

Legal Education Reform in Taiwan: Are Japan and Korea the Models?

Thomas Chih-hsiung Chen

I. Introduction

In 2007, a law professor at Keio University, who was also a member of the Japanese bar examination committee, was accused of leaking the contents of the bar exam during his class lectures.¹ The incident was said to have caused a substantial increase in the pass rate of Keio law graduates that year. The resulting scandal led to removal of the accused professor from the bar examination committee and his resignation from Keio University.² Later that year, to prevent similar occurrences the Japanese Ministry of Justice announced new rules governing conduct of the bar examination committee.³

The incident is unprecedented in legal education in Japan. But it is only one example of numerous unforeseen problems encountered since the legal education system was reformed in 2004. Changes centered on formation of graduate-level “Houkadaigakuin” (professional law schools), which are similar to law schools in the United States but admit students with both law and non-law backgrounds.⁴ In 2009, South Korea also established a model

Thomas Chih-hsiung Chen is Assistant Professor, Institute of Technology Law, National Chiao Tung University, Taiwan. The research of this article was partially funded by the Institutum Iurisprudentiae, Academia Sinica, Taiwan. The writing of this article began as the work for my presentation at the 2005 conference, “Democratization and Judicial Reform in Taiwan,” at the John King Fairbank Center for Chinese Studies of Harvard University. I appreciate Wei-ting Liu, Ting-yu Liu, and Jo-ting Fu for their great research assistance. I am in debt to my colleagues at the Institute of Technology, National Chiao Tung University for sharing the administrative burdens during the last year. Special thanks to my wife, Professor Carol Chih-Chieh Lin, for her love and support as I worked on this article. I can be reached at chen@mail.nctu.edu.tw.

1. Eiji Yamamura, Introduction of the new bar examination and the changing effect of influential professors on its outcomes: The case of Japan 2006–2009, MPRA Paper No. 21371, at 3 (2010), *available at* http://mpra.ub.uni-muenchen.de/21371/1/MPRA_paper_21371.pdf.
2. *Id.*
3. *Id.* at 8.
4. *See, e.g.*, 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, 366–67 (2009); *see also* Annelise Riles & Takashi Uchida, Reforming Knowledge? A Socio-legal Critique of the Legal Education Reforms in Japan, 1 *Drexel L. Rev.* 3, 12 (2009), *available at* <http://scholarship.law.cornell.edu/facpub/37/>.

similar to American-style legal education.⁵ Under the new systems in Japan and Korea, only graduates of new law schools are eligible to take the national bar exams.⁶ The major difference between the two systems is that Korea tightly controls the number of new law schools and law students and has a 70 percent or higher pass rate on its bar exam, while in Japan the number of law schools is more than expected and the pass rate remains lower than 40 percent.⁷

Implementation of the American model of legal education has led to fierce debate. Supporters of the reforms claim that the introduction of the Socratic Method, interactive teaching and clinical education will considerably strengthen the professional skills of the next generation of attorneys.⁸ However, critics maintain that the constraints related to the bar exam pass rate have turned the new law schools into cram schools.⁹ The pass rates are viewed as a bottleneck for those who want to enter the legal profession and a major obstacle to reforms.¹⁰ The exam's content and test methodology, however, appear to have aroused less comment.

At least two books on legal education in East Asia have included the Taiwanese system in the same category with those of Japan and Korea.¹¹ But will Taiwan follow in the footsteps of Japan and Korea? Even more important: Is the American model the gold standard for legal education in East Asian countries?¹² Or should Taiwan insist on changes?

At the beginning of the 21st century, academic discussion and government studies on legal education reform in Taiwan have focused mainly on the

5. Matthew J. Wilson, U.S. Legal Education Methods and Ideals: Application to the Japanese and Korean Systems, 18 *Cardozo J. Int'l & Comp. L.* 295, 337-40 (2010).
6. *Id.* at 318-19, 340.
7. *Id.* at 326-27, 339-40.
8. See, e.g., Peter A. Joy et. al., Building Clinical Legal Education Programs in a Country without a Tradition of Graduate Professional Legal Education: Japan Educational Reform as a Case Study, 13 *Clinical L. Rev.* 417, 420-21 (2006); Wilson, *supra* note 5, at 305; see also Noboru Kashiwagi, Creation of Japanese Law Schools and Their Current Development, in *Legal Education in Asia: Globalization, Change and Contexts*, 185, 192-93 (Stacey Steele & Kathryn Taylor eds., Routledge Press 2010).
9. Wilson, *supra* note 5, at 328-29; see also Charles R. Irish, Reflections on the Evolution of Law and Legal Education in China and Vietnam, 25 *Wis. Int'l L. J.* 243, 244 (2007).
10. Wilson, *supra* note 5, at 326-29.
11. See, e.g., William Alford, Introduction to Raising the Bar: the Emerging Legal Profession in East Asia 3 (William Alford ed., Harvard Univ. Press 2007); Stacey Steele & Kathryn Taylor, Introduction to Legal Education in Asia: Globalization, Change and Contexts, *supra* note 8, at 10-11.
12. American Bar Association, Report of Special Committee on Foreign Law Schools Seeking Approval under ABA Standards 4, July 19 2010, available at [http://apps.americanbar.org/legaled/accreditation/kanereportinternational%20\(2\).doc](http://apps.americanbar.org/legaled/accreditation/kanereportinternational%20(2).doc).

experiences of Japan and Korea.¹³ Since 1999, countless conferences have invited foreign scholars to discuss legal education reform in their countries.¹⁴ Although scholars in Taiwan have yet to reach a consensus on the ideal model, most agree that the current system is problematic.¹⁵ In 2006 and 2007, the government proposed two reform schemes,¹⁶ both resembling reforms undertaken in Japan and Korea. Both schemes adopt the American post-undergraduate training system and permit only graduates of the newly designated professional schools to take the bar examination.¹⁷ One controversial issue in the two proposals is raising the bar exam pass rate by limiting the number of students (probably fewer than 700) admitted to the new professional law schools. Because of resistance from legal academia, neither of the proposals has been adopted.¹⁸

This paper argues that several often ignored differences between the system in Taiwan and the pre-reform systems in Japan and Korea—particularly the separation of examinations for judicial officers and lawyers—suggest that Taiwan should follow a different path. In the last decade, while legal education in Japan and Korea has become similar to American-style law schools, Taiwan has been developing more diversified tracks and institutions, including graduate law institutes that admit students for professional education without undergraduate degrees in law. Although Taiwan also has cram schools, inefficiency in the legal education system is less the result of low bar exam pass rates than the politics in legal academia—a problem unlikely to be solved simply by adopting the reform models of Japan and Korea. Although new rules related to national professional admission exams went into effect in 2011, these rules are likely to exacerbate, rather than resolve, old problems. Furthermore, because the Judge Act of 2011 encourages the selection of judges and prosecutors from experienced lawyers rather than from young, inexperienced law school graduates without much social experience, we can expect that a distinct new educational route will evolve. In the new system, a graduate-level law degree might become necessary and American-style schools at the graduate-level might be established. However, law schools which train lawyers in a diverse range of specialties are likely to be preserved.

This article is divided into four parts. First it compares the major characteristics of the current structure of legal education in Taiwan with the

13. Tay-Sheng Wang, *The Development of Legal Education in Taiwan: An Analysis of the History of Law and Society*, in *Legal Education in Asia: Globalization, Change and Contexts*, *supra* note 8, at 137, 146.

14. *Id.*

15. Taiwan ge daxue falü xiangguan xisuo zhuguan zhendui erlinglingqi nian siyue shiba ri guonci faxue jiaoyu biange gongtinghui fabiao xinwengao (The persons in charge of law-related departments in Taiwan, press release in connection with the public hearing on legal education reform held on Apr. 18, 2007) [hereinafter *Legal Education Reform Press Release*], available at http://justice.nccu.edu.tw/News/news_view.asp?id=155.

16. Wang, *supra* note 13, at 146-49.

17. *Id.* at 146-48.

18. *Id.* at 148-49.

pre-reform systems in Japan and Korea. Second, it analyzes the structure of the professional admission exams and the arguments provided in support of this approach. Third, it explains why reform efforts between 2005 and 2007, based on reforms in Japan and Korea, were unsuccessful. Fourth, it discusses several important actions since 2007, particularly the new dual-exam model adopted in 2011, which will shape legal education in Taiwan.

II. Similarities and Differences: Pre-reform Systems in Japan and Korea

1. *Two Gates and Two Tracks*

Taiwanese legal education looks similar to that in Japan and Korea before their recent reforms: undergraduate study of law, a national admission licensing exam and pre-practice training at a central government institute.¹⁹ Nonetheless, there remain several important differences between the system in Taiwan and those of the other two countries. These differences make pressure for reform in Taiwan weaker than it was in Japan or Korea.

First, unlike the pre-reform systems in Japan and Korea, law schools in Taiwan are the only path for those wishing to become judges, prosecutors and lawyers,²⁰ since a law degree is required to take the professional admission exams.²¹ This not only makes the pool of applicants smaller than that of Japan

19. Mayumi Saegusa, *supra* note 4, at 370; *see also* Masako Kamiya, Structural and Institutional Arrangements of Legal Education: Japan, 24 *Wis. Int'l L. J.* 153 (2006); Sang-Hyun Song, the Education and Training of the Legal Profession in Korea: Problems and Prospects for Reform, in *Raising the Bar: the Emerging Legal Profession in East Asia*, *supra* note 11, at 23, 23-33; For information about legal education in Taiwan in earlier years, *see* Hundgah Chiu & Jyh-pin Fa, Taiwan's Legal System and Legal Profession 13-14 (Occasional Papers/Reprints Series in Contemporary Asian Studies No. 5, 1994), *available at* http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1123&context=mscas&sei-redir=1&referer=http%3A%2F%2Fwww.google.com.tw%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3DTaiwan%25E2%2580%2599s%2BLegal%2BSystem%2BAnd%2BLegal%2BProfession%26source%3Dweb%26cd%3Dr%26ved%3DoCCcQFjAA%26url%3Dhttp%253A%252F%252Fdigitalcommons.law.umaryland.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D1123%2526context%253Dmscas%26ei%3DKpoWT8WPOtDjMAWBwW4Aw%26usg%3DAFQjCNFJkxas2VhRt9GNEUEuHmSxtYHA4w%26sig%3D_-E45FwxKzscas4KEoV4Vg#search=%22Taiwan%E2%80%99s%20Legal%20System%20Legal%20Profession%22.
20. In the pre-reform systems of both Japan and Korea, regulations governing the judicial exams required no background in legal education, though in reality a great number of students aiming to become lawyers entered undergraduate law departments. Wilson, *supra* note 5, at 317.; *see also* Jae Won Kim, Legal Profession and Legal Culture during Korea's Transition to Democracy and a Market Economy, in *Raising the Bar: the Emerging Legal Profession in East Asia*, *supra* note 11, at 68.
21. However, before Regulations Governing Certification Tests were abolished in 2008, people who did not have a college degree could take a certification test to qualify for the bar exam. *See* Zhuanmen zhiye ji jishu renyuan gaodeng kaoshi lushi kaoshi guize (Regulations of professional and technical staff higher examination of bar exam), art. 5, subsec. 4 (2009) [hereinafter Taiwan's Bar Exam Regulations], *available at* <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=Ro040047>. The certification test required the applicants to be older than 22 years. *See* Jianding kaoshi guize [Regulations Governing Certification

or Korea, but also establishes the education of law professionals as the primary mission of law schools in Taiwan, despite the fact that the low pass rate means that most law graduates do not become practitioners.

