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Promoting Social Justice Values and Reflective Legal Practice in Chinese Law Schools*

Brian K. Landsberg**

I want to begin by describing two events that occurred in November 2010. First, in early November, a group of eleven law professors from five Chinese law schools participating in our Rule of Law program to enhance experiential legal education in China spent eleven days on a training visit to Pacific McGeorge School of Law in Sacramento. The visit included observation of clinical, simulation, and doctrinal classes, a visit to federal district court, a trip to Stanford Law School, and continuing discussions about teaching methodology. The visiting professors all gave very high marks to the learning during their stay. For example, one said, “this visit is especially meaningful in my acquisition of a primary understanding of U.S. clinical legal education.”¹ According to another, “I have gained a real understanding of clinical education, developed new ideas on teaching concepts and their implementation, and learned skills that can be applied to practical teaching.”² In response to the question of how the visit would affect their teaching and curriculum, a typical answer was: “Deeply impressed by this visit, I will add the teaching methods that I’ve learned here to my clinical program’s syllabus. And I believe with the improvement in the syllabus, my students will benefit more intensively and extensively.”³

The second event was the death, from brain cancer, of the noted constitutional scholar, Cai Dingjian. Professor Cai was known as a tireless advocate of the rule of law in China: democracy, independent judiciary, and constitutional review.⁴ His death brought an outpouring of eulogies from the academic and legal communities. For example, the Yirenping Centre, an anti-discrimination legal aid group, stated: “We have lost an inspiring teacher, a respected scholar in law, a good friend for the civil community, and a public intellectual who fights for the rights of the less privileged in Chinese society.”⁵

* This essay is adapted from a talk delivered to the Society of American Law Teachers 2010 conference.

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1. Anonymous evaluation of Pac. McGeorge Sch. of Law (on file with author).

2. Anonymous evaluation of Pac. McGeorge Sch. of Law (on file with author).

3. Anonymous evaluation of Pac. McGeorge Sch. of Law (on file with author).

4. *See A Tribute to Pr. Cai Dingjian*, SCIENCESPO (Mar. 5, 2011), <http://sciencespo-globalgovernance.net/node/137>.

5. *Cai Dingjian, 1956-2010*, CHINESE L. PROFESSORS BLOG (Nov. 23, 2010), http://lawprofessors.typepad.com/china_law_prof_blog/2010/11/cai-dingjian-%E8%94%A1%E5%AE%9A%E5%89%91-1956-

Yale Professor Paul Gewirtz said Professor Cai “had a gentle tenacity about all that he did. He was powerfully committed to reform and to justice, had an exceptionally powerful mind, and a bottomless capacity for work. But his warm personality and his personal decency were an inseparable part of what made him so persuasive and effective.”⁶

These two events, the training visit and the death of Cai Dingjian, frame this essay.

The rule of law in China faces many challenges, and there are limits to what we as U.S. law professors can accomplish. Nonetheless, we can help Chinese law schools promote the rule of law, and this can lead to progress. China “stands in transition between the rule of man and the rule of law.”⁷ The transition is not in a straight line, and we cannot expect the Chinese legal system to become a clone of western legal systems. “China is going to continue to go its own way.”⁸

Any effort to build a strong rule of law in China faces at least the following four challenges, which are widely recognized by Chinese and Western scholars: (1) The judiciary has not yet become fully professionalized.⁹ It is marked by corruption in some instances and by interference from the political forces on other occasions;¹⁰ (2) Lawyers are often poorly trained, resulting in spotty professionalism.¹¹ They are subject to intimidation when they take on controversial cases challenging entrenched authority.¹² There is no deep tradition of pro bono work.¹³ Additionally, there are 10,000 people to each lawyer [compared with 258 people to each U.S. lawyer];¹⁴ (3) Law schools have suffered

2010.html.

6. *China Law Center Partner, Professor CAI Dingjian, Passed Away*, YALE L. SCH. (Nov. 24, 2010), <http://www.law.yale.edu/intellecualife/12516.htm>.

7. Huo Xiandan, *Legal Education and the Transformation of the Legal Profession*, in CHINA'S JOURNEY TOWARD THE RULE OF LAW: LEGAL REFORM, 1978-2008, 251, 293 (Cai Dingjian & Wang Chenguang eds., 2010).

8. Donald Clarke, *The Chinese Government's Evolving Relationship with Its Citizens*, CHINESE L. PROFESSORS BLOG (Nov. 15, 2010), http://lawprofessors.typepad.com/china_law_prof_blog/2010/11/the-chinese-governments-evolving-relationship-with-its-citizens.html.

