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ACCREDITING FOREIGN LAW SCHOOLS

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I. Introduction

In the wake of increasing globalization, foreign law schools are formulating their curriculums around the traditional American law school curriculum with some offering the Juris Doctorate degree instead of traditional LLB or LLM degree.¹ One of these schools, the Peking University School of Transnational Law (“STL”), located in Shenzhen, People’s Republic of China, will offer courses entirely in English according to the school’s founding dean, Jeffrey Lehman, the former dean at University of Michigan Law School.² During the school’s orientation, Lehman announced the “creat[ion] [of] something new... an institution that can make a valuable contribution to the evolution of legal education in China, and around the world.”³ The school, according to its website, “will place special emphasis on the doctrinal rules that have the greatest impact on transnational activities originating in China, and also on the doctrinal rules that have their origins in the common law.”⁴

STL’s faculty will be made up primarily of American law professors⁵ and students learn cases from American law.⁶ Its mission is to “nurture harmony between the Chinese and American legal systems through the dissemination of knowledge to the legal, policy, educational and business communities with both countries.”⁷ The school’s professors will employ the

¹ Leigh Jones, *Foreign Law Schools Follow the U.S. Playbook*, <http://www.law.com/jsp/article.jsp?id=1202424363465> (last visited Apr. 14, 2009).

² Jeffrey Lehman, *A Message from the Chancellor and Founding Dean*, <http://www.szpku.edu.cn/ips/article.asp?articleid=2790> (last visited Sept. 30, 2008).

³ Jeff Lehman, *Orientation Week Welcome*, <http://www.szpku.edu.cn/ips/article.asp?articleid=3590> (last visited Sept. 30, 2008).

⁴ The Peking University School of Transnational Law, <http://www.stl.szpku.edu.cn/en/article.asp?articleid=5> (last visited Apr. 14, 2009).

⁵ On its website, 9 out of 12 STL professors listed as “faculty” hold Juris Doctor degrees from American law schools, many being graduates of Harvard Law School. *See, Faculty of STL/Faculty – Peking University School of Transnational Law*, <http://www.stl.szpku.edu.cn/en/article.asp?articleid=23> (last visited Apr. 14, 2009).

⁶ Andy Guess, *An American Law School in China*, <http://www.insidehighered.com/news/2008/05/22/china> (last visited Sept. 30, 2008).

⁷ Peking University School of Transnational Law, *About ICUS*, <http://www.stl.szpku.edu.cn/en/article.asp?articleid=24> (last visited Apr. 14, 2009).

Socratic Method and, like most American law schools, STL will award the Juris Doctorate degree after three years of successful study.⁸ But the school's tuition will be less than \$10,000 a year⁹ – two to three times lower than most US law schools' tuition.

Out of STL's 35 offered electives, at least 20 closely pertain to international practice.¹⁰ The school's supporters believe that the institution will create a new "cadre" of lawyers who are well-equipped to practice on a transnational level, giving them a significant competitive advantage.¹¹ STL is the first foreign law school to seek American Bar Association ("ABA") accreditation,¹² and with ABA accreditation, STL can supply lawyers to American international law firms needing help in foreign offices.¹³

In a recently held dedication ceremony that drew political leaders and legal jurists from across the globe,¹⁴ United States Supreme Court Justice Anthony Kennedy predicted that STL will inspire "dynamic changes" in China, and will "take its place among the fine law schools of the world."¹⁵ The school also drew praise from numerous business attendees including partners from international law firms and legal information companies, such as Thomson Reuters and LexisNexis.¹⁶ Justice Kennedy's laudatory speech could function as an important precursor for the school's effort to seek accreditation, as remarks by Supreme Court Justices have guided

⁸ Martha Neil, *Chinese Law School Plans to Seek Accreditation from ABA*, http://abajournal.com/news/chinese_law_school_to_seek_accreditation_from_aba/ (last visited Apr. 14, 2009).

⁹ Guess, *supra* note 6.

¹⁰ *Id.*

¹¹ Jones, *supra* note 1.

¹² *Id.*

¹³ STL's dean was quoted as saying "Our goal is for them to walk out and work for Paul Hastings, Akin Gump and other similar firms," Jones, *supra* note 1.

¹⁴ Guests for the October 23, 2008 event included the Chinese Vice Premier Li Keqiang, and Hong Kong's Former Chief Executive Tung Chee-Hwa. See Du Guodong, *Peking University School of Transnational Law Opens*, http://news.xinhuanet.com/english/2008-10/23/content_10246563.htm (last visited Oct. 26, 2008). See also Angela Wang, *Top Jurists to attend dedication of Peking University School* <http://www.antara.co.id/en/arc/2008/10/21/top-jurists-to-attend-dedication-of-peking-university-school/> (last visited Oct. 26, 2008).

¹⁵ Justice Anthony Kennedy, *Remarks on the Occasion of the Opening of the Peking University School of Transnational Law* http://hongkong.usconsulate.gov/uscn_others_2008102202.html (last visited Oct. 22, 2008).

