

# 7 The development of legal education in Taiwan

## An analysis of the history of law and society

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Taiwan's legal education system was initially induced by the Japanese during the colonial period, which commenced at the end of the nineteenth century. In a country such as Taiwan, which has, via Japan, adopted the Continental European civil law system, the legislative regulation of social life is predicated upon knowledge produced by legal education and then mediated through the executive and the judiciary. The institutions of legal education create a class of legal professionals who engage in the creation of law and who influence the general community's perception of the legal system. What, then, is the normative content of such education, which plays a crucial role in a country governed by the rule of law? In the case of Taiwan, we can examine this question from the perspective of social history and come to understand – and critique – the orientation of current reform projects.

### **The introduction of Western legal studies under Japanese rule**

#### *The education system (1895–1945)*

This chapter begins by examining legal education in the period of Japanese colonial rule. At first, the colonial government did not provide professional training for Taiwanese people, for example, by setting up legal education institutes. Instead, it relied on legal bureaucrats recruited from Japan. We can contrast the Japanese attitude to modern legal and medical education, both of which were absent in Taiwan when Japanese rule commenced. The colonial government moved quickly to establish medical training schools. On the other hand, as law is closely connected to political power, the colonial government did not want Taiwanese people to study law, lest they use it as a weapon against Japanese rule.

However, from 1910, some Taiwanese travelled offshore to undertake legal education. By the 1920s, 20 per cent of Taiwanese students in Tokyo were studying law. In 1918, Qingyao Ye became the first Taiwanese person to become a qualified lawyer and in 1931 Yansheng Huang became the first Taiwanese person to be appointed as a judge in Taiwan. Lawyers and judges were highly respected in local communities. This tendency of the Taiwanese to study law abroad has continued to the present day. As we will see, it has far-reaching effects on domestic legal education.

In 1928, under its policy of national assimilation (*neidi yanchang* 內地延長), Japan established Taiwan's first legal education institute, in the Department of Government within the College of Liberal Arts and Political Science at Taihoku (Taipei) Imperial University. This institute was oriented towards producing administrative officers rather than legal professionals. It is not surprising that it mainly produced graduates with the administrative skills needed in government and business, as it was greatly influenced by a conception of legal education developed at the Imperial University of Japan. This emphasized the inseparability of law and politics. Furthermore, the social status of executive and judicial officers at that time was higher than that of legal practitioners. Students of the Department of Government gained a Bachelor of Laws (*faxue shi* 法學士) degree after three years of study.

### ***Teaching content***

The law course set up in the Department of Government contained subjects (frequently based on key legal codes) that in many ways were not dissimilar to those still taught in law departments today. Compulsory subjects included, for example, Constitutional Law, Administrative Law, Civil Law, Commercial Law, Criminal Law and Legal Theory. Students were also required to take economics, finance, politics and ethics. The elective subjects available were drawn from legal, economic and political topics, in roughly equal shares. The choice students made depended generally on their career direction. Those who wanted a career in the business world would select options concerning civil law and commercial law. Those interested in government would choose constitutional and international law-related subjects. In addition, those who wanted to pursue a judicial career would choose family law, inheritance law, civil and criminal procedure, and so on. Students also frequently selected subjects from other faculties such as philosophy, history, literature and science.<sup>1</sup>

Lecturers used textbooks written by important Japanese legal academics. Foreign books in German, English and French were also often used as sources. Case studies were drawn from the judgments of Japanese courts. Courses thus focused on Japan rather than Taiwan, though some research was conducted into Taiwanese issues. Overall, though, libraries held very few materials on Taiwan. A major reason for this focus on Japan was that graduates would seek employment throughout the Japanese Empire and its sphere of influence (for example, Manchuria), not simply in Taiwan.<sup>2</sup>

The teaching model that followed was practised in Japan before World War Two, and involved lecturers explaining legal principles while students made notes and memorized the information. There was little training in reflective analysis or independent judgment.<sup>3</sup>

### ***The background and performance of students and lecturers***

All the law teachers in the Department of Government were from Japan and all were male. Most of them held a Bachelor of Laws degree, frequently from the

Imperial University of Tokyo. The majority were engaged full-time in teaching and research; only a few held judicial posts and it would seem that none were practicing lawyers.<sup>4</sup> Most of them seem to have held liberal political views.

At that time, most of the students were Japanese, with only around 10 per cent coming from the Taiwanese community. None were female. After graduation, most moved into administrative or governmental roles; very few became lawyers or judges, and even fewer became academics.

## **Legal education under the Kuomintang**

### *The legal educational system (1945–1990)*

After World War Two, the Japanese-based legal system operating in Taiwan was replaced by that of the Republic of China, molded on the Chinese mainland by the Kuomintang.<sup>5</sup> With this change, legal education in Taiwan, including the content of legal education, shifted its focus to the law of the Republic of China. However, a degree of continuity was maintained since the Japanese had had a major influence on the modernization of law on the Chinese mainland, including through the translation of Western civil law terminology into Chinese characters. Moreover, the Department of Government was renamed and reorganized into the Kuomintang's new Department of Law at National Taiwan University (the former Taihoku Imperial University). In the early 1950s, it continued to be Taiwan's only institution of legal education.<sup>6</sup>

It was not until 1955 that the second institution of legal education in Taiwan was founded: the law department of the Taiwan Provincial College of Business and Law (now National Taipei University). In the context of the long period of military rule, legal education developed quite slowly. By 1990, there were still only eight institutions of legal education in Taiwan: four public (at National Taiwan University, National Taipei University, National Chengchi University and the military academy described below) and four private (Soochow University, Fujen Catholic University, Chinese Culture University and Tunghai University).<sup>7</sup> Some of the law schools were initially established as postgraduate institutes, because they did not have sufficient teachers and facilities for undergraduate programs.<sup>8</sup> The law department operating for military officers began to operate in 1957. Its graduates received preferential treatment in the professional admission examination (with less onerous requirements) and many became lawyers.

