

## Teaching and Learning Law in Taiwan: A Timely Review

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### Abstract

Legal education plays a crucial role in our democratic society based on the rule of law. A full and rich legal education ensures the quality of legal professionals. In Taiwan, since the beginning of this century, we have seen significant improvements in law teaching and learning, as well as the national examinations for different legal professionals. Nevertheless, as the world is changing quickly and technology is growing exponentially, it is important that law schools and teachers must adapt to the new environment. This article discusses the issues and challenges of Taiwan's legal education and elucidates the policy changes in relevant national examinations regarding legal professionals. The author argues that law schools and teachers should try to maintain a balance between practical, theoretical, and inter-disciplinary courses. In addition, the use of advanced technology, such as Artificial Intelligence (AI), to assist teaching is recommended. Law teachers should, through on-the-job training, understand the inner workings of AI in order to maximize its benefits. The role of the government in shaping the legal education is also assessed. In particular, attention is paid to the latest policy reform on merging different national examinations according to the 2017 National Conference for Judicial Reform. While it remains to be seen whether this grand reform will work and to what extent it will affect our legal education, the efforts on the part of the Examination Yuan deserve recognition. It represents a sign of progress in a democracy.

Keywords: legal education, national examinations, teaching and research, judicial reform

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## 我國法律教育與學習之省思

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### 摘要

法律教育為民主法治社會之基石。法律專業人士之素養取決於完整及良好的法律教育。二十餘年來，我國現行法律教育已有許多進步，但在面臨時代快速變遷及新興科技推陳出新的今天，仍應與時俱進。本文嘗試就現行法律教育所面臨的問題與挑戰及相關政府部門在形塑法律教育過程中所扮演的角色作一評析，並就近年考試院所提出之改革方案提出個人看法。作者認為，我國大學法律系及教師應在教學上，就實務、理論及科際整合的課程間謀取平衡，且應利用新興科技如人工智慧等輔助教學，使學生獲得最大的學習成效。另外，考試院奠基於 2017 年總統府司法改革國是會議的四合一考試改革方案，由於尚未施行，對法律教育的影響，仍待觀察，但嘗試改革的努力仍值得鼓勵與肯定。

關鍵詞：法律教育、國家考試、教學與研究、司法改革

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## I. Introduction

Legal education determines the quality of legal professionals. “Legal education” means that law students are taught a series of courses covering constitutional law, statutory law, important judicial decisions and other authoritative texts, so that they are able to understand the legal concepts and possess the ability to practice law in concrete cases. As a civil law country, Taiwan’s current legal education includes, a 4-year (with a few exceptions 5-year) Bachelor of Laws program (LL.B. degree), a 2-year Master of Laws program (LL.M. degree), a 2-year Postgraduate Master of Laws program (LL.M. degree), and a Doctor of Laws program (Ph.D. in law or Doctor of Laws degree). The LL.B. program focuses on the doctrinal courses of constitutional law, civil code, criminal code, civil procedures code, criminal procedures code, and the administrative law. These “6 Codes” derive dozens of other specialized courses. On the other hand, postgraduate education offers courses on a more theoretical and inter-disciplinary perspective and is supposed to train qualified people for doing academic research. Law teachers must fulfill their obligations by lecturing and instructing students doing different degrees. This article seeks to review the issues and challenges of legal education in Taiwan. Focus is placed on the LL.B. program, although some of my observations and comments also apply to the master’s and doctoral programs. The role of the government in shaping the legal education is also reviewed. Comments are made on the national examinations regarding legal professionals, particularly the most recent policy reform based on the 2017 National Conference on Judicial Reform. The author argues that while many of the criticisms on the legal education may sound legitimate, improvements can be seen in the last two decades. Nevertheless, a structured curriculum which integrates doctrinal, clinical, theoretical and inter-disciplinary courses to provide a full range of legal knowledge to students is desired. In addition, while it remains to be seen to what extent the latest policy reform on national examinations, if implemented, will affect legal education, it deserves recognition.

Universities in Taiwan have different names for their law degree programs, such as Law Department, Department of Financial and Economic Law and Department of Government and Law etc. They all offer more or less the same law courses. For the sake of simplicity, the term “law school” is used to describe the academic unit where law students are enrolled.

