

Legal Education Reform in China Through U.S.-Inspired Transplants

Matthew S. Eric

Editors' Note: With publication of “Legal Education Reform in China Through U.S.-Inspired Transplants,” the *Journal of Legal Education* is launching a series of articles exploring historical developments and contemporary trends in transnational legal education. The Editors welcome submissions touching on curriculum, pedagogy, and related topics in law schools from all regions of the world.

Introduction

Over the past several decades, a salvo of development agencies, donors, NGOs, educational programs, law schools, and academics, many from the U.S., have sought to reform the Chinese legal system and, particularly, legal education. At the same time, education ministries of the People's Republic of China (PRC), increasingly mindful of the status of Chinese education in a global market, have adapted aspects of the U.S. legal education model in China. While these exchanges have done much to improve understanding across the Pacific, there is a lack of assessment to measure their progress. In this Article, I examine the viability of the U.S. law school model for legal education reform in the PRC, its implications for China's legal modernization, and the experiences of Chinese law students, the would-be catalysts of the “rule of law” (ROL), through a case study of Tsinghua University Law School (TULS). At the outset, I note that my study is focused on TULS, where such reforms are occurring at the margin; however, given Tsinghua University's nearly unrivaled prestige in Chinese education, they are influential. Thus,

Matthew S. Eric is a Ph.D. candidate at Cornell University (Anthropology), JD University of Pennsylvania, LL.M Tsinghua University. Research for this Article was funded by the University of Pennsylvania GAPSA-Provost Award for Interdisciplinary Innovation. The author thanks Wang Chenguang, Jacques deLisle, Michael Dowdle, John Smagula, Tom Ginsburg, Mo Zhang, Kay-wah Chan, Yae-Ji Park, Bryant Garth, and an anonymous reviewer for JLE for reading earlier drafts. All mistakes are the author's.

TULS occupies the progressive end of the spectrum of Chinese law schools, and other law schools regard TULS as such.¹

I examine two dimensions of the reform of legal education. The first is the introduction of the Juris Master (JM) professional degree influenced by the model of the U.S. Juris Doctor (JD). Over a decade ago, the PRC Ministry of Justice (MOJ) introduced the JM degree to gradually become the main professional degree for the study of law. As opposed to the top-down creation of the JM program, the second dimension of reform is changing pedagogies introduced “bottom-up” by individual law instructors and professors. The goal of the JM degree is to produce practice-oriented legal professionals and the objective of the experimental pedagogies is to develop, specifically, critical and analytical thinking skills as a central criterion for lawyering. I use an ethnographic approach to study these legal transplants as my status as U.S. law student, a TULS foreign LLM student, and anthropologist created a series of contingent positions: insider-looking-out and outsider-looking-in. Throughout, the perspective I take is of the students’ experience.

My case study of TULS sounds a note of caution in the race to transplant² exogenous legal institutions, such as law schools, in China. Domestic and foreign reformers of Chinese law view a modern legal education system as a prerequisite to ROL. However, ROL means different things to domestic and foreign reformers. The current ROL modernization project, an uneasy amalgamation of internal and external pressures, differs from the “law and development” (L&D) movement of the 1960s and 1970s.³ Rather than uni-

1. Further notes as to time-frame of study and terms discussed herein: First, Western countries have sought to reform legal education in China since the late Qing dynasty. See Weifang He, *China’s Legal Profession: The Nascence and Growing Pains of a Professionalized Legal Class*, 19 Colum. J. Asian L. 138, 142 (2005) (stating that the role played by missionary schools and universities founded by the West cannot be overstated). The U.S. influence also started during this period but has intensified beginning in the early 1990s. See *infra* text following note 81. I focus on U.S., as opposed to European influence, for reasons both empirical and ethnographic: not only are American lawyers the majority of reformers at my field site but my experience as a U.S. law student affords me with a basis of comparison in considering U.S.-influenced legal education reform in the PRC. Second, although U.S. law schools have undergone their own (limited) transformation in the past 125 years (see *infra* note 6), by the U.S. model of law schools and legal education, I mean the three-year professional program (Juris Doctor) designed to socialize legal novices into legal practitioners through classes and coursework that inculcate legal reasoning and case-based and statutory analysis. Third, ROL is a highly contested and slippery concept the contents of which differ according to one’s position whether positivist, normative or ideological. While most would agree ROL’s definition, at minimum, is a meaningful restraint on state action, for the purposes of this Article, I emphasize that the U.S. and PRC definitions differ in important ways. The Article, in part, attempts to illuminate the contours of overlap and divergence through legal education which the leaders of Chinese legal reform view as leading to ROL.
2. See Alan Watson, *Legal Transplants: An Approach to Comparative Law* 21 (University of Georgia Press, Athens, 1993); See also William Ewald, *Comparative Jurisprudence (II): The Logic of Legal Transplants*, 43 Am. J. Comp. L. 489 (1995).
3. The L&D movement featured U.S. legal experts, judges, and academics traveling to

directional “legal imperialism,”⁴ A central premise of this Article is that legal education reform in China proceeds by the “pull” of domestic actors more than the “push” of external reformers. While PRC legal elites are the architects of legal education reform, state-led and centrally-planned reforms that speciously replicate the U.S. model have had unforeseen consequences. On the other hand, grassroots reforms led by “cultural brokers” appear more amenable to professionalizing law students.

Section I of this Article introduces the case study of TULS and methodologies employed. Section II describes the operation of the JM program and experimental teaching approaches at TULS. Section III develops the implications of the case study for U.S.-inspired legal transplants in China. Section IV draws conclusions, makes suggestions, and offers some provocations for future collaboration between domestic and foreign legal reformers in the PRC.

An Ethnography of a PRC Law School

While enrolled as a foreign LLM student at TULS from 2007 to 2008, I examined the impacts of American influence at an elite Chinese law school. I collected data at TULS’s main campus in Beijing and the branch campus in Shenzhen.⁵ The specific reforms I consider here are the introduction of the JM degree program, patterned after the American JD, and pedagogies that foster critical thinking skills.⁶ These two aspects of reform exemplify horizontal and

developing states in Latin America and Africa to reform legal institutions, chief among them, law schools, to produce a new class of public interest lawyers who would protect human rights and uphold democratic values. *See* David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 4 *Wis. L. Rev.* 1062 (1974) (offering the definitive critique of L&D and, in so doing, becoming the most often cited of any article in the literature). As many scholars have drawn parallels between the L&D movement and today’s ROL initiative (*see infra* note 79), and the lasting legacy of L&D as that of a failed movement, this Article, in the spirit of the Chinese saying “to know the road ahead, ask those coming back,” compares legal education reform, for the aim of building ROL, to yesteryear’s L&D movement.

4. James A. Gardner, *Legal Imperialism: American Lawyers and Foreign Aid in Latin America* (The University of Wisconsin Press, Madison, 1980).
5. The LLM program in which I was enrolled is distinct from the LLM program for the Chinese students. TULS offers a master’s degree in Chinese law for international students. Tsinghua University, The Master of Law Program (L.L.M. Program) in Chinese Law: An Overview, <http://www.tsinghua.edu.cn/docsn/fxy/english/llm/llmoverview.htm> (last visited May 22, 2009).
6. In assessing the viability of the U.S. experience for China, I am not claiming that U.S. law schools themselves are unchanging. U.S. law schools have changed both in terms of curriculum and pedagogy. They have integrated legal writing and research into the curriculum and clinical legal education since the 1960s. However, with these exceptions, which themselves are still viewed as “soft” subjects, U.S. law schools, as an institution, have remained remarkably consistent for the past 125 years. *See e.g.*, Todd D. Rakoff & Martha Minow, *A Case for Another Case Method*, 60 *Vand. L. Rev.* 597 (2007). On the topic of clinical legal education, one of the most controversial aspects of the transplantation of American pedagogies in China, *see* Michael William Dowdle, *Preserving Indigenous*

vertical legal transplants.⁷ Although both demonstrate the same horizontality as they originate in the U.S. tradition, they are different in their vertical orientation. Whereas the JM program is administered in a top-down manner, under the MOJ, the experiments in pedagogy are conducted in an ad hoc fashion by law school deans and law professors. At the same time, the two are inter-related in that part of the mandate of the JM is to introduce practice-oriented teaching, although the new pedagogies have also been used to teach graduate students in other programs such as the LLM and undergraduates.

My data gathering focused on (1) the learning strategies of students, (2) teaching approaches of professors, (3) student reflections on legal instruction, and (4) how their learning prepares them for their professional careers. Throughout, I sought to understand the learning experience as a student myself at TULS while linking classroom learning to the larger context—the place of students and lawyers in Chinese society. I used an ethnographic approach developed by anthropologists of legal and political institutions supplemented by a questionnaire given to students. In this section, I first describe the institution of TULS and its graduate law degree programs. I then introduce my methodologies. Next, I provide a profile of the student groups being compared. Lastly, I assess the two dimensions of legal education reform in China.

Institutional Setting

TULS is, in many ways, an atypical law school in China for its relatively young history, its small size, the degree of its internationalization, and its orientation toward preparing its graduates for high-level positions as decision-makers and lawmakers. Tsinghua University has always had a close relationship to the U.S. The university was founded on April 29, 1911, with part of the Boxer Indemnity, funded by the U.S. government, as Tsinghua Xuetaang, full name *Qinghua LiuMei Yubei Xuexiao* (Tsinghua Preparatory School for Study in the U.S.).⁸ Tsinghua University is most well-known as a multidisciplinary polytechnic university with an emphasis on training engineers, and particularly, the “fourth generation” of China’s current leadership including Hu Jintao, PRC President and General Secretary of the Chinese Communist Party

Paradigms in an Age of Globalization: Pragmatic Strategies for the Development of Clinical Legal Aid in China, 24 *Fordham Int’l L.J.* 536 (2000) (arguing that international efforts to promote clinical legal aid in China have impeded the development of indigenous legal aid practices and institutions). *But see* Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 *Yale Hum. Rts. & Dev. L.J.* 117 (2005) (arguing that the American model of clinical legal education can play a significant role in the development of Chinese legal education).

7. Randall Peerenboom conceives of transplants as having two dimensions—horizontality and verticality—where each orientation describes the direction of transplantation. *See* Randall Peerenboom, *What Have We Learned about Law and Development? Describing, Predicting, and Assessing Legal Reforms in China*, 27 *Mich. J. Int’l L.* 823 (2006).

8. *See* Tsinghua University, *History of Tsinghua University*, <http://www.tsinghua.edu.cn/eng/about/history.htm> (last visited May 22, 2009).

(CCP). The law school traces its roots to 1920 when the first law department was established at the university. In 1995, TULS was re-established as a stand-alone law school to “answer the call for establishing and enhancing the rule of law in China.”⁹

TULS is seen as one of the pioneering law schools in China today because of its experimentation with curriculum, teaching, and overseas connections.¹⁰ The law school offers the four-year LLB, dual bachelor degree of at least four years, two-year LLM, three-year JM and four-year Ph.D. degree in law.¹¹ It has 53 full-time professors of whom approximately half have obtained an advanced degree abroad (U.S., Japan, Europe or U.K.) and a total current enrollment of 1,350 students, 306 of whom are undergraduates, making it one of the smaller law schools in China.¹² Further, it has engaged in a range of cooperative and exchange programs with law schools from the U.S., U.K., and Europe. The U.S. exchange program for which it is most well-known is the LLM program in U.S. law taught by Temple University’s Beasley School of Law, a program supported by a range of private and public donors including the U.S. State Department.¹³ Thus, TULS has strong ties to both the PRC government and the international community and, as such, provides fertile ground for the study of the cross-pollination of legal education reforms.¹⁴

9. See Tsinghua University, Introduction: Tsinghua University Law School, <http://www.tsinghua.edu.cn/docsn/fxy/english/About.htm> (last visited June 3, 2009).
10. Both Tsinghua University and TULS enjoy remarkable prestige in China. Over the past five years, since first studying Chinese at Tsinghua University, I have traveled throughout China. When my Chinese interlocutors hear I study at Tsinghua, whether in Shanghai or Ürümqi, Kunming or Haerbin, the near universal response is “Zhongguo mingpai daxue!” (China’s “brand-name” university). In today’s China, where higher education is seen as essential for upward mobility, Tsinghua carries a kind of talismanic authority, much of it produced by the Party-state whose “fourth generation” leaders nearly all attended Tsinghua. See Cheng Li, *China’s Leaders 15* (Rowman & Littlefield, Lanham, MD., 2001). The only other school rivaling Tsinghua for national prestige is, of course, Peking University, 1.5 km away. As for the ranking of TULS, a popular ranking among Chinese students is that of Wu Shulian, Head of the Study Group, Evaluating Chinese Universities, which puts TULS in the top 5. See e.g., 2009nian Zhongguo daxue faxue Adeng xuexiao [2009 A Class Chinese Law Schools], <http://edu.sina.com.cn/gaokao/2008-12-24/1729180847.shtml> (last visited May 22, 2009).
11. Much of the information on TULS that follows was obtained from internal TULS administration documents on file with the author.
12. By comparison, East China University of Political Science and Law accepts roughly 2,500 incoming students per year.
13. The Beasley School of Law has had a long history in China following Deng Xiaoping’s visit in 1979. See Anon., Deng Xiaoping Fuzongli jieshou Meiguo Danpu’er Daxue mingyu falü boshi xuewei [Vice-Premier Deng Xiaoping Receives an Honorary Doctorate in Law Degree from the U.S.’s Temple University], *People’s Daily*, February 2, 1979.
14. TULS is conscious of its modeling after American law schools. Faculty told me TULS is modeled after Yale Law School. Multiple copies of *The Spirit of Yale*, translated into

Writing In/On Law Schools: Methodologies

The study of Chinese legal education has historically relied on quantitative approaches.¹⁵ This preference is tied to the number-orientation of central ministries that evaluate law schools and determine which schools are awarded additional programs and resources. Scholars often rely on the official statistical yearbooks which have their own limitations. Most importantly, statistical surveys that stress quantitative indicators have at least two shortcomings. One, they equate increase with progress and such statistics can become part of the problem in creating incentives that emphasize quantity over quality. Second, they create blind spots in the experiential aspects of learning (e.g., the different kinds and sources of pressures students face) that can be addressed by more participatory approaches.