¹⁶ Partners from the firms of Paul Hastings and Akin Gump were present at the ceremony. See Jeffrey Lehman, *Dedication Ceremony*, <http://www.stl.szpku.edu.cn/en/article.asp?articleid=57> (last visited Oct. 27, 2008).

discourse on the subject in the past.¹⁷ And while ABA rules bar the accreditation of online law schools,¹⁸ they do not, according to an ABA spokesperson, prohibit the accreditation of foreign law schools.¹⁹

The ABA has not decided whether to grant STL accreditation perhaps due to its requirement that a law school must complete at least one full academic year before receiving provisional approval.²⁰ Despite the school receiving support from the legal community, this paper argues that the ABA should not accredit STL because, to do so, the ABA would have to compromise its accreditation standards. This paper is based in part on an analysis the ABA Standards as well as previous ABA accreditation decisions in connection with accrediting foreign law schools.

Moreover, this paper contends that the ABA should not use its accreditation policy as an instrument of “lawfare”²¹ and legal imperialism to promote liberal values of democracy in China. Indeed, not only has China long resisted importing America’s legal model but its political system discourages an independent system of laws. Additionally, the idea of exporting

¹⁷ In a speech at Rutgers University, Justice Ginsburg warned about the deficiencies of online law schools and stated that the process of obtaining a legal education over the internet “loses something vital when students learn in isolation, even if they can engage in virtual interaction with their peers and teachers.” See Robert Salazar, *Juris Doctor.com: Are Full-Time Internet Law Schools the Beginning of the End for Traditional Legal Education?* 12 *CommLaw Conspectus* 101 (2004). Since her remarks in 1999, online law schools have yet to receive ABA accreditation to the dismay of online students who are thus precluded from taking almost all state bar examinations.

¹⁸ Purely online schools like Concord Law School are hindered from accreditation mainly because of ABA Standard 306(c) which provides that a law school may provide credit for distance education “if: (1) there is ample interaction with the instructor and other students both inside and outside the formal structure of the course throughout its duration; and (2) there is ample monitoring of student effort and accomplishment as the course progresses.” See, Andrew Rosen, *Concord University School Of Law’s On-line Law Degree Program*, 15 *St. John’s J. Legal Comment* 311 (2001).

¹⁹ Neil, *supra* note 8.

²⁰ Standards for Approval of Law Schools of the American Bar Association, Rule 4(c) specifies that a “law school may not apply for provisional approval until it has completed the first full academic year of its program...”

²¹ A relatively new phenomenon, lawfare is described as a “strategy of using or misusing law as a substitute for traditional military means to achieve military objectives.” See, *Lawfare, the Latest in Asymmetries*, Council on Foreign Relations, March 18, 2003.

the American legal system to another country is inherently ethnocentric, and attempts at spreading Western values could threaten the recipient nation's traditions.

II. ABA Standards for Accreditation

The ABA has issued guidelines for its accreditation standards, and they are commonly known as “Standards for Approval of Law Schools.”²² According to the ABA, almost all the standards are mandatory, and any law school seeking provisional accreditation must demonstrate “substantial compliance with each of the Standards...”²³ Furthermore, while not obligatory, the ABA specifies that “[a]n approved law school should seek to exceed the minimum requirements of the Standards.”²⁴ These standards relate to a variety of areas; including but not limited to admissions, curriculum, library resources, and student services. The hurdles a law school must overcome to meet and retain accreditation are quite arduous.

As many as ten new law schools have been announced to open across the United States, each of which is likely to seek ABA accreditation,²⁵ and there currently are 11 law schools that have been granted provisional approval.²⁶ Any law school – domestic or otherwise – that seeks ABA accreditation must first obtain provisional approval and thereafter undergo extensive

²² ABA Standards and Rules Procedure, *available at* <http://www.abanet.org/legaled/standards/ABA%20Standards%20and%20Rules%20of%20Procedure%20Final.pdf> (last visited Apr. 3, 2009).

²³ 2008-2009 Standards for Approval of Law School, Chapter 1.

²⁴ *Id.*

²⁵ Leigh Jones, *A deluge of law schools*, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202421786165> (last visited Mar. 16, 2009).

²⁶ The provisionally accredited law schools are the Charleston School of Law; Charlotte School of Law; Drexel University Earle Mack College of Law; Elon University School of Law; Faulkner University Thomas Goode Jones School of Law; Florida A&M University College of Law; University of LaVerne College of Law; Liberty University School of Law; John Marshall Law School (Atlanta); Phoenix School of Law; and Western State University College of Law. *See* ABA approved law schools, <http://www.abanet.org/legaled/approvedlawschools/approved.html> (last visited Mar. 16, 2009).

review by an ABA site team before ultimately receiving full accreditation. A law school must not only meet the ABA Standards but retain them as well.