## II. Some observations on current legal education

For decades, one of the most well-known critics on legal education is that the law courses offered by law schools have been too theoretical to the extent that students cannot utilize the knowledge they learned in practice (許育典, 2019, p. 39). This phenomenon can be attributed to the following reasons. First of all, most of the members of the law faculty (including assistant professor, associate professor, and full professor) do not have practical experience in law as it is not a requirement to obtain a

teaching position at the law school. Basically, a Ph.D. in law degree (or S.J.D., J.S.D under the American system) from a prestigious university abroad will suffice. As a result, doctrinal education, i.e. the learning of legal language and interpretation, is not given sufficient weight. On the other hand, theoretical courses multiply. This trend is considered natural as the promotion of junior teaching staff depends very much on their publication of papers with “significant academic values”. In addition, law schools at some top universities encourage legal scholars to publish their works in the English language in famous law journals or ones with high impact factor. Those academic “achievements”, of course, are not meant to be read by undergraduate or even postgraduate law students whose English capability are far from satisfactory. It is definitely a nightmare for a law student to read an article written by a Taiwanese scholar in English on the legal philosophies of Kantian ethics or Rawl’s theory of justice. It would be much better if the student spent his/her time and efforts on the reasoning of authoritative court decisions and interpretations. The point I want to make is not that doing research on western legal philosophies is of no value, but that it is impractical for the majority of law students who only spend a few years on campus. In an attempt to remedy the situation, some judges and attorneys are invited as part-time teachers to lecture doctrinal courses. The effects are marginal, because most of those courses are elective and cover only a very small proportion of all of the law courses.

Secondly, a matter of serious concern is the lack of training in legal writing. Law students are taught to understand and memorize important articles in the codes, but are not trained sufficiently to write in a legal manner. Legal writing is not just about the drafting of legal documents such as sales contracts, but also the addressing of realistic legal issues in a persuasive way in favor of a legal position. What is the point of learning law if law graduates cannot even write something to demonstrate their professional knowledge? This issue is attributable to the fact that most of the legal academics do not have the practical experience of legal writing. The stark reality is, they are not capable of teaching what they do not know.

Thirdly, law schools are not able to catch up with globalization trends and challenges. We live in a world which is so different from the one thirty years ago. The globe’s climate is changing, Internet has become part of our daily lives, and even Artificial Intelligence (AI) is altering the industry. Various kinds of legal issues and challenges are there right in front of us. Yet, law schools seem to be content with their conventional law courses as if those issues and challenges do not exist. Law exists to maintain public order as well as to settle disputes in a fair and just manner based on the rule of law. Ignorance of those global issues, technological advancements, and the growing complicity of human society cannot achieve the very purpose of law. Legal academics need to address those issues and challenges and incorporate them in their law teaching. If advanced technologies have impact on students’ learning, then we should know the technical inner-workings of those technologies before we use them.

We probably need to start some new courses, such as climate change policy and law, intellectual property rights on information technology, Internet security and safety, as well as law and ethics on biological science. This, in turn, means that law schools must recruit new blood capable of doing interdisciplinary studies. Where do we find them? This is a serious issue that deserves special attention. Apart from recruiting faculty from abroad, which, of course, is most convenient, we may nourish our own. To start with, junior law students should take courses other than law. They may choose, according to their interests, subjects such as meteorology, geochemistry, oceanography, biology, computer science, and information technology during their first and second years on campus. This, of course, requires a systemic restructuring of law school courses.

