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## **Methods of Experiential Education: Context, Transferability and Resources**

*Julie A. Davies\**

My own interest in experiential education dates back to law school, when I was privileged to participate in innovative clinical education at the University of California, Los Angeles. Later, years after becoming a professor, I decided I wanted to teach in our in-house clinic. In the process of learning to teach with experiential methods, I encountered the same steep learning curve that many of the Chinese law professors studying here this year are experiencing, but of course, I did not have to do so in a foreign language. Still, the experience proved very challenging, yet rewarding, and led me to undertake broader study of experiential education to gather data and strategies from other U.S. schools that might benefit us here.

The question this paper seeks to answer is: what lessons can be learned from the experiences of countries other than China about the development of experiential education? In particular, what challenges are posed by the different contexts in which experiential education programs are introduced? Frequently, experiential education is developed in countries that not only have legal systems different from the U.S., but different cultural values and political and economic systems. How do these differences in context affect the transferability of materials and pedagogical insights used in U.S. programs? What resource challenges must be solved in order to permit experiential education to flourish? As the discussion that follows reveals, contextual differences matter immensely; understanding and adjusting to the legal, educational, cultural, political, and economic environments is essential to the success of any initiative to introduce experiential learning. Professors and students engaged in experiential learning must believe that they are teaching and learning something that is professionally useful. The people who support that learning as part of an academic program—other professors, university administration, members of the bar, judges, and even the parents of students—must likewise share that view. Thus, experiential education must be tailored to a country, and indeed, to particular universities, to reach its full potential. Context is so important that it would be a mistake to view programs as wholly transferable, though clearly certain educational strategies do transfer. Contextual differences also affect resources—both what is needed, and how to obtain funds.

China is certainly not alone in developing programs that feature experiential education. Within the U.S., law schools continue to experiment with new types of

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experiential education and confront some of the same barriers that arise in programs in other countries: resistance from non-believers, resource challenges, and lack of parity in status afforded to some teachers at some schools. Looking at the experience of China, as illustrated by fellow academics,<sup>1</sup> the country's experiential education policy appears to be far ahead of many other countries, including those that started earlier. China Scholar William P. Alford describes the efforts of the People's Republic of China since the end of the Cultural Revolution as the most concerted effort in world history to construct a legal system.<sup>2</sup> This quest for reform of the legal system, China's interest in high quality education, including legal education, and the establishment of a robust and enthusiastic organization such as the CCCLE,<sup>3</sup> positions China well for incorporation of experiential education programs. Nonetheless, there are valuable lessons to be learned from the experiences of other countries, which will be discussed below.

## I. CONTEXT

Experiences with exporting U.S. legal education methods to the rest of the world have shown, time and again, the importance of understanding the context in which those methods will be used. The Law and Development Movement of the 1950's and 1960's sought to spread U.S. legal educational approaches to reform legal education in many other countries, with the goal of promoting modernization and economic development.<sup>4</sup> Funded by the Ford Foundation and U.S. government, the law professors involved were deeply disappointed by the results, or lack thereof, and much of their self-criticism centered on their failure to have "a well-thought-out, cogent theory of how and why legal reform programs were supposed to work."<sup>5</sup> James Gardner described the enterprise as "legal imperialism;" while other scholars expressed their disenchantment in slightly different but equally pessimistic terms.<sup>6</sup> Yet a cogent theory of law

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1. See e.g., Mao Ling, *Clinical Legal Education and the Reform of the Higher Legal Education System in China*, 30 *FORDHAM INT'L L.J.* 421 (2007); 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 (2005); Zhen Zhen, *The Present Situation and Prosperous Future of China Clinical Legal Education* (Oct. 7, 2005) (unpublished manuscript), available at [http://www.law.ucla.edu/docs/zhen\\_zhen\\_prosporous\\_future\\_of\\_chinese\\_clinical\\_educatio\\_.pdf](http://www.law.ucla.edu/docs/zhen_zhen_prosporous_future_of_chinese_clinical_educatio_.pdf).

2. William P. Alford, *Exporting "The Pursuit of Happiness"*, 113 *HARV. L. REV.* 1677, 1707 (2000) (reviewing THOMAS CAROTHERS, *AIDING DEMOCRACY ABROAD: THE LEARNING CURVE* (1999)).