These institutions also established Masters and Doctoral programs in order to foster legal research capacity; for example, National Taiwan University created its LL.M program in 1955 and its Ph.D program in 1974.<sup>9</sup>

### *Teaching content*

The curricula of all these law schools were regulated by the Ministry of Education and were structured around the legal codes, in a similar way to law teaching under Japanese rule. The curricula were heavily weighted towards compulsory

subjects.<sup>10</sup> In contrast to the Japanese period, however, legal education under the Kuomintang was also directed at instilling a culture of Chinese nationalism and reinforcing the power of the Kuomintang's authoritarian state.<sup>11</sup> Kuomintang ideology, based on Sun Yat-sen's 'Three Principles of the People', was the basis of constitutional thought.<sup>12</sup>

Education in conceptions of individual rights and freedoms was stifled, although from the 1970s a few theories drawn from American, European or Japanese liberal democratic traditions began to be discussed, especially by younger scholars who had studied in those societies.<sup>13</sup>

From the 1970s, too, the rigid teaching methods of the earlier years began to give way to more innovation; again, this was led by the new generation of law teachers returning from graduate study overseas. New textbooks appeared and teachers increasingly referred to different legal theories, and discussed real and hypothetical cases rather than merely examining legal codes.<sup>14</sup> This development improved the students' comprehension of legal concepts and their ability to transplant foreign civil law to local practice. The quality of legal professionals and judges rose as a consequence.

### *The background and performance of students and teachers*

One of the great strengths of legal education in Taiwan is that it has become accessible to the entire population. This development occurred during the authoritarian period of Kuomintang rule. While teachers and students were initially disproportionately drawn from families that had fled from mainland China in 1949, the percentage from other groups (that is, the native Taiwanese) rose steadily, until by the 1980s, they were in a majority.<sup>15</sup> Legal education came to be offered on merit, without discrimination based on ethnicity or social class. Moreover, while the great majority of law students were initially male, female participation gradually increased, until by the end of the 1980s, women attended law schools in equal numbers to men. Politically and socially disadvantaged groups were thus able to gain access to legal education. This contributed to the capacity of the movements of political opposition and social protest, which expanded in the 1980s, to carry out their activities within the legal system.

In contrast to the broad accessibility of legal education, admission to the legal profession remained highly restricted; the extremely low pass rates for the examinations for lawyers and judges meant that the large majority of law students were unable to become professional lawyers. The pass rate of the professional admission examination for lawyers was 17.5 per cent during the 1950s but dropped to around 2 per cent for most of the 1960s, 1970s and 1980s. It surprisingly rose to above 14 per cent in 1989 and then was about 9 per cent on average during the 1990–2000 period. In contrast, the examination for judges has maintained an extremely low pass rate; while it was around 16 per cent in the 1950s, it has been around 4 per cent since 1960.<sup>16</sup>

## Legal education in the post-autocratic era

### *Rising student numbers and institutional diversification from 1991*

During the 1990s, while many longstanding problems with the nature of legal education remained unresolved, its availability was greatly expanded. This occurred in tandem with the trend towards political liberalization and democratization, and with the advance of globalization and technological innovation. As mentioned above, between 1928 and 1990 there were just eight Taiwanese institutions with law departments. However, in 2006, a survey by the Ministry of Education indicated that 37 universities and other higher education institutions had established 109 law department and postgraduate institutes. The number of students had risen to 17,671.<sup>17</sup> In other words, over 16 years between 1991 and 2006, the number of universities or colleges providing legal education had increased more than fourfold.

Five different kinds of legal education institutions have been involved in this expansion: (1) national universities that previously concentrated on other disciplines, such as engineering; (2) newly founded national universities; (3) colleges upgraded from private institutes; (4) colleges upgraded from private schools offering professional diplomas; and (5) newly founded private institutions.<sup>18</sup> The last three categories greatly increased after reforms to higher education taking effect from 1994.<sup>19</sup>

Why have these universities and colleges set up law courses, one after another? Taiwan has become a society in which law has assumed greater importance. Some universities have therefore established law courses in response to the increasing need for people with legal skills, in areas of employment such as the public service or the commercial sector. On the other hand, a more pragmatic motive has been that law schools can be established at low cost and can easily attract students in a context where law has rising prestige and legal skills are in rising demand.<sup>20</sup> This later consideration is particularly important to many private institutes that lack an established reputation.

As more and more institutions engage in legal education, they have each sought to distinguish themselves in the marketplace. They have created new institutional arrangements and offered programs with specialized orientations. Some of these do not go much further than a change of name. However, what has changed dramatically is the structure of postgraduate programs in legal education. As the reforms in this area have been rather complex, they are best described under three categories.

