



# A Study of the Supply-side Reform of Clinical Legal Education: From the Perspective of Fostering Outstanding Legal Talents

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## Abstract

In this thriving 21<sup>st</sup> century, all segments of the society especially the market have been posing stricter requirements for legal graduates. Responsively, the 2.0 initiative of Fostering Outstanding Legal Talents has new tasks for the clinical legal education. As a response, this essay will explore in three possible ways that may bring the quality of legal talents to an outstanding level based on the theory of supply-side structural reform and the existing problems of clinical legal education. They are enrichment of the ways of legal evaluation, curriculum framework reform and advancement of practical skills of teaching faculty.

**Key words:** Outstanding legal talents; Clinical legal education; Supply-side reform

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Today, the legal education in higher educational institutions in China is seeing an increasing scale and faster development, and is becoming more market-oriented. In addition, all segments of the society especially

the market have raised their standards for legal talents. So the supply-side structural reform of legal education is called for. On September 17th, 2018, the Ministry of Education and the Political and Judiciary Commission under the Central Committee of the Communist Party of China stressed again in the jointly released Opinions for the 2.0 Initiative of Fostering Outstanding Legal Talents with Ethical and Legal Qualities that legal schools and universities should strike a balance between talents cultivation and industrial demands in ways that enable the deepening reform of legal education in higher educational institutions, enhancement of legal practice in education and refinement of industry-university cooperative education program for a legal-talents-fostering community. As part of the outstanding legal talents cultivation scheme, clinical legal education has been featured on the priority list. With years of trials and experiment, however, clinical legal education in China does not progressed as much as expected. So it’s imperative to press on with the training of legal talents through supply-side reform, which entails the innovation of legal education ideas and frameworks for sustaining dynamism in clinical practice.

## 1. NEW REQUIREMENTS FOR OUTSTANDING LEGAL TALENTS IN A NEW ERA

### 1.1 Definition of Clinical Legal Education

Clinical legal education originated from the US in the 20th century and was later introduced to China. This type of education is an imitation of how medical interns learn in their preliminary stage of clinical practices. Similarly, legal students receiving clinical education involve themselves in legal practices under the instruction of their professors or experienced lawyers. In this way, legal students are given opportunities to train their legal mindset and skills, which kicks a balance between basic theory education and vocational skill training. Another

advantage that clinical legal education features is that students can build up their sense of responsibility and professional ethics by providing legal aids for the weak. (Shen, 2008)

In clinical legal education, the idea of clinical practice was borrowed from medical science where experts argued that medical knowledge should be learnt by the side of ward beds. (Foucault, 2001, p.58) Accordingly, legal students are distributed to people's procuratorates, China's judicial branch, people's courts, law firms or other legal business institutions, (Yan, 2016) enabling environments that allow students to apply the theories they learn to legal practices and therefore understand the basic theory in a more profound way.

Many countries around the world have established a full-fledged scheme for clinical legal education. Among them, Japan is a standout that boosts a unique legal education covering multiple forms of teaching and learning, such as legal clinics, legal business simulation and off-campus internships.

## **1.2 Features of Clinical Legal Education**

Traditional legal education usually aims to impart legal theories to students in class learning that extensively foreground the grasp of theoretical knowledge. The consequence is that students are not empowered to solve problems in reality with the theories they learn in class. Clinical legal education, arguably, is a supplement to the traditional one instead of an alternative in that it features distinctive advantages in its teaching goals, teaching methods and other aspects that traditional legal training lacks. In clinical legal education, students are encouraged to get engaged in judicial practice. This means they need to get down to how every step of legal practice and way of doing is unfolded in real legal business and how they can provide legal aids for those in need in their internships. As such, they will be trained strictly to internalize both code of ethic and standards of professional conducts and values, and to build up the ability to apply legal theory to practice. In terms of ways of teaching, clinical legal education, unlike traditional on-campus legal education, allows legal majors to learn from their experiences in courts, procuratorates and law firms, which requires a shift in the responsibility of professors who act as supervisors and instructors during students' practice.

## **1.3 Requirements in a New Era**

According to the 2.0 Initiative of Fostering Outstanding Legal Talents with Ethical and Legal Qualities and Minister Chen Baosheng's speeches, there are three requirements for legal talents in this new era.