More recently, scholars have introduced more qualitative methods to the study of PRC law schools.¹⁶ Over the past decade, ethnographies have gained a foothold in the classroom, elucidating particular aspects of classroom learning in late reform China¹⁷ with American law professors and students contributing first-hand accounts of their classroom experiences.¹⁸

At TULS, I was enrolled in the LLM program for foreign students. However, as the classes for foreign students are in English and separate from those of Chinese students, I also audited courses with the Chinese students. I audited both LLM courses and JM courses. Occasionally, the professor would single me out as the “foreign expert” and ask me to expound, before the class, on the differences between PRC and U.S. property law, for example, making me experience not a small degree of the discomfort of the observer being observed. Additionally, I took every chance to participate in student activities from formal events such as the 2008 TULS Doctoral Student Conference in

Chinese, on the bookshelf of one teacher corroborated this point.

15. See Sharon K. Hom, Beyond “Stuffing the Goose”: The Challenge of Modernization and Reform for Law and Legal Education in the People’s Republic of China, in *Chinese Education: Problems, Policies, and Prospects* 287, 291-92 (Irving Epstein ed., Garland Press, New York, 1991).
16. See, e.g., Dowdle, *supra* note 6 and Phan, *supra* note 6.
17. See, e.g., Kai-Ming Cheng, Understanding Basic Education Policies in China: An Ethnographic Approach, in *The Ethnographic Eye: Interpretive Studies of Education in China* 29 (Heidi A. Ross, Judith Liu & Donald P. Kelly eds., Routledge, New York, 2000); Michael Agelasto, *Educational Disengagement: Undermining Academic Quality at a Chinese University* (1998); Vanessa Fong, *Only Hope: Coming of Age Under China’s One-Child Policy* (Stanford University Press, Palo Alto, 2006).
18. See, e.g., Sharon K. Hom, *American Legal Education Methodology in China: Teaching Notes and Resources* (Prospect Publishing House, Beijing, 1990) (providing a description of attempts to introduce various American legal teaching methodologies in Chinese law school classrooms while developing an intensive one-year teacher training program at China University of Politics and Law); 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) (describing her experience as a lecturer at Sichuan University Law School).

nearby Hebei Province to student union-sponsored events on studying abroad in the U.S. My underlying goal was to (re)learn the study of law aside my Chinese classmates.

I employed semi-structured interviews with both LLM and JM students as well as four groups of legal academics and practitioners to gain a better idea of how these groups view master's degree law students, their training, and preparation for a career in lawyering. To understand the goals and rationale of teaching approaches, at TULS, I conducted interviews with professors, clinical legal education and legal aid instructors, administrators and the then dean, Wang Chenguang. The second group I interviewed was American and European visiting law professors at TULS to determine, from their comparative perspective, the differences in teaching Chinese law students as opposed to those of their home country. Third, I interviewed American law professors teaching at other law schools in Beijing to assess American-style teaching at other law schools. Last, I interviewed partners at both foreign and Chinese law firms to evaluate the job market for LLM and JM students. In all, I conducted 38 interviews.¹⁹

I supplemented my ethnology and interview with a focused questionnaire designed to elicit responses to specific issues for which I wanted feedback from the class as a whole. Although Chinese students are generally not familiar with completing surveys, the TULS administration was encouraging.²⁰ Each class has a *banzhang* (class monitor) who liaisons between students, faculty, and administration. The administration had me work with the *banzhang* to administer the questionnaires. I distributed and collected the questionnaires during individual classes.²¹

Profiles of Comparison Groups

For my study, I sought to compare the two main graduate degrees in law in the PRC: the LLM, which is a traditional civil law graduate degree, and the JD-inspired JM. As such, I collected data from first year students in both programs during the 2007-2008 academic year. Sixty-five of the seventy-nine LLM students in the class of 2009 (who began their studies in the fall semester of 2007) responded, which comprises 82 percent of the class (n=65). Ninety percent of the LLM students fell within the category of age twenty-one to twenty-five while only 8.3 percent were older. Female and male students were about evenly represented. The students were nearly all Han Chinese mostly from the eastern provinces and provincial-level cities.

For the JM class of 2010, which also began classes in the fall of 2007, 193 of the 253 students or 76.2 percent responded to the questionnaire (n=193).

19. All names of Chinese students are pseudonyms.

20. *But cf.* Kai-Ming Cheng, *supra* note 17, at 33 (explaining the differences between Chinese and non-Chinese notions of "research" in the field of education).

21. *But cf.* Abramson, *supra* note 18, at 305-06 (describing her survey which was blocked by the administration of the Sichuan University Law School).

As a whole, the JM students were slightly older than their LLM counterparts: 76 percent were between twenty-one to twenty-five years old and 19.8 percent were twenty-six to thirty. Male students were more prevalent at 59.1 percent of the class. JMs were also almost exclusively Han Chinese and came from the more developed, eastern provinces.

Legal Education Reform from Above and Below

Assessing the JM Program: Top-Down Reform

The JM program at TULS illustrates problems endemic to the professional degree in law. Many of these problems are an effect of central planning misfire: the consequences of trying to introduce top-down, piece-meal reform into an existing legal education system. The result is a program that has the superficial features of the JD (i.e., three years in duration, enrolling students with no previous law training, training in legal practice, etc.) but which, in practice, exhibits conventional Chinese civil law education. I compare JM students with LLM students to show how TULS has designed its degree programs to favor the latter over the former.

Background to the JM Professional Degree Program

The JM degree program has been fundamental to the modernization of Chinese legal education. In 1993, a research team consisting of legal education experts, jointly organized under the Ministry of Education (MOE) and MOJ, was convened to improve legal education. As part of this process, research was conducted on the American JD program.²² In 1995, the Academic Degree Committee of the State Council approved the Juris Master (*falü shuoshi*) Professional Degree Program.²³ A pilot program was launched a year later at eight universities; 539 students have now graduated from this program.²⁴ The National Steering Committee of the Juris Master Professional Degree Education was formed in 1998, under the Academic Degree Commission and the MOE and MOJ, but it is ultimately accountable to the MOJ,²⁵ chaired initially by Xiao Yang, then head of the MOJ and President of the Supreme People's Court, to oversee the implementation of the JM.²⁶ In 2003, 37,000

22. See Xiandan Huo, JM jiaoyu: yifazhiguo de rencaiku—Zhongguo falü shuoshi zhuanweixuewei (JM) jiaoyu de tansuo yu gaige [JM Education: The Brain Bank for Ruling the Country According to Law—Probing and Exploring China's Juris Master Professional Degree (JM) Education], 7 *Zhongguo Lüshi* 58, 59 (2002).

23. See Weidong Ji, Legal Education in China: A Great Leap Forward of Professionalism, 39 *Kobe U. L. Rev.* 1, 15 (2006).

24. See *id.*

25. The JM is, in fact, the only law degree administered under the MOJ. All other degrees are under the MOE. The result has been a kind of inter-ministerial turf war in setting the curriculum, teaching methods, and overall goals of the degree programs.

26. See Xianyi Zeng, Legal Education in China, 43 *S. Tex. L. Rev.* 707, 711-12 (2002). In 1999, the National Steering Committee established the curriculum for the JM degree. See *Falü*

people took the entrance exam for this program and by 2004, it surpassed the MBA to become the top entrance exam for graduate studies.²⁷ From 1996 to 2006, 18,102 students earned JM degrees.²⁸

There are currently JM programs at 80 universities, with some 30,000 students enrolled, and the number of universities offering JM degrees is projected to grow to 100 by 2010.²⁹ It is the goal of the MOJ and most educators to transform the study of PRC law from the model of an undergraduate major in a comprehensive university to a post-graduate professional school with the JM being the main law track in China.³⁰

The JM degree has been interpreted widely by Chinese academics as essential to the modernization of China's legal system and as a requirement to building ROL. Scholars have viewed it as vital to realizing former President Jiang Zemin's *yifazhiguo* "rule the county according to law"³¹ and preparing lawyers to compete for legal services in post-accession WTO China.³² The overriding purpose of the JM is to produce better legal practitioners. The JM is part of an overall shift in the strategy of state legal education from theory to practice or from "legal article, legal principle, legal philosophy" (*fatiao, falü, fazhexue*) to "legal article, legal principle, legal practice" (*fatiao, falü, fashijian*).³³

shuoshi zhuan ye xueli yanjiusheng zhidaoxing peiyang fang'an [Program and Guidelines for the Training of JM Professional Degree Graduate Students], promulgated by the State Council Academic Degree Committee, amended 2006, available at <http://www.fashuo365.com/html/2006-10/3598.html>.

27. See Xiangshun Ding, J.M. haishi J.D.? Zhong, Ri, Mei fuhe xing falü rencai peiyang zhidu bijiaox [J.M. or J.D.? A Comparison of Chinese, Japanese and American Composite Models of Legal Personnel Training], 3 *Falüjia* 137, 138 (2008).
28. See *id.*
29. See Xiandan Huo, Zhongguo falü shuoshi zhuan ye xuwei jiaoyu zhidu de shijian yu fansi [The Practice and Rethinking of China's Juris Master Professional Degree Education System], 5 *Hebeisheng Zhengfa Guanli Ganbu Xueyuan Xuebao* 24, 28 (2008).
30. *Id.* at 26.
31. See Zhu Liheng, Lun falü shuoshi zhuan ye xuwei jiaoyu de xianzhuang yu gaige, [On the Present Conditions and Reform of the Juris Master Professional Degree], 26 *Hebei Faxue* 159 (2008) (quoting Zhang Fusen, head of the Second National Steering Committee of the Juris Master Professional Degree Education).
32. See Anon., Schools Aim to Help Law Experts Compete, Zhongguo Jiaoyu he Keyan Jisuanjiwang [China Education and Research Network] (2002), available at http://www.edu.cn/200201_1478/20060323/t20060323_22506.shtml (quoting Huo Xiandan, Deputy Director-General of the Ministry of Education's Legislation and Legal Education Department, who provides guidelines to law schools and law departments in the PRC).
33. See Yongan Liao, et al., Luoshi falü shuoshi shiwu xing rencai peiyang mubiao zhi wo jian: "falü shuoshi zhuan ye xuwei yanjiusheng peiyang fang'an yu kecheng tixi gaige" ketizu, [Opinions on Ascertaining the Goals of the Juris Master Model of Practical Affairs and Personnel Training: Study Group on "The Reform of the Training Program and Curriculum System of the Juris Master Professional Degree Graduate Students"], 30 *J. Xiangtan Normal U.* (Social Science Edition) 119, 119 (2008).

Learning Environments

One of the most profound differences between LLM and JM students at TULS is their learning environment. Whereas all LLM students study at TULS's main campus in Beijing, since the introduction of the JM program in 2000, most JM students have studied at the Shenzhen branch campus. TULS in Beijing is located on the campus of Tsinghua University, one of China's largest universities, containing 31,000 students including undergraduates and graduates. TULS is adjacent to the Tsinghua University Science Park, a major R&D center, which houses the main offices of Internet giants Google, Microsoft, Baidu and Sohu. Tsinghua University is located in Haidian District in Beijing where China's other top universities are located. As such, TULS's Mingli building on the main campus features a constant flow of students and scholars from throughout the country and the entire world.