#### *(1) Postgraduate education for students holding an undergraduate law degree*

The changes here concern students admitted to further study in the form of Masters and Doctoral degrees. The range of specializations (*fenzu* 分組) has markedly expanded. Consider the developments at the law schools at National Taiwan University and National Chengchi University, for example. At National Taiwan

University, in addition to traditional specializations in jurisprudence, public law, civil law and criminal law, new specializations have been established in areas such as economic law, fiscal law and international law. At National Chengchi University, the traditional fields have been complemented by offerings in financial law, employment law and social law.<sup>21</sup> Students taking these specializations are now able to build on them by embarking on advanced studies, drawing on comparative law or training in other disciplines. Many have moved on to Doctoral programs in Europe, the United States or Japan. However, a major problem with many of these students in advanced programs has been that they are just biding their time; their real focus is on preparing for the lawyers' and judges' examinations. Consequently, there is little improvement in students' ability to conduct legal research.<sup>22</sup> Moreover, the deterioration in the ratio of academic supervisors to students has also cast doubt upon whether the quality of graduate legal research has improved more generally.<sup>23</sup>

*(2) Basic legal training for students who have not studied law*

In the 1980s, the educational bureaucracy decided not to introduce the American JD model of postgraduate legal education into Taiwan.<sup>24</sup> However, through the influence of Mr Li Mo, Soochow University in Taipei, a private institution, established a special Masters stream for non-law graduates. At that time, it was possible for public servants to apply for the program and, if enrolled, to obtain a three-year scholarship. This meant that the success of the course was not in doubt.

While Soochow's course is apparently similar to an American JD, it differs in several important respects. First, it is not run for the sole purpose of producing legal practitioners. Most of its graduates work in the public service or otherwise return to their former positions. Very few become lawyers or judicial officers.<sup>25</sup> Second, in contrast to the American position, the Soochow course is a traditional Masters degree, in the sense that it requires the completion not only of coursework, but also of a research thesis. This has proved to be an important obstacle for some students who cannot finish their study on time, or who are unable to produce a thesis of an appropriate quality.

In 1997, National Chengchi University, a public institution, set up a similar program, followed by National Taipei University in 2001 and National Taiwan University in 2004. All of these, like Soochow, were not originally directed at producing lawyers.<sup>26</sup> Recently, however, programs such as that at National Taiwan University have emphasized that their objective is to enable students to develop legal knowledge and skills at a level sufficient for legal practice. Thus, there now seems to be a move toward American-style courses.

*(3) Specialized legal training for students either with or without previous studies in law*

The third development in legal education consists of discrete programs in specific areas of law. These do not aim at a comprehensive legal education, and

certainly do not prepare students for professional admission examinations (although students may have other ideas). An early example of this was National Taiwan Ocean University (國立海洋大學), which in 1991 established a Maritime Law Research Institute enrolling both law graduates ('Group A') and non-law graduates ('Group B'). Of broader significance was the joint initiative of National Chiao Tung University (交通大學) and National Tsing Hua University (清華大學), both at Hsinchu, which set up a Law and Technology Research Institute in 2001. This also enrolls both law and non-law graduates, dividing them into two groups. For students with a law background, this model does not materially differ from the advanced training in a particular specification, discussed above.<sup>27</sup> A difficulty with this model of legal education is that it often involves a compromised allocation of resources and staff between two very different groups of students in terms of their background, knowledge and goals.

Apart from these examples, there are other institutions that tout their specializations in their attempts to recruit both law and non-law graduates; those most commonly highlighted are programs in finance law, fiscal law and intellectual property law. Some also promote their particular combination of theoretical and practical teaching or the fact that they cater for full-time workers. In this environment, it is not surprising that the numbers of Masters students has grown sharply.<sup>28</sup>

### ***Teaching content***

In the 1990s, law teachers with graduate experience in the United States began to reach an equivalent number to those returning from Europe and Japan. This meant that, in addition to continuing the Civil Law tradition of legal interpretation, law schools began to increase the teaching of American legal research methodologies, such as Economic Analysis of Law, Critical Legal Studies and forms of empirically based legal analysis.<sup>29</sup>

Despite the availability of comprehensive legal textbooks across a wide range of legal subjects, law teachers continued to use lecturing as their main teaching style. It is difficult to say whether they drew links between the legal theories derived from overseas and the laws, judgments and interpretations produced in Taiwan, as there is no empirical information available at the national level. However, there were already some law teachers developing a different approach to legal education, one which focused on case analysis, rather than legal theories (though this remained a minority approach among scholars at National Taiwan University and nationally). By way of illustration, a number of professors at National Taiwan University Law School<sup>30</sup> selected several major interpretations of the Council of Grand Justices (Taiwan's Constitution Court), as well as scholarly writings, and edited them for the purposes of producing teaching materials.<sup>31</sup>

At the same time as improvements were being made to the rather rigid methods of teaching, there was, as mentioned above, significant growth in the number of law schools. This raised the question of whether teaching qualifications were adequate. There were several law schools where the standard of teachers and students

was not ideal. Some of the newly established schools were in the parlous situation of having only one or two full-time members of teaching staff.<sup>32</sup> Most law schools sought teaching staff who had gained Doctoral degrees overseas. These had the potential to combine legal theory and practical analysis, as we have just seen, but the number of such scholars did not keep pace with the rapid growth in the number of law schools. Moreover, if we look at those staff who entered the new law schools, they lacked leadership from senior legal scholars, and tended to sacrifice the interests of students in their allocation of time between teaching and research.

Furthermore, a number of lawyers and judges who in previous times would have been unlikely to gain a teaching position in a law school were now able to do so as a consequence of the great need for staff. To be sure, they were able to bring to their students an understanding of the practical operation of law. Nonetheless, legal education was not their basic profession, nor could it be expected that it would become so. Thus, the content of their teaching tended not to extend to new trends and developments in legal thought. They could contribute little to raising standards of legal knowledge and legal problem-solving in talented students. This failure to pay attention to the quality of teaching, and to blindly expand legal education, seemed to follow the same mistaken path as in the early period of Republican China.

