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## NOTES

### ADOPTING AND ADAPTING: CLINICAL LEGAL EDUCATION AND ACCESS TO JUSTICE IN CHINA

#### I. INTRODUCTION

Since the Ministry of Justice's first mention of "legal aid" in its Lawyers' Professional Morality and Professional Discipline Standards in 1993, the Chinese government has increasingly emphasized legal aid as an important component of an overall project to implement the rule of law in China.<sup>1</sup> From the outset, Chinese universities and their students have played a role in legal aid's development, first through university-affiliated nongovernmental legal aid centers and student-run organizations, and more recently through clinical legal education programs incorporated into the law school curriculum. These student legal aid efforts have been self-consciously modeled on clinical legal education programs in the United States, and like their U.S. counterparts, they state among their goals not just building skills, but also instilling in students a commitment to public service and fulfilling some small part of China's legal aid needs — in other words, contributing to the expansion of access to justice in China.<sup>2</sup>

Such cross-jurisdictional borrowing of institutional models is not only desirable, but also necessary in a country such as China, which since the late 1970s has sought to develop rapidly a market economy and the accompanying legal and regulatory infrastructure necessary to administer it. But, as scholars often have lamented since Professors Marc Galanter and David Trubek's original critique of the law and development movement,<sup>3</sup> successful legal transplantation is neither easy nor routine. Borrowed models must be adjusted to indigenous circumstances.<sup>4</sup> And in every importation, the nasty specter of "legal

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<sup>1</sup> See Benjamin L. Liebman, *Legal Aid and Public Interest Law in China*, 34 TEX. INT'L L.J. 211, 219, 222–23 (1999).

<sup>2</sup> See COMM. OF CHINESE CLINICAL LEGAL EDUCATORS, CLINICAL LEGAL EDUCATION 20 (2003) [hereinafter CCCLE].

<sup>3</sup> See David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 WIS. L. REV. 1062.

<sup>4</sup> Cf. 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 (2000) (warning that focus on U.S. legal aid models might suppress development of potentially more useful indigenous legal aid practices). To articulate the transformative process that legal institutions undergo after importation, Professor Máximo Langer has proposed an alternative to the transplantation metaphor: rather than expecting that a borrowed legal idea or institution "can simply be 'cut and pasted' between legal systems," it is more apt to describe the process as a "legal translation" in which a borrowed institution is altered — possibly dramatically — to

imperialism”<sup>5</sup> lurks: the would-be imparter and the would-be recipient must constantly examine what, if anything, makes the introduced idea or institution better than what is already there. Western theorists have at times doubted the very validity of legal importations, claiming the law and development movement to be in a constant state of “crisis.”<sup>6</sup> But notwithstanding the theorists’ perceived conundrum, practitioners in developing countries have continued to import and adapt legal models. They know “there [is] no going back”<sup>7</sup> to an idealized pre-globalization state, and in today’s globalized economy, they will have to borrow to catch up.

China’s legal educators, for their part, are keenly aware of the challenges before them in importing clinical legal education; they have struggled from the outset with the question of how to “localize” the American model, in which they see much promise but many ill fits.<sup>8</sup> This Note examines China’s importation and localization of this one legal institution, the U.S.-style legal clinic, with respect to one stated goal of the importation, promoting equal access to justice in China. The scope is purposefully modest: one might also examine clinical legal education’s potential contributions to many other worthy goals, including increasing the professional skills of law graduates or instilling a sense of professional responsibility that might ultimately strengthen the Chinese bar, but those questions are large and deserving of separate treatment. The conclusion is also modest: clinical legal education alone, no matter how adapted, does not have the power to establish equal access to justice in China, although it may, if China’s clinical legal educators continue their innovative adaptations to Chinese needs and circumstances, contribute in some small way to that goal.

Part II of this Note examines the relationship between clinical legal education and the goal of equal access to justice, both in the movement’s origins in the United States and in its importation to China. Part III steps back for a view of the context in which clinical legal education operates in China, noting distinctive features of the Chinese legal system and profession that might pose challenges to addressing access-to-justice concerns through clinical legal education. From this grounding, Part IV examines some promising innovations by Chinese

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achieve meaning within its new context. Máximo Langer, *From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, 45 HARV. INT’L L.J. 1, 5 (2004).

<sup>5</sup> E.g., JAMES A. GARDNER, *LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA* (1980).

<sup>6</sup> Brian Z. Tamanaha, *The Lessons of Law-and-Development Studies*, 89 AM. J. INT’L L. 470, 471 (1995).

<sup>7</sup> *Id.* at 484.

<sup>8</sup> See, e.g., Wang Juying, “Zhen suo shi fa lü jiao yu” ben tu hua de si kao [Considering Localization of “Clinic-Style Legal Education”], 23 HEBEI FA XUE [HEBEI LEGAL STUD.] 82 (2005).

clinical educators that begin to address these challenges in creative ways. Part V concludes that these innovations show much promise, but no form of clinical legal education alone will be sufficient to address China's access-to-justice needs.

## II. THE GOAL: USING CLINICAL LEGAL EDUCATION TO FURTHER EQUAL ACCESS TO JUSTICE

### A. *Roots of the Movement: The United States*

Both legal aid and clinical legal education took wing in the United States in the 1960s. Legal aid through local voluntary groups had existed in the United States since 1876,<sup>9</sup> but it was not until the 1960s that a powerful anti-poverty movement sought government support for a nationwide legal aid scheme, culminating in the formation of the Legal Services Corporation (LSC).<sup>10</sup> Likewise, while one can trace the development of clinical legal education in the United States back to the efforts of legal realists from the 1930s to the 1950s, it was the efforts of William Pincus, a lawyer who was an anti-poverty advocate and officer of the Ford Foundation, that secured Ford Foundation funding in the late 1960s for the Council on Legal Education and for Professional Responsibility (CLEPR), and in turn for dozens of clinical legal education programs at law schools throughout the country.<sup>11</sup> After initial pilot programs at a handful of schools in the late 1960s and early 1970s, the majority of law schools introduced clinical legal education over the decade that followed, and the movement coalesced.<sup>12</sup> The mission of these new clinical programs was intrinsically tied to the legal aid movement: the programs aimed not simply to teach skills and instill a general commitment to public service, but to create a cadre of dedicated young lawyers ready to fill positions in new legal aid centers funded by the LSC. Clinical legal education was synonymous with an access-to-justice goal.

The legal aid and clinical legal education movements were in step with their time. It was doubtless a turbulent period in American history, but also one in which the use of the legal system to promote rights seemed to have boundless potential. The Warren Court held sway. At the same time, civil rights preoccupied the American con-

<sup>9</sup> See BRYANT GARTH, *NEIGHBORHOOD LAW FIRMS FOR THE POOR* 17–20 (1980).

<sup>10</sup> For a detailed history of the LSC (initially called the Legal Services Program) and its connection to the “war on poverty,” see *id.* at 17–46.

<sup>11</sup> Stephen Wizner, *The Law School Clinic: Legal Education in the Interests of Justice*, 70 *FORDHAM L. REV.* 1929, 1933 (2002); see also Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 *TENN. L. REV.* 1099, 1105–07, 1111–14 (1997) (discussing early legal realist efforts and the subsequent CLEPR initiative).

