

# Turbulence Ahead: The Future of Law Schools in Japan

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## Introduction

On April 1, 2004, Japan introduced a new law school system. While legal education was offered at the undergraduate level in the past, the new system elevated law schools into graduate programs. The change was part of judicial reform proposals designed to increase the role courts play in Japanese society and to support that expanded judicial role by training more lawyers. The change was very controversial as some observers viewed it as a bold attempt to radically alter the Japanese legal system, which used to be supported by only a small number of lawyers.

This article will examine the new law school system in Japan and try to evaluate its impact. Even though the new system has had a tremendous impact, this article concludes that the Japanese legal education system has some serious drawbacks and further drastic changes are needed to ensure the system's long term success.

## I. Path to the Introduction of Law School

### *A. Traditional Legal Education System*

After the Meiji Restoration in 1868, the government established a modern legal system by adopting the Civil Code and Criminal Code, modeled first after the French legal system, then after a while replacing it with new codes heavily influenced by the German legal system.<sup>1</sup> In 1889, the Meiji Government enacted the first modern constitution in Japan, the Meiji Constitution, modeled after the Prussian Constitution.<sup>2</sup> Consequently, the legal system in Japan was almost entirely based on the German civil law system.

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1. Hiroshi Oda, *Japanese Law* 18 (3d ed., Oxford Univ. Press 2009).
2. *Id.* at 15-17.

The legal education system was also strongly influenced by the German civil law tradition, which was taught at the undergraduate level.<sup>3</sup> Those who wanted to become attorneys had to pass a bar examination separate from the examination to become judges and prosecutors.<sup>4</sup>

After World War II, the examinations for judges, prosecutors, and attorneys were unified<sup>5</sup> and the education system was democratized and liberalized. More universities were created and, consequently, more students enrolled. The number of law faculties increased as well. As of 2000, there were 93 faculties of law and roughly 45,000 students enrolled every year.<sup>6</sup> Yet, the basic structure as well as nature of legal education did not change.

Undergraduate legal education was generally a four-year curriculum. Most of the law faculty's curriculum focused on the study of six basic codes: the Constitution, the Civil Code, the Criminal Code, the Commercial Code, the Code of Civil Procedure, and the Code of Criminal Procedure. Most course instruction was done through lecturing. Moreover, legal education in Japan has traditionally been highly theoretical and doctrinal. Students are supposed to learn the meaning of the codes through theoretical and doctrinal analysis of the text. Since Japan is a civil law country, precedent does not have any binding effect. As a result, even though cases came to have significant practical meaning after World War II, legal education used to ignore them or refer to them only in passing. No serious examination of cases is conducted.

Prior to the 2004 reforms, legal education was separate from professional legal training. Those who wished to become lawyers had to pass the bar examination, mostly on their own. Applicants did not even need a law bachelor's degree to take the bar examination. Those who passed the bar examination could enroll in the Judicial Training and Research Institute (JTRI) for two-years of practical training. The JTRI is run by the Supreme Court of Japan and is the only institution in Japan that provides practical training for those who wish to become judges, prosecutors, and attorneys.<sup>7</sup>

3. Constance O'Keefe, *Legal Education in Japan*, 72 *Or. L. Rev.* 1009 (1993); Yasuhei Taniguchi, *Legal Education in Japan*, in *Law and Technology in the Pacific Community* 295 (Boulder 1994); Hisashi Aizawa, *Japanese Legal Education in Transition*, 24 *Wis. Int'l L.J.* 131 (2006); Masako Kamiya, *Structural and Institutional Arrangements of Legal Education: Japan*, 24 *Wis. Int'l L.J.* 153, 162-64 (2006); Katsumi Yoshida, *Legal Education Reforms in Japan: Background, Rationale, and the Goals to be Achieved*, 24 *Wis. Int'l L.J.* 209, 209-11 (2006); Kahei Rokumoto, *Legal Education*, in *Law in Japan: A Turning Point* 190 (Univ. of Washington Press 2007).
4. Setsuo Miyazawa & Hiroshi Otsuka, *Legal Education and the Reproduction of the Elite in Japan*, 1 *Asian-Pac. L. & Pol'y J.* 2 (2000).
5. *Shihō shikenhō*, Law No. 140 of 1949, art. 1, para. 1 [hereinafter *Bar Examination Act*].
6. *Shihōseido kaikaku shingikai* (The Judicial System Reform Council), *Ikensho* (Final Report) (June 12, 2001), available at <http://www.kantei.go.jp/jp/sihouseido/report/ikensyo/index.html> [hereinafter *Council Report*].
7. Supreme Court of Japan, *The Legal Training and Research Institute of Japan*, available at <http://www.courts.go.jp/english/institute/index.html>. Unlike in the United States where judges are selected from practicing attorneys, most of the judges in Japan become judges

Students of the JTRI are regarded as a kind of “public servant” and receive a stipend from the government.

The bar examination was very competitive. Even though the bar examination was defined as “an examination to judge whether the applicant has necessary knowledge and ability to apply that knowledge to become judge, prosecutor, or attorney,”<sup>8</sup> the number of applicants who could pass the examination was set in advance. Until the 1990s, the number of candidates who could pass the bar examination was limited to 500 each year and the pass rate was less than 3 percent.

As a consequence, very few law students chose to take the bar examination to become lawyers. An overwhelming number of law students chose to become civil servants or company workers. Since so few graduates would pursue a career as a lawyer, traditional legal education provided a general liberal arts education rather than one focused entirely on law.<sup>9</sup>

### *B. Problems in the Traditional Legal Education System*

The Japanese legal education system contributed to the increased number of people in the general workforce with some legal knowledge. Many civil servants as well as company workers use that knowledge in their working environments. However, the traditional legal education system also had some serious flaws.

First of all, since the student body was so diverse and the students’ motivation to study law was equally diverse, it was difficult for law faculties to focus on any particular groups of students. As a result, the purpose of legal education was obscure and the system was not satisfactory for the large number of students who would not become lawyers or for the small number of students who wished to become lawyers. In fact, legal education was not designed to prepare students to pass the bar examination. Moreover, abstract theoretical and doctrinal analysis is hardly sufficient in providing the students with the knowledge and skills to solve a specific problem or case or to face new legal challenges.

Secondly, the traditional legal education system produced only a small number of lawyers every year. As stated above, the bar examination was arguably the toughest examination in Japan. As a result, the number of persons who passed the examination and became lawyers was quite limited: the total number of lawyers in Japan was 13,800 in 1990, 15,108 in 1995, and 21,185 in

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after finishing the training at the JTRI and continue to serve as judges until retirement age. Although practicing attorneys could become judges, it is rare to find such cases.

8. Bar Examination Act, *supra* note 5, art. 1, para. 1.
9. Koichiro Fujikura, Reform of Legal Education in Japan: The Creation of Law Schools Without a Professional Sense of Mission, 75 Tul. L. Rev. 941, 943-44 (2001); Yukio Yanagida, A New Paradigm for Japanese Legal Training and Education—In Light of the Legal Education at Harvard Law School, 1 Asian-Pac. L. & Pol’y J. 1 (2000).

2005.<sup>10</sup> As of 1997, Japan had about 20,000 lawyers, compared with 941,000 in the United States, 83,000 in the United Kingdom, 111,000 in Germany and 36,000 in France. The ratio of lawyer to population was 1 to 6,300 in Japan, 1 to 290 in the United States, 1 to 710 in United Kingdom, 1 to 740 in Germany, and 1 to 1,640 in France. The number of new lawyers admitted to the bar every year was about 57,000 in the United States, 4,900 in United Kingdom, 9,800 in Germany, and 2,400 in France, compared to only 700 in Japan.<sup>11</sup>

Moreover, the rigorousness of the bar examination also had a significant impact on legal education. Test takers usually had to take the exam six times before finally succeeding, and the average age of those who passed the examination was over 28 in the 1980s and 1990s.<sup>12</sup> That means most of those who passed the bar examination studied for about six years after graduating from universities. As a result, it became an almost established practice for students who wished to pass the bar examination to go to “cram schools” and take special courses and practice tests specifically designed for exam preparation. In the 1990s, it became apparent that many students who wished to pass the bar examination were attending cram school classes even while they were enrolled in universities.<sup>13</sup> They simply skipped the regular university classes and just took the final examinations.

Cram schools are not acceptable alternatives to comprehensive legal education curriculums. Cram schools instructors have usually passed the bar examination but found teaching more interesting than practice. They usually do not have any academic background in theoretical or comparative analysis. Since the students are focused entirely on passing the bar examination, instructors only prepare them to answer test questions. They encourage students not to express their own thoughts but to simply repeat the most acceptable answers.

Finally, no institution in the traditional system provided professional legal skills. It was only after one passed the bar examination and entered into the JTTRI that they received practical training. However, practical training at the JTTRI was mainly designed to teach drafting skills and practical knowledge on how to conduct trials, how to interrogate the defendants, or how to defend

10. Japan Federation of Bar Associations (JFBA), *Bengoshisū no suii (Changes in the Number of Attorneys)*, available at [http://www.nichibenren.or.jp/library/ja/publication/books/data/2011/whitepaper\\_bengosinosui2011.pdf](http://www.nichibenren.or.jp/library/ja/publication/books/data/2011/whitepaper_bengosinosui2011.pdf). As of May 1, 2012, there were 32,126 attorneys. JFBA, *Nichibenren no kaiin (Current Number of Membership)*, available at [http://www.nichibenren.or.jp/jfba\\_info/membership/about.html](http://www.nichibenren.or.jp/jfba_info/membership/about.html). See also JFBA, *White Paper on Attorneys, 2010*, available at <http://www.nichibenren.or.jp/library/en/about/data/WhitePaper2010.pdf>.

11. Council Report, *supra* note 6.

12. House of Representatives, Judiciary Committee hearing (Nov. 22, 1989) (statement of Kazutomo Ijima, Ministry of Justice), available at <http://kokkai.ndl.go.jp/SENTAKU/syugiin/116/0080/11611220080006a.html>.

13. Fujikura, *supra* note 9, at 944.

clients, i.e., focusing on judges. There was no program that taught basic practical skills such as legal research, writing, and advocacy.

