

# **STRUCTURAL AND INSTITUTIONAL ARRANGEMENTS OF LEGAL EDUCATION: JAPAN**

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Law and lawyers in Japan are very inward looking, domestically oriented, and domesticated, in the sense that neither is known to initiate innovative changes; rather, they tend to confirm status quo ante. Very few law students have an interest in venturing into the foreign/non-Japanese environment, and our curriculum reflects their lack of curiosity, offering few stimuli to look outward. That lack of interest dramatically changes once students graduate, but young alumni voices are too small to function as leverage to change legal education. Having said that, I will now provide a rough description of legal education in Japan.

Japan currently provides three different kinds of legal education: a four-year undergraduate study leading to a first degree in law; a three-year professional education at the graduate level, expected to confer its first J.D.s as early as spring of 2006; and eighteen-months' training at the Legal Training and Research Institute, considered to be part and parcel of the judicial system.<sup>1</sup>

## **I. BRIEF SKETCH OF LEGAL EDUCATION: UNDERGRADUATE AND PROFESSIONAL**

Many Japanese universities offer four-year undergraduate education in law and confer the first degree in law.<sup>2</sup> This has been the traditional law degree, in which students are expected to be generally knowledgeable about law but not necessarily at the level required of legal professionals. It is estimated that

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<sup>1</sup> It might be no surprise to many comparative lawyers to state that most descriptions of legal education, the legal system, and legal qualifications in Korea and Taiwan match those of Japan. Even the episode of President Roh and the openness of professional legal qualifications have an equivalent in a story of a young ex-wife of the head of a mafia-like gangster organization who not only did not have a college education but lacked a high school diploma. She had dropped out of school in her early teens but eventually qualified as a lawyer because the National Bar Examination is open to all who wish to prove themselves.

<sup>2</sup> There are ninety universities conferring B.A. in law and twenty-seven universities offering law-related B.A. courses. See Table 1, *infra*.

more than forty thousand people receive law degrees each year.<sup>3</sup> Until recently, only a handful of those who studied law would aspire to be “attorneys-at-law” by taking national bar examinations.<sup>4</sup> The rest are more likely to enter the real world directly after graduation, often to be employed as white-collar workers.<sup>5</sup>

The fact that most graduates would not consider themselves particularly knowledgeable in law derives from the structure of the law curriculum in general as a combined course on law, political science, and public administration.<sup>6</sup> Some students may take public law<sup>7</sup> as well as political science subjects<sup>8</sup> and sit for national and local civil service examinations, while others may take the “foundational”<sup>9</sup> law and other relevant law subjects appropriate for bar examinations. The majority, however, takes private

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<sup>3</sup> See Table 1, *infra*; see also Ministry of Educ., Culture, Sports, Sci. & Tech. [MEXT], Gakko kihon chosa, Heisei 17 nendo, koto kyoiku kikan tokeihyo ichiran [Basic Survey of Educational Institutions, Fiscal Year 2004, Statistical Tables pertaining to Higher Education], [http://www.mext.go.jp/b\\_menu/toukei/001/05122201/004.htm](http://www.mext.go.jp/b_menu/toukei/001/05122201/004.htm) (last visited Jan. 20, 2006) [hereinafter Gakko kihon chosa].

<sup>4</sup> We shall refer to those national bar examinations held since 1946 as the Current Bar Examination, and to those bar examinations to be held from 2006 onward as the New Bar Examination. The Current Bar Examination, which was open to all those who apply regardless of the applicant’s academic qualifications, will be held in the present format until 2010. In order to take the New Bar Examination, applicants are required to graduate from a Japanese law school. After 2011, an annual preparatory examination (similar to the Current Bar Examination in form) will provide an opportunity to those who have not graduated from a law school.

<sup>5</sup> See Gakushuin Univ., <http://www.gakushuin.ac.jp/univ/adm/place/page2.html> (last visited Apr. 19, 2006), for statistical information concerning Gakushuin graduates.

<sup>6</sup> The two national universities which have offered law degrees since 19th century, Tokyo and Kyoto, were established for the purpose of selecting and educating elite public officials at the national level, hence their curricula focused on how to govern (by and with law). Many of the “post-war” faculties (established after the 1947 educational reform) have taken the Tokyo/Kyoto curricula as their model but not exactly their function of education for public officials, nationally and locally.

<sup>7</sup> Public law subjects are constitutional law, administrative law (tax law, economic regulations law) international law and comparative constitutional law.

<sup>8</sup> Political theories, process and histories are the more common subjects being offered. Recent years have seen international relations and regional studies being included as well. See Table 2, *infra*, as a sample undergraduate law curriculum.

<sup>9</sup> “Six codes” have been the staple subject matters of bar examinations: constitutional law, civil codes, commercial law, civil procedure, criminal law and criminal procedure.

law subjects and/or whatever may strike their fancy, because most companies demonstrate no interest in what students have learned at university when interviewing would-be graduates.<sup>10</sup> In combination with the fact that legal education at the undergraduate level tends to emphasize what knowledge one has acquired of the black-letter laws (and doctrinal theories pertaining to them) rather than how one can find and apply law, students see themselves not as knowledgeable in law but as adaptable to the real world's needs.<sup>11</sup> This image of undergraduate legal education as educating "generalists" may well be one of the reasons for the business communities, particularly Keizai Doyukai (Japan Association of Corporate Executives) and Nippon Keidanren (Japan Business Federation), to demand more specialized "professional" education of law in recent years.<sup>12</sup>

The recently established so-called law schools,<sup>13</sup> which are professional schools at the graduate level, are expected to confer

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<sup>10</sup> "Mentatsu" (How to Become an Expert at Job Interviews), a series of books extremely popular with students applying for jobs, categorize students by sex and by "science" or "non-science" major only. The assumption here is that students won't be asked about what they have learned.

<sup>11</sup> Based on comments of students taking my classes.

<sup>12</sup> The first report to propose an increase in the number of judges and lawyers in general was Keizai Doyukai's Gendai nihon shakai wo kangaeru iinkai (Committee to reflect upon contemporary Japan, also known as Miyauchi Committee after its Chairperson) published in GENDAI NIHON SHAKAI NO BYORI TO SHOHO [THE PATHOLOGIES OF AND REMEDIES FOR CONTEMPORARY JAPAN] in June 1994. This was followed in January 1997 by Keizai Doyukai's GUROBARU KA NI TAIOSURU KIGYO HOSEI NO SEIBI WO MEZASHITE: MINKAN SHUDO NO SIJO KEIZAI NI MUKETA SEIDO TO RIPPO, SHIHO NO KAIKAKU [TOWARD ESTABLISHING CORPORATE LEGAL STRUCTURE TO MEET THE CHALLENGE OF GLOBALIZATION: THE SYSTEM FOR MARKET-LEAD ECONOMY AND ACCOMPANYING LEGISLATIVE AND JUDICIAL REFORMS]. Nippon Keidanren followed by publishing its report SHIHO KAIKAKU NI TSUITE NO IKEN [OPINIONS ON JUDICIAL REFORM] in May 1998, possibly the first proposal for establishing professional schools of law at the graduate level. See Hiroshi Saito, *Shiho seido kaikaku: futatsu no nagare no goryuten* [Reforming Judicial System: Converging Two Trends], 1 GEKKAN SHIHO KAIKAKU [JUDICIAL REFORM MONTHLY], Oct. 1999, at 47.

<sup>13</sup> Sixty-eight law schools opened their doors and admitted 5,767 students in April 2004. Six more opened in 2005, bringing the number of law schools to seventy-four, and admitting an additional 5,544 new students. Since there were no applications to establish law schools in June of 2005, there will be no new law schools opening in April 2006. Of the seventy-four schools, twenty-three are national, two are public (Tokyo Metropolitan and Osaka City), and forty-nine are private institutions. See Ministry of Educ., Culture, Sports, Sci. & Tech., [http://www.mext.go.jp/a\\_menu/koutou/houka/houka.htm](http://www.mext.go.jp/a_menu/koutou/houka/houka.htm) (last visited Sept. 29, 2005); Ministry of

the new equivalent of the Juris Doctor (J.D.), on those who shall graduate.<sup>14</sup> It is theoretically a three-year course, on the assumption that applicants do not necessarily have law degrees or knowledge about the law but might have had rich and diverse experiences they could bring into law.<sup>15</sup> To adjust to the fact that there are many who actually possess law degrees and need not start from scratch, most law schools also provide a two-year option.<sup>16</sup>

Most law schools are affiliated with universities that confer law degrees to undergraduate students.<sup>17</sup> Certain national law schools are affiliated with universities conferring social science degrees such as economics, but not necessarily law.<sup>18</sup> One law school is “independent” in the sense that it is not directly affiliated with an undergraduate educational institution,<sup>19</sup> although it

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Educ., Culture, Sports, Sci. & Tech., [http://www.mext.go.jp/a\\_menu/koutou/houka/05071101.htm](http://www.mext.go.jp/a_menu/koutou/houka/05071101.htm) (last visited Sept. 29, 2005); Ministry of Educ., Culture, Sports, Sci. & Tech., [http://www.mext.go.jp/b\\_menu/houdou/17/05/05052002.htm](http://www.mext.go.jp/b_menu/houdou/17/05/05052002.htm) (last visited Sept. 29, 2005).

