

## I. Introduction

### A. Why Legal Clinics?

“Do justice, love mercy, walk humbly with your God.” This is the goal and the reason we study at Handong International Law School (HILS).

However, in the midst of hectic law school life, students come to the point where they don't really care about the “justice.” Some students would say that they will take care of “justice” after they graduate. But unless they become aware of justice while they are in law school, it will not be easy to think about justice after graduation when they get even busier. Is there any way that we can remind ourselves what justice we need to seek; in other words, what injustice is out there in the real world that demands action?

We are not the first one who has struggled with these questions: in the United States, law schools which spotted the injustice in the real world had started something called “legal clinic.” Through clinical legal education, providing ways for law students to get involved in the issues in the society, law students have been able to seek social justice. At the same time, clinical legal education has served to provide a means to teach lawyering skills on top of the all the case books.

### B. Purpose of This Paper

This paper suggests possible clinical legal educational models for HILS. To be familiar with the concepts of the clinical legal education, I will go over the clinical legal educations in the United States. This includes the history of clinical legal education and a general overview of the current situation. Also, I will look into specific cases which help to understand how to implement clinical legal education. The section after that, I will introduce situations in East Asia, including China, Japan, and Korea.<sup>1</sup> Starting from the general situations of legal education, clinical legal education, and specific cases will be following. Lastly, I will suggest possible clinical models for HILS.<sup>2</sup>

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<sup>1</sup> Contents in this section are mainly from the Clinical Law Symposium on April 24, 2010 and The Third Annual Conference of Japan Clinical Legal Education Association on April 25, 2010 in Japan.

<sup>2</sup> Many professors have shared their experience on their clinical education and provided kind advice on the possible models and via emails and skype. I want to express my gratitude to them: Professor Peter Joy at Washington University, Professor Robert Danforth, Professor Mary Natkin, Professor Hari Osofsky at Washington and Lee University, Professor Bruce Jacob at Stetson Law School, Professor Shigeo Miyagawa at Waseda University Law School, Professor Deng Xiangshun at Renmin University, Professor Moon Jae Wan at Hankuk University of Foreign Studies Law School, Prosecutor Seo Jeongmin and my biggest and sincerest thanks to Professor David Eggert at Handong International Law School. I also want

## II. Legal Clinics in American Law Schools

### A. History of Legal Clinics in the States

The first wave of clinical legal education in the United States emerged in the late 1890's when the casebook method started gaining wide acceptance. Law students at several law schools began to provide hands-on opportunities to learn and practice lawyering skills and legal analysis as well as social justice via legal dispensaries or legal aid bureaus. These opportunities were based on volunteer and non-credit; these had forms of a modern externship or hybrid clinic.<sup>3</sup> William Rowe advocated clinical legal education by arguing that law student volunteer affiliations with legal aid should be formalized as part of the law school curriculum. Another event that encouraged legal clinics during the first wave of clinical legal education was the "Reed Report" published by the Carnegie Foundation for the Advancement of Teaching in 1921. The Reed Report identifies three components of legal education – (1) general education, (2) theoretical knowledge of the law, and (3) practical skills training.

Clinical legal education was not prevalent in the first half of the twentieth century for several reasons. First, clinical legal education was not an attractive option for the law schools. At that time, no law school at that time required a university-based law school degree to be admitted to the bar; proprietary law schools were still prevalent, and the basic legal training were provided by apprenticeships for entering the legal profession. Therefore, to be distinguished from the apprenticeships, law schools were not interested in “model law offices”. Second, law schools were not funded enough to support clinical legal education, which costs a lot of money. Third, there was no agreement by legal educators that teaching lawyering skills was valuable. Last, clinical legal education experience was not on the list of the standards which were set up by ABA and the Association of American Law Schools (AALS).<sup>4</sup>

The second wave of clinical legal education began from the 1960's and continued until the late 1990's. During this era, clinical legal education became prevalent as part of the law school curriculum. Among several factors that contributed to the transformation - the development of clinical pedagogy, the emergence of external funding, an increased number of faculties who could teach clinical courses - the demands for social relevance in law school played

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to thank Korean law students who helped me to understand Korean law schools' situations: Han Kyung Tae at Jeonnam University Law School, Oh Ji Hun at Korea University Law School.

<sup>3</sup> Margaret Martin Barry, Jon C. Dubin, and Peter A. Joy, *Clinical Education for This Millennium: The Third Wave*, 7 *Clinical L. Rev.* 1, 5 (2000).

<sup>4</sup> *Id.*, at 8.

the most critical role. The passion of the law students in this era to be involved in the society led clinical legal education to be recognized and settled down as a way of legal education.<sup>5</sup> During 1960's to 1970's, clinical programs were started to provide legal services to indigent clients with many contemporary problems involving civil rights, consumer rights, environmental rights, and poverty rights movements. Clinical faculty helped students to apply the appropriate law as well as imparted the professional values for the lawyers such as justice, fairness, and morality.

During the second wave of clinical legal education, there were two major funding sources to promote clinical legal education. The first one is from the Ford Foundation which boosted the law schools to set up clinical programs for the poor. The Ford Foundation provided an aggregate amount of \$500,000 to 19 law schools from 1959 to 1965 through a program called the National Council on Legal Clinics (NCLC). In 1965, Ford provided an additional \$950,000 and NCLC was renamed the Council on Education in Professional Responsibility (COEPR), and renamed again Council on Legal Education for Professional Responsibility (CLEPR) in 1968. The Ford Foundation made another \$11 million donation to CLEPR to support clinical legal education programs and 107 law schools were able to get grants from CLEPR. Thus, the Ford Foundation provided almost \$13 million during the first part of the second wave of clinical education.<sup>6</sup>

In addition, in 1978, the Department of Education became the major source of funding for clinical legal education programs. The program was initially called Title XI Law School Clinical Experience Program and renamed the Title IX Law School Clinical Experience Program in 1980. From 1978 to 1997, funds ranging from \$605,000 to nearly \$15 million per year were appropriated for a total \$87,134,000.<sup>7</sup>

During the second wave, the ABA worked in various ways to promote clinical legal education and moved clinical education into the mainstream of legal education. First, in 1992, the MacCrate Report<sup>8</sup> recommended law schools to have clinical programs that are able to teach lawyering skills and professional values. Then, in 1996, ABA Standards were amended to "offer live-client or other real-life practice experience" to all ABA accredited law schools.<sup>9</sup>

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<sup>5</sup> Id, at 12.

<sup>6</sup> Id, at 19.

<sup>7</sup> Id, at 19.

<sup>8</sup> From the Task Force on Law Schools and the Profession, A.B.A. Section of Legal Education and Admission to the Bar, Statement of Fundamental Lawyering Skills and Professional Values (1992).

<sup>9</sup> Id, at 20.

## B. How They Are Operated

### i. Types of the Clinics

Various types of clinics have developed responding to many influences: social justice, client need, clinician interest and motivation, funding, teaching goals and more. And there are many other ways to classify the clinics. The most typical method of classifying clinics is according to teaching method: (1) in-house live-client clinics, (2) externship programs, and (3) simulation. All of these clinics share common in terms of utilizing the students' experience as the subject matter for analysis. Students In-house live-client clinics are usually located in the law school and faculty supervises students' practicing. In externship programs, students work in professional settings outside the law school and are supervised by the lawyers in the working places. Students in the simulation programs are located in controlled settings to learn lawyering process.<sup>10</sup>

Another way to classify the legal clinics is based on the relationship formed among students, clients, and supervisors: (1) direct service, (2) externship, (3) hybrid clinics. In *direct service clinics*, the relationship between a lawyer and clients is direct and exclusively under the supervision of law school clinicians. This type of clinic is also called a *live client clinic* or *in-house clinic* since the clinic is often housed in and funded by a law school. In an *externship program*, both attorneys and law school clinicians supervise the students work in law offices in non-clinical practice. The externship program is also referred as a *field placement clinic*. *Hybrid*, programs combine elements from both direct service and externship programs. The elements include the nature of the law practice, the relationship to the law school, and the degree to which the clinician engages in specific case supervision and active practice in the underlying practice.

