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ETHICAL TRAINING FOR LAW STUDENTS IN CHINA: LESSONS FROM OVERSEAS COUNTRIES

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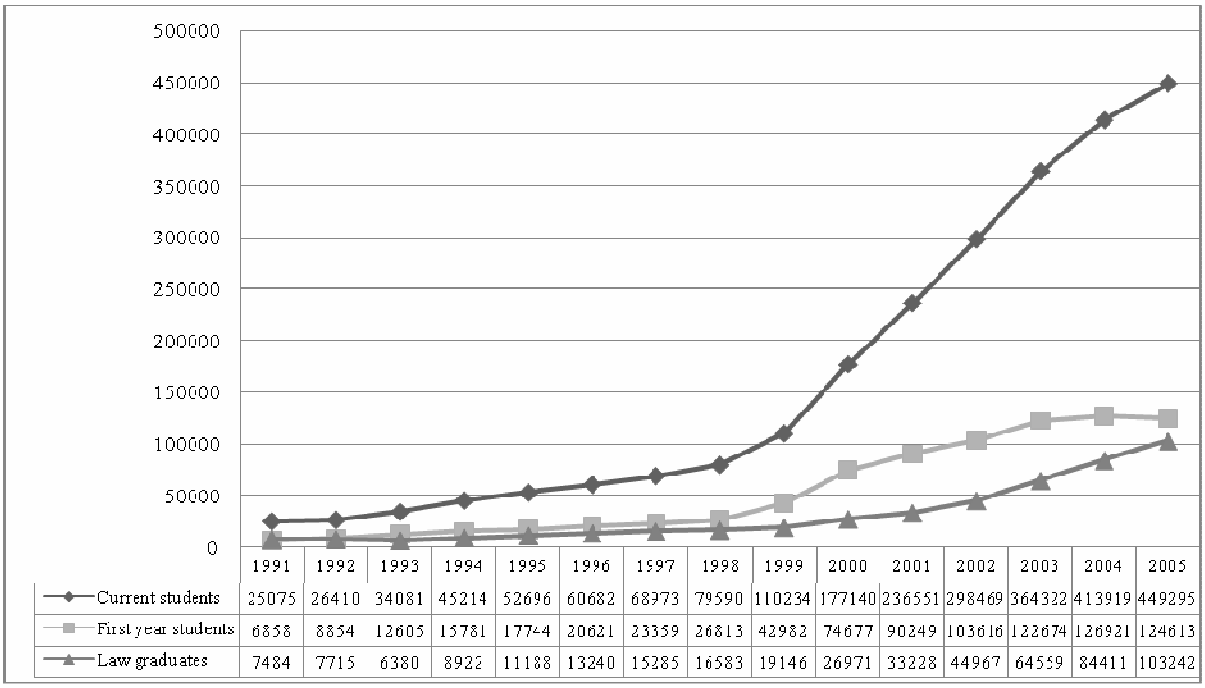
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Abstract: Ethical training for law students is commonly known as legal ethics education. In the past three decades, there has been a growing awareness of the importance of legal ethics education in many overseas countries. After outlining the evolution of law schools in China, this article evaluates the development of legal ethics education in overseas law schools before and the lessons that can be learned from such experience for legal ethics education in Chinese law schools.

Keywords: ethical training, legal ethics education, Chinese law schools

Introduction

In the past three decades, law schools in China have experienced phenomenal growth. In 1976, there were only four law schools, but by 1989 the number had increased dramatically to 62. By 1999 it had reached 183 and by 2005 there were 559 (Zhu, 2007, p. 40-42). The rapid growth of law students in the past three decades is illustrated in the following diagram:



	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Current students	25075	26410	34081	45214	52696	60682	68973	79590	110234	177140	236551	298469	364322	413919	449295
First year students	6858	8854	12605	15781	17744	20621	23359	26813	42982	74677	90249	103616	122674	126921	124613
Law graduates	7484	7715	6380	8922	11188	13240	15285	16583	19146	26971	33228	44967	64559	84411	103242

Figure 1. Change in number of law students in Chinese law schools

In spite of their phenomenal growth, law schools in China have not been free from criticism. For example, Ma pointed out that within the school curricula legal ethics was not a compulsory subject (Ma, 2006, p. 256). However, in recent years, in order to strengthen the teaching of legal ethics, nine schools introduced clinical legal education in September 2000 based on the American model. Liu argued that clinical legal

education complemented traditional legal education in training future lawyers (Liu, 2004). Equally, Pan identified improvement of the ethical standard of students as one important goal of clinical legal education in China (Pan, 2006, p. 376-403).

