

The Status Quo and Institutional Challenges Faced by China's Clinical Legal Education*

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Abstract

On December 13, 2000, the Committee of Chinese Clinical Legal Educators under China Association for Legal Education (CCCLE), a national organization with 204 member schools, celebrated the 20th anniversary of the introduction of the clinical legal education (CLE) program in China. CLE, which was born in the early 20th century in the U.S. and became widespread in the early 1960s and 1970s,¹⁾ is rooted in the Chinese legal-education system. Both Japan and South Korea adopted CLE in the beginning of the 21st century, since the establishment of the new law school systems. This article conducts a comparative analysis of the CLE in China, Japan, and South Korea after discussing the incentives for adopting CLE and the status quo of CLE in China.

KEYWORDS: Clinical Legal Education, China

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1) Maria Concetta Romano, *The History of Legal Clinics in the US, Europe and around the World, Special Issue/1 Dirit. Quest. Pubbliche* 27, 27 (2016).

I. The Inherent Features of Chinese Legal Education and the Inception of Clinical Legal Education in China

1. *Tracing the Tradition of Legal Culture and Legal Education in China*

It is widely known that China already had a system of laws thousands of years ago, being one of the oldest civilizations in the world. To some extent, the current legal system and culture of China have been influenced by the philosophies and cultures at the time of classical China, such as Confucianism, Daoism, and Legalism.²⁾ The traditional Chinese culture attaches great importance to law and legal education.³⁾ With the rise of the Legalist school of thought (which emphasizes the transparency of laws and the people's awareness of them) during the Warring States Period (475–221 B.C), many legalists, who were experts on law, started to teach legal knowledge to their pupils. This is believed to be the origin of private legal education in China.

From the Qin Dynasty, imperial China gradually shaped a legal system whose statutes came to embody the fundamental Confucian teachings after the Han Dynasty. Private organizations and individuals who flourished in the Eastern Han Dynasty (25–220 AD) and thereafter exerted efforts to make annotations to statutes and to teach legal knowledge.⁴⁾ At that time, many eminent scholars undertook annotation and teaching work as a family trade, and many law-teaching families became famous for several generations.⁵⁾ The scholastic annotations made by private intellectuals were adopted by the rulers and became part of the body of laws in the Sui and Tang Dynasty, which boosted the development of the traditional Chinese law. Upon the instruction of Emperor Yonghui, some famous bureaucratic scholars in the Tang Dynasty, such as Zhangsun Wuji, compiled a comprehensive code of criminal provisions and their annotations called

2) JAMES M. ZIMMERMAN, CHINA LAW DESKBOOK: A LEGAL GUIDE FOR FOREIGN-INVESTED ENTERPRISES 31 (2nd ed. 2005).

3) Zeng Xianyi, *Legal Education in China*, 43 S. TEX. L. REV. 707, 707 (2002).

4) *Id.*

5) *Id.* at 707-708.

Yonghui Lvshu (*Lv* refers to “criminal provisions” and *Shu* refers to “annotations”), which was promulgated as the primary source of laws at that time. Such compilation of criminal provisions and annotations did not only present the laws that were in effect at that time but also made it easier for the officials and intellectuals to understand and master the laws for better governance. Also, the promulgated criminal provisions and their annotations became important contents for those who took the *Keju* (Imperial Examination System, civil service exam), which was the most important exam for the selection of public officials (including judicial officials) after the Sui Dynasty in imperial China. As there was no systematic education on laws in ancient China, however, it was the government that promoted the public awareness of the laws and that offered legal education, with private organizations and individuals participating in these endeavors only after the Qing Dynasty.⁶⁾ Mainstream education then was teaching *Sishu Wujing* (Confucian literature), and awareness of the laws was not emphasized in the civil service exam. Such practice continued until the beginning of the 20th century, particularly in 1905, when *Keju* was abolished. It thus cannot be said with certainty that there was a formal system of educating legal professionals in imperial China due to the immaturity of the judicial system and legal profession then.

In the 19th century, China was dragged into the globalization process and came to face the biggest challenge that it had ever faced in its imperial history: the rise of capitalism and industrialization. Since then, knowledge of foreign laws was introduced in China, and some of such laws were even adopted in some special designated zones, such as Shanghai and Qingdao, and in other big portal cities in China. The spread of Western knowledge also motivated some Chinese intellectuals to go abroad to study modern knowledge, including law. Since the beginning of the 20th century, with the influence of and assistance from Japanese legal experts, legal-education institutes aiming to train legal professionals gradually emerged in China. In addition, since the promulgation of a system of statutes by the Nationalist government, the successor of the Qing government, in the 1930s, legal-

6) *Id.* at 707.

education institutes, which were usually incorporated in universities, had been maintaining certain standards for imparting legal knowledge to law students. After the founding of the People's Republic of China in 1949, the country's laws were modified and reorganized under the influence of the Soviet Union, but the universities continued to impart legal knowledge.

2. The Rapid Development of Legal Education in Contemporary China and Its Inherent Features

At the end of the 1970s, with China's new twofold policy of reform and opening to the world, the country started to revive its market economy and legal system, which led to the revival of the legal profession and the rapid development of legal education in contemporary China.

The demand for legal education also emerged for the recovery of the social order and for realizing the aforementioned new twofold policy. The rapid growth of legislation since the end of the 1970s also elevated the demand for legal talents. In 1978, the four comprehensive universities and five colleges of political science and law that had existed before the Cultural Revolution reopened their doors to law students. Thereafter, legal education in China started to develop dramatically. In 1978, only a number of universities carried out higher law education, with a total registration of only 729 undergraduate law students. Now, there are over 650 universities and colleges in China that are offering legal-education programs. Before the Third Plenary Session of the 11th Central Committee of the Communist Party of China, there was no formal degree system for legal education, but in 1981, China began to build a degree system consisting of an undergraduate degree to master's and doctoral degrees.

