

The Evolving Mission of Peking University's School of Transnational Law

Philip J. McConaughay

Peking University's School of Transnational Law ("STL") is approaching its fifteenth anniversary. By most measures, STL has been an unqualified success. STL's American law J.D. program –China's only U.S. law J.D. –is comparable in all substantial respects to the J.D. programs of leading U.S. law schools. STL's China law Juris Master's program (J.M.), with which STL's J.D. is offered jointly, is reshaping the content and objectives of Chinese legal education and creating substantial demand, among both students and employers, for a graduate professional degree in law. Most important, the value of STL's J.D. and J.M. programs in combination has proved far greater than simply the sum of the parts and is helping both to define and reflect legal services in an era of advanced commercial exchange among mixed legal traditions.

The evidence of STL's success is clear. Demand for admission to STL among China's most academically gifted college graduates is extremely high. STL has recruited a multinational faculty of leading scholars, all of whom subscribe to the case study method of instruction with intensely interactive class sessions, even within STL's largely civil law J.M. curriculum. The professional placement of STL graduates in world-leading Chinese and multinational law firms, businesses, government offices, and universities has been exceptional, even during the recent economic downturn resulting from the pandemic. STL enjoys a steadily growing alumni/ae base on the cusp of leadership in China and elsewhere.

And STL provides all of this to students at very low cost: less than US\$10,000 tuition per year in comparison with annual tuition at U.S. law schools that often exceeds \$50,000, leaving the average U.S. law student with debt upon graduation of \$165,000.

At the same time, because STL is an academic unit of Peking University ("PKU"), fully subject to central government and PKU regulations, policies, and practices, STL faces certain endemic challenges capable of jeopardizing its unique program and achievements. In this respect, STL is unlike the leading

Philip McConaughay is Dean and Professor of Law at Peking University School of Transnational Law and a former vice chancellor of Peking University Shenzhen Graduate School. Thanks to Colleen Toomey, STL's immediate past Vice Dean and currently Senior Associate Dean of Columbia University School of International and Public Affairs, for her helpful suggestions and edits to earlier drafts of this article.

American universities that have established campuses in China (e.g., NYU Shanghai, Duke Kunshan, Tsinghua-UC Berkeley Shenzhen Institute), all of which conditioned their presence on carve-outs from Chinese government regulations, policies, and practices that are not consistent with the fundamentally American university character of their programs. STL, in contrast, is a *Chinese* law school that offers an American law program, *not* an American law school with a China campus.

Chief among the challenges is the looming threat of censorship. Despite Peking University's renowned tradition of "freedom of thought and expression,"¹ China's Great Firewall blocks much internet traffic, import restrictions identify and forbid the entry of "sensitive" academic books, and a renewed national emphasis on the primacy of Chinese Communist Party thought has slowed and threatens to impede the otherwise remarkable expansion, internationalization, and elevation of higher education in China during the past two decades (e.g., Peking and Tsinghua Universities are now ranked twelfth and fourteenth, respectively, in the 2023 QS worldwide university rankings; they are tied for sixteenth in the Times Higher Education worldwide university rankings. Seven Chinese universities have joined the Top 100 universities in the world.). These impediments require expensive—and for PRC nationals, risky and often unavailable—alternative methods of access to knowledge and research materials essential for academic work.

Another challenge is the centralized control of higher education, which impedes effective faculty governance at the level of universities and disciplines. Legendary Peking University President Cai Yuanpei first called for the "institutional autonomy" of China's universities well over a century ago.² Reasonably broad autonomy of governance, however, has yet to occur, whether for Chinese universities or for their constituent disciplines. Constraints on faculty governance at the level of disciplines express themselves in multiple ways in the daily life of a Chinese law school, in admissions, faculty appointments, curricular approval, and other core aspects of the educational program.

A challenge of a different sort is instilling in China's law students, who have grown up in a society without a well-established legal profession, legal system, or rule-of-law tradition, an appropriately strong sense of the ethical and professional responsibilities of lawyers across different legal systems and traditions. At STL, we strive to teach a principled and ethical approach to advocacy, counseling, and problem-solving in a society that traditionally has tolerated a more instrumental approach to each.

The worldwide COVID-19 pandemic has presented a more recent challenge, not so much in the transitions to and from online instruction and remote learning with which law schools and universities worldwide have had to contend during waves of infection, but in the enduring lockdowns, border controls, quarantines,

1. WILLIAM C. KIRBY, EMPIRES OF IDEAS: CREATING THE MODERN UNIVERSITY FROM GERMANY TO AMERICA TO CHINA 241 (2022).

2. *Id.* at 240.

and restrictions on international travel that accompanied China's "zero-COVID" policy, which ended only in December 2022. In combination, these aspects of pandemic control significantly diminished the international engagements of STL students and faculty—and adversely affected the law school's ability to recruit new expatriate faculty—during the three years of pandemic controls, despite the law school's founding principle of deep, ongoing international engagement. The end of "zero-COVID" presumably will usher in a return to pre-pandemic levels of international travel, engagement, and expatriate recruiting; calendar year 2023 will be the test.

The core characteristics and values of STL, nonetheless, remain strong despite these challenges, none of which, we hope, ever will rise to the level of an existential threat, but all of which possess that capacity. The story of STL's first fifteen years, as a result, has been one of adaptation, with the law school's mission evolving accordingly. This essay will recount and examine the most important adjustments in STL's mission, together with the choices we have made along the way to preserve the law school's core values.

I. The Evolution of STL's Educational Program

STL's program of legal education has evolved in four distinct phases: (1) STL initially offered only a U.S. law J.D. degree with the widely touted goal of acquiring ABA approval of its J.D. program. (2) Because of a regulatory complication that jeopardized the award of a J.D. degree independently of a J.M. degree, STL added a J.M. degree beginning in its second year of operation, but the J.M. clearly was secondary in importance to STL's J.D. STL's J.M. curriculum was skeletal—essentially a handful of traditional China law courses imported from other China law schools—and only a single resident J.M. professor was added to STL's faculty. (3) Within a few years of STL's establishment, rapid advances in China's domestic economy, increased foreign direct investment in China, and burgeoning worldwide investment by China state-owned enterprises elevated the importance of China law in domestic and international legal services and accelerated the growth of China law firms. China law firms began to make significant inroads into the inbound and outbound legal services formerly dominated by foreign law firms, and placement preferences of STL graduates began to shift from foreign to domestic firms. STL redesigned its J.M. curriculum to introduce content essential to legal skills and services in a domestic economy increasingly based on technological innovation, technology transfer, sophisticated financial services, and internationalization. (4) STL integrated its newly redesigned China law curriculum with its U.S. law J.D. curriculum and added multinational and multicultural perspectives to both to create what we believe is the world's only true School of *Transnational Law*.

Phase I: A U.S. Law J.D. in China

STL owes its origin to Peking University (PKU) Professor Hai Wen, a former chancellor of PKU's Shenzhen Graduate School, who proposed that PKU offer a U.S. law J.D. program in China that could substitute for the U.S. J.D.

programs to which exceptional Chinese college graduates increasingly were applying. PKU advanced the idea and in 2007 applied to China's State Council for authorization to offer China's first J.D. degree in U.S. common law, which the State Council authorized on an experimental basis. PKU recruited Jeffrey Lehman, Cornell University's immediate past president and a former dean of the University of Michigan Law School, to serve as STL's founding dean, and STL admitted its first students in 2008.³

From the outset, STL's goal was ABA accreditation. The law school aspired for STL graduates to "walk out and work for Paul Hastings, Akin Gump and other similar firms."⁴ This goal seemed realistic: Visiting U.S. law professors spoke of the comparability of STL to their home law schools, and leading U.S. practitioners compared STL students favorably to their young U.S. associates. In testimonials STL filed with the ABA,⁵ Harvard Law Professor Charles Ogletree observed, "The students [at STL] are absolutely remarkable I am convinced that the young people I taught there would be exceptional American lawyers." United States District Judge Ellen Segal Huvelle reported, "I found that the students at STL demonstrated a keen appreciation for and understanding of the culture, values and ethics of the American legal system. If anything, they demonstrated far more enthusiasm for embracing our legal system than U.S. law students exhibit." Former ABA President Robert Hirschon said, "The STL students [I teach] discuss the same hypotheticals and read the same course book as students at the University of Michigan and University of Virginia. I can state . . . without reservation that the students I teach at STL have a similar level of appreciation and understanding of the culture, values and ethics of the American legal system as [the] foreign [law] students I teach in the United States."

In June of 2010, the ABA Council of the Section of Legal Education and Admissions to the Bar appointed a "Special Committee on Foreign Law Schools Seeking Approval under ABA Standards." The special committee's July 19, 2010, report recommended that the council proceed with the accreditation of law schools outside U.S. borders that meet ABA Standards, provided that "the curriculum is primarily focused on U.S. law, the instruction is primarily in English, and the faculty are primarily J.D. graduates of ABA approved law schools."⁶ Three months later, STL wrote to the ABA to announce that, if the ABA were to adopt the recommendation of the special committee, STL would seek ABA approval.

3. The history of STL's early years that follows is drawn in part from Philip J. McConaughay & Colleen B. Toomey, *China and the Globalization of Legal Education: A Look into the Future*, in *THE GLOBALIZATION OF LEGAL EDUCATION* 308 (Bryant Garth & Gregory Shaffer eds., 2022).

