

Reviewed Article – Clinic, the University and Society

ESTABLISHING AN ENVIRONMENTAL LAW CLINIC IN CHINA: A REVIEW OF RELEVANT FACTORS AND VARIOUS MODELS.

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Keywords Environmental Law Clinic (ELC), China, Clinical Legal Education, Environmental Law, Experiential Education

Abstract

This paper looks at the factors which affect the establishment of Environmental Law Clinics (ELCs) with a particular focus on models that might be most effective in a Chinese context. The paper is the result of desktop research and a clinical program where five law students and one supervising academic from an Australian Law school attended a Chinese law school in early December 2016. During the visit, Australian law students conducted a workshop with Chinese law students as well as visited several NGOs in Wuhan and Beijing to grasp a better understanding of the environmental issues the country faces. The observations in this paper are preliminary in nature and further discussion of educational goals and community needs will be required before settling on a particular model. Brief recommendations and a list of relevant factors for consideration for Chinese ELCs are provided at the end of the paper.

¹ I am grateful to the editor and the anonymous reviewer as well as the research assistance from Queensland University of Technology (QUT) law students during this writing of this paper: Tess Van Geelen, Eva Sheppard, Ellie Prior, Kathryn Lukin, Phoebe McTaggart and Joshua Dunn. All errors remain my own.

INTRODUCTION

Clinical Legal Education (CLE) is one of legal education's biggest success stories.²

Drawing largely on practices from nursing and medicine, law schools from almost every part of the world have taken up the task of training and educating their students through the powerful paradigm of experiential education. The 'traditional' model of CLE involves law students attending lawyer-client advice sessions or assisting with upcoming cases. Under supervision, these students gain insights into what lawyers do and the types of legal issues their clients face. More sophisticated models of CLE have evolved to include students working on initiatives like law reform and education such as workshops, seminars and information sessions. Some models have also experimented with other disciplines such as finance, business, science and social work.

The goal of CLE has traditionally been two-fold. First, there should be a focus on student 'learning through doing' (i.e. the experiential part). It is this work-integrated experience that separates CLE from classroom-based learning where students absorb information through lectures and texts. Further, most legal clinics involve a social-justice aspect, as opposed to an experience, for example, in corporate firms or private businesses with a focus on making profit (these types of initiatives are more commonly referred to as internships, placements or secondments). The second goal of CLE is thus to provide a

² Wilson, R., (2009) Western Europe: Last Holdout in the Worldwide Acceptance of Clinical Legal Education. 10(6) *German Law Journal*, 359-382.

benefit or service to the community. In the literature, this is often referred to as 'service learning'.³ The discipline of law is uniquely placed for service learning because of its ability to address questions of justice, fairness and equality.

Environmental Legal Clinics (ELCs) are a specialized form of legal clinic. Their focus, as the name implies, is on the application, analysis and improvement of environmental laws. Apart from Schroeck's recent work,⁴ Wei's paper from, 2009,⁵ and Pei-Pei He and other's 2016 research⁶, little appears to have been published about ELCs in China. Schroeck's paper emphasized a need for partnerships with United States (US) law schools which have an established history of ELCs but noted there are several challenges that face the Chinese context. Wei emphasized the differences in legal systems of the US and China, suggesting a focus should be had on training and recruiting professional staff to run the clinics. Finally, Pei-Pei He and others suggested that non-government organizations (NGOs) need to be closely aligned with ELCs and curriculum

³ Smith, L. (2004). Why Clinical Programs Should Embrace Civic Engagement, Service Learning and Community Based Research. *Clinical Law Review* 10(2), 723-754. See also: Laurie A Morin and Susan L Waysdorf 'The Service-Learning Model in the Law School Curriculum' (2012) 56 N.Y. L. Sch. L Rev 561, 567.

⁴ Schroeck, Nicholas J (2016) "A Changing Environment in China: The Ripe Opportunity for Environmental Law Clinics to Increase Public Participation and to Shape Law and Policy." 18(1) *Vermont Journal of Environmental Law* 1-17.

⁵ Wei, Xu (2009) 'A Comparative Study of Environmental Law Clinics in the United States and China' 19 *Education Law Journal* 75-94.

⁶ Pei-Pei He, Yu-Jing Zhuang, Ying Lin and Cheng-Hui Zheng 'Environmental Law Clinics in Collaboration with Environmental NGOs in China' 9(3) *Sustainability* 2017 337; doi:10.3390/su9030337

development. All authors covered some of the benefits and impediments to the operation of ELCs in China.

The arguments in this paper shy away from a 'casework model' of an ELC where students engage in environmental litigation. Whilst China has enjoyed something of an 'environmental awakening' of late, with an influx of new laws and specialist environmental courts and tribunals (there are now over 900 specialist forums), the practice of public interest environmental litigation is still relatively scarce. There are several possible reasons for this, including:

- a lack of trained judges and lawyers specializing in environmental law;
- the complexity and expense of gathering expert evidence;
- the time-consuming and laborious nature of litigation procedure;
- the possibility that litigation could be seen as political or;
- the lack of effective transparency and right to information systems; and
- the fact that case law in China plays 'little role in the whole system of law' and that lawyers rely more on 'theoretical explanations of laws and regulations.'⁷

For these reasons, and others, this paper suggests that Chinese ELCs should focus on law reform, policy and community empowerment – at least in the short term. The focus of such an ELC would avoid providing 'services' to individual clients but encourage a small

⁷ Wei, above n 4.

group of students (say 5-10) to help deliver a reform or education project (a report, written analysis, journal article, website resource, education video etc.).⁸ Non-casework models can provide students with a broader array of experiences for their future work, whilst, at the same time, allowing the clinics to be powerful forces for change through the practice of 'community lawyering.'⁹ As Robertson has suggested, ELCs which undertake tasks outside of litigation (such as compliance and regulatory work) are also able to provide students with:

*a more realistic look at the practice of environmental law, and [one that] better prepares them to enter practice.*¹⁰

Pei-Pei He's paper is important in this regard, that is; that NGOs need to work closely with ELCs and universities to show them the type of work they *actually do* in practice, most of which is not litigation.¹¹

In the end, whichever model of ELC is considered, the situation is 'ripe' for China to start trialing different approaches.¹² US law schools aggressively experimented with clinical

⁸ Building the clinic around the language of 'environmental justice' or 'environmental governance' allows students and other stakeholders to situate the practice of the clinic in a broader theoretical space than just law.

