

An Institutional Inquiry into Legal Skills Education in China*

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After beginning with a brief introduction of the state of the legal skills training in contemporary Chinese law schools, this paper analyzes the slow development of legal skills training in China from the following perspectives: the rational choice of relevant actors in legal skill training, the impact of traditional institutionalization of knowledge, and most importantly, the lack of sufficient social demand for legal skills. This paper suggests focusing on increasing social demand along the rapid socio-economic development in China, and suggests government increasing investment and cultivating legal skills training in Chinese law schools.

I. PROBLEMS AND PERSPECTIVES ON LEGAL SKILLS TRAINING IN CHINA

Legal skills training in Chinese law schools now seems unable to satisfy the demands of the ever-growing professional orientation of Chinese legal education. Although currently there are no statistics to demonstrate a direct comparison between law students in China and the United States, I still develop an impression that graduates from China's top law schools cannot compare with their American counterparts in lawyering skills, though they are equally brilliant in intelligence and potential. Inspired by the American model of legal education, there has always been a voice for enhancing professional education and skills training in China. This voice indicates the want of substantial improvement in those areas. On the other hand, the Chinese legal profession does not find it a problem that Chinese law graduates are lacking in professional skills (at least such complaints are rarely heard) because many Chinese graduates have become top lawyers in China after years of practice. However, even the top lawyers often have to receive certain types of legal training in the U.S. in order to deal with cases involving foreign elements. It seems the Chinese legal profession is basically satisfied with the current quality of Chinese law graduates. Therefore, it is necessary to explore the factors that hamper the development of legal skills training in Chinese law schools. What is worth the most attention is discovering

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the cause of the Chinese legal profession's ignorance of the importance of legal skills training; it may be the most important factor that encumbers the path of legal skills training.

Some scholars have already conducted preliminary analysis on the problem. One of the frequently mentioned factors is that Chinese legal education mainly occurs at the undergraduate level. This means that at enrollment, law students are too young to be fit for professional skills training. Additionally, these students are used to the spoon-feeding style of education they receive in high school. This leads to a rigid way of thinking—mainly conceptual, propositional and theoretic—that applies general theories and principles to particular circumstances in a way of scientific deduction. Therefore, it is very difficult for Chinese law students to adjust themselves to the large amount of uncertainty in the legal profession and the variety of human characters when they enter universities.

Moreover, Chinese students are generally very protected by their families before they go to college. With the onset of the birth planning policy, Chinese parents are always trying their best to protect their children from any contact with real society for fear that their only child may be led astray. All these factors make it difficult for Chinese students to adapt themselves to skills training in higher education institutions.

At the urge of some Chinese scholars, the Chinese government initiated the “Juris Master Program,” directed toward this phenomenon. However, although this program has been implemented for more than a decade, there is not a clear sign of improvement in Chinese law graduates' professional skills. A few scholars even advance a more radical notion—to completely abolish legal education on the undergraduate level and entirely adopt the American model.

Another factor, rarely mentioned but actually more important, is the financial situation of law schools. Generally speaking, legal skills training requires a tremendous investment in human resources, time, and space in order to facilitate the “master and apprentice” model of training. This is a challenge to teachers because teaching skills is not considered as attractive or challenging as acquiring knowledge and intelligence. Considering China's current economic status and its educational investment, obviously it is impossible for Chinese law schools to obtain enough financing and human resources in order to afford an overall advancement of legal skills training. Furthermore, due to the late development of the legal profession in China, highly-talented teachers are badly needed. The corresponding solution is the hope of more attention from society and the legal community to push government and university authorities to substantially increase their financial investment in this field. This solution is basically a policy of government-guided investment, though this call has not received a significant response.

Although the above views hold some truth, there are also some weaknesses. If it is the system of undergraduate education that restrains legal skills education, how do we explain the fact that law graduates from other civil law countries and regions, such as Hong Kong, where law schools also enroll high school

graduates, are highly skilled in their practice? If the requirement of legal skills education to have a large quantity of experienced teachers is constrained by the insufficiency of the Chinese government's investment in education, how do we explain the phenomenon that Chinese undergraduate legal education has been developing at a worrying speed for more than ten years with such limited financial and human resources?

This paper analyzes this problem on three levels: the actor's rational choice on a micro level, and the two macro constraints of such a choice—academic tradition and social demand. The focus of the micro level is that the insufficiency of legal skills education is the result of an unwritten self-interested compromise reached by students and law schools from the costs and benefits of study or teaching.