4. Jeffrey S. Lehman, Vice Chancellor, NYU Shanghai, Address to The Council of International Affairs of the New York City Bar Association: The Peking University School of Transnational Law: What? Where? Why? 3 (Jan. 31, 2012) (on file with author).

5. STL Comments to ABA Accreditation, 2012 (on file with author).

6. REPORT OF SPECIAL COMMITTEE ON FOREIGN LAW SCHOOLS SEEKING APPROVAL UNDER ABA STANDARDS (July 19, 2010), <https://www.abajournal.com/files/kanereportinternational2.pdf>.

Leading observers predicted the likelihood of STL's ABA approval. The global legal strategist for Thompson West said, "I'm very confident STL will get ABA accreditation. The Chinese students specializing in American law will help maintain the growth of international trade This means more jobs, transactions and opportunities."⁷ The head of Akin Gump's Beijing office agreed: "For us it is important because we depend on Chinese lawyers, most of whom have had to go to the U.S. and get a graduate law degree."⁸

Unfortunately for STL, the special committee's recommendation coincided with an unprecedented downturn in the U.S. markets for legal services and legal education.⁹ Barely a month following the special committee's recommendation, U.S. lawyers and law deans began writing the ABA to express strong opposition to the accreditation of foreign law schools, especially STL. Practitioners were afraid that an ABA-approved STL would flood the American market for legal services with U.S. bar-eligible Chinese lawyers; U.S. law deans feared a loss of foreign applicants if STL could provide the same law degree and U.S. bar access *in* China at far less cost.¹⁰

Almost two years to the day following the special committee's recommendation, the Council of the ABA Section of Legal Education and Admissions to the Bar voted fifteen to zero, with two abstentions, *not* to proceed with the accreditation of foreign law schools. Professor John Flood of the University of Westminster (London) expressed the prevailing assessment of the ABA's decision: "The decision was driven by . . . practitioners in the U.S. who are intimidated by foreigners taking American jobs against a backdrop of a shrinking legal market."¹¹

Phase 2: STL's Addition of a China Law Juris Master's Degree

When China's State Council authorized PKU's establishment of a U.S. law J.D. program, the authorization extended literally only to an "*international Fa Lv Shuo Shi*," or *international Juris Master's degree*.¹² China's Juris Master's degree, established in 1999 as a postbaccalaureate professional (i.e., practice-oriented) law degree, is officially recognized by the Ministry of Education as an authorized university degree; a Juris Doctor, or J.D., is not recognized by the Ministry of

7. Jaime Mendoza, *China Legal*, U.S.-CHINA TODAY (July 31, 2009), <https://uschinatoday.org/features/2009/07/31/china-legal/> (quoting Chang Wang).

8. *Id.* (quoting Elliot Cutler).

9. Eli Wald, *Foreword: The Great Recession and the Legal Profession, in The Economic Downturn and the Legal Profession*, 78 *FORDHAM L. REV.* 2051 (2010).

10. Harrison Barnes, *ABA Accreditation of Foreign Law Schools?*, *LAWCROSSING* (Aug. 20, 2012), <https://www.lawcrossing.com/employers/article/8037/ABA-Accreditation-of-Foreign-Law-Schools/>.

11. Sam Favate, *ABA Council Votes Against Accrediting Foreign Law Schools*, *THE WALL ST. J. BLOG* (Aug. 7, 2012), <http://blogs.wsj.com/law/2012/08/07/aba-council-votes-against-accrediting-foreign-law-schools/>.

12. State Council Circular X.W.B. [2007] No. 46 (China).

Education.¹³ Even though the State Council's authorization of an *international* Fa Lv Shuo Shi was understood to refer to a U.S.-style J.D., there was some concern within Peking University that a J.D. could not be awarded without an accompanying, officially recognized, Juris Master's degree (Fa Lv Shuo Shi). STL consequently added a J.M. degree during STL's second year of operation (2009), resulting in a required J.D./J.M. dual-degree program.¹⁴

When STL began its J.M. curriculum, China's practice-oriented J.M. degree was neither well established nor well regarded, popularly perceived, at best, as "second tier" in comparison with the more theoretical undergraduate curriculum resulting in an LL.B.¹⁵ STL essentially conceded this fate for its new J.M. degree, enlisting only one full-time J.M. professor from another PKU school to create the curriculum, and otherwise simply importing J.M. courses taught by visiting instructors from other China law schools. STL's J.M. courses were scheduled during weekend and evening hours not occupied by the J.D. curriculum. STL's J.D. program remained STL's curricular priority and singular focus until the ABA's 2012 decision not to extend its accreditation jurisdiction to foreign law schools.

Shortly following the ABA's decision, STL Founding Dean Lehman announced that he would be leaving STL to establish a new NYU campus in Shanghai. Most observers, including many within Peking University, viewed these twin blows as the death knell for STL. Dean Lehman predicted otherwise¹⁶

13. China's establishment of a J.M. degree was consistent at the time with the growing "professionalization" (i.e., Americanization) of legal education worldwide. See Alison W. Connor, *China's Lawyers and their Training: Enduring Influences and Disconnects*, in *LEGAL REFORMS IN CHINA AND VIETNAM: A COMPARISON OF ASIAN COMMUNIST REGIMES* (John Gillespie & Albert H.Y. Chen, eds. 2016). For example, in the same time frame, Japan and South Korea announced the establishment of postbaccalaureate J.D. degrees, as did universities in Australia, Canada, Hong Kong, Singapore, India, and the Philippines, with other nations contemplating similar moves. See, e.g., Jeffrey S. Lubbers, *Japan's Legal Education Reforms from an American Law Professor's Perspective* 15-18 (American University Washington College of Law Legal Studies Research Paper Series, 2012), <http://ssrn.com/abstract=1552094>; Rosa Kim, *The "Americanization" of Legal Education in South Korea: Challenges and Opportunities*, 38 *BROOKLYN J. INT'L L.* 49 (2012); Carole Silver, *Globalization and the Monopoly of ABA-Approved Law Schools: Missed Opportunities or Dodged Bullets*, 82 *FORDHAM L. REV.* 2869, 2871, 2878-79 (2016).
14. Because STL's fledgling J.M. curriculum was taught exclusively in Chinese, and because STL's English-language J.D. curriculum could not be offered independently of a J.M. degree, enrollment in STL's dual J.D./J.M. program effectively became limited to PRC nationals and other students fluent in spoken and written Mandarin (i.e., students principally from Hong Kong, Macau, and Taiwan).
15. Xin Yun, *The New Juris Master's degree: China's Tightrope between Theory-Oriented and Practice-Oriented Legal Education*, 29 *INT'L J. LEGAL PRO.* 209 (2022).
16. Dean Lehman described STL's new circumstances as follows: "Freed from any need to worry about the American Bar Association STL will now be able to focus in a more single-minded manner on the ultimate question: what kinds of education will best prepare professionals to serve a world in which the processes of globalization—economic, social and political—are likely to continue accelerating in the decades to come?" Jeffrey Lehman, Vice Chancellor, NYU Shanghai, The Senobu Foundation Distinguished Lecture: Transnational Legal Education in the 21st Century: Two Steps Forward, One Step Back (Mar. 16, 2014) (on file with author).

and encouraged me to succeed him as STL's dean.¹⁷ My charge was to contend with these developments and perceptions.

Phase 3: Transforming STL's J.M.

Although the global recession of 2008–2009 was followed by the unprecedented downturn in the U.S. market for legal services that dashed STL's hopes of ABA approval, the opposite was occurring in China. China's economy and market for legal services were growing exponentially. This was especially true of Shenzhen, STL's home.¹⁸

Between 1980 and 2016, Shenzhen's GDP in real terms grew at an average annual rate of twenty-two percent, the highest in China, and the city transformed from a village dependent on agriculture and fishing to a metropolis of almost twenty million known for technological innovation and services. Shenzhen's annual investment in R&D exceeded (and still exceeds) that of most nations,¹⁹ spawning such world-leading technology and finance giants as Tencent, Huawei, Ping An, DJI Drones, BGI, BYD, and ZTE.²⁰ In 2010, Shenzhen and Hong Kong (Shenzhen's neighbor only a few minutes to the south) announced their joint development of "Qianhai," a growing center of IT, finance, and legal services located in Shenzhen, touted since as "Asia's Wall Street."²¹ In 2013,

17. I became dean of STL in 2013, intrigued principally by the same question Dean Lehman posed in his 2014 Japan speech (*see supra* note 16). Between 2012 and 2013, Stephen Yandle served as STL's interim dean. Stephen was STL's vice dean, a former deputy consultant of the ABA's Section of Legal Education and Admissions to the Bar, and before that the associate dean for administration at Yale Law School. I had been founding dean of Penn State Law, founding dean of Penn State's School of International Affairs, dean of Penn State University's Dickinson School of Law, a professor of law at the University of Illinois, Urbana-Champaign, and a partner at Morrison & Foerster, resident in Tokyo, Hong Kong, San Francisco, and Washington, D.C.
18. At the behest of the Shenzhen and national governments, Peking University established a campus in Shenzhen in 2002, the Peking University Shenzhen Graduate School. Shenzhen was designated in 1980 as China's first Special Economic Zone, and its economic growth and transformation since have been phenomenal, as described in the text, above, following note 18. Shenzhen's basic development strategy has been built around the same principles of "cluster economics" responsible for the growth of U.S. high-tech centers in Silicon Valley, Route 128 (Boston), and Austin, Texas: a combination of favorable government policies, high-tech industries, and abundant institutions of higher education, with collaboration among all three sectors.
19. He Huifeng & Nectar Gan, *China's Economic Powerhouse Shenzhen Banks on R&D to Bring It to Greater Heights*, SOUTH CHINA MORNING POST (Jan. 31, 2016, 11:00 PM), <https://www.scmp.com/news/china/policies-politics/article/1907998/chinas-economic-powerhouse-shenzhen-banks-rd-bring-it>.
20. Shenzhen's economic and technological ascendancy has continued. By 2017, *The Economist* declared Shenzhen "one of the world's most innovative cities" (*see Welcome to Silicon Delta: Shenzhen is a Hothouse of Innovation*, THE ECONOMIST (Apr. 12, 2017), <https://www.economist.com/special-report/2017/04/06/shenzhen-is-a-hothouse-of-innovation>) and the World Intellectual Property Organization ("WIPO") announced that Shenzhen-Hong Kong had surpassed California's Silicon Valley on WIPO's Global Innovation Index. *See SZ-HK Overtakes Silicon Valley*, SHENZHEN DAILY (June 23, 2017).
21. QIANHAI, <http://www.szqh.com.cn> (last visited May 12, 2023); Natasha Khan & Enda Curran,