### **1.3.1 Foreground the Establishment of Values of Students**

China's clinical legal education aims to prepare for the new era a new generation of legal talents with all-round moral, intellectual, physical and aesthetical grounding.

In this sense, ideological and ethical education should be placed at the top of the agenda in modern legal education in a way to help students establish socialist core values. Specifically, undergraduate education plays an irreplaceable role in shaping students' values on life and the world. so, it's imperative to upgrade current legal education to provide students with easier access to professional training and community practice as a way to enhance their sense of responsibility and professional ethical code and understanding of the essence of legal education.

### **1.3.2 Match Legal Education to Social Demands**

Learning is the top priority of students. Responsively, legal education should center on how students can have sound understanding of legal theories through industrious working. But in the 21<sup>st</sup> century, legal education should be responsive to the changing demands of the society. In other words, there must be a balance between legal education and social demands where legal students are allowed to apply various learning in legal practice. This entails an upgraded curriculum that weigh practical ability as much as theoretical knowledge.

### **1.3.3 Strengthen the Teaching Faculty**

Conventionally, professors act as instructors in students' learning process. In modern clinical legal education, professors in legal schools and universities should achieve betterment in professional ethics, knowledge and skill to meet the higher standards the education scheme has set for them. They are required to get down to legal practice where they can offer guidance to students.

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## **2. CURRENT SITUATIONS AND PROBLEMS IN CHINA'S CLINICAL LEGAL EDUCATION**

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China's legal education has gone through ups and downs before it gets on the right track since 1949 when the country was founded. But there are still some problems that must be solved for it to meet the current demands of China's economic and social advancement. So, how to innovate the legal education scheme has become an urgent task.

The concept of supply-side structural reform comes from the study of economics. "In economic development, supply and demand are complementary to each other. An imbalance between the two can bring about the slowdown of economic growth. To put it clearly, supply surplus usually results in excess capacity and reversely demand without supply to respond to often leads to inflation. There must be a balance between supply and demand if China wants to keep its economy sound and sustaining. (Lin and Su, 2016) Supply-side structural reform has been gaining attention from all segments of the society since it was highlighted in President Xi Jinping's report to the 19th National Congress of the Communist Party of China.

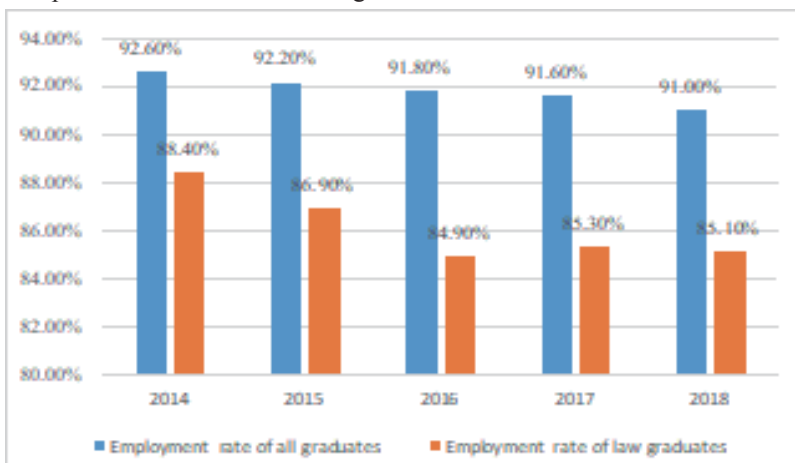
China's current legal education can be analyzed from the perspective of the relation between supply and demand. The country has a great demand for outstanding legal talents in its progression under the rule of law. China has seen the increase of both law schools and law undergraduates, but the fact is that the exceptional few that meet the high requirements of the market are of small proportion. Paradoxically, the employment of law undergraduates and graduates has been at a low rate. This problem is mostly attributable to the detachment of legal practice, which fails to gain as much attention as it should, to theoretical knowledge. The stagnation in clinical legal education makes it impossible for students to refine their comprehensive competence. China needs to attach greater importance to the combination of theory and practice in students' learning and the coordination of

traditional legal education and clinical legal education in teaching strategy in its future reform of legal education to accomplish the transformation from a quantity-oriented mode of development to a quality-oriented one. (Xu, 2011)

## 2.1 Current Situations of China's Clinical Legal Education

### 2.1.1 Employment of Legal Graduates Is at a Low Rate

Currently, the number of law schools and universities in China has been on a tremendous rise, but the employment of their graduates is not at a favorable rate. According to the annual Chinese College Graduates' Employment Report from MyCOS Institute, the employment rate of law undergraduates has been lagging behind in the past several years.