Nevertheless, it is not nearly enough to simply attach importance only to these individual actors' rational choices. Heed should also be taken to the institutional environment, which is always a significant concern for any actor in making a choice. Therefore, I deepen the exploration in terms of academic tradition and social demand. The academic tradition refers to an acknowledged and comparatively static academic institution, which symbolizes a stable social evaluation of the importance of all academic disciplines formed on the basis of social practice. Therefore, to a large extent, it influences and shapes peoples' subjective and social evaluation of the profit they can obtain from investment in their studies, thus acting as a guide for individual choices.

Yet, a more influential factor to legal skill's training is the social demand, without which legal skills would not likely be generated or purchased, and this training would not be transformed into knowledge or products of any value. Social demand is formed in society and is inseparable with economic status and social formation. As a result, this paper involves observation of current Chinese society. In addition, special attention should be given to the fact that there is not a "one-to-one" relationship between a particular social demand and a certain product. Generally, there are alternatives to satisfy the same social demand. When there is insufficiency in the social demand for a particular product, for example, legal skills, we should not only ask why there is such insufficiency, but we should also determine whether there is a cheaper alternative that can satisfy part or all of the demand. That is what constitutes the other parts of the paper. However, it is important to note that my research on the constraints of legal skills training does not mean that I am certain that these constraints should be eliminated. My analysis is positive in nature. Further research and more comprehensive analysis ought to be done on evaluation and policies. As such, I will make some conservative suggestions for legal skills training for Chinese law schools in the last part of this paper.

There are various definitions of legal skills. I would like to put forward my own definition before going into the depth of the research. In my understanding, a legal skill refers to the technical ability essential for a lawyer to deal with a particular type of legal practice. To make my definition an operating one, I

assume legal skills include: (1) the ability to draft legal documents by precisely abstracting the particular dispute at issue; (2) the ability to search and summarize the law and other relevant materials for a particular issue; (3) the ability to negotiate and communicate with clients or other legal professionals; (4) the ability to settle a concrete dispute; (5) the ability to address claims of a certain case by skillfully employing knowledge of procedures; (6) the ability to debate in court and persuade judges; and (7) the ability to lobby for a certain subject matter in legislation and to push for reform of laws. I exclude from the scope of legal skills the ability to analyze and interpret legal documents and facts and the ability to grasp political policies, which is a must for any excellent legal professional. Of all the seven abilities, the first two are the abilities to communicate with texts while the last five are the abilities to communicate with people. These abilities are integrated in legal practice and cannot be separated from each other.

II. HISTORY AND THE STATUS QUO

Modern Chinese legal education commenced in the late years of the Qing Dynasty, yet it is generally acknowledged that contemporary Chinese legal education began with the overall resumption of the national entrance examination to colleges and universities in 1977-78. At one point in Chinese history after 1957, there was no legal profession in Chinese society (although there were indeed judges and procurators); consequently, from the end of the 1970s to the beginning of the 1980s, Chinese society had no concept of a legal profession. Also, at that time there was not the current institutional difference between social sciences and humanities or the difference between academic and vocational education. Even so, the specialty design and talent cultivation pattern serving the planned economy and the emphasis on “applying theory to practice” highlighted the practicability of legal education to some extent. The major symbols of legal skills training at that time were moot court, a course in many law departments’ curriculum, and the graduation externship, which was a required course for undergraduate education prescribed by the Ministry of Education. According to the Ministry of Education, all college students in grade four must complete a graduation externship for three or four months in departments that may need their specialized knowledge. Law students often fulfill their graduation externship in courts or procuratorates.

Of course, these skills trainings were far from enough and the institution itself was problematic. First, moot court can only familiarize students with litigation procedures and improve their advocacy by studying a given case, which is not the same thing as the practical skills required for being a modern legal professional. Second, skills cannot be entirely obtained in classroom teaching, but rather must be learned in practice with experienced lawyers. However, there was a shortage of legal professional experts in the law practice, including judges, lawyers, and suitable law teachers. Graduation externships could theoretically help train law students in their legal skills, but in the era of the planned economy

all graduates had to abide by the government's dispatch to certain posts, not having any freedom in choice of their own jobs. This often caused the lack of connection between skills and employment and the consequential lack of stimulation for students to acquire legal skills. Even if they had mastered certain legal skills, they might not have benefited from them in getting a better job, and therefore they had little motive to learn these skills during their graduation externship.

This situation remained until the beginning of the 1990s. With the increasing influence of the market economy in Chinese society, some partnered law firms began to appear in large cities in the latter half of the 1980s. In 1992, China officially declared a policy of constructing a holistic socialist market economy. Since then, the market economy has been developing at a rapid rate. As the government loosened its restrictions on the legal profession, there was an immediate increase in the number of legal professionals—first lawyers and then judges, procurators, and even some law professors began working part time in legal practice. Compared with that of judges and procurators, lawyers' jobs involved more uncertainties. In order to pursue their professional interests, lawyers were concerned with legal practice, so they prioritized the accumulation of various lawyering skills. Accordingly, a kind of “unstated knowledge” of legal skills was accumulated, which was quite different from the analytical intelligent discourse instructed in law schools. From this, a group of legal professionals rose to carry on and transmit this type of knowledge.

