

REFLECTIONS ON THE EVOLUTION OF LAW AND LEGAL EDUCATION IN CHINA AND VIETNAM

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A little more than twenty-five years ago, Professor Richard Bilder and I had a series of discussions with students interested in establishing an international law journal. Although I recollect that we had reservations about the sustainability of a journal specialized in international law, Professor Bilder and I were moved by the enthusiasm of the students to support the creation of the Wisconsin International Law Journal (WILJ). After gaining the approval of the full faculty, the journal was formally established and the first issue was published in 1982. From a simple beginning with a single issue of 150 pages in the first year, the journal has grown to four issues and more than 1000 pages, and has become well recognized as an important voice in international legal scholarship. As the journal's co-advisor (with Professor Richard Bilder) for the first eighteen years of its existence, I can say with certainty that the success of the journal is due to the hard work and enduring commitment of the many Wisconsin students who have served on the journal's board over the last twenty-five years. Based on my experience, the role of the faculty advisors was quite minimal as the students made certain that their status as a "student-run" journal was not jeopardized by anything other than sporadic faculty intervention.

The students of WILJ deserve a hearty congratulations for developing the journal into a major resource in contemporary international law. The journal's existence enhances the Law School's image throughout the national and international legal community and the Law School community should be pleased.

But rather than dwell on the considerable achievements of the WILJ students, I would like to turn to a parallel development of considerable significance that has occurred without much notice over the last twenty-five years: the increased role of law in China and Vietnam.

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What follows is not a thorough empirical examination of the role of law and legal education in China and Vietnam, but a review of developments as I have witnessed them in my work with these two countries.

The role of law and the stature of legal education vary considerably over the East Asian region.¹ Law and legal education are non-existent or stagnant in Cambodia, Laos, Myanmar, North Korea, and the Philippines. Among the more developed economies of Japan, Hong Kong, Singapore, South Korea, Taiwan, and Thailand, law and legal education have changed, but the changes have been relatively small and incremental.² The one notable exception is the Japanese reforms of legal education, which began in 2004 with the wholesale adoption of what was characterized as American-style legal education.³ Unfortunately, what started as an effort to emulate the top-tier law schools in the United States was implemented so that the current system of Japanese legal education puts enormous emphasis on passing the national bar exam. Consequently, Japanese law schools now more closely resemble bottom-tier U.S. law schools, which are essentially cram schools for the U.S. bar exams. So, among the more developed economies of East Asia, the one major effort at reforming law or legal education has been a disappointment to many of its proponents.⁴

China and Vietnam are two countries where law and legal education have experienced a sea change over the last twenty-five years, with continuing rapid evolution very probable over the next decade and perhaps beyond. It appears that during the last twenty years, law and legal education in China and Vietnam have gone from being of no consequence to being recognized as important elements in each country's efforts to transform itself into a prosperous, market-oriented economy. The pace of change in the role of law has differed in China and Vietnam,

¹ Within the Law School's East Asian Legal Studies Center, the term "East Asia" is interpreted in its geographic sense to include both Northeast and Southeast Asia.

² See generally 24 WIS. INT'L. L.J. 1-423 (2006) (devoted to the papers presented at the International Conference on Legal Education Reform in Taipei, Taiwan on September 16 and 17, 2005).

³ In April 2004, sixty-eight Japanese law schools, modeled somewhat after their American counterparts, began operation. Masako Kamiya, *Structural and Institutional Arrangements of Legal Education: Japan*, 24 WIS. INT'L. L.J. 153, 155 n.13 (2006). They admitted 5,767 students into either a two- or three-year program, depending on whether the students possessed undergraduate degrees in law. *Id.* In April 2005, six more schools opened and a total of 5,544 new students were admitted. *Id.*

⁴ See generally Takahiro Saito, *The Tragedy of Japanese Legal Education: Japanese "American" Law Schools*, 24 WIS. INT'L. L.J. 197 (2006) (providing an example of the criticisms directed against the most recent reforms in Japanese legal education).

with China making an earlier movement to introduce a more rule-based system into commercial transactions. More recently, however, Vietnam's enthusiasm for market-based reforms and rule of law has accelerated so that the pace of change in Vietnam now may exceed what is occurring in China. So, my impression is that while the important role of law and legal education is fairly well recognized in China's more prosperous regions and Vietnam still lags behind China, the gap between the two is closing.

My conclusions are twofold. First, the growing importance of law and legal education in China and Vietnam suggest that the transition to a market-based economy is becoming more firmly entrenched in both countries. These are good indicators for the people of China and Vietnam because it means they will enjoy more economic freedom and almost certainly a more prosperous environment. These also are good indicators for the international business community because they allow easier access to more open and transparent markets. In addition, for those who see a connection between economic freedom and political freedoms, the increased significance of law and legal education should be taken as heartening signs for the political futures of both countries.

