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Japan's Legal Education Reforms from an American Law Professor's Perspective

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Abstract:

This paper describes and analyzes Japan's reform of legal education. This reform that began in 2004—a new system of legal education, coupled with changes in the national bar examination and in the national legal training institute for successful exam-takers—was part of a wide-ranging national law reform movement in Japan. As a result, 74 universities across Japan established graduate-level “law schools,” most of which were added to pre-existing undergraduate law departments. The new law schools provide a degree equivalent to an American Juris Doctor (JD) degree. These law degrees became the main prerequisite for taking the national bar exam. The pass rate for the bar exam was supposed to increase from an anemic 3% to about 70%, as part of a national strategy to increase the number of Japanese lawyers. But due to a combination of factors the reform has not worked as planned.

Keywords: Law Schools, Legal Education, Bar Exam, Japan

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Japan's Legal Education Reforms from an American Law Professor's Perspective*

*Legal professionals in the 21st century must possess a deep sense of humanity, sensitivity, broad culture and expertise, and the ability to think flexibly and negotiate effectively. Furthermore, insight into the structure of society and human relations, a sense of human rights, knowledge of foreign law and new laws, an international perspective, and knowledge of languages are increasingly necessary.*¹

With this statement, a leading reformer within the Japan Federation of Bar Associations (JFBA), described his ideal product of the then incipient, now ongoing, but still controversial, Japanese legal education reform.²

This essay will provide my own views of the reform—based subjectively on what I have seen myself in five summers teaching “Introduction to Anglo-American Law” at Ritsumeikan University School of Law, and more objectively from reviewing the writings of more knowledgeable observers in the legal literature.³

I. Introduction

This reform that began in 2004—a new system of legal education, coupled with changes in the national bar examination and in the national legal training institute for successful exam-takers—was part of a wide-ranging national law reform movement in Japan.⁴ This reform was described

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This article was prepared at the invitation of Ritsumeikan University School of Law as a contribution to a book commemorating the retirement of Professor Shiro Okubo. He has been a leading Japanese scholar in Labor Law and Constitutional Law for many years, an expert on American society and law (“chi bei”), a proponent of reforms in many areas of Japanese society, and a highly respected and popular teacher at Ritsumeikan University and its new Law School. I am proud to call him a dear friend.

My thanks to Professor Okubo, Dean Masato Ichikawa, and the Law School Faculty, staff, and students for making my visits to Ritsumeikan so enjoyable. Thanks also to Dean Ichikawa and Professor Dan Rosen of Chuo Law School, for their helpful comments on a draft of this chapter. Remaining mistakes are mine alone.

¹ Yoshiharu Kawabata, *The Reform of Legal Education and Training in Japan: Problems and Prospects*, 43 S. TEX. L. REV. 419, 422 (2002).

² He also unwittingly provided a good description of the qualities and abilities possessed by Professor Okubo!

³ Admittedly, as a non-Japanese speaker my conversations in Japan are somewhat limited, and my review is only of the American legal literature, though some of those articles were by Japanese writers.

⁴ See John O. Haley, *Heisei Renewal or Heisei Transformation: Are Legal Reforms Really Changing Japan?*, 10 ZEITSCHRIFT FÜR JAPANISCHES RECHT [J. JAPANESE LAW] 7 (2005), available in English at Washington University School of Law Faculty Working Paper No. 05-10-02 (Oct. 12, 2005) at 2-3, <http://ssrn.com/abstract=825689> (describing reforms between 1994 and 2005 in laws concerning elections, banking, capital markets, administrative procedure, products liability, civil procedure, freedom of information, antitrust, open government, and company law.) Since then, a new citizen-judge program for major criminal cases has just gone into effect in May 2009.

by one commentator as one of the three major law reforms in the past 150 years, ranking with the Meiji-era constitutional reforms and the post-WWII constitutional and other changes wrought by the Allied occupation.⁵

As a result, 74 universities across Japan established graduate-level “law schools,”⁶ most of which were added to pre-existing undergraduate law (sometimes law-and-politics) departments. The new law schools provide a degree equivalent to an American Juris Doctor (JD) degree, while the undergraduate degrees correspond more to a Bachelor of Laws (LLB) degree.⁷

Prior to the institution of the new law schools in 2004, about 91 universities across Japan had undergraduate law programs with a total of about 45,000 students, along with some smaller master’s and doctoral programs that were (and still are) primarily designed to train future academic researchers and teachers rather than future legal practitioners.⁸

The national bar exam was open to anyone, but its pass rate was extremely low, with only 2-3% of takers passing and then being admitted into the national Legal Training and Research Institute. The Institute, overseen by the Supreme Court, was designed to provide practical training (formerly for two years, recently cut to one), while also providing a basis for selecting future judges and prosecutors. Those not interested in or selected for those positions would, upon completion of the Institute, become *bengoshi*—qualified to represent clients in court or in other matters (somewhat of a cross between the British barrister and the American attorney-at-law). The Institute’s training regime consists of some coursework and on-site training in a criminal court and a civil court, a prosecutor’s office, and a law firm. During the training, students formerly received a stipend (about \$2,000 per month) from the government, but that will end next year, when the trainees will instead be offered a no-interest government loan.⁹

Because of the difficulty of passing the bar exam, most LLB graduates did not even attempt it, but instead looked to begin their careers in business or government. Others sought other law-related jobs such as licensed judicial scriveners, administrative scriveners, patent attorneys, tax

⁵ See Eric A. Feldman, *Legal Reform in Contemporary Japan*, UNIVERSITY OF PENNSYLVANIA LAW SCHOOL PUBLIC LAW AND LEGAL THEORY RESEARCH PAPER NO. #07-17 (2007) at 3-4, available at <http://papers.ssrn.com/abstract=980762>. See also Masahiko Omura, Satoru Osanai, & Malcolm Smith, *Japan’s New Legal Education System: Towards International Legal Education?* 40 J. JAPAN L. 39 (2005), available at http://law.anu.edu.au/anjel/documents/ZJapanR/ZJapanR20_07_Smith_etal.pdf.

⁶ Their official name was “Postgraduate Schools of Legal Studies,” but now are almost universally called “Law Schools.” See Yoshihisa Nomi, *Reform Plan of Legal Education in Japan*, at 2 (Dec. 2000) (unpublished paper for the Symposium on Legal Education at Renmin University, Dec. 2000) on file with author.

⁷ The analogy is a bit strained because in the U.S., there are few, if any, undergraduate law departments, and the law schools across the country, many of which have been in existence for decades, simply renamed their “LLB” degrees as “JD” degrees in the 1970s.

⁸ See Jasper Kim, *Socrates v. Confucius: An Analysis of South Korea’s Implementation of the American Law School Model*, 10 ASIAN-PAC. L. & POL’Y J. 329-330 (2009).

⁹ See Mayumi Saegusa, *Why the Japanese Law School System was Established: Co-Optation as a Defensive Tactic in the Face of Global Pressures*, 34 L. & SOCIAL INQUIRY 371 (2009). Information on the stipend’s termination was supplied by Dean Ichikawa.

agents, and consultants on social insurance and labor. These are all licensed professionals. In 1999, about 150,000 people were employed in these occupations.¹⁰

But despite the relatively high number of law-trained graduates, the low bar passage rate led to a very small number of *bengoshi* relative to the population, compared to attorneys in other countries. This was one of the underlying concerns that led to the reform in legal education.

Writing in 2002, Yoshiharu Kawabata, the reformer from the JFBA, reported that:

The current number of legal professionals in Japan is 21,300. Among them, 2000 are judges, 1300 prosecutors and about 18,000 are lawyers. There are 6300 citizens per legal professional. This is 22 times more than in the United States, 9 times more than in Germany and Great Britain and 4 times more than in France. Moreover, in some underpopulated, rural districts there are no lawyers. The lack of specialists also creates a problem. For example, lawyers with expertise in intellectual property and international corporate law are scarce.¹¹

Put another way, “In 2004, [in Japan] there were 18.91 lawyers per 100,000 people. By comparison, there were 372.05 in the U.S (2001-04), 195.09 in England and Wales (2002-04), 185.23 in Germany (2002-04), and 79.09 in France (2003-04).”¹²

Another problem was that many of the undergraduates studying law are notoriously uncommitted students. Japanese undergraduate students as a whole tend not to study very hard in universities because the student’s future employment opportunities have more to do with the university’s reputation than the student’s performance at that university. Once a student has made it into a good university after navigating the highly stressful national university entrance examination, many tend to “take a break” during their college years.¹³

Moreover, many law majors have minimal interest in law and no intention to take the bar exam. They may have chosen law as a major solely because of the status of the department within the university. Those students who did wish to take the bar exam realized that, because of the nature of the questions and the need to memorize great portions of the civil codes, they were better off skipping classes and attending one of the many “cram schools” that were available for bar preparation. Thus, undergraduate law students spent precious little time discussing and thinking about law, not to mention legal philosophy, legal policy, or even legal practice.

