

# Note from the Field

## Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice

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*Seeking to play a greater role in an evolving world order, China faces pressure to conform to international legal norms and the rule of law. Strengthening the legal culture in China includes exploring new ways to train Chinese law students. Against this background of cultural and pedagogical change, clinical legal education has begun to take root in Chinese law schools. This Note from the Field explores the potential for clinical legal education to motivate students and scholars in China to push the boundaries of law, making it a tool of social justice for the average Chinese citizen. Drawing on her experiences as a clinical instructor in Chinese law schools, Pamela Phan argues that the American model of clinical legal education and its “social justice” tradition can play a significant role in the development of Chinese legal education, in turn strengthening legal culture and reform in China.*

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## I. INTRODUCTION

The city of Wuhan lies along the Yangtze River, in the heart of central China.<sup>1</sup> Once as prosperous a trading port as Shanghai, and still one of China's largest cities, its development has been neglected in the central government's rush to expand and cultivate the coastal regions. Now a city of second-rate status, Wuhan continues to struggle with the tensions and gaps between rich and poor, which pervade its social fabric and lead to more frequent clashes on its city streets than in its courtrooms.

I confronted this reality for the first time as I observed a client interview in progress at Wuhan University's *Shehui Ruozhe Quanli Baohu Zhongxin* (the Center for Protection of Rights of Disadvantaged Citizens, or "Wuhan Center")<sup>2</sup> during the spring semester of 2004. Two female students from the legal clinic at Wuhan University (*Wuda*) were conducting an initial client interview. They sat in the casual clothing of today's Chinese youth, part of a new generation of "only children"<sup>3</sup> regarded by their own society as sheltered and spoiled. A group of five older Wuhan natives (only one of whom was female) huddled around them, speaking in animated, heavily accented tones at times incomprehensible to the students.

The clients' hands and faces were deeply tanned, coarse, and etched with lines. They had come from a specially designated development zone on the outskirts of the city<sup>4</sup> and wanted to see if it was possible to sue the local land and construction bureau over a property dispute. Despite receiving notice of the impending demolition over a year before their arrival as clients at the Wuhan Center, they were never afforded the opportunity to agree to or even negotiate compensation and relocation terms before the agency authorized removal of their homes by force and demolition.<sup>5</sup>

As the case proceeded, the students complained frequently about the daily calls that the clients made to their cell phones, the hours that they

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1. For the purposes of this Article, "China" refers to the People's Republic of China (*Zhonghua Renmin Gongheguo*) and to developments on the mainland only, without consideration of Taiwan or Hong Kong.

2. The Wuhan Center is a university-affiliated and administered legal aid service provider. It occupies an important position in the development of civil society in China, having opened in May 1992 as the nation's first nongovernmental legal aid center. See WUHAN UNIVERSITY, BROCHURE OF THE CENTER FOR PROTECTION OF RIGHTS OF DISADVANTAGED CITIZENS (2002) [hereinafter CENTER BROCHURE]; see also C. David Lee, *Legal Reform in China: A Role for Nongovernmental Organizations*, 25 YALE J. INT'L L. 363, 384 (2000).

3. Today's undergraduate and master's degree students are the earliest offspring of China's one-child-per-family policy, begun in the late 1970s.

4. As part of the economic reform effort, the Chinese central government has set aside certain portions of cities, or entire cities themselves, as "development zones." As farmland is seized and turned into areas for urban and industrial growth, the prioritizing of developers' rights over those of the local population has prompted litigation of the type seen in the Spring 2004 legal clinic at *Wuda*.

5. See *Xingzheng Qisuzhuang* [Administrative Bill of Complaint], Apr. 26, 2004 (on file with author). For reasons of confidentiality, details related to client and property location names have been omitted.

spent online and at the Wuhan Center researching (sometimes fruitlessly) the statutes that might be relevant to their case, and the difficulties of formulating arguments that would be effective in court. The clients also complained—about the inability of the students to understand their goals and the ineffectiveness of the law in resolving their problems.

As China opens up and turns increasingly outward during the new millennium, it is under an almost microscopic scrutiny. In its Olympic bid to bring the world to its doorstep by 2008, the nation has attracted the eyes and ears of economic and political rivals worldwide. A by-product of China's desire to emerge as a significant player in today's new international world order has been mounting pressure from other countries—including the United States—to conform to the standards of the international community. This pressure includes continuing calls for an overhaul of China's existing legal institutions, to ensure China's smooth transition into the community of nations that promote the rule of law.

As a result of these pressures, there has been a loosening of controls on at least two fronts, making possible the work that I do in China as well as the writing of this Article.<sup>6</sup> More and more American lawyers are now entering Chinese soil, Chinese classrooms, and even Chinese courtrooms, ready and eager to bring innovative methodologies to the teaching and training of a new generation of Chinese lawyers, procurators,<sup>7</sup> and judges. At the same time, the gradual growth of nongovernmental organizations ("NGOs") has allowed for ordinary citizens to venture into social spheres that until now were dominated by organs of the state.

By 1999, such developments created an opening for the introduction of clinical education in China at the law school level.<sup>8</sup> This effort has been motivated by a strong desire to change how students learn and think about the law, aiming to expose them to legal aid work and to give them the tools with which to apply theories learned in the traditional classroom to everyday realities.<sup>9</sup> Clinical legal education has also provided a

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6. This paper grew out of my work as a Yale-China law fellow, co-teaching the clinical course and assisting in the supervision of cases handled by clinic students at both Wuhan University and Northwest University of Political Science and Law.

7. In general, a procurator's role is analogous to that of an American prosecutor. Chinese procurators are modeled after the Soviet legal system, from which Chinese Communists borrowed heavily to develop their own legal system beginning in 1927. See Charles Chao Liu, Note, *China's Lawyer System: Dawning Upon the World Through a Torturous Process*, 23 WHITTIER L. REV. 1037, 1046-50 (2002).

8. Prior to the introduction of the clinical model, traditional Chinese legal education consisted largely of straight lecture by the professor and rote memorization by the students. Part II.B., *infra*, offers a more detailed analysis of the development of legal education in China since the turn of the 21st century.

9. Jerome Frank of Yale Law School and John Saeger Bradway of Duke Law School, credited as two of the original pioneers of clinical legal education in the United States, encouraged this methodology in an effort to bridge an educational gap between theory and practice. See generally Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 TENN. L. REV. 1099, 1100-05 (1997) [hereinafter MacCrate]. Similar to medical training, clinical legal methodology envisions a system whereby students work directly with those in need of professional services, diagnosing and dispensing solutions as part of their own learning process. *Id.* at 1103-06. For a more detailed discussion of the philosophy behind

battleground for some of China's most socially conscious scholars to examine and advance the quest of the nation's poor and disadvantaged, working alongside students to strengthen the power of law as a tool of the average citizen.

This Article focuses on the appropriateness of this type of "social justice" discourse, so similar to the discourse that dominated the United States during the 1960s, in discussions regarding the reform of Chinese legal education. Part II of this Article argues that there is a crucial place for the American model of clinical legal education in the development of law and the legal profession in China, and in the folds of China's educational system. After examining the meaning of "social justice" and the pedagogical aims of "justice-oriented" clinics, this Article moves on in Part III to contemplate how these clinical ideals might be articulated to establish a culture of law in China.

Part IV of this Article focuses concretely on the development of Chinese clinical models and methodologies, illuminating what these models try to achieve and what type of legal professionals they endeavor to train. This part provides support for the argument that law school clinics are a legitimate and important forum for teaching and effecting social justice in China. While Part V recognizes and confronts the difficulties of using the reform of legal education to reform society at large, it nonetheless concludes that in China, reform of the legal education system is a preliminary and necessary step towards legal reform generally.

## II. RE-CONCEPTUALIZING THE ROLE OF THE LAW AND CHINESE LEGAL EDUCATION

### A. China in the Shadow of Its Own Past

The push of historical forces and pull of modernization have done much to open the door, in just the past five years, to the development of a clinical legal education model in China. In part, this has resulted from the Chinese leadership's unprecedented focus on the training of more competent legal professionals,<sup>10</sup> capable of responding to the needs of the average Chinese citizen. The leadership has sought to establish minimum

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clinical legal education, see Jerome Frank, *A Plea for Lawyer-Schools*, 56 YALE L.J. 1303 (1947); and Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PENN. L. REV. 907 (1933).

10. This Article does not discuss the training of judges, which takes place outside the traditional Chinese law school setting. Although it is common in the American system for judges to train and practice as lawyers before joining the bench, this has not been the case in China. For a thorough analysis of the organization, role, and reform of the courts in China see STANLEY B. LUBMAN, *BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO 250-97* (1999) [hereinafter LUBMAN]. As the training of judges has become increasingly linked to the stability of the Chinese legal system, Chinese law schools and legal clinics are beginning to consider ways in which to incorporate judicial training. However, my experiences in working with various Chinese legal clinics have thus far failed to include the design of content specifically for judicial training.

standards to govern both the judiciary and the legal profession<sup>11</sup> in order to instill in the public some faith in the ability of the legal system to address their concerns.<sup>12</sup>

For thousands of years, the Chinese lived not under the rule of law but under the rule of man—"in particular, one man, the Emperor, whose word and whim were law."<sup>13</sup> In a feudalistic Chinese society under the rule of emperors and warlords, traditional teachings placed a high premium on the supremacy of the sovereign's and state's interests, at the expense of the individual's interests.<sup>14</sup> The legal system that developed under the Chinese Communist Party ("CCP", or the "Party") continued to emphasize the societal over the jural model of law, upholding law as a sword of the state rather than as a scale for balancing personal safeguards against the social order.<sup>15</sup> Despite initial calls for the independent exercise of judicial power, "subject only to law,"<sup>16</sup> the development of China's legal system suffered

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11. Standards established by the Interim Regulations on Lawyers and the succeeding Law on Lawyers, for example, aim to provide basic educational requirements and professional qualifications for lawyers.

12. True reform typically involves "cultivating a legal culture whereby obedience to the law becomes largely voluntary instead of coerced and whereby such obedience represents an affirmation of the legal regime." See Lee, *supra* note 2, at 374. As evidenced through the interactions with clients in the legal clinic at Wuda, there is clearly much work to be done in establishing this legal culture in China. See discussion *infra* Part V.C.

13. JUNE SHIH, FORD FOUNDATION, FROM THE RULE OF MAN TO THE RULE OF LAW, ¶ 12 (2003) available at [http://www.fordfound.org/publications/ff\\_report/view\\_ff\\_report\\_detail.cfm?report\\_index=431](http://www.fordfound.org/publications/ff_report/view_ff_report_detail.cfm?report_index=431) (last visited April 14, 2004); see also Wang Chenguang, *Introduction: An Emerging Legal System*, in INTRODUCTION TO CHINESE LAW 3-8 (Wang Chenguang & Zhang Xianchu eds., 1997) (noting that in the Chinese feudal totalitarian system, any "utterance of the emperor" was taken as law).

14. See Yi Sheng, *A Promise Unfulfilled: The Impact of China's 1996 Criminal-Procedure Reform on China's Criminal Defense Lawyers' Role at the Pretrial Stage (Part 2)*, 5 PERSPECTIVES 2-3, Mar. 31, 2004, [http://www.oycf.org/Perspectives/24\\_033104/3a\\_ShengYi.pdf](http://www.oycf.org/Perspectives/24_033104/3a_ShengYi.pdf).

15. See Liu, *supra* note 7, at 1050. The same mostly holds true today. Despite the Constitution's status as the highest law of the land, there is a rich body of literature questioning whether it has any real legal effect. Courts are not allowed to rely directly on constitutional provisions in deciding cases, nor can they review legislation to determine its constitutionality. Furthermore, since China is a civil law society, the legislature, rather than courts, is the principal source of law. See, e.g., Cai Dingjian, *Constitutional Supervision and Interpretation in the People's Republic of China*, 9 J. CHINESE L. 219 (1995); Peter Howard Corne, *Creation and Application of Law in the PRC*, 50 AM. J. COMP. L. 369 (2002); Michael Dowdle, *The Constitutional Development and Operation of the NPC*, 11 COLUM. J. ASIAN L. 1 (1997); Paul Gewirtz, *Approaches to Constitutional Interpretation: Comparative Constitutionalism and Chinese Characteristics*, 31 HONG KONG J. L. 200 (2001); M. Ulric Killion, *Post-WTO China and Independent Judicial Review*, 26 HOUS. J. INT'L L. 507 (2004).