Florida A & M College of Law (“FAMU”) is one of the several law schools that recently received provisional approval by the ABA. However, the ABA specified that FAMU has until August of 2009 to meet certain benchmarks in order to receive full accreditation,²⁷ and according to a recently prepared ABA Site Team Report, the law school faces a “very steep mountain to climb.”²⁸

According to ABA Standard 503, a law school must use an admission examination to “assess[] the applicant’s capabilities of satisfactorily completing the school’s educational program.” The Site Team Report critically noted that more than 25% of FAMU applicants had a Law School Admission Test (“LSAT”) score below 140.²⁹ While FAMU has admitted a number of applicants with LSAT scores “below the agreed-to standard,” it has not, according to the Site Team Report, admitted a student who has no LSAT score whatsoever.³⁰ However, unlike virtually all American law school admission applications, the STL application for admission does not include a caption for applicants to enter their LSAT score.³¹ Moreover, unless it is an “extraordinary case,” ABA Standard 502 requires a law school applicant to have a bachelor’s degree from “an institution that is accredited by an accrediting agency recognized by the Department of Education.” In its assessment of FAMU, the ABA Site Team did emphasize that

²⁷ Ron Matus, *FAMU law school running against the clock, internal problem*, St. Petersburg Times <http://www.tampabay.com/news/education/college/article501963.ece> (last visited March 16, 2009)

²⁸ The report was obtained by the St. Petersburg Times through a public records request, *See* Ron Matus, *A very steep mountain to climb*, The Gradebook, <http://blogs.tampabay.com/schools/2008/05/a-very-steep-mo.html> (last visited Mar. 16, 2009). The 51-page report is available at http://www.tampabay.com/specials/2008/PDFs/FAMU051308/FAMU_Attempt2.pdf (last visited Apr. 28, 2009).

²⁹ *Id.* at pg 21.

³⁰ *Id.* at pg. 22.

³¹ The STL admission application is found on its home page for download, <http://stl.szpk.edu.cn/en/article.asp?articleid=66>. It should be noted that having an LSAT score appears to be not a mandatory requirement for admission based on STL’s instructions for admission; the school requests an LSAT score but adds, “if available.”

FAMU (seemingly to its credit) has not admitted an applicant without a bachelor's degree from an accredited undergraduate institution,³² and that most FAMU applicants graduated from Florida undergraduate institutions. STL however attracts most of its students whose undergraduate degrees have been granted by institutions located in China or Taiwan. Consequently, the mountain climb is far steeper for STL or any other foreign law school seeking ABA accreditation because unless the ABA Standards are amended, it would be difficult for STL to fulfill this ABA requirement, as most foreign education is not accredited by an accrediting body of the U.S. Department of Education.³³ The rationale underlying this important requirement likely arose from the persistent fraud imposed on educators and faculty. Indeed, degrees from foreign "diploma mills" have been used to mislead American educational institutions.³⁴

Additionally, foreign law schools like STL will face difficulty in meeting other ABA Standards unless they are amended; namely, the law school's responsibilities relating to a student's character and fitness. The character and fitness requirement stems from ABA Standard 504, which declares that a "law school shall advise each applicant that there are character, fitness and other qualifications for admission to the bar and encourage the applicant, prior to matriculation, to determine what those requirements are in the state(s) in which the applicant intends to practice." It remains unclear how a foreign law school like STL will consider a student's character and fitness when a certain act that is deemed to be illegal in a foreign country, is clearly permissible in the United States or visa-versa. For example, suppose a prospective

³² Site Team Report, n. 21.

³³ Operating Manual for Qualification Standards, United States Office of Personnel Management, <http://www.opm.gov/qualifications/policy/ApplicationOfStds-04.asp> (last visited Apr. 3, 2009).

³⁴ Vincent Johnson, *Corruption in Education: A Global Legal Challenge*, 48 Santa Clara L. Rev 1, 75 (2008) (noting that foreign diploma mills issue diplomas that are "used to mislead American educational institutions hiring faculty members or staff" or "offer correspondence or online programs that entail little in the way of student testing and evaluation" and others "re-market previously issued or fake diplomas.").

student has violated China's strictly-enforced one-child policy;³⁵ might that raise a character and fitness issue? In other words, would such defiance to the law of China signify that a bar examinee may not be ethically suited to sit for a state's bar exam and practice law in the United States where no such restriction to child birth exists? This scenario would apply to any foreign nation whose laws do not comport or simply flat out contravene the American criminal justice system.

