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LEGAL CLINICAL EDUCATION IN CHINA: A LITERATURE REVIEW

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I INTRODUCTION

This literature review includes an overview of the theories for legal clinical education, the nature of and implementation of legal clinical education in China, the objectives of legal clinical education, the benefits of legal clinical education, the challenges faced in legal clinical education and suggested solutions to those problems. Furthermore, this literature review identifies certain gaps within the reviewed literature and makes suggestions for further research in this area.

In November 2020, several searches were performed on the China National Knowledge Infrastructure (CNKI) as well as Hein Online. The results were screened in inverse chronological order, evaluated for their relevance and frequency of downloads, and then further analysed by a review of the abstracts. The keywords used in the relevant searches were: “‘clinical education’ law”, ‘诊所教育法律’ which translates to ‘clinical legal education’, ‘诊所教育’ which translates to ‘clinical education’, and ‘Chinese clinical education’.

II THEORIES FOR LEGAL CLINICAL EDUCATION

This section looks at three types of theories of legal clinical education in China: 1) theories that were developed by the respective authors through their personal experience in teaching a legal clinic; 2) a technical skills theory that justifies clinical education on the basis of law schools’ role of providing practical technical skills for their graduates; and 3) a disruption type of theory which advocates for legal clinical education to fundamentally change education in general by removing spatial boundaries and changing student-instructor relationships.

The two theories proposed on the basis of practical experience come from an article written by Professor 何隽 (He Juan) on the basis of her teaching intellectual property in the Graduate School at the Shenzhen campus of Tsinghua University¹ and Professor 郑璇玉 (Zheng Xuanyu)

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¹ 何隽 [He Juan], «知识产权法案例教学的探索与思考» [Practices and Thoughts on the Case Teaching of Intellectual Property Law] (2019) 16(3) 中国发明与专利 *China Invention and Patent* 6.

on the basis of her teaching intellectual property at China University of Political Science and Law in Beijing.² Professor He Juan uses David Ausubel's ideas to explain the role of interactive teaching in her class through the use of the 'case method', 'clinical education', and a German method of practical education.³ He Juan notes the differences between the United States' system of common law and the Chinese (and German) system of civil law, as well as the difference between German law schools' 'teaching judges' and United States law schools' 'teaching lawyers'.⁴ Based on the differences between education in the United States and China, He Juan advocates for a system of 'participatory practice plus specialist leadership' on the basis of David Ausubel's theoretical differences between learning by exposure versus learning by discovery.⁵ According to He Juan, since learning by discovery cannot fully replace didactic learning for teaching foundational concepts, a mixture of traditional learning for foundational classes should be followed by practical learning with legal specialists acting as guides for law students.⁶ In support of her theory, He Juan primarily relies on the example of the intellectual property class that she taught in 2018.⁷

In contrast to He Juan, Professor Zheng Xuanyu looks at the lessons learned from thirteen years of intellectual property law clinic at China University of Political Science and Law to analyse clinical education from the bifurcated viewpoint of 'knowledge' and 'person' as two separate variables undergoing development.⁸ Zheng Xuanyu explains her theory in two parts: Firstly, with the entry of the 'person' variable into the domain, the 'knowledge' element also changes — this is in contrast to traditional education where the 'person' is a constant and the relationship between the teacher and learner is completely discrete.⁹ To the extent that practice and theory are separate in traditional education, theory and practice are never able to effectively 'mix in' with the student as a person.¹⁰ By contrast, in clinical education, the student in the process of studying also changes their own understanding and, after the student undergoes practical examination, he or she obtains a new thinking process which incorporates the concept of a 'law person' which, in turn, includes the relationship between the person and society and poses questions relating to civilisation as a whole.¹¹ Secondly, the scope of knowledge must be very broad and the person's understanding

² 郑璇玉 [Zheng Xuanyu], «知识产权法律诊所人才培养运行机制研究» [A Study on the Operation Mechanism of Cultivating Talents for the Intellectual Property Law Clinics] (2019) 21(2) 闽西职业技术学院学报 *Journal of Minxi Vocational and Technical College* 84.

³ 何隼 [He Juan] (n 1) 6–7.

⁴ Ibid 7.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid 7–8: The text here discusses the 2018 Spring semester 'intellectual property rights law and practice' class.

⁸ 郑璇玉 [Zheng Xuanyu] (n 2) 84.

⁹ Ibid 84–5.

¹⁰ Ibid 85.

¹¹ Ibid.

must match the requirements of the discipline and the time frame.¹² In this manner, the core difference between clinical education and the case method is that the case method provides for the teaching of events that have already occurred, while clinical education provides learning that is obtained through the experience of seeing how the law operates and provides for a broad understanding from all angles of legal functions.¹³ From this background, Zheng Xuanyu sees clinical education as developing students thinking about social responsibility and questions of civilisation, patriotism, altruism and a strong sense of Chinese identity.¹⁴

The theory of training necessary technical skills as a justification for legal clinical education can be seen from the writings of Professor 赵翔 (Zhao Xiang) and 王卉 (Wang Hui). Zhao Xiang analogises medical practical training with legal clinical education, focusing on the necessity of practical training as a key element of training legal professionals.¹⁵ Zhao Xiang argues for legal clinical education to draw inspiration from medical clinical education, in particular by utilising the PSR acronym, which stands for ‘Pressure-State-Response’, to frame decision-making.¹⁶ The PSR acronym structures clinical students to focus on the ‘question’, followed by focusing on the ‘situation’ and then determining on how to ‘respond’ to the pressure and the situation.¹⁷ Analogously, the PSR method can be used to focus on the interrelationships in legal practice, including: justice education and technical education, theory and practice, problem analysis, and cause analysis.¹⁸ Similarly, Wang Hui conceptualises legal clinical education at its core as technical or career training without regard to whether the instruction is done in a clinic or a regular class as long as there is practical training with the use of authentic cases and background materials so that students can meet the litigants, analyse evidence, interview people, participate in discussions, and decide cases.¹⁹

The final set of theories being put forth to justify legal clinical education revolves around creating authentic teaching experiences that go beyond the traditional boundaries of physical classrooms. Professor 贾蕊 (Jia Rui) from Shanxi Police Technical College identified six differences between traditional legal education and legal clinical education: 1) students in traditional education settings are imbued with complete and organised knowledge, while in clinical education problem-solving skills are applied to real-world problems; 2) traditional

¹² Ibid 85–6.