TULS moved the base of the JM program to the Shenzhen Graduate School in 2004, a campus of relative luxury. The center of campus has the feel of a Pacific island resort, replete with lush tropical foliage and flowers, reflecting pools, winding canal, tennis courts, and is adjacent to one of Shenzhen's most exclusive golf courses. It features the Shenzhen Science and Technology Library, in the form of a dragon spanning the man-made canal, touted as "the first public and national library" in the country which has a capacity for 1.5 million print volumes. But the library's bookstore has no books and the coffee shop has no coffee.

The Shenzhen Graduate School, which the law students share with students in the other schools, is a beautiful physical achievement, but it is not a vibrant intellectual climate. The JM program runs on a four-term academic calendar. Unlike the LLM program, there is no full-time faculty in residence at the TULS branch campus at the Shenzhen Graduate School. Rather, professors from the main campus spend approximately two months to teach two courses in Shenzhen and then rotate out. Some faculty members expressed their reluctance to travel to Shenzhen to teach the JMs. Furthermore, there are few extracurricular activities, few student organizations and clubs, no international students, and no guest lecturers or speakers. There are around 5,544 full-time graduate students at the Shenzhen Graduate School,³⁴ but unlike the busy rush of TULS's main campus, Shenzhen Graduate School, with a total capacity for approximately 16,500 students, feels empty.³⁵ Further, Shenzhen Graduate School is isolated from the city with, as yet, no affordable mass transportation for students. As one JM student confided, the "hard environment" (*yingshuanjing*) is very good but the "soft environment" (*ruanshuanjing*) is lacking.³⁶ The JM

34. See University Town of Shenzhen, Brief Introduction to University Town of Shenzhen, http://www.utsz.edu.cn/Catalog_72.aspx (last visited May 22, 2009). Note that Shenzhen Graduate School administrators, in an interview May 24, 2008, put the number at 4,373.

35. This number is calculated from the area built for student dormitories. There is 660,000 sq. m. of dormitory space for students and the minimum space for three graduate students (the average number of roommates) is 12 sq. m.

36. Shenzhen University Graduate School also has branch campuses for Peking University Law

students were nearly unanimous in wanting to relocate to Beijing;³⁷ some half-joked they were “sent down to the countryside” (*xiaxiangle*). However, TULS has an economic incentive to keep students in Shenzhen. The Shenzhen municipal government gives 20,000 RMB for each law student it brings to the Shenzhen Graduate School. In sum, while the Shenzhen Graduate School is impressive in its infrastructure, it seems the LLM students benefit most from the academic environment of TULS.

CLASSROOM EXPERIENCE: LEARNING THE CURRICULUM

The JM program, as opposed to the LLM, which aims at training academics, was intended to train “practicing attorneys” (*shiwu falüren*).³⁸ The classroom offers one view into the merits of the program in accomplishing its intended goal. The classroom experience, too, offers perhaps the sharpest contrast between the LLM and JM programs. The contrast shows that not only is the transplantation of the JD as the JM in China one that is hollowed out of its defining characteristics, but that the university has continued to lay emphasis on the existing LLM degree program.

Neither the LLM nor the JM classrooms have the same kind of intensity and culture of competition that is the hallmark, for better or worse, of the JD classroom. This characteristic of the Chinese law classroom is the product of traditional classroom ethics, enrollment, and teaching styles. The LLM classes were mainly small or medium-sized seminars of no more than thirty students, organized around their area of specialization.³⁹ In these seminars, students would take turns making presentations often with PowerPoint (PPT). The student presenter would take questions from the professor and sometimes

School, Nankai University, and Harbin Institute of Technology. Each of the universities has tried different ways to maintain a sizeable student body at Shenzhen Graduate School. Peking University Law School brought its JM students back to its main campus at the end of the 2007 academic year. That year, the School of Transnational Law (STL) under Peking University took its place. STL has its roots in the foundation of the U.S.-China Joint Center for Study of Law and Policy in 2005 when U.S. Supreme Court Justice Kennedy partnered with Peking University and the Beijing Foreign Languages University. The idea was to develop a three-year JD program for Chinese law students that would teach transnational law using American teaching approaches. While the PRC Academic Degree Committee of the State Council approved STL in a record two months, STL must wait to apply for ABA accreditation. STL began classes in the fall of 2007 with 55 students. While the long-term impact of STL remains to be seen, most immediately, it will add to the intellectual community of Shenzhen Graduate School.

37. Of the JM students I interviewed, only one, Gao Zhihui, from Gansu Province, said he preferred Shenzhen's University City, saying, “here we have mountains and we have rivers. Beijing has only crowds and pollution.”
38. See Yongan Liao et al., *supra* note 33, at 1.
39. The LLM class was divided into two classes (*banji*) which were, in turn, sub-divided into many specializations. Class 071 had 39 people sub-divided into the following specializations: commercial law (28), economic law (11), and environmental law (3). Class 072 had 40 people organized as follows: international law (16), criminal law (6), jurisprudence (7), constitutional law and administrative law (6) and procedural law (5).

the students followed by discussion. Students did not seem concerned with hierarchy in these oral participations; to the contrary, due to their familiarity with each other, there was a much more collaborative atmosphere to their learning (see Figure 1).

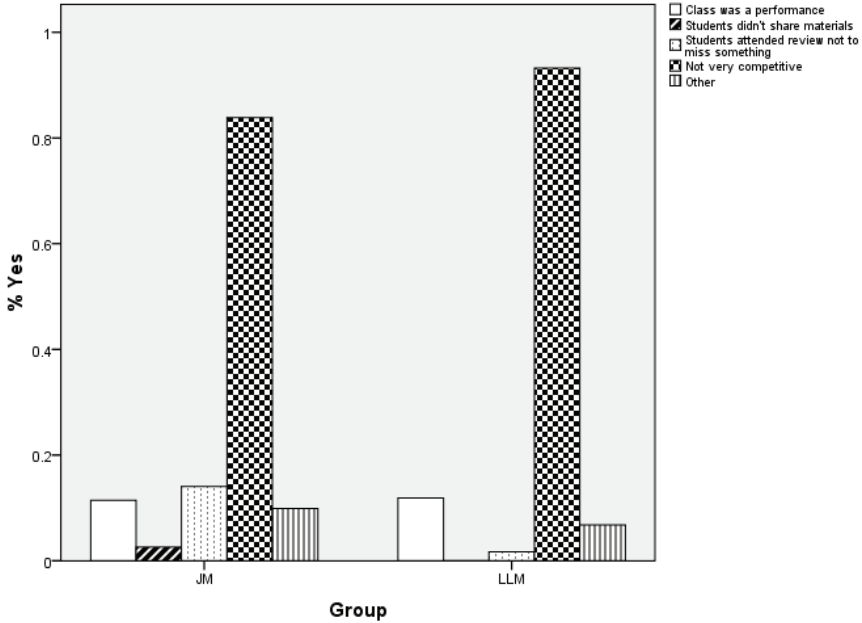


Figure 1. How competitive was your class?

While the LLM classroom reflects the stated goal of the degree program—to train students in a specialization, largely for an academic degree, the JM classroom does not seem to meet the stated goal. JM instruction exemplifies the mainstream teaching approach known as “stuffing the duck” (*tianya jiaoxue*), consisting of lecture and which encourages memorization of statutes for examination.⁴⁰ JM students were organized into large lecture halls of sometimes over 175 students.⁴¹ The professor lectures with the aid of PPT, sometimes reading entire portions of statutes, and there is infrequent student participation and almost no interaction. Very rarely are hypotheticals used or any sort of application of principles learned. For instance, in a contract law

40. See Hom, *supra* note 15.

41. Mandatory courses for the JM degree include: Deng Xiaoping Thought, foreign language, jurisprudence, general introduction to civil law, general introduction to criminal law, criminal procedure law, civil procedure law, administrative law and administrative procedure law, economic law, international law, commercial law, and constitutional law. Electives range from Chinese legal history to tax law to property law and maritime law. The course “legal practice” that teaches practical skills such as interviewing, drafting, and research is an elective course.

course, to explain contract modification, the professor used a case example of a publishing house suing an author for breach of a modified provision of the contract. The professor went through the plaintiff's claims, the damages sought, and then read the judgment. He did not review the court's reasoning, ask questions, or use subsequent hypotheticals to test students' understanding (see Figure 2).

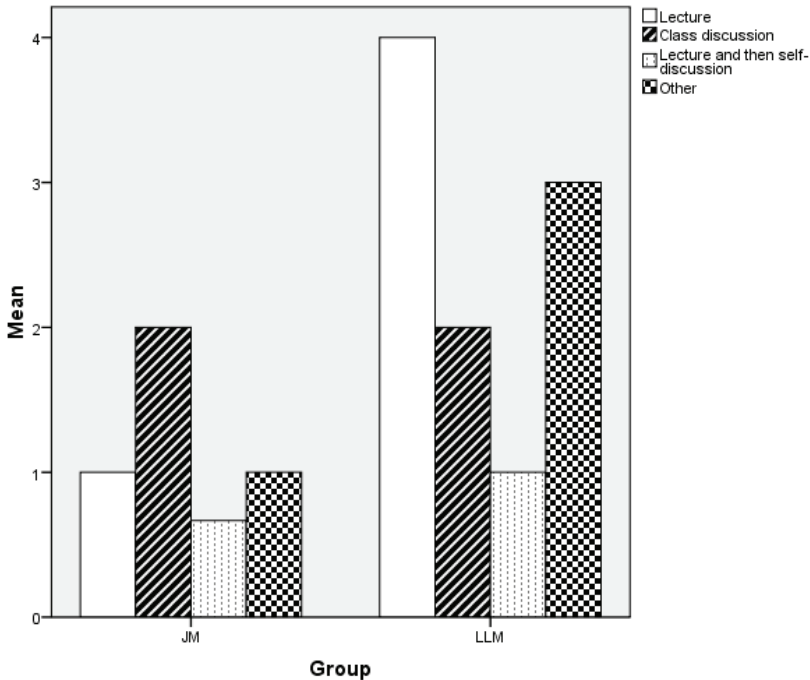


Figure 2. What teaching methods do your professors use?

Moreover, many students whisper among themselves during lectures, send text messages on their cell phones, or sleep. Students often skip class and, instead, attend cram schools in Shenzhen to prepare for the bar exam.⁴² Professors rationalize that like undergraduates, JM students do not have a background in the law and thus the professor must give them the fundamentals. However, in treating the JMs like undergraduates, professors are foreclosing the very aim of the program—to produce legal professionals.⁴³

42. Alternatively, students will listen to free recordings of cram school classes on-line. Students emphasize a disjuncture between their classes and their bar preparation, but often their criticism is that the latter focuses merely on memorization and does not require the thinking skills that they can develop through their degree program.
43. Wang Chenguang, former Dean of TULS, has written of many of the shortcomings of the JM. See Chenguang Wang, *The Rapid but Unbalanced Growth of China's Legal Education*

THE STUDENTS

There is a prejudice against JM students in legal education and the job market. They are viewed as second rate by teachers, law school deans, and prospective employers.⁴⁴ Some of the difference of opinion as to the quality of JM versus LLM students derives from the ways in which they are recruited. To make the JM professional degree the primary route for legal professionals, the MOJ has sought to increase the number of incoming students.

Students can enter the JM program in one of two ways: through either taking the entrance examination (*yanjiu ruxue kaoshi*) or by *baosong* (recommendation). The entrance examination tests a variety of subjects including students' knowledge of the substantive law. In order to pass this exam, students often study four or more months at a cram school (*peixun xiaoxue*). The *baosong* system was started in the reform period to improve the recruitment of students. All 100 universities designated as members of "Project 211," a designation by the MOE beginning in the early 1990s, have the *baosong* system. Tsinghua University began using the *baosong* system in the late 1990s, and the law school began using it in 2003 for undergraduates and in 2004 for the JM and LLM students. The *baosong* system is designed to encourage students to study certain majors by allowing them to enter the degree program without having to take the entrance exam. Rather, they are chosen based on their past grades and an interview.

