

# 中国人民大学 中国法律 发展报告 2013 法学教育与研究



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REPORT ON CHINA LAW DEVELOPMENT 2013  
LEGAL EDUCATION AND RESEARCH

主编 朱景文

 中国人民大学出版社

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· 北京 ·

图书在版编目 (CIP) 数据

中国人民大学中国法律发展报告. 2013, 法学教育与研究/朱景文主编. —北京: 中国人民大学出版社, 2014. 5  
ISBN 978-7-300-19298-7

I. ①中… II. ①朱… III. ①法律-研究报告-中国-2014 ②法学教育-研究-中国  
IV. ①D920. 4

中国版本图书馆 CIP 数据核字 (2014) 第 094861 号

中国人民大学  
中国法律发展报告 2013  
法学教育与研究  
主编 朱景文  
Zhongguo Falü Fazhan Baogao 2013

出版发行	中国人民大学出版社				
社 址	北京中关村大街 31 号	邮政编码	100080		
电 话	010-62511242 (总编室)		010-62511770 (质管部)		
	010-82501766 (邮购部)		010-62514148 (门市部)		
	010-62515195 (发行公司)		010-62515275 (盗版举报)		
网 址	http://www. crup. com. cn				
	http://www. ttrnet. com(人大教研网)				
经 销	新华书店				
印 刷	涿州市星河印刷有限公司				
规 格	155mm×235mm 16 开本	版 次	2014 年 5 月第 1 版		
印 张	38.25 插页 3	印 次	2014 年 5 月第 1 次印刷		
字 数	614 000	定 价	99.00 元		

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# 中国人民大学发展研究报告

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## 出版说明

2002年以来,中国人民大学年度系列发展报告(即《中国人民大学中国社会发展研究报告》、《中国人民大学中国经济发展研究报告》和《中国人民大学中国人文社会科学发展研究报告》)的出版发行,引起了社会各界和广大读者的广泛关注,产生了较大的社会影响,成为我校一个重要的学术品牌,这让我们深感欣慰,也增强了我们继续做好这项工作的责任和信心。正是基于这样的责任和信心,加上近一年的努力,我们又编写出版了中国人民大学系列发展报告 2013。

中国人民大学系列发展报告 2013 的各个子报告均由编委会负责审定选题、整体框架、主要内容和编写体例,组织有关专家召开研讨会,审核报告的写作提纲。各报告实行主编负责制,主编由校学术委员会主任、秘书长会议确定,学校聘任;主编聘请副主编或执行副主编。各报告根据主题,分别聘请相关部门的领导和知名学者担任顾问。中国人民大学社会学理论与方法研究中心、中国人民大学中国经济改革与发展研究院和中国人民大学人文社会科学发展研究中心分别作为《中国人民大学中国社会发展研究报告》、《中国人民大学中国经济发展研究报告》和《中国人民大学中国人文社会科学发展研究报告》的依托单位,在组织和写作方面发挥了主要作用。



根据实际情况及学者建议,学校对年度系列发展报告进行了一些调整。《中国人民大学中国人文社会科学发展研究报告》调整为逢奇数年出版。2010年,《中国人民大学中国法律发展报告》开始列入年度系列发展报告。现在,报告的编写出版工作已纳入学校的年度科研计划,成为一项常规性工作。

由于报告所涉及的问题大多具有重大、复杂和前沿性的特点,加上写作与出版周期较短及研究水平的局限,尽管我们尽了努力,报告中的不足或易引起争议的地方仍在所难免。欢迎专家和学者批评指正。

中国人民大学发展研究报告编委会

2013年3月31日



## 前 言

本报告把中国法学教育与研究分为四个部分，即高等法学教育、职业法学教育、普法教育和法学研究，各个部分分别研究它们的历史沿革、组织机构、人员构成、职能活动。

本报告资料的主要来源包括：

年鉴类：《中国法律年鉴》，《中国教育年鉴》，《中国司法行政年鉴》，《中国律师年鉴》。

高等法学教育类：（1）教育部：《全国教育事业发展统计公报》；（2）司法部教育司：《1949—1958年政法教育大事记》；（3）朱景文主编：《中国法律发展报告：数据库和指标体系》，北京，中国人民大学出版社，2007；（4）张文显主编：《世纪之交的中国法学——法学研究与教育咨询报告（1990—2005）》，北京，高等教育出版社，2005；（5）李龙主编：《中国法学教育改革研究报告——中国法学教育的改革与未来》，北京，高等教育出版社，2000；（6）霍宪丹：《不解之缘——二十年法学教育之见证》，北京，法律出版社，2003；（7）汤能松等：《探索的轨迹——中国法学教育发展史略》，北京，法律出版社，1995。

