

JAPANESE LEGAL EDUCATION IN TRANSITION

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As many scholars have observed,¹ legal education reforms to add graduate law programs are underway in Japan. However, we still maintain the traditional “faculty of law”-type undergraduate programs, and have not quite completed the reform process.² Therefore, I will discuss both traditional programs and the new graduate/professional programs (so-called “Japanese-style” law schools). Part I of this Article supplies general information on traditional legal education and background of the ongoing reform. Part II addresses the institutional arrangement of Japanese legal education. Part III analyzes the curriculum and teaching methods employed in Japanese legal studies. Part IV covers the teaching profession, and Part V examines the relationship between the bar examination and the legal profession. Part VI concludes the Article.

I. TRADITIONAL LEGAL EDUCATION AND ITS REFORM

The modern legal profession and legal education in Japan began in the late nineteenth century when the government began importing Western technologies and programs, including law, to better align with Western systems.³ We experienced a radical change after World War II.⁴ No other major reforms were undertaken until recently.⁵ Thus, in this Article, I will refer to the system established after World War II as the “traditional” one.⁶

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¹ See, e.g., Tom Ginsburg, *Transforming Legal Education in Japan and Korea*, 22 PENN ST. INT'L L. REV. 433, 437 (2004); James R. Maxeiner & Keiichi Yamanaka, *The New Japanese Law Schools: Putting the Professional into Legal Education*, 13 PAC. RIM L. & POL'Y 303, 303 (2004).

² This paper is based on information available as of January 2006, with some update as of April 2006. For an earlier report based on information available as of early 2004, see Maxeiner & Yamanaka, *supra* note 1.

³ HIROSHI ODA, *JAPANESE LAW* 21-29 (2d ed. 1999).

⁴ *Id.* at 29-31.

⁵ *Id.* at 31-33.

⁶ For general description of legal professions and their traditional way of training, see, for example, *id.* ch. 5.

A. UNIVERSITIES AND TRADITIONAL SYSTEM OF TRAINING LAWYERS⁷

A discussion on legal education depends on one's definition of legal education. If defined narrowly, as the training of prospective lawyers, one may doubt whether "legal education" had existed in Japanese universities until recently.⁸ Traditionally, there have been no educational requirements to sit for the National Bar Examination.⁹ Although most of the applicants, and most of those who pass the exam, have been law graduates, no degree or other formal education in law are required.

On the other hand, there are about ninety-three universities that have faculties of law or other programs focused on law, in which approximately forty-five thousand students are enrolled.¹⁰

⁷ Cf. Mark Thompson, *Taking Law at Chuo: Japan's Approach to Legal Education is Different. But is it Better?*, 10 CANADIAN LAW. 23 (1986), reprinted in JAPANESE LAW IN CONTEXT: READINGS IN SOCIETY, THE ECONOMY, AND POLITICS 41 (Curtis J. Milhaupt et al. eds., 2001) (hereinafter JAPANESE LAW IN CONTEXT) (explaining the Japanese legal education system to a western audience).

⁸ See Maxeiner & Yamanaka, *supra* note 1, at 309; Setsuo Miyazawa, *Education and Training of Lawyers in Japan – A Critical Analysis*, 43 S. TEX. L. REV. 491, 491-92 (2002); Yukio Yanagida, *A New Paradigm for Japanese Legal Training and Education – In Light of the Legal Education at Harvard Law School*, 1 ASIAN-PAC. L. & POL'Y J. 1 (2000); The Justice System Reform Council also noted:

[C]onventional legal education at universities has not necessarily been sufficient in terms of either basic liberal arts education or specialized legal education. Moreover, partly because at the undergraduate stage (law faculties of universities), the major purpose of education has been to send people with a certain level of legal education into various sectors in society, while at the postgraduate stage (postgraduate schools), the major purpose has been to train academic researchers, it has been pointed out that there exists a gap between education and actual legal practice. Accordingly, it is difficult to say that law faculties and postgraduate schools have played a proper role in fostering the legal profession as a profession.

The Justice System Reform Council, *Recommendations of the Justice System Reform Council – For a Justice System to Support Japan in the 21st Century –* (June 12, 2001) ch. III, pt. 2., 1 [hereinafter the Council's Recommendations], translated in 2001 ST. LOUIS-WARSAW TRANSATLANTIC L.J. 119.

⁹ Miyazawa, *supra* note 8, at 111. Those who have not attended any higher education are required to take a preliminary test, which examines languages, math skills, knowledge on science and social matters and resembles an ordinary college entrance examination. However, the vast majority of the Bar Exam applicants are college students and graduates who do not take this test.

¹⁰ The Council's Recommendations, *supra* note 8, ch. III, pt. 2., 2. (5).

Partly because a law degree is not required for the bar examination, and partly because not all students in law programs plan to be lawyers (the majority do not, in fact), these law programs are not designed to prepare students to be practicing attorneys.¹¹ Instead, they are designed to teach students some legal knowledge and logic along with a broader understanding of society.¹² Most graduates become white-collar workers; many join the business world, while others serve the government, either at the national or local level.¹³ Some may become journalists, and some may take the bar exam to be lawyers, of course. In sum, no specific career path is associated with the traditional law programs at the undergraduate level.¹⁴

B. LEGAL EDUCATION REFORM AS PART OF JUSTICE SYSTEM REFORM¹⁵

Since only a limited number of practicing lawyers emerge from the bar exam each year, it is said that Japan has a scarcity of lawyers.¹⁶ Although this scarcity has long been recognized, arguments for increasing the number of lawyers were limited until

¹¹ Yanagida, *supra* note 8, at 14-16.

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¹² *Id.*; the Council's Recommendations, *supra* note 8, ch. III, pt. 2., 1.

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¹³ Some may work in a legal department of a company or of a governmental body, but many actually work in unrelated departments. The fact that many graduates work in governmental bodies may partly explain the fact that many universities offer political studies and public administration courses. *See infra* Part II.A.

