

Chinese Clinical Legal Education in the Year of the Horse – a visit to Tsinghua University

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During the Cultural Revolution (1966-1976) lawyers were out of favour in China and legal training virtually ceased. Law schools reopened in the late 1970's and the number of lawyers has grown dramatically since that time. There are now more than 110,000 lawyers for the population of 1.2 billion.¹ With such a population level and therefore demand for legal services, the promulgation of numerous laws providing individual rights, a strong and well publicised government focus on developing legal aid schemes and the availability of foreign funding, clinical legal education programs are starting to make a mark on the university landscape in China.

University based legal aid centres in China have existed since the late 1980's at some universities. Two of the best known are at Wuhan University and the Centre for Womens Law Studies and Legal Service at Beijing University. The Wuhan Centre for the Protection of Rights of Disadvantaged Citizens was set up in 1992 based on models from the USA and students work there assisting in provision of legal services though they do not receive credit for this work. Similarly, graduate students work at the Women's Centre as volunteers. In 1996 a program was established which allowed students to receive academic credit at Beijing University by working with the Ministry of Justice's Legal Aid section to research

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¹ A Speech by the Secretary for Justice, Miss Elsie Leung, in Sydney, Australia on Thursday, 21 February 2002 at <http://www.info.gov.hk/justice/new/secretary/doc/210202e-1.doc>.

foreign legal aid systems for the Ministry of Justice.² A similar program was set up by Fudan University with the Shanghai Municipal Bureau of Justice. There are also a number of student run legal centres at a few Chinese universities.³ At these centres students give advice with some faculty assistance but students receive no academic credit for their work.

In late 2000 the Ford Foundation provided seed funding to seven clinics in Chinese universities. Chinese law students undertake a four year undergraduate law degree and the clinical programs are set up as part of this degree. The funding paid for case expenses, for the publishing of teaching materials and some teaching costs. In 2001 three more clinics were set up with Ford Foundation funding. The Foundation allocated \$490,000 (\$US) to this project in 2001.⁴ The hope is that the commitment from the staff of the Law Schools will mean that a way is found to keep the programs running without this money⁵ but there do not seem to be any concrete proposals as to how this will occur at this point.

Clinical legal education is seen as a way of allowing students to understand how the law works in practice and combining theoretical law and practice. In China many academics know little about clinical education and underestimate its value. It is important to note, however, that the first generation of clinical teachers are generally already established scholars and about 50 per cent of academics are part time lawyers.⁶

These programs are all set up with international funding and based on models from law schools in the USA. Questions have been raised as to whether this domination by the American legal environment and the litigation focus of these programs are the most effective way to provide services in China and whether this dependence on foreign money could have the effect of discouraging Chinese law schools in setting up clinical programs in the absence of comparatively generous foreign funding⁷. It seems clear from my visit, however, that the clinics are providing much needed legal services and opening up new learning opportunities for some Chinese law students.

One advantage of the clinics being assisted by a central funding body is that there is a level of coordination and support between clinics that is very advantageous. A Chinese Clinical Legal Education Network has been operating for some time, coordinated by the Ford Foundation and an announcement is about to be made (in July 2002) as to which of the

² Michael Dowdle, "Preserving Indigenous Paradigms in an Age of Globalization: Pragmatic strategies for the development of clinical legal aid in China", 24 *Fordham International Law Journal* 56, 79.

³ For a description and discussion of these centres see David Lee, "Legal Reform in China: A Role for Non Governmental Organizations", (2000) 25 (2) *Yale Journal of International Law* 363, 393.

⁴ Ford Foundation Global website. <http://www.fordfound.org/global/office/index.cfm?office=Beijing>

⁵ From a conversation with Xinxin Yang Ford Foundation on 2 July 2002

⁶ Above.

⁷ Above n 2, at 61.

clinics has been selected as the host organisation to continue its work. The network has held conferences, organised visits between clinics, supported partnerships between clinics and prominent US universities and allowed Chinese delegates to attend the 2001 Global Alliance for Justice Education conference in South Africa.

Reports produced by Xinxin Yang from the Ford Foundation show that the concerns of the Chinese clinical teachers are all too familiar to Australian clinical educators. At their August 2001 conference in Beijing the clinical lecturers identified their needs as;

1. Getting more information on how US clinics work,
2. Establishing a national organisation,
3. Publishing teaching materials,
4. Having more opportunity to exchange information, including teaching materials, with other schools,
5. Chances to see other school's practice, and
6. Obtaining a series of video materials as examples to show how to teach some subjects in clinics.⁸

A three day meeting of the clinic staff in January 2001⁹ discussed such issues as how much substantive law should be taught in the clinic, what to do about cases over the summer periods when courses are not run, styles of teaching in the clinic, and issues such as how directive the clinical teacher should be at different stages of the students' progress in the clinic, selection of clinic students (as demand far outweighs the opportunities for students) and the lack of administrative support. Other issues discussed which are also only too familiar to Australian clinical supervisors are the status of the clinical teacher within the Law Schools with many doing supervision work not recognised by the faculty, recognition of students' rights to act from the judiciary, and promotion of clinical legal education through the profession and universities. It is planned to publish a book to introduce the concept of clinical legal education to a wider audience.

The Ford Foundation's "Mini-Initiative on Clinical Legal Education and Legal Aid in China" is also planning to provide fellowships for new graduates to work in a legal aid or non-government organisation setting for a few years after graduation. The Foundation is also working on publishing materials for use by Chinese clinical teachers such as *A Teacher's Handbook on CLE* which was originally published in India, *CLE in China*, which is a collaboration among Chinese clinicians to introduce clinical legal education methodology to a Chinese audience and *Selected Articles*

⁸ Report by Xinxin Yang on clinical conference held in Beijing August 2001.

