

Analysis of “Dual System” Talent Training Model from the Perspective of Legal Education Reform in the New Era¹

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The “dual system” talent training model advocated and designed by the Guangdong University of Petrochemical Technology emphasizes and adheres to that the essence of regular higher education is general education and quality education, rather than vocational education, aiming for training general-purpose “rough-like” talents for the society on the pre-condition of providing certain professional basic theoretical education. The “dual system” talent training model of the law program is characterized by the “dual nature” at both macro and micro levels. At the macro level, it is mainly manifested in the dual system that attaches importance to the “legal professional quality system + humanistic quality system education,” emphasizing the training of basic legal professional qualities, while valuing the training and development of humanistic qualities and ideological and political concepts, etc. At the micro-level, it is manifested in the dual system of “legal theory knowledge system + legal practice operational knowledge system,” providing basic legal theory education, while strengthening the training of basic legal affairs practical operational skills, so that the students can develop the initial ability to solve simple legal practice problems, thus better resolving the tension between social talent demand and traditional training model. For the purpose of constructing the “dual system talent training model” for legal education, the

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law program shall adhere to the principle of advancing gradually in due order; focus on scientific setting and arrangement of the elective curriculum system, make the new goal of legal talent training both the starting point and ultimate goal, improve the validity of professional practice courses in the practice sessions, and cultivate students to have a more sound personality and comprehensive knowledge system, meeting the demand for legal talents in the new era.

Keywords: education reform, “dual system” reform idea, talent training model, legal education

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Introduction

Education is critical to the prosperity and future of our country. As an important part of China’s reform, education reform has been highly valued by the Party and government for more than 40 years. In Item 42 of the Decisions on Some Major Issues Concerning Comprehensively Deepening the Reform adopted in the 3rd Plenary Session, the 18th CPC Central Committee specially made the plan for “deepening the comprehensive reforms in the area of education”. It proposed “improve aesthetics education to raise students’ aesthetic and artistic ability,” and to persist in “making innovations in the mechanism of higher learning institutions that trains talents.” Chinese President Xi Jinping stressed, “China’s higher education should be closely integrated with its actual development goals” (Xi Jinping, 2017: 376-377). In the context of advancing the law-based governance of China in an all-round way, higher legal education, which undertakes the task of cultivating legal talents for China under the rule of law in the new era, should also conform to the historical trend, constantly explore the reform path of talent training model, and provide legal talents guarantees for building a moderately prosperous society in all respects and finally achieving China’s Two Centenary Goals.

I. The Tension between the Demand for Legal Talents in the New Era and the Traditional Legal Talent Training Model

In 1997, the 15th CPC National Congress put forward the basic principle of “practicing the rule of law,” which was soon written into China’s constitutional amendment. In 2014, the CPC Central Committee decided to “press forward with the rule of law.” Since then, it has formed a broad consensus in China to comprehensively build a law-based socialist country. To comprehensively advance the rule of law, China will undoubtedly face the situation of requiring more qualified legal talents, which not only provides an opportunity for the further development of legal education, but also puts forward higher requirements for it. However, due to various reasons, the talent training model of Chinese legal education has not kept up with the pace of social and economic development. Therefore, to a certain extent, it cannot meet the needs of building the rule of law in China for various legal professionals, which is typically manifested in the following two tensions.

First, there is a tension between the following two aspects. Ordinary law personnel tends to favor “professional” education and focus on the operability of legal practice, while the regular undergraduate legal education overemphasizes the education of legal theory. In China in the new era, especially after great changes have taken place in many aspects, such as the main social contradictions and the overall economic strength, in the context of China’s strategy