<sup>14</sup> There are 2,350 students registered in two-year (shortened) courses and thus may graduate in March 2006. Judging from the number of those who took “trial” for the New Bar Examination in August 2005, the actual number of those who graduate probably would be closer to 2,100 than 2,350.

<sup>15</sup> See HOKA DAIGAKUIN (KASHO) KOSO NI KANSURU KENTO NO MATOME [SUMMARY REPORT OF DISCUSSION ON THE (TENTATIVELY CALLED) LAW SCHOOL SCHEME] 2, <http://www.kantei.go.jp/jp/sihouseido/monbu-dex.html> (last visited Jan. 20, 2006).

<sup>16</sup> Some law schools set different entrance examinations for three-year and two-year courses: the former would require solid knowledge of law whereas the latter tries to select people with diverse experiences and logical minds. Others admit students to the three-year course, and then, once students are admitted, they have to take examinations administered by individual schools testing their knowledge of various legal areas. If they are approved by each school as sufficiently knowledgeable, they may receive up to thirty credits, equivalent of one year at law school, and may finish law school in two years instead of three. The ratio of three-year students to two-year students varies from institution to institution. It transpired that many smaller law schools end up having no three-year students at all.

<sup>17</sup> See Table 1, *infra*, for a list of universities conferring law degrees.

<sup>18</sup> These are Tsukuba University, Yokohama National University, Shinshu University, Shizuoka University, Shimane University, Kagoshima University and Rikkyu University. Kagawa University, which has Faculty of Law, and Ehime University, which does not, jointly established Kagawa-Ehime Universities Law School. See Table 1, *infra*.

<sup>19</sup> The corporation which governs Omiya Law School also has one university with law faculty, but the law school claims to be totally unrelated to the university.

has full cooperation with one of the prefectural bar associations. All students expect themselves to become qualified lawyers, although they have to pass bar examinations, spend twelve months training at the Legal Training and Research Institute,<sup>20</sup> and pass the Final Examination in order to be properly qualified. The first group will be graduating in March 2006, and the first new bar examination will be administered in late May of that year.<sup>21</sup>

## **II. PROCEDURE TO ESTABLISH EDUCATIONAL ENTITIES: RELATIONSHIP WITH THE MINISTRY OF EDUCATION, CULTURE, SPORTS, SCIENCE AND TECHNOLOGY**

Universities with undergraduate law departments and law schools are established with the permission of the Ministry of Education, Culture, Sports, Science and Technology (MEXT).<sup>22</sup>

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<sup>20</sup> The Supreme Court established the Legal Training and Research Institute (the Institute) in 1947 for those who passed the Current Bar Examination. At first, the twenty-four months education at the Institute consisted of eight months of lectures-at-large, and various on-the-job training experiences, eight months training at district courts (four months at civil litigation section and four months at criminal litigation section), four months at prosecutors' offices, and four months at practicing lawyers' offices. Since 1998, the training period was cut to eighteen months, and each training sessions were reduced proportionally. The Institute will continue to function as the only professional training institution of law even after the introduction of the New Bar Examination but the training period will be shortened to twelve months, beginning in October 2006. To register as a practicing lawyer, to enter judiciary or prosecutors' offices, one must finish this Institute and pass the Final Examination at the end of one's training period.

Unlike other institutions of legal education, the Supreme Court of Japan is responsible for the Institute, both for its content, personnel and budget. For the reason that it is not part of university education, this Article will not deal with the most important aspect of legal education in Japan.

<sup>21</sup> It is a serious concern of law school students whether society can ever absorb much larger number of lawyers than now. One answer I see is that we are on our way to establishing a "Comprehensive Legal Support System" to provide affordable access to Justice. The scheme will enlarge the range of legal aide in civil disputes, expand legal counsel to the accused, juveniles (proposed at this stage) and (to limited extent) crime victims as well as the defendants. Law school students are dreaming of becoming business lawyers dealing with international transactions and intellectual properties. I suspect that a larger percentage of the new entrants would have to work for legal aid organizations rather than at international law firms.

<sup>22</sup> Gakko kyoiku ho [Law Concerning Educational Institutions], Law No. 26 of 1947, art. 3.

Permission<sup>23</sup> is given to those institutions that satisfy minimum financial and educational requirements. As a general rule, MEXT oversees all the initial stages of establishing institutions of higher education.<sup>24</sup> Once an institution has had their first group of students complete their courses and graduate (four years in the case of establishing a university or a faculty of law and three years in the case of a law school), MEXT only requires that institutions report figures, such as the number of students registered, the number of people employed as members of the faculty and administration, and the institutions' various financial statements.<sup>25</sup>

Law schools are different in that MEXT oversees financial aspects but leaves the educational requirements to people "concerned,"<sup>26</sup> a group consisting of academic lawyers who actively participated in the debate leading up to the program's establishment, judges associated with the Legal Research and Training Institute and its training courses, and practitioners who had shown keen interest and spoken up in the reform process (apparently

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<sup>23</sup> *Id.* art. 4. To be precise, national universities and private (and public, i.e. funded by prefectures and municipalities) institutions differ in their manner of establishing a new school or department financially but are treated alike in terms of educational requirements. It is the Ministry of Finance (MoF) which will be responsible for deciding which national universities may establish a new faculty, (graduate and undergraduate) course, center, school, or institute. Once fiscal arrangements are agreed upon, national universities would apply to MEXT with a submission that they are able to satisfy appropriate educational requirements.

In case of private and public institutions, each must produce detailed financial statements which include meticulously kept past statements showing that the institution is financially healthy and predicting future earning and spending. MEXT is concerned with the financial stability of educational institutions, which are, by definition, non-profit in Japan, so that institutions are offering as much service and assistance as financially possible on one hand (the ideal financial state for educational entities is making barely even), and that students would be able to finish courses they have matriculated (which would be impossible if institutions are bleeding too much red) on the other hand.

<sup>24</sup> *Id.* arts. 60, 60-2.

<sup>25</sup> Gakko kihon chosa, *supra* note 3, is a compilation of data submitted to the MEXT by various educational institutions.

<sup>26</sup> The lists of the members for the law school evaluation committee in 2003, Ministry of Educ., Culture, Sports, Sci. & Tech., [http://www.mext.go.jp/b\\_menu/shingi/daigaku/meibo/03060103.htm](http://www.mext.go.jp/b_menu/shingi/daigaku/meibo/03060103.htm), and now Ministry of Educ., Culture, Sports, Sci. & Tech., [http://www.mext.go.jp/b\\_menu/shingi/daigaku/meibo/05060903.htm](http://www.mext.go.jp/b_menu/shingi/daigaku/meibo/05060903.htm), suggest who are those concerned with establishing law schools.

with encouragement from their bar associations).<sup>27</sup> These individuals were designated by MEXT to evaluate application documents and are now conducting on-site visits to see whether law schools are keeping their promises.<sup>28</sup> Regular members of the commission who oversee the application and visit campuses are totally exempt (or excluded) from the task of overseeing law schools.<sup>29</sup>

Currently, MEXT makes no attempts to inspect and supervise already established institutions in details, including on site-visits.<sup>30</sup> This does not mean that Japanese higher institutions are left free to do whatever they wish once their first class of students graduates. All institutions of higher education are now obliged to have themselves evaluated every seven years (beginning 2004) by accrediting institutions.<sup>31</sup> There are three organizations—National Institution for Academic Degrees and University Evaluation (NIAD), Japan Institution for Higher Education Evaluation (JIHEE), and Japan University Accreditation Association (JUAA)—accredited by MEXT to evaluate universities in general, and two—NIAD and Japan Law Foundation of the Japan

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<sup>27</sup> For example, Kazuharu Kawabata, who has made both lists cited in note 26, is a practicing attorney-at-law and has been designated as “Nichibenren hoka daigakuin mondai tokumei shokutaku” (commissioned by Japan Federation of Bar Associations as their representative on “law school questions.”).

<sup>28</sup> See Ministry of Educ., Culture, Sports, Sci. & Tech., *supra* note 26.

<sup>29</sup> Compare *id.* with the list for other graduate school evaluation committee in 2005, Ministry of Educ., Culture, Sports, Sci. & Tech., [http://www.mext.go.jp/b\\_menu/shingi/daigaku/meibo/05112201.pdf](http://www.mext.go.jp/b_menu/shingi/daigaku/meibo/05112201.pdf), and the list for university evaluation in general Ministry of Educ., Culture, Sports, Sci. & Tech., [http://www.mext.go.jp/b\\_menu/shingi/daigaku/meibo/05060901.htm](http://www.mext.go.jp/b_menu/shingi/daigaku/meibo/05060901.htm) (last visited Jan. 20, 2006).

<sup>30</sup> Until March 2003, MEXT conducted on-site inspections of universities, faculty by faculty. It would designate several professors who were well-respected in their field to visit several institutions a year to evaluate faculties of their own field. The total number of institutions being inspected apparently differs from year to year but the usual number appeared to be around ten faculties per field per year. These inspectors would give recommendations to those faculties which had not met the minimum level, usually about subjects offered or the required number of faculty members. The frequency of the visits depended on the field. Gakushuin’s past record showed that faculty of law had such visits on average of once every ten years whereas faculty of economics had once every twenty years and faculty of letters only once in 1979 since 1949.