⁹ Tokarz, Karen L. and Cook, Nancy L. and Brooks, Susan L. and Bratton Blom, Brenda (2008) Conversations on 'Community Lawyering': The Newest (Oldest) Wave in Clinical Legal Education' 28 *Washington University Journal of Law and Policy* 45.

¹⁰ Robertson, H., (1998) Methods for Teaching Environmental Law: Some Thoughts on Providing Access to the Environmental Law System, 23 *Columbia Journal of Environmental Law* 237, 269.

¹¹ Pei-Pei He above n 5.

¹² Schroeck above n 3.

models in the 1990s, and today the US leads the world in ELCs - not to mention the production of passionate and skilled conservation advocates. In the next decade, more than ever, there is the opportunity for Chinese law schools to investigate new ways of addressing environmental issues and teaching environmental law. The goal of this paper is to shed some light on the practical aspects of how that might be achieved through the establishment of ELCs.

APPROACH AND STRUCTURE

The findings in this paper are primarily based on desktop research carried out by the author with the assistance of five Australian law students between November 2016 and March 2017. As part of the research, a half-day workshop was held in partnership with a Chinese law school. During the workshop, the participants presented and discussed models of ELCs as well as the teaching and practice of environmental law in China. The author and students in the clinic also met with NGOs in Beijing and Wuhan to help understand the nature of environmental issues in China. Further research on this topic would be beneficial using empirical or case study approaches of existing ELCs. In this instance, time and resources did not permit that to occur and the recommendations in this paper should be understood in that light.

The paper is structured in three parts. Part one gives background and context to the idea of an ELC, looking at the benefits of CLE more generally and what an ELC might involve.

It also seeks to clearly define an ELC, something that has not been adequately achieved in the past. Part two of the paper considers existing ELC models categorizing them into casework, non-casework and hybrid/comprehensive approaches (type 'A', 'B' and 'C' approaches). Part three of the paper then looks at the Chinese context, noting ELCs that already exist and pointing out some of the challenges that litigation-focused (type A) models might encounter. Finally, part four of the paper provides recommendations about establishing an ELC in China including a list of relevant considerations such as funding, staffing, outputs and evaluation.

PART 1: BACKGROUND AND CONTEXT

The Benefits of Clinical Legal Education (CLE)

CLE can be a life-changing experience for any law student. It can open their eyes to the realities of the law and the impact of our systems and institutions upon wider society. It can give students a valuable set of contacts on which to call on later in life, and provide them with hands on experience to put on the resume. At the same time, CLE can support civil society providing them with much needed assistance on issues they may themselves lack the resources to pursue such as law and policy reform and community education. Universities are also recognising the benefits of CLE including being able to offer practical experiences to their students and, at a faculty level, engaging with external actors outside of the academic world (i.e. government, non-government and other private actors). Some

of the main benefits to the university, community and student have been summarised in table 1 shown below.

Table 1 Benefits of CLE from three perspectives

University	Student	Community
Improve Standing and reputation of the law school in society	Hands on experience of 'real life' legal matters to translate theory to practice	Attention to legal issues which might otherwise be under-analysed or under-resourced for want of resources
Opportunities for further research and collaborations with NGOs and government actors	Introduces to group of peers or networks to call on and collaborate with later in life	Links community to academic and professional sector which they might otherwise have little dealings with
Chance for academics to show impact from work and apply for further funding opportunities	Instils a sense of social justice and community empowerment in future practice	Gives communities a voice, platform or outlet they might otherwise not have had (e.g. through website or social media platforms)
Ability to differentiate itself from other universities, courses and programs	Gives students something they can point to in their resume and credit towards their degree	Reveals to communities how law and justice is relevant to their everyday lives

There are various ways of delivering CLE in tertiary education and as Giddings remarks, there is certainly no 'one size fits all' approach.¹³ One method involves hosting a clinic onsite at the university using existing space with paid lawyers or legally trained 'clinicians' to supervise student work. Another option involves running a clinic off-campus (externally) where the law school partners with a legal aid center or other *pro bono* or community organization.¹⁴ As Giddings sets out in some depth, there are various other hybrid models as well.¹⁵

In terms of supervision, which is a key question for any clinic, lawyers or clinicians can be employed on the staff of the university on a permanent or part time basis. Alternatively, supervisors might be kept 'at arm's length' from the university through a contractual arrangement from semester to semester or year to year.¹⁶ Another possibility is that some funding from the law school may be provided to a partner organization as remuneration for their supervisory work of the students (i.e. outsourcing of education

¹³ Probably the best and most comprehensive exploration for various models is found in Jeff Giddings, *Promoting Justice through Clinical Legal Education* (Justice Press, 2013).

¹⁴ See Giddings, *Ibid.*

¹⁵ *Ibid.*

¹⁶ One of the biggest problems in establishing and continuing a clinic is supervision of students. See for instance; Giddings, Jeff; McNamara, Michael (2014) 'Preparing Future Generations of Lawyers for Legal Practice: What's Supervision Got to Do With It?' 37(3) *University of New South Wales Law Journal* 1226. Lawyers are often not trained to assess and provide academic feedback to students and are often not cognizant of the academic context in which the students participate in the program. Supervision from universities is often not prioritized as research, collaborations and travel usurps time and effort on the part of more senior academics with the knowledge and wisdom to dispense powerful lessons through 'light bulb' moments.

responsibilities). In the end, it is about what works best for the law school in the current strategic, financial and educational climate in which it operates.