In recent years, the importance of legal ethics education has been increasingly recognised in developing the rule of law and reforming the judiciary in China. Qin has drawn attention to the situation in most other developed countries in the Western world, where courses on judicial ethics or legal ethics are compulsory in their law school curricula. Yet in Chinese law schools, there is no similar mandatory course in the curricula. He saw this as a 'fatal deficiency' in the Chinese legal education system (Qin, 2007, p. 58-61). Clearly, China is now gradually embracing a vision of legal ethics education that is rooted in the common law and liberal democratic system.

As a result, clinical legal education is now adopted for legal ethics education in Chinese law schools, but there is room for the strengthening of future curriculum reforms in such training. In this regard, Chinese law schools should continue to monitor overseas experiences to see what can be learned, particularly as legal ethics education has become a topic of global concern.

United States

In the United States, the Watergate scandal in the early 1970s marked the beginning of a new era for legal ethics education. The large number of lawyers involved in the scandal seriously undermined public confidence in the legal profession (Pearce, 1998, p. 719). In response, the American Bar Association ('ABA') mandated the teaching of legal ethics (or more commonly called Professional Responsibility) in all ABA-accredited law schools. As a result, since the late 1970s, all American law students intending to practice law have had to take a compulsory course in legal ethics followed by a bar examination. To some people, this new emphasis on legal ethics has exemplified a 'post-Watergate morality' (Rotunda, 2000, p. 661).

During the 1980s, the American Bar Association continued its efforts to promote legal ethics.[1] Then in 1992, a Task Force of the ABA Section of Legal Education and Admissions to the Bar comprising lawyers, judges, law school deans and professors, published the 'MacCrate Report'. The report set out 'the Fundamental Values of the Profession', one of which was 'recognizing and resolving ethical dilemmas' (MacCrate Report, 1992, p. 140).

Consequently over the past three decades, a body of literature has been developed on legal ethics education. For example, Morgan advocated the use of the problem method (Morgan, 1998, p. 409). Under this approach, law students are provided with 'realistic' patterns of facts which are different in detail and complexity. They are then required to advise on the decisions likely to be reached by courts (Ogden, 1984, p. 654). Others adhered to traditional lecturing methods, but with some innovations, such as Brown who advocated a 'modified traditionalist approach'. His innovations included the use of movie clips, group assignments and volunteering services to underprivileged members of the society (Brown, 2007, p. 1119).

In contrast, Moliterno advocated a 'comprehensive skill development' approach. He designed a course in which legal ethics was not taught as a 'side topic' but rather, 'built around the core demands of teaching ethics'. The distinguishing features of his program consist of 'experiential exposure' to ethical issues; role models provided by law professors; diverse sources of legal ethics materials; classroom discussions and written assignments; process for disciplinary actions; role playing of clients; and 'comprehensive'

simulation of client service (Moliterno, 1990, p. 145). In addition, Moliterno advocated the integration of skill and ethics teaching with clinical legal education, which would result in experiential programs combining legal ethics, skills and substantive law with an externship component (Moliterno, 1996, p. 68).

In a similar vein, Cramston and Koniak promoted the three elements of 'rules, story and commitment' necessary for good legal ethics teaching. In their scheme, 'rules' mean the legal rules, 'stories' refer to the contexts in which a better understanding of those rules can be achieved, while 'commitment' includes those core values and principles that inspire the profession (Cramston & Koniak, 1997, p. 145).

Green also advocated a 'contextual' approach (Green, 1998, p. 357). This means the placement of teaching within the reality of a small number of contexts, rather than across the whole spectrum of legal practice in order to allow students to acquire 'skills, concepts and processes necessary to recognize and resolve ethical dilemmas' (MacCrate Report, 1992). Green claims three advantages of such a 'contextual' approach. Firstly, it provides more realistic scenarios of ethics problems. Secondly, it enables students to spend more time on 'core' issues of legal ethics. Thirdly, it alleviates students' resistance towards the 'compulsory' nature of the legal ethics course (Green, 1998).

In contrast, Rhode advocated a 'pervasive' method whereby legal ethics should be taught both as 'a course in its own right' and legal issues addressed throughout the curriculum as they arose in all substantial areas of law (Rhode, 1992, p. 31). Moreover, she suggested that law professors should always include discussion of ethical issues in their own areas of expertise. What is more, law schools should provide electives in legal ethics under different areas of substantive law so that students could choose on the basis of their future intended fields of practice (Rhode, 2007, p. 1043).