¹⁴ “[A]t the undergraduate stage (law faculties of universities), the major purpose of education has been to send people with a certain level of legal education into various sectors in society. . . .” The Council's Recommendations, *supra* note 8, ch. III, pt. 2., 1; *see also* Curtis J. Milhaupt & Mark D. West, *Law's Dominion and the Market for Legal Elites in Japan*, 34 *LAW & POL'Y INT'L BUS.* 451, 451 (2003) (pointing out the bar and the bureaucracy as top distinctive careers for legal elites and a recent shift from the latter to the former).

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¹⁵ The process is documented by an insider. *See* Yoshiharu Kawabata, *The Reform of Legal Education and Training in Japan: Problems and Prospects*, 43 *S. TEX. L. REV.* 419 (2002).

¹⁶ *See, e.g.*, ODA, *supra* note 3, at 93-94; J. MARK RAMSEYER & MINORU NAKAZATO, *JAPANESE LAW: AN ECONOMIC APPROACH* 6-9 (1999); *see also infra* Part V. It should be noted, however, that many other state-licensed professions or quasi-lawyers handle legal matters as well as non-licensed corporate employees in a law department, supplying legal services. ODA, *supra* note 3, at 95-98; RAMSEYER & NAKAZATO, *supra*, at 10-12. For a discussion on the recent trend of supply of quasi-lawyers, *see* Milhaupt & West, *supra* note 14, at 476-77. Although recent reforms gave these people certain rights of audience, they are not

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recently. In the late 1990s, many parts of Japanese society, especially the big business circles joined by the ruling Liberal Democratic Party, began to complain about the problems of the Japanese justice system.¹⁷ Responding to such concerns, the cabinet formed the Justice System Reform Council, which delivered its final recommendations in June 2001.¹⁸ One major political agenda in Japan in the 1990s was deregulation of the strong national ministries.¹⁹ Thus, one of the philosophies of justice system reform is *ex post* remedies based on the rule of law, that is, judicial remedies, in return for reducing *ex ante* administrative regulation.²⁰ As part of this proposal for reform, problems concerning human resources to facilitate judicial remedies (in short, the supply of lawyers) gained attention as one item on the agenda.²¹

considered as part of the bar. Therefore, I will focus on training of full-licensed lawyers in this paper.

¹⁷ See Setsuo Miyazawa, *Reform in Japanese Legal Education: the Politics of Judicial Reform in Japan: The Rule of Law at Last?*, 2 *ASIAN-PAC. L. & POL'Y J.* 89 (2001). Commentators point out practical aspects of the attention of the business world, which does business in the global setting. For example, when Japanese big businesses encountered legal difficulties in the U.S. and saw the number of lawyers involved, they realized Japan had a lawyer scarcity problem. *Id.* at 99-103; see also, Koichiro Fujikura, *Reform of Legal Education in Japan: The Creation of Law Schools Without a Professional Sense of Mission*, 75 *TUL. L. REV.* 941, 943 (2001).

¹⁸ The Council's Recommendations, *supra* note 8.

¹⁹ See Miyazawa, *supra* note 17, at 99.

²⁰ [T]he various reforms, including political reform, administrative reform, promotion of decentralization, and reform of the economic structure such as deregulation . . . have sought to transform the excessive advance-control/adjustment type society to an after-the-fact review/remedy type society When likened to the human body, if the political branches constitute the heart and arteries, the judicial branch shall be said to be the veins. The series of reforms mentioned above, such as political reform and administrative reform, are, so to speak, an effort to restore and strengthen the functions to make blood flow swiftly by removing extraneous crudescence in the heart and arteries. According to this metaphor, justice reform shall be considered to be aiming at harmonizing the body and improving its health by expanding and strengthening the scale and function of the justice system as part of the what the 'shape of our country' should be in the 21st century, with fundamental reflection on whether or not the existing veins were excessively small.

The Council's Recommendations, *supra* note 8, ch. I, pt. 1 & pt. 2., 1.

²¹ *Id.* at pt. 2., 2.

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The council recommended establishing new graduate/professional programs (the “law schools”) to train future lawyers.²² The council’s proposed recommendations include several items. Only those who completed the program are eligible to sit for the (new) bar examination. The term of education is three years in principle, but institutions may shorten it to two years for those who already have a legal background. Traditional undergraduate programs in law will be maintained, but the new program should admit a certain number of applicants who have a non-law background or work experience.²³

Upon invitation by the Ministry of Education, Culture, Sports, Science, and Technology (“MEXT”), seventy-two institutions applied to establish such programs.²⁴ Sixty-eight were accredited;²⁵ four were rejected.²⁶ The accredited schools planned to admit 5,590 students in total, and the new programs/schools began in April 2004 with 5,767 students.²⁷ In March 2006, we saw the first graduates complete the two year programs.

²² *Id.* ch. III, pt. 1 & pt. 2.

²³ *Id.* ch. III, pt. 2. For earlier critical analysis of the proposal, see Miyazawa, *supra* note 8. The Council’s Recommendations are not limited to legal education. It includes number of proposals for reform of almost every aspect of the legal system. In my judgment, however, the proposal of “law schools” was one of two most radical changes. Another radical one was participation of lay citizens (quasi jury) in certain criminal proceedings. However, it is also true that the implementation of public participation in criminal cases has been much slower than that of new way of legal education.

²⁴ Ministry of Education, Culture, Sports, Science, and Technology (MEXT), Heisei-16-nendo Kaisetsu Yotei no Hokadaigakuin no Secchi Ninka Shinsei (Keikaku) Ichiran [List of Applications for Accreditation of Law Schools Expected to Open in 2004], http://www.mext.go.jp/a_menu/koutou/houka/03091701.htm (last visited Feb. 7, 2006). This number includes 20 national universities, 2 universities run by local governments and 50 private institutions. Many of them already had undergraduate programs in law. *Id.*

²⁵ Daigaku Secchi, Gakko-hojin Shingikai [University Accreditation Council], Heisei-16-nendo Kaisetsu-yotei Hokadaigakuin Ichiran [List of Law Schools Expected to Open in 2004] (Nov. 2003), http://www.mext.go.jp/b_menu/shingi/dai-gaku/toushin/03112104.htm.