of fully advancing the law-based governance, legal issues are no longer only the business of judicial organs and judicial professionals. All kinds of state organs and social organizations, including enterprises of various forms of ownership and ordinary citizens, generally have needs for legal services. It can be said that in a contemporary society under the rule of law, “a person may not have to deal with the judges for life, but it is impossible for him/her not to deal with the law.” In terms of quantity, in society as a whole, the entities of the first category that need legal talents include ordinary companies, organizations, families and individuals, which account for a larger proportion. The basic standard of the requirement for such talents is that they can handle simple daily legal affairs. In particular, for many small and medium-sized enterprises, they require that legal talents not only can handle simple daily legal affairs, but also can complete the daily administrative work (including office document processing). At the same time, they require that the employment cost should be relatively low. The entities of the second category that need legal talents include traditional scientific research institutions, public security, prosecution, court and judicial departments and other national professional institutions, as well as professional lawyer service institutions. These entities have little incremental demand for legal talents, and what they need are more professional high-end legal talents. Although the above-mentioned types of talents occupy a prominent position in the legal community, they can only accommodate a small number of law graduates for various reasons. In short, among the law graduates whose employment orientation is related to their specialty, a larger proportion of them will become the legal personnel of small and medium-sized enterprises, including a considerable proportion of non-full-time legal personnel. Generally speaking, employers hope that the professional training of such law students during their school period is similar to vocational education, so that they can quickly be competent for daily general legal work, rather than forcing them to have more legal theory literacy. In contrast, the regular undergraduate legal education in China, including the undergraduate legal education in private universities and independent colleges, has more teaching hours arranged for the part of legal theory, and much of the class is devoted to concepts, principles, and doctrines. The result is that after four years of professional study, few students can effectively complete the task of general contract drafting and contract review. Thus, there is an obvious tension between the following two aspects. Ordinary law personnel needs to pay attention to the operability of legal practice, while the regular undergraduate legal education pays too much attention to the education of legal theory.

Second, there is a tension between the following two aspects. The cultivation of humanistic quality of professional legal talents required by judicial organs emphasizes general education, while teaching by law subject in legal education is conducted too early. According to the relevant regulations of the Undergraduate Education Steering Committee of the Ministry of Education of the People’s Republic of China, specialty orientations shall not be divided at the stage of undergraduate legal education. In reality, many universities pursued the so-called distinctive characteristics when running their own schools. For example, the law program of financial and economic universities offer courses in the orientation of financial and economic law; the law program of science and engineering universities offer courses in the orientation of intellectual property law; and the law program of foreign language universities offer courses in the orientation of the law concerning foreign affairs. Although in form each university has also guaranteed the setting of specialty core courses as required by the state, the division of specialty orientations at the beginning of the legal professional training stage is bound to cause preconceived influence on students, artificially leading to the fact that students “tend to go overboard on one or some subjects”

too early. This is one of them. More importantly, the regular undergraduate education should be general education in essence, rather than professional education or vocational education in a strict sense. The reality in China is that while specialty orientations are divided prematurely, there are few courses and training related to humanistic literacy, and the postgraduate study only focuses on the law subjects of the specialty orientation. As we all know, “the life of the law is not logic but experience” (Holmes, 1881: 1). It can be imagined that after some law graduates who have undergone such professional training for many years have been employed by the judicial and law enforcement agencies, due to their lack of aesthetic education and humanistic spirit cultivation, it is no longer strange that they carry out law enforcement for the sake of law enforcement, even conduct entrapment operation or twist the law in adjudication for illegal purposes, and rarely consider the core value of fairness and justice contained in the rule of law. Finally, the core of the modern rule of law culture lies in the emphasis on rights protection, a prominent manifestation of which is that the legal documents, as a way of expression of state power, shall be rational and persuasive. In Western developed countries under the rule of law, it is common that a judgment is written in a lengthy statement, loading the content with references and cites from the classics and ancient works, which inevitably requires relevant legal personnel to have excellent logical argumentation, history and humanities and other basic qualities. This is obviously difficult to be achieved by a person who only received general legal training. Since the reform and opening up, and especially since the 18th CPC National Congress, the rule of law in China has been enhanced significantly. In recent years, the Supreme People’s Court has introduced a variety of excellent examples of judicial documents, such as typical cases and rule cases. On the one hand, this reflects that compared with the past, significant progress has been made in the level of judicial documents in China. On the other hand, we must recognize the fact that there is still a lot of room for improvement in the actual standards of legal documents issued by judicial departments in various regions. In short, there is still a certain tension between the humanistic literacy of some law graduates who are directly employed by national legal professional institutions and the requirements for professional judicial and law enforcement personnel for fully advancing the law-based governance.

II. Reasons for the Relative Lag of Traditional Model of Training Talents in Regular Higher Legal Education in China

After the founding of the People’s Republic of China, the textbook system, talent training model, and training plan of legal education were basically copied from the former Soviet Union. Since the reform and opening up, especially since establishing the basic strategy of the rule of law, higher legal education has also undergone considerable reforms. However, on the whole, the training model has not broken away from the traditional model and is still lagging behind the demand for legal professionals in the new era. In our analysis, the main reasons for this lag may include the following three aspects.