Second, the size of Taiwan's undergraduate classes is generally smaller (usually not more than 200 and often fewer than 100 students) than those in Japan or Korea and perhaps even smaller than those of some mid-size J.D. programs in the United States. This is because the Ministry of Education stringently controls the student-teacher ratio in public and private universities.²² The ratio limit for undergraduate law departments is 25 to 1 and is 12 to 1 for graduate institutes.²³ A student-teacher ratio of 25 to 1 might be considered too high,²⁴ in comparison with the 20 to 1 standard set by the American Bar Association for accredited law schools.²⁵ However, this figure is much closer to the American standard than those found in many European countries, such as Germany, in which class enrollment often exceeds 1,000 students with a student-teacher ratio exceeding 100 to 1.²⁶ More than 500 students in a single classroom, as can be found in some Japanese undergraduate law programs,²⁷ is a situation that has never existed in Taiwan.

The lower student-teacher ratio means that gaining admission to undergraduate law programs in Taiwan is more difficult than it is in many European nations. Because a law degree provides opportunities for higher income and greater prestige compared with other disciplines in the social sciences, admission to undergraduate law programs in Taiwan has become as

Tests], art. 3 (abolished in 2008), available at <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=R0050001>. Since most college students graduate at or after 22, few bar exam takers choose this approach.

22. With respect to the guideline for student-teacher ratios in higher education, see zhuanke yishang xuexiao zongliang fazhan guimo yu ziyuan tiaojian biao zhun (Standards of Total Develop Scale and Resource Conditions for Schools of Higher Education), available at <http://edu.law.moe.gov.tw/LawContent.aspx?id=FL049460>.
23. *Id.* at appendix 1.
24. Chang-fa Lo, Driving An Ox Cart to Catch Up with the Space Shuttle: the Need for and Prospects of Legal Education Reform in Taiwan, 24 *Wis. Int'l L. J.* 41, 51 (2006).
25. See Am. Bar Ass'n, Standards and Rules of Procedure for Approval of Law Schools, Ch. 4, Interpretation 402-1 (2011-2012), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2011_2012_aba_standards_chapter4_authcheckdam.pdf.
26. Mark E. Steiner, Cram Schooled, 24 *Wis. Int'l L. J.* 377, 378 (2006).
27. *E.g.*, Yoshiharu Kawabata, The Reform of Legal Education and Training in Japan: Problems and Prospects, 43 *S. Tex. L. Rev.* 419, 432 (2002). In Japan, there are nearly 100 undergraduate law faculties, with approximately 200,000 students in 2008. See Setsuo Miyazawa et al., The Reform of Legal Education in East Asia, 4 *Ann. Rev. L. & Soc. Sci.* 333, 340 (2008), available at <http://www.annualreviews.org/doi/pdf/10.1146/annurev.lawsocsci.3.081806.112713>. In Taiwan, some law departments might have classes with more than 300 students. But this is not a common situation. See Lo, *supra* note 24, at 60.

competitive as at American J.D. programs. Since the 1990s, law has ranked as the top choice for college applicants in the social sciences and the humanities.²⁸

The third difference is that during the last two decades, many universities have established graduate law institutes that admit students with non-law undergraduate backgrounds. This second gateway to the study of law is designed to meet the growing social demand for legal services on interdisciplinary matters. A student in these graduate institutes usually must obtain 80 to 100 credits in three academic years to earn a master's degree.²⁹ The success of these J.D.-like graduate institutes was an important reason for opposition to reforms during 2005 and 2007.

The fourth and perhaps most important difference between the system in Taiwan and those found in Japan or Korea is that Taiwan has two tracks for professional admission examinations and pre-practice training.³⁰ The national exam for the selection of judges or public prosecutors (the Judicial Officer Exam) is separate from the exam for licensing lawyers (the bar exam),³¹ and the pre-practice training for those who pass the two exams is separate as well. Individuals who pass the judicial exam enter the Judges and Prosecutors Training Institute for pre-practice training.³² At the end of that training, they must qualify to become judges or prosecutors.³³ Other individuals who pass the bar exam enter the Lawyers Training Institute.³⁴

Although the two training institutes are both run by the Ministry of Justice,³⁵ the resources assigned to them are significantly disproportionate.

28. Joseph L. Pratt, *The Two Gates of National Taiwan University School of Law*, 19 *UCLA Pac. Basin L. J.* 131, 151 (2001).
29. But because their diploma is a master's degree, the Ministry of Education requires that these students must write a master's thesis, which often makes their course of study longer than three years. *See* Wang, *supra* note 13, at 142.
30. Lo, *supra* note 24, at 64; *see also* Pratt, *supra* note 28, at 153-56.
31. For the development of admission to the bar, see Jane Kaufman Winn, *The Role of Lawyers in Taiwan's Emerging Democracy*, in *Raising the Bar: the Emerging Legal Profession in East Asia*, *supra* note 11, at 368, 368-69.
32. *See* Sifa renyuan renshi tiaoli (Judicial Personnel Regulations), art. 27 (2007), *available at* <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=Soo20049>. For a general introduction on judges and prosecutors in Taiwan, *see* Chiu & Fa, *supra* note 19, at 13.
33. *See* Fawubu sifaguan xunlian suo sifaguan xunlian guize (Training Institute For Judges and Prosecutors, Ministry of Justice—Regulations of training for judges and prosecutors), art. 20 (2011) [hereinafter *Regulations of training for judges and prosecutors*], *available at* <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=Ioo10008>.
34. *See* Regulations Governing Pre-Service Training for Attorneys, art. 4 (2009), *available at* <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=Ioo20012>.
35. *See id.* at art. 5; Fawubu sifaguan xunliansuo zuzhi tiaoli (Training Institute For Judges and Prosecutors, Ministry of Justice—Organization regulations), art. 10 (1980), *available at* <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=Ioo00002>. Though authority for lawyer training is in the hands of the Ministry of Justice, the ministry delegates that authority to the Taiwan Bar Association, to which all local bars belong.

The training for judges and prosecutors takes as much as two years and trainees are considered public servants, receiving an allowance during their training period.³⁶ The training includes classroom lectures on practical skills and on-site apprenticeship in district courts, the offices of district prosecutors, administrative agencies and law firms.³⁷ The institute assigns apprenticeship opportunities for trainees.³⁸ Test results from lectures and evaluations performed during the apprenticeships are taken into account when determining whether a trainee is to become a judge or a prosecutor, and to which jurisdiction he or she will be assigned after graduation. In short, this institute is similar to the Legal Training and Research Institute in Japan and the Judicial Research and Training Institute in Korea,³⁹ except that the training in the Taiwan institute is not for lawyers.

Conversely, the free training provided by the Lawyer Training Institute lasts only one month and offers no on-site practice.⁴⁰ Trainees are not considered public servants and receive no allowance. In addition to the training, a five-month apprenticeship under the supervision of a senior attorney who has practiced for more than five years is required before a student may join a local bar.⁴¹ However, unlike the trainees in the Judges and Prosecutors Training Institute, prospective lawyers must locate supervisors themselves.⁴² In the wake of the 2008 economic recession, the increased numbers of lawyers and a decline in the number of apprenticeship opportunities have made it more difficult for trainee lawyers to find supervisors. Considering the pre-practice training available in Japan and Korea, lawyers in Taiwan are less well trained before joining local bars.⁴³ The reason behind the separation of training tracks for judicial officers and lawyers is that a government subsidy to train lawyers is considered inappropriate because lawyers primarily pursue the interests of their clients and not the public.⁴⁴

36. See Regulations of training for judges and prosecutors, *supra* note 33, at art. 9–10. It is similar in Korea and Japan during the pre-reform periods. See Kim, *supra* note 20, at 51.

37. See Regulations of training for judges and prosecutors, *supra* note 33, at art. 10.

38. *Id.*

39. Wilson, *supra* note 5, at 316; Song, *supra* note 19, at 33–35; Kim, *supra* note 20, at 51.

40. Regulations Governing Pre-Service Training for Attorneys, art. 5 (2009).

41. *Id.* at art. 9 (2009).

42. *Id.*

43. Similarly separated paths and training existed in Japan before World War II. Two exams, one for judges and prosecutors and one for lawyers, existed until 1923. Even after the two exams were combined into one (those who passed all stages of the exam became judges or prosecutors, while others who did not pass the final stage but passed all other stages became lawyers), the separate practical training persisted in Japan until 1947. Before 1936, no apprenticeship time was required to become a Japanese lawyer. See Sabrina Shizue McKenna, Proposal for Judicial Reform in Japan: An Overview, 2 *Asian Pac. L. & Pol'y J.* 20, 122, 125 (2001).

44. Similar opinions appeared in Korea. See Song, *supra* note 19, at 34.

2. *The Effect of the Two-Track System*

The separate tracks influence the judicial system in three ways. First, unlike the systems in Japan and Korea, the annual passing quota of the Judicial Officer Exam is not calculated according to the capacity of the Judges and Prosecutors Training Institute, but according to demands for new judges and prosecutors requested by the Judicial Yuan (the highest judicial organ in Taiwan) and the Ministry of Justice.⁴⁵ Because the number of trainees in the institute is close to the demand for manpower, all trainees usually qualify as judges or prosecutors.⁴⁶ Because the selection of prospective judges and prosecutors is made, not at the end of their institute training as in Japan or Korea,⁴⁷ but before training, the Judicial Yuan and the Ministry of Justice have little discretion in selection of prospective judges or prosecutors from the pool of trainees. The recruitment of judges and prosecutors is therefore determined mainly by the judicial officer exam. This process hampers the ability of the Judicial Yuan and the Ministry of Justice to weed out weaker trainees. Conversely, new judges and prosecutors in Japan and Korea are selected from a much larger pool based on their performance in the training process and many trainees become lawyers instead of judicial officers.

The second effect is a reversal in the direction of career transfer between judges and lawyers from the typical pattern in the United States where judges are selected from senior practicing lawyers. Because judges and prosecutors in Taiwan have life tenure, a much higher starting salary, higher social status and better allowances and training than lawyers, becoming a judicial officer is the primary goal of most law graduates. However, after they accumulate sufficient experience and social connections, many judges or prosecutors become practicing lawyers to benefit from a better practice environment and higher long-term income.⁴⁸

The third effect is that the pass rate of the bar exam is easier to alter in Taiwan than in Japan or Korea because prospective lawyers are not trained with judicial officers and their training cost is low. The pass rate of bar exams in Japan and Korea was said to be less than 3 percent before the recent

45. Pratt, *supra* note 28, at 155. In Korea, before 1981, a candidate who scored 40 percent or higher in every subject and got an average score of 60 percent or higher passed the exam. Since there were very few successful candidates during those years, the policy changed into a fixed number of candidates each year after 1981. See Song, *supra* note 19, at 28.