²⁶ Compare MEXT, *supra* note 24, with University Accreditation Council, *supra* note 25.

²⁷ MEXT, Heisei 16 nendo Hokadaigakuin Nyugakusha Senbatsu Jisshi Jokyo no Gaiyo [Overview of Law School Admission in 2004] (May 12, 2004), http://www.mext.go.jp/b_menu/houdou/16/05/04051301.htm.

Six more universities later applied and were accredited to open programs, which began in April 2005.²⁸ The sum of the quotas, including those of the schools that began in 2004, added up to 5,825 while the actual number of enrollment was 5,544.²⁹ No further application to open a law school is planned at present.

II. INSTITUTIONAL ARRANGEMENT

A. TRADITIONAL PROGRAMS IN LAW

About ninety-three universities with faculties of law offer law-oriented programs at the undergraduate level.³⁰ It is worth noting that many faculties of law in Japanese universities offer not only law but also political studies and public administration courses. They follow the model of the leading university, the University of Tokyo Faculty of Law.³¹ Other universities, such as Hitotsubashi and Waseda, concentrate on law courses within the faculties of law and have independent departments of political studies or social sciences. Others do not have independent faculties of law but instead offer law-related courses and programs in colleges of other social sciences, creating, for example, a “Department of Business Law, College of Economics and Business.”³²

An undergraduate law program is a four-year program.³³ This term includes not only legal education per se but also liberal

²⁸ MEXT, Heisei-17-nendo Kaisetsu-yotei no Hokadaigakuin no Secchi Ninka Shinsei (Keikaku) Ichiran [List of Applications for Accreditation of Law Schools Expected to Open in 2005], http://www.mext.go.jp/a_menu/koutou/houka/05012603.htm (last visited Feb. 7, 2006). Three of the applicants were national universities and three were private universities. *Id.* Though it admitted students in April 2005, one institution was required to suspend recruiting new students because of an application flaw.

²⁹ MEXT, Heisei-17-nendo Hokadaigakuin Nyugakusha Senbatsu Jisshi Jokyo no Gaiyo [Overview of Law School Admission in 2005] (May 20, 2005), http://www.mext.go.jp/b_menu/houdou/17/05/05052002.htm. Some of the institutions could not recruit enough students to fill their quotas because many potential applicants realized the negative prospective of law school graduates. *See infra* Part V.B.

³⁰ *See supra* note 10 and accompanying text.

³¹ *Cf.* Milhaupt & West, *supra* note 14, at 459.

³² This variety makes it difficult to count how many universities offer law-oriented programs.

³³ This is the norm in Japanese higher education. Gakko Kyoiku Ho [School Education Act], Law No. 26 of 1947, art. 45. The exceptions are medical, dental and

arts courses. Some universities offer graduate programs in law, both at the master's and doctoral levels. They are primarily designed to train prospective academic researchers and teachers. Those who complete the programs are expected to research and teach at universities.³⁴ However, many universities also offer master's programs for those who do not seek academic careers. Students of such programs include those preparing for and taking the bar examination. People with work experience attend such programs as well, as they might want professional expertise or academic reorganization of their experience. The latter group includes some lawyers, but it is on their own personal initiative. No regulation, either by the government or by the bar associations, requires continuing legal education.³⁵

B. NEW LAW SCHOOLS

When implementing the new program to train practicing lawyers, some universities established new independent professional schools under their university systems. Others simply added new programs to graduate schools already in existence.³⁶

The duration of the new programs is three years.³⁷ In these kinds of programs, students are not expected to have had undergraduate legal education. It is government policy to accept students who have studied areas other than law or have had

veterinary medicine education, which are six years. Pharmaceutical education is joining the exception.

³⁴ To be honest, it should be noted that little specific training for teaching is offered in these programs, though the students are expected to make their living by teaching. The programs are primarily academic ones.

³⁵ Cf. The Council's Recommendations, *supra* note 8, ch. III, pt. 2, 5 (recommending development of a continuing legal education system).

³⁶ See MEXT, Heisei-17-nendo Hokadaigakuin Ichiran [List of Law Schools 2004], http://www.mext.go.jp/a_menu/koutou/houka/05071101.htm (last visited Feb. 7, 2006). Two qualifications should be added. First, two national universities, Kagawa and Ehime, formed a union to establish one law school. Second, Omiya Law School was established as an independent institution which has no affiliation with other universities.

³⁷ Chuo Kyoiku Shingikai [National Education Council], Hokadaigakuin no Secchi Kijun to ni tsuite [On Accreditation Standards of Law Schools] (Aug. 5, 2002), http://www.mext.go.jp/b_menu/shingi/chukyo/chukyo0/toushin/020803.htm, at 2(2)(1). [hereinafter Accreditation Standards].

working experience.³⁸ However, many law graduates are enrolled in the three-year programs as well.³⁹ For those who have studied law previously, many, but not all, institutions offer two-year programs. As they (are deemed to) know the basics of law, those students may skip some courses.⁴⁰

III. CURRICULUM AND TEACHING METHODS

A. TRADITIONAL PROGRAMS IN LAW

Although law professors share a general, common understanding, there is no defined curriculum for undergraduate programs. However, lecture methods dominate traditional undergraduate legal education. It is common to have classes with hundreds of students. One-way lectures in a huge hall to a mass of students sometimes, as commentators point out and instructors find in class, lead to passivity in students' attitudes towards studying.⁴¹

This problem has long been recognized, and universities have undertaken some reforms. They maintain lecture methods because lectures are believed to be the most efficient way of

³⁸ The legal profession in the 21st century should include a wide variety of people who have learned academic areas other than law, such as economics, science and mathematics, and medicine. In order to admit into the legal profession a number of people with various backgrounds including those with working experience, law schools should admit various applicants irrespective of their field of specialization at undergraduate schools as well as open their doors to working people and others. For achieving this, law schools should take such measures as admitting at least a certain percentage of graduates from faculties other than the law faculty and from among working people, etc. It is desirable that the percentage be reviewed as appropriate, aiming at expanding diversity, while considering the trend of applicants.

