

Experiential Learning in China: A Case Study of Clinical Legal Education

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Thank you. My deepest gratitude to HKU colleagues for inviting me to share my experience and my research. I also thank all of you here today making efforts to help me develop this topic. Although I have been active in this area, clinical legal education, for more than 10 years, this is the first time to have an opportunity to share my experience with international legal educators.

Clinical legal education in China was originally an outcome of legal transplantation where we started a legal clinic with the help of the American supporters. In connection to this, I'm grateful to have Professor Peter Joy here with me as the same panel. From the historical perspective, it would be fair to say that, with the help of American colleagues, we could develop this new teaching model more efficiently, for example, by building the institutional infrastructure across the country.

First of all, let me share an overview of China's clinical legal education. It is worth noting that the Chinese legal system is a civil law system, and this is one of the biggest obstacles in the process of promoting clinical legal education. China developed its legal education on a civil law legal system, and its national system of legal education serves the purpose of "general education", rather than "professional education". Simply put, China's law schools, and legal education more generally, are not designed for professional lawyers. In other words, law schools educate students for a variety of occupations and industries. For instance, we have half a million law students in China, including those of LLB, undergraduates in law. However, only 30 percent of these students will engage in private law practice. This indicates the different functions of legal education between China and the US. As mentioned by Professor Peter Joy, 90 percent of the students will practice law, they will get a bar exam. In contrast, only 30 percent of Chinese students will become lawyers in the private sector. More than 50 percent of the students will work in the government or judiciary, or other public service bodies. In this context, professional training is not essential for China's undergraduate legal education. This is a particular background against which the evolution of clinical legal education would become more difficult in China.

Secondly, the law school curriculum is traditionally designed in a top-down manner. In China, the Ministry of Education regulates the design of the curriculum and supervises its implementation. Every law school needs to comply with the top-down policy concerning the traditional curriculum, with its focus on civil law doctrines and socialist principles. In this connection, we use the traditional method of "lecturing" as a dominant way of legal teaching. Also, teachers are trained in this way and prefer to teach civil law methods, statutory laws, and doctrinal analysis written on the books. This is the mainstream and daily routine in Chinese law schools.

Comparatively, clinical education is a bottom-up innovation that has been initiated and developed by the leading law schools in China. In the early 1990s, Wuhan University introduced its pilot scheme to establish the first legal clinic in China, that is, the Wuhan Center for the Protection of Rights of Disadvantaged Citizens. It was developed by Hon. Wan E'Xiang, former Vice-President of China's Supreme People's Court. He was then a faculty member of Wuhan Law School. With the financial support of the US Ford Foundation, Wuhan University established the first legal clinic in China. In 2000, seven top law schools in China decided to line up to launch the first generation of clinical programs. Further, these law schools decided to set up an educational entity to promote clinical legal education, aiming to expand this toward a nationwide scale. Therefore, the Committee of Chinese Clinical Legal Educators (CCCLE) was established in 2002. This national committee became a sub-committee of China Association for Legal Education, an official commission supervised by both the Ministry of Education and the Law Society of China. In sum, clinical legal education started with bottom-up innovation and gradually became a national campaign in China. This was possible with the external support of the US Ford Foundation, Fulbright Foundation and Yale-China Association, and the clinic teachers from Yale Law School and Columbia Law School.

To date, more than 400 law schools have established their legal clinics. We have more than 600 law schools and more than 60 percent of them have registered as members of the national clinical education committee. Given the varying institutional capacities, there might be two or more clinics set up within one university. In this regard, we have more than 500 or 600 legal clinics in China. To be sure, these clinics have different strategies and focuses. For example, the legal clinic of Wuhan University started with its mission in helping the disadvantaged groups concerning civil rights. For another example, the legal clinic

of Sun Yat-sen University focuses on labor rights and social welfare. Others such as in Beijing, legal clinics work on gender equality, environmental protection, and criminal justice. These different areas of specialization, in the aggregate, create a new teaching model and a sense of diversity in China's legal education.

To illustrate, we can take a closer look at the legal clinic of Sun Yat-sen University. This legal clinic was established in 2001, together with the seven pioneering law schools aforementioned as the first generation of China's clinical legal education. We tried to set up a legal clinic with the assistance of Yale University, particularly Professor Jay Pottenger who was mentioned earlier by another keynote speaker. Apart from the external assistance, the credit should be given to the professional background of this law school, where more than half of the faculty members are registered as part-time lawyers, a special type of license admitted by the Chinese legal profession. In China, we have both full-time and part-time lawyers. The part-time lawyer license certifies the qualification of the law school teacher who wishes to practice law in a part-time capacity. This allows legal clinic teachers to supervise students in real cases. This year is the 20th Anniversary of our legal clinic. Every year we have 100 to 200 undergraduate law students who are required to take six to eight courses every semester. They will take the Legal Clinic course from the third academic year. After two years of preparation for specialized legal knowledge, in the fifth or the sixth semester, students will have the opportunity to take the course for clinical training.