Furthermore, law students in Taiwan are suffering from the syndrome of low English proficiency, which largely limits their scope of business in the future (陳文琪, 2015, p. 2). As an island state, Taiwan's economy depends on trade with other countries. Its exports account for around 70% of the total GDP, and 98% of which are industrial goods (Trading Economics, n.d.). Needless to say, hundreds of thousands of contracts and agreements are signed every day. In addition, as a member of World Trade Organization (WTO),<sup>2</sup> a rising demand for legal experts who also have good command of the English language has been expected. Under the circumstances, various kinds of business disputes involving foreign counterparts and documents written in English can be seen everywhere. Most of the disputes, when no private settlement is agreed upon, have to be resolved either in the Taiwanese courts or through arbitration in Taiwan or abroad. Legal professionals' limited ability to read, speak, write, or understand English means that they are incapable or reluctant to handle cases involving foreign elements. As a result, judges and prosecutors must rely on interpreters and translated documents, while lawyers have to seek assistance by hiring people with better English proficiency, but who often do not have the license to practice law. The quality of legal services is thus in question. In fact, not long after Taiwan joined the WTO, there was a movement to reform its legal education (see below). Among many of the proposals, adding "Legal English" as an examination subject was a consensus reached. It might be argued that improving students' English language proficiency is not the job of the law school. Students should plan for their own future, and that includes whether or not to learn a foreign language or practice law in a foreign language. Reasonable as it seems, a pragmatic viewpoint is that if legal professionals cannot provide quality services to the people in the business sector who have been contributing so significantly to the survival and development of Taiwan, that would be a waste of their expertise, and not helpful in shaping the economy based on the rule of law. Legal education should take into consideration this unique situation of Taiwan.

Last but not least, a dreaded phenomenon is that the LL.M. programs have fallen

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<sup>2</sup> The Republic of China acceded to the WTO in 2002 under the name "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (later referred to as Chinese Taipei).

to become a refuge for law graduates to prepare for the national examinations. Ideally, the purpose of doing a master's degree program is twofold: to further expand legal knowledge, and to learn how to conduct independent legal research. With few exceptions, law graduates tend to think otherwise. Their main reason to apply for a LL.M. program is to make use of the 2-4 year period on campus to prepare for the various national examinations held by the Examination Yuan (see below). As long as they are registered students, they enjoy the benefits of being able to use university resources, such as the library, study rooms, and other facilities. This pragmatic thinking defeats the very purpose of the LL.M. program as students seek to allocate most of their time to study over and over again those major subjects of the national examinations. Courses, no matter how attractive or innovative, offered by the master's degree program are very much ignored. To make matters worse, many students, after passing the examination they wish for, choose to give up their study. This is not just a waste of educational resources, but also explains, at least in part, why legal studies in Taiwan do not enjoy international fame.

### III. The role of government

Although academic freedom is guaranteed under the Constitution of the Republic of China,<sup>3</sup> the government plays an important role in shaping the legal education in Taiwan. There are three ministerial-level government branches which bear an influence on the operation of law schools. For decades, various kinds of decrees have been provided for different policies and purposes. Law schools at national and private universities must comply with them to ensure that they are well-accredited.

#### The Ministry of Education

The role of the Ministry of Education in the tertiary system includes the development of strategic policy for the tertiary sector and internationalization, provision of funding to facilitate educational projects, examining the qualification of faculty, advancement of research innovation, invention, and the commercialization of intellectual properties, as well as monitoring the performance of universities (Ministry of Education, 2012). Regarding legal education, apart from setting the minimum credits for graduation and examining the qualifications of law teachers, often times, certain project-based funding is available for application. For instance, back in 2005, a movement on legal education reform began. One of the most controversial ideas was to abolish the 4-year LL.B. program and adopt the Korean version of the United States Law School J.D. program (國立臺灣大學法律學院, 2008; 陳惠馨, 2006). In other words, only those who had accomplished a bachelor degree were eligible to apply for

<sup>3</sup> Article 11 of the Constitution states, "(t)he people shall have freedom of speech, teaching, writing and publication."

law school. Numerous conferences and meetings were held, yet, it seemed that the more the discussions, the less the consensus. The proposed reform was eventually rejected. On the other hand, quite a lot of postgraduate LL.M. programs were established, which could be considered a similarity with the United States J.D. program.

Another notable example happened between 2007 and 2011 in which a project was launched to improve law teaching at universities (陳惠馨, 2011). Over a hundred legal scholars were funded to innovate their teaching material, not just for law school courses, but also general education classes. Emphases were placed on developing dialogue teaching, domestic case studies, integrating theory and practice, and legal ethics. The results were very fruitful. An unexpected outcome of this project was that it provided an opportunity for law teachers to exchange ideas on law teaching, something that rarely happened in the past.