16. See Liu, *supra* note 7, at 1048 (quoting NANPING LIU, JUDICIAL INTERPRETATION ON CHINA 7-8 (1997)). The independence of the judiciary is a matter of particular concern to scholars of Chinese law. One scholar notes that throughout the 1980s, most judges came to their positions through transfer from Party and military posts. See LUBMAN, *supra* note 10, at 253. As a result, judges are more often regarded as "soldier[s] of the state," with a high emphasis on their dedication and ability to fight "in support of [China] on the civilian front," rather than on their legal experience or knowledge. *Id.* at 256. Few, if any, have received formal law school training prior to taking their positions on the bench. See Yi, *supra* note 14, at 14.

major setbacks well into the Party's rise to dominance.<sup>17</sup>

After the decade of chaos under the Cultural Revolution (*Zhongguo Wenhua Da Geming*), which dismantled nearly all of the legal infrastructure in China,<sup>18</sup> the tide began to turn in 1978. With Deng Xiaoping and his "Four Modernizations" program at the helm of the Party, the "rule of law" made its way back into Chinese discourse as part of an overall plan to undo the wrongs of the past two decades and win back popular confidence<sup>19</sup> (as well as to "check against future social upheavals").<sup>20</sup> In addition to reinstalling the nation's legal infrastructure, officially reopening law schools, and reinstating the Ministry of Justice ("MOJ") in 1979,<sup>21</sup> the Party established a 1978 Constitution,<sup>22</sup> among other laws, to lay the legal foundation for the formal rehabilitation of lawyers as a professional group.<sup>23</sup>

With rapid economic and social reform at the forefront of domestic policy, Deng and successive Party leaders have taken note of how indispensable a well-established legal system is to modernization efforts in China.<sup>24</sup> Expressing concern over the severe shortage of formally trained

17. Beginning in 1957, with the launching of an "Anti-Rightist Movement" (*Fan Youpai Yundong*), law and the legal profession were attacked in part due to an imputed association with capitalist values. One scholar notes that during this period, "the symbolic values of a Westernized legal system, which was the main purpose for legal reforms in the earlier decades, became the very ideological foe that the Communist regime sought to eradicate." Yi, *supra* note 14, at 4.

18. Between 1967 and 1976, law schools (including the one at *Wuda*) closed down, the procuratorial system completely dissolved, and most legal professionals were forced out of their positions and into mandatory "reeducation." Liu, *supra* note 7, at 1052-53.

19. *Id.* at 1056.

20. SHIH, *supra* note 13, ¶ 14.

21. Liu, *supra* note 7, at 1055.

22. The 1978 Constitution marked a shift from the radical ideology of the Cultural Revolution, but perhaps lacked the provisions necessary for true modernization as envisioned by Deng. A 1982 Constitution was later adopted to more explicitly emphasize production and economic development, thus laying the framework for accelerated reform during the Deng era. See Jonas Alsen, *An Introduction to Chinese Property Law*, 20 MD. J. INT'L L. & TRADE 1, 8 (1996) (citing IAN HAYNE, DEVELOPMENT IMPERATIVES AND THE "UNITARY STATE" IN POST-MAO CHINESE LEGAL RIGHTS 72 (1994) (unpublished honor's dissertation, Griffith Uni., Austl.)).

23. See Liu, *supra* note 7, at 1055-56. Liu's piece reflects his direct experience with the pendulum-like swings of China's legal development. His father was among the first group of Chinese procurators during the 1950s, was accused as a "rightist" in 1957, and barred from practicing law throughout the 1960s and 1970s. The chaos during these two decades resulted in virtually no change in the number of lawyers practicing in China. Compare *Provisional Regulations on Lawyers Adopted*, XINHUA GENERAL OVERSEAS NEWS SERV., Aug. 26, 1980 (reporting that there were 2,300 lawyers and 250 legal advisory offices in 1980) with *China Training More Lawyers*, XINHUA GENERAL OVERSEAS NEWS SERV., May 22, 1980 (noting that there were 2,800 lawyers and over 800 legal advisory offices in 1957); see also Yi, *supra* note 14, at 4.

24. Former Premier Zhu Rongji pointed out that both the building of a socialist country ruled by law and the new environment of reform and development in China call for comprehensive and effective promotion of administration by law. See *Zhu at Meeting on Administration by Law*, BEIJING XINHUA IN ENGLISH, July 6, 1999. Academics such as Professor Chen Duanhong of Peking University have also been vocal in advocating this point of view, stressing that Chinese legal reform is two-dimensional and includes both economic liberalization and an embracing of the rule of law, steps that may be separate but are nonetheless interdependent. See Chen Duanhong, Remarks on Legal Reform and

lawyers, the Chinese leadership increased funding for legal education in the new millennium in order to provide for more lawyers.<sup>25</sup> As a result of these efforts, the *People's Daily* (*Renmin Ribao*) reported last year that China now has 102,000 lawyers servicing its population of roughly 1.3 billion people, a forty-fold increase over just twenty-five years.<sup>26</sup> As early as August 1980, the government moved to establish uniform standards for this burgeoning new profession, promulgating the Interim Regulations on Lawyers ("Interim Regulations").<sup>27</sup>

Despite these attempts to reconstruct the Chinese legal system, government policies nonetheless remain reminiscent of efforts throughout China's history, dating as far back as the imperial era, to emphasize virtue, de-emphasize law, and reconcile the interests of the individual in a way that is harmonious with those of the state.<sup>28</sup> Even under the Interim Regulations, the government characterized lawyers as mere "legal workers of the state,"<sup>29</sup> employed in state-owned law advisory offices reliant upon the state for financial support.<sup>30</sup> It identified a lawyer's mission as:

provid[ing] legal assistance to government organs, work units, social groups, people's communes, and citizens in order to ensure the correct implementation of the law, protect the interests of the state and collective and the legal rights and interests of citizens.<sup>31</sup>

Professor Chen Duanhong of Peking University ("*Beida*") is thus justified in arguing that Confucianism and communist ideology have overwhelmed the rule of law. Even as the nation struggles "to demonstrate to the world that it now has a legal system consistent with international legal standards,"<sup>32</sup> long-honored feudalistic norms continue to haunt the

Administrative Law Scholarship in P.R. China (1999) (on file with Paul Gewirtz, Yale University) [hereinafter Chen].

25. See, e.g., Liu, *supra* note 7, at 1057-58. In March 1980, Deng Xiaoping stressed the need for at least 500,000 lawyers in the near future. *Id.* The MOJ in recent years has similarly focused on the sheer manpower required to move China into a fully functioning market economy, calling for some 300,000 lawyers, along with 300,000 accountants and 300,000 tax collectors. See SHIH, *supra* note 13, ¶ 14.

26. See *Law School Graduates Extend Legal Aid*, PEOPLE'S DAILY ONLINE, Mar. 25, 2004, ¶ 9 [http://english.peopledaily.com.cn/200403/25/print20040325\\_138429.html](http://english.peopledaily.com.cn/200403/25/print20040325_138429.html) (last visited May 27, 2004) [hereinafter *Graduates*]. It is important to note that this number still translates into less than one lawyer for every 10,000 people (compared to one lawyer for every 300 people in America). See SHIH, *supra* note 13, ¶ 16. Virtually no lawyers operate in the countryside, where the majority of Chinese live, *id.*, leaving the citizens of about 206 counties without any access to representation at all. See *Graduates*, ¶ 9.

27. Zhonghua Renmin Gongheguo Lüshi Zanxing Tiaoli [The People's Republic of China Interim Regulations on Lawyers], effective Jan. 1, 1982, available at [www.qis.net/chinalaw/lawtran1.htm](http://www.qis.net/chinalaw/lawtran1.htm) [hereinafter *Interim Regulations*].

28. See Lan Cao, "Rule of Law" in China: Introduction, 11 WM. & MARY BILL RTS. J. 539, 542 (2003).

29. Interim Regulations, *supra* note 27, art. 1.

30. See LAWYERS COMMITTEE FOR HUMAN RIGHTS, LAWYERS IN CHINA: OBSTACLES TO INDEPENDENCE AND THE DEFENSE OF RIGHTS 18 (1998) [hereinafter LCHR].

31. Interim Regulations, *supra* note 27, art.1.

32. Yi, *supra* note 14, at 1.

Chinese and exert a strong influence over modern China's vision for law and the legal profession.<sup>33</sup> China's leaders are under great pressure to redefine and respect the "rule of law" in a way that does not merely perpetuate the unassailable nature of past regimes.<sup>34</sup> Chen has thus urged that the legal academy<sup>35</sup> should step in to offer additional assistance in the development and advancement of the rule of law in China.<sup>36</sup>

Resistance to a re-conceptualization of the role of the legal system has created a crisis of governance in China,<sup>37</sup> which has led some top officials to declare recently that "the 'life and death of the [P]arty' rests on 'improving governance.'"<sup>38</sup> To lay a solid foundation for the building of China's

33. *See id.* at 4. The claim has been made that, "[t]o a certain extent, the [Chinese] government still bears a strong resemblance to a feudalistic bureaucracy." *Id.* at 7. This claim is supported by reference to the sole leadership of the CCP, which is included in the "Four Cardinal Principles" put forward by Deng Xiaoping in 1979 and incorporated as basic principles into the Chinese constitution. *See id.* Moreover, Chinese governmental branches are typically swollen with middle-rank officials, who merely pass on the orders of their superiors, and initiatives proposed at the lower levels must go through a mandatory process of review along the official ladder before they can receive approval from the top ranks. *Id.*

34. Professor Randall Peerenboom of the University of California at Los Angeles notes the struggle among Chinese scholars to reconcile the supremacy of the law with the leading role of the Party, providing an ideological interpretation of "rule of law" that is satisfactory to the governing regime. Randall Peerenboom, *Globalization, Path Dependency and the Limits of Law: Administrative Law Reform and Rule of Law in the People's Republic of China*, 19 BERKELEY J. INT'L L. 161, n.20 (2001). In 1995, former President Jiang Zemin stressed the importance of "ruling the country according to law" (*yifa zhiguo*), and in March 1999, both this term and the term "rule-of-law state" received constitutional recognition by the National People's Congress in its 1999 Amendments to the Constitution. However, by referring to the term "*fazhi*," which more accurately translates into "ruled by law," China's leaders continue to emphasize a legal system used primarily as an instrument for the state to control the masses and establish order. *See* Lan, *supra* note 28, at 542; Liu, *supra* note 7, at 1079. This differs from the American concept of the "rule of law," which instead implies legalization of democracy in a way that allows law to serve as the foundation for the whole of society, placing limitations on the government as well as the citizenry. *See id.*

35. Legal scholars in China tend to take on significant government advisory roles, frequently taking part in the process of legal drafting. It is common for the central government to invite scholars to help prepare the initial drafts of revised laws before they are submitted to the Legislative Affairs Office of China's State Council for review and further revision. *See, e.g.,* Liu, *supra* note 7, at 1062; Jia Hepeng, *Nation's Land Management System Under Reform*, CHINA BUS. WKLY., Jan. 6, 2004, ¶¶ 11-12, available at [http://www.chinadaily.com.cn/en/doc/2004-01/06/content\\_297063.htm](http://www.chinadaily.com.cn/en/doc/2004-01/06/content_297063.htm). Legal scholars also provide consultation services to courts and help coordinate legal training programs for local judges and procurators. Liu, *supra* note 7, at 1062.

36. *See* Chen, *supra* note 24.

37. Corruption is rampant throughout China, worsening as Party functionaries grow increasingly bold and amass greater wealth and power. This corruption has increased division and animosity between public officials and the public they are meant to serve. *See* Joseph Kahn, *China's 'Haves' Stir the 'Have Nots' to Violence*, N.Y. TIMES ON THE WEB, Dec. 31, 2004, [http://www.nytimes.com/2004/12/31/international/asia/31china.html?ei=5094&en=318b5fd113646061&hp=&ex=1104469200&partner=homepage&pagewanted=print&position=\[hereinafter China's Have Nots\]](http://www.nytimes.com/2004/12/31/international/asia/31china.html?ei=5094&en=318b5fd113646061&hp=&ex=1104469200&partner=homepage&pagewanted=print&position=[hereinafter China's Have Nots]).

38. *Id.* at ¶ 12. Some further argue that "[l]egal legitimation . . . only occurs where law operates as an ideology without the need for coercion." Edward J. Epstein, *Law and Legitimation in Post-Mao China*, in DOMESTIC LAW REFORMS IN POST-MAO CHINA 20 (Pitman B. Potter ed., 1994).

future, Party leaders are well-advised to follow the blueprint established by Professor John M. Burman at the University of Wyoming, who counseled (in relation to Russia) that:

First, [a country ruled by law] must have sound laws. Second, [it] must have an independent judiciary, which is allowed to interpret and enforce those laws. Third, [the country's] lawyers must become something more than fighters for communism, or any other '-ism.' They must become skilled professionals who are respected by the judiciary, their clients, and society, in general. Fourth, and most difficult, *a culture of law must take root and grow in [the country].*<sup>39</sup>

Under such rules, the leadership must establish and submit to a sound system of laws, within a sound legal culture, if China is to be the "rule of law" country it aspires to be.

Perhaps the most fundamental precondition to establishing the rule of law is Professor Burman's concept of a "culture of law." A culture of law can be said to exist where ordinary citizens are able to trust in the law, appealing to legal means for resolving their grievances. Without such widespread legal consciousness, any efforts to develop a sound system of laws will ultimately fail and laws that exist on the nation's books will remain no more than empty words, both in their application and in the way they are regarded by the public. Absent a culture of law, the rule of law may be able to take hold in theory, but will suffer a crisis of legitimacy in practice.

## B. The Rise of a Chinese Clinical Model

China's current crisis in governance was readily apparent in the clinic case that I observed. One of the greatest challenges that the students faced was learning how to explain to their clients the significance of the law and proceeding according to law, in an environment and system in which those affected have lost faith in the safeguards supposedly provided by law.<sup>40</sup> In past years, as the emphasis on lawyers serving society has increasingly focused on the provision of legal services to China's poor and disadvantaged, the remarkably swift growth of "legal aid" (*faliu yuanzhu*)<sup>41</sup>

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39. John M. Burman, *The Role of Clinical Legal Education in Developing the Rule of Law in Russia*, 2 WYO. L. REV. 89, 100 (2002) (emphasis added).