<sup>12</sup> See Wizner, *supra* note 11, at 1933.

sciousness, and the tight correlation between race and poverty was apparent to those in the legal aid and clinical legal education movements.<sup>13</sup> It is natural, then, that the rhetoric of the movements was based in the rights of discrete groups and often framed in terms of equal protection and nondiscrimination. Practitioners and educators focused on litigation and, beyond providing services to allow individual clients to access the legal system, often relied on “test cases” to change the law itself in ways anticipated to provide broader rights to underprivileged groups.<sup>14</sup>

Clinical legal education has progressively “solidified and expanded its foothold in the academy” since the 1960s.<sup>15</sup> Clinical programs are now part of the curriculum at virtually every law school in the United States,<sup>16</sup> and they have become sufficiently mainstream that the American Bar Association requires accredited law schools to offer students “live-client or other real-life practice experiences.”<sup>17</sup> Studies have found that, although overall student commitment to public interest work declines during the three years of law school,<sup>18</sup> participation in law school legal clinics increases students’ professed desire to enter a public interest career<sup>19</sup> and seems to be a factor in students’ actual decisions to do so.<sup>20</sup>

Still, some lament the seeming lack of progress in the field and wonder if clinical legal education is truly achieving its original access-to-justice goals. Clinical programs “remain at the periphery of law school curricula.”<sup>21</sup> Clinical offerings are usually elective, and clinical instructors enjoy relatively low status, often hired on a short-term basis with comparatively low compensation.<sup>22</sup> In such a system, only a limited number of students are receiving the message of the profession’s commitment to public interest values. Human and financial resource constraints mean such programs can provide only token direct

<sup>13</sup> See Jon C. Dubin, *Clinical Design for Social Justice Imperatives*, 51 SMU L. REV. 1461, 1465 (1998) (attributing the growth of social justice-oriented clinical legal education in the 1960s and 1970s in part to the time’s nature as “an era of civil rights activism”).

<sup>14</sup> See GARTH, *supra* note 9, at 20–21 (discussing the success of test-case litigation in achieving social justice reform during the 1960s).

<sup>15</sup> Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 12 (2000).

<sup>16</sup> See *id.* at 21.

<sup>17</sup> Section of Legal Educ. & Admissions to the Bar, Am. Bar Ass’n, Standards for Approval of Law Schools, Standard 302(b) (2006).

<sup>18</sup> See Howard S. Erlanger et al., *Law Student Idealism and Job Choice: Some New Data on an Old Question*, 30 LAW & SOC’Y REV. 851, 851 (1996).

<sup>19</sup> See Sally Maresh, *The Impact of Clinical Legal Education on the Decisions of Law Students To Practice Public Interest Law*, in EDUCATING FOR JUSTICE: SOCIAL VALUES AND LEGAL EDUCATION 154, 163 (Jeremy Cooper & Louise G. Trubek eds., 1997).

<sup>20</sup> See Erlanger et al., *supra* note 18, at 861.

<sup>21</sup> Barry et al., *supra* note 15, at 32.

<sup>22</sup> See *id.* at 27.

service to the poor as compared to need. Further, although offerings have diversified, the overwhelming focus of legal clinics has remained litigation, often emphasizing formal legal rules at the expense of attention to structural and enforcement problems that pose just as great a barrier to the disadvantaged in accessing justice.<sup>23</sup> Few systematic studies of student skills acquisition<sup>24</sup> or client-side results<sup>25</sup> have been conducted, leaving the effectiveness of clinical methods at fulfilling the access-to-justice goal an open question.

Despite these hurdles, the access-to-justice goal remains strong in U.S. clinical discourse,<sup>26</sup> and the hope is that clinical legal education has and will continue to foster equal access to justice in several ways. First, it may instill a commitment to public interest in its participants, who may continue to contribute to access-to-justice issues later in life through a public interest career path, pro bono work, or financial support. Second, clinics may directly provide significant (if not sufficient) amounts of legal services to disadvantaged groups. Third, clinical programs may effect change beyond the individual client through strategies that contemplate change in the law itself. Finally, legal clinics may serve as laboratories for exploring methods for more effective representation of clients' interests.<sup>27</sup>

### B. *The Translation: China*

As it did in the United States, clinical legal education emerges in China at a definitive national moment. The economic reforms begun by Deng Xiaoping almost three decades ago have come to fruition as China enjoys rapid economic growth. But China's citizens are not sharing equally in the fruits of its economic success: while urban residents enjoy greater and greater prosperity, the rural population remains impoverished.<sup>28</sup> Addressing this inequality is perhaps China's greatest challenge today. In addition to concern for its citizens' well being, the Chinese government also has an interest in maintaining both social stability at home and face vis-à-vis the rest of the world.<sup>29</sup>

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<sup>23</sup> Cf. Jeanne Charn, Preventing Foreclosure: Thinking Locally, Investing in Enforcement, Playing for Outcomes (Mar. 2006) (unpublished manuscript, on file with the Harvard Law School Library) (criticizing U.S. legal aid lawyers' focus on law reform as the sole vehicle for widespread impact and encouraging an approach that, among other things, thinks locally and invests in enforcement, although still primarily through litigation).

<sup>24</sup> See Jeanne Charn, *Service and Learning: Reflections on Three Decades of The Lawyering Process at Harvard Law School*, 10 CLINICAL L. REV. 75, 110-11 (2003).

<sup>25</sup> See *id.* at 113.

<sup>26</sup> See, e.g., Dubin, *supra* note 13.

<sup>27</sup> See Charn, *supra* note 24, at 113.

<sup>28</sup> On China's growing inequality, and in particular the urban-rural divide, see U.N. DEV. PROGRAMME, CHINA HUMAN DEVELOPMENT REPORT 2005, at 8-10, 21-37 (2005).

<sup>29</sup> Cf. Liebman, *supra* note 1, at 222-23 (identifying the Chinese government's desires not only "to increase the importance of law and to balance social development and the needs of the poor

The Chinese government has embraced legal reform as one means of managing its newly globalized economy and the societal problems stemming from it. Beginning in the early 1990s, the Chinese government increasingly emphasized legal aid and, more generally, rights protection for all citizens as important components of the overall project to implement “rule of law” in China.<sup>30</sup> The Ministry of Justice initiated its own efforts to build a national legal aid system in 1994;<sup>31</sup> since then, the number of legal aid centers nationwide has grown to over 3000.<sup>32</sup> The Ministry of Justice has listed the development of legal aid as a priority goal.<sup>33</sup>

As in the United States, clinical legal education has aligned with the broader effort to address inequality and increase rule of law in China. China began experimenting with university-based legal aid as early as 1992, when a law professor at Wuhan University started the first such program in China, the Wuhan University Center for the Protection of Rights of Disadvantaged Citizens (Wuhan Center).<sup>34</sup> Then, in September 2000, with support from the Ford Foundation, seven universities instituted law clinics and formally integrated them into the law school curriculum,<sup>35</sup> explicitly emulating U.S. clinical legal education programs.<sup>36</sup> Four more universities followed suit in 2002, and in July of that year, the eleven universities founded the Committee of Chinese Clinical Legal Education (CCCCLE) to promote the growth and development of clinical legal education in China.<sup>37</sup> By February 2007, sixty-four university law schools or departments had joined the organization.<sup>38</sup> In addition to promoting exchange of information

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with economic development,” but also “to boost the standing of China’s legal system in the eyes of the international community” as catalysts behind the country’s legal aid program).

<sup>30</sup> See *id.* at 222.

<sup>31</sup> See *id.*

<sup>32</sup> See Embassy of the P.R.C. in the U.S., China Strives To Provide More Legal Aid to Ordinary Chinese (Sept. 30, 2004), <http://www.china-embassy.org/eng/gyzg/t163026.htm>.

<sup>33</sup> *Id.*

<sup>34</sup> See C. David Lee, *Legal Reform in China: A Role for Nongovernmental Organizations*, 25 YALE J. INT’L L. 363, 383–84 (2000). The founder of the Wuhan Center, Professor Wan Xiang, is Yale-educated and modeled the Center on Western university-affiliated legal aid programs after visiting major universities in Europe and the United States. See *id.*; Wuhan da xue she hui ruo zhe quan li bao hu zhong xin [Wuhan Univ. Ctr. for the Protection of Rights of Disadvantaged Citizens], Zhong xin jian jie [Introduction to the Center], <http://www.cprdc.org/web/ShowArticle.asp?ArticleID=621> (last visited May 11, 2007) [hereinafter Introduction to the Center].