On the question of curriculum, some potential for significant change appeared to open up in 1995, thanks to a momentous decision of the Council of Grand Justices in that year.<sup>33</sup> The Council found that the uniform control over university courses exercised by the Ministry of Education was unconstitutional. This meant that law schools were no longer obliged to follow the course plans developed by the Ministry. The possibilities for curriculum reform have, however, still been somewhat constrained by the topics assessed in the lawyers' and judges' examinations – these have remained substantially the same. Even those subjects that have been designated as options have effectively become compulsory subjects, as they are tested in the examinations. The lack of an impetus for change has meant that, despite the legal freedom that universities now enjoy to set their own curricula, the structure of courses essentially remains the same as in the 1980s. Indeed, the centrality of civil law and commercial law remains a feature of legal studies, just as it was in 1928, even though public law courses have become more prominent. Optional courses have certainly become more diverse, particularly as a result of teachers studying overseas, and some deal with new legal issues. Unfortunately, though, as before, compulsory subjects tend to crowd optional subjects out of the curriculum.

### ***The background and performance of students and teachers***

The aspect of Taiwan's legal education system that most deserves approbation is the broad range of backgrounds of both students and teachers. This promotes social mobility. In terms of ethnicity, the proportion of students and teachers from each Taiwanese ethnic group generally corresponds to their proportion of the general population. However, very few teachers are from an indigenous background



and there are still relatively few female teachers, so there is room for improvement. Fortunately, in recent years, the number of female appointments to teaching staff has, it would seem, exceeded that of males.

The political and economic backgrounds of law students are similarly diverse. In the previous period, the entire education system on the island was geared towards instilling Kuomintang ideology into the population. Law students and law teachers could not avoid this influence. However, during the 1990s, the pre-eminence of Kuomintang ideology came to an end. Different points of view were reflected in legal circles. In the last presidential election, for example, the candidates of both major political parties (President Ma Ying-jeou and Mr Frank Hsieh) were graduates of National Taiwan University Law School.

At the same time, as in previous years, students from poorer social backgrounds were able to ascend to a relatively high social position through merit-based entry to legal education and low university fees. The former President of Taiwan, Chen Shui-bian, came from a poor household but became a lawyer through his study at National Taiwan University Law School and, ultimately, the leader of the nation.

How have lawyers, judges and other graduates of Taiwan's legal education system performed? At present, one can only give an impressionistic analysis; empirical research into the issue needs to be conducted. Several common criticisms can be identified. Some derive from non-legal professionals, such as doctors, accountants and engineers; for example, a frequently heard complaint is that lawyers do not understand non-legal disciplines. This complaint may simply reflect the fact that each profession tends to view itself as particularly important. However, two more specific concerns seem of more substance. One is how, in individual cases, non-legal knowledge may be incorporated into the legal process. A second relates to the alleged inability of Taiwanese lawyers to deal with the complexities of international transactions (such as those involving engineering projects). An issue raised by this latter issue is the extent to which law schools should be responsible for such education, or whether it is more appropriately dealt with by in-house training provided by firms.<sup>34</sup>

More broadly, there are complaints that judges have insufficient understanding of social context, and that legal education has not adequately stressed the linkages between law and society. Be that as it may, the issue is not simply one of legal education, but also involves the judicial training system.

However, there is an even more significant issue that must be faced by Taiwan's legal education system – why do the majority of law graduates not engage in legal practice? On one analysis, it could be suggested that if the present limits on the numbers of lawyers and judges nationally are not to be very significantly lifted (and the pass rate in the admission exams significantly raised), then admission to legal education should be correspondingly restricted. In order to determine the appropriate intake of both law students and of legal professionals, the fundamental objective of legal education should be considered. The aim is to enable individuals to understand legal reasoning and to apply it to practical problems (including in a legal research capacity). In a context where the demands made

of law are increasing and domestic graduates are more exposed to international competition, it is necessary to aim at an admission standard that will select highly capable students. A system that then prevented the large majority of such students from admission to practice should be called into question.

On the other hand, there are several problems with an overly restrictive approach to selection of students. It may deny students from poorer socio-economic backgrounds the opportunity of studying law. It could also lead to legal education being monopolized by a small group of people, and/or dominated by particular and narrow educational approaches. Further, if students are guaranteed entry into the profession, this may lead, in the absence of competition, to laziness on their part, and poor quality outcomes. Therefore, a degree of competition is appropriate both at the stage of entry to legal studies, and at the stage of admission to the profession.

## **The controversies over reform during the democratic period**

### ***Recent proposals for reform: the 2006 White Paper***

There has been no lack of controversy surrounding legal education since Taiwan democratized; from the end of the 1990s, in particular, there have been many scholarly gatherings where this has been the central theme. In December 1999, the Taiwan Law Society (臺灣法學會) at its annual meeting discussed the purposes of legal education, the content of courses and the role of postgraduate legal education. In March 2002, a conference organized by National Taiwan University Law School on the reform of legal education discussed the relationship between these issues and the professional examinations, as well as on-the-job training. In 2004, the Ministry of Justice organized an international conference considering the implications of Japan's adoption of United States-style legal education, as well as developments in Germany.<sup>35</sup>

In 2005, the legal reform issue had become politically significant enough for a governmental committee to be set up. In March of that year, at the suggestion of several law professors, the President's Human Rights Advisory Commission established a 'Committee to Promote the Reform of Taiwan's Legal System', convened by the then Vice-President Annette Lu.<sup>36</sup> The Committee's terms of reference included reform of legal education. A major reason for the establishment of this Committee was that jurisdiction over legal education is split between four governmental organizations: the Ministry of Education is responsible for higher education aspects; the Examination Yuan for professional examinations; the Ministry of Justice for professional training; and the Judicial Yuan for appointments. None of these agencies is superior to any of the others, so the Committee was created in an attempt to transcend jurisdictional boundaries.<sup>37</sup> However, the authority of the Vice-President in these matters is constitutionally doubtful.