The Council's Recommendations, *supra* note 8, ch. III, pt. 2., 2. (2)c. Among those admitted in April 2004, 34.5% were graduates of non-law undergraduate programs. See MEXT, *supra* note 27. As for those admitted in April 2005, the ratio is 29.9%. MEXT, *supra* note 28. I calculated these ratios combining the numbers of those admitted to the three-year programs and to the two-year programs.

³⁹ See MEXT, *supra* note 29.

⁴⁰ However, law schools may not require a law degree in deciding admission to the two-year programs as it goes against the governmental policy of open admission. They usually require additional tests on basic legal subjects. See Accreditation Standards, *supra* note 37, at 2(3).

⁴¹ See Yanagida, *supra* note 8, at 17-18; Thompson, *supra* note 7, at 42.

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teaching basic legal knowledge. Many institutions, however, also offer courses with smaller class sizes or seminars. These kinds of classes are considered to supplement large lectures. Instructors use discussion methods, problem methods, or any other teaching methods according to their preference and judgment on educational appropriateness.

A *roppo*, a handy code book, is a must for those who are studying law. In addition, publishers issue many textbooks and other kinds of study materials written for students. Instructors often use actual cases as study materials, especially in smaller classes and seminars.

Few universities offer clinical training at the undergraduate level. However, student volunteer activities in legal counseling, where they offer information to people in legal disputes, are common.⁴² Recently, many universities have given students credits for their internships, although such internships are not limited to legal practice.

In my opinion, the biggest flaw in the traditional undergraduate programs is the lack of clear definition in the purpose of the education. As I mentioned earlier, no specific career path is associated with undergraduate legal education.⁴³ Only a limited number of graduates become practicing lawyers or engage in legal work. Many others work in areas unrelated to law. For the former, university classes are too easy, or not enough preparation for their career; for them, prep schools offer classes better designed to prepare them for the bar exam.⁴⁴ For students who do not plan to work in the legal world, university classes are too difficult and too fussy.⁴⁵ When they designed the new professional programs, university law instructors recognized these problems of undergraduate legal education. However, discussion

⁴² Because of the Regulation of Attorneys Act, however, students may not represent them, nor be paid. See Bengoshi Ho [Attorneys Act], Law No. 205 of 1949, art. 72.

⁴³ See *supra* Part I.A.

⁴⁴ See The Council's Recommendations, *supra* note 8, ch. III, pt. 2, 1; Yanagida, *supra* note 8, at 19; Miyazawa, *supra* note 17, at 493; see also notes 85-86 and accompanying text.

⁴⁵ Shigeru Otsuka, *Nihon-gata Hogakubu no Hogaku Kyoiku ni kansuru Hansei to Kosatsu* [A Reflection and Some Proposals on Legal Education at the Faculty of Law in Japan], 33 TOKAI L. REV. 145, 146 (2005), points out that Itsutaro Suehiro, leading Civil Law professor at the University of Tokyo in the first half of

of abstract ideals has dominated, and few have reached concrete conclusions yet.

B. NEW LAW SCHOOLS

With the criticism towards traditional one-way lecture methods in mind, the council's recommendation supports "bi-directional" and "multidirectional" methods with small class size for the new law programs.⁴⁶ The council had in mind an American-style Socratic method. Therefore, universities needed to emphasize "rich communication between instructors and students and among students in small class[es]" in their application for accreditation.⁴⁷

To tell the truth, whether this kind of pledge has been honored depends on each instructor's skill and efforts.⁴⁸ Instructors who have seminar know-how in traditional undergraduate programs seem better able to adapt to the new teaching model. Though it is just my impression through limited observation, the new approach seems to be working in classes for advanced studies of fundamental areas of law, such as civil law or criminal law. In these kinds of classes, students already understand the basics of law, so the emphasis of the class is geared towards application. In other circumstances, however, instructors have to rely (sometimes heavily) on traditional lecture methods. This is especially true for the first-year courses within the three-year programs, because the entire structure of every major area of law must be taught in a limited time to students with diverse backgrounds, some with a legal education background, and some without.

Since the new programs should be designed to provide "a bridge between legal education and legal practice on the basis of

20th century, already regretted ineffectiveness of legal education caused by students' diverse career paths as early as in 1932.

⁴⁶ "[C]lasses at law schools must not simply be one-way lectures, but should be bi-directional (with give-and-take between teacher and students) or multidirectional (with interaction among students, as well) and rich in content." The Council's Recommendations, *supra* note 8, ch. III, pt. 2., 2.(2)d; *see also* Accreditation Standards, *supra* note 37, at 2(5).

⁴⁷ Accreditation Standards, *supra* note 37, at 2(5)(4).

⁴⁸ Cf. Makoto Ida et al., *Shidosha Zadankai: Hokodaigakuin de Oshiete Kanjita Koto [Instructors' Round-table Talk: What We Feel When We Teach at Law Schools]*, 295 HOGAKU KYOSHITSU 26 (2005) (providing instructors' view of education in the new setting).

systematic legal theory,”⁴⁹ a certain number of courses focusing on legal practice should be provided. Though concrete design is left to each institution, parts of the traditional Legal Research and Training Institute program are to be included.⁵⁰ As part of such “practical” courses, many law schools offer clinical courses, often in cooperation with local bar associations.⁵¹ Institutions often offer moot court and externships as well. As teaching practical matters is in its first attempts for legal instructors, we are still in the trial-and-error process in designing and conducting these kinds of courses, and no norm or standard has been established.

With respect to study materials, we experienced minimal change. However, new textbooks and other study materials were published as new schools were starting.

