

LAW AND HARMONY: AN IN-DEPTH LOOK AT CHINA'S FIRST AMERICAN- STYLE LAW SCHOOL

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ABSTRACT

Globalization has increased the demand for a global legal infrastructure, but a single worldwide legal system is unlikely in the foreseeable future. A better focus of discussion is what a "reasonably harmonized" global legal infrastructure might accomplish. One major goal is the facilitation of the legitimate interests of individuals and corporations who wish to transact across borders. Clients working across borders wish to be served by lawyers with different types of substantive knowledge, but with common analytical skills, common relationship skills, and a common understanding of what it means to be a lawyer. The demand has already led to rapid changes in the global practice of law; most significantly, the emergence of multinational law firms.

The growth of multinational law firms leads to the question: what are the essential skills that should define a transnational lawyer? A lawyer should be a problem solver, one who is adept at criticizing and synthesizing legal argument, but also one who is skilled in communicating and in assessing and influencing the perspectives of the recipient of the communication.

American legal education in the twentieth century excelled in teaching legal principles, but significant progress is required to maintain its superiority in the twenty-first century. American legal education can, and should, learn from overseas experiments.

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On October 22, 2008, the Peking University School of Transnational Law (“STL”) was dedicated at University Town in Shenzhen, People’s Republic of China (“PRC”). The ceremony was attended by jurists from around the world, including Associate Justice Anthony Kennedy of the United States Supreme Court. STL is mainland China’s first Western-style law school. Over the course of the program, the students are thoroughly trained in both Anglo-American common law and civil law systems of Western Europe.

The training at STL compares with that of the best American law schools in terms of the subjects taught and the training and experience of the professors. In addition, STL students have the advantage of a background in “li”, the Confucian ethical code which emphasizes collective harmony and the primacy of interpersonal relationships. In the Confucian vision, social harmony rather than justice is the symbol of the ideal society. Ideally under Confucianism disputes are settled according to what is best for social functioning and interpersonal relationships, rather than in terms of legal rights.

The combination of skills practiced at STL has the potential to create a new “breed” of lawyer. If the hallmark of the transnational lawyer in a global economy is the ability to not only critique legal argument, but also to effectively communicate and influence the perspectives of the recipient of the communication, the students at STL should be well-positioned for success.

This article takes an in-depth look at STL, based on the author’s firsthand knowledge acquired while serving as a Visiting Assistant Professor during STL’s first year of operation. It compares STL with Chinese, transnational and U.S. law schools to conclude that STL students – with their training in Western critical legal analysis and transnational skills, as well as their heritage of valuing interpersonal relationships and compromise – are uniquely positioned to join the ranks of transnational lawyers. It also considers what U.S. law schools might learn from STL.

TABLE OF CONTENTS

| | |
|---|----|
| I. INTRODUCTION | 28 |
| II. THE CONTEMPORARY CHINESE LEGAL SYSTEM | 30 |
| A. HISTORICAL INFLUENCE | 31 |
| 1. 1949-1966 | 31 |
| 2. 1966-1976 | 32 |
| 3. 1976-Present | 32 |
| B. PHILOSOPHICAL INFLUENCES..... | 32 |
| 1. Legalism and Fa | 33 |

| | | |
|------|---|----|
| 2. | <i>Confucianism and Li</i> | 33 |
| C. | IMPACT OF HISTORICAL AND PHILOSOPHICAL INFLUENCES | 34 |
| 1. | <i>Dispute Resolution in China</i> | 34 |
| 2. | <i>Interpersonal Relationships in China</i> | 35 |
| 3. | <i>Comparison with Western Adversarialism</i> .. | 35 |
| III. | CONTEMPORARY LEGAL EDUCATION IN CHINA | 36 |
| A. | HISTORICAL DEVELOPMENT | 36 |
| 1. | <i>1949-1966</i> | 36 |
| 2. | <i>1966-1976</i> | 37 |
| 3. | <i>1976-Present</i> | 37 |
| B. | CONTEMPORARY LEGAL EDUCATION | 38 |
| 1. | <i>Recruitment and Length of Study</i> | 38 |
| 2. | <i>Academic Programs</i> | 39 |
| 3. | <i>Objectives</i> | 39 |
| 4. | <i>Pedagogy</i> | 40 |
| C. | CHALLENGES TO LEGAL EDUCATION | 41 |
| IV. | TRANSNATIONAL LEGAL EDUCATION | 41 |
| A. | TRANSNATIONAL TRAINING | 42 |
| B. | THE FIRST TRANSNATIONAL LAW SCHOOL IN CHINA | 43 |
| 1. | <i>Soochow University Law School</i> | 43 |
| 2. | <i>The Mission</i> | 44 |
| 3. | <i>Curriculum</i> | 44 |
| 4. | <i>Ethical Training</i> | 45 |
| 5. | <i>Skills Training</i> | 46 |
| 6. | <i>Faculty</i> | 46 |
| 7. | <i>Students</i> | 47 |
| 8. | <i>Careers</i> | 47 |
| 9. | <i>Contributions</i> | 48 |
| V. | PEKING UNIVERSITY SCHOOL OF TRANSNATIONAL LAW | 48 |
| A. | PEKING UNIVERSITY | 49 |
| B. | STL | 49 |
| 1. | <i>The Mission</i> | 50 |
| 2. | <i>Curriculum</i> | 51 |
| 3. | <i>Ethical Training</i> | 52 |
| 4. | <i>Skills Training</i> | 53 |
| 5. | <i>Faculty</i> | 54 |
| 6. | <i>Students</i> | 55 |
| 7. | <i>Careers</i> | 55 |
| 8. | <i>Contributions</i> | 56 |
| VI. | CRITIQUE OF THE PEKING UNIVERSITY SCHOOL OF LAW J.D. PROGRAM | 56 |
| A. | COMPARISON WITH CHINESE LAW SCHOOLS ... | 57 |

| | |
|---|----|
| B. COMPARISON WITH TRANSNATIONAL LAW | |
| SCHOOLS | 57 |
| C. COMPARISON WITH U.S. LAW SCHOOLS | 59 |
| VII. CONCLUSION: LESSONS FROM STL..... | 60 |

I. INTRODUCTION

Globalization is the defining force of our times. Among the myriad changes it has engendered, globalization has increased the demand for a global legal infrastructure. While a single worldwide legal system is unlikely in the foreseeable future, a fruitful focus of discussion is what a “reasonably harmonized” global legal infrastructure might accomplish.¹ One of the main goals of such discourse is the facilitation of the legitimate interests of individuals and corporations who wish to transact across borders. Clients working across borders wish to be served by lawyers with different types of substantive knowledge, but with common analytical skills, common relationship skills, and a common understanding of what it means to be a lawyer. This demand has already led to rapid changes in the global practice of law; most significantly, the emergence of multinational law firms.²

The growth of multinational law firms leads to the question of what are the essential skills and values that should define a transnational lawyer. This is similar to the question addressed by the MacCrate Report: what lawyering skills are essential for competent representation, and what constitutes the essential values of the legal profession.³ The MacCrate Report suggests the following answer: a lawyer should be a problem solver, adept at criticizing and synthesizing legal argument, but also skilled in communicating, assessing, and influencing the perspectives of the recipient of the communication.⁴

American legal education in the twentieth century excelled in teaching legal principals and jurisprudence. It dramatically improved the way lawyers developed the skill of critical thinking.

1. Jeffrey S. Lehman, Dean of STL, Keynote Address at the Law School Admissions Council Annual Meeting: More Drops, More Buckets: What a More Integrated Transnational Legal Profession Implies for U.S. Law Schools (May 30, 2009) (on file with the author) [hereinafter Lehman, More Drops, More Buckets].

2. *Id.*

3. ABA, Sec. Leg. Educ. & Admis. to the Bar, *Legal Education and Professional Development—an Education Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (ABA 1992) [hereinafter MacCrate Report]; see also Lehman, More Drops, More Buckets, *supra* note 1.

4. MacCrate Report, *supra* note 3, at 121-221 (Part II). See also, Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What’s Missing from the MacCrate Report – Of Skills, Legal, Science and Being a Human Being*, 61 *WASH L. REV.* 593 (1994). (arguing for the inclusion of judgment, experience, feeling and character into the MacCrate skills and values).

The MacCrate Report, however, underscores that significant progress is required in the twenty-first century. American legal education can, and should, learn from overseas experiments.⁵

On October 22, 2008, the Peking University School of Transnational Law (“STL”) was dedicated at University Town in Shenzhen, People’s Republic of China (“PRC”). The ceremony was attended by jurists from around the world, including Associate Justice Anthony Kennedy of the United States Supreme Court.⁶ STL is mainland China’s first Western-style law school. Its Juris Doctor program is delivered in English. Students take first-year courses in Transnational Law, Torts, Contracts, Criminal Law, Property, Comparative Civil Procedure, Statutory Interpretation, and Legal Practice. Upper level courses include a wide array of commercial, administrative, and procedural courses. Over the course of the program, students are thoroughly trained in both Anglo-American common law and civil law systems of Western Europe.⁷

The training at STL compares with that of the best American law schools in terms of the subjects taught and the training and experience of the professors. In addition, STL students have the advantage of a background in “li”, the Confucian ethical code which emphasizes collective harmony and the primacy of interpersonal relationships.⁸ In the Confucian vision, social harmony rather than justice is the symbol of the ideal society.⁹ As a result, China has a strong tradition of favoring mediation over litigation.¹⁰ Disputes are often settled according to what is best for social functioning and interpersonal relationships, rather than in terms of legal rights.¹¹

5. Lehman, *More Drops, More Buckets*, *supra* note 1.

6. Associate Justice Anthony Kennedy, United States Supreme Court, Remarks on the Occasion of the Opening of the Peking University School of Transnational Law: U.S. Relations with the People’s Republic of China (October 22, 2008) (on file with the author).

7. Howard Bromberg, *Peking University School of Transnational Law: A New Venture in International Legal Relations*, 1 AVE MARIA INT’L L.J. 114, 118 (2009).

8. STANLEY B. LUBMAN, BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO 13-19, 235 (Stanford University Press 1999) [hereinafter LUBMAN, BIRD IN A CAGE]; Stanley B. Lubman, *Dispute Resolution in China after Deng Xiaoping: “Mao and Mediation” Revisited*, 11 COLUM. J. ASIAN L. 229 (1997) [hereinafter Lubman, *Mao and Mediation*]; Stanley B. Lubman, *Mao and Mediation: Politics and Dispute Resolution in Communist China*, 55 CAL. L. REV. 1284 (1967). See generally Stanley B. Lubman, *Looking for Law in China*, 20 COLUM. J. ASIAN L. 1 (2006) (providing a comprehensive discussion of law and dispute resolution in China).

9. LUBMAN, BIRD IN A CAGE, *supra* note 8, at 13-15.

10. *Id.* at 24. Ancient rulers attempted to persuade their constituents to resolve their disputes by making concessions among themselves in accordance with Confucian morality. Even Chinese judges were formerly expected to use their moral power to eliminate future lawsuits and preserve social harmony. *Id.*

11. *Id.* at 19.

The combination of skills practiced at STL has the potential to create a new “breed” of lawyer. If the hallmark of the transnational lawyer in a global economy is the ability to not only critique legal argument, but also to effectively communicate and influence the perspectives of the recipient of the communication, the students at STL are well-positioned for success.

