



武汉大学人文社会科学资深教授文丛

# 韩德培文集

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# 下 卷

第 三 编    韩…德…培…文…集

## 法学教育与研究篇



## Legal Education in China \*

The People's Republic of China is currently engaged in a remarkably self-conscious development of its legal system, with important implications for underlying jurisprudential theory and values. This article represents the first time that a major Chinese legal educator and scholar has spoken in depth for publication in English in the United States about the cross-currents that will shape the continuing evolution or revolution of Chinese legal education, theory, structure and doctrine.

Thirty-five years ago, Harvard Law School Dean Roscoe Pound wrote: No doubt it is futile to expect to make a great people over by law. It is more likely that the people will make over the law imposed upon it than that the people will be made over. <sup>(1)</sup>

China is indeed making over its law. But, as discussed in this article, it is also counting heavily on law and legal education for substantial help in the making over and stabilization of its society. The successes and failures of this recursive process are of obvious import for China, and of increasing interest to the rest of the world. In one sense, the importance of China has become almost cliché: the People's Republic is home to one quarter of the world's people. In a more fundamental sense, the outcome of its "experi-

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\* 本文合作者为美国西北大学法学院院长 S·肯特教授, 内容是根据韩德培教授 1982 年在美国讲学时的英文讲稿写成, 注释是肯特教授加的, 原载《美国比较法季刊》1984 年第 3 期。

mentation " with development, ideology and law is likely to sharply influence much of the developing and socialist world in the coming century. Western legal educators and theorists, comparative scholars, and practitioners have a unique opportunity to dispassionately evaluate the experiment, to learn from it, and to make their own contributions when appropriate. None of these three tasks will prove easy.

The somewhat limited materials on Chinese law currently available in English tend to group themselves into a small number of categories. There are the anecdotal accounts of short, often three-week, visits to China by lawyers and judges groups with arranged itineraries and contacts. <sup>(2)</sup> These tend naturally to be almost wholly descriptive, repetitive, and lacking in investigation of primary sources. Access to official translations of constitutions, laws and regulations is fortunately increasing. <sup>(3)</sup> But as important as these documents are, they cannot be expected to provide a comprehensive view of the legal system <sup>(4)</sup> or legal education. The most important contributions have come from the relatively few attempts at more analytical and creative scholarship. <sup>(5)</sup> Even these, however impressive under the circumstances, have been somewhat tentative and incomplete due to self-acknowledged difficulties. <sup>(6)</sup>

Despite the shortcomings of the available material, however, a base for further inquiry has been established. Conditions are ripe for the expansion of the breadth and depth of this inquiry now that China has begun again to reach out more broadly to the world. The purpose of this article is to contribute to the understanding of legal education and the dynamics of legal thought in China. It is to be hoped that it will be followed by increasing communication and inquiry among Chinese and Western legal scholars.

Part I describes legal education in China from the establishment of the People's Republic through 1982. With this background as a frame of reference Part II considers the procedure and content of the present scholarly debate of important legal issues in China. Part III then briefly discusses the prospects and obstacles for legal education and scholarship in the years ahead.





## I. LEGAL EDUCATION IN NEW CHINA

Legal education in China has endured many difficulties and setbacks over the past thirty-three years. During this time, valuable experience has been accumulated and profound lessons have been learned. This part of the article presents a chronological account of legal education in New China<sup>(7)</sup> in four periods. <sup>(8)</sup>

### A. Establishment of Legal Education System (1949—1956)

After the founding of the People's Republic of China in 1949, many urgent tasks were waiting to be accomplished. The State, while setting about the rehabilitation of the national economy, pursuing agrarian reform, suppression of counter-revolutionaries and many other tasks, paid great attention to the construction of the legal system and to legal education. Laws and regulations were successively promulgated during this period, and important reforms in legal education were instituted.

The Central People's Government articulated a guiding principle for the reform of legal education: to learn from the successful experience of Soviet legal education<sup>(9)</sup> and combine it with the actual conditions of China. Efforts were concentrated on setting up a few new institutes of political science and law, compiling teaching materials, and training new law teachers and cadres<sup>(10)</sup> already engaged in practice work. At the same time, Institutes of Political Science and Law and Law Departments in some universities from old China were readjusted and remodelled to suit the needs of New China.

The University of Political Science and Law and the New Research Institute of Science of Law were established in 1949. <sup>(11)</sup> The Law Department of the Chinese People's University, into which the University of Political Science and Law was merged, was created in 1950. The Law Department of the Northeastern People's University was also established in the same year. In 1951, the Central Political and Legal Cadre School, into which the New Research Institute of Science of Law was merged, was set up. Its mission

was "to train cadres engaged in county ( or city ) administrative and judicial work , [ and ] to train teachers of political science and law so as to gain experience in the content and method of teaching , thereby pushing forward the training of political and legal cadres in all parts of the country . " These institutions made important contributions to the training of teachers of law , as well as political and legal cadres .