IV. TEACHING PROFESSION

A. TRADITIONAL PROGRAMS IN LAW

Instructors of traditional legal education are heavily academically oriented. They are usually trained through traditional graduate programs and tend to have little or no experience outside the academic world.⁵² Very few belong to the bar. A faculty meeting, which usually holds authority in selection of new faculty members, usually makes its decisions based on publications and other academic qualifications. An instructor often considers himself or herself primarily as an academic researcher/scholar rather than a teacher. Many have doctoral degrees, though this is not required.

The attitude among instructors is a source of dissatisfaction for students. While traditional educational functions are usually entrusted to each instructor’s personal awareness and effort,

⁴⁹ The Council’s Recommendations, *supra* note 8, ch. III, pt. 2., 2.(2)d; *see also* Accreditation Standards, *supra* note 37, at 2(5)(1). R

⁵⁰ *See infra* Part V.A.

⁵¹ For example, Hokkaido University has had close ties with Sapporo Bar Association.

⁵² *See supra* note 34. R

many universities recently began institutional programs to improve education, such as evaluation by students or peer review of classes.⁵³

Lawyers sometimes teach part-time while practicing, or full-time after retirement, as do retired judges, prosecutors and others who have worked in the legal world.⁵⁴ Sometimes they are expected to bring practical experience to students and to the academic community as a whole. In other cases, however, they just teach subjects with a method similar to those of academic instructors. It depends on the reason the institution has invited the practitioner.

B. NEW LAW SCHOOLS⁵⁵

As the central part of the new program of training future lawyers, new law programs want skilled and experienced instructors. The regulation requires that, in principle, each instructor must have *both* more than five years of teaching experience *and* certain academic qualifications.⁵⁶

In addition, more than 20 percent of all instructors should be so-called “practical instructors,” who have more than five years of experience in legal practice as lawyers, judges, or public prosecutors.⁵⁷ At least one-third of them must be full-time.⁵⁸ This is because the new law schools emphasize education on legal practice and “practical instructors” are expected to teach practical courses.⁵⁹

⁵³ For example, Hokkaido University conducts a survey of classes evaluated by students. For the results of the 2004 survey, see *Gakusei ni yoru Jugyo Anketo Kekka (Heisei 16 Nendo Jisshi Bun)* [Result of Course Evaluations by Students (2004)], <http://www.hokudai.ac.jp/bureau/tenken/hokoku/2005/student-evaluation2/t0.html> (last visited Feb. 7, 2006).

⁵⁴ For example, a patent attorney sometimes teaches Intellectual Property, or someone who has worked in a legal department of a trading company sometimes teaches International Business Transactions.

⁵⁵ For general information, see Accreditation Standards, *supra* note 37, at 2.

⁵⁶ See Maxeiner & Yamanaka, *supra* note 1, at 324-325 (showing that MEXT refused to approve some prospective instructors).

⁵⁷ See Accreditation Standards, *supra* note 37, at 2(4)(3).

⁵⁸ *Id.*

⁵⁹ See *supra* notes 49-51 and accompanying text.

Since the council's recommendation emphasizes small class size, there should be at least twelve instructors in a law school, and the student/faculty ratio should be less than fifteen to one, which is much smaller than that of usual undergraduate programs.⁶⁰

V. BAR EXAMINATIONS AND THE LEGAL PROFESSION

As of April 1, 2006, there were 22,056 attorneys-at-law with full licenses under Japanese jurisdiction.⁶¹ The population of lawyers increased gradually through history: there were 5,862 attorneys in 1950; 10,197 in 1974; 15,215 in 1994; and 20,240 in 2004.⁶²

The quota of judges was 2,385 in 2004,⁶³ and that of public prosecutors is 1,505.⁶⁴ These numbers have increased through the decades, though at slower rates than the numbers of privately practicing attorneys.⁶⁵

It has been pointed out that Japan has a relatively small population of lawyers compared to other parts of the world.⁶⁶ In 2004, there were 18.91 lawyers per 100,000 people.⁶⁷ By comparison, there were 372.05 in the U.S. (2001-2004), 195.09 in England and Wales (2002-2004), 185.23 in Germany (2002-2004), and 79.09 in France (2003-2004).⁶⁸ East Asian countries/regions experience situations similar to Japan; there were 27.6 in Taiwan (2001/02) and 15.2 in South Korea (2000/01).⁶⁹ Recognition of the lawyer shortage was and is one of the major reasons behind legal education reform.⁷⁰

⁶⁰ Accreditation Standards, *supra* note 37, at 2(4)(2).

⁶¹ JFBA, Nichibenren no Kaiin [Members of JFBA] (Apr. 1, 2006), <http://www.nichibenren.or.jp/jp/nichibenren/kaiin/kaiin.html>.

⁶² HANREI CHOSA KAI [CASE RESEARCH SOCIETY], SAIBANSHO DATA BOOK 2004 [COURTS DATA BOOK 2004] 24 (2004).

⁶³ *Id.* The quota of summary court judges is excluded. I could not find statistics on actual numbers of judges or public prosecutors.

⁶⁴ *Id.* The quota for deputy attorneys is excluded.

⁶⁵ *Id.*

⁶⁶ See *supra* note 16 and accompanying text.

⁶⁷ Including practice attorneys, judges and public prosecutors.

⁶⁸ CASE RESEARCH SOCIETY, *supra* note 62, at 25.

⁶⁹ HOSO NO HIKAKU HO SHAKAIGAKU [THE LEGAL PROFESSION IN TRANSITION: A COMPARATIVE SOCIO-LEGAL STUDY] 390 (Seigo Hirowatari ed., 2003).

⁷⁰ See *supra* Part I.B.

In addition, most of the lawyers do their business in urban areas; according to statistics from the Japan Federation of Bar Associations (“JFBA”),⁷¹ three local bar associations in Tokyo have in total 10,687 attorneys, or 48.5 percent, of the 22,056 licensed. Except for those in Tokyo, only two bar associations have more than one thousand attorneys: the Osaka Bar Association (2,973) and the Aichi Prefecture Bar Association (1,010).⁷² Among fifty-two local bar associations,⁷³ more than half of them have fewer than one hundred members.⁷⁴ Moreover, many lawyers tend to maintain their offices in the capital of each prefecture, where the District Court sits.

