

## On Conflicts and Reconciliation Between Judicial Examination and Undergraduate Law Education

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### Abstract

The current judicial examination fully accords with the basic pattern of undergraduate law education in terms of the examination contents and subjects. However, the differences in the positioning of targets, content setting, appraisal approaches and other aspects between them as well as the inappropriate influences of universities' excessive pursuit of the pass ratio of judicial examinations have resulted in the adverse effects on the undergraduate law education in the aspects of teaching contents, teaching methodologies and teaching orders. In order to reconcile the shocks on undergraduate law education imposed by the judicial examination, it is necessary to start from two aspects, respectively reforming the judicial examination's contents and test methods as well as transforming the curriculum setting and teaching mode of undergraduate education.

**Key words:** Judicial examination; Undergraduate law education; Conflict; Reconciliation

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### INTRODUCTION

Judicial examination, as the test for checking qualifications of engaging in the law-related careers organized by the nation uniformly, bridges law education

and law-related careers. It serves as the bond that realizes the reasonable connection between law education and law-related careers. In general, the current judicial examination is based on the status quo of law education in our nation and accordant with the pattern of higher law education. With regard to the test contents, subjects, test methods and other aspects, they are basically coordinated with law education, thus realizing the close combination and common development between them (Ye, Han, & Ding, 2003). At the same time, the career orientation of judicial examination is of great significance for facilitating the upgrading and innovation of undergraduate law education mode in our nation. However, at the same time, we must see that the judicial examination system has generated some shocks on the undergraduate law education in our nation. In particular, since 2008 when the full-time undergraduates were allowed to attend judicial examination, the shocks on undergraduate law education become more obvious (Zhang, 2012). The phenomenon has aroused great concerns in the field of law education. Then, how to correctly interpret the conflicts between undergraduate law education and judicial examination? As a law teacher, the author intends to explore into the issue by combining with the daily teaching work and practices and hopes to seek suggestions from counterparts.

### 1. MANIFESTATIONS OF CONFLICTS BETWEEN THE JUDICIAL EXAMINATION AND UNDERGRADUATE LAW EDUCATION

In fact, the national judicial examination system established in 2002 clarified that the attendees who took part in judicial examinations must be undergraduates possessing a mastery of law-related knowledge (not restricted to be law majors). The judicial examination was not directly connected with undergraduate law

education (Pan, 2003). However, it does not hinder the close connection between judicial examination and undergraduate law education. The reasons are: on the one hand, the current judicial examination is accordant with the status quo of undergraduate law education in our country in terms of test contents, subjects and examination methods, which is fully demonstrated by “Approach to Implementing National Judicial Examination” (2008), syllabus of national judicial examination every year, or the test contents, subjects and so on in the judicial examination papers. On the other hand, one of the important talent cultivation goals in undergraduate law education is to foster talents in the law career, such as judges, procurators, lawyers, etc.. Passing judicial examination is correctly the prerequisite of engaging in law-related careers. It will definitely play certain orientation roles in undergraduate law education. Pitifully, since the implementation of judicial examination system, in particular since 2008 when full-time undergraduates were allowed to attend judicial examination, the moderate distance between them is broken. The undergraduate law education presents the obvious trend to lean toward judicial examination, deviates from the due cultivation mode that undergraduate law education should take on, and affects the undergraduate law education’s quality of talent cultivation.

**First of all, judicial examination shocks the teaching contents of undergraduate law education.** To a certain degree, judicial examination is one of the factors that can detect the undergraduate law education’s quality. Therefore, the passing rate of judicial examination will definitely affect the overall evaluation on the university’s law education, thus hindering the source of outstanding law majors’ enrollment and the prospects of the development of law education. Moreover, in many universities, especially the Law Academy in local universities, the phenomenon of “dominance of judicial examination” occurs, i.e., the focus of curriculum system setting and teaching is shifted to the courses closely related to judicial examination. According to the teaching plan regulated by the syllabus of judicial examination, the basic law courses or professional selective courses that are not closely related to judicial examination are greatly reduced or even directly canceled. For the reason, the structure of undergraduate law majors’ knowledge has severe deficiencies and deviates from the pattern of law education as well as the undergraduate law education’s cultivation goal.

