

# The Interaction between the Legal Aid System and Legal Clinic Education in Chinese Universities based on the Perspective of Legal Knowledge Supply

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**Abstract:** The legal aid system in Chinese universities is an important supplement to the legal aid system in China, and another important layer of significance of legal aid in universities is that it is an important position for practical legal education, as opposed to the legal clinic courses introduced by foreign countries. The legal aid system in Chinese colleges and universities has limitations in its functioning due to its positioning, and the legal clinic course is not suitable for the existing curriculum system. Under the framework of legal practice education, the legal aid system in colleges and universities and legal clinic education are homologous and isomorphic, which makes it possible for the two to be closely integrated in the knowledge supply level of legal practice education. How the university legal aid system and legal clinic education should promote each other requires, on the one hand, the expansion of the scope of university legal aid and, on the other hand, the development of diversified funding channels.

**Keywords:** Legal aid system in higher education, Legal clinic education, Legal practice education, Isomorphism.

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## 1. The Origin and Development of The Legal Aid System in Chinese Universities

### 1.1. The development of China's legal aid system

The evolution of legal aid from a spontaneous act of charity and morality on the part of the private sector to a responsibility and obligation of the State towards its citizens, with the State providing legal assistance to specific groups through the establishment of specialized organizations, is the main symbol of the institutionalization of legal aid and the core criterion for evaluating whether a country has a legal aid system in the modern sense.

In 1994, the Ministry of Justice began to promote the pilot work of legal aid, the basic framework for a legal aid system with Chinese characteristics, and legal aid work has produced enormous social benefits and won the approval of society. In September 2003, the Regulations of the People's Republic of China on Legal Aid came into force, marking the formal establishment of the legal aid system in China's legal system by way of national legislation. In 2021, the Legal Aid Law was promulgated, and came into force on 1 January 2022, and the Legal Aid Act was promulgated. In 2021, the Legal Aid Law was promulgated, and on January 1, 2022, it came into force. The Legal Aid Law summarizes and absorbs the achievements and lessons learned in the construction of the legal aid system in China, and has become an important part of the socialist legal system with Chinese characteristics.

China's legal aid activities have focused more on criminal legal aid; the duty lawyer system refers to a legal system whereby lawyers take turns on duty in people's courts and detention centers under the arrangement of legal aid organizations to provide free legal assistance to criminal suspects and defendants who do not have a defender. The duty lawyer system applies not only to misdemeanor cases, but should also be applied to felony cases; in cases of guilty pleas

and penalties, the duty of the duty lawyer should be to provide a defence around the question of whether the suspect or defendant understands the connotation of guilty pleas and penalties, as well as their legal consequences, whether there is a factual basis for the case of a guilty plea, whether the suspect or defendant is voluntarily pleading guilty to a penalty and how to proceed with the negotiation of a penalty, and so on.

As an important part of legal aid activities, the duty counsel system in China has received positive attention and sustained development. With the implementation of the trial-centered reform of the litigation system, the full rollout of the pilot system of leniency in pleading guilty and accepting punishment, the promotion of legal aid duty counsel, and the full coverage of criminal defense lawyers, the duty counsel system has ushered in an unprecedented "first year of development".

At the same time, however, it should be noted that the identity and positioning of duty lawyers has been the subject of more than a few disputes, and that the "defenderization" and "legal aid system" are the two basic streams of the current process, which should be integrated with policy documents, actual practice and theoretical demands to seek the best logical positioning. With regard to future reforms of the duty system, it should be noted that the relevant judicial interpretations in China stipulate that the coverage of legal aid should be expanded as much as possible. For criminal speedy trial cases and cases in which the suspect or defendant voluntarily pleads guilty and accepts punishment but does not have the assistance of a defender, the people's courts, people's procuratorates, and public security organs shall notify the duty lawyer to provide legal counseling, procedural choices, and applications for changes in compulsory measures, among other legal assistance. However, in these cases, the defendant's procedural choice is not only a procedural application of the problem, but also contains the entity deal with the consultation and game, and directly affects the final handling of the case, so the duty lawyer is competent enough

to do the job will not be doubtful. In view of this, in our country plea leniency system reform, should from "improve the legal aid system, expand the scope of legal aid" reform requirements, from expanding the coverage of traditional legal aid, for plea cases of criminal suspects, defendants to provide more effective legal help, and make it and duty lawyer system to form a complementary and mutually supportive. The system of duty counsel and the system of legal aid on duty should form a rational and complementary relationship. [1]