<sup>35</sup> CCCLE, *supra* note 2, at 16.

<sup>36</sup> See Zhen Zhen, The Present Situation and Prosperous Future of China Clinical Legal Education (Oct. 7, 2005) (unpublished manuscript), available at [http://www.law.ucla.edu/docs/zhen\\_zhen\\_prosporous\\_future\\_of\\_chinese\\_clinical\\_educatio\\_.pdf](http://www.law.ucla.edu/docs/zhen_zhen_prosporous_future_of_chinese_clinical_educatio_.pdf).

<sup>37</sup> CCCLE, *supra* note 2, at 16.

<sup>38</sup> See Zhongguo zhen suo fa lü jiao yu [China Clinical Legal Educ.], Re lie huan ying Huanan li gong da xue fa xue yuan jia ru Zhongguo zhen suo fa lü jiao yu zhuan ye wei yuan hui [Warmly Welcome Huanan Ligong University Law School in Entering CCCLE] (Feb. 27, 2007), [http://www.cliniclaw.cn/article\\_view.asp?id=346](http://www.cliniclaw.cn/article_view.asp?id=346).

among Chinese universities, CCCLE places a heavy emphasis on dialogue and partnership with American universities, both by sending Chinese educators to the United States to observe clinics and by inviting U.S. educators to China to share teaching methods and experiences.<sup>39</sup>

Improving access to justice remains a central theme of clinical legal education in China: clinical educators identify as primary goals for their programs, in addition to building practical skills, instilling in students commitment to the public interest and assisting with China's legal aid needs.<sup>40</sup> Moreover, China's inequality, combined with the government's desire to expand legal aid, presents a gaping need for work in the area of access to justice. For clinical legal education to meet this goal in the Chinese context, however, Chinese clinical educators will have to consider challenges that make an exact duplication of the U.S. model an imperfect fit.

### III. THE CHALLENGES: THE CONTEXT OF CLINICAL LEGAL EDUCATION IN CHINA

#### *A. The Chinese System*

Drastic government reforms begun in the late 1970s endeavored to transform China. These reforms were not limited to economics; after a decade of chaos, the government espoused the concepts of a government of laws and equality before the law. These principles were affirmed in the Constitution of 1982, which remains in effect today.<sup>41</sup> China has made progress toward these rhetorical ideals in the past decades; the ideals have not, however, proved quick or easy to achieve.<sup>42</sup> This section aims not to catalogue all of the successes and failures of China's legal reforms in recent decades, but rather to provide a general sketch of the Chinese system and how law operates within it, highlighting those features that might prove to be stumbling blocks for contributing to access to justice through clinical legal education.

1. *The Party and the Administrative State.* — China today remains a Party-state in which administration is the preferred form of governance. Dual, massive bureaucracies — the Communist Party and the government — operate side by side, with officials in the for-

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<sup>39</sup> CCCLE, *supra* note 2, at 17; Zhen, *supra* note 36. As of October 2005, CCCLE had partnered with the Ford Foundation to send a total of thirty-six Chinese clinical instructors to observe clinics at U.S. universities. See Zhen Zhen, *supra* note 36.

<sup>40</sup> See, e.g., CCCLE, *supra* note 2, at 19–20.

<sup>41</sup> See XIAN FA pmbl., art. 5 (1982) (P.R.C.).

<sup>42</sup> See ALBERT HUNG-YEE CHEN, AN INTRODUCTION TO THE LEGAL SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA 36–37 (2004).

mer occupying most of the prominent administrative positions in the latter.<sup>43</sup> Power remains overwhelmingly concentrated in the hands of the Party. Moreover, what would, in the U.S. system, be separate branches of government — the legislature and the judiciary — are in China, in effect, two units within the government side of the bureaucracy, which operates as a single-branch administrative state.<sup>44</sup> Although as a formal matter the National People's Congress is the supreme organ of the state,<sup>45</sup> many agencies outrank the legislatures and courts in terms of clout and hold vast regulatory power,<sup>46</sup> thus stymieing the power of those organs usually associated with law to promote access to justice absent broader structural reforms.

2. *Legislation and Regulation.* — Three levels of legislatures in China — national, provincial, and city — may legislate on all issues affecting their respective jurisdictions so long as their legislation is consistent with higher-level enactments.<sup>47</sup> Typically, the standing committees of legislatures form subcommittees, consult with various government agencies, draft legislation, and, in some cases, directly enact legislation.<sup>48</sup> The full body of the legislature approves the final drafts of important laws, usually with near unanimity; the National People's Congress has yet to vote down a piece of legislation.<sup>49</sup> The laws issued at the national level are typically vague, often intentionally leaving room for government agencies and legislatures at various levels to issue implementing rules and regulations and to tailor the specifics to local needs.<sup>50</sup> In addition, the state's vast array of administrative agencies at all levels may issue regulations and policy directives on issues that fall within their jurisdictions.<sup>51</sup> These regulations and policy directives often carry more practical weight than legislation because they tend to be more exact, and courts generally follow the most specific pronouncement on a given issue.

The scope of laws, regulations, and policies in China is wide-ranging, as the state remains heavily involved in its citizens' lives, from decisions regarding family planning to religious practice. However, several factors impede China's most disadvantaged from utilizing

<sup>43</sup> See *id.* at 91.

<sup>44</sup> See William P. Alford & Benjamin L. Liebman, *Clean Air, Clear Processes? The Struggle over Air Pollution Law in the People's Republic of China*, 52 HASTINGS L.J. 703, 739–40 (2001).

<sup>45</sup> See XIAN FA art. 57; Alford & Liebman, *supra* note 44, at 706.

<sup>46</sup> See Alford & Liebman, *supra* note 44, at 708, 739–40.

<sup>47</sup> See *id.* at 706 (concerning the National People's Congress); *id.* at 708 (concerning provincial and local people's congresses).

<sup>48</sup> See CHEN, *supra* note 42, at 98–104, 107–09.

<sup>49</sup> *Id.* at 62, 100.

<sup>50</sup> See RANDALL PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW 251 (2002).

<sup>51</sup> See Alford & Liebman, *supra* note 44, at 708.



law to accomplish their goals. Chinese laws and regulations suffer from overlapping lawmaking authority, with multiple agencies and legislative bodies at the national, provincial, and local levels making pronouncements on the same issue, often causing laws to conflict in a system that has yet to develop clear principles to rectify such conflicts.<sup>52</sup> Despite recent efforts to consult experts and the public when drafting legislation,<sup>53</sup> the process remains opaque and “[i]ndividual citizens and interest groups have few channels for influencing the law-making process,”<sup>54</sup> which in turn may lead to bad substantive laws. Further problems include vagueness and generally poor drafting of legislation<sup>55</sup> and instability of the laws.<sup>56</sup>

The challenge for proponents of equal access to justice, then, is to build systematically a structure in which laws are internally coherent, accessible, and responsive to public need. A particular law’s incoherence, inaccessibility, and inapplicability are unlikely to be severe impediments to the well-connected; a simple call to the relevant official will do the trick. It is the ideal of law, however, to define a system whereby an unconnected individual can find an answer that is equally applicable, with equal ease.

