

The influence of China's Unified Qualification Exam for Legal Professionals on China's legal education and its solution

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Abstract: Under the background of the formal establishment of China's Unified Qualification System for Legal Professionals, the long-standing problem of independence and competition between undergraduate legal education and qualification exam for legal professionals has become more prominent in China. In order to ensure the efficiency of legal education and the accurate identification of qualified legal talents in the qualification exam for legal professionals, we should re-understand the normal relationship between the undergraduate legal education and the qualification exam for legal professionals, connect the undergraduate legal education with the qualification exam for legal professionals, rationally view and actively solve the impact of the qualification exam for legal professionals on the study and employment of law school students. We should adjust the orientation of undergraduate legal education through policy promotion, and reform the qualification exam for legal professionals at the same time, so that the two can be better connected, so as to promote the development of legal education.

Keywords: Unified qualification exam; Legal professionals; Selection; Connection

1. Introduction

Each country has established different types of selection mechanisms for officials and professionals, among which the examination system is the most typical. At the same time, public institutions and private education departments in each country are also focusing on cultivating citizens, especially through the higher education system to cultivate high-quality citizens. Therefore, the vocational qualification examination held by the China and the course education carried out by universities have become two different educational channels^[1]. Sometimes they cooperate closely, sometimes they may pay attention to different priorities, and even have conflicts in ideas and contents. This phenomenon is very typical in the legal industry. In China, law schools have been widely set up in universities to cultivate Bachelor of law, while China also has established a unified qualification exam for legal professionals to evaluate and select excellent legal talents. To put it simply, the final decision on whether law school students can engage in legal work in the workplace is up to China---That is, students must try to pass the unified qualification exam for legal professionals, so they can engage in legal work.

It is precisely because of this institutional arrangement that almost 100% of the law school students of various Chinese colleges and universities will take part in the annual national unified qualification exam for legal professionals, and the number of people taking the examination is increasing year by year. Among this group, there are fortune's favorites and unfortunates. In general, law school students achieved better results in the qualification exam for legal professionals than other types of candidates. In some areas, the one-time pass rate of law bachelors participating in the examination has reached 40%, which is much higher than the 10%-15% pass rate of such examinations every year. However, we should also see that the qualification exam for legal professionals also has a great impact on the undergraduate legal education^[2]. A considerable number of law school students have been preparing for the examination since they first entered the University. By the second and third grades, they have no intention to participate in normal teaching activities. Many students also participate in various training courses of qualification exam for legal professionals held by the society, which affects the normal progress of law teaching. For this abnormal phenomenon, we need to carefully analyze it and formulate

corresponding countermeasures.

2. Analysis on the positive influence of Unified Qualification System for Legal Professionals on Legal Education

The predecessor of the Unified Qualification System for Legal Professionals is the national unified examination system for lawyer qualification. The first examination was held every year in 1990. In 2002, the lawyer qualification examination was transformed into a unified judicial examination. According to the provisions of the "Measures for the implementation of national Judicial examination", the judicial examination covers 16 basic courses of law, involving more than 20 specific legal systems. Through these to assess whether the candidates have certain legal professional knowledge and considerable ability to engage in the legal profession, only those who pass the judicial examination can serve as judges, prosecutors and practicing lawyers. In 2018, the judicial examination was upgraded to a Unified Qualification Exam for Legal Professionals. Those who serve as judges, prosecutors, lawyers, notaries, legal advisers, arbitrators (legal) and engaged in the review of administrative penalty decisions, administrative reconsideration and administrative adjudicate which involves the job access of millions of people. It is not difficult to see that the national unified qualification exam for legal professionals has high value^[3]. Those who pass the exam not only signify that they can engage in many enviable occupations, but also represent that these people have the beliefs, ideas, thinking, knowledge and skills of "legal people", and are the qualified and elite among many law educated students. Therefore, we can think that a good legal higher education is a necessary stage to pass the qualification exam for legal professionals. Only by taking the legal professional education seriously can we reach the victory. At the same time, the qualification exam for legal professionals also plays a role as a lighthouse. It has brought clear tasks and objectives to law educators and educates^[4]. It can even tell law students what legal knowledge and skills you must learn and what tests you will accept before you can embark on the boat of the legal profession. Taking and looking forward to the qualification exam for legal professionals is the goal and motivation for people who want to engage in the legal profession to study law in universities.