Mr. Kawabata was outspoken in his assessment:

The quality of undergraduate legal education is almost uniformly mediocre.

¹⁰ See Saegusa, *supra* note 9, at 365, 371-72.

¹¹ Kawabata, *supra* note 1, at 422 n.3.

¹² Kim, *supra* note 8, at 330-331.

¹³ For a thoroughgoing critique, see BRIAN J. McVEIGH, JAPANESE HIGHER EDUCATION AS MYTH 16 (2002), available on Google Books (“many parents regard universities as certifying institutions . . . and consider the acquisition of knowledge as inconsequential . . . ; most students see little purpose in higher education.”)

Undergraduate legal education is aimed at sending students with some amount of legal knowledge into the workforce. It does not adequately prepare people for the legal profession. Only a small number of undergraduate law students want to become lawyers and sit for the National Bar Examination. Most students quickly discover that law faculties offer only a series of mass-produced, impersonal lectures with enrollments that exceed 500 students. Students cannot pass the National Bar Examination by attending these lectures. So students who want to become lawyers go to preparatory cram schools and do not bother attending university classes.¹⁴

Gakushuin University Professor Masako Kamiya is a bit more charitable to the undergraduates, ascribing their lack of motivation to a disincentive provided by prospective employers. She explains that “The majority [of undergraduate law majors take] private 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.”¹⁵

II. History of the Reform in Brief

The movement to increase the number of lawyers began in the late 1980s when the Justice Ministry proposed increasing the number of successful bar exam applicants.¹⁶ This initiative, initially opposed by the powerful JFBA, eventually led to an increase from about 500 successful applicants a year to 700 by 1993.¹⁷ In 1991, the two organizations along with the Supreme Court created a Reform Committee that, in 1995 recommended a level of 1500 new successful applicants.¹⁸ However, by 1998, the actual number was only up to 812.¹⁹ In connection with this, the required period of training at the Institute was cut from two years to 18 months in 1999.²⁰

After the Reform Council issued its report to the Government in 1997, there was a lot of discussion within government, bar association, and business circles, as well described by Professor Setsuo Miyazawa.²¹ This culminated in 1999 with a law creating a Cabinet-level Justice System Reform Council. The Council was established for the purpose of:

clarifying the role to be played by justice in Japanese society in the 21st century
and examining and deliberating fundamental measures necessary for the

¹⁴ Kawabata, *supra* note 1, at 432.

¹⁵ Masako Kamiya, *Structural and Institutional Arrangements of Legal Education: Japan*, 24 WIS. INT’L L. J. 153, 154-55 (2006).

¹⁶ See Setsuo Miyazawa, *The Politics of Judicial Reform in Japan: The Rule of Law at Last?*, 1 ASIAN PAC. L. & POL’Y J. 89, 90 (2001).

¹⁷ *Id.* at 91.

¹⁸ *Id.* at 94. The JFBA’s proposal of 1000 was presented as a minority report. *Id.*

¹⁹ *Id.* The pass rate that year was 2.66%. *Id.*

²⁰ *Id.* at 94-95.

²¹ *Id.* at 99-105.

realization of a justice system that is easy for the people to utilize, participation by the people in the justice system, achievement of a legal profession as it should be and strengthening the functions thereof, and other reforms of the justice system, as well as improvements in the infrastructure of that system.²²

On June 12, 2001 the Council released its final report, *For a Justice System to Support Japan in the 21st Century*.²³ As described by two commentators in 2005:

The Reform Report is an impressive document of about 100 pages that mandates major changes in the civil justice, criminal justice, legal training and lawyer systems of Japan. The Commission consisted of a diverse group of thirteen representatives from various parts of society. While the Reform Report itself is an impressive achievement, what makes it extraordinary is that it has been fully adopted as national policy and is being implemented as such without the political infighting that would be expected in other countries.²⁴

With the Reform Report's backing, reformers proposed new graduate level law schools in order to promote more serious study of the law, less reliance on cram schools, and more mature applicants to a new bar exam that would be open only to those with the new JD degrees. Applicants would be limited to three attempts to pass the exam in five years. The old bar exam would transition out of existence after 2010 in order to allow those who had been studying for it some additional time to take it. Undergraduate legal education would continue, albeit with some reductions in those departments, with LLB degree holders gaining the advantage of being able to apply for a two-year, rather than three-year JD program at the new law schools.

Proponents of the reform expected the new bar exam to have a pass rate of over 70%—equivalent to the average in America. As Professor Miyazawa wrote in 2001: “All proposals assume that the National Bar Examination will become a purely qualifying examination without a pre-determined quota, and that 70% to 80% of law school graduates will pass.”²⁵ He had good reason to expect this. On this key point the Reform Report stated:

[L]aw schools should be designed in such a manner that the students can concentrate on their coursework while in school. In this respect, on the essential condition that people with the ability and motivation to become legal professionals are admitted to law schools and their grades are strictly evaluated and their completion of the coursework is rigidly certified, productive educational programs should be provided so that a certain ratio of those who have completed

²² See JUSTICE SYSTEM REFORM COUNCIL, *FOR A JUSTICE SYSTEM TO SUPPORT JAPAN IN THE 21ST CENTURY*, Introduction, available at <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html>.

²³ *Id.* See Chapter III of the Report for discussion of the reforms to the legal profession.

²⁴ James Maxeiner & Keiichi Yamanaka, *The New Japanese Law Schools*, bepress Legal Series, paper 81 (2003), at 2-3, available at <http://law.bepress.com/expresso/eps/81>.

²⁵ Miyazawa, *supra* note 16, at 114. Another contemporary analyst said it was expected that 80% would pass, see Nomi, *supra*, note 6, at 2.

the course at law schools (e.g., 70 to 80%) can pass the new national bar examination. . . .²⁶

Proponents also expected that about 20 universities would open a law school.²⁷

As it turned out, and as described below, these two key projections were woefully inaccurate.

III. Proponents' Arguments

One of the main purposes of the reform was to produce more lawyers to meet the legal needs of the public. As Professor Eric Feldman explained:

[R]eform of the legal system is intended to have concrete payoffs for “average” citizens. As stated by one elite reform group, the Judicial System Reform Council, “the system must be reformed so as to enable the people to easily access the justice system as users and to obtain proper, prompt and effective remedies in response to diversified needs.” More specifically, those payoffs are said to include easier and less expensive access to attorneys; a more robust rule of law that will foster more ever more predictable litigated outcomes; easier access to legal aid for criminal defendants; and trials that move efficiently and rapidly through the courts, among a host of other benefits.²⁸

Moreover, the increased supply of lawyers was intended to remedy the fact that most existing lawyers resided in the major urban centers and that, as a result, many rural areas were very underserved.²⁹

Another aspiration was that the graduates of the new laws schools would produce a different breed of lawyer:

Ideally, legal reformers hope these new institutions of legal education will help to create a new type of legal professional. Unlike the narrowly-focused 18-year-olds who enrolled in a university's faculty of law and spent all of their time studying law and preparing for the [old bar] exam (almost everyone failed it a couple of times, and frittered away several socially unproductive years doing little but attending cram school and trying again), law students who enroll in a postgraduate law school are encouraged to be diverse. As undergraduates, they have the option of studying anything from eighteenth-century English literature to agriculture, and prior to their legal studies they can, for example, work for an NGO in Sri Lanka or an international agency in Geneva, or do anything else that

²⁶ Reform Council Report, *supra* note 22, at Chap. III, Part 2, 2(2)d.

²⁷ See Maxeiner & Yamanaka, *supra* note 24, at 10 (citing Koichiro Fujikura, *Reform of Legal Education in Japan: The Creation of Law Schools Without a Professional Sense of Mission*, 75 TUL. L. REV. 941, 943 (2001)). Fujikura actually uses the phrase “ten to twenty.”

²⁸ Feldman, *supra* note 5, at 6 (citing Justice System Reform Council, *supra* note 22).