Defining an ELC

ELCs, much like the jurisprudence of environmental law itself, are a relatively new phenomenon.¹⁷ Whilst examples of ELCs are easy enough to find on the web, predominately in the United States (US), from an academic standpoint they have been under-studied and many for example may not be actually operational or fully-functioning. Similarly, whilst the benefits of CLE to student well-being and employability are increasingly well-known,¹⁸ the pedagogical benefits of ELCs, and indeed other specialist clinics (like human rights, intellectual property, labour law etc), are noticeably absent from the literature. Accordingly, settling on a definition of what an ELC is and what it seeks to achieve is not easy task. Nonetheless, drawing from the broader CLE literature, a working definition of an ELC can be constructed as follows:

'An ELC is a form of specialist legal clinic whereby tertiary students, under supervision, engage with various aspects of environmental governance in order to meet community needs as well as their own learning goals.'

¹⁷ See Wei, above n 4.

¹⁸ See for example James, Colin G., (2008) 'Lawyers' Wellbeing and Professional Legal Education' 42(1) *The Law Teacher: The International Journal of Legal Education*, 85-97.

This definition is broad enough to integrate students from other disciplines into the clinic (science, media, business, information technology etc), as well as cover the concept of environmental governance, which includes factors within and outside the law such as: the role of the media, NGOs and epistemic communities (e.g. universities and scientific bodies); the influence of human rights and other norms, policy considerations and other soft law non-binding instruments etc). The other key part of the definition is that students must be 'supervised' in some form that is an integral aspect of what CLE entails. The reference to a student's 'own learning goals' is derived from the pedagogical literature, a bulk of which theorises that students learn best when they set their own benchmarks for success through 'self-regulated learning.'¹⁹

Specialist clinics like ELCs have become more prominent in the United States, Australia and Europe since the 1980s.²⁰ The growth has been in response to a demand for more specialised fields of legal practice and more particular (and complex) community concerns. As Evans and Hyams write, one of the greatest benefits of specialist clinics is that they are able to:

¹⁹ See for instance: Barry J. Zimmerman (1990) Self-Regulated Learning and Academic Achievement: An Overview, *Educational Psychologist*, 25:1, 3-17

²⁰ See Giddings, above n 12, 101.

*...speak directly to the burgeoning particular interests of individual students and can generate an even greater degree of energy for the specialisation than they experienced in the general practice clinic.*²¹

As Wei writes, specialist ELCs have a unique capacity to combine:

*...social concerns about environmental issues with more traditional legal education...[and] serve as tools of social equity for helping the victims in environmental issues, especially those who cannot afford to hire a lawyer.*²²

Establishment and composition of ELCS

The first ELC was reportedly developed in the United States at the University of Oregon in 1976. Thereafter, they ‘sprouted like mushrooms’ and today, there are about 35 ELCs in the US including: Harvard, Yale, Chicago, Washington, Maryland, Duke, Tulane, Lewis & Clark and Pace.²³ The growth of ELCs in the US has been considerable. So much so, in fact, that it was reported in the 1990s that some universities were ‘using environmental law for experiments with clinical or interdisciplinary approaches to legal education.’²⁴

²¹ Evans, A., and Hyams R., (2015), ‘Specialist Legal Clinics: Their Pedagogy, risks and payoffs as externships’

22(2) *International Journal of Clinical Education* 147-180.

²² Wei, above n 4, 76.

²³ Babich, A., (2013) ‘Twenty Questions (and Answers) About Environmental Law School Clinics’ 22(1) *The Professional Lawyer* 45.

²⁴ Robertson, above n 9.

In addition to the US, Canada has a handful of ELCs including clinics established at: University of Victoria (Vancouver Island); University of Calgary (part of a Public Interest Law Clinic); York University's, (Osgoode Hall Law School); and the University of Ottawa's Ecojustice Clinic.²⁵ Central and South America are also home to several ELCs including Clinicas Juridicas (Juridical Clinic) at Universidad de Palermo in Buenos Aires and Costa Rica's Conservation Clinic at the University of Costa Rica (UCR). Several law schools in Australia (including Macquarie University which runs a Land and Environment Court experience), South Africa, China and Spain also have specialist ELCs built into their curriculums.²⁶ In all, a conservative estimate is that there are approximately 50 ELCs worldwide, with about two thirds located in the US.

In the US models, students in ELCs are likely to assist with legal advice and casework for individual clients (such as conservation organizations, concerned residents or community associations). There are special rules in many US jurisdictions, unlike in China and Australia for instance, which allow students to participate first hand in cases including advocating in Court. Law students in California for instance, can be accredited, to 'appear on behalf of clients 'in any public trial, hearing, arbitration, or proceeding.'²⁷

²⁵ My thanks to Canadian academic Pierre Cloutier de Repentigny for confirming these ELCs

²⁶ For an overview of an ELC in Spain, see Borràs, S, et al., 'The Environmental Law Clinic: A New Experience in Legal Education in Spain' (Chapter 5) in Daniela Ikawa, Leah Wortham (eds.) *The New Law School, Reexamining Goals, Organization and Methods for a changing world* (Public Interest Law Institute, 2010).

²⁷ Rule 9.42 ('Certified Law Students') California Rules of Court 2017

Likewise, law students in Florida can also apply for certification to represent clients in Court.²⁸ Various other states in the US have their own rules for student advocacy through CLE.

In addition to assisting with legal advice or casework in specific cases, students at an ELC may also work with academics or other organizations on research, education or law reform initiatives that are useful to broader society.²⁹ This might involve, for example:

- updating factsheets, handbooks or other community education resources;
- assisting in contract drafting or leasing or conveyancing work needed, for instance, to establish a private conservation reserve;
- preparing research or co-writing conference papers or journal articles
- pressuring companies to 'become greener' or go low emission by compiling reports or releasing public information in 'easy to understand' formats;
- launching and/or maintaining eco-friendly social media campaigns about a topical issue (e.g. water pollution in a local catchment, contamination levels in soil);
- commenting or making submissions on upcoming law and policy reforms at the local, state or national level.