The basic framework of the legal-education system has retained the institutional framework of the previous system, which was shaped in the 1950s. The law departments in universities and specialized universities of political science and law almost monopolize the education of legal talents in contemporary China. The mainstream legal education is a four-year undergraduate law course with the features of liberal arts education; it is offered by most of the over 650 legal-education institutes in China. Top comprehensive universities and colleges (now universities) of political science and law also provide graduate legal education, granting master's

and doctoral degrees on law. Furthermore, a Jurist Master (J.M.) degree, a new degree aimed at providing practical training by introducing some components of the American Jurist Doctor education, has been established and has expanded since 1997.⁷⁾ From 1996 to 2009, the number of law schools that had been given approval to offer a J.M. program increased from 8 to 115, and the number of enrolled students increased from 425 to 40,000. Since the introduction of the J.M. program, a total of 50,000 students have received J.M. degrees.⁸⁾ At present, there are 250 high-education institutes that have been allowed to recruit J.M. students, and after 1978, law graduates have played an important role in state governance, the rule of law, public service, social life, economic construction, and international affairs.

In comprehensive universities, the law department is usually separated as a "faculty of law" or "law school,"⁹⁾ but in some such universities, it is still integrated with other areas of study, such as economics or political science. In the five colleges of political science and law that have become universities since the end of the 20th century, even if non-law programs have been added, most of the students are still law students. Most of such universities have thus established several parallel departments with different names. For example, the Chinese University of Political Science and Law has a department of law, a department of civil and commercial law, and a department of international law.¹⁰⁾ The curriculum, however, is almost the same for each department. Therefore, the creation of different parallel departments is significant for administration purposes but is not meaningful for education purposes.

The undergraduate law students usually come from among the high school graduates, particularly those who passed the National University Admission Examination, but some are admitted through recommendation.

7) Xiangshun Ding, *The Reform of Legal Education in China and Japan: Shifting from the Continental to the American Model*, 3 J. OF CIV. L. STUD. 111, 114 (2010).

8) See Zeng Xianyi, *The Creation and Development of JM Education in China*, 3 JURISTS REV. (2007).

9) Due to the substantial difference of law school and faculty of law in the context of Japan and Korea, the author is hesitating to refer Chinese legal education institutes as "law school" although the official translation make use of this term.

10) See the homepage of CUPL at <http://en.cupl.edu.cn/Academics.html>

The number of students to be admitted and the qualifying scores are determined by the administrative authorities at the central or local level, and they are standardized nationally, with little or no autonomy given to each institute in such regard.

In addition, the legal education in China features Chinese characteristics, such as that most of the universities or colleges offering legal education are national or public higher-education institutes affiliated with either the national or local government, with only a few exceptions. In other words, almost all the institutes in China that are offering legal education receive financial resources from the government. Despite the differences in affiliation or funding sources among the legal-education institutes in China, all of them are subject to the supervision of the Ministry of Education, although the Ministry of Justice has also been involved in overseeing the quality of the J.M. program since such program's inception. In China, the Ministry of Education is in charge of all educational affairs, including formulating and establishing educational policies, deciding on the allocation of the financial budget and other resources for education, approving the establishment of majors and programs, and attending to the personnel affairs in the affiliated institutes. As the judicial agencies are not involved at all or are only minimally involved in the supervision of the legal-education institutes in China, such agencies are hardly able to contribute to the cultivation of a legal profession that meets the demands for legal practice in China. Moreover, as the law departments have been incorporated into universities or colleges, the development direction and educational and personnel policies of such departments are heavily influenced by the university administration, and their basic framework and fundamental policies tend to resemble those within the university rather than complying with the standardized policies issued by the Ministry of Education.

In China, to be qualified as a faculty member, one must meet the requirements cited by the Teachers Law of the People's Republic of China in 1993, including that all faculty members in Chinese universities and colleges must have at least a bachelor's degree. With the expansion of the Ph.D. programs in China, however, it became normal to hold one or more doctoral degrees obtained domestically or abroad. As such, a doctoral degree is now a minimum requirement for a law graduate to obtain a

teaching position in a law department. The higher academic-degree requirement for faculty members of law departments, however, does not necessarily mean that the law instructors in China now have better teaching capabilities. In fact, many Chinese law faculty members lack practical experience as lawyers. To obtain a teaching position, one is required to have published works rather than to have had law practice. In reviewing the performance of a law instructor, legal research work is most valued. Recently, the number of research papers published in several reputable law journals has been adopted as the most important criterion for law faculty promotion.

Due to the legal-education institutes' lack of or minimal linkage with the legal profession, their graduates find jobs in various industries. Several years ago, a news report drew much attention in China: instead of practicing law, a law graduate of Southwest University of Political Science and Law opted to become a butcher.¹¹⁾ The law graduate's decision was praised by the news report, but it also reflected the diversified careers for law graduates after the rapid increase in the number of people taking up law. Recently, due to the oversupply of law graduates in the job market, law graduates have dropped to the lowest employment ranking. Most holders of a bachelor's degree in law landed jobs completely unrelated to law, which they had spent four years specializing in. To delay their employment search and/or to improve their competitiveness, some law students choose to study further, pursuing a master's degree at a domestic or an overseas institute. This explains the rapid development and establishment of master's programs in China and other countries. The value of the graduates of China's law master's programs in the labor market went down in the 1990s, however, compared to that of the bachelor's degree holders. That is, the performance of law master's degree holders in the job markets only narrowly improved, and the jobs that they find are still very diverse.