The rise of professional lawyers as a group accelerated the accumulation and popularization of legal skills and knowledge. In China, this first facilitated improvement in the quality of judges. Lawyers and judges theoretically belong to the same community of legal professionals; however in legal and judicial practice the relationship between them is one mixed with rivalry and cooperation. Highly talented and skillful lawyers would confront judges, who were then less qualified legal professionals than the lawyers, with more professional legal questions which forced them to improve their abilities as a whole. Also, in order to be adjusted to the rising legal professional market, law schools began to invite successful practicing lawyers to lecture, which reformed law schools' curriculum to some degree.

In fact, the high income and flexible working schedule of the legal profession encouraged law students to transform their interests and orientation from the former focus on “academic concern” to legal practice. In order to be enrolled in law firms and other legal practice departments, law students began to develop interest in legal professional skills and were more willing to fulfill their externship in law firms. With a clear professional orientation in mind, students were better motivated to learn legal skills on their own initiative.

Consequently, the concept of legal vocational education has been involved into the academic debate on legal education. Since the latter half of the 1990s, many law schools have begun to establish institutions similar to a legal aid center, where undergraduates and postgraduates of law, under the guide of their

teachers, provide free legal services to clients unable or unwilling to pay expensive attorney fees. This practice soon gained support from the government. Although law schools had not particularly meant to develop legal skills with such a program, they have actually supplied an opportunity for their students to have a direct contact with clients and to understand and acquire legal skills. One of the most important motives for law students to participate in legal aid services is to enhance their comprehension of legal practice. Legal aid has become a very important venue to learn legal skills.

Concurrently with the joint efforts of the Ministry of Education and the Ministry of Justice, China has carried out the Juris Master program after the example of the American Juris Doctor program since 1995. The Juris Master program is influenced by the American model of legal education and is aimed at changing the solitary focus on academic analysis in Chinese legal education. Since 1995, this program has been spread nationwide. By the end of 2007, it was adopted by as many as eighty law schools. This program admits non-law majors into law schools to study for three years with the view of cultivating comprehensive, practice-oriented, and high quality legal talent. Nonetheless, this program has not achieved the expected effect, for various reasons. The biggest reasons are that the Chinese legal profession is underdeveloped and law professors' knowledge and instruction techniques are out of step with the development of the legal profession.

Even so, sparked by the market economy, changes in the legal profession continued to take place. One significant milestone was in September 2000 when the law schools at Peking University and Tsinghua University began to offer the course of clinical education, inspired by American clinical legal education and funded by the Ford Foundation. After that, law schools in other universities followed suit. Clinical education thus entered China. On July 28, 2002, the Committee of Chinese Clinical Legal Educators (CCCLE) was founded by eleven universities, and was the first nongovernmental educational organization to specialize in legal skills training. The Committee established its own website, organized a specialized discussion on a prestigious Chinese periodical of law science, and published a series of works and translated works on clinical legal education and other related subjects. Presently, clinical education is carried out in nearly all of the major law schools in China. However, it covers only a small number of law students. Roughly speaking, of all the undergraduate law students at the Law School of Peking University, no more than twenty percent have received clinical legal education. This is because of the serious shortage of clinical teachers. Usually there are only one or two in each law school, each possibly working only part time. In the law schools' teaching plans, clinical education has been placed in a marginal position. What's worse, this will remain the same for a long period into the future.

III. A RATIONAL CHOICE

Primarily, the insufficiency of legal skills training is a result of the rational choice made by actors of micro-level legal education under the micro-level institution. “Actors” refer to the two parties to education: law schools, the supplier of education, and students, the consumers of education.

From the students’ perspectives, a substantial institutional factor that influences their ability to choose legal skills training is the fact that legal education in China is like that in many European civil law countries. Unlike legal education in the United Kingdom and the U.S., which aims to cultivate legal practitioners, Chinese legal education attempts to provide both quality education and vocational education, fostering preliminary knowledge about law with interdisciplinary talent. Chinese law graduates do not necessarily seek the legal profession as their goal. In fact, a majority of graduates ultimately do not engage in the legal profession. They may become civil servants at various levels in governmental departments, they work for various companies, start their own business, or they may work for the media. Law students can be found in all trades. For those that do enter the legal profession, minus the few that become lawyers, a rather large portion of law graduates working in the court system or procuratorate system may be placed on posts having only a little to do with the legal profession. For example, they may ultimately work in the court or procuratorate systems’ publishing houses, newspapers, and various offices. Their jobs may involve executive affairs, policy study, teaching, or even clerical chores. They ultimately are administrative officials in the so called judicial system.