China's discriminatory policy against certain spiritual religious sects would also seem to prevent STL from adequately adhering to ABA Standard 211. This Standard forbids law schools to preclude an applicant based on gender, sexual orientation, or religion. In its official interpretation of Standard 211, the ABA recommends that law schools formulate their admission policies consistent with the rationale set forth in *Grutter v. Bollinger* 529 U.S. 306 (2003). It remains highly unlikely that STL would be able to adhere to the Standard in light of China's persist human rights violations and gender and religious based discrimination.³⁶ For instance, suppose an applicant reveals in her statement of purpose,³⁷ that she is a member of the banned spiritual movement, Falun Gong,³⁸ and she seeks to earn a degree in law to bring about social and political change in Communist China. Would STL admission offices be willing to grant admission to an applicant who can potentially incite governmental action against the school? If not, it would be virtually impossible for STL to reconcile the government's actions while at the

³⁵ Susan Tiefenbrun, *Gendercide and the Cultural Context of Sex Trafficking in China*, 32 Fordham Int'l L.J. 731, 752 (2008).

³⁶ U.S. Dept. Of State, 2008 Human Rights Report: China, <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119037.htm> (last visited Apr. 3, 2009).

³⁷ According to its application requirements, STL requires a 2-paged "statement of purpose" from candidates. <http://stl.szpku.edu.cn/en/article.asp?articleid=66> (last visited Apr. 3, 2009).

³⁸ Blending doctrines from Buddhism and Taoism, Falun Gong is a religious sect that has been deemed by Chinese officials as an "evil cult." Its followers are routinely arrested, tortured and even executed according to human rights groups. Tens of thousands of Falun Gong practitioners have been jailed, many of whom have been denied access to a lawyer. See AP, *China Imprisons Falun Gong Follower Lawyer says*, <http://www.iht.com/articles/ap/2008/11/14/asia/AS-China-Falun-Gong.php> (last visited Apr. 3, 2009) and Andrew Jacobs, *China Still Presses Crusade Against Falun Gong*, <http://www.nytimes.com/2009/04/28/world/asia/28china.html?ref=global-home> (last visited Apr. 28, 2009).

same time adhering to ABA Standard 211 unless there is a drastic change to the accreditation rules.

This is not to say that the ABA is reluctant in granting accreditation to law schools that have based their mission on values that are largely unaligned to the general institutional culture of most American law schools. Indeed, the ABA has accredited law schools based on Christian or Catholic teachings such as Ave Maria Law School and Regent Law School founded by the controversial televangelist Pat Robertson. More recently, Liberty University School of Law, founded Christian pastor Jerry Falwell, received provisional accreditation.³⁹ The ABA Site Team acknowledged the existence of academic freedom and that “things were [not] out of bounds” at the Christian law school.⁴⁰ Yet accrediting a Christian law school is vastly different from granting accreditation to an American-style foreign law school that can potentially spark intervention from a wary Communist or authoritarian regime.⁴¹

Another hurdle for foreign law schools, particularly STL, involves the level of academic freedom a faculty member is entitled to exercise as well as the level of autonomy a student is given in research projects. Independence from outside interference is the cornerstone ABA principle as exemplified in a recent council statement, which declared that “[i]mproper attempts by persons or institutions outside law schools to interfere in the ongoing activities of law school clinical programs and courses have an adverse impact on the quality of the educational mission

³⁹ Pamela J. Podger, *Laws of Change*, The Roanoke Times, <http://www.roanoke.com/news/roanoke/wb/78760> (last visited Apr. 4, 2009).

⁴⁰ *Id.*

⁴¹ Standard 211 further explains that it “does not prevent a law school from having a religious affiliation or purpose and adopting and applying policies of admission of students and employment of faculty and staff that directly relate to this affiliation or purpose so long as (i) notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school, and (ii) the religious affiliation, purpose, or policies do not contravene any other Standard, including Standard 405(b) concerning academic freedom.” The issues surrounding Academic freedom and STL will be ensuingly discussed.

of the affected schools...⁴² Political interference and pressure would arguably reduce a law school to being merely a tool of the government.

Over the past year, China tightened restrictions on expression and public dissent. For instance, China recently arrested a teacher who wrote a memorial slogan for the victims of an earthquake⁴³ and sent another teacher to a labor camp because he took earthquake photos of a school.⁴⁴ The Chinese government expressed concern that the teachers' actions could spark public outcry due to the shoddy workmanship done by government contractors. Likewise, if an STL faculty member speaks, or hosts an event relating to civil liberties, he or she could face stiff fines or even detention. This has led critics to question whether the school can annually recruit distinguished faculty.⁴⁵ Some have questioned whether the school will be able to espouse and champion deeply rooted American principles⁴⁶ such as zealous representation and the right to counsel in light of China's harsh crackdown on political opposition groups in Tibet and Xinjiang.⁴⁷ Additionally, China's internet censorship policies severely impede internet research especially in the field of human rights as numerous individuals have been arrested merely for downloading or posting material that called for political reform.⁴⁸ The government's policy

⁴² ABA Standards and Rules Procedure, Council Statements

⁴³ International Federation For Justice in China, *Teacher Arrested for Writing Sichuan Earthquake Victim Slogan*, <http://www.ifjc.org/content/view/1281/55/lang.en/> (last visited Nov. 13, 2008).