<sup>31</sup> Gakko kyoiku ho [Law Concerning Educational Institutions], Law No. 26 of 1947, art. 69-3.

Federation of Bar Associations (JLF)<sup>32</sup>—to evaluate law schools. Japan Association of Law Schools (JALS), unlike its counterpart, the American Association of Law Schools (AALS), does not claim to be an entity to accredit law schools.<sup>33</sup> Since 2000, NIAD has evaluated all national universities, and JUAA evaluated some thirty-four private universities in 2004.<sup>34</sup> Since law schools have not yet graduated a class, MEXT still oversees whether these schools have kept the promises they made when they applied.

In the last decade or so, we have seen two phenomena we had not encountered before: (1) so-called public-private collaboration and (2) application by for-profit entities to establish universities. In cases of public-private collaboration, prefectures and municipalities provide financial and/or land grants to private institutions in order to establish institutes of higher education, particularly new universities with undergraduate (profession-oriented) courses.<sup>35</sup> This public-private collaboration has two purposes: to invite young people to less-populated areas and stimulate regional economy, on one hand, and to receive necessary financial support to start a new enterprise without incurring much cost of its own, on the other.<sup>36</sup> No law department has

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<sup>32</sup> The Japan Law Foundation (JALS) of the Japan Federation of Bar Associations is not the counterpart to the Section of Legal Education and Admissions to the Bar of the American Bar Association. It is a separate entity from the JFBA and claims to be an independent think tank in collaboration with the Japanese Institute of Certified Public Accountants, Certified Public Tax Accountants' Associations, Japan Patent Attorneys Association, Japan Federation of Shiho-Shoshi Lawyers Association and JFBA. See Japan Law Foundation, About the Japan Law Foundation, [http://www.jlf.or.jp/about\\_jlf/1\\_1\\_mokuteki.shtml](http://www.jlf.or.jp/about_jlf/1_1_mokuteki.shtml) (last visited Sept. 29, 2005).

<sup>33</sup> For the functions of JALS, see Japan Ass'n of Law Schs., <http://www.lawschool-jp.info/> (last visited Apr. 19, 2006).

<sup>34</sup> Cf. Nat'l Inst. for Academic Degrees & Univ., <http://www.niad.ac.jp> (last visited Apr. 19, 2006) (for the activities of NIAD); Japan Univ. Accreditation Ass'n, <http://www.juaa.or.jp> (last visited Apr. 19, 2006) (for the activities of JUAA).

<sup>35</sup> See KOTO KYOIKU JOHO SENTA [CENTER FOR INFORMATION ON HIGHER EDUCATION], JIYU KA JIDAI NO SHITSU HOSHO TO SETSUMEI SEKININ [HOW TO GUARANTEE QUALITY AND ACCOUNTABILITY IN THE AGE OF DEREGULATION] ch. 3 § (5). The first cases are said to be Himeji-Dokkyo University (1988) and Wakanai Hokusei Gakuen Junior College (1987).

<sup>36</sup> *Id.* ch. 3, § (4).



been established in this manner so far.<sup>37</sup> Judging from the figures reported from these institutions, many of the public-private collaborations are far from successes.<sup>38</sup>

In case of for-profit entities' application, three entities have applied to establish professional schools at graduate level.<sup>39</sup> So far, professional schools for accounting, business administration, and "digital contents" studies have been established in 2004 and 2005.<sup>40</sup> Many more are applying to establish professional schools in such fields as accounting, management of technology, "visual and digital contents" studies, film business management, teaching, translation, and fashion business management.<sup>41</sup> One concern is that the educational content of these schools is no better than that of trade schools (or the cram schools for national examinations such as chartered accountants) and that these schools are not worthy to be called professional schools at the graduate level.<sup>42</sup> Another concern is that students at these entities may not

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<sup>37</sup> Some regional bar associations have shown great interest in establishing a law school and have lobbied for regional law schools within their jurisdictions. Promises of cooperation from local bars may explain why some national universities without undergraduate law courses have undertaken to establish law schools.

<sup>38</sup> The Wakkanai Hokusei Gakuen Junior College, discussed *supra* note 35, eventually became Wakkanai Hokusei Gakuen University. President Maruyama's 1998 paper admits that there were not sufficient applicants to keep the college open and alleges that becoming a four-year university specializing in teaching information technology is the only way to survive for a small college. Maruyama Fujio, <http://www.wakhok.ac.jp/~maruyam/college/m0825e.html> (last visited Jan. 20, 2006).

<sup>39</sup> Of the three, two entities have applied and established universities with undergraduate courses as well: Faculty of Comprehensive Career (LEC Tokyo Legal Mind University) in 2004, and Faculty of Digital Communications (Digital Hollywood University) in 2005.

<sup>40</sup> Digital Hollywood University ("digital contents" studies) started in 2004, LEC Tokyo Legal Mind University (accounting), and Business Breakthrough Graduate School (business management) started in 2005.

<sup>41</sup> TAC University Graduate School and Ohara Graduate School (accounting), LCA Graduate School (management of technology), WAO Corporation University ("visual and digital contents" studies), Japan Film Graduate School (film business management), Japan Education Graduate School (teaching), Japan Translation Graduate School (translation), and Bunka Fashion Graduate School (fashion business management).

<sup>42</sup> In fact, teaching staff at these for-profit professional schools consist mostly of practitioners, teaching on short-term contract, with no academic background. Training of skills without theoretical substantiation would belie the expected function of professional schools at graduate level, i.e. bridging theory and practice.

be offered as many services and as much assistance as these entities could and should provide. If they are making sufficient profit, it is likely to mean that the students are paying too much or receiving too little or poor-quality service and assistance in return.<sup>43</sup> If the ideal financial state for educational entities is barely breaking even,<sup>44</sup> and if these for-profit entities will actually be making substantial profits, either these entities are really cost-cutting (which has been alleged) or corner-cutting and not providing enough to students (which some people have suspected, not without evidence).<sup>45</sup> So far, no private entity has applied to establish either an undergraduate law faculty or a law school at the graduate level.<sup>46</sup>

### III. TEACHING METHODS, TEACHING MATERIALS AND CURRICULUM

As there will be no paper from Japan concerning teaching methods, teaching materials and curriculum, this paper will briefly describe teaching methods, teaching materials and curricula both of undergraduate and of graduate school level.

Modern Japanese law and the Japanese legal system have been greatly influenced by the French and German legal traditions, and legal education is no exception.<sup>47</sup> At the undergraduate

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<sup>43</sup> See, for example, Ministry of Educ., Culture, Sports, Sci. & Tech., [http://www.mext.go.jp/b\\_menu/shingi/daigaku/toushin/04021202.htm](http://www.mext.go.jp/b_menu/shingi/daigaku/toushin/04021202.htm) (last visited Jan. 20, 2006) for comments expressing concerns about its tuition/fee structure and financial viability.

<sup>44</sup> See Law Concerning Educational Institutions, Law No. 26 of 1947, art. 4; discussion *supra* note 23.

<sup>45</sup> There are, for example, reports of “full-time” but not tenured teaching staffs, (see, *e.g.*, discussion *supra* note 42), of poor quality library and other facilities, and of courses promised but not delivered.

<sup>46</sup> It might be worth mentioning that several entities running prep schools for the Bar Examination had shown great interest at the very beginning. It has been rumored that they realized that their applications would never pass muster that the committee evaluating applications to establish law schools had set up. Some prep schools tried to design collaborative arrangements with certain university-affiliated law schools in vain.

<sup>47</sup> Gustave Emile Boissonade de Fontarabie, a French jurist invited by the Japanese Ministry of Justice in 1872, besides drafting the Criminal Code, Code of Criminal Procedure, the Civil Code and others, taught law at the Ministry of Justice in 1874 and 1880, at Hosei University from 1885 to 1895, Hosei Univ., <http://www.hosei>.

level, almost all classes are lectures.<sup>48</sup> It is not rare to find lecture rooms with seating capacities of five hundred or one thousand. It is still the case that professors often expect students to take down every single word they speak, but those days, when students desperately wrote down whatever professors said in class because there were no textbooks available, have passed. In reality, there are several reliable textbooks on almost all subjects offered, some written by the professors themselves. Yet, it appears that today's students are not at all motivated to study, and thus, less willing to either take notes or buy and read these textbooks.<sup>49</sup> This is, no doubt, a reflection of the fact that almost 50 percent of people eighteen to twenty currently receive post-secondary education, and, by 2007, it is also expected that all those wishing to receive post-secondary education will be able to do so, though they may not be able to choose where they attend.<sup>50</sup> Some universities and colleges will certainly remain selective, as they have always been, but most will have to choose either to admit almost anyone who applies and maintain the number of students (and lower the prestige of the institution by foregoing its academic standards and reputation), or to tighten the intake in order to maintain the academic qualifications of incoming students (and risk the financial stability of the institution).

In order to motivate students to study harder and to stimulate their interest in law, most universities now offer a number of

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ac.jp/gaiyo/history.html (last visited Apr. 19, 2006), and at the University of Tokyo from 1890 to 1895. Meiji University was established by three of Boissonade's students from the Ministry of Justice. Meiji Univ., *The History of Meiji University*, <http://www.meiji.ac.jp/koho/information/history/index.html> (last visited Jan. 20, 2006).