职业法学教育类：（1）吴道富：《法官培训概论》，北京，人民法院出版社，2012；（2）山东法官培训学院课题组：《关于完善预备法官培训制度的调研报告》，载《山东审判》2010年第4期；（3）孙谦：《探索检察官官



制度,推进中国特色检察教育培训的改革与完善》,载《中国检察官》2011年第4期;(4)刘炳炎:《对我国法官教育培训的几点思考》,载《法律适用》1999年第23期;(5)石少侠主编:《司法教育的考察与比较》,北京,中国政法大学出版社,2001;(6)马立东、郭立新:《国家检察官学院二十年教育培训回顾》,载《国家检察官学院学报》2011年第6期;(7)《探索检察教育制度推进中国特色检察教育培训的改革和完善——孙谦在国家检察官学院聘任首批检察教育启动仪式上的讲话》,载《中国检察官》2011年第4期(司法实务)/总第121期;(8)王明睿:《完善我国律师业务培训制度的几点构想》,载《黑龙江省政法管理干部学院学报》2004年第4期。

普法教育类:(1)刘飏主编:《依法治国的生动实践——普法依法治理十五年》,北京,法律出版社,2001;(2)毕武江:《浅议少数民族地区普法教育的特点和采取的方法》,载《政法学习》1996年第4期;(3)韩大元、王德志:《中国公民宪法意识调查报告》,载《政法论坛》2002年第6期;(4)马克俊:《对我国普法教育的反思》,载《铁道部郑州公安管理干部学院学报》2001年第1期;(5)教育部社政司组编:《中国高校人文社会科学研究通鉴(1996—2000)》,北京,中国人民大学出版社,2004。

法学研究类:(1)历年的《全国高校社科统计资料汇编》,教育部社政司(社科司)编,高等教育出版社出版;(2)历年的《中国出版年鉴》,中国出版年鉴社编辑部编,中国出版年鉴社出版;(3)何勤华:《中国法学史纲》,北京,商务印书馆,2012;(4)国家社科基金项目数据库(<http://gp.people.com.cn/yangshuo/skygb/sk/index.php/Index/index>)。

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冯玉军负责第一、第五章统稿，刘坤轮负责第二、第三、第四章统稿，彭小龙负责第十章统稿。

全书由朱景文负责统稿，主编。

朱景文

2014年3月10日于世纪城



## Abstract

Legal education in China can be classified into the higher legal education for law students, the professional legal education for judges, prosecutors and lawyers, and the popularization of legal knowledge for public and officials.

Legal research according to the research's subjects can be divided into the research under the academy of social science, the one under the governmental organs, and the one under the higher education, as well as the one under the law society.

### **I . Higher Legal Education**

#### **1. Development of Higher Legal Education**

In term of quantity of law school in China, there were 4 law departments in the universities, namely, Peking University, Renmin University of China, Jilin University and Hubei University before the reform and opening up for a long time, and 5 political and legal colleges, namely, Beijing, Eastern China, South-West, North-West, South-Central Political and Legal College. The number of law school in China in 2012 increased to 624, growing by 68.3 times.



On quantity of law graduates, total number of law graduates before the reform and opening up (1949 - 1978) was 27,955, annually average 932. Comparatively, there was 187,570 students graduated from law schools in 2012, increasing by 200.3 times.

At the postgraduate students level, total number of postgraduate students before the reform and opening up was 468, annually average 36. Comparatively, there was 24,373 postgraduates since the reform and opening up, increasing by 676 times.

In short, there were 1,300,000 undergraduate students graduated from law schools between 1949 and 2012, in which there had been 1,280,000 undergraduates since the reform and opening up, and 95,000 postgraduates graduated from graduate schools, including 94,500 graduated since the reform and opening up. On the number of students graduated from law school per 100,000 people was 0.09 before the reform and opening up, but 3.95 after the reform and opening up, and 13.85 in 2012.

## 2. Issues and Rethinking of Higher Legal Education

### (1) Imbalance of Development of Higher Legal Education

Imbalance of development of higher legal education exists in the distribution of regions of legal education. The higher legal education mainly concentrates in the East-China (34%), the North-China (18%) and the South-Central (19%). Accordingly, most students graduated from law schools concentrate in the above three regions, respectively 35%, 17% and 18%. However the percentage of law graduates in the North-East and the North-West respectively only accounts for 8%.

In term of ranking of law graduates at the provincial level province, the first 5 provinces are Guangdong, Beijing, Shandong, Henan, and Shanghai with 38,037 students graduated from law school and account for 31.3% in all law graduates in 2012. Comparatively, the last 5 provinces are Qinghai, Tibet, Ningxia, Hainan, and Xinjiang with 3,238 law graduates and only account for 2.7%.

On the employment of law graduates, most law graduates employ in the East-China (22.09%), North-China (18.06%) and Central-South



(25.41%) in 2012, however, Only 7.91% in the North-East and 9.69% in the North-West.