Following the establishment of this Committee, in May 2005, the government appointed National Taiwan University's Professor Chang-fa Lo to conduct an inquiry into Taiwanese legal education. The inquiry was to canvass views from

a wide range of stakeholders, and propose specific changes. Professor Lo was assisted by a taskforce of eight, which included academics, legal professionals and judges. Views were sought from across the island and a range of possible reform models devised. In addition, three large-scale forums were organized. The first was an international conference that solicited the opinions of scholars from countries such as the United States, Japan, Germany and South Korea. The second was a conference jointly organized with the Examination Yuan, which looked at the examinations for judges and lawyers. The third was called at the end of 2005 to finalize a White Paper on Reform of Taiwan's Legal Education System, and the various options it contained.<sup>38</sup>

This White Paper indicated that there was a high degree of consensus around several issues. First, in relation to law degrees, the White Paper observed that the current system lacked clear goals, had no sense of appropriate intakes and lacked quality assurance. In order to address this, the White Paper proposed a three-year specialist law degree designed to train legal professionals. Students would either be – in one model – graduates of other disciplines or – in another model – graduates or fourth-year undergraduates. The professional admission examinations should, according to the White Paper, be redesigned so that at least 70 per cent of those students graduating with a law degree would pass; the mode of examination was to be subject to further discussion. Law faculties implementing the new system would encourage students to undertake Doctoral studies either in Taiwan or overseas to ensure the development of future academic talent. New institutional arrangements for determining intake, evaluating legal education and certifying schools would be introduced. The existing undergraduate programs could either be maintained, or phased out, with law students holding a Bachelor-level degree being able to participate in professional examinations for a certain period.

On the question of teaching staff, the White Paper proposed a teacher-student ratio of at least twelve to one, with at least half the staff being full-time. At least 20 per cent of staff would be drawn from professional lawyers and judges, with the government supplementing payments of judges in the event that their salaries decreased on taking up an academic position. Teaching methods and materials would be oriented towards the American 'Socratic Method' of teaching, or other methods involving active exchanges with students. Existing teaching materials focusing on the legal Codes would be modified or integrated with the new material.

In order to enable students to be internationally competitive, courses, and possibly degrees involving law in foreign languages would be offered. International contacts and cooperation, specialist options and better education in legal theory were also proposed.<sup>39</sup> If the White Paper's account of Taiwan's legal education system in 2006 is compared with the position in 1978, it is clear that the disregard for teaching the rule of law and legal theory is no longer evident. On the other hand, the White Paper indicates that courses and teaching styles have atrophied and that the many problems evident in the 1980s persist.

While the White Paper took the debate over legal education to a more sophisticated level, there were problems about participation in the process leading up to

its publication. Unfortunately, the prevalence of legal education ‘talk fests’ prior to Professor Lo’s inquiry meant that many stakeholders were rather fed up with the issue, as little concrete action seemed to eventuate. Many academic staff were not motivated to participate actively, partly because of the increasing pressure to produce research articles, and/or because of teaching overloads. Moreover, Professor Lo’s taskforce had only a few months to examine an extremely complex issue and to devise a policy response, so there was no real opportunity to have an extended dialogue between alternative points of view. Further, some specific proposals really needed more discussion in order to be fully developed. For example, having the same course of legal study for graduates, regardless of whether their first degree was in law or another discipline, seems unreasonable, at least at first glance.

### ***The temporary victory of the American model of legal education***

In Taiwan’s political culture, the conditions for a broad public policy debate are frequently lacking. Consequently, the government moved quickly to institute reform without more wide-ranging analysis. The President’s Human Rights Advisory Commission established a program for reform in April 2006, under which Legal Professional Institutes (*falü zhuan ye yanjiusuo* 法律專業研究所) teaching postgraduate law courses were to be in operation by 2008, a timetable approved by the Ministry of Education.<sup>40</sup> The main policy initiative in this program was the introduction of American-style graduate law degrees. This meant that the existing departments of law in universities were faced with closure, and their students would be able to sit the professional admission examination only within a limited time period. In 2007, Ming-chen Chen, a legislator with the Democratic Progressive Party who strongly favored American-style legal education, introduced a bill that would require all future candidates taking the examinations for admission to the legal profession, the judiciary and for prosecutorial positions, to have studied at the Legal Professional Institutes. Students currently enrolled and present graduates of undergraduate law schools would have no more than ten years within which to take the exams.

With these serious proposals suddenly on the table, many law teachers realized that a major change to legal education could quite possibly occur, but they had very little idea about what form this change might take, or at least they had only a partial impression. The law schools established during the 1990s were especially concerned, fearing that they would not satisfy the requirements for the establishment of the Legal Professional Institutes, and would have to cease operating. Consequently, a large number of law school administrators began to agitate for modifications to the reform plan. They advocated a ‘two-track’ system of legal education, under which the present undergraduate law schools could continue to operate.<sup>41</sup>

Political considerations then forced a change in the direction of the reforms. In June 2007, ten law school administrators, including representatives from the leading law schools, met with President Chen Shui-bian, expressing their reservations

about the proposals from his Advisory Commission. Realizing that there was no consensus among legal circles on the reform issue, President Chen directed the Education Department to suspend implementation of the Legal Professional Institutes scheme. The Examination Yuan was also to suspend its revision of the examination system, and members of the Democratic Progressive Party caucus in the Legislative Yuan were asked to respect the views of the legal academics and withdraw the reform bill. President Chen agreed that reform should proceed in an incremental, two-track and diversified way. The move to convert Taiwan's legal education system to an American model thus came to at least a temporary halt. No-one knows how reform will proceed in the future. In any event, reforms of teaching methods and teaching materials, which are not necessarily linked to wider systemic changes, are still under discussion.<sup>42</sup>

### ***Thought before action***

Reform of Taiwan's system of legal education requires careful consideration of the key underlying concepts. In the author's view, in democratic Taiwan it is not possible for scholars to stimulate change by relying on the actions of political powerbrokers. Feasible reform can be achieved only through debate and compromise involving all the interested parties. Of course, systemic change can often be implemented more efficiently in an authoritarian state, as opposed to a democratic one, the only problem being that change for the worse is just as likely as change for the better. Scholars in a democratic society must therefore ground their proposals on rational observation of a situation, and then persuade the public of the need for particular reforms based on a coherent conceptual analysis.