<sup>48</sup> See, for example, Gakushuin's syllabus, Gakushuin Univ., <http://www.syllabus.gakushuin.ac.jp/kougi> (last visited Jan. 20, 2006) for course explanations indicating that all courses except for seminars are in lecture-format.

<sup>49</sup> In recent years, it has become common practice to publish course syllabi, but very few professors expect students to use them so that they attend classes well-prepared. Students remain passive in large classes.

<sup>50</sup> See Chuo kyoiku shingikai [Main Commission on Education], *Wagakuni no koto kyoiku no shoraizo* [The Future of Higher Education in Japan], [http://www.mext.go.jp/b\\_menu/shingi/chukyo/chukyo0/toushin/05013101.htm](http://www.mext.go.jp/b_menu/shingi/chukyo/chukyo0/toushin/05013101.htm) (last visited Jan. 20, 2006).

small classes and seminars along with large classes.<sup>51</sup> However, we see fewer and fewer students register for these small classes.<sup>52</sup> In fact, students participate less not just in classes but in all university activities compared with ten years ago.<sup>53</sup> What students are doing and how and where they are spending their time substantiate the suspicion that undergraduate education is not taken very seriously.

In contrast, law schools idealize the Socratic method and emphasize dialogue in small classes (those containing fewer than fifty students).<sup>54</sup> The faculty is expected to encourage students to actively participate in this intimate atmosphere. Nevertheless, we often hear from our colleagues that there must be some room for lecture-style classes. For one, old habits die hard; a far more significant factor, however, is that Japanese law follows the civil law tradition in its emphasis of the importance of legal knowledge, of knowing the codes, cases, and theories at students' fingertips, as Mr. Saito's article indicates.<sup>55</sup>

One is struck by the fact that both teachers and students believe that all important issues ought to be covered in class. It seems not to occur to either of them to let students study on their own. It is much easier and quicker to cover numerous matters efficiently by lecturing rather than by soliciting students to think and analyze on their own. Thus, teachers face enormous pressure to dispense their wisdom by lecturing. This may also be due to the fact that students registered in the three-year course, who are assumed to have a non-law degree and are not familiar with law, have to cover the equivalent of the four-year law degree in

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<sup>51</sup> See the course description for Gakushuin's undergraduate law degree, *supra* note 48. According to this information, Gakushuin University offers forty-one lecture classes and forty-one small classes (seminars) for undergraduate students in law.

<sup>52</sup> Students' class registration statistics from last twelve years at Gakushuin shows that, in the early 1990s, about eighty-five percent of students registered for at least one small class whereas that number has declined to seventy percent in 2004.

<sup>53</sup> Participation in student activities also declined from about seventy percent to forty percent, according to Gakuseibu tokei (Student statistics kept at the Office of Student Affairs at Gakushuin).

<sup>54</sup> See HOKA DAIGAKUIN (KASHO) KOSO NI KANSURU KENTO NO MATOME, *supra* note 15, at 5.

<sup>55</sup> Takahiro Saito, *The Tragedy of Japanese Legal Education: Japanese "American" Law Schools*, 24 WIS. INT'L L.J. 197 (2006).

just one year in order to catch up with the other students. Students registered in the two-year course tend to compare themselves with those who pass the current bar examination. The average age of those who pass the current bar examination is somewhere around twenty-nine;<sup>56</sup> in addition, those who pass the exam have, on average, studied for almost ten years and taken the test more than seven times, so the two-year-course students feel they do not know as much and want to make up for the difference by having more information covered in classes.

There is no defined format for the undergraduate law degree curriculum (although there is a vague but common understanding of what subjects are expected to be offered), whereas there is a required curriculum<sup>57</sup> for law schools whose graduates may sit for the new bar examination. The latter has to include basic subjects,<sup>58</sup> practical subjects,<sup>59</sup> and advanced and relevant subjects.

Early in the process of reform, there were many idealistic proposals.<sup>60</sup> We are able to see their influence now in the

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<sup>56</sup> 29.03 years old, to be precise. See HOMUSHO DAJIN KANBO JINJIKAI [MINISTRY OF JUSTICE, OFFICE OF MINISTER, PERSONNEL SECTION], HEISEI 17 NENDO SHIHO SHIKEN DAI2JI SHIKEN KEKKA NI TSUITE [ON THE RESULT OF THE 2005 BAR EXAMINATION] (2005).

<sup>57</sup> See CHUO KYOIKU SHINGIKAI, DAIGAKU BUNKAKAI, HOKA DAIGAKUIN BUKAI [NATIONAL COMMISSION ON EDUCATION, COMMITTEE ON UNIVERSITY EDUCATION, SUBCOMMITTEE ON LAW SCHOOLS], HOKA DAIGAKUIN NO KYOIKU NAIYO, HOHO TOU NI KANSURU CHUKAN MATOME [INTERIM REPORT ON THE EDUCATIONAL CONTENT, METHODS AND OTHERS AT LAW SCHOOLS JAN. 22, 2002], [http://www.mext.go.jp/b\\_menu/shingi/chousa/koutou/003/toushin/020201.htm](http://www.mext.go.jp/b_menu/shingi/chousa/koutou/003/toushin/020201.htm) (last visited Sept. 29, 2005). See Table 3, *infra* for a sample of courses being offered.

<sup>58</sup> Each law school has to offer at least ten credits of public law (constitutional and administrative laws), thirty-two credits of civil law in general (civil, commercial laws, civil procedure and other adjectival laws), and twelve credits of criminal law and procedure.

<sup>59</sup> Legal ethics, legal research and writing, civil procedure in practice, criminal law and procedure in practice, “lawyering,” clinical education, and externship.

<sup>60</sup> One suggestion is clinical training centered education modeled after American medical education. The implication was a four-year graduate course in which students from the very beginning learn directly from real cases. They would interview and listen to clients explain their claims, then gather necessary information, on statutes and precedents and available remedies, and discuss their findings with peers under the supervision of professors who are also practitioners. Initiatives would be on students to come up with “diagnoses” and suggest appropriate recommendations. Because information stales quickly, the emphasis is on acquiring skills: to find, gather, analyze, and apply relevant information.

expected class size and student/teacher ratios, the inclusion of practitioners on the teaching staff,<sup>61</sup> the offerings of practical skill training subjects,<sup>62</sup> and the study-room environment, including students' carrels. However, these changes have not helped knowledge-oriented students to change their way of thinking from passive to active and participatory, or to acknowledge that they are being trained to acquire skills rather than to store as much information as possible (so that they can disgorge it when they sit for the new bar examination).

#### IV. STUDENTS AND FACULTY MEMBERS

Most people would agree that there are enormous differences between undergraduate and graduate law students.<sup>63</sup> The most obvious difference is in age. Most undergraduates have just

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No doubt, the most obvious model was American legal education. Legal Education and Professional Development – An Educational Continuum (“The MacCrate Report”) of 1982, emphasizing legal skills, was translated and published in 2001. ABA’s Section on Legal Education and Admissions to the Bars’ Consultant, John A. Sebert’s lectures surprised those who attended. It was not the statement indicating that American law schools have attained the delicate balance of the theoretical and the practical, but that legal education train students not to “think like a lawyer” as many in Japan have believed but to “act as a lawyer.” Thus, the ideal teaching model included not just Socratic method using case methods but also problem method, role playing, moot courts and debate sessions, legal writings, clinical courses dealing with real claims and simulated cases. It also suggested limiting the number of students per class to encourage active participation. Subject offerings are to expand to include collaboration with other disciplines such as economics, sociology, philosophy, and psychology, to illustrate theoretical depth to legal studies, and to accommodate “globalization” by including international and comparative laws as mandatory.

The truth was that many elderly practicing lawyers who had not been in academia for awhile express amazement that American legal education required syllabi, necessary preparation to attending classes, clinical education and student participation in classes, diversity in subject offerings, and student evaluations, some of which have already been familiar to contemporary Japanese university scenes.

<sup>61</sup> At least thirty percent of teaching staff must include practitioners with at least five years of experience. Senmonshoku daigakuin secchi kijun [Standards to Establish Professional Schools], Regulation of MEXT No. 16 of 2003, art. 5 & app. 2, available at [http://www.mext.go.jp/a\\_menu/koutou/houka/03050101.htm](http://www.mext.go.jp/a_menu/koutou/houka/03050101.htm).

<sup>62</sup> Legal research and writings, legal and professional ethics, “in practice” courses, internship, externship and clinical education at law schools’ legal centers where practitioners also function as attorneys-at-law.

<sup>63</sup> Based on comments with my colleagues at Gakushuin.

finished high school or “did a year at prep School.”<sup>64</sup> Thus, the assumption is that the majority of undergraduate students are eighteen years old, minors in Japan.<sup>65</sup> Although many universities now provide a special admission process for “mature students,” the number of such students is tiny and has had almost no influence in the self-perception of undergraduate students.<sup>66</sup> A recent trend I have noticed is that universities tend to treat undergraduates as “minors” by communicating directly with “parents and guardians” as they send “report cards” directly to, and hold consultation sessions with, “parents and guardians.” The interesting part is that these students do not object to being treated as children. In contrast, many graduate students are older<sup>67</sup> and have had some experience in the real world. Naturally, they expect to be treated as adults. They are more serious about their “study” and ask for make-up classes whenever professors fail to cover all of course materials, are more concerned about their grades, and have more concrete demands, particularly facility-wise, as they spend more time studying on campus.