¹³ Ibid 86.

¹⁴ Ibid.

¹⁵ 赵翔 [Zhao Xiang], «基于 PSR 模式的法律诊所教育策略研究» [Study on Educational Strategy of Legal Clinic Based on PSR] [2019] 11(2) 医学与法学 *Medicine and Jurisprudence* 47, 47.

¹⁶ Ibid 48.

¹⁷ Ibid.

¹⁸ Ibid 49.

¹⁹ 王卉 [Wang Hui], «非政法类院校实施诊所式法学教育模式研究» [Research on Implementation of Legal Clinical Education in Non-Political or Non-Law Universities] [2019] (10) 法制与社会 *Legal System and Society* 200, 200.

education encourages passive learning while clinical education fosters the ability to learn; 3) traditional education compartmentalises legal fields while clinical education looks at the case holistically; 4) traditional education does not allow students to enter real-life roles while clinical education requires managing real-life cases; 5) in traditional education the teacher serves as a leader who gives knowledge to the student, while in clinical education the roles are equal; and 6) in traditional education students search for one correct answer, while in clinical education students learn to think independently.²⁰

In a student paper by 陈运超 (Chen Yunchao), these ideas are further connected to computerised information technology.²¹ Chen Yunchao envisions legal clinical education as being within the mandatory law curriculum and performed with the help of judges and the local judicial ministry.²² Chen Yunchao also refers to the Chinese ‘Gold Class’ program requirements, featuring high quality, innovative, and challenging classes including: offline gold class, online gold class, mixed gold class, simulated reality gold class, and social practice gold class.²³ According to Chen Yunchao, for legal education to be considered exceptional, it must utilise modern information technology, combine internet and legal clinical education and establish new paths in knowledge and teaching.²⁴ In doing this, it is necessary to break through the limits of traditional clinical education in law by providing internet-based services that break through the spatial classroom limits, similar to what has been done in schools in Hangzhou and Guangzhou.²⁵ Furthermore, in pushing forward the use of the internet in law clinics, these clinics can analyse cases online and evaluate the potential likelihood of success in litigation.²⁶

Overall, Chinese scholars have made a substantial effort and enjoyed success in providing a theoretical basis for incorporating legal clinical education within the law school curriculum, but the literature above demonstrates a degree of disagreement in the field. He Juan and Zhao Xiang separate practice from the substantive elements of legal education. He Juan bifurcates practical experience and theoretical leadership by utilising two teachers to teach the same class from practical and theoretical perspectives. Zhao Xiang considers legal education as fundamentally technical and compares it to professional medical education, in effect flipping the normal focus of legal education

²⁰ 贾蕊 [Jia Rui], «本土法治资源下的法律诊所教育质量研究» [Research on the Quality of Clinical Education with the Use of Local Resources] [2020] (22) 高教学刊 *Journal of Higher Education* 185, 185–6.

²¹ 陈运超 [Chen Yunchao], «基于建设高校金课的法律诊所教学改革探究——以湖北文理学院法律诊所为例» [Research on the Teaching Reform of Legal Clinics Based on the Establishment of ‘Gold Classes’ — Taking the Legal Clinics of Hubei University of Arts and Science as an Example] [2019] (14) 法制博览 *Legality Vision* 113.

²² Ibid 113–14.

²³ Ibid 113.

²⁴ Ibid.

²⁵ Ibid 114.

²⁶ Ibid.

from theory to practice. This practice of focussing theoretical approach to legal clinical education is consistent with some of the social goals of legal clinical education described below, including the provision of legal services to those in need. However, He Juan's approach of utilising separate practice and theory instructors for a single class creates a set of new problems involving shared responsibility for a single class. This potentially results in one instructor acting as the head teacher, with the other instructor having a more assistive role. The consequential imbalance of power can lead to teaching conflicts.

On the other hand, the theory of legal clinical education presented by Jia Rui and Zheng Xuanyu emphasises knowledge and theory construction by students and de-emphasises the role of the instructor. This knowledge constructive approach stands in strong contrast with the practice justification, which emphasises technical knowledge transmitted from experienced instructors and may even require two instructors to transmit different types of specialised knowledge. Jia Rui's focus on the instructor taking the role of a class manager aligns smoothly with Zheng Xuanyu's emphasis that the process of education development occurs both within an individual and within knowledge itself. This emphasis on individual development and knowledge construction is more appropriate for university-level legal curriculum and is more reflective of the negotiation of meaning, which underlies legal reasoning in both theoretical and practical circumstances.