3. *The Judicial Role.* — Unfortunately, China’s courts are not in a position to rationalize incoherent legislation or, more broadly, facilitate access to justice as they might in other legal systems. First, the place of courts within China’s bureaucratic power structure limits their ability to adjudicate. As noted above, the judiciary has the rank of a common agency, and a fairly low-level one at that. Cases involving high-ranking Party officials are still beyond the reach of the courts and are usually handled within the Party system.<sup>57</sup> Moreover, although a court theoretically answers to higher-level courts, it is also beholden to Party and government officials at its equivalent geographical level, where judicial appointment and dismissal decisions are made and the court’s budget is set.<sup>58</sup> For this reason, it is common for judges to

<sup>52</sup> See CHEN, *supra* note 42, at 114–15; ZOU KEYUAN, CHINA’S LEGAL REFORM 94–96 (2006). The Law on Legislation, passed in 2000, attempts to resolve these conflicts, see CHEN, *supra* note 42, at 112–13, but it has not yet done so in practice, see *id.* at 114.

<sup>53</sup> See, e.g., CHEN, *supra* note 42, at 103–04 (mentioning use of consultative processes in the recent drafting of, inter alia, the 2001 amendments to the Marriage Law); Alford & Liebman, *supra* note 44, at 745–46 (describing broader involvement in the drafting process for an environmental law passed in 2000 as compared to its counterpart passed in 1995).

<sup>54</sup> PEERENBOOM, *supra* note 50, at 243.

<sup>55</sup> See CHEN, *supra* note 42, at 118.

<sup>56</sup> See PEERENBOOM, *supra* note 50, at 247–55.

<sup>57</sup> See William P. Alford, *Of Lawyers Lost and Found: Searching for Legal Professionalism in the People’s Republic of China*, in EAST ASIAN LAW: UNIVERSAL NORMS AND LOCAL CULTURES 182, 185 (Arthur Rosett et al. eds., 2003).

<sup>58</sup> See CHEN, *supra* note 42, at 153–54; Stanley B. Lubman, *Dispute Resolution in China after Deng Xiaoping: “Mao and Mediation” Revisited*, 11 COLUM. J. ASIAN L. 229, 323–27 (1997).

check with local political officials before issuing decisions that are considered “politically sensitive.”<sup>59</sup> As a matter of procedure, it is also common for judges to consult with the head of their own court or the court at the next-highest level prior to the decision, effectively negating the import of an appeal.<sup>60</sup>

Second, even if judges enjoyed full prestige and independence, certain features of China’s legal regime limit litigation’s potential as a path for change. China’s is a civil law system in which the decision of one case does not create a binding precedent for the next.<sup>61</sup> Further, Chinese judges are not empowered to review legislation for compliance with the Constitution, nor are they empowered to review lower-level legislation for consistency with higher-level legislation.<sup>62</sup> Such conflicts may be solved only through legislative or regulatory action,<sup>63</sup> and in a particular case, a judge must simply apply one rule without explicitly invalidating the other.

A third impediment to utilizing courts as a force to reshape laws in ways that promote equal access to justice is the low level of education of many of China’s judges. Historically, judges were not required to have any legal credentials, or even a college degree. A large percentage of judges were, in fact, retired military personnel.<sup>64</sup> In recent years, China has adopted more stringent requirements for entry into the judiciary, including passage of the bar exam and a college degree.<sup>65</sup> But judges from the era of military appointments will remain on the bench for some time, and they are unlikely to rock the boat with incisively written, progressive opinions.

Although these considerations paint a fairly grim picture, it is important to emphasize that China’s courts have been growing in strength thanks to ongoing reforms. As noted above, reforms in judicial qualification requirements ensure that the judiciary will grow in its legal knowledge and skill as new judges ascend to the bench. At the same time, the independence of individual courts from local government pressure — if not the independence of individual judges<sup>66</sup> — has increased in recent years.<sup>67</sup> Even more promising, some courts, particularly at the lower levels, have been pushing at the seams to expand their power, experimenting with everything from using the Con-

<sup>59</sup> CHEN, *supra* note 42, at 153; *see also* Lubman, *supra* note 58, at 324–25.

<sup>60</sup> *See* CHEN, *supra* note 42, at 143; Lubman, *supra* note 58, at 322–23.

<sup>61</sup> *See* Dowdle, *supra* note 4, at S62.

<sup>62</sup> *See* Benjamin L. Liebman, *Watchdog or Demagogue? The Media in the Chinese Legal System*, 105 COLUM. L. REV. 1, 67 (2005).

<sup>63</sup> *See* PEERENBOOM, *supra* note 50, at 260.

<sup>64</sup> *See* Lubman, *supra* note 58, at 311–12.

<sup>65</sup> *See* CHEN, *supra* note 42, at 135–36.

<sup>66</sup> *See* ZOU, *supra* note 52, at 150.

<sup>67</sup> *See* Liebman, *supra* note 62, at 68–69.

stitution as a gap-filler to vindicate basic rights to using other same-level courts' decisions in a semi-precedential fashion.<sup>68</sup> Higher-level courts have begun selecting "precedents," which are not technically binding but which lower courts are generally expected to follow.<sup>69</sup> The Supreme People's Court has allowed at least moderate room for such experimentation and itself distributes lower-level decisions it selects as exemplars for emulation on a quarterly basis.<sup>70</sup> Nonetheless, the results of these inklings of reform, and their ultimate impact on Chinese courts' ability to foster access to justice, remain to be seen.

### B. The Legal Profession

Compared to law students in the United States, who upon graduation are considered part of the community of lawyers, law students in China tend to enter a more diverse set of careers.<sup>71</sup> These include work as lawyers, judges, prosecutors, government workers within various agencies, and businesspeople, all of which are viewed as distinct professions. Given the current low passage rate of China's bar exam,<sup>72</sup> the highest proportion of law graduates today are going into the latter two types of positions, which do not require bar certification. For example, statistics for Master's and Ph.D. law students graduating in 2003 from Tsinghua University, one of the top law departments in China, show only 11.5% joining law firms and 4.2% going to courts.<sup>73</sup>

For those who do enter the legal field, the question remains: is the legal profession in China well positioned to contribute to access to justice at all? It is the Western scholar's natural tendency to look to the legal profession to solve perceived legal problems. Professor William Alford cautions, however, that such scholars have tended to "significantly overstate[]" the role of the legal profession in China's reforms to

<sup>68</sup> See Thomas E. Kellogg, "Courageous Explorers"? *Education Litigation and Judicial Innovation in China*, 20 HARV. HUM. RTS. J. (forthcoming Spring 2007).

<sup>69</sup> See *China's Higher Court Issues First Legal Precedents*, PEOPLE'S DAILY, Aug. 2, 2003, [http://english.people.com.cn/200308/02/eng20030802\\_121522.shtml](http://english.people.com.cn/200308/02/eng20030802_121522.shtml).

<sup>70</sup> See *id.*

<sup>71</sup> See Wang, *supra* note 8, at 83.

<sup>72</sup> See Gao Yifei, *Ying dang da fu du ti gao si fa kao shi de tong guo lv* [Bar Examination Rates Should Be Greatly Increased], DONG FANG FA YAN [E. LEGAL EYE], Dec. 5, 2005, <http://www.dffy.com/sifakaoshi/xx/200512/20051205072719.htm> (stating that China's bar exam passage rate was 6.68% in 2002, 8.75% in 2003, 11.22% in 2004, and 14.39% in 2005).