⁴⁴ Tania Branigan, *Chinese teacher sent to labor camp for earthquake photos*, <http://www.guardian.co.uk/world/2008/jul/30/chinaearthquake.china> (last visited Nov. 13, 2008).

⁴⁵ Sean Hocking, Practice Source, *Accreditation For Peking Law School in Shenzhen*, quoting Juli Schwartz, <http://practicesource.com/australian-asian-legal-eye/accreditation-for-pekings-law-school-in-shenzhen.html>.

⁴⁶ Id.

⁴⁷ One comment on a blog noted, "I wonder how Peking Law will teach the American approach to 'zealous advocacy' and the 'right to counsel,' especially in light of today's news about the 2 Chinese lawyers facing disbarment for representing Tibetan pro-independence clients." WL, Simple Justice A New York Criminal Defense Blog, *Welcome to Peking Law School*, <http://blog.simplejustice.us/2008/06/07/welcome-to-pekings-law-school.aspx> (June 7, 2008).

⁴⁸ Human Rights Watch, Human Rights News, *Freedom of Expression and the Internet in China* <http://www.hrw.org/backgrounder/asia/china-bck-0701.htm> (last visited Oct. 3, 2008).

could seriously hamper student research, as some have questioned whether Chinese authorities will even allow the ABA to monitor the school and carry out site evaluations.⁴⁹

According to the U.S. Executive Commission on China, the freedom of speech laws of China are “vague and overbroad,” with notable examples such as Article 26 which makes it an offense to publish anything that “harm[s] the honor or the interests of the nation,” and Article 6, which prohibits any individual to use the internet for purposes of looking up information “that disrupt[s] social order.”⁵⁰ STL’s admission application requires its applicants to sign and attest that he or she “shall *abide by the laws of the Chinese Government* and the regulations of Peking University (emphasis added).”⁵¹ Therefore the STL admission application on its face vitiates any notion that STL law students might have some degree of autonomy to freely write and research about delicate political matters because school policy requires students to act according to Chinese law.

Accordingly, unless the accreditation rules are amended, it would be virtually impossible for STL to satisfy the previously mentioned ABA Standards. The ABA cannot relax its standards or formulate a one-time exception to favor any school – domestic or foreign – because the U.S. Department of Education requires all accrediting institutions to apply its rules in a consistent manner.⁵² Hence, the important principles set forth in the ABA Standards must not be compromised merely to facilitate STL’s accreditation.

⁴⁹ Rules for Approval of Law Schools, Rule 12 Site Evaluation of Provisionally or Fully Approved Law Schools, specifies that “A site evaluation of a provisionally approved law school shall be conducted each year.”

⁵⁰ Congressional – Executive Commission on China, *International Agreements and Domestic Legislation Affecting Freedom of Expression*, <http://www.cecc.gov/pages/virtualAcad/exp/explaws.php#vaguelaws> (last visited Apr. 4, 2009). According to the US Congressional committee, the Chinese legislative bodies and authorities have not “offered guidance” as to the scope of these statutes and consequently the domestic laws remain “vague and overbroad.”

⁵¹ The STL admission application is found on its home page for download, <http://stl.szpku.edu.cn/en/article.asp?articleid=66> (last visited Apr. 28, 2009).

⁵² John A. Sebert, *ABA Accreditation Standards and Quality Legal Education*, 11 Tex. Rev. L. & Pol. 395, 398 (2007).

III. Slippery Slope

In the event that STL receives accreditation, many other foreign law schools that have formulated their curriculums around the American law school curriculum would request accreditation. Over the past few years, approximately 68 American-style law schools have opened in Japan⁵³ and 25 in Korea.⁵⁴ India also announced its plan to create American-style law schools, one of which, the New Delhi-based Jindal Global Law School, has received support from American law faculty as the school plans to issue Juris Doctorate degrees.⁵⁵ It is therefore highly foreseeable that schools like Jindal Global Law School will seek accreditation, and their efforts along with the many other law schools in India could intensify in the event STL receives accreditation.

Additionally, many Australian law schools have switched their LL.M programs and now offer Juris Doctorate degrees and there have been announcements to open American-style law schools in Egypt.⁵⁶ With the growing number of American-style law schools in distant areas, critics contend there will be an increased likelihood for STL or other foreign law schools to become complacent with its quality assurance given the schools' distance from the United States - away from ABA monitoring.⁵⁷ Moreover, critics note that it will increase legal outsourcing,⁵⁸

⁵³ Annie Murphy Paul, *Land of the Rising Lawyer?* Legal Affairs, http://www.legalaffairs.org/issues/July-August-2005/review_paul_julaug05.msp (last visited Apr. 14, 2009).

⁵⁴ Leigh Jones, *Foreign Law Schools Follow the U.S. Playbook*, <http://www.law.com/jsp/article.jsp?id=1202424363465> (last visited Apr. 14, 2009).