III THE NATURE AND IMPLEMENTATION OF LEGAL CLINICAL EDUCATION IN CHINA

Several articles provide an overview of how Chinese scholars understand legal clinical education in China and how it is being implemented in the classrooms. Professor 郭杰 (Guo Jie) explains that legal clinical education came to China from the United States and particularly from Harvard and Yale Universities.²⁷ Within China, legal clinical education initially started in several key universities as part of a pilot program with the support of the Ford Foundation and later was more broadly adopted with the establishment of the Chinese Legal Clinical Education Committee, which promoted legal clinical education within the individual universities.²⁸ The underlying purpose of legal clinical education was modelled after medical clinical education based on the philosophy that 'legal life is not in logic but rather in experience'.²⁹

With regard to the practical implementation of clinical legal education programs in China, there are several Chinese articles that explain how these programs can be put into practice. 张钊 (Zhang Zhao) and 朱琼 (Zhu Qiong) emphasise the importance of providing an

²⁷ 郭杰 [Guo Jie], «诊所式法学教育在劳动法课程教学中的应用» [The Application of Clinical Education in Teaching of Labour Law] (2019) 32(1) 河南广播电视大学学报 *Journal of Henan Radio and TV University* 87, 87.

²⁸ Ibid.

²⁹ Ibid.

interactive teaching platform and leveraging the strengths of the faculty to promote legal thinking and to help students obtain professional employment in the law.³⁰ Accordingly, the qualities of legal clinical education are: 1) content emphasises practice; 2) dynamic and technical content; and 3) unique assessment systems.³¹

Professor Guo Jie explains how legal clinical education was implemented in a labour law class to help students get a better grasp on the foundational principles of labour law.³² According to Guo Jie, labour law is special in that it is multi-faceted, involving procedure law, insurance law, administrative law, and basic labour theory — all of which are difficult for students to understand.³³ To help students learn this material, the class can be taught through moot court involving a selection of an appropriately difficult case and then separating the students into smaller groups where they would act out a role such as the labourer, the employing unit, the arbitrator, the lawyer, the union representative, and the witness.³⁴ In these roles, the students would understand the labour contract procedure and practise their negotiation skills.³⁵ Afterwards, students would be guided in writing the arbitral award and be given opportunities to switch roles in order to re-play the arbitration and to further supplement those elements that the students are not able to fully understand.³⁶ Guo Jie writes that it would also be possible to go beyond the limits of moot court to establish a labour consulting centre either within the school or within a labour union, which would allow for disadvantaged people to obtain legal aid from students in the form of advice in the evaluation of their case or even represent people in arbitration.³⁷ However, Guo Jie also acknowledges that these activities would all need to be done under proper supervision to prevent losses being caused by students' lack of experience.³⁸

Other legal clinical education programs have also been implemented all over China. One highly successful clinical program based out of Jiangnan University, located in Wuhan, China, has been described by Professor 侯永兰 (Hou Yonglan) as being organised into four segments: first, the clinic receives the concerned litigant; second, the facts of the case are analysed and discussed between the students and the teachers, and the strategy for the case is explored; third, theory guidance is provided by the teacher in following the students' plans and answering any questions; and fourth, in-class practical training is given

³⁰ 张钊 [Zhang Zhao] and 朱琼 [Zhu Qiong], «法律诊所教育视角下的民事诉讼法学教学方法的创新策略初探» [Legal Clinical Education Perspective on Innovative Strategies for Teaching Civil Procedure] [2019] (12) «中国多媒体与网络教学学报 (中旬刊)» *China Journal of Multimedia and Network Teaching (Mid-Term Issue)* 247, 247.

³¹ Ibid 247-48.

³² 郭杰 [Guo Jie] (n 27).

³³ Ibid 88.

³⁴ Ibid 89.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

with moot court.³⁹ Lecturer 杨娅敏 (Yang Yamin) from Dali University Law School believes that, based on the experience from the Juris Doctor programs in the United States, legal clinical education should be implemented for students that already have sufficient background in substantive legal knowledge and that the appropriate time for legal clinical education would be in the third year of the undergraduate law program.⁴⁰ Professor 马永保 (Ma Yongbao) likewise believes that students should first study the substantive law before moving on to legal clinical education: ‘Students should first study labour law theory and legal documents; then, within the clinic, students should view and emulate; and, finally, students should take on individual responsibility roles.’⁴¹

A further example of legal clinical education class in China can be observed from Tsinghua University Graduate School at Shenzhen, as described by Professor He Juan from her experience teaching a class taught in autumn 2018 titled ‘知识产权法律及实务’ (‘Intellectual Property Law in Practice’).⁴² In that class, He Juan would invite professionals from the intellectual property field, including: administrators from the WTO, intellectual property judges and lawyers, high technology industry representatives and so on.⁴³ The content of this class encompassed the field of knowledge of the specialists and introduced the students to the worldwide system of intellectual property protection.⁴⁴ The class also directly addressed the concrete conflicts and policy plans within the technological field.⁴⁵ This class engaged in experiential learning with the students, who would afterwards produce presentations within small groups, individual presentations, and a comprehensive paper.⁴⁶ The groups were five persons, and the students chose their own group members as well as a group leader who was responsible for the group’s study planning, presentation, and analytical paper.⁴⁷ The group leader would assign responsibility for the individual cases and would grade and rank the group members.⁴⁸ The class lasted eight weeks, with each group being required to choose a case and

³⁹ 侯永兰 [Hou Yonglan], «诊所法律教育面临的困境与应对思路——以江汉大学诊所课程教学为例» [Solution to the Problems in Clinical Legal Education — Jiangnan University as an Example] (2020) 37(1) 江汉大学学报(社会科学版) *Journal of Jiangnan University (Social Science Edition)* 118, 120.

⁴⁰ 杨娅敏 [Yang Yamin], «地方高校法学专业实施诊所法律教育路径研究» [Ways to Carry out Clinical Legal Education at Law Schools in Local Colleges and Universities] (2020) 5(3) 大理大学学报 *Journal of Dali University* 79, 81.

⁴¹ Translation by the author from 马永保 [Ma Yongbao] and 李一军 [Li Yijun], «劳动法诊所教育中的基本准则» [Basic Guidelines for Clinical Education in Labour Law] (2018) 33(22) 渭南师范学院学报 *Journal of Weinan Normal University* 19, 24.