### *C. The Road to Transformation*

The highly competitive nature of the bar examination limited the number of lawyers admitted to the bar in the post-war period. Throughout this same period, the court played a very limited role in resolving disputes. The small number of lawyers and relative insignificance of the Japanese judiciary was highly praised abroad, especially during the period when the Japanese economy was booming and the U.S. economy was suffering.<sup>14</sup>

However, the limited number of lawyers was problematic for several reasons. It was difficult for younger applicants to pass the examination. Moreover, since most lawyers were concentrated in Tokyo and Osaka, there were many rural areas where no lawyer or only one could be found.<sup>15</sup> In response to this condition, the Ministry of Justice gradually increased the number of people who could pass the bar examination in order to allow younger applicants to pass and to increase the number of lawyers in rural areas.<sup>16</sup> Yet, there were no radical attempts to increase the number of lawyers or to restructure the legal education system.

In the late 1990s, however, people grew increasingly concerned about the small number of lawyers in the country and the relatively small role the judicial system played in Japanese society. They came to argue for a more active judiciary, which necessitated more lawyers.

The business community first voiced those concerns. In 1994, the Keizai Dōyukai (Economists' Fellowship Association) published a report calling

14. Derek C. Bok, *A Flawed System of Law Practice and Training*, 33 *J. Legal Educ.* 570 (1983).
15. JFBA, *Bengoshi zero wan chisaishibusū no suii* (Changes in the Number of District Court Branches Where No Lawyer or One Lawyer Was Found), available at [http://www.nichibenren.or.jp/library/ja/publication/books/data/2011/whitepaper\\_zeroonehensen2011.pdf](http://www.nichibenren.or.jp/library/ja/publication/books/data/2011/whitepaper_zeroonehensen2011.pdf).
16. The initial focus of reform is to allow younger applicants to pass the bar examination, since many expressed concern with the average high age of passing. The Ministry of Justice proposed to increase the bar examination pass rate to help younger applicants enter the legal profession. Setsuo Miyazawa, *The Politics of Judicial Reform in Japan: The Rule of Law at Last?*, 2 *Asian-Pac. L. & Pol'y J.* 89 (2001). In 1991, the number of persons who could pass the bar examination increased roughly to 600 and then to 700 in 1993. In 1996, preferential treatment for younger applicants was introduced and 200 out of 700 were chosen from the applicants who took the examination within the past three years, while the remaining 500 were chosen based on their exam scores. Then it was agreed to increase the number to 800 in 1998 and to 1,000 in 1999. The length of practical training at the JTRI was reduced to one and a half years in 1999. It is worth noting that all the arguments made during the 1980s and 1990s were focused on bar examination pass rate but none touched on the education system in general. Moreover, the decision to increase the number of applicants who could pass the bar examination was debated mostly among judges, prosecutors, attorneys and legal academics. The number of people who could pass the bar examination was increased roughly to 1,200 in 2002 and roughly to 1,400 in 2004. The special quota for younger applicants was terminated in 2004.

for a stronger judicial system and more lawyers.<sup>17</sup> In 1997, the Keizai Dantai Rengoukai (the Federation of Economic Organizations) also published a report articulating similar recommendations.<sup>18</sup> In 1997, the ruling Liberal Democratic Party (LDP) set up a special committee to investigate the problems facing the current judicial system and issued a report in 1998.<sup>19</sup> All these reports called for strengthening the judicial system, increasing the number of lawyers in the country and introducing a new legal education system that was capable of training lawyers who could uphold a strong judiciary. These proposals were widely supported by the mass media. Although some practicing attorneys strongly opposed these reforms, eventually the leaders of the Japan Federation of Bar Associations (JFBA) came around to support these proposals.<sup>20</sup>

Japan is notorious for its immense administrative control on business activities. In order to engage in any economic activity, one needs permission from the government and must obey the control of bureaucrats who can effectively control every aspect of a business's economic activities. This level of bureaucratic interference is widely criticized and administrative reform had been on the political agenda for quite some time. Japanese society was accustomed to relying on bureaucratic discretion to regulate economic activities. The judiciary did not play a significant role in adjudicating such cases or in giving redress. After the burst of the bubble economy in early 1990s, however, a growing number of people came to view bureaucratic intervention as stifling the Japanese economy and to demand radical deregulation. Japan needed a system, they argued, in which everyone could engage in economic activities freely and any violation of law could be corrected by the courts. As a result of administrative reform during the 1990s, many public corporations were privatized and the regulatory power of the bureaucrats was significantly reduced. After the deregulation, a growing number of business people came to expect the judiciary to play a more active role and started to demand the

17. Keizai Dōyukai, Gendai nihonshakai no byouri to shohō (Problems in Contemporary Japanese Society and Prescription for Them) (June 1994), *available at* <http://www.kantei.go.jp/jp/sihouseido/dai2kai-append/teigen4.html>. In 1999, the Keizai Dōyukai also issued a proposal that called for a radical increase of lawyers. Keizai Dōyukai, Shihōseido kaikaku shingikai ni nozomu (Requests to the Judicial System Reform Council), *available at* <http://www.doyukai.or.jp/policyproposals/articles/1999/991126a.html>.
18. Keizai Dantai Rengoukai, Minji shihou no kasseika ni mukete (Toward Revitalization of Civil Justice System) (21st Century Policy Inst.) (Dec. 1998), *available at* <http://www.21ppi.org/thesis/981222.html>.
19. Jiyū Minshutō, 21 seiki no shihō no tashikana shishin (Solid Guidelines for Judicial System in the 21st century), *available at* [http://www.veritas-law.jp/ronbun\\_doc/20090929133643\\_1.pdf](http://www.veritas-law.jp/ronbun_doc/20090929133643_1.pdf).
20. JFBA, Shihōseido kaikaku no jitsugen nimuketeno kihontekiteigen (Proposal for Implementation of Judicial Reform) (Nov. 1999), *available at* [http://www.nichibenren.or.jp/activity/document/opinion/year/1999/1999\\_14.html](http://www.nichibenren.or.jp/activity/document/opinion/year/1999/1999_14.html). *See also* JFBA, Shihōseido kaikaku shingikai ikensho nitsuite (On Final Report of the Judicial System Reform Council) (Sept. 2001), *available at* [http://www.nichibenren.or.jp/activity/document/opinion/year/2001/2001\\_20.html](http://www.nichibenren.or.jp/activity/document/opinion/year/2001/2001_20.html).

strengthening of legal services. The call for increasing the number of lawyers was a part of such demand.<sup>21</sup>

Moreover, during the 1980s and 1990s, Japanese companies faced a growing number of international legal conflicts with foreign companies, especially American ones. Companies often had to negotiate with American lawyers and/or fight legal battles against them. Many Japanese businesses had difficulty finding competent domestic lawyers. They thus came to demand reform, by which they hoped to produce lawyers who could provide competent representation against their American counterparts. Moreover, they wanted to educate many lawyers with diverse backgrounds, especially those with knowledge in science and technology and able to handle intellectual property rights disputes.

In 1999, in response to these calls for reform, the Diet passed the Act to Establish the Judicial System Reform Council.<sup>22</sup> The act instructed the Council to consider the policies that would make the judicial system more accessible to the public, allow for public participation, and strengthen the legal profession.

The Council presented its final report on June 12, 2001, to Prime Minister Jun-ichirou Koizumi.<sup>23</sup> It proposed establishing new law schools and introducing a new bar examination to increase the number of applicants who would pass to 3,000 per year by 2010. The final report's target was to increase the total number of active legal professionals, including judges, prosecutors, and attorneys, to approximately 50,000 by 2018. The sense was that at a minimum, Japan must reach parity with France.

Based on this final report, the government adopted the Promotion Plan for Judicial Reform as a Cabinet decision on March 19, 2002.<sup>24</sup> The government then prepared necessary legislation and the Diet passed the Act on Education in Law School and Connection with Bar Examination in 2002.<sup>25</sup>

21. Hon. Sabrina Shizue McKenna, Proposal for Judicial Reform in Japan: An Overview, 2 *Asian-Pac. L. & Pol'y J.* 122 (2001); Iwao Sato, Judicial Reform in Japan in the 1990s: Increase of the Legal Profession, Reinforcement of Judicial Functions and Expansion of the Rule of Law, 5 *Soc. Sci. Japan J.* 71 (2002); Yoshida, *supra* note 3, at 211-16. *See also* Curtis J. Milhaupt & Mark D. West, Law's Dominion and the Market for Legal Elites in Japan, 34 *Law & Pol'y Int'l Bus.* 451 (2003) (noting a marked shift of elites from bureaucracy to law).
22. Shihōseido kaikaku shingikai settihō (Act to Establish the Judicial System Reform Council), Law No. 68 of 1999.
23. Council Report, *supra* note 6.
24. Shihōseido kaikaku suishin keikaku (Promotion Plan for Judicial Reform), Cabinet decision (Mar. 19, 2002), available at <http://www.kantei.go.jp/jp/singi/sihou/keikaku/020319keikaku.html>.
25. Houka daigakuin no kyōiku to shihōshikentō tonō renkeitō nikansuru hōritsu (Act on Education in Law School and Connection with Bar Examination), Law No. 139 of 2002. The Diet later passed the Houka daigakuin eno saibankan oyobi kensatsukan sonotano ippanshoku kokkakoumuin no haken nikansuru hōritsu (Act concerning Appointment of Judges, Prosecutors, and Other Classified Public Servants in Law School), Law No. 40 of 2003. This Act was passed to allow judges, prosecutors, and other classified public servants to teach at law school while retaining their job.

The MEXT (Ministry of Education, Culture, Sports, Science and Technology), which is in charge of education policy, prepared specific standards as well as a model curriculum for law schools. On August 5, 2002, the National Educational Advisory Council, an advisory board for the MEXT, submitted its “Report on the Standards for Establishing Law Schools” to the MEXT.<sup>26</sup> Based on this report, in March 2003, the MEXT published “Standards for Establishing Professional Graduate Schools,” which covered law schools.<sup>27</sup>

In 2003, based on these standards, the MEXT accepted applications for establishing new law schools. Seventy-two schools applied for approval and the MEXT approved 68 of them. These schools were set to open on April 1, 2004; eventually, 74 law schools were approved to accept 5,825 students each year.

