

CRAM SCHOOLED

MARK E. STEINER*

I. INTRODUCTION

Most law students in Japan, Germany, Korea, Taiwan, and the United States enroll in supplementary courses run by private companies that are designed to prepare students for their bar examinations. As described by Takahiro Saito, Chang Rok Kim, and Heinrich Wolff, law students in Japan, Korea, and Germany attend extensive “cram school” programs that generally last eighteen months and run concurrently with their formal studies.¹ Most American law students, on the other hand, attend a two-month bar review course that does not even begin until after they have graduated. This Article addresses why American bar preparation courses are not like those in Germany, Japan, and Korea, with a brief note on Taiwan.

II. LEGAL EDUCATION AND CRAM SCHOOLS IN JAPAN, KOREA, GERMANY, AND TAIWAN

Until the recent reforms in Japan, legal education in Germany, Korea, and Japan had three components: undergraduate legal education, lengthy cram school preparation, and practical, specialized legal training for those who pass the bar examination.² In Japan, graduate legal education began in April 2004.³

* Associate Professor, South Texas College of Law. B.A., University of Texas; J.D., University of Houston Law Center; Ph.D. (History), University of Houston. The author was Visiting Professor of Law (Fulbright Scholar), College of Law, National Taiwan University for the Fall Semester of 2005. He thanks Dean Chang-fa Lo and Professor Ming-jye Huang of National Taiwan University for their invitation to participate in the Legal Education Reform conference, and Dr. Jon Wright of Academia Sinica for his support.

¹ Takahiro Saito, *The Tragedy of Japanese Legal Education: Japanese “American” Law Schools*, 24 WIS. INT’L L.J. 197 (2006); Chang Rok Kim, *The National Bar Examination in Korea*, 24 WIS. INT’L L.J. 243 (2006); Heinrich Wolff, *Bar Examinations and Cram Schools in Germany*, 24 WIS. INT’L L.J. 109 (2006).

² See Tom Ginsburg, *Transforming Legal Education in Japan and Korea*, 22 PENN. ST. INT’L L. REV. 433, 435 (2004); James R. Maxeiner & Keiichi Yamanaka, *The New Japanese Law Schools: Putting the Professional into Legal Education*, 13 PAC. RIM L. & POL’Y J. 303, 307-10 (2004); Wolff, *supra* note 1; see also Juergen R. Ostertag, *Legal Education in Germany and the United States – Structural Comparison*, 26 VAND. J. TRANSNAT’L L. 301, 306-09 (1993) (discussing the historical development of German legal education).

The change from undergraduate to graduate legal education, however, did not result in the immediate disappearance of Japanese cram schools.⁴ Saito, in fact, predicts that the Japanese prep schools will continue to grow because the newly established law schools will not be able to teach the “specialized techniques” for passing the exam.⁵

A. GERMANY, KOREA, AND JAPAN

Until April 2004, Japanese, German, and Korean legal education also shared other characteristics. Law professors in Germany, Japan, and Korea almost exclusively used the lecture method. In all three countries, lectures served a practical need: class enrollments could be enormous. In German universities, some classes have had as many as one thousand students.⁶ The student-teacher ratio in Germany is very high: in 1991-1992, the University of Cologne had thirty-one full-time law professors teaching 6,216 law students—a 200:1 student-teacher ratio.⁷ The University of Munich in the 1994-1995 academic year had five thousand students and thirty-four full-time faculty, a 147:1 student-teacher ratio.⁸ Law classes in pre-reform Japan could exceed five hundred students.⁹ In post-reform Japan, the newly created law schools are supposed to abandon “the unilateral

³ Maxeiner & Yamanaka, *supra* note 2, at 303.

⁴ Saito, *supra* note 1.

⁵ *Id.* at 201. It will be interesting to see if Saito will be proved right about the continued growth of prep schools or the inability of law schools to prepare their students for the examination. I have doubts about both propositions.

⁶ Philip Leith, *Legal Education in Germany: Becoming a Lawyer, Judge, and Professor*, 4 WEB J. CURRENT LEGAL ISSUES 1, 4 (1995), available at <http://webjcli.ncl.ac.uk/articles4/leith4.html>.

⁷ Eckart Klein, *Legal Education in Germany*, 72 OR. L. REV. 953, 953 (1993). In the United States, the American Bar Association has established guidelines for an appropriate student-teacher ratio: a ratio of 20:1 or lower is presumptively in compliance while a ratio of 30:1 or lower is presumptively not in compliance. AM. BAR ASS'N, STANDARDS FOR APPROVAL OF LAW SCHOOLS AND INTERPRETATIONS 2005-06 Interpretation 402-2, <http://www.abanet.org/legaled/standards/chapter4.html> (last visited Oct. 12, 2005).

⁸ Leith, *supra* note 6.

