Japan's Law School System: The Sorrow and the Pity

Dan Rosen

It all started out so beautifully. After decades in which law was marginalized and even stigmatized in Japan, the government and industry realized that lawyers might actually be a helpful—rather than disruptive—force. With grand rhetoric, the Cabinet established the Justice System Reform Council in 1999.[1] Joining in the *fin-de-siècle* fervor, the Council was entrusted with the responsibility of "clarifying the role to be played by justice in Japanese society in the 21st century and examining and deliberating fundamental measures necessary for the realization of a justice system that is easy for the people to utilize, participation by the people in the justice system, achievement of a legal profession as it should be and strengthening the functions thereof, and other reforms of the justice system, as well as improvements in the infrastructure of that system."[2]

This was no mere shoveling away of an issue by assigning it to a committee. The Council was directly responsible to the Prime Minister.[3] It was made up of five professors, three lawyers, and an assortment of representatives from other segments of society[4] including the secretary-general of *Shufuren,* the Housewives Association. The Council said it set out to ponder the future of law in Japan from "the people's viewpoint."[5]

Two years of pondering led to a wide-ranging set of recommendations on matters such as access to legal services and internationalization of the legal

Dan Rosen is Professor of Law at Chuo Law School, Tokyo, Japan. I am indebted to Professors Noboru Kashiwagi and Setsuo Miyazawa for providing comments on a draft of this article and to Hiromi Tomita for help with research. Of course, the opinions expressed herein are solely my own and should in no way be ascribed to them or to any institution.

1. Shihō Seido Kaikaku Shingikai Setchihō [Justice System Reform Council Establishment Act], Law No. 68 of 1999, art. 2 (Japan).

2. *Id.* at art. 2, para. 1; *Recommendations of the Justice System Reform Council: For a Justice System to Support Japan in the 21st Century*, Justice Sys. Reform Council (June 12, 2001), http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html [hereinafter *Recommendations*].

3. Kahei Rokumoto, *Legal Education*, in Law in Japan: A Turning Point 190, 216 (Daniel H. Foote, ed. 2007).

4. *Id.*

5. *The Points at Issue in the Justice Reform,* Justice Sys. Reform Council (Dec. 21, 1999) (Japan), http://japan.kantei.go.jp/policy/sihou/singikai/991221_e.html [hereinafter *Points*].

practice.[6] The Council found that the key to accomplishing many of its goals was expanding the number of lawyers and enhancing the quality of their education.[7] This included a call for the creation of law schools, separate and distinct from the undergraduate and graduate faculties of law found in many universities. More than seventy institutions rose to the challenge, or—we might now say—took the bait.

In 2004, law schools across the country opened amid great expectations. It turned out the start of the system was its high point. Gallons of ink have already been spilled on this subject in multiple languages. Sweat and tears, too. There may even be some blood around. This article is not intended to be encyclopedic. My objective is to provide a narrative of what happened by someone who was present at the creation, someone who is *in* the system but not *of* the system. Things look clearer with the benefit of a decade and a half of hindsight. This article describes the failure of the government to honor its promises, the collusion of the practicing Bar to bring about the breach, the re-constricting of legal education, the rapid narrowing in the academic background of applicants, the effect on the institutions, and the loss to society.

The Perspective

Ordinarily, the biography of a journal article author is confined to the asterisk at the bottom of the first page. In this case, however, I am writing as a participant-observer. Recounting my own story (including more than twenty years in Japan) may help the reader in assessing the observations of this particular participant.

I am an American and the product of the American legal education system. In law school, I was active in many ancillary activities such as moot court and law journal. Approaching the end of my J.D. studies, I found I had an appetite for more. I went on to receive LL.M. and J.S.D. degrees and to clerk for a federal Court of Appeals judge. Then, I was invited to join the faculty of a law school in the state of Louisiana, where—by osmosis—I absorbed some knowledge of the civil law system.[8] (This would prove to be helpful later in understanding the legal system of Japan, another civil law jurisdiction.)

During the bicentennial of the American Constitution, I received a yearlong grant to teach American constitutional law in two public universities in Japan. I had a fine time and returned to my home institution. However, I had been bitten by the overseas bug and found a way to get back to Japan a few years later, for a two-and-a-half-year stint at a private university in Kyoto. One of

6. One longtime observer of the Japanese legal system observed that the reforms held "the possibility for revolutionary change." However, he presciently cautioned that "whether what you see is actually what you get is another question." Carl F. Goodman, The Rule of Law in Japan: A Comparative Analysis 5 (2d rev. ed. 2008).

7. *See Recommendations, supra* note 2.

8. I had taken a course in comparative law in law school, perhaps a foreshadowing of my career.

those years I was conducting research supported by another grant. The other year was primarily devoted to teaching, and to my own attempt at learning the Japanese language (a work that is still in progress).

Back to Louisiana for a while. Then came an invitation to become a regular member of the faculty at the private university in Kyoto. I moved there in 1997. When all the talk about law schools began, I was appointed to the university's Law School Planning Committee. However, in 2004, at the start of the system, I moved to the law school of my present employer, a private university in Tokyo.

I was not alone. Swept up in the enthusiasm of the Justice System Reform Council's recommendations for internationalization, the school also hired a distinguished law professor from Australia. My previous institution brought in a German law professor and, eventually, another American. It was a seller's market for law teachers from abroad who wished to work in Japan, as a number of institutions were recruiting such scholars for their law schools.

In addition to serving in my principal position, I have been fortunate to teach as an adjunct in several other universities, with responsibilities at the law school, graduate school, and undergraduate levels. All of the places I have been associated with have worked hard to create fine law schools. All of them have offered a good education to their students. And all of them—as well as the other law schools in the country (past and present)—have been betrayed by the government that set the system into motion.

In the Beginning

Until 2004, legal education in Japan primarily took place in the undergraduate law department, known as the Faculty of Law.[9] Graduate school studies were aimed at students who hoped to become scholars. (Graduate schools also served as places where students who did not get job offers to their liking could take refuge for a couple of years.) Law was a major, like history or physics. Most students who selected it had no intention of becoming lawyers. Their goal typically was to work in a company or in a government office. Law was considered to be a suitable major for a generalist.

It's a good thing so few students expected to work as lawyers. The government wouldn't allow them to. The number of new lawyers was strictly

9. Prewar legal education, from the Meiji era, is summarized in Setsuo Miyazawa with Hiroshi Otsuka, *Legal Education and the Reproduction of the Elite in Japan,* 1 Asian-Pac. L. & Pol'y J. 1, 3-8 (2000). The university where I teach was started in this era, in 1885, by a group of eighteen lawyers. One of them had studied at Boston University, another at Middle Temple Inn of Court in England. They founded the institution under the name *Igirisu Hōritsu Gakkō* (English Law School), in the belief that Japan should adopt the common-law system. They lost that argument, but the school—renamed as Chuo University—became one of the leading institutions for the training of lawyers. *Our History,* Chuo Univ., http://global.chuo-u.ac.jp/english/aboutus/history/ (last visited Oct. 17, 2016).

limited.[10] Anyone could take the bar exam regardless of college major, but only two percent or so would be deemed to have passed.