#### *D. Law School System as a Compromise*

The majority of law professors supported legal education reform.<sup>28</sup> Though they differed on whether to abolish undergraduate legal education or the JTRI, they supported the idea of law school as a graduate school to provide professional legal training.<sup>29</sup> Yet, there was some opposition to the proposal even among academics. Critics generally pointed out that the proposal for judicial reform was motivated by business interests and ignored social justice. As such, they argued that there was no necessary reason to increase the number of lawyers. They also argued the new law school system unnecessarily restricted eligibility to take the new bar examination.<sup>30</sup> Additionally, many practicing attorneys worried that a radical increase in the number of lawyers would stiffen competition. These views needed to be considered before the new legal education system could be introduced.<sup>31</sup>

26. Chuō kyōiku shingikai (National Educational Advisory Council), Houka daigakuin no setti kijuntō nitsuite (The Report on the Standards for Establishing Law Schools), available at [http://www.mext.go.jp/b\\_menu/shingi/chukyō/chukyōo/toushin/020803.htm](http://www.mext.go.jp/b_menu/shingi/chukyō/chukyōo/toushin/020803.htm) [hereinafter NEAC Report].
27. Senmonshoku daigakuin setti kijun (Standards for Establishing Professional Graduate Schools), MEXT Regulation No. 16 of 2003, available at <http://law.e-gov.go.jp/htmldata/H15/H15F20001000016.html> [hereinafter MEXT Standard]. The MEXT then issued a notice to implement this standard. MEXT, Senmonshoku daigakuin nikanshi hitsuyōuna jikō wo sadameru ken (Notice on Necessary Matters Regarding Professional Graduate Schools), MEXT Notice No. 53, available at [http://www.mext.go.jp/a\\_menu/koutou/houka/03050102.htm](http://www.mext.go.jp/a_menu/koutou/houka/03050102.htm) [hereinafter MEXT Notice].
28. Yanagida, *supra* note 9.
29. See also Gerald Paul McAlinn, Reforming the System of Legal Education: A Call for Bold Leadership and Self-Governance, 2 Asian-Pac. L. & Pol’y J. 15 (2001).
30. Fujikura, *supra* note 9.
31. See also Mayumi Saegusa, Why the Japanese Law School System Was Established: Co-Optation as a Defensive Tactic in the Face of Global Pressures, 34 Law & Soc. Inquiry 365 (2009).

It was thus decided that the new law schools would follow the American model as three-year graduate schools and use the Socratic Method and other interactive teaching methods in small classes. In order to overcome the pitfalls of traditional legal education, they planned for students to obtain knowledge and skills through continuous study at the law school. This change would be complemented by introducing a revised bar examination. If the new bar examination were easier to pass (if 70 to 80 percent of the applicants could pass), then law students would not have to worry about the test and could spend more time studying advanced subjects and learning basic legal skills during law school. It was also agreed that in the future, only graduates of these law schools would be allowed to take the new bar examination. The traditional bar examination would stay in effect until 2010.<sup>32</sup>

However, despite calls to abolish undergraduate legal education, the MEXT decided to maintain the current undergraduate curriculum. Moreover, despite calls to eliminate the JTRI, the Ministry of Justice and the Supreme Court of Japan steadfastly refused to accept such proposals and decided to maintain the common legal training to all those who passed the bar examination. These decisions had a significant impact on the structure of the law school system in Japan.

Initially, there was speculation that between 12 and 20 new law schools would be created and the total number of students enrolled would be limited to roughly 3,000. Such limitations made sense since the number of people who could pass the bar examination would rise to 3,000 in 2010 and it was necessary to limit the number of law students in order to assure that most of the graduates, 70 to 80 percent, should pass the new examination. However, a surprising number of universities announced that they planned to establish law schools and the MEXT could not effectively limit that number. Thus, most of the 93 law faculties in operation decided to establish their own new law schools and those were approved. As a result, more than 5,000 students were enrolled in law schools in 2004. It was thus apparent from the beginning that it would be difficult to maintain high bar passage rates despite increasing the number of people allowed to pass to 3,000 in 2010. As we will see below, this limitation has serious implications for Japanese law schools.

## II. The Current Law School System

### *A. New Law Schools*<sup>33</sup>

#### 1. The Standard for Establishing Professional Graduate Schools

The most conspicuous characteristic of the Japanese law school system is the heavy involvement of the government. The government, through the

32. Even after abolition of the traditional bar examination, however, a bypass procedure was created so those who cannot go to law school for personal reasons could still take the new bar examination. See *infra* note 116.

33. Rokumoto, *supra* note 3, at 224.

MEXT, has the power to approve law schools, to decide how many law students are admitted, how many law professors each law school must have, how many credits a student must earn, and which courses the students must take to graduate. The government also has the power to determine the model curriculum and even the content of the essential courses. Moreover, the government can give administrative guidance to the law school.

Under the established Standards, law schools must have a sufficient number of faculty members and must present a detailed proposal, together with syllabi of all the courses to be offered, for approval. The goal is to establish law schools as professional graduate schools with the sole purpose of training future lawyers.<sup>34</sup> The regular law school curriculum takes three years to complete.<sup>35</sup> Students must acquire more than 93 credits to graduate.<sup>36</sup> However, because officials anticipate many law students will have previously graduated from undergraduate law faculties, the school can exempt up to 30 credits, making it possible for them to graduate in two years.<sup>37</sup>

## 2. Detailed Structure of New Law Schools

Legal standards for law schools established by the MEXT merely provide for the bare minimum. However, the National Educational Advisory Council's report functioned as *de facto* legal norms, including much more detailed guidelines for the new law schools.

The guidelines declare professional legal education should operate "as a process" rather than simply preparing candidates for the bar examination. Law school must foster fairness, openness, and diversity and serve as "a bridge between theoretical education and practical education." Thus, law schools should serve as professional graduate schools<sup>38</sup> and grant J.D. degrees to their graduates.<sup>39</sup>

A law school can be established as a part of an existing university, by a combination of several universities, or independently from existing universities. Most of the law schools are established as a part of an existing university.<sup>40</sup> The MEXT requires, however, that law schools have an independent faculty and independent power to appoint faculty and establish curriculum.

34. MEXT Standard, *supra* note 27, at art. 18, para. 1.

35. *Id.* at art. 18, para. 2.

36. *Id.* at art. 23.

37. *Id.* at art. 25.

38. NEAC Report, *supra* note 26, at 2 (1).

39. *Id.*

40. One law school, the Omiya Law School, was established independently and is run in close connection with a local bar association, the Second Tokyo Bar Association. The Kagawa University and Ehime University joined hands to establish the Kagawa University/Ehime University Joint Law School.

Each school must have a minimum of 12 permanent faculty members and the student to faculty ratio should be less than 15.<sup>41</sup> At least half of the permanent faculty members have to be professors.<sup>42</sup> One-third of the permanent faculty members of a law school can serve concurrently in other faculties during their first ten years.<sup>43</sup> This provision exists so that faculty members of the new law school can serve on the undergraduate law faculty as well. Additionally, a substantial number of permanent faculty members should be practitioners—at least 20 percent.<sup>44</sup> Practitioners must have more than five years of experience<sup>45</sup> and at least one-third of permanent practitioner faculty members must not be part-time members. The remaining two-thirds can be part-time members who teach more than six credits and assist in managing the law school curriculum, with a focus on basic practical subjects (these part-time practitioners will be regarded as permanent faculty members because of their significant involvement in law schools).<sup>46</sup>

### 3. Content and Method of Teaching

Law school curriculum is divided into four categories: basic legal subjects, basic practical subjects, legal theory and related subjects, and advanced subjects.<sup>47</sup> Basic legal subjects include public law (constitutional law and administrative law), civil law (civil law, commercial law and civil procedural law), and criminal law (criminal law and criminal procedural law). Basic practical subjects include legal ethics, legal research, legal writing, moot court, advocacy, clinic, and externship. Legal theory and related subjects include jurisprudence, foreign law, politics, and law and economics. Advanced subjects include labor law, economic law, tax law, intellectual property law, international transaction law, and environmental law.

The National Educational Advisory Council's report also established teaching guidelines. Teachers should combine lectures, seminars, research and report projects, and learning should be interactive and multi-dimensional.<sup>48</sup> Additionally, law school classes should be small.<sup>49</sup> The basic legal subjects

41. NEAC Report, *supra* note 26, at 2(4). If the law school accepts 100 students per year, for example, the total number of students would be 300 and the minimum number of permanent faculty members would be 20. Law schools must also maintain balance based on age and gender among the faculty members.

42. MEXT Notice, *supra* note 27, art. 1, para. 3.

43. NEAC Report, *supra* note 26, at 2 (4).

44. MEXT Notice, *supra* note 27, at art. 2, para. 3; NEAC Report, *supra* note 26, at 2 (4).

45. MEXT Notice, *supra* note 27, at art. 2, para. 1; NEAC Report, *supra* note 26, at 2 (4).

46. MEXT Notice, *supra* note 27, at art. 2, para. 2; NEAC Report, *supra* note 26, at 2 (4).

47. MEXT Notice, *supra* note 27, at art. 5, para. 1; NEAC Report, *supra* note 26, at 2 (5).

48. NEAC Report, *supra* note 26, at 2 (5).

49. MEXT Notice, *supra* note 27, at art. 6, para. 1; NEAC Report, *supra* note 26, at 2 (5).

should be taught in classes of less than 50.<sup>50</sup> The report clearly anticipated the use of the case method or Socratic Method. Each instructor is required to publish the course syllabus and grading policy and is advised to take class attendance and class participation into consideration.<sup>51</sup>

#### 4. Admission

Applicants must have undergraduate degrees in order to apply to law school. Yet, in limited circumstances, third-year university students can apply for admission if they have excellent grades. In such cases, the student will be admitted into law schools without finishing their undergraduate degree.

All students who wish to enter law school must take the Law School Aptitude Test.<sup>52</sup> There used to be two institutions that administered the Law School Aptitude Test; the National Admission Center, which is an independent public administrative corporation, and the Legal Research Institute (LRI) of the JFBA. Each law school had to decide which test they would accept. But, in 2011, the National Admission Center stopped administering the test and the new Aptitude Test Supervisory Committee was established to administer the uniform test.<sup>53</sup>

Some of the larger law schools, such as Tokyo University Law School, Waseda University Law School, and Chuo University Law School, accepted approximately 300 students per year while the smallest law schools admitted only 30. Law schools are instructed to admit roughly 30 percent of its student body from applicants with work experience or non-law degrees.<sup>54</sup> In addition, a law school's admission policy must be based on fairness, openness, diversity, and must consider academic achievement, extra-curricular activity, and work experiences in addition to admission examination score.<sup>55</sup>

There are essentially two different types of admission procedures. Some law schools separate applicants to the three-year program from those who applied to the two-year one and required different entrance examinations. Applicants to the three-year program require no knowledge in law and the admission criteria is designed to attract students with diverse experience and knowledge in non-law subjects. Applicants to the two-year program are required to have basic knowledge in law and therefore must take essay examinations on constitutional law, civil law, and criminal law. However, some law schools

50. MEXT Notice, *supra* note 27, at art.6, para. 2.

51. *Id.*

52. *Id.* at 2(3).