The *baosong* system exemplifies this process of expanding JM classes sometimes at the expense of quality. In the JM class of 2010, 100 students were given offers. Their evaluation was based on their undergraduate grades, their major, and a five-minute interview. The interview is typically before four to five teachers who each asked one question in English or Chinese.⁴⁵ This process, according to the students, was just a formality. Once given an offer, students then accept or deny. After the admissions committee learns the total number of *baosong* students, it then extends offers to test-takers to fill the additional slots. LLM students are also admitted through *baosong*, but there are differences.⁴⁶ Significantly fewer students are admitted by *baosong*; only

Programs, Spring (vol.) Harv. China Rev. 1 (2006) (identifying the JM program's failings as: 1) inability to attract top students; 2) mode of entrance via a substantive examination that tests students on law who have never studied law; 3) lack of new teaching materials; 4) a pedagogy that does not lead to professionalization; and 5) graduates cannot find good jobs).

44. See Xiangshun Ding, *supra* note 27, at 142.

45. A typical English question was "explain your name in English."

46. In addition to the differences in the *baosong* system, LLM and JM applicants also take different entrance exams. The former take the *zizhu mingti* (school-based written exam) generated by TULS that either tests all areas of law or just the legal specialization to which the applicant is applying. The latter take the *quanguo timu* (nation-wide exam). The difference between the Chinese recruitment system, consisting of both *baosong* and exams, differs greatly from the U.S. system which puts heavy emphasis on the nation-wide Law School Aptitude Test (LSAT).

twenty-nine in the class of 2009. Moreover, the interview is like an oral test (*koushi*) that examines the applicant's knowledge of all areas of law, not just the specialized area to which the student is applying. It lasts about twenty minutes and the student applicant must actively debate with the five professor interviewers. Additionally, TULS recruits from Tsinghua undergraduates much more heavily for the LLM than for the JM class.

The admissions process reinforces Tsinghua University's status among students as a "brand-name university" (*mingpai daxue*). In some cases, pressure to earn a TULS degree outweighs the students' interest in studying law.⁴⁷ This motive applies nearly equally to both JM and LLM students, however (see Figure 3).

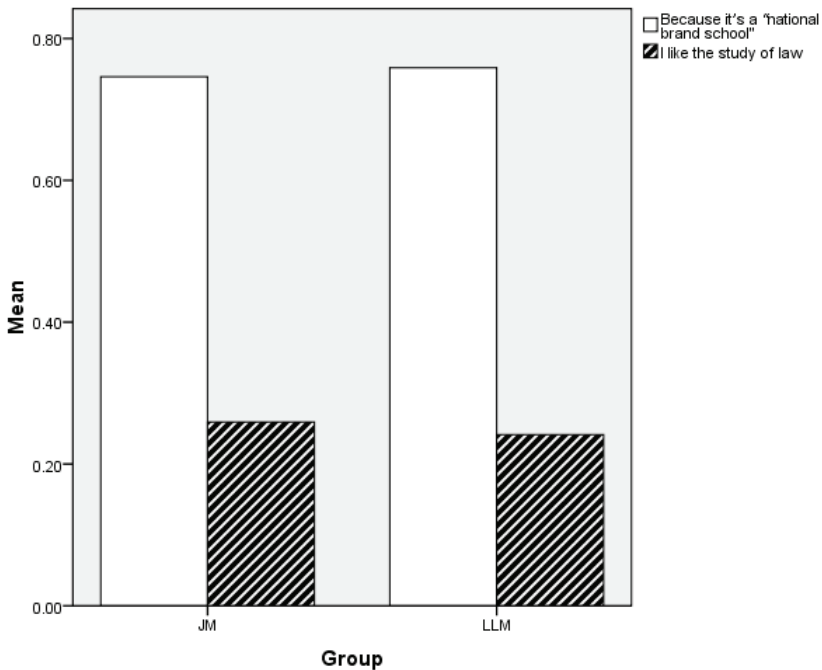


Figure 3. Why did you choose TULS?

47. This preference is not unique to the study of law. The pressure to attend a top university is so great that students will ignore the subjects for which they have a passion if studying a less interesting major will afford them a spot at a top university. This phenomenon also partly explains *wenpingre* (diploma-seeking fever) by which students successively pursue academic degree programs to advance their socio-economic status. See Fong, *supra* note 17, at 89-90.

The legal profession in China more often looks down on the JM students than the LLM students for this propensity. That perception, not unlike the way Japanese lawyers and judges regard students graduating from American-style law schools in their country, is bolstered by professional elitism and protectionism. A Chinese associate at a top international law firm in Beijing, who earned an LLM at TULS, explained, “we [LLMs] are the best. The JMs did not get a good enough score initially on their [university entrance] exam to study law and they are given a second chance.”⁴⁸ International law firms show a preference, in hiring first year associates, for students who obtained an LLB at the undergraduate level and then either went on to obtain an LLM in China or abroad.⁴⁹ Domestic firms also prefer LLM graduates. The newest trend is for Chinese students, with a LLM or even with only a LLB, to obtain a JD in the US.⁵⁰ One partner at a leading Chinese firm reported that the LLB degree is required for joining all practice groups except for intellectual property. Thus, JMs are only hired for a specialized practice such as intellectual property if they have an undergraduate background in the sciences.

FINANCING A LEGAL EDUCATION

Unlike their JM counterparts, LLM students stay in Beijing for the duration of their degree program. One would assume that the tuition costs for the degree programs would reflect the difference in living standard in the two respective locations, and the cost of tuition for the JM program would be less than that for the LLM. However, the opposite is true.⁵¹ Just as the LLM tuition is cheaper than that for the JM, so, too, are there more options for tuition repayment for LLM students. As part of the restructuring of higher education in the late reform period, students are now more reliant on private sources of funding for tuition repayment.⁵² Nevertheless, LLM students get

48. As with the university entrance exam, the graduate school entrance exam score determines both the quality of graduate program and the major itself. Many students will attend cram schools to increase their chances of acceptance.
49. Obtaining an LLM abroad, preferably from the U.S., is an unspoken rule for advancement in most international law firms. This rule partly stems from internal policies of the law firms and from restrictions on international law firms in China. For the regulations that place restrictions on the activities of international law firms in the PRC, see *Waiguo lüshi shiwusuo zhuhua diabiao jigou guanli tiaoli* [Regulation on Foreign Law Firms' Representative Offices in China], promulgated by the State Council, Dec. 22, 2001, effective Jan. 1, 2002, arts. 15 and 16.
50. See Carole Silver, David Van Zandt & Nicole De Bruin, *Globalization and the Business of Law: Lessons for Legal Education*, 28 *Nw. J. of Int'l L. & Bus.* 399 (2008) (observing an increase in JD-holding Chinese lawyers primarily because of PRC regulations preventing locally-licensed lawyers from practicing local law in association with foreign law firms).
51. For the JM program, years 1 and 2 (in Shenzhen) are RMB 16,000 and the third (in Beijing) is RMB 10,000. The LLM students, in contrast, pay RMB 10,000 for the two or three years of their program.
52. A decade ago, the government was still providing full tuition assistance (*gongfei*), but as part of the reforms, the government provides only partial tuition assistance. Further, most

more support from TULS in the form of scholarships than JM students.⁵³ More than 80 percent of JM students rely on parental support to pay their tuition,⁵⁴ whereas LLM students finance their education with a combination of parental support, loans, and scholarships. JM students were mindful of the difference in tuition between their program and their LLM counterparts in Beijing and resented it.

Experimentation with Critical Thinking Pedagogies: Bottom-Up Reform

Beginning in the late 1990s, law schools introduced experimental pedagogies that foster critical and analytical thinking skills (*pipanxing siwei*). These approaches include the Langdellian case method and Socratic teaching style, well-established in U.S. law school teaching. These methods cut across degree programs whether LLB, LLM or JM. Although pedagogical experimentation is part of the larger objective of the JM program to produce more practice-oriented law students, in practice, LLM students may benefit more from these pedagogies than JM students. Differing approaches may explain that while some proponents of introducing experimental teaching methods in PRC law schools are U.S. professors, most are Chinese law professors or deans who have studied abroad in the U.S.⁵⁵ These educators bring with them a conviction that the U.S. common law style of instruction is vital to instilling critical reasoning in students, that is, to “thinking like a lawyer.” Thus, as opposed to the L&D movement where the agents of reform were primarily foreign, in the experiments in pedagogy in China today, Chinese instructors are adapting American methods to the Chinese classroom. In the L&D movement, the case method was seen as the pedagogy of choice to inculcate a greater instrumentalist perspective on the law with the goal being to push students to link doctrinal arguments with the underlying philosophical principles and policy objectives.⁵⁶ Its use in China today has produced mixed outcomes. Some Chinese law professors mimic American law professors in teaching the Socratic Method, believing it the best approach. Others adapt the Socratic Method in a much more nuanced fashion.

Critical Reasoning in the Classroom

Teachers at TULS have, for several years, been experimenting with critical reasoning teaching approaches, largely borrowed from the U.S., that hold

universities base financial assistance on entrance examination scores, which precludes assistance to baosong students.

53. The LLM students are offered scholarships based upon their first semester grades. Although the scholarship usually does not cover the cost of tuition in full, it can.
54. When JM students enter the program, they sign a *zichou peiyang jingfei shuoshi yanjiusheng xieyishu* (Written Statement of Agreement for Independently Raising the Expenses Required for Pursuing the Master of Arts Program) which precludes TULS from providing for most forms of financial aid.
55. See, e.g., Zeng Xianyi, *supra* note 26, at 715.
56. See Gardner, *supra* note 4, at 249-51.

greater promise for professionalizing students. Many Chinese educators spent time in the U.S. either as graduate students or visiting professors and serve as “culture brokers”⁵⁷ who possess both transnational symbolic capital⁵⁸ as well as “local knowledge.”⁵⁹ However, their effectiveness in adapting U.S. teaching approaches to China depends on a number of factors including the duration the Chinese educator spent abroad and the extent of his or her exposure to and involvement in U.S. law teaching.

Many of these educators overlook the importance of critical reasoning and focus exclusively on test preparation (*yingshi jiaoyu*). Reform-minded educators have sought to modify American-style teaching methods that emphasize critical reasoning skills. For purposes of exposition, critical reasoning can take two forms: what could be called “thin” and “thick” conceptions of critical reasoning. “Thin” critical reasoning applies to the exercise of analytical reasoning as applied to legal materials to further the client’s interests. It has close affinities with formal logic. This is the critical reasoning tested in the LSAT: analyzing and evaluating argumentative statements. In law school, students acquire thin critical reasoning through questioning and argumentative exchange during which professors lead students to look for points of similarity or divergence in sets of “facts” that either support or undermine the staking of a legal claim based on precedent.⁶⁰ Thin critical reasoning informs many aspects of lawyering: conducting research including reading cases and statutes as well as examining evidence; developing (multiple and alternative) case theories; drafting memos or contracts; and oral advocacy and client consultation.

“Thick” critical reasoning widens the purview of analysis by focusing not only on policy analysis per se, but further, on politics and institutions of authority more generally, whether governmental, corporate, religious, or ideological. This form of critical thinking is not an explicit objective of

57. See Irwin Press, *Ambiguity and Innovation: Implications for the Genesis of the Culture Broker*, 71 *Am. Anthropologist* 205 (1969) (viewing the culture broker or “marginal man” as having a mandate, in the Parsonian sense, to innovate).
58. A growing number of social scientists are considering the role of agency in the form of transnational actors in the structures of globalizing processes. See, e.g., Hilary Cunningham, *The Ethnography of Transnational Social Activism: Understanding the Global as Local Practice*, 26 *Am. Ethnologist* 583 (1999) (analyzing the development of transnational identities among political activists); Beth Baker-Cristales, *Magical Pursuits: Legitimacy and Representation in a Transnational Political Field*, 110 *Am. Anthropologist* 349 (2008) (examining the strategies of Salvadoran state actors to contain and control transnational political subjects in the postwar period); Aihwa Ong, *Flexible Citizenship: The Cultural Logics of Transnationality* (Duke University Press, Durham, 1999) (assessing the entrepreneurial, multiple passport-holding Hong Konger as an agent of transnationalism).
59. See Clifford Geertz, *Local Knowledge: Facts and Law in Comparative Perspective*, in *Local Knowledge: Further Essays in Interpretive Anthropology* 167 (Clifford Geertz ed., Basic Books, New York, 1991).
60. See William M. Sullivan et al., *Educating Lawyers: Preparation for the Profession of Law* (Summary) 5-6 (2007), available at http://www.carnegiefoundation.org/dynamic/publications/elibrary_pdf_632.pdf.

instruction in formal educational institutions such as a law school; more likely, it is acquired from repeated exposure to and immersion in diverse forms of cultural media outside the walls of the school. Thick critical reasoning forms the basis for political mobilization whether democratic, such as Kagan's "adversarial legalism,"⁶¹ or socialist, as in classical Marxist thought.⁶²

For today's legal missionaries in China, thick critical reasoning, particularly that which works toward the ends of western liberalism, is the Trojan horse in the professionalization of the country's lawyers.⁶³ In this view, China's young lawyers are equipped with the resources to challenge the authority of the Party-state and work as agents of promoting a rights-based society and even democratization. For most Chinese educators, however, thick critical reasoning and its subversive agency are less a priority than is improving thin critical reasoning. Or, thick critical reasoning takes on a different valence than the American tradition with its bristling adversarialism.⁶⁴

Yet critical thinking is not something Chinese students are taught until they reach law school as undergraduates or graduate students. Instead, learning proceeds by memorizing materials and imitating the teacher in preparation for examination for the purpose of acquiring substantive knowledge rather than thinking creatively.⁶⁵ Efforts to introduce critical thinking at the primary or secondary education levels by culture brokers, in this case, either Chinese

61. See Robert A. Kagan, *Adversarial Legalism: The American Way of Law* 9 (Harvard University Press, Cambridge, 2001) (defining the concept as a method of dispute resolution with two salient characteristics: 1) formal legal contestation and 2) litigant activism).