This article takes an in-depth look at STL, China’s first American style law school. It begins, in Section II, by reviewing the development of the modern Chinese legal system and the historical events and philosophical theories which have influenced it. Section III examines the historical development, characteristics and challenges of contemporary Chinese legal education. Section IV examines the characteristics of transnational law schools and describes China’s first transnational law school at Soochow University. Section V takes an in-depth look at STL, based on the experiences of the author while serving as a Visiting Assistant Professor during STL’s first year of operation. Section VI compares STL with Chinese, transnational and U.S. law schools to conclude that STL students, with their training in Western critical legal analysis and transnational skills, as well as their heritage of valuing interpersonal relationships and compromise, are uniquely positioned to join the ranks of transnational lawyers. Section VII considers what U.S. law schools might learn from STL. A brief Appendix provides an example of “law and harmony” in action at STL.

II. THE CONTEMPORARY CHINESE LEGAL SYSTEM

Among the most prevalent factors underlying the Chinese legal system are its turbulent past century, as well as Confucianism and Legalism.¹²

12. Mark A. Scott, *China’s Influence on the American Legal System Arising from China’s Rise to Power*, 32 SUFFOLK TRANSNAT’L L. REV. 51, 77 (2008); Stephen L. McPherson, *Crossing the River by Feeling the Stones: The Path to Judicial Independence in China*, 26 PENN ST. INT’L L. REV. 747, 792 (2008); Lingyun Gao, *What makes a Lawyer in China? The Chinese Legal Education System after China’s Entry into the WTO*, 10 WILLIAMETTE J. INT’L L. & DISP. RESOL. 197, 201, 204 (2002); Weng Li, *Philosophical Influences on Contemporary Chinese Law*, 6 IND. INT’L & COMP. L. REV. 327, 332 (1996). See also M. Ulric Killion, *Post-WTO China and Independent Judicial Review*, 26 HOUSTON J. INT’L L. 507, 510 (2004) (advising that the “West must lend more understanding to the jurisprudence that has driven China’s legal system over the centuries Chinese jurisprudence is a foundational philosophy grounded in antiquity . . .”).

A. HISTORICAL INFLUENCES

The development of law in modern China may be divided into several periods: 1949 to 1966, 1966 to 1976, and 1976 through the present.¹³

1. 1949-1966

In 1931, the Communist Party of China (“CPC”) instituted the Chinese Soviet Republic.¹⁴ On October 1, 1949, Mao Zedong (“Mao”), the Chairman and leader of the CPC, announced the formation of the People’s Republic of China (“PRC”).¹⁵ The new government soon moved to establish a socialist legal system.¹⁶

The period from 1954 to mid 1957 is known as “the golden age” of legal development in China, because of the progress made in the creation of a formal legal system.¹⁷ The framework for the system was established in 1954 with the promulgation of the first PRC Constitution.¹⁸ The Constitution was supplemented by laws based on Russia’s 1936 Constitution as propagated under Stalin. This period saw the establishment of courts throughout China.¹⁹

The “golden age” ended in 1957, when the Soviet-Chinese alliance shattered and China’s leaders abandoned the Soviet legal model.²⁰ Prior to 1957, China had endorsed the policy of “letting a hundred flowers bloom and a hundred schools of thought contend,” encouraging the free exchange of ideas on Chinese rule.²¹ As a result, certain Chinese jurists and legal scholars sought to establish concepts such as judicial independence, equal justice before the law, and due process of law.²² The government, viewing the introduction of such concepts as strong criticism, ended the policy and launched the Anti-Rightist Campaign attacking their critics.²³ By 1959, the reform movement had come to a halt.²⁴

13. Lingyun Gao, *supra* note 12, at 204-05; Weng Li, *supra* note 12, at 320-29 (utilizing a five period framework).

14. Craig Avino, *China’s Judiciary: An Instrument of Democratic Change?* 22 PENN. ST. INT’L L. REV. 369, 376 (2003).

15. *Id.* at 376.

16. Lingyun Gao, *supra* note 12, at 204.

17. *Id.*; Weng Li, *supra* note 12, at 328.

18. Avino, *supra* note 14, at 376.

19. *Id.*; Weng Li, *supra* note 12, at 328; Lingyun Gao, *supra* note 12, at 204.

20. Weng Li, *supra* note 12, at 328.

21. Avino, *supra* note 14, at 375.

22. Weng Li, *supra* note 12, at 328; Lingyun Gao, *supra* note 12, at 204-05.

23. Avino, *supra* note 14, at 375.

24. Weng Li, *supra* note 12, at 328; Lingyun Gao, *supra* note 12, at 204-05.

2. 1966- 1976

Mao proclaimed the beginning of the “Great Proletarian Cultural Revolution” in 1966, destroying any possibility of China adopting either a totally Soviet-style or a totally Western-style legal system.²⁵ Although the reasons for the movement are unclear, it is believed to have started with a power struggle in the Communist Party’s leadership. Mao successfully mobilized the support of China’s youth and eliminated his Party opponents. From 1966 to 1969, China was in a state of civil chaos. Officials of the Party who had opposed Mao were branded as counter-revolutionaries and attacked by “Red Guards,” Chinese youths devoted to Mao. The laws of China were “literally abolished,” the Ministry of Justice was disbanded, and Mao’s pronouncements were considered the only source of law.²⁶

3. 1976 to Present

With the death of Mao in 1976, China began to recognize “social legality” and the protection of individual rights.²⁷ Deng Xiaoping seized power and implemented the “Two-Hands” policy, in which Chinese society was urged to develop the economy on the one hand and to strengthen the legal system on the other.²⁸ Since 1976, hundreds of laws have been enacted and the national court system has been restored.²⁹

B. PHILOSOPHICAL INFLUENCES

Confucianism and Legalism are traditionally viewed as the “main planks” of the Chinese conception of law.³⁰ Legalism advocates governance by means of a strict rule of law imposed by a strong central state.³¹ Conversely, Confucianism stresses the im-

25. Weng Li, *supra* note 12, at 328; Lingyun Gao, *supra* note 12, at 205.

26. Avino, *supra* note 14, at 378; Weng Li, *supra* note 12, at 328; Lingyun Gao, *supra* note 12, at 205.

27. Weng Li, *supra* note 12, at 329.

28. Avino, *supra* note 14, at 378.

29. Weng Li, *supra* note 12, at 329; Lingyun Gao, *supra* note 12, at 205.

30. LUBMAN, *BIRD IN A CAGE*, *supra* note 8, at 15; JIANFU CHEN, *CHINESE LAW: TOWARD AN UNDERSTANDING OF CHINESE LAW, ITS NATURE AND DEVELOPMENT* 7 (Kluwer Law International 1999); Weng Li, *supra* note 12, at 332; Scott, *supra* note 12, at 77; McPherson, *supra* note 12, at 790-91. *See also* BIN LIANG, *THE CHANGING CHINESE LEGAL SYSTEM 1978-PRESENT: CENTRALIZATION OF POWER AND RATIONALIZATION OF THE LEGAL SYSTEM*, 181-82 (2008) (noting that the “influence of Chinese legal traditions is a major factor affecting the legalization process”).

31. Russell Menyhart, *Changing Identities and Changing Law: Possibilities for a Global Legal Culture*, 10 *IND. J. GLOBAL LEGAL STUD.* 157, 185 (2003); Lingyun Gao, *supra* note 12, at 203; Avino, *supra* note 14, at 371. *See also* GOEFFREY MACCORMACK, *THE SPIRIT OF TRADITIONAL CHINESE LAW 4-6* (University of Georgia Press 1996) (discussing the Legalists and the desire for a centralized government).

portance of education, persuasion, and moral example in teaching proper social behavior. The belief that realization of these concepts will result in harmony and stability is central to Confucianism³² The dichotomy is characterized as the difference between *fa* (law) and *li* (social conduct).³³

1. *Legalism and Fa*

Legalism is based on a conception of man's nature as essentially selfish, and favors the use of *fa* rather than the less objective rules of *li*.³⁴ Legalists argued that a nation's stability required strict laws and harsh punishments.³⁵ They favored a rigid legal system because it compelled order and was equally applicable to all citizens.³⁶ China's first dynasty, the Qin (221-206 B.C.) relied on Legalist theories. However, in 206 B.C. the Han dynasty (206 B.C.- A.D. 220) seized power and Legalism's primacy came to an end.³⁷ Ultimately, Confucianism became predominant and China "embraced compromise" as the backbone of its legal system.³⁸

2. *Confucianism and Li*

The philosophy of Confucius was the official state philosophy of China from the second to the twentieth century and had a profound effect on Chinese law.³⁹ Confucius taught that the social fabric could be kept strong, and the country could enjoy enlightened government, by an understanding and practice of the principles of *li*,⁴⁰ which focus on maintaining harmony and respect for social hierarchy.⁴¹ The rights and obligations between people varied with each individual's place in the social hierarchy, and the ethical principles of *li* determined the proper manner in

32. Avino, *supra* note 14, at 371. See also MACCORMACK, *supra* note 31, at 6-11 (discussing Confucianism and individual moral codes).

33. Menyhart, *supra* note 31, at 185. See also CHEN, *supra* note 30, at 8 (discussing the "extraordinarily wide range of meanings" for *li*). This article is by its nature limited to a cursory discussion of *li* and Confucianism.

34. John W. Head, *Feeling the Stones When Crossing the River: the Rule of Law in China*, 7 SANTA CLARA J. INT'L L. 25, 40 (2010); Weng Li, *supra* note 12, at 333.

35. Scott, *supra* note 12, at 77-78.

36. *Id.*; Weng Li, *supra* note 12, at 333.

37. Avino, *supra* note 14, at 370-71.

38. Scott, *supra* note 12, at 78 (quoting Mark S. Hamilton, *Comment, Sailing in a Sea of Obscurity: The Growing Importance of China's Maritime Arbitration Commission*, 3 ASIAN PAC. L. & POL'Y J. 477, 484 (2002)).

39. John H. Matheson, *Convergence, Culture, and Contract Law in China*, 15 MINN. J. INT'L L. 329, 372 (2006). See also Killion, *supra* note 12, at 523 (noting that "Confucianism is a strongly entrenched social fact in China").

40. Head, *supra* note 34, at 39.

41. Avino, *supra* note 14, at 371; Lingyun Gao, *supra* note 12, at 201.

which people were treated.⁴² The collective good, rather than justice, was the goal of the legal system in this era.⁴³

C. IMPACT OF HISTORICAL AND PHILOSOPHICAL INFLUENCES

Confucian scholars criticized the Legalists for encouraging people “to think only in terms of their self-interest.”⁴⁴ They believed the Legalist philosophy made individuals more litigious and encouraged them to manipulate the legal system.⁴⁵ The influence of Confucianism is seen today in the preference for other forms of dispute resolution over litigation, as well as in the respect accorded to interpersonal relationships. Both of these concepts contrast with the American legal system, known for its “lawyer dominated litigation.”⁴⁶

1. *Dispute Resolution in China*

Litigation in the Confucian context is regarded as “time-consuming, degrading and costly.”⁴⁷ The idea that civil behavior should be enforced by the judiciary “strikes many Chinese as odd and unnecessary,” given Confucian traditions of civic duty.⁴⁸ From early Chinese civilization to the present day, mediation and related forms of “alternative” dispute resolution have been preferred over litigation.⁴⁹ Moreover, the preference for mediation is generally attributed to the influence of Confucianism with its emphasis on the virtues of “compromise, yielding, and non-litigiousness.”⁵⁰

42. Avino, *supra* note 14, at 371.

43. Lingyun Gao, *supra* note 12, at 201-02.

44. Menyhart, *supra* note 31, at 185 (quoting ALBERT H. Y. CHEN, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA 9 (Butterworths Law 1992)).