46. The total number of trainees in JPTI from 1988 to 2007 was 2,592, but only 7 trainees failed during this period. See Yafeng Lin, Tan minguo yilingling nian qi sifaguan kaoshi lushi kaoshi zhi xinzhi gaige (On the new systems of judicial and bar exams starting in 2011), National Elite, Vol.6, Issue 1, at 11 (June 2005), available at http://wwwc.moex.gov.tw/main/Quarterly/wHandQuarterly_File.ashx?quarterly_id=176.

47. See, e.g., Wilson, *supra* note 5, at 317-18.

48. See Heng-Wen Liu, Cong zhishi jishou yu xueke dingwei lun bainian lai taiwan faxue jiaoyu (From the perspectives of knowledge transplantation and discipline orientation to analyze the transformation of legal education in Taiwan in the last century), Ph.D. thesis, Institute of National Taiwan University Law, at 266-67 (2005), available at <http://www.airitilibrary.com/searchdetail.aspx?DocIDs=U0001-2407200521003900>.

reforms.⁴⁹ However, of those who passed, many ended up becoming judges or prosecutors. Thus, the number of new lawyers in the two countries was actually small. In Taiwan, the early pass rate of the bar exam has not dropped below 5 percent since 1989.⁵⁰ The reason for the difference is that the total number of individuals passing the exam in Taiwan is not fixed, but is based mainly on a fixed percentage of test-takers in any particular year. Therefore, the competitive pressure on individuals taking the exam in Taiwan probably is less than on those taking the exam in Japan or Korea.

The weaker competitive pressure in the Taiwan bar exam reduces but does not eliminate problems associated with low bar pass rates in Japan and Korea. Most students graduate from law school at the age of 22 or 23, however, the average age of individuals taking the bar exam is 27 and 26 for the judicial exam.⁵¹ Without including the one-year mandatory military service required of male law graduates, many individuals might have to prepare for as much as four to five years before passing either of the two national exams.⁵² As in Japan or Korea, many of those planning to take the exams stop working.⁵³ Many Taiwanese law students now begin attending cram schools in the second or even first year of law school.⁵⁴ Instructors increasingly complain that the attendance (and enthusiasm) of students in lectures is decreasing, except in courses dealing with issues directly related to the two exams.⁵⁵ The so called “double school phenomenon” in Japanese legal education, meaning that many law students simultaneously enroll in formal law schools and cram schools, has gradually become popular in today’s Taiwan.⁵⁶

If Taiwanese authorities can raise the bar exam pass rate, regardless of the capacity of the training institutes, why does it not do so? Raising the pass rate could reduce the pressure on law school graduates to prepare for the

49. The pre-reform system in Japan educated about 45,000 students each year, but the number of successful bar exam test-takers was smaller than 1,000 before 1999. See Wilson, *supra* note 5, at 315-17. In Korea, from 1991 to 2002, the passage rate was never higher than 5 percent. See Song, *supra* note 19, at 29.
50. Wang, *supra* note 13, at 140. For detailed numbers of bar and judicial exam applicants and passage rates, see Lo, *supra* note 24, at 66-68; see also Shu-chin Grace Kuo, Rethinking the Masculine Character of the Legal Profession: a Case Study of Female Legal Professionals and Their Gendered Life in Taiwan, 13 Am. U. J. Gender Soc. Pol’y & L. 25, 56-57 (2005).
51. Examination statistics, the Ministry of Examination, available at http://www.moex.gov.tw/main/ExamReport/wFrmExamStatistics.aspx?menu_id=158.
52. Hwei-Syin Chen, Toumingdu yu sifa renyuan kaoxuan zhidu zhi xingge (Transparency and innovation of the judicial examination & selection system), National Elite, Vol.1, Issue 2, at 37 (June 2005), available at http://www3.nccu.edu.tw/~hschen/book_summary/200506-01.pdf.
53. Lo, *supra* note 24, at 68; see also Steiner, *supra* note 26, at 378-83.
54. Lo, *supra* note 24, at 68-69; see also Kim, *supra* note 20, at 71.
55. Pratt, *supra* note 28, at 158; see also Kim, *supra* note 20, at 51.
56. Koichiro Fujikura, Reform of Legal Education in Japan: the Creation of Law Schools without a Professional Sense of Mission, 75 Tul. L. Rev. 941, 944 (2001).

exam and those wishing to become judges or prosecutors would not have to compete with those planning careers as litigators. Many factors hinder manipulation of the pass rate. The most important factor, however, is the role played by the Examination Yuan (a branch of government independent from the administration under the five-branch constitution in Taiwan, discussed below). The Taiwanese constitution has shaped the politics associated with the two exams, resulting in obstructions to reform. This issue deserves more detailed analysis.

III. The Politics of the Two Examinations

1. The “Failure” of Cram Schools

Cram schools dedicated to preparation for the bar exam are common in many countries. In the United States, most law school graduates take review courses from companies such as Barbri before taking the exam.⁵⁷ In Germany, the long tradition of cram schools, the so-called *Repetitorien* can be traced back to Bologna, Italy in the 13th century.⁵⁸ In Japan and Korea, more than 90 percent of those who succeed on the exam study in cram schools.⁵⁹ Students in Taiwan, Japan, and Korea appear to spend considerably more time in cram schools than those in the United States and Germany.⁶⁰ This could be explained in part by the high bar exam pass rate (typically more than 70 percent) in the United States and Germany.⁶¹ An alternative explanation is that cram schools in Taiwan, Japan, and Korea are managed less well than their counterparts in other countries. However, as described below, cram schools for other disciplines in Taiwan have been successful, and many cram schools provide review courses both in law and in other disciplines. It is unlikely that courses in other disciplines are managed well but law courses are not in the same cram schools.

Studying in cram schools is a typical life experience for many people in Taiwan.⁶² The annual nationwide university entrance examination, for which many high school students attend cram schools, is almost the only factor determining which university a student will attend and the discipline he

57. Wilson, *supra* note 5, at 301-02; *see also* Steiner, *supra* note 26, at 391-92.

58. Heinrich Amadeus Wolff, Bar Examinations and Cram Schools in Germany, 24 *Wis. Int'l L. J.* 109, 119 (2006).

59. Steiner, *supra* note 26, at 380.

60. Although students in Germany might spend as much time in cram school as their Korean and Japanese counterparts, they do not have to take the bar exam several times since the passing rate in Germany is around 70 percent. *See* Steiner, *supra* note 26, at 381-83.

61. *Id.*

62. Elise Potaka & Benjamin Yeh, Book dragons: Inside Taiwan's cram schools, *China Post*, June 6, 2011, *available at* <http://www.chinapost.com.tw/taiwan/national/national-news/2011/06/06/305070/Book-dragons.htm>.

or she will pursue.⁶³ Because graduates from the best high schools usually outperform others on university entrance examinations, junior high school graduates also fight to attend prestigious high schools, making the annual high school entrance examination nearly as competitive as the university entrance examination.⁶⁴ Cram schools have succeeded in helping many students gain access to the universities and departments they want.⁶⁵ Many Taiwanese also attend cram schools to prepare for language proficiency tests for people whose native language is not English (such as TOEFL, SAT, or TOEIC), to obtain occupational certificates or licenses, or to gain the qualifications required to become public servants.⁶⁶ The cram school industry generally has been able to help examinees obtain good scores in all these areas.

Although the bar exam is mostly a test of memory, the same ability tested in the university entrance examinations and many other tests in Taiwan, cram schools in law appear incapable of helping most exam-takers score highly on the national law exam. Before 2003, the Examination Yuan set the bar exam pass rate at 16 percent,⁶⁷ but the actual pass rate has never reached that level.⁶⁸ This is because another rule requires that examinees on average score higher than 50 points (the full score is 100 points) to pass.⁶⁹ The pass rate was 5.59 percent in 1998, 13.88 percent in 1999, 6.01 percent in 2000, 7.06 percent in 2001, and 7.77 percent in 2002.⁷⁰ This means that more than 86 percent of law school graduates in those years were unable to post an average score of 50 points on the bar exam. Since 2003, the Examination Yuan lowered the pass rate to 8 percent, and eliminated the requirement of a minimum average score.⁷¹ Based on limited data, the lowest scores of those passing the test were 48.3 in 2007, 48.2 in 2008, and 46.13 in 2010.⁷² This shows that since 2003, fewer than 8 percent of those taking the bar exam scored an average higher than 50 points. The low scores on the two exams appear to justify the contention (particularly

63. Pratt, *supra* note 28, at 151. It might be the same in Korea, see James Card, Life and Death Exams in South Korea, Asia Times Online, Nov. 30, 2005, available at <http://www.atimes.com/atimes/Korea/GK30Dgor.html>.

64. *Id.*

65. Potaka & Yeh, *supra* note 62.

66. The China Post Staff, Taiwan parents want English as official 2nd language, The China Post, Jan. 12, 2006, available at <http://www.chinapost.com.tw/taiwan/2006/01/12/75184/Taiwan-parents.htm>.

67. See Taiwan's Bar Exam Regulations, *supra* note 21, at art. 19, sec. 1 (2001), available at <http://law.moj.gov.tw/LawClass/LawOldVer.aspx?Pcode=R0040047&LNNDATE=20010403&LSER=001>.

68. For detailed numbers of bar and judicial exam applicants and passage rates, see Lo, *supra* note 24, at 66–68; see also Kuo, *supra* note 50, at 56–57.

69. Taiwan's Bar Exam Regulations, *supra* note 21, at art. 19, sec. 2.

70. Lo, *supra* note 24, at 66.

71. Taiwan's Bar Exam Regulations, *supra* note 21, at art. 19, sec. 1.

72. Examination Statistics, *supra* note 51.

from the bar) that the pass rate should not be raised. The major function of the bar exam is to ensure the competence of new lawyers, and a student with a score lower than 50 points can hardly be considered competent.

We could blame law schools for not educating their students well, for not adopting interactive teaching methods and for not including on-site practice training in the curriculum. But what can be said about cram schools? Low scores represent not only the failure of law schools but also of cram schools. If most of those who took the bar exam scored well (70 or 80 points, for example), it would be easier to justify the appeal of raising the pass rate. Because most law school graduates are unable to make satisfactory scores, it is difficult to justify raising the pass rate. Apparently, cram schools find it too difficult to deal with something in the two exams, and their students believe that the inability of cram schools to overcome the difficulty is acceptable and are still willing to pay tuition. I believe this difficulty stems from the format of the two exams.

2. *The Format of the Two Exams*

Prior to 2011, the formats of the bar and judicial exams were nearly identical.⁷³ Each exam was divided into six or seven sections.⁷⁴ Each section covered one main subject, such as civil law or criminal law, or combined two or three subjects, such as conflicts of law or maritime law. Each section contained only four essay questions addressing a number of issues.⁷⁵ For decades, this format remained almost unchanged⁷⁶ but it has three defects. First, because each section of the tests includes four questions, the legal issues involved are much narrower than the test subject is meant to cover. It seems doubtful, therefore, that the exams can differentiate between the competent and the incompetent.⁷⁷ There is a good chance that examinees who obtain high scores on the exam know little about untested issues, and those who get low scores do so simply because of bad luck.