40. The clients reported that the very governmental entities charged with upholding and implementing the law in their case had subverted it by hiring thugs to physically attack and prevent them from appealing their complaints to the central government in Beijing. See Collected Notes and Emails of the Author, Spring 2004 (on file with author)[hereinafter Collected Notes].

41. The term "legal aid" was virtually non-existent in China before 1993. See Benjamin L. Liebman, *Legal Aid and Public Interest Law in China*, 34 TEX. INT'L L.J. 211, 214 (1999). The development of legal aid and public interest law in China is a massive topic, well beyond the

has shifted a significant portion of this burden to law schools with clinical programs.

The urgency of fulfilling the nation's legal aid needs is very real. In 1996, the central government promulgated a Law on Lawyers<sup>42</sup> to substitute for the previous Interim Regulations, for the first time defining lawyers as those "providing legal services to the public," rather than just "state legal workers."<sup>43</sup> This new law imposes on lawyers a mandatory obligation to engage in legal aid.<sup>44</sup> The government subsequently authorized, in December 1996, the establishment of a Legal Aid Center operated by the MOJ and charged with overseeing legal aid programs.<sup>45</sup> In 2003 alone, China's leadership invested 150 million yuan (roughly \$18.14 million U.S.) in the provision of legal aid services, but Legal Aid Center Director Deng Jiaming continues to report that this is merely one-fifth of the amount needed.<sup>46</sup>

With state resources thus stretched, a gap has been created for the entry of clinical legal education into the Chinese law school curriculum. The clinical model poses a tremendous challenge to students schooled in a tradition of learning that leaves them ill-equipped to handle legal aid cases. At the heart of the provision of legal aid services lies the practice of poverty law. A poverty law practice requires students who are typically from wealthier classes and bigger cities to understand and work closely with clients who may be far removed from such centers of privilege. However, because Chinese legal education typically begins at the undergraduate level,<sup>47</sup> these students often lack prior exposure to the types of labor, property, or marital disputes that they must now help to resolve.

Moreover, the traditional education that Chinese students of law receive consists mostly of large lecture courses "devoted chiefly to the exposition of statutes and related expressions of legal doctrine."<sup>48</sup> Students

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scope of this Article. *See id.*; Lee, *supra* note 2.

42. Zhonghua Renmin Gongheguo Lüshi Fa [The People's Republic of China Law on Lawyers], effective Jan. 1, 1997, available at <http://www.qis.net/chinalaw/prclaw58.htm> [hereinafter Law on Lawyers].

43. *See Liu, supra* note 7, at 1074; LCHR, *supra* note 30, at 81. It is worth noting that if the term "public" refers only to the state, the Interim Regulations' characterization of the Chinese lawyer's role would not have been significantly altered.

44. Law on Lawyers, *supra* note 42, ch. 6., art.42.

45. *See Liebman, supra* note 41, at 222.

46. *See Graduates, supra* note 26, ¶ 7.

47. University-level programs are provided by colleges of political science and law (*zhengfa xueyuan*), as well as by law departments or schools within universities. The former were established for the training of procurators and court personnel, as well as public security and lawyers. *See Liu, supra* note 7, at 1063. Upon graduation from the standard four-year undergraduate program (*benke*), students earn a Bachelor of Laws (*Faxue Xueshi*). One may also begin the study of law at the graduate level, although most Chinese institutions do not enroll graduate students in their clinical courses. The three other categories of Chinese students working towards law degrees include: (1) candidates for the LL.M., or master's degree in law (*yanjiu sheng*), which will be a two-year program beginning with the 2004-2005 class; (2) candidates for the Ph.D. (*boshi sheng*), which will be a four-year program beginning with the 2004-2005 class; and (3) candidates for the J.M. (*shuoshi sheng*), an initial degree in law for those who have earned undergraduate degrees in other fields.

48. *See WILLIAM P. ALFORD & FANG LIUFANG, LEGAL TRAINING AND EDUCATION IN THE*

and faculty have few opportunities to engage one another interactively,<sup>49</sup> and thus, students lack opportunities to question or think critically about what they are learning. Reports and studies on legal education in China have criticized the traditional emphasis placed on memorization of black-letter law over critical reasoning and the ability to analyze and solve problems,<sup>50</sup> holding it “akin to technology transfer, the point of which was to impart as much information as possible in as short a period as possible.”<sup>51</sup>

To the extent that anything practical is incorporated into the law school curriculum, law school students are theoretically required to spend a two- or three-month externship (*shixi*) period in a judicial office or law firm.<sup>52</sup> The reality of this system is that by implementing it during the student’s last semester of study (when fourth-year undergraduates are particularly anxious about their graduate theses and prospects for finding a job) and setting no clear standards for how the externships should be conducted, the two- or three-month *shixi* period often becomes a mere break for the students from their ordinarily frenzied class schedules.<sup>53</sup>

This traditional style of educating is in keeping not only with the nature of legal education in many other civil law jurisdictions,<sup>54</sup> but also with the nature of Chinese education in general.<sup>55</sup> However, it simplifies the practice of law in a way that leaves Chinese students believing in mastery of black-letter law as the most important lawyering skill.<sup>56</sup>

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1990S: AN OVERVIEW AND ASSESSMENT OF CHINA’S NEEDS 16 (1994) [hereinafter ALFORD & FANG].

49. *Id.* at 17.

50. See, e.g., *id.* at 16; LCHR, *supra* note 30, at 65.

51. ALFORD & FANG, *supra* note 48, at 39.

52. This externship is incorporated into the Wuda law school curriculum as a required (*bixiu*), rather than elective (*xuanxiu*), course.

53. *Will It Stimulate Change in Tomorrow’s Lawyer: Clinical Legal Education in China* 16-17 [hereinafter *Will It Stimulate Change*].

54. In Romania, law is usually a student’s first and only degree. See Rodney J. Uphoff, *Why In-House Live Client Clinics Won’t Work in Romania: Confessions of a Clinician Educator*, 6 CLINICAL L. REV. 315, 323 (1999). Romanian students are rarely required to write, do reading assignments, or actively participate in class, but are instead “typically spoon-fed massive amounts of information in mind numbing lectures.” *Id.* at 325. Similarly, legal education in Chile generally consists of large lecture classes of 150 to 500 students who take notes, are assigned few to no texts, and do not participate in class. See Richard J. Wilson, *Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South*, 8 CLINICAL L. REV. 515, 557 (2002).

55. Beginning in elementary school, Chinese students are expected to learn through a system the Chinese call “stuffing the duck” (*tianya shi*), cramming facts, figures, and theories into hours of classroom lectures, followed by hours of memorization at home. See SHIH, *supra* note 13, ¶ 7; ALFORD & FANG, *supra* note 48, at 39. Wuda’s law school undergraduates report that it is typical for them to take six to eight courses per semester, sitting in on at least fifteen to twenty hours of class per week.

56. In a survey of students from the Spring 2004 legal clinic at Wuda, a number of students commented on their belief, prior to participation in the clinic, that the most effective lawyers were the ones who had the most knowledge of the laws relevant to their case. After a semester of clinic, the same students later commented that the practice of law is in fact much more complicated than their initial impressions, and that an effective lawyer must master many other skills aside from the ability to remember and regurgitate laws.

Although the Law on Lawyers requires much more than mere mastery of black-letter law, authorizing the issuance of a practicing certificate only to those who have apprenticed with a law firm for over one year,<sup>57</sup> it is no surprise that judges continue to complain about the low quality of lawyers.<sup>58</sup>

Remarkably, it is possible to qualify as a lawyer in China without even a college education in law or a college education at all, and without passing the national bar examination.<sup>59</sup> Even those graduates who study at the very top law schools in China are reported to be “much less prepared to assume responsibilities as practicing lawyers than their counterparts from foreign legal systems.”<sup>60</sup> Despite being an import from the American system, then, clinical legal education ultimately offers great promise for better preparing legal professionals who can more adequately handle the questions and difficulties brought about by China’s development in the 21st century.

In September 2000, as part of a Ford Foundation initiative,<sup>61</sup> clinical legal education was launched in classrooms at seven different law schools located in Beijing, Wuhan, and Shanghai.<sup>62</sup> By 2002, the effort had spread

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57. The Law on Lawyers establishes a two-step process for practicing law in China: first qualification, and then issuance of a practicing certificate. See LCHR, *supra* note 30, at 62-63 (citing Lawyers’ Practicing Certificate Administration Measures, issued November 25, 1996). There are also a number of other requirements for certification, including support for the Constitution and proof of good conduct. *Id.*

58. See *Will It Stimulate Change*, *supra* note 53, at 16. In the United States, the organized private bar and judiciary voiced complaints of a similar nature, lamenting the absence of effective skills training at American law schools and the resulting unpreparedness of law school graduates for the practice of law. See Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1467 (1998). Chief Justice Warren Burger of the Supreme Court was particularly vocal in his criticisms, noting that during the 1960s and 1970s, traditional law school methodologies were causing students to fail in the basic duty of providing society with people-oriented and problem-oriented counselors and advocates. See Warren E. Burger, *Some Further Reflections on The Adequacy of Trial Counsel*, 49 FORDHAM L. REV. 1, 5 (1980). Former ABA President Robert MacCrate notes that as early as the 1950s, a general recognition emerged within the legal profession that fundamental reform needed to start at the law school level first. See generally MacCrate, *supra* note 9.

59. LCHR, *supra* note 30, at 65. See also Law on Lawyers, *supra* note 42, arts. 6-7. The MOJ issued regulations subsequent to promulgation of the Law on Lawyers, “confirming that it is possible to qualify by completing just a two- or three-year course of study, which may be through self-study, adult education programs, correspondence courses, part-time universities or full-time colleges or universities.” See LCHR, *supra* note 30, at 61-62.

60. *Id.* at 65.

61. The Ford Foundation also contributed significantly to the growth of clinical legal education in the United States during the 1960s.

62. These schools included: Peking University, Tsinghua University, and Renmin University of China in Beijing; Wuhan University and South Central University of Economics, Political Science and Law in Wuhan; and Fudan University and East China University of Political Science and Law in Shanghai. See generally CHINESE LAW SOCIETY, COMMITTEE ON LEGAL EDUCATION, COMMITTEE OF CHINESE CLINICAL LEGAL EDUCATORS, BROCHURE ON CLINICAL LEGAL EDUCATION (2003) [hereinafter CCCLE BROCHURE]; COMMITTEE OF CHINESE CLINICAL LEGAL EDUCATORS, BRIEF INTRODUCTION: LEGAL CLINIC EDUCATION IN CHINESE UNIVERSITIES (2003), available at <http://www.cliniclawn.cn> [hereinafter CLINIC INTRODUCTION]. It has been noted that this initiative was made possible by cooperation between the Chinese government, which “views law school clinical programs as a way to alleviate the unmet need for legal services,” and the law schools themselves, which view such programs as a way to reinvigorate teaching.

to four additional campuses located in other parts of the nation,<sup>63</sup> and shortly thereafter the China Law Society gave its approval for the founding of a Committee of Chinese Clinical Legal Educators ("CCCLE"), a nonprofit academic body comprised of clinical legal educators from all over China. To date, formal membership in the CCCLE has expanded to include a total of thirteen institutions.<sup>64</sup>

CCCLE focuses on gaps in the traditional model of legal education to advocate for a more participatory, interactive (*hudong*) clinical model. Emphasizing the need to research "how to improve students' capacity to practice while they yet continue to cling to theory"<sup>65</sup> and working closely with clinicians from the United States through workshops and other exchanges,<sup>66</sup> China's early clinicians have established a vision for Chinese clinical legal education whereby "law students, under the guidance of teachers qualified to be attorneys at law, provide legal advisory services for those in need, 'diagnose' their problems and give 'prescriptions' to furnish them with methods of resolution, and legal aid. This model combines theoretic study with legal practice. . . ."<sup>67</sup> Much like the original American model, it applies the principles of clinical medical studies to better apprentice legal professionals<sup>68</sup> and incorporates as a significant goal a more hands-on approach to learning skills frequently neglected by the traditional model.<sup>69</sup>

### III. CHINESE LEGAL CLINICS AS A BATTLEGROUND FOR SOCIAL CHANGE

#### A. The Fight for a More Just Society

While skills training may have been the impetus for and one focus of

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Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 60 n.249 (2000).

63. Clinics were introduced at Sun Yat-Sen University in Guangzhou, Guangdong Province; Northwest University of Political Science and Law in Xi'an, Shaanxi Province; Sichuan University in Chengdu, Sichuan Province; and Yunnan University in Kunming, Yunnan Province. See CCCLE BROCHURE, *supra* note 62, at 16.

64. In 2003, Guizhou University for Ethnic Minorities in Guiyang, Guizhou Province, and the Nanyang Institute of Technology in Nanyang, Henan Province, were added to the list of law schools with clinical legal education in their curricula. See *id.* Through the sponsorship of the Asia Foundation, the law schools at Nanjing University and Zhengzhou University have also made clinical legal education available, and benefit from academic relationships with CCCLE. In addition, CCCLE maintains close contact with the law schools of over ten other universities. CCCLE affiliates are currently at work in at least one-third of the total number of regions under the Chinese government.

65. See CCCLE BROCHURE, *supra* note 62, at 16.

66. CCCLE notes that through joint sponsorship with the Ford Foundation, it has in recent years managed to send four groups of Chinese clinical legal educators to legal clinics in American law schools, helping to establish long-term partnerships for teaching exchanges and academic cooperation with such institutions as Yale, Columbia, New York University, University of Washington, and University of Connecticut. See *id.* at 17.