45. *Id.*

46. ROBERT E. KAGAN, ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LIFE (Harvard University Press 2001).

47. Shala F. Ali, *Approaching the Global Arbitration Table: Comparing the Advantages of Arbitration as Seen by Practitioners in East Asia and the West*, 28 REV. LITIG. 791, 812 (2009) (quoting MARTIN WRIGHT, JUSTICE FOR VICTIMS AND OFFENDERS: A RESTORATIVE RESPONSE TO CRIME 70 (Waterside Press 1996)).

48. *Id.* (quoting DAVID SHAMBAUGH, BEAUTIFUL IMPERIALIST: CHINA PERCEIVES AMERICA 299 (Princeton University Press 1991)).

49. LUBMAN, BIRD IN A CAGE, *supra* note 8, at 29; Lubman, *Mao and Mediation*, *supra* note 8, at 1285-86; Pitman B. Potter, *Legal Reform in China: Institutions, Culture, and Selective Adaptation*, 29 LAW & SOC. INQUIRY 465, 483-84 (2004) (describing the “near-legendary reputation” of China as a society in which informal mediation has emerged as a preferred alternative to formalized litigation). See also Cynthia Losure Baraban, *Inspiring Global Professionalism: Challenges & Opportunities for American Lawyers in China*, 73 IND. L. J. 1247, 1254 (1998) (describing the preference for alternative dispute resolution and related opportunities for American lawyers).

50. Lubman, *Mao and Mediation*, *supra* note 8, at 1285-86.

2. *Interpersonal Relationships in China*

The Confucian state is composed not of individuals, but of interconnections and interdependencies. The Confucian concept of “family” extends to personal relationships, or “*guanxi*.” As understood by the Chinese, *guanxi* implies mutual obligation, reciprocity, and personal affection.⁵¹ It is generally understood that there are three levels of *guanxi*: (1) the highest, inner circle for family members; (2) non-family members who have a significant connection based on trust or shared experience; (3) strangers who are not known and not trusted.⁵² Building *guanxi* is considered essential, and substantial resources may be committed to returning favors and creating obligations for others to return.⁵³ The importance of maintaining relationships creates additional aversion to conflict and litigation and reinforces the Chinese predilection for alternative means of dispute resolution.⁵⁴

3. *Comparison with Western Adversarial Legalism*

The American process of “policy making, policy implementation and dispute resolution by means of lawyer dominated litigation” has become known as “adversarial legalism.”⁵⁵ The central goal of adversarial legalism is not to bring about harmony, the resolution of disputes, or the development of interpersonal relationships. Rather, “the theme is a constant struggle of entitlements: who is right and who is wrong” and whose rights will be treated as “more important.”⁵⁶ Chinese legal scholars and officials remain apprehensive about the applicability of Western legal norms in China. Official statements about the proper role of law in contemporary China indicate that Chinese legal culture draws on a reservoir of Chinese tradition derived from Confucianism. Many Chinese legal scholars remain resistant to adversarial legalism as a solution to the challenges faced by the country’s legal system.⁵⁷

51. Matheson, *supra* note 39, at 373-74.

52. *Id.* at 374; PITMAN B. POTTER, *THE CHINESE LEGAL SYSTEM: GLOBALIZATION AND LOCAL LEGAL CULTURES* 13 (Routledge 2001).

53. *Id.* Cf. LUBMAN, *BIRD IN A CAGE*, *supra* note 8, at 304 (recognizing the importance of *guanxi*, but considering its negative aspects).

54. Matheson, *supra* note 39, at 375.

55. KAGAN, *supra* note 46, at 13; David Baharvar, *Adversarial Legalism as China's Primary External Model of Legality: What Does it Mean for China's Future?* 2 *CHINESE L. & POL'Y REV.* 65, 66 (2006).

56. Baharvar, *supra* note 55, at 66.

57. *Id.*; POTTER, *supra* note 52, at 7. See also Nicholas Howson, *Can the West Learn from the Rest? — the Chinese Legal Order's Hybrid Modernity*, 32 *HASTINGS INT'L & COMP. L. REV.* 815, 815-16 (2009) (considering whether the West can develop “a form of legality which is relational” rather than based on litigation). Cf.

III. CONTEMPORARY LEGAL EDUCATION IN CHINA

The existing Chinese legal education system was established with the founding of the PRC in 1949. It has experienced a tortuous journey, tracking the development of the modern Chinese legal system.⁵⁸

A. HISTORICAL DEVELOPMENT

1. 1949-1966

In 1906, the first modern Chinese law school, was established, and other law schools quickly followed.⁵⁹ After the establishment of the PRC in 1949, legal education changed to accommodate the newly adopted Soviet legal system.⁶⁰

In the following years, legal education was influenced by multiple political shifts and their affects on the Chinese legal system.⁶¹ In 1952, educational institutions focusing on political science and law were established in the four main administrative regions: Beijing, Shanghai, Chongqing and Wuhan.⁶² During this time, the objective of legal education was to prepare the students to “serve the people, to grasp modern science and technology and to participate in financial, economic, political, legal and intellectual work.”⁶³ Between 1954 and 1957, the objective of legal education was revised to focus on producing “red legal experts” who “grasped Marxism and Leninism theories as well as legal knowledge.”⁶⁴ By 1961, many law schools had closed.⁶⁵

Weifang He, *China's Legal Profession: The Nascence and Growing Pains of a Professionalized Legal Class*, 19 COLUM. J. ASIAN L. 138, 139 (2005) (considering the wisdom of scholars advocating reconstructing China's modern political-legal system using Confucian principles).

58. Mao Ling, *Clinical Legal Education and the Reform of the Higher Legal Education System in China*, 30 FORDHAM INT'L L. J. 421, 423 (2007); Charles Chao Liu, *China's Lawyer System: Dawning Upon the World Through a Tortuous Process*, 23 WHITTIER L. REV. 1037, 1047-54 (2002). See also WEI LUO, CHINESE LAW AND LEGAL RESEARCH 76-78 (Fred B. Rothman & Co. 2005) (providing background on the development of the modern Chinese legal education system).

59. Melissa Hung, *Obstacles to Self Actualization in Chinese Legal Practice*, 48 SANTA CLARA L. REV. 213, 217 (2008); Zeng Xianyi, *Legal Education in China*, 43 S. TEX. L. REV. 707, 708 (2002); Lingyun Gao, *supra* note 12, at 215.

60. Hung, *supra* note 59, at 217; Charles Chao Liu, *supra* note 58, at 1047-50.

61. Lingyun Gao, *supra* note 12, at 215; Zhenmin Wang, *Legal Education in Contemporary China*, 36 INT'L LAW. 1203, 1205 (2002).

62. Lingyun Gao, *supra* note 12, at 215.

63. *Id.* (quoting Kong Lingwang, *The Objectives of Legal Education*, 1 Legal Educ. 1, 1-2 (1985)). Although the law schools were formed to train both prospective lawyers and professors, the Higher Education Committee later decided that the schools should focus on preparing students for the judiciary. *Id.*

64. *Id.* (quoting Kong Lingwang, *supra* note 63, at 2). Between 1958 and 1960, the objective was again refined to “educate legal workers who could both politically and professionally serve for the Chinese Communist Party.” *Id.*

The law schools were re-opened in the four main regions in 1962.⁶⁶ However, law students during this period were no longer expected to develop legal knowledge; rather, they were required to “have correct and firm political beliefs, love the Party, love Chairman Mao” and “be a revolutionary proletarian soldier.”⁶⁷

2. 1966-1976

The law schools were once again closed in 1966 during the Cultural Revolution.⁶⁸ Laws were labeled as “bourgeois instruments” and abandoned.⁶⁹ Law professors and students were sent to factories and farms to be reeducated as workers. Courts were vandalized and law schools were closed.⁷⁰

3. 1976-Present

The law schools were reopened at the conclusion of the Cultural Revolution in 1976.⁷¹ Since 1979, almost every general university has established a law school or department of law.⁷² In 1986, the national bar association, known as the All China Lawyers Association, was created.⁷³ Under new objectives for legal education set by the Education Committee, law students and attorneys were expected “to be loyal to the Constitution and laws, to behave under lofty ethical standards, to connect theory with practices, to rigorously and justly enforce the law, to wholeheartedly serve the people, and [to] contribute to the socialist modernization of the country.”⁷⁴

65. *Id.* at 216.

66. *Id.*

67. *Id.* (quoting Kong Lingwang, *supra* note 63, at 2).

68. Lingyun Gao, *supra* note 12, at 216; Zhenmin Wang, *supra* note 61, at 1205.

69. Zhenmin Wang, *supra* note 61, at 1205 (“[E]verything changed after the Cultural Revolution broke out in 1966. Any laws, including . . . Soviet Union laws, were labeled as bourgeois instruments that must be abandoned.”).

70. *Id.*; Charles Chao Liu, *supra* note 58, at 1051-53. *See also* Chengyan Lu, *Legal Services in China: Facing the WTO*, 20 UCLA PAC. BASIN L.J. 278, 282 (2003) (discussing the effects of the Cultural Revolution on lawyers).

71. Hung, *supra* note 59, at 217; Chengyan Lu, *supra* note 70, at 282-83 (noting that businesses needed lawyers for transactional advice and dispute resolution).

72. Hung, *supra* note 59, at 217-18; Chengyan Lu, *supra* note 70, at 283; Charles Chao Liu, *supra* note 58, at 1053-54.

73. *Id.* at 218; Gerard J. Clark, *An Introduction to the Legal Profession in China in the Year 2008*, 41 SUFFOLK U. L. REV. 833, 839 (2008); Carlos Wing-Hung Lo & Ed Snape, *Lawyers in the People’s Republic of China: A Study of Commitment and Professionalization*, 53 AM. J. COMP. L. 433, 442-44 (2005).

74. Lingyun Gao, *supra* note 12, at 217 (quoting Kong Lingwang, *supra* note 63, at 3).

B. CONTEMPORARY LEGAL EDUCATION

By 2000, it was apparent that law would play an important role in China's transition to a market economy.⁷⁵ At that time, legal training became a valuable commodity within government service and China's growing private sector.⁷⁶ China's entry into the World Trade Organization in December 2001 provided additional opportunities for lawyers.⁷⁷ The increased recognition of the importance of lawyers put pressure on the Chinese legal education system. China quickly responded: currently China has at least six hundred law schools or law departments, with an estimated three hundred thousand students studying law.⁷⁸

1. *Recruitment and Length of Study*

Law school in China, as in many European countries, is an undergraduate program.⁷⁹ Law students are selected from high school graduates through the National University Admission Examination. Applicants apply, designating their schools of interest. Universities make admission decisions based on applications, the scores earned on the examination, and the government recruitment plan. Nationally ranked universities have the privilege of selecting the highest ranked applicants.⁸⁰ After four years of study, graduates receive an LL.B. degree, which qualifies them to work in the courts, prosecutors' offices, public security bureaus, other governmental and administrative offices, corporations, and law firms.⁸¹

Students who have completed four years of undergraduate education may apply for an LL.M. program.⁸² Graduate law students are selected through a combination of national and university tests.⁸³ Recently, China has also adopted the U.S. model for the J.M. program. This program accepts graduates with majors

75. Charles F. Irish, *Reflections on the Evolution of Law and Legal Education in China and Vietnam*, 25 WIS. INT'L. L.J. 243, 249 (2007).

76. *Id.*

77. *Id.* at 250:

"With the addition of a large number of WTO obligations onto the complex and multi-jurisdictional legal environment affecting commercial transactions, coupled with the rapid increase in the relative importance of international trade and China's private sector, a significant premium was available for those who could provide legal advice to assist domestic and foreign enterprises in their struggles to gain market share and increased profitability."

78. *Id.* at 251.