⁹ Xinxin Yang, Report on Semester Review, Beijing, 15-17 January 2001.

on *CLE Methodology* which will collect influential articles on both clinical legal education and education in general.¹⁰

Visit to Tsinghua University, Beijing

In July 2002 I visited a clinic at Tsinghua University in Beijing. Tsinghua University was set up in 1925 and its website states “With the inspiring motto “Self-discipline and Social Commitment,” Tsinghua is dedicated to the well being of Chinese society.”¹¹ The Law School resumed operation in 1999 and for the first time in China a university law faculty has its own separate teaching building in which each law faculty member has an office of his/her own. Plans are afoot to develop the largest law library in China. The University is comparatively well funded and the clinic offices, which are on the ground floor of the Law School on campus, are modern and well set up.

The clinics at Tsinghua were established two years ago. The university currently runs a labourers’ clinic, a civil rights clinic and a consumer protection clinic.

The aim of the clinics was to give clients professional assistance and to give the students professional training. The Law School believes that by giving the students practical skills they will be able to better meet the needs of society. The Law School also found that the main interest of many students in the Law School is to know whether they will be well paid when they graduate and start work as lawyers and it is believed that the clinic helps the students cultivate a sense of responsibility for others. There are as yet few jobs that students can apply for as legal aid lawyers so students do not see the clinic as a path to this type of work.¹²

In the two years the clinics have been running, 170 students have graduated from the courses and conducted 100 cases through negotiation and 20 cases that went to arbitration and court. Each teacher supervises ten students.

The Law School has recently decided to change the consumer protection clinic to a Protection of the Weak clinic. This change was made because the teachers in the course found that most of the consumer protection cases were sorted out by negotiation and the teachers wanted more meaty cases to take on and felt that the students weren’t getting as many skills from the course as they should be. The Labourers clinic was set up as there is a huge demand for assistance for labourers and this area of work suited the skills and experience of the clinical supervisor running the course.

¹⁰ Narrative Report by Xinxin Yang on Ford Foundation Grant activities Oct. 1, 2000 Sept. 30, 2001.

¹¹ <http://www.tsinghua.edu.cn/eng/index.htm>

¹² From a conversation with Chen Jianmin Tsinghua University Law School 2 July 2002.

The civil rights clinic was set up to take cases where clients have suffered an injustice at the hands of the government. An example given was a situation where the government might make a decision to set up a large building and this development might adversely affect those who lived in the area or where environmental problems were caused as a result of some government program. Ms Chen told me that the government has not reacted badly to anything the clinic has done. She was sure that the government has no influence over the Law School and that therefore there is no likelihood of problems arising from cases where the clinic was acting against the government's interests. This seems to be the case for the non-government organisations conducting legal aid work in China at present. Benjamin Liebman points out that "China is distinct from countries in which public interest lawyering has led to direct conflicts with state authority in that its central government appears committed at least in principle, to addressing many of the problems such advocacy highlights".¹³

Students have four classes each week which take the form of lectures, simulations of interviews, moot court and teachers speak about their experiences and give lectures on substantive law. In the first part of the class students discuss problems and issues they may be having in relation to their matters and each student discusses their cases in class. There are 30 students in each class. There is no formal teaching of interviewing or negotiation skills in other parts of the law degree.

There is a high demand for entry to the clinic from students. In the session coming up (2002) there were 95 students who had indicated they wished to enrol in the clinic.

Students are chosen to do the course on their attitude to the work of the clinic - those who are not considered serious about it are not able to do the course. Students' attendance at clinic training and as clinic volunteers is also taken into account. Over summer 20 students volunteer during their holidays to keep working in the clinic.

Beijing TV stations and the newspapers report the clinics' cases and some have been reported by Hong Kong TV stations. As a result of this, the clinic sometimes gets calls for assistance outside Beijing.

Students in the clinics are assessed on the following criteria;

- attendance at classes,
- attendance fortnightly at the clinic to be on duty and receive calls and their attitude to clients
- Students work together on cases and are required to finish at least one case,

¹³ Benjamin L Liebman, "Legal Aid and Public Interest Law in China" (1998-1999) 34 (2) *Texas International Law Journal* 211.

- the number of times the student communicates with their supervisor,
- the response of the client to the outcome of the case. (When the case is finalised the client makes an appointment at the clinic. During the course of this interview the teacher asks the client if they are satisfied with the result. Clients often send letters and have banners made up to thank the clinic for the work they have done.)
- the skills and insight students display during the course,
- file management, and
- the teachers' general feedback on the student.

Discussions with the students and their lecturer showed that the students have an extremely high level of motivation to learn and to assist their clients.

Michael Dowdle argues that rather than relying solely on US experiences for the development of clinical legal aid in China a better strategy would be to explore other experiences such as those of South Africa, France and Japan.¹⁴ As we have seen there are many similarities between the needs and objectives of programs in China and Australia.

The Chinese programs are undergraduate programs as in Australia. It seems that Australian clinical programs have a greater focus on providing general legal services to their communities and incorporating the students' needs into these programs than many programs in the US which give more priority to student needs and specifically on developing student advocacy skills. Australian in-house clinics also use a model of incorporating government and university funding and utilising the skills of volunteer lawyers to provide services to clients and education to students. The community legal centres in which they are run also have a history of incorporating lobbying, community legal education and test cases as their core activities. Given the overwhelming community need for legal services in China it may be that aspects of an Australian model for clinics would be worth considering for Chinese clinics. Australian clinical educators should give consideration to exploring any ways we can develop links with our Chinese colleagues. There is no doubt there is much we can learn as well. Translation and sharing of materials on clinical legal education and encouraging attendance at regional conferences would be a start. Such discussions and sharing of information can only benefit all clinical legal education programs in our region.