⁵⁵ Jindal Global Law School, *India's First Global Law School*, <http://www.jgls.org/lawschool/academic/courses.asp> (last visited Apr. 5, 2009).

⁵⁶ Hadia Mostafa, *Mastering Law*, <http://www.businesstodayegypt.com/article.aspx?ArticleID=2409> (last visited Dec. 8, 2008).

⁵⁷ One critic was quoted as saying, "The imprimatur of ABA accreditation is highly coveted, as it represents (ostensibly) the gold standard in recruiting, training and preparing law students to enter the legal profession... how, at such a distance, the ABA can ensure full compliance with its (STL's) standards[?]." See Hocking, quoting Schwartz, *supra* note 45.

⁵⁸ Gabe Acevedo, *Gabe's Guide to the e-Discovery Universe*, *Off Topic: American Barred Chinese Attorneys to be seriously ticked off when their work gets outsourced overseas*, <http://gabesguide.com/?p=64> (June 5, 2008)

which in turn can raise a number of serious ethical issues,⁵⁹ as work would be sent to various foreign jurisdictions where regulatory restrictions on lawyers differ from those in the United States.

In the United States, there have been several announcements to create new law schools.⁶⁰ In Maine, for example, there has been discussion to open the state's second law school,⁶¹ and in Texas, legislators are pushing for the creation of a law school in the northern portion of the state.⁶² Additionally, in March of 2009, the Lincoln Memorial University of Tennessee announced its intention to create a law school⁶³ following an earlier announcement by Concordia University to open a law school in Boise, Idaho.⁶⁴

With some in the legal profession expressing concern over the number of the law schools,⁶⁵ the ABA should amend its accreditation standards and provide a bright-line rule to preclude all foreign law schools from accreditation. It would be highly burdensome if not impossible to ensure that foreign law schools are adhering to all of the ABA quality standards given the distance of these schools from ABA monitoring.⁶⁶ By setting forth a bright-line rule to prevent foreign law school accreditation, the ABA would close the floodgates to accreditation

⁵⁹ Mary C. Daly, *Flattening the World of Legal Services? The Ethical Liability Minefields of Offshoring Legal and Law-Related Services*, 946 PLI/Pat 147 (2008).

⁶⁰ Approximately 6 of the 10 recently proposed law schools are located in the northeastern portion of the country; three of which are located in New York (Binghamton University, Stony Brook University and St. John Fisher College). Other proposals include opening law schools in Wilkes-Barre, Pennsylvania and New Haven, Connecticut as well as a Christian-focused law school in Pineville, Louisiana. See, Jones, *supra* note 25.

⁶¹ The Seattle Times, *Maine university renews efforts to open state's second law school*, http://seattletimes.nwsourc.com/html/education/2008886384_aphussonlawschool.html (last visited Apr. 5, 2009).

⁶² Gene Traylor, *Measures aim to establish University of North Texas law school in Dallas*, <http://www.star-telegram.com/legislature/story/1284111.html> (last visited Apr. 5, 2009).

⁶³ LMU Unveils New law school, Metro Pulse, <http://www.metropulse.com/news/2009/apr/01/lmu-unveils-new-law-school/> (last visited Apr. 5, 2009).

⁶⁴ Martha Neil, *Concordia U Plans to Open New Law School in Boise, Idaho*, http://abajournal.com/news/concordia_u_plans_to_open_new_law_school_in_boise_idaho/ (last visited Apr. 5, 2009).

⁶⁵ Jones, *supra* note 25.

⁶⁶ Hocking, quoting Schwartz, *supra* note 45.

and prevent diluting the quality and prestige of the Juris Doctorate from an accredited ABA law school.

IV. Accreditation as an instrument of Lawfare and Legal Imperialism

The ABA should not use its accreditation policy as an instrument of lawfare and legal imperialism to promote democracy particularly in nations that not only have a long track record of human rights abuses and political repression but have been consistently unyielding to legal change. While the “best case”⁶⁷ for STL may involve the institution to encourage liberal political values,⁶⁸ China has independently developed its own system of law in spite of America’s historic record of attempting to exert its influence in the Far East.

The United States during the early 19th century created, in what has been described as “the strangest federal tribunal ever,” a consular court in Mainland China.⁶⁹ This unique judicial forum surprisingly allowed United States federal law to be potentially applied inside mainland China.⁷⁰ Nevertheless, despite America’s efforts to spur change, China long resisted importing America’s legal model. More recently, the 1990s witnessed a resurgence of America strenuously exporting its values under the rubric of human rights.⁷¹ Yet, the American sponsored “Rule of Law” programs failed to establish any meaningful change in the field of human rights; to the extent that the Chinese government did demonstrate any willingness to allow reform, it solely

⁶⁷ Tanina Rostain, Legal Ethics Forum, *An American Law School in China*, (Oct. 27, 2008) <http://legalethicsforum.typepad.com/blog/2008/10/an-american-law.html>.