3. Committee of Chinese Clinical Legal Educators is a non-profit organization comprised of clinical legal educators from all over China. See Phan, *supra* note 1, at 129; Zhen, *supra* note 1.

4. See Leah Wortham, *Aiding Clinical Legal Education Abroad: What Can Be Gained and the Learning Curve on How to Do So Effectively*, 12 *CLINICAL L. REV.* 615, 616-17 (2006).

5. Matthew Stephenson, *A Trojan Horse in China?*, in *PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE* 191, 192 (Thomas Carothers ed., 2006).

6. See, e.g., JAMES A. GARDNER, *LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA* (University of Wisconsin Press 1980); Elliott M. Burg, *Law and Development: A Review of the Literature & a Critique of "Scholars in Self-Estrangement"*, 25 *AM. J. COMP. L.* 492 (1977); John H.

reform cannot exist in a vacuum. Rather, the context—the milieu or environment—in which such programs are implemented affect their content and ultimately their success. In the context of law reform, the culture and political situation in which programs are operating, the way different countries conceive of legal education, differences in the legal system used, and many more factors influence the initiatives undertaken.<sup>7</sup>

In the post-Cold War era, as funding for democracy promotion and rule of law programs resumed, many professors with expertise in experiential teaching, particularly live client clinics, have traveled to a variety of countries to share their knowledge and enthusiasm for clinics. Judging from the articles they have written documenting their efforts, these professors have learned from the mistakes of the Law and Development movement, and pay careful attention to context. Apparently, this understanding of the importance of context is not yet universal; Professor Alford suggests that U.S. academics still tend to present options that mirror our own legal and political institutions, approaching the past as “an encumbrance that the clear-minded should be only too ready to discard for a future remarkably akin to ours.”<sup>8</sup> However, judging from their articles, U.S. faculty who have worked in other countries under USAID, Ford Foundation, or other grant programs to help establish experiential learning, have clearly absorbed the lesson that understanding context is vital.

In what sense does the context matter? Programs developed by a law school respond to a perceived need within the university’s environment as well as its surrounding community. Is the need simply to provide professional skills training, or does it include service of the poor, inculcation of ethical precepts, or the advancement of certain rights? Leah Wortham suggests that any of these may be the purposes, and that these issues must be discussed as experiential learning programs are implemented.<sup>9</sup> Carol Rose, in a case study on Vietnam, cautions against assuming that Western models function well in all cultural contexts. There is a tendency to form caricatures of other legal systems, oversimplifying or failing to appreciate that differences are a matter of degree.<sup>10</sup> Peggy Maisel, in an article on clinical education in South Africa, writes about how the founders of clinical programs there needed to consider the tradition of paralegal assistance

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Merryman, *Comparative Law and Social Change: On the Origins, Style, Decline, & Revival of the Law and Development Movement*, 25 AM. J. COMP. L. 457 (1977); David M. Trubek, *Toward a Social Theory of Law: An Essay on the Study of Law and Development*, 82 YALE L.J. 1 (1972); David M. Trubek & Marc Galanter, *Scholars in Self-Estrangement: Some Reflections on the Crisis in Law and Development Studies in the United States*, 1974 WIS. L. REV. 1062 (1974).

7. See Frank Upham, *Mythmaking in the Rule-of-Law Orthodoxy*, in PROMOTING THE RULE OF LAW ABROAD: IN SEARCH OF KNOWLEDGE 75-76 (Thomas Carothers ed., 2006).

8. Alford, *supra* note 2, at 1712.

9. See Wortham, *supra* note 4, at 657-60.

10. Carol V. Rose, *The “New” Law and Development Movement in the Post-Cold War Era: A Vietnam Case Study*, 32 LAW & SOC’Y REV. 93, 130-31 (1998).

provided by members of the community in structuring their own courses.<sup>11</sup> These paraprofessionals had long provided services to indigenous people in many languages, and the goal was to devise programs that took into account the system for delivery of legal services that was unique to South Africa.<sup>12</sup>