At the same time, it is also necessary to draw on foreign experience and explore diversified models of duty counsel. The duty counsel system is a form of legal aid that requires the investment of a large amount of lawyers' resources. Therefore, for practicing lawyers engaged in legal aid services, duty counseling is undoubtedly a huge waste of judicial resources if there is not a sufficient caseload. From the viewpoint of extra-territorial experience, the form of duty lawyer service should be combined with the development of legal aid undertakings in different places, according to the resources of lawyers in different places, lawyers' practice and other factors, to take a flexible and diversified way. Similarly, in the construction of duty lawyers in our country, should also be combined with the full extent of local lawyers' resources, the number of criminal cases, to adopt appropriate duty lawyer mode, rather than flocking to all adopt "regularized sitting" duty lawyer system. [2]

## 1.2. Development and positioning of legal aid in universities

Our government's annual investment in legal aid is growing, and legal aid organizations around the world are also oriented to the needs of people's livelihoods, focusing on incorporating into the scope of legal aid matters closely related to people's livelihoods such as matters involving labor security, marriage and family, food and drugs, education and medical care, carrying out the branding of legal aid for people with disabilities and rural migrant workers, and guiding people in difficulty and other disadvantaged groups to obtain legal advice and legal aid in a timely manner by means of online applications, hotlines, and cell phone APPs. Various ways to obtain timely legal advice and legal assistance, the comprehensive promotion of legal aid activities clearly requires more from the perspective of the assisted, and is not limited to the scope of assistance for criminal defenders.

Compared with China's rapid economic and social development, there is still a shortage of legal aid personnel in China's legal aid work. The Opinions on Improving the Legal Aid System, issued in 2015, suggests that greater efforts should be made to mobilize college student volunteers to join the legal aid work. Therefore, encouraging more people with professional knowledge of law to participate in the legal aid cause is an important aspect of improving China's legal aid protection capacity. 2022 The Measures for the Administration of Legal Aid Volunteers issued in 2022 emphasizes that "the judicial administrative and educational departments should jointly encourage and support teachers and students of higher education institutions to provide legal aid volunteer services, and can take the participation of teachers and students in schools in the The participation of school teachers and students in legal aid volunteer service can be taken as a reference for teachers' performance evaluation, and the inclusion of legal aid volunteer service in students' internships, practical training and practical courses can be

explored. Encourage local league committees and institutions of higher education that are in a position to do so to recruit college student legal aid volunteers to actively provide legal aid volunteer services." In terms of the role of institutions of higher education in legal aid, the Measures for the Administration of Legal Aid Volunteers hold that "institutions of higher education and scientific research institutes may organize personnel engaged in legal education and research and law students to serve as legal aid volunteers, and under the guidance of the judicial administrative departments, provide legal counseling, drafting legal documents, case preparation, and case management services in accordance with the law to citizens in economic difficulties and other parties meeting the legal requirements. , drafting legal documents on behalf of citizens and other parties who meet the legal requirements, case representation, and labor dispute mediation and arbitration representation services." This, in effect, lays a solid legal basis for the development of legal aid activities in institutions of higher learning. [3]

In terms of the development of legal aid in China's colleges and universities, the first college legal aid organization in China, the Wuhan University Center for the Protection of the Rights of the Socially Disadvantaged, was established in 1992, and as China's governmental legal aid system has gradually been established and perfected, the law departments of various colleges and universities have one after another set up their own legal aid organizations, and a large number of law students have been involved in the cause of legal aid. However, before 2003, legal aid in colleges and universities had been in a groping stage, with no direct legal basis. It was not until September 2003 that China's first administrative legislation on legal aid, the Legal Aid Regulations, came into force, providing a legal basis and institutional safeguards for the establishment of legal aid organizations in colleges and universities and for the standardized development of the legal aid enterprise in China, and it was not until the promulgation of the Legal Aid Law in 2021 that the legal aid system with Chinese characteristics was initially established. [4]

As an important addition to China's legal aid system, university legal aid itself has distinct advantages and disadvantages.

In terms of advantages, on the one hand, law students are very enthusiastic about participating in legal aid. The most crucial element of vocational legal education is that students are required to combine their legal specialties with social practice and apply their theoretical knowledge of law to solve practical social problems. At present, the forms of law practice that are widely promoted and applied by universities and colleges in China's vocational legal education are moot courts and internships in courts, procuratorates and law firms. Although these two forms in strengthening the students' legal career thinking and ability to achieve certain results, but the students in the judicial trial in the practice of the ability has not been substantially improved, the root cause is that these two forms of practical education is difficult for law students to experience the whole process of real cases. Such as this form of moot court, although it is in the form of a simulation of the real trial process, but the students in the

The process of moot court often focuses more attention on the trial procedures, rules of evidence, courtroom debate skills and other aspects of the case, while ignoring the use of substantive law knowledge in the case, and at the same time, because of its still exists virtually, the student's practice of moot court is difficult to do the real confrontation, the

tendency to pan-performances and formality is more obvious. As for the practice mode of law students' internship in legal practice units, although it allows students to get in touch with some real cases, but due to the real

Given the limited time available for internships, it is difficult for the vast majority of students to follow the entire process of a case. Moreover, the students who went to the practical departments for internship generally reflected that the most work they did in these units was binding files, printing or copying some materials and other transactional work, and it was difficult for them to actually participate in a specific case, which made the effect of the internship greatly reduced.