China embarked on its Belt and Road Initiative (BRI)—since called “the new face of globalization”—promoting infrastructure development and economic links throughout Central, South and Southeast Asia, Eastern Europe, and Africa, for which Shenzhen serves as a gateway city.²² The domestic demand for legal services in China began to skyrocket along with these developments.²³

STL viewed these developments as a strategic opportunity to pursue two objectives. First, we believed we could transform J.M. education in ways that would provide students with the same professional skills in the practice of China law that we strive to cultivate in our J.D. program, namely, rigorous analytical thinking, the ability to see all sides of an issue, the ability to solve complex problems creatively, and the ability to persuade, both orally and in writing. These are precisely the skills essential for legal services in an advanced internationalized economy. Second, we believed we could blend our J.D. and J.M. programs and incorporate multinational legal perspectives in ways that would prepare our students for the multiple different legal regimes and perspectives they likely would encounter during their careers, not only in exchange between trading partners situated within China and Western legal traditions, but in BRI transactions and disputes that involve non-Western traditions and perspectives (see the discussion of Phase 4 below). Implementing both objectives ultimately would have a profound impact on STL's approach to legal education.

With respect to our objective of the reform of STL's J.M. program, we knew we would need to depart significantly from the conventional method of J.M. education followed by other China law schools. Despite the “practice-oriented” purpose of China's new J.M. degree, the typical approach of other China law schools to J.M. education is largely theoretical (i.e., teaching methods of statutory interpretation rather than engaging in interpretation and the application of codes to actual or hypothetical legal problems) and provided via one-way lecturing to large numbers of students, often hundreds at a time. This approach replicates, but substantially abbreviates, the standard approach to LL.B. education in China; it does not create a new approach for “practice-oriented” legal education. Teaching is not based on the case method, classes are not interactive, the acquisition of professional skills is not a priority, and the overall academic rigor of most J.M. programs is not high.

Hong Kong Cozies Up to Shenzhen to Create Future, BLOOMBERG NEWS (June 11, 2017), <https://www.bloomberg.com/news/articles/2017-06-11/hong-kong-cozies-up-to-shenzhen-in-border-swamp-to-lure-startups>; and Enoch Yiu, *Number of Firms Registered in Qianhai up 68 Percent, But Small Players Can't Get a Look In*, SOUTH CHINA MORNING POST (Feb. 8, 2017), <https://www.scmp.com/business/companies/article/2069187/number-firms-registered-qianhai-rises-68-cent-small-players-cant/>.

22. Andrea Brinza, *Is China's Belt and Road Ready to be the New Face of Globalisation?*, SOUTH CHINA MORNING POST (May 15, 2017), <https://www.scmp.com/comment/insight-opinion/article/2094368/chinas-belt-and-road-ready-be-new-face-globalisation>.

23. Sida Liu and Hongqi Wu, *The Ecology of Organizational Growth: China Law Firms in the Age of Globalization*, 122 AM. J. OF SOC. 798 (2016) for a study of the proliferation and growth of Chinese law firms during this period.

The principal architects of STL's J.M. program transformation—PKU Law Professor Ge Yunsong and STL Professor Mao Shaowei—began their efforts based on their belief that China's Civil Code, although largely derived from the German Civil Code, is not sufficiently mature and free of other foreign influences to be susceptible of a purely German-style step-by-step (i.e., theoretical) process of statutory interpretation. "[T]he basic approach of modern German legal science seek[s] to arrange all legal material of a given branch of law in the form of a logically consistent system which is organized around a few key . . . general principles of law, from which all concrete legal norms can be logically deduced."²⁴ Legal problem-solving proceeds according to a highly prescribed, logical, step-by-step methodology,²⁵ rarely influenced by political, economic, or social considerations.²⁶

Chinese legislation, in contrast to the German Civil Code, reflects "the influence of [multiple] different legal traditions and cannot simply be regarded as belonging to any of the 'traditional' legal families. [China is a] 'mixed jurisdiction.'"²⁷ Moreover, "mainland Chinese statutory law is not always as clear as one would wish and [some] areas of law are not yet codified at all."²⁸ Consequently, interpretative techniques must vary, sometimes approximating the techniques of common-law jurisdictions, with political, economic, and social considerations central to arguments seeking to influence the judicial interpretation of Chinese law.

Nonetheless, because China is a comprehensive code-based system and not a common-law system of judge-made law in combination with statutes, a methodology for the proper application of China's Civil Code clearly remains critical for China legal education and law practice. Simply transplanting to a China law J.M. curriculum the methods of analysis and instruction that have been so successful in U.S. law J.D. curricula—the case study method; smaller interactive class sessions with Socratic questioning of students; and an increased emphasis on experiential learning—would not necessarily be useful in the study of China law. At the same time, China's Civil Code and legal history are sufficiently different from European civil codes to warrant an approach to legal education and statutory interpretation that is different from the step-by-step interpretive methodology characteristic of civil code regimes. More nuanced interpretation and argument are critical to the development of China law.²⁹

24. Rainer Grote, *Comparative Law and Teaching Law Through the Case Method in the Civil Law Tradition—A German Perspective*, 82 U. DET. MERCY L. REV. 163, 167 (2005).

25. Lutz-Christian Wolff, *Structural Problem Solving: German Methodology from a Comparative Perspective*, 14 LEGAL EDUC. REV. 19, 22–23 (2004).

26. Grote, *supra* note 24, 177–78.

27. Li Xueyao, Li Yiran & Hu Jiexiang, *Globalisation and Innovative Study: Legal Education in China, in FROM IMITATION TO INNOVATION: LEGAL EDUCATION IN ASIA* (Andrew Harding, Jiexiang Hu & Maartje De Visser eds., 2017).

28. Wolff, *supra* note 25, at 47.

29. Email from Ge Yunsong, Professor, Peking Univ. to author (Sept. 9, 2015) (on file with author).

Professors Ge Yunsong and Mao Shaowei, accordingly, developed an approach to J.M. education that *combines* (i) German-style case study and rigorous step-by-step statutory application to legal problems *with* (ii) intense interpersonal classroom exchange and Socratic questioning designed to expose ambiguities and omissions in statutory language, elicit alternative interpretations, and identify possible economic, social and policy bases of various interpretations.

The success of this approach depended in large part on the introduction of the case study method into STL's J.M. curriculum.³⁰ Case study represents a significant advance in China legal education, made possible largely by the recent advent of published judicial judgments.³¹ As Professor Mao Shaowei explains, "[t]he case method necessitates the transition of classroom teaching from traditional knowledge-based lecturing to more interactive teaching. Interactive teaching sometimes seems less efficient, but it can be more effective in terms of helping students understand the complexity and subtlety of legal issues and legal thinking. [In this way], case study urges the students to focus on developing fundamental skills of critical reading and writing and professional skills of analyzing facts and interpreting rules."³²

The transformation of STL's J.M. program has been received very favorably by STL students and by leading China law firms and other employers. China's leading law schools also have taken note. Professor Mao has made invited presentations about STL's J.M. innovations to China's National J.M. Steering Committee and to symposia on legal education at Peking University Law School Beijing, Tsinghua University Law School, and Renmin University Law School.

The transformation of STL's J.M. program, however, did not address a fundamental question left open by the ABA's decision not to accredit foreign law schools: Of what value will students find a U.S. J.D. that does not lead to eligibility for bar admission in the U.S., a benefit conferred in all 50 U.S. states upon graduates of schools bearing ABA approval?

In fact, the absence of ABA accreditation has not diminished the attractiveness or value of STL's J.D. degree, whether to graduates or employers; nor, as we describe below, has it unduly limited access to important U.S. bars for graduates wishing to acquire a U.S. license to practice. Even for STL graduates who do not aspire to or seek admission to a U.S. bar, STL's J.D. degree, especially in combination with STL's J.M. degree, possesses extremely high currency with leading China law firms and government offices (especially those

30. The success also depended on a concerted effort to recruit to STL outstanding China law scholars who subscribe to STL's new methodology of J.M. instruction. See Resident Faculty, PEKING UNIV. SCHOOL OF TRANSNATIONAL L., https://stl.pku.edu.cn/Faculty_Research/Resident_Faculty.htm.