Clinics are also classified by the kinds of lawyering activities involved: litigation, transactional, dispute resolution, judicial, community organizing, legislative advocacy, and ombudsman. In litigation type clinics, students represent clients in courts or administrative agencies in trial or appellate advocacy. On the other hand, students can also represent clients in planning, negotiating and drafting transactions in transactional clinics. There are dispute resolution type clinics where students engage in negotiation or arbitration. In the externship models, students can work, not only with law firms, but also as law

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<sup>10</sup> Elliott S. Milstein, *Clinical Legal Education in the United States: In-house Clinics, Externships, and Simulations*, 51 J. Legal Educ. 375, 376 (2001).

clerks in judicial chambers, or work with community groups. Legislative advocacy is to work on legislative drafting and advocacy projects. Ombudsman clinics are to provide informal, non-litigation solutions to clients. Lastly, there are clinics called "unbundled," where students engage lawyering tasks as subset of full lawyering, such as counseling, pro-se assistance or negotiation.<sup>11</sup>

In addition, the relationship between clinical programs and law schools can be factors for categorizing programs. In-house clinics are operated exclusively *within* the law school where clinicians work with students to provide assistance. External clinics, by contrast, are run *outside* the law school where attorneys are hired to supervise the students; clinical training is not the primary feature in this context.

Lastly, clinical programs are classified by the source of funds: (1) hard money, (2) soft money, or (3) direct state support. Clinics funded with hard money are supported by a law school's internal budget. This budget is based on support for the entire institution, including alumni giving and state support. In this case, funding source is secure, but administrative discretion is greater than other sources. On the other hand, clinics funded with soft money are operated on funds from temporary sources, such as grants, foundations and governmental programs. It is considered as unstable and provisional but gives independence from the school.<sup>12</sup> Lastly, in case of direct state support, state or local government provide funds to operate a designated legal service.

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<sup>11</sup> Georgetown University Law Center offers a unique program called the D.C. Street Law Clinic. The D.C. Street Law Clinic has provided law-related educational services in the District of Columbia since 1972. The Clinic focuses on providing legal education to laypersons as well as aiding in the professional development of the law students. As Law students serving as law teachers to DC high school students and community members, they get to use interactive educational methods to develop academic, critical thinking, and civic skills and obtain a greater understanding of the law to those outside the legal profession. See more at <http://www.law.georgetown.edu/clinics/dcstreet/index.html> From this street law clinic, they have even established an NGO called "Street Law." Street Law has its mission and expertise in curriculum writing and program and professional development to democratizing nations around the world. They have established programs and developed materials in more than 30 countries. See <http://www.streetlaw.org>. In the United State, 10 law schools have street law programs: University of Akron School of Law, Georgetown University Law Center, Loyola University Chicago School of Law, University of Miami School of Law, Marquette University Law School, Minnesota Justice Foundation (collaborating with Hamline University School of Law, the University of Minnesota Law School, the University of St. Thomas School of Law, and William Mitchell College of Law), North Carolina Central University School of Law, Roger Williams University School of Law, University of San Francisco School of Law (collaborating with U.C. Berkeley School of Law, Golden Gate University Law School, and UC Hastings College of Law), Wayne State University Law School. They also have programs in 34 countries all around the world educating democracy, constitutionalism, law, and human rights content through seminar, conference agenda, and materials design.

<sup>12</sup> Handbook For New Clinical Teachers, May, 2009, at 13,14, C.L.E.A. Clinical Legal Education Association

## ii. Legal Clinics as Courses<sup>13</sup>

### 1. Substantive Areas

In-house, live client clinics are dealing with various types of substantive areas. Among them the most popular types of clinics are criminal defense and general civil law clinics. Mediation or ADR clinics followed the next ranking. A lot of clinics focus on family related subjects such as children, family law, and domestic violence. Immigration and community development clinics are popular as well.<sup>14</sup>

In field placement programs, judicial clerkships are the most popular programs. About 10% of the schools place students as clerks at the courts. A number of students go to public interest organizations and government agencies. Programs related to criminals are also popular: criminal prosecution or criminal defense. Students are also placed in general litigation type programs.<sup>15</sup>

### 2. Required/ Elective Course

The number of the schools which require students to take either in-house, live client clinic course or a field placement program is very few. Less than 1% of the schools mandate an in-house, live client clinic; less than less than 1% of the schools mandate a field placement program. There are also a relatively small number of schools (6%) which require students to take either an in-house, live

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<sup>13</sup> The contents of this section (except “3. Learning Methods”) are based on the *Survey* conducted by Center for the Study of Applied Legal Education (CSALE). The *Survey* is divided into two distinct parts. A single *Master Survey*, designed to provide an overview of the applied legal education program at each school, was sent to every ABA fully-accredited law school in the U.S. 145 out of 188 (77%) schools responded: 410 clinics at 91 law schools responded for the in-house, live client clinics and 235 field placement programs at 73 law schools responded for field placement programs. The *Staffing Sub-Survey* was forwarded to every applied legal educators in the schools had answered. 357 legal educators at 70 law schools responded. See, Santacrose, David A. and Kuehn, Robert R., *Survey of Applied Legal Education* (April 1, 2010). Washington University in St. Louis Legal Studies Research Paper Series No. 10-04-03; NYLS Clinical Research Institute Paper No. 09/10 #25. Available at SSRN: <http://ssrn.com/abstract=1586009>.

<sup>14</sup> Other types of clinics include: tax, appellate, transactional, environmental, housing, human rights, asylum/ refugee, criminal prosecution, disability law, health law, innocence, civil & criminal litigation, employment law, death penalty, intellectual property, administrative law, civil rights, securities, bankruptcy, legislative, wills/ trusts/ estates, consumer law, Indian law, constitutional law. (ordered in the popularity of the clinics)

<sup>15</sup> Just as in-house, live client clinics, various types of field placement programs exist: environmental, administrative law, appellate, legislative, family law, domestic violence, immigration, health law, medication/ ADR, children, civil rights, bankruptcy, employment law, asylum/ refugee, human rights, disability law, elderly law, intellectual property, tax, housing, transactional, consumer law, death penalty, community/ economic development, prisoners rights, constitutional law, Indian law, wills/ trusts/ estates, securities. (ordered in the popularity of the programs)

client clinic *or* field placement program. In the schools where participation in neither an in-house, live client clinic and/or field placement program is required, participation rates are fairly low, varying from less than 5% to more than 8%. The number of the students who enrolled in the field placement programs is usually higher than the number of students who enrolled in the in-house, live client clinics.

In the last five years, demands for in-house, live client clinics and field placement program have increased in more than 60% of the schools. The biggest reason for the increased demand was that students believe that clinics or programs improved their skills and marketability. Increased interest in substantive areas of clinics or programs was another reason, and the increased support and promotion of the clinics or programs also contributed to the increased popularity.

For the schools where the demands decreased, especially in case of in-house, live client clinics, students reluctant to chose the clinical courses since they had pressure on taking “bar courses.” Also, the increased popularity of field placement program was another factor that discouraged the increased demand of in-house, live client clinics.

### 3. Learning Modes

There are several learning modes used by clinical teachers. Regardless of the forms of the mode, the purpose the legal clinic is to make sure students to learn from their own experience. The most intensive learning mode is supervision: a clinical teacher frequently meets student teams, which is composed of two in many cases, and discusses preparation or analyze the work that has been done. Students are given review on their written work, strategic choices, and reflection on what has been learned. Through the supervision, students can extract theory from experience, apply theory to solve real-world problems, and revise theory in light of experience.

Case round is another learning mode. Case round usually takes the form of seminar and students are called on to present a case in preparation or to report the process. The group process is used not only to prepare the next actions in the cases but also to look back and analyzing the action taken and the result. Topics such as professional values, legal ethics, strategy, tactics, and the process of reflection are discussed to develop the better approach to lawyering.

There are other modes using a seminar using readings, simulations, and classroom discussion to teach the lawyering process. Lawyering skills such as client interviewing, client counseling, case theory, strategic planning, fact investigation, negotiation, persuasion, and trial skills are typically included in the syllabus for the seminar.<sup>16</sup>

#### 4. In-House, Live Client Clinics

65.6% of clinics require students to enroll at least one semester: 25.6% of the schools require two semesters. The average class size is eight to eleven students. The most prevalent number of credits per semester for the clinic, including both classroom and casework components, is three to four per semester. Some schools even award more than five and up to seven credits.

#### 5. Classroom Component

The most frequent classroom student-teacher ratio is eight to one, followed by four to one, six to one, five to one, ten to one, and twelve to one. Among the credits per semester, usually one to two credits per semester are assigned *just* to the classroom component. Average hours that clinics spend on the classroom component are 31 hours per semester, which becomes about two hours a week. During the class hours, students discuss about the case, learn skills and substantive law; sometimes it also involves simulations. The classroom component is usually graded with a mandatory numerical or letter grade.