First, the professional faculty of some universities have not met the requirements. Around the new century, China’s higher education entered a period of rapid development. In 2017, the number of higher education students in China was 37.79 million, with a gross enrollment rate of 45.7% (China Education Online, 2018: 12). The number of universities that offered the law program and the enrollment of law students had also been expanding. Due to the expansion of university enrollment since the end of the last century, in the first few years of the new century, the average annual growth of law graduates of junior college programs,

undergraduate programs and master programs was more than 30% (Fang Liufang, 2008: 17). By 2010, more than 900 institutions were providing legal education in China, more than 600 universities enrolled law students, and there were more than 700,000 law students studying at universities (Xu Xianming, 2010: 87). The large-scale expansion of higher education enrollment is the need for social and economic development and an important manifestation of the rapid progress of various undertakings in China. The increase in the number of students in school should have been based on the pre-condition of sufficient faculty. However, as far as we know, on the whole, a considerable proportion of regular second-tier universities, as well as most independent colleges and private colleges and universities, do not have sufficient professional faculty. The gap between the teacher-student ratio of the latter two categories of colleges and universities and the teacher-student ratio required by the national authorities is even as high as more than 50%, and the gap between the teacher-student ratio of a considerable proportion of the first category of universities and the teacher-student ratio required by the national authorities is 30%. It should be noted that compared with the world-class universities and disciplines, the above-mentioned three categories of colleges and universities are in the majority in the regular higher education system. Due to insufficient faculty, the incumbent teachers are wrestling with daily teaching, so it is difficult for them to carry out scientific research and innovation. Even if in teaching they find that there are some deficiencies in the professional training model, it is difficult for them to effectively address the deficiencies. Of course, the lack of legal faculty cuts the ground on which the law program stands, and other similar regular colleges and universities have to face the same challenge. Without high-quality and sufficient teachers, it is no longer surprising that the talent training model is stagnant.

Second, there is a lack of autonomy in the talent training model for universities. Teaching students in accordance with their aptitude is a basic principle of education, no exception for higher education. As an important part of higher education, the law program is characterized by a high social demand for talents, large enrollment, low cost for running the program, and low employment rate in the legal sector. The first three characteristics need no explanation. In a traditional sense, a low employment rate in the “legal sector” refers to the low employment rate of law graduates in state organs, including public security, prosecution, court and judicial departments. A sampling survey shows that even for top law universities such as China University of Political Science and Law, this figure was as low as 13% eight years ago (China Education Online, 2018: 12). And it is learned by the authors of this paper that for several regular colleges and universities, this figure has been below 3% in the past ten years. In short, legal education is no longer just to cultivate talents for public security, prosecution, court and judicial departments. Although different universities can make partial adjustments to the training scheme of the law program according to their own characteristics of running schools, many restrictions make it difficult for them to make this limited adjustment power effective. As a result, almost all the same courses and training modes are offered throughout the country without distinguishing between different needs and levels of schooling.

Third, there are obvious disparities in government investments in different universities. Government investment is the most important source of education funding. With the sustained development of China’s economy, governments at all levels have invested heavily in higher education, among others. However, there are still many defects in terms of investment in higher education, which are mainly manifested in the disparities of investments. Government investments in different universities vary significantly from region to region and from type to type over the years. In particular, a small number of colleges and universities have received

most of the funding, which has made many regular colleges and universities tight in funding, resulting in various malpractices. This has been widely criticized by the education community.

III. The “Dual Nature” of the Content of the “Dual System” Talent Training Model of the Law Program

The essential content of the “dual system” talent training model is to emphasize and adhere to that the essence of regular higher education is general education, rather than simple vocational education. On the pre-condition of adhering to professional basic education, it aims to cultivate “rough-like” talents at all levels and in all industries for the society, to correct the wrong tendency of professionalization in regular higher education to a certain extent. The “dual system” talent training model of the law program is also developed on this basis. However, due to the discipline characteristics of the law program, its talent training model has its own characteristics, which are manifested in the “dual nature” at both macro and micro levels.