79. Lingyun Gao, *supra* note 12, at 218; Weifang He, *supra* note 57, at 146-47.

80. Zeng Xianyi, *supra* note 59, at 710.

81. Lingyun Gao, *supra* note 12, at 220; Hou Xinyi, *Modern Legal Education in China*, 31 OKLA. CITY U. L. REV. 293, 296 (2007).

82. *Id.*

83. Zeng Xianyi, *supra* note 59, at 710-11.

other than law, aiming to train senior legal professionals.⁸⁴ Students holding an advanced law degree may then apply for a Ph.D. in law.⁸⁵ During a three-year course of study, Ph.D. candidates complete a thesis as well as their required course work.⁸⁶

2. *Academic Programs*

Since 1999, the National Guidance Commission of Higher Legal Education has required students to take fourteen core courses to earn an LL.B. The fourteen core courses are generally described as: Jurisprudence, Constitutional Law, Legal History, Criminal Law, Civil Law, Commercial Law, Criminal Procedural Law, Civil Procedural Law, Economic Law, Administrative and Administrative Procedural Law, Public International Law, Private International Law, International Economic Law, and "Criminalistics."⁸⁷ Electives include Foreign Legal History, Environmental Law, Family Law, and Writing.⁸⁸

Different schools may have somewhat different curriculums. In Peking University Law School, students must fulfill a total of 150 credits in mandatory courses, 20 credits in electives, a thesis, and an internship within four years of schooling.⁸⁹ After four years, they are expected to possess a solid knowledge of legal theory and various laws, sufficient proficiency in a foreign language to read professional materials, the skills necessary to apply legal knowledge to specific legal affairs, and the ability to perform legal research.⁹⁰

3. *Objectives*

The mission of legal education in China is informed by socialist ideological doctrine. The general mission, as loosely defined in the 1990's by the Ministry of Justice and the Ministry of Education, is to "educate excellent socialist legal practitioners and governmental administrators who have firm political belief, behave under lofty ethical standards, and specialize in law."⁹¹

84. *Id.*; Hung, *supra* note 59, at 222; Weifang He, *supra* note 57, at 148.

85. Lingyun Gao, *supra* note 12, at 221.

86. *Id.* In addition to the degeed programs, a number of non-degeed programs also exist in China. *Id.*

87. Zeng Xianyi, *supra* note 59, at 711; Hou Xinyi, *supra* note 81, at 296.

88. Hou Xinyi, *supra* note 81, at 296.

89. Zou Keyuan, *Professionalizing Legal Education in the People's Republic of China*, 7 SING. J. INT'L & COMP. L. 159, 169 (2003)

90. *Id.* See also Kara Abramson, *Paradigms in the Cultivation of China's Future Legal Elite: A Case Study of Legal Education in Western China*, 7 ASIAN-PAC. L. & POL'Y J. 302 (2006) (discussing the curriculum at the law school at Sichuan University).

91. Lingyun Gao, *supra* note 12, at 217 (citing East China University of Politics and Law, The Ninth "Five Year Development Plan" and Long Term Target Until

However, as China moves towards a market economy, the influence of communist ideology has diminished and the mission has become more pragmatic.⁹²

4. Pedagogy

China, a civil law country, uses teaching methods different from those applied in most law schools in common law nations.⁹³ The most common pedagogical technique is lecturing.⁹⁴ Classroom discussions between professors and students are rare; theoretical teaching is the main objective.⁹⁵ The legal teaching methods in China have been summarized as: “teacher-centered rather than student-centered; knowledge-oriented rather than skill-oriented; lectures on content and logical reasoning rather than problem-solving and creative-thinking.”⁹⁶

Case study is avoided, for the reason that no binding precedent and few published cases exist.⁹⁷ The Supreme Court does select cases that it believes are important to publish in an official report, but these cases merely guide, rather than bind, the lower courts.⁹⁸ Further, the opinions are not as detailed as those in common law countries. Opinions generally include “the cause of action, the basic facts, the law and the result,” without the legal reasoning.⁹⁹

As a result, Chinese students do not learn to engage in critical legal analysis.¹⁰⁰ Rather, they become adept at memorizing and applying large amounts of material.¹⁰¹ Even in application, the emphasis is on applying the law to a problem as if it has a single correct answer, as opposed to viewing the practice of law as a dynamic process in which there may be numerous “correct”

2010, 31 *Research on Higher Legal Education* 3 (1996)); Zou Keyuan, *supra* note 89, at 168.

92. Zou Keyuan, *supra* note 89, at 168. For instance, Peking University Law School aims to train students to master basic knowledge of the law and to become skilled in applying law to legal matters. *Id.*

93. Mao Ling, *supra* note 58, at 426.

94. Zou Keyuan, *supra* note 89, at 170.

95. Lingyun Gao, *supra* note 12, at 225.

96. Mao Ling, *supra* note 58, at 426.

97. Lingyun Gao, *supra* note 12, at 225.

98. *Id.* at 226.

99. *Id.*

100. Patricia Ross McCubbin, Malinda Seymore, Andrea Curcio & Llewellyn Joseph Gibbons, *China's Future Lawyers: Some Differences in Education and Outlook*, 7 *ASPER REV. INT'L BUS. & TRADE L.* 293, 296 (2007); Mao Ling, *supra* note 58, at 428.

101. McCubbin, et. al., *supra* note 100, at 297; Mao Ling, *supra* note 58, at 428. See also Eli Wald, *Notes from Tsinghua: Law and Legal Ethics in Contemporary China*, 23 *CONN. J. INT'L L.* 369, 371-72 (2008) (discussing the author's experience teaching law students at Tsinghua University).

answers.¹⁰² Chinese students are not often encouraged to examine the assumptions underlying legal rules, nor to frame arguments on both sides of an issue.¹⁰³ Accordingly, they learn many abstract legal theories and the blackletter of law of the statutes. However, after graduation, they must rely on work experience to learn the practical application of the law.¹⁰⁴

C. CHALLENGES IN LEGAL EDUCATION

Realizing the issues raised by the current methodology in legal education, some Chinese law schools have begun to place greater emphasis on preparing students for practice.¹⁰⁵ They are attaching more importance to practical teaching and encouraging classroom discussions, moot court, factual investigations, writing competitions, debates, and case law analysis.¹⁰⁶

There has also been discussion among Chinese legal scholars about the proper goals of legal education.¹⁰⁷ Several conclusions have been reached. First, professional skills such as research, writing and drafting practice documents, should be emphasized.¹⁰⁸ Second, professional ethics should be promoted.¹⁰⁹ Third, more attention should be paid to courses from other disciplines, such as political science, economics, history, philosophy, science, and technology.¹¹⁰

IV. TRANSNATIONAL LEGAL EDUCATION

In the area of transnational legal education, Western law schools face challenges similar to their Eastern counterparts. There is little debate that transnational education is needed. Lawyers are increasingly retained by clients residing in diverse cultures seeking advice that incorporates an understanding of multiple legal systems.¹¹¹ The American Bar Association

102. McCubbin, et. al., *supra* note 100, at 297.

103. *Id.*

104. Lingyun Gao, *supra* note 12, at 226.

105. *Id.* at 225 (citing East China University of Politics and Law: The Ninth “Five Year Development Plan”, and Long Term Target until 2010).

106. *Id.*

107. Hou Xinyi, *supra* note 81, at 297; Mao Ling, *supra* note 58, at 430; Elizabeth C. Cooper, *Global Collaboration in Law Schools: Lessons to Learn*, 30 *FORDHAM INT’L L.J.* 346, 351-52 (2007).

108. Hou Xinyi, *supra* note 81, at 298.

109. *Id.*; Mao Ling, *supra* note 58, at 430.

110. Hou Xinyi, *supra* note 81, at 298; Mao Ling, *supra* note 58, at 430.

111. Katerina P. Lewinbuk, *Can Successful Lawyers Think in Different Languages: Incorporating Critical Strategies that Support Learning Lawyering Skills for the Practice of Law in a Global Environment*, 7 *RICH. J. GLOBAL L. & BUS.* 1, 4 (2008); Carole Silver, *The Case of the Foreign Lawyer: Internationalizing the U.S. Legal Profession*, 25 *FORDHAM INT’L L.J.* 1039, 1039-40 (2002). *See also*, Chengyan

(“ABA”) has noted that globalization is opening up new legal markets and, further, that lawyers trained in comparative and international law will come to dominate these markets.¹¹² Lawyers of all nationalities must be trained for transnational practice.¹¹³

A. TRANSNATIONAL TRAINING

Differences in cultural values and behaviors often lead to conflicts in transnational dealings beyond the obvious substantive legal issues.¹¹⁴ As a result, transnational lawyering requires a wider array of skills than the analytical skills traditionally taught in law schools.¹¹⁵ Skills identified as necessary to transnational practice include negotiation, problem solving, communication, and adaptation skills.¹¹⁶ Scholars also stress that it is crucial that lawyers involved in transnational dealings study their own cultural mindset and patterns of communication as well as those of others.¹¹⁷ For example, transnational practitioners should be aware of the degree to which their cultural background reinforces individual achievement versus interpersonal relationships.¹¹⁸ It is believed that such cross-cultural competence is the key to so “many methods of thinking and problem-solving that it should be taught as foundational to transnational lawyering.”¹¹⁹ To teach cross-cultural competence, professors are urged to target key concepts such as collective versus individualistic cultures, direct and indirect communication, and social role and hierar-

Lu, *supra* note 70, at 327 (discussing the “huge and growing” Chinese legal services market).

112. David S. Clark, *Transnational Legal Practice: The Need for Global Law Schools*, 46 AM. J. COMP. L. 261, 268 (1998).

113. Lewinbuk, *supra* note 111, at 5; Silver, *supra* note 111, at 1039. See also Mary C. Szto, *Towards a Global Bar: A Look at China, Germany, England and the U.S.*, 14 IND. INT’L & COMP. L. REV. 585 (2004) (discussing the pressure to train lawyers for the rapidly globalizing legal profession).

114. John Barkai, *Cultural Dimension Interests, The Dance of Negotiation, and Weather Forecasting: A Perspective on Cross-Cultural Negotiation and Dispute Resolution*, 8 PEPP. DISP. RESOL. L.J. 403, 404 (2008); Talal A. Al-Emadi & Maryam A. Asmakh, *Cultural Differences and Their Impact*, 5 CHINESE J. INT’L L. 807, 807 (2006); Ilhyung Lee, *In re Culture: The Cross-Cultural Negotiations Course in the Law School Curriculum*, 20 OHIO ST. J. ON DISP. RESOL. 375, 375 (2005).

115. Catherine J. Iorns Magallanes, *Teaching for Transnational Lawyering*, 55 J. LEGAL EDUC. 519, 519 (2005).

116. *Id.* at 519-20.

117. *Id.* at 520; RICHARD E. NISBETT, *THE GEOGRAPHY OF THOUGHT: HOW ASIANS AND WESTERNERS THINK DIFFERENTLY. . . AND WHY* (The Free Press 2003).