11) Min Lyu, *A law student of Southwest University of Political Science and Law changed his major to do a butcher*, Chongqing Morning Post (July 27, 2006, 15:25). <http://news.sina.com.cn/s/2006-07-27/15259584671s.shtml>

3. *The Adoption of Clinical Legal Education*

Although the legal-education systems in each country are usually different from those in other countries due to the diversity in countries' traditions, cultures, and legal systems, it is reasonable to suppose that all of them aim to foster highly specialized professionals with a sense of social responsibility. The realization of this goal requires the design of new teaching methods. It is thus no wonder that CLE, which originated from American law schools in the 1960s, was immediately accepted and rapidly expanded in China. The Chinese legal educators came to acknowledge that CLE training could facilitate law students' development of lawyering skills and professional values that could help them deliver high-quality legal services in the labor market.

In the 21st century, with the development of legal education in China under the influence of the American legal education, new methods for teaching critical thinking and lawyering skills, such as the case simulation method and moot court competitions, emerged in the J.M. and other programs. Furthermore, as endorsed by the Ford Foundation, seven universities (Peking University, Tsinghua University, Renmin University, Wuhan University, Fudan University, East-China University of Political Science and Law, and Zhongnan University of Economics & Law) established law clinics in September 2000 and formally integrated these into their respective law school curricula, explicitly emulating the U.S. CLE program.¹²⁾ In July 2002, a nationwide organization for CLE, the Chinese Committee of Clinical Legal Education (CCCLE), was formally established. CLE has since been expanding at a fast pace in China as 128 universities in the country had established law clinics by the end of 2009. By the end of 2013, 167 law schools had been operating law clinics, and an estimated more than 16,700 students had been enrolled in such clinics.¹³⁾ Furthermore, by June 2017, 202 universities or colleges in China had opened elective CLE

12) Ding, *supra* note 7, at 126.

13) Xiaobing Liu, *Clinical Legal Education in China and the Issue of Locus Standi in Criminal Defense*, 23 *Willamette J. INT'L L. & Dis. Res.* 93, 95 (2015).

courses with two or three credits each.¹⁴⁾ The rapid increase in the number of law clinics in China also reflects the strong demand for practicality, as required by Chinese legal education, and shows that CLE has gradually become part of the Chinese legal-education system as one of the most important programs for training students in practical skills.

II. The Incentives for Adopting Clinical Legal Education and the Framework of and Problems Faced by Clinical Legal Education in China

It is noticeable that the establishment and fast development of CLE in China took place without the institutional evolution of legal education. There are currently around 300 CLE programs in the country, all of which were developed through incorporation into the existing context of legal education, without institutional evolution.¹⁵⁾

1. *The Incentives and Ideology for Adopting Clinical Legal Education in China*

The introduction of CLE into Chinese legal education is by no means fortuitous. Among the factors that resulted in the inception and development of CLE in China, the following are highlighted.

1) *The Demand for a High-Quality Legal Profession for Strengthening the Rule of Law*

With the rapid increase in the number of people taking up law after the 1970s, a new demand for improving the quality of legal education, especially the improvement of the practical courses, emerged at the beginning of the 21st century.

14) *Congratulations to the School of Philosophy and Politics and Law of Yunnan Normal University for becoming a new member of CCCLE*, The Website of The Committee of Chinese Legal Educators under China Association for Legal Education (CCCLE) (March 9, 2017), <http://www.cliniclaw.cn/article/?id=1863>.

15) *Id.*

The rapid increase in the number of people pursuing a bachelor's degree in law, however, could not improve the competitiveness of the Chinese legal professionals as the target of legal education in the four-year undergraduate program is not to train future lawyers but to impart legal knowledge and provide general legal education to the students.¹⁶⁾ Besides, the master's and doctoral programs in law are still academic-oriented and very far from meeting the practical requirements of legal education. For these two aforementioned reasons, the government had to urgently innovate the Chinese legal education so it would be able to meet the need for highly skilled lawyers domestically and internationally.

Realizing that the traditional Chinese education dominated by one-way lectures indeed cannot adequately prepare future legal professionals, some pioneer legal educators who studied in the U.S. have accepted CLE and have even expanded it as it is more interactive and experiential and has been proven to be able to meet some of the practical requirements in American law schools.

2) *The Influence of American Legal Education*

As mentioned earlier, with the end of the Cultural Revolution in 1976, China began to reconstruct its legal system and implement the twofold policy of reform and opening to the world, which necessitated that Chinese students study in developed countries. Chinese law students and legal scholars were thus dispatched to developed countries to conduct advanced research or obtain law degrees. Since then, the U.S. has become an important destination for these students and scholars as it is the most developed, powerful, and influential country in the world and the biggest investor in the Chinese markets.

There have been many legal-education exchange programs between China and the U.S., and the Committee on Legal Education Exchange with China (CLEEC) was the first university-based exchange organization that established and facilitated collaboration between American and Chinese law professors, with the involvement of the Department of Justice and Education and the Chinese government. The establishment of the CLEEC in

16) Xiangshun Ding, *From Reception to Collaboration: A Study of the Legal Education Exchange Between China and the United States since 1980s*. 3 *Chin. Leg. Sci.*, 52, 65 (2014).

1981 resulted from the demands raised by the academic and legal-practice circles in both the U.S. and China. Through CLEEC's programs, over 200 Chinese scholars were given opportunities then to visit and study in the top law schools in the U.S., which became the most important starting point for the formal legal-education exchange between these two major countries. The CLEEC facilitated the development of legal education in China and contributed to the development of and reforms in legal education as most of the pioneers of the CLE programs had experiences of studying in the U.S. Even after the creation of CLE, however, clinicians and lawyers from the U.S. still assisted in the efforts to establish clinical legal programs in China through workshops, exchange programs, and fellowships funded by the Ford Foundation, the U.S. Agency for International Development, and others.¹⁷⁾

There are no available statistics on how many Chinese law students are currently studying in U.S. law schools. However, in the 1990s and 2000s, the LL.M. (Latin Legum Magister, meaning Master of Laws) programs in the U.S., which targeted foreign law students, expanded significantly. Chinese law students represented a significant percentage of the enrollees in such programs. Due to the diffusion of American legal knowledge by American legal experts and the return of the Chinese law students or legal scholars to China, legal education in the country has fundamentally changed both institutionally and pedagogically, with the introduction of American legal-education elements, including the institution of the J.M. degree in China.¹⁸⁾

3) *The Promotion of Clinical Legal Education by the Ford Foundation*

In the U.S., the Ford Foundation played a critical role in expanding the CLE programs in the 1960s. In 1988, under a special agreement with the State Council, it became the first international non-government organization (NGO) that established an office in Beijing, with the Chinese Academy of Social Sciences acting as a local counterpart.¹⁹⁾ Among the

17) Cecily E. Baskir, *Crossing Borders: Creating an American Law Clinic in China*, 19 *Clinical Law Rev.* 163, 173 (2012).