### (2) A Shortage of Educational Resources

Along with fast development of higher legal education for recent years, a shortage of educational resources became more and more serious. Total number of law undergraduates increased by 12.8 times between 1992 and 2003, however, the number of teachers in law major only increased by 1.2 times at the same period. Accordingly teacher-student ratio grew from 1 : 4.61 in 1992 to 1 : 28.55 in 2003. Fortunately, the Ministry of Education has been tried to increase the quantity of law teachers for recent years so that the ratio is able to restore at a normal level, that is, 1 : 14.4 in 2012. However, the teacher-student ratio at the major law schools is still much lower than the general one, even 1 : 30. Not only the teacher-student ratio but also a shortage of classroom, educational equipments, books and etc, could be found everywhere in universities, especially the universities of science and technology that established the law schools too, but lack of humanities atmosphere.

### (3) Employment Bottleneck

The law major has always been one of the most popular fields of study since the reform and opening up and demand for law graduates has exceeded supply. However it has become rather difficult for the law graduates to be employed for recent years, that is, employment bottleneck.

According to the statistics of the Ministry of Education, ranking of employment rate of law graduates was No. 187 in 2002, and bottom in 2005. According to report on employment of graduates in different majors from the MyCOS, the law major has already been one of the most difficult to find job and one of the easiest unemployment since 2009.

### (4) Connection of Legal Education and Legal Profession

Along with development of legal education since the reform and opening up, a shortage of legal profession has taken place a great change and the educational quality of legal profession has increased. Most judges, prosecutors and lawyers have gotten the law degree. On the other hand, to a cer-



tain extent, increasing legal profession does not change a shortage of legal profession, especially in the western area of China because the legal education does not connect with legal profession.

It is no doubt that the legal education should be oriented to the legal worker. However, the legal workers in China are stratified. The higher legal education should not only focus on judge, prosecutor and lawyer in the city and the rich area, but also should notice training legal workers such as the LSWGR who works at the grass root and countryside in order to meet poor and peasants' needs that are different from the rich and the citizens' needs in the cities.

## II. Professional Legal Education

### 1. Development of Professional Legal Education

The number of personnel in the people's courts at all levels were about 150,000, in which personnel who graduated from universities or colleges only accounted for 6.8% in 1984. The Supreme People's Court established the spare-time legal university in 1985 and branch schools at the provincial level, which trained 100,888 graduates with law degree and 88,274 law students with professional certificate between 1985 and 1997. The percentage of personnel in the courts who graduated from university and college increased to 80% in 1997. The National Judge College was established in 1997, and trained 92,869 judges between 1998 and 2012.

The prosecutors and the lawyers' training went similar path as judges' from law degree education to the professional training.

### 2. Issues and Rethinking of Professional Legal Education

#### (1) Imbalance of Professional Legal Training

Imbalance of professional legal training still highlight. Right now China has more than 190,000 judges, more than 150,000 prosecutors and more than 220,000 lawyers. And training of legal profession is a obligation of courts, procuratorates and lawyer society at various level according to law. It is impossible to only depend on the National Judge College, the National Prosecutor College and Lawyer College established in Beijing to train so large amount of legal professionals. However, in term of ability and qualifi-



cation of training many local institutions are not yet suitable. Except development of local professional training, to fulfill so huge mission of professional training the various ways of professional training, including network education, should be played.

## (2) Quality of Trainees

Because contradiction between quantity of cases and lack of professionals to handle cases highlight, it is very hard to ensure every professionals be trained in some places. As a matter of fact, some trainees are not the professionals who did not do any professional business before. How to resolve the issue does not only depend on the professional training organs but also should ensure professionals' sufficiency so that every professional's right to be trained can be realized.

## (3) Contents of Professional Training

The contents of professional training should be different from academic education as higher legal education but stress on practical education, especially focus on connecting with trial, prosecution and lawyering. The professional training should not only stress on the professional ability and business skill, but also on the professional morality, especially connecting to judicial corruption, reconstructing education on the professional morality.

# III. Popularization of Legal Knowledge

## 1. Development of Popularization of Legal Knowledge

The popularization of legal knowledge began in 1986 in which the NPC's Standing Committee issued a project to popularize the legal knowledge (1986 - 1991). Since then on NPC issued a new project per 5 year, up to now there are total 6 projects for the 30 years. The main points in every project to popularize legal knowledge are different, from constitution, national autonomous area law, criminal law, civil law, marriage law, inheritance law, to the legal system with Chinese characteristics, and etc.

The lecture of legal knowledge for top leaders began in 1986 too. Since then on there are 26 lectures for top leaders, among which there are 4 lectures during the term of the 13<sup>th</sup> National Congress, 5 lectures during the 14<sup>th</sup> National Congress, 7 lectures during the 15<sup>th</sup> National Congress, 7 lec-



tures during the 16<sup>th</sup> National Congress, 2 lectures in 17<sup>th</sup> National Congress and 1 lecture during the 18<sup>th</sup> National Congress.