9. See, e.g., Stéphanie Balme, *Ordinary Justice and Popular Constitutionalism in China*, in BUILDING CONSTITUTIONALISM IN CHINA 179, 193 (Stéphanie Balme & Michael W. Dowdle eds., 2009); JIANFU CHEN, CHINESE LAW: CONTEXT AND TRANSFORMATION 679-80 (2008).

10. As to corruption, see Ling Li, *Corruption in China's Courts*, in JUDICIAL INDEPENDENCE IN CHINA: LESSONS FOR GLOBAL RULE OF LAW PROMOTION 196-220 (Randall Peerenboom ed., 2010); as to politicization, see Eva Pils, *Rights Activism in China: The Case of Lawyer Gao Zhisheng*, in BUILDING CONSTITUTIONALISM IN CHINA 243-60 (Stéphanie Balme & Michael W. Dowdle eds., 2009).

11. See Xiandan, *supra* note 7, at 298.

12. See Pils, *supra* note 10, at 243, 252-54 (detailing the treatment of one such lawyer).

13. For example, it was not until the 1980's that lawyers began to volunteer their services to help disadvantaged persons assert their rights. See Lin Lihong, *The Rise of Rights and Protections for the Disadvantaged*, CHINA'S JOURNEY TOWARD THE RULE OF LAW: LEGAL REFORM, 1978-2008, 251, 305 (Cai Dingjian & Wang Chenguang eds., 2010).

14. There are over 130,000 lawyers in China. CHINA'S JOURNEY TOWARD THE RULE OF LAW: LEGAL REFORM, 1978-2008, 32 (Cai Dingjian & Wang Chenguang eds., 2010). The population of China exceeds 1.3 billion, according to the World Bank. World Bank, World Development Indicators, GOOGLE PUB. DATA,

from excessively rapid growth. While there were virtually no law schools in China in 1976, there are now over 600, degrading the quality of instruction, student bodies, and opportunities after graduation.¹⁵ The schools suffer from a rigid curriculum which offers few experiential education opportunities and relies unduly on the lecture method and abstract theory.¹⁶ Those schools that do wish to offer experiential learning suffer from a lack of generally accepted experiential curricular materials.¹⁷ “In terms of course content, methodology, curriculum, course design, establishing educational goals, and the structure of educational programs, there are inconsistencies with the development of rule of law. This is especially the case in understanding the difference between what is taught in schools and what is practiced in society, as well as the difference between possessing pure knowledge and being able to comprehend or synthesize that knowledge”;¹⁸ (4) Civil society has not completely overthrown China’s long tradition of the rule of man.¹⁹ China’s one-party rule tends to create a privileged class that feels threatened by the rule of law.²⁰ China places uncertain limits on speech.²¹ Furthermore, the country continues to suffer from corruption, especially at the provincial and local levels.²² The current system has led to widening

http://www.google.com/publicdata?ds=wb-wdi&met=sp_pop_totl&idim=country:CHN&dl=en&hl=en&q=china+population (last visited Sept. 13, 2011) (type “china population” in search box and click “Search the web”). U.S. *Popclock Projection*, U.S. CENSUS BUREAU, <http://www.census.gov/population/www/popclockus.html> (last visited Mar. 18, 2011) (311 million people in the United States); *Occupational Outlook Handbook 2010-11 Edition*, U.S. DEPT. OF LABOR: BUREAU OF LABOR STATISTICS, <http://www.bls.gov/oco/ocos053.htm> (last visited Sept. 13, 2011) (served by 759,000 lawyers). *But see* Cai Yanmin & J. L. Pottenger, Jr., *The “Chinese Characteristics” of Clinical Legal Education, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* 87, 88 (Frank S. Bloch ed., 2011) (slightly different figures: 8,000 people per lawyer in China and 300 per lawyer in the United States).

15. Wang Chenguang, *From the Rule of Man to the Rule of Law, in CHINA’S JOURNEY TOWARD THE RULE OF LAW: LEGAL REFORM, 1978-2008*, 251, 293 (Cai Dingjian & Wang Chenguang eds., 2010). *supra* note 8, at 1, 33; Xiandan, *supra* note 7, at 269, 283.

16. *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, 126-27 (2005).