⁹ E.g., Yoshiharu Kawabata, *The Reform of Legal Education and Training in Japan: Problems and Prospects*, 43 S. TEX. L. REV. 419, 432 (2002).

mass lecture” and replace it with a “small group education system.”¹⁰ The new Japanese law schools are supposed to have a 15:1 student-teacher ratio.¹¹

The lecture method is not without its critics. Nearly thirty years ago, Wilhelm Karl Geck called it “outdated” and criticized lectures for promoting passivity and stifling creativity.¹² Most German professors, though, remain convinced that lectures are necessary to present civil law in a systematic, theoretical manner.¹³ While lectures are well suited for teaching very large classes, these theoretical commitments of German law professors suggest that the instructors probably would not change how they teach if they had smaller enrollments.¹⁴ Saito also defends the use of lectures as “the most efficient way to convey as much information as possible within a very limited period of time.”¹⁵

One hallmark of undergraduate legal studies in Germany, Korea, and Japan is that students apparently stay away from their university classes in droves while diligently attending cram school classes.¹⁶ Students in Germany are not required to prepare for, or even attend, class.¹⁷ As Wolff wryly notes, the obligation to attend class has been a “theoretical” one.¹⁸ In pre-reform Japan, students attended cram schools while “regular classrooms of law

¹⁰ Maxeiner & Yamanaka, *supra* note 2, at 319.

¹¹ *Id.* at 320.

¹² Wilhelm Karl Geck, *The Reform of Legal Education in the Federal Republic of Germany*, 25 AM. J. COMP. L. 86, 88 (1977).

¹³ Klein, *supra* note 7, at 954.

¹⁴ *Id.*

¹⁵ Saito, *supra* note 1, at 199-200.

¹⁶ See Richard L. Abel, *Lawyers in the Civil Law World*, in 2 LAWYERS IN SOCIETY: THE CIVIL LAW WORLD 13 (Richard L. Abel & Philip S.C. Lewis eds., 1988).

¹⁷ Rainer Grote, *Comparative Law and Teaching Law Through the Case Method in the Civil Law Tradition – A German Perspective*, 82 U. DET. MERCY L. REV. 163, 174-75 (2005).

¹⁸ Wolff, *supra* note 1, at 122.

faculties at major universities” became deserted.¹⁹ Thus, the Japanese students’ legal education took place at cram school.²⁰ Cram schools appear to challenge students more than do their university classes, which may be why students regularly attend cram school classes.²¹

The bar examination in pre-reform Japan and present-day Korea has presented an almost impossible hurdle for law students to overcome. In Japan in 2002, only 1,183 of 41,459 applicants passed the national bar examination.²² At one point in Korea, one hundred thousand students would study for the annual *sabubshihum*, but only a thousand would pass.²³ In 1990, the “average successful applicant was twenty-nine and was taking the test for the seventh time.”²⁴ In Korea, the pass rate remains between 2 and 3 percent.²⁵

Most law students in Korea, Japan, and Germany attend cram schools. In Korea, around 90 percent of successful *sabubshihum* applicants have attended cram schools.²⁶ One 1999 study found 625 of 626 successful exam-takers in Japan studied in cram schools, with the majority attending several days a week.²⁷ In

¹⁹ Koichiro Fujikura, *Reform of Legal Education in Japan: The Creation of Law Schools Without a Professional Sense of Mission*, 75 TUL. L. REV. 941, 944 (2001); see also Dan Rosen, *Schooling Lawyers*, 2 ASIAN-PAC. L. & POL’Y J. 66, 69 (2001); Setsuo Miyazawa with Hiroshi Otsuka, *Legal Education and the Reproduction of the Elite in Japan*, 1 ASIAN-PAC. L. & POL’Y J. 1, 26-28 (2000). The failure to attend classes at Japanese universities is so widespread that an apocryphal story has spread about a final examination at the University of Tokyo in which half of the grade depended upon students being able to successfully pick their professor from two photographs.

²⁰ Setsuo Miyazawa, *Education and Training of Lawyers in Japan – A Critical Analysis*, 43 S. TEX. L. REV. 491, 493 (2002).

²¹ See, e.g., Grote, *supra* note 17, at 176 (stating that cram schools enforce a “rigorous work discipline” on their students).

²² Maxeiner & Yamanaka, *supra* note 2, at 308.

²³ Hoyoon Nam, Note, *U.S.-Style Law School (“Law School”) System in Korea: Mistake or Accomplishment?*, 28 FORDHAM INT’L L.J. 879, 888 (2005).

²⁴ Constance O’Keefe, *Legal Education in Japan*, 72 OR. L. REV. 1009, 1011-12 (1993).

²⁵ Sang-Hyun Song, *Legal Education in Korea and the Asian Region*, 51 J. LEGAL EDUC. 398, 398 (2001).

²⁶ Nam, *supra* note 23, at 912.

²⁷ Curtis J. Milhaupt & Mark D. West, *Law’s Dominion and Market for Legal Elites in Japan*, 34 LAW & POL’Y INT’L BUS. 451, 468 n.64 (2003).

Germany, 90 percent of those taking the exams attend cram schools.²⁸

Students in Korea and Japan attended cram schools for two reasons: (1) a perception that their university studies failed to prepare them for the examination, and (2) the immense pressure created by the minuscule pass rates in those countries. The students' perception that their undergraduate courses were less than useful for preparing for the bar exam undoubtedly was reinforced by the students' realization that the majority of their law professors either never took or never passed the examination, since law faculty need not be bar members in order to teach.²⁹ The Justice System Reform Council in Japan specifically addressed bar examination preparation in its 2001 report, recommending that the education at the newly-created law schools be connected "organically" with the national bar examination.³⁰ It stated that graduate law schools should provide "productive educational programs" that would enable 70 to 80 percent of their graduates to pass the new national bar examination.³¹

The existence of a widely attended, extensive cram school program is harder to explain in Germany than it is in Korea and Japan. Unlike students in Korea and pre-reform Japan, German law students have a decent chance of actually passing the exam. In Germany, around 70 percent who take the first bar examination, which governs admission to the training programs, pass and are admitted to training.³² The current German pass rate is much closer to the rate in the United States than to the rates of Korea or pre-reform Japan,³³ yet students in Germany appear to spend as much time in cram school as their Korean and Japanese counterparts.