First, at the macro level, it is manifested in the dual system of “legal professional quality system + humanistic quality system education.” Although regular higher education in essence, is general education, it is feasible and necessary to divide specialties according to different training goals and social needs. One dimension for grasping this essence emphasizes that the establishment of the knowledge system of the law program and the cultivation of talents shall be based on the basic professional quality and humanistic quality, rather than just the basic professional quality. Humanistic literacy not only provides the aforementioned basic writing skills, logic, and argumentation methods for legal professionals to produce legal documents, but more importantly, it cultivates the humanistic values of people-oriented, fairness and justice for every legal practitioner. In November 2015, in the Rethinking Education: Towards a Global Common Good, UNESCO emphasized that the purpose of education is not only about the acquisition of skills, but also about the formation of a complete personality, which is the key to the sustainable development of education in the future. J.F. Herbart, a famous educational thinker in Germany, put forward the idea of “educational teaching” as early as the 19th century. He believed that “there is no ‘education without teaching’; ‘teaching without education’ is not recognized” (Herbart, 2002: 12). More importantly, judging from the employment prospects of higher legal education, the purpose of higher legal education is to train legal talents for important state organs for legislation, law enforcement, judicial practice, as well as enterprises, public institutions and social organizations. The future of the construction of the rule of law will inevitably rely on these legal talents. Therefore, the cultivation of legal professional quality must be accompanied by the simultaneous cultivation of values, ideology and morality. “Our education is to develop builders and successors to the cause of socialism with Chinese characteristics, not bystanders or opposition groups” (Xi Jinping, 2017). Higher legal education, as the operator of important political institutions such as the national judiciary and the core participant in the operation of the rule of law, should adhere to the model of providing professional knowledge education in line with the simultaneous cultivation of humanistic quality and political and ideological quality.

Second, at the micro-level, it is manifested in the dual system of “legal theory knowledge system + legal practice operational knowledge system.” Law is a knowledge system with strong practicality. Due to various reasons, the traditional teaching of the law program in China does not attach importance to the cultivation of practice. As mentioned above, society needs ordinary legal talents who have acquired certain practical skills. We often notice that some

excellent students, even though they have passed the National Unified Legal Professional Qualification Examination during their undergraduate study in the university, are still unable to independently undertake the common contract reviewing and drafting tasks in practice. The “dual-system talent training model” of the law program is to solve this problem at the micro-level, so that students who intend to directly engage in legal practice after graduation can be competent for the basic legal affairs work and have acquired preliminary practical knowledge and skills.

IV. Basic Strategies of Constructing the “Dual System” Talent Cultivation Model for Legal Education

The talent training model of an era must reflect and meet the era’s needs and have the characteristics of the era. Of course, the talent training model in China in the new era must have distinctive Chinese characteristics. At the 2018 National Education Conference, Chinese President Xi Jinping stressed, “We must work hard to enhance students’ comprehensive quality, and educate and guide them to develop comprehensive abilities,” “comprehensively strengthen and improve aesthetic education in the school,” and “strive to build an education system which comprehensively fosters the students’ all-round moral, intellectual, physical and aesthetic grounding with a hard-working spirit, in a bid to bring the country’s personnel fostering system to a higher level” (Xi Jinping, 2017). Xi Jinping’s instruction on education from a strategic position will be the basic guiding principle of China’s education work for a long period of time in the future. The talent training model of legal education in the new era must be constructed on this principle. We believe that the law program should follow the following strategies for the construction of the “dual system” talent training model.

First, the scientific setting and arrangement of the elective curriculum system is the core of the construction of the “dual system” talent training model. The classroom is the stronghold for educating and developing students, no exception for higher education. The first issue concerning class is the setting and arrangement of the curriculum system. With respect to the talent training model and goal, the core issue is also the setting and arrangement of the curriculum system in the model. Specific to the legal talent training model, its particularity is reflected in the fact that the national education authority has set the required courses which occupy the largest share of total courses, and stipulated the basic class hours of the courses. Therefore, what the only autonomy the university (or college or department) has is how many class hours of elective courses it can additionally set for students. The legal curriculum system under the dual-system talent model can be constructed from two aspects. The first is to set additional necessary elective courses, including public elective courses and professional elective courses. The second is to appropriately adjust the syllabus of required courses for various specialties, which may involve all the law specialty courses, aiming for adjusting the original law specialty courses and adding the content of practical analysis and operation training on the basis of developing students’ understanding of law specialty theories. For example, as an important civil law course, contract law involves complex knowledge and abstract theories. Whether it is taught as a part of an independent civil law course or as a single contract law course, due to the limitation of class hours, the teaching and learning of contract law are relatively difficult. There is still a considerable gap between the knowledge points of contract law in the textbook and the issues that should be paid attention to in the practice of contract affairs. Traditionally, this gap can only be filled by students in their actual work after graduation. Of course, this