118. Barkai, *supra* note 114, at 412. Individualistic societies value self sufficiency, freedom, challenge, and extrinsic motivators such as material rewards and individual rights. Collectivist societies value harmony, relationships, and collective interests over the rights of individuals. Collectivists also represent the majority of the world’s inhabitants. *Id.*

119. Maganalles, *supra* note 115, at 520.

chy.¹²⁰ Cognitive goals for students include: (1) the importance of understanding cultural similarities, as well as differences, and (2) the recognition that not all similarities and differences have equal significance.¹²¹

The methods used for teaching transnational skills are also more varied than those used for teaching analytical skills.¹²² Professors are urged to apply techniques for facilitating learning (as opposed to teaching) and independence of thought. Such techniques involve less talking and control by the teacher and more doing and control by the students. They include the use of games to teach skills, discussion of interdisciplinary material, group interactions, and solving multi-faceted problems.¹²³

B. THE FIRST TRANSNATIONAL LAW SCHOOL IN CHINA

Heeding the advice of the ABA, Western law schools are increasingly emphasizing the study of transnational law. However, one of the most successful transnational programs was established in Shanghai in 1915.¹²⁴ Soochow University Law School was known as the Comparative Law School of China ("CLS"). It operated from 1915 to 1951 and offered a unique program of comparative law study.¹²⁵

1. Soochow University Law School

Soochow University was established by American missionaries from the Methodist Episcopal Church South in 1906. CLS was founded nine years later by Charles Rankin, a Tennessee lawyer then teaching political science at the University. The first law school class consisted of seven students and more than ten instructors.¹²⁶

120. Susan Bryant, *The Five Habits: Building Cross Cultural Competence in Lawyers*, 8 CLINICAL L. REV. 33, 51 (2001).

121. *Id.* at 52.

122. Magallanes, *supra* note 115, at 521.

123. *See id.* at 521-24.

124. Alison W. Connor, *Training China's Early Modern Lawyers: Soochow University Law School*, 8 J. CHINESE L. 1, 3 (1994) [hereinafter Connor, *Training China's Early Modern Lawyers*]. The leading historian of Soochow is Professor Alison Connor. *See, e.g.*, Alison W. Connor, *Lawyers and the Legal Profession During the Republican Period*, in CIVIL LAW IN QING AND REPUBLICAN CHINA (Kathryn Bernhardt & Philip C.C. Huang eds., 1994); Alison W. Connor, *The Comparative Law School of China*, in UNDERSTANDING CHINA'S LEGAL SYSTEM (C. Hsu ed., 2003) [hereinafter Connor, *The Comparative Law School of China*]; Alison W. Connor, *How I Got the Story (And Why It Took So Long): Legal History in China*, 2 WASH. U. GLOBAL STUD. L. REV. 193 (2003).

125. Connor, *Training China's Early Modern Lawyers*, *supra* note 124, at 4-5.

126. *Id.* at 5-6.

CLS reached its height during the 1920s and 1930s.¹²⁷ In 1926, CLS became one of the few law schools in China to establish a graduate program, offering students the opportunity to earn an LL.M. without overseas study. The law school proved popular; in 1934, it graduated eighty-four students.¹²⁸ Although CLS was displaced during World War II, it planned to resume normal operations in Shanghai in 1945.¹²⁹ The formation of the PRC in 1949, however, prevented realization of the school's plans. Although CLS continued to operate for a few more years, the school was closed during the PRC's reorganization of higher education. Its library was broken up and its students and teachers reassigned. The class of 1952 was the last to graduate.¹³⁰

2. *The Mission*

CLS sought to provide students with a "legal education suited to the needs of the country" by teaching comparative law.¹³¹ Students took courses in European, Anglo-American and Chinese law, the idea being that, by studying basic areas of law in the three systems simultaneously, they would be able to make their own comparisons.¹³² The aim of CLS was "to give the students a thorough mastery of the fundamental principles of the world's chief legal systems." A key objective was to produce students who could "contribute to the making of a new and better jurisprudence for China."¹³³

3. *Curriculum*

Although other Chinese law schools of the day taught comparative law courses, few matched the range of CLS.¹³⁴ In 1934, for example, the CLS program included courses in: (1) Chinese law, (2) modern continental law (French, German, Japanese and Soviet Russian civil law), (3) Anglo-American law, (4) Roman law, and (5) public and private international law.¹³⁵ Students were required to take not only Roman law and legal Latin, but also continental civil law (German or French); comparative elec-

127. *Id.* at 6.

128. *Id.* at 7.

129. *Id.* at 8.

130. *Id.* at 8-9. Most of the books went to the newly established East China Institute of Politics & Law. Law students and many teachers were also assigned there. *Id.*

131. *Id.* at 10.

132. *Id.*

133. *Id.* (quoting Soochow University, Courses and Announcements, 1919-20, 31).

134. *Id.* at 11 (citing Sheng Zhenwei, *Nineteen Years of Legal Education at Soochow*, 7 *THE LAW J.* 241, 246 (1934)).

135. *Id.* (citing 7 *CHINA L. REV.*, inside cover (1934)).

tives included world legal history and comparative criminal law.¹³⁶ As late as 1950, the administration hoped to strengthen the international law program by building on the school's excellence in foreign languages and comparative law. The founding of the PRC, they argued, made it even more important to provide international law training for government officials so that they might fulfill their duties.¹³⁷

Classes (other than Chinese law) were conducted in English, even after Chinese became the main language of instruction at the University.¹³⁸ The case method of teaching was employed by the Anglo-American faculty, who had all studied in the United States or England.¹³⁹

4. *Ethical Training*

Chinese society lacked the tradition of an independent legal profession bound by ethical rules, making ethical training a critical challenge for CLS.¹⁴⁰ The national lawyers' and local bar association regulations did contain some rules of professional conduct.¹⁴¹ However, many Chinese lawyers and educators believed that the system was inadequate. They advocated the enactment of a more general "legal ethics law" to raise the moral standards of the legal profession.¹⁴²

CLS Dean Shelley Sun (Sun Xiaolou) believed that legal ethics should be a required first-year course to insure that students would be given an idea of their responsibilities to society early in their careers.¹⁴³ Charles Rankin, the school's founder, also emphasized the importance of legal ethics in legal education. Asked to state the reasons for the law school's founding, he replied that lawyers should:

[L]ead in opposing corruption and upholding virtue. With skill and judicial wisdom they should be quick to discern the approach of public danger, and [be] instant and courageous in opposing it. And as counsel of the people and advocates before the court, their course should be such that on whatever side they may be, their sole purpose is to render all possible

136. *Id.* at 11-12 (citing Sun Xiaolou, LEGAL EDUCATION 189, 194, 196 (1935)).

137. *Id.* at 12-13 (citing undated discussion of the proposed curriculum, prepared for submission to the East China educational authorities, Shanghai Municipal Archives, Q 245-153).

138. *Id.* at 13.

139. *Id.* Conner notes that, "case books were used and the students were expected to state the case with the book firmly closed." *Id.*

140. *Id.* at 18.

141. *Id.* (citing Liu Zhen, *Provisional Regulations of the Shanghai Bar Association*, LAWYERS' ETHICS, at 21-32 (1934)).

142. *Id.*

143. *Id.* at 19 (citing Sun Xiaolou, *supra* note 136, at 191).

assistance to the litigant and the court in arriving at a just and righteous decision.¹⁴⁴

5. *Skills Training*

The concerns for professional competence and social responsibility were reflected in the activities encouraged at CLS. All students were required to participate in the moot court, introduced in 1921.¹⁴⁵ The sessions, held every two weeks, followed the procedures of the Chinese and the American court systems. Students played the roles of the attorneys, witnesses, and jurors; lawyers, judges and faculty members served as the judges.¹⁴⁶

CLS also published a law journal, which was edited by the students under the supervision of a faculty editorial board.¹⁴⁷ Their quarterly journal was actually composed of two publications, one in English (*The China Law Review*) and the other in Chinese (*Faxue Zazhi*). Most contributors were CLS students, faculty and graduates, but practicing lawyers and judges from the Chinese and foreign bars in Shanghai also submitted articles.¹⁴⁸ The journal “introduced the principles of foreign laws to China” and “acquainted foreign countries with the principles of Chinese law.”¹⁴⁹

6. *Faculty*

CLS originally drew instructors from the Shanghai International Bar, the ranks of which included many Americans.¹⁵⁰ Although most of the original professors were foreign, more Chinese gradually joined the faculty.¹⁵¹ In the late twenties, CLS attempted to move towards the employment of full-time instructors. However, the goal of employing a full-time faculty was never fully realized.¹⁵² In the administration’s view, having a high proportion of the faculty teaching on a part-time basis created disadvantages. Nevertheless, despite the concerns that a permanent part-time faculty could not devote sufficient attention to the school, many part-time instructors taught at CLS for ex-

144. *Id.* at 19-20 (citing letter from Charles Rankin to Dean Sheng (March 12, 1949), Shanghai Municipal Archives, Q 245-399).

145. *Id.* at 20.

146. *Id.* at 20 (citing Soochow University, *The New Atlantis*, at 144d (1922)). Conner notes that CLS students participated in moot court for all three years and were graded on their performance.

147. *Id.* at 21.

148. *Id.* *The China Law Review* was republished by Oceana Press in 1975.

149. *Id.* at 21 (citing Editorial, 1 *CHINA LAW REVIEW* 33 (1922)).

150. *Id.* at 22-23.

151. *Id.* at 23.

152. *Id.* at 25.

tended periods and were sought out by students precisely because they had practical skills.¹⁵³

7. *Students*

The CLS student body came from throughout China.¹⁵⁴ Its 1918-49 graduates came from sixteen provinces and a large number of cities and towns, with the later and larger classes increasingly diverse. In addition, CLS was well-known outside China's borders and attracted a number of overseas Chinese from Hong Kong and Southeast Asia.¹⁵⁵ Students also came from a broad range of institutions. The seventy-six members of the class of 1932, for example, had studied at a total of twenty-six colleges or institutes.¹⁵⁶

The percentage of college graduates fluctuated. During the late twenties and early thirties, twenty to fifty percent of the school's students had obtained an undergraduate degree.¹⁵⁷ By the late thirties, very few CLS students were college graduates, although they still met the school's entrance requirement of two years of college study.¹⁵⁸ By 1941, the incoming class at CLS was admitted directly from secondary schools to the new four-year program mandated by the educational authorities. Thereafter, few students had a college degree or even a few years of college.¹⁵⁹

8. *Careers*

CLS graduates pursued a wide range of careers in government, business, academia, the judiciary, church work, news reporting and translation.¹⁶⁰ However, CLS was known for training legal practitioners rather than legal officials.¹⁶¹ According to the 1936 directory of the law school's first eighteen graduating classes (1918-35), forty-one percent were engaged in full-time and another eight percent in part-time private practice; even

153. *Id.* Conner notes that many were such excellent teachers that, when the Law School introduced regular day sessions (albeit with part time faculty), students often preferred to attend the evening sessions because the instructors were practicing lawyers and judges.

154. *Id.* at 27.

155. *Id.*

156. *Id.* at 28.

157. *Id.* at 28-29 (citing Student Files, Shanghai Municipal Archives, Q 245-273 to Q 245-279).

158. *Id.* at 29.

159. *Id.*

160. *Id.* at 39.

161. *Id.*

in later years the percentage of graduates in private practice remained high.¹⁶²

9. Contributions

By the early 1970s, CLS had all but disappeared.¹⁶³ Nevertheless, CLS graduates prospered in Hong Kong and Taiwan. In both territories the English language training, comparative law foundation, and practice orientation allowed CLS graduates to work in an increasingly global legal environment.¹⁶⁴ A form of CLS also survived in Taiwan; the program still offers students the choice of enrolling in either the civil law or the comparative law section, in which many of the courses are classified as Anglo-American law and are taught in English.¹⁶⁵ Even in the PRC, CLS graduates have resurfaced at courts, law offices, universities and other institutions.¹⁶⁶ Furthermore, as the interest in international legal education and the globalization of law practice has increased, CLS has begun to be studied as a guide for future programs.¹⁶⁷

V. PEKING UNIVERSITY SCHOOL OF TRANSNATIONAL LAW

A pressing need for Chinese lawyers qualified for membership in the transnational legal profession was created by the policy of reform begun by Deng Xiaoping and accelerated by China's accession to membership in the World Trade Organization.¹⁶⁸ Recognizing this need, Peking University recruited Jeffrey Lehman, the former President of Cornell University, to lead a new school of transnational law on the University's Shenzhen campus. STL opened its doors in September 2008.¹⁶⁹

162. *Id.* (citing Soochow School of Law, Miscellaneous Statistical Charts, Shanghai Municipal Archives, Q 245-273 to Q 245-60).