²⁹ See Miyazawa, *supra* note 16, at 95-96 (citing the skewed geographic distribution of lawyers).

they (and the law school admissions officers) believe is worthwhile. Consequently, reformers expect that the bar increasingly will be peopled by broadminded and diverse individuals. And they will be ever more likely to be attentive to rights that heretofore have been neglected or misunderstood. That, at least, is the hope.³⁰

Proponents also hoped to expand the course offerings within the new law school curriculum to allow an increased focus on international law. Typical is the statement made by the leaders of Chuo Law School: “[I]t was hoped that the [new law school] curriculum would be expanded to include a range of internationally oriented offerings in both comparative law and international law, as well as allow scope for programs developed overseas, such as Clinical Legal Education programs.”³¹

I should point out here that American scholars are also encouraging more “transnational” legal study. Columbia Law School Professor Peter Strauss extolled the virtues of the program at McGill University in Canada, which teaches its students in both civil and common law at the same time, and suggested that this sort of approach was needed in the U.S.³² He concluded:

[W]e have to learn to train lawyers who can adapt as readily to the differing legal systems of varying nations, as our current graduates can adapt to the differing legal systems of the states. We need to be able to send them out of our doors with the confidence that they could meet the demands of practice wherever in the world, not just wherever in the country, their practice might take them.³³

In Japan, in addition to the increasing emphasis on international law, the methods of law teaching were also supposed to change—with more of a focus on class discussions (“Socratic method,”) and learning how to think about the law in more creative and critical ways. As the Justice System Reform Council put it “[C]lasses at law schools must not simply be one-way lectures, but should be bi-directional (with give-and-take between teacher and students) or multidirectional (with interaction among students, as well) and rich in content.”³⁴ Professor Kamiya had a consistent, but slightly different vision: “In my view, it is important in professional training to understand the different attitudes required by the different functions entail[ed] 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.’”³⁵ Mr. Kawabata was equally clear about this motive: “The Japanese plan to create new law schools closely follows an American model. We envision graduate schools that require three years of

³⁰ Feldman, *supra* note 5, at 9-10. Maxeiner and Yamanaka put the historical percentage of the “big five” as two-thirds, *supra* note 24, at 12.

³¹ Omura, Osanai, & Smith, *supra* note 5, at 46.

³² See Peter L. Strauss, *Transsystemia—Are We Approaching a New Langdellian Moment? Is McGill Leading the Way?* 56 J. LEGAL EDUC. 161 (2006).

³³ *Id.* at 163.

³⁴ Reform Council Report, *supra* note 22, ch. III, pt. 2(2)(d).

³⁵ Kamiya, *supra* note 15, at 176.

study, and we aim to make students think like lawyers and act like lawyers by using intensive, interactive teaching methods.”³⁶

In fact, throughout the debates about the new system, the changes were often referred to as “American-style.” Professor Feldman goes so far as to declare: “Although it has become *de rigueur* in Japan to deny that the new schools are modeled on those in the U.S., it is impossible to describe them accurately in any other way.”³⁷

But as one commentator has pointed out, “Japanese interest in legal matters and the law may actually run deeper than it does in the American population.”³⁸ He pointed out that 30% of surveyed Japanese said they owned a basic legal text, and that while “America graduates about 38,000 students from its law schools every year, Japan, with half the population, graduates over 40,000 college students with degrees in law,” many of whom obtain law related jobs in corporations or government.³⁹

IV. The New System as Implemented

A. Description

Sixty-eight law schools opened in April 2004 and six more opened in 2005. Only four universities were denied permission to create a law school.⁴⁰ Of the seventy-four schools, twenty-three are national, two are public (Tokyo Metropolitan and Osaka City), and forty-nine are private institutions.⁴¹

Most law schools are affiliated with universities that confer law degrees or related degrees to undergraduate students.⁴² One law school, Omiya Law School, established by one of the Tokyo bar associations, is “independent” in the sense that it is not directly affiliated with an undergraduate educational institution.⁴³

³⁶ Kawabata, *supra* note 1, at 431.

³⁷ Feldman, *supra* note 5, at 9.

³⁸ George Schuhmann, *Beyond Litigation: Legal Education Reform in Japan and What Japan’s New Lawyers Will Do*, 13 U. MIAMI INT’L & COMP. L. REV. 475, 520 (2006).

³⁹ *Id.* at 521.

⁴⁰ See Kim, *supra* note 8, at 322, 333.

⁴¹ See Kamiya, *supra* note 15, at 155 n.13. See *id.*, Table I, for a list of all 74 law schools and enrollment information. National universities were partially privatized in 2004; public universities are administered by provincial or municipal governments. As a point of comparison, as of 2007, there were 87 national universities in Japan (including the seven former Imperial universities), 89 public universities and 568 private universities. See wikipedia entry for “Japanese national university,” http://en.wikipedia.org/wiki/Japanese_national_universities (accessed July 19, 2009).

⁴² See *id.* at 156 n.18.

⁴³ See *id.* at 156-57.

To address the fact that many applicants already possessed an LLB degree, law schools were permitted to admit such students for a two-year course of study. Professor Kamiya explained how law schools addressed this issue:

Some law schools set different entrance examinations for three-year and two-year courses . . . 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.⁴⁴

An overall enrollment of 5800 students was reported in 2006, with a surprisingly low drop-out rate of only about 4%, according to a newspaper survey with responses from fifty-eight of the seventy-four schools.⁴⁵

One undeniable effect of the new bar exam is that it has at least spread the positive results among the nation's universities. In the last 50 years of the former system, the "big five" universities, three private (Chuo, Waseda, and Keio), and two national (the University of Tokyo and Kyoto University) accounted for almost 19,000 of the 25,000 successful candidates for admission to the Institute.⁴⁶ According to the 2008 results, however, of the 2065 successful applicants, 791 (38.3%) were from the big five. Interestingly, 71 of the 74 law schools had at least one successful applicant and 62 had at least four.⁴⁷

The new law school system has also led to a growth in women law students; of the students entering the new law schools in 2004, almost 30%, were female.⁴⁸ While the comparison is not exact, this was double the percentage of women passing the old bar exam in 1990.⁴⁹ It also has apparently led to a significant rise in women prosecutors. In 1995, women only made up just 5.7% of prosecutors, a lower percentage than for lawyers as a whole or judges. But in 2008 that figure had climbed to 17.2 percent, higher than the 15.4 percent for judges and 14.4 percent for

⁴⁴ *Id.* at 156 n.16.

⁴⁵ See James A. Jolly, *Where Are the Japanese Going with their New Law Schools?*, HAW. BAR J. 32 n. 4 (September 2006) (citing "Houka Daigakuin 96% ga Shuuryou" [96% Completion at Law Schools] ASAHI SHIMBUN (in Japanese), April 4, 2006, pages 1 and 2).

⁴⁶ See Omura, Osanai, & Smith, *supra* note 5, at 40.

⁴⁷ Excel chart of 2008 bar exam results by law school, provided by Ritsumeikan Law School, on file with author. The recently released 2009 results are quite similar: 794 of the 2043 successful applicants (38.9%) were from the "big five"; each of the 74 schools had at least one and 64 had at least four. Excel chart of 2009 bar exam results by law school, provided by Ritsumeikan Law School, on file with author.

⁴⁸ See Feldman, *supra* note 5, at 13 (citing Eri Osaka, "Women and the New Legal Training System in Japan," paper presented at the Annual Meeting of the Law and Society Association, June 2005).

⁴⁹ *Id.*

lawyers. Furthermore, the percentage of women among newly accepted prosecutors rose from 18 percent in 2000 to 34 percent in 2008.⁵⁰

One other significant adjustment in the plan has been made. Even though the old bar exam is still scheduled to disappear after 2010, starting in 2011, Japan will allow those who lack a law school degree to take a “preliminary examination” and successful candidates will be eligible to take the new bar examination.⁵¹ It is unclear how many of these “side door” candidates there will be.

B. Critiques

1. Fundamental

One *bengoshi* who is also a solicitor in Australia, Takihiro Saito, has called it a “strange reform” in a 2006 article, suggesting that the real “victims” are the students, most of whom “will be forced to spend approximately four million Japanese yen (US\$36,000) on tuition for three years of study,” with only a 40% chance of becoming legal practitioners.⁵²

He suggests that studying Japan’s code-based civil law is fundamentally different than studying America’s case-based common law. Japanese law students “must engage in a thorough study of textbooks that explain how to interpret various statutes and the relationships among the articles. That study is very time consuming, as there are many articles in each code.” On the other hand, he argues, “common law jurisdiction students do not have to spend as many hours studying as those students in civil law jurisdictions do.”⁵³ This may come as news to American law students! And while I acknowledge that Japanese students probably do put even more time studying, it seems to be primarily because of the ever-looming shadow of the difficult-to-pass bar exam.

Mr. Saito also defends the lecture-style of Japanese legal education as more suitable than the Socratic method,⁵⁴ he defends the cram schools,⁵⁵ and stresses the importance of the Institute as providing practical legal training.⁵⁶

⁵⁰ Ryo Takano, “Increase in fairer sex softens image of prosecutor,” ASAHI SHIMBUN (English ed.) May 4, 2009, p.20.

⁵¹ See Hoyoon Nam, Note, *U.S.-Style Law School (“Law School”) System in Korea: Mistake or Accomplishment?* 28 FORDHAM INT’L L.J. 879, 907 (2005).

⁵² Takihiro Saito, *The Tragedy of Japanese Legal Education: Japanese “American” Law Schools*, 24 WIS. INT’L L. J. 197, 197-98 (2006).