Professor Grady Jessup documents the relationship between an understanding of context and the development of program in an article that chronicles his experiences in Africa.<sup>13</sup> In preparing for a 1995 trip to Ghana, he stockpiled NITA<sup>14</sup> materials to incorporate into a ten-week visit sponsored by American Bar Association African Law Initiative Program during which he was to lecture on trial advocacy and ethics. He confesses that at the time of that trip, he was unaware of the prevailing methodology for teaching law in Ghana.<sup>15</sup> Although ultimately he was able to use his NITA materials along with a book recommended by a Ghanaian professor, Jessup and the ABA African Law Initiative Conference agreed that “a successful Clinical Legal Education model in Africa cannot be based upon a wholesale transfer of the American model, since the American model may not be adaptable to the African experience culturally, politically, economically, or socially.”<sup>16</sup> The gist of Jessup’s article is a suggestion for a Development Law Clinic in Ghana that would be based on African customary law and traditional values.<sup>17</sup> If implemented, this clinic would resist importation of norms and values from outside Africa, and instead draw on indigenous law and values that continue to shape African law and society.<sup>18</sup>

The choice between methods of experiential learning—simulations or live-client clinics, for example—may also depend on context. I use the term *may* because there seems to be real disagreement about this. Leah Wortham, who has consulted for years in Russian and Polish law schools, believes in-house clinics can be organized and operated with sufficient flexibility that they are suitable for virtually any legal system.<sup>19</sup> Others, however, urge different means of providing experiential education in certain systems. In a 1999 article, Rodney Uphoff

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11. Peggy Maisel, *Expanding and Sustaining Clinical Legal Education in Developing Counties: What We Can Learn From South Africa*, 30 *FORDHAM INT’L L.J.* 374, 383-84 (2007).

12. *Id.*

13. Grady Jessup, *Symbiotic Relations: Clinical Methodology—Fostering New Paradigms in African Legal Education*, 8 *CLINICAL L. REV.* 377 (2002).

14. National Institute for Trial Advocacy.

15. Jessup, *supra* note 13, at 378.

16. *Id.* at 380.

17. See Jessup, *supra* note 13. Customary law and traditional values remain relevant and differ somewhat from the common law traditions imposed by colonizers. Jessup suggested that a Development Law Clinic in Ghana could be a useful curricular addition that would differ significantly from traditional clinical programs. Its focus would be on national building efforts and systemic changes rather than client-centered representation. This would be consistent with traditional African values that place the community well-being above the individual. *Id.* at 382-84, 395-96.

18. Jessup, *supra* note 13, at 397.

19. See Wortham, *supra* note 4, at 654-56 (disagreeing with article arguing that in-house clinics are not viable in Romania and stating that those encouraging the clinical model should be open to broad flexibility).

concluded, after a visit to Romania as a CEELI Legal Specialist, that Romanians should resist the pressure to add live client clinical programs and instead focus on developing other types of experiential learning for their students.<sup>20</sup> Uphoff began his visit with the intent to encourage Romanians to adopt live client clinics and a wealth of suggestions as to how they could overcome obstacles, but realized that various factors, including not only funding but also the structure of the Romanian educational system, would be serious impediments to live client clinics.<sup>21</sup> After extensive consultations with Romanian professors, Uphoff saw a desire for experiential learning, but at times, a completely unrealistic view of what constituted clinical education. He was encouraged when a group of professors suggested replacing a mandatory practicum, which had been ineffective, with a new course consisting of lectures, discussions, simulation exercises, and student observations.<sup>22</sup>

Professor Haider Ala Hamoudi, a Clinical Education Specialist at DePaul University School of Law, concluded that practical impediments would make introduction of live client education in Iraq “ineffective at best and counterproductive at worst.”<sup>23</sup> In addition to the obvious security challenges during his visits in 2003 and 2004, Professor Hamoudi encountered outright hostility to change among many senior faculty, outrageously high faculty-student ratios, inflexible curriculum, a lack of electives, and an almost complete lack of any legal practice experience among the faculty.<sup>24</sup> Moreover, there were significant differences among the three law schools he was working with, ranging from outright opposition to experiential learning in Baghdad to desire to create a program that would include all members of a class rather than a select few in the Kurdish Suleymania University.<sup>25</sup> As a result, a variety of experiential learning programs, including moot court sessions, practice-based exercises, and meaningful courtroom visitation were implemented to the delight of the students at all three universities.<sup>26</sup>

Although it appears that some colleagues view Professor Uphoff’s conclusions about live client clinics in Romania as overly pessimistic or wrong,<sup>27</sup> his consideration of context and his willingness to work creatively with faculty to

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20. Rodney J. Uphoff, *Why In-House Live Client Clinics Won't Work in Romania: Confessions of a Clinician Educator*, 6 *CLINICAL L. REV.* 315, 315-16 (1999).