Due to this phenomenon, the study of legal skills is not attractive enough for law students. Comparing the cost and profit, an investment in legal skills may not be the most efficient one for two reasons. First, as a specific human capital, legal skills are directly connected with the legal profession.¹ Therefore, the point is not whether the skills are useful to other professions. Rather, the point is whether it is possible for students to achieve better efficiency in their future long-term employment by investing in legal skills during their undergraduate study, compared with law students’ investment in other more general knowledge and skills to increase their general human capital. Although generally the more skills the better, the acquisition of skills always demands time and energy, which are both limited resources in a student’s four-year college life. There is always a consideration of opportunity cost in the investment in legal skills. If a student has no intention to be a lawyer or is at least unsure, it may be very inefficient for him to invest time in acquiring legal skills and it may be more efficient to invest time in acquiring more general knowledge and skills. For example, the skill of legal drafting is not as widely applicable as the skill of writing general documents or papers.

1. Though these skills can be transferred to other professions, such a transfer is difficult to some extent or may lead to depreciation of the skills.

Considerations should also be given to people's preference for different types of knowledge and their varying efficiencies in learning at different stages in life. From this angle, investment in skills training during the undergraduate stage may not be more efficient than investment in general academic knowledge. Mastery of skills requires consistent practice for quite a long time and cannot be accomplished in a short period. Sometimes some people cannot make any perceptible progress after longtime practice due to their own particular character. Some skills, such as negotiation skills and dispute settlement skills, need to be learned on the foundation general knowledge of society and social experiences. As a result, it is better to learn some legal skills earlier and others later. This means that age sometimes can be an advantage to learning some legal skills while being a disadvantage to learning others. On the university campus, legal skills do not appeal to ordinary students as much as the skills of performance, expression, elocution, and organization. Comparatively speaking, certain disciplines, such as mathematics, literature and social sciences, are more dependent on youth. Moreover, throughout life, people prefer to acquire different types of knowledge at different stages. The preference for literature, abstract theories, concern for the world, and appreciation for music and art all tend to reach their peak in a person's youth. Once that stage is past, a person's interest becomes weaker and it is difficult to enhance that interest and ability. Therefore, there is some truth in students prioritizing the study of theoretical and philosophic knowledge and to attach less importance to legal skills, because it conforms to students own distribution of life resources to pursue the maximum profit. Similarly, this is why universities place more emphasis on quality education or general education at the undergraduate level.

Just the same, law schools compare the costs and benefits of skills training with that of other specialized courses. Primarily, for a prestigious law school, cultivating top legal talent is a main goal, but it should not be the only goal. Secondly, it is also problematic for a law school to adjust its curriculum to meet students' demands. Since human and financial resources are limited in law schools, in designing a course the law school will ultimately take into account the number of students who are willing to enroll, no matter how much the law schools wish to benefit the students' future careers. Generally, law schools prefer to offer a course that is selected by more students, whether it is required or elective. Since the majority of Chinese law students do not work in the legal profession after graduation, students that select the related skills courses will be comparatively small in number, which will obviously influence law schools' decision on the design of legal skill courses and on the distribution of credit hours. As a matter of fact, although clinical legal education is offered in many Chinese law schools, it is regarded as a marginal course because only a small number of students enroll.

Additionally, it is difficult to determine the core contents that should be included in a legal skills course. If the scope is too narrow, not only will the course be unworthy of its name, but also it may overlap with similar courses such

as negotiation skills. However, if the scope is too wide, there would hardly be any teachers capable of teaching all the required skills. Teachers proficient at advocacy may not necessarily be good at promoting legislation or negotiation. An overextended scope may also give rise to the phenomenon that different teachers and different law schools teach different things under the same name of the legal skills course. Also, it is possible for the whole course to fall apart when a particularly skilled teacher leaves. Course assessment is problematic as well, especially because currently the Chinese Ministry of Education will usually conduct uniform assessment.

But without uniform course contents, the course is not likely to have a precise social evaluation or a meaningful response to the effect of the course. It will be difficult to determine whether the course is helpful to students, and if so, how much it is helping them. What's more, there isn't any indirect response, because when employers choose students, they are mostly concerned with which university the students graduated from, what degree they earned, or what specialized courses they took. At least presently, no attention is paid to the legal skills course. Consequentially, whether students take the course or not has little to no influence over their employment. Therefore, a law school cannot obtain the accurate information to help its decision-making process. Therefore, all of these factors act as constraints to the design of the legal skills course. Such choices are closely related to the current state of Chinese academic institutions, which are in a course of transformation.