²⁸ Students in Florida can achieve 'legal intern certification' pursuant to Chapter 11, Rules Regulating the Florida Bar (the 'Student Practice Rule').

²⁹ McNamara, Judith, Campbell, Catherine, & Hamman, Evan, (2014) 'Community Projects: Extending the Community Lawyering Model' 12(2) *International Journal of Clinical Legal Education*, 18.

The potential scope of work at ELCs appears broader than other types of clinics and likely reflects the transdisciplinary array of problems that stakeholders in environmental governance face on a daily basis (legal, scientific, technological, financial, conceptual, etc). ELCs are likely to be unique in this way and can expose law students (and other students) to a wide variety of community projects outside of litigation, which help develop a student's notion of social justice and build their capacity to address complex issues in a systematic and supervised way.³⁰ Students who partake in ELCs also have the benefit of being exposed to environmental issues first hand and take some degree of ownership or responsibility over their experience.

For some students, experience in an ELC can sharpen their passion for the environment and the natural world, whilst for others they may realize for the first time a desire to pursue a career path in public interest advocacy. Some students may also find work with or through the ELC or its stakeholders, whilst others might make valuable social and business contacts for future work. Most ELCs, like other clinics, can also be adapted to focus on the skills which universities wish to build in students by placing an emphasis on specific strategies or legal tools including representation, community education, and policy.³¹

³⁰ *Ibid.*, 9.

³¹ Karin M., and Runge, R., (2011) 'Toward Integrated Law Clinics That Train Social Change Advocates' 17 *Clinical Law Review* 563, 570.

Moreover, because of the public interest and 'grass roots' nature of the work that they do, ELCs can also be a powerful way of universities connecting with their local community and the organizations that represent them. For those universities that wish to specialize in environmental law and governance, they can also prove a valuable part of competitive advantage acting as a magnet for the country's best and brightest future environmental lawyers.

The number of students enrolled in ELCs varies considerably. As Robertson estimated in the late 1990s, ELCs (in the US) have enrolled 'anywhere from three to fourteen students each semester.'³² That said, most ELC operations tend to be niche and relatively small initiatives, and student groups are often kept to a manageable size of between 4 and 10 students rotating through the clinic at different times. Most law schools with ELCs seem to offer it as an undergraduate (elective) option in later years of the degree, though there is no reason why it cannot be offered at the postgraduate (e.g. Masters of Laws) level or built into practical legal components of legal admission processes post-graduation. As Clubb remarks, postgraduate clinics have the potential to engage older students in a wider appreciation of socio-economic factors and deliver more targeted and sophisticated benefits to complex problems in the community.³³

³² Robertson, above n 9, 267

³³ Clubb, C.,

(2013) 'Masters of Our Destiny - The Integration of Law Clinic into Post Graduate Masters Provision.' *19 International Journal of Clinical Legal Education* 395.

Challenges faced by ELCs

ELCs face considerable challenges, as Giddings remarks, perhaps more so than any other form of clinic.³⁴ The reasons for this seem relatively straightforward. The practice of environmental law, protection and conservation is often directly opposed to the interests of both government and private enterprise (mining, chemicals, agriculture, shipping, development etc). It comes as little surprise that taking on cases or advocating issues that challenge those interests can result in condemnation or criticism from those who stand to lose from the circumstances. The Tulane Environmental Law Clinic in the US, for example, was famously the subject of extensive criticism over litigation it was involved in several years ago.³⁵ At the time, Tulane's ELC program represented citizens who challenged the issuing of environmental permits to the petrochemical industry. In response, the industry 'developed an eleven-point plan' to "kneecap" the university financially.³⁶ Likewise, it has been reported that the University of Oregon's clinic and University of Pittsburgh's have been attacked by state officials and industries.³⁷

Funding is of course another major roadblock to establishing an effective ELC (or indeed any form of clinic). As environmental law is often an elective – or a small component of

³⁴ Giddings, above n 12, 133.

³⁵ Kuehn, R., (2000) 'Denying Access to Legal Representation: The Attack on the Tulane Law Clinic' 4 Wash. U. J. L. & Pol'y 033 <http://openscholarship.wustl.edu/law_journal_law_policy/vol4/iss1/>

³⁶ Joy, P., and Kuehn, R., (2010) 'Kneecapping' Academic Freedom' Washington University in St. Louis Legal Studies Research Paper No. 10-11-01. Available at SSRN: <https://ssrn.com/abstract=1719325>, 9.

³⁷ Giddings, above n 12, 133.

of university curriculums - marketing the idea of an ELC to law school management may prove harder than for other initiatives which drive research agendas and increase student enrolments. Furthermore, conservation and community organizations which may work with the ELC are often member-driven and receive little or no government funding for their activities. Reliance on a percentage of a successful judgment in a case is one option for ELC funding, but in jurisdictions outside of the US, these forms of 'contingency fees' may be illegal. Moreover, in public interest environmental hearings 'there is often no pot of gold at the end of the rainbow.'³⁸

Like other specialist clinics that focus on public interest issues (consumer advocacy, human rights, refugees, labor law etc.) ELCs can also struggle to manage student expectations and attract student interest. In many parts of the world, including China, public interest law is not a lucrative career pathway for law students. This is particularly the case in uncertain economic times where students have accumulated considerable debt over the course of their degree. There are also cultural considerations at play. In China, for instance, students may well be the only child of their household, and there are high expectations that they will one day succeed financially and perhaps avoid the type of work that ELCs do. One of the core challenges of ELCs is therefore to change the

³⁸ Preston, B (2013) 'Environmental Public Interest Litigation: Conditions for Success' (Speech delivered at the International Symposium: Towards an Effective Guarantee of the Green Access: Japan's Achievements and Critical Points from a Global Perspective, Awaji Island, Japan, March 2013) <http://greenaccess.law.osaka-u.ac.jp/wp-content/uploads/2013/04/13en_preston.pdf> 11

'charitable' image of the work they undertake and be able to market their existence to high performing students with a passion or interest in working in environment, public interest, administrative law or other related areas of law.