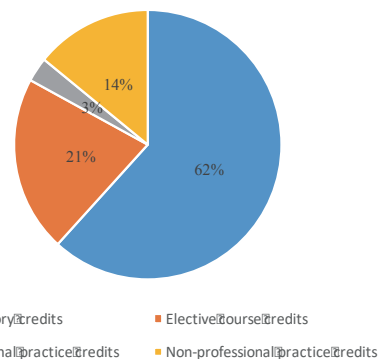
**Figure 1**  
**Employment rates of graduates with bachelor's degree**  
 Six months after leaving school in 2014 to 2018

As seen from Figure 1, the employment rates of law graduates six months after leaving schools from 2014 to 2018 were lower than the total employment rates of all graduates which remained around 91%. Statistics also show that the employment of law graduates has been among the bottom at the same period of time. These mean innovative strategy must be applied to legal education as soon as possible.

### 2.1.2 Legal Curriculum in Higher Education

#### Emphasizes Legal Theory

The legal education circle has been thinking whether they should prepare law students for future career as a lawyer, a judge or a procurator, or foster their students in a way that will make them researchers or professors in the field of law theory and systematic legal knowledge or in liberal education. (Wang, 2016) In reality, almost all law schools and universities focus much more on theory than on practice. As shown in Figure 2, despite the small percentage of legal practice credits, the conundrum of legal practice has not yet grab the attention from all sides.



**Figure 2**  
**Credits percentages of different courses of law students**  
 in an anonymous university

## 2.2 Problems in China's Clinical Legal Education

### 2.2.1 Imbalance Between Legal Theory Education and Clinical Legal Education

At present, the legal education in China presents an imbalance between legal theory education and clinical legal education, with the former one weighing more in the whole framework. As mentioned above, the legal

education circle has been perplexed by how to decide on their education goal -- legal professionals or academic persons? This is a typical dualistic question. It is this kind of dualistic mindset that should be avoided in the innovation of legal education and respective framework design. In fact, the question can be answered with the theory of supply-side reform. Accordingly, it is easy to figure out that legal business talents are in great demand in the job market. As response, schools should aim to cultivate talents equipped with both professional knowledge and practical competence. Therefore, it's fundamental to establish a full-fledged scheme for clinical legal education that answers exactly the demands from both the job market and academic circle. The legal education in China has been centered on fostering talents for the academic world, which in fact has a much smaller demand, and theoretical knowledge. To solve this problem, academic institutes out of all law schools and universities should undertake the responsibility of the cultivation of academic talents. As for the rest, they should put more efforts in establishing a cohesive education mode that combines well theoretical learning and clinical practice according to the requirements of the 2.0 Initiative. In this way, the potential of legal graduates either going for the academic circle or press ahead in legal business can be reached under a comprehensive legal education system.

### **2.2.2 Clinical Legal Education Overshadowed by Overwhelming Legal Professional Qualification Examination**

As seen from the regulations of the National Qualification Examination for Legal Professionals, examine candidates can be from all walks of life, including legal majors. A pass in such time-consuming test represents a better chance of obtaining a satisfying job in the market. That explains why a great number of students flock into law training agency and contribute most of their time preparing for the test despite mounting pressure. Even professors in schools are inclined to design lessons targeting the test. The consequence is, which is foreseeable, that students only have limited time for clinical education organized by their schools in the forms of moot courts or short-term internships.

The lack of a sophisticated system for clinical education put law students in a conundrum where they understand the knowledge they learned from the theoretical perspective and have little access to opportunities to practice in reality. The 2018 change in the legal bar-exam system extracts subjective questions out of the traditional combination of objective questions and essay questions and makes them an independent test. This means subjective questions are playing a bigger part in the qualification exam and more importantly, the authority is trying to provide more opportunities to improve their problem-solving ability in real legal

business. Articles of laws should go deep into real scenarios of laws instead of remaining on paper.