21. *Id.* at 317-25. Uphoff noted that Romanian professors regularly hold two or three jobs, which makes them reluctant to develop new courses. Quality teaching is not rewarded in Romania’s hierarchy of professional advancement. Students spend upwards of thirty-five hours a week in classes and cover so many basic courses in so many areas that students are far less law focused. *Id.* at 323, 333.

22. *Id.* at 336-37.

23. Haider Ala Hamoudi, *Toward a Rule of Law Society in Iraq: Introducing Clinical Education into Iraqi Law Schools*, 23 *BERKELEY J. INT’L L.* 112, 115 (2005).

24. *Id.* at 120-24.

25. *Id.* at 125-28.

26. *Id.* at 129-32.

27. Phan, *supra* note 1, at 135; Wortham, *supra* note 4, at 654-55.

develop programs that they could and would deliver successfully is surely right. While China has been receptive to live client clinical education, it is certain universities will want to tailor experiential learning programs to their particular environments, just as U.S. law schools do. Professor Hamoudi was able to be successful in assisting Iraqi universities because of his ability to modify a program to fit the unique and very different contexts of the universities he was working with. It should also be noted that context plays a key role in the actual content of whatever experiential model is selected. Trial advocacy with a focus on cross-examination makes little sense in a system where cross-examination is not permitted, unless the goal is to train lawyers for international practice.

One last point to make about the context in which experiential learning occurs is that experiential learning programs must often weather adverse political conditions, or changing political environments. In this regard, Richard J. Wilson's study of legal clinics in Chile is illuminating.<sup>28</sup> Wilson ponders the question of how clinical education programs that began in the socialist government overthrown in 1973 by Augusto Pinochet survived and thrived under a military dictatorship. More generally, he questions whether "we [can] ever examine clinical education without close attention to externalities such as the political and legal-cultural environment in which they exist?"<sup>29</sup> Although the military government took over all governmental institutions and destroyed any it did not want, the law school programs cast themselves as apolitical, purely educational, or as positive contributors to the regime's stability through their service to the poor.<sup>30</sup> Wilson notes that although their "flat and ahistorical" profiles during this era might be argued as a failure of a core mission—"that of engagement by students in the life of law in action"<sup>31</sup>—the reality was that this was the only position that would ensure any modicum of safety to the students.<sup>32</sup>

The previous examples indicate the importance of considering context, in the broadest possible sense, as programs for experiential education are crafted. While context, whether political or institutional, can impose limits, it also provides opportunities to craft an experience that is really meaningful in a particular type of legal system or legal practice. Understanding context, even as it varies among university faculty within a country, can assist in structuring programs that faculty feel competent to teach successfully and to endorse enthusiastically to the broader community.

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28. See Richard J. Wilson, *Three Law School Clinics in Chile, 1970-2000: Innovation, Resistance and Conformity in the Global South*, 8 *CLINICAL L. REV.* 515, 576-79 (2002).

29. *Id.* at 577.

30. *Id.* at 577-79.

31. *Id.* at 579.

32. *Id.*

## II. TRANSFERABILITY

How transferable to other countries are models of experiential education that are well-established in U.S. law schools? Are the skills taught through experiential education transferable to the rest of a legal curriculum? The answer to these questions depends on how one defines experiential education and the skill-set it involves. The most persuasive view is that if experiential learning is viewed as a mode of pedagogy that emphasizes certain learning skills, this method is eminently transferable. Actual course materials (such as books or problems) and the course content (the choice and structure of the particular experiences that comprise the course) may or may not be directly transferable, but in all likelihood, these require substantial adaptation if usable at all.