is relatively costly. The “dual system” training model needs to adjust the traditional model to make up for this deficiency, so that students have the opportunity to analyze and process the real contract text in the classroom, thus effectively filling this gap in advance.

Second, the key is to improve the validity of professional practice courses. The law specialty itself is a highly practical subject, so the practice sessions are particularly important for the students of the law program. Pintner, a German administrative jurist, emphasized the importance of professional practice for students’ development in legal education. He noted that administration has now become an elective course for law students. However, in view of the current reduction in-class hours and the increasing freedom for students to select the elective courses, the role of administration is limited. The students who are interested in administration may as well take courses in Speyer School of Administration during their internship to deepen their understanding. In administrative practice, the understanding of “dogma” alone has never been sufficient to solve the problem. As long as anyone is involved in the actual problems of administrative law and seeks answers, he/she can realize that only if he/she has certain administrative experience or necessary administrative theory can he/she get the correct results. (Pintner, 1999: 7) In order to cultivate qualified talents with humanistic literacy and certain legal practice skills, it is necessary to increase the workload of practice appropriately. However, it is more important to improve the real validity of practice within the original practice courses and class hours. Two initiatives can be started to achieve this goal. The first is to enhance the accuracy of the evaluation on practice sessions, to prevent invalid and false practices such as “practice merely with going through formalities” and “dummy practice” as much as possible. For example, on the basis of evaluating the relevant written documents and materials during students’ internship, on-site guidance and on-site assessment by the teacher shall be added. The second is to improve the real scenario of practice as much as possible, rather than “moot court-style” practice. For example, the students should be required to participate in a real legal dispute throughout the process, and to produce a complete set of legal documents for a specific dispute throughout the process. Of course, though the focus of the “dual system” model is to moderately improve the validity of the practice session, it must not exceed proper limits. In particular, no practice session shall be used to weaken the classroom theoretical learning. After all, the latter is the fundamental part of student’s school learning stage.

Third, the adjustment of the talent training goal is both the starting point and ultimate goal. The goal determines the direction of action, and it is also one of the important criteria to judge whether the action strategy is correct or not. As mentioned earlier, the “dual system” talent model is essentially based on the purpose of cultivating professional talents while enabling them to have the necessary humanistic qualities. Therefore, adjusting the original talent training goal shall be the starting point for all work of this model, and at the same time, it is also the ultimate goal of the work to be achieved. Based on the above discussion, the adjusted legal talent training goal under the “dual system” training model can be summarized as follows: adhering to the principle of training “general-purpose” talents, striving to provide students with personal needs with a space for selecting the training model, giving consideration to both specialty learning and humanistic literacy cultivation, specialty theory learning and practical operation skills improvement, laying a solid foundation for students to further specialty research and study in the future, and enabling them to have the basic ability to resolve simple legal disputes.

Conclusion

Reform is essentially an exploration of unknown areas. That is why the theory of “crossing the river by feeling for stones” was proposed at the beginning of reform and opening up. In other words, the principle of advancing gradually in due order shall be followed. This strategy has been proved to be correct and feasible in practice. In the same way, educational reform should follow the principle of advancing gradually in due order, requiring constant trial and error to achieve perfection. Specifically, the reform of the “dual system” talent training model for legal education as mentioned in this paper, will involve partial adjustments to the teaching plans of all specialty courses. Some elective courses shall be added or adjusted to achieve the new talent training goal. This is a complicated and systematic project, which cannot be accomplished in one stroke. Therefore, the measures we can take include that students can choose the new training model on their own, and that some universities in some areas can gradually adopt the new training model or launch a pilot on the new training model. All relevant universities shall adjust the syllabus and training schemes in their own universities in a timely manner, and take a step-by-step approach to carry out the transformation of the talent training model of the law program in the new era in an orderly manner.

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