If we take a longer-term view, we can also find some problems. Although China's undergraduate legal education began after the founding of the people's Republic of China, it has been interrupted for more than ten years, and then started again after China's reform and opening up. This kind of education is earlier than the qualification exam for legal professionals. For a long time, China's undergraduate legal education has formed its own teaching tradition, that is, paying attention to the teaching of theoretical knowledge, focusing on the understanding of basic concepts and the interpretation of basic principles, but not paying enough attention to specific practices^[5]. When students are about to finish their studies in the school, they will be arranged to practice in the legal affairs department to learn the practical knowledge which is not mentioned in the law books and also cannot be taught by university teachers. As far as the teaching content is concerned, the undergraduate legal education is based on the knowledge system of various departments, and the teachers' teaching is mainly monotonous. The examination of each subject of the undergraduate legal course uses questions such as term explanation, short answer, discussion and case analysis to examine students' mastery of professional theoretical knowledge. The examination questions are relatively simple. Students often learn by rote to cope with the examination. As a result, students lack the ability to operate in legal practice. Students trained in this mode will face great challenges if they want to successfully pass the qualification exam for legal professionals.

3. The negative influence of qualification exam for legal professionals on undergraduate legal education

Examination is an evaluation of the educational process and its effect, but it is not a perfect mirror that can reflect the real face. The qualification exam for legal professionals is indeed an assessment for law school students who take part in the examination, but the focus of its assessment or the answers it wants may not be provided by undergraduate legal education^[6]. On the contrary, in order to get the answers required by the qualification exam for legal professionals, legal education must make some adjustments, concessions and even alienation.

First of all, the two different directions of the national qualification exam for legal professionals outline and the undergraduate teaching outline of the law school make the teaching activities at a loss. According to the latest "national unified qualification exam for legal professional measures", the

qualification exam for legal professionals is divided into two stages. The first stage is the objective examination, which is divided into test paper 1 and test paper 2. The contents of test paper 1 include the theory of socialist rule of law with Chinese characteristics, jurisprudence, constitution, Chinese legal history, international law, judicial system and legal professional ethics, criminal law, criminal procedure law, administrative law and administrative procedure law; The contents of test paper 2 are civil law, intellectual property law, commercial law, economic law, environmental and resource law, labor and social security law, private international law, international economic law and civil procedure law (including arbitration system). Only after the candidate has passed the objective examination can he be allowed to take part in the second stage of the examination. If a candidate fails the objective test, he or she is not eligible to take the rest of the test. The main subjects of the subjective examination are: the theory of socialist rule of law with Chinese characteristics, jurisprudence, constitution, criminal law, criminal procedure law, civil law, commercial law, civil procedure law (including arbitration system), administrative law and administrative procedure law, judicial system and legal professional ethics. The types of examination are mainly case analysis questions and legal documents. The test questions of the two stages are different, the test focus is different, and the requirements for candidates' knowledge and skills are also different. Specifically, the Chinese Ministry of justice will publish the outline of the qualification exam for legal professionals as a guide for candidates to review and prepare for the examination^[7].