A. THE TRADITIONAL BAR EXAMINATION AND THE LEGAL PROFESSION⁷⁵

No educational background is required to sit for the traditional bar examination, but applicants without any college education must take a preliminary test.⁷⁶ The bar examination consists of three steps. The first step, which is held in May, tests constitutional law, civil law, and substantive criminal law with multiple-choice questions. The second step, which is held in July, is the essay portion, which consists of questions on constitutional law, civil law, criminal law, commercial law, civil procedure, and criminal procedure. This is the most difficult part of the whole exam. Those who have passed the second step are interviewed in October, but few fail.

One of the most important facts about the traditional bar examination is that it is a competitive examination. The number

⁷¹ JFBA, Bengoshi-kai Betsu Kaiin-su [Number of Members of Each Bar Association] (Apr. 1, 2006), http://www.nichibenren.or.jp/ja/jfba_info/membership/data/060407.pdf.

⁷² *Id.* Aichi Prefecture has Nagoya, the third largest city in Japan.

⁷³ Each district for a District Court, which usually consists of one prefecture, has one local bar association, except for Tokyo, where there are three. Since Japan has an integrated bar system, the number of members of a bar association equals the number of practicing lawyers. Attorneys Act, Law No. 205 of 1949, arts. 8, 9.

⁷⁴ *Id.*; see also Kazuhiro Yonemoto, *The Shimane Bar Association: All Twenty-One Members Strong*, 25 LAW IN JAPAN 115 (Daniel H. Foote trans., 1995), reprinted in JAPANESE LAW IN CONTEXT, *supra* note 7, at 50.

⁷⁵ See Miyazawa, *supra* note 8, at 491-94; RAMSEYER & NAKAZATO, *supra* note 16, at 6-9.

⁷⁶ See *supra* note 9 and accompanying text.

of successful candidates was limited to five hundred for a long time.⁷⁷ The number gradually increased in the 1990s and reached 1,000 in 1999, a little less than 1,200 in 2002, and a little less than 1,500 in 2004.⁷⁸

The examination is so competitive that most applicants have to take it several times and it usually takes years to pass the whole exam. The pass rate is an infamously low 2 to 4 percent,⁷⁹ and the average age of successful applicants in 2005 was 29.03.⁸⁰ Many people continue to study for the exam for years after graduation from colleges, well into their late twenties or thirties; they may study while they work, or they may just study without working!⁸¹ This phenomenon has been considered to waste young talent and to result in a myopic tendency of younger lawyers, who lack broader social experience.⁸² Reforms had been implemented from time to time,⁸³ but no radical solution was imposed until the announcement of the new law school plan.⁸⁴

As classes in the university law programs were not designed to produce lawyers or to prepare students to take the bar examination, most of the applicants (and would-be applicants) go to cram or prep schools.⁸⁵ The prep schools teach only subjects tested in the bar exam and focus on test-taking skills. In fact,

⁷⁷ Ministry of Justice [MOJ], Shihoshiken Dai-2-ji Shiken Shutsuganshasu, Gokakushasu to no Suii [Transition of Number of Applicants for the Bar Examination] (Oct. 29, 1999), <http://www.moj.go.jp/PRESS/991029/1920-s2.html>; see also Miyazawa, *supra* note 17, at 90; Shozo Ota & Kahei Rokumoto, *Issues of the Lawyer Population: Japan*, 25 CASE W. RES. J. INT'L L. 315, 320 (1993).

⁷⁸ MOJ, Shihoshiken Dai-2-ji Shiken Shutsuganshasu, Gokakushasu to no Suii [Transition of Number of Applicants for the Bar Examination] (Nov. 9, 2005), <http://www.moj.go.jp/PRESS/051109-1/17-4syutu.html>.

⁷⁹ *Id.*

⁸⁰ MOJ, Shihoshiken Dai-2-ji Shiken no Kekka ni tsuite [Result of the Bar Examination] (Nov. 9, 2005), <http://www.moj.go.jp/PRESS/051109-1/17-4soukatu.html>.

⁸¹ They depend on their family, parents or a spouse, for their living.

⁸² Ota & Rokumoto, *supra* note 77, at 318-19; RAMSEYER & NAKAZATO, *supra* note 16, at 9.

⁸³ An increase in the number of those who successfully pass the exam is one of the reforms.

⁸⁴ For a description of the Bar Exam reform, see Miyazawa, *supra* note 17, at 90-97.

⁸⁵ Miyazawa, *supra* note 8, at 493; Yanagida, *supra* note 8, at 19; see also The Council's Recommendations, *supra* note 8, ch. III, pt. 1. (“[A]mid the increasingly fierce competition to pass the bar examination, students have become increasingly dependent on preparatory schools, which has caused the situation referred

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most of the applicants regard studying at the prep schools as more important than studying at the universities.⁸⁶ The applicants study only subjects/areas of law that are tested in the exam, and they do not pay attention to other areas of law or related studies, even if they may be helpful to practice law.⁸⁷ Therefore, criticisms suggest that those who passed the exam in recent times tend to have limited intellectual horizons.⁸⁸

Successful applicants join the Legal Training and Research Institute (“LTRI”), a sub-division of the Supreme Court. They receive one-and-a-half years of training in legal practice, especially legal writing.⁸⁹ The program includes a one-year internship in civil and criminal courts, offices of public prosecutors, and offices of private practitioners, for a period of three months each. However, it does not emphasize studying the rule of law itself, because those enrolled are considered to have mastered the basics of law when they passed the bar examination.⁹⁰ This step has been considered important, and the number of seats at the LTRI has defined the number of those who pass the bar exam.⁹¹

to as the ‘double school phenomenon’ (trend of going to two schools, the university and the preparatory school) or the ‘phenomenon of leaving universities’ (dai-gakubanare; the tendency to ignore university classes and focus only on preparatory schools); and this has had a serious adverse impact on securing the quality of those who are to become legal professionals.”). Some universities have offered classes to prepare for the Bar Exam as well. *See Yanagida, supra* note 8, at 19 n.32. However, it has not been a norm, nor has any governmental regulation required one.