### **2.2.3 Deficiency in Legal Teaching Faculty**

Clinical legal education requires the involvement of both professors and students. To qualify, professors need to have rich experiences in legal practice and capacity to handle complicated cases as well as a big reservoir of theoretical knowledge. In this way, they are expected to provide students with pragmatic guidance and instructions. In factual clinical education, however, some professors are probably found unable to work on emergent cases or provide suggestive guidance for students due to lack of experiences in legal practice and demonstrable competence to take immediate action in face of problems. With this standard, the number of qualifying teaching faculty are far from sufficing.

In clinical education, law students need to apply law theories to actual legal cases when they from time to time offer legal services. This entails a full set of knowledge before they go for professional internships. So normally, they need to have a good command of basic laws by taking lessons learning law theories for certain credits in advance. Without sound knowledge to underpin practice, clinical legal education would be no more than a slogan itself.

### **2.2.4 Shortage of Financial Support in Clinical Legal Education**

In clinical legal education, financial support is more needed than in the traditional one. Deficiency in financial support tends to put its development at risk of stagnation, such as the problems occurring in the localization of clinical practice. (Han, 2006, p.196) Comparatively, clinical legal education is a costly education mode that requires heavy investment in different aspects. Firstly, clinical education needs a larger number of professors. In clinical practice, every teacher provides tailored guidance for a small number of students, which is far beyond reach in traditional one where several dozens or even over a hundred of students are under instruction by one teacher. The second is that clinical education needs an independent office to accommodate its operation, which produces office expenses and administrative expenses. Lastly, legal clinics offer legal aid to people who can't afford expensive attorney fees, which means there will be no financial attainment to subsidize the running of clinics.

Be it legal clinics, off-campus internships or moot court, all entail huge investment in the employment of teaching faculty, selection of legal cases, operation of a specific venue and other aspects. But the current deficiency in financial support imposes constraints to the advancement of clinical legal education. To achieve progress, clinical legal education should gain equivalent attention and investment from the authority.



### 3. SUPPLY-SIDE REFORM – DEVELOPMENT OF CHINA’S CLINICAL LEGAL EDUCATION

The supply-side structural reform, a developing mode that can also be applied in education, is comprised of four core objectives – cutting excess capacity, addressing weak links, improving development quality and increasing effective supplies. (Liu, 2017) Accordingly, the supply-side reform of China’s clinical legal education can be focused on four aspects – transitioning of education mode, balancing theory and practice in curriculum design and addressing weakness in legal practice. Targeting the major supply-demand problem, the clinical legal education can be refined in the following ways.

#### 3.1 Enrich the Ways of Evaluation of Legal Curriculum

In most cases, a closed-book exam, which requires the completion of all questions in a designated period of time, is a way to assess the performance of law students. A good command of law theories from the textbooks will normally promise a pass, sometimes a satisfying score if students know the books like the palm of their hand. This way of evaluation, however, emphasizes more of how the law theories can be interpreted than how actual legal cases can be approached.

Considering the fact that the current legal education leans to theoretical learning, we suggest a reasonable division of theory and practice in the future legal education system. Hopefully, this will direct students’ attention to legal practice and help improve their all-round abilities as a law student. For instance, in legal practice concerning the Criminal Law, students can be given a factual case where they are encouraged to compose bills of indictment, pleadings, verdicts and other papers after consulting related materials and make conclusions based on their own interpretation or analysis of the case. Furthermore, students are allowed to communicate their points of view in a moot court. Such innovation will provide an enabling environment to sharpen their analyzing, paper writing and hand-on ability and to get familiar with lawsuit procedure. (Chen, 2015) This method is a better way to reflect the level of students’ all-round abilities and encourage students’ participation in legal clinics.

Another method is called “case workshop”. In such a case workshop, students will have the opportunity to handle an individual case with the guidance of an experienced professor. Its advantage lies in that students will work like a lawyer who prepares every step of the case from the very beginning when the case is entrusted. As an education mode that combines law theories and practice, case workshop aims to strengthen students’ ability to apply knowledge, make judgment and solve problems. (Ji, 2013) Students’ performance in the process and the results they

work out with teammates for assessment will be given a respective score by their professors.