67. *Id.* at 16.

68. See *id.*

69. See discussion *supra* note 8.

the clinical model, there is a second, more fundamental objective: "to teach students how others think and to help them understand different points of view—to teach students how to be sovereign, responsible, and informed citizens in a heterogeneous democracy."<sup>70</sup> The learning of skills—and legal doctrine—is thus significant, not as an end in itself, but as a means to an end.<sup>71</sup> In order to achieve recognition and resolution of society's tensions,<sup>72</sup> a second, more fundamental aim of legal education becomes the ability for students "to study and think about how the law came to be what it was, whose ends it served, why it should not be changed, and the role of lawyers and judges in changing it."<sup>73</sup>

This goal of heightened critical thinking is much more difficult to implement than mere skills training, and debates exist within American and Chinese clinical communities alike about whether it makes sense to incorporate it. Some of the earliest American clinical voices argued that because the law is designed to govern human relations, the study of legal problems must necessarily be "a study of the facts as to human relations and the study of the rule of law regulating those relations."<sup>74</sup> Similarly, some of China's pioneering clinicians have continued to draw parallels to the medical model, conceptualizing lawyers as professionals trained for the purpose of examining society's ills.<sup>75</sup>

The "ills" to which these clinicians refer<sup>76</sup> are the injustices that plague a heterogeneous "democracy."<sup>77</sup> When the zeitgeist of the 1960s thrust

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70. See Dubin, *supra* note 58, at 1498 (quoting Akhil Reed Amar & Neal Kumar Katyal, *Bakke's Fate*, 43 UCLA L. REV. 1745, 1774 (1996)).

71. See Barry, *supra* note 62, at 12.

72. See, e.g., Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 FORDHAM L. REV. 1929, 1934-35 (2002).

73. *Id.* at 1931-32.

74. See Herman Oliphant, *The Future of Legal Education*, 6 AM. L. SCH. REV. 329, 331 (1928). Professor Oliphant identified the areas of law most involved in human relations as the law of domestic relations, the law of business relations and the law of political relations, all of which impact and govern modern domestic, industrial and political life. *Id.* at 332. He urged that these areas of law should be used as the vehicles for integrating the study of law and of social facts. *Id.*

75. At the annual CCCLE conference, held at Northwest University for Political Science and Law in October 2004, Professor Yang Zongke of the host institution argued that lawyers have a responsibility to examine and treat society's ills, and that a lawyer who is himself flawed (*you maobing*) is incapable of treating society's flaws. See Email from the author to Yale-China (Oct. 24, 2004, 04:58 PDT) (in part recording Yang Zongke, Remarks during Panel Discussion on *Faxue Jiaoyu de Jiaoxue Mubiao yu Jiaoxue Pingjia* [Legal Education: Teaching Objectives and General Evaluation], Legal Clinic Teaching Inspection and Seminar, Northwest University of Political Science and Law, Xi'an, China (Oct. 17, 2004)) (on file with the author) [hereinafter Conference Email].

76. I interpreted Professor Yang's reference to the "defects" (*maobing*) in today's Chinese legal professionals to be a reference to the corruption of the present era and the abuse of law in the service of just a small elite.

77. See *supra* note 70 and accompanying text. The term "democracy," as used in this Article, is meant to imply a minimizing of power imbalances between the privileged and the disadvantaged, and the inclusion of voices of the disadvantaged in the construction and governance of a body politic. It is understood to take different forms in different societies and does not necessarily entail the separation of powers and electoral processes that the United States has created for itself.

clinical programs into a whole host of crises in American society, it opened the door for clinical faculty to question the law's potential for remedying injustice and inequality.<sup>78</sup> As society's ills festered and various conflicts exposed injustices, American clinicians seized the opportunity to shape legal clinics with stronger social justice missions, teaching students to question the fairness of laws and existing distributions of power. A movement developed within the legal academy to help students understand that "the shape of the law at any time reflects ideology and power as well as what is wrongly called 'logic.'"<sup>79</sup>

The goal of training students of law as agents of social justice later became institutionalized and incorporated into the "MacCrate Report,"<sup>80</sup> commissioned in 1989 by the American Bar Association ("ABA") to create a vision of lawyering skills and professional values deemed central to the competent practice of law.<sup>81</sup> Significantly, the MacCrate Report included among the list of important professional values "striving to promote justice, fairness and morality."<sup>82</sup> A "justice-oriented clinic" is one that takes on the challenge posed by MacCrate to teach about "justice, fairness and morality," pushing students "to deconstruct power, to identify privilege, and to take responsibility for the ways in which the law confers dominance."<sup>83</sup>

Simply stated, a justice-oriented clinic teaches students about justice by

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78. See Barry, *supra* note 62, at 13. Professors Philip Schrag and Michael Meltsner remark that "[c]linical legal education was born in the social ferment of the 1960s." See PHILIP G. SCHRAG & MICHAEL MELTSNER, REFLECTIONS ON CLINICAL LEGAL EDUCATION 3 (1998). In addition to undergoing a sexual revolution, the United States during the 1960s was "an era of civil rights activism, antiwar protests, the welfare rights movement and an emerging view of law as an instrument of progressive social change." Dubin, *supra* note 58, at 1465.

79. See Barry, *supra* note 62, citing RONALD DWORKIN, LAW'S EMPIRE 271-72 (1986).

80. See SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUCATION AND PROFESSIONAL DEV.—AN EDUCATIONAL CONTINUUM (1992) [hereinafter MACCRATE REPORT]. MacCrate, a former ABA President, himself makes mention of this social justice goal. See MacCrate, *supra* note 8, at 1125. One scholar has analyzed the MacCrate Report as recognizing that it is through the process of making decisions with clients and counseling clients about decisions that the lawyer effects justice. See Jane H. Aiken, *Provocateurs for Justice*, 7 CLINICAL L. REV. 287 (2001).

81. The tremendous political and social changes brought about by the 1960s led to an explosion in the legal profession. The profession itself, as well as enrollments for the J.D. degree, more than doubled in size by 1991. See MACCRATE REPORT, *supra* note 80, at 14-15. Justice Wahl of the Minnesota Supreme Court, then serving as chairperson of the ABA Section of Legal Education and Admission to the Bar, questioned what skills and character traits the profession actually required of lawyers, thus providing the focal point for the writing of the MacCrate Report. See MacCrate, *supra* note 8, at 1126.

82. MACCRATE REPORT, *supra* note 80, at 213-15. The MacCrate Report also included a plea for instruction in the following values of the profession: providing competent representation (a responsibility owed to clients), striving to improve the profession (a responsibility owed to the profession), and dedication to professional self-development (a responsibility owed to oneself). *Id.* 207-21. In addition, it set forth ten generic skills significant to the practice of law, including: (1) problem solving; (2) legal analysis and reasoning; (3) legal research; (4) factual investigation; (5) communication; (6) counseling; (7) negotiation; (8) litigation and alternative dispute resolution procedures; (9) organization and management of legal work; and (10) recognizing and resolving ethical dilemmas. *Id.* at 138-40.

83. Jane Harris Aiken, *Striving to Teach "Justice, Fairness, and Morality"*, 4 CLINICAL L. REV. 1, 11 (1997).

exposing them to injustice, and in this way helps them verify the commitment of their own societies to “democracy.”<sup>84</sup> It furthers so-called “social justice imperatives” in three important ways: (1) “through the provision of services and pursuit of legal and social reform on behalf of clients and community groups lacking meaningful access to society’s institutions of justice and power;”<sup>85</sup> (2) through the exposure of law students to a spirit of public service that will help extend access to counsel to such clients and community groups;<sup>86</sup> and (3) through the provision of experiential learning in a way that allows them to understand the relationship between law and issues of social justice, on both a theoretical and personal level.<sup>87</sup>

Through clinical legal education, otherwise privileged law school students learn what it feels like to walk in their clients’ shoes by interviewing clients in their homes, waiting in line with clients at government offices, and attending meetings with client social service caseworkers.<sup>88</sup> These students must scrutinize the law from the perspective of those who do not necessarily benefit from it, and in this way learn how to “challenge long-held assumptions and develop a healthy skepticism about law’s neutrality.”<sup>89</sup> In effect, the ideal of a justice-oriented clinic is to train students to become social activists. Whether this is an appropriate ideal for legal education is perhaps best answered by William Pincus of the Ford Foundation,<sup>90</sup> who insisted that “[f]ighting for justice for an individual is essential for the individual and for society if it is to continue to be a society worth living in,” adding, “If lawyers don’t do this, who will?”<sup>91</sup>

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84. Former Indiana Law School Professor Fran Quigley has analyzed adult learning theories and identified “disorienting moments” as moments “when the learner confronts an experience that is disorienting or even disturbing because the experience cannot be easily explained by reference to the learner’s prior understanding of how the world works.” Fran Quigley, *Seizing the Disorienting Moment: Adult Learning Theory and the Teaching of Social Justice in Law School Clinics*, 2 CLINICAL L. REV. 37, 51 (1995). Quigley concludes that the experiential basis of the live-client clinic is an “ideal setting for the learning of social justice concepts” precisely because of its ability to expose the learner to disorienting moments. *Id.* at 52-53.

85. Dubin, *supra* note 58, at 1475. Dubin argues that the “unprecedented dismantling of the American safety net” has contributed to the need for clinical programs to help address unmet legal needs pervasive in American society today. *Id.* I argue in Part III.B., *infra*, that China is similarly experiencing a dismantling of the traditional safety net provided by its socialist government in a way that makes the need for clinical development as pressing, if not more so, in China.

86. *Id.*

87. *Id.*

88. See Aiken, *supra* note 83, at 46. This process minimizes power imbalances between students and their clients, giving clients a potentially greater voice than they would otherwise have in their attorney-client relationships. See *id.* at 38. Because many students are inexperienced at the practice of law, and thus unsure of themselves, they are eager to understand the details and are more likely to defer to the client than a typical legal professional would be. See *id.*

89. *Id.* at 18.

90. As President of the Council on Legal Education for Professional Responsibility from 1968 to 1981, Pincus provided the leadership and secured the Ford funding that enabled most law schools in the United States to begin or expand their clinical programs.

91. See Dubin, *supra* note 58, at 1466 (quoting the COUNCIL ON LEGAL EDUC. FOR PROF’L RESPONSIBILITY, CLINICAL LEGAL EDUCATION IN THE LAW SCHOOL CURRICULUM 1 (1969)).

## B. "Social Justice" in a Non-American Context

Is the social justice imperative one that translates into non-American terms? For the rule of law to really take hold, should legal education elsewhere be similarly designed to strive for "democratization"<sup>92</sup> of the local legal culture? American law professors, lawyers, and judges have in recent years been dispatched to nations all around the world to aid in the development of democratic institutions, despite the failure of similar efforts in the past.<sup>93</sup> This work is premised on the notion that American assistance will help the targeted nations build a sound legal system, and that this sound legal system is essential to the creation of an effective, accountable democratic state.<sup>94</sup>

In China, these efforts are well-coordinated with what has already been taking place in society at large. There is a push from within China for a more accountable, democratic state, leading to the type of social movement<sup>95</sup> that American legal clinics capitalized on during the 1960s. As the structure of society changes, the formulation of what is "just" or "unjust" has also begun to change. The average Chinese citizen no longer considers as "just" whatever the Emperor or the Party deems so. The democratization process has in general reduced the role of the state in all aspects of economic, social, and political life, paving the way for new relationships to emerge in all spheres.<sup>96</sup>

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92. See Wizner, *supra* note 72, at 1937. Professor Stephen Wizner's conceptualization of lawyers as "trustees of justice" begs the question, is democracy an absolute, universal good? While economic wealth and reform may be common goals for all nations, some question whether striving towards democracy is necessarily so. I argue that democracy, if defined as a leveling of the playing ground for different segments of society, is a universal good worth striving for, as is the use of law as a means for remedying social inequalities. This is particularly true in societies like China, where the poor and disadvantaged make up the vast majority of the population. See Liebman, *supra* note 41, at 241 (noting that in the late 1990s, China had approximately 85 million persons officially classified as impoverished, out of an overall population of 1.2 billion).

93. See, e.g., Uphoff, *supra* note 54, at 337-38 (1999). One effort widely regarded as a failure is the "law and development movement" of the 1960s and early 1970s, supported by a small circle of funding organizations. See Stephen Golub, *Forging the Future: Engaging Law Students and Young Lawyers in Public Service, Human Rights, and Poverty Alleviation*, available at [http://www.justiceinitiative.org/resource2?res\\_id=101449](http://www.justiceinitiative.org/resource2?res_id=101449) (last visited Mar. 16, 2005). This movement also featured efforts to reform legal education in developing countries, but attempted to do so through a wholesale transfer of American models without regard to the social and political contexts within which they were to operate. For critiques of the movement's assumptions and activities, see JAMES A. GARDNER, *LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA* (1980); David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 4 WISC. L. REV. 1062-1101 (1974).

94. See discussion *infra* Part II.A.

95. Professor Janet Mosher of the University of Toronto defines social movements as "a challenge to the existing order and to the label of 'just,' which, through an act of self-ingratiation, that order has bestowed upon itself." Janet E. Mosher, *Legal Education: Nemesis or Ally of Social Movements?*, 35 OSGOODE HALL L.J. 613, 620 (1997). See also discussion *infra* Part V.C.