31. XinhuaNet, *Chinese Courts Publish Judgements Documents Online*, CHINA DAILY (Nov. 28, 2013), https://www.chinadaily.com.cn/china/2013-11/27/content_17136289.htm. The alternative would have required professorial creation of fact-based cases for the same purpose; actual cases clearly are preferable.

32. Email from Mao Shaowei, Professor, Peking University School of Transnational Law (Sept. 9, 2015 at 3:48 PM) (on file with author).

contending with inbound and outbound international exchange and disputes) and with multinational organizations worldwide. Common law (and often U.S. statutory law and judicial precedents) continues to play an important and often dominant role in transnational transactions and disputes, investor-state disputes, and relations among states. U.S. bar admission is essential for none of these positions, even though all of the positions place high value on the knowledge and skills that accompany an American law J.D. and even though providing legal services in some or all of these contexts may require licensure in China or some other jurisdiction.³³

Moreover, STL's lack of ABA approval has not prevented us from creating alternative means of access for STL students to the principal U.S. bars of interest—New York, California, and Washington, D.C. Details aside, we have established one-year exchange and visiting programs for STL students with several leading ABA-approved U.S. law schools that permit STL students to accumulate sufficient credits for immediate access, upon their graduation from STL, to the bar exams of these jurisdictions.³⁴ STL graduates who acquire licenses to practice in China (or elsewhere) also are eligible for multiple U.S. bar exams on this basis. Admission to one of these state bars ordinarily is sufficient for partnership partnership-track positions in U.S. law firms in these jurisdictions or in the foreign offices of these firms. No STL graduates, to date, have been disadvantaged by not enjoying access to bar admission in all 50 U.S. states, as they presumably would have enjoyed had they graduated from an ABA-approved law school.³⁵

33. A supermajority of STL students (between sixty percent and seventy percent) since STL's inception have been women. During STL's early years, many of STL's female students aspired to professional placement with multinational U.S. firms because the workplace environments for women were far superior to the workplace environments of China law firms. Even today, female lawyers seeking positions in China law firms often are confronted with questions about their marriage and childbearing plans, questions that clearly would be illegal if asked by a U.S. employer. Nevertheless, the situation has improved appreciably in recent years as China law firms have grown and become more sophisticated in response to the advances and internationalization of China's economy. China law firms now cannot afford to overlook the value provided by top female law school graduates, especially those from STL, whose breadth of legal knowledge and English fluency are on par with those of the best U.S., British, and Australian lawyers.
34. New York also requires an LL.M. degree from an ABA-approved U.S. law school, but since many STL students already possess an undergraduate LL.B. degree, their year-long exchange or visit to a U.S. law school can result in the award of an LL.M. in addition to fulfilling the credit requirements for STL's J.D. degree.
35. As noted in note 14, *supra*, all STL J.D./J.M. students currently are either PRC nationals, from Hong Kong, Macau, or Taiwan, or otherwise fully fluent in spoken and written Mandarin. (Written proficiency sufficient to meet the demands of STL's J.M. degree is unusual for students growing up outside of China, even if in Mandarin-speaking homes.) Demand for an STL J.D., nonetheless, remains high among children of the worldwide Chinese diaspora. We currently are exploring the creation of a J.M. track in China law taught exclusively in English. Assuming that an English-language J.M. track will satisfy the PKU requirement that all STL J.D. students also earn a China law J.M., this could enlarge demand for STL's J.D. appreciably and, possibly, if demand increases sufficiently among U.S. nationals, cause

Phase 4: Becoming a School of Transnational Law

The ongoing economic integration of Shenzhen and Hong Kong, like the broader economic exchange between China and the West, is providing numerous examples of the interface between Chinese and common-law traditions and confirming the core importance of STL's dual-degree program to legal services in transactions and disputes involving Chinese and Western parties.

To illustrate, the Shenzhen and Hong Kong stock exchanges are linking with the prospect of a more unified regulatory regime. The South China Arbitration Commission is creating new panels of arbitrators and rules of procedure designed especially for multilegal system disputes. China is experimenting with the legal regime in Qianhai (the joint Shenzhen-Hong Kong IT and financial services center) to determine those legal institutions and rules most conducive to economic exchange between parties from fundamentally different legal traditions. Qianhai courts, for example, include both Mainland and Hong Kong judges.³⁶ A special Qianhai agency is charged with identifying foreign laws that may provide useful guidance in the evolution of China's legal regime for multinational exchange.³⁷ A new "Qianhai Shenzhen-Hong Kong International Legal Services District" includes lawyers and law firms licensed in multiple jurisdictions.³⁸

China's Belt and Road Initiative (BRI) includes similar efforts to foster a transnational legal infrastructure conducive to successful exchange and dispute resolution between China and BRI countries, except that China-BRI exchange, unlike Shenzhen-Hong Kong exchange (and China-West exchange more broadly), often will involve parties exclusively from non-Western legal traditions, or at least from mixed legal traditions. China's new International Commercial Court (CICC), which is based in Shenzhen, has introduced adjustments to court procedural rules designed specifically to accommodate mixed-legal-tradition dispute resolution.³⁹ Similarly, the same agency charged with identifying foreign

STL to rethink the desirability of ABA approval in order for STL graduates to access a wider range of U.S. bar admission.

36. Specifically, the Shenzhen Intermediate People's Court for Qianhai includes Hong Kong citizens on the panels of judges ("juries") hearing Hong Kong-related case. See Zuozhen Liu & Jiannan Li, *The Rule of Law Experiment in China's Pilot Free Trade Zones: The Problems and Prospects of Introducing Hong Kong Law into Guangdong*, 10 HAGUE J. ON THE RULE OF L. 341 (2018).
37. Qianhai's "Benchmark Chambers International," which is supported by Shenzhen's Justice Bureau, is charged with identifying *foreign* laws that might be instructive for the future legal framework of Qianhai and the Pearl River Delta (<http://www.bcsiz.org/eng/>).
38. See *Shenzhen's Qianhai Opens Its Legal Services to Wider World By Breaking Institutional Barriers*, CISION PR NEWSWIRE (Sept. 13, 2022, 09:58 ET), <https://www.prnewswire.com/news-releases/shenzhens-qianhai-opens-up-its-legal-services-to-a-wider-world-by-breaking-institutional-barriers-301623224.html>; Tony Cheung, *Hong Kong Legal Sector Must Seize on Unique Strengths of 'One Country, Two Systems' to Seek More Business in Mainland China*, SOUTH CHINA MORNING POST (Sept. 29, 2022, 8:49 AM), <https://www.scmp.com/news/hong-kong/politics/article/3194298/hong-kong-legal-sector-must-seize-unique-strengths-one>.
39. Susan Finder, 2018. *Update on China's International Commercial Court*, SUPREME PEOPLE'S CT. MONITOR (Mar. 11, 2018), <https://supremepeoplescourtmonitor.com/2018/03/11/>

laws that might be instructive for the future legal framework of Qianhai also has been charged with researching the different legal systems and practices in BRI countries.⁴⁰

It is not clear what new commercial and legal rules and practices will emerge from the economic integration of Shenzhen and Hong Kong or from China's growing exchange with BRI countries as well as with the West. What is clear, however, is that new rules and practices will emerge, that they will be heavily influenced by Chinese and other non-Western traditions, and that they likely will preview parallel developments throughout China and worldwide as China's global influence continues to grow. Just as Western and Chinese law firms are attempting to anticipate these developments through mergers and other forms of strategic alliance,⁴¹ legal education must adjust to prepare a new generation of lawyers capable of anticipating and contending with the changing landscape.⁴²

In comparison to most U.S. law schools, STL's J.D. program has a remarkably multinational resident faculty; almost half have first degrees in law from outside the United States, although several of these colleagues also hold S.J.D.s from elite U.S. law schools. All of STL's first-year J.D. podium courses, as well as our first-year research and writing courses, are taught by highly qualified professors whose terminal degrees are U.S. J.D.s earned at top U.S. law schools. Our

[update-on-chinas-international-commercial-court/](#).

40. See *supra* note 37 and accompanying text.

41. U.S., U.K. and other Western law firm alliances with Chinese law firms have proliferated during the past decade. A few of the earliest examples include Mayer Brown JSM and Jingtian & Gongcheng; McGuireWoods and FuiJae; King & Wood Mallesons; Baker & McKenzie and FenXun; Dentons and Dacheng; Winston & Strawn and Yuanda; and many more. See generally Liu & Wu, *supra* note 23; Shawn Chen, *Opinion: The New Norms of the China Legal Market*, SSQ.COM (Mar. 2, 2021), <https://www.ssqasia.com/english/news/opiniontheneewormsof/>; *Can Chinese Law Firms Take Over the World?*, THE ECONOMIST (Mar. 3, 2021), <https://www.economist.com/business/2021/03/03/can-chinese-law-firms-take-over-the-world>.