Let us pause here to consider the meaning of "passed." It does not refer to some absolute standard of knowledge (e.g., a grade of eighty-five percent). Rather, it means the top papers in the stack, up to the number of people the government would admit in that year. At the end of the twentieth century, Japan had about 21,000 lawyers (*bengoshi*)[11] to serve a population of around 125 million.[12]

It was easier for a camel to pass through the eye of a needle than for a test-taker to enter the kingdom of lawyers.[13] Those who were determined to find an opening often paid little attention to courses outside law. Moreover, they frequently supplemented their university law courses with lectures at cram schools aimed at passing the exam. Many students devoted more energy to the cram school, a phenomenon that was common enough to have its own word: *daigakubanare*. After graduation, a substantial number would forgo career opportunities to become examination monks, huddled for years in confined carrels studying (memorizing?) for the exam, taking it, not being among the favored few, spending another year in the carrel, emerging just long enough to sit for the exam again, returning to the carrel, and repeating the process for years on end.

Even under the best of circumstances, those who passed the bar exam, highly intelligent as they were, had a narrow conception of law and not much knowledge about anything else. No practical lawyering skills, either, but that was to be remedied by two years in the Legal Research and Training Institute, a facility under the direction of the Supreme Court.[14] All who passed the exam were required to study at the Institute. This was law school, at least the practical aspects of law school. During their time there, the trainees would express a desire to be lawyers, prosecutors, or judges.[15] The Institute would

10. The number was about 500 per year until 1990. After that, it was gradually increased to around 1000 at the time the Council began its work in 1999. *Points, supra* note 5, at III.3(1).

11. *Id. Bengoshi* are the closest equivalent to American "lawyers," with all-purpose licenses to provide legal services. Japan also has *benrishi* (patent attorneys), *zeirishi* (tax attorneys), and *shihoshoshi* (something like legal scriveners and notaries but with the authority to be involved in debt consolidation and real estate transactions).

12. Countries with smaller populations had more lawyers: 110,000 in Germany, 83,000 in Britain, and 36,000 in France. *Points, supra* note 5, at III.3(1).

13. *See Matthew* 19:24 (King James)("And again I say unto you, It is easier for a camel to go through the eye of a needle, than for a rich man to enter into the kingdom of God.").

14. Saibansho Hō [Court Act], Law No. 59 of 1947, art. 14 (Japan).

15. The Institute says judges are required to have a "well-rounded education" and professes to provide them with organized training to help achieve that goal. However, its conception of a well-rounded education is hardly a liberal arts college curriculum. The rest, apparently, is up to what the Institute calls "self-cultivation." *The Legal Training and Research Institute of Japan,* Sup. Ct. of Japan, http://www.courts.go.jp/english/institute_01/institute/index.html (last visited Oct. 17, 2016).

pass judgment and determine who among them would enter the profession. (Very few would wash out, but not everyone would get his or her preference.) That was the landscape that the Judicial Reform Council set out to rearrange.

A Different Vision

By the end of the twentieth century, Japan had realized something was wrong. The economy had been struggling since the burst of the bubble in the early 1990s. The country's primacy in manufacturing and innovation was being challenged by other Asian nations: South Korea and China, in particular. "Made in Japan" was beginning to sound nostalgic as Apple iPods displaced the Sony Walkman on the hips of the hip, Samsung TVs were moving to the front of store shelves, and Chinese factories were churning out mass-market products at low costs. Japanese salarymen and their corporate employers weren't exactly ready to stage a revolt, but they were groping for ways to turn the situation around.

The government, and the Liberal Democratic Party that had controlled it for almost all of the postwar period, recognized that the deterioration of the economy posed a threat to its grip on power. When corporate interests began to agitate for more and better lawyers, the party and the government began to take notice.[16] Companies had found themselves at a disadvantage in international negotiations, especially with American lawyers. Not only were they hard pressed to find Japanese attorneys who could go toe-to-toe with the Americans, they also had difficulty locating lawyers who know anything about the substance of their businesses.[17] Lawyers, by and large, had been trained in law and nothing else.[18]

The empanelment of the Justice System Reform Council was seen as part of a solution. The Council noted the country was entering the new century "carrying with us enormous financial deficits and economic difficulties or a sense of some kind of social blockade."[19] It looked to lawyers, and a heightened reliance on law, to break through the blockade of political, administrative, and social systems that had become sclerotic.

When the Council issued its report in 2001, one of the most direct and precise recommendations was "to aim, deliberately and as soon as possible, to secure 3,000 new entrants to the legal profession annually" by around 2010.[20]

16. *See generally* Setsuo Miyazawa, *Successes, Failures, and Remaining Issues of the Justice System Reform in Japan,* 36 Hastings Int'l & Comp. L. Rev. 313, 314-16 (2013).

17. *See* Shigenori Matsui, *Turbulence Ahead: The Future of Law Schools in Japan,* 62 J. Legal Educ. 3, 9 (2012).

18. Even *Keidanren,* the powerful business association, called for the creation of law schools in order to produce better-trained lawyers with varied experience. Setsuo Miyazawa, Kay-Wah Chan & Ilhyung Lee, *The Reform of Legal Education in East Asia,* 4 Ann. Rev. L. & Soc. Sci. 333, 342 (2008).

19. *Points, supra* note 5, at II.1.

20. *Recommendations, supra* note 2, at ch. III, pt. 1.1.

At that pace, the number of lawyers would reach 50,000 by the year 2018, one for every 2400 people in the country.[21]

The Council's vision was a profound departure from the Japanese penchant for regulation to prevent "excessive competition." Throughout the economy, entry to business was controlled to prevent failure.[22] This applied to everything from public baths to broadcast stations. However, change was in the air. By the time the Council presented its recommendations, Junichiro Koizumi, a reformist Prime Minister (at least so far as any Prime Minister drawn from the Liberal Democratic Party could be considered a reformist) had taken office. He would even push the heretical policy of privatizing the post office and its tentacles of insurance and banking services. If ever the climate was favorable for shaking up the legal system, and the comfort of the lawyers protected by a dearth of competition, this was it.

The Council said the number of lawyers should be determined by the market (based on social demand),[23] not the fiat of bureaucrats or the preference of existing lawyers for protection. The number 3000, it said, should not be seen as an upper limit.[24] It envisioned seventy to eighty percent of graduates of the new law schools being admitted to practice.[25]

The Council recognized that the existing system was ill-suited to producing sufficient lawyers of the type it believed the country needed. Thus, it proposed the creation of postgraduate law schools, not limited to universities. To the contrary, the Council envisioned competition between university and freestanding law schools leading to a diversity of legal professionals.

It also recognized the limits of the narrow nature of legal education that had prevailed to that point. That approach may have worked in the second half of the twentieth century, especially in the immediate postwar rebuilding period, but it was inadequate for developing lawyers who could effectively operate in the more diverse, internationalized twenty-first-century environment. Law, by itself, is a set of tools and a way of thinking. It needs other content on which to operate. Clients (and countries, for that matter) have issues involving employment conditions, technology, family relations, harmful behavior, banking, the issuance of stocks and bonds, and many more topics, but nobody comes to an attorney with a burning need to resolve a purely abstract question of law.