Unfortunately, the recent scholarly debates on reform of legal education have usually rested on views formed from personal experience, or have sought to invoke models from overseas.<sup>43</sup> However, individual experience is limited and cannot pinpoint the weaknesses of the current system, nor predict the possible difficulties associated with reform, nor explain why teaching methodologies have remained basically unchanged for 80 years. These issues need to be explored through empirical research; for example, research is needed to identify the appropriate number of lawyers that should be admitted through the professional examination.<sup>44</sup>

Moreover, every reform model has its benefits and drawbacks and resolving these can depend on value judgments. Student selection provides a clear example: should the requirements of elite groups or the general society prevail? Given that there is no objective way of resolving this question, foreign models are useful only as reference materials, not as guides. At the end of the day, reform must respond to Taiwan's own social conditions.

### ***A proposal for further discussions on legal education***

Set out below (Figure 7.1) is the author's own suggestion for reform of legal education in Taiwan. I aim to clarify the educational and professional aims of

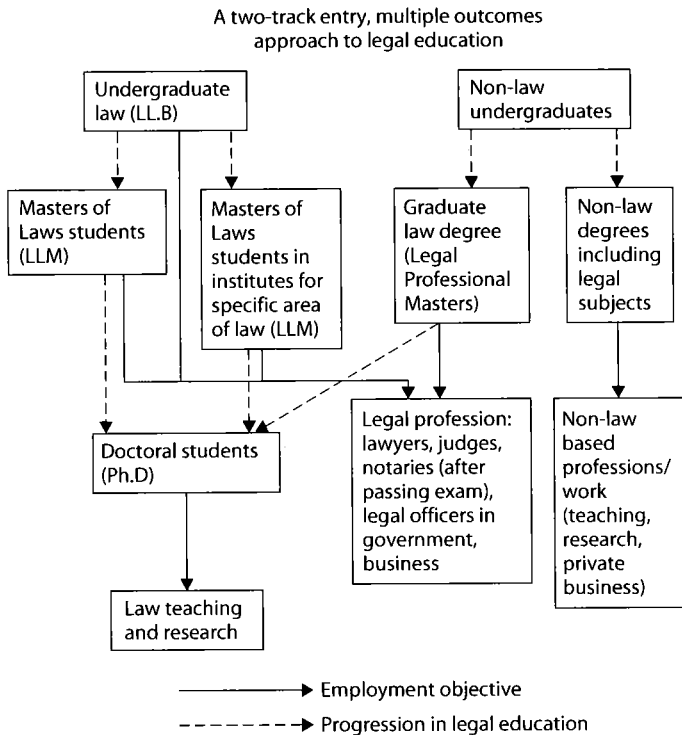


Figure 7.1 Blueprint for legal education in Taiwan.

legal education in order to identify the qualities demanded of law students and the requirements of law teachers. This figure also enables assessments to be made of current legal institutions, with a view to determining whether they are capable of implementing reforms. It outlines the essential features of a new legal education system, so that further thought can be given to specific issues such as modifying teaching materials and evaluating law schools.

The outline describes a ‘two-track – multiple outcomes’ system in which there would be two pathways to legal education. One pathway would (as at present) be an undergraduate law degree, during which a student would receive a basic grounding of law. A graduate could choose not to undertake further education, but in order to become a legal professional, the graduate would have to pass the professional admission examination (the reasonableness of this examination is another issue). Further training in law might be required, but this would be the responsibility of legal professional bodies rather than universities. If the student did not pass, or did not seek to pass, an admissions examination, other options, such as working in the legal affairs department of a business enterprise, would remain open.

Undergraduate students could alternatively choose to continue their legal education by undertaking a Masters degree. LL.M graduates could become legal professionals or take up other options, or they could continue their studies at Doctoral level either in Taiwan or overseas. The purpose of gaining a Ph.D would be to seek employment at a university or legal research institute. It would, of course, also be possible for a student to embark on studies in other disciplines, such as economics, accounting and management, even to the point of obtaining an additional degree. Indeed, such study should be encouraged. Such additional studies would not, however, constitute part of the system of legal education.

The second pathway would be for students who had completed an undergraduate degree in a discipline other than law. It would aim to open up access to the legal profession to a wider range of people, and to promote healthy competition and cooperation with the students taking the first pathway. Students taking the second pathway would need to make a choice: either to undertake studies to gain legal knowledge sufficient to become a lawyer, or to study law as an adjunct to work in another profession. This choice would determine the type of graduate legal education in which they would enroll. If they made the first choice, to study law in depth, they would enter a Legal Professional Institute and receive legal training similar to that offered to undergraduate law students. Thus they would be in a similar position to graduate students taking the JD degree in the United States. In order to distinguish these students in Taiwan from LL.M (*faxue shuoshi* 法學碩士) students, and in particular to avoid the misapprehension that such study would entail a thesis, the term 'Legal Professional Masters' (*falü zhuan ye shuoshi* 法律專業碩士) would be used.