<sup>73</sup> Qinghua da xue [Tsinghua Univ.], *Fa xue yuan 2003 jie bi ye sheng qu xiang* [Law School 2003 Graduate Destinations] (2003) (on file with the Harvard Law School Library). A more recent study shows only 13% of 2006 law graduates from China University of Political Science and Law and 3% of their counterparts from Beijing Transportation University finding jobs in the legal field. Chen Hongwei, *Re zhao sheng leng jiu ye* [Hot Student Enrollment, Cold Employment], ZHONGGUO JIAO YU XIN WEN WANG [CHINA EDUC. NEWS WEB], Feb. 5, 2007, [http://www.jyb.com.cn/jy/jyzt/zyhq/t20070205\\_64372.htm](http://www.jyb.com.cn/jy/jyzt/zyhq/t20070205_64372.htm).

date.<sup>74</sup> Commitment of the profession to legal aid has been limited in China. Most lawyers consider any commitment to public service to be fulfilled through “mandatory pro bono,” which is required by law at the local level<sup>75</sup> and viewed by lawyers in a light similar to payment of taxes.<sup>76</sup> Within the legal aid field, most are state workers affiliated with the National Legal Aid Center or its local branches; only a spirited few, working in a handful of NGO legal aid centers, maintain the independent stance and commitment to the public interest that Americans associate with the social justice movement.<sup>77</sup>

In addition, the number of lawyers per capita in China limits their ability to make significant strides in promoting access to justice. China simply does not have enough lawyers, even with mandatory pro bono, to guarantee equal access through a case-by-case strategy. Despite exponential growth in the absolute number of lawyers, China’s proportion of lawyers to total population is far lower than that of the United States. Whereas approximately 125,000 lawyers serve a population of over 1.3 billion<sup>78</sup> in China (less than one lawyer for every 10,000 people), over one million lawyers<sup>79</sup> serve a population of about 300 million<sup>80</sup> in the United States (more than one lawyer for every 300 people). Even in the United States, legal aid efforts through the individual service model are often criticized for failing to fulfill need; this problem is exacerbated in China. Furthermore, China’s lawyers are highly concentrated in cities, whereas the vast majority of the country’s poor remain in the countryside.<sup>81</sup> According to official statistics,

<sup>74</sup> Alford, *supra* note 57, at 184.

<sup>75</sup> See Liebman, *supra* note 1, at 220–21.

<sup>76</sup> Cf. Wen Zhang, Legal Aid in China 20–21 (May 7, 2005) (unpublished manuscript, on file with the Harvard Law School Library) (describing mandatory pro bono as reflecting the state view that lawyers “should be taxed through the provision of free legal services” and discussing firms’ tendency to “eschew” their pro bono duties).

<sup>77</sup> One example of such an NGO-style center is the Wuhan Center, which is discussed in detail in section IV.A, *infra* pp. 2149–2151.

<sup>78</sup> CIA, *China: People*, in THE WORLD FACTBOOK (2007), <https://www.cia.gov/cia/publications/factbook/geos/ch.html#People> (estimating Chinese population as of July 2007 at 1,321,851,888 people).

<sup>79</sup> See AM. BAR ASSOC., NATIONAL LAWYER POPULATION BY STATE (2006), *available at* [http://www.abanet.org/marketresearch/2006\\_national%20lawyer\\_population\\_survey.pdf](http://www.abanet.org/marketresearch/2006_national%20lawyer_population_survey.pdf) (listing the total number of active lawyers in 2006 in the United States at 1,116,967).

<sup>80</sup> CIA, *United States: People*, in THE WORLD FACTBOOK (2007), <https://www.cia.gov/cia/publications/factbook/geos/us.html#People> (estimating U.S. population as of July 2007 at 301,139,947 people).

<sup>81</sup> See William P. Alford, “Second Lawyers,” First Principles: Lawyers, Rice-Roots Legal Workers, and the Battle over Legal Professionalism in China 21 (Jan. 15, 2005) (unpublished manuscript, on file with author). Professor Alford advocates the continued and perhaps expanded use of “rice-roots legal workers,” who lack the credentials and training of lawyers but are authorized by the state to provide basic services primarily to rural populations, to facilitate access to justice in the countryside. *Id.*

206 counties in China do not have even one licensed lawyer.<sup>82</sup> A working model for rule-of-law development and legal aid cannot assume the availability of lawyers to handle every case in China. China, therefore, needs to find other solutions.

### *C. Tentative Diagnosis*

The U.S. model of clinical legal education at least initially appears to be a good fit for China's need to provide access to justice for all citizens. China's challenge is similar to the one that clinical legal education, in combination with legal aid, first sought to address in the United States: how can a legal system guarantee equal access to justice to citizens with unequal endowments of wealth? However, to address this problem effectively, clinical educators in China need to take into account features of China's current legal system and profession and adjust the clinical legal education model accordingly. Clinical educators in China have strived to make these assessments and adjustments from the outset; Part IV explores some of their solutions in detail. But first, this section attempts a tentative diagnosis of the major potential hurdles.

Several factors noted above, when viewed in tandem, suggest that a case-by-case litigation strategy alone may be of little practical utility in promoting access to justice in China. The many law graduates pursuing non-legal careers, the low lawyer-to-population ratio, and the concentration of lawyers in urban rather than rural areas all suggest that case-by-case provision of legal services will amount to a mere scratch on the surface. In addition, many hurdles to accessing justice exist at a higher, systematic level, namely, in the continued concentration of power in the Party, in legislative and regulatory processes, and in the content of and conflicts among laws. Moreover, litigation is limited as a tool by systemic features including China's lack of a precedential system and the limited prestige and political position of the courts.

Other factors suggest that even an approach that looks beyond the single case might have limited success. First, various pressures weigh against attempts to inspire students to continue their public service commitments beyond graduation. Whereas at the time of clinical legal education's development the United States was home to a class of legal professionals who were both self-aware as a distinctive, internally governed professional group and historically (at least rhetorically) commit-

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<sup>82</sup> See *Zhongguo: 206 xian wu lü shi — lü shi yu ji ceng jian xing jian yuan de kun huo* [China: 206 Counties Have No Lawyers — The Dilemma of the Legal Profession Moving Further Away from the Grassroots], FA ZHI RI BAO [LEGAL DAILY], December 24, 2006, available at [http://law.hust.edu.cn/Article\\_Show.asp?ArticleID=1384](http://law.hust.edu.cn/Article_Show.asp?ArticleID=1384).

ted to working “in the public interest,”<sup>83</sup> such professional awareness and commitment has yet to develop fully in China. Public interest job opportunities are rare — as are legal jobs as a whole — and young law graduates who enter traditional law firms find little support for pro bono work outside of that mandated by the state. Commitments, even if sincere, are difficult to maintain when not supported by a subculture of others with similar commitments.<sup>84</sup>

Second, fledgling clinics in China are faced with limited resources. Most programs rely almost entirely on a single foreign source — the Ford Foundation — for funding. Such an arrangement carries the disadvantages of limited funding and a lack of guaranteed, long-term stability.<sup>85</sup> Many scholars have proposed expanding and diversifying clinical legal education’s funding sources, and in particular increasing domestic funding from universities, the public, and the government.<sup>86</sup> But obtaining adequate funding from each of these sources involves significant challenges. In a challenge quite similar to one seen in the United States, Chinese universities would need to change their attitude that clinical legal education is “much less important than the courses required for graduation”<sup>87</sup> before they would invest the necessary funds. And in a challenge somewhat different from the situation in the United States,<sup>88</sup> obtaining adequate funding from the public would require “raising the entire society’s public consciousness, and especially that of the legal profession,”<sup>89</sup> as well as state encouragement of donations through expanded tax deductibility provisions. Further, as discussed below, government funding must be viewed with caution if it comes with the string of greater supervision attached. China’s clinics continue to struggle with these problems, and until larger and more stable pools of funding materialize, clinical programs will by necessity

<sup>83</sup> See Stephen Breyer, *The Legal Profession and Public Service*, 57 N.Y.U. ANN. SURV. AM. L. 403, 404, 416–17 (2000) (stating that “[t]he lawyer’s public service tradition has a proud American history” and arguing that lawyers in the United States have historically played four different public service roles: unpaid attorney, law reformer, statesman, and teacher).