62. See Karl Marx, *Capital*, Volume One, in *The Marx-Engels Reader* 294, 320 (Robert C. Tucker ed., W.W. Norton & Co., New York, 1978) (observing, famously, that in the commodity, a product of labor, men's labor appears as a social relation not between themselves but between the products of their labor).

63. See Matthew Stephenson, *A Trojan Horse in China?* in *Promoting the Rule of Law Abroad* 191 (Thomas Carothers ed., Carnegie Endowment for Peace, Washington, DC, 2006). See also Eric Henry, *Speaking English in Shenyang: Language and the Cosmopolitan Imagination in China* (2008) (unpublished Ph.D. dissertation, Cornell University) (on file with author) (providing a parallel example, from the perspective of English language acquisition, whereby native English speakers believed their teaching English would bring with it Western values, morals, and iconoclastic individualism).

64. It is received knowledge that this is a learned behavior derived from the socialization process of law school. When I was pursuing my LLM at TULS, after one class, a woman from Switzerland commented that the American students were exceptional to the extent that they challenged the professor. After studying in a U.S. law school for three years and comparing my interactions there with those at TULS, it seems the American classroom grooms its students to be assertive, outspoken, and argumentative. The cauldron of the U.S. law school classroom, through the Socratic Method, mock trials, mootings and like exercises, places a premium on oral confidence in making legal arguments. My conversations with students from civil law countries outside of China confirm this distinction. This suggests that Americans are the outlier in this regard. It is not that the Chinese lack this mode of engagement with the material and those who teach it, but in fact, most countries value less antagonistic approaches.

65. See Agelasto, *supra* note 17, at 353.

or American, are often met with resistance by the school administration.⁶⁶ At the same time, Chinese law students do learn critical thinking based on the continental civil law tradition. A JM student named Wang Bocai, who planned, after graduation, to attend law school in the U.S., compared American and Chinese critical thinking this way:

After studying the American LSAT, I understand critical reasoning in U.S. law schools to divide legal arguments into evidence, assumptions, and conclusion. Any one of these can be wrong or inaccurate which weakens the legal argument. In critical reasoning, as it is taught in Chinese law, we are not taught to think like this. In our approach, analysis proceeds by: one, stating the definition and then, two, elaborating a beautiful system (*wanmei tixi*), but we are not taught to look for flaws.

Wang Bocai's depiction highlights the difference between common law deductive and analogical reasoning versus civil law inductive reasoning. Students begin with the legal definition or theory (one level of abstraction) and then, from there, develop a scientific structure (a second-order abstraction). Principles are taken out of their factual and historical context and facts recede.⁶⁷ One American law professor teaching U.S. common law at TULS noted that her Chinese law students were not used to the "grinding down" of case material into factual distinctions which JDs are taught relentlessly their first year. Stéphanie Balme, a visiting law professor from France, said that her Chinese students' logic was impressive in the formal (i.e., thin) sense but they had much more difficulty attempting what she calls "vivid (legal) reasoning" by which they "question or criticize—even in a constructive way—people who hold more power than themselves."⁶⁸

These comments suggest that civil law instruction takes place within defined social relationships between student and teacher, which are politicized in the PRC. Both JM and LLM students told me that most professors prefer questions to be asked one-on-one after class. In these conversations, ideas of respect (*zunjing*) or "saving face" (*ai mianzi*) were recurring. Students repeatedly analogized respect for the professor to respect for the judge, law firm partner, or other authority figures. These hierarchical relationships determine the extent of "free speech" inside and outside of the classroom and the "thickness" of critical thought.

Since the June 4, 1989 "Democracy Movement," which began as a student protest, the government has taken measures to co-opt students, seen as

66. *Id.* See also Huhua Ouyang, One-Way Ticket: A Story of an Innovative Teacher in Mainland China, 31 *Anthropology & Educ. Q.* 397 (2000) (providing an account by a Chinese English teacher who tried to introduce more communicative pedagogies from the West into her classroom but faced stiff opposition from established teachers).
67. See John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* 64 (Stanford University Press, Palo Alto, 1985).
68. Interview with Stéphanie Balme, a visiting law professor from France, in Beijing (Mar. 25, 2009).

among the most liberal elements of society, into its state-led modernization project.⁶⁹ Such measures include introducing patriotic education as early as primary school and increasing the prevalence of CCP organs in universities.⁷⁰ Most law schools have CCP branches with both the faculty and the student body. Further, student bodies have active membership in the Communist Youth League of China (Youth League). At Tsinghua University, each class has two or three presidents: a class president, a Youth League president, and sometimes a CCP president. Student representatives of the Youth League or CCP are responsible less for monitoring speech and imposing sanctions for errant views than they are in “thought development” (*sixuei peiyang*) through student meetings as recitations of CCP doctrine. Similarly, the faculty of TULS has a CCP branch whose primary activity is to organize meetings to ensure that CCP policy is disseminated to CCP members within the faculty. The CCP branch and the university administration (i.e., law school faculty) are seen as separate and distinct. However, CCP branches in universities have power to introduce curriculum from higher-level CCP authority, although the exercise of this power is seen as interference with the independence of teaching. Likewise, reporting on students’ speech is seen as undue interference although this does not mean that it does not happen.⁷¹

Thus, for a variety of reasons—pedagogical, cultural, and political—students are wary of their speech. While in private conversation, they express their views of law and policy freely and say they could make such statements during class, when they are actually in class, they exercise a form of guarded self-censorship. When they do exercise thick critical thinking, students often use proxies. For instance, they might take U.S. law and American culture as the object of their critique, such as an LLM Modern Western Philosophy course during which students poked holes in the U.S. constitutional concept of “police power,” although the conversation steered clear of discussing China. In other courses, students discussed the divergence between statutory law and law in practice in the areas of Chinese contract or administrative law to demonstrate how judges and lawyers veer from correct legal doctrine. Although professors occasionally used a case to highlight the problem of local corruption and even elicit strong

69. See Elizabeth J. Perry, Casting a Chinese “Democracy” Movement: The Roles of Students, Workers, and Entrepreneurs, in *Popular Protest and Political Culture in Modern China: Learning from 1989* 74 (Jeffrey N. Wasserstrom & Elizabeth J. Perry eds., Westview Press, Boulder, 1994) (providing explanations for the movement’s genesis and failure).

70. See generally Suisheng Zhao, A State-Led Nationalism: The Patriotic Education Campaign in Post-Tiananmen China, 31 *Communist & Post-Communist Stud.* 287 (1998).

71. In practice, the Party-state has erected multiple layers of surveillance between its organs within the faculty and the students. For instance, students occasionally do monitor other students’ views and even those of professors. See, e.g., David Bandurski, Chinese Students Inform on Political Science Professor, China Media Project, (November 27, 2008), <http://cmp.hku.hk/2008/11/27/1407/> (reporting on the case of Professor Yang Shiqun at the East China University of Politics and Law whose students had gone to the public security bureau to report that content in Professor’s Yang’s class was anti-government which has led to a formal investigation).

responses from students,⁷² such occasions were the exception and narrowly tailored such that there were few wider discussions as to the government's or the CCP's role in affecting legal outcomes where their interests are at stake. In all classes, the overall trend was for the professor to set the parameters of discussion and the bar for critical statements.

Students who exercise critical thinking outside of class are often subject to surveillance by state security bureaus. For example, in 2004, I witnessed a public protest on the main quad of Tsinghua University when the university shut down the students' electronic bulletin board system after politically sensitive comments were posted. In vivid contrast to the style of student protests in the U.S. during the Iraq War, the Tsinghua students' protest had the feeling of a wake. The students bowed their heads silently before the central sundial on which the expression is carved: *xingshengyuyan* "actions speak louder than words". A plainclothes public security officer, so identified by a Chinese friend after the incident, recorded the students with a camcorder.

By associating critical thinking in the law classroom with political liberalization and mass movements, foreign legal reformers often make erroneous assumptions about the role of lawyers in Chinese society and their capacity to effect political change. Significantly, of all the groups with whom I interacted during my fieldwork, including American and European law professors, Chinese law professors, and Chinese administrators, the group most pessimistic about the potential of lawyering to bring about social change in China was the TULS students themselves.⁷³ Only 39.8 percent of JMs and 51.7 percent of LLMs thought lawyers can influence public policy. When asked whether lawyers can push reform, fewer than half of JMs and LLMs (39.1 percent and 45 percent, respectively) said they "basically agree."

The law students' views of the status of lawyers in Chinese society are closely linked to their motives for attending law school and their ultimate career plans. Students were unabashedly pragmatic in their reasons for studying law at TULS and their future plans. While the name recognition of Tsinghua University galvanized much of their decision-making, the law career itself offers few benefits (see Figure 4). Consequently, most students I talked to do not plan to become lawyers. Their primary reason was that lawyering is difficult work with few rewards in terms of income or prestige, unlike the stratospheric salaries and elite lifestyles that await many American law students at comparable, elite law schools. They regard competition for

72. One example was a choice of law issue during a civil procedure JM class. The statute provided for the law of the defendant's jurisdiction to be controlling but the loan agreement between the parties provided for the law of the plaintiff's jurisdiction to prevail. Because the borrower in the case was a state-owned bank, local legislators, under pressure by the local government, issued special provisions to validate the claim of the borrower.

73. This finding accords with the growing law and society literature on Chinese lawyers. See, e.g., Ethan Michelson, *The Practice of Law as an Obstacle to Justice*, 40 *Law & Soc'y Rev.* 2 (2006) (concluding that "cause lawyers" function as gate-keepers to keep many grievances out of the courts).

entry-level positions in domestic law firms as too intense and even harsher for international law firms. Instead, most TULS students wanted to become civil servants (*gongwuyuan*) (see Figure 5). Although the income is not as high as partners in established law firms, civil servants have much more security and a more collaborative and relaxed (*qingsong*) work life. Many viewed TULS as more helpful in making social connections with classmates who would later assume high positions in the government and the CCP than in terms of acquiring professional legal skills. As opposed to the career of an official, lawyers just starting their careers must depend on themselves, which is too risky. Those students who were public interest-minded, explained a male LLM student named Guo Richang, thought that rather than be seen as an agent outside of and working against the government (as a lawyer),⁷⁴ a much more promising route was to work for the government.

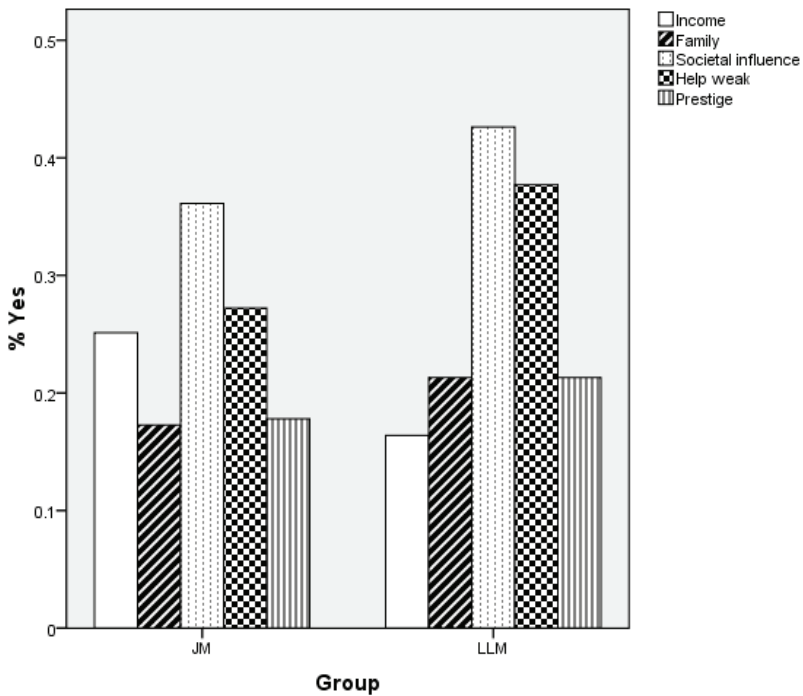


Figure 4. Reason for attending law school

74. Students were acutely aware of the difficulties of lawyering in the public interest in China whether as legal aid attorneys, public defenders or working for an NGO.