Tuition and fees also differ between undergraduate and graduate programs. Law schools are expensive compared to other Japanese higher-education schools. This may be one of the reasons that law school students are more serious and demanding than undergraduates. National universities charge around five hundred thousand yen per year for undergraduate courses.<sup>68</sup> It is about five hundred thousand yen as well at public universities.<sup>69</sup> Tuitions and fees at private institutions range from six hundred thousand to a little more than one million yen.<sup>70</sup> In comparison,

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<sup>64</sup> Majority of students are just out of high school, according to Gakuseibu tokei, *supra* note 53.

<sup>65</sup> MINPŌ [CIVIL CODE], art. 3 (Japan).

<sup>66</sup> Gakushuin has a separate admission procedure for mature students but its number has never exceeded ten among almost ten thousand undergraduate students.

<sup>67</sup> Those who were admitted in 2004 are apparently older (approximately twenty-eight years old) than those in 2005 (approximately twenty-four years old).

<sup>68</sup> National universities may charge up to 110% of 535,800 yen, the standard tuition.

<sup>69</sup> Tokyo Metropolitan University's tuition is 520,000 yen. Osaka City University's tuition is 535,800 yen.

<sup>70</sup> Ritsumeikan University's tuition is 637,000 yen whereas Osaka University of Economics and Law's tuition is 996,000 yen. Most universities ask to add about 200,000 yen more to the amount being paid to the school under various explanations.

national law schools' tuition and fees are eight hundred thousand yen per year, and public law schools charge sixty to eighty thousand (600,000 to 800,000) yen.<sup>71</sup> Private law schools charge from one million to two million yen, but in some law schools, the seemingly high tuition and fees are offset by abundant scholarship offers.<sup>72</sup> Japan Student Services Organization (JASSO), funded by the national government, also offers generous scholarships to those who apply, but not many students are interested in its financial assistance scheme.<sup>73</sup>

We do not have sufficient information to illustrate a typical graduate law student, but I can provide an image of a Gakushuin law school student. "He"<sup>74</sup> is admitted to the two-year course, is about twenty-seven years old, attended a well-known university and received his law degree, and has had very little real world experience since graduation but went to one of the more popular prep schools before entering this law school. His family background is such that he can ask for financial help from his family because he is from a fairly well-to-do professional family.<sup>75</sup> In the case of an undergraduate, "he"<sup>76</sup> is eighteen years old, just out of high school, most likely from one of our feeder schools; he naturally had not studied hard to be admitted, and he does not take lectures too seriously because he "knows" no one fails to graduate. His family background is probably not that different financially but rather than being a lawyer or an accountant, occupies important positions in well-known corporations.

There are two distinct features of faculty members in law schools compared to undergraduate law faculties. One is that at

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<sup>71</sup> National universities' standard tuition is 800,000 yen. Osaka City University's tuition is also 800,000 yen. Tokyo Metropolitan University's tuition is 663,000 yen, the lowest among law schools.

<sup>72</sup> Kansei Gwakuin University's tuition for the first year is 1,000,000 yen, but it will be 1,400,000 yen from the second year onwards. Nihon University's tuition is 2,000,000 yen, but the top forty percent will be exempted from paying the tuition.

<sup>73</sup> Only a couple of students from Gakushuin have applied to JASSO for a scholarship or a student loan.

<sup>74</sup> At Gakushuin, 45.3 percent are women, whereas the average rate is 30.2 percent.

<sup>75</sup> Based on interviews with law school students.

<sup>76</sup> About a third of undergraduate law students are said to be women, but the number differs from institution to institution, ranging from about fifty to just above twenty percent. It has been pointed out that universities with girls' feeding schools tend to have higher percentage of female students.



least 30 percent of faculty members must be practitioners.<sup>77</sup> The other is the low student/teacher ratio (“STR”).<sup>78</sup>

Of course, there some practitioners have been teaching undergraduate law students since before law schools existed. Some judges left the bench before the retirement age of sixty-five and became academics by choice. Some institutions saw that lectures and seminars by practitioners helped motivate students to be interested in legal practice and eventually decide to sit for bar exams.<sup>79</sup> Alumni who are practitioners also helped tutor those interested in preparing for bar exams at some older institutions.<sup>80</sup> Although national universities prohibited their faculty members to register to practice law even when qualified,<sup>81</sup> some private institutions allowed, or turned a blind eye to allow, professors to register as qualified lawyers at prefectural bar associations and practice law, so long as that practice did not interfere with teaching and other academic obligations.<sup>82</sup> Because the registration fee is considerably high, most academics prefer not to register (unless, for instance, they are quite confident that they could attract sufficient clients to cover cost of running a law office) even

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<sup>77</sup> See HOKA DAIGAKUIN (KASHO) KOSO NI KANSURU KENTO NO MATOME, *supra* note 15, at 7; Senmonshoku daigakuin secchi kijun [Standards to be applied to Establish Professional/Graduate Schools] Heisei5 nen monbu kagaku shorei 16go [MEXT Executive Order No. 16 of 1993]; CHUO KYOIKU SHINGIKAI [MAIN COMMISSION ON EDUCATION], HOKA DAIGAKUIN NO SECCHI KIJUN TO NI TSUITE [ON STANDARDS TO ESTABLISH LAW SCHOOLS] (2002).

<sup>78</sup> At Gakushuin, the STR for undergraduate is 57 to 1 whereas for law school it is 9.6 to 1.

<sup>79</sup> Judges and practitioners have offered small classes and seminars for undergraduate students since 1997 at Gakushuin.

<sup>80</sup> Shimpokai at Chuo University has a long history (since 1934) of alumni tutoring undergraduate students for Bar Examinations.

<sup>81</sup> Since April 2004, when national universities became independent agencies, teaching and administrative staff no longer are in civil service. Accordingly, many of the rules which restricted their activities do not apply any more. There was always a very thin line between what was allowed and sometimes even encouraged, such as being on government committees, or on the board of directors for non-governmental organizations and submitting legal opinions to or appearing as expert witness at courts, and what was prohibited, such as being on board for other entities and practicing law by giving legal advice, before the advent of independent agencies.

<sup>82</sup> Institutions such as Tokai University appear to have been lenient in accommodating busy practitioners as professors.

if they could.<sup>83</sup> One could say that it was frowned upon for an academic to practice (and considered poor form) unless there was some “desperate” reason to do so.<sup>84</sup> It is not that far from the truth to state that most academics know little about practice, and practitioners have little interest in theoretical aspects of academic writing unless these could possibly support new claims they would like to assert in the courts.

In 2003 and 2004, many academics decided to register as qualified lawyers, using their experience teaching (preferably foundational subjects) more than five years at acknowledged institutions and having graduate school of law with doctorate course in order to do so.<sup>85</sup> Many others became involved in bar association governance.<sup>86</sup> Of course, law school curricula demand that academics and practitioners collaborate in teaching. Thus, the relationship between practitioners and academics has become more intimate and intertwined than before, for better or for worse.

Another important factor differentiating undergraduate law from graduate law teaching, particularly for private institutions, is the applicable “student/teacher ratio.” The STR for law schools, because they are professional schools, is 10 to 1, whereas for undergraduate courses, it is expected to be about 60 to 1 at private institutions.<sup>87</sup> In reality, some institutions accommodate more students than their facilities could possibly allow, and the STR may run up to 100 to 1. At national and public universities,

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<sup>83</sup> The basic annual fees for three Tokyo bar associations are 600,000 yen.

<sup>84</sup> In one case with which I am familiar, a professor’s in-law was in solo practice and was becoming very old. In order to allow the “family enterprise” to continue until one of his children becomes qualified, the professor felt he had to register and engage in some legal counseling. It appeared to be acceptable to his university because he was not actively expanding the practice at the cost to his professorship.

<sup>85</sup> JFBA’s statistics on practitioner registration indicates that up to that period, the number of registrants whose qualification derived from the fact that he has been teaching at qualified institution as associate or full professor for more than five years remained in single digit each year but since 2003, the number has risen to double digits.

<sup>86</sup> For example, Professor Yoshida of Hokkaido University is a member of the disciplinary committee of the Sapporo Bar Association.

<sup>87</sup> This figure also had been the standard at the Institute of Legal Research and Training’s two-year course.

the average number probably is about 15 to 1, judging from my experience at Hokkaido University.

## V. SOME CONSEQUENCES, INTENDED AND UNINTENDED, OF STARTING LEGAL EDUCATION AT GRADUATE LEVEL

### A. GRADUATE SCHOOLS OF GOVERNMENT AND PUBLIC POLICY

Just about the same time as law schools opened, Tokyo University established a graduate school of public policy. Since then, Hokkaido, Tohoku, Hitotsubashi, and Kyoto have established or are in the process of establishing graduate schools of public policy.<sup>88</sup> I suspect that there are several reasons.