The second conclusion relates to the legal services markets in East Asia. While American lawyers and American law schools have dominated the East Asian markets for legal services and legal education, we should be mindful of what is happening in China and, to a lesser extent, Vietnam. Throughout the East Asian region, the rule of law rhetoric may significantly exceed its substance, but it would be shortsighted to dismiss the changes that are occurring in the region as being of no consequence to U.S. lawyers and legal educators. American legal education is losing its allure to Chinese and other East Asian students as Chinese and other East Asian lawyers are on their way to challenging American preeminence in legal services. Vietnam is still in the process of playing catch-up in the area of legal services, but Vietnamese energy and enthusiasm for law reform suggest that the country and its legal services industry will join the mainstream of East Asia more quickly than might be expected. I should quickly add that China, Vietnam, and East Asia are not the only sources of potential competition for the American legal services market, but I have limited my comments to East Asia because that has been my principal travel destination over the last twenty-five years.

I. LAW AS OF LITTLE CONSEQUENCE

A. CHINA

In the late 1970s, as China emerged from the disasters of the Cultural Revolution, Deng Xiaoping introduced a tectonic shift in policy. The new policy of “Socialism with Chinese characteristics” translated into market-oriented economic policies under the control of the Communist Party—in other words, economic liberalism with political statism. This shift to more market-oriented principles began with small, tentative steps and was almost killed along with the protesters in Tiananmen Square in 1989. As a consequence, even into the mid-1990s, law and legal education were not recognized as important components in the move towards a market-based economy.

In the mid-1990s, there were about 84,000 lawyers, 175 law schools or law departments, and about 25,000 to 30,000 students studying law in China.⁵ Apart from the few lawyers who were trained outside of China, however, most of the lawyers in China either lacked formal training, or the training they did receive was very abstract, heavily steeped in communist dogma, and not at all useful in assisting the transition to an outward looking, market-oriented economy. The opportunities for lawyers were also relatively few and they were very poorly paid. I recollect that many of the lawyers in the mid-1990s doubled as law professors, and their compensation from both sources was meager. The lack of legal job opportunities in China and the low level of compensation were two significant reasons why many Chinese law students made great efforts to remain in the United States after they completed their U.S legal training.

The Chinese judiciary was in much the same condition. In the early 1990s, there were about 140,000 judges, but only 10,000 had degrees in law.⁶ Many of the judges were retired army officers with no

⁵ Jianshe Tian & Jialin Xu, *Shi Yi Jie San Zhong Quan Hui Yi Lai Woguo Gaodeng Faxue Jiaoyu Shiye Yi Pie* [A Glimpse of China's Higher Education in Law Since the Third Plenary Session of the Eleventh CPC Central Committee Meeting in 1978], CHINA LAWS (June 29, 2006), available at http://www.lawbase.com.cn/law_learning/lawbase_@1661.htm; see State Council Information Office of the People's Republic of China, *Zhongguo Renquan Shiye de Fazhan* [Progress in China's Human Rights] (Nov. 1995), http://www.gov.cn/zwqk/2005-05/25/content_700.htm (last visited Mar. 17, 2007).

⁶ See Jianan Guo et al., U.S. Dep't of Justice, Bureau of Justice Statistics, *World Factbook of Criminal Justice Systems: China*, Judicial System, <http://www.ojp.usdoj.gov/bjs/pub/ascii/>

formal legal training and sometimes little or no formal education. The Chinese judiciary, even among themselves, was widely regarded as corrupt, inept, and almost totally lacking in independence.

The low status of law and lawyers in China was reflected in the lack of attention and resources available for legal education, which was treated like the stepchild of higher education. Even today, libraries of all sorts tend to be quite nominal throughout East Asia, but in the 1990s the law libraries of China's major universities were small, dingy, in bad repair, and with largely empty shelves. On seeing law libraries at Chinese universities, I remember thinking that I had more books in my office than the entire holdings of many of the university law libraries. I also remember thinking that it was not just the number of books that was lacking, but the quality as well: in the foreign language section of many libraries I visited, much of the section on foreign law consisted of out-of-date treatises and digests. In addition, the ancillary services, such as telephones, copy machines, and even elevators to upper floors were either non-existent or broken.