The second issue associated with the structure of the examinations is that every individual examiner possesses tremendous power in deciding the fate of test-takers. For instance, there are six sections in the bar exam. Usually,

73. Lo, *supra* note 24, at 64.

74. The six sections of the bar exam are Civil Law, Civil Procedure, Criminal Law, Criminal Procedure, Administrative Law and Compulsory Enforcement Act, Commercial Law, and Conflict of Laws. See Taiwan's Bar Exam Regulations, *supra* note 21, at art. 12 (2009). The seven sections of the judicial exam are Civil Law, Civil Procedure, Criminal Law, Criminal Procedure, Commercial Law, Compulsory Enforcement Act and Conflicts of Laws, and Administrative Law. See Regulations of public service special examination of judicial exam art. 6 (2009) [hereinafter Regulations—judicial exam].

75. See Chen, *supra* note 52, at 42.

76. *Id.* at 40.

77. *Id.* at 44.

each of the four questions in each section is written by different examiners.⁷⁸ The total score of each section is 100 points, and each essay question has a maximum value of 25 points. That is to say, each essay question accounts for 4.16 percent ($25/(6*100)$) of the overall average score. Because there are approximately 4,000 to 8,000 applicants every year,⁷⁹ hundreds are within one point difference in the overall average scores. Under a fixed pass rate policy, the score for any question can decide the destiny of a given test-taker. If there were more exam questions, the importance of each question would be diluted. Similarly, if the examinations did not depend entirely on essay questions but contained a number of multiple choice questions instead, each question would be less important. Nonetheless, the regulations covering the bar and judicial exams specifically require that all sections of the exams include only essay questions,⁸⁰ which strengthens the power of individual examiners.

The third defect is the vague standard adopted for grading exam answers. Usually answers to one essay question are evaluated by a single grader.⁸¹ Because thousands take the test, it is difficult for a grader to judge all essay answers according to the same standards. Furthermore, no sample answer is provided after the exams, which makes it even more difficult to set a grading standard.⁸² The accuracy and fairness of the grading results can be challenged under such a process.

3. The Examination Yuan: A Gate Keeper Outside the Legal Profession

For decades, the negative effect of the two exams on legal education has been widely criticized but the test method of the two exams remains unchanged.⁸³ At least two features of the examination system can explain the reluctance of administrators to reform the tests. One is that the Examination Yuan, a unique constitutional branch in Taiwan, is basically immune from accountability for inefficiencies in the examinations it oversees. The other is the dominance of law scholars in designing and grading the essay questions.

The Examination Yuan, instead of the Judicial Yuan, Ministry of Justice, or Taiwan Bar Association, controls the design and administration of the bar and judicial exams. The existence of the Examination Yuan in the constitution of Taiwan is based on the deeply rooted heritage of civil service examinations in

78. Pratt, *supra* note 28, at 156.

79. For detailed numbers of the bar and judicial exams applicants and passage rates, see Lo, *supra* note 24, at 66-68; see also Kuo, *supra* note 50, at 56-57.

80. See Taiwan's Bar Exam Regulations, *supra* note 21, at art. 14; see also Regulations—judicial exam, *supra* note 74, at art. 5, sec. 3 (2009).

81. One grader might have to grade over 5,000 examination papers. See Pratt, *supra* note 28, at 156.

82. See Chen, *supra* note 52, at 44.

83. *Id.* at 42.

Imperial China.⁸⁴ Under that system, people from all walks of life, regardless of social status, had equal opportunity to take national exams.⁸⁵ The goal of the exams was to find intellectually competent and ethical people through fair and objective testing.⁸⁶ The few selected became elite civil servants enjoying privileged status and ample resources for further training.⁸⁷ The system encouraged class mobility and social stabilization until its abolishment in the late Qing dynasty.⁸⁸ When Sun Yet-sen, father of the Republic of China (Taiwan), developed the constitution of the new China, he believed that the spirit of the system should be maintained to ensure fairness and equality when recruiting public servants.⁸⁹ To this end, he separated the power over national examinations and recruiting public functionaries from the administrative branch and established the Examination Yuan as one of the five branches of government.⁹⁰ According to Article Eighty Six of the Constitution, the qualifications of public servants and professional licensure should be decided solely by the Examination Yuan.

One resulting problem is that the actions of the Examination Yuan are largely immune from outside supervision, particularly from the judicial and legislative branches. The traditional checks and balances among the powers of the three branches of government in Western constitutions cannot be appropriately applied to the interactions between the Examination Yuan and other branches of government. Although the power of administering examinations is separate from the power of administration, the Legislative Yuan (congress) does not have the same power to question members of the Examination Yuan about policy issues as it has to question the Executive Yuan (the administrative branch of the government),⁹¹ nor does it have the power to demand that the Examination Yuan alter its policies.⁹²

From the judicial point of view, the Constitutional Court has made it a rule to respect the discretion of the Examination Yuan.⁹³ Moreover, Congress

84. For detailed explanations of civil service examinations in imperial China, see Benjamin A. Elman, Political, Social, and Cultural Reproduction via Civil Service Examinations in Late Imperial China, 50 *J. Asian Stud.* 7 (1991), available at http://www.princeton.edu/~elman/documents/Civil_Service_Examinations.pdf.

85. *Id.* at 9.

86. Edward A. Kracke, Jr., Family vs. Merit in Chinese Civil Service Examinations Under the Empire, 10 *Harv. J. Asiatic Stud.* 103 (1947).

87. Elman, *supra* note 84, at 10.

88. Weifang He, China's Legal Profession: the Nascence and Growing Pains of a Professionalized Legal Class, 19 *Colum. J. Asian L.* 138 (2005).

89. Piero Tozzi, Constitutional Reform on Taiwan: Fulfilling a Chinese Notion of Democratic Sovereignty?, 64 *Fordham L. Rev.* 1193, 1208 n.69 (1995).

90. *Id.*

91. *Zhonghua Minquo Xianfa* (Constitution of the Republic of China), art. 57 sec. 1 (1947).

92. *Id.* at art. 57 sec. 2 (1947).

93. *Dafaguan Huiyi Jieshi* (Grand Justices Council Interpretations), no. 682 (2010).

has legislatively shielded the Examination Yuan's grading practices from administrative review⁹⁴ and barred examinees from requesting sample answers for essay questions.⁹⁵ Although citizens may theoretically influence the policies of the Examination Yuan through congressional legislation, the number of examinees for any exam is too small to become an influential lobbying group. In short, the Examination Yuan rarely faces pressure from other branches of government. The independence of the Examination Yuan is meant to prevent class politics and prerogatives from interfering in the examination process.⁹⁶ But, because of its independent nature, the Examination Yuan is under no pressure to correct inefficiencies, justify the absence of empirical evidence to support testing methods or its tardiness in reforming the bar and judicial exams.

4. The Interaction between Academic Prestige and the Power of Examiners

In the United States, no law scholar would regard a position as a bar examiner as important to his or her academic career. However in Taiwan, and probably also in Japan and Korea, being a bar examiner might expand a law scholar's academic influence, indirectly bringing nationwide recognition. The interaction between academic prestige and the power of examiners comes from the dominance of law scholars in the two examinations.

Although the Examination Yuan enjoys great independence, it is unable to provide full-time jobs for the large number of experts responsible for the design or grading of national examinations. The work of designing and grading questions in the bar and judicial exams is performed by outside experts. In the selection of examiners for the two exams, being a law school academic or publishing textbooks on subjects included in the exams is not considered a conflict of interest. This differs considerably from the policies associated with most bar exams in the United States. For example, the Louisiana Supreme Court Committee on Bar Admissions prohibits any full-time or adjunct member of any law school faculty from acting as a member of the committee or as an examiner.⁹⁷ In Taiwan, senior full-time law professors are generally selected as chairs of examination committees and as examiners.⁹⁸ This reflects the traditional system of Chinese civil service examinations, in which examiners must be authoritative experts in the tested fields because

94. Administrative Procedure Act, art. 3.

95. Dianshi fa (The Examination Affairs Act), art. 23 (2002), available at <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=R0020001>.

96. Yeh Jiunn-Rong, Changing Forces of Constitutional and Regulatory Reform in Taiwan, 4 J. Chinese L. 83, 85 n.7 (1990).

97. Louisiana Supreme Court Comm. On Bar Admissions, Admission Rules, Rule XVII § 1(E) (2008), available at http://www.lascba.org/admission_rules.asp. Several states adopt similar rules. See Lawrence M. Grosberg, Standardized Clients: A Possible Improvement for the Bar Exam, 20 Ga. St. U. L. Rev. 841, 869 n. 104 (2004).

98. See Examination Affairs Act, art. 5-8, 10. In Japan, leading law professors make and grade the bar exam. See Miyazawa et al., *supra* note 27, at 349.

they represent the state. Serving as an examiner in the bar or judicial exams means gaining official recognition, despite the fact that the names of those who framed questions for the exams are never revealed.

Although most examiners have attempted to design impartial and practical questions for the two exams, the fairness of the exams can be tainted by a few individuals who manipulate loopholes in pursuit of their own interests. In 2002, a task force led by Professor Chen Hwei-Syin from the National Chengchi University College of Law completed a thorough empirical study of the original test papers, particularly those from the 2001 bar and judicial exams.⁹⁹ Their report confirmed several long held suspicions related to the exams.¹⁰⁰ It found that—despite the thousands of law scholars and professionals qualified to be examiners—many examiners for the 2001 bar exam were from the faculty of three national universities and 70.85 percent of those who passed the 2001 bar exam were from the same three universities.¹⁰¹ The study found that the Examination Yuan did not have a mechanism for reviewing the background of scholars and selecting examiners.¹⁰² At least 25 scholars had been examiners on the same exam for more than three years.¹⁰³ In panel discussions with prestigious law scholars and professionals specializing in the subjects tested by the exams, many experts agreed that some essay questions did not address fundamental legal issues, rather advancing issues not usually taught in the curriculum of most law schools.¹⁰⁴ Some test questions included unusual or unique jargon based on the distinct opinions of one scholar or a small group of scholars.¹⁰⁵

The effects of these problems are obvious. Because the two exams are so competitive, no one taking the test can risk losing a single point on any question. However, the scope of tested content remains highly uncertain and the standards of grading are so vague that a rational examinee will only choose to study the opinions of law professors who are likely to serve as examiners. Memorizing the opinions of every law scholar is far beyond the capacity of any individual test-taker. Therefore, cram schools take over and become an indispensable part of preparation for the two exams. Cram schools cannot guarantee high scores but they represent the students' best shot.

The dominance of law scholars in the two examinations has had a profound effect on academic politics. Professional exams are expected to test general, if

99. See Hwei-Syin Chen et al., *Sifaguan, lushi kaoshi shiti xiangguan wenti fenxi zhuanan yanjiu baogao* (Report on Issues Relating to the Questions of the Judicial Officers Exam and the Bar Exam) 4-5 (Ministry of Examination, 2002).

100. *Id.* at 42-45, 48-49.

101. *Id.*

102. Chen et al., *supra* note 99, at 160-62.

103. *Id.* at n.30.

104. Chen, *supra* note 52, at 50-51.

105. Chen et al., *supra* note 99, at 1179.

not unanimous, opinions on issues shared by experts in the field being tested. By contrast, the success of a scholar is largely decided by whether he or she can create a distinctive theory that eventually becomes a mainstream view of the professional community. Under the current examination system, an examiner could use the power to design questions to promote personal opinions. Law students would have no choice but to purchase the textbooks and study the theories, published papers and class notes of a scholar repeatedly named an examiner. Students would do this out of fear that the examiner might grade favorably answers that apply his theories and give a reduced grade to answers that do not—even if this does not happen in practice. In this way, the two exams become important mechanisms by which law scholars promulgate their theories and expand their academic influence beyond the boundaries of their home campuses.