Finally, successful clinics manage their student expectations well. To do this, students need to be given a realistic idea of what they will and won't be doing.³⁹ As McNamara et al writes, without clear expectations and direction, students can be frustrated and confused about their experience.⁴⁰ Maintaining student interest in a specialist CLE along the semester can be challenging, time consuming and administratively demanding.⁴¹ Students may tend to focus exclusively on assessment tasks, rather than on the needs of the clinic and its clients, thereby 'playing the game' of the law school, rather than contributing to the real community needs.

Some of this may flow from the fact that legal clinics are still generally viewed as though they are separate or not 'as important' as the rest of the regular law curriculum.⁴² This is likely a result of the traditional view of academic tertiary education and its historical focus on teaching 'black letter law'. Nevertheless, those students who have experienced the advantages of a legal clinic often suggest (anecdotally) that the benefits of such a

³⁹ Evans and Hyams, above n 20.

⁴⁰ McNamara et al, above n 28.

⁴¹ Evans and Hyams, above n 20.

⁴² Hall, J., and Herrigan, K., (2011) 'Clinic and the Wider Law Curriculum' *International Journal of Clinical Education* 25-37.

model are so unique to education that clinics should form part of the compulsory curriculum. Despite this, it remains that in most institutions clinics are seen as optional rather than a core unit that delivers relevant knowledge and skills.⁴³ The challenge for ELCs are no different in this regard. Some universities - like Rovira i Virgili University in Spain, for example - have tried to address this by making an ELC 'both a core subject in the syllabus of the master's degree in environmental law and an elective in the undergraduate course in law.'⁴⁴

PART TWO: EXISTING ELC MODELS

This part of the paper categorises the different focuses (or models) of ELCs into three groups: Type A, B and C. Table 2 below summarises the three basic models of ELCs that are available. The three types were based on desktop research undertaken by the author and clinical students.

Type A (casework) models tend to focus on litigation, legal advice and work related to court proceedings. An example of a Type A clinic model is the Columbia Law School ELC, in which students advocate for citizen and environmental groups before state and federal agencies, and have both a local and national focus on environmental litigation.⁴⁵

⁴³ Ibid.

⁴⁴ Borràs et al, above n 25.

⁴⁵ Columbia Law School, Environmental Law Clinic, 'Clinical Education <www.law.columbia.edu/clinics/environmental-law-clinic>

Pace University's environmental litigation clinic is another example of a Type A model, and since the 1990s has run several important cases.⁴⁶ Another example of a type A clinic is the Clinicas Juridicas (Juridical Clinic) at Universidad de Palermo in Buenos Aires, Argentina. Enrolment in this clinic is mandatory for all law students in 4th or 5th year. Under supervision, students assist qualified lawyers who are representing clients on issues including civil, criminal, mediation, family, human rights, immigration and environment law. Students undertake research, conduct interviews and prepare documents for upcoming cases.⁴⁷

Table 2. Three basic CLE models categorised by the nature of the work they do

	Type A (Casework)	Type B (Education-Reform)	Type C (Comprehensive)
Focus of ELC	Predominately Litigation-focussed, undertakes casework, representation and legal advice to particular clients in and related to court or tribunal proceedings.	Concentrates on law reform, and tends to focus on information and education regarding environmental issues rather than one-off legal advices or representation in Court	Focuses on a wide range of legal activity including litigation, case work, advice, education initiatives, policy and law reform.

⁴⁶ Pace University, 'Pace Environmental Litigation Clinic' <www.law.pace.edu/pace-environmental-litigation-clinic>

⁴⁷ Universidad de Palermo, 'Clinicas Juridicas', Facultad de Derecho (Law Faculty), <http://www.palermo.edu/derecho/facultad/clinicas_juridicas/casos/index.html>

Type B (law reform-education) models of ELCs tend to concentrate on non-litigious tasks such as students assisting with community education, policy and law reform. These tasks are broader than ‘one-off’ cases and do not necessarily involve serving individual clients, but rather, focus on delivering wider community gains. The University of Victoria ELC (in Canada), for instance, appears to adopt this type of model.⁴⁸ It reportedly operates on a local level in order to optimise community involvement, and, in addition to meeting with community groups about their legal issues, produces handbooks and other documents for community organisations and the general public. In another example, at Queensland University of Technology (QUT) school of law in Australia final year law students partner with an environmental NGO to prepare law reform submissions, factsheets, handbooks, YouTube videos, community events and other non-litigious services.⁴⁹

Finally, Type C (hybrid or ‘comprehensive’) models involve a combination of Type A and B, in which both litigation and reform-education work are undertaken. These clinics are comprehensive in their scope (or at least claim to be) and likely attract significant oversight and funding commitments from the university. There are numerous examples of Type C clinics in the United States and most may, by default, end up working on law

⁴⁸ University of Victoria, Faculty of Law ‘Environmental Law Centre,’ <<http://www.elc.uvic.ca/programs/clinic/>>.