163. *Id.* at 43.

164. *Id.*

165. *Id.* at 44.

166. *Id.* There are also reports of a version of CLS being considered in Shanghai. Connor, *The Comparative Law School of China*, *supra* note 124, at 243.

167. Connor, *The Comparative Law School of China*, *supra* note 124, at 243.

168. An Overview of the Peking University School of Transnational Law, <http://stl.szpku.edu.cn/en/about/index.aspx?MenuID=02010102> (last visited Aug. 14, 2010) [hereinafter Overview of STL].

169. Andy Guess, *An American Law School in China*, INSIDE HIGHER ED., May 22, 2008, <http://www.insidehighered.com/news/2008/05/22/china>; Molly Thomas, *Snap Judgments*, A.B.A. BUS. L. TODAY, Sept./Oct. 2008, <http://apps.americanbar.org/buslaw/blt/2008-09-10/snapjudgments.shtml>; Julie Friedman, *Homeschooling: The First U.S.-Style Law School in China*, THE AMERICAN LAWYER Sept. 2008, 22; Leigh Jones, *They Do It Our Way: Foreign Law Schools Follow the U.S. Playbook*, NAT'L L. J., Sept. 8, 2008, at 1.

A. PEKING UNIVERSITY

Peking University, also known as “Beida”, is China’s oldest and most prestigious university. Its main campus is in Beijing and it is home to a traditional Chinese undergraduate law school that is one of China’s best.¹⁷⁰

In 2001, the city of Shenzhen, with a population of approximately 10 million people, gave a campus to three of China’s top universities, including Beida, to be used for graduate and professional education.¹⁷¹ Hai Wen is the leader of Beida’s Shenzhen campus. He grew up in China, completed graduate economics work in the United States, and became a tenured faculty member at an American university before returning to Beida.¹⁷²

Hai Wen observed that graduates of Beida’s law school in Beijing could not get jobs at multinational firms in China as partner-track associates without first doing advanced study in the U.S. He began to investigate whether Beida could develop an experimental law school on the Shenzhen campus that could deliver more of what multinational firms were looking for. The result was STL.¹⁷³

B. STL

STL is unique among China’s 600 plus law schools.¹⁷⁴ Its mandate is to draw upon the best features of American legal education and adapt them to a Chinese context. Symbolizing the intellectual potential of U.S. - China cooperation, STL hopes to become one of the top law schools in the world.¹⁷⁵ From its inception, it has planned to apply to the American Bar Association for accreditation.¹⁷⁶

170. Lehman, *More Drops, More Buckets*, *supra* note 1; Jeffrey S. Lehman, Dean, Peking Univ. Sch. Of Transnational Law, Address at the Woodrow Wilson International Center for Scholars: China’s First U.S. Style Law School: Five Narratives in Search of an Author (May 21, 2008) [hereinafter Lehman, Five Narratives] (transcript available at http://www.jeffreylehman.com/wilson_center_five_narrative.html).

171. Lehman, Five Narratives, *supra* note 170.

172. *Id.*; Bromberg, *supra* note 7, at 114. Hai Wen is also member of the Joint Center for China-U.S. Law and Policy Studies Institute, founded in 2005. STL has its roots in the foundation of the U.S.-China Joint Center for the Study of Law and Policy. Mathew S. Erie, *Legal Education Reform in China through U.S. Inspired Transplants*, 59 J. LEGAL EDUC. 60, 69, n.36 (2009).

173. Lehman, *More Drops, More Buckets*, *supra* note 1; Lehman, Five Narratives, *supra* note 170.

174. Bromberg, *supra* note 7, at 116. Bromberg notes that Soochow University School of Law was a precursor of STL. *Id.* at 116, n.2.

175. Overview of STL, *supra* note 168.

176. Laurel S. Terry, Carole Silver & Ellyn S. Rosen, *Transnational Legal Practice 2009*, 44 INT’L LAW. 563, 571 n.47 (2010) (describing plans to apply for accreditation); Carole Silver, *What We Don’t Know Can Hurt Us: The Need for Empirical*

STL students enroll in a four-year program that leads to both a J.D. and a J.M. degree. While the J.M. curriculum is familiar in China, the English-language J.D. curriculum is the first of its kind.¹⁷⁷ The J.D. education at STL is multi-faceted. In addition to mastering substantive legal rules, students develop skills in critical thinking and writing, master different forms of legal reasoning, and develop “sympathetic engagement with counterargument.”¹⁷⁸ Further, STL students are taught that lawyers around the world are considered members of a public profession, with a duty to ensure that law is a force for good in society.¹⁷⁹

1. *The Mission*

STL aspires to be a law school that integrates China’s entry into global business and international diplomacy with a commitment to the rule of law as understood in Western legal systems.¹⁸⁰ The STL website provides:

The processes of globalization have created the need for a new kind of lawyer, the “transnational lawyer”. This is especially true in China, where we are experiencing the most rapid modernization of any nation in history. Here at the Peking University School of Transnational Law, our mission is to prepare students to be transnational lawyers.¹⁸¹

Dean Lehman adds that preparing students to become “attorneys at top international law firms is a key objective” for STL. Students should be able to “walk out and work for Paul Hastings, Akin Gump and other similar firms.”¹⁸²

Research in Regulating Lawyers and Legal Services in the Global Economy, 43 AKRON L. REV. 1009, 1012, n.6 (2010) (noting remarks of Stephen Yandle, Associate Dean of STL, on accreditation) (remarks available at <http://www.uakron.edu/law/vieo/miller-becker-symposium-2009.dot>); Cf. Samuel J. Ravine & Russell G. Pearce, *Rethinking the Legal Reform Agenda: Will Raising the Standards for Bar Admission Promote or Undermine Democracy, Human Rights, and Rule of Law?* 77 FORDHAM L. REV. 1635, 1641 (2010) (describing STL’s plans but questioning their viability).

177. Overview of STL, *supra* note 168.

178. *Id.* Lehman describes “sympathetic engagement with counterargument” as being able to “become comfortable holding multiple perspectives on an issue in your mind at the same time. To be comfortable with the complexity of problems. And to be comfortable with the idea that different people who are reasonable and good might believe, think or act differently from one another.” Jeffrey S. Lehman, Dean, Peking Univ. Sch. Of Transnational Law, Address to students at Beijing Foreign Studies University: Globalization, The New Transnational Legal Studies, and China’s Future in an Interdependent World (Sept. 6, 2007) (transcript available at http://www.jeffreylehman.com/announcement_of_peeking_univ.html).

179. *Id.*

180. Bromberg, *supra* note 7, at 116.

181. *About Peking University Transnational School of Law*, PEKING UNIV. SCH. OF TRANSNATIONAL LAW, <http://www.stl.szpk.edu.cn/en/about/index.aspx> (last visited Aug. 18, 2010).

182. Jones, *supra* note 169.

STL has been assisted in the development and publication of its mission by the involvement of two important supporters. Justice Anthony Kennedy of the U.S. Supreme Court was the keynote speaker at the school's dedication ceremony in October 2008 and has discussed the school before a wide range of audiences. C.H. Tung, the former Chief Executive of Hong Kong, has (together with the China-U.S. Exchange Foundation, whose board he chairs) been a visible proponent of the school as a model of Chinese-American collaboration.¹⁸³

In addition, international law firms such as Paul Hastings, Janofsky & Walker, and Akin Gump Strauss Hauer and Feld have donated time and money to support the mission. Paul Hastings partner Timothy Dickinson explains his firm's interest in STL: "[w]e now can create lawyers well-equipped to practice in a global environment without leaving China."¹⁸⁴

2. *The Curriculum*

STL's J.D. curriculum emphasizes the development of substantive knowledge of the transnational legal system, with emphasis on the common law as it has evolved in the United States, and of intellectual and professional skills. The latter goal is pursued through several educational pedagogies: the study of judicial opinions through the Socratic Method, the development of research, writing and oral advocacy skills through a legal practice program, and the development of a sense of professional responsibility through classroom courses.¹⁸⁵

Courses at STL take place in six-week modules, as do the other academic programs on the Shenzhen campus. In each six week block, students will typically take two, three credit courses, each of which will meet four or five days a week and will culminate in a written examination. The first three modules occur from September through January; the second three modules take place from February through June.¹⁸⁶ Students take first year courses in Torts, Contracts, Criminal Law, Property, Comparative Civil Procedure, Legal Methods, Transnational Law, Statutory Interpretation, and Professional Responsibility. Upper level courses include a wide array of commercial and administrative classes, including International Economic Law, Transna-

183. Overview of STL, *supra* note 168; Kennedy, *supra* note 6.

184. Jones, *supra* note 169.

185. *The Institute for China-US Law & Policy*, PEKING UNIV. SCH. OF TRANSNATIONAL LAW, http://www.china-us-law.org/institute/the_peeking_university_school.html (last visited Aug. 18, 2010).

186. Bromberg, *supra* note 7, at 116. *STL Schedule*, PEKING UNIV. SCH. OF TRANSNATIONAL LAW, <http://www.stl.szpku.edu.cn/en/current/index.aspx> [hereinafter *STL Schedule*].

tional Real Estate, International Tax and International Debt Restructuring.¹⁸⁷ Over the course of a three year program, the students are trained in both the Anglo-American common law and the continental civil law systems.¹⁸⁸

English is the language of instruction at the school; students must be fluent in written and spoken English to be admitted to the entering class. Given the demands of the school, only the top college graduates are accepted for admission, although the required undergraduate degree may be in any subject.¹⁸⁹

3. *Ethical Training*

STL students take a class in professional responsibility during their first year of law school.¹⁹⁰ In academic year 2008-9, Professional Responsibility was taught by Frank Wu, currently Dean of UC Hastings College of Law.¹⁹¹ The three credit course was taught using Thomas D. Morgan & Ronald D. Rotunda, *PROFESSIONAL RESPONSIBILITY, PROBLEMS AND MATERIALS* (10th ed. 2008), and the *Model Code of Professional Responsibility* (1980).

The course covered the same material traditionally taught to third year students in American law schools, but with an awareness of the Chinese context. On the fiduciary duty of the lawyer to the client, Dean Wu advised to the students:

It should be apparent to you that despite your expertise . . . ours is a service profession. Ultimately, if you are to be successful, you must keep your own interests subordinate to those of your client. That does not mean that you must do everything your client requests: in some instances, you may have to withdraw . . . or you may need to offer counsel about an alternative course of action . . .¹⁹²

Further, on fiduciary duty to the client and guanxi, Dean Wu noted:

A few other comments about government lawyers, the use of connections and guanxi. . . . In the ethics context, the most scrupulous lawyers try to avoid even looking as if they are en-

187. Bromberg, *supra* note 7, at 118; *STL Schedule*, *supra* note 186.

188. Bromberg, *supra* note 7, at 118.

189. *Id.* Subsequent classes have been of comparable size.

190. *STL Schedule*, *supra* note 186.

191. He has also served as the Dean of the Wayne State University School of Law and as a trustee of Gallaudet University. He is a member of the Committee of 100 and has taught at Howard University, the University of Maryland, the University of Michigan, and Columbia University.