Then we will examine the undergraduate legal education in China. In China, it is generally believed that undergraduate legal education is a common knowledge education, not a special vocational education. As far as the world is concerned, the legal education in most countries is also a kind of common knowledge education in the undergraduate stage. Therefore, the undergraduate education of the university law school implements the syllabus issued by the undergraduate legal education steering committee. Among them, there are 14 core courses and several elective courses, and specific requirements are put forward for the teaching of each course. Students who have completed the necessary courses can obtain a Bachelor of law degree. These requirements are different from the national unified qualification exam for legal professionals. As students pay attention to the qualification exam for legal professionals, they hope that the law teachers of the school will teach them more about the examination skills of the qualification exam for legal professionals, which changes the requirements of the undergraduate legal education that should be adhered to. If the teaching is organized in full accordance with the outline of the qualification exam for legal professionals, the law schools in China will have no professional characteristics, but will become a pure training institution, just like the institution that teaches people to learn dance or cooking, which will certainly lead to the same mistake as the examination oriented education.^[8]

Secondly, students will face the dilemma of two classes and two sets of textbooks. As the undergraduate legal education plan is planned in the past four years. Therefore, the undergraduate legal education plan must take into account the links between the various courses of law and the difficulty of students' understanding of law courses. This arrangement is the accumulation of experience in undergraduate legal education over the past few years. However, this arrangement does not necessarily conform to the learning arrangement of various courses in the qualification exam for legal professionals, because the object of the qualification exam for legal professionals is not advanced legal theory, but the ability to apply legal norms to specific cases to solve practical problems. In order to face the qualification exam for legal professionals, students often make a suitable review plan to arrange their own time, and even participate in various training classes and buy special review materials. While students are busy preparing for the qualification exam for legal professionals, they also have to deal with the school curriculum examination, which makes students learn two sets of teaching materials at the same time, affecting students' mastery of professional knowledge^[9]. Especially when students think, or get information from others, that a certain law school course has little connection with the national qualification exam for legal professionals, or will not become the scope of the qualification exam for legal professionals, they are likely to make a rash decision, that is, to ignore or simply give up this course and devote time and energy to more useful courses, which will lead to incomplete legal education for students. This phenomenon is very similar to the recognition and enforcement of judgments of foreign courts in international law. For the law courses and knowledge taught in the law school, the national qualification exam for legal professionals can determine useful knowledge and useless knowledge, and the law school students will decide what to learn and how to learn according to this baton.

4. Reshaping the relationship between legal education and qualification exam for legal professionals

How to position and choose rationally the relationship between undergraduate legal education and national qualification exam for legal professionals, so as to form a good connection between them, is a major theoretical and practical issue that needs to be seriously considered in law school undergraduate legal education.

4.1 Look at the differences between legal degree education and qualification exam for legal professionals rationally.

The function of legal education is to train legal talents, while the function of qualification exam for legal professionals is to select talents. The objectives of undergraduate legal education are diverse^[10]. It is not only to train legal professionals, but also to provide a basis for training high-level research talents, or to train other legal talents, and even to improve the legal quality of citizens, however, the objective of the qualification exam for legal professionals is very simple, that is, to select qualified legal professionals; The content of legal education is relatively extensive, while the scope of qualification exam for legal professionals is limited, and it is impossible to involve all the content of legal education. The problem between legal education and qualification exam for legal professionals can not be simply attributed to who decides who and who adapts to who. They are interdependent and indivisible. Legal education should be relatively independent and properly guided by qualification exam for legal professionals; The qualification exam for legal professionals also needs to be constantly reformed and improved, giving due consideration to legal education. Only in this way can we establish a scientific, reasonable, high-quality and efficient talent selection system.

4.2 To ensure the independence of legal education, it should not be reduced to a "training course" for qualification exam for legal professionals.