⁵³ *Id.* at 198-99. This concern was echoed in Ms Saegusa’s interviews:

Among those I interviewed, civil law professors tended to express stronger resistance to the law school proposal than law professors of other disciplines. They questioned whether the American-style law school system, based on common law, is a good fit with the Japan’s civil law. Since civil law has so many codes, lecturing is more effective than the Socratic method, the question-and-answer technique commonly used in American law schools.

Saegusa, *supra* note 9, at 386.

⁵⁴ See Saito, *supra* note 52, at 199-200.

⁵⁵ *Id.* at 200-02.

In the end, he reluctantly concedes that “for political reasons, we will be forced to keep the law schools,” but that “we should look at legal education in the Commonwealth countries as a model for constructing a new reform plan.”⁵⁷ His prescription is even more radical, in that, under this plan, he would modify the Japanese law schools to make all students take a three-year set of “very basic legal subjects.” He would “strictly” examine student performance and only allow “students of a high caliber . . . to graduate and apply to the new bar examination.” He would eventually also abolish the bar examination and the four-year undergraduate LL.B. course.⁵⁸

Another Commonwealth expert on Japanese law, Luke Nottage (a New Zealander barrister teaching in Australia), was similarly concerned about the reform’s focus on “adding further years of legal education,”⁵⁹ not only because of the costs to the students raised by Mr. Saito, but also “because it ducks the far greater challenge of revitalizing the existing undergraduate law program.”⁶⁰ However, according to a recent account of the debate in legal circles, “As a result of the pressure from influential law professors and opposition from the Ministry of Education, reforming the undergraduate law faculties was not regarded as a solution.”⁶¹

I would point out that the cost concern loses some of its force when it is remembered that under the old system, many bar exam aspirants took the test numerous times, usually after spending a lot of time and money on cram schools.⁶²

2. Flawed Design

Most commentators accepted the need for significant reforms; instead they focused on what they considered the flaws in the overall design.

A persistent fundamental criticism is that the unexpectedly high number of law schools and law students, when combined with the unexpectedly low number of successful bar exam takers, has, to the consternation of law students, led to a much lower pass rate than expected. This has led to a shakiness of the entire enterprise.

Writing in 2005, John Haley, the dean of U.S. experts on Japanese law, predicted problems even with the proposed limit of 3000 successful results on the new bar exam:

Current plans limit the combined classes of legal apprentices to 3000. Thus only half of the initial two classes of law school graduates will pass the exam and have

⁵⁶ *Id.* at 202-04.

⁵⁷ *Id.* at 207.

⁵⁸ *Id.* at 208.

⁵⁹ Luke Nottage, *Reformist Conservatism and Failures of Imagination in Japanese Legal Education*, 2 ASIAN-PAC. L. & POL’Y J. 28, 47-48 (2001).

⁶⁰ *Id.* at 47.

⁶¹ Saegusa, *supra* note 9, at 380.

⁶² The same arguments were made and criticized in Korea. *See* Nam, *supra* note 51, at 912-13.

the opportunity to become lawyers, judges, or prosecutors. Each year as those who failed on their first attempt try again . . . the number of applicants will presumably increase by about a third and the percentage of those who are successful will correspondingly decrease.⁶³

In fact he was overly optimistic, as the figures show only 2065 applicants passing in 2008 with a pass rate of 33%.⁶⁴ But he was more prescient in his fears about the consequences:

Already some schools have failed to attract the number of students they anticipated. Those who have the largest percentage of failed applicants are thus bound to suffer even more. For the schools and the universities or other organizations . . . who support them financially, survival will surely depend on producing graduates who pass the new national examination for admission to the Institute. The first order of business for law school administrators and faculty will be to ensure their students are equipped to do well on the examination. The consequences seem inexorable. Instead of a new era of American-styled law schools, as many anticipate or hope, these new schools are far more apt to become examination preparatory schools—new, expensive, university-run *juku*.⁶⁵

He also allowed for the possibility that the system might succeed despite its built-in flaws:

I may be wrong. Perhaps the law school graduates—at least those who fail—will discover new and better opportunities in the corporate world or in government. Companies may end up preferring them over the university law faculty graduates with less specialized (examination preparatory or not) legal education. They may do better on the national civil service examination than those with a mere baccalaureate degree in law. If so, the schools may survive and even begin to offer a broader selection of course and seminars designed more for those who will enter corporate and government service rather than the more narrowly defined avenues of legal practice of the prototypical Japanese attorney. Such a trend would indeed presage real—perhaps even transformational—change. . . . It would require a demand for specialized corporate managers and government officials, for persons with legal expertise rather than generalists to be trained in-house. And with that demand would come a market for experienced lawyers with corresponding competition and career mobility.⁶⁶

⁶³ Haley, *supra* note 4, at 8.

⁶⁴ See 2008 excel chart, *supra* note 47. A small number (around 100) also passed the old bar exam. This opportunity is scheduled to be eliminated by after 2010, although an unknown number of applicants who pass a preliminary examination will also be permitted to take the new bar exam starting in 2011. See text at note 51. In 2009 although the number of successful applicants dropped from 2065 to 2042, the percentage rose to 40.4% due to the smaller number of applicants. See 2009 excel chart, *supra* note 47.

⁶⁵ Haley, *supra* note 4, at 8-9.

⁶⁶ *Id.* at 9. Indeed the possibility of taking the national civil service exam seems to have become an attractive option for those who have failed the bar exams three times. But that exam has an even lower pass rate.

Other commentators have also expressed skepticism of the financial viability of having both a law school and an undergraduate law faculty. For example, Professor Kamiya sounded this note of caution:

With a low [student/teacher ratio] 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 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.⁶⁷

And some have pointed the finger at the continuing bottleneck created by the continuation of the Institute and its limited capacity for trainees.

Professor Miyazawa wrote in 2001:

I have argued for several years that the present system of practical training under the Training Institute should be replaced with a decentralized method of professional legal education in universities, where faculty members, who enjoy both academic freedom and independence from the judiciary, present a wide range of different views to future lawyers.⁶⁸

Indeed after the Justice Reform Council proposed to maintain the Institute, he also predicted exactly what would come to pass: “would it not become a bottleneck that artificially limits the number of people who pass the National Bar Examination?”⁶⁹

Also writing in 2001, Robert Grondine, head of the Tokyo office of White and Case and of the American Chamber of Commerce, sounded the same theme:

The cost to the system for retaining this bottleneck on the future supply of lawyers will be very great. Such mandatory government-run legal practice training courses are generally only seen in countries where newly qualified lawyers have not been through a graduate law study program, such as the United Kingdom, Australia, Korea, and Taiwan (the latter two following the post-war Japanese system). Thus, retaining this additional one-year requirement, during which the

⁶⁷ Kamiya, *supra* note 15, at 174-75. As of July 2009, no law schools have closed, but I have recently heard authoritative predictions that seven or eight may be on the verge of closing.

⁶⁸ Miyazawa, *supra* note 16, at 112.

⁶⁹ *Id.* at 121.

government will still presumably be paying salaries to all the Institute students, seems very odd.⁷⁰

He added:

In the future, the number of newly qualified lawyers could then be adjusted solely by reference to the bar examination, which all law school graduates will have to pass after graduation. In a demand-oriented market, the number of applicants to graduate law schools would respond to the broader perception of the continuing insufficiency or excess of lawyers. The students themselves would have to decide whether a professional career as a lawyer was a wise investment. Further, students would and should be required to fund that investment on their own, rather than at government or taxpayers' expense.⁷¹

At the beginning of the reform, Mr. Kawabata explained that the asserted reason for maintaining the Institute was that "law professors in Japan have no experience with legal practice and are not licensed to practice, so they are unable to provide practical training to law school students."⁷² He first pointed out that "law schools could hire practitioners as adjunct professors or lecturers, so they could probably manage to provide practical legal training."⁷³ But he then explained what he considered the real reason for maintaining the Institute: its role in selecting future judges and prosecutors in Japan:

The Supreme Court and the Prosecutors' Office look for trainees who show themselves to be intellectually competent and diligent, and who are by nature conformist and conservative, and encourage them to become judges or prosecutors. Such trainees are likely to support the career system of judges and prosecutors, and are unlikely to challenge the status quo during their lifelong careers as judges and prosecutors.⁷⁴

V. Evaluation of the Reform

After five years of implementation, a student of the reform has concluded that "the law school system was adopted because the legal establishment co-opted pro-law school scholars and other reformists."⁷⁵ By that she means that "[t]he existing institutions all remain, with only slight changes, after the introduction of the law school system." "The new bar exam still has caps on the number of those allowed to pass. Those who do are then required to be trained at the

⁷⁰ Robert F. Grondine, *An International Perspective on Japan's New Legal Education System*, 2 ASIAN-PAC. L. & POL'Y J. 2 (2001). Starting next year the salary payments to Institute attendees are ending.