⁶⁸ Jeffrey Lehman, *Five Narratives about STL*, (May 21, 2008). http://www.jeffreylehman.com/wilson_center_five_narrativ.html

⁶⁹ Teemu Ruskola, *Colonialism Without Colonies*, 71 *Law & Contemp. Probs* 217, 219 (2008).

⁷⁰ *Id.* at 225.

⁷¹ Lauren Carasik, *Think Glocal, Act Glocal: The Praxis of Social Justice Lawyering in the Global Era*, 15 *Clinical L. Rev.* 55, 108 (2008).

concerned financial and economic initiatives.⁷² This setback likely stems from the Chinese Communist political system, which discourages an independent system of laws, and sees law as a tool for the oppression of the proletariat.⁷³

Where the idea of suing the state seems largely counterintuitive in Communist regimes, it was of fundamental importance for America's founding fathers to lay out a system where citizenry are able to check governmental oppression.⁷⁴ The very notion of opening an American-style law school in a foreign nation like China to encourage democratic change or promoting democratic values is futile without the government fostering and promoting liberalized legal culture. Indeed, culture, according to legal philosopher Ronald Dworkin, is "shaped by law, that is, by collective decisions taken by political officials as to how we must all behave."⁷⁵ It is the government therefore that plays a fundamental role in shaping the methodology employed by its lawyers. It comes as no surprise, therefore, that current figures show that a sizable proportion of lawyers in China are members of the Chinese Communist Party.⁷⁶

Additionally, the idea of exporting the American legal system to another country "reeks of U.S. cultural arrogance,"⁷⁷ and attempts at spreading Western values as well as legal systems possibly threaten the recipient nation's customs and traditions. Simply put, it is inherently ethnocentric to assume that America's legal system should be exported to a foreign nation

⁷² Peggy Maisel, *The Role of U.S. Law Faculty in Developing Countries: Striving for Effective Cross-Cultural Collaboration*, 14 *Clinical L. Rev.* 465, 478 (2008).

⁷³ Gerard J. Clark, *An Introduction to the Legal Profession in China in the Year 2008*, 41 *Suffolk U. L. Rev.* 833, 849 (2008).

⁷⁴ *Id.*

⁷⁵ Ronald Dworkin, *Who Should Shape our Culture?* *The Magazine of NYU School of Law* (Autumn 2005).

⁷⁶ According to figures, 52% of full time lawyers, 70% of part time lawyers, and 87% of specially appointed lawyers are either members of the Communist Chinese Party or Communist Youth League. See, Ethan Michelson, *Lawyers, Political Embedness, and Institutional Continuity in China's Transition from Socialism*. *AJS* Volume 113 Number 2, Table 3 (Sept. 2007).

⁷⁷ Carasik, *supra* note. 70.

without understanding that such an endeavor will intrude upon the recipient nation's sovereignty, and more importantly collide with their sense of human dignity. Moreover, we may gradually lose the notion of cross-culture interaction when a nation's values are diluted with seemingly unfamiliar concepts, even if such endeavors involve exporting normative aspects of "international human rights."

Also, a possible ABA attempt at accrediting a foreign law school will possibly be seen with scrutiny by the host nation. Some countries view American court decisions as suspect⁷⁸ or even hypocritical particularly where the United States can freely obtain jurisdiction on foreigners who commit alleged violations of international law but foreign courts are precluded from obtaining jurisdiction on American citizens.⁷⁹ Hence, efforts at exporting facets of the American legal system to a particular country may not only erode that nation's culture or values but also spark distrust and cynicism toward the motives of the United States. This is clearly the case with China because its citizenry may harbor isolationist sentiment after China was humiliatingly defeated in the 19th century by numerous Western powers during the Opium Wars.⁸⁰

Moreover, in a prior American "imperialist" attempt, the ABA employed determined effort to improve the quality of legal-aid programs in China however the programs did not appear to create any widespread change in the Chinese legal system.⁸¹ The ABA program suffered largely because of the limited number of participants in proportion to China's vast population. Therefore, the notion of accrediting one law school or five or even 10 American-

⁷⁸ Austen Parish, *Reclaiming International Law From Extraterritoriality*, 93 Minn. L. Rev. 815, 867 (2009).

⁷⁹ Ralph J. Henham et. al, *The Criminal Law of Genocide*, 57 (Ashgate Publishing 2007).

⁸⁰ Wei Shi, *Incurable or Remediable? Clues to Undoing the Gordon Knot Tied by Intellectual Property Rights Enforcement in China*, 30 U. Pa. J. Int'l L. 541, 546 (2008).

⁸¹ Arwen Joyce, Tracye Winfrey, *Taming the Red Dragon: A Realistic Assessment of the ABA's Legal Reform Efforts in China*, 17 Geo. J. Legal Ethics 887, 897 (2004).

style law schools in China in hopes of encouraging growth of democratic values remains highly questionable.