Finally, certain American legal academics focus on teaching students how to perceive ethical dilemmas within an 'experiential learning environment' so as to promote students' moral development.[2] Luban and Millenmann asserted that clinical legal education was the best way to teach legal ethics with elements of moral judgment incorporated (Lubman & Millenmann, 1995, p. 31). Shaffer also advocated the use of clinical education in providing an experiential environment to foster moral dialogues (Shaffer, 1996). In contrast, Hartwell advocated the use of 'out-of-class attorney-client simulations' to advance moral development of students (Hartwell, 1995).

In summary, within the spectrum of legal ethics education among American legal academics, there are those scholars at one end who focus on the teaching of rules, while some in the middle of the spectrum advocate the teaching of rules in context; at the other end, there are those who concentrate on the moral development of their students. As we see earlier in this paper, clinical legal education akin to the American model has now become a popular methodology adopted by Chinese law schools in teaching legal ethics.

Australia

Before the 1990s, legal ethics was not part of the undergraduate law degree curriculum in Australia, but in 1992, the Consultative Committee of State and Territorial Law Admitting Authorities included legal ethics as one of eleven core subjects on a list of compulsory law subjects for the academic stage of legal education (Centre for Legal Education, 1992).

In 2000, the Law Admission Consultative Committee (LACC) recommended that all applicants intending to become legal practitioners in Australia were required to complete a legal ethics course while studying their Practical Legal Training (PLT) course. They took the view that all lawyers "should act ethically and

demonstrate professional responsibility and professional courtesy in all dealings with clients, the courts, the community, and other lawyers." This recommendation was accepted by the State and Commonwealth Attorney Generals in August 2003 (Pastellas & Maxwell, 2004).

Australia also actively promotes legal ethics through innovative curriculum reforms, and has developed a body of literature on legal ethics teaching in recent years.[3] For example, Tzannes advocated such teaching as 'a skill that is learned and practised much like advocacy, interviewing and negotiation.' To this end, she designed innovative methods to strengthen students' skills in detecting ethical dilemmas, ethical decision-making and implementing decisions in the face of opposition (Tzannes, 1997, p. 59). Similarly, Noone and Dickson developed a similar legal ethics course combining a clinical programme with classroom teaching, which constantly encouraged students to question 'whether one can be a good lawyer and a good person at the same time?' (Noone & Dickson, 2001, p. 91).

In contrast, Robertson (2005, p. 221) developed a three-category conceptual framework for legal ethics teaching. The first category adopts what he called a 'rules' approach, under which the legal ethics curriculum covers the minimum requirements required by the accrediting professional bodies. One example he gave for this approach was the 'Priestly' requirement, named after the chairman of the Committee for setting the minimum requirements for legal education in Australian universities.

Secondly, legal ethics should be treated as a skill in a similar approach to that of the A.B.A. in U.S. referred to earlier in the MacCrate Report. On the premises that 'competent, ethical practice requires more than just knowledge of the applicable rules and principles of professional responsibility', the report emphasizes that lawyers should acquire skills in identifying and dealing with ethical dilemmas (p. 203-207). As one may see from the discussion that follows, the Marre Report in U.K. also adopted this 'skill' approach.

The third category adopts a 'judgment' approach, which is a collection of different approaches that demonstrates a preference towards a 'value-based' conception of ethical lawyering. It emphasizes that lawyers have discretion in making their decisions, as they make ethical or moral choices all the time in their daily decisions. Clearly, Robertson's scheme is useful in conceptualizing legal ethics teaching in different jurisdictions. Significantly, Fang also argued for a 'value-based' model of legal education in China.[4]

United Kingdom

In the past forty years, four major reports on legal education were published, including the Ormrod Report (1971), the Benson Report (1979), the Marre Report (1988), and the Lord Chancellor's Advisory Committee for Education and Conduct First Report on Legal Education and Training (ACLEC, 1996). However, it was only in the last two reports that the topic of legal ethics was addressed.

The Marre Report (1988), published by the Law Society and Bar Council of England, identified an 'adequate knowledge of professional and ethical standards' as one important skill that law students should acquire at the vocational stage of legal education. This marked English recognition of the importance of ethics in legal education. Many other skills recommended in the Marre Report also involved a substantial ethical component, such as 'an ability to help clients understand the options available to them so that they can make an informed choice of action or direction' (Boon, 2002, p. 34).