IV. ACADEMIC INSTITUTIONS

It has been just one century since the beginning of modern legal education in Chinese universities at the start of the twentieth century. Before that, there was the study of "lü" in traditional Chinese society, which was similar to modern legal education, but it did not receive much attention. What was included in the traditional Chinese academic institution and was officially imparted into the educational system were humanities, such as "jing" (classical works), "shi" (historical works), "zi" (philosophical works) and "ji" (belles-lettres). In this sense, there was neither social science education nor vocational education. Skills similar to those of the legal practice were excluded from the traditional academic system and became mysterious tricks imparted between family members. There is little record of this type of skill to be found, but for some memoirs written by "shiye," private advisers attending to legal, fiscal, or secretarial duties in the old time.

At the beginning of twentieth century, the modern science of law and other social sciences were introduced from the West into China. It was at that same time that the transformation of Chinese academic institutions began. However, traditional Chinese academic institutions still molded the science of law with both the quality of social science and an emphasis on vocational education. The science of law was introduced into China as a discourse practice rather than an

academic discipline centering on practice and the legal profession. Therefore, the science of law in China was concerned more about the theories of law than the practice and experience of law.

There was little chance for legal practice at that time. Chinese society was mainly an agricultural society and did not have a legal profession in the modern sense. In a society with limited business opportunity and a small urban population, there were scarcely potential consumers that could afford legal services; thus, a flowering legal profession was not likely to develop, let alone the accumulation of legal skills. While a minority of law students stayed in big cities to cope with the limited demand for legal services, most law students graduated and became civil servants in the government or teachers. This was far from enough to make a legal profession. Prosperity of the science of law then was merely prosperity of legal discourse, and legal education remained mainly as education of legal discourse.

That state of affairs lasted for one century, but the change was due to different contributing elements from a subsequent historical period. The instability of Chinese society and its dominant agricultural culture produced the stagnation in the science of law in the first half of the twentieth century. After the 1950s, industrialization commenced under the background of a planned economy, which instead of helping to expand the scope of legal practice, made the demand for legal services continue to decline. Legal services became a dispensable part of society because conflicts among individuals, enterprises, and working units were mostly settled through administrative measures. Near the end of the 1970s and the beginning of the 1980s, only disputes pursuant to crime and divorce were brought to court. Legal education shrank on a large scale and its practice-oriented features were all erased with the predominant mainstream political ideology. The “Cultural Revolution” finally ended at the close of 1970s and legal education resumed. However, without the support of a legal profession and high quality teachers, the reconstruction of the science of law was based on the discourse of traditional academic institutions and political ideology. Its development remained mostly at the discussion level. At least in the first several years, employment of law graduates would first meet the demand from colleges and universities, with research institutions and government departments making up for the remaining vacancies caused by the “Cultural Revolution.” Among the rest, some went to work in the court and procuratorate systems, but their posts remained mainly executive ones. Few law graduates engaged in lawyering.

Without a sound foundation of a legal profession, there is naturally no proper soil for education and research in the field of legal skills. The departments in the science of law that were developed first were aimed closer to traditional humanities, such as jurisprudence, the history of law, and international law that caters to the need of developing foreign relations.² All of these departments are

2. This is in fact a whole additional type of academic discourse.

far from actual legal practice and constitute a disadvantageous premise for the development of modern Chinese legal education and the legal profession. Not only the textbooks used but also the teachers and teaching methodologies are very confined and therefore restrict development in the research and education of law. This mode will set substantial obstacles for the development legal skills training. For example, Chinese students that have graduated from American law schools, who account for the largest percentage of the Chinese international student population, mostly enter the U.S. legal profession instead of teaching at law schools because of the favorable professional institution the high income for lawyers. On the contrary, the majority of Chinese law students studying in European civil law countries choose teaching positions at law schools.

Although an easy assumption to make, this is not because Chinese modern legal reform followed the civil law system and Chinese legal educational system shares more in common with the civil law system rather than the common law system; with a more careful analysis, another reason can be discovered. It is easier for the civil law model of legal education and the tradition of statute law to be adapted to and integrated into the Chinese academic tradition. The civil law model of legal education tends to focus itself on legal texts rather than on analysis of legal doctrines through study of concrete cases, and so is lacking the training of legal practice-oriented analytical ability. In common law countries, law students learn at least some legal skills in their first year reviewing case briefs, searching for proper laws, and drafting legal instruments. Although the course of “legal instruments and legal writing” is also offered by some Chinese law schools, it has little strength to inspire students because they find it not intellectually challenging due to its overemphasis on highly formatted legal instruments and lack of orientation to practical legal issues. It is very natural for students to prefer academic legal courses, which are more inspiring and challenging, or other courses of non-law humanities rather than dull legal skills training courses.