The Council thus recommended recruiting law school applicants from the full range of academic areas.[26] A lawyer who knows something about chemistry could be more helpful to a pharmaceutical producer than one who

21. *Id.*

22. *See generally* Richard Katz, Japan: The System that Soured 91 (1998).

23. *Recommendations, supra* note 2, at ch.III, pt. 1.1.

24. *Id.*

25. *Id.* at ch. III, pt. 2, 2(2)d.

26. *Id.* at ch. III, pt. 2, 2(2)c.

simply has memorized the rules for submitting an application for approval of a medicine. A lawyer with a background in art history would be more effective in counseling a sculptor than one who just knows how to read the copyright statute.

Geographic diversity was also a priority. Lawyers, and universities producing the lion's share of lawyers, were concentrated in two urban corridors, centered around Tokyo and Osaka. A distribution of law schools across the country was expected to provide a ready supply of attorneys for people from Okinawa to Hokkaido. A particular embarrassment was what were called "zero-one" regions: areas within the jurisdiction of a district court that had only one lawyer, or none at all.[27] The Council aimed to make citizens aware of what lawyers could do for them—to develop a legal consciousness.[28] The legal profession, it said, "should play the role of the so-called 'doctors for the people's social lives.'"[29]

The Council made a couple of recommendations that—apart from the subsequent government duplicity—ultimately served to undermine the law school system: maintaining the undergraduate law departments and allowing law majors to complete law school in two years rather than three.[30] These two policies, combined, subverted many of the other goals by creating two classes of law school citizenship.

While good reasons were present for dismantling undergraduate law studies, the stakeholders in that system strongly resisted. At the time the Council was at work, some 45,000 students were enrolled in ninety-three undergraduate law departments.[31] Not every university could, or would, create a law school, and faculty of law professors were, understandably, opposed to defining their jobs out of existence. Moreover, employers who had long looked to the faculties of law as reliable sources for corporate workers[32] were unsettled about how their recruiting might be disrupted.

27. *Id.* at ch. III, pt. 1.1.

28. Compare Takeyoshi Kawashima, Nihonjin no Ho Ishiki (Japanese Legal Consciousness) (1967) (Japanese rarely resort to lawyers for cultural reasons) and Takeyoshi Kawashima, *The Legal Consciousness of Contract in Japan,* 7 Law in Japan: An Annual 1 (1974) (translated excerpt from the preceding book) *with* John Owen Haley, *The Myth of the Reluctant Litigant,* 4 J. Japanese Studies 359 (1978) (Japanese rarely resort to litigation in part because of a lack of availability of lawyers.) Even after half a century, this debate continues to consume hours and hours of scholarly contemplation and pages and pages of publications. *See, e.g.*, Takao Tanase, Community and the Law: A Critical Reassessment of American Liberalism and Japanese Modernity (Luke Nottage & Leon Wolff trans. and eds., 2010); J. Mark Ramseyer & Minoru Nakazato, Japanese Law: An Economic Approach (1999); Setsuo Miyazawa, *Taking Kawashima Seriously: A Review of Japanese Legal Consciousness and Disputing Behavior,* 21 Law & Soc'y Rev. 219 (1987).

29. *Recommendations, supra* note 2, at ch. I, pt. 2.2.

30. *Id.* at ch. III, pt. 2.2(2)(c).

31. *Id.* at ch. III, pt. 2.2(5).

32. The Council referred to this as producing and sending "human resources . . . to various

The second policy—of shortening the law school period—was predicated on the undergraduate law graduates demonstrating that they had already acquired enough basic knowledge to justify skipping basic subjects.[33] However, this assumed that law school coverage of such subjects would be equivalent to the undergraduate version. If that were true, the law schools would have failed to provide the kind of advanced, interactive (as opposed to one-way) education that the Council charged them with delivering. The Council called this "'bi-directional (with give-and-take between teachers and students)" and "multidirectional (with interaction among students, as well)."[34] So, either the Council was not serious about law school education being different from the undergraduate model (primarily consisting of lectures) or it was wrong in considering the undergraduate study to be equivalent. More likely, it was the latter.

That was not the only thing it was wrong about. Part of the benefit of recruiting law school students of diverse educational backgrounds was that they would learn from one another. Exempting undergraduate law majors from basic courses deprived them of the opportunity to learn the material with classmates from a wider context. It also sent the message that—despite the lofty rhetoric—law was just about law and nothing else.

In fact, the two-year students *(kishusha)* and three-year students *(mishusha)* rarely meet in the classroom. And the two-year students have next to no time to devote to any of the skill-building activities that are staples in American law schools, exercises like mock trial, moot court, writing competitions, clinic, and law review editing.

More fundamentally, maintaining undergraduate law studies ensured that law schools (and lawyers) would be less educationally diverse. Quite naturally, students who major in law are attracted to law school. So, they make up the majority of those who enter. Closing off the undergraduate law option would have channeled these young minds into other disciplines, upon which they could have built their law school studies later.

Korea, which created law schools a few years after Japan, learned from Japan's mistake. It required any institution that opened a law school to close its undergraduate law department.[35] That does not completely shut off legal double dipping. However, since the law schools—for the most part—are in the most prestigious institutions (from which most applicants would be expected to come), it does have the practical effect of doing so. Companies somehow still find college graduates worth employing; society did not crumble.

---

sectors in society." *Id.*

33. *Id.* at ch. III, pt. 2.2(2)b-c.

34. *Id.* at ch. III, pt. 2.2(2)d.

35. *See* Dohyun Kim, *Recent Reforms in the Legal Profession and Legal Education,* in Law and Society in Korea 150, 161 (Hyunah Yang ed., 2013). *See generally* Jasper Kim, *Socrates v. Confucius: An Analysis of South Korea's Implementation of the American Law School Model,* 10 Asian-Pac. L. & Pol'y J. 322 (2009).

In Australia, the University of Melbourne took a bold step in the same direction. It was under no compulsion to eliminate undergraduate law studies. It decided to do so on its own. As part of an overall assessment of its curriculum, the university converted several disciplines—including law and medicine—completely to graduate studies. Melbourne could take the risk of losing capable students to other institutions because of its status as the leader in legal education. Admission was limited to graduate students in 2008, although undergraduates already enrolled were able to complete their programs. The school's reputation remains strong, and at least one study found that the J.D. students are more satisfied than their LL.B. predecessors.[36]

Like all political policies, the Japanese legal reform recommendations were the result of bartering. Not all the ingredients were excellent, but—by and large—they had the makings of something that could be nutritious. The Cabinet signed off on the plan in March of 2002,[37] and the Diet passed enabling legislation that same year.[38]

The plan may have called for more competition, but that is not the same as deregulation. To the contrary, the government deeply involved itself in setting standards for the law schools and admission to practice. The Education Ministry rules schools. The Supreme Court controls the practice. The Justice Ministry runs the bar exam. Each of these entities has different constituents and listens to different people. The plan did not unify their perspectives; it just pushed resolution of the disagreements further into the future, much as Henry Clay's "Great Compromise" ultimately led to the Civil War.