18) Ding, *supra* note 16, at 65.

19) CDB Team, *Our Registration Story: The Ford Foundation*, China Development Brief

programs that were supported by the Ford Foundation, a large portfolio was in the areas of education and culture, including legal education. The Ford Foundation not only sponsored the initiation of CLE in China but also continued to provide funding to law clinics nationwide until the 2010s. In 2002, with support from the Ford Foundation and the influential China Legal Education Society, 11 institutions formed a national academic organization: the Committee on Chinese Clinical Legal Education (CCCLE), which has played the leading role in the development of CLE in China.²⁰⁾ The CCCLE scholars who studied at top U.S. law schools have played important roles in pushing forward the development of the rule of law in China as the mainstays of the legal profession. Since the establishment of CCCLE, the number of Chinese law students studying in U.S. universities has rapidly increased.

2. Framework and Status Quo of Clinical Legal Education in China

Although the mainstream legal education in China is undergraduate-oriented, the goal of undergraduate legal education is controversial. Some argue that its primary goal is to train legal professionals rather than just imparting liberal arts education on law to them, but some embrace the opposite view. This ambiguity of goal of undergraduate legal education and the fact that the curricula of the Chinese undergraduate programs on law are hybrids with liberal arts courses, law courses, practical courses, and specialty courses other than law may justify the opening of the CLE programs not only to master's law students but also to undergraduate law students.

In China, to train all types of students in practical skills, practical courses aiming to equip the students with professional skills were already made part of the curricula even before the introduction of the CLE concept. For example, the simulation and moot court programs were incorporated into some courses in the curricula of Chinese legal-education institutes. Some law schools organized moot court competitions (e.g., the Jessup International Law Moot Court Competition) as a student activity rather

Website. <https://chinadevelopmentbrief.cn/ngos/the-ford-foundation/>

20) Baskir, *supra* note 17, at 173.

than a credit course to improve the students' lawyering skills. Also, even before the introduction of CLE in China, externships were already required for law students with a high GPA (grade point average) in China. The students were typically assigned to institutions relating to law enforcement, judicial organs, law firms, and government agencies to observe legal practices. However, the rapid increase in the number of legal-education institutes meant that some institutes could not provide all their students with opportunities and platforms for externships. Furthermore, due to the lack of supervision by experienced faculty members or lawyers, externship did not play an important role in legal education.²¹⁾ To some extent, the emergence of CLE filled in the gap with regard to practical courses in China, allowing law students to practice lawyering even before they graduate.

Clinical programs have varied foci, such as comprehensive legal affairs, criminal affairs, environmental issues, and disability issues. Peking University School of Transnational Law (STL), a graduate-level law school offering bilingual legal education in Chinese and English for Chinese law students in Shenzhen, China, even founded a clinic in Fall 2010, in which Chinese graduate law students, under an American faculty member's close supervision, are able to represent detained immigrants in the U.S. in their administrative appeals to the U.S. Board of Immigration Appeals.²²⁾

Clinical programs, however, usually have small registration numbers and are open to students at different legal-education levels. In addition, due to the lack of clinical professorship in China, clinical activities are usually facilitated and supervised by academic professors who have specialized in substantial or procedural law, with the collaboration of law practitioners. The institutional frameworks for clinical activities are also quite varied in China. At the beginning of the 21st century, some prestigious law schools, such as Renmin University of China, ran a formal law firm staffed with faculty members (some of these law firms maintain a firm connection with the school even when they are no longer being run by the school).²³⁾ As

21) Ding, *supra* note 7.

22) Baskir, *supra* note 17, at 165.

23) Beijing Dishu Law Firm (Dishu for short), as one of the earliest law firms approved by the Ministry of Justice, established in May, 1985, is a large legal service organ, composed of

such, Renmin University of China could then easily incorporate the CLE program into the regular works of the firm. That is, students are assigned to the firm and may practice under the mentorship of the part-time lawyers therein, who are usually faculty members at the university, or may deal with some preliminary tasks for the lawyers in the firm. Unlike Renmin Law School, however, most of the CLE programs in China rely on collaborative works with off-campus law firms or organizations to guarantee the availability of case resources and practical instructors. Here, one or several full-time faculty members and off-campus practical instructors conduct theoretical lectures and mentor the registered students on legal practice. At the environmental clinic of Renmin Law School, the teaching activities have been incorporated into the daily works of Friends of Nature, an NGO for promoting environmental protection. Three faculty members and one administrative staff of Renmin Law School are responsible for teaching basic environmental law and civil and administrative law procedure; meanwhile, the staffs of Friends of Nature supervise the registered students as they interview clients seeking legal assistance and provide legal consultation. The registered students are also assigned to work on specific cases, including litigation cases, and are even given opportunities to represent the client in court, under the supervision of the NGO's staffs. To some extent, the collaboration between the CLE program and off-campus law firms or organizations has provided the needed human and case resources and has made the teaching of CLE possible in China.