96. See Grady Jessup, *Symbiotic Relations: Clinical Methodology – Fostering New Paradigms in African Legal Education*, 8 CLINICAL L. REV. 377, 392 (2002). As mentioned in the introduction,

If new relationships in Chinese society are to have meaning and be sustainable, they need to be supported by a legal framework that includes respect for the limits and obligations imposed by law.<sup>97</sup> Professor Tony Saich of Harvard's Kennedy School of Government remarks:

Continued rapid economic growth is deemed vital to Party survival but this will entail further lay-offs, down-sizing of government bureaucracy and the shedding of more government functions. This creates the need to expand the social organization sector to take on these functions on behalf of society, or the likelihood of social instability and unrest will increase.<sup>98</sup>

China's traditional social network has been unraveling,<sup>99</sup> and almost every case encountered through the legal clinics seems to touch on a whole universe of societal issues. Rather than ignoring these issues, legal education reform has little choice but to address the societal injustices in today's rapidly developing China and help to democratize the local legal culture.

Certainly, skepticism exists in China, with some students and professors questioning whether clinical legal education is too idealistic and premature at this stage of China's development.<sup>100</sup> They doubt that a method that focuses on one client and one case at a time could possibly bring about systemic change. After all, legal educators in developing nations must fight two separate battles—one to change the way in which students have traditionally been taught to learn, and the other to change the way in which law and the legal profession have traditionally been regarded.

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*infra*, one example of this has been the development of NGOs in recent years in China, which has allowed for the new entry of ordinary citizens into social spheres previously dominated by state organs.

97. *See id.* at 392-93.

98. Tony Saich, *Negotiating the State: The Development of Social Organizations in China*, 161 CHINA Q. 124, 128 (2000).

99. Nicholas Kristof notes in a New York Times Special Report that reform has negatively impacted laborers and peasants throughout China. Nicholas D. Kristof, *Special Report: China: A Maturing Power*, N.Y. TIMES ON THE WEB, Dec. 24, 2003, <http://www.nytimes.com/top/opinion/editorialsandoped/oped/columnists/nicholaskristof/index.html> (click on "Multimedia Features"). Economic reform has resulted in the closing of numerous state-owned enterprises ("SOEs"), as the government makes way for self-accounting financial units responsible for their own profits and losses in an increasingly market-based economy. *See id.* The impact of these closings has been to "break the 'iron rice bowl' that provided cradle-to-grave social security to workers and their families," LCHR, *supra* note 30, at 20, infuriating laborers who previously nursed expectations of lifetime employment. Kristof, *supra*. Furthermore, bankruptcies in SOEs, "combined with loosening of travel restrictions create a growing number of migrant laborers [sic] who lack the protections that their work units once provided." Hari M. Osofsky, *Social Change Through Active, Reflective Learning? Clinical Legal Education in China and the United States* 26 (July 25, 2002) (unpublished manuscript, on file with author).

100. The skeptics are generally students or colleagues who have not been involved in the clinical effort, but even those who have been involved at times express similar doubts.

A similar strain of pessimism about the applicability of the American model has been echoed in other developing nations to which the model has been exported. Professor Rodney Uphoff of the University of Oklahoma questioned the wisdom of bringing to Romanian law schools the live-client clinical programs that existed at their American counterparts.<sup>101</sup> He notes that nearly fifty years of communism have produced in the Romanian people a fatalistic view of “law as a given that they are powerless to change”<sup>102</sup> and argues that “[a]lthough skills and values instruction is needed [in Romanian law schools], Romanian students must first learn to think critically, to argue persuasively, and to write effectively.”<sup>103</sup>

But Professor Uphoff has the argument backwards. It is the very absence of a clinical movement and the live-client model that prevents students either in Romania or China from learning how to question and be more critical of the law—and thus, from helping to change it. In societies subject to such fatalistic views of the law and legal reform, clinical legal education becomes even more relevant. Moreover, where traditional legal education has failed to teach such basic skills as reasoning and effective communication, legal clinics may be the best—and only—hope for achieving that foundation. The work done in the clinics not only helps to make such failures apparent, but also functions as a hands-on training ground.

The Chinese government has placed an immense burden on law schools by imposing on them the responsibility for helping to establish China’s new legal framework. But while some in the legal academy may be reluctant to shoulder this burden, the more activist academics have greeted it with great hope.<sup>104</sup> Rather than teaching law in a way that upholds the status quo, reinforcing existing power structures and undermining social movement,<sup>105</sup> China’s early clinicians instead look to the clinical model as the vehicle for establishing new modes of dialogue within their society.

#### IV. TRAINING THE NEW GENERATION OF CHINESE LEGAL PROFESSIONALS

##### A. The Pedagogical Aims of China’s Pioneering Legal Clinics

To respond adequately to the social transformations taking place in China, legal clinics have helped to shift the “emphasis of lawyering . . . from outcome to process . . . [and] from instrumentalism to

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101. See Uphoff, *supra* note 54.

102. *Id.* at 318.

103. *Id.* at 325.

104. I do not assume that all clinicians in China are uniformly optimistic and genuinely enthusiastic about the clinical cause, but a good number (including the Permanent Members of the CCCLE board with whom I have worked closely) seem by nature to be social activists, who are inspired on an ideological level to help reform society through the mechanisms of the clinical model.

105. See generally Mosher, *supra* note 95.

empowerment."<sup>106</sup> Chinese clinicians attempt to do this by teaching skills, knowledge, and the ability to work with members of subordinated communities in ways meant to facilitate social transformation.<sup>107</sup> Because CCCLE specifically identifies "providing legal aid to disadvantaged groups" as one of the goals of clinical legal education in China,<sup>108</sup> legal aid casework serves as the starting point and an integral part of almost every clinic at every Chinese law school.

The legal clinic at *Wuda*, for example, was deliberately designed to be about service and takes on the mission of the Wuhan Center, aiming "to provide the most quality legal aid to people in the most need by the most able people."<sup>109</sup> At *Wuda*, each of the four clinic instructors occupies a position of leadership in one of the Wuhan Center's six divisions<sup>110</sup> and takes on responsibility for supervising a group of eight clinic students, divided into pairs that work closely on a case of their own choosing, approved by the clinician.<sup>111</sup> Supervisory sessions are conducted on a weekly basis or as needed, and include updates of progress made on each case, as well as difficulties encountered along the way. For the more fortunate students, there is an opportunity to go to court by semester's end.<sup>112</sup>

*Wuda's* clinic is client-centered (*yi dangshiren wei zhongxin*). During one discussion of a military discharge case handled by students under the supervision of *Wuda's* clinical program head, Li Ao, the focus shifted from a review of the case facts to a reflection on the need for lawyers to stand in their clients' shoes (*huan yige jiaodu*), approaching issues from their clients' perspective. Li Ao suggested that the students may have made choices different from their clients', and therefore questioned the value of pressing forward in that particular case.<sup>113</sup> But ultimately, she reminded them of a

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106. *Id.* at 614.

107. See generally *id.* (arguing that only this type of legal training can be seen as responsive to social movements).

108. CCCLE BROCHURE, *supra* note 62, at 20.

109. CLINIC INTRODUCTION, *supra* note 62, at 8.

110. The six divisions correspond to the sectors of society that they aim to serve, namely: (1) women, (2) minors, (3) the elderly, (4) the disabled, (5) laborers, and (6) complainants in administrative suits against the government. See CENTER BROCHURE, *supra* note 2, at 2-3.

111. The entire group of eight is expected to know the details of all cases taken on by the group, so that they can help in the analysis and supervisory efforts of the group as a whole. Group members tend to be supportive of one another and are often present in court when their classmates go to trial. To maintain the intimacy that is required for an effective clinical experience, *Wuda's* clinicians have agreed that they will accept no more than a total of thirty-two students in any given semester (although over 200 expressed interest in applying for the Fall 2004 course). Students are selected on the basis of an essay written to explain their interest, followed by a face-to-face interview with the individual clinician who will eventually supervise them.

112. What takes place in real cases, when dealing with real people, often results in casework dragging beyond the neatly packaged time constraints of a school semester. In the event that a court session is set for a date falling beyond the conclusion of the semester, the students on that case are given the opportunity to continue their representation. A number of students do choose to do so; however, in the event that a student opts not to for lack of time or interest, the case will be passed along to new students in the supervising clinician's group.

113. The case involved a male client only a few years older than the students who had

lawyer's professional obligation zealously to advocate on behalf of client interests, as long as those interests are not illegal in nature.<sup>114</sup>

Through their cases, *Wuda's* students are learning how to work with clients whose universe is far removed from their own. In talking to these clients, students must determine what model of lawyering might be most effective. In dealing with client problems, they must figure out how best to react when the system has failed someone. And in communicating with opposing counsel and judges who are at times unprepared and unsympathetic, they must realize that justice is not only about facts and arguments, but also about the balance of power.<sup>115</sup>

*Wuda* is teaching clinic students about justice by exposing them to injustice. It notes as one of its goals "contributing to the public interest and society"<sup>116</sup> and aims to train clinic students to think deeply about the continued relevance and fairness of existing laws and regulations. It also suggests to these students the significance of interpersonal relations when it comes to the practice of law. In this way, the *Wuda* clinical curriculum helps to train a new type of lawyer—one who is at once a counselor (helping clients explore both legal and non-legal solutions to their problems), an advocate (going that extra mile to fight their clients' battles) and an activist (not just content with the way things are, but capable of questioning whether they make sense and initiating reform where needed).<sup>117</sup>

Clinics and individual clinicians make conscious, targeted decisions when determining the types of cases and clients they will take on. It is telling that the Wuhan Center refers to its targeted service groups as "*ruozhe*," a term that has been translated into English as "disadvantaged," but which literally means "the weak" or "feeble" of society. Even more telling is that the Wuhan Center explicitly associates itself with the movement to advance the rule of administrative law in China,<sup>118</sup>

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been released from military service, and under the socialist system that has always promised job security to its citizens, should have received either a newly arranged job or some form of monetary entitlement. See Collected Notes, *supra* note 40. Even though the client was still strong and capable, he chose to wait and rely on the government's unfulfilled promises rather than find a job on his own.

114. *Id.*

115. As Professor Mosher notes, "law is an object for critical reflection about power and justice—a site of contestation." Mosher, *supra* note 95, at 620.

116. CLINIC INTRODUCTION, *supra* note 62, at 8.

117. The *Wuda* clinic stresses the importance of the experiential process in helping students "develop not only a better understanding of legal ethics, but also their sense of social responsibility." *Id.*

118. The passage of the Administrative Litigation Law in 1989, State Compensation Law in 1994, and Administrative Punishment Law in 1996 was particularly momentous in providing for the first time for individuals to challenge state actions and bureaucratic acts. See *Zhonghua Renmin Gongheguo Xingzheng Susong Fa* [Administrative Litigation Law], art. 2, 1990; *Zhonghua Renmin Gongheguo Peichang Fa* [State Compensation Law], art. 2, 1995; *Zhonghua Renmin Gongheguo Xingzheng Chufa Fa* [Administrative Punishment Law], art. 6, 1996; all available at

<http://www.cecc.gov/pages/selectLaws/administrativeLaw/administrativeLaw.php>. Two years after promulgation of the Administrative Punishment Law, the New York Times

recognizing the injustices faced by clients in conflict with administrative agencies and agreeing to represent them in cases that seek to hold accountable a traditionally unassailable government.<sup>119</sup>

Clinics at other Chinese universities are just as explicit in their social justice mission and scrutiny of the changing relationships in today's China—including, perhaps most significantly, the relationship between the government and its people. In January 2003, Northwest University of Political Science and Law (*Xibei Zhengfa Xueyuan*, or “*Xibei*”) established a Public Interest Law Clinic (*gongyifa zhensuo*), with the aim of educating students to analyze “social phenomena which controvert to [sic] the value of fairness and justice.”<sup>120</sup> During a classroom session opened to visiting clinicians from throughout China, one group of students from this clinic presented a project that they had designed to investigate and challenge the fairness of a recently promulgated traffic regulation. A representative from the group concluded in his report to the class that the purpose of government is to act in the service of the people (*wei laobaixing fuwu*); thus, when the people become dissatisfied with a particular policy, the government should move to change it.

Still other clinics at institutions throughout China incorporate into their design the examination and protection of such individual entitlements as labor rights, criminal defense, and recently even civil liberties under the Constitution.<sup>121</sup> In the tradition of America's earliest clinicians, today's Chinese clinicians are in fact using those laws most involved in the governing of human relations—the laws of domestic relations (divorce and marital property cases), business relations (consumer protection cases), and political relations (administrative, labor protection, constitutional, civil rights, and environmental protection cases, among others)—as vehicles for

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reported:

All over China, ordinary people are suing the powers that be – their employers, state enterprises, the local police – acts of defiance against their broad and previously unchecked power over people's lives.

A decade ago, such suits would have been unthinkable. But the Chinese are in the midst of a far-reaching overhaul of their legal system.

Elisabeth Rosenthal, *A Day in Court, and Justice, Sometimes, for the Chinese*, N.Y. TIMES, Apr. 27, 1998, at A1.

119. This effort is currently spearheaded in large part by Li Ao, who also serves as the Executive Leader of the Center's Administrative Litigation Division and one of the Permanent Members of the CCCLE Committee. CCCLE BROCHURE, *supra* note 62, at 32.