The mission of the law profession is to promote justice. Yet, widely held suspicions about the fairness of examinations have no doubt had a negative impact on the ethical development of law professionals. If law students are unable to trust their instructors to design examination questions in an impartial manner, how can professors expect their students to devote themselves to the public interest? If the administration of examinations is unfair, any attempt to enhance the ethical development of new lawyers by including the subject of legal ethics in the bar and judicial exams would be nothing more than empty talk. In my opinion, because the fairness of the two exams always has been a concern, they represent an annual nationwide course on “legal unethics” for all law students in Taiwan.

IV. The Failed Reform Effort, 2005 to 2007

1. Two Reform Proposals Initiated by the Government

After Japan and Korea adopted U.S.-style legal education, a series of formal discussions and government actions occurred in Taiwan in 2005, 2006 and 2007 on the need to pursue similar changes.¹⁰⁶ These actions ended in failure because of resistance from legal academia, but the lack of success should not be considered the result of self-centeredness. Academics hesitated to support radical changes because of the negative consequences from reforms in Korea and Japan. From my perspective, the potential for conflict among reform goals—such as increasing the number of practicing lawyers and enhancing the quality of legal service—is the fundamental reason Taiwan decided not to follow in the footsteps of Japan and Korea.

106. Hwei-Syin Chen, *Hua weiji wei zhuanji: tan faxue jie ruche yinying faxue jiaoyu gaige de hushing* (Turning crisis into opportunity: how should legal academia respond to the calls for reform of legal education), 112 *Taiwan L. J.* 90 (2002) [hereinafter Chen, *Journal*].

In 2005, the Human Rights Advisory Commission, convened by then Vice-President Annette Lu,¹⁰⁷ established the Committee to Promote the Reform of Taiwan's Legal System.¹⁰⁸ In May, 2005, the government appointed Chang-fa Lo, then dean of National Taiwan University College of Law, to organize a task force for the reform of legal education.¹⁰⁹ In the wake of several meetings by the task force, large-scale forums and an international conference on the experience of the United States, Japan, South Korea and Germany, the task force wrote a white paper on reform of Taiwan's legal education system at the end of 2005.¹¹⁰ The report proposed that Taiwan should establish professional law schools at the graduate level on the Japan/Korea model.¹¹¹ Later, at a forum in April, 2006, the Examination Yuan and Ministry of Education announced proposals to be put into effect starting in the fall of 2008.¹¹² This was the first time that a concrete timetable had been announced.

The core concept of the proposals was creation of a legal professional institute, similar to those in Japan and South Korea.¹¹³ Under the proposals, all graduate institutes were to be transformed into legal professional institutes after 2008.¹¹⁴ The Ministry of Education was to close institutes unable to meet accreditation standards and students who enrolled in undergraduate LL.B. programs on or before 2008 still would be permitted to attend the exams until 2022.¹¹⁵ After 2022, only graduates from legal professional institutes would be qualified to participate in the two professional admission exams.¹¹⁶

In 2006, the Ministry of Education asked Professor Lo to draft the accreditation standards for the legal professional institute. Lo's task force presented its final draft of the standards in October, 2006, which were modeled after the American Bar Association Standards and Rules of Procedure for Approval of Law Schools 2005-2006 and the standards adopted by the Japanese Ministry of Education for the accreditation of professional law

107. Annette Lu earned a master's degree from the University of Illinois at Urbana-Champaign College of Law in 1971 and an LL.M. degree from Harvard Law School in 1978. *See* Tenth-term Vice President, Republic of China, the Republic of China Yearbook-Taiwan 2002, available at http://www.gio.gov.tw/taiwan-website/5-gp/yearbook/2002/bio_lu.htm.

108. Wang, *supra* note 13, at 146.

109. *Id.*

110. *Id.* at 147.

111. *Id.*

112. *Id.* at 148.

113. *Id.*

114. *Id.*

115. Ministry of Education, Falüren yangcheng zhidu xingge fangan zuotanhui (The symposium of legal system reforms and programs to develop legal profession staffs) 9-10, available at <http://www.law.cycu.edu.tw/law/file/%E3%80%8C%E6%B3%95%E5%BE%8B%E4%BA%BA%E9%A4%8A%E6%88%90%E5%88%B6%E5%BA%A6%E8%88%88%E9%9D%A9%E3%80%8D%E6%9B%B8%E9%9D%A2%E8%B3%87%E6%96%99.pdf>.

116. *Id.*

schools.¹¹⁷ In June, 2007, the Ministry of Education drafted rules for subsidies to help graduate institutes transform themselves into legal professional institutes.¹¹⁸ Eligibility for a governmental subsidy requires that an institute maintain a student-teacher ratio no higher than 15 to 1. The rules also specify that a subsidy is to be provided for courses or activities dealing with legal ethics, clinical education and topics related to globalization.¹¹⁹ Importantly, appended to the rules is a draft of the accreditation standards for professional law schools promoted by the Ministry of Education, based on findings of the task force.¹²⁰

Although many law scholars agreed at the time that something had to be done to improve the system while expressing willingness to discuss prospective reform proposals, they resisted making radical changes in such a short time without first achieving a consensus among legal academics. This opposition was particularly acute among those unfamiliar with the notion of a legal professional institute, including the large number of law scholars who never studied in the United States. Many law scholars criticized the proposals. In 2007, a bill proposed by Ming-chen Chen,¹²¹ a legislator who strongly favored American-style legal education, was the last straw for many of these legal scholars. Chen's bill provided very little description of the new professional law institute but would have moved up the deadline for graduates of professional law institutes to take exams from 2022 to 2015.¹²² This meant that the entire system of legal education would have to be transformed by 2013, (just six years after the proposal), to enable the first group of students under the new system to graduate in 2015. The imprecision of the proposal and the strict timetable led to confusion and anxiety among scholars.

After countless meetings, forums, symposiums and conferences between 2005 and 2007, a number of leading scholars decided to oppose the proposals. In April, 2007, about 40 scholars, including the successor to the dean of National Taiwan University College of Law, signed a press release listing the reasons why the proposals should not be adopted.¹²³ Because the Ministry of Education refused to postpone its proposals, in June, 2007, ten senior law school administrators met with then-President Chen Shui-bian to explain

117. Chang-fa Lo et al., *Falu zhuan ye yan jiu suo she zhi biao zhun zhi yan jiu qi mo bao gao shu* (Final report of the standards of accreditation for the Professional Legal Institute) 7 (2006) (project commissioned by the Executive Yuan, Ministry of Education).

118. Yin-Lung Chen, *Taiwan faxue jiaoyu gaige zhi fangshi* (The methods of legal education reform in Taiwan), in *Paper Collection for Taiwan Law Society 2007 Annual Meeting of Law*, at 2, 2-3 (2007), available at <http://fju.lawbank.com.tw/file/lawreform.pdf>.

119. *Id.* at 5-6.

120. *Id.* at 6-8.

121. Wang, *supra* note 13, at 148.

122. Chen, *Journal*, *supra* note 106, at 92.

123. *Id.* at 92-93.

their doubts.¹²⁴ Under strong opposition from law scholars, President Chen directed the Ministry of Education to terminate the plan instituted by the Legal Professional Institute.¹²⁵ The Examination Yuan later suspended plans to amend the rules related to the two exams.¹²⁶ Members of the Legislative Yuan who belonged to the same political party as President Chen also withdrew their support from Ming-chen Chen's bill.¹²⁷ Debate among legal academics on alternative measures to reform legal education gradually ended.

2. *Graduate Law Institutes: Alternative or Complementary to the Current System?*

As one commentator correctly pointed out, legal education reform in democratic Taiwan no longer can be implemented according to the will of a few political powerbrokers.¹²⁸ However, two issues related to the 2005–2007 proposals merit further analysis. First, most of those who opposed the plans advocated a “two-track” model of legal education, in which the graduates of existing undergraduate law departments would remain eligible to take the bar and judicial exams.¹²⁹ Second, the proposals failed to mention several key changes from the reforms in Japan and Korea that were meant to assist law schools in obtaining the necessary resources to meet the accreditation standards.¹³⁰ A failure to provide these mechanisms is the major reason that law scholars had no incentive to comply with the reform proposals.

In the 2007 draft of subsidiary rules to assist in the establishment of legal professional institutes, the Ministry of Education listed the goals of these reforms, such as including law students from more diverse backgrounds, enhancing the competence of law school graduates to deal with international and transnational matters and narrowing the gap between theory and practice through clinical legal education.¹³¹ Opponents argued that the models provided by Japan and Korea were not the only means to achieve these goals.¹³² The press release signed by 40 scholars in 2007 pointed out that no empirical study had proven that graduates of undergraduate law programs are less competent than students who spend three years in graduate programs. Limiting the two exams to graduates of professional legal institutes likely would provide no benefit and raise the cost of legal education (because of higher tuition and longer time at law schools) and increase the tendency of students to focus only

124. Wang, *supra* note 13, at 149.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. Legal Education Reform Press Release, *supra* note 15.

130. *See infra* notes 152–156 and accompanying text.

131. Ministry of Education, *supra* note 115.

132. Yin-Lung Chen, *supra* note 118, at 12.

on subjects relating to the exams.¹³³ In addition, Taiwan needs to develop a more diversified legal profession.¹³⁴ The governmental proposals favoring only legal professional institutes conflict with the multiple demands of Taiwanese society.¹³⁵ In short, opponents admit that something must be done to improve legal education in Taiwan, but they still believe that the current multiple tracks are better than the unified system in Japan, which relies on graduate-level professional law schools. Thus, the major issue is whether the current multiple tracks are capable of satisfying social demands for legal service in Taiwan.

In the new Japanese system, the time that bar passers must spend in central institutes in practice training has been cut from two years to one.¹³⁶ For students with a law background, the reduction in training could be considered part of the education provided by the new graduate-level law schools. Thus, the new system would extend the total length of study by one or two years. However, practice training in Taiwan lasts only one month. The practical skills of entry-level lawyers, therefore, are lower than those found in Japan and Korea. Requiring a graduate degree to take the bar exam would greatly extend the total time required to train a new lawyer. Opponents of the reforms remain unconvinced that current undergraduate programs produce lawyers incompetent to handle the general run of domestic cases, which require only basic legal knowledge.

On the other hand, the demands for two other types of legal service have grown dramatically in the last two decades. The growth of Taiwan's high-technology industry has increased demand for law practitioners familiar with other disciplines, such as patents, biotechnology, cyber law, taxation and health care. In addition, economic globalization, particularly since Taiwan joined the World Trade Organization in 2001, has increased the demand for legal services related to international or transnational law and regulations.¹³⁷ Opponents have acknowledged the existence of these demands, but believe that existing J.D.-like graduate programs in Taiwan are sufficient to meet them.¹³⁸

During the last two decades, several universities with longstanding undergraduate law programs, including Soochow University, National Chengchi University, National Taiwan University and National Taipei University, established graduate institutes that admit non-law graduates.¹³⁹ These universities have maintained their undergraduate programs. Their

133. Legal Education Reform Press Release, *supra* note 15. See also Yin-Lung Chen, *supra* note 118, at 13.

134. *Id.*

135. *Id.*

136. Wilson, *supra* note 5, at 320.

137. Lo, *supra* note 24, at 70-75.

138. Yin-Lung Chen, *supra* note 118, at 13-14.

139. Wang, *supra* note 13, at 142.

graduate programs, however, closely resemble the new law schools in Japan. Although these programs are similar to American J.D. programs, they differ from the American model in two important respects.