²⁸ Wolff, *supra* note 1, at 120.

²⁹ See Kawabata, *supra* note 9, at 432; Saito, *supra* note 1, at 201; Song, *supra* note 25, at 399. Cf. Nam, *supra* note 23, at 913.

³⁰ JUSTICE SYS. REFORM COUNCIL, RECOMMENDATIONS OF THE JUSTICE SYSTEM REFORM COUNCIL: FOR A JUSTICE SYSTEM TO SUPPORT JAPAN IN THE 21ST CENTURY ch. II, pt. 2, 2 (2001), available at <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html> (last visited Oct. 12, 2005).

³¹ *Id.* ch. II, pt. 2, 2(2)(d). As noted by Saito, only thirty percent of examinees are now expected to pass. Saito, *supra* note 1, at 205-06.

³² Cf. Maxeiner & Yamanaka, *supra* note 2, at 308.

³³ Compare *id.* with *supra* text accompanying notes 22-25.

Previous commentators have attributed this reliance upon cram schools to the manner in which law is taught in German universities. Philip Leith, for example, asserted that German cram schools existed because of the large law classes in German universities: "The students themselves, flung into these large classes find it difficult to relate to other students and to gain feedback on how their education is progressing."³⁴ The cram school overcame the problem of student "detachment."³⁵ Leith wrote this in 1995, however, and his explanation no longer has the force that it once did. More recently, German university legal education has been influenced by the cram-school approach.³⁶ Many universities now offer "cram courses" and professors give "trial oral examinations to groups of students to prepare them more effectively" for the state examination.³⁷ Nonetheless, German students appear to remain convinced that cram school ensures bar examination success.³⁸ The extensive cram school program may just be an ingrained part of German legal education—generations of German law students have attended cram schools.³⁹ But it is also possible that because the pass rate is relatively high and the professors are addressing the problem of student detachment that bar preparation in Germany will come to resemble that of the United States.

B. TAIWAN

Although none of the papers discussed the situation in Taiwan, it appears to be similar to that of Korea and pre-reform Japan. Legal education in Taiwan consists of three components:

³⁴ Leith, *supra* note 6. See also Geck, *supra* note 12, at 88 (arguing that students attend cram school rather than their law classes because they feel "lost in an amorphous mass" at their university); Jutta Brunnée, *The Reform of Legal Education in Germany: The Never-Ending Story and European Integration*, 42 J. LEGAL EDUC. 399, 402 (1992) (arguing that personal attention and availability to students are rare in German universities).

³⁵ Leith, *supra* note 6, at 6.

³⁶ Wolff, *supra* note 1, at 126-27.

³⁷ Grote, *supra* note 17, at 176. See also Wolff, *supra* note 1, at 126-27. Law colleges in Korean universities, according to Professor Kim, also are starting to teach examination technique because "law school rankings are determined by the number of successful applicants of the examination." Kim, *supra* note 1, at 246-47.

³⁸ Wolff, *supra* note 1, at 120.

³⁹ *Id.* at 119.

undergraduate education, cram school, and specialized training for those who pass either of the two bar examinations.⁴⁰ The bar passage rate is very low. The average passing rate for the National Judicial Examination from 1970 to 2000 was around 4 percent.⁴¹ The average passing rate for the National Bar Examination from 1985 to 2000 was under 7 percent.⁴² The highest passing rate was 15 percent in 1993.⁴³ Because of this low passage rate, students turn to cram schools (*buxiban*) for help. The cram school courses in Taiwan can last up to eighteen months and meet three nights a week for three hours each night.⁴⁴ Because students take cram school classes concurrently with their college courses, cram school appears to interfere with the students' regular instruction.⁴⁵

Saito and Wolff are not particularly critical of cram schools. Neither Saito nor Wolff seem troubled by the disruptive effect that cram schools may have on students' university education, nor is there any concern about the expense of for-profit cram schools, which could limit access to the legal profession to those who can afford the supplementary courses.⁴⁶ Other observers have not been as uncritical. Professor Koichiro Fujikura of Tezukayama University lamented how "regular classrooms of law faculties at major universities have become deserted. In effect, the cherished tradition of teaching law . . . at university has apparently lost to the private commercial enterprise of cram schools."⁴⁷

⁴⁰ E.g., Shu-chin Grace Kuo, *Rethinking the Masculine Character of the Legal Profession: A Case Study of Female Legal Professionals and Their Gendered Life in Taiwan*, 13 AM. U.J. GENDER SOC. POL'Y & L. 25, 38-42 (2005).

⁴¹ *Id.* at 40.

⁴² *Id.* at 42.