17. *See id.* Thus, the most common statement of eleven Chinese clinicians who visited Pacific McGeorge in November 2010 was that they needed more curricular materials. *See* anonymous evaluations of Pac. McGeorge Sch. of Law (on file with author).

18. Chenguang, *supra* note 15, at 33.

19. *Id.* at 1.

20. *See, e.g.*, Jerome A. Cohen, *China’s Hollow ‘Rule of Law’*, CNN (Dec. 31, 2009), <http://www.cnn.com/2009/OPINION/12/31/cohen.china.dissidents/index.html>.

21. CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA, 2008 ANNUAL REPORT 1-2 (2008).

22. Chief Justice Wang Shengjun noted that nearly 800 court officials were punished for violating laws in 2009. For example, Huang Songyou, former vice president of the Supreme People’s Court, was convicted of taking over a half million dollars in bribes from 2005 to 2008. *Top China Judge Bangs Gavel: We Won’t Abide Dirty Officials*, SHANGHAI DAILY, Mar. 12, 2010, at A3.

disparities between the poor and the affluent.²³ The Chinese legal system faces structural weaknesses for enforcement of constitutional rights.²⁴

At the same time, one can realistically recognize opportunities in China: (1) China is blessed with some remarkable human resources.²⁵ Many talented lawyers, judges, educators, and government officials believe in the rule of law.²⁶ They “evince a high degree of hope about the future.”²⁷ Some, such as Cai Dingjian, speak out.²⁸ In addition, many members of the public support the concept of the Rule of Law.²⁹ Beginning ten years ago, the Ford Foundation helped some schools establish clinics and form the Committee of Chinese Clinical Legal Educators (“CCCLE”), which provides potential infrastructure for the clinical movement.³⁰ China has experienced growth in the number and reach of legal aid organizations;³¹ (2) Proponents of the rule of law can rely on stated official policy: the rule of law is often put forth as the policy of the Party and the State.³² There is a superstructure of laws and regulations.³³ The government has exerted effort to professionalize the legal profession, judiciary, and procuratorate;³⁴ (3) Western governments have devoted modest resources to support Rule of Law projects. For example, the U.S. Agency for International

23. Fu Jing, *Urban-Rural Income Gap Widest Since Reform*, CHINA DAILY, http://www.chinadaily.com.cn/china/2010-03/02/content_9521611.htm (last visited Mar. 15, 2010).

24. Cai Dingjian, *Social Transformation and the Development of Constitutionalism*, in CHINA'S JOURNEY TOWARD THE RULE OF LAW: LEGAL REFORM, 1978-2008, 51, 79-80 (Cai Dingjian & Wang Chenguang eds., 2010).

25. *China's Human Resources: Information Office of the State Council of the People's Republic of China*, BEIJING REV. (Sept. 2010), http://www.bjreview.com.cn/document/txt/2010-10/13/content_303463.htm.

26. See Jiang Ping, *China's Rule of Law is in Full Retreat*, CHINESE L. PROFESSORS BLOG (Mar. 2, 2010), <http://lawprofessors.typepad.com/chinaLawProfBlog/2010/03/jiang-ping-chinas-rule-of-law-is-in-full-retreat.html>.

27. Judith A. McMorrow, *Professional Responsibility in an Uncertain Profession: Legal Ethics in China*, 43 AKRON L. REV. 1081, 1094 (2010).

28. See *supra* notes 4-6.

29. Ping, *supra* note 26.

30. See Yanmin & Pottenger, *supra* note 14, at 92-93 (for the history of the first Ford Foundation funded programs at seven Chinese law schools and the beginning of the CCCLE). Yanmin and Pottenger explain that the CCCLE has facilitated the growth of Chinese law school clinics in a variety of ways, including training workshops, program inspections, and preparation of curricular materials. *Id.* at 94.

31. The first legal aid organization in China was established in 1992 at Wuhan University. Lihong, *supra* note 13, at 305. By 2006 there were 3,149 legal aid organizations in China, and in 2007 around 420,000 cases received legal aid. *Id.* at 321.

32. President Hu Jintao expressed commitment to “comprehensively implement the rule of law as a fundamental principle and speed up the building of a socialist country under the rule of law.” See Hu Jintao, *Hu Jintao Report to 17th National Congress of the Communist Party of China*, XINHUANET (Oct. 15, 2007), http://news.xinhuanet.com/english/2007-10/24/content_6938749.htm.

33. See, e.g., Zhu Weijiu, *Towards Governance by Rule of Law*, in CHINA'S JOURNEY TOWARD THE RULE OF LAW: LEGAL REFORM, 1978-2008, 101 (Cai Dingjian & Wang Chenguang eds., 2010).