Recently, the Education Ministry launched another grand policy. The Taiwan's Bilingual 2030 Plan aims at connecting Taiwan to the world and enhancing international competitiveness by turning Taiwan into a bilingual English-Mandarin Chinese nation by 2030 (International Trade Administration, 2021). Accordingly, law schools should provide bilingual law courses on all subjects by then. The term "official language" implies that legal professionals, among others, will be able to read, write, communicate and make arguments in English. To date, it is still not clear how this ambitious policy is to be achieved. Nevertheless, the policy may serve as a catalyst for those engaged in legal education to put more efforts on teaching law in English. Undoubtedly, it is a challenge for those law teachers who obtained their doctoral degrees from non-English speaking universities. As of today, we see a growing number of law courses taught in full English at some prestigious universities. It is indeed an encouraging sign.

As an educator, I have noticed the value advanced technology holds for teaching and learning. The use of online teaching as a substitute for in-person class during the Covid-19 pandemic (2019-2022) is a good example. It has been proved that AI, in particular ChatGPT and the most recent GPT-4, can draft contracts, citing relevant cases and even advancing arguments for legal practitioners (Villasenor, 2023). It is also said that AI can provide students with a more personalized learning experience. AI algorithms can analyze student data and adapt to their learning styles, providing feedback and recommendations that are tailored to their individual needs and abilities (Melo, 2023). At the initial stage, AI-powered tools allow law students to find relevant statutes, precedents and legal articles, making them more efficient and resourceful. Different opinions regarding a particular legal issue can also be obtained through conversational AI. This expands students' perspective. These observations have demonstrated that the involvement of AI in legal education is not a science fiction, but a matter of time. The education authority should treat the use of AI in education in a

serious manner. Ethical guidelines to ensure an environment of trust for the use of AI by educators and students should be adopted. Law teachers need to receive on-the-job training on how to maximize the benefits of AI in teaching, and to avoid misinformation and disinformation created by it.

### **National Science and Technology Council**

The National Science and Technology Council (hereinafter the Council) was established by the Executive Yuan for the purpose of planning, coordinating, reviewing matters, and allocating resources for national scientific development and technological research and application.<sup>4</sup> For decades, legal academics, in particular those junior ones, are keen on applying project-based grants from the Council. The reason is twofold. Apart from obtaining extra funding for their research, it is also a recognition of their academic performance in the area. In fact, when a faculty member is seeking promotion, the amount of projects he/she gets from the Council is regarded as one of the important criteria on the part of the university. As it is rather difficult to get funding from the Council, the proposed research topic must appear to be novel, theoretical, attractive and of academic value. A variety of proposed topics can be found ranging from philosophical studies such as legal jurisprudence, justice theory, sociology of law, legal anthropology, and feminism, to practical issues including AI, rights of persons with disabilities, rights of the child, and LGBTQ rights. Abundant publications in Chinese and in English can be found. Admittedly, for the sake of diversity, this, to a certain extent, represents Taiwan's academic success. Yet, legal scholars should be aware of the fact that some of their research results may be too theoretical, and thus are not suitable to be used as teaching material in class. After all, the purpose of doing a law degree is to learn to resolve legal issues according to the law and other authoritative interpretations. For law students, enjoying the fruits of a law professor's research is a luxury, not a necessity.

### **Ministry of Examination**

Law graduates who wish to become legal professionals must take the examinations held by the Ministry of Examination, Examination Yuan.<sup>5</sup> There are two major examinations, namely the Civil Service Special Examination for Judges and Prosecutors, and the Advanced Examination for Attorneys (bar examination).<sup>6</sup> This state-run examination system has been operating for over 7 decades.<sup>7</sup> The Examination

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<sup>4</sup> Article 1, Organization Act of the National Science and Technology Council.

<sup>5</sup> According to Article 83 of the Constitution, The Examination Yuan is the highest examination organ of the State and is in charge of matters relating to, among others, examinations.

<sup>6</sup> There are other kinds of examinations recruiting people with legal backgrounds, such as examinations for diplomatic personnel, judicial clerks, national defense legal personnel etc. However, they are not the priority choices of law graduates.

<sup>7</sup> The first Judicial Special Examination and the Bar Examination were held in 1950; the very next year

Ministry determines the dates, forms, examination subjects, and pass rates for the examinations. For years, the Ministry of Examination has been constantly facing lots of criticisms. In response, certain reforms and adjustments have been made.