⁴² 何隽 [He Juan] (n 1) 7.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid 7–8.

⁴⁶ Ibid 8.

⁴⁷ Ibid.

⁴⁸ Ibid.

analyse the core issues prior to the fourth week of class.⁴⁹ At that point, the teacher would assess the selected case as well as the analysis of the core issues and then either require a different case selection or lead the students through the issues analysis.⁵⁰ The students had four weeks to work on their projects while the class continued. Afterwards, the group presentations would occur, and the relevant specialists might provide feedback to the students; thereby, further solidifying and increasing the students' understanding of the legal issues.⁵¹

The final legal clinical education model was implemented in Xinjiang University Law School as described by 夏黑讯 (Xia Heixun).⁵² At Xinjiang University, the legal clinic was a two credit hour class that met for approximately two hours of class time per week with a focus on judges' legal roles while de-emphasising attorneys' roles in moot courts and other activities.⁵³ This class was available for approximately 32 students that were in their third year of study.⁵⁴ The practical component of the law clinic class was dominated by moot court,⁵⁵ and students' exposure to law offices or legal corporate offices was relatively limited.⁵⁶

The above literature regarding the implementation of legal clinical education in China demonstrates the split between utilising legal clinical education as one among many methods of instruction of substantive topics versus utilising legal clinical education as a method to emphasise technical skills and provide useful legal services to the community. Unsurprisingly, this split follows the divide observed in the prior section involving the theory of legal clinical education. Instructors who prioritise the transfer of broader technical knowledge to their students are more likely to emphasise technical skills and community service, while those instructors who consider legal clinical education as a pedagogical tool are likely to focus on moot court as a method to teach topics such as labour law. This creates a dichotomy of purpose, with some scholars seeking realistic learning environments through clinics that serve live clients while other scholars are looking for more interactive, stimulating learning environments to provide for the development of broader metacognitive skills.

IV THE OBJECTIVES OF LEGAL CLINICAL EDUCATION

The perceived objectives of legal clinical education in China also differ substantially among scholars. Yang Yamin is focused on the goal of having graduates that are ready to practise law immediately upon

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² 夏黑讯 [Xia Heixun], «诊所式法律教育的实践困境与改善路径» [Clinical Legal Method Practical Difficulties and the Path Towards Improvement], [2019] (18) 法制与社会 *Legal System and Society* 198.

⁵³ Ibid 198.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

graduation.⁵⁷ In addition to having ready-to-practise professionals, Guo Jie is seeking a more interactive curriculum for relatively dry or boring classes such as labour law as well as a more holistic education under the ‘fostering exceptional talents’ program in China.⁵⁸ Xia Heixun from Xinjiang University sees clinical education as serving two types of goals: the first type being fostering student thinking as legal professionals, improving student reasoning skills, fostering a sense of professional responsibility, and improving technical skills; and the second type of goal being directed towards the education profession in terms of disruption of the status quo and an opportunity for educational development and the re-focusing of education towards the student.⁵⁹ Gao Yu argues that legal clinical education in the fourth year of undergraduate education can be tailored to serve different purposes and provide for a rich educational experience that happens outside of the university campus: students can go out into the community and obtain the proper guidance from law firms or other legal professionals.⁶⁰

Another distinct objective of clinical legal education is social service and social justice relating to legal aid. Professor Xiaobing Liu from the Law School of China University of Political Science and Law argues for the necessity of giving students the right to represent criminal defendants in Chinese courts as a means of promoting social justice and giving law students ‘in-court’ experience.⁶¹ Xiaobing Liu notes that, in 2013, law students provided legal aid for approximately 2.39% of the cases for which criminal legal aid was provided.⁶² Xiaobing Liu also notes three major concerns with allowing students to represent criminal defendants: first, criminal procedure is sophisticated in comparison to civil procedure; second, criminal defence is particularly important to the defendant since it involves the potential loss of fundamental human rights; and third, law students are potentially still immature psychologically and lack the necessary experience.⁶³ Nonetheless, Xiaobing Liu generally rejects these concerns based on the perceived relative success of law students providing criminal defence in the United States.⁶⁴ Furthermore, Xiaobing Liu writes that allowing law students to provide in-court representation for criminal defendants provides three benefits: first, student legal aid can ameliorate the general scarcity of human resources for criminal legal aid services; second, student legal aid can promote and develop Chinese legal education as a whole; and third, student legal aid can improve the level

⁵⁷ 杨娅敏 [Yang Yamin] (n 40) 79.

⁵⁸ 郭杰 [Guo Jie], (n 27) 87–8.

⁵⁹ 夏黑讯 [Xia Heixun] (n 52) 198.

⁶⁰ 高宇 [Gao Yu], «诊所式法律教育问题与对策研究» [Research on Legal Clinical Education Issues and Strategies] [2019] (5) 法制博览 *Legality Vision* 87, 87.

⁶¹ Xiaobing Liu, ‘Clinical Legal Education in China and the Issue of *Locus Standi* in Criminal Defense’ (2015) 23(1) *Willamette Journal of International Law and Dispute Resolution* 93, 93–4.

⁶² *Ibid* 96.

⁶³ *Ibid* 99.