⁴⁹ See Hamman, E., Maguire, R., & McNamara, J., (2014) Pro bono partnerships in environmental law: enhancing outcomes for universities and CLCs. 39(2) *Alternative Law Journal* 115-119.

reform, research and community education where no cases are available or active for students to work on. At Berkeley Law School (in the US) for example, clinic students undertake litigation, but are also encouraged to develop advocacy skills in law and policy reform. Students work on research about particular environmental issues across five main areas: climate change, toxics reduction, drinking and sanitation, green job creation, and equity in access to nature.⁵⁰

The advantage of Type C clinics is that they offer students the chance to develop courtroom and legal drafting skills as well as see the broader context in which environmental law operates. Berkeley Clinic director Claudia Polsky recently commented on the need for developing student skills outside of litigation:

I'm not inclined to add another amicus brief to 15 others in a case simply because it would give students useful experience writing an amicus brief. In a world of rapidly rising temperatures and pollution levels, and an alarming rate of species extinction, we need to make a real-world difference in addition to teaching lawyering skills.⁵¹

There are several examples of Type C clinics in the human rights context as well. At the Public Interest Law Clinic at Universidad Nacional de Tucuman (Argentina) for instance, students conduct litigation on behalf of individuals for human rights infringements. At

⁵⁰ Berkeley Law School, 'Environmental Law Clinic takes on Urgent Issues'
<<https://www.law.berkeley.edu/article/environmental-law-clinic-takes-urgent-issues/>>

⁵¹ Ibid.

the same time, students at the clinic also work on projects related to access to justice and information, such as producing 'layperson-friendly' guides to the law and citizen rights.⁵² The categories A-C are by no means static. At times, ELCs may begin as one form of clinic and morph into another. The Centre for Human Rights Law and the Environment (CDHA) in Argentina, for example, began as a Type C clinic, incorporating a range of programs that included student-led litigation, advocacy, community engagement, and capacity building of key actors locally and nationally. The clinic represented individuals and communities impacted by environmental degradation or unsustainable use of natural resources, and works to protect communities from future negative impacts.⁵³ In the past it ran a number of successful cases, for example, against mining companies that did not comply with rules regarding clean-up and rehabilitation of the area. However, after a few years, CDHA found that student-based litigation was too difficult as cases took too long and the timing was too unpredictable to fit within a university course. Thus the organisation now continues as a Type B clinic, focusing on community engagement and advocacy.⁵⁴

⁵² Puga, M., (2010) 'Challenges for Legal Clinics in Argentina' *The Law Teacher* 239-259.

⁵³ Center for Human Rights Law and the Environment, 'Mission and Activities', http://wp.cedha.net/?page_id=6271&lang=en.

⁵⁴ Ibid.

Internal or External Delivery?

External clinics (clinics hosted 'off-campus') are often seen as more cost effective than onsite models, but they still have their own set of challenges.⁵⁵ They may, for instance, be deficient from a teaching and learning perspective, as students may not understand their own attributes, learning styles and learning needs without effective university supervision present. The law school may therefore have little control over the day-to-day learning of the students, with reliance that the external institution will provide the students with educationally useful and valuable activities, and an expectation that the students themselves are proactive and honest in how they are viewing their experience.⁵⁶ The external organization may also hold a different view of social justice from the students or university, which can cause an uneasy relationship between the university and the partner.⁵⁷ This conflict may also cause broader image issues for conservative universities or law schools where a partner may be seen as too 'radical' or 'political' for other forms of work the university undertakes (for instance in other faculties like mining, petrochemicals, business, investment etc).

Internal clinics also have their own set of challenges. First, there are the considerable costs of establishment.⁵⁸ Suitable office space, computers, reception staff etc may be needed.

⁵⁵ Giddings, above n 12.

⁵⁶ Evans and Hyam, above n 20.

⁵⁷ Taylor, A., (1977) 'Clinical Legal Education' 2(2) *Studies in Higher Education* 137-147.

⁵⁸ Chmerkinsky, E., 'Why Not Clinical Education', (2009) 16 *Clinical Law Review* 38.

Costs can also increase due to the small student-to-faculty ratio, meaning several students may need to be supervised very closely by a senior academic.⁵⁹ Further, clients (if the clinic sees clients) need to come on-site at the university to deliver documents, receive advice or give instructions to lawyers. There may be logistical issues where clients are some distance from the university or, in some countries, there can be security issues with attendance by non-students on campus grounds. Lastly, internal clinics can also face recruiting problems, attempting to find suitable staff and develop the sort of profile and reputation that specialist clients would consider appropriate for their needs.⁶⁰

One issue which affects both internal and external clinics is that there is a lack of information more generally concerning clinic establishment.⁶¹ The information that does exist mostly relates to the US yet the establishment of clinics should ideally take in to account the local cultural setting.⁶² This means that setting up new legal clinics may involve extensive research and due diligence (costs) before the clinic is active including taking into account the culture of the communities for which the services are intended.

⁵⁹ Ibid.

⁶⁰ Evans and Hyams, above n 20.

⁶¹ Puga, above n 51.

⁶² Ibid.

PART 3: ELCS IN THE CHINESE CONTEXT

Why establish an ELC in China?

China is an emerging superpower. Over the last three decades it has lifted millions out of poverty and greatly increased public infrastructure and investment in health and education and other important services. It has also become a major geo-political player on the regional and world scene able to negotiate and influence future international agendas. Of course, this has also come at great environmental cost. Air pollution cripples major cities like Beijing, Shanghai and Wuhan, particularly in the winter months, and water pollution from sewerage, chemical production and fertilizer run-off has affected large parts of China's inland lakes and river systems including the mighty Yangtze. The impacts on human health and biodiversity are obvious and the financial costs of such degradation are increasingly recognized.

In response, the Chinese Communist Party (CCP) has made important advances, strengthening its Environmental Protection Law (in 2015), introducing tort legislation for pollution victims to receive compensation (in 2009), making water pollution a priority in the latest five year plan and allowing NGOs to play a stronger role in the co-regulation of pollution. Hundreds of newly established specialist environmental courts (including a special chamber in China's Supreme Court) will require trained judges and environmental lawyers. NGOs, law firms and government agencies will also need

practitioners and researchers who have hands on experience of the workplace and environmental issues surrounding compliance.

Legally-trained graduates will thus play an ever-important role in the refinement and application of China's environmental governance systems. ELCs can play a central role in the development of these skills. China's graduates will not only need to be passionate about conservation issues, but technically skilled in understanding and using environmental law as a positive source for change in their communities. With their focus on experiential tasks, ELCs are one of the only vehicles that can offer that. Numerous ELCs can also help to establish a movement of younger scholars and practitioners one which is connected to the world to draw examples from, but also one that understands and is able to suggest solutions in accord with its own customs and laws.