#### 6. Casework Component

Just like the classroom component, the most frequent student-teacher ratio for the casework component is eight to one, followed by five to one, six to one, four to one, and ten to one. For the casework component, students get credits not according to the hours they worked on but by a fixed number of credits; usually, students get two to three credits for the case work components. The average hours that students spend per semester are 46 to 50 hours, which becomes a little more than three hours a week. Students are graded by a mandatory numerical or letter grade for the casework component.

More than 60% of the clinics have all students practice under a student practice rule<sup>17</sup>; about 20% of the clinics reported that only some of the students

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<sup>16</sup> Milstein, id at 377.

<sup>17</sup> Student practice rules were adopted to encourage clinical programs and other goals such as serving indigent clients and assisting state and governmental agency lawyers. Under Student Practice Rules,



practice under a rule, and rest of the 20% of the clinics make none of the students practice under a rule. About half of the clinics require students to take pre- or co- requisite courses. Evidence is the most commonly required course, and substantive law of the clinics is also common required course. Professional responsibility, civil procedure, and criminal procedure are also often required before taking the course.

## 7. Field Placement Program

Most of the field placement programs, 91.5% of the programs, require students to take one semester. The average number of students who enroll in a field placement programs is 14 or 15; the most common number for the enrolled students is 1 to 7 students and 8 to 14 students. The average number of placements supervised per person is around 11; the most common number supervised is 5 to 6 students. More than 60% of the field placement programs provide a fixed number of credits and three credits are the most common number of credit and students usually work 50 to 59 hours a week. However, most of the schools limit the number of the fieldwork credits they can take for the graduation. Students can take credits up to 15 beginning from 6 credits; the most common number of maximum credits for the fieldwork credits is 12.

Most of the courses are given according to a pass/ fail grade for the fieldwork hours. Students are usually evaluated via student evaluations, on-site supervisor evaluations, site visits, and other means. Most field placement programs require students to keep journals. Journals are not shared with the on-site field supervisor; only 8.5% share the student journal with the on-site field supervisor. Time logs are used and more than half of the programs require the logs to be verified by the on-site supervisor. At the same time, on-site visits to the field placement offices are regularly done, usually once a semester or once a year. More than 62% of the on-site supervisors are not trained regularly. Only about 15% of programs always provide training; 22% of programs sometimes provide training.

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qualified law students can act as an attorney in specific situations defined by the rules. Based on the American Bar Association's Model Student Practice Rule, adopted in 1969 to, all 50 states and most of Federal courts adopted such a rule. The focus on these rules is on promoting legal education. For example, Alabama Rule for Legal Internship by Law Students specifies one of its purposes as "to encourage law schools to provide senior law students with practical training during the period of their formal education." See, Ursula H. Weigold, Attorney-Client Privilege as an Obstacle to the Professional and Ethical Development of Law Students, 33 Pepp. L. Rev. 677, 709 (2006). List of the Student Practice Rules adopted by Federal and State courts is available at <http://www.ll.georgetown.edu/guides/StudentPractice.cfm>

More than 87% of the programs have a classroom component to the course, but only half of them give credits for the classroom component. For the classroom component, students are graded based on a pass/ fail. At the class, students learn ethics/ professional responsibility, skills instruction, substantive and procedural law as well as discuss about the cases. Ethics/ professional responsibility courses are not only dealt in the classroom component, but sometimes they are required as pre- or co-requisites for the course. Other pre- or co-requisites courses include substantive laws for the placement programs, evidence, civil procedure, and criminal procedure.

## 8. Faculty at Legal Clinic

The biggest obstacle to clinical legal education is cost. Especially for the law schools which want to have in-house clinical legal programs, high cost per student is the biggest challenge. The cost per student for clinical education programs is different according to the types of clinical programs; the cost is more expensive for in-house clinics since more faculty members are necessary. To deal with the cost problem, law schools have employed faculty in different ways: contractual appointment, tenured/ tenure track, clinical tenured/ clinical tenure track, adjunct, visiting, staff attorney, fellow are the examples of the forms of employment. Among various faculty members, those who are hired as fellow or clinical tenured/ clinical tenure track are usually responsible for supervising case work for the in-house clinics; other components of the clinical programs such as classroom component of the in-house clinics or field placement programs or supervising field placement programs are mainly conducted by tenured/ tenure track or adjunct faculty. This is to reduce the high cost of in-house clinical programs.

Law schools have developed other ways to deal with the cost problem. They sometimes raise the ratio of student/faculty higher than adequate ratios - the 10:1 or 8:1 ratios.<sup>18</sup> Another way to reduce the cost for in-house clinics is employing clinical faculty on short-term basis with lower status and compensation such as "clinical fellows." Though they cannot pursue the advanced degree or invest time on further scholarship, they believe that the teaching experience can make them marketable to be permanent clinical faculty.<sup>19</sup> Schools also have found ways to utilize the existing clinical faculty.

"Clinical labs" are classes that are added as adjuncts to traditional substantive courses for lower credits. While students are taking the substantive

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<sup>18</sup> Barry, at 27.

<sup>19</sup> Id.

courses, they can choose to take the clinical labs if they want. They are usually offered as one credit course and provide clinical components for those courses.<sup>20</sup> Another way to provide legal clinical education with the existing clinical faculty is the hybrid in-house/externship program. In the hybrid in-house/externship program, students are under the supervision of a clinician at a law school and the lawyer in a legal provider, which the law school has made partnership with. The program can be operated either in the law school or in the legal provider's office. Clinicians and the lawyers from the legal provider closely cooperate, and this cooperation allows clinicians to take more students.<sup>21</sup>

### III. Legal Clinics in East Asia<sup>22</sup>

Legal education in China, Japan, and Korea has dramatically changed already since the dawn of the new millennium. These three Northeast Asian countries have similar cultural backgrounds as well as similar judicial system: they all have civil law tradition, and the role of the lawyers is defined differently in each society. Moreover, all three countries have adopted the "legal clinic" models from American legal education in the beginning of the new millennium. In this section, I want to explore the legal education generally in three countries, focus specifically on clinical legal education and specific legal clinics.

#### A. China

##### i. Legal Education in China

Just like many other aspects of Chinese society, Chinese legal education has developed dramatically in the last 30 years. Under Mao's regime that aggressively destroyed intellectuals, lawyers were persecuted as class enemies. Legal training effectively ceased after the abolition of the Ministry of Justice in 1959. During the Cultural Revolution, from 1966 to 1976, lawyers played virtually no role in China except as targets of criticism and persecution.<sup>23</sup> After the Cultural Revolution, only two universities had law departments.

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<sup>20</sup> The Seattle University Law School provides a number of substantive courses that have clinical components. Either one-credit live-client components or simulated clinical components (the so-called labs) are added to the traditional substantive courses. *See* John Mitchell, et al, *Then Suddenly Seattle University Was on its Way to a Parallel, Integrative Curriculum*, 2 *Clin. L. Rev.* 1 (1995).

<sup>21</sup> Barry, at 28.

<sup>22</sup> Contents in this section are based on the speech and notes at the Clinical Law Symposium, "Developing Lawyers and Clinical Legal Education in East Asia: Educational Reforms and Challenges in China, South Korea, and Japan" held by The Science Research Group of Clinical Legal Education (April 24, 2010) and The Third Annual Conference of Japan Clinical Legal Education Association, "Developing Lawyers as 'Societal Doctors' Through Clinical Legal Education" (April 25, 2010).

<sup>23</sup> Benjamin L. Liebman, *Legal Aid and Public Interest Law in China*, 34 *Tex. Int'l L.J.* 211, 216 (1999).

Out of devastation, along with other parts of the society, Chinese started restoring the legal society. Rule of law started to be established in the society, and the request for the reformation of the legal education increased. Especially in the field of legal education, the Chinese economic reform<sup>24</sup> and American law school's model played a significant role. As legal education has developed, there are now 630 higher legal educational institutions in China.<sup>25</sup>

## ii. Legal Clinics in China

Chinese clinical legal education for the past 10 years has been developed very dramatically. In China, 124 schools are participating in some way in clinical legal education. There are two unique factors that boosted the development of clinical legal education in China; funding from the Ford Foundation and the public citizen representative system (公民代理制度).