What’s worse, some significant transformations in Chinese higher education went against legal skills training. One example is the boom of the market economy from the beginning of the 1990s which should have encouraged legal education to transfer its focus to legal skills training. Another substantial progress in Chinese higher education overshadowed the possible important influence of the Chinese society and market over legal education when the mid-1990s educational strategy was revealed: “to revitalize the nation by boosting science and education,” rendering all universities and law schools in pursuit of the balance between research and teaching so as to realize the integration of “production, teaching and research.” Such progress is doubtlessly correct and necessary to the entire Chinese higher education as well as being a timely turn with far-reaching meaning in the development of Chinese society. It is also contributive to the general development of law schools. The Chinese science of law, as an academic discipline introduced from abroad, remained to develop on a low level under the pressure of social reform, and after the founding of PRC it

has been categorized under “political science and law.” It is more political than academic. “Infantility of the science of law” is a comment not only made by other academic disciplines but also acknowledged by many scholars of law. Therefore, the Chinese community of science of law is dedicated to the academic turn which has been realized and become mainstream in law schools. However, the academic turn has an obvious negative impact on legal skills training. Stress on research, projects, and publications as well as the pressure of promotion forces teachers to try every means to publish papers. Because of this, teachers, especially those who practice part time, do not have much time and motivation to invest their energy in skills training which ultimately is excluded from assessment indexes. In such a climate, it is impossible for legal skills training to be brought into the agenda of law schools. Accordingly, it may well be said that since the end of 1970s, Chinese legal education has been marching more on the “academic” road, which is especially obvious in some prestigious law schools. Such a tradition-based academic institution emphasizes academic research and publications, while ignoring legal skills training. Law students are also confined by these institutions at the micro-level when making their rational choices.

V. SOCIAL DEMAND AND ALTERNATIVE SATISFACTION

Apart from the institutional factor, insufficiency in legal skills training results from the lack of social demand for a Chinese legal profession. Chinese society remained basically an agricultural society with little industry or commerce until 1949. People were living in a society constructed on relations between acquaintances. Those two factors limited the demand for legal services: because acquaintances would form their own mechanism to prevent and settle disputes and the agricultural society could not generate enough wealth for ordinary people to afford legal services fees. The science of law, introduced at the beginning of the twentieth century, existed in such circumstances. Most law graduates did not engage themselves in the legal profession, which was concentrated in large commercial cities.

With the regime change in 1949, the legal profession was confronted with even greater difficulty. The purpose of revolution, above all, is to overturn the old system. In this sense, there is not truly a revolution if the old legal system is not overturned. However, once the legal system is abolished, there is no foundation for the legal profession. What’s more, construction of the planned economy system and other social systems eliminated the social demand for the legal profession as the only means to settle disputes. Disputes that formerly were settled through legal procedures now, in the planned economy system, could be dealt with through administrative measures established by the Communist Party of China and other social mechanisms. Thus, the legal profession was placed in an awkward position and could hardly go on. In 1977 or even later, the only types of law that could be practiced were criminal law and marriage law.

Consequently, without a legal profession, there was no need for legal skills and even the existence of the science of law became questionable.

Even in the 1990s, when the Chinese market economy and legal education was developing rapidly, insufficient social demand for legal skills training still existed. First, in Chinese society as a whole, legal practice was rather simple and crude and did not involve the employment of many legal skills. At that time, the vast majority of Chinese law graduates seldom worked independently at the beginning of their career, even if they chose to take on legal practice. Instead, they would receive a period of employment training under the guidance of experienced lawyers in the form of an apprenticeship. Chinese law graduates, young and intelligent, were both capable of and highly motivated for this type of learning in order for their own personal advancement. As time passed, practicing lawyers now do not expect too much of Chinese law graduates who are simply viewed as providing cheap labor. Now, legal skills training has been transferred from law schools to law firms or other judicial institutions, which forms a viable alternative to the supplier of legal skills training.

Of course, there is some high-level legal practice, such as foreign trade disputes, that is beyond the ability of the Chinese legal professionals. These legal professionals are short in language skills, knowledge of economics and trade, and lack legal skills and legal ethics. The inconvenient entrance and exit of the Chinese border also renders Chinese lawyers in a disadvantageous position to deal with foreign trade disputes. As a result, Chinese clients usually employ foreign law firms in the hope of reliable and efficient settlement of disputes. Foreign lawyers and law firms, therefore, form another significant alternative to the demand for Chinese legal practice.