34. As to lawyers, see Xiandan, *supra* note 7, at 273-82. As to the courts and procuratorate, see *id.* at 271-72; see also Jiang Huiling, *Judicial Reform*, in CHINA'S JOURNEY TOWARD THE RULE OF LAW: LEGAL REFORM, 1978-2008, 199, 207-09 (Cai Dingjian & Wang Chenguang eds., 2010); and see Xiandan, *supra* note 7, at 271-72.

Development currently sponsors four Rule of Law programs in China, aimed at civil society, administrative law, education, and the death penalty.³⁵ What can U.S. law schools do to promote Rule of Law in China? There may be many answers; the following suggestions are based upon the experience gained under the Pacific McGeorge Rule of Law program, which is supported by the U.S. Agency for International Development.³⁶ Many of these suggested steps cost money, so the ability of U.S. law schools to pursue them depends on funding sources: the U.S. Government, private sector, Chinese government or law schools, or the Chinese students and professors.

The Pacific McGeorge program is based on a “Train the Trainers” approach. We train Chinese law professors in U.S. experiential teaching methods that promote professional skills, identity, and ethics.³⁷ Sixty Chinese law professors participated in training workshops in China.³⁸ Feedback from the workshops has been overwhelmingly positive.³⁹ For example, a Chinese participant in our 2008 workshop in Hangzhou made this comment, which is by no means unique: “Through the workshop I basically know why we should push the legal clinic and advocacy class in China, and how to give the class to the law students in China. So I think it was excellent.”⁴⁰ Participants left the workshop agreeing that the program to date is just the beginning and that more needs to be done to promote the Rule of Law initiative.⁴¹ As one advocacy workshop participant noted in evaluating the program: “I hope there can be a long-term and persistent cooperation between the American Law School and Chinese Law School.”⁴²

Since 2007, Pacific McGeorge has also offered an LL.M. in Experiential Law Teaching.⁴³ This year-long program introduces participants to learning theory, methods of teaching simulation courses such as trial and appellate advocacy, negotiation, and mediation, and methods of clinical legal education.⁴⁴ The methodology is learning by doing. While the program is open to all nationalities, most of its graduates have been Chinese. One Chinese professor

35. For example, the U.S. Agency for International Development funds four rule of law programs in China: the Pacific McGeorge program, an American Bar Association program, an Asia Foundation program, and a program at the University of Massachusetts (on file with author).

36. Contract between U.S. Agency for Int’l Dev. and Pac. McGeorge Sch. of Law (on file with author).

37. For the first four years of our program, American University’s Washington College of Law, under the inspired leadership of Elliott Milstein, participated as a key partner in this training, providing invaluable training in clinical legal education methods.

38. Records on file with author.

39. Evaluations of Pac. McGeorge Sch. of Law (on file with author).

40. Anonymous evaluation of Pac. McGeorge Sch. of Law (on file with author).

41. Notes on final debriefing (on file with author).

42. Anonymous evaluation to Pac. McGeorge Sch. of Law (on file with author).

43. Initially called LL.M. in Teaching of Advocacy.

44. *LL.M. in Experiential Law Teaching*, PAC. MCGEORGE SCH. OF LAW, http://www.mcgeorge.edu/Academic_Programs/LLM_and_JSD_Programs/LLM_in_Experiential_Law_Teaching.htm (last visited May 17, 2011).

who completed the course, Luo Wenyan, observed: “For Chinese legal experiential education, the core concept of American experiential education, learning by doing, and the teaching methodologies and techniques, such as simulation, demonstration, role-play, and critique, are really worth being learned from. Wonderful experience!”⁴⁵

In November 2010, we brought eleven Chinese law professors to Pacific McGeorge for a training visit. Like the LL.M. program, the training visit enables the professors to observe U.S.-style legal education in action and to learn from that observation. The LL.M. program offers a richer experience, but the per person cost of the training visit is substantially less. Professor Xu Chen, in his report on his visit to Pacific McGeorge, concluded:

In a sense, we must strengthen the connection between theory and practice, and instruct students to understand the traditional knowledge by attending the clinics. In doing so, we can provide a learning environment for law students. They will learn practical lawyering skills and understand the real world by helping the clients who seek assistance. They will learn the ethic of lawyering and develop their professional identity as a future attorney. As far as I think, the most important value of legal clinical education is to teach them to commiserate with poor people and take the responsibility for them, besides earning the money. In a faculty-supervised, law office setting, law students will face a variety of legal and moral challenges, so they must think and adjust their behaviors accordingly.⁴⁶