One of the most long-lasting criticisms is that the pass rates of the bar examination are too low (陳長文, 2001, p. 10, 2020; 黃銘傑, 2006, p.5). For instance, the pass rate in 1982 was just 0.34% (林雅鋒, 2010). Some argue that this represents a colossal failure of our legal education, as well as a terrible waste of educational resources, because it means that an overwhelming majority of law graduates cannot become legal professionals and must seek jobs elsewhere.<sup>8</sup> Whether this criticism is valid requires a careful study on the quality of our legal education.

**Table 1**

*Bar Examination Pass Rates*

Year	Number of people taking the exam.	Number of people accepted	Pass rate
2009	6,644	536	8.07
2010	7,482	600	8.02
2011	9,055		
	2,902	963	10.64
2012	8,619		
	2,930	915	10.62
2013	8,595		
	2,684	892	10.38
2014	8,994		
	2,715	915	10.17
2015	8,309		
	2,464	822	9.89
2016	8,711		
	2,587	860	9.87
2017	9,256		
	2,771	924	9.98
2018	8,846		
	2,600	759	8.58
2019	8,964		
	2,726	549	6.12
2020	9,620		
	2,864	650	6.76
2021	9,110		
	2,827	940	10.3
2022	9,342		
	2,787	913	9.77

the government of the Republic of China moved to Taiwan after losing the civil war in Mainland China (考試院院史編撰委員會, 2020, p.394-397).

<sup>8</sup> In the United States, if a law school is found to be out of compliance for having low bar passage rates, it would be asked to lower its admission rate the next year (Mojadad, 2023).

Indeed, by looking at the above numbers,<sup>9</sup> the pass rates over the years appear to be low. Nevertheless, one must not overlook the fact that the amount of people taking the examinations was rather huge, which, in turn, means that there are quite a lot of law students graduating from law schools in Taiwan. As a senior professor of law who has been frequently invited to conduct law faculty evaluations and assessments, I must say that the teaching quality of most of the law schools, in particular those at the private universities, is far from satisfactory. Factors such as lack of funding, shortage of qualified teaching staff, overloaded teaching, and mismanagement of the department's affairs, all contribute to the low quality of legal education at those private universities. Under the circumstances, law graduates from those unqualified law schools are not expected to become legal professionals.<sup>10</sup> Their participation in the bar examination only inflates the denominator. So now the question is: Why do we have so many law schools in Taiwan? The story began in the early 1990s when there was a significant change in education policy,<sup>11</sup> which led to an explosion in the number of universities. Law school was considered as one of the most cost-efficient, and thus lucrative teaching units in the eyes of many newly established private universities. Indeed, it takes only a law teacher and a piece of chalk to teach a law course in the classroom, no equipment or assistant is required. What could be more attractive than to start a law school? In sum, at least in the last 20 years, the pass rates of the bar examination are not as low as they appear. The argument is probably valid before the education reform, in particular, during the Martial Rule era (1949-1987).

Legal academics like to emphasize that since the Ministry of Examination holds the authority to decide the examination subjects, it eventually dictates our legal education. As a result, the freedom of teaching guaranteed by the Constitution is infringed. Whenever there is an adjustment of the examination subjects, law schools must adapt to such a change by adding new subjects or canceling deleted subjects. This will also

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<sup>9</sup> Dara collected from <https://nccur.lib.nccu.edu.tw/bitstream/140.119/38724/11/045111.pdf> (Visited 25 Aug., 2023).

<sup>10</sup> Unlike the U.S., all law schools must obtain approval from Taiwan's Ministry of Education, and are subject to evaluation and assessment every 5 years by the Higher Education Evaluation and Accreditation Council of Taiwan (財團法人高等教育評鑑中心基金會), which is, in turn, authorized by the Ministry of Education. Regardless of the government's efforts, some of them are nothing more than accreditation mills.