<sup>84</sup> See Erlanger et al., *supra* note 18, at 860–61.

<sup>85</sup> See YANG YONGCHANG, ZHONGGUO FA LÜ YUAN ZHU FA ZHAN WEN TI YAN JIU [RESEARCH ON PROBLEMS IN CHINA’S LEGAL AID DEVELOPMENT] 405 (2004).

<sup>86</sup> See, e.g., *id.* at 407; Yang Xinxin et al., *Cong Meiguo fa xue yuan gong yi xing fa lü fu wu shi jian kan Zhongguo gao xiao fa lü yuan zhu zhi du de fa zhan* [Looking at the Development of China’s Higher Education Legal Aid Organizations from the Perspective of U.S. Law Schools’ Public Interest Legal Service Practice], in BEI DA FA LÜ YUAN ZHU SHI ZHOU NIAN TE KAN [BEIJING UNIVERSITY LEGAL AID TENTH ANNIVERSARY SPECIAL ISSUE] 39 (2004).

<sup>87</sup> Pamela N. Phan, Note from the Field, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 YALE HUM. RTS. & DEV. L.J. 117, 141 (2005).

<sup>88</sup> Top law firms in the United States have been major donors to U.S. clinical programs. See, e.g., Hale & Dorr Legal Servs. Ctr., History, <http://www.law.harvard.edu/academics/clinical/lsc/about/history.htm> (last visited May 11, 2007) (noting the law firm Hale & Dorr’s two-million-dollar contribution to the Center).

<sup>89</sup> Yang et al., *supra* note 86, at 39.

remain small. “Legal clinics remain a sort of luxury item”<sup>90</sup> made available only to a select group of the brightest students through an application process.<sup>91</sup> These resource limitations not only restrict the concrete amount of legal aid work clinics are able to accomplish, but also inhibit the development of a subcultural community that would support continued public interest consciousness among law graduates.

Third, and relatedly, clinics in China have limited independence. Financial dependence on foreign sources may dissuade clinical programs in China from looking beyond case-by-case litigation because funding gravitates toward familiar models.<sup>92</sup> An additional threat to independence comes from within China in the form of standardization and government supervision. Although standardization of practice by the CCCLE has been mostly positive, there is the potential that too much consistency can discourage, even stifle, the creativity necessary to develop new ways to address China’s legal aid needs. Moreover, many scholars are calling for even greater standardization and more direct governmental supervision, through the auspices of the National Legal Aid Center under the Ministry of Justice, to coordinate all clinical legal education programs across China.<sup>93</sup> Indeed, some schools have created clinical programs that are by and large externships with local governmental legal aid centers.<sup>94</sup> While coordination between government legal aid programs and university clinics may no doubt bring many benefits in terms of greater effectiveness and opportunities for students, a centralized supervisory regime and strong ties to the government may undermine the ability of clinical programs to creatively address systematic problems within the government itself.

#### IV. THE STRATEGIES: INNOVATIVE, INDIGENOUS ADAPTATIONS OF CLINICAL LEGAL EDUCATION IN CHINA TODAY

This Part examines three innovative clinical models in China today in an attempt to analyze how they respond to the potential problems outlined above. The first model takes a typical case-by-case litigation approach, but at the same time it creatively harnesses the media to achieve a larger impact. The second model works directly with local government to draft new legislation that has an impact on disadvantaged social groups. The third model uses a comprehensive approach

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<sup>90</sup> Phan, *supra* note 87, at 141.

<sup>91</sup> See YANG, *supra* note 85, at 408 (calling for clinics to be limited to students whose “grades are excellent” and who possess “high quality of thought”).

<sup>92</sup> See Dowdle, *supra* note 4, at S59–S60.

<sup>93</sup> See, e.g., YANG, *supra* note 85, at 407; Yang et al., *supra* note 86, at 38–39.

<sup>94</sup> See, e.g., COMM. OF CHINESE CLINICAL LEGAL EDUCATORS, BRIEF INTRODUCTION: LEGAL CLINIC EDUCATION IN CHINESE UNIVERSITIES 31–32 (2004) [hereinafter BRIEF INTRODUCTION].

to assist a rural community in improving local governance and to explore “rule of law” institutions at the community level.

*A. The Litigation Approach*

Clinical legal education programs in China thus far have been largely oriented toward legal consultation and litigation. As noted above, the ability to promote equal access to justice through such a case-by-case approach may be limited by the realities of China’s current legal system. Some litigation clinics, however, have identified strategies that aim to influence beyond the single case. The Wuhan University Center for the Protection of Rights of Disadvantaged Citizens, the oldest and most developed litigation clinic, serves as a leading example of the potential such clinics hold.

First, the Wuhan Center is particularly adept at utilizing the power of the media.<sup>95</sup> Media attention on a legal case can both raise public awareness of a given rights issue and, when relevant, put pressure on government officials beyond the court to remedy the issue in question.<sup>96</sup> Moreover, with courts’ increasing horizontal communication, there is a possibility that a given decision will have persuasive influence beyond the single case — a possibility strongly tied to media attention. This strategy, of course, requires factual circumstances compelling enough to harness public opinion. But in the absence of formal court-based mechanisms through which citizens can challenge and change the laws, change inspired by public pressure may be a next-best alternative.<sup>97</sup>

The Wuhan Center maintains extremely good relations with the media, and these relations have allowed it to attract positive media coverage not just in Wuhan, but nationwide.<sup>98</sup> Whereas other legal aid centers take cases based on income-eligibility requirements regardless of subject matter,<sup>99</sup> the Wuhan Center has identified and pursued factually compelling cases in its areas of focus — women’s rights, chil-

<sup>95</sup> Although China’s press remains state-controlled, in recent years “media commercialization and increased media editorial discretion have combined with rising attention to social and legal problems” to increase the media’s ability to expose such problems. Liebman, *supra* note 62, at 6.

<sup>96</sup> See *id.* at 69. Of course, media coverage and the resultant public pressure may not always fall on the side of rule-of-law norms. Professor Benjamin Liebman recounts several instances in which public sentiment led to harsher prosecutorial decisions and court sentences — including speedy death sentences — with very few procedural protections for defendants. See *id.* at 69–80.

<sup>97</sup> Cf. *id.* at 59 (noting that the media “increasingly seek to appeal to the public in ways that pressure the Party-state to respond to popular views” and that “[s]uch views may be of particular importance in a system in which there are few other mechanisms for channeling popular interests and opinions”). This use of the courts in conjunction with a media campaign makes for an interesting contrast with the U.S. scenario, in which minorities have historically turned to courts precisely because courts are somewhat insulated from public opinion.

<sup>98</sup> See Lee, *supra* note 34, at 386; Liebman, *supra* note 1, at 234 & n.208.

<sup>99</sup> See Lee, *supra* note 34, at 384.



dren's rights, rights of the disabled, rights of the elderly, labor rights, and administrative litigation, which addresses government abuses<sup>100</sup> — making it easier to foster media attention. Its reputation in the public eye is strong, and as a result, its participation in a given case attracts public support for its cause. The Center, perhaps partially as a result, enjoys a very high success rate in court, winning seventy-two percent of the fifty-four cases it concluded in 2005.<sup>101</sup> Beyond the cases themselves, the Center conducts extensive public activities to raise awareness of rights issues, “inviting the whole society [to] participate[] in legal aid work together.”<sup>102</sup>

Another strength of the Wuhan Center lies in its relative independence from the government. The Center is organized as an NGO<sup>103</sup> and has managed to attract comparatively diverse private funding sources.<sup>104</sup> This independence allows it to take on administrative litigation cases against the government, cases that state-run legal aid centers cannot take and private attorneys often avoid.<sup>105</sup> In fact, the Wuhan Center embraces these cases; in the description of one visiting clinical instructor, the Center “explicitly associates itself with the movement to advance the rule of administrative law in China, 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>106</sup> The Center, like some clinics in the United States,<sup>107</sup> views itself as a laboratory for experimentation in this relatively new realm of the law.<sup>108</sup>

Despite these promising features, a cautionary note is in order: the Wuhan Center model may not be easily duplicated. First, the Center from its outset has enjoyed very strong governmental relations through the connections of its founder, Professor Wan Exiang,<sup>109</sup> who is now Vice President of the Supreme People's Court.<sup>110</sup> Such good relations

<sup>100</sup> See Introduction to the Center, *supra* note 34.