42. China's global economic influence, as well as its increasing exchange with the non-Western world, challenges as never before prevailing assumptions of a global convergence of law around the Western legal tradition. Recent scholarship suggests the persistence of non-Western traditions and practices even when transactions appear on their surface to conform to modern Western standards of exchange. For example, it seems clear that, even though Chinese commercial practices governed traditionally by relational considerations, or *guanxi*, have moved on a massive scale to more formal mechanisms of exchange, including impersonal written contracts, relational considerations continue to play an important role in the articulation, performance, and governance of the contracts and transactions. Chen, Deakin, Siems, and Wang found this in their report of the attitudes of market participants in their examination of the relationship among contract, corporate, and financial law and recent economic growth in China. Chen Ding et al., *Law, Trust and Institutional Change in China: Evidence from Qualitative Fieldwork* 20, 25-27, 15 J. CORP. LEG. STUD. 258, 273, 276-278 (2017). Qjao and Upham report similar findings in their examination of China's and Shenzhen's markets for real property transactions. Shitong Qjao & Frank K. Upham, *China's Changing Property Law Landscape*, in *COMPARATIVE PROPERTY LAW* 35-37 (Michele Graziadei & Lionel Smith eds., 2017). Ali similarly reports an ongoing gulf between Asian party commercial dispute resolution preferences and those of parties from Western legal traditions. SHAHLA F. ALI, *RESOLVING DISPUTES IN THE ASIA-PACIFIC REGION: INTERNATIONAL ARBITRATION AND MEDIATION IN EAST ASIA AND THE WEST* (2010).

plan is to maintain this character of staffing of STL's first-year J.D. curriculum consistent with our commitment to a core J.D. curriculum comparable to the J.D. curricula at the best U.S. law schools.

STL's upper-level J.D. courses, on the other hand, are taught by a mix of scholars, some with U.S. J.D.s, but many with first degrees in law from outside the U.S. together with S.J.D.s from elite U.S. law schools, and several more whose Ph.Ds. and first degrees in law are both from prestigious universities outside of the United States. None of the faculty in the last two groups is a U.S. citizen. We also offer several upper-level J.D. courses taught by visiting professors from leading law schools in the United States, United Kingdom, the European Union, Africa, and South and Central Asia, and by a few leading U.S. and international practitioners. Many upper-level J.D. courses focus on international law topics or on the introduction of foreign (non-U.S., non-China) legal systems.

Almost all J.D. courses that focus on U.S. topics, including first-year courses, include comparative elements.

Although all STL J.M. professors are PRC citizens and all have Ph.D.s. in law from PKU or another leading China university, most also have a second Ph.D. from a leading university in either the United States or Germany. Like STL's J.D. courses, STL's J.M. courses also include comparative and international law perspectives.

The comparative elements incorporated throughout STL's curriculum help students understand potential interplay among China law, American common law, and other legal traditions in ways they likely will encounter as practicing lawyers. Some courses are devoted entirely to studying the interplay, such as "Ambiguity: The Problem of Bilingual Contracts." For much of STL's upper-level curriculum, in fact, it is not necessary for students to distinguish between "J.D." and "J.M." courses because the credits in many of the courses may apply equally toward either degree.

One reasonably might ask in today's world of multinational transactions, exchange, and dispute resolution whether U.S. law school curricula—except possibly those with only a narrow regional focus—should become more like STL's rather than the reverse.⁴³ This is likely to be a central inquiry if the ABA revisits the question of approving foreign law schools and STL decides to revisit the question of ABA accreditation.⁴⁴

43. Professor Deborah J. Merritt posed precisely this question in her perceptive post about STL in her blog, "Law School Café." Deborah J. Merritt, *Peking University, LAW SCH. CAFÉ*, <https://www.lawschoolcafe.org/2016/01/18/peking-university/>.

44. Even if the ABA were to extend its accreditation jurisdiction to law schools outside the United States, it is by no means certain that ABA approval would be forthcoming without adjustment by the ABA of those standards and interpretations uniquely suited to the U.S. system of higher education. In China, for example, universities and disciplines are financed differently from those in the United States; budgets are far less transparent; the central government Ministry of Education plays a much greater role in curriculum development and in the overall administration of universities and disciplines; information services and legal research

II. The Challenges STL Has Faced as China's Only U.S. Law J.D.

It is critical in assessing the challenges STL faces in offering a U.S. law J.D. in China to appreciate that STL is an academic unit of Peking University, fully subject to PKU and China Ministry of Education ("MOE") policies, practices, and traditions. STL is *not* an academic unit of a U.S. university offering an American academic program in China in partnership with a Chinese university. STL is a *Chinese* law school that offers a U.S. law program, *not* a U.S. law school with a China campus.

This distinguishes STL from NYU Shanghai, a partnership between New York University and East China Normal University; Duke Kunshan University, a partnership between Duke University and Wuhan University; Tsinghua-UC Berkeley Shenzhen Institute, a partnership between UC Berkeley and Tsinghua University; Schwarzman College of Tsinghua University, established by financier/philanthropist Stephen A. Schwarzman in partnership with Tsinghua University; and possibly other leading Sino-foreign university partnerships operating in Mainland China. The prestigious foreign partners in these collaborations were able to negotiate, as a condition of establishing a presence in China, carve-outs from Chinese government and university policies, practices, and traditions that are not consistent with the fundamentally American university character of their programs.⁴⁵

STL has no such carve-outs from MOE and PKU policies. Whatever differences exist between STL and the law schools of other Chinese universities with respect to STL's American law J.D. program exist by virtue of an allowance by PKU that PKU considers consistent with its authority within the Chinese system of higher education. This is fundamental to understanding STL.⁴⁶

are highly regulated; faculty appointments and promotion and tenure standards are more centralized; admissions criteria are more regulated; public service and clinical opportunities are different and more constrained; academic freedom is more constrained; and so forth. The ABA understandably might insist on foreign law school conformance to U.S. standards governing some of these matters, but others reflect deeply held values different from those of the American bar, or transitional adaptations appropriate for certain stages of national development, or some other difference or circumstance not directly relevant to the delivery of a rigorous American J.D. program. The suggestion of the 2010 *Special ABA Committee Report on Foreign Law Schools Seeking Approval under ABA Standards* (see *supra* note 6) that ABA approval of foreign law schools should turn on a "curriculum primarily focused on U.S. law . . . and [on a] faculty primarily [of] J.D. graduates of ABA approved law schools" also could be problematic for foreign law schools like STL, whose curriculum and faculty have developed differently from this but in ways we believe would be advantageous for ABA-approved American law schools.

45. As William Kirby notes regarding the establishment of Schwarzman College of Tsinghua University, the college "[has] its own, dedicated internet service that [can] transcend the Great Firewall of Chinese censorship [and] its library [has] international newspapers, magazines, and scholarly books" in addition to the full range of Chinese literature, scholarship, and political works. KIRBY, *EMPIRE OF IDEAS*, *supra* note 1, at 299. My understanding is that NYU Shanghai, Duke Kunshan, and Tsinghua-UC Berkeley Shenzhen Institute enjoy similar dispensations from their respective municipal and provincial governments.
46. This also is critical to understanding why ABA assumptions about U.S. university operations may not apply to STL.

Censorship

The first question asked by academics, lawyers, and faculty candidates interested in learning more about or possibly joining STL invariably is whether STL professors are subject to censorship in their teaching, classroom discussions, or scholarship. They want to know whether STL professors enjoy the same degree of academic freedom as law professors at U.S. universities.

The question is straightforward enough; the answer is a bit more complicated. There clearly are censorship restrictions on STL's academic enterprise that are not present in the United States. However, none (so far, at least) has interfered directly with the content of classroom teaching and discussion in the J.D. courses and seminars STL offers, although they probably have adversely affected the range of J.D. courses STL offers and both the content and range of STL's J.M. courses. Censorship restrictions have not affected the choice or content of the scholarly topics, publications, and activities of STL's expatriate professors, although our PRC professors undoubtedly are constrained.

With respect to STL's curriculum, there are two areas in which our J.D. curriculum diverges from J.D. curricula at U.S. law schools. Both are attributable to political factors outside of STL's control.

First, as is true of all Chinese university graduate programs, STL must schedule certain compulsory political courses for Mainland students. First-year students must take *Theory and Practice of Socialism with Chinese Characteristics in New Era* and *Methodology of Marxism and Social Science*. Upper-level students must take advanced courses of the same titles. The courses are taught by instructors from PKU's School of Marxism. The STL faculty has no say in the required nature or content of the courses. STL schedules the courses for weekend or evening attendance so as not to interfere with the hours of instruction of STL's J.D. and J.M. courses.

Recently, there has been an increase in official directives regarding the incorporation of political and ideological content into all China graduate school curricula.⁴⁷ In 2020, the Ministry of Education issued "Guidelines for the Ideological and Political Construction of Colleges and Universities." Peking University followed with an "Implementation Plan for Deepening the Ideological and Political Construction of Curriculum." Domestic faculty (i.e., PRC citizens), including STL's J.M. faculty, have been asked to consider curricular enhancements in accordance with the guidelines and implementation plan. The Ministry of Education has begun a series of livestreamed training sessions for domestic (PRC citizen) faculty pertaining to implementation of the guidelines.