One might well ask what the Education Ministry would know about training lawyers. In the United States, lawyers (through the American Bar Association) and law professors (through the Association of American Law Schools) set the standards for law schools and essentially regulate them through the accreditation process. The U.S. is not always a paragon of virtue, but—at least on this point—its approach makes sense: standard-setting by people who understand the content.[39]

The Education Ministry of Japan may have many talented administrators (I refrain from using the word "bureaucrats" because of its negative connotation). However, the content and practice of law give rise to different considerations than general educational issues. The Ministry convened a Law School

36. Wendy Larcombe, Letty Tumbaga, Ian Malkin, Pip Nicholson & Orania Tokatlidis, *Does an Improved Experience of Law School Protect Students against Depression, Anxiety and Stress? An Empirical Study of Wellbeing and the Law School Experience of LLB and JD Students,* 35 Sydney L. Rev. 407, 421 (2013).

37. *Judicial Reform Promotion Plan*, Nihon no Naikaku (Mar. 19, 2002) (Japan), http://www.kantei.go.jp/jp/singi/sihou/keikaku/020319keikaku.html.

38. Hōka Daigakuin no Kyōiku to Shihō Shiken tō to no Renkai tō ni Kansuru Hōritsu [Act on Linkage Between Law School Education and Bar Examination], Law No. 139 of 2002 (Japan).

39. *See* Gerald Paul McAlinn, *Reforming the System of Legal Education: A Call for Bold Leadership and Self-Governance,* 2 Asian-Pac. L. & Pol'y J. 15 (2001).

Committee, including law professors, others from the legal profession, and people from other sectors of society.[40] Political forces also became involved, and the Education Ministry had to coordinate its efforts with those of the Cabinet's Office for the Preparation of the Promotion of Justice System Reform.[41] The resulting standards[42] reached every crevice of legal education: from who was qualified to teach (e.g., how many articles in recent years) to how many students could be in the classrooms.[43] They were notably precise and confining for a project that was supposed to be encouraging an expansive approach to legal education.

Most law professors didn't know much about running a law school, since Japan did not have any until 2004. They had come up through the graduate schools, which grant master's and Ph.D. degrees and primarily are devoted to training scholars, not lawyers. Some who had studied in law schools in other countries played leading roles in envisioning what Japanese law schools might look like.[44] They had to convince their colleagues and the government of the value of converting to a new system. Faculty of law academics, in particular, were skeptical about abandoning the undergraduate/graduate school model. People who hoped to become lawyers but had not yet passed the exam were opposed to impeding their opportunity to take the test repeatedly. And then, there were the lawyers. A substantial minority opposed increasing the size of the practicing bar and, not coincidentally, competition.

One salutary effect of the debate was that it set off what was perhaps Japan's first extensive contemplation of what legal education should be. For several years, barely a week went by without some organization or institution convening a symposium on law school curriculum, methods, and goals. Nothing existed in Japan like the MacCrate Report,[45] which had set the agenda for American legal education from the 1990s. Indeed, the federation of

40. *See* Miyazawa, *supra* note 16, at 328-29.

41. *Id.* at 331-34.

42. *Id.* at 334.

43. *See Matsui, supra* note 17, at 10.

44. Professor Daniel Foote, an American on the faculty of the University of Tokyo, is someone who brought law school expertise to the process. From 2001 to 2005 he worked with the Education Ministry on law school matters and from 2002 to 2004 with the Headquarters for the Promotion of Justice System Reform.

45. A.B.A. Section of Legal Educ. & Admissions to the Bar, Legal Education and Professional Development–An Educational Continuum (1992) (the "MacCrate Report" named for Robert MacCrate, Esq., chairman of the task force). *See also* A.B.A. Section of Legal Educ. & Admissions to the Bar, *Twenty Years After the MacCrate Report: A Review of the Current State of Legal Education Continuum and the Challenges Facing the Academy, Bar, and Judiciary* (Mar. 20, 2013), http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/june2013councilmeeting/2013_open_session_e_report_prof_educ_continuum_committee.authcheckdam.pdf..

bar associations commissioned two scholars, Setsuo Miyazawa and Eri Osaka, to translate it into Japanese.[46]

Grumbling could be heard from a number of directions about the prospect of an Americanization of legal education and, ultimately, the profession. Part of this was based on the belief that even if the American approach suited American law and society, it would be out of place in the civil law context of Japan. This debate was a distant echo of the nineteenth-century Meiji-era choice of a legal system for a modernizing Japan. The civil law prevailed then. Why then should Japan choose an American common-law-based system for its legal training now?

Several reasons presented themselves. One was that, as a practical matter, American-style law practice and lawyers had become the default for global legal practice in the twenty-first century. American lawyers and law firms were everywhere. Their standards, to a great extent, had become the global standard. If Japanese lawyers were to hold their own in this environment, for the benefit of their clients, they needed to know how to operate.

Also, the United States had a longer history of legal education reforms. With a million lawyers and 200 or so law schools, it had amassed a formidable amount of experience in what worked and what did not.[47] The MacCrate Report, for example, identified a need for skills training and pointed law schools in that direction. By the 2000s, schools recognized an excessive inward-looking tendency, leading to widespread experimentation and implementation of various approaches to globalization of the curricula.[48] The Council's recommendations did not refer to the United States, but they were replete with concepts that had come from that country.[49]

Opening Day and the Subsequent Seasons

Japan has largely accepted the western calendar. In practice, however, the new year begins with the flowering of the cherry trees. New employees report to work in April, companies turn the page on their budgets, and schools open their doors for the spring semester—the start of the academic year.

So it was in 2004. Sixty-eight law schools welcomed their first classes and got down to the business of transforming the Japanese legal system.[50] Optimism was blossoming all around. Students had arrived with a diversity of backgrounds. In that year and the next few, I had several students who

46. *See* Miyazawa et al., *supra* note 18, at 344.

47. *See generally* Dan Rosen, *Schooling Lawyers,* 2 Asian-Pac. L. & Pol'y J. 66 (2001).

48. For example, the theme of the 2013 annual meeting of the Association of American Law Schools was "Global Engagement and the Legal Academy," *2013 Annual Meeting Program*, AALS, https://memberaccess.aals.org/eweb/DynamicPage.aspx?webcode=2013amwhy&Reg_evt_key=a931e6c6-e043-4c5d-9af6-491599393238&RegPath=EventRegFees.

49. *See* Miyazawa et al., *supra* note 18, at 346.

50. Six more started the next year, for a total of 74. *Id.*

had given up careers in the Foreign Ministry to come to law school. They were mostly in their early 30s and had already had overseas postings. Another member of the entering class was pushing 60. He had just retired from one of the country's major newspapers.