53. Tekiseishiken kanri iinkai (Aptitude Test Supervisory Committee), Heisei 23 nen ikōno tekiseishiken jisshi nimuke tekiseishiken kanri iinkai wo kaisai (On Establishment of Aptitude Test Supervisory Committee), available at [http://www.jlf.or.jp/userfiles/20100528\(5\).pdf](http://www.jlf.or.jp/userfiles/20100528(5).pdf).

54. MEXT Notice, *supra* note 27, at art. 3, para. 1; NEAC Report, *supra* note 26, at 2 (3). If fewer than 20 percent of students with work experience or a non-law degree enroll, the law school must publicize that fact. MEXT Notice, *supra* note 27, at art. 3, para. 2.

55. NEAC Report, *supra* note 26, at 2 (3).

employed a slightly different admission program. These schools admitted all students into the regular three-year program and then subsequently admitted some students into the two-year program after the legal examination. The majority of law schools, including Tokyo University Law School, adopted the first admission method, while Waseda University Law School adopted the second method.<sup>56</sup> The ratio of students admitted into the three-year program versus students admitted into the two-year program also differs significantly from school to school depending on their admission policy. Despite the principle that the regular program in law school should be the three-year one, many law schools admit more students into the two-year program instead.

The statistics show very interesting characteristics of admission procedure of the Japanese law schools. For the 2004 academic year, the first year the new law school system was in place, 72,800 students applied for admission and 5,767 of them enrolled into 68 law schools. The admission rate was 7.8 percent. Of these 5,767 students, 2,350 students enrolled in the two-year program and 3,417 in the three-year program. Of newly enrolled students, 3,779 were graduates of undergraduate law faculties, representing 65.5 percent of the student population. Those who had work experience or non-law degrees numbered 2,792 and represented 48.4 percent of the student body.<sup>57</sup>

For the 2005 academic year, a total of 74 law schools admitted 5,825 students. The total number of applicants was 41,756, and 5,544 students actually enrolled. The admission rate was 13.2 percent. Three-year program students occupied 3,481 seats, two-year program students occupied 2,063 seats, and 3,884 of the students admitted were graduates of undergraduate law faculties, representing 70.1 percent of all the students enrolled. Those who had work experience or non-law degrees occupied 2,091 seats, representing 37.7 percent of the student body.<sup>58</sup> The statistics show a significant drop in the number of applications to law school, a significant drop in the number of applicants who had work experience or non-law degrees and a significant increase in the

56. Waseda University Law School radically altered its admission procedure in 2011. For the academic year 2008, the Waseda University Law School admitted 425 students, and only 14 were two-year course students. Waseda University Law School, 2008 *nendo nyugakushasenbatsushiken saishūgoukakushano gaiyōtō* (Result of Admission Examination, 2008), available at <http://www.waseda.jp/law-school/jp/news/index080303.html>. But, for 2011, the Waseda University Law School accepted 150 two-year program students, while admitting 120 three-year program students. Waseda University Law School, 2011 *nendo nyugakusha senbatsushiken goukakushano gaiyōtō* (Result of Admission Examination, 2011), available at <http://www.waseda.jp/law-school/jp/news/index10108.html>. This decision was triggered by the low pass rate of graduates of the three-year program. See *infra* sources cited in notes 85-95.
57. MEXT, Heisei 16 *nendo houka daigakuin nyugakusha senbatsu jisshijōkyo no gaiyō* (Summary of Admission to Law School, 2004), available at [http://warp.da.ndl.go.jp/info:ndljp/pid/286184/www.mext.go.jp/b\\_menu/houdou/16/05/04051301.htm](http://warp.da.ndl.go.jp/info:ndljp/pid/286184/www.mext.go.jp/b_menu/houdou/16/05/04051301.htm).
58. MEXT, Heisei 17 *nendo houka daigakuin nyugakusha senbatsu jisshijōkyo no gaiyō* (Summary of Admission to Law School, 2005), available at [http://warp.da.ndl.go.jp/info:ndljp/pid/286184/www.mext.go.jp/b\\_menu/houdou/17/05/05052002.htm](http://warp.da.ndl.go.jp/info:ndljp/pid/286184/www.mext.go.jp/b_menu/houdou/17/05/05052002.htm).

number of graduates of undergraduate law faculty. The admission statistics for subsequent academic years demonstrated similar trends.<sup>59</sup>

### 5. Graduation Requirement

The new law school system set graduation requirements to which all law schools must adhere. Students must earn 93 total credits to graduate including 54 credits in basic legal subjects; 10 credits in public law (constitutional law and administrative law); 32 credits in civil law (civil law, commercial law, civil procedure law) and 12 credits in criminal law (criminal law and criminal procedure law). Professional ethics is also mandatory. In addition, law schools should require at least 6 credits in basic practical subjects, 4 credits of legal theory and related subjects, and 33 credits in selective subjects. Law schools must also limit students to 36 credits per year (44 credits for the senior year).<sup>60</sup>

### 6. Admission Fee and Tuition

The MEXT allowed law schools to set their own admission and tuition fees, and most law schools charge higher tuition fees for law students than for other students.

Nationally funded law schools require an admission fee of ¥282,000 (3,500USD with the exchange rate of \$1 to ¥80). These schools are allowed to set their tuition fees up to 120 percent of the standard fee of ¥804,000 (10,000USD), but most law schools decided to charge the standard fee. Admission fees and tuition for the academic year of 2012 have held steady.<sup>61</sup>

Most private law schools charge admission fees ranging from ¥200,000 (2,500USD) to ¥300,000 (3,600USD). They typically charge a building fee as well. Tuition for private university law schools ranges from one million yen (12,500USD) to two million yen (25,000USD) per year. However, many offer a variety of scholarships, including a complete tuition fee waiver for students who are admitted into the law school with high scores.

59. MEXT, Heisei 18 nendo houka daigakuin nyugakusha senbatsu jisshijōkyō no gaiyō (Summary of Admission to Law School, 2006), available at <http://www.moj.go.jp/content/000004412.pdf>; MEXT, Heisei 20 nendo houka daigakuin nyugakusha senbatsu jisshijōkyō no gaiyō (Summary of Admission to Law School, 2008), available at [http://www.mext.go.jp/b\\_menu/houdou/20/05/08051915.htm](http://www.mext.go.jp/b_menu/houdou/20/05/08051915.htm). For the 2010 academic year, 74 law schools accepted 4,909 students from 24,014 applicants; 21,319 applicants actually took the examination; 7,765 students were admitted; and 4,122 students actually enrolled. The two-year program students were 1,923 and three-year program students were 2,199. The students who had work experience and non-law degrees were 993 and occupied only 24.1 percent of all enrolled students. Ministry of Internal Affairs and Communication, Houka daigakuin (hōsōyouseiseido) no hyōka nikansuru kenkyūkai houkokusho (Final Report of the Study Conference on Evaluation of Law Schools) (Dec. 21, 2010), available at [http://www.soumu.go.jp/main\\_content/000095209.pdf](http://www.soumu.go.jp/main_content/000095209.pdf) [hereinafter Evaluation Report].

60. MEXT Notice, *supra* note 27, at art. 7.

61. Kokuritsu daigakutō no jugyōryō sonotano hiyou nikansuru shōrei (Regulation on Tuition and Admission Fees of National University), MEXT Regulation No. 16 of 2004, available at [http://www.mext.go.jp/a\\_menu/koutou/houjin/03121901/013.pdf](http://www.mext.go.jp/a_menu/koutou/houjin/03121901/013.pdf).

### 7. Third-Party Evaluation

Finally, law schools must seek a third-party evaluation every five years.<sup>62</sup> Three institutions are licensed to evaluate law schools: the National Institution for Academic Degrees and University Evaluation (NIADUE), an independent administrative corporation, Japan University Accreditation Association, and the LRI of the JFBA. These institutions review law school operations and evaluate whether the school satisfies the listed standards. If a law school falls short, the MEXT will give administrative guidance to the school to help it improve.<sup>63</sup>

#### B. New Bar Examination<sup>64</sup>

Those who successfully graduate from law school can take the new bar examination. However, they can only take the examination three times, and must do so within the first five years after graduation.<sup>65</sup> If a candidate cannot pass the new bar examination during this period, he or she must wait for two years after their last attempt and then try again.<sup>66</sup>

The new bar examination<sup>67</sup> takes place in May and consists of a multiple-choice examination and essay examination.<sup>68</sup> The multiple-choice examination covers public law, civil law, and criminal law<sup>69</sup> and it takes a whole day to finish. The essay examination takes three days. The test-taker must answer essay questions in public law (four hours), civil law, including commercial law and civil procedure law (six hours), and criminal law, including criminal procedure law (four hours).<sup>70</sup> The test-taker must also answer questions in

62. NEAC Report, *supra* note 26, at 2 (8).

63. For standards for evaluation, see [http://www.niad.ac.jp/ICSFiles/afieldfile/2006/07/25/no6\\_2\\_houkakiyunyoukou200603kaitei.pdf](http://www.niad.ac.jp/ICSFiles/afieldfile/2006/07/25/no6_2_houkakiyunyoukou200603kaitei.pdf) for the NIADUE, [http://www.juaa.or.jp/images/accreditation/pdf/handbook/law/2010/shiryuu\\_01.pdf](http://www.juaa.or.jp/images/accreditation/pdf/handbook/law/2010/shiryuu_01.pdf) for the Japan University Accreditation Association, and <http://www.jlf.or.jp/work/dai3sha/kijyun060116.pdf> for the LRI of the JFBA. For the results of the recent evaluation, see *infra* note 103.

64. Ministry of Justice, Heisei 24 nen shihōshiken nikansuru Q&A (Questions and Answers on New Bar Examination, 2012), available at [http://www.moj.go.jp/jinji/shihoushiken/shiken\\_shinshihou\\_shikenqa.html](http://www.moj.go.jp/jinji/shihoushiken/shiken_shinshihou_shikenqa.html).

65. Bar Examination Act, *supra* note 5, at art. 4, para. 1, no. 1.

66. *Id.* at art. 4, para. 2.

67. The Ministry of Justice, which administers the new exam, established a new Bar Examination Committee, *Id.* at art. 12, consisting of seven members, chosen from judges, prosecutors, attorneys, and scholars. *Id.* at art. 13. Bar examination reviewers, appointed by the Justice Minister upon recommendation by the committee administer the test. *Id.* at art. 15. Before the 2008 reform, a substantial number of law school professors were involved in the writing of the examinations and evaluating them. As a result of the reform in 2008, however, the number of law professors who participate in writing questions for the new bar examination was significantly reduced. See *infra* note 99.