⁴³ *Id.*

⁴⁴ See Joseph L. Pratt, *The Two Gates of National Taiwan University School of Law*, 19 UCLA PAC. BASIN L.J. 131, 158 (2001).

⁴⁵ *Id.* at 159.

⁴⁶ On the expense of cram schools, see Nam, *supra* note 23, at 912; Grote, *supra* note 17, at 176.

⁴⁷ Fujikura, *supra* note 19, at 944.

III. THE BAR EXAMINATION AND AMERICAN LAW SCHOOLS

In the United States, there has always been a close, and often uneasy, relationship between the bar examination and law schools.⁴⁸ In the United States, the real growth in law schools came in the late nineteenth and early twentieth centuries.⁴⁹ Richard Abel notes that the virtual disappearance of the apprentice system in the early twentieth century cannot be explained by “legal compulsion.”⁵⁰ As late as 1923, no state required prospective lawyers to attend law school.⁵¹ Instead, the rise of law schools coincided with the introduction of formal bar examinations in the late nineteenth and early twentieth centuries.⁵² Would-be lawyers believed their chances of passing the bar increased by attending law school.⁵³ In some jurisdictions, prospective lawyers were lured by the “diploma privilege,” which ensured admission.⁵⁴

For example, the state of Texas, where I teach, also saw a dramatic increase in the number of law schools during this period. In 1927, nine law schools were operating in Texas.⁵⁵ Only one of those schools (the University of Texas) had operated continuously before the introduction of the statewide uniform bar

⁴⁸ See ROBERT STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S*, at 157, 163 (1983).

⁴⁹ *E.g.*, RICHARD L. ABEL, *AMERICAN LAWYERS* 40-41 (1989).

⁵⁰ *Id.* at 42.

⁵¹ *Id.*

⁵² *Id.* at 43.

⁵³ *Id.*

⁵⁴ *Id.* at 41, 62. Wisconsin is now the only state with the diploma privilege. Linda Jellum & Emmeline Paulette Reeves, *Cool Data on a Hot Issue: Empirical Evidence that a Law School Bar Support Program Enhances Bar Performance*, 5 NEV. L.J. 646, 650 (2005). The American Bar Association has opposed the diploma privilege since 1921. The Council of the Section on Legal Education and Admissions to the Bar of the American Bar Association continues to oppose the diploma privilege, maintaining that “every candidate [for bar admission] should be subject to an examination by public authority.” Section of Legal Educ. & Admissions to the Bar, Am. Bar Ass’n, Council Statements, <http://www.abanet.org/legaled/council/prior.html> (last visited Oct. 12, 2005).

⁵⁵ Mark E. Steiner, *The Secret History of Proprietary Legal Education: The Case of the Houston Law School, 1919-1945*, 47 J. LEGAL EDUC. 341, 342 (1997).

examination system in 1919.⁵⁶ The growth of Texas law schools was tied to the bar examination. Night schools like the Houston Law School were quite explicit in proclaiming that the purpose of the school “is to prepare students for the practice of law in this state, and to enable them to pass the State Bar Examination.”⁵⁷

In the first three decades of the twentieth century, “day” and “night” schools fought an intense struggle over the future of American legal education. On one side, there were the schools with full-time professors who used the case method and enrolled full-time students who had pre-legal training.⁵⁸ On the other side, there were night schools run by practitioners, who primarily used the lecture method and enrolled part-time students who might even have lacked a high school diploma.⁵⁹

“Elite” law schools and bar leaders held these night schools in disdain.⁶⁰ Part of the elite bar’s critique of night-law schools was that they merely prepared students for the bar examination. If more Suffolk night-school graduates passed the bar than Harvard graduates, then something was obviously wrong with . . . Suffolk. After all, Suffolk had the wrong kind of professors and the wrong kind of students.⁶¹

Another part of the critique of night schools was that they allowing the “wrong types”—notably Jews and immigrants—to gain access to the legal profession.⁶² Some critics of night schools were able to deftly mesh academic snobbery, xenophobia, and

⁵⁶ *Id.* On the introduction of the statewide examination in Texas, see Stephen K. Huber & James E. Myers, *Admission to the Practice of Law in Texas: An Analytical History*, 15 HOUS. L. REV. 485, 509-11 (1978).

⁵⁷ Steiner, *supra* note 55, at 344 (quoting Letter from Ewing Werlein, Dean, Houston Law Sch., to Alfred Z. Reed (Feb. 26, 1927) (Houston Law School Papers, Box 1, Folder 3, Houston Metro. Research Ctr.)).

⁵⁸ See generally John Henry Schlegel, *Between the Harvard Founders and the American Legal Realists: The Professionalization of the American Law Professor*, 35 J. LEGAL EDUC. 311 *passim* (1985).

⁵⁹ Dorothy E. Finnegan, *Raising and Leveling the Bar: Standards, Access, and the YMCA Evening Law Schools, 1890-1940*, 55 J. LEGAL EDUC. 208, 209 (2005).

⁶⁰ Thomas Koenig & Michael Rustad, *The Challenge to Hierarchy in Legal Education: Suffolk and the Night Law School Movement*, 7 RES. IN L., DEVIANCE & SOC. CONTROL 189, 192-93 (1985).

⁶¹ *Id.* at 197. Accord ABEL, *supra* note 49, at 67.