In 1952 and 1953 , the 59 institutes of political science and law and university law departments were reorganized in concert with the readjustment of institutes of higher learning all over the country . Some of them were combined to form , respectively , the East China Institute of Political Science and Law , the Beijing Institute of Political Science and Law , the Central Southern Institute of Political Science and Law , the Southwestern Institute of Political Science and Law , and the Northwestern Institute of Political Science and Law . In addition , law departments were retained at six universities : Chinese People's University , Northeastern People's University , Beijing University , Wuhan University , Fudan University and Northwestern University . Political and legal cadre schools were successively set up in the various provinces , municipalities and autonomous regions , and they took charge of the training of political and legal cadres for their respective regions .

After several years of readjustment and reform , legal education began to take on new aspects in China . The progress of the Law Department at Wuhan University provides a useful example . After the founding of the People's Republic , our Department inaugurated radical reforms in education in accordance with the needs of the country . Courses about Kuomintang laws were abolished . <sup>(12)</sup> Great attention was paid to the training of teachers and the improvement of their professional abilities . More Soviet teaching materials were used . During the overall readjustment of law institutes and departments in 1952 , some twenty teachers of law were transferred to our Department from the Chinese People's University , Zhongshan University , Xiamen ( Amoy ) University , Hunan University and others , thus greatly expanding the ranks of teachers for our Department . Altogether , there were





eighteen professors and associate professors teaching in our Department at that time. <sup>(13)</sup>

Five teaching and research sections were set up, including the theory of the state and law, <sup>(14)</sup> law of the state (constitutional law), criminal law, civil law and international law. The curriculum was designed to address the needs of our country for the construction of a legal system. The following courses, among others, were offered: the History of the Chinese State and Law, the State Law of China, the State Laws of the People's Democracies, the Chinese Criminal Law, and the Organization of Chinese Courts. <sup>(15)</sup> Gradually we reduced the proportion of Soviet teaching materials and combined the study of foreign laws with that of our own laws. <sup>(16)</sup> Outlines and lecture notes on all specialized courses offered in our Department were prepared for the students' studies, and for exchange with other law institutes and departments.

The National Conference on Political and Legal Education convened in 1954 by the Ministry of Education clearly laid down the policy and tasks of political and legal education and set forth its training objectives. Law departments of universities were to adapt themselves to the needs of the State's political and legal work, and train political and legal workers and law teachers who were loyal to the socialist cause, ardently loved the motherland, were in good health, possessed a firm working class stand and Marxist-Leninist viewpoint, had a good grasp of the advanced science of politics and law, and were familiar with political and legal work. In September of the same year, the Ministry of Education issued a program for the teaching of law, prescribing a four-year period of schooling <sup>(17)</sup> and a curriculum of twenty-nine courses including theoretical, basic, and specialized courses. It also required concentration in the fourth year in one of four subjects: the theory of state and law, state law, civil law or criminal law, so that the students might make advanced studies of a particular subject on the basis of general professional knowledge. Provisions were also made in the unified teaching program for a balance of classes, scholarly research and writing and practical work, all of which helped accomplish the task of training po-



litical and legal workers with a high ideological and theoretical level and great professional skill. In our teaching we persisted in integrating theory with practice and in combining foreign experience with the actual conditions of our own country. Teaching and scientific research were gradually put on the right track, the quality of teaching steadily improved, and the enrollment figures increased year after year. In the eight years from 1949 to 1956 our department recruited a total of 493 students. After graduation, most of them went into judicial work, while others took up the teaching of law and scientific research. They made substantial contributions to the construction of New China's legal system.

According to incomplete national statistics, twelve institutes or departments had been set up in the country by 1956 for higher learning in political science and law, with more than nine hundred teachers specializing in law. 2 824 new law students were enrolled in 1956, ten times the enrollment figures in 1949. Political and legal cadre schools at various levels and cadre training classes run by local political and judicial organs trained, in rotation, hundreds of thousands of cadres engaged in practical political and legal work. By 1956, then, a legal educational system basically suited to the needs of New China had been established and had achieved initial success.

In reforming the old legal educational system and establishing the new during this period, our guiding ideology was clear, our principles and policies were comparatively correct, the measures adopted were reliable, and consequently the results were satisfactory. The graduates that came out of the institutes and departments of political science and law during this period have become the backbone of our country in politics, law and legal education. It is true that legal education also had its shortcomings and deficiencies, which manifested themselves chiefly in three ways. First, necessary as it was to learn from the Soviet Union at that time, there often existed a dogmatic tendency of copying its experience indiscriminately. Second, a one-sided negative approach was often taken to the problem of dealing with the cultural heritage of law<sup>(18)</sup> instead of adhering to the policy of "making