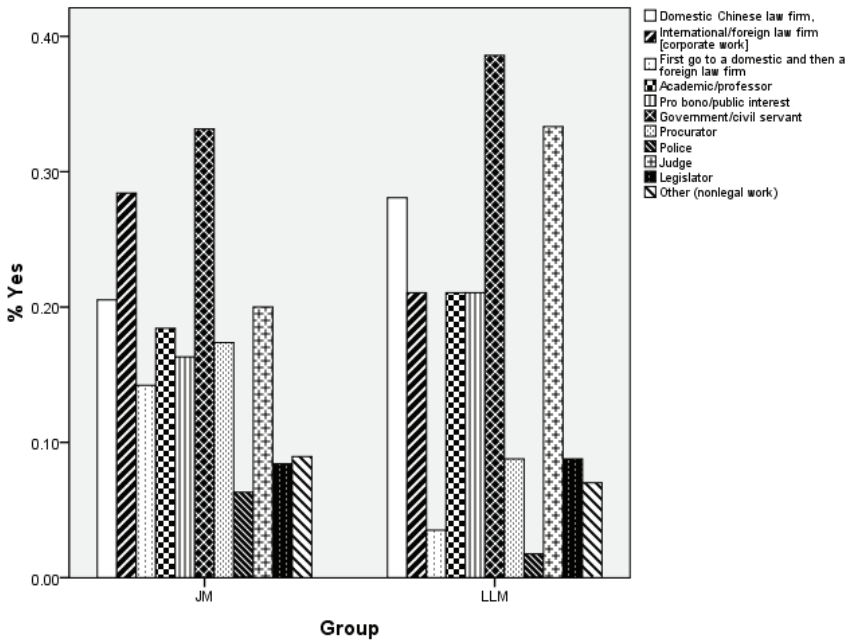


Figure 5. Career choice

The preference of TULS law students to become civil servants over lawyers has implications for the teaching of law and, specifically, the potential for critical reasoning pedagogies. The Trojan Horse theory would posit that even if law school graduates pursue careers as officials, they will still use the critical reasoning skills they acquired in law school to promote the liberalization of society, because, as officials, they are acting within the government. Unfortunately, the experience of TULS students demonstrates this theory may be wide of the mark. Students see the law-route and the official-route as two very distinct careers. The two career trajectories begin with their different qualifying exams, the national judicial examination (*guojia sifa kaoshi*) and the national civil servant examination (*guojia gongwuyuan kaoshi*), respectively, which test different material and different skills. More importantly, the two careers have different reward systems for promotion and advancement. While lawyers advance through handling of cases and development of clients, both of which actively call upon critical reasoning skills, civil servants rise through their vertical organizations largely by following orders and appeasing superiors in an approach colloquially known as *pigu jue ding naodai* (“your ass directs your brain”).

A LAW TEACHER AMONG WOULD-BE OFFICIALS

Despite the propensity of TULS students for joining the government, TULS is nevertheless one of the most dynamic Chinese law schools in terms of pedagogical experimentation for critical reasoning skills. As law schools have more discretion in structuring curriculum for graduate than undergraduate programs, professors at TULS have been able to introduce innovative courses designed to bolster analytical, critical, and creative reasoning among the law students. These adaptive pedagogies differ starkly from top-down legal education reforms. Whereas in planning the JM, considerable research was conducted on the U.S. experience, the design and subsequent administration of the professional degree program were handicapped by a lack of experiential knowledge of the JD and a distanced view of the students. In contrast, some educators who have benefitted from the different approaches to legal education in multiple systems and who interact daily with students are designing much more tailored approaches to legal instruction. Professor Betty Ho's program "Foundations in Common Law" (Foundations) is one such example. Originally from southern China, Professor Ho (Chinese name: He Meihuan) has spent most of her career as a practicing attorney and law professor outside of China. She studied common law in Canada, the U.K. and U.S. She joined the TULS faculty in 2002 and taught full-time through 2008. She brings her experience in both the Anglo-American and civil law systems to her teaching. While she acknowledges globalization as Americanization, she seeks to frame U.S. teaching approaches within the Chinese system through indigenization (*bentuhua*) and critical evaluation.⁷⁵

Professor Ho organized her Foundations course as a four-semester program: Foundation I teaches students how to read cases, Foundations II teaches case analysis, Foundations III teaches legislation, and Foundations IV consists of a moot court. The content of the course is Anglo-American common law. Both she and her students speak in English. She limits the class to about twenty students and requires each to take a written entrance exam. Third- or fourth-year undergraduates can take the course, but it is mainly LL.Ms. JMs can only attend if they are studying at Beijing. I observed her Foundations II course.⁷⁶

Foundations balances U.S. teaching methods with understanding of the learning styles, experiences and expectations of Chinese law students. In the first class, Professor Ho organized the students into groups of four who read, analyzed, and presented cases. She divided class time between a full session with all twenty students, small group discussions of draft reports assessing a line of cases, and presentations during which an assigned group would present cases and another group would critique the first group's analysis and

75. See He Meihuan, *Lun dangdai zhongguo de putong falü jiaoyu* [Discussing China's Modern Common Law Education], (China University of Politics and Law, Beijing, 2005) (calling globalization "quanqiu falü Meiguohua" (global legal Americanization)).

76. Professor Ho did not allow auditors for her course. To my knowledge, I am the only auditor she permitted to observe her course in the six years she taught it.

reasoning. During the full class session, the groups would present cases in a manner analogous to how professors in the U.S. go over cases in class (i.e., parties, facts, case history, issues, reasoning, and holding). Professor Ho elicited students' responses as to the analysis of the case and then entered them on blank PPT slides. She employed a "soft" Socratic approach to test each group's understanding of the case. Progress made through the case material was heavily fact-specific and much time was used making sure the group "on call" brought out the nuances of the fact pattern. While a group would know if it was "on call" and so those students had some forewarning, she would call freely on members of that group. While the general spirit of the full class session was one of collegiality, the pressure and intensity felt in U.S. law classrooms was palpable before class as students rushed to prepare or review materials and talked nervously among themselves.

Overall, the students exhibited little difficulty or discomfort in adapting to their first common law experience. The multiple challenges of studying a significant amount of foreign case material in a second language, through novel teaching approaches and under palpable pressure, had some noticeable but not inhibitory effect on their classroom performance. There were traces of civil law reasoning in some of their presentations. For example, students would focus more on individual cases and the proposition(s) they stood for rather than the relationships between them. Also, during the group presentations, the students would generate PPTs that would graphically illustrate the "structure" of a judge's reasoning with a systematicity that would seem perhaps extraneous to U.S. law students.

Survey results showed students saw multiple benefits.⁷⁷ For Foundations II, these can be grouped as 1) ability to analyze cases and legal arguments, 2) ability to discern logical defects, 3) ability to comment on and criticize the reasoning of others, and 4) the ability to work in teams. Students' appraisals of the work they did in the course further suggested "thicker" critical reasoning skills. One female LLM student said she learned "bravery to challenge the judge, to analyze the judgment and its reasoning, and to learn how precedents have been used for different purposes." But, there were drawbacks to the program, attrition being the largest problem; very few students completed Foundations IV, citing the volume of the work and the unaccustomed pressure. Students in Foundations II spent 3.6 hours per day preparing for class. The average LLM spent approximately two hours per week preparing for *all* of their classes. While the high rate of attrition and the resource intensiveness of Professor Ho's program may shed doubt as to whether her approach can be replicated without further modification, her Foundations sequence out as one of the more promising examples of refashioning U.S. pedagogies to Chinese law schools. Professor Ho's Foundations program is one example of a hybrid teaching approach that has promise in the reform of Chinese legal education. LLMs and JMs selected a hybrid approach that combines some lecture and

77. Surveys were based on questionnaires that Professor Ho collected each year from the period 2002-2008.

professor instruction to provide a baseline for discussion but then proceeds by interaction, dialogue, and exchange as their first and second ideal teaching methods, respectively (see Figure 6).⁷⁸

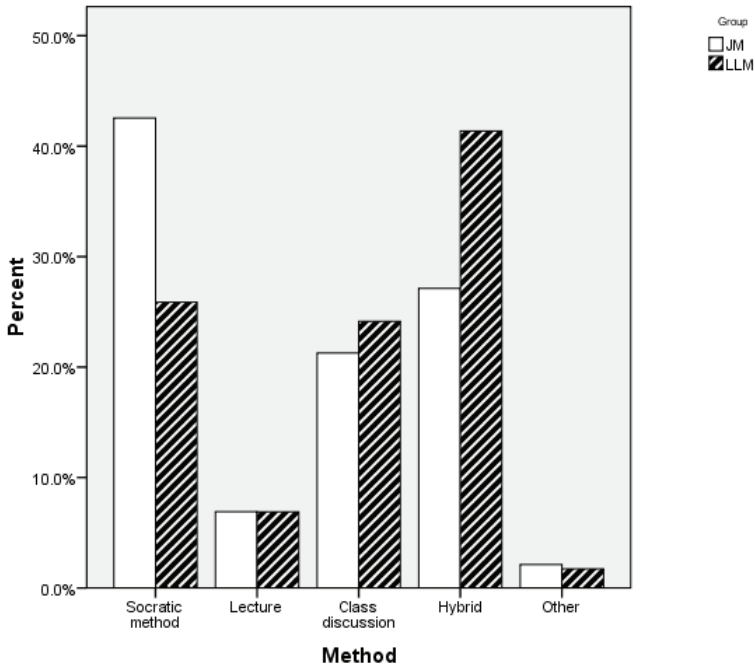


Figure 6. Students' ideal teaching methods

Implications for Legal Education Reform in China

The case study of TULS shows several problems inherent to the use of transplants in legal education reform and law reform, more generally, in the PRC. These problems, building on Peerenboom, can be grouped into the following categories: the horizontality of transplants, the verticality of transplants, and the globalized context within which transplantation occurs. These categories provide a basis with which to assess the findings of the TULS case study and its significance for law school reform in China.

Horizontal Transplants: Between the Push and the Pull

One of the central differences between the exportation of U.S. legal institutions during the earliest phases of L&D and the contemporary ROL

78. Forty-one and seven-tenths percent of the JM students preferred the Socratic Method. I found that because they had such little exposure to the pedagogy, they idealized it to an extent greater than the LLMs who had some experience learning Socratically.

initiative is the paramount role, today, of local political elites in steering the course of reform. Domestic actors including law professors, law school deans, and other educators are doing much of the heavy lifting in terms of institutional reform. Nevertheless, legal transplantation occurs as a process with two forces: promotion by the country of the transplant's origin and reception by the adapting legal system. The TULS case study evidences the two roles and suggests that the viability of a transplant depends on such factors as active participation and local knowledge.

Scholars have drawn parallels between the L&D movement half a century ago, and today's ROL movement, even calling the ROL initiative the "new" L&D movement,⁷⁹ particularly given the focus on reforming legal education in non-western countries. The first wave of the L&D movement did not affect China as the county was embroiled in the upheavals of the Great Leap Forward and the Cultural Revolution during the movement's florescence.

Yet since the early 1990s, a constellation of actors, with overlapping agendas and mixed goals, have pushed ROL projects in the PRC by funding and exporting legal expertise for specific instrumental purposes. The genesis of the U.S. effort can be traced to the Ford Foundation's funding of the first U.S.-style legal aid center at Wuhan University in 1992.⁸⁰ Since then, multiple players have entered the arena as part of the industry of exporting ROL models through transplantation. The actors include representatives of all branches of the U.S. government, including the executive,⁸¹ the Supreme Court,⁸²

79. *See, e.g.*, Carol V. Rose, The 'New' Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study, 32 *Law & Soc'y Rev.* 93 (1998); Michael J. Trebilcock & Ronald J. Daniels, *Rule of Law Reform and Development* 280 (Edward Elgar Publishing, London, 2008); *but see* David M. Trubek & Alvaro Santos, *The New Law and Economic Development* (Cambridge University Press, New York, 2006).

80. *See* Benjamin Liebman, Legal Aid and Public Interest Law in China, 34 *Tex. Int'l L.J.* 211, 233 (1999). *See also* Stephenson, *supra* note 63, (assessing the fruits of the "China rule of law initiative" started by President Clinton in 1997 which gave official imprimatur to these efforts).

