroom time teaching legal theory and explaining codes; that most of the cases examined are not real but instead hypothetical.

During the first few weeks at my U.S. law school, I was panicked because I felt I could not find a uniform definition of a concept in Torts, nor a definite answer to a question—except sometimes in Civil Procedure, which is heavily code-based. I could not understand why there were so many student discussions in class, nor how those discussions related to the subject. I found courses based on codes, such as Civil Procedure, easier than courses based on case law, such as Torts, because the teaching method in courses based on codes resonated with the teaching method in China.

### C. *Admission to Practice Law in China and U.S.*

After successfully finishing four years of study at law school in China, students may sit for the National Judicial Examination, which is held once a year.<sup>100</sup> In addition, non-law-school students who hold

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98. See, e.g., Chunlin Leonhard, *A Legal Chameleon: An Examination of the Doctrine of Good Faith in Chinese and American Contract Law*, 25 CONN. J. INT’L L. 305, 326 (2010) (citing Daniel C. K. Chow, *The Legal System of the People’s Republic of China* 64-66 (2009)).

99. Leng Hui, *Chinese Culture Schema of Education: Implications for Communication between Chinese Students and Australian Educators*, ISSUES IN EDUCATIONAL RESEARCH, 15(1) (2005).

100. Guo Jia Si Fa Kao Shi Shi Shi Ban Fa [Measures for the Implementation of National Judicial Examination], art. 6. Sup. People’s Ct.

undergraduate degrees may also sit for the exam.<sup>101</sup> In 2007, the Ministry of Justice in China began allowing students in some areas in China who graduated from a three-year law-school program to sit for the Judicial Examination.<sup>102</sup> Moreover, only Chinese citizens are eligible to take the exam,<sup>103</sup> which is uniform across the country.

Students who pass the Judicial Examination are issued a Certificate of the Legal Profession Qualifications by the Ministry of Justice.<sup>104</sup> This certification is typically the first step to practicing law in China. A person should also have practice training at a law firm for a full year and should be a person of good character and conduct.<sup>105</sup>

Furthermore, a person shall be granted the lawyer's qualification upon approval by the Ministry of Justice if that person has received an undergraduate legal education of less than the four-year law-school program, engaged in professional work such as legal research and teaching, and acquired a senior or equivalent professional level.<sup>106</sup>

However, a person shall not be qualified to practice law if the person is incompetent, has been subject to criminal punishment except for negligent crime, has been discharged from public employment, or has the lawyers certificate revoked.<sup>107</sup>

By comparison, unlike China, which has a national bar examination cross the country, each state in United States has its own bar examination. The power of each state to promulgate the requirements that prospective attorneys must satisfy in order to practice law in the state accords with the Tenth Amendment of the United States Constitution.<sup>108</sup>

Also, unlike China, which has only one bar examination held for two days each year, most U.S. states require candidates to take a national exam called the Multistate Professional Responsibility Examination<sup>109</sup> in addition to the state-administered bar exam held each February and July.<sup>110</sup> To be able to practice law in the United States does not require

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101. *See id.* at art. 15.

102. *Si Fa Bu Guan Yu Que Ding Guo Jia Si Fa Kao Shi Fang Kuan Bao Ming Xue Li Tiao Jian Di Fang De Yi Jian* [Opinions from the Ministry of Justice on lowering the qualifications to sit for the National Judicial Examination] Sup. People's Ct.

103. Measures for the Implementation of National Judicial Examination, art. 13.

104. *Guo Jia Si Fa Kao Shi Shi Shi Ban Fa* [Measures for the Implementation of National Judicial Examination] art. 16.

105. *Zhong Hua Ren Min Gong He Guo Lv Shi Fa* [Law of the People's Republic of China on Lawyers] art. 8.

106. Law of the People's Republic of China on Lawyers, art. 7.

107. *See id.* at art. 9.

108. *See* U.S. CONST. amend. X.

109. National Conference of Bar Examiner, Multistate Professional Responsibility Examination (MPRE), available at <http://www.ncbex.org/multistate-tests/mpre/>.

110. The New York State Board of Law Examiners, Description of Bar Exam, available at <http://www.nybarexam.org/TheBar/TheBar.htm#descrip>.



one year of full-time practice in a law firm, as is required of Chinese lawyers.