**Second, judicial examination shocks the undergraduate law education’s teaching methods.** On the prerequisite that the judicial examination dominates the undergraduate law education, in order to appeal to students’ demands on judicial examinations, teachers often adopt the teaching methods that are beneficial to improve the passing ratio of judicial examination. They only pay attention to the explanation of the frequently test points

of judicial examination and the analysis on relevant cases but ignores the teaching of law’s legal spirit and basic legal stipulations. The classes have evolved into the places for the judicial examination. Daily examinations and tests mostly adopt the questions in judicial examination (Zhu, 2009). Under this situation, law teachers often pay attention to students’ ability of simple examination-oriented ability and memorization in the teaching process instead of their thinking, analytical ability, judgment and other comprehensive law-related qualities. Law education becomes examination oriented to a certain degree.

**Third, judicial examination shocks are the normal teaching order of undergraduate law education.** In particular, since 2008 when the full-time undergraduates were allowed to attend judicial examination, a considerable number of senior students in Grade 3 are not attentive in class to make preparations for judicial examination. Some of them even skip classes. Considering the shocks on the teaching contents and teaching methods, they are almost fatal to the undergraduate law education because the four-year undergraduate law education is actually shortened to three years or two years and a half. Moreover, the selective specific courses for the enhancement and expansion of undergraduate law majors’ mastery of professional knowledge, as well as the practical course to drill and forge law majors’ practical skills are basically during the third and fourth academic year. It is likely to cause the undergraduate law majors’ severe lack of professional knowledge structure and professional practical skills even if they pass the judicial examination. For the reason, they may be unqualified to take law-related jobs.

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## 2. CAUSES FOR THE CONFLICTS BETWEEN JUDICIAL EXAMINATION AND UNDERGRADUATE LAW EDUCATION

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As mentioned above, the current judicial examination has imposed adverse shocks on the teaching contents, methods and order in common undergraduate law education. Then, why do such adverse shocks occur? Why cannot undergraduate law education be dominated and guided by the judicial examination? In terms of the doubt, if we comb up the contents related to national judicial examination system and the cultivation mode in undergraduate law education, we can find the differences between judicial examination and undergraduate law education in terms of positioning of the targets, content setting, appraisals and so on.

**First of all, the singularity of the goals of the judicial examination’s talent selection is different from the diversity of cultivation goals of undergraduate law education.** According to relevant regulations in “Approach to Implementing National Judicial Examination” (2008), judicial examination system is set

up for improving and guaranteeing the qualities of judges, procurators, lawyers and notaries for the purpose of selecting the talents possessing the qualifications for law-related careers and examining whether the candidates to serve as judges, procurators, lawyers and notaries in the future possess the knowledge and application ability that they should possess so as to ensure the quality of law-related careers. However, compared with the singularity of the judicial examination's goal of talent selection, the cultivation goal of undergraduate law education is characterized with diversity. Law education can not be only foster law-related vocational professionals, but also cultivate nation-governance talents. On the one hand, undergraduate law education, as one type of career education, it aims at cultivating judges, procurators, lawyers and elites in other law-related careers. However, on the other hand, undergraduate law education, as a kind of common education or quality-based quality, besides cultivating elites in law-related careers, also opens up to legislation organizations, law enforcement organizations, commercial areas, social service areas, basic level, as well as social areas in a wider range. Besides, it also targets at cultivating the all-round talents with a considerable amount of legal knowledge and qualities. Moreover, under the situation where law majors confront "difficulties in job hunting", the emphasis on the cultivation of the latter type of talents is of greater realistic significance because the employment of judges, procurators and other traditional law majors has become saturated, while the employment market in legislation organization, governmental departments and other legal service industries is quite wide. If the injection of knowledge for the sake of passing judicial examination is over-emphasized in undergraduate law education, it undoubtedly deviates from the diverse cultivation goals of law education. Furthermore, the enhancement of such an orientation will worsen law majors' difficulty in employment.