In September 2000, the Ford Foundation, which had significantly contributed to development of clinical legal education in the US in the 1960s, launched clinical legal education at seven law schools in Beijing, Wuhan, and Shanghai. Five years later, thirty five law teachers at universities and 59 extramural supervisors were offering courses that trained 3,590 students, processed 1,782 legal aid cases, and provided more than 10 thousand person-hours of legal advisory services.<sup>26</sup> In July 2002, the Committee of Chinese Clinical Legal Educators ("CCCLE"), a nonprofit academic body comprised of clinical legal educators from all over China was founded.<sup>27</sup> CCCLE has been working hard to develop clinical legal education. By 2010, formal membership in the CCCLE has expanded to include a total of thirteen institutions.<sup>28</sup> The Ford Foundation has also sponsored Chinese clinicians to participate in

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<sup>24</sup> The Chinese economic reform (simplified Chinese: 改革開放, literally Reform and Opening) refers to the program of economic reforms called "Socialism with Chinese characteristics" in the People's Republic of China (PRC) that were started in December 1978 by pragmatists within the Communist Party of China (CPC) led by Deng Xiaoping and are ongoing as of the early 21st century. The goal of Chinese economic reform was to generate sufficient surplus value to finance the modernization of the mainland Chinese economy.

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<sup>26</sup> Peggy Maisel, *The Role of U.S. Law Faculty in Developint Countries: Striving For Effective Cross-Cultural Collaboration*, note 67, 14 CLINICLR 465, 479 (2008).

<sup>27</sup> Pamela N. Phan, *Clinical Legal Education in China: In Pursuit of a Culture of Law and a Mission of Social Justice*, 8 Yale Hum. Rts. & Dev. L.J. 117, 129 (2005).

<sup>28</sup> Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 Clinical L. Rev. 1, 60 n.249 (2000).

international conferences to educate them.<sup>29</sup>

Chinese judicial system has a unique system called “the public citizen representative system.” It allows non-lawyers to represent their fellow public citizens in litigation. Usually, close relatives<sup>30</sup>, persons recommended by a public organization, and citizens approved by the people's court, take part in the litigation as agents of the litigant. The public citizen representative system is based on three major Chinese procedural laws.<sup>31</sup> This system is widely accepted by the public citizens since they recognize this system as one way of participating in the nation’s operation. Moreover, legal aid societies utilize the system to help the weak in the society. Under this system, students who registered to the legal clinics can provide full legal service including court representation for litigants.

## B. Japan

### i. Legal Education in Japan

Japan has introduced a system of graduate professional legal education by adopting the US style law school system in 2004. There are 74 law schools in Japan and more than 5,000 students are prepared to be future lawyers every year. The introduction of the graduate law school system was more than merely changing the way of education. It was a part of Japanese judicial reform,

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<sup>29</sup> Conferences supported were Global Alliance for Justice Education in 2001 (Durban), 2004 (Poland) and 2006 (Argentina) and The Workshop on the Implementation of the International Covenant on Economy, Social and Cultural Rights in China in October 2003 in Wuhan. *See* Peggy *supra* note 67, at 479.

<sup>30</sup> The scope of the "close relatives" is different in each law. In criminal law, they include husband and wife, parents and children, siblings. In civil law, they include husband and wife, parents and children, siblings, grandparents. In administrative law include husband and wife, parents and children, siblings, grandparents, other relatives who support either the children or the elder.

<sup>31</sup> Article 32 of Criminal Procedure Law of the People's Republic of China:

“In addition to exercising the right to defend himself, a criminal suspect or a defendant may entrust one or two persons as his defenders. The following persons may be entrusted as defenders:

(1) lawyers; (2) persons recommended by a public organization or the unit to which the criminal suspect or the defendant belongs; and (3) guardians or relatives and friends of the criminal suspect or the defendant. Persons who are under criminal punishment or whose personal freedom is deprived of or restricted according to law shall not serve as defenders.”

Article 58 of Civil Procedure Law of the People's Republic of China:

“Each party or legal representative may appoint one or two persons to act as his or her agents *ad litem*. A lawyer, a party's near relative, a person recommended by a relevant social group or the unit to which a party belongs or any other citizen approved by the people's court may be entrusted as the party's agent *ad litem*.”

Article 29 of Administrative Procedure Law of The People's Republic of China:

“Each party or legal representative may entrust one or two persons to represent him in litigation. A lawyer, a public organization, a near relative of the citizen bringing the suit, or a person recommended by the unit to which the citizen bringing the suit belongs or any other citizen approved by the people's court may be entrusted as an agent *ad litem*.”

responding to major societal factors, including globalization, the collapse of the “bubble economy,” and increasing demands for both domestic and international legal services in Japan.<sup>32</sup> The goal of adopting the law school system was to create new professional law schools that would “bridge theoretical education and practical education” and provide law students with the opportunity to acquire the specialized legal knowledge, lawyering skills, and professional values “necessary for solving actual legal problems.”<sup>33</sup>

Before the introduction of graduate law schools in Japan, the Legal Training and Research Institute was the sole source of training of legal professionals and the only way to gain admission to the Institute was passing the National Bar Examination.<sup>34</sup> The Bar Examination, however, did not require the Bar takers to have undergraduate-law degree; thus anyone who wanted to be a lawyer could take the Bar. Moreover, preparing the Bar was usually done by attending the “cram schools,” where taught the skills to take the exam rather than legal knowledge. This caused a disconnection between the study of law in college and the education of legal professionals.

## ii. Clinical Legal Education in Japan

Under the old system, the Legal Training and Research Institute was the primary and only place where students could get clinical legal education. The Institute provided lectures and apprenticeship-like rotations through judicial, prosecution, and law offices. The apprenticeships were, however, not enough to be considered as a clinical education. First of all, even though they were at the judicial offices, students did not get opportunities to conduct hearings or provide legal advice to clients: what they did at the offices was “observing lawyering skills.” They “learn by seeing” rather than “learn by doing.” Furthermore, while they are at the offices, trainees’ obligation is to “learn, understand, and follow the present legal practice.” This is contrary to the clinical approach which motivates students to reflect upon their own work.<sup>35</sup>

It is one of the most important assignments for the new law schools to educate students not only in theory but also with practical skills. Unlike

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<sup>32</sup> Peter A. Joy, at el, Building Clinical Legal Education Programs in a Country Without a Tradition of Graduate Professional Legal Education: Japan Educational Reform as a Case Study, 13 *Clinical L. Rev.* 417, at 418 (2006).

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

<sup>34</sup> The Bar passage rate, i.e., the admission rate to the Institute was very low: approximately two to three percent of total exam takers. On the other hand, the passage rate in the U.S., is 64 percent: 76 percent for first-time-takers, and final passage rate is 94.8 percent. See Joy, *id.*, at 426.

<sup>35</sup> See Joy, *id.*, at 425

undergraduate law departments where students were not sure they would be lawyers or not, students who entered law schools are expected to be lawyers after graduation. Therefore, law schools should be able to raise competent professionals who can provide high quality legal service to the clients. For these reasons, clinical legal education has been gradually established in Japan since 2004, the beginning of the new law school system. Now there are 39 law schools which educate their students clinically in some ways. The number of the in-house legal clinics has also been increasing, and now there are 17 in-house legal clinics in the universities.<sup>36</sup> 52 per cent of the schools have adopted legal clinics that enable students to deal with the real cases. 87 per cent of the schools are providing externship programs not only to the attorney's offices, but also to the Ministry of Justice, administrative offices, human rights NGOs, international organizations. Education based simulation is also provided in many schools.<sup>37</sup>

Among many issues arise to improve clinical legal education in Japan, there is a critical impediment to be considered: the low bar passage rate. When the new law school system was introduced in 2004, the bar passage rate was projected to 70, up to 80 per cent for the new National Bar Examination, the exam given to graduates of the new professional law schools. However, the result has been far away from the original plan. In 2006, the passage rate for the first exam takers was 48 per cent, which was the best number so far.<sup>38</sup> It has been continually decreasing and in 2009, the passage rate dropped under 30 per cent: 27.6 per cent.<sup>39</sup> The quality of legal education in law schools in Japan is in question. Japanese law schools are blamed for producing low-quality graduates who cannot even pass the Bar Exam. Therefore, the law schools are under pressure to focus on teaching legal doctrines to pass the National Bar Exam rather than educating how to apply the legal knowledge to solve client

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<sup>36</sup> Schools that have in-house legal clinics are Omiya, Okayama, Kyushu, Kyoto, Kumamoto, Kokugakuin, Tokai, Meiji Gakuin, Dokkyo, Simane, Senshu, Tsukuba, Hosei, Yamanashi Gakuin, Waseda, Aichi, Kansai.