As undergraduate law courses were alleged as insufficient for educating and training public officials, and future judges, prosecutors, and drafters of statutes are to be educated and trained at law schools, some political scientists and economists saw the need (as well as the opportunity) to start “Kennedy School of Government”-type institutions in Japan.<sup>89</sup> The idea fit neatly with the University Reform Council’s 1998 report, mentioned by Professor Yoshida, that advised starting professional schools at the graduate level.<sup>90</sup> Also important is the fact that legal education is perceived as very narrow and limited, a typical phenomenon of the civil law system.<sup>91</sup> There is little acknowledgment, not only among lay people but also among lawyers, that Supreme Court decisions are not just interpretation and application of law but “policy decisions by one branch of government” as well and cannot escape political implications no matter how

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<sup>88</sup> These all happen to be national universities. Meanwhile, only two private institutions, Waseda University’s Okuma School of Public Management and Tokushima Bunri University’s School of Comprehensive Policy Studies, offer similar professional degrees.

<sup>89</sup> See, e.g., the statement of Tokyo University’s Graduate School of Public Policy and Government, <http://www.pp.u-tokyo.ac.jp/overview/index.htm> (last visited Jan. 20, 2006) [hereinafter Tokyo University].

<sup>90</sup> DAIGAKU SHINGIKAI [UNIVERSITY REFORM COUNCIL], NIJUISSEIKI NO DAIGAKUZO TO KONGO NO KAIKAKU HOSAKU NI TSUITE [UNIVERSITIES IN THE TWENTY-FIRST CENTURY AND OUR FUTURE REFORM POLICY] (1998).

<sup>91</sup> See Tokyo University, *supra* note 89.

politically neutral the Supreme Court aspires to be.<sup>92</sup> If law schools are to train lawyers without referring to “law as policy decisions,” it is necessary to train policymakers and analysts to fully recognize and illustrate the various implications that legal decisions may have for the public.<sup>93</sup> With faculty members composed of political scientists, economists, public policy analysts, and some lawyers,<sup>94</sup> the claim that a public policy school is right for the time would easily be accepted by the society, and, of course, MEXT.<sup>95</sup>

As more and more young people undertake undergraduate education, one needs to differentiate one’s educational experience by acquiring higher qualifications. It is still sufficient to have a B.A. from a respectable institution, but it is probably an advantage to have a graduate degree, particularly from professional schools. Thus, newly established graduate schools actually stimulated the “need” for higher educational institutions, including law schools.

## B. UNDERGRADUATE LEGAL EDUCATION IN FLUX

Many universities offering the undergraduate law degree program have now begun to admit smaller number of students than before.<sup>96</sup> This is due, no doubt, to the limited number of people available to teach law, even though the pool has been expanded to include some practitioners. Depending on the original size of the faculty, one-third to one-half of law faculty has left

<sup>92</sup> *E.g.*, Tokyo Procurator’s Office v. Sakata, 13 KEISHŪ 3225 (Sup. Ct., Dec. 16, 1959) (the Sunagawa case).

<sup>93</sup> *See* Tokyo University, *supra* note 89.

<sup>94</sup> Needless to say, having two professional schools based on law faculty would place lawyers and political scientists within the faculty on par, help to avoid petty politicking (because both would need the others’ cooperation to start separate professional schools), and provide *raison-d’être* for both groups as academics (one needs to engage in the latest and most fashionable research topics if one were to teach to graduate rather than undergraduate students). It also helped economists who are seen as becoming too theoretical and otherworldly, compared to those business management and administration people on the same economics faculty (the number of business schools are also on rise in Japan since the turn of the century).

<sup>95</sup> DAIGAKU SHINGIKAI, *supra* note 90.

<sup>96</sup> For example, Waseda University reduced its intake of undergraduate law student by about 29 percent, from seven hundred to five hundred, and the University of Tokyo by about 33.3 percent, from six hundred to four hundred, in 2004.

undergraduate teaching and now belongs to law schools. Some of those at law schools also teach undergraduate students, and many new people have begun teaching, so the size of law faculty might not have shrunk that much. Nevertheless, in order to keep the STR within a reasonable range, and, possibly, to maintain the academic standards of incoming students, the intake has definitely become smaller.

More significant than the decrease in the number of students who will eventually receive B.A. in law, is that undergraduate law curricula now offer fewer foundational subjects. In fact, at large institutions, there appears to be a greater variety of “law and” courses<sup>97</sup> than there used to be. At smaller institutions, law course offerings tend to be the bare minimum, and there has been an increase in political science offerings (as many universities have yet to establish graduate schools of government and public policy).<sup>98</sup> Some faculty members express reservations that law degrees no longer guarantee a solid knowledge of foundational law, while others counter that the degree has not done so for the past fifty years. I suspect that the B.A. in law no longer offers the detailed coverage of legal information that law schools expect, and that the two-year course will eventually have to be abolished.

More important than changes in the number of students and/or the curricula is the change in the purpose of legal education. Although not many students in the undergraduate programs became lawyers, most undergraduate education nevertheless aimed to educate students to “think like lawyer[s].”<sup>99</sup> This is no longer the case; it would be absurd to aim at educating students to “think like a lawyer” when undergraduate courses no longer offer a direct route to legal qualification. Different institutions appear to present slightly differing version of “preparing students to become good citizens with decent understanding of law,” not without reason.<sup>100</sup> An average citizen will

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<sup>97</sup> Law and Economics, Law and Sociology, Law and Psychology, Law and Public Policy, Law and Gender, Law and Children, to name a few.

<sup>98</sup> See Table 2, *infra*.

<sup>99</sup> For example, the past mission statements of Gakushuin University.

<sup>100</sup> See Katsumi Yoshida, *Legal Education Reforms in Japan: Their Background, Rationale and the Goals to be Achieved*, 24 WIS INT'L L.J. 209, 222 (2006), for Hokkaido University's recent mission statement.

have to be more conscious of consequences of law, as Japan has chosen to “legalize” its society, that is, to make all its actors, political and economic, profoundly transparent and accountable, responsible, and responsive.<sup>101</sup> Connections and backroom dealings are no longer the norm in any transaction, government or otherwise.<sup>102</sup>

There will also be less emphasis on procedural courses; while students still must know the overall picture of legal process, they will not study the nitty-gritty details of civil procedure. Many more courses would/should be taught from perspectives of “law in context,” so that students would see legal decisions not in isolation but as part of policy decisions, with social and economic consequences or important historical meanings. We hope students will show interest in what other countries are doing to solve the same or similar problems with law; laws of different legal systems should be offered so that we have a better understanding of countries and regions in different parts of the world. There is no denying that the future undergraduate law degree points in the direction of liberal arts education with good civics coverage, as a preparatory course for future leaders of society. What and how to teach undergraduate law will inevitably have to change.

### C. FINANCIAL IMPLICATIONS

This may not be the place to mention the financial aspect of having both a law school and an undergraduate law faculty. With a low STR and expensive facilities, one cannot expect the law school to pay its own costs. The undergraduate facility which, along with the economics and commerce departments, but with a smaller number of students, has been the financial backbone for most private institutions, may not be contributing as much as it used to. Neither the law school nor the law faculty can expect to bring the institution much financially except through student fees and donations. It may be just the few large institutions with sufficient funding that can afford to maintain both graduate and undergraduate law. Ten years down the road, I would not be

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<sup>101</sup> The first indication was the Keizai Doyukai report of 1994, *supra* note 12.

<sup>102</sup> See the 2004 amendment to Anti-monopoly Act encouraging whistle-blowing to backroom deals leading to cartels within industries.

surprised to find about thirty graduate law schools in existence. Academic corporations and their management should seriously reconsider what they have been taken for granted: that law programs may not remain their golden geese.

## VI. SOME CONCLUDING REMARKS

The most important unintended consequence, as I see it, is the fact that undergraduate legal education has to change in its content as well as methodology. My colleagues and acquaintances, both academics and practitioners, have been extremely concerned with “what” law to teach and “how” to teach law to profession-oriented (in reality, bar-examination-conscious) students at law schools. However, it still does not occur to many of them that undergraduate law studies will have to be different as well. I still suspect that most of those teaching law to undergraduates are not yet aware of the fundamental transformation which law school as professional education at the graduate level has brought to undergraduate law courses. First, law will have to be taught as a liberal arts program. It will have to encourage future citizens to participate in the political process with the full knowledge of what it means to be an active participant in a democratic society. It will also have to prepare them to be well-informed participants in the market economy. Second, law will have to compete with political science, economics, and other social science courses for students, because the undergraduate law program is now completely foreclosed from a direct path to legal qualification. Third, those teaching law to undergraduates will have to place more emphasis on understanding and explaining social and political implications of statutes, judicial decisions, and legal reforms, rather than simply “interpreting” law. Some help from graduate schools of government and public policy may actually be necessary to provide classes dealing with “law-in-context.” Fourth, the collaboration of practitioners and academics at law schools may extend to classes at the undergraduate level, which may also introduce students to “living” law rather than the “black-letter” law currently taught. In short, I believe that the legal discipline in general will have to change to accept the “law-in-context” movement.