Secondly, legal aid in colleges and universities has the advantage of professional resources. At this stage, legal aid in China is mainly provided by legal aid agencies under the judicial department of the Government and social organizations such as the Women's Federation and the Disabled Persons' Federation, and the shortage of personnel and funds is a common problem encountered in the development of legal aid in various parts of China. Universities have a large number of legal professionals, many of whom are experienced law teachers with a dedication to serving the community and have a lot of free time at their disposal. In addition, the number of law majors in China is very common, and almost every city has several universities that offer law majors. Integrating legal education into legal aid, and allowing senior undergraduate and postgraduate law students with certain professional knowledge and skills to join the legal aid team can effectively alleviate the problem of insufficient legal aid personnel in both the government and the society. Judging from the actual operation of the existing legal aid organizations in colleges and universities in China, most of the law students who participate in legal aid are selected through a rigorous selection process from among their senior classmates with better overall qualities. They often have finished studying the substantive and procedural law related to the content of legal aid cases, and they have strong adaptability and expression ability in addition to a relatively solid theoretical foundation. At present, the student legal aid centers in China's colleges and universities are developing vigorously, and most of them carry out legal counseling and legal awareness activities in a combination of online and offline ways, and generally have a deep combination with the Internet. At the same time, legal aid in colleges and universities is showing a trend of service refinement, i.e., for different jurisdictions, professional departments are set up to provide precise legal services. In addition, after years of development, each university legal aid organization has formed a set of standardized operation system, including case registration system and financial statement system, to ensure the smooth operation of the organization. As a result, university legal aid organizations have advantages that are difficult to match with those of other legal aid institutions. [5]

At the same time, we should also note that the legal aid system in universities has considerable limitations. First, legal aid activities have been affected by restrictions on the authority to represent. The absence of relevant provisions in the Legal Aid Regulations has led to the fact that volunteers recommended by university legal aid organizations to represent cases are often not recognized by the judiciary, and judicial interpretations of the Civil Procedure Law have severely limited the system of legal representation. Most legal

aid organizations are not registered, leading to uncertainty about the identity of volunteers, who may not be recognized by the courts and other case-handling authorities, which ultimately hinders representation. Uncertainty about representation makes it difficult for university legal aid to recruit good students, and the legal needs of clients cannot be fully met, ultimately resulting in a loss of cases and personnel, and the organization operating at a low level. In addition, because of its position as a legal volunteer service with compensatory status, legal aid operating organizations are always short of funds. Legal aid organizations in colleges and universities are the physical basis for the education of new liberal arts in law, and the normal operation of the organizations cannot be supported by funds. The standard per capita funding for legal aid and the actual proportion of funding for handling cases are lower than those in other countries, and in some places there is even a situation in which the contractors advance the costs. Currently, legal aid organizations in colleges and universities are mainly funded by university grants, which is a single source of funding. Some colleges and universities are funded by public welfare foundations, but the funding is short-term and unstable. The previous Legal Aid Regulations only provided for stipend support for assigned cases, and for reasons such as ambiguous status, legal aid organizations rarely assign cases to colleges and universities in practice. Most of the cases of legal aid in universities originated from the reception of the interviewed people, and such cases could not receive relevant subsidies at the government level. After its successful introduction into the law, the institutional safeguards for legal aid in colleges and universities have gradually been improved. According to the Measures for the Administration of Volunteers, colleges and universities are entrusted by legal aid agencies to organize the recruitment of legal aid volunteers as public institutions. At the organizational level, university legal aid teachers and students are volunteers managed by legal aid agencies under the judicial administrative departments. As a recruiting unit, the legal aid agency shall pay the actual expenses incurred by the legal aid volunteers in the course of providing services, such as travel expenses. Based on the above analysis, it can be seen that some of the cases currently represented by university legal aid are beyond the scope of legal aid, and the costs incurred in such cases still need to be borne by the university legal aid itself. [6]

In addition to being part of the legal aid system, legal aid activities in higher education constitute a part of practical legal education. However, legal aid activities are not part of the university law curriculum, as there is a need to recognize from the field of knowledge provision in legal education that there is a parallel legal education curriculum, the legal clinic course.