The facilities available for legal education were not much better. Classrooms typically were poorly lit and drafty in the winter and suffocating in the summer. The chairs and desks for students and faculty were well beyond their useful lives, and chalkboards, if they existed at all, were so rough that it was difficult to make a clear impression on them (assuming there was chalk available). I remember giving a lecture in China on a cold morning in February. The classroom was so cold that all of us could see our breath, and I joked to myself that the students remained alert not because of what I was saying but out of fear of succumbing to hypothermia.

This occurred in the first half of the 1990s, before the widespread use of e-mail and easy access to the Internet. Within the more industrialized countries in North America and Asia, the preferred form of communication on legal issues was by fax. But law schools in China frequently did not have fax machines, which made communications very problematic. At one point, when the University of Wisconsin Law School was working with a Taiwanese law firm to put on a professional training program at a Chinese university, the absence of a fax machine at the Chinese university became such a serious barrier to

wfbjchi.txt (last visited Mar. 16, 2007); Sohu.com, *Faguan Zhenti Suzhi Tigao Benke Xueli Zhe Sheng Zhi 51.6%* [Overall Quality of Judges Improved: 51.6% Now have Undergraduate Degrees] (July 18, 2005), <http://news.sohu.com/20050718/n226343956.shtml>.

effective communication that the Taiwanese firm donated one to the law department of the Chinese university.⁷

B. VIETNAM

However dismal the state of law and legal education was in China in the mid-1990s, in Vietnam it was much worse. The Vietnamese Communist Party introduced the policy of *doi moi* in the second half of the 1980s. *Doi moi*, which literally means “change and newness,”⁸ was the policy base for a transition from the command economy to a market-oriented economy “with socialist direction.”⁹ As in China, the transition started slowly and the role of law in the transitional process was notable for its naiveté and roughness. A major problem was that so few Vietnamese were conversant with the basic elements of a market economy.¹⁰ Until the advent of *doi moi*, higher education in Vietnam certainly had no room for market economics and trade theories, and those Vietnamese who studied abroad were predominantly located in the Soviet Union or East Germany where the curricula were especially short on market-oriented economics.

Even into the 1990s, in Vietnam, “capitalism” was regarded as a bad word and foreigners were warned not to mention it generally and for certain not to associate it in any way with the Vietnamese *doi moi* reforms aimed at market socialism. An additional problem in the Vietnamese context was that the Vietnamese law reforms were envisioned as having the dual functions of supporting the transition to a “socialist market economy” and concurrently sustaining the dominance of the Vietnamese Communist Party, with the emphasis on the latter over the former when the two functions appeared to be in conflict.

At the beginning of *doi moi* and continuing into the 1990s, there were only a few lawyers in Vietnam, and those I met often had no formal legal training. Instead, people acting as lawyers, such as the general counsel for state-owned enterprises, commonly had been educated as engineers or scientists with their legal skills acquired through on-the-job training. In the early days of Vietnam’s reforms, there were only a

⁷ The law firm making the donation was Lee and Li, which is based in Taipei.

⁸ Thayer Watkins, San José State University, *The Political and Economic History of Vietnam*, www.sjsu.edu/faculty/watkins/vietnam.htm#DOIMOI (last visited Feb. 12, 2007).

⁹ *Id.*

¹⁰ See Mark Sidel, *Law Reform in Vietnam: The Complex Transition from Socialism and Soviet Models in Legal Scholarship and Training*, 11 UCLA PAC. BASIN L.J. 221, 223-28 (1993).

handful of institutions offering legal education, and the educational programs could only be described as somewhat less than the basics necessary to support an economy in transition.¹¹ I remember visiting the major Vietnamese “law schools” in the early 1990s in both Hanoi and Ho Chi Minh City and I was astonished at what I saw. The law school facilities were small: one or two rooms, dirty, and lacking in even such basics as chairs and desks. Law libraries were largely nonexistent. The courtyards were filled with weeds and the hallways cluttered with trash. I could not imagine how any law school class could be conducted in such circumstances, and I knew for certain that most American law school professors would quickly give up in despair. My tour of Vietnamese law school facilities in the early 1990s led me to the conclusion that there was simply nothing for the University of Wisconsin Law School to cooperate with. Legal education was at such a low level in Vietnam that we could not possibly be of any meaningful assistance. As a consequence of my pessimistic review, I did not return to Vietnam until well after the turn of the millennium.

II. THE AWAKENING

A. CHINA

Sometime in the late 1990s, it became apparent to both major policy makers and college students that law would play an important role in China’s transition to a market economy. At that time, legal training became a valuable commodity within government service, including within the judiciary where, since 1995, a legal education was required for new judges. At about the same time, law became recognized as a potentially lucrative career, especially in providing services to China’s burgeoning private sector. Some lawyers in China’s coastal regions and Beijing, although maybe only a few, were quietly rumored to be making millions of dollars in fees. It also was at this time that I began to observe real improvements in the physical infrastructures available to law departments. Where before law departments had only meager resources, in the late 1990s the physical environment of legal education began to

¹¹ See *id.* at 225.

improve with new buildings, renovated classrooms, some improvements in the libraries, and modern telecommunications equipment.