Holders of Legal Professional Masters degrees would have the same access to legal professional examinations as those with LL.B and LL.M degrees. Whether the degree in another discipline would provide them with an advantage in the job market would depend on the nature of their degree and on the specific job requirements. Unlike LL.B graduates, though, Legal Professional Masters students could, like LL.M students, seek admission directly to a Doctoral program and engage in advanced studies in law, in order to become legal academics or professional legal researchers. Creating multiple pathways to an academic or research career would enrich Taiwan's legal research culture, and expand the opportunities for interdisciplinary work.

Outstanding non-law graduates who wished to study aspects of law in addition to their main specialty could study discrete legal subjects in an adjunct program run through their (non-law) professional postgraduate institutes. This would not, however, result in their obtaining any kind of law degree. This should be viewed as one aspect of legal education, one that would strengthen the linkages between law and other professions in society, and increase awareness throughout society of the rule of law. The law teachers in these programs would be likely to engage in different sorts of research work to those in the law faculties and legal research institutes, generating further diversity.

In short, this two-track system would lead to greater diversity, broadening the range of choices available to individuals, and improving national legal education and research.

## Conclusion

This chapter has sought to relate the present dilemmas facing Taiwanese legal education to the history of law teaching on the island. This history began during the Japanese colonial period, and continued through the authoritarian period of Kuomintang rule, to present-day liberal democratic Taiwan. Notwithstanding the many debates on the aims and content of legal education that have occurred over the last hundred years, there remains uncertainty as to the future direction of law teaching.

There is now a pressing need to conduct credible empirical research into the current state of legal education in Taiwan. Without a full grasp of its present condition and the causes of its 'illness', it is not appropriate to simply prescribe a foreign cure. In contrast to the past tendency of legal education to serve the interests of politics, we must now stress that the conceptual starting point should be the needs of the students. We need to identify the different kinds of legal curricula appropriate to different pedagogical needs of talented people. Are we talking about people aiming to be law teachers; legal researchers; legal professionals seeking a license to practice (where licensing policy is determined by government); legal officers in government agencies or businesses; or people who engage in professions outside the law? We also need to review the student quality required for selection into courses, and the educational quality expected in tertiary institutions.

I have proposed that legal education be reworked along the lines of a 'two-track – multiple outcomes' model. In my view, this model will ensure that legal education for this generation of students creates a firm legal underpinning for Taiwanese society, enabling future generations to enjoy a rich quality of life.

## Notes

Most of the references below are to Chinese-language texts. The name of the author has been translated into English. Most of the authors are from Taiwan, where pinyin Romanization is generally not used for names. Where known, the Taiwanese Romanization is used (there is not one consistent system); where this is not known, pinyin is used and the name is italicized.

\* The original Chinese article can be found at Tay-sheng Wang, 台灣法學教育的發展與省思：一個法律社會史的分析 [The Development of and Reflections on Legal Education in Taiwan: An Analysis from a Socio-legal Perspective], 台北大學法學論叢 [*Taipei University Law Review*] 68 (2008): 1–40. The translator wishes to thank Adam Laidlaw and Kevin Zhou for their assistance.

1 王泰升 [Tay-sheng Wang], 台大法學教育與台灣社會 (1928–2000), 台灣法的世紀變革 [Legal Education at National Taiwan University and Taiwanese Society (1928–2000): A Century of Reform of Taiwanese Law] (Taipei: 元照出版公司 [Yuanzhao Publishers], 2004): 137–43.

2 *Ibid.*: 150–51, 249–50.

3 陳昭如 [Chao-ju Chen], 初探台北帝大政學科的法學教育與法學研究 [An Initial Investigation of Legal Education and Legal Research at Taipei Imperial University Academia] (台北帝國大學研究一, 第2期 [Research into Taipei Imperial University, volume 2], May 28, 1997).