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⁸⁶ The Council’s Recommendations, *supra* note 8, ch. III, pt. 1; Miyazawa, *supra* note 8, at 493; Yanagida, *supra* note 8, at 23 n.38. However, I have observed few people who completely skip university education, probably because it is too risky to close possibilities other than the bar exam and a college degree is helpful in finding employment, both in and out of the legal practice.

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⁸⁷ As I observe, this tendency seems to have grown stronger after so-called “non-law electives” were abolished from the essay part in 1992 and so-called “law electives” were abolished in 2000. For “non-law electives,” applicants chose one out of six non-law subjects, which included, for example, political studies, psychology and accounting. For “law electives,” applicants chose one from six areas of law subjects such as administrative law, bankruptcy or labor and employment law.

⁸⁸ *See, e.g.,* The Council’s Recommendations, *supra* note 8, ch. III, pt. 1; Miyazawa, *supra* note 17, at 111.

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⁸⁹ The term was two years until 1998 with sixteen months of internship, for four months for each.

⁹⁰ Yanagida, *supra* note 8, at 111.

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⁹¹ *See Ota & Rokumoto, supra* note 77, at 320; RAMSEYER & NAKAZATO, *supra* note 16, at 6-7.

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When they have completed the LTRI program, candidates are admitted to the bar with full license.⁹² The license is permanent and for life; no continuing legal education is required.⁹³ Judges and public prosecutors are employed upon the completion of the LTRI program as well.⁹⁴ However, they are selected through an informal process during the LTRI program; as the LTRI instructors include judges and prosecutors, they recruit students they consider appropriate for those offices.⁹⁵ It is said to be difficult, or virtually impossible, for those who are not selected through the TRI program to take office as judges or public prosecutors.⁹⁶

B. NEW BAR EXAMINATION AND LEGAL PROFESSION

We have not seen the new bar examination yet. The first exam will be conducted in May 2006, after the first students completed the new program in March 2006.⁹⁷ Only those who have completed the new law programs are eligible to sit for the new bar exam. The final traditional bar exam will be held in 2011, and thereafter only the new one will be conducted.⁹⁸ However, an annual preliminary test will be offered for those who do not

⁹² Attorneys Act, Law No. 205 of 1949, art. 4.

⁹³ While there is no regulation by the government or the bar on continuing legal education at present, the Council's Recommendations call for the need to develop CLE. The Council's Recommendations, *supra* note 8, ch. III, pt. 2, 5.

⁹⁴ Saibansho ho [Judiciary Act], Law No. 59 of April 16, 1947, art. 43; *see also* RAMSEYER & NAKAZATO, *supra* note 16, at 16-17; Tom Ginsburg, Japanese Legal Reform in Historical Perspective 9-10 (Oct. 28, 2002) (unpublished manuscript, presented at the American Society for Legal History 2002 Annual Meeting) available at <http://www.law.uiuc.edu/faculty/documents/vitae/ginsburg.pdf>.

⁹⁵ HOSO NO HIKAKU HO SHAKAIGAKU, *supra* note 69, at 409; *see generally* SAIBANKAN NI NARENAI RIYU [THE REASON ONE CANNOT BE A JUDGE] (Net 46 ed., 1995).

⁹⁶ *See generally* SAIBANKAN NI NARENAI RIYU, *supra* note 95.

⁹⁷ On April 10, 2006, MOJ announced the number of the applicants of the first new bar examination, which will be held on May 19 through 23. MOJ, Heisei-18-nen Shin Shihoshiken no Juken Yoteisha [Prospective Candidates of the 2006 New Bar Examination] (Apr. 10, 2006), http://www.moj.go.jp/SHIKEN/SHIN_SHIHOU/shin04.pdf. 2,137 applied and 2,125 will take the exam. *Id.* The difference seems to represent those who had applied but could not complete the law school programs.

⁹⁸ Shiho Shiken Ho [Bar Examination Act], Supplementary Provision, Law No. 138 of 2002, art. 7.

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have the opportunity to attend a law school after 2011; those who pass the preliminary test are eligible to sit for the new bar exam as well.

The new bar exam consists of a multiple-choice section and an essay section.⁹⁹ In the multiple-choice section, three areas are tested: constitutional and administrative law; civil law, commercial law and civil procedure; and criminal law and procedure. In the essay section, in addition to the subjects examined by the multiple-choice questions, an elective is tested, for which each applicant will choose one of eight areas of law.¹⁰⁰

The LTRI program for legal practice will be maintained.¹⁰¹ However, the term will be reduced to one year. Upon the completion of the LTRI program, graduates will be lawyers, judges, or public prosecutors.

Some problems in the new bar examination remain. While graduates of the new law programs are eligible to sit for the exam, they may take it only three times and within five years of graduation.¹⁰² Those who cannot pass within three times or five years will have wasted their time, money, and other resources spent in attending a law school.

In addition, the number of those who pass will be limited; the new bar exam, like the traditional bar exam, is a competitive examination, not a qualifying examination. Eight hundred will pass the first new exam in 2006 (along with eight hundred for the traditional exam, sixteen hundred in total), and when the traditional exam is abolished in 2011, three thousand will pass the new exam.¹⁰³ However, universities will send 5,500 to 6,000 graduates of the new program to be tested every year;¹⁰⁴ there is an apparent gap in numbers. Notwithstanding the fact that the new law schools are designed to train practicing lawyers, more than half

⁹⁹ *Id.* §§ 2, 3.