Further details can be found in the statistics of 2016. For example, we have more than 100 cases every year, and we have more than 10 cases every month. In 2016, we had about 150 cases, e.g., more than 40% were labor law cases and the others were civil law cases and administrative law cases. To be sure, this is not necessarily accurate because some of the cases involved more than one subject area. In other words, it could involve labor law, civil law, and administrative law cases. We have very few criminal law cases. The hard fact is we only have one criminal law teacher in our clinic to supervise students, which is not enough. In regards to these constraints, the limited funding and human resources remain the common problems for Chinese legal clinics to expand their programs. For further detail of actual practice, let's take another example of a case that our students represented in 2007. Our students represented a migrant worker in Guangzhou who suffered an injury during his employment. In China, the employee needs to get an official certificate from the local government to confirm a "workplace injury" and to apply for compensation. In this case, however, the migrant worker failed to provide an employment contract with

the employer and the local government denied the certification of workplace injury. In an alternative, our students helped this worker to file the case to the court of Guangzhou and succeeded in overturning the government's administrative decision on the workplace injury. During the litigation, they pressured the employer into reaching a compensation agreement with the worker. This is a typical case that involved different subject areas of knowledge and that students would need to leverage the knowledge of labor law, administrative law, and civil procedure law. During the process of clinical training, we could encourage students to think out of the box and to help the clients creatively. Therefore, the students might be benefited from clinical training by trying to integrate both doctrinal and experiential knowledge through an actual case study.

An additional background I want to mention is, in China, the court may conditionally allow non-lawyers to represent clients in civil proceedings. According to the Civil Procedure Law of the PRC, a non-lawyer can represent a litigant of the civil procedure "if it is recommended by the party's or the litigant's community, entity or relevant social organization". If our students get reference letters from the clients' community or their affiliated entity, the students can represent the clients in civil proceedings. However, students would not take up the role of legal representatives because it will take a longer time and afford additional risks. We usually encourage students to do pre-trial work and to give general advice before the formal legal actions. We will also advise the clients to find a lawyer at the subsequent stage. One important consideration is, if a case lasts for one year or even two years, it crosses several semesters, and our students would not be able to follow this case for such a long time. The Legal Clinic course is only for one semester. It would be better for clients to have a professional lawyer who can work for a longer time. Thus, not surprisingly, 80% of our cases are non-litigation cases, involving pre-trial or preliminary consultation. Although in other legal clinics students might represent litigants at the lowest level of the people's courts, these are the very limited number of exceptional cases.

Let's move to the next part for the discussion of educational benefits. First, most of the students learn to manage the client relationship by way of clinical training. This is very important, and it can only be learned in the legal clinic or another form of experiential training because most of the students never had a client-centered case. They try to study law and the principle of law just on the books, but this is the first time when you get a case. You try to manage the expectation and the emotion of the client, it is real and it could provide stimulation to students to acquire the first-hand experience in dealing with the clients. The client

might keep complaining but you need to direct the client to a legal question or legal problem. This pushes the students to think about how to link the knowledge with this experience. Put differently, this is a second-time learning process, i.e., teaching the client is to learn twice. Under the teacher's supervision, students learn to manage the client relationship and they try to find out a range of resolutions, and various forms of alternative dispute resolution, not limited to litigation advice. To bear in mind, this should be a tailor-made solution for that particular client, for example, to try the administrative review procedure, or to try some other petition procedures. You need to provide a set of options for clients to get it done.

The second benefit of clinical legal education is the promotion of pro bono law practice in China. This is the original purpose of clinical education. But I would say this is also a double-edged sword. We can see a diverse picture here. We might discourage some students if we fail to secure the necessary resources to support their clinical training. For some students, when they had experience with the underprivileged clients, they suffered more when some clients just came to complain, but not to seek legal advice. Some students regarded that experience as a sheer waste of time, and they insisted that is not the original purpose when they took the course. But that's fine, students are free to make different career choices after taking the Legal Clinic course.

Technically, we face two problems. One problem is the "out-of-scope meetings" with the clients when the clinical service process is unregulated. Some clients keep talking or doing things that are not related to our educational objectives. This is what we define as the out-of-scope meeting. Then the teachers need to supervise or control if the students are not capable of structuring a client meeting. We need to teach it again. Even for junior lawyers, this is difficult, and it's more difficult for students. The second problem for Chinese clinical educators is the unbalanced evaluation and promotion system. Now in China, top universities focus on ranking and research output, rather than teaching. However, legal clinic teachers spend more time on classroom teaching without getting additional credits, and they feel frustrated. Therefore, many young teachers have declined to take over the burden of clinical legal education. These problems create further uncertainties for the future development of clinical legal education. That said, I believe that we will have more solutions. This is the end of my presentation. But in the meantime, it is the beginning of our further exchanges and collaboration. I hope we can work together to find out the solutions. Thank you very much.