First, reset the training objectives. The goal setting of legal education is the starting point of legal education. It plays an important guiding role in determining the training program, curriculum and teaching plan of legal education. The training objectives of law schools in different types of colleges and universities should be different, which is the requirement and inevitable manifestation of the "diversification" of law education. Therefore, we should change the situation of "all schools are the same" in practice^[11]. For the law schools of some well-known universities, according to their educational levels, the educational goal should be positioned as training the country's urgently needed thick foundation, wide caliber, compound and high-quality legal talents. To enable students to become high-level professionals with comprehensive moral, intellectual and physical development, with a solid theoretical foundation of law, systematic professional knowledge of law, necessary knowledge of natural science, economic management and humanities, who can skillfully engage in law or related work or can continue to study for postgraduates. For the law school of newly-built local undergraduate colleges and universities, it should according to the actual situation and its educational level, position the training as cultivating applied talents who have comprehensive moral, intellectual and physical development, systematically master legal knowledge, are familiar with Chinese law and the relevant policies of the party, and can engage in practical legal work in administrative organs, judicial organs, procuratorial organs, legal service institutions, public institutions, social organizations and enterprises. These law schools should focus on strengthening the education of students' professional knowledge and the cultivation of students' legal thinking ability, autonomous learning ability and the ability to integrate theory with practice. Its graduates should be practical talents who are "all-round person" in basic law and have a proper understanding of other knowledge. Avoid over pursuing the so-called "common knowledge education" and neglecting the professional education, which leads to the situation that the graduates' seemingly "common knowledge education" is actually "non-common knowledge education"^[12]. In addition, a number of law schools need to be built to train specialized legal talents, such as health law talents, information law talents, environmental law talents, intellectual property law talents, etc.

Secondly, the adjustment of training program. The adjustment of training program is the guarantee document to realize the educational goal of school. The training program of law schools in colleges and universities should reflect the requirements of training objectives and ensure their realization. For well-known colleges and universities, the adjustment should focus on the requirements of the qualification exam for legal professionals, increase the examination training courses and ensure that the

main courses required by students to participate in the examination have been completed^[13]. As for the newly built local undergraduate colleges and universities, the following reforms should be carried out: First of all, the curriculum should focus on the core courses of law to ensure that students are proficient in the basic laws of the country and can use them flexibly. For the subjects that belong to the core courses but are difficult for students to learn and are not practical, the content of the qualification exam for legal professionals should be directly taken as the teaching content and the class hours should be reduced. For example, the three subjects of international law and legal history can be set up in the form of introduction, with emphasis on the basis of ensuring the integrity of legal knowledge. Secondly, considering the time arrangement of the qualification exam for legal professionals and ensuring that students have enough review time, the teaching arrangement should be adjusted to change the current teaching process arrangement that there are too few law courses for freshmen and sophomores. Theoretical law courses such as constitution and jurisprudence should be offered in the first year of university, and all core courses of law should be offered in the third year of university. In addition, the examination methods and the arrangement of practical teaching should also consider the requirements of the qualification exam for legal professionals and make corresponding adjustments. Set up legal affairs scenes similar to the real world in and out of the classroom, so that students can use the law, not just remember the law.

Third, the improvement of teaching methods. China's legal education has always paid more attention to the interpretation and deduction of legal theories and the annotation of legal provisions. This philosophical way of education is very beneficial to the cultivation and consolidation of students' basic knowledge, but it also has obvious defects. That is, it is easy for teachers to make arbitrary decisions on knowledge, and suppress the cultivation of students' innovative thinking ability, autonomous learning ability and the ability to use the learned knowledge to solve practical problems^[14]. And law is a very practical subject fundamentally. The first important thing is to solve the problems in real life and gradually form a set of universal rules. At present, increasing the class hours of case discussion and legal practice, and establishing and improving clinical legal education are one of the key points of teaching reform in colleges and universities.