The recently completed Best Practices for Legal Education project spearheaded by Professor Roy Stuckey<sup>33</sup> defines experiential education as courses in which experience “is a significant or primary method of instruction.”<sup>34</sup> Experiential education is described as the prime mode of pedagogy in courses described as “clinical.” Drawing on the scholars’ descriptions of the process, the best practices document stresses the stages of learning involved, the various cognitive, performance, and emotional skills required, and the opportunities that experiential programs provide students to be involved in their own education.<sup>35</sup> Professor Carrie Menkel-Meadow describes practical courses as “the law school’s primary means of teaching students how to connect the abstract thinking formed by legal categories and procedures with fuller human contexts.”<sup>36</sup> This theme is reiterated in the recently issued Carnegie Foundation report on the education of lawyers in a chapter entitled “Bridges to Lawyering.”<sup>37</sup> Although the Carnegie Report acknowledges that faculty in some U.S. law schools today remain dismissive of a “trade school stigma”<sup>38</sup> there is much theory to back up the value of experiential education, not just in law, but in any educational enterprise.

With a broad definition of experiential education, it becomes apparent that this mode of teaching, in one form or another, is certainly transferable to educational systems that have previously excluded it. The debate then centers on what aspects are most desirable, and as I have suggested above, the answer ought to be answered by people who are intimately familiar with the legal, educational,

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33. ROY STUCKEY ET AL., *BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP* (Clinical Legal Education 2007), available at [http://www.cleaweb.org/documents/Best\\_Practices\\_For\\_Legal\\_Education\\_7\\_x\\_10\\_pg\\_10\\_pt.pdf](http://www.cleaweb.org/documents/Best_Practices_For_Legal_Education_7_x_10_pg_10_pt.pdf).

34. *Id.* at 165.

35. *Id.* at 166-67.

36. Carrie Menkel-Meadow, *Two Contradictory Criticisms of Clinical Education: Dilemmas and Directions in Lawyering Education*, 4 *ANTIOCH L. J.* 287 (1986).

37. WILLIAM M. SULLIVAN ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* 87 (Carnegie Foundation for the Advancement of Teaching ed., Jossey-Bass 2007).

38. *Id.* at 93.

cultural, economic and social context of a country. Nonetheless, there are some common obstacles to transferability that must be overcome.

Many forms of experiential learning encounter resistance because the educational system in place is centered on acquisition of knowledge, in the abstract, from the lectures of professors. In her article about Chinese legal education, Professor Mao Ling asserts that legal training still places too much focus on a “knowledge-centered education model” that inhibits creative thinking and problem solving—skills that must be inculcated in Chinese law graduates.<sup>39</sup> In Iraq, Professor Hamoudi observed a teaching style comprised only of lecture, with student participation being unexpected and unwelcome.<sup>40</sup> Professorial dominance is common in both developed and developing countries, with the result that law professors come to see student interaction as a threat.<sup>41</sup> This mindset must be overcome to permit the introduction of experiential learning as a primary mode of pedagogy. It is an enormous challenge which, in itself, requires skill in advocacy and persuasion.

Richard Wilson identified several other issues that may impede the transferability of experiential learning outside of the U.S., particularly in live client clinics. One problem is that members of the organized bar or judges may be as hostile as professors to the idea of law students engaged in experiential learning classes. One source of this animosity may be that they view law students as competitors for fees, and this may lead them to oppose relaxation of rules prohibiting student practice.<sup>42</sup> Another obstacle to transferability relates to the role of clinics within the government’s network of legal services to the poor. Sometimes governments, or even the law schools themselves, promote clinics as the “repository for legal services to the poor.”<sup>43</sup> If legal services are unavailable elsewhere, and if the clinics take on this mission, the result may be that students and professors are completely overwhelmed. If this occurs, it leads to poor supervision,<sup>44</sup> and a sacrifice of the pedagogical value of the course. Without time for instruction, study of theory, and reflection, schools do not gain the benefits of experiential learning for their students.

The fact that law is an undergraduate course of study in most of the world also raises concerns about transferability. Is experiential learning appropriate for students who are somewhat younger than the average American law student? Richard J. Wilson suggests that the age differences in the law student cohort in Chile and the United States do not reflect significant differences in cognitive,

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39. Ling, *supra* note 1, at 428.

40. Hamoudi, *supra* note 23, at 118.

41. *Id.* at 118-19.

42. Richard J. Wilson, *Training for Justice: The Global Reach of Clinical Legal Education*, 22 PENN ST. INT’L L. REV. 421, 430 (2004).