The ACLEC Report went further than the Marre Report in addressing legal ethics. It called for '…the development of what has been termed common professional values'. The Report also advocated that legal

education should strengthen law students' capacities in five major areas: intellectual integrity and independence of mind, core knowledge, contextual knowledge, legal values and professional skills (ACLEC, 1996, para. 2.4). Following the publication of the ACLEC Report, the Law Society of England and Wales published a consultation paper advocating that legal knowledge, skills and ethics constitute the core of legal education 'from the cradle to the grave' (Law Society, 2001). The consultation paper was well received, thereby establishing the central role of legal ethics in legal education (Boon & Webb, 2002). Nevertheless, unlike the US and Australia, there is no compulsory legal ethics course in the academic law degree, as it is only taught at the vocational stage.

In recent years, however, literature on legal ethics education has started to emerge in the U.K. For example, O'Dair (1998, p. 154) has argued that legal ethics teaching should go beyond training in professional standards, while Webb pointed to the role models served by law professors in transmitting values both inside and outside the classroom. He asserted that if the curricula of law schools remain silent in those areas that call for ethical responses, then they contribute to a cynical response to law (Webb, 1999). Similarly, Cownie (2003) argued for values in teaching law and engagement with students on these debates. Interestingly, a similar plea was made by Xu a law school dean in China who asserted that legal education was in essence a study of values and an education in justice (Liu & Shen, 2008, p. 47).

New Zealand

In 1996, the New Zealand Law Society published the Cotter and Roper Report, which found that ethical training of lawyers could no longer be left to the professional bodies alone as a result of the increased pressure in legal practice (Cotter & Roper, 1996, p. 56-59). Consequently, on October 17th 1997, the Council of Legal Education adopted a resolution prescribing legal ethics as a compulsory subject in the LL.B. degree. As a result, New Zealand undergraduate law students intending to become barristers and solicitors after 31st July 2000 were required to study legal ethics. This resolution represented a landmark development in legal education (Webb, 2001).

Like other developed countries, New Zealand has witnessed the emergence of literature on legal ethics education in recent years. For example, Webb highlighted the 'fragmented' nature of legal education in most countries. This referred to the division between law areas, between legal knowledge and legal practice, between law theory and law application, between liberal education and professional education. Consequently, there was no obvious place in legal education where legal ethics should be taught. Webb also considered the problems of the 'pervasive' approach. He pointed out that law professors who do not have adequate time to cover their own courses have no incentive to extend their curriculum to cover legal ethics in their own subject areas so he maintained that a separate course of legal ethics should be provided even if the subject is taught pervasively in other courses. Interestingly, Webb's comments on this lack of clarity on the 'status' of legal ethics are shared by Si in relation to Chinese law school curricula (Si, 2007).

Canada

Canada undertook a review of legal ethics education in its law schools in the early 1990s, leading to the Cotter Report (Cotter, 1992). While there is no compulsory legal ethics course in universities like those in US and Australia, law schools like the University of Western Ontario have introduced a mandatory legal ethics course (Pitel, 2005). Furthermore, Canadian literature on legal ethics teaching is growing. For

example, Pitel identified the problems of Western Ontario's law school in introducing their mandatory legal ethics course. These included the difficulties of teaching legal ethics effectively with large numbers of students in large lecture halls; students' resistance towards the legal ethics course; problems associated with designing course materials of appropriate depth and difficulty and of assessment. On this last point, it is noteworthy that similar difficulties are encountered in Chinese law schools regarding appropriate assessment.[5]

Other Asian Countries

Legal ethics education is also developing rapidly in law schools of other Asian countries like Japan and Malaysia. In Malaysia, for example, law students are required to study legal ethics in an undergraduate course called Professional Practice. The course contents are similar to their counterparts in other English speaking countries, such as duty of counsel to court and client.[6] In contrast, the concept of legal ethics is relatively new in Japan. It was not until the early 2000s that the country embarked on radical legal education reforms, which included a strengthening of ethical training.[7] For example, newly established graduate professional law schools teach legal ethics through mandatory courses. It is, therefore, clear that China is still lagging behind these Asian countries in adopting mandatory legal ethics courses.