192. Memorandum from Dean Wu to the Students of STL, 2 (June 2, 2009) (on file with the author). Dean Wu provided the students with a memorandum following most of his classes. See generally Wald, *supra* note 101 for another legal ethics professor's notes from Tsinghua University law school.

gaged in wrong doing The test is . . . does the lawyer have confidential information. . . . Students enrolled in this course typically develop a sense of paranoia about practice. This response is normal. It will subside. . . . Even then, however, it is helpful to you – not harmful – to possess a sense of the dangers that may affect you. Remember that your client is counting on you to be conscious of every type of legal issue; she has retained you for that very purpose and she lacks your skill. You will be a paid worrier.¹⁹³

Finally, Dean Wu offered the following thoughts on the lawyer's duty to society and the rule of law:

An independent judiciary resolving disputes according to the rule of law [instead of based on relationships or power, or simply arbitrarily] . . . may produce results we find disagreeable from time to time, and it may even err now and then, but it is the best system for us as human beings living in a diverse society with conflicting notions of the good life. . . . To do justice is to believe in the power of rational discourse to communicate, persuade and bring about meaningful change.¹⁹⁴

4. Skills Training

STL was launched in 2008 with a weeklong orientation, including a staged reading of the Greek play *Antigone* by Sophocles. Following the staged reading, the students were involved in a moot court involving the characters in the play. It proved a successful method of introducing the practice skills component of a legal education.¹⁹⁵

In addition, the first year Legal Practice Program met in the third and sixth modules of the academic year. The STL Legal Practice Program follows a conventional first year legal writing curriculum. Predictive writing, research, and production of an office memorandum are taught in the first six-week module. Persuasive writing, production of an appellate brief, and oral argument are taught in the second. The program was adapted for STL by the use of an individually prepared course-pack, rather than an American legal writing textbook.¹⁹⁶ The capstone of the first year program was the oral argument competition. The students argued a copyright problem, which had been the subject of

193. Second Memorandum from Dean Wu to the Students of STL 2-4 (June 3, 2009) (on file with the author).

194. First Memorandum from Dean Wu to the Students of STL, 2 (June 3, 2009) (on file with the author).

195. Bromberg, *supra* note 7, at 121.

196. *Id.* at 120. The program was developed by Professor Bromberg, Clinical Assistant Professor at the University of Michigan and Visiting Professor and Director of STL's Legal Practice Program 2008-10, with the assistance of myself and Clinical Professor Jason Eyster of Ave Maria School of Law.

their appellate brief, before judges and attorneys from Hong Kong and the surrounding areas.¹⁹⁷

STL intends to require Legal Practice for the entire three year J.D. curriculum. Advanced Legal Practice assignments include the drafting of trial motions and briefs, client letters, and contracts.¹⁹⁸ In addition, a number of doctrinal courses at STL include a drafting component. For example, in the 2008 first year contracts course students negotiated and drafted a commercial contract.¹⁹⁹

5. Faculty

Currently, most STL courses are taught by visiting professors – tenured faculty at respected law schools throughout the world and practicing lawyers with the highest level of professional distinction. Over time it is expected that STL will develop a tenured faculty of its own, so that instruction will be provided by a mixture of permanent and visiting faculty.²⁰⁰

STL has recruited a number of distinguished administrators, professors and jurists. Dean Lehman serves as the Chancellor and Founding Dean of STL. He is Professor of Law and former President of Cornell University. He has also served as the Dean of the University of Michigan Law School and as President of the American Law Deans Association.²⁰¹ Stephen Yandle serves as Associate Dean of STL. He was formerly the Associate Dean of Yale Law School.²⁰² Charles Ogletree, the Jesse Climenko Professor of Law at Harvard Law School, was a Visiting Professor of

197. See Jeffrey S. Lehman, Dean, Peking Univ. Sch. Of Transnational Law, Speech to the Shenzhen Lawyers Association: The Geography of Legal Thought: Reflections on Cultural Differences within the Legal Profession, (May 30, 2009) [hereinafter Lehman, Geography of Legal Thought] (transcript available at <http://www.stl.szpku.edu.cn/en/index/rdetails.aspx?Id=84&&FirstNo=0302>).

198. Advanced Legal Practice Syllabus (on file with the author).

199. The class was taught by Professor Whitmore Gray, Professor Emeritus at the University of Michigan. The students negotiated in groups. They enjoyed it to such an extent that I ultimately included a similar assignment in the legal practice courses at Wayne State University Law School.

200. Jeffrey S. Lehman, *A Message from the Chancellor and Founding Dean*, PEKING UNIV. SCH. OF TRANSNATIONAL LAW, <http://www.stl.szpku.edu.cn/en/about/index.aspx>.

201. *Senior Administration*, PEKING UNIV. SCH. OF TRANSNATIONAL LAW, <http://www.stl.pkusz.edu.cn/en/Faculty/Tdetails.aspx?Id=206&&MenuId=020404> (last visited Nov. 7, 2010). In developing the first year program, Dean Lehman was assisted by Professor James Feinerman, the James M. Morita Professor of Asian Legal Studies at Georgetown University and a former editor of the China Law Reporter, as well as by a distinguished group of advisors from some of the world's most highly regarded law schools and firms.

202. *Id.*

Law in 2009-10.²⁰³ Barry Slutsky, a member of the faculty at the University of British Columbia, was the C.V. Starr Distinguished Professor in Residence 2009-10.²⁰⁴ Harry Edwards, Senior Judge on the United States Court of Appeals for the D.C. Circuit, served as the C.V. Starr Distinguished Jurist in Residence in 2009-10.²⁰⁵

6. *Students*

Dean Lehman interviewed the first group of students personally.²⁰⁶ Out of 200 applicants, 54 students were accepted.²⁰⁷ The first class was comprised entirely of Chinese students and included slightly more females than males.²⁰⁸ All of the students had undergraduate degrees from Chinese universities. Their majors included English, Economics, Business, Engineering, Politics, Accounting, Medicine, Law, Chinese Literature, Chemistry, Philosophy, Marketing and Shipbuilding. Most of the students were in their twenties, only one was married. Several of them had significant work experience in their undergraduate area of study and many of them had at least one year of professional experience. One student was already a practicing Chinese lawyer.²⁰⁹

7. *Careers*

Choices of careers include transnational law, corporate law, academia, business executive, civil servant and politician. Many students have expressed a desire to serve their country with their

203. *Faculty Directory*, PEKING UNIV. SCH. OF TRANSNATIONAL LAW, <http://www.stl.pkusz.edu.cn/en/Faculty/details.aspx?Id=295&&MenuId=020401&&FirstNo=0204> (last visited Nov. 7, 2010).

204. *Id.*

205. *Id.* Judge Edwards has written extensively about the disconnect between legal education and legal practice in the United States. See e.g. Harry T. Edwards, *The Growing Disjunction Between Legal Education and Legal Practice*, 91 MICH. L. REV. 34, 41 (1992) (expressing the view that if U.S. law schools “continue to stray from the principal mission of *professional* scholarship and training, the disjunction between legal education and legal practice will grow and society will be the worse for it.” (emphasis in the original)).

206. Lehman, *Five Narratives*, *supra* note 170. Of that process, Professor Bromberg wrote “I was moved when [Lehman] described to me his experiences interviewing all of the prospective students for the first class, learning of their challenges in making their way in Chinese society, studying English, making the remarkable decision to learn legal norms of foreign cultures so that they could become exemplary lawyers, judges and public officials in their own.” Bromberg, *supra* note 7, at 118-19.

207. Bromberg, *supra* note 7, at 118; Jaime Mendoza, *China Legal*, U.S.-CHINA TODAY, July 31, 2009, available at http://uschina.usc.edu/article@usct?china_legal_14050.aspx.

208. Mendoza, *supra* note 207.

209. Picture Book of Students of Peking University School of Transnational Law (2008) (on file with the author).

law degree. Almost all have expressed the hope that upon graduation they will be a credit to STL and “make it proud.”²¹⁰

Their hopes were summed up most eloquently by the Chinese attorney turned law student, who cited Confucius:

According to Confucianism, [a] gentleman should at first know the world and learn knowledge, then enhance personality and character, and last devote to family, society, country and the world. So, no matter what profession I will take in the future, I will try my best to make my self, my family and my country better.²¹¹

8. Contributions

Professor Bromberg, Visiting Professor of Law and Director of the Legal Practice Program at STL, offered the following thoughts on STL’s contributions:

I expect that the first fruit of the law school will be its outstanding graduates. Given their training in American law and Chinese government, they will be uniquely qualified to take up positions as public officials dealing with questions of international law and relations, as domestic lawyers enriched by a comparative legal education and as international lawyers working in Chinese law firms and offices. STL students will be experts in the two great legal systems of the world, common law and civil law. I expect some to work in western and Asian law firms with an expertise in Chinese legal relations. . . . Following perhaps in the footsteps of the Soochow school of law, STL can make a small but significant contribution to the professionalization of Chinese law and the promotion of Chinese international legal relations as China takes its place as one of the world’s great powers.²¹²

United Nations Ambassador to China Jon Huntsman visited STL on June 22, 2010. He expressed the view that as a result of studying Chinese and American law, STL students will be “uniquely qualified as ‘transnational lawyers’ to tackle the issues arising from globalization.”²¹³

VI. CRITIQUE OF THE PEKING UNIVERSITY SCHOOL OF LAW J.D. PROGRAM

Dean Lehman has indicated that STL aspires to be “a school that provides the kind of education that American law schools will be providing ten years from now, when the full impact of

210. *Id.*

211. *Id.*, student profile of Jiang Jianfeng, STL entering class of 2008.

212. Bromberg, *supra* note 7, at 123.

213. Jon Huntsman, U.S. Ambassador to China, Speech to STL Students (June 22, 2010) (transcript available at <http://www.stl.szpku.edu.cn/en/index/Rdetails.aspx>).

globalization on the legal profession is better understood,” producing law students competent to practice law in “New York and Shenzhen, London and Shanghai, Tokyo and Beijing, Mexico City and Hong Kong.”²¹⁴ Such a statement raises the question of how an STL education varies from that provided by other law schools in China, by other transnational law schools, and by law schools in the United States in providing transnational training.

A. COMPARISON WITH CHINESE LAW SCHOOLS

STL resembles Chinese law schools which offer a J.M. degree. There are, however, three areas of significant differences: language, pedagogy and content.²¹⁵ With respect to language, J.D. classes at STL are taught in English. All graduates are expected to speak and write English at a level of fluency that will enable them to be fully effective in transnational environments.²¹⁶ With respect to pedagogy, STL instruction emphasizes the Socratic Method. A high priority is placed on practicing lawyering skills, rather than transmitting information from teacher to student.²¹⁷ With respect to content, STL strives to teach students comparative law, common law, Western commercial law, and the various dimensions of transnational law – public international, private international, and comparative.²¹⁸

STL’s program also uniquely responds to many of the challenges identified as currently confronting Chinese legal education.²¹⁹ Professional skills education is emphasized through use of the Socratic Method, the expanded Legal Practice Program, and skills practice within “doctrinal” courses such as contracts.²²⁰ Professional ethics are presented with American professors, texts and rules while still addressing Chinese issues such as *guanxi* and the future role of the rule of law.²²¹ Finally, attention is given to interdisciplinary subjects particularly those, such as economics, that are of importance to transnational lawyers.²²²

B. COMPARISON WITH TRANSNATIONAL LAW SCHOOLS

STL bears similarities to other transnational law schools, as well. As recommended for all transnational law schools, it has an

214. Lehman, *Geography of Legal Thought*, *supra* note 197.

215. *Id.*

216. *Id.* See discussion *supra* Part V (B) (2).

217. *Id.* See discussion *supra* Part V (B) (2).

218. *Id.* See discussion *supra* Part V (B) (2).