In China, university-based centers for legal aid also play an important role as law clinics for the students registered in CLE programs. To

teaching and research personnel with lawyer's credential in the Law School of Renmin University of China. Many of the lawyers are domestically and internationally well-known jurists, and Dishi is the important platform for them to apply their academic achievements to reality. Relying on great mastering and deep understanding of economic policies and laws home and overseas, Dishi is able to offer positive, creative and practical solutions to legal affairs for clients. For the tendency of the real global economic integration, Dishi has established cooperative relations and maintained business ties with law firms in Japan, Germany, UK, US, France, Canada, Australia, HK, Taiwan and other countries and regions. Dishi can provide a full range of legal services for clients of all walks of life. See *Overview of Law Firm*, Beijing Dishi Law Firm, <https://dishilaw.com/article/?id=10> (last updated Dec. 21, 2019).

strengthen the practical-training aspect of the legal education they are offering, many universities operate institutes for legal aid, in which the senior law students provide legal consultation or representation to vulnerable groups. Based on this platform, the clinical activities can easily be integrated with the preparatory works for case litigation. Legal aid centers are usually operated by volunteer students, but some centers are well staffed by full-time faculty members.²⁴⁾

3. *The Functions of Clinical Legal Education in China*

Chinese law-school-based law clinics play an important role in training students in practical skills. In particular, clinical programs provide training in the areas of professional responsibility and ethics, court appearances, negotiations and interviews, writing and briefing, and case analysis and strategizing.²⁵⁾ Meanwhile, such programs are also vital in providing legal aid to socially vulnerable groups and equal access to justice in China. For example, the Renmin University of China Disability Law Clinic empowers students, faculty, and volunteer lawyers to work with persons with disability and their organizations to provide them with high-quality legal services, promote the development and reform of laws and policies for the protection of the rights and interests of persons with disability, and increase disabled persons' awareness of their rights. At Sichuan University, approximately 60 students each year participate in criminal-justice and labor law clinics while other students continue to participate in legal-aid cases outside the formal clinical program.²⁶⁾

In China, many universities of political science and law want to and can invest more resources in practical education, including clinical education.

24) The Center for Protection of the Vulnerable Groups affiliated to Wuhan University established in 1992 by a returned Yale law graduate integrated with CLE programs in 2000. Presently it has developed into the Wuhan University Training Center of Law staffed with thirty-one full-time members including five professors and nine associate professors. See Wuhan University Training Center of Law, <http://lawlab.whu.edu.cn/2/11/2009-06-02/830.html> (last visited Sep 21, 2018).

25) Lining Zhang, *Chinese Clinical Education: Examinations and Expectations*, 2(2) *Asian J. Of Leg. Educ.* 119, 121 (2015).

26) *Id.* at 126.

Based on a survey among the CCCLE members, the five universities of political science and law in China are offering numerous clinical programs. For example, China University of Politics and Law in Beijing has a rural law clinic serving a suburban population of migrant workers and villagers. The legislation clinic at Northwest University of Politics and Law in Xi'an (*Xibei*) works with "government agencies and civic organizations to propose and craft legislation that affects socially disadvantaged groups."²⁷⁾

The aspiration of the law clinic work is to strengthen the rule of law in China and to nurture law school graduates who value public service. The students participating in such law clinics not only gain legal knowledge but also get to master communication skills with socially vulnerable groups under divergent circumstances, and learn to deal with concrete legal issues. They not only gain a better understanding of the legal needs of vulnerable persons but also develop the skill of communicating with them. The entire process of attending clinical activities is an enriching experience, yielding not only opportunities to understand the functions of laws and their divergent impact on society but also helping deepen the convergence of substantive and procedural laws and CLE.

4. The Problems and Challenges Faced by the Chinese Clinical Legal Education

It seems that CLE has been so rooted in the Chinese legal-education environment since its introduction in 2000 that by August 2012, the CCCLE had already had 148 member schools, more than 75 of which had established formal clinical programs as part of their curricula. At present, it has over 204 members schools with more than 300 clinics.²⁸⁾ However, the CLE in China has been introduced and developed in an environment without institutional reform, which means that clinical programs are provided with little or no institutional support. Although the mainstream legal education in China is doctrinal, practical training courses are not excluded. The ideologies of teaching through live cases and learning by

27) *Id.* at 121.

28) This number is released by the secretary-general at the 20th anniversary event on December 13th, 2020.

practice were easily accepted and transplanted into the Chinese legal-education context, which resulted in the rapid increase of clinical programs in China. Due to the inadequacy of resources and the lack of institutional construction, however, the clinical programs are currently encountering problems and challenges.

4. Considerable Gaps in Quality among the Law Clinics

CLE has been easily inserted into the curricula of Chinese universities, but its quality and effectiveness are quite varied in different universities. While prestigious comprehensive universities and universities of political science and law have well-established clinical programs, most of the over 650 universities providing legal education in China have not yet opened a law clinic. Most of the law clinics in China (even among those of the 204 members of CCCLE) have the distinct problem of not having real clinical casework and having little or no supervision over the students' clinical activities. Some clinical programs offer only simulation courses while others categorize any course offering practical learning as "clinical." A research result from both interviews and desk research shows that only 40% of the best clinical schools in China have real-client clinical cases from local courts or legal-aid offices; the others have only practice courses.²⁹⁾

5. Serious Lack of Eligible Clinicians

In China, CLE is provided by full-time faculty members in collaboration with law practitioners. There is no "clinical professor" category. Under the framework of Chinese legal education, teaching performance, including in clinical courses, is usually not recognized much compared with research publications. Although there is a "teaching-oriented professor" category, this category is not designated for clinical professors. Thus, most faculty members want to invest more time and energy into writing and publishing rather than teaching and mentoring students. Therefore, the lack of eligible faculty members to serve as clinical instructors is one of the institutional

29) Zhang, *supra* note 25, at 121.