Conclusions

What assessment, therefore, can we make of the relevance of overseas experience in the context of ethical training for law students in China? Influence from overseas is not new. China has in recent years adopted clinical legal training programs based on the US model to improve the ethical standards of law students. Clearly, a closer and more detailed focus on the overseas experience relating to practical schemes, and methodological techniques suitable for legal ethics education reveals a widening wealth of beneficial references.

In my opinion, there are at least three lessons to be learnt for China. To begin with, the growing emphasis on legal ethics education in overseas law schools indicates that China should follow the example of this international development by similarly increasing its efforts in ethical training for law students. With the exception of the U.K., most of the countries discussed have compulsory legal ethics course in their law degree program, either mandated by the professional bodies (like US, Australia and New Zealand) or introduced by law schools independently (like Canada).

Secondly, as indicated above, overseas literature provides reference materials for China in strengthening its ethical training for law students, particularly in introducing more innovative methods such as the use of movie clips described by Brown and the promotion of simulations in the teaching of ethical dilemmas as put forward by Hartwell. Moreover, as clinical legal education courses are introduced into the curricula, legal ethics can also be taught within Chinese law school programs as advocated by such scholars as Shaffer, Luban and Milleman. Moreover, in adopting Robertson's three-category conceptual framework, China can consider adopting either one, or a combination of the three approaches: 'rule', 'skill' and 'judgment'.

Thirdly, ethical training of law students is clearly more developed in U.S. and Australian law schools which have generated a comprehensive body of literature. China should therefore look to these two countries in particular for inspiration in future efforts to strengthen their ethical training of law students.

China should also follow closely the development in other Asian countries like Japan in its future reforms. In the near future, law schools in China should combine the teaching of legal knowledge, legal skills and legal ethics into the curriculum. This will enable Chinese law students to learn legal ethics in the context of different areas of legal knowledge and legal skills. For example, students can learn the ethical issues faced by criminal lawyers in conjunction with Chinese Criminal Procedure Law and Criminal Advocacy Skills. Likewise, students can study the ethical issues faced by commercial lawyers side by side with Chinese Company Law and Chinese Corporate Practice. This will create a more 'integrated' model of legal education in China akin to the best practices existing in other developed countries. In addition, Chinese law schools should reform their curricula to teach legal ethics as a compulsory subject, a practice already adopted in other jurisdictions like the US and Australia.

Moreover, Chinese law schools should introduce more innovative teaching methods to teach legal ethics. In so doing, their students will no longer study legal ethics passively as a body of rules, but in a more 'self-directed' manner. To this end, law schools should devote more resources to clinical legal education, as the latter has proved to be an effective means of teaching legal ethics through active learning of students. In the long run, widespread adoption of clinical legal education in Chinese law schools may produce a new generation of ethical lawyers for the country.

Finally, China needs to cultivate a culture and tradition of co-operation between its law schools and legal profession because their collaboration is crucial to the success of legal ethics teaching. For example, in designing the curricula for a legal ethics course, it is always preferable to involve experienced legal practitioners, as they are the people who know most directly, the current ethical issues faced by their profession. Moreover, when it comes to the design of 'realistic' tutorial problems for a legal ethics course, practitioners' input is also invaluable. To this end, those law schools which have a long history and a wide alumni network in the Chinese legal profession will be best placed to strengthen their legal ethics teaching as they can work closely with their alumni in the legal profession.

Notes

1. See, for example, the American Bar Association, In the spirit of public service: A blueprint for the rekindling of professionalism (1986).

2. See, for example, Lerman, L.G., (1997-1998). *Teaching moral perception and moral judgment in legal ethics courses: a dialogue about goals,* William and Mary Law Review, 39, p.457.

3. See, for example, Economides K. and Webb, J. (2001). Teaching ethics and professionalism: A lesson from the antipodes, *Legal Ethics,* 4, p.91.

4. See Fang Wencui, (2005). A *study of valued-based legal education*. Beijing: Peking University Press,

5. See, for example, Jiang Weipin, (2009). Problems and solutions existing in contemporary chinese legal education. *Journal of Tianzhong*, April issue, pp.116-117.

6. See, for example, Ravi Neeko, Hargopal Singh Gill and Parmes K., (2001). Professional practice Kuala Lumper: *Malayan Law Journal.*

7. For the reinforcement of legal ethics in Japan legal education system, see *Recommendations of the justice system reform council – For a justice system to support Japan in the 21st century,* Chapter 3, Part 6, available at <http://www.kantei.jp/foreign/policy/sihou/singikai/990612_e.html>.

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