¹⁰⁰ At present, elective subjects are scheduled to include Intellectual Property, Labor and Employment Law, Tax Law, Bankruptcy, Economic and Antitrust Law, Public International Law, Transnational Private Law (including Conflict of Laws, International Civil Procedure and International Transactions) and Environmental Law. These subjects will be re-considered after a few years.

¹⁰¹ The Council's Recommendations, *supra* note 8, ch. III, pt. 2, 4.

¹⁰² Bar Examination Act, art. 4.

¹⁰³ The Council's Recommendations, *supra* note 8, ch. III, pt. 1, 1.

¹⁰⁴ *See supra* notes 25-29 and accompanying text.

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of the graduates will not be admitted to the bar. Combined with the three-time or five-year limitation, this governmental policy has made students, instructors, and institutions anxious about, and sometimes angry at, the new bar examination.¹⁰⁵ Contrary to the ideal of the reform, students are again forced to concentrate on the tested subjects.

This odd inconsistency of the governmental policy is, as I understand it, the result of the conflict of policies of the MEXT and of the Ministry of Justice. At the early stages of the reform, 70 to 80 percent of graduates of new programs were expected to be admitted to the bar.¹⁰⁶ To achieve this goal, the ministry expected only a limited number of universities to offer such new programs.¹⁰⁷ On the other hand, the MEXT, which has authority in accreditation of higher education, adopted a policy that any institution meeting certain standards would be accredited and no artificial control of numbers of schools or students should be made.¹⁰⁸ The MEXT's policy was based on a broader governmental policy—deregulation; the famous (or infamous) Japanese administrative practice of “administrative guidance” was avoided. Under the MEXT's policy, many universities, especially private schools, rushed to apply for new programs because they thought that a university without a new law school might look inferior to a university with a law school.¹⁰⁹ In the end, far more universities established new law schools, admitting many more students, than originally anticipated.¹¹⁰

Everyone recognizes this is a major problem, but few concrete proposals have been offered so far. Schools that produce a certain number or ratio of successful graduates can escape the problem, anyway. However, schools that can produce few or no

¹⁰⁵ Cf. Miho Nishijima, *Sanshin Hakushi? Jukensei ni Noshikakaru Shin Shihoshiken no Juatsu* [Three-Struck Doctor? Pressure of the New Bar Examination upon Candidates] (Jan. 7, 2006), <http://allabout.co.jp/study/adultedu/closeup/CU20051204A/index.htm>.

¹⁰⁶ See The Council's Recommendations, *supra* note 8, ch. III, pt. 2., 2.(2)d.

¹⁰⁷ Fujikura, *supra* note 17, at 943; Maxeiner & Yamanaka, *supra* note 1, at 322-23.

¹⁰⁸ Accreditation Standards, *supra* note 37, at 2 (“From the perspectives of, among other things, deregulation, enhancement of conditions for free competition in higher education is to be sought. . .”).

¹⁰⁹ Maxeiner & Yamanaka, *supra* note 1, at 323.

¹¹⁰ *Id.* at 322-23.

successful graduates will be driven out.¹¹¹ Possible careers for unsuccessful graduates are also recognized as an issue but little discussion has occurred. It is natural for professors to avoid discussing the issue because otherwise their law school might look weak.

VI. CONCLUSION

We are in the middle of a major social experiment. The dust has not settled yet. We are not sure whether the reform produces the intended outcome.¹¹² In my opinion, the confusion comes from the fact that we did *not* change one major aspect of the traditional system of training lawyers: the competitive bar examination, limiting the number of successful candidates.

I think that, during the reform process, we did not have enough discussion regarding the qualifications required for lawyers. We did have some discussions, but they were too abstract; we did not define in clear terms what the minimum qualifications for a lawyer are. Problems in traditional legal education and the system of training lawyers have been recognized; it was apparent that some change was necessary. However, we can design a system only after we define a clear and concrete goal and itemize functions of each part of the whole training process, including the role of a bar examination.

The role of a bar examination was not considered much during the reform process. It was taken for granted that a bar exam would be maintained with a few modifications, even though the limitation on the number of successful candidates was the source of the problems of traditional legal education. If the purpose of the exam is to maintain the minimum qualifications of lawyers, it should be a qualifying examination, which all of the candidates who show certain competence should pass; less-able attorneys will be removed by the force of the legal market. If the purpose of the exam is, instead, to recruit the best and brightest from society, a competitive examination might be appropriate; however,

¹¹¹ Competition has already begun in the form of gathering excellent students by, for example, offering tuition waiver or scholarships. Maxeiner & Yamanaka, *supra* note 1, at 326-27.

¹¹² Hoyoon Nam, *U.S.-Style Law School ("Law School") System in Korea: Mistake or Accomplishment?*, 28 *FORDHAM INT'L L. J.* 879, 904-09 (2005) (pointing out negative evaluation by Korean lawyers of Japanese legal education reform).

much broader electives should be included. A competitive examination that consists of a limited number of required subjects drives applicants to narrow test-taking skills that may be of questionable relevance to practicing law and providing competent legal services.¹¹³ Again, the new bar exam defines the behavior of law school students.¹¹⁴ Moreover, since the new law programs are institutionally connected to it, schools and instructors are also driven by the fear of the exam.

At any rate, we must cope with the situation. A stormy sea still lies ahead.

¹¹³ To put it another way, it may be appropriate to say that distrust of traditional university education was so serious during the reform process, see *supra* Parts III.A. & IV.A., that reliable inspection of the outcome of the new legal education was desired. This view accords with the fact that the legal education reform was not only a part of the Justice System Reform but also of the reform of university systems as a whole, which I didn't emphasize in this paper. Katsumi Yoshida, *Legal Education Reforms in Japan: Their Background, Rationale and the Goals to Be Achieved*, 24 WIS. INT'L L. J. 209 (2006).

¹¹⁴ It should be added that, though I show a pessimistic view of the reform, I am not pessimistic about the enrolled students I meet in class. I know they are enthusiastic and have a concrete sense of purpose. The problem is that their enthusiasm might not be rewarded.