- 4 王泰升 [Tay-sheng Wang], 台大法學教育與台灣社會 (1928–2000), 台灣法的世紀變革 [Legal Education at National Taiwan University and Taiwanese Society (1928–2000): A Century of Reform of Taiwanese Law], 177–8.
- 5 Ibid., 114–16; for more information on legal education in Republican mainland China, see 劉恆奴 [Heng-wen Liu], 從知識繼受與學科定位論百年來台灣法學教育之變遷 [One Hundred Years of Change in Taiwan's Legal Education: The Reception of Legal Knowledge and the Determination of Legal Curricula] (台灣大學法律學研究所博士論文 [National Taiwan University Law School Doctoral Theses], 2005): 99–153.
- 6 On the structure of the Law Department, see 王泰升 [Tay-sheng Wang], 台大法學教育與台灣社會 (1928–2000), 台灣法的世紀變革 [Legal Education at National Taiwan University and Taiwanese Society (1928–2000): A Century of Reform of Taiwanese Law], 123–4; 劉恆奴 [Heng-wen Liu], 從知識繼受與學科定位論百年來台灣法學教育之變遷 [One Hundred Years of Change in Taiwan's Legal Education: The Reception of Legal Knowledge and the Determination of Legal Curricula], 195; 司徒仲敷等編 [Zhong-ao Si et al.], 傍昔創新, 踵事增華—國立臺北大學五十五年 [Learning from Bygone Years: 55 Years of National Taipei University] (Taipei: 國立臺北大學 [National Taipei University], 2004): 143.
- 7 See, for example, 高鴻廷等編 [Hong-ting Gu et al.], 東海三十年, 東海大學 [30 Years at Tunghai University] (Taichung: Tunghai University, 1985); 中國文化大學校史編纂委員會編, 中國文化大學校史 [A History of Chinese Culture University] (Taipei: 中國文化大學 [Chinese Culture University], 1999).
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- 9 王泰升 [Tay-sheng Wang], 台大法學教育與台灣社會 (1928–2000), 台灣法的世紀變革 [Legal Education at National Taiwan University and Taiwanese Society (1928–2000): A Century of Reform of Taiwanese Law], 123–7.
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- 11 王泰升 [Tay-sheng Wang], 台大法學教育與台灣社會 (1928–2000), 台灣法的世紀變革 [Legal Education at National Taiwan University and Taiwanese Society (1928–2000): A Century of Reform of Taiwanese Law], 143–8.
- 12 The Three Principles of the People (*Sanmin Zhuyi* 三民主義) are nationalism (*Minzu Zhuyi* 民族主義, freedom from foreign rule), democracy (*Minquan Zhuyi* 民權主義) and social welfare (*Minsheng Zhuyi* 民生主義).
- 13 See 教育部 [Ministry of Education], 文工會, 青工會編, 大學院校哲學及法律學教學研討會資料彙編, 編者自刊 [Materials from the Forum on the Philosophy of the University and Legal Education] (Taipei: Ministry of Education, 1978): 50–68, 110–27.
- 14 王泰升 [Tay-sheng Wang], 台大法學教育與台灣社會 (1928–2000), 台灣法的世紀變革 [Legal Education at National Taiwan University and Taiwanese Society (1928–2000): A Century of Reform of Taiwanese Law], 153–74; 教育部 [Ministry of Education], 文工會, 青工會編, 大學院校哲學及法律學教學研討會資料彙編, 編者自刊 [Materials from the Forum on the Philosophy of the University and Legal Education].
- 15 王泰升 [Tay-sheng Wang], 台大法學教育與台灣社會 (1928–2000), 台灣法的世紀變革 [Legal Education at National Taiwan University and Taiwanese Society (1928–2000): A Century of Reform of Taiwanese Law], 204, 206–7, 225–7.
- 16 劉恆奴 [Heng-wen Liu], “戰後司法人之研究” [A Study of Post-war Judicial Personnel], 思與言 [Thought and Word] 40, no. 1 (2002): 175–6; 王泰升 [Tay-sheng Wang], 台大法學教育與台灣社會 (1928–2000), 台灣法的世紀變革 [Legal Education at National Taiwan University and Taiwanese Society (1928–2000): A Century of Reform of Taiwanese Law], 258–67.

- 17 See *Report of the Legislative Yuan*, volume 96, no. 39 (2007): 5. The Legislative Yuan is Taiwan's Parliament; 陳惠馨 [Hwei-syin Chen], '台灣近年來有關法學教育改革的討論與發展' [A Discussion of Recent Reforms to Legal Education in Taiwan], 月旦法學雜誌 [Yuedan Law Magazine] 302 (May, 2006).
- 18 劉恆奴 [Heng-wen Liu], 從知識繼受與學科定位論百年來台灣法學教育之變遷 [One Hundred Years of Change in Taiwan's Legal Education: The Reception of Legal Knowledge and the Determination of Legal Curricula], 191, Table 4-1.
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- 21 劉恆奴 [Heng-wen Liu], 從知識繼受與學科定位論百年來台灣法學教育之變遷 [One Hundred Years of Change in Taiwan's Legal Education: The Reception of Legal Knowledge and the Determination of Legal Curricula], 199, 206.
- 22 黃銘傑 [Ming-jye Huang], '法學教育與司法官, 律師考試制度檢討與改進之研究' [A Study of Legal Education and the Examination System for Judges and Lawyers: Analysis and Reform], 10.
- 23 For example, the number of research students at National Taiwan University rose from 16 in the 1980s to more than 100 in 2007, while there was only a limited increase in teaching staff.
- 24 劉恆奴 [Heng-wen Liu], 從知識繼受與學科定位論百年來台灣法學教育之變遷 [One Hundred Years of Change in Taiwan's Legal Education: The Reception of Legal Knowledge and the Determination of Legal Curricula], 201.
- 25 成永裕 [Yong-yu Cheng], '大學法律專業教育之新嘗試—以東吳大學法學院碩乙組為例' [New Initiatives in the Education of Legal Professionals in Taiwan: The Example of Soochow University], in 台灣法學會編, 邁向二十一世紀的台灣法學與法學教育 [Taiwanese Law and Taiwanese Legal Education Strides Towards the Twenty-first Century], ed. 台灣法學會 [Taiwan Law Society] (Taipei: 台灣法學會 [Taiwan Law Society], 2000): 368-73.
- 26 劉恆奴 [Heng-wen Liu], 從知識繼受與學科定位論百年來台灣法學教育之變遷 [One Hundred Years of Change in Taiwan's Legal Education: The Reception of Legal Knowledge and the Determination of Legal Curricula], 204-5.
- 27 See at section (1) above.
- 28 劉恆奴 [Heng-wen Liu], 從知識繼受與學科定位論百年來台灣法學教育之變遷 [One Hundred Years of Change in Taiwan's Legal Education: The Reception of Legal Knowledge and the Determination of Legal Curricula], 205-6.
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- 33 Interpretation 380.
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[A Study of Legal Education and the Examination System for Judges and Lawyers: Analysis and Reform].

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- 40 See *Report of the Legislative Yuan*, volume 96, no. 7 (2007).
- 41 *Report of the Legislative Yuan*, volume 96, no. 45 (2007): 1–38.
- 42 陳惠馨 [Hwei-syin Chen], '台灣近年來有關法學教育改革的討論與發展' [A Discussion of Recent Reforms to Legal Education in Taiwan], 9.
- 43 See, for example, 潘維大 [Wei-ta Pan] and 陳子平 [Tz-ping Chen], 東吳大學法學院建院九十周年慶法學教育學術研討會 [Forum on Legal Education Publication Celebrating the 90th Anniversary of the Founding of Soochow Law School] (Taipei: 東吳大學法學院 [Soochow University Law School], 2006).
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