⁶² JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 106-09, 121-23 (1976).

class and ethnic bias. Dean Harry Richards of the University of Wisconsin Law School thus stated:

If you examine the class rolls of the night schools in our great cities, you will encounter a very large proportion of foreign names. Emigrants and sons of emigrants remembering the respectable standing of the advocate in their own home, covet the title as a badge of distinction. The result is a host of shrewd young men, imperfectly educated, crammed so they can pass the bar examinations, all deeply impressed with the philosophy of getting on, but viewing the Code of Ethics with uncomprehending eyes.⁶³

The model favored by full-time law professors achieved almost complete hegemony over American legal education as professors joined forces with elite bar leaders, although these elite schools never were able to quite finish off night law schools.⁶⁴

This struggle left an indelible legacy on American legal education. American law professors' fetishization of law school rank and hierarchy apparently began in this period. An even more curious legacy is the widespread disdain for any law school that is concerned about its students' preparation for the bar examination; such a school risks being dismissed as a mere "trade school" among many legal education professionals.⁶⁵ This elitist disdain for law schools that expressly prepared their students for the bar examination was once codified in the American Bar Association's accreditation standards. Standard 302(f) announced, "A law school may offer a bar examination preparation course, but may not grant credit for the course or require it as a condition for

⁶³ STEVENS, *supra* note 48, at 109 n.67 (quoting Harry S. Richards, *Progress in Legal Education*, in HANDBOOK OF THE ASSOCIATION OF AMERICAN LAW SCHOOLS 63 (1915)).

⁶⁴ Cf. George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091, 2114-25 (1998).

⁶⁵ Interestingly, one of the University of Wisconsin law professors who spoke at the Legal Education Reform conference provided an excellent example of these attitudes. He spoke derisively of lower-tier American law schools that merely "taught law" instead of policy. He then suggested to conference participants that they needed to visit only "first-tier law schools" if they wanted to see "interesting ideas" about teaching.

graduation.”⁶⁶ Standard 302(f) oddly envisioned “a scheme of required professional training that [was] not expected to prepare the students for the required professional licensing examination.”⁶⁷

The accreditation standards now allow for credit for a bar examination preparation course, but such credit cannot be “counted toward the minimum credits for graduation.”⁶⁸ Standard 301 also mandates that “a law school shall maintain an educational program that prepares its students for admission to the bar and effective and responsible participation in the legal profession.”⁶⁹ The factors that the ABA will consider in determining whether a law school is meeting Standard 301 include “the rigor of its academic program, including its assessment of student performance, and the bar passage rates of its graduates.”⁷⁰

Nationally, the bar passage rate has declined over the last decade.⁷¹ The overall decline in the passage rate has led to increased concern by some American law schools and an increased willingness to take action.⁷² More than a third of American law

⁶⁶ SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, STANDARDS FOR APPROVAL OF LAW SCH. & INTERPRETATIONS § 302 (f) (1998), quoted in Maureen Straub Kordesh, *Reinterpreting ABA Standard 302(f) in Light of the Multistate Performance Test*, 30 U. MEM. L. REV. 299, 300 & n.1 (2000).

⁶⁷ Byron D. Cooper, *The Bar Exam and Law Schools*, 80 MICH. BAR J., Feb. 2001, at 72, 72; see also Kordesh, *supra* note 66, at 321 (opining that Standard 302(f) is a “perfectly adequate standard so long as the bar exam does not test what is taught in law school.”).

⁶⁸ Interpretation 302-7 states:

If a law school grants academic credit for a bar examination preparation course, such credit may not be counted toward the minimum requirements for graduation established in Standard 304. A law school may not require successful completion of a bar examination preparation course as a condition of graduation.

2005-06 ABA STANDARDS, *supra* note 7, at 20.

⁶⁹ *Id.* at 18 (Standard 301).

⁷⁰ *Id.* (Interpretation 301-3).

⁷¹ Christian C. Day, *Law Schools Can Solve the “Bar Pass Problem”—“Do the Work!”*, 40 CAL. W. L. REV. 321, 321 (2004).

⁷² Jellum & Reeves, *supra* note 54, at 647-48.

schools “sponsor a program, course, or activity designed specifically to improve law graduates’ performance on the bar examination.”⁷³ Many American law professors believe they have an ethical or professional obligation to help their students prepare for the bar examination.⁷⁴

A. THE PRESENT BAR EXAMINATION IN TEXAS

To understand why American legal education has not developed a lengthy cram school program, it is useful to look at what an American bar examination actually tests and what law schools do to prepare their students for the exam. Because each state’s examination differs, I will use the examination in Texas as an example. To become a lawyer in Texas, an applicant must do four things: pass a background check for “character and fitness,” graduate from an accredited law school, pass the Multistate Professional Responsibility Examination (MPRE) with a score of at least 85 within two years of passing the Texas Bar Examination, and pass the Texas Bar Examination.⁷⁵ The Texas Bar Examination is a two and one-half day exam.⁷⁶ On the first day, the exam tests Texas procedure and evidence (both civil and criminal) and contains the Multistate Performance Test (MPT).⁷⁷

Introduced in the mid-1990s, the MPT is a relatively new part of the examination.⁷⁸ Texas is one of thirty jurisdictions to use the MPT.⁷⁹ The MPT consists of a hypothetical description of a client’s legal problem, some factual background (usually in the

⁷³ Comm. on Bar Admissions and Lawyer Performance & Richard A. White, *AALS Survey of Law Schools on Programs and Courses Designed to Enhance Bar Examination Performance*, 52 J. LEGAL EDUC. 453, 456 (2002).