An outsider observes that Japanese legal education tried to teach law as if the professor is, and students should think and

perform like, a judge writing a decision: based on these facts, is it just, proper, or right to decide the case the way the judge did? My experiences in common-law countries indicate that students are taught to be advocates trying to persuade judges. The former implies that there is one right answer to the issue. The latter encourages innovative approaches to solving new problems as well as old issues which, without such effort, appeared to be losers. In my view, it is important in professional training to understand the different attitudes required by the different functions entails by the concepts of "if I were a judge" and "if I were arguing in front of a judge." The attractive feature of American legal education appears to be this "skill to persuade." We are entering an age in which nothing can be taken for granted. The changing world no longer supports the possibility of a known "right" answer to legal problems. It appears that we lost "Mr. Right" (or we were made to realize that there was no "Mr. Right" from the very beginning) after feminism became prevalent. The "right answers" based on our past experience are no longer the "right answers" to new problems. What we probably have to do is to persuade our skeptical colleagues that what matters as a good lawyer is the skill to persuade rather than the skill to know the right legal answer.



TABLE 1: INSTITUTIONS CONFERRING UNDERGRADUATE LAW (B.A.), LAW-RELATED (B.A.) & GRADUATE LAW (J.D.) DEGREES

		Undergraduate Faculty (Law=0)	Number of Students*	Law-related Department within Non-law Faculty	Number of Students*	Law Schools	Number of Students*
<i>National Universities</i>							
Hokkaido University	北海道大学	0	200			0	100
Otaku University of Commerce	小樽商科大学	Commerce	465	Corporate Law	106		
Tohoku University	東北大学	0	160			0	100
Iwate University	岩手大学	Humanities and Social Sciences	215	Law and Economics	70		
Yamagata University	山形大学	Humanities	300	Comprehensive Policy Science	215		
Fukushima University	福島大学	Public Administration and Sociology	210	Public Administration	?		
Ibaragi University	茨城大学	Humanities	395	Social Sciences	225		
Tsukuba University	筑波大学	Social Sciences	80			0	40
Chiba University	千葉大学	Law and Economics	370	Law	120	0	50

		Undergraduate Faculty	Number of Students*	Law-related Department within Non-law Faculty	Number of Students*	Law Schools	Number of Students*
Tokyo University	東京大学	o	400			o	300
Hitotsubashi University	一橋大学	o	170			o	100
Yokohama National University	横浜国立大学	Economics	230	Economic Law	115	o	50
Niigata University	新潟大学	o	180			o	60
Kanazawa University	金沢大学	o	180			o	40
Shinshu University	信州大学	Economics	185	Economic System and Law	60	o	40
Shizuoka University	静岡大学	Humanities	480	Law	110	o	30
Nagoya University	名古屋大学	o	150			o	80
Mie University	三重大学	Humanities	265	Social Sciences	165		
Toyama University	富山大学	Economics	405	Management Law	115		
Kyoto University	京都大学	o	330			o	200
Osaka University	大阪大学	o	170			o	100

		Undergraduate Faculty	Number of Students*	Law-related Department within Non-law Faculty	Number of Students*	Law Schools	Number of Students*
Kobe University	神戸大学	o	180			o	100
Shimane University	島根大学	Law and Economics	90	Law	?	o	30
Okayama University	岡山大学	o	225			o	60
Hiroshima University	広島大学	o	180			o	60
Yamaguchi University	山口大学	Economics	385	Economic Law	70		
Kawaga University	香川大学	o	160				
Ehime University	愛媛大学	Law and Humanities	505	Comprehensive Policy Science	360		
						Kawaga-Ehime University	30
Kyushu University	九州大学	o	200			o	100
Kumamoto University	熊本大学	o	210			o	30
Kagoshima University	鹿児島大学	Law and Humanities	395	Law and Policy	95	o	30
Ryukyu University	琉球大学	Law and Humanities	510	Comprehensive Social Systems	265	o	30

		Undergraduate Faculty	Number of Students*	Law-related Department within Non-law Faculty	Number of Students*	Law Schools	Number of Students*
<b>Public Universities</b>							
Metropolitan University of Tokyo	首都大学東京	0	167			0	65
Osaka City University	大阪市立大学	0	180			0	75
Kita Kyushu City University	北九州市立大学	0	195				
<b>Private Universities</b>							
Asahikawa University	旭川大学	Economics	200	Economics and Law	100		
Sapporo University	札幌大学	0	250				
Hokusei University	北星大学	Economics	364	Law and Economics	110		
Hokkai Gakuen University	北海学園大学	0	275			0	30
Sapporo Gakuin University	札幌学院大学	0	200				

		Undergraduate Faculty	Number of Students*	Law-related Department within Non-law Faculty	Number of Students*	Law Schools	Number of Students*
Aomori Chuo Gakuin University	青森中央学院大学	Faculty of Business Management Law	175				
Fuji University	富士大学	Economics	300	Management and Law	75		
Akita University of Economics and Law	秋田経済法科大学	o	200				
Tohoku Gakuin University	東北学院大学	o	325			o	50
Hakuo University	白鷗大学	o	300			o	30
Kantou Gakuen University	関東学園大学	o	200				
Ryutsu Keizai University	流通経済大学	o	250				
Surugadai University	駿河台大学	o	280			o	60
Dokkyo University	独協大学	o	280			o	50

		Undergraduate Faculty	Number of Students*	Law-related Department within Non-law Faculty	Number of Students*	Law Schools	Number of Students*
Heisei International University	平成国際大学	0	300				
						Omiha Law School	100
Rissho University	立正大学	0	300				
Seiwa University	清和大学	0	190				
Chuo Gakuin University	中央学院大学	0	300				
Aoyama Gakuin University	青山学院大学	0	455			0	60
Kaetsu University	嘉悦大学	Management and Economics	300	Management and Law	100		
Gakushuin University	学習院大学	0	250			0	65
Keio University	慶応義塾大学	0	600			0	260
Keio University	慶応義塾大学	Comprehensive Policy Science	425				
Kokugakuin University	国学院大学	0	500			0	50

		Undergraduate Faculty	Number of Students*	Law-related Department within Non-law Faculty	Number of Students*	Law Schools	Number of Students*
Kokushikan University	国士館大学	o	400				
Komazawa University	駒沢大学	o	450			o	50
Sophia University	上智大学	o	285			o	100
Seijo University	成城大学	o	220				
Senshu University	専修大学	o	760			o	60
Daitobunka University	大東文化大学	o	225			o	50
Takushoku University	拓殖大学	Political Science and Economics	680	Law and Political Science	230		
Toyo University	東洋大学	o	450			o	50
Nihon University	日本大学	o	850			o	100
Hosei University	法政大学	o	473			o	100
Meiji University	明治大学	o	900			o	200
Meiji Gwakuin University	明治学院大学	o	455			o	80

		Undergraduate Faculty	Number of Students*	Law-related Department within Non-law Faculty	Number of Students*	Law Schools	Number of Students*
Rikkyo (St. Paul's) University	立教大学	o	405			o	70
Waseda University	早稲田大学	o	700			o	300
Ajia University	亜細亜大学	o	340				
International Christian University	国際基督教大学	Liberal Arts	620	Social Sciences, International Relations	?		
Seikei University	成蹊大学	o	250			o	50
Tokyo University of Economics	東京経済大学	Contemporary Law	250				
Soka University	創価大学	o	300			o	50
Chuo University	中央大学	o	1000			o	300
Chuo University	中央大学	Comprehensive Policy Science	250				
Teikyo University	帝京大学	o	725				
Nihon Bunka University	日本文化大学	o	200				



		Undergraduate Faculty	Number of Students*	Law-related Department within Non-law Faculty	Number of Students*	Law Schools	Number of Students*
Tokai University	東海大学	o	300			o	50
Kanagawa University	神奈川大学	o	400			o	50
Kanto Gakuin University	関東学院大学	o	385			o	60
Toin Yokohama University	桐蔭横浜大学	o	180			o	70
Yamanashi Gakuin University	山梨学院大学	o	270			o	40
Chukyo University	中京大学	o	300			o	30
Nanzan University	南山大学	o	260			o	50
Meijo University	名城大学	o	530			o	50
Aichi University	愛知大学	o	310			o	40
Aichi Gakuin University	愛知学院大学	o	365			o	35
Asahi University	朝日大学	o	150				

		Undergraduate Faculty	Number of Students*	Law-related Department within Non-law Faculty	Number of Students*	Law Schools	Number of Students*
Nagoya Keizai University		0	300				
Takaoka University of Law	高岡法科大学	0	190				
Hokuriku University	北陸大学	Futurology	200	Legal Studies	100		
Kyoto Industrial University	京都産業大学	0	570			0	60
Doshisha University	同志社大学	0	650			0	150
Ritsumeikan University	立命館大学	0	735			0	150
Ryukoku University	竜谷大学	0	340			0	60
Kyoto Gakuen University	京都学園大学	0	180				
Osaka Gakuin University	大阪学院大学	0	275			0	50
Osaka Keizai University	大阪経済大学	Business Administration	300	Business Law	100		

		Undergraduate Faculty	Number of Students*	Law-related Department within Non-law Faculty	Number of Students*	Law Schools	Number of Students*
Osaka Keizai Hoka University	大阪経済法科大学	0	200				
Osaka Kokusai University	大阪国際大学	Politics, Economics and Law	200				
Kansai University	関西大学	0	790			0	130
Kinki University	近畿大学	0	680			0	60
Setsunan University	摂南大学	0	200				
Momoyama Gakuin University	桃山学院大学	0	200				
Nara Industrial University	奈良産業大学	0	100				
Teidukayama University	帝塚山大学	Law and Policy	250				
Konan University	甲南大学	0	350			0	60
Kobe Gakuin University	神戸学院大学	0	475			0	60