⁷¹ *Id.* at 4.

⁷² Kawabata, *supra* note 1, at 432.

⁷³ *Id.*

⁷⁴ *Id.* at 432-33. Whether the system of appointing judges and prosecutors to their positions shortly after they pass the bar examination should be reconsidered is beyond the scope of this chapter.

⁷⁵ Saegusa, *supra* note 9, at 365.

Institute for one year. Undergraduate law faculties remain, although many universities have reduced the size of the programs.”⁷⁶

Indeed, many components of the legal establishment appear content with the system. The business community appears satisfied because the reform will produce more lawyers;⁷⁷ the Supreme Court has been able to maintain the Institute to select conservative judges and prosecutors; Ministry of Justice is still largely in control of the cap on new lawyers;⁷⁸ and more jobs have been produced for the expanding (albeit still overworked) law faculty. Only the law students, the ultimate consumers of the new law schools, are left unsatisfied. They have begun to show their own skepticism by “voting with their feet.”

[M]any potential law students appear to [still] consider the risk of failure too high to justify paying for an expensive law school education, which carries a tuition price tag of \$12,000–\$18,000 per year. Judging by the number of people taking the entrance examination, applications to the new law schools have been in a tailspin since their inaugural year; in 2003, 35,499 aspiring law students sat for the nationwide law school admission exam (equivalent to the American LSAT), a figure that dropped to 21,298 in 2004 and 17,791 in 2006.⁷⁹

The numbers have now gotten worse. In 2008, only 13,138 people applied to the National Center for University Entrance Examinations for the Japanese LSAT and in 2009 the number fell to 10,282.⁸⁰ And the *Yomiuri Shimbun* has just reported that the total number of applications to the nation’s law schools for the 2009 academic year fell 25 percent from the 2008, falling below 30,000 for the first time. At 42 schools the ratio of total applicants to successful applicants fell below two to one, with one (unnamed) law school having only five applicants enrolled despite its approved class size of 30.⁸¹

VI. Spread of the Graduate Law School Model—Especially in Asia

Regardless of its bumpy start in Japan, the American-style JD degree is spreading beyond Japan. The most significant development is in Korea where a national legal education reform resembling Japan’s (but with some crucial differences) is beginning in 2009. In addition, several Canadian law schools have recently made the switch from LLB to JD degrees. And there have been university-led initiatives in Australia, Hong Kong, Mainland China, India, the Philippines,

⁷⁶ *Id.* at 392-93.

⁷⁷ *See id.* at 391.

⁷⁸ *See id.* at 390.

⁷⁹ Feldman, *supra* note 5, at 10.

⁸⁰ Information supplied in an e-mail from Dean Ichikawa.

⁸¹ Editorial, “Law schools must put quality before quantity,” THE YOMIURI SHIMBUN (online English ed.), July 26, 2009, available at <http://www.yomiuri.co.jp/dy/editorial/20090726TDY04304.htm>.

and Germany, where universities have begun offering JDs or JD-equivalents (sometimes along with the traditional LLB).⁸²

The Korean example is especially instructive. Although the pre-existing situation⁸³ and many of the reforms parallel Japan's,⁸⁴ a crucial difference is that the Korean Graduate Law School Act ("GLSA") established a strict limit of 25 new law schools. It also required that at least one-half of these schools be designated from outside the Seoul metropolitan area.⁸⁵ Because the total number of students expected to be enrolled in the first class of these 25 universities totals 2000,⁸⁶ the number of graduates should be similar. And because it is expected that the number of newly-admitted Korean lawyers from 2012—the first graduating class year under the new system—will total over 1500,⁸⁷ the bar exam passage rate should exceed 75%.

Several other variations from Japan's plan are worth noting: (1) the chosen universities must eliminate their undergraduate law programs; (2) English language proficiency will need to be demonstrated through a TOEIC/TOEFL score; and (3) the bar examination will be open only to the law school graduates. It appears the Korean reformers have learned some key lessons from Japan's experience thus far.

Since 1995 a rapidly increasing number of Chinese universities have augmented their LLB degree programs by also offering a "Juris Master" program—a three year graduate-level program modeled on the American JD program for students who did not have study law as undergraduates.⁸⁸ By the end of 2007, it has been adopted by about 80 law schools, and it was expected to grow to 100 by 2010,⁸⁹ despite some feeling in China that the JM degree is inferior

⁸² See, e.g., Simon Chesterman, *The Globalisation of Legal Education*, 2008 SING. J. LEGAL STUD. 58 (2008) (citing sources describing the national initiative in Korea and individual university-led initiatives in Australia, Hong Kong and the Philippines). See also Wikipedia ("Juris Doctor"), which has a lot of information about developments around the world, http://en.wikipedia.org/wiki/Juris_doctor.

⁸³ The ratio of lawyers per population was similar to Japan's, see Nam, *supra* note 51, at 880-84 (explaining that Korea had one lawyer for every 4800 persons, and detailing the low bar exam pass rate and the similar training Institute).

⁸⁴ One similarity is that Korean law school faculties must have a minimum number of former legal practitioners. At least one-fifth of Japanese law school faculties must be lawyers, and most of such lawyer professors are *bengoshi*. E-mail from Dean Ichikawa.

⁸⁵ See Kim, *supra* note 8, at 344 (pointing out that that "may not seem controversial from the U.S. perspective, since many, if not most, law schools are located outside of large metropolitan areas . . . ; however, in Korea, universities and their law school departments located outside of Seoul are generally considered as de facto second-tier universities").

⁸⁶ See *id.* at 324 n.9 (listing the 25 universities and their projected enrollment). While Korea's population is about one third of Japan's, and the number of law schools and projected law student enrollment is thus proportionate to Japan's, the key difference is the projected 75% pass rate.

⁸⁷ See *id.* at 325 (emphasizing that this approximates the overall U.S. pass rate).

⁸⁸ See Matthew S. Erie, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 59 J. Leg. Ed. 60, 67 (2009).

⁸⁹ *Id.* at 68. See also Su Li, "An Institutional Inquiry into Legal Skills Education in China," (2008), available at [http://www.mcgeorge.edu/Documents/centers/global/usaid/Dean%20Zhu%20Suli\(translation\).pdf](http://www.mcgeorge.edu/Documents/centers/global/usaid/Dean%20Zhu%20Suli(translation).pdf); and Xinhua

to both the undergraduate LLB or the graduate LLM degrees.⁹⁰ Moreover, the former President of Cornell University in the U.S. recently established the Peking University School of Transnational Law (STL), which is actually in Shenzhen.⁹¹ Founding Dean Jeffrey Lehman described School in a recent speech: “The students are older and have received bachelor’s degrees before coming to STL to pursue a Juris Doctor. All of the faculty have experience teaching outside of China, including places like Amsterdam, Jerusalem, Hong Kong, and in the United States at Harvard, Yale, Stanford, and Michigan.”⁹² There were 50 students in the first class and the school is seeking accreditation by the American Bar Association.

In Hong Kong, the Chinese University of Hong Kong⁹³ and the City University of Hong Kong⁹⁴ both now offer LLB and JD degrees, and the University of Hong Kong will do the same starting in September 2009.⁹⁵ Students who wish to practice law in Hong Kong after their JD must subsequently complete a one-year postgraduate Certificate in Laws program at one of the universities in Hong Kong.

In the Philippines, the Ateneo de Manila Law School, established in 1936, changed its degree from LLB to a graduate-level JD degree in 1991.⁹⁶ Its website listed the names of about 120 admitted applicants for the 2009-10 academic year.

India’s Jindal Global Law School, near Delhi, will be offering both a five-year undergraduate and a three-year graduate law degree starting in September 2009.⁹⁷ While both degrees are called LLB degrees, the three-year graduate program in law is the first in India and is very similar to a JD degree program otherwise.

News Agency, “China to see more Juris Masters in coming decade,” (June 17, 2004), *available at* http://english.peopledaily.com.cn/200406/17/eng20040617_146622.html.

⁹⁰ Erie found through interviews that the JM degree is viewed as a “second rate” degree by laws school deans and teachers as well as prospective employers. Erie, *supra* note 88, at 73. While beyond the scope of this article, a primary reason for this is appears to be that the students in these programs are now heavily recruited through a less competitive process because Chinese universities are able to charge them higher tuition for these (new) degrees; a second reason seems to be that upon graduation JM holders suffer in comparison with LLM graduates who have studied law for seven rather than three years. *Id.* at 73-75.

⁹¹ See the homepage at <http://stl.szpku.edu.cn/en>. See also Erie, *Supra* note 88, at 69-70, n.36 describing how STL shares the Shenzhen Graduate School campus with Tsinghua University Law School and two other graduate schools in other disciplines.