Classes such as mine, focusing on international law and the law of other countries, attracted sizable enrollments at many schools. My Australian colleague taught Asian business transactions. He arranged a two-week study-abroad program at the University of Melbourne. Close to twenty students signed up. Elective courses flourished in topics that never would appear on the bar exam. Students accepted the invitation to expand their horizons, trusting in the promise that seventy percent to eighty percent of them would pass that hurdle. After all, the Reform Council had said that legal training would no longer be focused "only on the 'single point' of the national bar examination but by organically connecting legal education, the national bar examination, and apprenticeship training as a 'process' . . . ."[51] Indeed, at the most selective schools, the pass rate was expected to be well above the national average. And so, students at those institutions could look at the bar exam much as their American counterparts do at top and even mid-level institutions: just another step in the march to becoming lawyers, not a nearly impenetrable barrier.

The schools themselves were diverse too. The large number meant that essentially every region had a school that could train people who would stay nearby and provide legal services. Okinawa's University of the Ryukyus had an entering class of thirty; big schools in Tokyo—such as Chuo, Waseda, and Tokyo—took in 300. One of the three Tokyo bar associations even helped start a freestanding law school in nearby Saitama prefecture. Its mission was to approach legal education with a fresh perspective and provide training informed by the profession.

So for two or three years, it looked as though the law schools had checked all the boxes in the Reform Council's recommendations. Teachers were thinking deeply about how best to present the material; students were willing to take at least some courses outside the "mainstream." Spirits were running high.

Signs of trouble, however, were emerging.

Do the math. The Council had projected a bar exam pass rate of seventy percent to eighty percent, aiming toward 3000 new lawyers per year. The Education Ministry had authorized approximately 5800 students per year for the various law schools. The Justice Ministry's Bar Exam Committee, however, was dragging its feet. The pass rate for the first exam (2006) to include law school graduates (from the two-year program) was forty-eight percent. The next year, with both two-year and three-year graduates taking the exam, the rate declined to forty percent.[52]

51. *Recommendations, supra* note 2, at ch. III, pt. 2.1.

52. Miyazawa et al., *supra* note 18, at 348.

By 2007, the new Justice Minister, Kunio Hatoyama, publicly joined the counterrevolution. He said 3000 lawyers a year was too many for a country that favors negotiation and conciliation. Japan, he said, should not become a litigious society.[53] The next year brought a new chairman of the Japan Federation of Bar Associations (*Nichibenren*) to office. Makoto Miyazaki and the Federation both called for rolling back the 3000-a-year plan, or at least postponing it.[54] The attack on the reforms was a turnabout for *Nichibenren*. It had passed a resolution supporting the Reform Council's vision in 2001.[55] The resolution garnered a two-thirds majority of the lawyers voting.[56] The opponents may have been in the minority, but they were second to none in intensity. They did not simply accept the loss and walk away.[57]

Miyazaki contended that increasing the number of lawyers was adversely affecting quality.[58] That is one of the primary arguments of opponents. Some actually believe it. They, quite naturally, think that the system that produced them must be right. That conclusion assumes that the previous number is imbued with some Archimedean perfection for discerning the legal talent present within the population. Five hundred per year was the standard for a long time. A thousand per year was the norm just before the law school system started. Fifteen hundred were allowed to pass in the early years of the law school system. The Bar, in 2015, opined that 1500 was appropriate.[59]

In any case, this assumption reflects a profound lack of confidence in the intellectual capacity of the country's youth. In 2010, Noboru Kashiwagi, a distinguished law school professor and former legal officer for a global corporation, observed, "[S]trangely enough, no serious discussion or empirical research has been conducted regarding the level of skills and knowledge required for qualification as a contemporary lawyer. It seems that the standard set more than 50 years ago, when most lawyers were litigators, has been

53. Setsuko Kamiya, *Scales of Justice: Legal System Looks for Right Balance of Lawyers,* The Japan Times, Mar. 18, 2008, http://www.japantimes.co.jp/news/2008/03/18/reference/scales-of-justice-legal-system-looks-for-right-balance-of-lawyers/#.WFDkFnd7F8c.

54. *Bar Groups Hit Haste to Hike Lawyer Ranks,* The Japan Times, July 19, 2008, http://www.japantimes.co.jp/news/2008/07/19/national/bar-groups-hit-haste-to-hike-lawyer-ranks/#.V7K5F2XUkoQ.

55. *See* Daniel H. Foote, *The Trials and Tribulations of Japan's Legal Education Reforms,* 36 Hastings Int'l & Comp. L. Rev. 369, 373-74 (2013).

56. *Id.* at 374.

57. In the 1990s, the Bar had also opposed proposals to increase the number of exam-passers from 500 to 1000, although it eventually gave in. *Id.* at 388.

58. *See* Hideki Kojima, *Current Topics Surrounding the Legal Environment in Japan,* IPBA J., Dec. 2008, at 7, 9, https://ipba.org/media/normal/1602_2008_-_Dec.pdf.

59. Susumu Murakoshi, *Statement Concerning "Further Promotion of Systematic Reform in the Fostering of Legal Professionals" (Summary),* Japan Federation of Bar Assoc., June 30, 2015, http://www.nichibenren.or.jp/en/document/statements/year/2015/150630.html.

retained, without regard to Japan's current requirements."[60] The strangeness continues, with supposition substituting for illumination.

The declining quality argument is also sometimes linked to a shared aversion to competition. Even if the new lawyers are competent, their swelling ranks, it is said, will lead to price-cutting. And price-cutting will result in cutting corners on services. Similar arguments have been made in the United States, with—for example—restrictions on advertising by pharmacies[61] and lawyers.[62] The conclusion has been that the profession can and should continue to monitor the actual quality of the services rather than deprive consumers of the benefits of competition.

If, for the sake of argument, we grant the dubious proposition that the top 1000 scorers on the bar exam will be better lawyers than the next 2000, we still must wonder: Is Japanese society really served by limiting the practice to the very best and brightest? Not everyone needs the most excellent (and expensive) attorney, just as not everyone needs the most excellent medical specialist. A head cold does not require the services of a brain surgeon. However, it can benefit from the attention of a competent physician of some sort.

Insisting on excellence rather than competence (in this case, as narrowly defined by exam scores) results in a lack of access to competence. The Bar's argument—couched in terms of protecting the public—in fact results in people going forth with no legal advice at all or paying for a lot more expertise than they need.

Lawyers also profess concern about the ability of new lawyers to make a living. The jobs just aren't there, they say. Indeed, one of the disappointments of lawyers educated in the law schools has been fewer law firm openings than they had hoped for in the big cities. This is not necessarily bad, if it pushes them to less populated areas. That was one of the Reform Council's goals. Additionally, corporations, associations, and government agencies are coming around to the idea of hiring in-house legal specialists. Such attorneys, with the benefit of a law school education, are surely better-prepared to be helpful than the undergraduate law majors who used to fill most such positions. Not every *bengoshi* needs to be operating within the framework of a law office.[63] This also fits well with the Council's goal of expanding the variety of legal services.