⁶⁴ *Ibid* 99–100.

of social justice in China by levelling the playing field between the prosecutors and the defendants.⁶⁵

In contrast to Xiaobing Liu, Wei Zhaochi focuses primarily on China's legal aid system and considers law clinics to be one of three solutions for improving the quality of legal professionals who can provide legal aid.⁶⁶ Wei Zhaochi divides the development of legal aid in China into three periods: the period starting with the founding of the People's Republic of China with the general pronouncement that 'defendants have a right to protection';⁶⁷ the period of formalised legal aid in big cities in China starting in 1994 and continuing with the passage of 《刑事诉讼法》 (criminal procedure law), 《律师法》 (lawyers law), 《关于迅速建立法律援助机构开展法律援助工作的通知》 (legislative notice relating to the speedy establishment of legal aid structures and the expansion of legal aid work), and other related laws and notices;⁶⁸ and the most recent period starting from approximately 2012 with numerous additional pronouncements to improve the legal aid system coming in the form of legislation, the National People's Congress, the State Council, and the People's Supreme Court.⁶⁹ However, the Chinese legal aid system continues to have difficulties: First, the legislative provision for legal aid is very uneven depending on region with words such as 'poor individuals' being subject to uneven interpretation.⁷⁰ Consequently, legal aid is only being provided in 7% of capital or life imprisonment cases and legal aid is provided only in 11% of those types of cases during the investigative phase.⁷¹ Second, there are issues with obtaining resources for legal aid in terms of legal professionals being distributed unevenly throughout the country and their skills varying too greatly, as well as the issue with financial outlays for legal clinics coming almost entirely from public finance.⁷² Third, there are structural difficulties in terms of lack of uniformity between regions as well as the conflict and overlap between ministry workers and social lawyers.⁷³ For improvements to Chinese legal aid, Wei Zhaochi argues for better funding of legal aid so that the 'government will not be treating a guest to dinner while the lawyers end up paying for the bill';⁷⁴ furthermore, Wei Zhaochi wants an improvement in legal professional skills by creating a public lawyer system, establishing a detailed legal aid procedure, and developing legal clinical education.⁷⁵

⁶⁵ Ibid 101.

⁶⁶ 魏兆池 [Wei Zhaochi], «我国法律援助制度之完善» [Perfecting China's Legal Aid System] [2019] (1) 黑龙江省政法管理干部学院学报 *Journal of Heilongjiang Administrative Cadre College of Politics and Law* 138, 141.

⁶⁷ Ibid 138–9.

⁶⁸ Ibid 139.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid 140.

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid 141.

⁷⁵ Ibid 141–2.

In the above discussion of the goals of legal clinical education, the literature included both pedagogical goals and broader social goals. As noted by the reviewed literature, despite there being room for improvement both in the sphere of legal education and in the sphere of providing legal services to people in need, there are substantial problems in attempting to address both issues simultaneously through legal clinical education. Given the relatively short period of university-level legal education in China, the primary focus during this three-to-four-year period should be pedagogical. The broader social issues may be solved by various other methods, including by bifurcating the legal profession between technicians, such as paralegals or legal secretaries, who can provide very specialised social services to criminal defendants, and broader legal professionals, who can be trained to focus on reasoning skills and policymaking.

V THE BENEFITS OF LEGAL CLINICAL EDUCATION

Several benefits of legal clinical education have been identified in the reviewed literature. Many of the listed benefits are consistent with hands-on or experiential learning; however, other benefits include providing social services to underserved communities and teaching morality to students. Professor 马永保 (Ma Yongbao) and 李一军 (Li Yijun) explain that the benefit of legal clinical education is in its realism and the exposure of students to real-world problems which gives students a sense of justice and encourages them to protect the legal system.⁷⁶ Furthermore, Ma Yongbao and Li Yijun see a benefit in nurturing student autonomy as a metacognitive goal of clinical education which is executed through adjusting: first, the goals of education and social justice; second, instructor teaching and student learning relationships; and third, the relationship between the teaching subject and students' autonomous learning goals.⁷⁷

Professor 侯永兰 (Hou Yonglan) sees the benefits of legal clinical education as being likewise more related to experiential learning.⁷⁸ Namely, Professor Hou Yonglan believes that legal clinical education is beneficial because: first, legal clinical education creates a new relationship between students and teachers in that 'the teacher guides and helps students resolve issues that they would not be able to solve through their own thinking and hard work';⁷⁹ second, legal clinical education creates a new teaching method that creates a more open classroom and uses a dual teacher team involving outside legal professionals; third, legal clinical education creates a particular and specific teaching requirement for students to deeply understand the method of managing a legal process; fourth, legal clinical education makes explicit the goals of education which involves various societal goals as well as the development of students' technical abilities; and

⁷⁶ 马永保 [Ma Yongbao] and 李一军 [Li Yijun] (n 41) 20.

⁷⁷ Ibid 23–4.

⁷⁸ 侯永兰 [Hou Yonglan] (n 39).

⁷⁹ Ibid 118.

fifth, legal clinical education advances the use of evaluation methods which are autonomous and multi-factored.⁸⁰

By contrast, Professor 许身健 (Xu Shenjian) from China University of Political Science and Law, in an article published in the *Prosecutorial Daily* (检查日报), sees benefits from legal clinical education in terms of indoctrinating morality into law students.⁸¹ Professor Xu Shenjian sees legal clinical education as a means of moving morality education from the abstract and into concrete concepts.⁸² This moral education occurs by making it possible for young people to discover issues of professional values and ethics and provide an opportunity for those issues to be further discussed and analysed through the use of simulated negotiations, simulated mediations, moot court and other simulated activities.⁸³

Another benefit of legal clinical education is the ability to localise law schools to their communities, as mentioned by Professor and dean of Anhui University of Finance and Economics Law School 张卫彬 (Zhang Weibin).⁸⁴ Zhang Weibin looked at the examples of successful localisation efforts in India's Jindal Global Law School and Thailand's Mah Fah Luang University.⁸⁵ In both of these universities, their respective law clinics were able to help the students interact closer to the community and take advantage of the local circumstances, which included providing assistance to farmers in rural communities in the case of the law school in India and specialising in trade and commerce for the law school in Thailand.⁸⁶ In both cases, the law clinics were driven by the environment of the physical location of the law school, with the law school in India being located in a rural farming area and the law school in Thailand being located near an international port.⁸⁷

As demonstrated by the reviewed literature, the potential benefits of legal clinical education are immense, but they cannot all be achieved within a single conception of legal clinical education. There are certain benefits which are closely related to the conception of legal clinical education as a means of providing technical instruction versus other benefits which are more easily accessed through legal clinical education as purely a pedagogical instrument. With respect to the technical conception of legal clinical education, the proposed benefits include providing social services, teaching morality, realism, support of the legal system, student autonomy, broader experiences through dual instructors, closer links to the community, and so on. These broad

⁸⁰ Ibid 118-19.