**Second, the test contents of judicial examination are different from the focus of undergraduate law education.** According to "Approach to Implementing National Judicial Examination" (2008) and syllabus of national judicial examination every year, the contents in national judicial examination include: theories of laws, applied law, current legal stipulations, legal practical cases and law career ethics. Combining with the judicial examination papers every year, the distribution of subjects involved in examination contents is demonstrated as: Paper I: Comprehensive Knowledge, including: Notion of Social Legal Governance, Legal Theory, History of Legal Governance, Constitution, Economic Law, International Law, International Private Law, International Private Law, International Economic Law, Judicial System and Law-related Career Ethics. Paper II: Criminals and Administrative Law, including: Criminal Law, Criminal Procedural Law, Administrative Law & Administrative Procedural Law. Paper III: Civil and Commercial Case

Law, including: Civil Law, Commercial Law, Civil Procedural Law (including arbitration system). Paper IV: Practical Examples (Cases) Analysis, including: Notion of Social Legal Governance, Legal Theory, Constitution, Administrative Procedural Law, Criminal Law, Criminal Procedural Law, Civil Law, Commercial Law, Civil Affair Procedural Law. It should be said that the contents of current judicial examination basically cover the main courses of undergraduate law education. Ministry of Education determines 16 courses as the core curriculum in undergraduate law teaching, including Legal Theory, Constitution, China's History of Legal Governance, Criminal Law, Civil Law, Commercial Law, Intellectual Property Law, Economy Law, Criminal Procedural Law, Civil Procedural Law, Administrative Law and Administrative Procedural Law, International Law, International Private Law, Environmental Law and Resource Protection Law, Labor Law and Social Security Law. They are the required courses in undergraduate law education, which is basically consistent with the contents of juridical examination.

However, although the test contents of judicial examination are the same with the scale of the courses in undergraduate law education, the focus of judicial examination greatly differs from the emphasis of undergraduate law education. The manifestations are: First, judicial examination focuses on the check on the basic legal knowledge and stipulations. However, this is only one part of undergraduate law education. Undergraduate law education also attaches importance to legal theories and common education. Second, although judicial examination covers all the core courses in the law major, the examination mainly centers on the check of the mastery of civil law, criminal law and procedural law, while international law, international private law and international economic law account for an extremely small percentage.<sup>1</sup> Third, undergraduate law education also includes more refined professional selective courses besides the 16 professional core course, including Legislation, Maritime Law, Evidence Law, Trust Law and International Trade Law and other courses focusing on one specific discipline. Although judicial examination includes some relevant contents, it does not check the key law and criminal law, China's History of Legal Ideology, History of Foreign Legal Governance, Roman Law, Criminal Policy Law and other theoretical disciplines that judicial examination does not check directly. Fourth, undergraduate law education also includes mock court, judicial practice, judicial internship, skill-oriented courses requiring for practices, writing of graduation paper and other comprehensive courses. The teaching contents

<sup>1</sup> Through the statistics of 2013 judicial examination papers, it was found that Criminal Law, Civil Law, Commercial Law, Criminal Procedural Law, Civil Procedural Law, International Law, International Economic Law and International Private Law accounted for 81, 92, 52, 77, 71, 9, 15 and 15, respectively.

of these courses cannot be directly demonstrated in the judicial examination obviously.

**Third, the singularity of the test method of judicial examination is different from the diversity of the test method of undergraduate law education.** According to the regulations in “Approach to Implementing National Judicial Examination” (2008), the judicial examination adopts the test method of one-time test, examination without references, and written examination. The full mark of every examination paper is 100 scores. In terms of the test questions, the test questions on Paper I, Paper II and Paper III are objective questions in the form of single-choice and multi-choice questions. The questions on Paper IV are subjective questions in the form of Q&A questions, case analysis questions and statement questions. Among them, the choice questions account for the major part (There are four papers in total. Among them, the questions on Paper I, Paper II and Paper III are all choice questions, accounting for 75% of the whole scores). There are many advantages by using the form of objective questions, choice questions to check candidates’ vocational ability, such as clear answers, sole answers, eliminating scorer’s subjective factors and so on. Besides, the question proposers in judicial examination also demonstrate strong flexibility. However, such simplified examination questions can hardly display the diversity of legal disputes, subjectivity of legal thinking and complexity of application of laws. Besides, it is also different from the diversity of the test methods in undergraduate law education. In general, it is mutually corresponding to the diversity of the courses in undergraduate law education. There are two test methods in undergraduate law courses: One is the form of examinations, including examination without references and examine with references. The former one is mainly applicable to the core courses in law education. The latter one is mainly applicable to the selective courses in law education. The other one is overall check, which can be applied to check students’ practical ability or skill-oriented courses by means of examination, such as case analysis report and reflections on the internship. Different from the examination without references that is mainly composed of objective questions in judicial examination, examination with references is mainly composed of subjective questions. It can better show students’ understanding of laws, analytical ability and comprehensive application ability. Moreover, it is quite coherent to the goal of talent cultivation in undergraduate law education.