obstacles to the development of Chinese law clinics.³⁰⁾

6. *The Issue of Locus Standi in Litigation*

Unlike the courts in most countries, the Chinese courts allow laypersons to represent litigants in court, which is usually called citizen representation.³¹⁾ With such a framework, students enrolled in a clinical program are eligible to represent live clients in court. However, in criminal justice, courts usually impose more severe restrictions on client representation, prohibiting laypersons (including law students) from representing clients in court. Therefore, in the area of criminal legal aid, even if law clinic students have done much of the preliminary work (e.g., legal consulting, research, and writing), they are still prohibited from representing their clients in court.³²⁾ Things have even gotten worse for clinical students with the recent revision of the procedural laws, further limiting client representation in court by non-lawyers to citizens recommended by the community, employed by a party, or recommended by a relevant social group.³³⁾ Such revisions address the practical demand for improving the agency of litigation by better protecting the interests of the litigants, but they disqualify students registered in law clinics from acting as agents in court. To resolve this issue, some pioneer professors have called for clinical students to obtain a recommendation from the community or university to represent a client, or for practical rules to be formulated for clinical students.³⁴⁾ However, given the absence of practical

30) Zhang, *supra* note 25, at 126.

31) The Chinese civil, criminal and administrative procedures laws provided for such framework.

32) Liu, *supra* note 13, at 94.

33) Art 58 of Civil Procedure Law of the People's Republic of China revised in 2012 provides that a party or a legal representative may retain one or two persons as litigation representatives. The following persons may serve as a litigation representative: (1) A lawyer or legal service worker at the basic level. (2) A close relative or staff member of a party. (3) A citizen recommended by the community or the entity employing a party or recommended by a relevant social group. This provision replaced the old one that other citizens approved by the court. Similar revision also was completed in the revised Administrative Procedure Law in 2014.

34) Professor Cai Yanmin at Sun Yat-sen University who is one of leading professors in

rules for clinical students, even if the issue of client representation by clinical students could be resolved within the current legal framework, the lack of variety of clinical practices for law students in China is likely to become more serious in the future. It is still far from being instituted for Chinese CLE.

III. A Comparative Analysis of the Clinical Legal Education in China, Japan, and South Korea

At the beginning of the 21st century, China, Japan, and South Korea began to reform their legal-education systems, modeling these after the American Jurist Doctor degree, which triggered the discussion and utilization of experiential learning in the three countries. Since then, experiential-teaching methods have been introduced and utilized in the law classroom in the three countries. New teaching methods, including the case method, internship, externship, and clinical education, have also been utilized and expanded. The emergence of experiential learning in the legal-education institutes (including CLE) in China, Japan, and South Korea is significant for the students in these countries, who are usually more passive learners than their counterparts in Western countries, and who usually see teachers as “gurus imparting knowledge.”³⁵⁾

However, the legal-education reformists in the three aforementioned countries aim to imbue the legal profession with high-quality legal talents, but each country has taken a different approach. China has adopted an approach different from those adopted by Japan and South Korea, as seen in the unified bar examinations and practical training systems in the country. The two other countries' approaches to reform, on the other hand, aimed to transfer the function of judicial training institutes to law schools partially (Japan) or completely (South Korea), which resulted in the fast

promoting CLE in China addressed this issue in her article. See Cai Yanmin, *Status, Regulation and Challenges: Clinical Legal Education in China*, in *PILOT HANDBOOK OF SIMULTANEOUS LEGAL CLINICS* (Zhang Wusheng ed., 2013).

35) SHUVRO P. SARKER, *CLINICAL LEGAL EDUCATION IN ASIA: ACCESSING JUSTICE FOR THE UNDERPRIVILEGED* 6 (1st ed. 2015). Shuvro Prosun Sarker (ed.), *Clinical Legal Education in Asia: Accessing Justice for the Underprivileged*, Page 6, Palgrave MacMillan 2015.

development of CLE in the two countries as opposed to China's experience of encountering fatal problems in relation to CLE.

1. Different Approaches to Legal-Education Reform in China, Japan, and South Korea

Although the designers of the new legal-education systems in China, Japan, and South Korea claimed that they modeled their systems on American-style legal education or used the latter as a reference, the characteristics of the implemented systems are quite different from those of American law schools. Therefore, a comparison of the new CLE methods implemented in the three countries with those implemented in American law schools is crucial for identifying the characteristics of the former.

In China, the introduction of the J.M. program allowed undergraduate students with diverse backgrounds to take up law in a postgraduate law school in the country, quite similar to the American system and its counterparts in Japan and South Korea. Unlike the American Juris Doctor program, however, the new J.M. program in China (or the new law school system with Chinese characteristics) is based on the old undergraduate-oriented legal-education system in the country. Therefore, the new program is open to graduates, who already have an LL.B. (Bachelor of Laws) degree. In China, J.M. programs recruit two types of students: full-time students, and from 1995 to 2009, part-time students. Only non-law majors are qualified to apply as full-time students and to take the admission examination. Those with work experience, however, even if they are law major undergraduates, are eligible to apply for admission into the part-time program. Nevertheless, since 2009, the Education Administration decided to expand the scale of the J.M. programs, permitting even undergraduate law majors to apply for admission into a full-time J.M. program. This raised a new problem: how to teach students with different backgrounds and who already have various levels of legal knowledge. To attain the goal of producing highly qualified lawyers or legal talents, the new J.M. program must enlist the services of qualified faculty with real-world law practice experience. Unlike the American law faculty, however, very few law professors in China, Japan, and South Korea have law practice experience. To solve such problem, the Japanese and South Korean legislatures passed

a law providing for judges and prosecutors to be dispatched to teach at professional law schools for a certain period while their services in the court or prosecutor's office where they are connected are suspended. However, there have been no significant changes in the teaching faculty in the Chinese J.M. programs; the old academic-oriented faculty members are still the main teaching personnel therein. In other words, there has been no institutional evolution in China even if CLE has been introduced in the Chinese law classrooms and even if its use therein has been expanded. Thus, despite the fact that some experiential teaching methods are now being utilized in the J.M. programs in China, it is hard to conclude that such programs are radically different from the old legal-education system.