⁹² Jeffrey S. Lehman, “More Drops, More Buckets: What a More Integrated Transnational Legal Profession Implies for U.S. Law Schools,” Keynote Address, Law School Admissions Council Annual Meeting (May 30, 2009), *available at* <http://stl.szpku.edu.cn/en/article.asp?articleid=142>.

⁹³ See <http://www.cuhk.edu.hk/law/jd/index.html#> (JD degree); <http://www.cuhk.edu.hk/law/llb/index.html> (LLB degree). Also offered are several double degrees and masters degrees.

⁹⁴ See <http://www.cityu.edu.hk/slwl/english/programmes/courses/jd.htm> (JD program).

⁹⁵ See http://www.hku.hk/law/jd/jd_overview.html.

⁹⁶ See <http://law.ateneo.edu/index.php?p=32&PHPSESSID=97d98dc928359b3878cd843fd362e354> (JD program).

⁹⁷ See http://www.jgls.org/lawschool/FAQs_3year.pdf.

In Australia, while many universities offer both an LLB and a JD (the latter for undergraduates with non-law degrees), the flagship Melbourne University has chosen to offer only a JD degree and has closed its undergraduate law program.⁹⁸ What is interesting about this is that in Australia either an LLB or a JD degree can lead to admission to practice. In either case a degree holder must complete either Articles of Clerkship (a one-year supervised work experience in a legal firm), or a practical legal training course.⁹⁹ Thus, Melbourne University must have concluded that the JD program and degree themselves add sufficient value for students to choose it over the LLB degree. I would note that the training courses are offered by the universities as they are in Hong Kong.¹⁰⁰

In Canada, five of the country's 21 law schools have stopped granting LLBs and are now conferring JDs: the University of Toronto Law School, Osgoode Hall, the University of British Columbia Law School, the University of Western Ontario Law School and Queen's University, with several more reportedly considering it.¹⁰¹ But this change merely reflects the reality that the Canadian law schools are three-year graduate programs already. Only the name of the degree is changing, as was the case in the U.S. in the 1960s.

According to Jeffrey Lehman, "not everyone is rushing to Americanize their systems. Asian countries are embracing change, but the direction of European countries is less clear. There is a move to standardize higher education across Europe through the Bologna accord, a declaration originally signed by 29 European countries, but whether those countries eventually will adopt U.S.-style law programs is uncertain." He pointed to one European school, Bucerius Law School in Germany, which offers doctoral and post-doctoral degrees.¹⁰²

VII. My Own Views

A. Subjective Observations at Ritsumeikan

In my five summers spent teaching at Ritsumeikan University School of Law I have been very impressed. The new law school was first housed in a converted building just north of the main Kinugasa campus in Kyoto. Although the building was strikingly lovely, it was rather isolated, and clearly too small to house the full three-year complement of 450 students. Somehow the

⁹⁸ See <http://jd.law.unimelb.edu.au/go/about-us/melbourne-jd>.

⁹⁹ See The University of Melbourne Faculty of Law, Guidelines for Admission to Legal Practice Requirements in Australia and Internationally, available for downloading at <http://jd.law.unimelb.edu.au/go/about-us/melbourne-jd>.

¹⁰⁰ See e.g., <http://www.law.qut.edu.au/study/courses/legprac> (Queensland university offering).

¹⁰¹ Terrence Belford, "Why change to a JD degree? Canadian law students are increasingly pushing for a Juris Doctor degree, rather than an LLB, to get international recognition of their training," THE GLOBE AND MAIL, GLOBE CAMPUS, (Feb. 25, 2009), available at <http://www.globecampus.ca/in-the-news/globecampusreport/why-change-to-a-jd-degree>.

¹⁰² "Foreign law schools follow the U.S. playbook," Peking University School of Transnational Law, STL Media Kit, available at <http://stl.szpk.edu.cn/en/article.asp?articleid=105>. Bucerius Law School does not offer a JD degree, only an LLB and several graduate degrees, but what makes it unusual is that it is Germany's first free-standing private law school. It has its own admission process. In addition all students are required to spend one trimester abroad at one of our partner universities, around 90 located in 30 different countries. See <http://www.law-school.de/home.html?&L=1>.

University managed to secure a valuable parcel near Nijo Castle to build an impressive seven-story modern law school building that opened in 2007 and is the equal of any I have seen in the United States.

It has modern classrooms, carrels for every student, spacious faculty offices, an excellent library, moot court room, a large auditorium, a well-staffed administrative office, study and clinic rooms, plenty of free bicycle parking, a nearby train station, and a comfortable cafeteria and restaurant that are open to the public.¹⁰³

To all appearances it is “just like” an American law school. Class size is small, the teaching style is a mixture of lecture and Socratic method, and the exams, grading, reading loads, teacher evaluation forms, faculty office hours, and faculty meetings are all nearly identical to what I see at Washington College of Law at American University.

There are some differences, however. As mentioned, students are divided into two-year and three-year students. The semester schedule is different—with the spring semester running from April to late July, and the fall semester from September to January. Thus there is a very short summer vacation. In any event, the pressure to pass the bar exam has led students to spend their breaks studying anyway. I’ve noticed that many students spend most of their waking hours at the law school. On a recent Friday night at 11:30 pm, I was surprised to see that the bicycle racks were still full.

Class exams and “reports” are more frequent, and students that do fail final exams (now a rare occurrence in the U.S.) are allowed to retake them. There is a wide menu of course offerings, although the shadow of the bar exam does heavily influence course selection. Over half of the courses are required courses (64 of the 98 credits needed for graduation).¹⁰⁴ In addition, every student is required to take a clinical class or externship before graduating.¹⁰⁵

Except for age differences, there is little diversity among the students. There are currently few foreign students, although I do hear that a campaign will be underway soon in Japan to attract more foreign students to Japanese universities, and that Ritsumeikan will likely be one of the nation’s private universities that will receive government support for that effort.. More surprisingly, there is only one women (an attorney) among the 36 permanent faculty members at Ritsumeikan Law School with another (associate professor) hired for 2010,¹⁰⁶ although the student body is about 34% female and the undergraduate law department faculty is about 22% female.¹⁰⁷ This problem is not limited to Ritsumeikan. Professor Nottage noted that “the proportion of women Faculty members in Japan’s “leading” national university law faculties

¹⁰³ See <http://www.ritsumei.ac.jp/acd/gr/hoka/en/facilities.htm>.

¹⁰⁴ See <http://www.ritsumei.ac.jp/acd/gr/hoka/en/curriculum.htm>.

¹⁰⁵ *Id.*

¹⁰⁶ See <http://www.ritsumei.ac.jp/acd/gr/hoka/en/faculty.htm>. Word on the new hire came from an e-mail from Dean Ichikawa. He acknowledged the number is too low.

¹⁰⁷ The updated percentages for 2009 are from an e-mail from Dean Ichikawa.

remains remarkably low.”¹⁰⁸ (One new hurdle perhaps is that faculty members cannot join the law school until they have had at least five years of teaching with a minimum of three publications in the last five years.¹⁰⁹)

The faculty has a much higher teaching load than American law professors, especially since many of them have to do double duty—teaching in the undergraduate law department as well. (There is also a strict retirement age at most schools—at Ritsumeikan it is 65, hence an active professor like Shiro Okubo must retire from the faculty.) Many law faculty members have told me that teaching at the law schools is more taxing and less enjoyable than in the undergraduate departments—primarily because the bar-fixated law students ask many more questions about blackletter law.¹¹⁰ I should note here, though, that Japanese students, as a general matter, are noticeably more deferential and respectful of their professors.

Another difference I have noted is that the school lacks the sort of a “career center” or “placement office” that is the centerpiece of most American law schools. Nor do Japanese law firms make a practice of visiting the school to recruit potential new lawyers as do law firms in America—although there is no summer job season for law students in Japan, graduating students do take the bar exam in May and are available for clerkships in law firms that same summer while they await their results.

Another difference from American law schools is that Ritsumeikan (and I believe most Japanese universities in general) lack the sort of prominent “alumni office” that serves to try to generate alumni financial contributions that make up a large proportion of the endowments of U.S. schools. Such endowments are much less common in Japanese universities, which depend more on tuition and government funds for their operations.

B. Proposed Fixes

1. Raise the Bar Exam Pass Rate!

In my opinion, the number one need is to raise the bar passage rate; otherwise the system will likely wither and possibly die. At a minimum, if the current system remains unchanged, it is likely that only the strongest schools will survive.¹¹¹

¹⁰⁸ Nottage, *supra* note 59, at 45 n.55.

¹⁰⁹ See Saegusa, *supra* note 9, at 393.

¹¹⁰ I should mention that Dean Ichikawa commented to me by e-mail that “Indeed teaching in Japanese law schools is tough, but I have enjoyed it. I believe most of our faculty member have enjoyed too.”