43. *Id.*

44. *Id.*

social and psychological development.<sup>45</sup> Moreover, he suggests that while no one method of adult learning or teaching has been shown to be superior to another, there is evidence that it is beneficial to utilize multiple methods of instruction.<sup>46</sup> Rodney Uphoff, while endorsing experiential learning, seriously questioned whether Romanian students between the ages of eighteen and twenty-two, studying for their first degrees, possessed the maturity to undertake live client representation.<sup>47</sup> Given their overwhelming course loads spanning a wide range of academic subjects, he did not think that the students could be sufficiently prepared for representation of clients without massive changes in the overall curriculum.<sup>48</sup> This conclusion led Uphoff to agree with Ukrainian professors that other modes of experiential learning would be preferable in Ukraine. One's view of this issue may affect the form of experiential education adopted, but the age of the students should not be an impediment to experiential education generally.

Lack of suitable teaching materials is an obstacle to transferability applicable both to live client experiential courses and to courses based on externships, observations and simulations. Japan serves as a good example but is in no way unique. There, legal scholars have virtually no knowledge of law practice and no ability to move from the sphere of academia to practice.<sup>49</sup> This affects the content of legal scholarship useful for experiential courses, limiting the availability materials on topics such as lawyering skills and ethics.<sup>50</sup> At Waseda Law School in Japan, practitioners, scholars and staff of non-governmental organizations (NGOs) addressed this deficit by coming together to co-teach a clinical course.<sup>51</sup> These collaborators prepared a textbook for their course with an interdisciplinary and practice oriented focus, and the NGO staff facilitated externships for the students.<sup>52</sup> However, this experience is somewhat unusual.<sup>53</sup> In the absence of such collaboration, some Japanese schools offer "clinical programs" that limit students to observing counseling sessions.<sup>54</sup> In Africa, as in Japan, materials are

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45. Wilson, *supra* note 28, at 570.

46. *Id.* at 571.

47. Uphoff, *supra* note 20, at 324.

48. *Id.*

49. Peter A. Joy et al., *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, 429-30 (2006).

50. *Id.* at 431.

51. *Id.* at 442 (discussing Refugee and Immigration Law Clinic at Waseda Law School).

52. *Id.*

53. This solution offers the positive benefit of overcoming the lack of experience and materials, but also raises the possibility that such a course will be treated as outside the standard curriculum. To the extent that adjuncts fill primary teaching roles, other faculty may view clinical teachers as different or not part of the hierarchy at the law school. This can then lead to further problems with transferability if faculty does not step forward to create or teach in experiential learning courses, and to issues of resource scarcity, as funding such a program may appear ancillary to basic law school needs. I am unaware whether these problems exist at Waseda, but it is worth pointing out that there are trade-offs made in using non-core faculty.

54. Joy et al., *supra* note 49, at 454.

scarce. Unlike Japan however, this lack is due in part to resource issues; there is an absence of books and online sources that we in the United States take for granted.<sup>55</sup> The solution to this problem is to direct grant funding at the production of materials by law teachers in the country.<sup>56</sup> Although teaching materials from U.S. schools may be helpful to the production of textbooks and problem sets suitable for experiential courses elsewhere, direct translations are unlikely to be useful because they cannot take into account the particular content of the course, and the context in which it is being taught.<sup>57</sup>

Programs such as the partnerships between Chinese law schools, the American University, and Pacific McGeorge seem to be on the right track as far as maximizing the transferability of experiential education methods. Chinese law faculty are the key to conceiving course content and bringing materials to life. However, there are several cautions we ought to heed. One is to resist the temptation to try to replicate a U.S. model program in China, or a Chinese program in the U.S. Leah Wortham encountered many U.S. clinical faculty during the course of her visits to Russia and Poland who failed to explore programmatic options that did not have a counterpart in U.S. practice.<sup>58</sup> The other pitfall to avoid is the temptation to see this process as one easily completed within a short period of time. To understand how experiential teaching techniques apply across borders and to make fruitful use of faculty interchanges requires the development of long-term relationships.<sup>59</sup> These relationships cannot be uni-directional. We, as the host schools for this particular program, must use this opportunity to learn as much about the legal system and legal education in China as our students are learning about the U.S. legal and educational systems.<sup>60</sup>

### III. RESOURCES

Resources are a constant issue for clinical programs. As Peggy Maisel puts it, “[u]nderlying all of the obstacles to the growth and sustainability of clinical legal education in South Africa and elsewhere in developing countries is a lack of sufficient stable funding.”<sup>61</sup> Among U.S. law schools, the issue of resources required to sustain experiential learning at law schools is also a concern for many schools. Grant monies are sometimes available, especially to sustain live client clinics, and some governmental programs, such as giving the interest on lawyers’

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55. Jessup, *supra* note 13, at 390.