⁷⁴ *E.g.*, *id.* at 454; Day, *supra* note 71, at 322.

⁷⁵ TEX. SUPREME COURT, RULES GOVERNING ADMISSION TO THE BAR OF TEXAS 2-6 (n.d.). Most students take the MPRE in their third year of law school.

⁷⁶ Tex. Bd. of Law Exam’rs, Texas Bar Examination—General Instructions, http://www.ble.state.tx.us/exam_info/tbe_instructions2.htm (last visited Jan. 30, 2006).

⁷⁷ RULES GOVERNING ADMISSION TO THE BAR OF TEX. app. A (Tex. Bd. of Law Exam’rs 2003), available at <http://www.ble.state.tx.us/Rules/rulebook.pdf>.

⁷⁸ *E.g.*, Stella L. Smetanka, *The Multi-State Performance Test: A Measure of Law Schools’ Competence to Prepare Lawyers*, 62 U. PITT. L. REV. 747, 751 n.17 (2001).

⁷⁹ Nat’l Conference of Bar Exam’rs, Multistate Examination Use, <http://www.ncbex.org/tests.htm> (follow “Which Jurisdictions Use NCBE Multistate Examinations?” hyperlink) (last visited Jan. 15, 2006).

form of deposition excerpts), and a “library” of statutory provisions and abbreviated court opinions.⁸⁰ The student is expected to read the material, analyze it, and prepare a client letter, memorandum, or brief in support of a motion—in only ninety minutes.⁸¹ According to the Texas Board of Law Examiners, the MPT is “designed to test an applicant’s ability to use fundamental lawyering skills in a realistic situation. Each test evaluates an applicant’s ability to complete a task which a beginning lawyer should be able to accomplish.”⁸² According to the National Conference of Bar Examiners, the MPT is designed to require test-takers to (1) sort detailed factual materials and separate relevant from irrelevant facts; (2) analyze statutory, case, and administrative materials for principles of law; (3) apply the law to the relevant facts in a manner likely to resolve a client’s problem; (4) identify and resolve ethical dilemmas, when present; (5) communicate effectively in writing; and (6) complete a lawyering task within time constraints.⁸³ Advocates for the MPT argue that it tests actual lawyering skills rather than the ability to memorize rules or take multiple-choice tests.⁸⁴

The other portion of the first day’s exam covers Texas procedure and evidence.⁸⁵ Students must answer forty questions in ninety minutes and cannot write more than five lines per question.⁸⁶ The answers almost entirely depend on rote memorization of procedural rules, including timetables.

On the second day, the examination consists of the Multistate Bar Examination.⁸⁷ This exam is consists of two hundred multiple-choice questions given in two three-hour sessions.⁸⁸ The subjects tested include: contracts, constitutional law, criminal law

⁸⁰ Nat’l Conference of Bar Exam’rs, The Multistate Performance Test (MPT), <http://www.ncbex.org/tests/mpt/mpt.htm> (last visited Oct. 12, 2005).

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Smetanka, *supra* note 78, *passim*.

⁸⁵ Tex. Bd. of Law Exam’rs, *supra* note 76.

⁸⁶ *See generally* Tex. Bd. of Law Exam’rs, Past Examinations Online, http://www.ble.state.tx.us/past_exams/main_pastexams.htm (last visited Oct. 12, 2005).

⁸⁷ Tex. Bd. of Law Exam’rs, *supra* note 76.

⁸⁸ *Id.*

and procedure, real property, evidence, and torts.⁸⁹ Except for evidence, the subjects tested consist roughly of the traditional first-year curriculum.⁹⁰ The first-year curriculum predates the multistate exam, but one reason the first-year curriculum perhaps seems impervious to change is that it does reflect the requirements of the multistate bar exam.⁹¹

On the third day, the Texas Bar Examination tests state-specific material.⁹² There are twelve essays, and the students are given thirty minutes for each essay.⁹³ The subjects tested include:

- a. Uniform Commercial Code (2 essays)
Business associations, including corporations,
- b. agency and partnerships (2 essays)
- c. Family law (2 essays)
- d. Wills & administration (2 essays)
- e. Real property (2 essays)
- f. Trust & guardianship (1 essay)
- g. Consumer law (1 essay)⁹⁴

For the most part, these subjects are governed by Texas law.

All Texas law schools offer what are called “bar classes” because the subjects are tested on the bar examination. While the efficacy of such courses is disputed, the courses are popular with students.⁹⁵ Texas law schools also publicize what subjects are tested on the bar examination and what courses correspond to those subjects. Some law schools recommend a course of study while other law schools require students take certain “bar

⁸⁹ *Id.*

⁹⁰ Lawrence M. Grosberg, *Standardized Clients: A Possible Improvement for the Bar Exam*, 20 GA. ST. U. L. REV. 841, 851 (2004).