Furthermore, unlike China, where law-school and non-law-school students alike may sit for the bar, the states, subject to some exceptions,<sup>111</sup> typically only allow a candidate who holds a JD degree to take the bar.<sup>112</sup>

Moreover, China only allows Chinese citizens to take the bar exam, whereas most states, such as New York, do not have a citizenship requirement. Some States, such as New York and California, also allow foreign LLM students to take the bar exam.<sup>113</sup> Admittance to practice law in one state, subject to some exceptions, does not authorize a lawyer to practice law in other states.<sup>114</sup>

The most important difference between admission to practice law in China and the United States is that professional responsibility and ethics are more important in the United States than in China. Firstly, U.S. bar exams require candidates to study legal ethics and to take the MPRE.<sup>115</sup> Secondly, to be able to be admitted to the bar of a given state, a character-fitness test is required, which includes a character reference and background check,<sup>116</sup> whereas the character requirements to practice in China are not as strict.<sup>117</sup> Thirdly, regulations after admission to a state's bar are more comprehensive and easy to implement than similar regulations in China.<sup>118</sup>

## II. WHAT CHINA CAN LEARN FROM THE LEGAL EDUCATION AND ADMISSION TO PRACTICE IN THE UNITED STATES

The United States has a developed legal system; China still has a long way to go in its legalization process. I believe that China can learn from the United States during this process.<sup>119</sup> First, China should consider setting up the law schools as graduate schools.

To practice law, especially in a specialized area, a lawyer not only needs professional knowledge about law but also in-depth knowledge of

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111. *See id.*

112. *See id.*

113. *See id.*

114. Rule 5.5 (b), Model Rules of Professional Conduct.

115. Multistate Professional Responsibility Examination (MPRE), *available at* <http://www.ncbex.org/multistate-tests/mpre/>.

116. AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION & ADMISSIONS TO THE BAR & NATIONAL CONFERENCE OF BAR EXAMINERS, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS 8-9 (Margaret Fuller Corneille & Erica Moeser, eds. 2000).

117. Law of the People's Republic of China on Lawyers, art. 8.

118. *See id.* ch. VII.

119. The process entails structuring law-school programs, curricula, pedagogical methods and admission requirements to practice law.

the particular area. For example, a patent lawyer should know patent law as well as biology, mechanical engineering, physics or the like; a corporate law attorney should master corporate law as well as economics or finance; a litigator should know the rules of procedure and evidence as well as psychology. However, Chinese students go to law school right after high school without having studied in some other areas at first. Some non-law school graduates become lawyers without formal legal education. Therefore, many lawyers in China only have either a law-school education or an education in another major. In order to improve the quality of legal services provided by lawyers, China will need to allow law-school students to get undergraduate educations in some specific area before they attend law schools.

Second, China should consider changing conventional law-school pedagogy in order to encourage critical thinking and analysis. As discussed above, Chinese law-school students tend to passively receive information in class. Professors spend most of the class time lecturing and explaining rules. Not much class time is spent openly discussing issues, and students are not used to questioning what they are being told.

However, in real practice, lawyers are required to question others' propositions and the assumptions underlying them. If law-school students did not develop these skills in law school, they would encounter difficulties when trying to exercise these skills in practice. Therefore, in order to prepare law-school students in China to practice law in the real world, law professors should spend more time encouraging in-class discussions, encourage student to challenge assumptions and offer different opinions.

Third, China should not allow non-law-school students with bachelor's degree to sit for the bar examination. Legal education is critical for lawyers in real practice. Even though people with other majors could pass the bar exam in China by memorizing the tested content, two or three months of intensive study are no substitute for three or four years formal legal education. Passively memorizing and regurgitating rules does not make one a good lawyer.

An interesting comparison between bar-admission standards in China and the United States is that China has a very low bar exam pass rate, fifteen percent on average from 2002 to 2008.<sup>120</sup> One reason for this low passage rate is that non-law-school graduates may sit for the bar. Some law-school students fail the bar because they are not as good at memorizing rules as others who have strong memories but who don't know the meaning of those rules. However, to practice law is not to

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120. Li Nian Si Fa Kao Shi Tong Guo Lv Fen Xi, *available at* [http://www.chinalaw.edu.com/new/1300\\_23229/2010\\_5\\_6\\_sh8662394025165010217738.shtml](http://www.chinalaw.edu.com/new/1300_23229/2010_5_6_sh8662394025165010217738.shtml).

memorize rules; it is to know the rules and apply them creatively to unique fact patterns.

Therefore, one way to improve the quality of lawyers' legal services in China is to prevent people with no formal legal training or legal practice experience from sitting for the bar. An alternative would be to change the content of bar examination in China from code-centric to case-centric. This would make the exam more difficult for candidates who simply remember the rules without bothering to understand them.

To conclude, Chinese and U.S. lawyers are educated and admitted to practice law differently in two different legal systems. China has a lot to learn from the United States. First, China should consider making law schools graduate schools. Second, China should consider changing law-school pedagogy in order to encourage critical thinking and analysis. Third, China should either allow only law-school students with bachelor's degree to sit for the bar exam or change the exam from code-focused to case-focused.