China's entry into the WTO in December 2001 accelerated the attention to rule-based reforms and added an international dimension to what had previously been a largely internal reform within China. With the addition of a large number of WTO obligations onto the complex and multi-jurisdictional legal environment affecting commercial transactions, coupled with the rapid increase in the relative importance of international trade and China's private sector, a significant premium was available for those who could provide legal advice to assist domestic and foreign enterprises in their struggles to gain market share and increased profitability. At about the time of China's accession to the WTO, China came into prominent view as the land of opportunity for the legal services industry.

Today, lawyers are widely recognized as indispensable cogs in an increasingly privatized and market-oriented Chinese economy. The number of lawyers in China has increased from 80,000 in the mid-1990s to more than 120,000.¹² Even though lawyers today have a much more relevant education than they did a decade ago, the government has recognized that 120,000 lawyers is still far below what is needed to transform China to a modern, market-oriented economy. As a consequence, the government's policy is to further increase their number in China.¹³

The increased recognition of the importance of lawyers and the government's policy of increasing the number of lawyers are putting pressure on the Chinese system of legal education, and higher education is responding. There now are close to six hundred law schools or law departments in China, with three hundred thousand students studying law.¹⁴ Law is increasingly recognized as a high-status profession that offers remarkable opportunities for financial gain or political influence.

¹² China State Council Information Office, White Paper, 2004 Nian Zhongguo RenQuan shiye de Fazhan [Progress in China's Human Rights Cause in 2004], May 19, 2005, <http://theory.cqnews.net/system/2005/05/19/000478182.shtml>; Xuhui Chen, *Zhong guo lushi Wang ye de Gaikuang* [Survey of the Chinese Legal Profession], Mar. 20, 2006, http://www.cdd.cn/homepage/article_show.asp?id=67325&m_id=41512.

¹³ Chen, *supra* note 12.

¹⁴ Xianyi Zeng, Zhong guo Renmih Daxie Fa Xue Yuan Minyu Yuanzhang Zeng Xianyi Jiaoshou Zhici [Speech by Professor Xianyi Zeng, Honorary Dean of the Chinese People's University Law School], <http://www.law.ruc.edu.cn/Article/ShowArticle.asp?ArticleID=4070> (last visited Aug. 8, 2007).

On a personal level, I have witnessed the growing importance of law in China in three specific ways. First, the United States and other Western countries are no longer recognized as the only places where it is possible to get a relevant, rigorous legal education. China itself has raised the quality of its legal education such that the undergraduate and graduate law students obtain a good foundation for work in the government or the private sector of a market-oriented economy. Graduate training outside of China, which used to be indispensable to a career in international business law or a high-level position in government policy making, has become like a topping on an already rich dessert: it's a nice addition, but it is no longer absolutely essential.

The second indicator of the growing importance and attractiveness of the Chinese legal services market is the increased willingness of the Chinese law graduates to return home after completing their graduate legal studies in the United States. While the U.S. legal services market is highly competitive and saturated with talent, the opportunities for Chinese lawyers are growing exponentially. Good jobs are available in the major cities of Beijing and Shanghai, but it appears to me that the really attractive opportunities are in the industrially prosperous but legally underserved areas, such as Wenzhou, Qingdao, Nanning, and Hangzhou. Trained Chinese lawyers now have many more opportunities in China than they did in the past, and this appears to be increasingly recognized among the Chinese graduates of U.S. law schools.

The third indicator of the maturing of the Chinese legal market is the increased respect offered to the Chinese judiciary. The number of judges in China has grown from about 140,000 in the early 1990s to 220,000 by 2005.¹⁵ Almost invariably, the new judges also are better trained than their predecessors—in 1995, only ten thousand of the 140,000 judges had a legal education, but by 2005, this had increased to ninety thousand. In addition, since 1995 judicial candidates have been required to have a legal education, and, for existing judges, the Chinese government is devoting considerable resources and allowing more releases for professional training. Each year, for example, the University