Existing ELCs in China

China already has (or has had) a handful ELCs operating across the country, though they are still in the 'embryonic stage.'⁶³ At Sun Yat-sen University, in Guangzhou, for instance, an ELC was established in 2003 – said to be the first in China.⁶⁴ As Pei-Pei He and others report, a major grant from the Ford Foundation in 2000 helped to lay the ground work

⁶³ Pei-Pei He, above n 5.

⁶⁴ Baskir, C et al., (2015) 'Chinese Clinical Legal Education: Globalizing and Localizing', in Sarker, Shuvro Prosun (Ed.) *Clinical Legal Education in Asia: Accessing Justice for the Underprivileged* (Palgrave Macmillan, 2015), 42.

for other clinical initiatives at Peking University, Tsinghua University, Renmin University of China, Wuhan University, Zhongnan University of Finance and Political Science, East China University of Politics and Law and Fudan University.⁶⁵ The Sun Yat-sen clinic was originally intended to carry out litigation work (i.e. a Type A model), however, due to a lack of public interest cases, the clinic has taken on a policy and law reform approach instead (Type B model).⁶⁶ Reportedly, it took the clinic several years before it could build a rapport with the local community and relevant organizations to conduct such work.⁶⁷

Another ELC exists at China University of Political Science and Law associated with the Centre for Legal Assistance to Pollution Victims in China (CLAPV).⁶⁸ The CLAPV clinic is unique in China as it focuses on litigation and pursues about 15 cases per year.⁶⁹ As Stern reports, these cases are 'mostly referrals from CLAPV's legal assistance hotline and come from all over the country.'⁷⁰ By comparison, the Sun Yat-sen model, cases only provided a moderate form of work for the clinic.⁷¹

⁶⁵ Pei Pei He, above n 5.

⁶⁶ Hamman et al., above n 48.

⁶⁷ Phan, P., (2005) 'Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice' 8(1) *Yale Human Rights and Development Journal* 141.

⁶⁸ Wei, above n 4, 82.

⁶⁹ Stern, R., *Environmental Litigation in China: A Study in Political Ambivalence* (Cambridge Univ. Press, 2013), 196

⁷⁰ Ibid.

⁷¹ Wei, above n 4, 82.

Most of the other existing ELC projects in China seem to have had assistance or partnered with US universities or funders. Other relevant study partnerships also exist. Vermont Law School in the US, for example, famous for its environmental law focus, has established the U.S.-China Partnership for Environmental Law in 2006 to build capacity amongst Chinese students and lawyers. As Schroeck reports, Vermont partners with Renmin University in Beijing to deliver a specialist environmental law program.⁷² Some of its more interesting outputs and learning experiences include the production of joint research papers.⁷³ The partnership's geographical focus more recently has shifted to include the rest of Asia as well.⁷⁴

Challenges for ELCs in China

In addition to the challenges that face ELCs in other parts of the world, there are particular challenges that face Chinese law schools. A recent paper by Pei-Pei He and others pointed to several defects in the ELC system including: a lack of qualified teaching faculties; incomplete legal clinic goals; and a lack of an effective curriculum system.⁷⁵

⁷² Schroeck, above n 3, 15

⁷³ Vermont Law School, 'Joint Research Project Papers'
<<http://www.vermontlaw.edu/academics/centersand-programs/us-asia/publications/joint-research-project-papers>>

⁷⁴ Vermont Law School, 'US-Asia Partnerships for Environmental Law'
<www.vermontlaw.edu/academics/centers-and-programs/us-asia>

⁷⁵ Pei Pei He, above n 5.

Despite recent amendments allowing ‘registered’ NGOs to bring public interest suits, public interest litigation is still rare. As Schroeck recently commented:

*The Chinese legal system [still] limits the ability of citizens and public interest advocates to affect social change. Control still ultimately rests with the Communist Party, with minimal rights for citizens. Corruption is still a significant barrier.*⁷⁶

More recently, NGO collaborations (including funding opportunities) have been restricted by tougher laws introduced by the CCP. As Fulda recently wrote:

*A controversial new law regulating the activities of foreign non-profit organizations (NPOs) in China came into effect on January 1 [2017]. Under the Overseas NGO Law, foreign NPOs will have to meet very stringent registration and reporting guidelines.*⁷⁷

All this adds to the already tight funding around existing ELC models. Wei makes this point succinctly:

In the US, ELCs may receive reward in the form of an order for attorney fees from the judge when they win a case. That is both a relief to the fund-raising problem as well as an impetus to try the hardest to win the case. However, there is not such a mechanism in China....[Moreover] in China, most universities are state-owned. Although there are also

⁷⁶ Schroeck, above n 3, 17

⁷⁷ Fulda, A., (2017) A new law in China is threatening the work of international NGOs The Conversation <<http://theconversation.com/a-new-law-in-china-is-threatening-the-work-of-international-ngos-70884>>

some foundations that are willing to support ELCs in China, such as the Ford Foundation and the Lingnan Foundation, the general prospects are not so optimistic, and funds themselves are tight... Seeking funds [thus] takes a lot of time away from the substantive work of the ELCs and sometimes even threatens the initial establishment or the continued existence of ELCs.⁷⁸

A further impediment to ELCs in China is that there are limited opportunities and incentives for law graduates to work directly in public interest environmental law either during or after university. Most middle-class students in China are from one-child families and are reluctant to pursue public interest careers where salaries and prestige are far less than the more established commercial pathways. This phenomenon is not necessarily specific to China. Countries like Australia and the US face a shortage of public interest lawyers not to mention relatively small percentage of students willing to make it their career path in a time of high competition for jobs and salaries.