219. See discussion *supra* Part III (C).

220. See discussion *supra* Part V (B) (4).

221. See discussion *supra* Part V (B) (3).

222. See discussion *supra* Part V (B) (2-4).

expanded skills curriculum.²²³ STL instruction emphasizes the Socratic Method, teaching students to “think like lawyers” as well as “sympathetic engagement with counterargument.” Legal Practice particularly emphasizes written and verbal communication skills. Other classes introduce the students to negotiation and drafting skills.²²⁴ The curriculum is taught by a geographically and culturally diverse faculty and includes comparisons between the common and civil law systems as well as public and private international law.²²⁵ Most importantly, STL strives to instill in students an understanding of the significance of cultural differences in the practice of law. As Dean Lehman explains, STL students are trained “to understand cultural differences, where they matter, how they can be significant” but also “how they should resist the temptation to explain everything away on the basis of culture.”²²⁶

STL also has many characteristics in common with CLS, the first transnational law school in China. First, STL seeks to provide students with a legal education suited to their place and time through a curriculum focused on comparative law.²²⁷ Second, STL teaches its classes in English and includes a variety of interdisciplinary subjects.²²⁸ Third, STL recognizes the ethical challenges posed by a society lacking a tradition of an independent legal profession and has addressed that challenge by requiring legal ethics as a required first year course so that students can appreciate their responsibilities to society early in their careers.²²⁹ Fourth, STL emphasizes professional competence through the use of case study, Socratic Method, and a strong skills curriculum.²³⁰ Fifth, STL utilizes a well-qualified international faculty and enjoys a well-educated, geographically diverse (within China) student body.²³¹ Sixth, STL benefits from students who wish to pursue a wide variety of careers and have a strong commitment to advancing the interests of their county.²³² Lastly, STL may serve as a guide for future transnational programs in an increasingly global legal environment.²³³

223. See discussion *supra* Part IV (A).

224. See discussion *supra* Part V (B) (4).

225. See discussion *supra* Part V (B) (5).

226. Lehman, *Geography of Legal Thought*, *supra* note 197.

227. See discussion *supra* Part V (B) (2).

228. See discussion *supra* Part V (B) (2).

229. See discussion *supra* Part V (B) (3).

230. See discussion *supra* Part V (B) (4).

231. See discussion *supra* Part V (B) (5-6).

232. See discussion *supra* Part V (B) (7).

233. See discussion *supra* Part V (B) (8).

C. COMPARISON WITH LAW SCHOOLS IN THE UNITED STATES

Finally, STL resembles law schools in the United States. The same basic curriculum is taught, in the same language, from the same texts via Socratic Method, by many of the best U.S. professors.²³⁴ Most media coverage of STL, in the United States and abroad, emphasizes that this is the first *U.S.* law school in China.²³⁵ In fact, the similarities are so great that STL plans to seek admission to the American Bar Association.²³⁶

Nevertheless, differences do exist. STL places a greater emphasis on transnational legal training than its U.S. counterparts. Dean Lehman notes:

STL's curriculum is more transnational than any American law school I know of. In the first three months, students are required to take a course called "transnational law," which immediately gets them focusing on the reality of contemporary life, in which we are subject to the dictates of multiple sovereigns, often speaking inconsistently with one another. . . . Indeed, from the first day of orientation our students were expected to be thinking about the complex relationship among law, language and culture.²³⁷

Further, STL's student base is culturally diverse from that of its counterparts in the United States. "Culture" may be defined as the "collective programming of the mind which distinguishes the members of one group from another."²³⁸ The Chinese students of STL enjoy a "collective programming of the mind" that varies from that of their Western colleagues: they have inherited the philosophy of Confucianism.²³⁹

Contrary to Western adversarial legalism, where the individual is the bearer of rights and the government must decide whose rights are "more important,"²⁴⁰ under Confucianism rights are contextual.²⁴¹ They depend on the relationships of the individuals and each conflict must be addressed in terms of the alternative consequences with a view towards finding a basis for

234. See discussion *supra* Part V (B).

235. Triedman, *supra* note 169; Jones, *supra* note 169.

236. See discussion *supra* Part V (B), n. 176; Thomas, *supra* note 169; Mendoza, *supra* note 207; Lehman, More Drops, More Buckets, *supra* note 1.

237. Lehman, More Drops, More Buckets, *supra* note 1.

238. Al-Emadi & Al-Asmakh, *supra* note 114, at 807 (quoting GEERT HOFSTEDE, CULTURE'S CONSEQUENCES: INTERNATIONAL DIFFERENCES IN WORK RELATED VALUES 25 (1984)).

239. LUBMAN, BIRD IN A CAGE, *supra* note 8, at 24 ("The official philosophy stressed the virtue of yielding and the superiority of non-contentiousness, and produced very strong social pressure against conflict and in favor of mediation and compromise").

240. Baharvar, *supra* note 55, at 66.

241. LUBMAN, BIRD IN A CAGE, *supra* note 8, at 19.

cooperation.²⁴² Negotiation and compromise are valued. The “law” serves only to express rules to uphold the values embedded in relationships and to preserve social harmony.²⁴³

As a result, STL students are uniquely positioned to become leaders in transnational law. They will graduate with training in Western critical legal analysis. They will have knowledge of civil, common and comparative law. They will be thoroughly trained in practice skills. They will be ethically grounded based on their first year introduction to professional responsibility. They will have interdisciplinary training in areas, such as economics, that are of concern to transnational lawyers. They will have an understanding of cultural differences, how they can be significant but also “how they should resist the temptation to explain everything away on the basis of culture.”²⁴⁴ Lastly, they bring to the study of law a philosophical background in Confucianism which values cooperation, compromise, the preservation of relationships, and social harmony.

VII. CONCLUSION: LESSONS FROM STL

The ABA’s Student Learning Outcomes Subcommittee recently announced that it is drafting rules requiring law schools to identify the skills and competencies they want students to have when they graduate and to develop methods to measure whether they are meeting those goals.²⁴⁵ The Society of American Law Teachers is advocating for these new accreditation standards to include a core set of skills schools must teach, including negotiating, working collaboratively, and communicating effectively with people from diverse ethnic and cultural backgrounds.²⁴⁶

Other professionals have observed that while many American universities have been “standing still, their Asian counterparts have surged ahead.”²⁴⁷ The Chronicle of Higher Education recently published an article by Singapore Professor Kishore Mahbubani entitled “Five Lessons America Can Learn from Asia about Higher Education.”²⁴⁸ Mahbubani writes, “[w]ith

242. *Id.*

243. *Id.*

244. Lehman, *Geography of Legal Thought*, *supra* note 197.

245. Karen Sloan, *Holding Schools Accountable*, *THE NATIONAL LAW JOURNAL*, Feb. 22, 2010, at 1, 11-15.

246. *Id.* at 13.

247. Kishore Mahbubani, *5 Lessons America Can Learn from Asia About Higher Education*, *THE CHRONICLE OF HIGHER EDUCATION*, Mar. 7, 2010, at A72.

248. *Id.* Professor Mahbubani is a professor of public policy at the National University of Singapore. He has also served as the ambassador of Singapore to the United Nations. He is the author of many books on Asia and foreign policy, including *THE NEW ASIAN HEMISPHERE: THE IRRESISTIBLE SHIFT OF GLOBAL POWER TO THE EAST* (2008).

more than 20 million students, China has . . . overtaken America as the world's largest higher education sector. The time has come for American higher education to think the unthinkable: that it can learn lessons from Asia."²⁴⁹

Experts believe that American universities and graduate schools must make progress in the twenty first century and that they might do well to learn from experiments overseas. What might U.S. law schools learn from STL? To help students understand that there are multiple legal systems in the world and multiple legal cultures.²⁵⁰ To teach students appreciation of the relationships between approaches to law and deeper cultural attitudes.²⁵¹ To occasionally step back from Western adversarialism, with its emphasis on who is right and who is wrong, and to consider instead nurturing interpersonal relationships, placing collective interests over individual rights, and striving for cooperation in the resolution of disputes in order to obtain social harmony.

The individuals and corporations who wish to transact across borders will be seeking lawyers with common intellectual and relationship skills that will allow them to consummate their transactions. Those lawyers trained in the best of Western and Eastern legal traditions will be the most likely to succeed.

APPENDIX: LAW AND HARMONY IN ACTION

One of many examples of "law and harmony" in action was experienced by the author at STL in 2008. The first class of STL students began the Legal Practice program in November. The Legal Practice faculty immediately began hammering the students with hypotheticals, constantly inquiring "who should prevail." The students were able to discuss the multiple sides of any legal argument, but invariably persisted with a question of their own: "what of harmony, sir?"²⁵² Being Western adversarial legalists, we deftly avoided the question.

In fact, it was not until we began the "non-research" problem²⁵³ that we began to understand the question. The problem involved the tort of intentional infliction of emotional distress: a male high school student verbally abused by his baseball coach

249. *Id.*

250. Lehman, More Drops, More Buckets, *supra* note 1.

251. *Id.*

252. I was referred to in the classroom as "Dr. Burr, Sir." I was honored by the title and attempted to have it adopted by my students at Wayne State (unsuccessfully).

253. For those unfamiliar with legal practice programs, for their first assignment students are given a "client file" and several cases and requested to write a memorandum discussing the merits of the client's claim.

sought our “law firm’s” advice. The issue, of course, was whether he had a cause of action. We anticipated that the Chinese students would be unfamiliar with the tort of intentional infliction of emotional distress. We were surprised to learn that the students were unfamiliar with the game of baseball.

Hence, the first Saturday in December found two middle-aged, mid-western American law professors attempting to teach a group of 20-something Chinese students the game of baseball on an overgrown soccer field in Shenzhen, PRC. Equipment turned out to be our first problem. We met beforehand with the student chosen as “Chairman of the Sports Committee” and explained what we would need. Ever resourceful, she purchased a bat on EBay, borrowed a tennis ball from the University courts, stamped cardboard boxes into bases, and drew the diamond in classroom chalk. Our second problem proved to be timing, a Communist Party meeting was scheduled for the same day. Nevertheless, a respectable number of our students managed to appear for the game.

The day dawned sunny and warm; Shenzhen is approximately an hour from Hong Kong and sub-tropical. In choosing teams, the students divided themselves along gender lines, then split and reconfigured so that the teams consisted of equal numbers of males and females. With some discussion, it was decided that the positions would rotate so that all of the students, regardless of skill, would have an opportunity to experience the game.

The second batter up hit a line drive to right field. Instead of running to first base as expected, however, she stood at home plate basking in thunderous applause generously given not only by the members of her own team, but the opposing team as well. After loud “encouragement” from my mid-western male colleague, she danced to first base – still holding the bat – and accepted the first baseman’s congratulatory hug. The ball remained forgotten in right field, as the batter posed for cell phone photos compliments of the pitcher.

The game continued. Every successful play was celebrated by all; every defeat was graciously accepted as the responsibility of both teams. The rules of baseball are hard to understand and even more difficult to apply. There was much discussion over the application of the rules, their impact on this game and these players. The discussions were time consuming, and my colleague paced the baselines shaking his head, but consensus was always reached and harmony maintained.

Three hours and three innings later, the sun began to set, the air began to cool and the game was called. No “winner” was declared, but no one but the two American professors seemed to

notice. Amid more applause, many cell phone photos, and an enthusiastic round of “thank you, sirs”, the players returned to their studies.

On Monday, they arrived at class ready to discuss our problem. Did the law provide our client with a remedy? The students were required to apply the decisions of the Florida courts on the elusive tort of intentional infliction of emotional distress and decide. They brought to their discussions not only a newfound knowledge of baseball, but the same principles and values they exhibited on the field. They tempered the traditional Western adversarial quest for the truth with a respect for harmony; they listened to and absorbed alternative points of view, sought solutions beneficial to all sides, and valued consensus above individual rights.