<sup>37</sup> Japanese law schools have strength in developing the simulation programs. Nagoya University Law School has developed PSIM (Professional Skills Instruction Materials) Consortium. To connect the legal theory and law practice, PSIM consortium shares the teaching materials with participating schools via the Internet. 20 cases of mock civil trials, 14 cases of mock criminal trials, 38 cases of civil lawyering, 2 cases of criminal lawyering are offered by the PSIM consortium. The total 27 schools are participating in PSIM consortium. See <http://www.law.nagoya-u.ac.jp/~psimconsortium/e/index.html>: Kwansei Gakuin University Law School provides virtual law firm program to provide practice education. They recognize that the goal of the legal education in their law school is to raise lawyers who can act as "doctors for people's social lives," See <http://192.218.160.219/lскеisei/en/program/index.html>.

<sup>38</sup> There are two tracks for the law schools in Japan. One is two-year course for students who studied law at undergraduate; another is three-year course for students who do not have undergraduate law degrees. This was the result of the first group.

<sup>39</sup> The passage rate in 2007 was 40.2 per cent, and 33.0% in 2008. See Yahoo Japan News, <http://dailynews.yahoo.co.jp/fc/materials/?mn=0000019575>

problems. Students also likely spend their time in cram schools and focus merely on the subjects that are on the Bar Exam rather than learning from various experiences. Therefore, the low bar passage should be overcome for Japanese law schools to stabilize the clinical legal education in law schools.

### iii. Waseda University Law School

Waseda Law School is one of the leading law schools that have adopted clinical education in their curriculum actively. With 300 students and 70 full-time faculty members, Waseda figured out that they would be able to manage both general and specialized legal clinics. In 2003, a year before the law school opened, they ran pilot programs of the civil law clinic, the criminal law clinic, and the refugee and immigration law clinic. They started to offer the clinical courses for credit from 2006 spring. What they have been trying to achieve through the legal clinics is that to be a bridge theory and practice and to offer students “to learn by doing” rather than “to learn by seeing”, which used to be done in the Legal Training and Research Institute. Waseda Law School offers legal clinics, simulations, and externships.

#### 1. Civil Law Clinic

Waseda Law School set up the in-house clinic, Waseda Legal Clinic<sup>40</sup>, which is a real law firm registered in Daini Tokyo Bar Association<sup>41</sup>.

Two to four students team up for each case usually, and teams of academic faculty members and practicing attorneys who are new to the faculty supervise them.<sup>42</sup> Prior to the client interview, students research on the kind of legal problem and consult with the supervising attorney. The students lead the client interview and after the interview, discuss the problem with the faculty supervisor and then the students give legal advice to the client. The faculty

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<sup>40</sup> Waseda Legal Clinic provides three kinds of legal advisory services to the clients: (1) clinical courses (educational purpose), (2) free legal advice by attorneys at Waseda Legal Clinic, (3) legal services as a usual law firm. If a client chooses the third option, he or she has to pay 5,000 yen for 30 minutes. The first two categories are provided free; however, subject matters are limited to certain kinds. See <http://legal-clinic.mylawyer.jp/pc/>.

<sup>41</sup> 第二東京弁護士会, Daini (the second) Tokyo Bar Association is one of the three local bar associations consisting of attorneys with offices in Tokyo. It was established on March 30, 1926. See <http://niben.jp/english/index.html>.

<sup>42</sup> In Japan, the mobility among legal professions, legal scholars, practicing attorneys, public officers such as judges and prosecutors is very low. Due to the rigidity among legal professions, unlike U.S. law schools, most of the law professors in Japan do not have practical experience in law. It is due to the rigidity of career paths in the legal professions in Japan: law professors were prohibited to practice law once they are hired since the school expects them to spend their time to research and education instead of litigation. On the other hand, practicing attorneys are also prohibited from "assuming any paid public post." See Joy, *id.* at 430.



supervisor provides the students feedback at each step. The cases dealt with include landlord/tenant disputes, inheritance matters, divorce or custody, real estate, employment, accident, and money problem cases. Some cases were in litigation; others were involved in negotiation, mediation, or family court procedures. In 2009, a total 109 students took the legal clinic courses.<sup>43</sup>

## 2. Criminal Justice Clinic

The Criminal Justice Clinic started in summer 2004 and became a regular for-credit course in the spring of 2005. To lead the Clinic, two attorneys who had about twenty years of criminal defense practice joined the faculty members. Most of the cases were assigned from the duty attorney system, which provides criminal suspects detained at detention centers free legal advice.<sup>44</sup> Though there is no student practice rule in Japan, so students cannot stand in court, students have participated in all of the out-of-court work, including witness interviews, and drafting arguments. Students were even able to attend confidential interviews when the police permitted with their faculty supervision. Among 21 cases taken from 2004 to 2006, three cases were dismissed at the pretrial level. This is 14.3% of dismissal rate, which is much higher than average rate of 0.3%.<sup>45</sup> Students get great benefit from taking clinical experience: it has not only allowed them to learn criminal law and procedure but also motivated them to work harder by meeting real clients.

## 3. Refugee and Immigration Law Clinic

At the Refugee Clinic, third-year law students offer legal services to refugees and non-citizens under the supervision of a pair of an academic faculty member and a visiting faculty, who have been practiced in this field over fifteen years. Students were required to take a refugee and immigration law class that the clinic's teachers jointly teach as a prerequisite to the Refugee Clinic. This course provides theoretical background as well as lawyering skills including drafting documents and communication with foreign clients.

Along with the faculty members, a group of law practitioners, scholars, and NGO staff members also helped the teaching team by providing externship opportunities for students and giving advice on the course. As a fruit of their

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<sup>43</sup> Description of legal clinic course at Waseda Law School's website. In 2009, the number of students who took externship courses was 153. See <http://www.waseda.jp/law-school/jp/about/education/clinic02.html>.

<sup>44</sup> Joy, id at 440.

<sup>45</sup> Shigeo Miyagawa, The Role of Clinical Legal Education Under the Law School System, a speech at The Third Annual Conference of Japan Clinical Legal Education Association at Hitotsubashi University (April 25, 2010).

efforts, the group published a textbook for students who take the Refugee and Immigration Law Clinic and similar clinical courses at other law schools. This was meaningful in a sense that it represents the ideal of “bridging theory and practice.”<sup>46</sup>

#### 4. Externships

Waseda Law School offers 129 slots for externships. Placements include law firms, law departments at the corporations, NGOs, central government ministries and agencies, municipal governments, and domestic regional offices of international organizations.<sup>47</sup>

In the initial stage to establish externships, the Refugee Clinic played a key role to make connection with NGOs and international organizations where traditionally only a handful number of lawyers were hired. In 2004, one student was sent to a refugee-related NGO where all staff members were non-lawyers. The NGO was providing a variety of services to refugees including assistance in filling out application forms for refugee status and researching the likelihood that the refugee would face persecution if forced to return to his or her home country. This experience, being in the non-litigation setting with non-legal staffs, makes students think about role of lawyers and appreciate what they can do.<sup>48</sup>

#### C. Korea

##### i. Legal Education in Korea

Korea adopted a U.S.-style graduate level law school system only in 2009 along with the judicial reform.<sup>49</sup> The judicial reform was to aim at the reformation of the legal education so that law schools will be able to produce lawyers who have both knowledge and experience. Before adopting the law school system, four-year education at undergrad-level law departments focused exclusively upon theories and knowledge. On the other hand, experience based education was limited to the Judicial Research and Training Institute where the

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<sup>46</sup> Joy, id at 441.

<sup>47</sup> Organizations that accept students are: 85 law firms, 16 law departments at corporations, 12 government offices, NGO 10, and so on. See <http://www.waseda.jp/law-school/jp/about/education/clinic03.html>.

<sup>48</sup> Joy, id at 442, 443.