The second divergence between STL's J.D. curriculum and leading U.S. law school J.D. curricula is more subtle: It is the absence in STL's curriculum of

47. This is a national initiative. See, e.g., KIRBY, *EMPIRE OF IDEAS*, *supra*, note 1, at 251, 264–65. As Professor Kirby notes, "In November 2018 the Ministry of Education released '10 Guidelines for the Professional Behavior of Teachers in Colleges and Universities in the New Era,' which underscored the Party's view that universities and their faculty must not cross political red lines." *Id.* at 264. All PKU faculty, including those of us at STL, received copies of the new guidelines.

courses and seminars addressing highly controversial issues about which the central government has staked out a strong position. A few notable examples are the new National Security Law in Hong Kong (and the role of the Hong Kong judiciary in applying the National Security Law), Uyghur detention camps in Xinjiang Province, and Tibet. These omissions more likely result from faculty candidate choice at the appointment stage than from self-censorship by STL faculty. STL faculty tend to have different teaching priorities. Scholars of topics that are known to be “sensitive” in China likely prefer to reside outside of China and consequently do not seek appointment at STL. The research interests and agendas of scholars interested in joining STL’s faculty tend to be animated by the unique economic and social developments under way in Shenzhen and the surrounding region and include topics such as intellectual property and innovation policy, climate change and energy policy, globalization of the legal profession, comparative corporate governance, financial market regulation, international dispute resolution, China law, the development of China’s judiciary and legal institutions, and so forth.⁴⁸

Two other forms of censorship with which STL must contend, unlike U.S. law schools, affect access to information generally rather than teaching, scholarship, or the law school’s curriculum directly. These are (i) China’s “Great Firewall,” which imposes significant content-based restrictions on internet access, and (ii) import restrictions and regulations, which affect the importation of certain “sensitive” foreign publications for STL’s library. Both impose transaction costs on faculty (and students) who must access prohibited information via alternative means, but neither ultimately prevents (at least for expatriate faculty) the access, study, and discussion of desired but prohibited material or the production of scholarship that depends on or benefits from the material. We have developed workarounds.

With respect to the Great Firewall, the workaround is quite simple and relatively inexpensive: a VPN (or virtual private network), readily available in online application stores for a modest licensing fee. This approach is not foolproof. There still are occasions when China exercises its unfettered ability to interfere with internet availability or with VPN access to otherwise prohibited websites. These include regular, but usually brief (hours long, perhaps a day or two), instances of VPN interference, with occasional episodes of near-complete internet blocks, as during a National Party Congress or national holiday, when national censors seem intent on preventing potentially critical social media commentary and exchange. When the Party meeting or national holiday is over,

48. STL does regularly offer courses pertaining to political and civil rights and liberties (which some may not expect to see in a China law school), including international human rights, the U.S. Constitution Bill of Rights (in addition to U.S. Constitutional Law), the U.S. First Amendment (in addition to the U.S. Bill of Rights), and public interest advocacy, all taught by leading U.S. scholars and public interest advocates, with class discussions, syllabi and required reading largely parallel to U.S. counterpart courses. It also is worth noting that STL has the only Public Interest Law Foundation (“PILF”) in China; this a student-run organization raises funds annually to support STL students working in public interest legal positions in China and abroad.

access is restored. The instances of interference are disruptive and extremely frustrating, but we survive them.

Import restrictions on certain academic books are more deleterious. All China libraries, including STL's library, are required by law to purchase foreign published material through a licensed import-export company. Occasionally, STL receives notice that one of the books or online subscriptions it has ordered is "restricted" and not available for import. Of 1,231 foreign book orders STL placed between 2016 and 2021, fifteen were restricted and not available for import or purchase in China. All fifteen were publications of leading academic presses (five were published by Oxford University Press, four by Cambridge University Press, two by Harvard University, one by the University of Chicago, one by Hart Publishing, one by Sussex Academic Press, and one by Verlag Dr. Kovač). One canceled database was the renowned Oxford Constitutions of the World, restricted most probably because of its inclusion of Taiwan's Constitution and related material. Oxford was asked to remove the offending content but refused and pulled the product from the PRC market.

The impact of self-censorship in this context likely also is significant, with book orders not even attempted if the desired material deals with Tibet, Xinjiang, human rights in China, the South China Sea or other territorial disputes, or recent political developments and dissent in Hong Kong.

The workarounds we have developed to address book import restrictions are more time-consuming and expensive than VPNs and do not extend as reliably as VPNs to the entire STL community. They are effective, however, in enabling expatriate (but not PRC) faculty access to restricted research materials.

There are two basic means of circumvention. First, STL has standing agreements with law libraries outside of Mainland China that provide for STL faculty access to their collections, which include the materials and databases STL has not been able to import directly. We will negotiate similar arrangements with other academic libraries, including those in the United States, to the extent necessary. Second, we provide STL faculty with reasonably substantial research accounts with which they may travel and purchase books directly. We cannot then include the purchased books in STL's library collection because of university and government rules pertaining to library and other institutional collections, but our expatriate faculty, at least, still are able to gain access to materials they desire for their research.

Invited lectures and conferences involving outside guests pose additional risks of censorship. Outside speakers are subject to central approval (essentially by the Party apparatus within the University), and if the topic or speaker is "sensitive," approval typically is denied. This has never occurred with respect to a speaker invited to deliver a lecture or participate in a conference at STL, even when the speaker or topic is "sensitive." The compromise we have reached is that, if a speaker or topic is sensitive, the presentation will be advertised and presented only within the STL community. We do not advertise or broadcast the event outside of STL, and we do not invite guests to the event apart from

members of the STL community. This strikes a balance we believe consistent with the academic freedom we—STL’s expatriate faculty—expect within STL, while remaining respectful of our status as guests in China who are subject to the same rules as everyone else with respect to public activities. Once again, however, this compromise does not account for lectures and conferences foregone because the lecturer or topic likely is *too* sensitive to fall within the compromise.

Governance Autonomy

It is difficult to quarrel with central planning and direction when it has enabled China to achieve so much on such a grand scale in so little time. This has been true not only within higher education, but with respect to gains in poverty abatement; healthcare; food security; industrialization and economic development; urban development; housing supply; the establishment of modern transportation, energy distribution, communications systems and other municipal services; the establishment of primary and secondary schools; the creation of administrative agencies, a nationwide judiciary, and other elements of legal infrastructure; and multiple additional essential social services. These achievements have not occurred without significant social costs and inequities (just as in other developed nations), but they are remarkable nonetheless in their scale and the significant social benefits they have provided in so short a time for hundreds of millions of people.

It is interesting to compare photos of Shenzhen in the early 1980s, when it was essentially a village dependent on fishing and agriculture in an otherwise undeveloped landscape, with photos from identical perspectives in 2010 and beyond, when the city was firmly established as a world-leading center of technological innovation, finance, and global exchange with a population approaching twenty million. In even less time, Shenzhen has established thriving campuses of Peking University, Tsinghua University, Harbin Institute of Technology, Tsinghua-UC Berkeley Shenzhen Institute, Southern University of Science and Technology (SUSTECH), Hong Kong University, Chinese University of Hong Kong, Moscow State University, and several other leading domestic and foreign universities and partnerships.⁴⁹

Higher education nationwide in China has developed with similar rapidity and excellence, thanks largely to central planning and financial support. Early on (i.e., in the 1990s), the central government established programs to support the recruitment of scholars from abroad, including especially scholars of Chinese descent. As Professor William Kirby has observed, “The halls of top-tier Chinese universities were increasingly filled with scholars who had left tenured positions abroad to participate in the extraordinary growth—in quality as in quantity—of Chinese higher education.”⁵⁰ The central government also made differential investments in Chinese universities to ensure that the best eventually would join

49. For a more detailed description of developments in Shenzhen and the rest of China’s Pearl River Delta (the “Greater Bay Area”), see McConnaughay & Toomey, *supra* note 3, at 308–11, 319–21.

50. KIRBY, EMPIRE OF IDEAS, *supra* note 1, at 256.

the ranks of the world's most elite.⁵¹ The result (as mentioned above): Peking and Tsinghua Universities are now ranked twelfth and fourteenth, respectively, in the 2023 QS worldwide university rankings; they are tied for sixteenth in the Times Higher Education worldwide university rankings. Seven Chinese universities have joined the Top 100 universities in the world, and scores of others are close behind. It is doubtful that these achievements would have been possible had emergent Chinese universities been left to rely on their own planning and resources during the past few decades.

Yet, as noted above, legendary Peking University President Cai Yuanpei first called for the “institutional autonomy” of China’s universities well over a century ago,⁵² a call echoed repeatedly from within Chinese universities since. As Mei Li and Rui Yang explained in their 2014 UNESCO study, *Governance Reforms in Higher Education: A Study in China*, “[a]utonomy is at the heart of the concept of ‘university.’ Derived from the Greek words for ‘self’ and ‘law or customary usage,’ the word describes the process of self-government that is considered a right and responsibility of colleges and universities.”⁵³

Except in China. Chinese universities have always been controlled by the state. Peking University, like all Chinese universities, to my knowledge, has an academic administrative structure similar to the administration of U.S. research universities, with a president, executive vice president/provost, various central university officers, and deans of each constituent college and school—but it also has a parallel administrative structure staffed entirely by Chinese Communist Party (CCP) officials, with a Party committee led by a Party Secretary at the helm, and with a Party Secretary of each constituent campus, college, school, and discipline. The Party administrative apparatus is superior in rank and authority to the academic administrative apparatus.

Obviously, leading Chinese universities and scholars would not enjoy the superior worldwide reputations they enjoy were the parallel CCP structure consistently more repressive than supportive of the academic enterprise. This clearly has been the case at Peking University, although there have been notable exceptions.⁵⁴

51. *Id.* at 253–56. See also Sophia Mellor, *Chinese Universities are Gaining Ground on American Institutions*, FORTUNE (Oct. 12, 2022), <https://fortune.com/2022/10/12/world-university-rankings-chinese-universities-gaining-america-faltering/>; January 24, 2017, Notice of Ministry of Education, Ministry of Finance and National Development and Reform Commission on Issuing (Interim) Methods of Facilitating the Development of World-class Universities and World-class Disciplines; Simon Marginson, *China: a Rapidly Evolving University System*, TIMES HIGHER EDUC. (Dec. 2, 2015), <https://www.timeshighereducation.com/world-university-rankings/china-a-rapidly-evolving-university-system>; and *These Universities Have the Best Reputation Worldwide*, WORLD ECONOMIC FORUM (June 20, 2017), <https://www.weforum.org/agenda/2017/06/universities-best-reputation-china-times-higher-2017/>.