We must further note that some skills deemed essential to legal practitioners in a commercial society are not as useful in Chinese society. Primarily, because of the regional imbalance in the development of politics, economics, and the rule of law in Chinese society, dispute settlement takes on various forms with different Chinese regions possibly demanding different legal skills and possibly having different definitions of legal skills. Consequently, it is difficult to form a uniform conception of legal skills. In fact, there is not even a widely acknowledged community for legal professionals and a wide division exists regarding what constitutes "legal skills." To practice law in China's rural areas and inland cities, the most effective measures may not be the legal skills standardized in commercial society. For instance, the key to judicial practice may not be a determination of rights in accordance with the law, but rather mediation, which can effectively ease conflicts and harmonize varieties of relationships. In such cases, deliberate employment of legal skills may not necessarily solve problems, but instead may actually intensify the conflicts, propelled by both clients and other legal professionals. An important illustration is the ups and downs that judicial mediation has endured in the past twenty years. And if the techniques employed by rural Chinese are effective to settle disputes among acquaintances, they will become another alternative to legal skills.

These so-called “techniques” possibly include conduct accompanying social transformations while being in violation of legal professional ethics, such as corruption. Legal professionals are not abstract beings; instead, they are rational beings living in real society. Few of them would strive to enhance their legal skills with the mere purpose of making themselves more like standard legal professionals.

What’s more, legal skills only have a marginal influence over legal professionals’ income. In an ideal system of law, legal skills can play a decisive part in winning those cases to which both parties share equal responsibility. Hence, that legal skills make the best profit for legal professionals is possible on the premise that the whole society enjoys a sound system of law, where many aspects of social life are explicitly specified with rules and people are law-abiding. In such an ideal legal system, without more profitable means, the enhancement of legal skills would become the investment to achieve the greatest profits and interests. However in reality, without such an ideal legal system, there are a lot of loopholes and laws are full of ambiguities and uncertainties. If results of cases or other issues are not determined by legal skills but rather through interpersonal relations, wire-pulling, interest exchanges, or even bribery in broad daylight, investment in legal skills will generate far less returns than other investments. Thus, it is easily understandable that people will not make investments in legal skills with the clear knowledge that it not the most efficient investment.

Even legal professionals will unavoidably surrender themselves to such an environment and turn to invest in interpersonal relations, powers, or even some unlawful and corrupt ways to make a profit that should be made from the use of legal skills. The reasoning is simple and can be clearly illustrated with a comparison to college and university admissions. Generally speaking, the more effort one makes in school, the better opportunity one has to go to college, and hence the larger possibility one has of increasing their income. Yet, when such efforts reach a certain limit, the corresponding marginal effect tends to be digressive. If admission to college can be bought by money or gained through interpersonal relations and a promising job is hence secured, people are not likely to invest their time and energy in their studies; they would rather invest in interpersonal relations whenever possible. From this angle, improper conduct, rule-breaking, and corrupt behavior are alternatives to legal skills. More than that, they will further restrain the social demand for legal skills. In my view, this is the most important factor in restraining such demand.

VI. SIGNIFICANCE AND SUGGESTIONS

I believe the above analysis has proven that the absence of legal skills training in Chinese law schools is not simply a problem caused by educators, but rather is jointly caused by many elements. No doubt, legal skills training must be strengthened to make up for its deficiency in Chinese society. But this problem

cannot be solved by simply increasing or enhancing legal skills training. It is a problem needing a transformation in society.

The goal of the above analysis is not merely to keep track of evolution of the problem. Some suggestions in terms of policy-making have already been implied, and some suggestions that seemed perfectly justified are denied or at least set aside. China ought to enhance legal skills training and it is urgent because there is a potentially enormous demand for legal services as China's ever-deepening reform further integrates China's economy with the world economy. Such economic integration makes urbanization, industrialization, and commercialization inevitable in society, which gradually becomes unacquainted consequently. Expansion and opening of the legal services market is certain. It can be expected that many high-quality foreign lawyers will enter the Chinese legal services market through various channels in the next ten years. If Chinese legal professionals continue to pay no attention to legal skills, the most profitable parts of legal practice will be taken, if not monopolized, by foreign law firms and lawyers. If so, the evolution and advancement of the Chinese legal profession and legal education will be seriously affected.

However, our strategy for the problem should not be objection to competition with the foreign legal profession. I do not agree with restricting foreign lawyers and firms with a critical requirement for entrance into the market. Whether for consumers' interests, perfection of the Chinese legal profession, or promotion of its division and purification, I maintain that competition is the best way, but with the goal being to facilitate long-term development and overall enhancement of the Chinese legal profession. If competition with foreign legal professionals leads ultimately to the collapse of the Chinese legal profession, it will cause serious problems in the Chinese legal profession and bring turbulence to Chinese society overall. In a word, advancement of the Chinese legal profession, including training and enhancement of legal skills, is a must and cannot be avoided.