⁸¹ 许身健 [Xu Shenjian], «如何上好法律人的思想品德课» [How to Make an Excellent Moral Class for Legal Professionals] 《检察日报》 [Prosecutorial Daily], May 15, 2019, 7th 版, 1.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ 张卫彬 [Zhang Weibin], «高校法律诊所教育如何实现“本土化”» [How to Localize Higher Education Legal Clinics] 2019(23) 《检察风云》 *Prosecutorial View* 28, 28-29.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Ibid.

benefits are unquestionably valuable in and of themselves; however, the technical conception of legal clinical education does not directly include the benefit of increased absorption and the effective use of detailed substantive knowledge and theory. On the other hand, a more pedagogical role for legal clinical education, such as moot court or simulations, results in fewer benefits, but with those benefits being predominantly related to metacognition and experiential learning of substantive legal principles. Considering the limited duration of formal legal education, the purported broad benefits of the technical conception of legal clinical education are less likely to be achieved than the more limited benefits inherent in the more limited pedagogical reform approach.

VI THE CHALLENGES WITH LEGAL CLINICAL EDUCATION

The two most mentioned challenges with legal clinical education are the lack of financial resources that are necessary to fund legal clinical education and the lack of appropriate teacher requirements or adequate training for clinical professors. Both of these issues are mentioned in articles by 杨娅敏 (Yang Yamin),⁸⁸ 黄娅琴 (Huang Yaqin) and 张琼 (Zhang Qiong),⁸⁹ 侯永兰 (Hou Yonglan),⁹⁰ 惠批修 (Hui Pixun) et al,⁹¹ and 王卉 (Wang Hui),⁹² while 夏黑讯 (Xia Heixun)⁹³ only brought up the funding issue and 凌济政 (Ling Jizheng) only brought up the lack of faculty practical experience.⁹⁴ Another issue was the lack of student opportunities for students to represent clients in court, as mentioned by Hou Yonglan,⁹⁵ Xia Heixun,⁹⁶ and Hui Pixun.⁹⁷ Hui Pixun points out that since the November 2012 reform of civil procedure law, it is no longer possible to represent clients as a citizen representative, which creates a problem for law clinics⁹⁸ along with the related issue of a shortage of suitable clinical cases,⁹⁹ an issue which is

⁸⁸ 杨娅敏 [Yang Yamin] (n 40) 80.

⁸⁹ 黄娅琴 [Huang Yaqin] and 张琼 [Zhang Qiong], «法律诊所教育的创新与困境» [Innovations and Difficulties in Legal Clinical Education] (2020) 34(3) 延边教育学院学报 *Journal of Yanbian Education College* 123, 124.

⁹⁰ 侯永兰 [Hou Yonglan] (n 39) 121.

⁹¹ 惠批修 [Hui Pixun] et al, «依托司法行政资源的特色化法律诊所建设研究» [Research on the Construction of Legal Clinics Based on the Specialization of Judicial Administrative Resources] [2019] (3) 陕西青年职业学院学报 *Journal of Shaanxi Institute of Junior Managerial Personnel* 66, 67: observing that because clinical education is not highly regarded there are few talented young people who want to be clinical professors.

⁹² 王卉 [Wang Hui] (n 19) 200.

⁹³ 夏黑讯 [Xia Heixun] (n 52) 199.

⁹⁴ 凌济政 [Ling Jizheng], «对中国诊所法律教育的现实反思» [Realistic Reflection on Legal Clinical Education in China] [2020] 34(3) 河南财政税务高等专科学校学报 *Journal of Henan College of Finance and Taxation* 87, 88–9.

⁹⁵ 侯永兰 [Hou Yonglan] (n 39) 121–2.

⁹⁶ 夏黑讯 [Xia Heixun] (n 52) 199.

⁹⁷ 惠批修 [Hui Pixun] et al (n 91) 67.

⁹⁸ Ibid.

⁹⁹ Ibid.

also observed by Wang Hui.¹⁰⁰ Xia Heixun also notes a related issue of unclear responsibility for the true legal clinical cases since the students lack real status as lawyers to be truly in charge of cases, and the teachers, along with the university, also have unclear responsibility to the law clinic's clients.¹⁰¹

The other directly related issues involve a lack of clinical infrastructure. Huang Yaqin and Zhang Qiong note the lack of acceptance of clinical education because of the compartmentalisation of law into substantive categories, which is inconsistent with clinical education.¹⁰² Xia Heixun observed that in Xinjiang University, where only one-third of the class was able to participate in legal clinical education, and the selection criteria appeared somewhat arbitrary, there existed an inherent conflict between legal clinical education being available for 'outstanding students' and the university's responsibility to educate all the students equally.¹⁰³ Wang Hui likewise noted an issue with securing law clinic access for all students as well as an issue with the variation of clinical education methods among universities, which include: general legal clinics, specialised clinics and special methods, or community service clinics.¹⁰⁴ Hui Pixun notes a lack of a uniform grading system and confusion between legal aid and clinical education to such an extent that some practitioners think that clinical education involves simply teaching students lawyering tricks.¹⁰⁵ Finally, Ling Jizheng believes that, in contrast to western 'professional-based education', the trend of clinical education in China is to emphasise values-based education; furthermore, there is a movement towards mass education, a movement towards total education reform in China (requiring reforming the concept of credit hours and so on), and a movement towards emphasising the social function of education.¹⁰⁶