68. Bar Examination Act, *supra* note 5, at art. 2.

69. *Id.* at art. 3, para. 1.

70. *Id.* at art. 3, para. 2.

one of the selective subjects (three hours), chosen from bankruptcy law, tax law, economic law, intellectual property law, labor law, environmental law, public international law, or private international law.<sup>71</sup> Those who achieve the minimum score requirement on the multiple-choice examination are eligible for evaluation of the essay test. The Bar Examination Committee decides who passes,<sup>72</sup> based on the decision of the bar examination reviewers, chosen from candidates who passed the minimum score requirement in all essays. There is no oral examination, a change from the old bar examination.

Those who pass the new examination must enroll in the JTTRI for a year of practical training. The government decided not to provide stipends to the trainees.<sup>73</sup> During the one-year program, students participate in eight months of field training in the district court's civil and criminal departments, the prosecutors' office and at law firms, with each rotation lasting two months. Then, students will return to the JTTRI for selective practical training, focusing on a particular field for two months and collective training for two months in order to follow up the field training in a classroom setting. Those students who pass the final examination will graduate from the JTTRI<sup>74</sup> and are eligible to become judges, prosecutors, and attorneys.

### III. The Preliminary Evaluation and Future Agenda

#### *A. Significance of the Introduction of the New Law Schools*

The new law school system was proposed as part of the judicial reform proposal to increase the role of the courts and add to the number of lawyers to support such an expanded judiciary. Despite the critiques of the judicial reform proposal, no one can deny that the courts played a very small role in Japanese society in the past and there was an insufficient number of lawyers to sustain a more expanded court role. The basic aim of the judicial reform proposal is justified. There is a definite need to restructure the Japanese judicial system and for speedy resolution of legal disputes. That means Japan needs more litigators. Especially with the introduction of citizen participation in criminal cases, trials can be held intensively and not intermittently as they were in the past so more trial lawyers are needed. Yet, apart from litigators, in Japan's

71. Shihō shikenhō sekou kisoku (Regulation to Implement the Bar Examination Act), Ministry of Justice Regulation No. 84 of 2005, art. 1.

72. Bar Examination Act, *supra* note 5, at art. 8.

73. Saibanshohō no ichibu wo kaiseisuru hōritsu (Act to Amend the Parts of the Judiciary Act), Law No. 163 of 2004. However, when this act was about to take effect, the government decided to extend the stipend for one more year in 2010 in response to strong opposition from the JFBA. Saibanshohō no ichibu wo kaiseisuru hōritsu (Act to Amend the Parts of the Judiciary Act), Law No. 64 of 2010.

74. The Supreme Court of Japan, Judicial Training and Research Institute, *supra* note 7.

deregulated economy, there is a critical need for attorneys who can give legal advice, prevent legal disputes and solve legal disputes out of the court.<sup>75</sup>

Even though there are criticisms against establishing law schools as professional graduate schools, following the American model,<sup>76</sup> they do provide the overriding benefit of allowing students with various backgrounds to receive professional legal education. The new law schools have been praised for successfully introducing this unique opportunity.<sup>77</sup> Moreover, the probability of passing the new bar examination has increased substantially and those who studied non-law subjects at universities are more likely to pass. This system will produce a substantial number of lawyers with extensive knowledge in non-law subjects, a great achievement.

### *B. Limiting the Number of Applicants Who Can Pass the New Bar Examination*

The new law school system emerged as a compromise between those who argued for radical transformation of Japanese legal education and those who did not want to change the traditional system. Unfortunately, there are significant drawbacks in the current system which can be traced back to this origin.

The first problem is that the number of people who are allowed to pass the bar examination is pre-determined by the government rather than by the market. It was pre-determined that 900 to 1,000 candidates would be allowed to pass the first new bar examination in 2006, while an estimated 500 to 600 would be allowed to pass the traditional bar examination. These numbers were selected to limit the total number of new lawyers to be admitted into the JTRI to 1,500. It was also agreed that the number of persons who would pass the bar examination and become lawyers would increase to 3,000 by 2010. With this preset bar examination pass rate, it will take more than 20 years

75. George Schumann, *Beyond Litigation: Legal Education Reform in Japan and What Japan's New Lawyers Will Do*, 13 U. Miami Int'l & Comp. L. Rev. 475 (2006).

76. James R. Maxeiner & Keiichi Yamanaka, *The New Japanese Law Schools: Putting the Professional Into Legal Education*, 13 Pac. Rim L. & Pol'y J. 303, 316 (2004), points out that the American system of legal education is premised upon a social and legal system different from those in Japan and argues that the American style advocacy may be inappropriate in Japan. Luke Nottage, *Reformist Conservatism and Failures of Imagination in Japanese Legal Education*, 2 Asian-Pac. L. & Pol'y J. 28 (2001), argues that the Australian model which provides legal education at the undergraduate level but allows law students to double major in non-legal subjects is more appropriate.

77. The Research Committee on Judicial System of the LDP published a report on law schools and concluded that overall law schools were off to a good start. LDP, *Aratana hōsōyousei seido no rinen no jitsugen no tameni* (Toward Realization of Ideals of New Lawyer Education System), available at <http://www.lawschool-jp.info/info/20061213.pdf>. In 2007, the MEXT conducted a follow-up survey of law schools which were approved with some conditions to see whether the conditions were satisfied. Over all, the MEXT found that law schools have substantially improved their operating environment. MEXT, *Houka daigakuin settikeikaku rikōjoukyoutō chousa no kekkatō nitsuite* (Heisei 20 nendo) (Result of the Follow-up Survey of Law Schools, 2008), available at [http://warp.da.ndl.go.jp/info:ndljp/pid/286184/www.mext.go.jp/b\\_menu/houdou/21/01/1232204.htm](http://warp.da.ndl.go.jp/info:ndljp/pid/286184/www.mext.go.jp/b_menu/houdou/21/01/1232204.htm).

before Japan reaches its target in terms of the ratio between population and number of lawyers available.<sup>78</sup>

Moreover, the Supreme Court of Japan refused to abolish the JTRI. Although the rationale for the JTRI is debatable,<sup>79</sup> its mere existence necessarily restricts the number of persons who can pass the bar examination. There is a limit as to the number of students who can be accepted at the JTRI, due to physical capacity of the facilities as well as budgetary restrictions, especially when the government is paying stipends to all students who are enrolled at the JTRI. Even though the purpose of the bar examination is to determine whether a particular applicant is qualified to practice law or not, these limitations and restrictions force the Ministry of Justice to restrict how many people can pass, a decision unrelated to a candidate's qualification. If the number of persons who can pass the bar examination is already set in advance, how can one argue that the exam is designed solely to evaluate the qualification of a candidate as to whether he or she is fit to practice law?

On September 21, 2006, the results of the first new bar examination were revealed, and 1,009 out of 2,091 applicants passed the examination.<sup>80</sup> The pass rate was about 48 percent. Since this was the first time the exam was given, only graduates of expedited two-year programs were qualified to participate. The pass rate differed radically from law school to law school,<sup>81</sup> and four law schools did not have any students successfully pass.<sup>82</sup>

The pass rate for the second exam, in September 2007, was 40.2 percent with 1,851 passers out of 4,607 applicants.<sup>83</sup> The pass rate for graduates of three-year programs was a disappointing 32.3 percent, in contrast to 46.0 percent

78. Robert F. Grondine, *An International Perspective on Japan's New Legal Education System*, 2 *Asian-Pac. L. & Pol'y J.* 1 (2001).

79. *Id.* Some argue that since those who pass the bar examination have to attend the JTRI to receive practical training, there is no need for law schools to provide practical training. Takahiro Saito, *The Tragedy of Japanese Legal Education: Japanese "American" Law Schools*, 24 *Wis. Int'l L.J.* 197, 203-04 (2006).

80. Ministry of Justice, Heisei 18nen shinsihōshiken no kekka (The Summary of 2006 New Bar Examination) (General), *available at* <http://www.moj.go.jp/content/000006357.pdf>.

81. Ministry of Justice, Heisei 18nen shinshihōshiken houka daigakuinbetsu gougakushasūtō (Summary of 2006 New Bar Examination Classified by Each Law School), *available at* <http://www.moj.go.jp/content/000006359.pdf>.

82. In 2006, 549 applicants passed the old bar examination out of 30,248 applicants. The pass rate was 1.81 percent. Ministry of Justice, Heisei 18nendo kyushihōshiken dainijishiken no kekka nitsuite (Summary of Result of the 2006 Old Bar Examination), *available at* <http://www.moj.go.jp/PRESS/061109-1/18soukatu.html>.

83. The Ministry of Justice, Heisei 19nen shinsihōshiken no kekka (Summary of 2007 New Bar Examination), *available at* <http://www.moj.go.jp/content/000006382.pdf>. It must be noted that only 248 candidates passed the old bar examination out of 23,306 test-takers in 2007. Ministry of Justice, Heisei 19nen kyushihōshiken dainijishiken gougakushasūtō (Summary of the Result of the 2007 Old Bar Examination), *available at* [http://www.moj.go.jp/jinji/shihoushiken/press\\_071108-1\\_19soukatu.html](http://www.moj.go.jp/jinji/shihoushiken/press_071108-1_19soukatu.html). The total number of candidates who passed the bar examination in 2007 thus came down to 2,099.

for graduates of two-year programs. The pass rate varied widely between law schools. All law schools had at least one candidate who passed the bar examination, but some law schools did have a very low pass rate.<sup>84</sup>

The result of the 2008 new bar examination was again uninspiring.<sup>85</sup> The pass rate was 33.3 percent. The pass rate for three-year program students was 22.5 percent, and 44.3 percent for two-year program students. Three law schools failed to have any students pass and nine law schools had a pass rate under 10 percent.<sup>86</sup> The result of the 2009 examination was even worse, with a pass rate of only 27.6 percent. The pass rate for three-year program students was only 18.9 percent, while that for two-year program students was 38.7 percent. Of 9,743 applicants, 2,043 passed.<sup>87</sup> Although every law school produced at least one successful candidate, 14 law schools had a pass rate under 10 percent.<sup>88</sup> The pass rate for the 2010 examination was a woeful 25.4 percent. Despite the official goal of increasing the number of passers to 3,000 by 2010, only 2,074 passed out of 8,163 who applied. The pass rate for three-year program students was only 17.3 percent, while the pass rate for two-year program students was 37 percent.<sup>89</sup> Eighteen law schools produced fewer than five successful applicants and two law schools were unable to produce any successful applicants.<sup>90</sup>