First, most American law schools offer similar basic law courses in the first-year J.D. programs, with more diversified and advanced courses in the second and third years. At the four universities mentioned above, law subjects tested in the two national exams still are a significant part of curriculum throughout the entire three years, just as in undergraduate programs.¹⁴⁰ Some courses even teach graduate and undergraduate students in the same classrooms. This is probably because most law faculties must devote the majority of their time to traditional law subjects, making fewer resources available for J.D.-like programs.

The second difference is the low pass rate for the two exams. Students of these programs either devote most of their time to preparing for the bar or select careers other than as legal practitioners.¹⁴¹ It is no wonder that scholars in these universities object to the view that legal professional institutes will attract smarter students than those in existing undergraduate programs.

In this respect, the Korean reforms, in which universities can offer either undergraduate or graduate law programs, but not both, are worth further analysis.¹⁴² The advantage of this policy is that it forces universities to devote all their resources to only one type of program, ensuring that they have more concentrated developmental strategies. During the last two decades, Taiwan has seen several universities with no undergraduate law programs establish graduate institutes, a trend that is similar to the Korean model.¹⁴³ Because these institutes are not large enough to offer a comprehensive legal education, they only focus on special areas of law, such as maritime law, technology law, finance law, government law and intellectual property law.¹⁴⁴ The reason for this policy is that these areas of law require knowledge of other disciplines, giving students in areas other than law a number of advantages. Though there is concern that these institutes must compromise by allocating resources and staff between the two groups of students,¹⁴⁵ they closely resemble the legal professional institute model promoted by reformers.

Because these institutes are new, their innovative approach to the curriculum does not face strong objection from faculty, as is common in traditional law schools. The mission of these institutes is to satisfy the demands of industry and businesses dealing with transnational regulations and they provide more courses related to foreign law or even the development of practical skills.

140. Lo, *supra* note 24, at 55-56.

141. Wang, *supra* note 13, at 142.

142. Wilson, *supra* note 5, at 338-39.

143. Wang, *supra* note 13, at 142-43.

144. Wang, *supra* note 13, at 143.

145. *Id.*

These courses help students—even without lawyers' licenses—find jobs such as in-house counsels for high-technology companies engaged in international trade. The institutes also can help students lacking background knowledge in disciplines other than law to get job offers in areas in which there is a shortage of legal experts.¹⁴⁶

From a policy perspective, the success of these two types of graduate institutes reduces the pressure to reform legal education, since these established programs train professionals who can satisfy demands for interdisciplinary skills. In general, opponents to the reforms view these new graduate institutes not as an alternative but as complementary, to the current system based on undergraduate programs.¹⁴⁷ In my opinion, this view stems from several issues neglected in the reform proposals, including the number of full-time faculty, flexible tuition rates and whether to permit full-time law professors to practice law.

3. Issues Ignored in the Proposals

During the last two decades, the number of universities or colleges providing legal education has increased from 8 to 37, representing a fourfold increase since 1990.¹⁴⁸ Because the Ministry of Education stringently limits the number of teachers a university may recruit, the size of the full-time faculty in most new legal education institutions is small, with usually fewer than ten professors.¹⁴⁹ The number of lectures that the full-time teaching staff can give is insufficient to provide as comprehensive an education as that offered by the new professional law schools in Japan and Korea.¹⁵⁰ As a result, these institutes produce only a small portion of the law students in the country as a whole.¹⁵¹ Under the reform proposal, graduate law institutes that fail to meet

146. For example, the Institute of Technology Law at National Chiao Tung University, though quite young compared to the foregoing universities that provide undergraduate law programs, offered courses to most IP in-house counsels at Science Park in Hsinchu, the Taiwanese counterpart of Silicon Valley.

147. Yin-Lung Chen, *supra* note 118, at 13-14.

148. Wang, *supra* note 13, at 141.

149. For example, in 2012, the Institute of Technology Law at National Chiao Tung University has 9 full-time faculty members, which is one of the largest faculties among all graduate law institutes. See NCTU Law, Faculty Member, available at http://www.itl.nctu.edu.tw/community_en.htm. For information regarding the faculty sizes of individual law departments or institutes, see Ministry of Education Website, available at <http://ulist.moe.gov.tw/>.

150. The new law schools in Japan are required to have at least 12 full-time faculty members, and the student-teacher ratio must be no less than one full-time faculty member per 15 students. See Japan University Accreditation Association, Law School Standards 13, available at http://www.juaa.or.jp/en/images/accreditation/standards_law.pdf.

151. For example, the graduate institute for non-law background students at National Taiwan University admits 32 students annually; see Graduate Institute of Interdisciplinary Legal Studies, Admissions Information, available at http://www.law.ntu.edu.tw/giilslaw/chinese/versec/versec_enter.htm. The institute has the largest student body among all graduate

accreditation standards would have to cease operations. But the proposals did not suggest any approach, such as merging with other law programs, for the institutes to increase the sizes of their faculties. Thus, it appears that the reforms would significantly reduce the number of students, law scholars and law schools countrywide without any promise of improving the quality of legal education.

Another neglected issue is tuition. The professional graduate law schools in Japan and Korea have greater leeway to adjust their rates.¹⁵² Failure to provide this flexibility in Taiwan might be the key reason for the failure of the reforms. High tuition rates would enable law schools to provide higher salaries as an incentive to convince law practitioners to shift their careers from practice to academia, enabling them to create clinical programs. A more flexible tuition policy also might encourage schools to improve their curriculum and pedagogy. When costs increase, students likely would study harder and demand better teaching performance. Improved teaching performance would lead to better lawyers and law firms then might offer more associate positions to beginning lawyers. All of this would create a virtuous cycle—one not seen before in Taiwan.

The Ministry of Education historically has established caps on tuition for both public and private universities.¹⁵³ Because of the uncertain economic outlook since the 2008 global recession, it is unlikely that the government will change the long-established policy of low tuition any time soon. Because of similarities in the tuition rates of all universities, improving the quality of teaching would not increase the funding of schools. As a result, a law professor would not obtain more resources from his or her school by educating better lawyers. On the other hand, research projects commissioned by government agencies represent the major source of research funding and additional income for scholars and law schools. It follows that law schools are likely to pay more attention to research than the education of competent professionals.

institutes that admit non-law students. For information regarding the student body sizes of individual law departments or institutes, see Ministry of Education Website, *supra* note 149.

152. Kamiya, *supra* note 19, at 167–68; Jasper Kim, Socrates v. Confucius: An Analysis of South Korea's Implementation of the American Law School Model, 10 Asian-Pac. L. & Pol'y 322, 332 n. 58 (2009); It appears that the new Korean law schools are still underfunded. See Kyong-Whan Ahn, International Conference on Legal Education Reform: Law Reform in Korea and the Agenda of "Graduate Law Schools," 24 Wis. Int'l L.J. 223, 233–34 (2006).
153. See Daxue fa (University Act), art. 35 (2011), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=H0030001>; see also Sili xuexiao fa (Private School Law), art. 47 sec. 1 (2011), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=H0020001>; Zhuanke xuexiao fa (Junior College Law), art. 35 sec.1 (2010), available at <http://law.moj.gov.tw/Eng/LawClass/LawAll.aspx?PCode=H0040001>.

Another issue is whether law professors should be allowed to practice law and join the bar while engaged as full-time teachers.¹⁵⁴ Under the current legal framework, law professors in public universities are viewed as public servants and are not permitted to practice law in their off-hours.¹⁵⁵ The reform proposals would require legal professional institutes to offer clinical training and draw at least one-fifth of their faculty from professional lawyers and judges.¹⁵⁶ The proposals failed to recognize, however, that a law practitioner who no longer could practice law after joining a law school likely would be unable to lead students in dealing with cases in law clinics. Because the proposals failed to deal with issues such as this, their blueprint appeared unrealistic.

However, there is a rationale behind the structure of these graduate institutes. The new professional law schools in Japan and Korea admit both law and non-law graduates.¹⁵⁷ Some scholars are skeptical about putting students with different backgrounds in the same classroom,¹⁵⁸ which is uncommon in American law schools and appears inconsistent with the American model of legal education. Yet the experience of National Chiao Tung University Institute of Technology Law, where I teach, proves that this kind of arrangement can be effective and productive, at least for areas of law related to interdisciplinary issues. Our institute occasionally combines four types of students in courses related to technology law including law and non-law students, and full-time and part-time students.¹⁵⁹ In discussing legal cases involving high technology, some non-law students are able to explain relevant technical knowledge more effectively even than law teachers, because the laboratories or companies in which the students work deal with technology similar to that mentioned in the cases. Students with a background in law often are better at analyzing legal

154. This issue was raised in the research project on the accreditation standards of the Professional Legal Institute, but was not included in the government's proposals. See Lo et al., *supra* note 117, at 73-79.

155. *Id.* at 76-77.

156. With respect to clinical legal education in Taiwan, there are few clinical training programs or courses available at most universities. See Lo, *supra* note 24, at 61. Currently the most advanced form is the judicial externship. In 2005, National Chiao Tung University launched the first judicial court externship course collaborating with Taipei District Court. Advice from John Marshall Law School and assistance from Ching-fang Lin, then president of the court and an alumnus of Duke Law School, shaped the content of the course. The institute selects graduate students to clerk in district courts with one-to-one instruction from senior judges. Students spend at least 160 hours in court to obtain three credits. The externship includes reading documents in cases, observing trial process, discussing issues in cases with supervising judges, researching precedents and laws, writing memoranda, etc. In 2008, In-Jaw Lai, then president of Judicial Yuan and an alumnus of Harvard Law School, decided to promote this model nationwide. Judicial Yuan promulgated regulations encouraging all courts in Taiwan to conduct externship projects with law schools. Some law schools later developed similar externship courses, but primarily at the undergraduate level.

157. Wilson, *supra* note 5, at 339.

158. *Id.* at 331.

159. It is now a common structure among law schools in Taiwan.

issues because they have studied law much longer. They often provide inspiring insights for non-law students. Classes like this provide a win-win situation that a group with only one type of student would be unable to achieve. The diverse background of the pool of students at Chiao Tung has proven to be a great resource for the development of interdisciplinary areas of law.¹⁶⁰

Another issue associated with the reforms in Japan and Korea is whether to maintain the undergraduate programs.¹⁶¹ If the new graduate-level law schools could transform non-law graduates into good lawyers, why keep the undergraduate programs? Although literature on this issue is scarce,¹⁶² as far as I am concerned, an obvious answer to this question involves language competency. For students in American law schools, English is the only language required. However, for an East Asian country in which English is not the official language, three years of training may be insufficient for non-law students to develop into excellent transnational lawyers because courses in domestic law have already taken up most of their time.¹⁶³ Some transnational lawyers might obtain an LL.M. degree before dealing with practical issues related to foreign matters but requiring that they obtain a master's degree before taking the bar exam might make the process of becoming a lawyer prohibitively long.