		Undergraduate Faculty	Number of Students*	Law-related Department within Non-law Faculty	Number of Students*	Law Schools	Number of Students*
Kansai Gwakuin University	関西学院大学	0	510			0	125
Himeji Dokkyo University	姫路独協大学	0	300			0	40
Okayama University of Commerce	岡山商科大学	Law and Economics	120	Law			
Hiroshima Shudo University	広島修道大学	0	220			0	50
Fukuyama Heisei University	福山平成大学	Economics		Management and Law	?		
Matsuyama University	松山大学	0	210				
Seinan Gakuin University	西南学院大学	0	350			0	50
Fukuoka University	福岡大学	0	650			0	50
Kyushu International University	九州国際大学	0	380				
Kurume University	久留米大学	0	235			0	40

		Undergraduate Faculty	Number of Students*	Law-related Department within Non-law Faculty	Number of Students*	Law Schools	Number of Students*
Miyazaki University of Industrial Management	宮崎産業経営大学	0	100				
Shigakukan University	志学館大学	0	150				
Okinawa University	沖縄大学	Law and Economics		Law and Economics	250		
Okinawa International University	沖縄国際大学	0	110				
Total Number of Students**			41499		3156		5825

\*Number of admitted students as submitted to MEXT

\*\*As submitted to MEXT

**TABLE 2: A LIST OF LECTURES AT AN UNDERGRADUATE LAW COURSE (GAKUSHUIN)**

2000		2005	
	Credit		Credit
Constitutional Law I (Government Structure)	4	Constitutional Law I (Government Structure)	4
Constitutional Law II (Human Rights)	4	Constitutional Law II (Human Rights)	4
Constitutional Litigation	4		
International Law I (The Basic Structure)	4	International Law I (The Basic Structure)	4
International Law II	4	International Law II	4
Administrative Law I (The Basic Structure)	4	Administrative Law I (The Basic Structure)	4
Administrative Law II (Individual Areas)	4	Administrative Law II (Remedies)	4
Administrative Law III (Remedies)	4		
Criminal Law I (General Theory)	4	Criminal Law I (General Theory)	4
Criminal Law II	4	Criminal Law II	4
Criminal Law III (White Collar Crimes)	4		
		Introduction to Criminal Litigation	2
Criminal Procedure	4	Criminal Procedure	4
Civil Law I (General Theory)	4	Civil Law I (General Theory and Real Properties)	4
Civil Law II (Real Properties)	4	Civil Law II (Torts)	4
Civil Law III (Torts)	4	Civil Law III (Contracts)	4
Civil Law IV (Contracts)	4	Civil Law IV (Family Law and Succession)	4
Civil Law V (Family Law and Succession)	4		
Commercial Law I (General Theory and Bills of Exchange)	4	Commercial Law I (General Theory)	4
Commercial Law II (Corporations)	4	Commercial Law II (Corporations)	4

2000		2005	
	Credit		Credit
Commercial Law II (Insurance and Maritime Laws)	4	Commercial Law III (Insurance and Maritime Laws)	4
		Introduction to Civil Litigation	4
Civil Procedure I	4	Civil Procedure I	2
Civil Procedure II	4	Civil Procedure II	2
Litigation (Theory and History)	4		
Labour Law	4	Labour Law	4
Social Securities Law	4		
Consumer Protection Law	4		
Landlord and Tenant Law	4		
Competitions Law	4	Competitions Law	4
Intellectual Properties I	4	Intellectual Properties	4
Intellectual Properties II	4		
Tax Law I	4	Tax Law	4
Tax Law II	4		
Bankruptcy Law	4	Bankruptcy Law	4
Conflict of Laws	4	Conflict of Laws	4
Criminology	4	Criminology	4
Legal History -Japan	4	Legal History -Japan	4
Legal History - Europe	4	Legal History - Europe	4
Roman Law	4		
Comparative Constitutional Law	4	Comparative Constitutional Law	4
Anglo-American Law	4	Anglo-American Law	4
German Law	4	German Law	4
French Law	4	(French Law (alternate year))	4
Law of European Union	4	Law of European Union	4
Philosophy of Law	4	Philosophy of Law	4
Sociology of Law	4	Sociology of Law	4
Cyberlaw	4		
Political Science	4	Political Science	4
Public Administration	4	Public Administration	4

2000		2005	
	Credit		Credit
International Relations	4	International Relations	4
History of Political and Foreign Relationship - Japan	4	History of Political and Foreign Relationship - Japan	4
History of International Political Relationship	4	History of International Political Relationship	4
European Political History	4	European Political History	4
History of Political Theories - Europe	4	History of Political Theories - Europe	4
History of Political Theories - Japan	4	History of Political Theories - Japan	4
Political Economy - Contemporary Perspectives	4	Political Economy - Contemporary Perspectives	4
Municipalities and Public Administration	4	Municipalities and Public Administration	4
Japan and the United States - Contemporary Perspectives	4	Japan and the United States - Contemporary Perspectives	4
Comparative Legislative Process - Japan and the United States	4	Comparative Legislative Process - Japan and the United States	4
Political Demography	4	Political Demography	4
		Political Theories in the 20th Century - Liberalism, Socialism, Fascism and Beyond	4
Sociology	4	Sociology	4
Media Literacy	4	Media Literacy	4
		Human Rights and Politics	4
		Internet and Public Policy	4
Politics of European Union	4	Politics of European Union	4
Japan in the International Community - 2000	4	Japan in the International Community - 2005	4
Contemporary East Asia - Political Perspectives	4	Contemporary East Asia - Political Perspectives	4
Identity and Society	4	Identity and Society	4



2000		2005	
	Credit		Credit
Power and Authority	4	Power and Authority	4
Leadership - Political Analysis	4	Leadership - Political Analysis	4
Political Identity and Political Action	4	Political Identity and Political Action	4
		Election Analysis - Theory	4
International System and Foreign Policy in Japan	4	International System and Foreign Policy in Japan	4
Europe in the World	4	Europe in the World	4
Contemporary American Political Policies	4	Contemporary American Political Policies	4
Conflicts in International Context	4	Conflicts in International Context	4
Global Governance	4	Global Governance	4
Conversing Media	4	Conversing Media	4
Social Changes and Political Identity	4	Social Changes and Political Identity	4
Public Philosophy	4	Public Philosophy	4
Modern China and Politics	4	Modern China and Politics	4
Contemporary Public Administration	4	Contemporary Public Administration	4
Contemporary Great Britain	4	Contemporary Great Britain	4
		War and Ethics	4
History of Foreign Policy - Japan and the United States	4	History of Foreign Policy - Japan and the United States	4
Theory of Finance	4	Theory of Finance	4
Economic Policy Analysis	4	Economic Policy Analysis	4
Theory of Japanese Economy	4	Theory of Japanese Economy	4

**TABLE 3: LIST OF COURSES AT A LAW SCHOOL  
(GAKUSHUIN)**

<b>Course Title</b>	<b>Credit</b>
Introduction to Public Law 1	2
Introduction to Public Law 2	2
Constitutional Litigation 1	2
Constitutional Litigation 2	2
Administrative Litigation 1	2
Administrative Litigation 2	2
Introduction to Civil Law 1	2
Introduction to Civil Law 2	2
Introduction to Civil Law 3	2
Introduction to Civil Law 4	2
Case Study - Civil Law 1	2
Case Study - Civil Law 2	2
Introduction to Commercial Law 1	2
Introduction to Commercial Law 2	2
Business Organization Law	2
Business Finance Law	2
Introduction to Civil Procedure 1	2
Introduction to Civil Procedure 2	2
Case Study - Civil Procedure 1	2
Case Study - Civil Procedure 2	2
Introduction to Criminal Law and Procedure	2
Basic Criminal Law	2
Criminal Law 1	2
Criminal Law 2	2
Basic Criminal Procedure	2
Criminal Procedure 1	2
Criminal Procedure 2	2
Civil Procedure in Practice	2
Criminal Law and Procedure in Practice	2
Legal Ethics	2
Moot Court	2
Legal Research and Writing	2

Course Title	Credit
Lawyering	2
Clinical and/or Externship	2
Comparative Law 1	2
Comparative Law 2	2
American Law 1	2
American Law 2	2
German Law	2
Legal Philosophy	2
Law and Sociology	2
Landlord and Tenant	2
Consumer Protection Law	2
Medicine and Law	2
Trust	2
Contemporary Commercial Transaction and Law	2
Financial Law in Practice	2
Business Law 1	2
Business Law 2	2
Business Planning 1	2
Business Planning 2	2
Law of Execution, Attachment and Garnishment	2
Bankruptcy	2
Labour Law 1	2
labour Law 2	2
Tax Law 1	2
Tax Law 2	2
Competitions Law 1	2
Competitions Law 2	2
Intellectual Properties 1	2
Intellectual Properties 2	2
International Law	2
International Economics Law	2
Conflict of Laws 1	2
Conflict of Laws 2	2
Environmental Law 1	2
Environmental Law 2	2