84. The Ministry of Justice, Heisei 19nen shinshihōshiken houka daigakuinbetsu goukakushasūtō (Summary of 2007 New Bar Examination Classified by Each Law School), *available at* <http://www.moj.go.jp/content/00006384.pdf>.
85. Ministry of Justice, Heisei 20nen shinshihōshiken no kekka (Summary of 2008 New Bar Examination), *available at* <http://www.moj.go.jp/content/00006423.pdf>.
86. Ministry of Justice, Heisei 20nen shinshihōshiken houka daigakuinbetsu goukakushasūtō (Summary of 2008 New Bar Examination Classified by Each Law School), *available at* <http://www.moj.go.jp/content/00006425.pdf>.
87. Ministry of Justice, Heisei 21nen shinshihōshiken no kekka (Summary of 2009 New Bar Examination), *available at* <http://www.moj.go.jp/content/00006465.pdf>. In 2009, 15,221 applicants took the old bar examination and 92 passed. Ministry of Justice, Heisei 21nen kyushihōshiken dainijishiken no kekka (Summary of 2009 Old Bar Examination), *available at* <http://www.moj.go.jp/content/00002130.pdf>.
88. Ministry of Justice, Heisei 21nen shinshihōshiken houka daigakuinbetsu goukakushasūtō (Summary of 2009 New Bar Examination Classified by Each Law School), *available at* <http://www.moj.go.jp/content/00006467.pdf>.
89. Ministry of Justice, Heisei 22nen shinshihōshiken no kekka (Summary of 2010 New Bar Examination), *available at* <http://www.moj.go.jp/content/000053691.pdf>. It must be added that 59 applicants passed the final old bar examination in 2010. Ministry of Justice, Heisei 22nen kyushihōshiken dainijishiken no kekka (Summary of 2010 Old Bar Examination), *available at* <http://www.moj.go.jp/content/000057098.pdf>.
90. Ministry of Justice, Heisei 22nen shinshihōshiken houka daigakuinbetsu goukakushasūtō (Summary of 2010 New Bar Examination Classified by Each Law School), *available at* <http://www.moj.go.jp/content/000053692.pdf>. The 2011 examination showed an even worse pass rate, 23.5 percent, admitting 2,063 applicants from 8,765 test-takers. Ministry of Justice, Heisei 22nen shinshihōshiken no kekka (Summary of 2011 New Bar Examination) *available at* <http://www.moj.go.jp/content/000079294.pdf>. The pass rate for three-year program students was 16.2 percent, while the pass rate for two-year program students was 35.4 percent.

It is difficult to defend such an arbitrary limitation on the number of people who can pass the bar examination when considered in the context of declining pass rates.

### *C. Transforming American Style into Japanese Style*

Although the new law school system is often called “American-style,” Japanese law schools are very different from American ones. The American law school paradigm was “transformed” into a unique Japanese style during the implementation process.

In the United States, since there is no undergraduate legal education, all students enter law school without any legal knowledge. Law professors teach students how to think like lawyers through case method or Socratic Method during the first year. That first year is very important because students have to learn how to analyze legal issues and statutes, how to read cases, and how to make and write legal arguments.

However, since undergraduate legal education remained largely intact in Japan, Japanese law schools offer the expedited two-year program in addition to the American-style three-year program. Most students who enter law schools are graduates of undergraduate law faculties. But, since they were not provided with any professional legal education or practical skills training, they must acquire the necessary legal training in only two years. It is doubtful whether they can do so in such a short period.<sup>91</sup>

On the other hand, students who did not study law as undergraduates must spend their first year catching up to those who did. The lower bar examination pass rates for three-year program students indicate that entering law school with no legal education background is difficult to overcome. Due to the stiff competition of the bar examination, three years of study is simply not enough to pass.

This situation made it hard for law schools to introduce the case method or Socratic Method in their first year curriculum because these methods do not cover all the materials that undergraduates learned over four years of legal study.<sup>92</sup> This is one of the main reasons why some large law schools fail to maintain small class sizes in the first year of the three-year program.<sup>93</sup> There simply isn’t enough time to effectively implement the case method or Socratic

91. Because many law faculties lost professors to law schools, they cut the number of courses at the undergraduate level. This means that future graduates of undergraduate law faculties may not have sufficient in-depth knowledge of law, as was expected by law schools who accepted them into the two-year expedited program. Kamiya, *supra* note 3, at 172-73.

92. *Id.* at 164-65.

93. Both Tokyo University Law School and Kyoto University Law School were warned by the MEXT for exceeding required class caps of 50 students (their classes numbered roughly 70 students). MEXT, Heisei 21nendo houka daigakuin settikeikaku rikō joukyōtō chousa ryūijikō (Result of Follow-up Survey of Law Schools, 2009, Reservations to Each Law School), available at [http://www.mext.go.jp/b\\_menu/houdou/22/02/\\_\\_\\_icsFiles/afldfile/2010/02/05/1289959\\_002\\_1.pdf](http://www.mext.go.jp/b_menu/houdou/22/02/___icsFiles/afldfile/2010/02/05/1289959_002_1.pdf).

Method in the first year because all available class hours must be spent introducing the students without law backgrounds to basic legal principles.

Moreover, many faculty members in law schools are not familiar with the case method or Socratic Method and tend to lecture instead. Because many of them never received an American style legal education (instead, they usually go to Germany or France for comparative study), they are not accustomed to the case method or Socratic Method. Additionally, since the Japanese legal system is heavily influenced by civil law traditions, many faculty members tend to emphasize the systematic understanding of law, avoiding the use of case method in the process.<sup>94</sup> It is doubtful, therefore, that the case method or Socratic Method is effectively used even during the second and third year of law school.

Another striking difference between American and Japanese law schools involves the development of practical legal skills. The regular law school curriculum in Japan does not provide many opportunities to learn these skills and, unlike American law schools, the number of practicing lawyers who teach part-time at law school is quite limited. Moreover, unlike American law students, law students in Japan do not have summer jobs in law firms. They may learn practical skills through an externship program but those opportunities are quite limited. As a result, most Japanese law students do not have any exposure to real life legal practice before graduation.

#### *D. Effect of Low Pass Rate on Law Schools*

The low pass rate for the new bar examination negatively impacts law schools. First, many law school graduates will initially fail the examination, forcing them to study for one or more years on their own after graduation. As it is uncertain what options these students have if their own law schools cannot offer them any further assistance, cram schools will surely step in to offer programs that help prepare for the bar examination. This grossly undermines the original purpose behind the law school reforms.

Furthermore, graduates of law schools have three opportunities to take the new bar examination within five years of graduation. If they fail the examination three times, they must once again enter another law school to be re-qualified to take the new bar examination. This is obviously not an appealing prospect. If the pass rate of new bar examination remains this low in the future, then we must anticipate that a substantial number of graduates will be forced to give

94. Kamiya, *supra* note 3, at 164. Some argue that in civil law jurisdictions lawyers place much emphasis on understanding the text of the statutes. Consequently, students are required to learn how to interpret legal text, and the lecture style is the most efficient teaching method in such jurisdictions. They thus argue that introducing the case method in first year of law school for those who have no legal knowledge runs the risk of causing more harm to students than benefit. Saito, *supra* note 79, at 200.

up and must find a job instead.<sup>95</sup> Yet, it is unclear what job opportunities exist for these law school graduates who failed the bar examination.

These future uncertainties, together with the low pass rate, work as a deterrent to keep applicants away from law schools. In 2005, as previously mentioned, the number of law school applicants significantly decreased. Even though the number of applicants increased in 2007, 36 law schools out of 74 actually enrolled fewer students than they admitted. That accounts for roughly half of all the law schools. In 2008, the number of applicants declined once again and 46 out of 74 law schools enrolled fewer students than they could have accepted.<sup>96</sup> It is true that many law schools are trying to prevent students who are unlikely to pass the new bar examination from enrolling. But this figure surely indicates that some law schools are having a hard time attracting students, especially those whose graduates had a very low bar pass rate. If these law schools fail to improve their graduates' pass rate, they will face tremendous difficulties in attracting applicants in the years to come. It is unclear to what extent law schools could survive if the number of applicants drastically decreased.

Moreover, if the overall pass rate remains below 30 percent and the pass rate for three-year program students remains below 20 percent, applicants who did not study law in their undergraduate degree may reconsider their goal of becoming a lawyer. Especially for those who have jobs, there would be very little incentive to quit and enter law school when the likelihood of passing the bar examination is so low. This would undermine the ultimate goal of producing more lawyers with diverse social backgrounds or those who are knowledgeable in science and technology.

#### *E. Effect of Low Pass Rate on Law School Education*

The low pass rate could also have an effect on law school education. Since law students constantly worry about passing the bar examination, they tend to focus only on subjects which are necessary for the examination. This means that many students will eschew subjects not directly related to the bar examination, especially legal theory, jurisprudence or specialized subjects. They may also neglect practical skills courses based on the same rationale.

Even with respect to subjects which are directly relevant to the bar examination, the low pass rate will necessarily affect students' study habits. For example, they may tend to focus on solving the examination problem and only pay attention to case summary and legal framework but ignore the underlying facts or division of opinions inside the court. They may also neglect theoretical or critical analysis of the cases.

95. A total of 1,737 graduates lost the qualification to retake the examination by 2010. Evaluation Report, *supra* note 59.

96. Chuō kyōiku shingikai, daigakubunkakai, (National Education Advisory Council, University Division), Nyūgakushano shitsu to tayouseino kakuho, Assurance of Good Quality and Diversity of Students), available at [http://www.mext.go.jp/b\\_menu/shingiji/chukyo/chukyo4/houkoku/o8100219/002.htm](http://www.mext.go.jp/b_menu/shingiji/chukyo/chukyo4/houkoku/o8100219/002.htm).