<sup>101</sup> Wuhan Univ. Ctr. for the Protection of Rights of Disadvantaged Citizens, Summary in 2005 of CPRDC (Mar. 18, 2006), <http://www.cprdc.org/web/ShowTeacher.asp?ArticleID=604>.

<sup>102</sup> *Id.*

<sup>103</sup> See Introduction to the Center, *supra* note 34. Technically, the Wuhan Center is organized as a “people-organized non-enterprise unit” (“*minban fei qiye danwei*”). *Id.*

<sup>104</sup> See Lee, *supra* note 34, at 386.

<sup>105</sup> See *id.* at 385–86.

<sup>106</sup> Phan, *supra* note 87, at 137–38 (footnote omitted).

<sup>107</sup> See Charn, *supra* note 24, at 113–14.

<sup>108</sup> The Administrative Procedure Law, which for the first time allowed citizens to bring suits against government agencies for infringement of their rights, was adopted in 1989. See Xingzheng susong fa [Administrative Procedure Law] (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 4, 1989, effective Oct. 1, 1990) CHINALAWINFO (last visited May 11, 2007) (P.R.C.).

<sup>109</sup> See Lee, *supra* note 34, at 386.

<sup>110</sup> See China Vitae, Biography of Wan Exiang, [http://www.chinavitae.com/biography/Wang\\_Exiang/bio](http://www.chinavitae.com/biography/Wang_Exiang/bio) (last visited May 11, 2007).

remain key in China today for the smooth running of any independent, NGO-style organization (which also to some extent tempers that independence). Second, the Wuhan Center's crucial good relations with the state-run media are probably not unrelated to its good government relations. Finally, the Wuhan Center's model is resource intensive, and while it has successfully attracted sufficient funding for its work, primarily from international sources, it has a head start on other clinics in tapping a limited supply.<sup>111</sup> Thus, it has yet to be seen whether others will be able to emulate the working model of the Wuhan Center.

The Wuhan Center model of media tactics and relative independence from government holds much promise for promoting access to justice. However, because of the limitations of China's judiciary, other models that rely less heavily on litigation may be more effective at addressing systematic problems within the legal system. The model is further limited in that it imparts skills and modes of thinking about access to justice that are likely useful only to those students who pursue traditional legal careers.

### B. The Legislation Approach

Improvement of China's laws, particularly at the provincial and local levels where the details of national laws are specified and implemented and where laws most directly affect people's lives, is an overt way to promote equal access to justice. At least one clinic, the Legislation Clinic at Northwest University of Political Science and Law (NWU), has taken this route.<sup>112</sup> Specifically, the clinic proposes legislation that affects socially disadvantaged groups.<sup>113</sup> The clinic works with government agencies and government-led civic organizations, such as the Xi'an City Elderly People's Commission and the Women's Federation of Shaanxi Province, to whom the provincial and local People's congresses and governments have delegated certain responsibilities to formulate regulations and city ordinances.<sup>114</sup> Since its founding, the clinic has been involved in two pieces of local-level legislation, both pertaining to the rights of elderly people, and two pieces of provincial legislation, one on domestic violence and one on workers' compensation for rural migrants.<sup>115</sup>

<sup>111</sup> See Dowdle, *supra* note 4, at S58–S59.

<sup>112</sup> See Xibei zheng fa xue yuan fa lü zhen suo xin wen zhong xin [Nw. Univ. of Political Sci. & Law Legal Clinic News Ctr.], Li fa zhen suo xiang mu yuan zhu jiao xue fa gai ge [Pedagogical Reform of the Legislation Clinical Aid Program] (Apr. 17, 2005), <http://www.nwcliniclaw.cn/news/news/31/200541795712.htm> [hereinafter NWU Legal Clinic News Ctr.].

<sup>113</sup> See BRIEF INTRODUCTION, *supra* note 94, at 18.

<sup>114</sup> See Yang Zongke, *Li fa zhen suo xiang mu jiao xue fa de tan suo* [Exploration of the Pedagogy of the Legislation Clinical Program], XINAN FA LÜ ZHEN SUO [SW. LEGAL CLINIC], June 4, 2004, available at <http://210.28.216.121/show.aspx?id=113&cid=77>.

<sup>115</sup> See NWU Legal Clinic News Ctr., *supra* note 112.

Several characteristics of the Legislation Clinic at NWU are worthy of attention. First, and most significantly, the Legislation Clinic engages students directly in work that by definition takes a broad approach to access to justice. In drafting legislation, students open up the legislative process to both their own and the public's input as they consult with affected groups and bring particular public concerns to legislators' attention. In addition to facilitating the representation of affected interests, the Legislation Clinic also becomes a public forum in which not only students, but also clinical professors and outside experts such as judges, practicing lawyers, and scholars, convene to bear on a legislative issue.<sup>116</sup>

Second, the Legislation Clinic forces students to think about societal problems from multiple perspectives. On the one hand, legislation projects require students to step out of the classroom and engage with society. In the legislation projects on domestic violence and protection of elderly people's rights, students conducted numerous surveys and interviews with those who were affected by the proposed legislation.<sup>117</sup> On the other hand, legislation requires students to probe theoretical questions beyond the realm of the law.<sup>118</sup> For instance, during the NWU Legislation Clinic's drafting of anti-domestic violence provisions, the very definition of "domestic violence" sparked theoretical discussions that cut across many disciplines.<sup>119</sup> Students participating in the project generated a total of about thirty theses stemming from their experiences, seven of which were published.<sup>120</sup> This combination of practice and theory is likely to leave deep impressions on students, laying the foundation for a potential long-term commitment to the access-to-justice issues with which they have struggled.

Finally, legislation projects are usually less costly and engage more students per project than litigation of individual cases, and therefore their social impact in terms of inspiring a commitment to access to justice in students is potentially much greater.<sup>121</sup> As of 2005, less than three years after the clinic's establishment, about 500 students had participated in the Legislation Clinic at NWU, whereas an average clinic could engage at most a few dozen students per semester.<sup>122</sup> Given the lack of adequate funding sources in clinical legal education

<sup>116</sup> See *id.*

<sup>117</sup> See, e.g., Xibei zheng fa xue yuan fa lü zhen suo xin wen zhong xin [Nw. Univ. of Political Sci. & Law Legal Clinic News Ctr.], Xibei zheng fa xue yuan li fa zhen suo ke cheng shi lu [Transcript of a Class at the NWU Legislation Clinic] (Apr. 12, 2004), <http://www.nwcliniclaw.cn/nwcliniclaw/shownews.asp?newsid=579>.

<sup>118</sup> See Yang, *supra* note 114.

<sup>119</sup> *Id.*

<sup>120</sup> See NWU Legal Clinic News Ctr., *supra* note 112.

<sup>121</sup> See *id.*

<sup>122</sup> *Id.*

in China, a legislation clinic model provides a more cost-effective alternative to the standard litigation clinic.