Fourth, the construction of teachers. In well-known universities, teachers' team is characterized by high education and higher vocational education. It seems that the construction of teachers' team is a false proposition for them. However, it should be noted that at present, the pure theory teachers in law schools of colleges and universities in China account for a considerable proportion^[15]. However, "any legal profession is to better put the law into practice, and the pure theory teaching mode is bound to be eliminated". Therefore, for law schools of well-known universities, it is urgent to encourage teachers to engage in legal practice and bring their practical experience and what they has learned from work back to the classroom. There are neither masters nor applied teachers with rich practical experience in the newly built local undergraduate colleges and universities. In recent years, the efforts of newly built local undergraduate colleges and universities to optimize the teaching staff by "building nests to attract Phoenix" have not only achieved little results, but even brought heavy economic burden to the schools. Therefore, the newly built local undergraduate colleges and universities should take the construction of applied local undergraduate colleges and universities as their basic orientation, take the training of applied legal talents as the training goal, change the knowledge structure of existing teachers, and strive to cultivate "double qualified" teachers. This is not only the limitation of the newly built local undergraduate colleges and universities, but also the basic requirement of cultivating law applied talents.

4.3 Improving the national qualification exam for legal professionals system

First of all, we should improve the passing rate of the legal profession qualification examination in a planned way, so that more graduates can pass the examination and obtain the qualification to engage in the legal profession. In today's world, countries that adopt the unified qualification exam for legal professionals have a relatively high pass rate. For example, the passing rate of the legal exam in the United States is quite high, and there is little difference between states. Take Colorado as an example, the state legal exam is organized by the state Supreme Court and held twice a year, and the pass rate is about 75%. China's qualification exam for legal professionals should also further improve the pass rate. On the one hand, it can encourage more excellent students to apply for law majors; On the other hand, the fact that more students can pass the qualification exam for legal professionals will encourage law students to strengthen the cultivation of their comprehensive legal quality, rather than focusing on the qualification exam for legal professionals, so as to eliminate the "baton" role of the qualification exam for legal professionals^[16]. Of course, if more and more students pass the qualification exam for legal

professionals, it will lead to more fierce competition in the legal profession or a decline in the quality of legal professionals. This kind of problem still needs long-term observation.

Secondly, the qualifications of those who take part in the national qualification exam for legal professionals should be limited. The current regulations should be relatively strict, that is, only the owner of the legal professional diploma can participate in the national qualification exam for legal professionals. At present, more than 400 colleges and universities in China have law departments, accounting for 1/4 of the country's more than 1700 colleges and universities. There are more than 360000 law students, accounting for 5% of the total number of students in all colleges and universities. Under such a large-scale legal education background, it is stipulated that only those who have obtained a legal diploma can be qualified to take the judicial examination, and the implementation conditions have been fully met. In the United States, if you want to take the lawyer qualification examination and become a lawyer, you must be a graduate of the law school. All the graduates of the law school are post-graduate education, which can also be understood as people who have at least obtained a graduate degree of law equivalent to that of China. China can also further learn from foreign practices, and stipulate that only those who have a bachelor's degree in law or above can participate in the qualification exam for legal professionals, or stipulate that in addition to having a bachelor's degree in law, those who have also studied political science, psychology, accounting and other professional knowledge can participate in the qualification exam for legal professionals, so that those who engage in the legal profession in the future can have a more comprehensive professional quality.

Thirdly, reform and improve the contents and methods of the qualification exam for legal professionals. Judging from the contents of the judicial examination in the world, it generally consists of three parts: the first is the objective examination, the second is the legal writing examination, and the third is the legal practice examination, in which the subjective examination and the open book examination account for the main proportion. China's qualification exam for legal professionals has also been reformed, such as using computers to answer questions and allowing you to read the code during the examination. However, it should be said that the qualification exam for legal professionals is a typical oriented examination with objective questions as the main part. In China's annual qualification exam for legal professionals, there is a certain proportion of rote content, and sometimes there are some biased questions, strange questions and controversial questions. Some training institutions participate in guessing questions and teaching candidates' mechanical answer skills, which makes the real legal literacy impossible to be tested and reflected in the examination, and violates the original intention that the examination should select people with legal literacy.

5. Conclusions

The qualification exam for legal professionals should remain open, not simply through the adjustment of the difficulty coefficient to control the pass rate, but should be a comprehensive, multi angle examination of the ability and quality of candidates.

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