Moreover, since the pass rate is a significant quality benchmark, law schools naturally tend to place emphasis on passing the bar examination. In 2007, one professor at Keio Law School, who had been a bar examination reviewer, held several practice sessions for his own students. He was accused of providing questions that were very similar to those on the actual bar examination, a potential confidentiality violation. Although the investigation later revealed that he did not leak any confidential information, he did violate the policy against holding practice sessions by reviewers. He was ultimately discharged as a bar examination reviewer.<sup>97</sup> It has become apparent, however, that the low pass rate practically forces many law schools to offer practice sessions or preparation sessions for their students.<sup>98</sup> Since the MEXT does not allow law schools to offer such practice sessions as regular courses, they have to be offered informally or through organizations other than the law school itself. This has put most law schools in serious dilemma.<sup>99</sup>

#### *F. The Future of Japanese Law Schools*

Even though one of the major goals of restructuring Japanese legal education was to produce more qualified lawyers, it is now apparent that the social and economic system in place does not have enough legal jobs available. Some of the local bar associations, citing the difficulty of finding a job, decreasing candidate quality, and excessive competition in the name of profit, have demanded that the new policy of allowing more people to pass the bar be reconsidered.<sup>100</sup> This contentious issue was at the center of the 2009 election for president of the JFBA. The victorious candidate called for a radical cut in

97. The Bar Examination Committee considered the impact of his behavior on Keio Law School students studying for the new bar examination and decided that no action should be taken against those applicants. Ministry of Justice, Shihō shiken iinkai kaigi (dai39kai) gijiyōshi (Bar Examination Committee Meeting), Aug. 2, 2007, *available at* <http://www.moj.go.jp/content/000006886.pdf>.
98. The MEXT surveyed all law schools after this incident and found that 54 law schools out of 74 offered bar examination preparatory sessions and 467 law professors were involved, including seven bar examination reviewers. MEXT, Houka daigakuin niokeru shinshihōshiken nikanrenshita shidō no jōkyo nitsuite (Survey Result on the Advice Given toward Passing New Bar Examination), *available at* [http://www.mext.go.jp/b\\_menu/shingi/chukyo/chukyo4/houkoku/07122014/002.pdf](http://www.mext.go.jp/b_menu/shingi/chukyo/chukyo4/houkoku/07122014/002.pdf). The MEXT issued a warning to these law schools that offered preparatory sessions by bar examination reviewers and issued a statement on law school involvement with the preparation for new bar examination. Chuō kyōiku shingikai (National Educational Advisory Council), Shihōseido kaikakuno shushini sotta houka daigakuin kyōikuno arikata nitsuite (On Education in Law Schools in Following the Ideal of Judicial Reform), *available at* [http://www.mext.go.jp/b\\_menu/shingi/chukyo/chukyo4/houkoku/07122014/001.pdf](http://www.mext.go.jp/b_menu/shingi/chukyo/chukyo4/houkoku/07122014/001.pdf).
99. The Ministry of Justice decided in 2008 to reduce the number of law school professors who would be involved in making the 2009 bar examination questions. Ministry of Justice, Shihōshiken iinkai kaigi (dai49kai) giji yōshi (Summary of Meeting of Bar Examination Commission), Oct. 8, 2008, *available at* <http://www.moj.go.jp/content/000006971.pdf>. Some are calling for excluding law school professors from serving as bar reviewers altogether.
100. The Statement of Aichi Prefecture Bar Association regarding the Number of Lawyers, Feb. 13, 2007, *available at* <http://www.aiben.jp/page/frombars/topics2/272zinkou.html>.

the number of people to be admitted.<sup>101</sup> Ultimately, the number of bar passers in 2010 was limited to 2,000 instead of 3,000 and will probably remain at this level.<sup>102</sup>

A growing number of concerns have been raised about the quality of law school education. Many criticize schools for granting credits without demanding work and allowing graduation without sufficient quality control. Third-party evaluations have confirmed that more than a few law schools are failing to meet the standards.<sup>103</sup> Even instructors at the JTTRI have voiced their concern with the declining quality of law school graduates.<sup>104</sup>

As a result, the MEXT pressured each law school to cut the number of students they admit and many schools cut their admission numbers by 20 to 30 percent in 2009. The total number of law students admitted for 2010 dropped to 4,900. Moreover, the MEXT warned about two dozen law schools

101. JFBA, President's Message, Apr. 1, 2010, (message of President Kenji Utsunomiya), *available at* [http://www.nichibenren.or.jp/jfba\\_info/organization/message/100401.html](http://www.nichibenren.or.jp/jfba_info/organization/message/100401.html) (calling for an end to increasing the number of new lawyers). In 2011, the JFBA issued an official statement calling for reducing the number of bar passers to 1,500. JFBA, Hōsōjinkou seisaku nikansuru teigen (Proposal on the Number of Lawyers), Mar. 15, 2012, *available at* [http://www.nichibenren.or.jp/library/ja/opinion/report/data/2012/opinion\\_120315.pdf](http://www.nichibenren.or.jp/library/ja/opinion/report/data/2012/opinion_120315.pdf).
102. The Ministry of Internal Affairs and Communication issued an assessment on the law school system and recommended reconsideration of the target number of lawyers. Ministry of Internal Affairs and Communication, Hōsōjinkōno kakudai oyobi hōsōyouseiseidono kaikaku nikansuru seisaku hyoukasho (Assessment Report on the Number of Lawyers and Legal Education Reform), Apr. 20, 2012, *available at* [http://www.soumu.go.jp/menu\\_news/s-news/000056940.html](http://www.soumu.go.jp/menu_news/s-news/000056940.html) [hereinafter Assessment Report].
103. LRI, Ninshō hyouka kekka (Result of Evaluation of Law Schools), *available at* [http://www.jlf.or.jp/work/dai3sha\\_find.shtml](http://www.jlf.or.jp/work/dai3sha_find.shtml); NIADUE, Hyouka kekka (Result of Evaluation of Law Schools), *available at* [http://www.niad.ac.jp/n\\_hyouka/houka/hyouka/index.html](http://www.niad.ac.jp/n_hyouka/houka/hyouka/index.html); Japan University Accreditation Association, Houka Daigakuin ninshō hyouka (Result of the Evaluation of Law School), *available at* <http://www.juaa.or.jp/accreditation/law/result.html>. Although a substantial number of law schools were found to fail to meet the standards (for instance, in 2008, 14 of 37 law schools failed to receive certification, MEXT, Heisei 20endo houka daigakuin ninshō hyouka kekka gaiyō (Result of the Third Party Evaluation of Law Schools in 2008), *available at* [http://www.mext.go.jp/b\\_menu/shingi/chukyo/chukyo4/012/siryo/attach/1282875.htm](http://www.mext.go.jp/b_menu/shingi/chukyo/chukyo4/012/siryo/attach/1282875.htm)), it was because law schools had to meet all the requirements to receive certification. Later, the standard was amended to make it possible for a law school to receive certification when it meets just the important requirements. MEXT, Houka daigakuin nikakawaru nishōhyukano minaoshi nitsuite (On Reconsideration of the Standard for Evaluation of Law Schools), *available at* [http://www.mext.go.jp/b\\_menu/shingi/chukyo/chukyo4/012/siryo/attach/1288205.htm](http://www.mext.go.jp/b_menu/shingi/chukyo/chukyo4/012/siryo/attach/1288205.htm).
104. In 2007, the JTTRI revealed an unprecedented number of candidates failed to pass the final examination: 71 out of 1468, or 4.8 percent of all students. Kyodo News, September 3, 2007, *available at* <http://www.47news.jp/CN/200709/CN2007090301000660.html>. Since almost all had passed the final examination in the past, this increase apparently reflects the perception of the instructors at the JTTRI that increasing numbers of students do not have sufficient knowledge or skills to become lawyers.

that have struggled to attract quality applicants that they must improve.<sup>105</sup> Each of these schools has a very low pass rate. The MEXT also published the recommendation to improve legal education by the National Educational Advisory Council which emphasizes the bar pass rate as one of the key criteria by which to evaluate law school quality.<sup>106</sup> The MEXT will continue to pressure law schools that have low pass rates and may even recommend that they merge with other law schools. This would further decrease the number of students to be admitted to law schools.<sup>107</sup>

In May 2010, Himeji Dokkyo University Law School decided not to accept any new students for 2011, and will close its doors after graduating its remaining students.<sup>108</sup> Very few of its graduates have passed the bar examination and the school saw years of steady decline in its enrollment. Other law schools that have low pass rates will likely face a similar fate. It's clear that some drastic reforms are needed in order to achieve the original goals behind the introduction of the new law school system.

### *G. Possible Solutions*

The roots of these problems can be traced to the decisions to maintain the undergraduate law faculties and to maintain the JTRI and its cap on the number of people who can pass the new bar examination.

As long as the undergraduate law faculties remain unchanged, we can expect that most law school students will be graduates of these law faculties. This limits the likelihood that students with non-law backgrounds, especially those with a background in science and technology, would choose to become lawyers.

The best way to overcome these problems is to eliminate the undergraduate faculty of law and transform it into a faculty of political science or public

105. The MEXT expressed grave concern with respect to 14 law schools and worries about 12 others. All of the 14 schools had less than twice as many applicants as the number of students who could be admitted. Chuō kyouiku shingikai, daigaku bunkakai, houka daigakuin tokubetsu iinkai (National Education Advisory Council, University Division, Special Committee on Law School), Gijiroku (Record of Meeting), Jan. 22, 2010, *available at* [http://www.mext.go.jp/b\\_menu/shingi/chukyo/chukyo4/012/gijiroku/1291881.htm](http://www.mext.go.jp/b_menu/shingi/chukyo/chukyo4/012/gijiroku/1291881.htm).

106. Chuō kyouiku shingikai, daigaku bunkakai, houka daigakuin tokubetsu iinkai (National Educational Advisory Council, University Division, Special Committee on Law School), Houka daigakuin kyōiikuno shitsuno kōjōno tameno kaizenhousaku nitsuite (The Report on Improvement of Law School Education), April 17, 2009, *available at* [http://www.mext.go.jp/component/b\\_menu/shingi/toushin/\\_\\_\\_icsFiles/afieldfile/2009/04/20/1261059\\_1\\_1.pdf](http://www.mext.go.jp/component/b_menu/shingi/toushin/___icsFiles/afieldfile/2009/04/20/1261059_1_1.pdf).

107. Starting in 2012, the MEXT is reducing the subsidy to law schools with low admission and bar passage rates. MEXT, Houka daigakuin no soshiki minaoshi wo sokushinsuru tameno koutekishien no minaoshi nitsuite (Reconsideration of Public Subsidy in order to Promote Reorganization of Law Schools), Sept. 16, 2010, *available at* [http://www.mext.go.jp/b\\_menu/shingi/chukyo/chukyo4/012/siryō/attach/1298216.htm](http://www.mext.go.jp/b_menu/shingi/chukyo/chukyo4/012/siryō/attach/1298216.htm).

108. Himeji Dokkyo University, What's New, May 27, 2010, *available at* <http://www.himeji-du.ac.jp/news/details.php?id=464>.

policy. If there is no undergraduate legal education, law schools only need to maintain the regular three-year program. And since no law student would have any previous legal education, law schools can more effectively use the case method or Socratic Method.