A cynic may suspect that the public-spirited arguments against increasing the ranks of lawyers are really a cover for protectionism. I cringed, a few years ago, when I heard a Japanese lawyer making a presentation to a group of visiting American attorneys. He said that his father (also a lawyer) had taken

60. Noboru Kashiwagi, *Creation of Japanese Law Schools and Their Current Development,* in Legal Education in Asia: Globalization, Change and Contexts 185, 196 (Stacey Steele & Kathryn Taylor, eds. 2010).

61. Virginia State Pharmacy Board v. Virginia Citizens Consumer Council, 425 U.S. 748 (1976).

62. Bates v. State Bar of Arizona, 433 U.S. 350 (1977).

63. *See generally* Masahiro Tanaka, *Japanese Law Schools in Crisis: A Study on the Employability of Law School Graduates,* 3 Asian J. Legal Educ. 38 (2016).

the family on a vacation to the U.S. when the speaker was a child. Now the speaker himself was a lawyer, but—he complained—he could not afford to do the same for his wife and children. Thus, he concluded, Japan should not have any more lawyers.

Was this a joke? It didn't seem so. Rather, it appeared to be offered more as a case study: the family vacation as a benchmark for determining the proper population of lawyers. Somehow, the Reform Council had failed to consider this in its deliberations on promoting rule of law and access to legal services.

Medical doctors voiced protectionist sentiments in the 1980s, causing the country to hold the line on new physicians, halt plans for new medical schools, and cut back authorized enrollments in existing medical schools until 2008. Mission accomplished: The number of physicians per capita became two-thirds the average of industrialized nations, with even worse sparseness in rural areas.[64] Physicians' income was preserved, at the cost of public health. Since then, the need for more, rather than fewer, physicians has become apparent, and the number of medical doctors increased 9.3% between 2006 and 2012.[65]

Another argument proffered for controlling the number of exam-passers is the limited capacity of the Legal Training and Research Institute, where skills training does take place. The question, however, should be why the Institute continues to exist. It was created at a time before law schools.[66] Undergraduate schools could not be expected to teach lawyering skills to teenagers. Doctrine was their domain. Students who demonstrated command of the doctrine by passing the bar exam then moved on to the Institute, where they would be trained in how to use it.

But now we have law schools, obviating the Institute's raison d'être. By maintaining a full three-year program, the law schools could—and should—assume responsibility for skills training, perhaps in concert with a period of apprenticeship.[67] The current year-and-a-half Training Institute duty already includes a year of such apprenticeships. All that would have to be done is

64. Editorial, *Dubious Cure for Doctor Shortage,* The Japan Times, Jan. 3, 2014, http://www.japantimes.co.jp/opinion/2014/01/03/editorials/dubious-cure-for-doctor-shortage/#.V7LAmWXUn3A.

65. Japan has about 300,000 physicians, close to ten times the number of lawyers. *See* Masatoshi Matsumoto, Soichi Koike, Saori Kashima & Kazuo Awai, *Geographic Distribution of Radiologists and Utilization of Teleradiology in Japan: A Longitudinal Analysis Based on National Census Data,* PLOS/One, Sept. 30, 2015, http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0139723 (last visited Oct. 20, 2016).

66. Setsuo Miyazawa, who was deeply involved in discussions about the law school system, recommended abolishing the Institute and entrusting the Bar with the responsibility of providing practical training. Setsuo Miyazawa, *The Politics of Judicial Reform in Japan: The Rule of Law at Last?,* 2 Asian-Pac. L. & Pol'y J. 89, 112 (2001).

67. Prof. Hisaei Ito has proposed one year of practical training in an Inns of Court-type environment instead of conventional law schools, followed by two years of practical training at a law firm. Hisaei Ito, *"Falling Law School" in the US and Japan,* The Japan News, http://www.yomiuri.co.jp/adv/chuo/dy/education/20140807.html.

abolish the Institute's own six months of instruction, at least for those who do not intend to be judges or prosecutors. The Institute, as one might expect, is not enthusiastic about the prospect of extinction. It is more than a school; it is an instrument of uniformity and acculturation to its particular view of a proper legal society.

Every lawyer, every prosecutor, and every judge in Japan has been to the same "law school": the Institute. Critics assert that its faculty tries to imbue the students with an orthodoxy that perpetuates the status quo. They suspect that approach also lays the groundwork for "the extreme form of legal positivism and passivity of most judges in Japan."[68] Judges are loath to hold statutes unconstitutional; criminal defendants are almost always convicted; tort plaintiffs are awarded minuscule damages. Legal professionals become acculturated to the values behind those truths formally and informally during their training days.[69]

While I disagree with the protectionist opposition of lawyers, at least I understand where they're coming from. But why would the country go to all the trouble of studying its legal profession, concluding that it needed lawyers who were more deeply and broadly educated, creating a law school system for accomplishing that, and then allow would-be lawyers to opt out of law school and go straight to an exam?

That is, in fact, what the powers-that-be decreed once the "new"[70] bar exam was put in place in 2011.[71] People who fancied a lawyer's career could avoid the inconvenience of obtaining a legal education by passing the *yobi shiken* preliminary qualifying exam. They would then proceed to the bar exam. Like the bar exam itself, the preliminary exam emphasizes the *roppo,* the six fundamental subjects:[72] constitutional law, civil code, civil procedure, criminal law, criminal procedure, and commercial law.[73] Nothing about the test rewards the breadth of inquiry envisioned by the Reform Council.

68. Miyazawa, *supra* note 66, at 112.

69. On the other hand, lawyers and their organizations have been among the more progressive elements of Japanese society. They are among the few institutional groups to challenge the government and, at least sometimes, to champion unpopular positions.

70. Although not all that new in scope. *See* Stacey Steele & Anesti Petridis, *Japanese Legal Education Reform: A Lost Opportunity to End the Cult(ure) of the National Bar Examination and Internationalise Curricula?,* in The Internationalisation of Legal Education: The Future Practice of Law 92 (William van Caenegem & Mary Hiscock eds., 2014).

71. *See* Stacy Steele, *Japan's National Bar Examination: Results from 2015 and Impact of the Preliminary Qualifying Examination,* 41 J. Japanese L. 56, 57-58 (2016).

72. Japanese law students carry a copy of the *roppo* around with them from the day they enter law school to the day they finish.

73. The bar exam magnanimously offers the choice of one elective: insolvency, tax, economic law, intellectual property, employment law, environmental law, public international law, or private international law. *See* Steele, *supra* note 71, at 57-58.

Applicants get the message: All the posturing about diversity of training is not to be believed. What counts is what has always counted: the basics, brutally memorized and available for instant recall. So, they either lock themselves away to push provisions of the codes into their cerebra or they sign up for cram schools that will force-feed them what they need to pass the test. Many of the preliminary exam-takers are also law school students, operating in cram-school mode. They sit in law school classes but devote their attention to preliminary exam preparation.[74] And if they pass that exam, they frequently wave *sayonara* to their law schools.[75] It's essentially the pre-law school system state of affairs, resurrected.