52. See KIRBY, EMPIRE OF IDEAS, *supra* note 1, at 240.

53. MEI LI AND RUI YANG, GOVERNANCE REFORMS IN HIGHER EDUCATION: A STUDY IN CHINA 19 (2014).

54. See, e.g., Christian Shepherd, *China's Peking University Tightens Party Control, Curbs Activism*, REUTERS (Nov. 4, 2018, 6:44 AM), <https://www.reuters.com/article/us-china-education-peking/>

STL has been especially fortunate in this respect, likely because of Jeff Lehman's stature as founding dean, and due to the fact that STL has had an expatriate dean and large complement of expatriate faculty up through the present day. Unlike other PKU schools, STL does not have a school party secretary, and the party secretary and chancellor of Peking University Shenzhen Graduate School, to whom STL reports, are accomplished scholars with a deep appreciation of the academic principles on which world-class research, scholarship, and teaching depend. The central university's leadership (of which the Shenzhen Graduate School chancellor is a senior vice president), in turn, has been similarly supportive.

This does not mean that STL's governance autonomy is identical to the governance autonomy enjoyed by leading U.S. law schools. We regularly encounter constraints in the administration of our educational program that are not typical of leading U.S. law schools. Some of the constraints are akin to those experienced by U.S. social science and science disciplines that are subject to the rules and standards of the larger graduate school faculty; others are unique to the system of higher education in China.

With respect to the former, U.S. law schools, like U.S. medical schools, often escape graduate school requirements because of the professional nature of their programs and the profession-specific accreditation standards with which they must comply. In China, law still is considered a "social science" for purposes of graduate school jurisdiction; unlike U.S. law schools, Chinese law schools do not enjoy exemption from graduate school rules based on the professional nature of their programs or different accreditation demands. For STL, this means we must contend with PKU approval of curricular changes, degree requirements, and entry-level faculty appointments. STL usually is afforded significant deference by PKU's educational administration with respect to each of these, but the possibility of interference remains.

Certain other centrally imposed requirements tend to apply regardless of STL's quality standards. One example is the mandatory thesis required by the MOE of all master's students nationally, regardless of discipline, with rigid requirements far more attentive to form than substance and an overall purpose far better suited to research degrees than professional degrees. We do our best at STL to turn the thesis into an upper-level writing requirement or independent study typical of U.S. law schools, but the prescribed requirements of form and purpose are far from suitable for this purpose.

Another example of a centrally imposed requirement that displaces STL quality standards is that all students must complete at least one six-week "internship" with an outside employer as a condition of graduation. The problem with this requirement is that there are insufficient standards governing internship quality (unlike ABA-regulated "externships" at U.S. law schools, which STL also offers). On the whole, internships too seldom provide meaningful learning experiences, in part because they are often viewed by employers as sources

of free labor and by students as job interviews. Students tend to accumulate multiple internships, wasting weeks of time that otherwise could be devoted to academics (or at least to beneficial law school-approved “externships”), believing internships to be essential to employment following graduation (largely a fiction for STL students because of the law school’s exceptional annual placement record, which, demonstrably, is not dependent on prior internship placement).⁵⁵

Multiple additional centrally imposed standards and requirements are uniform among disciplines and tend to diminish STL’s ability to take full advantage of the high international currency ordinarily accorded a U.S. J.D. For example, the MOE does not recognize a J.D. as either an official authorized degree in China or as a Ph.D. equivalent. The former encumbers the progress of STL graduates in select civil service positions (in which an MOE-recognized doctorate degree is required for advancement to the highest levels). The latter interferes with STL’s ability to appoint to our tenure-track faculty PRC citizens whose terminal degree is a J.D. from an elite U.S. law school (which clearly is sufficient for a tenure-track faculty appointment in the United States). At most Chinese universities, however, PRC citizens must possess a Ph.D. for a tenure-track appointment.

Another example is STL’s inability to promote, tenure, and compensate faculty who are PRC citizens according to the same standards we apply to expatriate faculty. This inevitably results in workplace inequities that our PRC colleagues, fortunately, bear with patience and understanding.⁵⁶

A final example worth noting is strict central government control over graduate school admissions. The Ministry of Education allocates quotas to all Chinese universities that limit the total number of PRC students they may admit into each degree category—bachelor’s, master’s, and Ph.D. The higher the degree, the lower the quota. The better the university, the lower the aggregate quota, thereby ensuring highly selective admissions among the best universities and the distribution of top students among universities targeted for elite status. Each university then has discretion to distribute its total quota allocation among its various disciplines and programs. STL’s J.D./J.M. program quota currently is 150 new PRC students each year.⁵⁷

Centrally determined subquotas also apply. STL, for example, must adhere to an MOE rule that no more than fifty percent of its J.D./J.M. quota may be used to admit applicants who have earned “exemptions” from the National

55. See STL’s annual placement statistics at *Placement Data*, PEKING UNIV. SCH. OF TRANSNAT’L L., https://www.stl.pku.edu.cn/Careers/Placement_Data.htm (last visited May 16, 2023).

56. STL promotes and tenures expatriate professors according to the same process and standards in place at leading U.S. law schools. We also compensate expatriate faculty in line with leading public research university law faculty compensation in the United States. It is understandable that considerations of equity among PRC faculty across disciplines might account for compensation differences between STL’s expatriate J.D. faculty and STL’s PRC J.M. faculty, but promotion and tenure standards should be school and discipline specific, even if faculty ranks recognized system-wide require a supplementary process.

57. STL’s dual-degree J.D./J.M. program is four years, resulting in a total PRC student population at STL of 600.

Graduate School Entrance Exam; the remaining applicants must gain eligibility for admission by meeting or exceeding Peking University's "cut score" on the national exam, which typically is the highest in China.⁵⁸

These strict quotas and rules result in a pool of exceptionally gifted students eligible for admission to STL. STL then must decide according to a highly prescribed interview process which of the qualified applicants will receive offers of admission. As reliable as the MOE-dictated process has been in producing exceptional applicants for admission, however, it imposes near-insurmountable hurdles on a category of student STL would like very much to recruit: PRC students educated at leading universities abroad.

PRC students educated abroad lose out on the opportunity to gain admission by way of earning an "exemption" from the National Graduate School Admissions Exam because exemptions may be awarded only by domestic universities. They consequently must take the National Graduate School Entrance Exam if they wish to apply for admission. Yet they feel underprepared for the exam because of their years and education abroad (e.g., one of the core topics tested on the exam is Chinese political theory). This deters many highly qualified PRC students from seeking graduate school admission in China. This is especially disappointing to STL given the international focus and English proficiency demands of STL's J.D. curriculum and the growing interest in STL among academically gifted, English-proficient PRC students who studied at top universities outside of China.

The restrictions on discipline-specific faculty governance and the imposition of academic requirements that do not meet disciplinary standards is not a problem unique to STL. Regulatory impositions tend to hold back optimal development and innovation in all disciplines, as I suspect central authorities will appreciate when autonomy of governance finally is afforded and Chinese faculties are able to realize their full potential.⁵⁹

Professionalism

A unique pedagogical challenge we face at STL (or at least one that is different in degree in comparison to the similar challenge in U.S. law schools) is

58. Undergraduates who place among the top few graduates of leading Chinese universities may earn "exemptions" from the National Graduate School Entrance Exam and gain admission solely on the basis of their "exempt" status. The National Graduate School Entrance Exam is the alternative path for admission, an ostensibly merit-based method of assessment without regard to personal status, undergraduate university, or past academic performance. Some have criticized the National Graduate School Entrance Exam (and university admissions generally) as not always administered fairly, with geographic and other influences sometimes trumping exam scores. See, e.g., Ann M. Koenig, *National Graduate School Entrance Examination in China: Lower Numbers, Fraud Operation in Harbin*, AACRAO (Feb. 23, 2014), <https://www.aacrao.org/resources/newsletters-blogs/aacrao-connect/article/national-graduate-school-entrance-examination-in-china-lower-numbers-fraud-operation-in-harbin>.
59. As William Kirby has observed, "The greatest challenge confronting Chinese universities today is not the competition they face abroad but the obstruction they encounter at home." KIRBY, *EMPIRE OF IDEAS*, *supra* note 1, at 393.

introducing students to the ethical and professional responsibilities of lawyers. STL students—all of whom (except LL.M. candidates) currently are PRC citizens—have grown up in a society without a long-established legal profession, legal system, or rule-of-law tradition. There is not a long history, as there is in the United States and much of the West, of lawyers assuming leadership roles in their communities and government; of people and companies turning to lawyers for help with transactions and disputes; of lawyers resisting pressures to serve interests other than those of their clients; of lawyers adhering to facts and law without exaggeration; or of jurists who feel bound by the law and their duty of evenhanded decision-making. The “lawyer-statesman” ideal—the embodiment of professionalism—that Professor Anthony Kronman laments as “lost” in the United States⁶⁰ never existed in China.