Since 2006 and as part of the systemic comprehensive reform in Japan, the new bar examination, which only Japanese law school graduates may take, coexists with the old bar examination system. Since the cancellation of the old bar examination (which anyone could take) in 2011, applicants who are not graduates of a Japanese law school have had to take a special examination to be qualified to take the new (and predictably limited) bar examination. In South Korea, since 2012, only law school students have been permitted to take the New Bar Examination, upon their graduation from law school. In China, the reform of legal education has produced no changes connected with the qualification for taking the bar examination. Further, the system for obtaining legal professional qualification is still separated from legal education. There are no limitations with regard to who can take the unified professional examination; one can take it even without having obtained or finished formal legal education. There are also no institutional connections between legal education (even in the J.M. program) and the bar examination in China, very different from the prevailing situation in the new Japanese and South Korean law schools and in the American law schools.

China is much behind Japan and South Korea in terms of institutional reform because Chinese legal education is still basically liberal arts education on law. Thus, a legal-education institute in China functions as an umbrella institute where students with different degrees (e.g., bachelor's degree, the traditional master's degree, J.M. degrees for different student groups, doctoral degree) are taught by almost the same faculty members. In the law departments of universities or colleges, a full-time teaching position

is very rarely given to an experienced law practitioner, and faculty members may take a part-time job as a lawyer or an arbitrator. In addition, there are no institutional exchanges between the faculty members and law practitioners in Chinese legal education, which has resulted in the inadequacy of the faculty members' know-how on teaching practical lawyering skills in an academic environment. Without a systematic evolution of the adoption of new human resources, there is not much reason to believe that new practical courses integrating theory and practice can be taught with innovative teaching methods like CLE in China.

Professional-education goals have to be achieved through concrete teaching activities. The CLE programs in Japan and South Korea also encounter different problems, but these come as part of the process of realizing the goals of professional legal education. In China, however, due to the immaturity of the institutional designation for professional legal education, the attainment of the goals of such education is not guaranteed in terms of the allocation and accommodation of teaching faculty, the education contents, the teaching methods to be used, and the incentives given to the students for training in professional skills. Thus, the inadequacy of the institutional reforms within the legal-education circle in China has resulted in the decline of CLE therein in recent years in terms of the quantity and quality of the programs offered.³⁶⁾

2. Interaction with Law Practice: An Advantage and a Disadvantage of Clinical Legal Education in China

At the beginning of the revival of legal education in China after the 1970s, to promote the connection of legal education with legal practice and the effective use of human resources in higher education for the legal-service market, many Chinese legal-education institutes set up their own law offices or firms. The faculty members practiced in such law offices on a part-time basis. These university-affiliated law firms provided legal

³⁶⁾ On event of the 20th Anniversary of CLE in China, several participants expressed the concerns on the dramatic decline of CLE programs. One of leaders of CCCLE even pointed out that most of CLE programs fell in disqualification according the guideline among over 300 programs run by its 204 members.

services not only for general clients but also for people from vulnerable groups. Meanwhile, such institutes also opened a window for law students to understand their role as lawyers in society and to apply what they had learned in the classroom. Due to the regulatory changes on law firms at the beginning of the 21st century, however, universities could no longer run a law office, although some universities still directly or indirectly maintained a substantial connection with the law firms that used to be affiliated with them, for the purpose of materializing practical education or providing legal aid. Faculty members and law students were thus encouraged to interact with legal practice. According to the formal curricula, Chinese law students also needed to complete a period of internship at an internal or external legal institute before graduation, under the supervision of a faculty member. For instance, in 1992, a CLEEC alumnus from Yale Law School returned home to Wuhan and established therein the first legal-aid center in China: the Centre for the Protection of the Rights of the Disadvantaged.³⁷⁾ Thus, it is no surprise that the Chinese legal-education circle may have initiated the concept of CLE and stepped up to adapt it with practical courses in the Chinese legal-education curricula earlier than Japan and South Korea did. Shortly after the emergence of CLE, partially because of the liberal environment bridging the need for practical education and the demand for on-campus legal education, where law students could register in law clinics, the provision of "legal aid" shifted to a large extent to law schools with clinical programs.³⁸⁾ On the one hand, the involvement of law clinics in the provision of legal aid allowed clinical students to deal with live cases while on the other hand, their participation in such contributed to dispute resolution among the disadvantaged in the society.

Two missions have driven the emergence and expansion of CLE in the U.S. since the 1960s: that of cultivating practical legal talents and that of realizing social justice for the vulnerable groups in the society. However, in China, neither the institutional legal education nor judicial reforms achieved similar missions. At the time when CLE was introduced to the

37) Harvard Law Review Association, *Adopting and Adapting: Clinical Legal Education and Access to Justice in China*, 120 HARV. L. REV. 2134, 2139 (2007).

38) Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 YALE HUM. RTS. & DEV. L. J. 117, 126 (2005).

legal-education system in China, little attention was paid by the legislature, judiciary, or law firms thereto. As a consequence, no corresponding policy was established to facilitate the development of CLE. The judiciary has launched several rounds of judicial reforms since 2012, but few of such reforms fit CLE. Shortly after the introduction of CLE in Chinese legal education, most of the CLE programs were integrated with the civil-procedure law framework of citizen representation, in which students who were registered in law clinics were able to access live cases and real clients. The new amendment of the procedural law, however, imposed stringent restrictions on the eligibility for client representation in court, which almost deprived clinical students of eligibility to represent clients. Clinical students could continue to provide consultation for clients in real cases but without formal representation of them in court, but such unfriendly measures from the law-practicing field indeed put severe constraints to CLE. As a consequence, most law clinics had no choice but to collaborate with off-campus law firms or NGOs for their students' practical education.