#### 3.2 Establish an Innovative Legal Curriculum

In China’s current legal education system, most lessons are delivered in classroom. So it’s imperative to establish a sophisticated system for clinical legal education by innovating the traditional one. The design of a renewed legal education system that covers both theory and practice, should serve the educational goal of building up students’ competence in legal business.

The curriculum system should include a reasonable proportion of clinical courses, such as trial advocacy program and moot court. At present, students spend limit time working as an intern outside schools. Little chance do they have to get to know how lawsuits are handled in real world. As such, law schools and universities can learn from medical schools by either extending the duration of undergraduate program or inserting clinical practice into consecutive theory courses. According to the Opinions for the 2.0 Initiative of Fostering Outstanding Legal Talents with Ethical and Legal Qualities, clinical legal education should take up a larger proportion in the whole. To be specific, its credit (hours) should be no less than 15% of the total. As for schools, they are responsible for developing new teaching methods and curriculums, ensuring the implementation of case-based teaching, moot court and legal clinics and looking for cooperative partners that can offer opportunities of off-campus legal practice for students to refine their professional skills. Additionally, the significance of legal practice credits is reaffirmed in the 2.0 Initiative. Minister of Education Chen Baosheng also highlights in his speech at the National Working Conference on Undergraduate Education in the New Era that universities should push for class innovation that goes beyond the traditional teach-and-learn mode and replaces it with new ways of teaching that encourage exploration, engagement and individuality.

Furthermore, law schools and universities should make detailed curriculum design, teaching plans and ways of assessment to guarantee down-to-ground implementation of clinical legal education that will be conducive to students’ understanding of theories and improvement of skills.

#### 3.3 Empower the Legal Faculty With More Legal Practices

The establishment of a sophisticated system for clinical legal education should be supported by a panel of professors experienced in legal practice and with rich restoration of law theories. Zeng Xianyi, a renowned legal educator, contends that the premieres of a law school are teaching staff, referential materials and teaching methods. Minister of Education Chen Baosheng also stressed in his speech that educators should be devoted to the cultivation

of talents and support the educational system with their betterment of ethics, academy and skills.

In clinical legal education, the teaching skills of the faculty, which is as important as students' theoretical knowledge, determines whether clinical education can play its part in the entire legal education system. As a complicated teaching method, clinical legal education engages teaching staff equipped with a wide range of law theories or thorough interpretation of law theories and teaching skills. The fact is that most of the teaching faculty in law schools specialize in law theories rather than legal practice. Some professors devote most of their time and energy to research while save little for the update of teaching contents and the improvement of teaching quality. As shown in class, theoretical knowledge and the analyses of basic legal concepts make more frequent appearances than legal practice. It is understandable that theory teaching gathers more attention from professors, but there will be little room for the cultivation of legal talents if law theories and legal practice are separated. (Wang, 2016)

The establishment of a clinical legal education scheme requires a stronger panel of teaching staff with rich experiences in legal practice. That means teachers should have active interactions with students in case workshop, legal clinics, moot court and other new teaching methods. Another pragmatic suggestion is to absorb lawyers into the panel of legal teaching staff as US authority does.

### 3.4 Provide Policy and Financial Support

An adequate investment can guarantee the proceeding of clinical legal education. For one thing, law schools should obtain cases and attract investment by making clinical legal education known to the outside world. For example, they can introduce legal clinics to and establish cooperation with organizations such as law firms where a rich pool of cases can be provided for students to practice. For another, the government should direct more investment into the clinical legal education scheme as emphasized in the 2.0 Initiatives.

## CONCLUSION

Clinical legal education has long been overlooked and remained sluggish in the current legal education in higher

education institutions. This has profoundly affected the cultivation of legal talents. Thanks to the theory of supply-side structural reform, the development of clinical legal education now can be unfolded from a new perspective. Under this theory, innovation should be deployed from notion to scheme, from teaching faculty to students to establish a sophisticated clinical legal education scheme. As such, China's deficiency in legal talents will be addressed.

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