A fundamental issue with implementing legal clinical education also relates to how Chinese law schools are developed to teach judges or scholars rather than lawyers. Xia Heixun explains that in China, education is normally centred towards 'teaching judges' while legal clinical education focuses on skills more suitable to lawyers; however, most of the students do not know the type of legal professionals they will become upon graduation.¹⁰⁷ Ling Jizheng explains that there is a lack of clarity and a contradiction on the purposes of clinical education, which has as its purpose the professionalisation of education and encouraging 'thinking like a lawyer', while, at the same time, university legal education generally encourages 'thinking like a scholar' through research and theoretical analysis.¹⁰⁸ Therefore, clinical education is

¹⁰⁰ 王卉 [Wang Hui] (n 19) 200.

¹⁰¹ 夏黑讯 [Xia Heixun] (n 52) 199.

¹⁰² 黄娅琴 [Huang Yaqin] and 张琼 [Zhang Qiong] (n 89) 124.

¹⁰³ 夏黑讯 [Xia Heixun] (n 52) 198–9.

¹⁰⁴ 王卉 [Wang Hui] (n 19) 201.

¹⁰⁵ 惠批修 [Hui Pixun] et al (n 91) 68.

¹⁰⁶ 凌济政 [Ling Jizheng] (n 94) 91–2.

¹⁰⁷ 夏黑讯 [Xia Heixun] (n 52) 198.

¹⁰⁸ 凌济政 [Ling Jizheng] (n 94) 89.

unable to change the systemic learning philosophy, the focus on theory, or the methods that students use for their learning.¹⁰⁹ On the other hand, clinical education stands as a method to improve a student's learning ability, clinical education teaches students to learn and use law, clinical pedagogy acts as a mixed method, and clinical education provides students with unlimited opportunities for development.¹¹⁰

The above-listed challenges predominantly relate to financial resources and structural difficulties in implementing a live client clinic in China. Most of the challenges are also directly caused by a Chinese policy decision against live client clinics. Namely, the following difficulties are created by the educational and social environment in China rather than being inherent to legal clinical education: the 2012 reform preventing representation of live clients by civil representatives, unclear responsibilities for cases and issues relating to equal access for students. There is also an inherent contradiction between a learning objective of university instruction and the service objective of legal practice. For an efficient legal practice, legal professionals tend to take narrow types of cases which are within their area of specialisation. This is done to assure competent attorney work product and to avoid attorneys' expenditure of time and effort on learning new areas of law, which will not constitute the focus of future practice. This practical reality is in strong tension with the objectives of legal education where the overarching objective is for the student to obtain or construct knowledge and eventually function independently as a legal professional. Despite this inherent tension, Chinese scholars have made substantial efforts to resolve some of the challenges related to providing legal clinical education, which is the subject of the discussion below.

VII PROPOSED SOLUTIONS TO THE CHALLENGES WITHIN LEGAL CLINICAL EDUCATION

The solutions proposed by the reviewed literature are framed by individual scholar's viewpoint relating to the role of legal clinical education as either a practical method of making 'ready to practice' legal professionals or as a transformational change of legal education in China. Many of the changes being suggested are either too simplistic, such as asking for more funding to alleviate the funding shortage, or too abstract, such as changing educational ideology. Nonetheless, the reviewed literature shows openness to broad reforms for the purpose of improving legal education in China.

Several articles advocate for practical solutions to the well-known difficulties in legal clinical education. Zhang Zhao and Zhu Qiong argue for: first, the need to change ideology for the legal clinical education field to focus on the final outcome of employment; second, the need to guarantee resources for clinical programs; and third, the need to further strengthen and establish legal clinics.¹¹¹ Huang Yaqin

¹⁰⁹ Ibid.

¹¹⁰ Ibid 90.

¹¹¹ 张钊 [Zhang Zhao] and 朱琼 [Zhu Qiong] (n 30) 248.

and Zhang Qiong propose: first, an increase in advertisement for the establishment and cooperation with clinical programs; second, fostering and recruiting clinical teaching faculty as well as changing the incentive structure for teaching; and third, increasing the sources of funding for clinical education.¹¹² Wang Hui's solution is to provide for a variation of legal clinical education methods and partition those methods between in-school clinics, out-of-school clinics, and moot court clinics.¹¹³ Wang Hui's approach to other problems with legal clinical education is similar to other articles in that Wang Hui advocates for increasing funding, improving faculty recruiting, choosing suitable students to participate in clinical programs, and providing for a more liberal grading system involving self-grading or peer-grading.¹¹⁴

Several articles advocate for a more transformational approach involving the integration between the government organs or industry and legal clinical education as a means to resolve some of the issues in legal clinical education. Hou Yonglan's solutions include: first, not separating legal aid from clinical education; second, increasing cooperation with local courts and law offices; third, improving cooperation with local businesses, unions, and women's rights groups; fourth, creating a platform between the people's mediation committee and community law school clinics; and fifth, utilising the resources from the 'fostering exceptional legal talents program'.¹¹⁵ Hui Pixun believes that the Ministry of Justice can be used to solve many of the problems with legal clinical education by using a 'dual teacher model' where most of the instruction happens at the ministry, with the university instructor providing general lectures.¹¹⁶ Through this structure, the ministry can provide an abundance of cases, financial resources, and improve legal talent while having the legal clinics lighten the caseload of the ministry.¹¹⁷ Finally, Ma Yongbao advocates for changing legal practice rules to allow for students to represent people in court for both criminal and civil cases and advocates for legal clinical education which focuses on education components such as theory rather than just practical skills.¹¹⁸

The reforms proposed by the reviewed literature are responsive to the problems faced by legal clinical education in China and demonstrate uniquely Chinese solutions to a broader problem of legal clinical education. The most compelling proposed solution is for the expansion of the role of the Ministry of Justice in potentially providing mediation cases or even taking the lead in some areas of clinical education. This solution is innovative but would create a conflict of interest where legal education and the administration of justice would be excessively intertwined. However, the use of this innovative solution may be

¹¹² 黄娅琴 [Huang Yaqin] 和 张琼 [Zhang Qiong] (n 89) 124–5.