120. BROCHURE ON CLINICAL LEGAL EDUCATION OF NORTHWEST UNIVERSITY OF POLITICAL SCIENCE AND LAW 6 (2004) [hereinafter XIBEI BROCHURE]. My work at *Xibei* includes advising on the Public Interest Law Clinic, as well as co-teaching both the Civil and Community Law Clinics. *Xibei* is China's first and only institution with a Legislative Clinic and one of the few to operate as many as four different clinics under the supervision of eleven clinicians. *Id.*

121. Debate has recently increased on both sides of the Pacific about the role of constitutional law in China, and whether citizens have the power to challenge laws, regulations, and government actions on the basis of their unconstitutionality. For an interesting analysis, see Michael C. Dorf, *What a Chinese Height Discrimination Case Says About Chinese (and American) Constitutional Law*, FINDLAW'S LEGAL COMMENTARY, May 26, 2004 <http://writ.news.findlaw.com/dorf/20040526.html>.

integrating the study of law and social facts.<sup>122</sup>

### B. Translating and Making Sense of Pedagogy

The real challenge for Chinese clinicians has been to determine exactly how to structure a justice-oriented clinic—in particular, what knowledge and skills need to be taught in order to achieve the clinic's pedagogical aims. Michael Dowdle argued several years ago that “promoting discovery of the indigenous development implications and possibilities inherent in the domestic environment” is preferable to simply replicating successful foreign models of clinical legal aid.<sup>123</sup> A common theme that continually resurfaces at conferences on Chinese clinical legal education has been this very concept of localization, or “indigenization” (*bentuhua*), of curriculum development.

While CCCLE takes no position on which lawyering skills should be incorporated into the clinical curriculum, it does highlight the following as worthy of commending and perhaps advancing:

- learning how to communicate with a variety of clients under different circumstances;
- learning how to deal with different legal problems;
- learning how to develop oral advocacy skills, including questioning technique and summarizing;<sup>124</sup>
- learning how to plan for a case and analyze the facts and materials in a way that allows for effective problem-solving;
- learning how to give priority to the clients' preferences, rather than one's own.<sup>125</sup>

These benchmarks echo the skills set forth in the MacCrate Report, which provides an even more extensive outline of the specific skills that should be taught to ensure competent practice of the law.<sup>126</sup> It is important to note, however, that such skills cannot be taught in China the same way

122. See discussion *infra* Part III.A.

123. Michael William Dowdle, *Preserving Indigenous Paradigms in an Age of Globalization: Pragmatic Strategies for the Development of Clinical Legal Aid in China*, 24 *FORDHAM INT'L L.J.* S56, S56-S57 (2000).

124. Through my observations at various trials conducted in Wuhan, I have noticed that the ability to summarize arguments is particularly important to litigating cases in China. Due to the frequent and active participation of the judges during the proceedings, it is possible to have a court session in which the lawyer has little opportunity to speak outside of his opening and closing statements, or the “debate” (*bianlun*) that occurs between the two parties prior to closing statements. See Field Notes of the Author (May 28, 2004) (with observations from a court session at the *Wuhan Shi Wuchang Qu Renmin Fayuan* [People's Court of the Wuchang District, Wuhan City]) (on file with author).

125. See CCCLE BROCHURE, *supra* note 62, at 19. The list also includes, among other points, learning “to care for the public interests” and “to strive for the maximum rights and interests legally allowed,” which are not so much skills as they are values essential to what has been perceived as competent lawyering in China. *Id.*

126. See *supra* note 82. Arguably, any lawyer acting as an agent and advocate of the law would need to learn and master these skills (among others), regardless of the country where he or she practiced.

they are taught in the United States.

Professor Uphoff tells one story in which a legal specialist in Romania designed a clinical course to include simulations featuring American-style cross-examination. While students were somewhat familiar with cross-examination techniques from American movies and thoroughly enjoyed such simulations, “[t]he problem [was] that the role of the Romanian trial lawyer is substantially different from that of the American trial lawyer.”<sup>127</sup> In Romania, as in China, a trial attorney would rarely be permitted to engage in the type of cross-examination we see in the United States.<sup>128</sup>

In adapting the American clinical model to China’s needs, it is crucial to recognize that China is a civil law society in which judges regard themselves as civil servants.<sup>129</sup> During court proceedings, they exercise extensive power over the supervision and shaping of the fact-finding process.<sup>130</sup> Moreover, there is no formal civil law equivalent to the common law process of discovery, and the trial itself is but a moment buried in a series of meetings, hearings, and verbal and written communications.<sup>131</sup> The significance and nature of such skills as fact investigation, litigation, and alternative dispute resolution, to name a few, differ in ways that Chinese clinicians need to consider when developing their own course syllabi.

The failure to adapt the clinical curriculum to local needs and possibilities has resulted in confusion over clinical legal education’s designs and aims. At *Wuda*, for example, there is ongoing debate about whether a classroom component should even exist, or whether the main aim of the clinical program is merely to provide experiential learning through the provision and supervision of casework. Most Chinese clinics have focused mainly—or even entirely—on the case component, without developing a classroom component to provide structure to the experiential learning process and ensure that students understand the bigger picture.<sup>132</sup>

Professor Richard Wilson of American University observed in the Chilean legal clinics that students tended to regard the handling of cases as “drudgery” when given no sense of the greater obligation and values involved.<sup>133</sup> He argues, “When the student has an opportunity to examine

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127. Uphoff, *supra* note 54, at 340.

128. *See id.*

129. *See supra* note 15.

130. *See* LUBMAN, *supra* note 10; *see also* JAMES G. APPLE & ROBERT P. DEYLING, A PRIMER ON THE CIVIL-LAW SYSTEM 35-38 (Federal Judicial Center, 1995).

131. *See id.*

132. This has prompted CCCLE Director Zhen Zhen to emphasize at a recent training conference that clinicians, in their enthusiasm and fervor, should not forget the educational purpose behind clinical legal education. Zhen Zhen, *Zongjie Taolun, Zhensuo Jiaoyu Peixun Huiyi* [Closing Remarks on the First Day of the Clinical Legal Education Training Conference] (Aug. 8, 2004) (on file with author) [hereinafter Zhen Zhen Remarks].

133. *See* Wilson, *supra* note 54, at 560. A Columbia Law School student conducting research this past June at the Wuhan Center shared similar observations regarding the unenthusiastic and uncommitted attitude of students on duty there. Students in the clinic are required to report for duty (*zhiban*) at least once a week, whether or not they are currently handling a case. The Center also utilizes other volunteers, who are usually graduate students

closely the ethical issues involved in representation of the poor, as well as the legal institutions in which practice occurs, there may be a greater sense of curiosity and commitment to the task at hand."<sup>134</sup> Commitment to social justice thus develops only when direct client interaction and representation are combined with the preparatory psychological conditioning that takes place during classroom sessions.

When used effectively, classroom sessions help to provide context to what the students are gaining from their casework and ensure that all students—not just the top students—are challenging their own perceptions and re-evaluating their personal evolution as legal professionals. The numerous and varied classroom conversations about the effectiveness or ineffectiveness of particular research, writing, or oral communication techniques have everything to do with the more effective practice of law as a service in the interest of justice. In order to help effect social justice, Chinese clinicians cannot afford to neglect the classroom component, but must make sure to integrate it closely with each stage of the case-handling process.<sup>135</sup>

## V. THE CHALLENGES OF CLINICAL DESIGN AND VIABILITY IN CHINA

### A. Struggles Within the University

Admittedly, a number of systemic challenges make it difficult for Chinese clinicians to utilize fully the potential of the clinical classroom. To begin with, legal clinics remain a sort of luxury item, regarded by Chinese law schools as much less important than the courses required for graduation.<sup>136</sup> While the legal clinic at *Wuda* may involve up to four or five

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currently not enrolled in the clinical course. This system turns duty in the service of a greater end into mere duty for such students.

134. *Id.* at 574-75.

135. Of course, it is also important not to neglect the case-handling component of the clinical program. One exception to the prevalence of the live-client model is the environmental law clinic at Sun Yat-Sen University, co-taught in 2004 by my Yale-China colleague, Carlos Da Rosa. This particular clinic does not incorporate the handling of actual cases by students, not for want of interest or due to a conscious decision to exclude such opportunities, but because it is in its infant stages and is still working to establish ties in the community and with relevant community organizations.

136. At *Wuda*, a student must complete 150 credits by the end of his four years. Most courses are assigned two or three credits and roughly correspond to the number of classroom hours attended per week. See WUHAN UNIVERSITY, UNDERGRADUATE EDUCATION PLAN OF WUHAN UNIVERSITY, 172-75 (2001) (on file with author) [hereinafter *WUDA PLAN*]. There are fourteen substantive courses set forth as requirements to be fulfilled by undergraduate law school students prior to their graduation, including: (1) Jurisprudence, (2) Constitutional Law, (3) Administrative and Administrative Litigation Law, (4) History of the Chinese Legal System, (5) Civil Law, (6) Civil Litigation Law, (7) Criminal Law, (8) Criminal Litigation Law, (9) Commercial Law, (10) Intellectual Property Law, (11) Economic Law, (12) International Public Law, (13) International Private Law, and (14) International Economic and Environmental Law. *Id.* at 172. In addition, there are mandatory requirements, such as Marxist philosophical principles, Marxist political and economic principles, Mao Zedong ideology and Deng Xiaoping theory, which must be fulfilled by all undergraduate students,

hours of class time per week, in addition to several hours of correspondence with and research on behalf of clients, it is assigned only three credits<sup>137</sup>—the same number allotted to classes meeting just three hours per week, with few, if any, out-of-class assignments.<sup>138</sup>

Under such circumstances, the demands of the clinical program can prove tiring to both students and clinicians. Clinic students—whether in China or elsewhere in the world—must balance academic obligations with demands imposed by their clients. In China, their instructors must build the foundation for the school's clinical program, even as professional assessment continues to focus on assigned teaching and research work in specialized areas.<sup>139</sup> The combination of these multiple pressures has resulted in the tendency to neglect or hastily scrap together poorly conceived in-class sessions.<sup>140</sup>

Even when well-designed, classroom time is an exercise in countering resistance from students who continue to cling to the traditional model of legal education.<sup>141</sup> It is a struggle for Chinese law students to unlearn the ways in which they have always been taught to learn. Li Ao recounts that one student enrolled in her administrative litigation course approached her to complain about the experimental clinical methods<sup>142</sup> she used to teach that course. The student insisted that he could not learn without the instructor answering his questions directly and resolutely. Particularly for students who have accustomed themselves to and are successful at traditional classroom methods, clinical teaching creates discomfort and uncertainty over what and from whom students should be learning.

This problem is exacerbated when there are only a handful of Chinese

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regardless of their major. *Id.* at 173. Legal clinic is not only an elective, but also one available to just a small portion of the law student population. *See supra* note 111. During the last class of the fall semester of 2004, one clinic student actually questioned whether learning about maritime law was as fundamental as learning to communicate with clients, and why the former was a requirement, but not the latter.

137. If a student opts to participate in a legal clinic in lieu of an externship (*shixi*), that student receives the four credits typically assigned to the externship. *See WUDA PLAN, supra* note 136, at 175.

138. My undergraduate students have reported that there are few readings assigned to them in their traditional courses. In some courses, there is not even a primary text, or to the extent that there is, the texts used are either publications written by the professor teaching the course or prescribed instructional materials written by a team of scholars selected through the MOJ. *See ALFORD & FANG, supra* note 48, at 17.

139. CCCLE identifies this pressure on instructors as one of the major problems facing Chinese clinical legal education today. *See CCCLE BROCHURE, supra* note 62, at 21.

140. Titi Liu of the Ford Foundation has criticized this lack of a cohesive classroom component in Chinese clinical legal education. Meeting with Titi Liu, Program Officer, Ford Foundation, in Beijing, China (Aug. 4, 2004) [hereinafter Liu Meeting]. Clinicians at some schools, concerned about workload and time pressures, even question whether case supervision needs to be in-person, or can instead be conducted over email and telephone.

141. *See also* discussion *infra* Part II.B.

142. During the last fifteen minutes to half-hour of this class, Li Ao typically allows her students to ask questions related to administrative litigation law in front of their classmates. The students take over the platform, and after raising issues they may have contemplated on their own, open the floor up to their classmates for comment.

clinicians at each institution to resist static and rigidly structured learning methods fostered by centuries of tradition, and by the overwhelming majority of colleagues who teach doctrinal courses.<sup>143</sup> Chinese clinicians have typically started their own careers teaching such courses, where the classrooms were never student-centered. It is as much of a struggle for these clinicians as it is for their students and colleagues to challenge the teacher's traditional role as omniscient master. Even in the United States, where teaching modules and training opportunities exist in abundance, it can still be a challenge to learn how to teach not simply by lecturing, but also by appropriately moderating student-driven discussions.

For clinicians to enjoy greater success, there must be a more coordinated effort to re-examine Chinese legal pedagogy as a whole. Clinical education currently requires Chinese students to make use of foundational skills that remain absent from the undergraduate curriculum, and that are rarely imparted even at the graduate level.<sup>144</sup> Analytical and ad hoc problem-solving skills are weak to the extent that they have seldom been developed or honed through practice in the traditional classroom.<sup>145</sup> Thus, an early emphasis on critical thinking and persuasive writing would increase the effectiveness of clinical legal education in a student's educational experience more generally.