Finally, another major consideration in the Chinese context is the staffing of the ELC. As Wei points out, 'most [Chinese] professors feel that they do not have time to take up other roles and responsibilities beyond their [existing] teaching and research.'⁷⁹ In comparison, many of the supervisors in the US are experienced *clinicians*, rather than lecturers or professors with experience in classroom teaching and legal research. Universities may

⁷⁸ Wei, above n 4, 87.

⁷⁹ *Ibid.*, 87

have to find additional funds to employ clinicians outside of their research, service and teaching work. The benefits need to outweigh the costs in this regard.

Recommendation: Establishing an external ‘education-reform’ model

The unique set of challenges facing China’s environmental governance systems suggests emulating the litigation-style US (Type A) model of ELCs may not work particularly well.

In the short term, ELCs in China should consider focusing on law reform, education and broader advocacy initiatives to develop something of a movement of relevant material and resources. Emerging ELCs across several universities might be joined together in some collegiate way, for instance, through a Chinese association of ELCs. The collective could meet regularly to discuss different approaches to pedagogy and community service around environmental law as well as connect with ELCs throughout the rest of the world.

In terms of a way of delivering such a model, Chinese universities would do well to avoid expensive ‘in-house’ approaches where the costs and risks of the clinic are absorbed by the law school. On the contrary, law schools should consider collaborating, on a trial basis, with external established organizations such as China’s Global Environment Institute (GEI), Friends of Nature, Natural Resource Defense Counsel (NRDC), Institute of Public & Environmental Affairs (IPE), or WWF-China. These organizations (particularly the domestic NGOs) can be effective partners in the experiential learning experience for students, as well as help to develop effective curriculum content in CLE

more generally. Indeed, recent empirical research has suggested that 'curriculums designed in cooperation with [NGOs] can better solve the dilemmas' faced by China's current environmental law courses.⁸⁰ Partnerships would of course need to be cognizant of recent changes to overseas NGO funding and collaboration laws in China.⁸¹ Although many of the larger NGOs are based in Beijing or Shanghai they may have regional offices or related groups working in other cities. Online collaborations (i.e. cyber projects) could also be an option for rural and remote places so the university does not have to pay for the cost of student travel.

The advantages of an external education-reform model might include:

- the ability to produce research or other outputs over a planned period (one or two semesters);
- access to existing resources on topical and 'real life' issues that affect a variety of people;
- the opportunity for students to work across several related disciplines (for instance, science, policy and media);
- the ability of the law school to control assessment and supervision in a defined period (including developing student skills in project planning) but not necessarily of the content of the work;
- the opportunity to undertake team work which would simulate student practice post-graduation;

⁸⁰ Pei Pei He, above n 5.

⁸¹ See Fulda, above n 76.

- the ability of students to work remotely and in their own time without constant client, partner or;
- the chance for students (and the university) to reference results of their work (for their resume).

Additional factors for consideration

In addition to the type of model considered appropriate (Type A, B and C), there are several specific factors that should also be canvassed. A summary is included in table 3 below.

Table 2 Relevant considerations when establishing an ELC in China

Consideration	Relevant Questions
FUNDING:	How will the ELC be funded? Would a trial period be beneficial? How many staff are needed to run the ELC? Will they be part time or full time? What other resources are needed (computers, texts, translation services etc)? Can the ELC be ‘built on’ to an existing initiative?
SUPERVISION:	Who will supervise the students from an assessment point of view? Who will supervise and provide feedback on their substantive work? Do guidelines need to be developed?
STUDENTS:	How many students will be involved? Will they be postgraduate or undergraduate? Will the course be mandatory or optional? What length of ‘university’ time will the clinic run for? (one semester or two?) What will be the form of assessment? How will the course be ‘marketed’ to potential students?

CONFIDENTIALITY:	How will issues of confidentiality and privacy be managed? What happens when students work offsite and may have access to confidential data or systems?
FOCUS:	Would a specific area of law be helpful to look at (water, soil, air pollution, biodiversity etc.)? What scale could the clinic cover (local, regional, national, international issues)?
EVALUATION:	How will the clinic be evaluated by supervisors and course coordinators? How will the perspectives of students, supervisors, clients and partner organizations be evaluated?
IMPACT AND OUTPUTS:	What scholarly or other outputs can be gained from the ELC? Can the clinic be built around a research agenda, for instance, 'access to environmental justice' in China?
LINKAGES	How can the ELC link with other organizations in the community? How can it link with Government? Is there the possibility of students doing government work through the ELC? How could ELCs 'talk' to each other?

These considerations were generated from the general literature on CLE and the workshop experiences undertaken by the author and the clinic students. Best practice

guidelines are also available online which give excellent advice regarding student assessment and other issues.⁸²

CONCLUSION

Further research, particularly of an empirical nature, is needed to realize the full potential of specialist ELCs in China. Certainly, there are many environmental challenges facing China and CLE provides a small but important part of that solution. One of the most important contributions seems to be for ELCs to operate as a basis to assist in capacity building and inspiration of new ideas around environmental challenges for the future. Universities can be an integral part of that drive, particularly through the law school. As Stern notes, ELCs can act as 'portals' in this way – a mechanism for generating new ideas about how to tackle the country's most urgent environmental problems.⁸³ A more pressing question then arises: what model might work best for such a program? The arguments in this paper suggest although China's judicial and legislative systems are developing at pace, there are significant barriers to a US-style litigation (Type A) clinic. These include: the need for constant funding; the complexity of environmental evidence; the length of environmental hearings; travelling to and from the court; and the politically

⁸² In Australia see: Evans, A et al, *Best Practices: Australian Clinical Legal Education* (Australian Government, 2013). In the US, see: Stuckey, R, *Best Practices for Legal Education: A Vision and a Road Map*, 2007.

⁸³ Stern, above n 68, 166.

sensitive nature of cases (see for instance, the Tulane Law School example). For these reasons, this paper suggests that an education-reform ELC model (i.e. a Type B model) might be best suited to Chinese law schools. It is further suggested that such a model might be best undertaken in external mode in collaboration with domestic NGOs in China.