¹¹³ 王卉 [Wang Hui] (n 19) 201.

¹¹⁴ *Ibid.*

¹¹⁵ 侯永兰 [Hou Yonglan] (n 39) 122–4.

¹¹⁶ 惠批修 [Hui Pixun] et al. (n 91) 68–9.

¹¹⁷ *Ibid.*

¹¹⁸ 马永保 [Ma Yongbao] 和 李一军 [Li Yijun] (n 41) 22.

suitable for creating a separate degree program or a separate technical field of legal education. Since the focus on live client legal clinical education occurs towards later years of legal education, it may be suitable to bifurcate the legal profession between a technical prosecutorial or legal aid practice and a general practice specialisation. This could be done either by offering technical training within the Ministry of Justice entirely, or by providing students with an option to complete their last year or two of legal education at the Ministry of Justice for the purpose of receiving a technical version of legal education. With this approach, educational resources could be saved since formal education would be reduced, and social services objectives could be better satisfied with specially trained legal professionals.

VIII CONCLUSION

This literature review provides an overview of the nature and implementation of legal clinical education in China, the objectives of legal clinical education, the benefits of legal clinical education, the theory of legal clinical education, as well as the challenges faced in legal clinical education. These topics have been thoroughly addressed by Chinese scholars through approximately twenty years of practical experience as well as through inspiration from legal clinical education in the United States and internationally.

This literature review demonstrated multiple methods of implementation of legal clinical education and revealed a degree of disagreement with respect to the objectives and theories of legal clinical education. The nature and methods of implementation appear to range from clinical programs that involve real clients to clinical programs that are effectively moot court by another name. Based on the reviewed literature, there is an implication that some of this divergence arises because of the recent popularity of legal clinical education and because legal clinical education can receive funding and support from organisations such as the Ford Foundation or the ‘exceptional legal talents program’ causing many universities to structure their education in such a way as to meet the requirements to obtain outside funding. The difference in objectives of legal clinical education parallel the issues in the United States, with some stakeholders looking to transform legal education from being academic to becoming more technical, some stakeholders employing legal clinical education to solve greater societal issues through legal aid, while still others using legal clinical education to transform educational paradigms towards more authentic learning experiences.

With respect to the challenges and resolutions of these challenges within legal clinical education, the reviewed literature focuses on the practical issues with the implementation of an ideal clinical experience. The challenges perceived are often driven by an individual author’s objectives for his or her ideal law clinic. However, the issues of funding, as well as teacher training, appear to be most prevalent. The reviewed literature shows a desire for a more authentic learning environment, a

greater focus on legal aid, and a greater societal purpose for law clinics. However, due to the limited ability of law clinics to achieve those objectives, the reviewed literature advocates for student practice rules as well as support from governmental organs to allow for legal clinical education, which provides learning experiences unbounded by the spatial limits of the classroom.

The reviewed literature also reveals certain gaps which require further research, predominantly in the area of educational theory and psychology relating to the usefulness of legal clinical education as a pedagogical tool. The reviewed literature demonstrates the relative willingness of Chinese instructors to utilise simulations and moot court as part of their teaching pedagogy. However, the instructors utilising these methods use anecdotal evidence and intuitive reasoning to show that these interactive methods are useful for their students and provide for superior results; furthermore, there is a lack of rigorous, objective analysis to justify these practices. Without theoretical justification, legal clinical education remains fundamentally at a 'trial and error' phase. Furthermore, there is a gap in the reviewed literature with respect to explaining the methodology in curriculum development and the methodology involved in the selection of a particular simulation or moot court exercise. The freestyle and anecdotal nature of these practices follow post-hoc justifications rather than a designed and tested learning environment supported by educational and psychological theories.

For live client clinics, the reviewed literature focuses on solving social problems and improving practice skills of recent law school graduates. The intuitive reasoning followed by the reviewed literature remains deceptively straightforward in its logic: students who learn practical skills will find it easier to practice law upon graduation, and if students provide legal aid to those in need, then people in need of legal services will receive those valuable services. As has been previously noted by Chinese scholars, there exist substantial difficulties with students providing competent services to clients, and there are challenges in realistically imitating legal practice.¹¹⁹ Additionally, the question of realism and its desirability deserves further research because providing a realistic environment might not be desirable in all circumstances. The type of psychological response triggered by artificial learning environments can be more useful for educational development and less distorted than the psychological and learning responses engendered by an attempted recreation of reality. Finally, the social problem of certain individuals not receiving necessary representation cannot be resolved by providing them representation that cannot be considered competent. Consequently, research should be undertaken to determine the benefits of representation by students and the benefits of representation by experienced legal professionals as compared with cases involving unrepresented litigants. In summary, the reviewed literature leaves gaps in providing methodologically

¹¹⁹ 郭杰 [Guo Jie] (n 277) 89; Xiaobing Liu (n 61) 99; 夏黑讯 [Xia Heixun] (n 52) 199.

convincing evidence that legal clinical education can provide benefits to the clinic clients, to broader society, and to the clinic students.