Another factor requiring the Chinese legal profession's ever-increasing attention to legal skills training is the transformation that Chinese society is undergoing. In previous parts of the paper, I have analyzed the small demand for legal services and possible lack of need of legal skills associated with the modern legal profession in an agricultural society constructed on relations between acquaintances. But now China is undergoing a transformation—the rural population is declining drastically, the country is quickly urbanizing, and mobility of the population is increasing greatly, which all indicate that China is transforming into an urban, industrial, and commercial society no longer built on relations between acquaintances. As traditional interpersonal relations change, certain legal skills that are not applicable to the former agricultural and acquaintance society will become increasingly important in the new social environment. Furthermore, an industrial and commercial society increases the cost for investment in interpersonal relations while decreasing its earnings, which forces people to turn to the legal profession for dispute settlement. As a result,

investment in legal skills will generate a greater profit as the social transformation continues.

Both of these reasons push me to this conclusion—legal skills training in Chinese society should and will be enhanced.

“Chinese society” certainly includes law schools, but it is not limited to law schools only. Though legal education in European civil law countries is not profession-oriented and does not provide the same amount of legal skills training as American law schools do, there are still excellent lawyers in those countries. Hence, legal skills training may not necessarily be supplied only by law schools, but also can be provided by other employing institutions in society such as law firms. Because Chinese legal education endeavors to strike a balance between institutional education and vocational education, I consider it more rational for parts of society, particularly law firms, to supply legal skills training.

First, it may be more efficient. If Chinese higher education continues to be mostly funded by the state, an increased investment in legal skills training on the whole is inefficient because most law students will not enter the legal profession and are not in need of many legal skills. Thus, a fairly large part of such investment would be a waste and there is a question of opportunity cost. Undergraduate education lasts for a period of only four years. If too much time is invested in legal skills training, then less time will be invested in cultivating students’ knowledge and abilities in other fields. Third, even law schools that care about market demand are separated from the legal professional market and other related markets, so they actually do not have a clear idea what legal skills are needed in the market. Even if they had a clear idea, in light of the market demand it would be difficult for law schools to require professors to teach legal skills training, select such professors, and ensure that they carry out the teaching plan. Consequently, skills training offered by law schools may deviate from market demand.

Comparatively speaking, it is more efficient for employers, regardless of the employer’s government or enterprise, to invest in legal skills training. Employers will efficiently invest in human capital in accordance with their own needs and in consideration of their costs and benefits. Employers have a better idea of the market demand and their own needs, and have greater flexibility in choosing proper teachers for providing legal skills training. Additionally, once a student enters a profession on his own will, he tends to study with greater enthusiasm and a clearer goal. Though I insist that employers provide legal skills training, I do not mean that training must be put off until students have graduated; instead, it may be carried out during students’ college life and off campus, just like with American law students who extern with law firms after their first year of study.

My analysis also makes it clear that the enhancement of legal skills education cannot rely only on the introduction of American legal clinical education, law schools’ increase in financial funds, or recruitment of clinical professors. Educational departments in governments, universities, or law schools cannot be the major driving force to obtain that goal. It is better to believe in the market, to

believe in investors' foresight, and to believe in consumers' demand expressed by their purchasing power.

But this does not call for any reduction in the government's responsibilities. The government's continuing responsibilities include promoting China's economic development and social transformation to boost demand for legal skills, rectifying disciplines of the legal profession, reducing corrupt behaviors and acts against professional ethics, and reducing unfair competition in the legal profession. Specifically, reducing improper acts, rule violations, and crime will enable legal professionals to agree that investment in legal skills is the most profitable and least dangerous. It is also within the government's responsibility to render greater profit gained from legal skills than from corruption or violation of legal professional ethics. This is a foundation on which a stable, rational, and constructive market for demand and supply of legal skills can be established.

Based on the above reasoning, I conclude that, in the current social system and institutional environment in China, the Chinese Juris Master program is unlikely to achieve the same effect as a U.S. Juris Doctorate education. This is contrary to many people's good wishes.

In the end, although I have placed emphasis on legal skills in an industrial, commercial, and urbanized society, we should remember that China is a large country with an imbalance in political, economic, and social development with rural population still accounting for the vast majority of the Chinese population. Consequently, legal professionals in rural areas and economically underdeveloped regions may still require certain legal skills that are adjusted to that social environment, although these skills are excluded from the legal skills discussed in this paper. As a result, as uniform legal skills training develops with Chinese society, the Chinese academic legal community must recognize and research the legal skills needed by local legal professionals, because such skills are effective some share commonalities with modern legal skills.