⁹¹ On the “puzzling persistence of the first-year curriculum,” see John Henry Schlegel, *Walt Was Right*, 51 J. LEGAL EDUC. 599 (2001).

⁹² Tex. Bd. of Law Exam’rs, *supra* note 76.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Phillips Cutright et al., *Course Selection, Student Characteristics and Bar Examination Performance: The Indiana University Law School Experience*, 27 J. LEGAL EDUC. 127, 135-36 (1975).

courses.”⁹⁶ Texas law schools also offer other programs to help their students in preparing for the bar. Texas Tech University, for example, offers assistance with time and stress management and with planning studying strategies.⁹⁷

Unlike Saito’s hapless Japanese law professors, Texas law professors, if they desire, can help their students prepare for the Texas bar examination. Many Texas law professors are licensed to practice law in Texas, and most have passed at least one state’s bar examination. For example, I teach a course in consumer transactions, a subject tested on the bar exam. I prepare my students for the consumer law essay by using old bar questions as in-class reviews. Three or four times a semester, I give my students fifteen or twenty minutes to work in a small group and develop an outline of what their answer would be to a bar-type question; we then immediately go over their answers. I like to give chapter summaries as we go along anyway, so the exercises just replace those reviews. I also briefly mention test-taking strategy, such as how to read the call of the question. All of this takes surprisingly little time: I spend less than two hours reviewing bar questions, and I have been given forty-two hours for classroom instruction.

B. BAR REVIEW IN THE UNITED STATES

American law students do not spend years studying at a cram school before taking the bar examination. They are unlike

⁹⁶ Southern Methodist University Dedman School of Law, for example, lists courses that “cover significant subject matter tested on the Multi-State Professional Responsibility Exam, the Multi-state Bar Exam, or the Texas Bar Exam” on its website. S. Methodist Univ., Dedman Sch. of Law, Courses Tested on the Bar Exam: Fall-2005, http://registrar.law.smu.edu/bar_courses02.asp?Term=Fall-2005 (last visited Oct. 12, 2005); *see also* S. Methodist Univ., Dedman Sch. of Law, The Bar Examination: SMU Course Coverage and Recommendations, <http://studentaffairs.law.smu.edu/reccoursesforbar.shtm> (last visited Oct. 12, 2005). Texas Tech University School of Law requires students to take Wills and Trusts and Commercial Law. Tex. Tech Univ. Sch. of Law, Course Descriptions, <http://www.depts.ttu.edu/officialpublications/courses/LAW.html> (last visited Oct. 12, 2005). Texas Wesleyan University School of Law requires students to take Business Associations and Estates & Trusts. Tex. Wesleyan Univ. Sch. of Law, Course Descriptions, <http://law.txwes.edu/Default.aspx?tabid=212> (last visited Oct. 12, 2005). Baylor Law School requires students to take Business Organizations, Consumer Protection, and Trusts and Estates. Baylor Law Sch., Curriculum, http://law.baylor.edu/faculty_curriculum/curriculum.htm (last visited Oct. 12, 2005).

⁹⁷ Tex. Tech Univ. Sch. of Law, Office of Academic Success Programs, <http://www.law.ttu.edu/lawWeb/oasp/index.shtm> (last visited Oct. 12, 2005).

law students in Germany or Japan or Korea, who may have spent more than eighteen months studying in a cram school before they take their first bar examination.⁹⁸ Bar preparation by for-profit businesses is different in the United States.⁹⁹ It is staffed differently, and its timing and length are different.

The bar review course used by most students lasts only seven weeks, typically featuring one three-hour lecture per day, five days a week.¹⁰⁰ The bar exam in Texas is offered in February and August each year.¹⁰¹ The seven-week-long bar course begins about two months before the exam; the reviews need not interfere with law school course work.¹⁰²

Bar reviews, at least the near-monopoly Bar/Bri, use almost exclusively law professors to give lectures.¹⁰³ Unlike Germany, Japan, or Korea, there is no strict division between those who teach in law schools and those who teach bar reviews.¹⁰⁴ In the United States, bar review lecturers are nothing more than moonlighting law professors.¹⁰⁵ The use of law professors in bar review courses may ameliorate law students' sense of unease during law school about a possible "disconnect" between law school and the bar examination.

Several reasons may help explain why "bar review," for American law students, is unlike cram schools or prep schools. On a comparative basis, the state bar examinations do not present such daunting challenges as other countries' bar exams. The United States has had a long tradition of relatively easy access to

⁹⁸ See authorities cited, *supra* note 1.

⁹⁹ Cf., e.g., Bar/Bri, About Bar/Bri, http://www.barbri.com/about/about_frame.htm (last visited Apr. 13, 2006).

¹⁰⁰ See, e.g., Bar/Bri, Summer 2006 Austin Schedule, http://www.barbri.com/schedules/tx_S_2006_Austin1.pdf (last visited Apr. 13, 2006).

¹⁰¹ Tex. Bd. of Law Exam'rs, Examination Dates, http://www.ble.state.tx.us/exam_info/exam_dates.htm (last visited Apr. 13, 2006).

¹⁰² See, e.g., Bar/Bri, *supra* note 100.