According to this analysis, the two-track model of legal education advocated by opponents of the reforms should not be viewed simply as a way for orthodox law scholars to protect their own interests or as a halfway step toward a more uniform system. Instead, it could be viewed as a means to satisfy social demands for a variety of legal services which might optimize social utility better than a unified system. The mission of undergraduate law programs is to train competent general legal practitioners capable of representing clients with simple legal problems. The mission of graduate law programs, on the other hand, is to train legal specialists capable of handling complex issues,

160. When Taiwan established its Intellectual Property Court in 2008, half of the judges, who had no scientific background, were graduates from this institute. Although still relatively young, it is partly because of this model that graduates of this institute have become sought-after in Taiwan by high-tech companies needing legal counsel.

161. Wilson, *supra* note 5, at 331.

162. Kashiwagi, *supra* note 8, at 188.

163. The experience of National Chiao Tung University can confirm this assertion. The institute offers a full spectrum of the first-year courses at American law schools and some upper-level courses on American law, taught in Chinese or English. The institutes also actively collaborate with foreign law schools, on joint degrees or distance learning courses. When competing for an offer at big law firms, sometimes graduates of the institute, though never having studied abroad, beat competitors graduating from the LL.M. programs of top American law schools. But law-background students are more likely than non-law students to succeed in such competition. My interpretation is that the training at undergraduate law programs gave the law-graduates advantages in understanding advanced American law. For some non-law graduates who do not need a Taiwanese bar license because they prefer to be international lawyers, the institute allows non-law students to replace some required courses of domestic law with Anglo-American law credits, but this would reduce the students' understanding of Taiwanese law.

particularly those facing the challenges of globalization. Of course, there might be no harm in asking graduates of undergraduate law programs to spend two or three more years in professional law programs before allowing them to take the bar exam, as is done in the new systems in Japan and Korea. However, if the content of the bar exam favors generalists, the pressure to pass might distract students in graduate institutes from studying areas of law that are not tested. Bar exam reform is indispensable for any workable reform proposal.

V. Reformative Events after 2007

1. *The Casebook Writing Movement*

After government action on legal education reform ended in 2007, debate diminished dramatically. There remain a number of changes worth noting, however. For example, in the Innovative Teaching Program of Legal Science in Taiwan, sponsored by the Ministry of Education and hosted by Professor Hwei-Syin Chen of National Chengchi University, more than 100 law scholars participated in drafting innovative teaching materials between 2007 and 2011.¹⁶⁴ The mission was to inspire the development of innovative teaching in law-related courses.¹⁶⁵ Those materials related to local cases, dialogical pedagogy, and professional ethics were the major topics of this plan.¹⁶⁶ More than 50 casebooks on the market today were produced during those four years and many law scholars had their first experience using the Socratic Method.¹⁶⁷ The program, which can be called the “casebook writing movement,” was unique in Taiwanese legal history. Although funding for the initiative ended in 2011, its impact on instruction in law schools in Taiwan has been profound. Changes in legal education may take time but they will come.

2. *Old Wine in Old Bottles? The New Examination Rules of 2011*

Another change is the promulgation of new rules for the judicial and bar exams by the Examination Yuan, which went into effect in 2011.¹⁶⁸ The requirements for taking the two exams—no limit on time for the test-takers

164. For a more detailed introduction on this project, see The Office of Innovative Teaching and Research in Education of Legal Science, Introduction, available at <http://140.119.178.246/modules/tinydo/index.php?id=8>; see also Hwei-Syin Chen, *Chuangxin yu shijian-Taiwan faxue jiaoyu de gaibian changshi: 2007 nian-2010 nian* (Innovation and Practice, the attempt to reform legal education in Taiwan, 2007-2011), in *Chuangxin yu shijian: Taiwan faxue jiaoyu* (Innovation and Practice: legal Education in Taiwan), 3, 3-26 (Hwei-Syin Chen ed., 2011) [hereinafter Chen, Innovation].

165. *Id.*

166. The Office of Innovative Teaching and Research in Education of Legal Science, *supra* note 164.

167. Chen, Innovation, *supra* note 164, at 7.

168. Taiwan's Bar Exam Regulations, *supra* note 21, at arts. 3, 6, 12, 13, 14, 19, 20 (2009); Regulations—judicial exam, *supra* note 74, at art. 16 (2009).

and the format of one section composed of essay questions—are unchanged.¹⁶⁹ However, examinees now must pass an additional screening test of multiple choice questions before taking a second essay examination.¹⁷⁰ The major function of this first stage—the multiple-choice test—is to weed out a significant number of exam-takers from the essay test, thus reducing the number of essay questions that examiners must grade.¹⁷¹ In addition, new topics have been added to the first test, including international public law, international commercial law, securities law, legal English and legal ethics.¹⁷² The pass rate of the first stage is 33 percent for both bar and judicial exams.¹⁷³ For the bar exam, the pass quota of the second stage is 33 percent. For the judicial exam, these figures are determined by the manpower quota set by the Judicial Yuan and the Ministry of Justice multiplied by 1.1.¹⁷⁴ The ultimate pass rate of the bar exam will be increased from the previous 8 percent to 10.89 percent.¹⁷⁵

Under this new rule, 926 examinees successfully passed the 2011 bar exam,¹⁷⁶ the largest number in history. Considering that the population of Korea is double that of Taiwan,¹⁷⁷ the 926 is roughly equivalent to the 1,500 to 2,000 students of new Korean law schools who are expected to pass their nation's revised bar exam in 2012.¹⁷⁸ Since the population of Japan is 5.5 times larger than that of Taiwan, the 926 is equivalent to 5093 in Japan.¹⁷⁹ But the number

169. *Id.* See also Lishian Huang, Xinzhi sifaguan ji lüshi guojia kaoshi yushi shiti pinzhi yu yingkaoren yijian fenxi zhi yanjiu (Research on the new judges and lawyers national examination pretest with regards to item quality and feedback from the testees), National Elite, Vol. 6, Issue 3, at 134-35 (2010), available at http://www.moex.gov.tw/main/Quarterly/wHandQuarterly_File.ashx?quarterly_id=197.
170. Taiwan's Bar Exam Regulations, *supra* note 21, at arts. 3, 12 (2009); see also Regulations—judicial exam, *supra* note 74, at arts. 4-6 (2009) [hereinafter Regulations - judicial exam].
171. Lin, *supra* note 46, at 7.
172. Taiwan's Bar Exam Regulations, *supra* note 21, at art. 12 (2009); see also Regulations—judicial exam, *supra* note 74, at art. 5.
173. Taiwan's Bar Exam Regulations, *supra* note 21, at art. 19, sec. 4 (2009); see also Regulations—judicial exam, *supra* note 74, at art. 11.
174. Taiwan's Bar Exam Regulations, *supra* note 21, at art. 19, sec. 5 (2009); see also Regulations—judicial exam, *supra* note 74, at art. 11, sec. 2.
175. Lin, *supra* note 46, at 1.
176. See Ministry of Examination, Yibainian zhuanmen zhiye ji jishu ren yuan gaodeng kaoshi lüshi kaoshi diershi baokao renshu ji luqu huo jige lü an leike fen (The statistics of the number of applicants and the passing rate for the 2011 bar exam), available at <http://www.moex.gov.tw/main/ExamReport/wHandStatisticsFile.ashx?StatisticsID=1193&blnMulFileS=True>.
177. At the end of 2011, the population in Taiwan was about 23 million; Korea had some 48 million. See CIA's World Facebook: Korea, available at <https://www.cia.gov/library/publications/the-world-factbook/index.html>.
178. See Wilson, *supra* note 5, at 340.
179. The population in Japan is around 127 million. See CIA's World Facebook: Japan, available at <https://www.cia.gov/library/publications/the-world-factbook/geos/ja.html>.

of successful examinees in the Japanese 2009 bar exam was only 2043,¹⁸⁰ which means Taiwan is still producing more lawyers than Japan annually under the new rules.

The new rules in Taiwan have been acclaimed as a sign of progress. In reality, however, they have only reinforced the essay-question format and teaching methods based on rote memorization. During the last decade, the number of law graduates has increased four-fold,¹⁸¹ as has the number of applicants for the two exams. As one member of the examination committee pointed out,¹⁸² grading more than 10,000 test-takers each year makes it impossible to maintain the traditional grading process, in which one grader evaluates all of the answers to one essay question.¹⁸³ The screening mechanism of the first stage excludes two-thirds of the test-takers from the essay-based exam, thereby considerably easing the burden on examiners. It has been claimed that this change will improve the quality of grading by enabling examiners to focus on fewer answers and maintain more consistent standards.¹⁸⁴ In addition, the pass rate of the second stage of the bar exam will be increased to 33 percent from the old pass rate of only 8 percent.

While these claims are true, the burden on those preparing to take the exams has increased considerably under the new rules. They must now take four instead of two tests each year if they wish to follow both tracks. In addition, the justification for excluding two-thirds of test-takers from the essay test is unpersuasive. If an examinee passes the first stage but fails in the second stage, the qualification gained by passing the first stage cannot be retained for the following year.¹⁸⁵ If the first-stage test is truly intended to differentiate more intelligent students from their less gifted counterparts, why not retain this qualification? If the first test is unable to make such distinctions, how can failed examinees be justifiably excluded from the second-stage test?

Despite these shortcomings, the new rules have had a positive impact. The answers to each essay question will no longer be graded by one, but by two graders.¹⁸⁶ If the gap between the two scores is significant, a third grader will be brought in to reach a consensus.¹⁸⁷ Graders will be provided sample answers,¹⁸⁸ theoretically to ensure that grading is more objective. The Examination Yuan

180. Wilson, *supra* note 5, at 327.

181. Wang, *supra* note 13, at 141.

182. Lin, *supra* note 46, at 2.

183. Pratt, *supra* note 28, at 156.

184. Lin, *supra* note 46, at 2.

185. Taiwan's Bar Exam Regulations, *supra* note 21, at art. 3 (2009); *see also* Regulations—judicial exam, *supra* note 74, at art. 4.

186. Lin, *supra* note 46, at 7.

187. *Id.*

188. Huang, *supra* note 169, at 145.

will provide guidelines for each subject before the exam to ensure that all prospective test-takers are aware of the scope of tested subjects.¹⁸⁹

However, the pre-reform experience of Japan and Korea tells us that these changes are bound to fail: the new first stage of multiple choice questions is an obvious duplication of their pre-reform systems.¹⁹⁰ If this modification could have saved law students time in preparing for examinations and, therefore, have raised the overall performance of legal education, the two countries would not have had to establish graduate professional law schools. Because no limits have been imposed on the number of times an examinee may take the exams, test-takers who fail inevitably will participate in the exam the following year, thereby enlarging the pool of applicants and the number of answer papers an examiner has to grade.¹⁹¹ In addition, because the dominance of scholars in the exams remains, law schools have no incentive to change their pedagogy or curriculum. The new rules will simply delay, rather than prevent, radical reform in the future.