Chinese law professors have noted a need for experiential teaching materials.⁴⁷ Our program has endeavored, with some success, to assist Chinese legal educators in the development of suitable materials. Program participants have already published three books of teaching materials, and more are in progress.⁴⁸ Similarly, there is a need for research and writing about the role of the legal profession, including ethics, representation of the disadvantaged, legal aid, and pedagogy in law schools. Program participants have written several articles published in both Chinese and U.S. journals. The China University of Political Science and Law, one of our original Chinese partners in the program, is starting two journals: one on experiential legal education and the other on clinical legal education.

45. E-mail from Luo Wenyan to author (Feb. 8, 2010) (on file with author).

46. Professor Xu Chen report (on file with author).

47. Notes on final debriefing (on file with author).

48. BRIAN LANDSBERG, REPRESENTING CLIENTS: SIMULATION CASE FILES FOR LEGAL EDUCATION (Luo Wenyan & Brian Landsberg eds., 2008); COMPREHENSIVE PRACTICE OF LEGAL SKILLS (Luo Wenyan & Liu Jianming eds., 2009); HONGQING TENG & CHANGXING LIU, ACCESS TO JUSTICE: CLINICAL LEGAL EDUCATION (2010).

The above efforts have created a multiplier effect in two ways. First, Chinese professors who have completed our programs are providing experiential legal education to hundreds of Chinese law students each year.⁴⁹ Second, the most talented and experienced Chinese professors have become trainers themselves.⁵⁰ This lessens cost and, more importantly, provides a Chinese face to the program as well as a promise of long-term sustainability.

Finally, four Pacific McGeorge professors have offered classes to Chinese students directly, in three Chinese law schools, and, like many U.S. law schools, we have also enrolled Chinese students in J.D. and LL.M. classes. These efforts do not have the same multiplier effect as the Train the Trainers program, but they do help legitimize, in the minds of Chinese law students, the use of experiential legal education in Chinese law schools.

Note that these steps focus on method, rather than on substantive law. Inherent in what we teach is a process-oriented approach to law, which should promote the rule of law. However, we do not directly attempt to influence Chinese legal educators to follow U.S. substantive ideology because methods that reflect Chinese culture and values are more likely to succeed. Furthermore, we want to avoid feeding the image of the imperialist American; we can succeed only as long as we have credibility.

What is the payoff from such efforts? First, we have helped create a group of Chinese law professors who can train other Chinese faculty in experiential teaching methods. The multiplier effect of the program has enabled a growing number of Chinese law faculty to open clinics and simulation classes and to use experiential methods in doctrinal classes. For example, at the China University of Political Science and Technology, Yu Guodan and others formed a new juvenile clinic, with almost fifty students. Dong Jingbo teaches a new advocacy class and also coached an advocacy team that won first place in a national competition.⁵¹

Efforts such as ours help enhance the legitimacy of the clinical legal education movement in China by showing faculty that it is a serious academic activity, with strong andragogical bases in learning theory, which deepens student understanding of doctrinal courses. In turn, the program has resulted in stronger representation of disadvantaged persons, both by the clinics and by producing a new generation of lawyers who have been trained in professional values, including the importance of providing pro bono work.

49. Reports from participating Chinese law schools to Pac. McGeorge Sch. of Law (on file with author).

50. Luo Wenyan, Liu Jianming, Hu Minfei from Zhejiang Gongshang University, Xu Shenjian, Dong Jingbo, and Li Chao from China University of Political Science and Law, and Zhou Shiwen and Teng Hongqing from South China University of Technology have all taught in one or more of our programs in Harbin, Wuhan, and Chengdu. See *Experiential Education in China: Workshop Training Materials*, PAC. MCGEORGE SCH. OF LAW, http://www.mcgeorge.edu/Experiential_Education_in_China/Workshop_Training_Materials.htm (last visited Mar. 18, 2011) (program materials).

51. E-mail from Yu Guodan to author (Dec. 8, 2010) (on file with author); E-mail from Dong Jingbo to Ly Lee (Feb. 28, 2011) (on file with author).

In the words of one Chinese legal educator: “Talented legal professionals are the resource that makes building a democratic and lawful government possible.”⁵²

52. Xiandan, *supra* note 7, at 285.