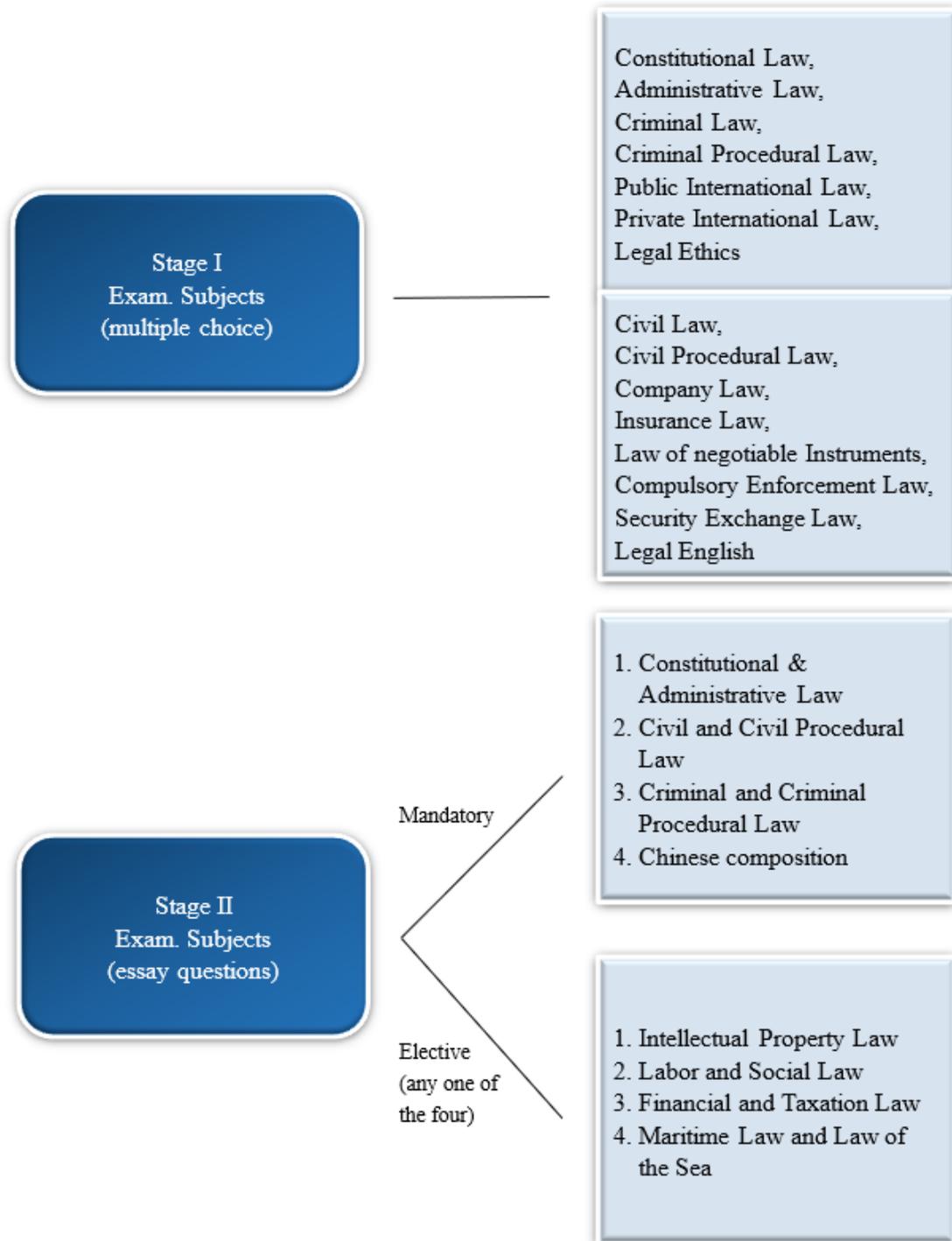
<sup>11</sup> This is known as the Education Reform of Taiwan. Regarding the reform of the tertiary system, one of the goals was to lessen the pressure on students preparing for the university entrance examination. Increasing the number of universities seemed to be the most convenient solution (薛曉華, 2009).