The legislation clinic model does, however, have a drawback: it requires close cooperation with state institutions and, in fact, cannot succeed without such institutions' entrustment of legislative tasks to the clinic. This reliance on government risks the clinics' independence, not only in maintaining work flow, but also in advocating positions that might be in opposition to entrenched government views. This problem might be mitigated by cultivating relationships with multiple institutional partners and selecting partners that display a willingness to grant the clinic space for innovation.

### *C. The Comprehensive Approach*

A third approach brings students to a rural area to engage in a wide range of legal activities — not just litigation and legislation but also civic education, process analysis, and survey-based research — in an attempt to engender a nuanced understanding of the legal challenges and potential solutions in one community. Peking University's Qianxi Community Clinic takes just such a comprehensive approach. The Qianxi Clinic was established in December 2001 as a partnership between the Peking University Legal Aid Society and the Qianxi County government.<sup>123</sup> The clinic is a highly ambitious project, not just for its scale,<sup>124</sup> but more fundamentally, for its attempt to use Qianxi County as an experimental site to explore models of rule of law and self-governance at the grassroots of Chinese society.<sup>125</sup> On the one hand, the Qianxi Clinic's comprehensive model bridges the urban-rural divide by assisting a rural community in building its legal system; on the other hand, the community serves as a microcosm through which students have a chance to grapple with all dimensions of a legal issue.

Each student's participation at the Qianxi Clinic is multidimensional. Students begin with the provision of traditional pro bono legal services, such as litigation, legal consultations and training, mediation in civil disputes, publicizing laws and raising legal awareness, and

<sup>123</sup> See Shen Junyao & Li Jun, *Zai bing leng li xing yu peng pai ji qing zhong qian xing* [Moving Forward Amidst Cold Rationality and Wave-Like Enthusiasm], [http://www.lawpku.org/lawer\\_web/text/34/actv3405.htm](http://www.lawpku.org/lawer_web/text/34/actv3405.htm) (last visited May 11, 2007).

<sup>124</sup> Qianxi County covers an area of 1439 square kilometers, consisting of seventeen townships and numerous villages, and has a population of over 360,000. See Xing zheng qu hua wang [Administrative Region Web], Qianxi Xian [Qianxi County], <http://www.xzqh.org/quhua/13hb/0227qx.htm> (last visited May 11, 2007).

<sup>125</sup> See Zhongguo zhen suo fa lü jiao yu [China Clinical Legal Educ.], *Hui gui hai shi chao yue* [To Turn Back or To Overcome] (December 6, 2003), <http://www.cliniclaw.cn> (follow "geng duo" hyperlink under "fa lü yan jiu" in the right-hand column; then select article title) [hereinafter China Clinical Legal Educ.].

mobilization of citizens for collective representation of their interests.<sup>126</sup> These experiences serve as the “basis” from which students are able to understand the legal system in practice.<sup>127</sup> But whereas most clinics stop at this stage of student development, the Qianxi Clinic goes beyond, challenging students to apply what they have learned in macro-oriented activities including drafting community legislation and suggesting grassroots legal reforms.<sup>128</sup> Participating students have written on a wide range of topics centering on “rule of law” institutions in rural communities,<sup>129</sup> including the value and technicalities of village elections, institutional design of self-governance for villagers, dispute resolution mechanisms in rural communities, and interest representation of farmers.<sup>130</sup>

The Qianxi Clinic approach has engaged students in a much wider range of activities than either the Wuhan Center or the Legislation Clinic, and through these activities it has aimed to drive students toward a mode of thinking at the level of institutions.<sup>131</sup> Not only do its methods address access to justice in rural areas at a broad level, they also instill in students a comprehensive skill set that may serve them well whether or not they enter the legal field. These characteristics, in the view of one legal educator, make these types of community clinics “more appropriate [than traditional clinical models] for the legal education environment of China, in that [they] can maximize the effective use of clinical education.”<sup>132</sup> Like the Wuhan Center and the Legislation Clinic, however, the Qianxi Clinic faces challenges. As a joint endeavor with the local government, similar to the Legislation Clinic, its independence may be limited. Also, the model may prove costly and reach fewer students because it requires participants to travel to a rural area — although this factor may be mitigated by pooling resources with the local government.<sup>133</sup> On the whole, it is an experiment with much potential for future growth and refinement.

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<sup>126</sup> See Shen & Li, *supra* note 123.

<sup>127</sup> “Qianxi mo shi” she qu fa lü fu wu jian she zuo tan hui hui yi zhai yao [Abstract of Conference on the “Qianxi Model” of Community Legal Services], BEIDA FA LÜ YUAN ZHU QI KAN [BEIJING U. LEGAL AID PERIODICAL], June 6, 2003, <http://laa.lawpku.org/index.asp> (follow link in box at bottom) [hereinafter “Qianxi Model”].

<sup>128</sup> ZHEN SUO FA LÜ JIAO YU YAN JIU [CLINICAL LEGAL EDUCATION RESEARCH] 293 (Wang Limin & Mou Xiaoyuan eds., 2004); see also “Qianxi Model,” *supra* note 127.

<sup>129</sup> See China Clinical Legal Educ., *supra* note 125.

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> See Chen Binsheng, *Ye tan Zhongguo gao xiao “zhen suo” fa lü jiao yu* [Also Discussing China’s Higher Education “Clinical” Legal Education], 45 HEILONGJIANG SHENG ZHENG FU GUAN LI GAN BU XUE YUAN XUE BAO [HEILONGJIANG PROVINCE GOV’T ADMIN. CADRE INST. ACAD. J.] 130, 131 (2004).

<sup>133</sup> See China Clinical Legal Educ., *supra* note 125.

## V. CONCLUSION

Professor Leah Wortham, an experienced clinical educator who has assisted in establishing clinical programs abroad, offers advice for avoiding the pitfalls of ill fits and disguised imperialism when importing a clinical legal education model: “focus on ends to be achieved rather than institutions as an end in themselves”;<sup>134</sup> “do not seek to replicate a home country model”;<sup>135</sup> “consider economic, political, and social forces that cause things to be as they are”;<sup>136</sup> and realize that “clinical education should not be a value-free, technocratic endeavor.”<sup>137</sup> This Note attempts to follow these lines of inquiry, and the innovations of China’s clinical legal educators show that they too have borne them in mind. Clinical legal education has made great strides in the course of a single decade, growing from only one or two NGO-style clinics at leading universities to sixty-four programs integrated into the curriculum at law schools and departments throughout China. In the process, distinctive adaptations have emerged to address China’s access-to-justice issues at a level beyond the individual case.

But given its high costs, does clinical legal education, as implemented in China today, actually advance the cause of access to justice better than other alternatives? Despite inspiring innovations, an answer, as in the U.S. case, is difficult. The translation is ongoing, and the ultimate effects on clinical students’ career choices and support for public interest work will not be known for some time. Nor is it easy to measure the quality of skills conveyed or the effectiveness of services provided. Professor Wortham is rightfully wary of “over promising” what clinical legal education can deliver.<sup>138</sup> Nonetheless, even if clinical education does not turn out to be a good answer for China, trial and error is part of the process of learning and innovation. This Note represents a small step in that learning process, in the hopes that its analysis might help clinical legal education maximize its contribution to equal access to justice. Most likely, clinical legal education will be one small contributor among the many ongoing institutional innovations and reforms in China that, in the aggregate, may gradually change the legal system for the better.

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<sup>134</sup> Leah Wortham, *Aiding Clinical Education Abroad: What Can Be Gained and the Learning Curve on How To Do So Effectively*, 12 CLINICAL L. REV. 615, 673 (2006) (capitalization altered).

<sup>135</sup> *Id.* at 674 (capitalization altered).

<sup>136</sup> *Id.* at 676 (capitalization altered).

<sup>137</sup> *Id.* (capitalization altered).

<sup>138</sup> *Id.* at 682.