¹¹¹ I have heard arguments that the “survival of the fittest” will itself solve this problem by lowering the number of law schools, thus, perforce, raising the bar passage rate (assuming the number of successful applicants stays the same). This may be true, but many universities will resist this move, and I fear it would limit the availability of legal education only to the elite, big-city institutions. The *Yomiuri Shimbun* editorial, *supra* note 80, states that “some law schools will unavoidably go under and be forced out of this professional discipline. The government should actively promote the reorganization and integration of law schools.” But it notably also urged the government to “firmly [keep] in place” the plan to increase the number of successful applicants to 3000 in 2010 “as a way of addressing the uneven distribution of lawyers across the nation . . . as well as other problems.”

The Reform Council had recommended that the number of legal professionals should be increased to 3000 per year until 2010.¹¹² As Ms. Saegusa points out, however, “the number 3000 has been treated as if it were an upper limit. Even if 3,000 per year until 2010 can be interpreted as the cap, the cap in 2006, when the new bar exam started, could have jumped to 3,000 immediately. However, the cap in 2006 was approximately 1,600, which was only 100 more than the cap in 2005.”¹¹³ Despite the higher cap, in the first year of the new bar exam with a one-time-only reduced group of law school graduates (only the two-year students), 1009 out of 2,087 exam-takers passed, with a passing rate of 48.3%.¹¹⁴ There has been some progress since—in 2008 there were 2065 successful applicants. However, the passage rate for this larger group was only 33%,¹¹⁵ and the total is still a long way from 3000. In 2009 the number of successful applicants actually went down to 2042 (though the passing percentage did go up to 40.4% because there were over 1200 fewer exam takers).¹¹⁶

What is even more worrying is that there are serious proposals from the Justice Ministry and some regional bar associations to reduce the 2010 target number of 3000. As Ms. Saegusa described the situation recently:

The justice minister expressed his concern that a large number of lawyers generated by the new law schools may potentially undermine the quality of lawyers and indicated that he was going to revisit the target of 3,000 people per year passing the new bar exam by 2010, including the possibility of lowering the number. At the JFBA, there is a rising chorus of concern from regional bar associations that more lawyers will result in greater competition and therefore scarcity of employment. In response to such voices, the new JFBA president demanded slowing down the rate of increase after 2010. Despite their original acceptance, the legal establishment is attacking the law schools’ very *raison d’être*: increasing the number of legal professionals. If the number of those passing the bar exam is lowered or checked, it will undermine fundamental assumptions and expectations of law students and educators across the country.¹¹⁷

My view is that the 3000 figure should be met as soon as possible, thus producing about a 60% pass rate with the current level of exam takers. If the Institute is revised as I suggest below, then the figure could rise to an even higher number, and the pass rate could eventually approach the original projections.

¹¹² See Reform Council Report, *supra* note 22, at ch. 3, pt. 1 (“While paying heed to the progress of establishment of the new legal training system, including law schools, the aim should be to have 3,000 successful candidates for the new national bar examination in about 2010.”).

¹¹³ Saegusa, *supra* note 9, at 389-90.

¹¹⁴ See Kim, *supra* note 8, at 333 n.59

¹¹⁵ See 2008 excel chart, *supra* note 47.

¹¹⁶ See 2009 excel chart, *supra* note 47.

¹¹⁷ Saegusa, *supra* note 9, at 391.

2. Eliminate the Institute (Except for Judges and Prosecutors), and Consider Substituting a Clerkship Requirement or Post Graduate Course Work

While I understand the reasons for the continuing existence of the Institute, it clearly serves as a bottleneck that provides an excuse for keeping the number of successful bar exam takers even below the agreed-upon minimum number of 3000. Moreover, other than for educating and selecting future judges and prosecutors, its practical training function for future *bengoshi* can be performed either by increasing experiential learning opportunities at the law schools, or by adding a one-year clerkship requirement as in Australia or post-graduate training courses at universities as in Hong Kong or Australia. The Korean reformers seem to recognize the need to make this change, because apparently their similar Institute will be modified to train only prosecutors and judges, while other law school graduates “will complete different training pursuant to their career interests.”¹¹⁸ I would note that last November, of the 1731 graduates of the Japanese Institute, only 75 became judges and 73 became prosecutors.¹¹⁹

In addition, continuing legal education requirements, as required by most American states, can help maintain the skills, knowledge, and abilities of Japanese lawyers, once they are admitted to the profession.

3. Reduce the Number of Law Schools or Law Students

Reducing the number of law schools would be one way to increase the bar passage rate (assuming the total number of successful applicants stays the same, but this may not be possible, if only because the existing schools may be loath to admit they cannot succeed. However, the market may end up doing this anyway. Moreover, the Ministry of Education has just taken a significant step to limit the overall number of law students by “suggesting” that universities cut their annual admission (class size) by 15-20%.¹²⁰ One knowledgeable American law professor at a major Japanese law school was critical of that proposal:

Like a flat tax, this proposal may appear to be even-handed, but it has disparate results. Some small law schools already have barely enough students to justify (and finance) the employment of a faculty large enough to cover the diversity of essential classes. Cutting their admission by that much would be tantamount to a death sentence for those schools. (One wonders if that is the unstated objective.) On the other hand, it also unreasonably restricts schools that have been successful

¹¹⁸ See Nam, *supra* note 51, at 900-01.

¹¹⁹ E-mail from Dean Ichikawa.

¹²⁰ See Japanese Law Blog, “Law school quotas to be slashed,” (April 19, 2009), *available at* <http://japaneselaw.blogspot.com/2009/04/japan-is-churning-out-too-many-law.html> (detailing plans by leading law school to cut law school enrollment by 20%). The *Yomiuri Shimbun* editorial, *supra* note 80, states that these cuts were required of law schools “whose ratio of total applicants to successful applicants falls below 2-to-1”, and that 50 law school had so far agreed to do so. I’m also told that there is some controversy about what the definition of “applicant” should be for the purpose of that ratio.

in preparing students for the exam. And, it deprives applicants of 15-20% of opportunities to study in those successful schools.¹²¹

4. Rethink the Concept of *Bengoshi*

An American lawyer who has taught and worked as a registered foreign lawyer in Japan has described the many other legal professionals (other than *bengoshi*) this way:

[U]nless a lawsuit is required, a different professional might be more appropriate. If the problem is drafting and filing legal documents with government offices (such as establishing and/or registering a corporation), a judicial or administrative scrivener would better serve the purpose. For tax advice, a tax agent is more appropriate; for intellectual property rights, consult a patent attorney. Notaries draw up wills and notarize legal documents to be filed in foreign countries under the provisions of the Hague Convention. Real estate transactions will be someone else, and immigration problems are probably better handled in person. The list goes on, but probably the legal functionary encountered most often is the suit-and-tie salary men and women of the legal department of a company involved in contract negotiations. These people are not licensed in any way, but in all practicality they function as “in-house counsel” for their company and are probably more knowledgeable about the legal aspects of their field than a *bengoshi*. They should be taken seriously.¹²²

Professor Nottage agreed, suggesting that Japanese law faculties “should consider how to educate “legal” professionals in a much broader sense.”¹²³

Indeed, if these professionals—many of whom do work similar to “attorneys” in the United States—were included in the number of Japanese lawyers, the ratio of attorneys to population would be much more similar to ours. So, one way, perhaps, to open the system would be to allow them to represent parties in litigation. As far back as 1998, a business-supported think tank recommended just that.¹²⁴

However, this may not be so simple. An American lawyer for the Hitachi Corporation disagreed:

There are scholars who think that [these licensed professionals] should be counted as lawyers and that our view of Japan as a grossly under-lawyered society should be revised. I disagree. These narrow specialists are engaged merely in facilitation functions and do not have the authority or standing of a lawyer to challenge bureaucratic actions. Moreover, if you are comparing the number of

¹²¹ E-mail from Dan Rosen, Professor, Chuo University Law School, to author, July 12, 2009. Chuo has resisted the Ministry’s effort.

¹²² James A. Jolly, *supra* note 45, at 32-33. See also Saegusa, *supra* note 9, at 371-72.

¹²³ Nottage, *supra* note 59, at 44, and sources cited at notes 53-53.

¹²⁴ See Miyazawa, *supra* note 16, at 102-03.

lawyers in Japan and the U.S., and if you add these kinds of specialists to the left hand side of the equation, I think you would have to add H.&R. Block [tax advice] employees and numerous paralegals to the U.S. side of the equation, leaving the comparison little changed.¹²⁵

Moreover, this suggestion would seem to run counter to the reason for creating the new law schools. After all these specialists can now enroll in the law schools as, for example, patent lawyers sometimes do in the United States. In any event, so far, only one minor change has been made in this regard; after 2003, judicial scriveners are allowed to serve as representatives for litigation in the summary courts.¹²⁶

My view is that it would be better instead to broaden the concept of a *bengoshi* so that new lawyers are not considered to be primarily barrister-like, courtroom litigators. Rather, the new, more numerous *bengoshi* would take on other roles as do American lawyers—advisors, appeals specialists, government counsel, law professors, etc. If this concept were to change somewhat, a *bengoshi* would still be a high-status professional, and the Japanese society could easily absorb them.