The ABA's prior attempts in China suggest that the accrediting agency lacks influence, if not adequate foreign policy familiarity, to accurately predict that a nation whose government does not subscribe to democracy would gradually adopt liberal values through an accredited American-style law school. The ABA should therefore not be at the very forefront of inciting China or any other foreign nation to either adopt America's political system or America's legal culture.

Finally, few, if any of the corporate law firms that have demonstrated a particular interest to recruit STL graduates would have incentive to depart from their financial motivations merely for the sake of spreading the idea of liberal democracy to China. Indeed, such firms would not needlessly desire to seek the attention of wary Chinese authorities. Furthermore, STL's objective for their graduates involve having them employed in international law firms, whose practice areas relate to business and corporate law; this field would hardly provide graduates the means to usher the socio-political change⁸² that the ABA envisioned in holding "governments accountable under the law." Hence, just like the ABA's prior "Rule of Law" attempts at China, accrediting STL or any other Chinese law school would seemingly have an impact solely on China's economy. In a word, with the notion that STL students will join the ranks at international corporate firms and work at reputable law firms at Shenzhen – a city known for its

⁸² Tanina Rostain, Legal Ethics Forum, *An American Law School in China*, (October 27, 2008) (noting that "corporate firms, which is where it seems all Peking Transnational Law grads will land, [are not] obvious incubators of fragile yearnings towards freedom – despite the stories that firms like to tell themselves," while adding that "lawyers who depend on powerful clients for business are more prone to resist efforts at democratization and the spread of rights consciousness than support it, and have, as often as not, played a politically conservative role."). <http://legalethicsforum.typepad.com/blog/2008/10/an-american-law.html>.

strong economy - the ABA must act uniformly without focusing on the interests of corporate “biglaw.”

V. Conclusion

As this paper is written, it remains uncertain whether the ABA will accredit STL because the school must operate for a certain period of time before becoming eligible for provisional and full accreditation. Nevertheless, globalization trends may operate as an important factor in the ABA’s determination. The ABA’s mission has steadily changed from an exclusively domestic discourse to one that includes a broader international focus. Emphasis was earlier placed almost entirely on domestic goals rather than overseas concerns, as exemplified by the 1990 ABA Mission Statement, which declared that its first goal was “to promote improvements in the *American* system of justice (emphasis added).”⁸³ While the ABA did make mention of an objective to advance the rule of law in the world, the drafters of the 1990 mission statement focused on the American system of justice, given the number of goals presented relative to the legal profession in a domestic context.⁸⁴

Emphasis now however has subtly altered toward an approach that includes transnational concerns, as the current ABA objectives include “hold[ing] *governments* accountable under law” and to “increase public understanding and respect for the rule of law, the legal process, and the role of the legal profession at home and *throughout the world* (emphasis added).”⁸⁵ These concerns however should not suggest that the ABA relax or compromise its vital accrediting

⁸³ John W. Graham, Wendy C. Havlick, *Mission Statements to the Corporate and Nonprofit Sectors*, 44 (Taylor & Francis 1994).

⁸⁴ *Id.*

⁸⁵ ABA Mission and Goals August 2008, available at <http://www.abanet.org/about/goals.html> (last visited Apr. 5, 2009).

standards, as the ABA has previously drawn praise for carrying out careful evaluations in ensuring high quality legal education.⁸⁶

Nor does it warrant an inherently ethnocentric idea of exporting America's legal system in hopes of promoting ideas of liberal democracy particularly in countries that have long resisted America's legal model. Indeed, without the government promoting a liberalized legal culture, such endeavors will likely be unsuccessful. This is clearly evident with China where previously sponsored ABA "Rule of Law" programs only had a minuscule impact solely on the nation's economy.

In the event Chinese law schools like STL receive accreditation but do not undergo a meaningful democratization process, it would severely undermine the quality of the accrediting process and raise serious questions about the ABA's selective criteria. Additionally, tensions could spark between the ABA and several states, as states may simply refuse to defer to the ABA's standards. Some cast doubt as to whether a particular state, which requires bar exam applicants to graduate from ABA-approved law schools, would be willing to extend this requirement to foreign law schools because such a state would encounter considerable difficulty in reconciling the potential of having foreign law school graduates sit for its bar exam but not graduates from a non-ABA approved American law school.⁸⁷ Therefore, accrediting STL or any other foreign law school in the hope of spurring political change is too grave of a risk for the ABA. While the ABA's goal to strengthen the rule of law in foreign nations may contain benign aspects, the ABA should not experiment with its accreditation policy in China or in any other foreign country.

⁸⁶ Betsy McKenzie, Out of the Jungle, *ABA as gatekeeper of legal education*, <http://outofthejungle.blogspot.com/2006/12/aba-as-gatekeeper-of-legal-education.html> (December 6, 2006).

⁸⁷ Kurt Snyder, China Esquire, *ABA accredited school coming to china?* <http://www.chinalawandbusiness.com/2008/06/05/aba-accredited-school-coming-to-china/> (July 28, 2008).