A new type of popularization of legal knowledge is an activity to invite the legal scholars to report for the public and officials.

## 2. Issues and Rethinking of Popularization of Legal Knowledge

### (1) Focus of Popularization of Legal Knowledge

In term of total target of construction of the rule-of-law state, the purpose of popularization of legal knowledge is to lay a foundation of legal consciousness for all people's law-abiding. Generally speaking the legal consciousness can be divided into legal knowledge and legal belief. Education of popularization of legal knowledge should correctly handle the relation between the legal knowledge and belief in which the legal belief should become the focus of education to enhance the legal consciousness of all people. The people can find legal specialists to help if they lack the legal knowledge. However, if the people lose the legal belief it will disrupt the foundation of a rule of law state.

### (2) Imbalance of Popularization of Legal Knowledge

Popularization of legal knowledge is imbalanced between the cities and countryside, rich and poor areas, Han's and national minorities' residence. The imbalance exists not only in the scope of popularization, but also in different legal needs of the different groups and areas. Popularization of legal knowledge should notice commonality and particularity of different people and areas.

### (3) Stressing on Practical Effect of Popularization of Legal Knowledge

In term of forms of popularization of legal knowledge, it should be stressed on the practical effect. Although how many persons and officials participate in the popularization of legal knowledge is important, however, more important is their practical effect. Evaluation of practical effect of popularization does not lie in the test or examination of legal knowledge, but lies in the practical action to abide law, and establishment of legal belief. Popularization of legal knowledge also should fight the formalism.



## **IV. Legal Research**

### **1. Development of Legal Research**

Along with the development of legal education, the legal research has developed very fast too since the reform and opening up. In term of legal research of higher education, 34,797 legal works and translations between 1992 and 2011 were published, in which 620 books in 1992 and 2,294 books in 2011, increasing by 2.7 times. In term of academic journal of law, there were only two journals before the reform and opening up, however the quantity of academic journal of law has already exceeded 200. On the article of law, 2,887 articles and translations in 1992, but 20,806 articles and translations in 2011 were published, increasing by 6 times.

### **2. Issues and Rethinking of Legal Research**

#### **(1) Imbalance of Development of Legal Research**

In term of three kinds of institution of legal research, namely, academy of social science, state organs and higher education, most research results were achieved by the legal research institutions under the higher education. On the research of higher education, the key universities played major role, especially research results with high quality were achieved by the scholars in the key universities. On the research of key universities, most research results were achieved by a few scholars, but a lot of scholars had very few research results, and some of them even never have. So there are many research results in term of total quantity of research results, however, there are few in term of results per capita.

#### **(2) Quantity and Quality of Legal Research**

How to ensure and control the quality of legal research is a key to advance the legal research although the quantity of legal research grow very fast. In order to control the quantity of research different methods were applied, including core journal institution, research program, and academic awards mechanism. The core journals of law are not yet unified right now, for example, different law schools have confirmed the scale of core journals themselves as a standard to evaluate the research results as well as the title promotion. Nanjing University confirmed "Chinese Social Science Citation





Index” (CSSCI), and the department of legal information under China Law Society also created a standard called as “Chinese Legal Science Citation Index” (CLSCI) for law schools and research institutions’ reference. All of the standards were critiqued although they were significant. These critiques include that the first, not all articles published in the core journal are good in quality, and not articles published in the non-core journals are bad in quality; the second, distinction between the core and non-core journals would lead the core journals “洛阳纸贵” (paper become expensive in Luoyang). It also brings about corruption and unhealthy tendency in publishing circle, the authors should pay for publishing articles.

### (3) Research Program of Law

In term of quantity of research programs of law, kinds of programs, funds to assist program, the research programs have increased twofold, tenfold even hundredfold since the reform. However, it is general issue for research programs of law to pay attention to applying programs but look down closing programs on time. In term of evaluation of programs, the factors do not relate to the program itself impact on the evaluation’s fairness. On the orientation of programs, it is necessary to focus on the reality of Chinese construction of the rule of law, but how to balance between focus on reality and historical and foreign topics, especially topics need to research for a long time is still a problem need to seriously concern.

### (4) Academic Awards of Results of Legal Research

Generally speaking, academic awards of results of legal research are able to reflect the better level the results attained and evaluating mechanism can basically ensure the fairness of academic awards. However, factors do not relate to the results themselves, such as what universities or research institutions the applicants are from, who is his or her tutor, and etc. still impact on fair evaluation. More important is that whether a article or book is good or bad usually does not depend on how many commentators favor or not. How to appraise and elect a really good research result through a fair mechanism of evaluation on academic awards still need to further explore.