<sup>49</sup> In Japan, recently Himeji Dokkyo University Law School has become the first school that has decided to close. In 2004, the first year when the law school opened, the competition rate for the entrance was 8:1. However, the Bar passage rate in 2006, the first year for the New Exam, no one passed the New Bar Exam. So far there have been only three graduates who passed the Bar for four years. (Joins, After six years, Japanese law school has decided to close, <http://news.joins.com/article/aid/2010/05/29/3785007.html?cloc=olink%7Carticle%7Cdefault>, May29, 2010 )

national judicial department educates newly licensed lawyers after passing National Legal Examination System in a two year program.<sup>50</sup>

Apparently, the legal education in Korea was very similar to Japanese one, and Korea has learned lessons from Japanese Judicial Reform. After seeing Japanese struggles with the low bar passage rate, Korea has adopted many strategies to prevent this from happening. One of the most significant achievements of the Judicial Reform Committee in Korea was that they successfully limited the number of the law schools and the students. Japanese law schools were criticized for their poor quality of education and one of the biggest reasons for this was unrestricted number of law schools and students. Therefore, in Korea, only 25 universities were authorized to open law schools and a total of 2,000 students were allowed.<sup>51</sup>

There are other differences between Korean law schools and Japanese. In Korea, a three-year course is the only course available for the students to take in the law schools. In Japan, students have options to finish in two years if they have an undergraduate law degree. Also, in Korea the current Bar Exam will be abolished in 2017 after five-year of period of grace. The New National Bar Exam will be adopted in 2012. Only those who graduated from the law schools will be allowed to sit for the Bar whereas in Japan, people who did not go to law school still can be lawyers by taking another kind of Bar Exam, called the Preliminary Exam.

## ii. Clinical Legal Education in Korea

Before the introduction of the law schools, clinical education in Korea was reserved mainly for the Judicial Research and Training Institute. The Judicial Research and Training Institute had started as the training institute for prosecutors and judges, and still the scope of the legal education there is limited to the writing the legal documents such as complaints and opinions.

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<sup>50</sup> In Korea, the passing rate of National Legal Examination System is less than 5%. Due to the outrageous competition rate, usually students prepare for the exam at least two to three years, merely focusing for the preparation of taking the exam. For the students passing the exam had become the first and most priority for their lives, so they did not focus on their curriculum. At the same time, schools also had become obsessive about the exam pass rate to maintain their good reputation and spend on a lot of resources on exam preparation rather than on academic research. Also there are people who would take the test forever; in some cases, they have prepared for the exam more than 10 years. This has considered as a huge waste of human resources, since young people who were supposed to work were not working. Therefore, the judicial reform was initiated by the Ministry of Justice to improve legal education and judicial system.

<sup>51</sup> There are 74 law schools in Japan and the number of the students is not limited.

However, as the law schools have started, law schools are now responsible to raise legal professionals “who have knowledge and abilities that will allow professional and efficient resolution of diverse legal disputes in order to provide equality legal service responding to the people's diverse expectations and requests.”<sup>52</sup> Moreover, after the current National Bar Exam is abolished in 2017, the Judicial Research and Training Institute also will likely be dismantled. Therefore, the importance of clinical legal education at law schools is cannot be over-emphasized.

Learning from Japanese judicial reform, Korea has adopted many regulations to ensure effective clinical legal education. First of all, the law schools need to have at least a fifth of the faculty who are “attorneys-at-law”<sup>53</sup> or “foreign lawyers with certificates or licenses with five-year experience or more in relevant fields.”<sup>54</sup> Second, law schools are required to offer courses that teach practical skills such as legal ethics, legal research, legal writing, including drafting complaint, briefs, and opinion, moot court under the law.<sup>55</sup> All the schools made these five courses as mandatory courses that students have to take to graduate.

With these efforts to promote clinical legal education, though it has been only three semesters since the new law schools opened, clinical legal education has been established well in Korean legal education. Especially, externship programs are offered in many schools. Law firms, NGOs, courts, prosecutors’ office, and other government agencies have been very cooperative and students are doing externships during the vacations.

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<sup>52</sup> Art.2 Educational Ideology, Act on the Establishment and Management of Professional Law Schools (2008)

<sup>53</sup> The word 'lawyer' in Western society is recognized in broader sense than that in Korea or in Japan. Therefore, there is no word that exactly matches to the 'lawyer' in English, and there can be several translations for 'lawyer.' First of all, 'lawyer' usually means *byunhosa* which means the practicing legal counsel after passing the National Bar Exam and getting the license. Before the law school started, most law professors were not *byunhosa*; they had neither license nor practicing experience. Second, 'lawyer' can be translated into *bupjoin*, which includes judges and prosecutors who are licensed to practice. However, judges and prosecutors are not allowed to teach as professors while they are in their job. Thirdly, 'lawyer' is to be translated to *bupryulga/bupryuljunmunga* which literally means legal professions. Law professors can be included in this category with *byunhosa* and *bupjoin*. Here, ‘attorney-at-law’ indicates *byunhosa*. See Kwang-Jun Tsche, The Korean Legal Profession Caught in the Current of Judicial Reform for Legal Education, Justice tonggwon 87 ho 215, 229 (2005).

<sup>54</sup> Id. Art 16 (4).

<sup>55</sup> Art.20(1) Curricula, Act on the Establishment and Management of Professional Law Schools (2008)

### iii. Korea University Law School – CLEC

#### 1. History

Korea University opened Clinical Legal Education Center (CLEC) in 2008, a year before they started the graduate law school. In 2008, a number of students and a professor got together and prepared for opening a legal clinic at the law school. They provided legal services to the victims of the Taean oil spill.<sup>56</sup> They made "Compensation Guide 200 Q & A for Taean oil spill."<sup>57</sup> They also provided free legal service to the disabilities who are suffering from the inconvenience arising from the unfair service<sup>58</sup> and the legal assessment for the websites which are difficult to use for the blinds.<sup>59</sup>

CLEC officially opened in February 2009 with the start of the law school. CLEC has been actively learning from legal clinics overseas. In July 2009, they invited Prof. Lewis from the Washington University in St. Louis and had lectures on legal clinics. This was in preparation for the coming field trip to US law schools. In July 2009, the head of CLEC, Prof. Yun and twelve students from CLEC visited law schools and legal institutions in the US for about two weeks to learn about clinical legal education.<sup>60</sup> In January 2010, again Prof. Yun, another professor from CLEC, and twelve students visited legal clinics in China.<sup>61</sup> In April 2010, some professors visited Japan to participate in the conference held by Japanese Clinical Legal Education Association.

#### 2. Organizations

There are 57 students registered for CLEC. Most of the students are working at the community law clinic. Six professors who have practiced in the legal field and three attorneys who are currently practicing are appointed as an

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<sup>56</sup> Taean oil spill was Korea's worst-ever oil spill. In December 2007, Hebei Spirit spills 10,000 tons off S Korea's west coast. The South Korean government declared a state of disaster in the region. The area is one of the most beautiful beaches in the country, and local residents who made living by providing inns for the tourists for the beach. See BBC NEWS, 'S Korea declares slick 'disaster'', Dec 9, 2007, <http://news.bbc.co.uk/2/hi/asia-pacific/7134967.stm>

<sup>57</sup> available at <http://www.korealawschool.com/bbs/view.asp?ai=2&p=1&idx=7&f=MemName&q=>

<sup>58</sup> Enacted in April, 2007 and amended in May, 2009. Under Act on the Prohibition of Discrimination of Disabled Persons, Remedy Against Infringement of Their Rights, all the public and private businesses shall provide the equal services to both the employees and the customers.

<sup>59</sup> The websites should be equally easily and conveniently accessible regardless of the disabilities. Act on the Prohibition of Discrimination of Disabled Persons, Remedy Against Infringement of Their Rights, Art 14.

<sup>60</sup> They visited legal clinics at Stanford, Berkeley, Hastings law school; Federal District Court, Federal Court of Appeal in San Francisco and NGOs.

<sup>61</sup> Schools they visited were Beijing University, Renmin University, Qingwha University, actively working with the support from the Ford Foundation, a million dollars every year.

advisory committee. The office is located in the law school building, and they will move to more spacious office when the new building for the law school is completed.<sup>62</sup> The office hour is from 9 am to 5:30 pm during weekdays and students take shifts to receive the clients. The office is closed from one week before the exam, and closed for two weeks.

#### i. Community Clinics

The Community Law Clinic provides legal aid to people who cannot afford lawyers by themselves. 29 students are participating as case managers and supervised by professors who have practiced. In 2009, more than 100 cases were accepted and handled.

Cases are received via telephone or emails. CLEC has its own requirements when they take the case; they take cases only if the income of the potential client does not exceed the minimum wages. Also cases need to fit into the educational purpose. Once cases are accepted, they are assigned to each case manager who is responsible for those cases from the beginning to the end. Case managers contact their own clients and start from introduction and investigation of the facts. All the facts that they investigated are recorded in the case logs. Case logs are forwarded to the Head of the CLEC, Prof. Yun, and he assigns the appropriate supervising faculty members to each case manager. Practicing attorneys are hired as supervising faculty if it is necessary. Case managers work together with their supervisors and provide legal advice to the clients. Other legal services such as drafting complaints or finding out the fact can also provided when they are necessary. The school pays the fee when attorneys outside of the school are involved as educational expense.