have effects on the recruitment of new law faculty. For instance, in 2011, when the bar examination was divided into two stages (Figure 1), some new subjects, namely, Legal English, Legal Ethics, and Law of the Sea (elective subjects) were added, law schools had to adjust to this change by adding those subjects. New law teachers had to be recruited if no current law faculty was able to teach them. A deeper concern on the part of the legal academics is who holds the power to decide which subjects should be included in the examinations. To put it another way, since examination subjects are supposed to be important or major legal subjects, who are the qualified persons to decide which subjects are important or major? Are decisions to change subjects based on some scientific study? Or are they just a reflection of the decision-makers' subjective views? This was the criticism when the Bankruptcy Law was deleted from the bar examination in 2011.<sup>12</sup> It is rather difficult to tell whether this is a valid argument. Our society has become so complicated that hundreds of different Acts are applied everyday by the courts and the law enforcement. As far as ordinary people are concerned, all laws are important when they are either plaintiffs or defendants in the courts. Obviously, it is impossible to include all subjects in the examination which are deemed important or major. One can always argue that, for example, the Tobacco Hazard Prevention Law is too important to be ignored because nicotine and other chemicals contained in the cigarettes are causing too much harm to hundreds of thousands of people every day. Nevertheless, to say that X Law is more important than Y Law is like comparing apples to oranges. At the end of the day, a choice has to be made. In a democratic society, one can only say that as long as the formation of the committee which makes the decisions is legitimate and that the process of decision making is transparent and accountable, changes in the examination subjects must be respected.

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<sup>12</sup> For decades, Bankruptcy Law and Compulsory Enforcement Law were combined as one examination subject in the bar and judicial special examinations.

Figure 1  
*Bar Examination Subjects*



A noteworthy development is the plan to change the form of the examination by the Examination Yuan in 2022. It was a response to the 2017 National Conference on Judicial Reform, an *ad hoc* committee (chaired by President Tsai Ing Wen) aiming at reaching a consensus on overhauling the judicial system. Certain conclusions regarding legal education were made. It was decided that legal education should include practical, doctrinal, liberal arts, interdisciplinary and diversified courses such as Taiwan's legal history, legal sociology, judicial behavioral science, human rights, justice, democracy, gender, labor, and aboriginal law (總統府, 2017, p. 63). As for the qualification of legal professionals, the policy of combining various examinations should be adopted. In addition, those who pass the examination should receive one year of practical training at different institutions (government branches or NGOs) before choosing to become judges or prosecutors (總統府, 2017, p. 62).

After years of discussion and planning, in 2022 the Examination Yuan submitted a draft amendment to the Regulation on Legal Professionals' Qualification and Appointment. Should the legislature pass the amendment, there will be a major change to the current examination system regarding legal professionals. According to the draft amendment, the bar examination, the Civil Service Special Examination for Judges and Prosecutors, and the Civil Service Examination for Legal Personnel will be merged to become one independent legal professionals' examination. Those who pass the examination will be qualified as attorneys after a certain period of practical training. They may further be selected as judges, prosecutors or legal personnel in different government branches according to the decrees and needs of the relevant authorities (崔慈悌, 2022). It is said that this reform was based on the German two-tier system under which students must receive legal education (Rechtsstudium), practical training (Rechtsreferendariat/Vorb), and pass two national examinations (Staatsexmen) before they start to practice law (陳慈陽, 2022). This could ensure the quality of the legal professionals as well as their professional images. Admittedly, it is an ambitious reform, and it involves tremendous changes to the current system. On the other hand, outcomes are not guaranteed and the effects on legal education are unknown. It will be the job of the legislature to consider its viability.

#### **IV. Concluding remarks**

If one believes that the mission of law teaching is to train students to become legal professionals, so that they can pursue justice through the rule of law in this highly complicated but inter-connected world, then surely the current legal education has much room for improvement. A full and rich legal education requires a restructured curriculum which is able to integrate doctrinal courses with clinical, theoretical and

interdisciplinary studies. This, of course, would mean that students must take more courses, and subsequently, spend more time on campus. On the other hand, law teachers should always improve their teaching methods and update their teaching material by using new technologies such as AI. They should not forget that their primary responsibility is to provide legal knowledge with good quality to the students. Nothing matters more than this. Undoubtedly, the government plays an important role in shaping and supporting legal education and should realize that injecting funding to law schools is not to fill their financial gap, but is an investment into the well-being of our free society based on the rule of law. It remains to be seen whether the latest policy reform launched by the Examination Yuan will work and to what extent it will affect legal education. Nonetheless, it is worth trying. After all, in a democracy, all policies are experiments, success is not guaranteed, but pursuit of achievement is always encouraged.

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