¹⁵ Xiaosuo Zhao, *Zong guo Faguan Edu Taolun* [Discussion on the [Appropriate] Number of Judges in China], RENMIN LUNTAN [PEOPLE'S FORUM] (2005), <http://people.com.cn/GB/paper85/15907/1406054.html> (last visited Aug. 8, 2007); Wenpin Shanggu ≠ Shuiping Tigao, *Faguan Peisun Bu Neng Zhi Ben Zhe Wenping Qu* [Diploma ≠ Quality. Judges' Training Should Not be Geared Toward Diploma Only], XIN HUA NEWS NET, Mar. 11, 2004, http://news.xinhuanet.com/newscenter/2004-03/11/content_1360136.htm.

of Wisconsin Law School has joined the Shanghai High People's Court in hosting the Seminar on Judicial Skills Training. The Shanghai component of the seminar involves several weeks of English language training followed by one week of intensive lectures and discussion sessions with U.S. judges and law professors. The Shanghai component is followed by three weeks in the United States, principally in Madison but also typically with visits to courtrooms in Minneapolis/St. Paul and/or Chicago. The Seminar on Judicial Skills Training is complemented with the Advanced Judicial Training Seminar under which two Shanghai judges participate in classes at the University of Wisconsin Law School and observe the U.S. judiciary in action over the course of an academic semester.

B. VIETNAM

Law and legal education in Vietnam still are considerably underdeveloped; but in recent years, and now with Vietnam's accession to the WTO on January 11, 2007,¹⁶ the Vietnamese are paying much more attention to the role of law and lawyers in facilitating the transition to a market-oriented economy. There are only about four thousand lawyers in Vietnam, and only a little more than ten institutions offer some form of law training,¹⁷ but legal education has become a very popular undergraduate major and the base for graduate degrees. In fact, law has become so popular that the demand for classroom space is straining the resources of the Vietnamese institutions offering legal education. In February 2007, I participated in a conference on international trade law in Vung Tau, Vietnam. As I had to leave the conference early to catch a flight, a car was arranged to leave on a Saturday evening for the three-hour return trip to Ho Chi Minh City. I shared the car with a young academic who was returning to the city to teach his class at six in the morning the next day. He explained that his teaching schedule was not the worst—some courses started even earlier and they continued on late into the night, seven days a week. He said the extended classroom hours were necessary because of the enormous number of students now seeking a legal education.

¹⁶ See World Trade Organization, Viet Nam to Join WTO on 11 January 2007 (Dec. 12, 2006), www.wto.org/english/news_e/news06_e/acc_vietnam_12dec06_e.htm.

¹⁷ See *Teaching Law in Vietnam*, VIETNAMNET BRIDGE, Dec. 28, 2007, <http://english.vietnamnet.vn/education/2006/12/648370>.

I also have witnessed an explosion of interest in international legal cooperation among the Vietnamese universities. As mentioned earlier, when I visited Vietnam in the early 1990s, I was struck by the underdeveloped state of Vietnamese legal education, and I felt that there were no Vietnamese counterparts with which we could work effectively. In 2002, when I again visited some of the Vietnamese law schools, I found some interest in what the University of Wisconsin Law School might offer in terms of international cooperation, but the interest was not overwhelming. By 2006 and 2007, the attitude towards international legal cooperation had changed dramatically. Now, as best I can tell, almost without exception, the law departments of universities and government agencies are exceptionally enthusiastic about the possibility of working with us. In just a few years, the problem in Vietnam has shifted from locating suitably enthusiastic partners to choosing among multiple possibilities without offending those not chosen.

It is true that the Vietnamese resources available for legal education are still quite meager, especially in contrast to China. The opportunities for overseas degree and non-degree training are almost all funded with grants from foreign governments and NGOs. A reasonably affluent middle class with an interest in overseas training is not yet a factor affecting legal training in the United States. But per capita incomes are growing quickly in Vietnam and law is increasingly recognized as a central component in the country's future growth prospects, so I expect that interest in legal studies will continue to expand and that soon the expansion will include an international, self-financed dimension.

III. CONCLUSIONS

As indicated at the beginning of this Article, I have two concluding observations. First, the centralized role of law and legal education in China and Vietnam should be recognized as positive indicators in their transition to more market-oriented economies. The entrenched position of law suggests that the shift towards economic openness and greater reliance on market mechanisms will continue at a rapid pace. In addition, for those who see a connection between economic and political freedoms, the increased significance of law and legal education should be taken as heartening signs for the political futures of both countries.

The second conclusion is that the growing sophistication of the legal services market in China and eventually in Vietnam will mean a more competitive environment for U.S. lawyers and legal educators. There will be a significant premium for lawyers and legal educators who are creative and relevant in the rapidly changing economic and political environment of the Pacific Basin. In the past, the winners were predominantly Americans, but that predominance is going to be seriously challenged in the years just ahead.