56. See Lawrence M. Grosberg, 7 *CLINICAL L. REV.* 469, 491-92 (2001) (as CEELI specialist in Russia, Grosberg is of the view that CEELI should support Russian clinicians in the development of *new* materials, making U.S. materials available in translation as background resources, and providing audio/visual equipment and assistance).

57. *Id.*

58. Wortham, *supra* note 4, at 674.

59. *Id.* at 676.

60. *Id.* at 675.

61. Maisel, *supra* note 11, at 387.

trust funds to clinics that serve the poor, help defray costs of operation. Nonetheless, the lower faculty-student ratio associated with experiential learning programs makes them more expensive than a large class staffed by a single professor.

While the simulation variety of experiential learning programs is often seen as much less expensive, the cost depends on the amount of professorial and other supervisory time entailed. For example, Pacific McGeorge is somewhat unique in requiring second year students to take Appellate Advocacy. The course takes the students from the point of trial court motions up to an appeal using a detailed case file that presents domestic and international law issues. Because each student is writing several court documents and arguing the case at various stages, the school hires many attorneys to teach small sections of students, and law students employed by the law school on a part-time basis assist the attorneys in conducting mock hearings, reading papers and coaching class members. In addition, professors must teach the theory portion of the course, demonstrate the experiential methods students will employ to complete their assignments and review all papers submitted. Needless to say, this program is not inexpensive.

Externship programs are often viewed as uniquely inexpensive because they entail supervision of students by practitioners who are not paid for their services. Sometimes these attorneys are anxious for extra help, and benefit from the students' labor, and some attorneys participate simply because they believe it is important to teach and mentor students entering the legal profession. Nonetheless, the American Bar Association requires schools to monitor the educational experience their students receive, and to provide the students with opportunities to learn and reflect on the practice experience. Costs are therefore entailed, both in faculty time and in hiring non-professorial staff to monitor placements, handle paperwork, and run some small group sessions.

One feature of the programs I have just described is the use of non-professorial staff to assist in supervising experiential educational experiences. While this can stretch the teaching staff and reduce the cost, it introduces and perpetuates many of the issues that have marginalized clinicians.<sup>62</sup> Contract or adjunct staff often lack any voice in curricular decisions or school policy. They are paid less than tenured faculty members. They lack job security comparable to tenured faculty members. Thus, although resources are saved in some U.S. law schools by using non-tenured staff, the trade-offs are costly.<sup>63</sup>

As other countries incorporate experiential learning, they will want to avoid creating a two-tier system where the clinical professors are outsiders. Pamela Phan's article about clinical education in China argues that the Chinese system of legal education "holds greater potential for integrating doctrinal and clinical

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62. See *supra* discussion in note 51.

63. For a discussion of the importance of faculty involvement to the long-term survival of clinical programs, see Wortham, *supra* note 4, at 667-68.

methods than its American counterpart.”<sup>64</sup> Phan points out that in China, “clinical methodology” has a broader definition than it does in the United States, encompassing any teaching method that is participatory and interactive. This had enabled doctrinal professors to see the possibilities for experiential learning in doctrinal classes, and is avoiding separation of professorial ranks into two subclasses.<sup>65</sup> This is an admirable goal and one that should enhance the transferability of experiential learning courses providing that resource challenges are not too difficult.

The experiences of some U.S. law professors observing other programs led them to believe that externships and simulations are preferable if resources are of concern. Resources were among the serious concerns of Rodney Uphoff in recommending against live-client clinics in Romania,<sup>66</sup> but the theme is echoed elsewhere. As a consultant to Hong Kong University, Stacy Caplow concluded that without a long-term funding commitment, a live-client clinic would be irresponsible, but she thought externships and simulations of wide variety would be easily implemented.<sup>67</sup> Like Phan, she noted the high likelihood that simulations could be integrated in other classroom courses, but also she noted that the abundance of simulation teaching materials could be very useful to schools seeking to introduce experiential learning by that method.<sup>68</sup> As noted above, materials from one country may not be immediately usable in another, but being able to adapt or use them would reduce the resources required to offer experiential learning. Ultimately, it is probably true that some types of experiential learning could be offered more cheaply than others, with substantial trade-offs in terms of supervision and feedback as staffing is reduced.