5. Create Placement and Alumni Offices

It seems inevitable that Japanese law schools will soon recognize the need (if they haven't already) to enhance their capabilities in helping their graduates find jobs. As the number of lawyers increases, job-hunting will likely be more competitive. And as some of their graduates end up not passing the bar exam after their maximum three tries, schools will want to work even harder to help find placements for them, if only to show prospective applicants that enrolling in their school is worth their tuition no matter what the outcome. Thus, Japanese law school would be well advised to study the operation and resources of American law school placement offices.

Similarly, once the law schools develop a base of graduates, they will want to maintain relations with them, if only to enhance placement and to keep them involved with their *alma mater*. Moreover, as Japanese law schools come under more budgetary pressures, they will need to look for additional sources of funding. While changes in the tax code might be required to stimulate the sort of large-scale alumni contributions or family bequests that one finds directed to American universities, I would be surprised if Japanese law schools do not look for ways to entice corporate or alumni contributions to their operating or endowment funds. Again the American experience might be instructive here.

6. Enhancements to Law School Faculty (Including More Diversity, Higher Salaries)

Japanese law school faculty members are currently overworked. I have frequently met law professors who have classes all five or six days a week and at both the undergraduate and

¹²⁵ "Japan: 'The Rule of Law Without Lawyers' Reconsidered," Remarks by Carl J. Green Senior Representative Hitachi Corporate Office, Washington D.C., March 14, 2001, available at <http://www.asiasociety.org/speeches/green.html>.

¹²⁶ See Saegusa, *supra* note 9, at 393.

graduate law schools. In addition they have explicit article-writing quotas and other administrative responsibilities such as writing and grading entrance exams and bar exams, and doing bar exam preparatory classes. This serves to make teaching in the law schools less attractive to top scholars and teachers than it should be. I have met younger undergraduate law teachers who are trying to avoid being asked to teach at the law schools. Obviously this is a problem. More teaching positions are needed to spread the workload. The pending reduction in class sizes may help in this regard, but it will not help much if the same course offerings are to be maintained. Otherwise, salaries will need to be increased—especially at the law schools of public universities.

Furthermore, Japanese law schools currently have very few women or foreigners on their faculty. To some extent this reflects Japanese society and norms as a whole. But given the increasing number of women interested in legal careers, Japanese law schools should work hard to increase the number of women professors. In addition, if Japan is planning to try to increase the number of foreign law students, it will need to correspondingly increase the number of foreign law professors.

7. Rethink the Approach to Undergraduate “Pre-Law” Education

Unlike Korea, Japan has allowed the existing undergraduate law programs to continue to co-exist with the law schools. This leads to some would-be lawyers feeling that they should spend all seven years studying for the bar exam, while it leads other undergraduates to feel that the two programs are essentially redundant and that they can wait till law school to really get serious. Neither approach seems optimal.

Indeed, since the law schools offer a two-track system—a two-year course for students with LLB degrees, and a three-year course for students with other undergraduate degrees, it is apparent that the new system was supposed to attract non-law majors who could master the legal education in three years just as well as the law majors could in their six years of law study. But Tokyo University Professor Yoshihisa Nomi, writing in 2000, was prescient on this point:

[W]here the level of the final bar examination is set will play an important role. If it is set at a high level so that only exceptionally talented students from other field[s] can pass, then most of the students who want to be a lawyer will choose law faculty at the undergraduate level. But on the contrary if the level of the bar examination is set at a relatively low level so that the students from other field[s] can pass easily, law faculty might lose its attraction. The level of the final bar examination should be determined considering the expectation of the society not from the interest of the law faculties.¹²⁷

Passing the bar exam has proved to be an even greater challenge for the three-year students. In 2008 almost twice as many two-year graduates passed as three-years, but among the five law schools with the highest pass rate for their graduates, 83% of their successful test-takers were

¹²⁷ See Nomi, *supra* note 6 ,at 3.

two-year students.¹²⁸ Waseda University, another of the historically top law programs, attempted to buck this trend by accepting mostly three-year students. While 100 of its three-year graduates did pass, its overall pass rate was only 15th,¹²⁹ which is abnormally low for Waseda, and I am told that in 2010 it will modify its approach by admitting one-third of its students as two-year students.¹³⁰ Moreover an increasing number of three-year law students are now also drawn from those with LLB degrees, thus undermining the theory of the two-track system.

From my standpoint, six or seven years of law study (plus another at the Institute) should not be necessary and a liberal arts undergraduate education (to be sure, with some law-related courses) should be encouraged, not discouraged by the bar examination. The question of what type of undergraduate education is the best preparation for graduate law study is not a new one. As far back as 1927, an American scholar, John Dickinson devoted most of a chapter of a book to this issue. He wrote that “a loose and random cultural education may prove positively disadvantageous to a proper study of law. The college education which precedes a course at one of the leading law schools should include definite training in certain subjects if the student is subsequently to pursue his law studies in the most fruitful and advantageous way.”¹³¹ He then went on to suggest some courses that should be required: (1) English literature, (2) English and American constitutional history, (3) comparative governmental systems, (4) analytical and historical politics, (5) economics, and (6) history of philosophy.¹³² Dickinson’s prescription has not been followed precisely in the U.S., but it is not a bad summation of the sort of liberal arts background that may be best suited for law school study.

So I would suggest a rethinking of the undergraduate curriculum in tandem with the other changes suggested above. If handled appropriately, this reduction in emphasis on law courses at the undergraduate level can also help alleviate the “double” teaching responsibilities of law faculty members.

Professor Kamiya understands this:

[I]t still does not occur to many of [my colleagues] 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. . . . Second, law will have to compete with political science, economics,

¹²⁸ See 2008 excel chart, *supra* note 47. The five schools were Hitotsubashi, Keio, Tokyo, Kobe and Chuo. In 2009 the two-year students’ results were somewhat better, improving the ratio to about 40%. The five highest percentage law schools were somewhat different—Hitotsubashi, Tokyo, Kyoto, Kobe, and Aichi, but again 78% of the successful applicants were two-year students. See 2009 excel chart, *supra* note 47.

¹²⁹ See 2008 excel chart, *supra* note 47. Waseda was 13th in 2009. See 2009 excel chart, *supra* note 47.

¹³⁰ Conversation with Ritsumeikan Law School Dean Ichikawa.

¹³¹ JOHN DICKINSON, ADMINISTRATIVE JUSTICE AND THE SUPREMACY OF LAW IN THE UNITED STATES 348 (1927), (reprinted edition 1955 Russell & Russell, Inc., New York). I should note that I found this book in Professor Okubo’s library.

¹³² *Id.* at 350

and other social science courses for students, because the undergraduate law program is now completely foreclosed from a direct path to legal qualification.¹³³

She concluded, “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.”¹³⁴

This is what seems to be happening in Korea and in some major universities around the world.

VIII. Conclusion

Perhaps I have been unduly influenced by meeting such impressive Japanese Law Professors as Shiro Okubo and by working in such an impressive environment as Ritsumeikan University School of Law, but I think the new law school system is well worth preserving. It has built a foundation for providing excellent training to the best and the brightest of Japanese students, not only to be *bengoshi*, but to be leaders of the nation and the community. But this can only be maintained if the law schools can continue to be viable and to attract these students. This will require a renewed commitment to the reform, along with some compromises, by all the stakeholders in the legal system in order to meet the challenges that have been described above.

But I say this with a large dose of humility because I recognize that there are a lot of societal factors involved in this issue that may not be discernable without being able to read the Japanese-language commentaries.

So I close by quoting Prof. Haley once more. Lest I be understood as suggesting that I know what is normatively best for Japan in this or any other field, I can’t do any better than the postscript to his article:

It ill behooves an American law professor who enjoys the material and social benefits of elite status in a society that is far more needful of transformational change than Japan to suggest that Japan change. We spend far more on health, education, safety and government than Japan. Yet the average Americans is not as healthy, as well educated, nor as safe as the average Japanese. We have more and perhaps better lawyers but that has not prevented over 20 times as many of our fellow inhabitants on a per capita basis to be imprisoned. Nor do we have safer cars or factories. Our economy may be growing faster than Japan’s but Japanese are proving to be even more innovative and our economic inequality is much greater and appears to be increasing. We may have a two-party system, but we have also developed an increasingly divisive, partisan political culture that impedes our capacity to fashion sound policy in nearly every field.¹³⁵

¹³³ Kamiya, *supra* note 15, at 175.

¹³⁴ *Id.* at 74.

¹³⁵ Haley, *supra* note 4, at 12.