Given such circumstances, in recent years, with the decline of CLE in law schools, the role that law clinics play in providing legal aid to vulnerable people has been *crippled*. From my personal view, this trend is due to the delusion that there is either no demand or a lower demand for legal aid in the country. On the contrary, the disputes and the demands for dispute resolution that resulted from the rapid economic and social changes in China have been increasing yearly. To meet the demand for legal aid, the authorities expand the budget for establishing law firms in the public interest, and require full-time lawyers to accomplish pro-bono works, without considering the function of university-based law clinics due to some concerns about the difficulties in the quality control of the legal works conducted by clinical students. In the field of legal aid in recent years, the vital role of CLE has not been accounted for or evaluated by the authorities and policymakers.

It of course cannot be denied that there are potential risks regarding the quality of CLE works in China due to loose management and inadequate resources, among others. It is also noteworthy, however, that the integrity of the role that CLE plays in providing legal aid to the disadvantaged and the demand for practice could not only meet the increasing demand for legal aid but could also reduce the difficulty of developing and

implementing CLE in China.

3. The Need for an Institutional Designation for Clinical Legal Education in China

A law scholar used to ask the following question: “Should a law school try to teach students in a law clinic where they have to deal with problems faced by real clients?” The use of the word “clinic” prompts the analogy of trainee doctors meeting real patients in their medical clinics. It is hard to believe that a doctor could start a medical practice without ever examining a living body, or that scientists could complete their education without conducting practical tests, but this has been the norm in legal education outside North America. In China, Japan, and South Korea, such analogical questions have always been raised. As the institutional-education reforms in these three countries progress, the concept of CLE has been materialized in the legal-education environments. The three aforementioned countries developed a variety of legal clinical programs to meet the demands of cultivating legal professionals.

In the three aforementioned countries, the demand for high-level legal talents in the global market economy has motivated and inspired the reforms of legal education and the legal profession. As mentioned earlier, to some extent, the legal-education systems in these three countries are in a state of transition from the traditional lecture-oriented approach to a more professional and more skill-oriented approach. The question of how to train law students to help them master lawyering skills and to equip them with practical abilities so that they can enter the legal community smoothly has become a critical motivator of legal-education reform in each of the three countries.

Nevertheless, in China, neither the newly established J.M. program nor the other programs (e.g., the undergraduate law and LL.M. programs) are related to obtaining legal professional qualification for the purpose of taking the bar exam or showing that a law student has acquired lawyering skills. Therefore, even if law schools provide lawyering-skill-related courses in their curricula, these courses are not considered as important as the fundamental courses, such as civil and procedural law, the students’ knowledge of which is tested in the national bar examination. One critical

element of expanding lawyering skills is convincing the students that it is not the bar examination alone that is important for becoming a lawyer, but that skills training is also important. The students need to be told that better training will help boost their future career performance. In my view, the development of lawyering-skill education in China, Japan, and South Korea must rely on further institutional reforms. The Chinese legal-education policymakers have to redesign the objectives of legal education in the country to give greater importance to training lawyers, and have to include required courses in practical skills in the legal-education curricula providing doctrinal legal knowledge. The bar examination process must also consider whether to allow only law graduates to take the bar exam, and whether to consider not only knowledge but also skill when admitting law graduates to the profession.³⁹⁾

We may expect resistance to the foregoing because of the concern that the law schools in China are currently facing some internal and external difficulties in providing education on lawyering skills, such as with the CLE courses. Unlike in the U.S. and many other countries, in China and Japan, there is no established pool of experienced law practitioners to serve as professors of legal practice, and law schools have no motivation to attract experienced lawyers to join their faculty. From the perspective of student participation in live cases, a model of student practice rules has helped pave the way for students to practice law in the U.S. In China, South Korea, and Japan, however, the status of student representation of clients in CLE is uncertain. There is thus a need for clinical-practice rules. Lawyering-skill training will not develop in these three countries, especially in China, without legislation permitting students to practice law or without willingness on the part of the judges, prosecutors, attorneys, and bar associations to permit a greater number of students to participate in the process of legal representation.

Although China, Japan, and South Korea are facing difficulties in conducting experiential education, opportunities also exist because more and more legal educators in these countries are convinced that lawyering – skill education is highly effective in cultivating future attorneys. The

39) Zeng Xianyi, *Gouzhu Faxue Jiaoyu yu Sifa Kaoshi de Xinxing Hudong Guanxi*, 4 CHINA LAWYER 18, 18 (2002).

acceptance of the U.S. graduate law school model and of the CLE method also shows that some common legal – and lawyering-skills education features exist beyond the legal systems in East Asia.

We can expect that the need for better-trained lawyers will continue to increase. First, the transition of legal practice is creating a need for lawyers with high-quality legal skills. In China, Japan, and South Korea, the legal system is becoming progressively adversarial. The lawyers increasingly have to cross-examine witnesses in court and therefore have to master advocacy skills. Second, law schools and law students also demand more lawyering education. The rapid development of legal education in the three countries has caused some chaos, particularly harsh competition. Only law schools that can provide high-quality education are likely to survive, and only law students with high professional ability are likely to obtain employment opportunities as lawyers in the future. Therefore, the market mechanisms will likely affect how the three countries provide legal education in the future. Lastly, private organizations and law firms are starting to explore the new way of providing lawyering-skills education.

There is no need to reinvent the wheel in the world. This is true for the legal educators in China, Japan, and South Korea; they can simply transfer the U.S.-inspired legal education and methods to their respective countries. The practice of CLE in China shows that it is possible to apply the clinical teaching method in a context influenced by a civil-law tradition. However, to attain success in the use of this method, it is essential to implement the corresponding institutional evolution internally and externally. In this regard, China, Japan, and South Korea are facing similar but also varied challenges and problems. As such, it is important for the legal educators in China, Japan, and South Korea to communicate and collaborate with each other.