3. Changes in Judicial Recruitment

As mentioned at the beginning of this paper, the separation of national admission exams and training paths between lawyers and judicial officers has made it easier for Taiwan to increase the number of individuals passing the bar exam. That separation has generated continuous debate throughout each stage of judicial reform. One core issue is whether all career judges should be selected through the mechanism of the Judicial Officer Exam conducted by the Examination Yuan, rather than chosen from the ranks of experienced lawyers, as in Anglo-American tradition.¹⁹² The concern is that young judges who have just graduated from law school, with limited social experience, may be unable to understand the complex cultural or social nature of facts and

189. Ministry of Examination, Gongwu renyuan tezhong kaoshi sifaguan kaoshi, zhuanmen zhiye ji jishu renyuan gaodeng kaoshi lüshi kaoshi ge yingshi kemu mingti dagang (The guideline for designing the questions of the 2011 judicial exam and bar exam), available at http://www.moex.gov.tw/main/content/wHandMenuFile.ashx?menu_id=586&blnMulFiles=False.

190. Song, *supra* note 19, at 27.

191. Of course, because the pass rates of the two exams are fixed, the competitive pressure remains constant as well, regardless of the total number of exam takers in any given year.

192. In 1999, almost all leaders in the fields of law academia and practice participated in a Judicial Yuan judicial reform conference. One important consensus reached at the conference was to combine the current separate examinations into one. On the issue of how judges should be selected, 60 participants favored choosing them only from prosecutors, lawyers and law scholars rather than through examination, and 55 participants opposed. On training prospective judicial officers and lawyers, 26 participants were in favor of “one examination, separated training systems,” while 89 participants supported the idea of “one examination, one training system.” See Tay-sheng Wang, Faguan Yu Jianchaguan Jih Yucai Yu Syunlian (the Selecting and Training of Judges and Prosecutors), in Sihfagaige Shihhuounian De Heigu Yu Jhanwang (The Tenth Anniversary National Conference on Judicial Reform: Retrospect and Prospect), at 546, 546-47 (Dennis Te-chung Tand & Kuo-chang Huan eds., 2010) [hereinafter Wang, Selecting and Training].

arguments in disputes. A 1989 law permits lawyers and law professors who have been practicing or teaching for at least three years to apply to become judges—a measure that has not found much favor. Nonetheless, in 2002, the Judicial Yuan decided to select more new judges in this manner.¹⁹³

According to the rules promulgated by the Judicial Yuan, there are three ways for a lawyer to become a judge.¹⁹⁴ The first involves obtaining a recommendation from the Taiwan Bar Association.¹⁹⁵ The second is through an annual Judicial Yuan written and oral examination.¹⁹⁶ The third is by invitation from the Judicial Yuan task force that recommends lawyers who have practiced law for at least 14 years while demonstrating an outstanding reputation or making notable contributions to the legal profession.¹⁹⁷ As of 2009, 43 lawyers had been appointed judges by the first method and 19 lawyers through the second.¹⁹⁸ Considering the heavy workload, the salary of a judge is not attractive to prestigious senior lawyers. As a result, no one has yet accepted the Judicial Yuan's invitation to become a judge.¹⁹⁹

Although these judges constitute only a small part of the judiciary, the Judicial Yuan has gradually established an alternative path for recruitment of new judges. This has provided the Judicial Yuan with greater power in selecting and training new judges. In addition, these prospective judges are not trained at the Judges and Prosecutors Training Institute within the Ministry of Justice, but at the Judicial Personnel Study Institute, an agency for continuing education of judges that is overseen by the Judicial Yuan.²⁰⁰ Notably, this separates the training of judges from that of prosecutors.

On June 14, 2011, Taiwan's Congress passed a controversial Judges Act, which had been in the making for 23 years.²⁰¹ Although it had a lengthy gestation, the legislation was passed hastily in response to several events in 2010 and 2011 that undermined public trust in the judicial system, including

193. Sifayuan linxuan lushi, jiaoshou, fujiaoshou, jiangshi chongren fa yuan faguan shencha banfa (Regulation of selection of lawyers, professors, associate professors, and lecturers appointed to the Court as judges of Judicial Yuan) was promulgated on Sept. 9, 2002, and abolished Mar. 23, 2011, then replaced by Sifayuan linxuan lushi, jiaoshou, fujiaoshou, zhuli jiaoshou zhuan ren fa yuan faguan shencha banfa (Regulation of selection of lawyers, professors, associate professors, and assistant professors appointed to the Court as judges of Judicial Yuan) (2011) [hereinafter Court Appointment Regulation], available at <http://law.moj.gov.tw/LawClass/LawAll.aspx?PCode=A0020152>.

194. *Id.* at art. 4.

195. *Id.* at art. 5.

196. *Id.* at art. 8–10.

197. *Id.* at art. 11–13.

198. Wang, Selecting and Training, *supra* note 192, at 547.

199. *Id.*

200. Court Appointment Regulation, *supra* note 193, at art. 23.

201. See June Tsai, Legislature passes law for removing Taiwan judges, Taiwan Today, June 15, 2011, available at <http://taiwantoday.tw/ct.asp?xItem=167912&ctNode=413>.

acquittals of alleged child molesters and several scandals involving alleged unethical conduct by judges of the High Court and the Supreme Court.²⁰² One major purpose of the new law was to remove incompetent judges.²⁰³ To ensure that newly appointed “baby” judges with little social experience did not become arrogant “dinosaur” judges living in an ivory tower, Congress made a resolution asking that ten years after enactment of the Judge Act, fewer than 20 percent of newly appointed judges should be selected from those who pass the test administered by the Examination Yuan.²⁰⁴ Other new judges must be selected from other sources, such as from lawyers who have practiced law for at least three years.²⁰⁵ To encourage selecting judges from experienced law professionals, the Judges Act authorizes the Judicial Selection Committee to make these decisions.²⁰⁶ The committee is to be headed by the president of the Judicial Yuan and to include two representatives of the Examination Yuan, six individuals representing judges, one prosecutorial representative, three representatives of lawyers and six scholars or impartial members of society.²⁰⁷

Although these congressional solutions are not binding, they represent the view of Congress that people with little social experience beyond time spent studying at cram school are qualified to become judges and prosecutors. Implicit in these actions is that the current two national examinations for lawyers, prosecutors, and judges will not be combined into one, as has happened in Japan and Korea. Conversely, the paths of examination and training probably will be further separated, with the bar exam adopted as the first exam for all graduates of law schools.

202. For detailed information regarding these unethical events, see Zach Zagger, Taiwan passes controversial new law to remove judges, *Jurist*, Paper Chase Column, June 15, 2011, available at <http://jurist.org/paperchase/2011/06/taiwan-passes-controversial-new-law-to-remove-judges.php>. Some commentators correctly pointed out that these high-profile incidents involving Taiwan’s judges are the result of defects in legal education in Taiwan. See Lin Chih-Chieh, Taiwan’s Judicial Reform Starts with Education, *Taiwan Today*, Apr. 22, 2011, available at <http://taiwantoday.tw/ct.asp?xItem=161203&ctNode=413>.

203. Wendy Zeldin, Taiwan: Law on Removal of Judges Adopted, But Dinosaur Judges Might Not Become Extinct, *Law Library of Congress, News & Events*, Jul. 6, 2011, available at http://www.loc.gov/lawweb/servlet/lloc_news?disp3_1205402737_text.

204. See Legislation Yuan, *Lifayuan gongbao* (Legislative Yuan Report), N. 100, No. 49, p. 2229, available at <http://lis.ly.gov.tw/tscgi/lgimg?@1004905;2228;2230>.

205. *Id.*

206. See Zeldin, *supra* note 203.

207. *Id.* Another congressional solution asks that the Judicial Yuan, the Examination Yuan, and the Administration Yuan together prepare a report on the feasibility of new rules for the recruitment of judges and prosecutors within three years following enactment of the act. The new rules should separate the recruitment of judges and prosecutors into two stages. Law graduates who pass the first stage of the judicial exam must have at least three years of work experience before taking the secondary stage of the exam. Examinees who pass the first stage but fail in the second stage are still eligible to obtain a lawyer’s license. See Legislation Yuan, *supra* note 204, at 2229. Since a congressional solution has no binding effect, whether the three yuans will make this report will not be known until 2014.

Two developments are likely to reinforce this trend. On the one hand, because government budgets limit the number of new judges and prosecutors, the judicial exam has admitted fewer test-takers each year. In 2011, only 70 examinees were accepted,²⁰⁸ the lowest number in two decades. On the other hand, more lawyers join the legal profession every year, greatly increasing competition in the legal services market. Meanwhile, the global economic recession has meant that fewer clients can afford high attorney fees. As a result, an increased number of lawyers are now interested in changing careers to what they consider more secure jobs as judges or prosecutors. If these trends continue, passing the bar exam will no longer guarantee a respectable job. Because undergraduate law programs are not necessarily able to provide students with the skills required to survive in a competitive market, more students might consider earning a master's degree before entering the job market. Therefore, although Taiwan does not require a master's degree to practice law, as Japan and Korea do, it is likely to become a *de facto* condition. The only question is whether graduate institutes in Taiwan will recognize this trend and redesign their curriculums accordingly.

VI. Conclusion

Under the impact of globalization, many countries have amended their legal education systems to produce professionals capable of meeting the challenge of severe market competition. The radical reforms to legal education in Japan and Korea have stimulated debate in Taiwan about whether to adopt similar changes and spurred a number of governmental initiatives. Although attempts at similar reform failed in Taiwan, the adjusted system shares many of the characteristics with the Japanese and Korean reforms. Law schools in all three countries still admit students from the undergraduate level, even after establishing professional programs at the graduate level. Graduate programs are available in each of these countries, admitting both law and non-law graduates. One goal of the original plans was to make non-law graduates the major group of law students. Students with an undergraduate law background, however, still are the majority in graduate programs. As in Japan, a number of Taiwanese universities offer both undergraduate and graduate programs. Other universities offer only one type of law program, as in the Korean model. Although a graduate degree is not required to practice law, a master's degree in law has become popular among new legal professionals in Taiwan. These characteristics do not exist in the American system, but might be necessary for Asian countries in which English is not an official language. These changes have developed differently in the three countries—but the systems may share more similarities than differences.

The separation of admission exams for judges, prosecutors and lawyers in Taiwan has made it easier to increase the number of individuals passing

208. Ministry of Examination, *Yibainian gongwu ren yuan tezhong kaoshi sifaguan kaoshi diyishi baokao renshu ji luqu huo jige lu an leike fen* (Statistics of the number of applicants and the passing rate for the 2011 judicial exam), available at <http://www.moex.gov.tw/main/ExamReport/wHandStatisticsFile.ashx?StatisticsID=1190&blnMulFiles=False>.

the bar exam, at the cost of reduced pre-practice training. Among all types of educational institutions, only graduate programs are capable of narrowing the gap between theoretical teaching and legal practice. However, for graduate programs to fulfill this mission, several important issues that have not been recognized must be examined seriously. These issues include the means to expand the faculty, flexible tuition policies and the eligibility of full-time law faculty to practice law. In addition, the framework of the national admission exams is becoming more similar to that abandoned by Japan. This can hardly be called progress. These key considerations are not yet central issues in Taiwan. If policy makers refuse to address them, however, Taiwanese legal professionals will be at a disadvantage when they compete with Japanese and Korean lawyers, with negative economic consequences and a retarding effect on essential judicial reform.