Case managers must participate in the discussion called “Case Round.” Through Case Round, students can get advice and ideas from peer students as well as the professors. As a result, Case Round functions as a bridge between the practice and theory. All of the cases were settled so far; none of the cases went to the litigation yet.

#### ii. Disabilities Clinic

The Disabilities Clinic has focused on legislation rather than litigation. They are involved in legislation and seminars. They take reports from the blind concerning web sites that they found inconvenient to use. They assess the

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<sup>62</sup> Once the new building is completed, offices for the legal clinic will be placed to the entire floor. They will make the office like offices in the law firm to make it more professional.

reports according to the Guideline to promote web accessibility<sup>63</sup> and notify the result of the assessment to that organization. CLEC entered an agreement with the National Human Rights Commission, and has been accepting cases which have educational value and providing the legal advice.

### iii. Human Rights Clinic for Foreigners

Korea has more than one million migrant workers, but current law is discriminatory against the migrant workers<sup>64</sup> and CLEC has been working with other organizations to make the law fairer.

Human Rights Clinic also operates a Refugee Clinic. Korea is one of the hardest countries in the world for refugees to get refugee status. CLEC filed an administrative litigation to request grant of the refugee status for foreigners who are seeking for asylum in Korea with Dongchun Foundation.<sup>65</sup>

### iv. Internet Law Clinic

There are mainly two issues that the Internet Law Clinic deals with: freedom of expression in cyber space and addiction to Internet games. They have held forums on freedom of expression inviting experts in the field. In October, 2009, they invited Frank La Rue, the United Nations Special Rappator on freedom of expression, and opened the forum titled “Freedom of Expression on Cyber Space: The Present and the Future in East Asia.”

They also try to get involved in legislation regarding the addiction on the Internet, and online games. They hope to bring a class action against the Internet game providers like the suits brought against the tobacco companies in the U.S. They are preparing the website so that they can easily provide legal advice on matters like infringement of freedom of expression and violation of copyright.

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<sup>63</sup> KICS.OT-10.0003, The Ministry of Information and Technology

<sup>64</sup> Art 84 of Immigration Control Act imposes an obligation to notify “if any public official of the State or local government finds, in the course of carrying out his duties, a person falling under any of subparagraphs of Article 46(1), or a person deemed to be in contravention of this Act, the official shall without delay inform the head of office or branch office or the head of the foreigner internment camp.” This article kept migrant workers who are illegally staying in Korea from reporting their mistreatment since they are afraid of deportation.

<sup>65</sup> Dongchun Foundation is established in June 2009 by BLK, one of the leading law firms in Korea. They aim to promote the right of the vulnerable and the weak by legal services, legislation, and financial support. Dongchun has worked for refugee litigation as its initial

project, and has agreed to work with the Center for the Migrant Workers to support migrant workers and multi cultural families. They have actively involved in helping the refugees and UNHCR officially delegated all the process of the refugee litigations to the Dongchun.

<http://www.baekimlee.com/kor/society/dongcheon.asp> (Korean)

Fall semester of 2010, eight students are involved in the Internet Law Clinic. Two of them are 2Ls; five of them are 1Ls; and one undergrad law students are working for the Internet Law Clinic. They have a website<sup>66</sup> where students can take the questions from the Internet users. Students are also involved in the case which professors consider to be appropriate for the students to handle.

#### v. CLEC Forum

Besides clinical programs, CLEC holds forums three to four times a year. Each forum has dealt with different issues and experts were invited for the forums. These forums have helped to raise the public's consciousness on the matter as well as to share knowledge and experience from the experts with students. Although lectures by experts are not in the scope of traditional legal clinics, these forums by legal clinics can be very meaningful in Korean context. These can help in two ways: these forums will promote the legal clinics and raise awareness of the public regarding the issues.

### 3. Curriculum

Since the fall semester of 2010, Korea University Law School has started to offer clinical courses: externship and legal aid clinic. Students are required to take at least two credits from clinical courses and they can earn up to four credits. Students can chose between externship and legal aid clinic and one credit is given for working for 60 hours. For externship, students are to work outside of the law school. Varieties of organizations are provided for the students to do externship: legislative, judicial, executive offices, law firms, in-house counsel department of corporation. Credits for externship should be earned during either summer or winter vacation. In case legal aid clinic course, students are to work at in-house clinic (CLEC). However, one of the credits must be earned by working at the law firms.

Students need to record the journal every day. Based on students working, supervisors at the working place would give students either pass/ fail grade.

In addition to clinical courses, law school requires students to take "public volunteer" course. Students are required to go to outside of the school and utilize their legal knowledge and help out people in need. To complete the course, students need to take minimum three credits of public volunteer. One credit is given for 24 hours of volunteering. Grades are given pass/ fail basis.

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<sup>66</sup> <http://www.internetlawclinic.org>



#### 4. Remarks

Besides the fact that there is no equal clinic in Korea, CLEC is unique because of students' strong commitment. In case of Japan, though Waseda is one of the leading schools operating legal clinics actively, its initiators were mainly professors. In CLEC, students are the most important source for the clinical legal education; the main participants for the visit to the U.S. law schools were students rather than professors, and they have learned a lot through the trip to the United States. Even though students cannot get credits for their services, they devote their times and effort to serve the legal clinics.

Legal clinic serves as a great tool to provide students the perspectives they need for their studies. Students mentioned that before they had got involved with the clinics, their only interest was studies; however, after they started meeting real clients, they were moved and motivated to study harder to do good things using the law. Moreover, in Korean society, responsibilities of lawyers are more and more emphasized and it will be a good way to educate the law students to promote their social responsibilities.

#### IV. Suggestions for HILS

##### A. Who We Are

##### i. Our Strength

Among many ways that we can describe HILS, the best way to identify us is that HILS is a Christian law school. As a part of Handong Global University, we have a lot of good Christians, Christian groups, and churches in Korea that are willing to help and work with us. Another strong point is that as a law school which teaches US and international law in English, students are able to communicate in English.

##### ii. Our Limitations

Located in Pohang, it takes five-hour drive from Seoul, the capital city of South Korea and all the center of the legal community. In Pohang, legal community is very small: other than government lawyers, there are only about 20 practicing lawyers in Pohang and their working field is limited. However, with the help of the modern technology, communication with the people in the remote places should not be difficult. Through emails or service like Skype, we can communicate with people even in the foreign country.

Also, since we mainly learn US law, lack of understanding of Korean law is another potential problem. Regarding Korean law, we can pursue the help from professors in the undergraduate law department at Handong. In addition, we can work with other organizations in Korea and learn about Korean situations and laws.

Financial issue is a big issue in starting the clinical program. In the beginning stage, school's support is crucial. Since legal clinics are new ideas in Korea and we are not a law school in the US, it will be difficult to get funds to support legal clinics here. Therefore, the support from the school is crucial. Since the school has tight budget, here are suggestions that the school make commitment without a big burden. It can start support by providing a space for legal clinic and equipment such as desks, chairs, computers, printers, and so on. Since it is crucial to have extensive provision for the clinical programs, the school can hire clinical fellow, not an official professor, but a fresh attorney who just got a license and can supervise the students for the issues they are dealing with.<sup>67</sup> As the legal clinics are settled down, we can continue to look for other funding sources which aimed to help legal clinical education or international legal education from in and outside of Korea to support the legal clinics.

## B. Possible Clinics

### i. Migrant Worker Clinic

These days, manufacturing industries in Korea heavily rely on migrant workers from developing countries since Koreans avoid working in these industries. In 2008, about 430,000 migrant workers were in Korea and 1,100 in Pohang area; the number of the migrant workers is increasing every year. However, migrant workers suffer from discrimination. Korean society has realized this problem and some of the churches try to help migrant workers.

In Pohang, there are several churches helping migrant workers: Neulsarang church, Jaeil church, and Kyungdong church. Among them, Kyungdong church has a migrant workers center and provides various kinds of services. These services are mainly focus on satisfying the needs of migrant workers as well as encouraging them. Pastor at Kyungdong church is very passionate in serving migrant workers and doing whatever they need: providing a temporary shelter for the migrant workers and other foreigners who are in

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<sup>67</sup> In case of Women's Hope Center Legal Clinic, which I suggest in the later section of the paper, for example, Min Hwang could be hired as a clinical fellow who can help students to learn lawyering as well as the substantive issues they are dealing with.

transit; providing education (Korean, IT, etc); visiting migrant workers in factories who cannot come to the service; running food bank; holding and sponsoring cultural events like the bazaar, soccer tournaments, medical checkup, singing contest, cultural festival, flower festival, Chuseok, and new year's day events, and so on.