What's more, it works. The highest passage rate on the 2016 bar exam came not from alumni of any of the law schools but rather from exam-takers who had started with the *yobi shiken*. Close to sixty-two percent of them passed. The law school with the best rate, Hitotsubashi, had slightly less than fifty percent. The mighty University of Tokyo was barely over forty-eight percent.[76] Not surprisingly, applications to law schools have been falling. (This surely is also related to the draconian overall pass rate on the bar exam, just under 23 percent in 2016.)[77] Those opting for the preliminary exam have been increasing.

So, why would the government subvert the very law school system it created? One answer is that the government is not monolithic. As mentioned earlier, the Education and Justice ministries both have their hands in the setup, as does the Supreme Court. Politicians too. The argument is made that excluding people who cannot afford law school tuition from the possibility of practicing law is unfair. I am not at all unsympathetic to the proposition, advanced most prominently in the U.S. by Bernie Sanders, that higher education should be free. However, even Bernie would not advocate foisting uneducated "professionals" on the public. If affordability is all the government is concerned about, it could provide more scholarships and loans. And, by the way, cram schools are not free, either.[78]

74. Ironically, the Education Ministry rejected the applications of universities that had planned to partner with cram schools to create law schools at the start of the law school system. *See* Eriko Arita, *66 Institutions Win Approval to Open U.S.–Style Law Schools*, The Japan Times, Nov. 22, 2003, http://www.japantimes.co.jp/news/2003/11/22/national/66-institutions-win-approval-to-open-u-s-style-law-schools/#.V8gckGXUkoQ.

75. One might wonder if students who bypassed law school or who bailed out before graduating would be viewed as less desirable candidates for employment. Steele reports that, to the contrary, some lawyers say bar exam passers who started with the preliminary exam are in high demand. Steele, *supra* note 71, at 65. One reason may be that their experience resembles that of most of the lawyers doing the hiring, who entered the profession before the advent of law schools.

76. *See* Steele, *supra* note 71, at 60 (previous year's results).

77. 6899 sat for the exam, and 1583 were allowed to pass. The Justice Ministry posted the raw numbers, school by school, at http://www.moj.go.jp/content/001202510.pdf (last visited Oct. 20, 2016).

78. A two-year program can cost about $12,000, roughly equivalent to two years of law school tuition at a public university. The introduction of the law school system has been good

Whatever one thinks of Brian Tamanaha's assertion that attending an American law school may not be worth the cost,[79] the numbers are dramatically different in Japan. Tamanaha cites statistics that in 2011, the average private law school tuition in the U.S. was $39,184.[80] In Japan, in 2016, tuition at even the best private law schools is around $15,000 per year. Public law schools, including the highly prestigious University of Tokyo, are less than $10,000. These are not backbreaking, mortgage-equivalent numbers. Moreover, many of the students—those who majored in law as undergraduates—are only there for two years.

Implicit in the backdoor approach are a number of troubling beliefs:

1) Law school really doesn't enhance the quality of a lawyer.

2) The bar exam is what actually measures suitability to be a lawyer.

3) The Reform Council's findings are just rhetoric.

Those beliefs may not be true, but the system operates as if they are. The result is self-contradictory. On one hand, the regulators have loaded the curricula of law schools with required courses.[81] On the other hand, they have excused applicants for the preliminary exam from taking any courses. It's not unlike the battles between taxi drivers and Uber drivers being waged in cities around the world. The former are highly regulated; the latter do as they like. They both pick up passengers.

All those required courses leave little room for the kind of skill-training experiences that American law schools embraced decades ago. That's especially so for students in the two-year program. Of course, those who go it alone or opt for cram school get none at all. Moot court? Anyone who has been through law school in the United States knows how time-intensive that can be, and how effective it is in integrating the skills of research, writing, and argumentation. The closest thing in Japan is a negotiation-and-arbitration contest held every December, open to schools around the country (and

for cram schools' business. At first, they worried that law school education would displace them. In fact, it multiplied their opportunities. They now offer courses for taking law school entrance exams, courses for students taking the preparatory qualifying exam, and courses for everybody taking the bar exam.

79. Brian Z. Tamanaha, Failing Law Schools (2012).

80. Brian Z. Tamanaha, *Is Law School Worth the Cost?,* 63 J. Legal Educ. 173, 174 (2013).

81. Professor Foote raised the concern that all the required courses left little room for courses in other fields, clinics, and other innovations that the Reform Council anticipated. He was told that if standards of that sort were not put in place, schools would be likely to impose even more bar exam-related required courses. Foote, *supra* note 55, at 400.

abroad, for that matter).[82] Law schools are hard pressed to field teams; most participants come from undergraduate and graduate schools.

Law review? The three-year model of American law schools may not be perfect,[83] but it is well-suited to the training that law reviews provide: qualification in the first year, apprenticeship in the second (including writing projects of increasing sophistication), and editorship (including interaction with professional authors) in the third. Japanese students would be quite comfortable with that model, as it is essentially what they have experienced in school club (*bukatsu*) activities: Older students *(sempai)* show younger ones *(kohai*) the ropes, with Confucian-style responsibilities running in both directions.

The two-year (or no-year) programs complicate any attempt to adopt the American student-run law journal system in Japan. Students at Waseda Law School created a journal called Law & Practice, more or less like a U.S. law journal. That is the only one I know of. They are heroes. Chuo Law School has a small group of students involved in checking citations and content for its law journal. Editorial control, however, is with the faculty. Japan has next to no tradition of student-edited journals. In any case, academic writing is generally seen as an endeavor for graduate school students, not professional school students.

The same is true for clinics. If the scope of student activity in legal writing and editing is restricted, one can imagine the constraints involved in working with "live clients." Some law schools do have clinics and do fine work within the confines imposed upon them.[84] However, through no fault of their own, they cannot give students or clients the depth that is provided by many clinics in American and other countries' law schools. Even if the law allowed them to, students' schedules would not.

Study abroad would seem to be one of the most important activities of the new law schools, in keeping with the Reform Council's conclusion that Japan needs lawyers who are able to operate in a globalized environment. More than 200 such programs are offered by American law schools, in almost every part of the world from Accra to Zagreb.[85] Japanese law schools have only

82. *See Outline,* Intercollegiate Negotiation Competition (INC), http://www.negocom.jp/eng/what/ (last visited, Oct. 21, 2016).

83. *But see* Elizabeth Olson, *The 2-Year Law Education Fails to Take Off,* N.Y. Times, Dec. 25, 2015, http://www.nytimes.com/2015/12/26/business/dealbook/the-2-year-law-education-fails-to-take-off.html?_r=0.

84. *See* Matthew J. Wilson, *Legal Clinical Education in Japan: A Work in Progress,* in Clinical Legal Education in Asia 195, 200 (Shuvro Prosun Sarker ed., 2015); Shigeo Miyagawa, Takao Suami, Peter A. Joy & Charles D. Weisselberg, *Japan's New Clinical Programs: A Study of Light and Shadow,* in The Global Clinical Movement: Educating Lawyers for Social Justice 105, 106 (Frank S. Bloch ed., 2011).