### 3. RECONCILIATION BETWEEN JUDICIAL EXAMINATION AND UNDERGRADUATE LAW EDUCATION

The above analysis indicates that due to the existence of the difference between judicial examination and

undergraduate law education, judicial examination is thought to have a certain distance from undergraduate law education. However, in reality, because of the arrangement of the schedule of the judicial examination and the existence of the policy that full-time undergraduate students are allowed to take part in the judicial examination, the negative influences of judicial examination on undergraduate law education become more obvious. It is a problem that undergraduate law education must respond to about how to relieve or eliminate the conflict. Of course, the reasons for the conflict are two-way. There are some problems in terms of the system of judicial examination. It also reflects the backwardness of undergraduate law education. As a result, in terms of the response measures, multiple measures should be taken.

#### 3.1 Reform the System of Judicial Examination

In terms of the selection of talents in law-related careers, judicial examination has given play to sound effects. It has improved law-related practitioners’ professional quality and the criteria of recruitment of judicial personnel, further elevated the quality of lawyer teams, and greatly promoted the quality of lawyers and procurators so that the judicial teams have become the groups with highest vocational qualities among national public servants. It has facilitated the formation of the community of law-related careers, changed the situation that the judges, procurators and lawyers undertook separated responsibilities in the past, overcome the deficiency of qualification examinations divided by the boundary of departments, confirmed the uniform understanding of legal notions, system, technology, procedure and ethic morality among law practitioners, and enhanced the consciousness of career community. Despite this, there are still many deficiencies in terms of selecting talents in law-related careers. Such deficiencies have also brought many confusions and shocks on undergraduate law education. Considering the length of the paper, the author only elaborates on the problems in the test contents and examination methods that are closely correlated to undergraduate law education as well as proposes the measures.

**First of all, adjusts the judicial examination’s test contents.** The current judicial examination demonstrates the mechanical features and over-emphasis on theories. It fails to reflect the main contents of undergraduate law education. Moreover, it hardly shows the goal of selecting the talents in legal careers. The contents on the examination paper are too theory-oriented. There are a large number of hypothesized propositions instead of actual cases in legal practices. The examination over-emphasizes candidates’ mastery of basic legal knowledge and checks candidates’ memorization of legal rules. The test questions are to examination oriented. A lot of questions require for memorization. However, the examination of candidates’ understanding and



applications of laws is not enough. At the same time, in terms of subjective problems, the question setting is too mechanical. The candidates' analytical ability, deduction ability and judgment can hardly be checked. As a result, in the future, in terms of the test contents, the examination's practicality and skill orientation can be highlighted. The examination can further check candidates' rational analysis and logical thinking as well as enhance the check of ethics and standard of law-related careers.

**Second, reforms the test methods of judicial examination.** The current judicial examination is simple in test methods. At present, the judicial examination in our country implements the system of "one-time examination". The test form is singular. The examination is completed within two days. As long as the students taking part in the judicial examination reach the up-to-standard score that year, they can be granted with the qualification of law-related careers. Besides, they obtain the qualifications of judges, procurators, lawyers and notaries. The examination adopts the form of written examination. The test questions are extracted from the question bank. Among them, the choice questions account for a large amount of proportion ((There are four papers in total. Among them, the questions on Paper I, Paper II and Paper III are all choice questions, accounting for 75% of the whole scores). Besides, the objectivity of subjective question checking can hardly be guaranteed at present. Therefore, passing the judicial examination does not mean the possession of outstanding judicial practical skills. The examination can hardly test and verify the entire knowledge structure and vocational ethics of modern law-related talents. In the future, in terms of the reform of the examination method, the sub-stage checking method can be adopted. The examination can be carried out twice. The first examination adopts the written examination form. Basically, it employs the current judicial examination method. It mainly investigates into candidates' completeness of structure of legal knowledge as well as the basic ability of mastery, understanding and judgment of legal knowledge. The second examination also adopts the written examination form. It can focus on case analysis. All the questions adopt the form of subjective questions, which mainly check candidates' ability of overall analysis and problem solving (Pan & Chen, 2008). In this way, it can reflect the contents of undergraduate law education more completely and comprehensively as well as check candidates' vocational ability related to law.