81. Interview with former State Department officer, in Beijing, P.R.C. (Apr. 2, 2008) (stating that the State Department wanted Chinese law to move to a precedent system by, among other causes, promoting case method analysis in law schools).

82. U.S. Supreme Court Justice Kennedy established the Joint Center for China-U.S. Law & Policy Studies in 2005. It has hosted several conferences on legal education exchange in both the U.S. and China.

and Congress;⁸³ the American Bar Association;⁸⁴ developmental agencies;⁸⁵ NGOs;⁸⁶ law firms;⁸⁷ law schools;⁸⁸ scholars;⁸⁹ and commercial outfits.⁹⁰ U.S. actors work in concert with members of the PRC legal community including the MOJ, All China Lawyers Association, legal practitioners and academics. Law school reform has taken many forms such as those aimed at improving the training and continued education of Chinese law professors⁹¹ and those directed at educating Chinese law students in U.S. law.⁹² However, reforms that focus on the institution of the Chinese law school itself have had the most widespread impact on Chinese law students. From the U.S. perspective, the contemporary drive to institute ROL in China concentrates much of its resources, manpower, and funding on training the next generation of lawyers via methodologies developed in the U.S. with the intent that these lawyers will be agents of change toward a more open, rights-based China.⁹³

83. *See, e.g.*, Congressional-Executive Commission on China, 108th Congress, The Rule of Law in China: Lawyers without Law? Roundtable before the Congressional-Executive Commission on China (Comm. Print 2003), *available at* http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_house_hearings&docid=f:87399.wais (discussing the impact of U.S.-led efforts to reform P.R.C. law schools).
84. The American Bar Association's "Rule of Law Initiative" in China includes a "Legal Education Reform and Civic Education" project. *See* ABANet.org, ABA Rule of Law Initiative: China, <http://www.abanet.org/rol/asia/china.html> (last visited May 25, 2009).
85. The Ford Foundation's Law and Rights Program has been one of the most active donors in Chinese legal education reform. *See, e.g.*, Weidong Ji, *supra* note 23, at 13 (discussing the Ford Foundation's establishment of clinical legal education programs in Chinese law schools in September, 2000).
86. *See* ChinaDevelopmentBrief.com, Directory of International NGOs, (2007), <http://www.chinadevelopmentbrief.com/dingo/> (last visited May 25, 2009).
87. *See, e.g.*, O'Melveny & Myers LLP, The O'Melveny Scholarship Programs: Shanghai and Beijing, www.omm.com/aboutus/scholarships/ (last visited May 25, 2009).
88. Most top U.S. law schools now have exchange programs with Chinese law schools. For a partial list of summer study programs, see Wei Luo, Summer Study Programs of Chinese Law in China or Hong Kong, <http://law.wustl.edu/Chinalaw/chlsumm.html> (last visited May 25, 2009).
89. *See, e.g.*, Council for International Exchange of Scholars, Fulbright Scholars Program, <http://www.cies.org/> (last visited May 25, 2009) (sending a handful of U.S. law professors to Chinese law schools each year).
90. LexisNexis sponsored a conference entitled "LexisNexis-Peking University Law School Discussion Forum for the Integration of Sino-American Legal Education and Legal Practice" on October 28, 2008. Westlaw has recently introduced a product called "Westlaw China."
91. *See* Anne F. Thurston, The Committee on Legal Education Exchange with China (CLEEC): 1983-1997. pt. 43 (1997) (detailing the workings of the CLEEC during 1983-1997, this report describes the impact of the program, which financed the overseas education of several leading Chinese academics, on individual careers, teaching approaches, and "rule of law").
92. LLM programs offered at U.S. law schools are increasing in number. *See* Zhenmin Wang, Legal Education in Contemporary China, 36 *Int'l. Law.* 1203, 1207 (2002).
93. *See, e.g.*, U.S. Dep't of St., Supporting Human Rights and Democracy: The U.S. Record

Interviews conducted during the 2007-2008 academic year reveal a spectrum of responses to this approach. Chinese law students were enthusiastic about taking a class with a law professor from the U.S. but were also quick to point out the shortcomings of programs that bring U.S. law professors without China experience to TULS and other PRC law schools. Students were skeptical of the impact of visiting scholars who have a light course load and teach for only one semester.⁹⁴ Both TULS law students and U.S. law professors teaching at TULS and elsewhere thought their interaction was, at times, superficial and the long-term impact minimal. Moreover, many programs fail to provide training for visiting professors who are told simply to “teach like a U.S. classroom.” Students were more appreciative of visitors who taught a heavy course load and stayed for longer than a semester, such as Stéphanie Balme who taught at TULS for two years. Overall, students were appreciative, however, of visiting faculties’ efforts regardless of the duration of their teaching. In short, from the Chinese students’ perspective, the time the visiting professor spent teaching in China as well as that individual’s “China knowledge” were important.⁹⁵

Additionally, joint projects between foreign legal experts and Chinese counterparts are sometimes frustrated by miscommunications about immediate goals (i.e., difference in expectations between the parties) as well as long-term ends (e.g., disparate conceptualizations of ROL and the role of legal institutions in its promotion). One example is the Tsinghua Legal Clinic Program (TLCP) founded originally in September, 2000, as the “Consumer Protection Clinic” with the support of the Ford Foundation. Modeled after U.S. clinical legal education, the clinic was meant to provide students with opportunities to represent consumer clients in court; however, since many such disputes are settled through mediation and reconciliation, this objective was not met. By 2001, the Consumer Protection Clinic was replaced by the “Labor Protection Clinic” and the “Disadvantaged Group Protection Clinic.” The Ford Foundation encouraged the TLCP to take on high-profile cases but many TULS faculty wanted to take on less sensitive cases.⁹⁶ In 2004, when

2006 84 (2006), available at <http://www.state.gov/documents/organization/80699.pdf>.

94. Alison Anderson, an American law professor who taught at TULS, commented: “I cannot even begin to imagine all the differences in concepts of school, the teacher-student relationship, career patterns, and so forth all of which impact learning. It would be presumptuous to try to analyze all this after mere[ly] eight weeks of teaching my students six hours a week”; *Cf.* Eli Wald, Notes From Tsinghua: Law and Legal Ethics in Contemporary China, 23 *Conn. J. Int’l L.* 369 (2008) (providing a journal of a U.S. law professor teaching professional ethics in China for the first time at TULS for one quarter or 14 meetings of 120 minutes).
95. While most programs that bring U.S. law faculty to China teach U.S. law, with some inroads into international law, Chinese law students nevertheless spoke more highly about foreign faculty who knew how to communicate non-Chinese legal systems to them. Mandarin language acquisition, knowledge of Chinese history and law, and sensitivity to Chinese classroom etiquette were all skills valued by Chinese students.
96. Misunderstandings in U.S.-Chinese joint projects rarely feature a simple U.S. versus Chinese difference in opinion. In the case of TLCP, many TULS faculty also pushed high-profile cases.

the TLCP accepted more controversial cases, local authorities intervened and faculty were fired. TLCP was subsequently re-organized and currently operates in conjunction with two extracurricular programs: the Tsinghua Barefoot Lawyers' Training Program (started in 2006) and the Tsinghua Rural Legal Aid Center (established in 2004). The early difficulties of TLCP can be attributed, in part, to misdirection in terms of matching certain types of disputes with appropriate channels for public interest law instruction. More fundamentally, however, the collaboration was impeded by differences between the function and ultimate aims of the project; U.S. sponsors viewed clinical legal education as a vehicle for access to justice while Chinese hosts saw the clinics primarily as an educational tool for students. Although the TLCP provides a cautionary tale, it has, over time, established a sustainable program that both instructs students and provides pro bono legal service to the community.⁹⁷

Vertical Transplants: Top-Down and Bottom-Up

Perhaps the central implication of my TULS case study is that bottom-up, grassroots adaptations of legal transplants are more responsive to local conditions and needs than grand schemes in the form of state-sponsored central-planning. This point confirms the theme of William Easterly's *The White Man's Burden: Why the West's Efforts to Aid the Rest Have Done So Much Ill and So Little Good*. In this book, long-time expert on foreign aid Easterly describes two ideal types of foreign aid: the "planner" and the "searcher":

In foreign aid, Planners announce good intentions but don't motivate anyone to carry them out; Searchers find things that work and get some reward. Planners raise expectations but take no responsibility for meeting them; Searchers accept responsibility for their actions. Planners determine what to supply; Searchers find out what is in demand. Planners apply global blueprints; Searchers adapt to local conditions. Planners at the top lack knowledge of the bottom; Searchers find out what the reality is at the bottom.⁹⁸

Although Easterly's depiction has been criticized for its idealized dichotomy, his characterization holds true for legal education reform in China. Easterly's types apply to (e.g., U.S.) foreign aid workers, but they can be extended equally to their in-country counterparts. The JM professional degree program began as a result of a research study headed by PRC legal experts working under the Academic Degree Commission and in conjunction with central ministries. The effect of the pilot program was an academic degree program that failed to integrate the more efficacious aspects of training in the American JD program with the distinct character of learning in the Chinese classroom. Any fine-grain details acquired by the planners from actual teaching experience were muted

97. The program is a four credit course for one semester, requiring three hours of classroom instruction per week, with space available for a total of 40 students. Criteria for accepting cases include the nature of the case, instructional value, merits of the case, security considerations, and venue of the action (only Beijing cases are accepted).

98. See William Easterly, *The White Man's Burden: Why the West's Efforts to Aid the Rest Have Done So Much Ill and So Little Good* 5-6 (Penguin Press, New York, 2006).

out in designing and implementing the JM program as the Chinese equivalent of the JD. In addition, while the JM program encourages teaching that facilitates practical training, the program lacks clear guidance or incentives for teachers to do so.

In contrast, searchers, such as Professor Ho and other educators working on the ground, have direct and constant interface with students and work to find practical ways to tie non-Chinese teaching approaches into classroom dynamics. These educators effect small-scale change based on accumulated local knowledge and practical experience which allows the teachers to make necessary adjustments whether curricular or pedagogical depending on students' performance and feedback. For example, the small group discussions of draft reports in Professor Ho's Foundations program provide a venue for immediate feedback and teacher-student interaction to the benefit of both the educator and the learner. Nonetheless, Chinese teachers seeking to introduce experimental approaches operate within the confines of the university faculty and administration, state-mandated curriculum, and the surveillance of CCP organs. Each constraint works, in various ways from budgetary to disciplinary, to thwart innovation.⁹⁹

Context for Transplants: Globalization as Americanization

Today's legal transplants operate under a set of global conditions that differ significantly from those of fifty years ago during the L&D movement. The bipolar order of the Cold War has been replaced by American supremacy that still operates through traditional realist notions of military and economic power, but also through "soft power"—the role of the U.S. in globalization. Globalization, as conventionally understood, deterritorializes flows of capital, technology, commodities, migrants, media, and law. As opposed to modernization theory of the 1960s, which assumed identifiable categories of time and space as unilinear and evolutionary, globalization witnesses a marked acceleration of time-space compression in capitalist political economy as central to culture change.¹⁰⁰ Transplants no longer operate in a one-to-one trajectory but rather are diffused, often repeatedly (re)localized such that they successively shed the skin of their origin (e.g., the U.S. JD is borrowed by Japan and then China borrows the JD based on the Japanese experience¹⁰¹). Nevertheless, this does not mean that the metaphor of the transplant is obsolete in the "age of globalization." When observers speak of globalization, they are often participating in the celebratory misrecognition of hegemonies that are identifiable. This is, more exactly, a partial misrecognition as, on the one hand, Chinese legal reformers¹⁰² valorization of the preeminent legal models of the

99. See, e.g., Ouyang, *supra* note 66.

100. See Michael Kearney, *The Local and the Global: The Anthropology of Globalization and Transnationalism*, 24 *Ann. Rev. of Anthropology* 547, 551 (1995).

101. See Xiangshun Ding, *supra* note 27.

102. The Americanization of law schools has been a theme of reform over the past couple of

day has been a conscious endeavor,¹⁰³ but, on the other hand, the entry of globalization as a discourse elides the origin of legal models and transplants. This is not to dismiss globalization as a faux concept, but to suggest that the globalization of law obscures more than it explains. In academic discussions about reform of law schools in China, often “the global” stands in for the U.S.¹⁰⁴ This invocation is not only an a priori assumption that the U.S. style should, in fact, be the world standard, but, more importantly, it partially misrecognizes the hegemonization of “lex Americana.”¹⁰⁵

While the object of critique during the L&D movement was legal missionaries and the ethnocentric assumptions that undergirded much of their

decades throughout East Asia. *See* Setsuo Miyazawa, Kay-Wah Chan & Ilhyung Lee, The Reform of Legal Education in East Asia, 4 *Ann. Rev. L. & Soc. Sci.* 333 (2008) (providing a literature review of the Americanization of legal education in China, Japan, and Korea).