There was official disrespect for law and lawyers in dynastic China,⁶¹ lawyers often were singled out as “bourgeois” targets of attack during the Cultural Revolution,⁶² and official efforts to resurrect a Chinese legal profession did not advance meaningfully until announcement of the 1982 Lawyers’ Regulations.⁶³ A standardized test for entry into the profession was not administered nationally until 1988;⁶⁴ a university degree was not required to qualify as a China-licensed lawyer until 2002; and a law degree was not required until 2018. As of 2000, there were only 68,000 lawyers in China for a population of 1.2 billion; in 2010, there were barely 200,000 lawyers for a population of 1.3 billion; today there are just over 522,000 lawyers for a population of 1.4 billion.⁶⁵ By way of comparison, the U.S. had over a million lawyers in 2000 for a population of 282 million; the U.S. today has over 1.3 million lawyers for a population of 330 million.⁶⁶

Our objective at STL is to instill a principled and ethical professional approach to advocacy, counseling, and problem-solving in students accustomed to a society that traditionally has tolerated a more instrumental approach to each. We have yet to develop the perfect course or suite of courses and experiential opportunities to give us confidence that we are succeeding, but we continue to experiment with new content and approaches to teaching professional responsibility and to incorporate relevant lessons throughout STL’s curriculum. This

60. ANTHONY KRONMAN, *THE LOST LAWYER* (1993).

61. See, e.g., DERK BODDE & CLARENCE MORRIS, *LAW IN IMPERIAL CHINA 415-20* (1967); THOMAS GELATT, *LAWYERS IN CHINA: THE PAST DECADE AND BEYOND 1-3*, OCCASIONAL PAPERS, CONTEMPORARY ASIA SERIES, NO. 6 (1991).

62. GELATT, *supra* note 61, at 4.

63. *Id.* at 7.

64. Sida Liu, *China: A Tale of Four Decade*, in 1 *LAWYERS IN 21ST CENTURY SOCIETIES* 697, 698 (Richard Abel et al. eds., 2020).

65. *Id.*

66. *ABA Survey Finds 1.3M Lawyers in the U.S.*, ABA (June 30, 2022), <https://www.americanbar.org/news/abanews/aba-news-archives/2022/06/aba-lawyers-survey/>.

is an area in which STL believes its graduates can set standards for the Chinese legal profession and provide role models for future Chinese lawyers.⁶⁷

'Zero-COVID'

Universities and law schools worldwide have had to contend during the COVID-19 pandemic with the challenges and deprivations of remote operations, and STL is no different. The difference of consequence for STL was the severe restrictions on travel and daily life that accompanied China's "zero-COVID" policy. The restrictions included strict border controls with multiple pre-entry testing requirements and long, unpleasant post-entry quarantines (initially twenty-one days, later reduced to ten); restrictions on both domestic and outbound international travel; daily COVID testing in many cities (including Shenzhen) as a condition of access to work, stores, public transit, and just about everywhere; and regular lockdowns of unspecified duration without advance notice or means of escape. An October 2022 New York Times article offered an accurate portrayal of daily life under China's zero-COVID policy.⁶⁸

China ended its zero-COVID policy, abruptly, on December 8, 2022. The ensuing rampant spread of the disease throughout the country has been tragic,⁶⁹ but assuming widespread natural immunity and improved vaccination efforts

67. A related issue we face is persistent incidents of academic dishonesty. Each year we experience several incidents of plagiarism, and occasionally, blatant cheating. The number of such instances is relatively few in comparison to our student population—no more than a handful each year—but enough to be concerning. The problem is especially frustrating because STL students are among the most academically gifted graduate students in China, and we emphasize in multiple training sessions from first-year orientation onward the critical importance of academic integrity and honesty. It may be that working in a second language presents too great a temptation for some students to copy instead of providing original work. A combination of outcome-oriented instrumentalism and a different sense of the availability of the work of other authors also may explain some infractions (*consider, e.g.,* William ALFORD, *TO STEAL A BOOK IS AN ELEGANT OFFENSE* (1995), discussing intellectual property law in China). Another possible explanation is that the sanctions for academic infractions in China are not as severe as in the United States. Chinese universities, including PKU, are loath to suspend or expel students, even when accompanied by an opportunity to reapply after a period of reflection and personal growth (as at many U.S. law schools). Perhaps this reflects the severe lifelong consequences that often accompany a negative remark in a student's Dang'An, the permanent government dossier that records the performance and attitudes of all PRC citizens. The lack of a severe sanction, however, seems implicitly to cause some students to believe the infraction is worth the risk.
68. Vivian Wang, *In China, Living not "With Covid," but with "Zero Covid,"* N.Y. TIMES (Oct. 1, 2022), <https://www.nytimes.com/2022/10/01/world/asia/china-covid-zero.html>.
69. *See, e.g.,* Chris Buckley at al., *From Zero Covid to No Plan: Behind China's Pandemic U-Turn*, N.Y. TIMES (Dec. 21, 2022), <https://www.nytimes.com/2022/12/19/world/asia/china-zero-covid-xi-jinping.html>; Chris Buckley & Amy Chang Chien, *As China's Covid Tsunami Recedes, Relief, Grief and Anxiety Follow*, N.Y. TIMES (Jan. 31, 2023), <https://www.nytimes.com/2023/01/31/world/asia/china-covid-infections-decrease.html>; *Will We Ever Know How Many People Died of Covid-19 in China?*, THE ECONOMIST (Feb. 2, 2023), <https://www.economist.com/china/2023/02/02/will-we-ever-know-how-many-people-died-of-covid-19-in-china>; and Pablo Robles, Vivian Wang & Joy Dong, *In China's Covid Fog, Deaths of Scholars Offer a Clue*, N.Y. TIMES (Feb. 5, 2023), <https://www.nytimes.com/interactive/2023/02/05/world/asia/china-obits-covid.html>.

in the aftermath, normal daily life and entry to and exit from China should follow soon. Calendar year 2023 will be the test of STL's ability to resume pre-pandemic levels of international travel, engagement, and expatriate recruiting.

III. Conclusion

Peking University's School of Transnational Law, by most measures, has been an unqualified success. STL's U.S. law J.D. program—China's only U.S. law J.D.—is comparable in all substantial respects to the J.D. programs of leading U.S. law schools. STL's China law Juris Master's degree—with which STL's J.D. is offered jointly—is reshaping the content and objectives of Chinese legal education and influencing legal education nationally.

The value that students derive from the combination of STL's J.D. and J.M. curricula, moreover, exceeds the value of studying either independently of the other. STL courses blend the study of China law, U.S. law, and other legal regimes in ways designed to equip students for the practice of law in a world in which parties from different nations and legal traditions increasingly interact, creating challenges that only the best transnational lawyers will be able to resolve. The goal of study at STL is to contribute to a deep student awareness of different legal regimes and traditions, different commercial practices and expectations, different cultures, and different notions of truth and justice, and to prepare a new generation of lawyers equipped to contend with the new rules and practices likely to emerge from their interaction.

Demand for admission to STL among China's most academically gifted college graduates is extremely high. STL has recruited a multinational faculty of leading scholars, all of whom subscribe to the case study method of instruction with intensely interactive class sessions, even within STL's largely civil law J.M. curriculum. The professional placement of STL graduates in world-leading Chinese and multinational law firms, businesses, government offices, and universities is exceptional, even during the recent economic downturn resulting from the pandemic. STL enjoys a steadily growing alumni/ae base on the cusp of leadership in China and elsewhere. And STL provides all of this to students at very low cost, with an annual tuition not even twenty-five percent of that at most leading U.S. law schools.

At the same time, because STL is an academic unit of Peking University, fully subject to central government and PKU regulations, policies, and practices, STL faces certain endemic challenges capable of jeopardizing its unique program and achievements. These include censorship, restrictions on faculty governance, and the absence of well-established standards for the profession of law. These clearly are challenges that are not prevalent at U.S. law schools. STL remains strong, nonetheless.

STL is an experiment in legal education that is unique in the world in an area of the world equally unique for its remarkable economic development and transformation. The internationalization and worldwide exchange characteristic

of Shenzhen and the surrounding region make the experiment of STL even more interesting, and perhaps pathbreaking for legal education globally.

STL graduates are setting standards of excellence for an emerging Chinese legal profession in terms of their professionalism, their ethical approach to the practice of law, and their capacity to deliver legal services and leadership of the highest caliber no matter how complex, challenging, or multicultural the problems they face. The work of educating them for this pursuit will have lasting value.⁷⁰

70. STL represents the work of many, starting, of course, with Founding Dean Jeffrey Lehman, whose stature and vision as a former president of Cornell University and dean of the University of Michigan Law School ensured Peking University and China government support for a project that was as risky as it was unprecedented—establishing a U.S. law J.D. program in China. Jeff's inaugural administrative team—Vice Dean Stephen Yandle, Assistant Dean Xu Hua, directors Charly Zhang, Yvonne Liu, and Eric Mao, along with the library director, the late Professor Duncan Alford—forged an ABA approval-worthy law school in China from little more than an official invitation to try.

I am incredibly grateful to the administrative team with whom I worked in transforming STL's mission following the ABA's 2012 decision not to accredit law schools outside of the United States. Vice Dean Colleen Toomey, Associate Dean Chen Keru, Professor Mao Shaowei, Assistant Dean Christian Pangilinan, and Director Kim Zhong, along with Stephen Yandle, the late Duncan Alford, Charly Zhang, Yvonne Liu, and Eric Mao from earlier years, are as talented, resourceful, and tireless a leadership team as I ever could have imagined. They are unstoppable.

And, of course, the success and ongoing strength of STL through the years results principally from STL's amazing students and graduates taught by a brilliant, pioneering, and dedicated faculty.

All of us have been helped and supported by talented additional administrative staff too numerous to name.