## **2. Introduction and Development of The Legal Clinic Course**

### **2.1. Definition of a legal clinic program**

The "legal clinic" is a characteristic teaching model of American law schools. Since 1930, Yale Law School pioneered the "legal clinic".

Since then, the "Law Clinic" has become a common practice course offered at ABA-accredited law schools across the United States. The name "clinic" was inspired by the medical school model of using clinic-based education to train medical interns, and its curriculum requires students to

participate in real cases under the guidance of faculty members to develop the ability to "think like a lawyer" in the legal profession.

In the legal realism movement that began to emerge in the 1920s, practical legal education was advocated by realist scholars due to its focus on social reality and its problem-solving orientation, and legal clinics gradually began to become a formal content of legal education during this period. When legal clinic education was first born, it did not receive much attention because the tradition of law schools at that time was still based on the "case teaching method". To the 1970s, in the Ford Foundation's strong funding, legal clinic education in the United States major law schools have been fully developed, as of the end of 1975, the United States has 127 law schools opened 346 legal clinic courses. Subsequently, legal clinic education began to spread to common law countries outside the United States.

Legal clinic education has played a pivotal role in training applied talents for law schools in various countries, training students' legal practice ability and cultivating their professional ethics and sense of social responsibility. The purpose of legal clinic education is to cultivate students' theoretical knowledge and at the same time to exercise their practical ability of applying the law, cultivate students' innovative ability of pushing forward new ideas and hone their adaptability to cope with the society.

## **2.2. Development of Legal Clinic Programs in China**

Although China's legal clinic education started late, but from 2000, Peking University, Tsinghua University and other seven colleges and universities of the law school to open the legal education program to date, after 20 years, most of China's key colleges and universities in their law schools you have opened a clinic law course. At present, China's clinic legal education, although the number has been a great development, but in the specific operation and practice of the course there are still many problems: such as China's current clinic legal education is still mainly to take the teaching as the main, case as a supplement to the traditional teaching mode, the students do not have the opportunity to participate in the real case, the learning effect is not good; legal clinic education course objectives are not clear, the business settings are too narrow; legal clinic settings do not have sufficient financial security, the legal clinic is not a legal clinic, and the legal clinic has been set up. Legal clinic settings do not have adequate financial security. The existence of these problems seriously shackles the further development of legal clinic education in China. Drawing on the experience and lessons learned from the United States clinic legal education, the author believes that China's clinic legal education can be optimized from the following aspects.

As a practical course, the legal clinic program was originally designed to make up for the lack of legal practice skills taught in the traditional classroom. However, at present in many of our country's law schools, the legal clinic program is still mainly classroom education, supplemented by case practice, students are still accepting the "classroom + notes" of the traditional teaching mode, even after a complete legal clinic program training, not many opportunities to actually have the opportunity to handle cases, enhance the ability to practice law, which is contrary to the original purpose of the legal clinic This is contrary to the original purpose of the legal clinic.

Therefore, in the curriculum of the legal clinic, first of all, we can retain the classroom curriculum on the basis of the original single lecture classroom mode into an interactive classroom, the United States law clinic used in the virtual legal clinic course mode is worth learning and drawing on. The virtual legal clinic is a teaching method in which real cases are cited in the classroom and students are allowed to improve their practical ability through division of labor, discussion and role simulation. Compared with the single lecture classroom teaching mode, it can make students more immersive. Secondly, the study of legal clinic needs a certain amount of time accumulation to achieve the purpose of improving students' legal practice ability. Therefore, it is suggested that the credits of the legal clinic course should not be less than 4 credits, and students should complete the corresponding curriculum in two semesters. For example, classroom teaching is conducted in the first semester to cultivate students' case comprehension, problem solving and communication skills.

In fact, the legal clinic program in China has also experienced the so-called problem of incompatibility. In a nutshell, the legal clinic program is not ideal for teaching law practice due to its lack of comprehensive practicality. This makes us reflect on the education of legal clinics in connection with legal aid activities.