103. That is, European during the founding of the Republican China, Soviet when the Communists took power, and American in the reform era. Much has been written about China’s borrowing of U.S. commercial law. *See, e.g.*, Robert C. Art & Minkang Gu, China Incorporated: The First Corporation Law of the People’s Republic of China, 20 *Yale J. Int’l L.* 273, 274 (1995) (asserting that the National People’s Congress was “plainly modeling [the Company Law of the People’s Republic of China, adopted December 29, 1993, revised October 27, 2005] on American and other Western corporation codes” although it will not be expected to produce business entities comparable to those in the U.S.); Jennifer A. Crane, Riding the Tiger: A Comparison of Intellectual Property Rights in the United States and the People’s Republic of China, 7 *Chi.-Kent J. Intell. Prop.* 95, 97 (2008) (calling PRC intellectual property laws “an elaborate United States-inspired intellectual property legal regime without the political and social foundations”); Richard Student, China’s New Anti-Monopoly Law: Addressing Foreign Competitors and Commentators, 17 *Minn. J. Int’l L.* 503 (2008) (comparing China’s first comprehensive antitrust law, the Anti-Monopoly Law, effective August 1, 2008, to provisions of the U.S.’s Sherman Act of 1890); Xian Chu Zhang, The Old Problems, the New Law, and the Developing Market—A Preliminary Examination of the First Securities Law of the People’s Republic of China, 33 *Int’l Law.* 983 (1999) (finding that the regulatory model affirmed by the Securities Law of the People’s Republic of China, effective July 1, 1999 is modeled on securities law of United States).
104. For instance, on Dec. 15-16, 2001, law professors and law school deans from throughout East Asia convened a conference at Renmin University of China School of Law entitled “21st Century Forum for Reforming and Developing the Legal Education in Asia.” About a third of the papers addressed problems of globalization but focused on learning from the U.S. or from East Asian countries that have adopted the U.S. model. The Association of American Law Schools convened the “Chinese and American Law School Deans’ Conference” from Mar. 31-Apr. 2, 2005 at the China University of Political Science and Law during which many PRC law schools expressed their desire to form partnerships with U.S. law schools. Also, on May 19, 2007, TULS hosted the “Tsinghua-Tokyo University Symposium: Reforms of Legal Professional Education in Japan and China. Globalization as a Challenge to Legal Education,” which featured exponents of legal education reform in Japan and China, but the central problem discussed was how to adapt the U.S.-style of law schools to the respective countries.
105. *See* Jacques deLisle, Lex Americana? United States Legal Assistance, American Legal Models, and Legal Change in the Post-Communist World and Beyond, 20 *U. Pa. J. Int’l Econ. L.* 179, 180 (1999) (describing this movement as “the extraordinarily ambitious and multifaceted drive undertaken or supported by U.S. organizations and individuals to transplant laws and legal ideas and to foster legal reform or development abroad”).

work,¹⁰⁶ today, the object is Americanization as globalization itself. Just as the L&D movement encountered a backlash among “dependency” theorists,¹⁰⁷ so, too, in contemporary China, the so-called New Left (*Xin Zuopai*) critique China’s integration into the global capitalist system, via such supranational organizations as the WTO, and supported by legal reforms which evidence American neoliberal influence, as detrimental to the interests of the country and, specifically, the commoner. The New Left is comprised of intellectuals, such as Wang Hui,¹⁰⁸ Han Deqiang,¹⁰⁹ Cui Zhiyuan,¹¹⁰ Wang Shaoguang,¹¹¹ and Gan Yang,¹¹² who come from diverse academic fields but who write to reappraise the concepts of modernity and development and to transcend inveterate binaries such as socialism and capitalism, modern and traditional, and China and the West.¹¹³ They share a common disdain for policies of the PRC government, over the past fifteen years, that promote economic development and embrace globalization at the expense of massive class stratification. Their platform is partly a return to core tenets of communism, partly a reinterpretation of Western social democratic theory, partly a strain of surging nationalism, and part of a more general push-back against globalization in developing countries and the U.S. role in the unipolar world order. These scholars have joined with officials that have formed cliques in certain governmental ministries. Although a minority, they have, in the area of legal reform, stalled the passage of legislation that was deemed as complaisant

106. See Gardner, *supra* note 4; Trubek & Galanter, *supra* note 3.

107. See, e.g., Theotonio Dos Santos, The Structure of Dependence, in Readings in U.S. Imperialism 225 (K.T. Fann & Donald C. Hodges eds., Porter Sargent, Boston, 1971); D. Etounga-Manguelle, Does Africa Need a Cultural Adjustment Program, in Culture Matters 65 (L. Harrison & S. Huntington eds., Basic Books, New York, 2000).

108. Department of Chinese Language and Literature at Tsinghua University. Wang Hui was former editor-in-chief of Dushu.

109. Department of Economics and Management School at Beijing University of Aeronautics and Astronautics. See, e.g., *Quanqiu hua xianjing yu Zhongguo xianshi xuanze* [The Crash—The Global Trap and China’s Realist Choice] (Economic Management Press, 2000) (criticizing “market romanticism,” this book in many ways, prefigures the world economic crisis of 2008).

110. Department of Public Policy and Management at Tsinghua University. See, e.g., *Kanbujian de shou de fanshi de beilun* [The Dilemma of the Invisible Hand Paradigm] (Economic Science Publisher 1999) (arguing that the Washington Consensus asks developing nations to adopt free trade policies while itself promoting “soft budget constraint”).

111. Chair of Department of Government and Political Administration at the Chinese University of Hong Kong. See, e.g., *Tiaozhan shichang shenhua* [Challenging the Myth of the Market] (Plan Publishers, 1997) (critiquing global capitalism on the eve of China’s entry into the WTO).

112. Centre of Asian Studies, University of Hong Kong. Gan Yang conducts research on the political economy of China’s Reforms and liberalism in China.

113. See Kalpana Misra, Neo-Left and Neo-Right in Post-Tiananmen China, 43 *Asian Survey* 717, 727 (2003).

toward the Washington consensus.¹¹⁴ The New Left shares certain intellectual affinities with the Critical Legal Studies (CLS) movement in 1960s America which wrote against U.S. legal imperialism during the L&D movement and the role of the institution of the U.S. law school in reproducing hierarchies abroad and at home.¹¹⁵ There is even collaboration between the first generation CLS and today's New Left.¹¹⁶

My conversations with law faculty at TULS and other leading PRC law schools suggest that while collaboration with U.S. legal experts still confers considerable prestige to Chinese educators, Chinese faculty and administration have much more definitive goals than even a decade ago. Progress has resulted both from the overall development of the field of legal education in China as well as from American experts consciously tailoring projects to meet the needs of Chinese colleagues rather than imposing pre-formed projects that fail to account for local conditions, and differing legal systems and legal cultures.¹¹⁷ A more structural problem, however, is a view that certain legal transplants are prerequisites of a "modern" legal education system. The work of cultural brokers with transnational legal knowledge is crucial to not just localizing such transplants, but, specifically, critically evaluating their adaptation.¹¹⁸ The JM program is one instance of a mis-identified transplant as a kind of global marker of legal modernity but is, in fact, a product of one specific legal system embedded in a tradition of education and political and legal culture that could not differ more than that of the PRC. Instead of the cut-and-paste approach, micro-adaptations that take the form of experimentation, trial and error, hybridization, and continual student feedback, guided by teachers versed in the multiple legal systems, may form the basis of a more constructive dialogue for reform.

114. See Matthew S. Eric, *China's (Post-)Socialist Property Rights Regime: Assessing the Impact of the Property Law on Illegal Land Takings*, 37 H.K. L. J. 919 (2007).

115. See, e.g., Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy: A Polemic against the System* 100 (New York University Press, New York, 2004) ("Legal hierarchy is a typical American phenomenon, rather than something peculiar to law or even to the professions").

116. See, e.g., Zhiyuan Cui & Roberto Mangabeira Unger, *China and World* (forthcoming).

117. Philip Genty, Clinical Professor at Columbia Law School, who worked with the Public Interest Law Initiative in Eastern Europe, believes that, in many instances, the new wave of international projects featuring clinicians fails to account for cultural differences. See Philip M. Genty, *Overcoming Cultural Blindness in International Clinical Collaboration: The Divide Between Civil and Common Law Cultures and its Implication for Clinical Education*, 15 *Clinical L. Rev.* 131 (2008).

118. See generally Pitman B. Potter, *The Chinese Legal System: Globalization and Local Legal Culture* 2 (Routledge, London, 2001) (describing a process of selective adaptation "by which borrowed foreign norms about law and legal inst's have been mediated by local legal culture"); Sida Liu, *Beyond Global Convergence: Conflicts of Legitimacy in a Chinese Lower Court*, 31 *L. & Soc. Inquiry* 75 (2006) (describing the localization of global legal institutions in a lower court in Hebei Province).

Conclusion

United States foreign policy post-9/11 has undermined its status as an exemplar of ROL. At the same time, critics cite the world financial crisis as evidence that neoliberal economics no longer offer a sustainable model for developing nations. No surprise then, that the question lingers as to whether the U.S. model of legal education is the best path to seed ROL abroad. To be sure, the process of adapting that model to the economy outpacing all the rest poses a unique set of problems.

From the perspective of Chinese law students, U.S. legal transplants dressed up as globalization fail to recognize the particular challenges confronting Chinese law students in late reform PRC. Chinese law students face pressures, constraints and decisions that have no analogue in the experience of American JD students. The socialization of Chinese law students occurs within the relationship between Chinese political and legal culture and traditions of education that generate notions of lawyering and its teaching that are markedly different from American law schools. It is little wonder that TULS students themselves are opting out of the law career trajectory. The problem has deeper roots, however, in terms of the lack of rewards, economic incentive, and stability in the profession of lawyering. Although Tsinghua University is exceptional for its close ties to the Party-state, students at TULS are not alone among law students in China in attending law school with a mind to choose a non-lawyer profession, such as becoming a civil servant. Further, in direct conflict with many U.S.-led aspirations, students at TULS demonstrate deep skepticism as to the capacity of lawyers to function as agents of political liberalization. Views of lawyering will change as the legal market matures, but governmental regulation of lawyers suggests change is not forthcoming.

The centralized and top-down approach of introducing new law degree programs, such as the JM, shows that basing such reforms on specious models of the U.S. experience results in unintended consequences. So while the JM is being designed as the main degree for professionalizing PRC lawyers, in fact, the LLM remains a more efficacious vehicle of professionalization. This is particularly true in terms of developing practical skills of legal reasoning, argumentation, and oral advocacy. While the JM program is successful as a revenue-generator for law schools, universities, and local governments, from the perspective of students, in many respects, the JM program is a failed transplant. The program demonstrates that transplantation that is imported based on the U.S. experience is not likely to prepare Chinese law students for the particular challenges they face. It is doubly ironic that more PRC law schools are moving to the JM model as the sole graduate law degree.

At the same time, grassroots legal transplants show greater promise for improving and reforming legal education. Educators who have knowledge across legal systems, jurisdictions, and cultures are breaking new ground with approaches to law teaching, rooted in their experience in working with Chinese students. Such efforts require more attention from scholars and support from funders. Joint PRC-U.S. training programs for Chinese law instructors should

seek to cultivate such approaches. But Chinese law instructors should not be the only objects of improved efforts at legal instruction. While in the past most training programs and international conferences were convened by ROL-promoters from the U.S., recently Chinese legal experts have begun their own practice of instructing lawyers, judges, and law enforcement officials from other (developing) nations through training programs and international conferences.

From the perspective of U.S.-sponsored programs in China and other would-be exporters of legal education to the PRC, greater attention should be given to training and preparing teachers who go to China. ROL projects in China today are less a product of an individual Western agency and more the alchemy of well-intentioned U.S. expertise mixed with Chinese reformers' goal to accumulate global social capital. Nonetheless, in terms of institution reform as a whole, China has a history of grounding foreign institutions in Chinese social practices. China may enter the forefront of legal instruction if it continues to draw upon best practices—such as the German *Übungen* or exercises during which students can apply the principles learned in lectures to cases in smaller groups; in-class mock transactions during which students take on different roles as in certain common law countries; and externships and clinics that are both a product of and responsive toward local conditions. It may be that China can develop hybrid teaching approaches that improve on some of the excesses of U.S. law schools and thus reinstate students as the center of legal education.