Another possibility is to preclude graduates from undergraduate law faculties from enrolling in law school. It is noteworthy that the University of Melbourne in Australia established law school as a graduate school<sup>109</sup> while at other Australian universities legal education is provided at the undergraduate level. The University of Melbourne law school does not accept graduates of law faculties. If the same kind of arrangement was adopted in Japan, then law school could become a professional school for students who want to become lawyers. If we could exclude the graduates of law faculties from entering law school, then all students would enter law school with knowledge in other subjects and could follow a uniform three-year program. There would be also no need to maintain the two-year program.

The second necessary change to improve legal education is to abolish the JTRI and the cap on the number of persons who can pass the bar examination. At the very least, the numerical cap should be reconsidered and the JTRI should be reorganized so that all law school graduates can gain basic practical legal skills.

We have already seen that the numerical cap and the low pass rates have a tremendously negative impact. So long as the cap remains at its current level, it is inevitable that most law students will simply focus on passing the examination and be unwilling to study advanced courses or engage in in-depth analysis of cases and legal doctrines, let alone spend time to obtain basic legal skills. The numerical cap on the number of persons who can pass the bar examination should be removed and at the same time the JTRI should be abolished so that almost all law school graduates, if qualified, could pass the bar examination without making the exam the focal point of their education.<sup>110</sup> If there is a need to provide further professional training, there are viable alternatives to the JTRI. For instance, law school graduates could be required to spend a year learning practical skills at law firms, as is done in Canada.<sup>111</sup> Or

109. Melbourne Law School, *available at* <http://www.law.unimelb.edu.au/jd/future-students/selection-criteria>.

110. Aizawa, *supra* note 3, at 150; Yoshida, *supra* note 3, at 220-21. In the United States, the pass rate on bar examinations in 2010 was 68 percent (for graduates of ABA approved law schools, it was 74 percent). Some states have a lower pass rate; for instance the pass rate was 50 percent in California. National Conference of Bar Examiners, 2010 Statistics, *available at* [http://www.ncbex.org/assets/media\\_files/Statistics/2010Stats110111.pdf](http://www.ncbex.org/assets/media_files/Statistics/2010Stats110111.pdf). It is assumed that most of the so-called national law schools have a higher pass rate. As a result, law school students do not worry much about the bar examination during law school education. Usually, they start preparation for bar examination after completing law school.

111. The requirement for admission varies with each province in Canada. In British Columbia, for instance, law school graduates must finish nine months of articles in a law firm or other legal workplace, a 10-week Professional Legal Training Course, and examinations. Law

at the very least, the JTRI should provide practical training to almost all those who successfully completed the law school curriculum.

There are many people who worry about a huge influx of lawyers and the declining quality of practitioners. Nevertheless, since the bar examination is designed to evaluate whether one has the minimum legal knowledge and skills rather than the relative amount one possesses compared to other candidates, there should be no arbitrary limit on the number of people who can pass the bar examination. It is still unclear whether there is a job market for all graduates who pass the bar. This means that a significant number of new lawyers may have a hard time finding law firms that would hire them. Even if too many candidates pass the bar examination and become lawyers, it is up to the market to decide how many lawyers society needs. It is absurd to limit the number of lawyers in an effort to prevent excessive competition.

The concern with the declining quality of new lawyers is certainly a legitimate one. Yet, it is difficult to evaluate the quality of lawyers simply by the bar examination. The bar examination should only be used to determine basic competence and the market should decide whether lawyers are truly reliable and trustworthy. Looking at the ratio of lawyers to total population in countries like the United States, Germany and Canada, there is no reason to believe that the number of competent lawyers in Japan should be significantly lower than in these developed countries or that the qualifications to become a lawyer should be especially stricter in Japan than in other developed countries.<sup>112</sup>

Professors Annelise Riles and Takashi Uchida point out that legally trained but non-qualified legal experts—law graduates who are not members of the bar—are playing a positive role in the informal legal ordering of Japan and efforts to produce more professional litigators and other kinds of formally-qualified legal experts overlook the important value of such informal legal

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Society of British Columbia, *Becoming a Lawyer in BC*, available at <http://www.lawsociety.bc.ca/page.cfm?cid=41&t=Becoming-a-Lawyer-in-BC>.

112. It is true that in Japan, there are more than 70,000 quasi attorneys in addition to 30,000 practicing attorneys. They include 19,394 judicial scriveners (Shihō shoshikai, Zenkoku kaiinsū no suii (Number of Judicial Scriveners), available at [http://www.shiho-shoshi.or.jp/association/intro/rengoukai\\_data.html](http://www.shiho-shoshi.or.jp/association/intro/rengoukai_data.html)), 42,328 administrative scriveners (Gyousei shoshikai, Tan-i betsu kaiin sū itiran (List of Number of Administrative Scriveners of Each Local Association), available at <http://www.gyosei.or.jp/unit/kaiin-list.html>) and 9,145 patent attorneys (Benrishikai, Nihonbenrishikai kaiin no bunpujōkyo (Classification of Members), available at [http://www.jpaa.or.jp/about\\_us/information/pdf/kaiinbunpu.pdf](http://www.jpaa.or.jp/about_us/information/pdf/kaiinbunpu.pdf)). Some may claim that if we include these quasi lawyers, then Japan has a substantial number of lawyers to sustain the strong judicial system. The problem with this argument is that despite recent amendments to allow judicial scriveners and patent attorneys to represent their clients in certain types of litigation, their legal services are still limited, and the number of attorneys who can give legal advice on all sorts of legal questions is still very small compared with other developed countries. Moreover, even considering the existence of these quasi lawyers, there is no convincing reason to believe that the number of persons who can qualify to become attorneys is smaller than in other developed countries or that Japan requires especially higher qualifications for attorneys than do other developed countries.

experts.<sup>113</sup> However, I believe they are exaggerating the role played by the graduates of law faculties and underestimating the need for more professional legal experts. Even if those non-qualified legal experts are playing a positive role, their number is limited and they could be easily replaced by lawyers.

There is definitely room for improvement in the current law school system. However, there is a growing sentiment inside the government that it must reconsider the initial reform goal of increasing the number of lawyers in Japan and that it should cut back the number of students law schools can accept.<sup>114</sup> The current government is led by the Democratic Party of Japan, which has not been an enthusiastic supporter of the new law school system. They have already published an opinion calling for a reduction in law school enrollment.<sup>115</sup> But it is simply wrong to limit the number of people who can pass the bar examination and force many law schools to close down or cut down the number of students they accept.<sup>116</sup>

### Conclusion

It is too early to draw any conclusions as to whether the introduction of the new law school system has been a success or a failure. Yet, if Japan keeps undergraduate legal education as is and keeps the JTRI along with a numerical

113. Annelise Riles & Takashi Uchida, *Reforming Knowledge? A Socio-Legal Critique of the Legal Education Reforms in Japan*, 1 *Drexel L. Rev.* 3 (2009).
114. The Ministry of Justice and the MEXT jointly set up a working team to consider the law school system; their report was filed in July 2010. Ministry of Justice, *Hōsōyouseiseido nikansuru kentou wahkingu chiimu niokeru kentoukekka* (Result of the Consideration of the Legal Education System), available at <http://www.moj.go.jp/content/000050026.pdf>. The Ministry of Justice, the MEXT, and other ministries have established a forum on legal education to discuss the future of legal education. MEXT, Press Release (May 13, 2011), available at [http://www.mext.go.jp/b\\_menu/houdou/23/05/1305900.htm](http://www.mext.go.jp/b_menu/houdou/23/05/1305900.htm). The Ministry of Internal Affairs and Communication also recommended the reduction of number of law students and encouraged for merger of law schools. Assessment Report, *supra* note 102.
115. Democratic Party of Japan, *Hōsōjinkōno arikata to hōsōyouseiseido kaizenhousaku nikansuru kentou purojekuto chiimu chukan matomean* (Interim Report of Project Team to Consider Improvement Measures of the Attorney Population and Legal Education System), July 8, 2009, available at <http://www.moj.go.jp/content/000036349.pdf>.
116. Finally, after abolishing the current bar examination in 2010, the bypass procedure for taking the new bar examination will be implemented. Applicants who could not go to law school can challenge this preliminary examination and be qualified for the new bar examination. Bar Examination Act, *supra* note 5, at art. 4, para. 1, no. 2, art. 5; Ministry of Justice, *Shihōshiken yobishiken no shikumi* (A Guideline for Preliminary Examination), available at <http://www.moj.go.jp/SHIKEN/shinqa01-08.html>. This bypass procedure remains because of the voices calling for leeway for those who could not go to law school for economic or other reasons. The actual number of candidates who could pass this preliminary examination is not decided. If the number is substantial, then the whole idea of establishing law schools would be totally undermined. Therefore, this bypass procedure should be limited to a bare minimum. The 2011 bypass examination showed that 116 passed the examination out of 6,477 test-takers. Ministry of Justice, *Heisei 23nen shihōshiken yobishiken* (Result of 2011 Preliminary Examination to Bar Examination), available at <http://www.moj.go.jp/content/000080863.pdf>.

cap on the number of persons who can pass the bar examination, then the future of the new law school system will be bleak.

Maybe the day will come when many of the law schools with low bar exam pass rates will be forced to shut down.<sup>117</sup> This would bring the total number of law school students closer to the 2,000 mark and perhaps it will enable almost all the graduates to pass the bar examination and become lawyers. If this occurs, Japan will still lack the necessary number of lawyers to sustain an enhanced judicial system. Instead of scaling down the law school system, I argue Japan should abolish undergraduate legal education or preclude graduates of law faculties from law school. The law school system should provide professional legal education to university graduates who major in various subjects and make it possible for most graduates to pass the bar examination and become lawyers. This will require eliminating the arbitrary cap on the number of persons who can pass the bar examination. Additionally, the JTRI must be abolished or significantly expanded to accept a higher enrollment. These measures will not only support the future of a robust legal education system, they will also support Japan's goal of an enhanced judicial system.

117. Omiya Law School announced its decision to merge with Yokohama Toin Law School. Omiya Law School, Yokohama Toin houka daigakuin tonou tougou ni tsuite (On Merger with Yokohama Toin Law School), Aug. 8, 2011, *available at* [http://www.omiyalaw.ac.jp/topics/2011/08/post\\_65.html](http://www.omiyalaw.ac.jp/topics/2011/08/post_65.html). Omiya Law School will be the second law school to disappear.