¹⁰³ The Bar/Bri website asserts it has "assembled the nation's finest faculty of law professors, all of whom are outstanding teachers and bar exam experts." Bar/Bri, Texas <http://www.barbri.com/states/tx/index.htm> (last visited Oct. 12, 2005) (emphasis removed).

¹⁰⁴ Compare *id.* with authorities cited, *supra* note 1.

¹⁰⁵ See Bar/Bri, *supra* note 103, and accompanying text.

the legal profession.¹⁰⁶ While the first-time pass rate has declined in recent years, law schools, to varying degrees, have recognized this trend and are adapting; moreover, the eventual pass rate remains over 90 percent.¹⁰⁷ American students have no reason to be as anxious as Korean, Japanese, or German law students.

If students in Germany are drawn to cram schools because their large lecture classes cause a sense of detachment, then American law students may not have a similar catalyst.¹⁰⁸ The Socratic method—the teaching method some of their professors tend to prefer, at least for some portion of class time—requires student preparation and participation. Students also are exposed to a variety of teaching styles. American law professors, unlike their civil-law counterparts, do not seem as tied to one particular teaching method. While 97 percent of the professors teaching first-year courses use the Socratic method, they use it for only 59 percent of their class time.¹⁰⁹ The Socratic method is supplemented by lectures, which take up 25 percent of class time.¹¹⁰ In upper-level classes, 93 percent of professors use the Socratic method about half of the time.¹¹¹ Ninety-four percent of those professors also use lectures, which occupy about one-third of class time.¹¹² Other methods such as small groups and role playing also are used.¹¹³ Professors who teach “code courses” such as taxation and the Uniform Commercial Code often use the “problem method” instead of the case method.¹¹⁴ There seems to be more awareness among many American law professors that

¹⁰⁶ E.g., JAMES WILLARD HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS* 283 (1950).

¹⁰⁷ Richard Cabrera, *Working to Improve: A Plan of Action for Improving the Bar Exam Pass Rate*, 27 WM. MITCHELL L. REV. 1169, 1177 (2000).

¹⁰⁸ But see Gerald F. Hess, *Heads and Hearts: The Teaching and Learning Environment in Law School*, 52 J. LEGAL EDUC. 75, 77-79 (2002) (American law students experience stress, alienation, and loss of self-esteem).

¹⁰⁹ Steven I. Friedland, *How We Teach: A Survey of Teaching Techniques in American Law Schools*, 20 SEATTLE U. L. REV. 1, 27 (1996).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 25-26.

¹¹⁴ See, e.g., PAUL BARRON & MARK B. WESSMAN, *SECURED TRANSACTIONS: PROBLEMS AND MATERIALS* (2003).

choices are available among teaching methods and that learning theory can guide those choices.¹¹⁵

Another reason that cram schools have failed to appear in the United States is that American law students lack the free time to attend an extensive program while they are in school and undoubtedly would be unwilling to take a longer course that would delay taking the exam. Faced with an interactive classroom that requires their participation, American law students are forced to prepare for class.¹¹⁶ The lecture method, as noted by Duncan Kennedy, operates under two rules: “the rule that you must let the teacher drone on without interruption, balanced by the rule that he can’t do anything to you.”¹¹⁷ It is human nature for students not to prepare for a lecture class, but class preparation in American law schools takes considerable time. In addition, unlike their counterparts in Germany, Japan, or Korea, American law students typically work for law firms while they are in law school. One school’s survey found that 90 percent of its students held legal clerkships during law school with a large majority of those students clerking during the academic year.¹¹⁸ Between reading for class and clerking, most American law students would not have the spare time to devote to an extensive cram school program. Moreover, many American law students attend school part time.¹¹⁹ Those students, who already must balance the demands of law school, employment, and family, do not have time for cram school either.

¹¹⁵ See, e.g., Tracy L. McGaugh, *Generation X in Law School: The Dying of the Light or the Dawn of a New Day?*, 9 LEGAL WRITING 119 (2003); Michael Hunter Schwartz, *Teaching Law by Design: How Learning Theory and Instructional Design Can Inform and Reform Law Teaching*, 38 SAN DIEGO L. REV. 347 (2001).

¹¹⁶ E.g., Michael Vitiello, *Professor Kingsfield: The Most Misunderstood Character in Literature*, 33 HOFSTRA L. REV. 955, 960 (2005).

¹¹⁷ Duncan Kennedy, *Legal Education and the Reproduction of Hierarchy*, 32 J. LEGAL EDUC. 591, 593 (1982).

¹¹⁸ Donald N. Zillman & Vickie R. Gregory, *Law Student Employment and Legal Education*, 36 J. LEGAL EDUC. 390, 391 (1986).

¹¹⁹ Section of Legal Educ. & Admissions to the Bar, Am. Bar Ass’n, Law School Attendance Figures, Fall 2001, <http://www.abanet.org/legaled/statistics/miscstats.html> (last visited Oct. 12, 2005).

VI. CONCLUSION

American law students prepare for their bar examination differently than their counterparts in Germany, Japan, and Korea. While most of them take a supplementary bar preparation program, this program is not as extensive or intrusive as cram schools. Although American legal education has many, many problems, the lack of cram schools certainly is not one of them. As a result, American legal education can be better determined by law schools, rather than by those creating and administering the bar exam; perhaps this should be kept in mind in the debate over legal education and cram schools in Taiwan.