Fortunately, this may be where the Chinese system of legal education holds greater potential for integrating doctrinal and clinical methods than its American counterpart. In China, "clinical methodology" is a catch-all term that expands beyond simulations and case supervision to include any teaching method that is participatory and interactive in nature.<sup>146</sup> By creating such a broad definition, the Chinese have made it easier for doctrinal professors to be receptive to the clinical method, even when they

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143. While Chinese law schools typically boast a faculty of several hundred, clinics are run by a mere handful of individuals. *Wuda*, established in 1893, began operating a clinic only in 2000. None of its four clinicians had obtained the status of Assistant Professor (*fu jiaoshou*), all functioning as Lecturers (*jiangshi*) prior to the spring 2004 appointments process.

144. See ALFORD & FANG, *supra* note 48, at 17, 31. At least with traditional, doctrinal American legal education, the Socratic and case methods provide opportunities for students of law not only to participate actively in class, but also to get into the habit of applying legal theories to new fact patterns and scenarios. Through the use of appellate-level cases, replete with their review and analysis of lower court reasoning, American law students are more likely to understand that legal authorities can be questioned and that the law can be manipulated and interpreted in different ways to achieve different ends.

145. Critics have also pointed out that Chinese legal training generally lacks cultivation of such fundamental skills as breaking a problem into its constituent parts to organize solutions; reading statutes, regulations, cases and other legal materials closely; identifying pertinent facts and applying the law to them; envisioning arguments that others might make from the same law and facts; and presenting one's conclusions in a manner that is both persuasive and reasoned. *Id.* at 31.

146. Chinese clinicians consider the use of participatory and interactive learning methods (*hudong*), especially the goal of "equal participation, equal teaching and learning," to be clinical in origin and nature. See, e.g., CCCLE BROCHURE, *supra* note 62, at 18. This is because only in legal clinics do teachers regularly stray from the traditional lecture format. This broad definition of clinical methods seems consistent with the pedagogical aim of effecting social justice, as it underscores the value of a plurality of voices and facilitates their inclusion into the operative dialogue.

may be skeptical of the particular exercises or role-playing techniques associated with it.

More importantly, because Chinese clinicians are also educators in doctrinal subjects, they are not “outsiders” at the outset of their careers, but instead fight the same battles for recognition and legitimacy as their doctrinal colleagues.<sup>147</sup> As a result, the experimental clinical methodologies used in their doctrinal courses are more likely to be seen as models for successful legal teaching generally. As clinical methodologies spread in this way to even the more traditional professors of doctrine, the clinical model of legal education will over time become more standardized, more accepted by Chinese students, and thus, more sustainable.

### B. The Impact of Students and Clinical Legal Aid in the “Real World”

The clinical method additionally suffers, not because it is premature or inapplicable in China, but perhaps because it currently lacks institutional support both within and outside the university. As an initial matter, Chinese legal clinics face more issues related to government control over—and pressure upon—legal activities than their American counterparts.<sup>148</sup> For example, Dean Mo Hongxian of *Wuda* reports that the environmental law department at the Wuhan Center was forced to shut down almost a decade ago after becoming embroiled in a toxic waste lawsuit implicating government agencies.<sup>149</sup>

In addition, Chinese clinics do not enjoy the human resources support from which American clinics benefit, and are instead heavily reliant on students and volunteer staff.<sup>150</sup> These students lack “legal representative”<sup>151</sup>

147. See Zhen Zhen Remarks, *supra* note 132.

148. Some American scholars have cited instances in which politically charged government efforts have also interfered with the activities of at least one American environmental law clinic. See Peter A. Joy, *Political Interference with Clinical Legal Education: Denying Access to Justice*, 74 TUL. L. REV. 235 (1999).

149. Conversation with Mo Hongxian, Vice-Dean, Wuhan University School of Law and Director, Center for Protection of Rights of Disadvantaged Citizens, and Dean Hill Rivkin, Professor, University of Tennessee College of Law, at Wuhan University (May 24, 2004). While Dean Mo is confident that the past decade has brought about sufficient change to allow for a different outcome today and hopes to rehabilitate the Wuhan Center’s environmental law practice, others point out that the state continues to fear political opposition and maintains control over most social organizations. See Saich, *supra* note 98, at 127; see also Lee, *supra* note 2, at 377-78. *But cf.* Liebman, *supra* note 41, at 233-36 (distinguishing the specific experiences of the Wuhan Center and the Center for Women’s Law Studies and Legal Services of Peking University and attributing their relative successes to the establishment of close ties with the press and various government agencies).

150. See Liu Meeting, *supra* note 140.

151. While an actual, licensed attorney appearing on behalf of a client is referred to as the official legal representative (*weituoren*), a student enters an appearance merely as a common representative (*yiban dailiren*). Almost anyone may appear in court as a common representative, including the client’s family, friends, or even work unit. A common representative is prevented from accessing or may not access as easily, certain legal documents available to a legal representative. At *Wuda*, clinic students emphasize their identification as work affiliates (*gongzuo ren yuan*) of the Wuhan Center; however, at other schools that lack a university-based legal aid center, it is more difficult for students to go into

status when handling cases<sup>152</sup> and are therefore severely limited in their room to maneuver on behalf of clients. Moreover, they could not, even if they wanted to, resort to some of the tactics frequently used by practicing lawyers to establish *ex parte* communications and relationships (*guanxi*) with the judges responsible for their cases.<sup>153</sup>

Chinese legal educators have also worried about the youth and vulnerability of their students, noting that setbacks in the courtroom have the potential to disillusion them at too early a stage in their careers, thus discouraging them from the pursuit of law after graduation.<sup>154</sup> Professor Peng Xihua of South Central University of Economics, Political Science and Law (*Zhongnan Caijing Zhengfa Xueyuan*, or "*Caida*") counters that such setbacks could just as easily highlight the injustices in the current legal system, inspiring students to pursue law with even greater determination and focus.<sup>155</sup> Most clinical courses in China continue to target undergraduates, capitalizing on the fact that these students can begin as early as age nineteen or twenty their life long practice of self-evaluation as legal professionals—a goal perhaps more significant than the ability to win.<sup>156</sup>

Although the limitations of the academic setting have created an imperfect system, in some ways clinical legal aid offers more hope to the

court with such legitimacy and clout.

152. During the last CCCLE conference, one common issue raised in small group discussions was the status of student representatives before legal entities and in court. CCCLE notes this difficulty in its literature and explains:

[R]estricted by existing laws, the rights of students in the clinic while handling cases are far less than lawyers, and society has not yet reached a consensus on making coordinated efforts to realize the various goals of law education. Therefore, striving for "quasi-lawyer" status for students in legal clinics is still a goal that teachers and students in legal clinics and law education specialists' committee should strive for.

CCCLE BROCHURE, *supra* note 62, at 21.

153. A number of clinicians who previously practiced as lawyers or procurators, as well as some students, report that the several months between the trial date and the issuance of a final decision are prime time for lawyers on either side to invite judges out to dinners or other informal occasions, where they can curry favor on behalf of their clients.

154. This concern has been voiced at all of the conferences and workshops on Chinese clinical legal education that I attended in 2004, including the August Beijing conference, October Xi'an conference, and December Wuhan workshop.

155. See Collected Notes of Author on Fall 2004 Legal Clinic (with notes taken during Clinical Legal Education Workshop, Wuhan, China (Dec. 19, 2004))(on file with author)[hereinafter Fall Notes]. Professor Peng offers the amusing argument that although the first time he entered the courtroom was to sit in on a divorce case, such exposure hardly discouraged him from later pursuing married life. *Id.*

156. Former Georgetown University legal clinic student Agata Szypszak reflects: My success in . . . clinic involved a lot more than winning the case. My triumphs included: improving my collaborating skills, learning to exercise authority, and becoming more self-reliant. If, instead of being a catalyst and a resource, [the clinician] had acted as our boss, [my partner] and I would probably . . . have won the case. But what would happen the next time I had to represent a client, work on a project with someone, or undertake a seemingly impossible task?

Agata Szypszak, *Where in the World is Dr. Detchakandi? A Story of Fact Investigation*, 6 CLINICAL L. REV. 517, 530 (2000).

disadvantaged than state-administered legal aid in China. Zhu Dewu, Director of the state-run Hubei Province Legal Aid Centre, complains about the lack of morale and diligence among lawyers who take on legal aid cases merely to satisfy the mandatory pro bono requirements under the Law on Lawyers.<sup>157</sup> By contrast, while the morale and competency of student representatives may also be low, these students have at least chosen and competed vigorously to participate in the provision of legal aid services through their clinical programs. Even without winning, what students are able to achieve for their clients is clear in the calls and messages of gratitude sent to law school clinic offices.

While minimum standards set forth by the government restrict the types of cases and clients that may apply for and receive state-administered legal aid,<sup>158</sup> law clinics are more at liberty to take on cases and clients that legal aid lawyers either cannot or prefer not to take.<sup>159</sup> Clinics have thus initiated efforts that go well beyond representation of litigants in court, expanding into the field—including into villages and areas in which ethnic minorities reside—to practice a form of “street law” that is aimed towards social education and the provision of legal aid more broadly.<sup>160</sup> A space exists in the academic setting for imagination and innovation, making the pursuit of social justice a creative ideal that can be realized.

Despite suffering from a scarcity of human and financial resources,<sup>161</sup> Chinese clinicians remain hopeful that the nation’s law schools will increase the size and scope of clinical programs, supporting them as fundamental to broader goals of legal education and legal reform.<sup>162</sup> This

157. See Fall Notes, *supra* note 155 (in part recording Zhu Dewu, Remarks on *Falü Yuanzhu* [Legal Aid] at the Clinical Legal Education Workshop (Dec. 19, 2004)).

158. See *id.* For a more extensive discussion, see Liebman, *supra* note 41, at Part IV.A.

159. Thus, the majority of cases handled by state-administered legal aid centers may be criminal cases, while those handled by university legal aid centers include administrative or women’s rights cases, among others. See *id.* at 226, 234.

160. Wuda has experimented with the concept of “street law” in an effort to better fulfill the goals established by CCCLE by making legal aid accessible to a greater number of clients and reshaping the educational experiences of a greater number of students. Li Ao, Address at the Opening Session of the Institute of International Education Elizabeth Luce Moore Conference on Women’s Issues (June 1, 2004). At Xibei, a Community Law Clinic (*shequ zhensuo*) was established in June 2003 to “[provide] legal service for the community in various forms as to help drafting community regulations, establishing disputes resolving mechanism and explaining basic knowledge of law to the residents.” See XIBEI BROCHURE, *supra* note 120, at 7. Although this effort holds great promise for the expansion of Chinese clinical legal aid in the future, Chinese clinicians at present lack the necessary resources and clear vision to have developed a sufficiently concrete or enduring program.

161. CCCLE is particularly concerned about the future of clinical legal aid once Ford Foundation funding has expired or dried up:

In view of the huge need for students eager to take this course [and] the large number of new schools applying for admission into CCCLE funds are needed to set up this course and to assist disadvantaged groups in need of legal aid. The extent of funding for clinics and the existence of a stable financial base to defray the costs of handling cases will influence not only the scale and direction of development for clinical legal education, but also . . . the localization and standardization of clinics.

CCCLE BROCHURE, *supra* note 62, at 21.

162. CCCLE argues, “[O]nly when clinic law education has become an integral part of the

hope has led two law schools in Wuhan recently to come together to conduct a training workshop aimed at encouraging professors of doctrine to establish new legal clinics based on their subject matter interests.<sup>163</sup> These two schools will host a CCCLE-sponsored conference, scheduled for July 2005, to bring together clinicians, law school deans, and representatives from the Ministries of Justice and Education to discuss the broader topic of legal education reform in China.

### C. A Lesson in Administering the Law of the Land

It seems appropriate at this point to return to the case presented in the introduction. Despite the various complaints and our willingness to allow the students to decline the case,<sup>164</sup> they nonetheless made a joint decision to go forward, even traveling several hours out into the field to survey the site of the eviction and demolition. Perhaps they felt a sense of moral obligation to assist in the pursuit of justice on behalf of their clients, particularly as more injustices came to light.

Initially, the clients hoped to achieve two main goals: (1) having the court declare that the eviction and demolition were conducted illegally, contrary to national and local regulations, and (2) having the court award a compensatory amount that was more reasonable and “just” than the nominal amount the clients had been promised, but had never received. Although in theory it seemed clear that students and clients were working toward the same goals, frustrations and disagreements arose. During a number of meetings, the clients expressed that it was enough for them to merely explain their side, perhaps conceptualizing court as a forum of mostly therapeutic value, where they could verbalize their problems and feel better by virtue of having done so.<sup>165</sup>

The students, on the other hand, repeatedly tried to reinforce that the clients’ stories must be backed by evidence and tied in with specific references to law. Their frustration with the clients was obvious, their tones harsh. They were prepared and patient when it came to the initial interview, allowing the clients to relate to them in detail the entire

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law education system in our country will the problem of costs for teaching and handling cases in clinic law education be fundamentally solved.” *Id.* at 21-22.

163. A total of over forty professors from *Caida* and the College of Law at South Central University for Ethnic Communities (*Zhongnan Minzu Daxue Faxueyuan*, or “*Minda*”) attended the Clinical Legal Education Workshop in Wuhan from December 18-19, 2004.