Last semester, Seoyoung Lee, one of our students, set up a legal clinic for migrant workers in the migrant worker center in Kyungdong church. The main aim of the legal clinic was to take legal inquiries from the workers and to provide legal advice after researching Korean law. Possible issues dealt include employment, insurance, immigration related issues. However, after one semester of serving at the church, she found out that giving legal advice is a just a tiny part of their needs; what they really needed was turned out to be their friends. She participated in all the events at the church with migrant workers and listened to their stories, such as difficulties they are going through at the working place, stories of their family at home. Another big portion of the work was translating the sermon. By her translating the sermon to English, migrant workers could listen to the sermon every Sunday.

After fervent serving the migrant workers for a year, now she has to leave Pohang, and tries to look for somebody who can continue to serve the church by translation and other servings. However, it has been hard to find someone who is willing to continue the job as she has done. In fact, there is a conflict of interests between the church and us. The pastor wants us to get involved in the general service by serving translation, participating in all the events as Seoyoung did. However, we, law students who want to have handful experience of practicing what we learned at HILS, do not want to get involved in too much of other events besides "legal advice." Therefore, for migrant worker legal clinic to be a sustainable one which attracts law students continue to serve, the boundary of the service we can provide should be resolved between the church and the law school.

## ii. ADR Clinic on Campus<sup>68</sup>

There are various disputes arising on campus as different people have different interests. Every semester, there have been conflicts among different groups. Last year, the biggest dispute arose between the student government body and the other students who opposed their statement on objecting to the memorial altar in honor of the former President. Last semester, students were

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<sup>68</sup> Special thanks to Professor Glen Waddell, the President of Birmingham Theological Seminary. Professor Waddell taught Dispute Resolution Course in summer 2010 and inspired ideas for the ADR clinic on campus.

complaining about the renovation of the cafeteria and there were discussions between the cafeteria and the student government body. Every time the conflicts arose, the way that problems resolved was not satisfactory. Each party hurt the other side and people got hurt after the conflicts. Moreover, since there are many international students from different cultures, there have been many conflicts among students from different cultures: Korean students and students from other cultures often have troubles at I-House, the international students' dormitory. There are mentors who take care of students' life at the dormitory, but it is not easy for them either to deal with those disputes all the time.

To deal with these conflicts, Christian reconciliation can be a great service: HILS students could potentially provide biblical coaching, mediation, and arbitration. An ADR clinic might be operated in two different ways. First of all, law students can be coaches, mediators, or arbitrators and directly get involved in the problems. This will be helpful especially if the conflicts are among students. In Korean society, age is a very important factor and youth need to show respect to their elders. Therefore, it might be easier for the law students who are usually older than undergrad students to help reconciliation for the dispute between younger undergrad students. On the other hand, it might not be easy for law students if they deal with the conflicts between the students and the other staffs or workers on campus. Another way to help is that ADR clinic can train student leaders, staff, or mentors of I-House. By training them, they will be able to serve as coaches, mediators, or arbitrators. Training can be offered during orientation for leaders or staff retreat. If all these efforts work effectively, the school can set up the policy to require all disputes that cannot be resolved individually to be taken to Christian reconciliation.

To operate ADR clinic, students need to take the ADR courses. Before students register ADR clinics, students should be able to learn substantive laws and procedures about ADR. School can offer ADR course either as a modular course or a regular course. If the course is to be offered as a modular course, the contents of the course should focus on theories; on the other hand, if the course is to be offered as a regular course, it can cover clinical portion by simulations.

To take the cases, there are various possible ways. We can hold an office on campus, could be in the law school or other building where students can easily access, and open to the clients who want to bring the cases. Also website can be operated to take the cases online. Another possible way is having a seminar once a semester, and after the seminar, we can take the cases from the participant of the seminar. If the clinic has stabilized, we might be able to reach out to the local community, especially to the local churches, could be another way to do this. For the cases for simulation, professors and other lawyers

working in this field can help us to have good cases to work on.

### iii. Women's Hope Center Legal Clinic

The Women's Hope Center (WHC) is a ministry that exists to share God's love with those in Korea who are challenged with an unplanned pregnancy by educating, supporting, and equipping them so that they may make life-affirming decisions. WHC wants to provide the help through counseling center, maternity home, youth education, unwed mothers support, and legal clinic.

Among many branches of WHC, WHC especially wants to conduct research through its legal clinic. To understand Korean situations – unwed mothers' parental rights, adoption laws, abortion laws, possible baby trafficking issues, and so on – lots of research needs to be done. Moreover, by getting involved in the legislation process, legal clinic would contribute to make better law which can support life-affirming decisions. Therefore, WHC legal clinic can function as a legislation clinic.

In the States, a legislation clinic is one of types of the clinics that teach legislative lawyering skills. These skills include assessing a legislative problem, researching the problem, proposing solutions, drafting materials, and presenting materials orally. Since HILS does not provide courses regarding legislation process, cooperation with Korean law schools would be crucial to have this type of clinic at HILS. We can learn from Korean law schools about the Korean legislation and Korean laws; on the other hand, we can provide US and other international laws and situations to them which would result a comparative legal scheme.

Besides the research, WHC legal clinic can also contribute by providing legal advice to the clients. There can be legal issues arisen from the crisis pregnancy and students can give advice to the clients. Cases can be taken either through the office or online. Website for legal clinic can be a portion of WHC homepage where unwed mothers can visit and ask for help.

With providing the legal advice, WHC legal clinic can educate the clients, including unwed mothers.

### iv. Other Possible Clinics

There are various clinical services that we might be able to offer regarding the need of the local community as well as the want of the students.

For example, Handong University entered into lots of different agreements with the schools or organizations overseas. Every time they entered into an agreement, the documents need to be reviewed carefully. Students can assist the reviewing of documents, and they can learn how the provisions are drafted and whether they are reasonably and fairly made. Another kind of possible clinic is IP clinics.

There are many students who are interested in IP issues at HILS. To help small companies to register IP rights, students can take those IP cases from small companies and work to get patent or copyright from IP organizations. This can save companies the expense and students can get experience by helping them. Kangho, a law firm which entered into agreement to help us, could help us to take the cases. Also IP law firms in the States where our graduates are working might provide us the cases.

In terms of the forms of legal clinic, it doesn't have to "in-house clinic" to provide the clinical programs. What I think suit for HILS is something similar to "Street Law Clinic" in Georgetown Law Center. Students in the Street Law Clinic teach practical law to public high school students and adult learners in the District of Columbia. As they help their clients learn legal concepts, they also teach their clients to develop basic academic skills such as reading, writing, listening, oral expression, problem solving and analytic thinking. In our case, we can reach out to the local community, could be high schools or churches, and teach clients to learn laws and English. About the laws that we can teach, we can provide variety of laws according to the needs of the community. We could teach them Korean law related to abortion, parental right, for example in case of WHC clinics, or we can also teach general US and international laws.

In fact, what I want to emphasize is that we don't have to stick to the traditional "clinical programs" to learn the lawyering skills. The most important thing is in whichever ways, we need to get involved with the local community and who are in need of help. Thus, developing clinical programs which can provide education to the local community will be a great way for our students to get involved in the local community with the skills they have, especially English.

## V. Conclusion

Legal clinic is a great way to learn through practicing what we learn in the classroom. Not only that, it also helps us to get involved in the real issues in the real world. In fact, the history of the legal clinic explains well the fact that law students have been passionate to seek the justice.

By adoption of the law school system in Korea, focus of the legal education is now moving towards to raise legal professionals and many law schools are interested in legal clinics. Korean law schools are now learning lessons from the US and other East Asian countries such as Japan and China.

Located in Pohang, learning US and international law, and loved by Christ, we need to consider how we can serve the people outside the school. It will be great for us if we can serve those who cannot visit the lawyers' office. In addition to our students hard work, such as legal clinics for migrant workers or WHC, HILS can provide the framework to do the good work. By establishing legal clinic, students can learn lawyering skills, substantive laws, and how to love others by what they learn. I hope to see students learn to do justice, love mercy, and walk humbly with our God through legal clinic at HILS.