## **3. Knowledge Provision as A Perspective: Isomorphism Between the Legal Aid System and The Legal Clinic Education Program**

At the present stage in China, the importance of practical education in law is emphasized. Some scholars have pointed out that the value orientation of the curriculum and teaching methods of law should emphasize the practical orientation. Undergraduate basic knowledge, basic ability must be in line with the requirements of practice; master of law should be back to the original intention of the establishment, that is, closely integrated with practice; master of law, doctor of law, although the theory is strong, but it is difficult to imagine, do not understand the value of the theory of practice. Therefore, legal education must improve the curriculum from the perspective of basic courses, specialized courses, professional skills training, from the accumulation of knowledge and ability to train students in two dimensions. [7]

Within the framework of practical legal education, legal clinic education and the legal aid system in colleges and universities constitute two sides of the same coin and should be considered together. At present, the major legal clinics in China are mainly engaged in legal aid. Although legal aid can play a role in pursuing social justice, helping the disadvantaged and cultivating students' professional values, legal aid involves fewer types of cases, which is not conducive to the overall enhancement of students' legal practice ability. In addition, most of the law students in China do not have the intention of choosing public interest lawyers in their career planning, and many of them choose the legal clinic course for the purpose of improving their legal practice ability rather than specializing in legal aid for the disadvantaged groups. Therefore, each law school should set up legal clinics with different themes according to its own college characteristics and regional advantages, and provide opportunities for students to get in touch with some specialized cases, such as intellectual property cases,

financial cases and so on, while retaining legal aid services. At the same time, based on the establishment of on-campus legal clinics, communication and exchange with courts and law firms, the establishment of off-campus legal clinics, to give students more opportunities to contact with legal practitioners in different industries, so as to help students exercise their legal practice ability and clarify their legal career planning.

More importantly, legal clinic education is homogeneous with college legal aid in terms of knowledge supply of legal practice education. First of all, legal clinic education and college legal aid have homology. As law students often cannot cope well with the challenges of judges and rival lawyers in legal practice, nor can they adapt to the mode of actual operation of law in the society as soon as possible. Thus, along with the rise of legal aid activities for social hardship groups at the end of the 19th century, clinic legal education began to appear. At that time [8], the legal aid organizations of many universities in the United States became legal aid clinics, and the early history of clinic legal education in the United States is inextricably linked to legal aid services for poor groups. Scholarly research suggests that clinic legal education in many countries began with legal aid, and that there is a clear difference between legal aid clinics and general legal aid societies in the U.S. Legal aid societies provide legal services to economically disadvantaged clients in the form of legal advice and assistance, with a focus on the client, while legal aid clinics have a dual purpose, serving both students and clients. [9]

In addition, legal clinic education is isomorphic with the legal aid activities of colleges and universities. Taking legal aid as the working platform, the legal aid stations take the cases as teaching cases, and taking volunteer groups as the teaching basis, the dual setting of volunteer groups realizes the interface between the legal aid volunteers and the students of the legal clinic courses, and the inspirational and discussion teaching method integrates the two.

Thus, from the perspective of practical legal education, legal aid activities and the public development of legal clinic education provide a constant flow of concrete knowledge from practice to theory.

#### 4. Directions for Future Improvement

The future of legal aid activities and legal clinic education should be integrated into a comprehensive consideration of future development, and there is a need to seek a balanced and co-evolving approach to legal aid activities and legal clinic education in a holistic manner.

First, the scope of legal aid should be expanded to meet the new demand of the people for legal aid, so that the curriculum material for legal clinic education can be expanded at the same time. Important matters closely related to livelihood issues should be added to the scope of legal aid. For example, matters such as farmers' rights and interests being jeopardized in land transfers, and people in difficulty requesting compensation for damages caused by traffic accidents, medical malpractice and domestic violence should be included in the scope of legal aid. This in fact promotes the

diversification of the content of the legal clinic curriculum through the idea of improving legal aid activities.

Secondly, diversified channels of fund-raising should be explored. Legislation can be passed to obtain special funding from the Government for legal aid in higher education. A cost-sharing system for beneficiaries can be set up, whereby beneficiaries of legal aid who have improved their financial situation as a result of winning a case and are able to pay for part of the cost of legal aid can do so in accordance with the scope of the contribution agreed upon in the prior contract between the two parties.

(c) Reimbursement of part of the legal aid costs on a sliding scale. [10] Thirdly, a "special charity fund for legal aid" can be set up. The charitable funds collected by charitable organizations in China can be subdivided and a "special charity fund for legal aid" can be set up under the charitable funds, and universities, as civil legal aid institutions, can also apply for such funding. In addition, legal clinic programs can apply for necessary project and program funding to subsidize the staff and daily expenses of legal aid activities. We can also see the role of legal clinic programs in supporting the funding of legal aid activities through multiple channels of fund-raising efforts.

In conclusion, our characteristic legal aid system and the legal clinic system introduced through the United States, because of their isomorphism, can be closely integrated and mutually promoted under the framework of practical legal education.

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