164. I have been surprised at how much control students at *Wuda* can exercise in the intake and case filing process. Although there are regulations at the Wuhan Center calling for approval by at least one of the divisions before a case may be taken on, little attention is paid to which cases are dismissed by students even before any group discussion. This particular case raised such issues as complexity of facts, division of labor made difficult by the scope of the issues presented, and even a concern for safety, as the lawyer who had previously represented these clients was beaten in retaliation for his involvement in the case. We discussed these issues extensively and made sure that everyone felt comfortable with proposed solutions for dealing with these risks before we allowed the case to go forward.

165. See Email from author to Yale-China (May 12, 2004, 05:26 PDT)(on file with author) [hereinafter Issues Email].

chronology of events and bring to life what was on paper. However, during follow-up sessions the students would fixate on one or two solutions they had themselves deemed to be right or "just" based on their reading of the relevant laws, and would then talk down to the clients when their opinions or proposed solutions were not agreed to.

Whether in the area of interviewing, problem-solving, or counseling, students in China struggle to break free of the habit of clinging to one right answer (often the answer that most rigidly adheres to standards set forth in the text of the statute).<sup>166</sup> They also struggle to learn patience in dealing with clients less informed and less educated than they are. In assessing the likelihood of success in this case, the students were unable to express much more than pessimism. In response, the clients declared that they would abandon their pursuit of a court judgment and opt instead for out-of-court methods to obtain "just" compensation.<sup>167</sup>

The issues faced in this case are familiar ones. Particularly in the area of administrative litigation, efforts made by lawyers at legal aid centers and by students in legal clinics feel sisyphian in their uphill climb. Many supervisory discussions in the *Wuda* clinic have been devoted to strategy and deciding whether it makes sense to proceed in the administrative courts, opt for civil litigation, or perhaps give up entirely. The very fact that these conversations occur repeatedly in the Chinese clinics reflects that there is still a lack of confidence in the system of justice, as well as in the value of proceeding by law to seek justice against a government failing to uphold the law.

A dearth of necessary lawyering skills is not all that leaves lawyers ill-prepared to deal with these cases. As demonstrated by our clinic's case, the real issue is learning to speak the same language as the poor and disadvantaged who come to seek greater access to justice. While our students interpreted "justice" to mean achieving the best solutions allowable under law, they failed to take into account that the clients instead interpreted "justice" to mean an opportunity simply to voice their dissatisfaction over matters directly affecting them.

Existing scholarship reports that clinical legal aid is disproportionately successful.<sup>168</sup> However, cases that are not taken on, are mediated out, or unravel before they make their way to court (as in the above scenario) do not factor into these statistics. The reality is that the rate of victory in court is not as high as it seems,<sup>169</sup> and clinic students will continue to suffer defeat

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166. See discussion *infra* Part V.A.

167. See Issues Email, *supra* note 165. This decision by the clients initially gave the clinicians some cause for concern, as we were hoping that the clients would not resort to violence or other underhanded measures that circumvented or subverted legal ones.

168. See, e.g., Dowdle, *supra* note 123, at 57-58 (reporting that the Wuhan Center wins about 60% of its administrative litigation suits, a rate 30% above the national average); Liebman, *supra* note 41, at 234.

169. Of the four cases taken on by Li Ao's supervisory group during the spring semester of 2004, one succeeded, one was resolved through mediation, and the other two failed to progress due to a mutual decision by the clients and clinic to suspend representation. Of the two cases I observed in court during the fall semester of 2004, one lost both in the lower court

both in the courtroom and in their learning process if clinical legal education continues to focus on skills training in a vacuum, rather than in tandem with a need to re-evaluate and reform the law itself. Cases like the above are pervasive and reflect both today's absence of a social safety net for the poor and disadvantaged and, as has been pointed out among Chinese clinicians, the fundamental flaws inherent in existing Chinese law.<sup>170</sup>

Clinical legal education provides a mechanism for working with clients who in China also function as "social movement actors," commonly oppressed but no longer willing to accept their oppression.<sup>171</sup> "Conscientization" is critical to the actual launching of a social movement and requires a "reflection upon social, economic, political, and legal structures, and upon distributions of resources and power."<sup>172</sup> This allows social movement actors to realize that their suffering is "structural, not individual, in origin."<sup>173</sup> Only after this critical consciousness forms can these actors be moved to end their oppression, through "the fundamental transformation of the social, economic and/or political conditions which permit and perpetuate that oppression."<sup>174</sup>

I have argued that a social movement is already underway in China, transforming traditional relationships in Chinese society. Whether this movement is productive or destructive depends on whether the structures supporting China's new relationships can be concomitantly and appropriately transformed. If China's social movement actors fail to understand that the social tensions and crisis in governance that exist in China result from the lack of a sound legal culture, which is necessary to support the rule of law, then any revolution that ensues will be a destructive one and will fail to establish new structures that are sustainable. The regime that develops under this scenario will be no more than a new tyranny of the majority, empowered to punish and oppress those previously in command.

On the other hand, if China's social movement actors can let go of the idea that their battle is about one individual (the common laborer or peasant) pitted against another (the Party cadre) to understand that the issues are structural and concern the way in which law is perceived, then they can help bring about social transformations that will eventually be more just and inclusive of all voices and concerns. In this way, whomever the majority or minority, the dominant or weak, mechanisms will exist to resolve their grievances and safeguard their individual interests.

I concede that "the manner in which legal services are organized—individually and case-by-case—creates few opportunities for

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and on appeal, while the other was later resolved through a post-trial, court-administered mediation process.

170. See Fall Notes, *supra* note 155 (recording one law professor's comment that "the law itself is at root flawed" ("fa liu genben you wenti")).

171. See Mosher, *supra* note 95, at 619.

172. *Id.* at 620.

173. *Id.*

174. *Id.*

the sort of collectivization of experience which could permit insights into the structural roots of client suffering."<sup>175</sup> However, because clinical work takes place in an academic setting, I believe that the lawyering that occurs there more successfully incorporates and inculcates skills necessary for meaningful and productive dialogue with social movement actors, including the ability to listen, to share power, to open oneself up to critical examination so that meaningful dialogue can take place, and to develop an active imagination.<sup>176</sup> In this way, working one case at a time nonetheless has tremendous impact.

When I presented this theory to my clinic students in the Fall 2004 course, they were cynical. They did not believe in the power of one case. However, one case—if it uncovers a “defect” (in the words of Chinese clinician Yang Zongke) endemic to the system as a whole—has in fact been shown to trigger a much broader social movement challenging the entire system.<sup>177</sup> Clinical legal education works to cure defects not only in the professionals who practice the law, but also in the law itself. In this way, individual cases and client interactions can become the means by which law may finally trickle down to the average citizen and ignite the engines of lasting social reform.

## VI. CONCLUSION

Why has the clinical experiment failed in places like Romania? Professor Uphoff points to two main defects: (1) the lack of clearly identified goals, which are essential to determining the structure or content of any clinical program, and (2) the lack of dedicated, quality teachers.<sup>178</sup> I am much more optimistic about the clarity and passion of the vision that Chinese clinicians have for providing legal aid to clients and for deepening students' understanding of a lawyer's obligations and values.<sup>179</sup>

The impact of clinical legal education will not be felt immediately. To achieve more perfect paradigms of interviewing, counseling, negotiation, or oral advocacy skills, fundamental, systemic changes in legal education are needed. And to witness the benefits of clinical legal education trickle

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175. *Id.* at 621.

176. *Id.* at 633.

177. *See, e.g., China's Have Nots*, *supra* note 37 (describing a case in which the beating of one porter by a government official incited a protest that Chinese journalists estimated at 30,000 to 70,000 participants).

178. *See Uphoff*, *supra* note 54, at 335, 345-46.

179. *See CCLE BROCHURE*, *supra* note 62, at 20. At the August 2004 Beijing conference, a clinician from *Beida* voiced his opinion about what it would take for clinical legal education in China to sustain itself as an independent methodology. He suggested that Chinese clinicians focus specifically on the resolution of China's social issues and the utilization of legal clinics as one forum for achieving such a resolution. *See Beijing Group Discussions*, *supra* note 152. There is shared optimism among his colleagues that Chinese legal clinics could have a huge influence on society if the clinical community would just focus on two separate but interrelated purposes: first, researching which laws are applicable in a particular case, but in the event that such research proves fruitless and no applicable laws are found, moving on to examine where gaps may exist in the legal system. *See Fall Notes*, *supra* note 155.

down to those clients it aims to serve, building sustainable social change, more than a generation may be requisite. However, by focusing on tomorrow's generation of Chinese lawyers while they are still early in their careers, the clinical model has great potential to help set a higher standard for the legal profession and instill trust in the legal system among those farthest from its reaches.<sup>180</sup>

As scholars and educators, we tend to get mired in the details: Is the methodology working? Are the students reflecting enough?<sup>181</sup> We forget to step back from our role as educators and allow student voices to educate us. Those students who attend CCCLE-sponsored conferences often find themselves explaining to clinicians that the greatest achievement of clinical legal education has been to provide them with an understanding of how law should function in society.<sup>182</sup>

Although clinical legal education has room to improve and expand in the future, it is already bringing about a quiet revolution in the lives of the Chinese students and clients it touches.<sup>183</sup> One of *Wuda's* clinic students, who initially questioned whether legal clinics had merely emerged out of the defects in China's legal education system, ultimately concluded by semester's end that "[n]ot only should clinical methodology... be developed as a significant component of the training of the legal profession in China, but it should also be institutionalized to allow for China's legal system to become a more perfect system."<sup>184</sup> With this type of gradual change in attitude, "for the first time, the law becomes worthy of respect,

180. Some argue that it is this attempt to focus on law students and young lawyers, reforming the legal system "in gradual ways that are significant but not sweeping," which may prove far more successful than earlier efforts to "modernize" legal systems as a whole. See Golub, *supra* note 93, at 3.

181. The fact that these questions relate to the betterment of the clinical model, rather than to the question of whether clinics are needed (which is now assumed), reflects that clinical legal education has been accepted in China and is entering a new, more vibrant phase of localization.

182. See Fall Notes, *supra* note 155 (recording Cao Xuhui, Remarks at Legal Clinic Teaching Inspection and Seminar, Northwest University of Political Science and Law, Xi'an, China (Oct. 17, 2004)). Cao Xuhui is one of a number of Chinese clinic students who continue to work in the clinical programs long after their official semesters in the clinic have concluded. Cao was part of the first group of students to participate in the clinical program at *Caida* run by Peng Xihua. (Professor Peng was himself a student of Wan Xiang, founder and former director of the Wuhan Center.) Cao has continued to work on the clinical program during his three years of master's studies and has been invited to become a clinical instructor at *Minda* during the 2005-2006 academic year. At *Wuda*, my own clinic teaching assistant during both the spring and fall semesters of 2004 was a student in the Fall 2003 course.

183. Despite the lack of official statistics and the fact that it may still be too early to tell, clinical legal education seems in some notable cases to have had a significant impact on students in China. Cao reports that in an informal survey he conducted at *Caida*, about 80% of students who had participated in legal clinics tested into graduate programs—a much higher rate than in the law student population at large. See *id.* In the United States, where more official statistics exist, the numbers do not show a greater tendency among former clinic students to later practice public interest law. However, neither country has been able to measure the impact that clinical legal education may have on student skills and values as legal professionals, regardless of the nature of their practice.

184. Evaluations, *supra* note 56.

and respect is the prerequisite to a culture of law."<sup>185</sup>

In most societies, clinical legal education has had great success where there is first a rising social consciousness, bringing with it a push for change from within.<sup>186</sup> This push has already begun in China. In promising a society governed by law and ready for entry into the global community, China's leadership has initiated reform of the legal system. In so doing, it has inadvertently created the preconditions for a "rule of law" theory that will help to redistribute some power back to the people and reform society as a whole.

The influential Chinese author, Lu Xun (a Mao Zedong favorite), recounts a conversation with a friend:

Imagine an iron house without windows, absolutely indestructible, with many people fast asleep inside who will soon die of suffocation. But you know since they will die in their sleep, they will not feel the pain of death. Now if you cry aloud to wake a few of the lighter sleepers, making those unfortunate few suffer the agony of irrevocable death, do you think you are doing them a good turn?<sup>187</sup>

His friend retorts, "But if a few awake, you can't say there is no hope."<sup>188</sup> Lu Xun is forced to re-evaluate and concedes, "True, in spite of my own conviction, I could not blot out hope, for hope lies in the future."<sup>189</sup> Indeed, there is an entirely new generation of "social provocateurs"<sup>190</sup> in China. The whole nation, including the government, has expressed a willingness to listen to these visionaries and has every incentive to join the broader community of nations promoting the rule of law. It is only a matter of time.

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185. Burman, *supra* note 39, at 117.

186. The American and Chilean clinical movements were able to accelerate as a result of internal social movements in each nation. See Wilson, *supra* note 54, at 565.

187. Lu Xun, *Preface to the First Collection of Short Stories*, "Call to Arms," in *SELECTED STORIES OF LU HSUN* (Yang Hsien-yi & Gladys Yang trans., Foreign Languages Press 1972) (1922), available at <http://www.coldbacon.com/writing/luxun-calltoarms.html#Preface>.

188. *Id.*

189. *Id.*

190. Professor Aiken describes a "provocateur" as a person who instigates and inspires others to action, particularly in the pursuit of justice. See Aiken, *supra* note 80, at 306.