How should the resource challenges be surmounted? In addition to university funding, there has, of course, been grant funding for many clinical programs in other countries. But the dilemma is how to build programs that persist when grant funding ends in university systems that rarely have the tuition base of U.S. schools.<sup>69</sup> Peggy Maisel’s article on South African clinical education points out several innovative ways to stretch resources and raise revenues. Resources were stretched in South Africa by hiring law students who were required to take a post law school clerkship to tutor students in anticipation of clinical field work.<sup>70</sup>

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64. Phan, *supra* note 1, at 143.

65. *Id.*

66. Uphoff, *supra* note 20, at 321-23. Uphoff states that the severe economic problems in law schools would make them almost completely dependent on outside funding, which is inevitably temporary, and that they would be hard-pressed to find domestic funding to replace it. *Id.* at 342-45.

67. Stacy Caplow, *Clinical Legal Education in Hong Kong: A Time to Move Forward*, 36 H. K. L.J. 229, 251, 253 (2006).

68. *Id.* at 253.

69. See, e.g., Gregory S. Crespi, *Comparing United States and New Zealand Legal Education: Are U.S. Law Schools Too Good?*, 30 VAND. J. TRANSNAT’L L. 31, 36 (1997) (comparing U.S. and New Zealand university systems and pointing out the predominantly public character of law school education in New Zealand, and the low tuition as compared both to private and public law schools in the U.S.).

70. Maisel, *supra* note 11, at 391.

Salaries were not high, and the employment helped the graduates fulfill their clerkship requirements.

Maisel describes the formation of the Association of University Legal Aid Institutions (AULAI) as the most effective strategy developed.<sup>71</sup> AULAI operates as a professional association for all members of university law clinics, but it is more. In 1998, AULAI established a separate trust to help fund and support development of clinical education in South Africa.<sup>72</sup> Rather than representing a single school, it collects money and shares it among the twenty-one university based law clinics as determined by its Board of Trust and membership.<sup>73</sup> Thus, competition among the programs for funding is avoided.<sup>74</sup> Even so, most of the fundraising has come from charitable sources, such as the Ford Foundation and International Commission of Jurists (ICOJ), and more than these grants will be required to sustain the clinics.<sup>75</sup> Another instance of innovative funding occurred when the AULAI assisted law schools in entering contracts with the paralegal groups that work throughout rural areas and townships that are not accessible to traditional legal aid.<sup>76</sup> This solution allowed students to visit the paralegal offices and assist the staff there as needed,<sup>77</sup> and of course, it also reduced the likelihood that the paralegal community so integral to delivery of services in South Africa would be threatened by the development of clinical education. The clinics also entered into contracts with the government legal aid bureau to assist in representation of indigent people.<sup>78</sup> One further aspect of the funding challenge in South Africa is that the private bar has undertaken, as a project, to fund the salaries of each law clinic's director.<sup>79</sup> This has been the most consistent source of funding law clinics have in South Africa.

China's enthusiastic CCCLE will be an enormous asset in facilitating the spread of experiential education in China and in supporting its members. South Africa's creation of the AULAI Trust might well be a useful model for schools within certain regions to work together on funding challenges. Indeed, if the clock could be turned back forty years in American legal education, many of the South African ideas would be attractive here. Unfortunately, competition seems to be on the increase among U.S. schools, and it would be unthinkable to pool resources. Still, China's tradition is different, and the full flowering of experiential education lies ahead, so some South African strategies could be implemented.

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71. *Id.* at 392.

72. *Id.*

73. *Id.* at 393.

74. *Id.* at 394.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.* at 395.

79. *Id.* at 397.

#### IV. CONCLUSION

China's interest in experiential education, combined with its quest to expand and improve legal education and to produce creative and innovative lawyers, will provide strong motivation to surmount problems of transferability and resources. The key is to develop a structure that fits China's needs and fits well within its educational system. I hope that this brief look at the experience of other countries in meeting these challenges provides food for thought as we continue to think about China.