85. A.B.A. Section of Legal Educ. & Admissions to the Bar, *Foreign Summer and Intersession Programs,* http://www.americanbar.org/groups/legal_education/resources/foreign_study/foreign_summer_winter_programs.html (last visited Oct. 21, 2016).

a handful. Chuo Law School used to have four: Melbourne, Hong Kong, Hawaii, and Vietnam. It now offers only the first two. The programs run one or two weeks. Waseda Law School allows a half-dozen or so students to spend a year at overseas law schools, typically leading to an LL.M. degree. A few more schools also offer study-abroad opportunities, but not many. Time is one issue. Students in the two-year program have only one chance to participate.[86] Even three-year students, considering joining after their first year, worry that a week or two overseas might adversely affect their preparation for the bar exam, coming two years in the future! This angst has increased over the years, as the pass rate on the bar exam has fallen.

The reticence to attend study-abroad programs is part of a wider pattern. Many law schools have developed curricula rich with electives. The draconian pass rate on the bar exam, however, is the strongest possible disincentive to enrollment. No matter how much the government may say about the need for broadly trained lawyers, by maintaining a chokehold on entrance to the profession, it channels students to bar-related subjects and away from others that may divert attention from what is seen as the principal task at hand.

I teach a course, for example, in international entertainment law. It provides an opportunity to examine a wide range of legal subjects—contracts, torts, intellectual property, business associations, conflicts of law, and more—in action. Japan's entertainment industry is one of the largest in the world. The country is both a major importer and exporter.[87] Knowing about this could be extremely helpful to a young lawyer developing a career. Even those who don't envision having such clients can benefit from integrating the strands of law they have studied to that point and seeing how law operates in a global context. [88]

The course materials—including pleadings, court decisions, and statutes—are mostly, but not exclusively, in English. The subject is inherently entertaining. Many students are interested, but few enroll. The diversion of time from studying bar exam subjects is seen as outweighing the attraction. I get it, and

86. In fact, they could participate after their second and final year too, but as the bar exam comes just a few months after that, none would.

87. The government has even made promotion of Japanese entertainment internationally a priority, with money and an unfortunately named "Cool Japan" initiative. Kabushigaisha Kaigai Juyō Kaitaku Shien Kikō Hō [Act on the Establishment of the Japan Brand Fund], Law No. 51 of 2013. *See, e.g.*, Cool Japan Strategy Promotion Council, *Cool Japan Strategy Public-Private Collaboration Initiative,* Cabinet Office, Gov't of Japan, http://www.kantei.go.jp/jp/singi/titeki2/cool_japan/pdf/20150617_initiative_honbun_e.pdf (last visited Oct. 21, 2016); *What is Cool Japan Fund?,* Cool Japan Fund, Inc., https://www.cj-fund.co.jp/en/about/cjfund.html (last visited Oct. 21, 2016); *Cool Japan/Creative Industries Policy,* Ministry of Economy, Trade and Industry, http://www.meti.go.jp/english/policy/mono_info_service/creative_industries/creative_industries.html (last visited Oct. 21, 2016).

88. *See* Dan Rosen, *A New Stage for Legal Education: Entertainment Law as a Model for Client-Based Teaching*, 1 Chuo L.J. 143 (2004) (written amid great optimism for what was then the new law school system).

am all the more grateful for those students who are willing to take a leap of faith and sign up.

The same is true for my course in American law. No country is more important to Japan's international trade than the United States. The course covers areas of American law that Japanese clients are mostly likely to encounter and alerts students to major differences in the two systems[89] (e.g., consideration in contracts). It is directly relevant to matters that students may confront in their practice. When the law school system started, the class was well-subscribed. As the reality of bar exam pass rates sank in, the numbers dropped. I am not the only teacher of such a course in Japan, and I am not the only one to be facing more empty seats in the classroom.

This is not just the lament of a teacher from overseas. Professor Kashiwagi observed, "Law schools offer a variety of other courses and subjects, including law and sociology, law and economics, consumer law, law of the aged, juvenile law, common law, Chinese law, French law, German law, Roman law, legal writing, legal negotiation, legal ethics, interviewing and counseling. However, most students are unwilling to study subjects other than those that are included on the Bar Examination . . . . [They] simply do not have the luxury of spending time on these other subjects."[90] That was the case in 2010 when his words were published. It is even more so today.

Forward to the Past

And so, after nearly two decades of study and more than twelve years of operation of law schools, Japanese legal education is racing toward the past. The wave of talented people willing to be part of the great reform movement has turned into a trickle. Nearly 73,000 applied for law school admission in the first year. That is now down to fewer than 10,000. As noted earlier, the number admitted to practice is being pushed back too. And the academic background of new lawyers has—for the most part—resisted diversity. Law school applicants, and bar exam passers, are primarily people who majored in law in college.

The government, which sets the number allowed to pass the bar exam before anyone picks up a pencil, has begun pressuring schools that have low pass rates. "Excess competition; low quality" goes the refrain, even though the performance of the students—in an objective sense—might be quite good. Universities in Japan, both public and private, receive funding from the government. Funding for "low-performing" schools[91] has been cut. Some

89. *See generally* Dan Rosen, Butaman *for Breakfast and Other Morsels of Legal Reasoning,* in Legal Education in Asia: Globalization, change and contexts, *supra* note 60, at 200.

90. Kashiwagi, *supra* note 60, at 192.

91. Based on bar exam pass rates, entrance exam statistics, and reaching or falling short of authorized enrollment. *See* Editorial, *Law School and Bar Exam Reform,* The Japan Times, Oct. 3, 2013, http://www.japantimes.co.jp/opinion/2013/10/03/editorials/law-school-and-bar-exam-reform/#.V7VqVGXUkoQ.

have given up; the number of law schools has fallen to about fifty. And not surprisingly, those that are doing well are, by and large, those that were on top in the old system: big-name institutions in large cities.

Lawyers who come through the law school system certainly enter the profession with more, and better, training than their predecessors. Faculty members are working hard to teach well.[92] However, the improvement in the training of lawyers is far less profound than what was envisioned. Beyond that, as we have seen, many students spend an abbreviated time in law school, and some would-be lawyers don't even bother. The overall number of attorneys has increased, and zero-one regions have gotten a few of them. But these improvements are marginal.

This story has no shortage of victims, students and educational institutions among them. The greatest loser of all, though, is the public, which has been deprived of the many benefits envisioned by the Reform Council. It was promised a tale of reform and progress. Instead it got a story of relapse and regression.[93]

92. *See* Kashiwagi, *supra* note 60, at 190-91.

93. Writing in a magazine for lawyers, Professor Kashiwagi recently compared Japan's legal education with its medical education and with legal education in Korea. He concluded that Japanese legal education suffers from a lack of clarity on desirable outcomes and that the country needs to decide what kind of legal society it wants. Noboru Kashiwagi, *Nihon no Ishi Yōsei Kyōiku to Hōsō Yōsei Kyōiku oyobi Kankoku no Hōsō Yōsei* (Japan's Medical Education Training and its Legal Education Training as Well as South Korea's Legal Education Training), NBL (New Business Law), No. 1081 (2016) at 22, 28.