### **3.2 Reform the System of Undergraduate Law Education**

The shock of undergraduate law education exerted by judicial examination is attributed to the system of judicial examination on the one hand. On the other hand, it also demonstrates the non-adaptability and backwardness of undergraduate law education in the new era. The goal of talent cultivation of undergraduate law education is

wider and more diverse than that of judicial examination. Besides, the test contents and examination methods vary from each other. However, the commonness and the undergraduate law majors' employment demands decide that undergraduate law education must "appropriately lean toward" judicial examination so as to realize the mutual reconciliation between undergraduate law education and judicial examination. More importantly, such a reform does not require that undergraduate law education should center on judicial examination. Furthermore, it cannot give up the goal of talent cultivation in law education and violate against the basic pattern of law education (Xiao, 2011). Then, from the observational perspective of judicial examination, how should undergraduate law education initiative its teaching pattern?

**First, adjust the contents of courses for undergraduate law majors.** The current cultivation plan requires that students should take a considerable number of courses. Besides, due to the phenomenon of overlapping course setting, it wastes teaching resources and occupies students' independent learning and the time which should have been allocated by themselves, including the after-class time that students can make use of to prepare for judicial examination. Consequently, it is unavoidable that students will "skip classes" to make preparations for judicial examination. Therefore, it is necessary to adjust the current contents of courses for undergraduate law majors. The adjustment is demonstrated in two aspects: First, reduce the number of required courses and limited optional courses for law majors properly and add selective courses about law and other disciplines so that it can both satisfy the demands on professional training, but also help students form "multi-dimensional perspectives about knowledge". Moreover, it is more accordant with the overall ability requirements on talents engaging in law-related jobs, i.e., "mastery of a wide range of knowledge, possession of a solid foundation". Second, add mock court, legal analysis, judicial internship and other practical courses appropriately so as to improve students' practical skills and cultivate their capability in law-related careers.

**Second, reform the teaching mode of law majors' courses.** In China, the traditional law-teaching mode focuses on theoretical education. Teachers mainly instill the system of knowledge of various law disciplines. When students get in touch with law education, they often regard laws as scientific knowledge like history, philosophy and literature. The educational model emphasizes more the injection of basic concepts and knowledge as well as the mastery of learning methods (Huo, 2002). Such a teaching mode enables students to memorize the basic general and systematic knowledge. However, students lack the ability to combine theories with practices as well as the initiatives, activeness and innovation in law learning (Zhou & Qi, 2009). Therefore, the traditional teaching model should be transformed. Case teaching methodology

should be advocated and launched. Such a dialogue or discussion teaching methodology can help students master the essence of law in learning and delving into cases, enlighten their legal thinking, stimulate their subjectivity, improve their logical deduction ability and cultivate their analytical capability and critical perspective. This is the real connotation of the goal of talent cultivation in law education. Furthermore, it is also corresponding to the logical legal thinking competence, analysis & judgment ability, and specific legal problem solving capability checked in judicial examination as well as skills in law-related careers.

## CONCLUSION

The analysis in this paper has shown that although there remains close relationship between the judicial examination system and the undergraduate education of law system, they are of much difference in goal setting, content configuration and examination method. And allowing the fresh graduates to take the judicial examination has brought serious impact to the undergraduate education of law. Faced with such an objective fact, every law education workers must take the conflict between the two seriously and timely adjust some contents of the judicial examination system that falls short of the relevant contents of basic rule of law education. Meanwhile, we shall timely update undergraduate education course system and teaching mode of law science that are not in accordance with occupational

direction of Judicial Examination. Only in this way can the legal talents who adapt the need of social development be cultivated.

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