

## **Changes in Japanese Legal Education**

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## ABHANDLUNGEN / ARTICLES

### Changes in Japanese Legal Education

*Andrew R. J. Watson\**

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#### I. INTRODUCTION

This paper endeavours to explain the most important development in Japanese legal education for sixty years – the introduction, in 2004, of graduate law schools, with re-

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semblances to those in the United States. They are attended by students who wish to take the National Bar Examination (NLE). Those who pass this examination are permitted to attend a one year course of study, at the Supreme Court's elite Legal Training and Research Institute (LTRI) in Tōkyō, successful completion of which is required to join the legal profession as a judge, prosecutor or attorney.

At the beginning of the last decade the Japanese government saw a reformed legal system as key to social ordering and resolving disputes, which were expected to rise as the country moved away from organisation by central administrative planning and guidance towards the free market, individualism, personal autonomy, and fuller participation in globalisation. Vital to this was the creation of graduate law schools intended to increase both the size and capabilities of the legal profession. A greater role for law and lawyers ran counter to the views of traditional writers, who maintained Japanese did not like law, with its universalist values, and resorted to it little, favouring instead time honoured particularistic methods of conflict resolution, for reasons largely grounded in culture. Others asserted Japanese legal culture, marked by low rates of litigation, was produced by high costs, inadequate access to lawyers, they are often especially scarce in rural areas, delays, weak interlocutory and enforcement procedures and a poorly funded legal aid scheme: Moreover, this was not just tolerated but engineered by a government and powerful civil service, determined to avoid consumption of a greater proportion of national wealth by civil litigation, and supported by business, to limit the chances of interference in its activities by ordinary people.

While premature to assess the overall effect on Japanese legal culture and wider society of the very substantial changes, with their origins in the 2001 Report of the Judicial Reform Council (JRC), brought about by the government, legal profession education has certainly changed. The world in which annually tens of thousands of candidates sat the National Legal Examination, and on average two per cent passed, has vanished.

Although capable of teaching a deeper intellectual, critical and more reflective understanding of law and many useful lawyers' skills, law schools, which replaced the old system, have been hindered in their ability to do so by a decision taken in 2003, which permitted many more to be created than was originally anticipated and subsequently by government refusal to allow the number of their graduates who pass the new National Legal Examination to rise to that initially projected because, contrary to predictions, demand for legal services did not increase. These factors combined to produce an annually decreasing pass rate. Understandable pre-occupation by students, and their teachers, with success in the National Legal Examination led to concentration at many law schools only on examinable subjects and marginalisation of those not but nonetheless beneficial. Also features from the previous system appeared including students attending cram schools for exam techniques and even absenting themselves from classes in order to do so.

Because of considerable anxiety about passing the National Legal Examination, substantial expense and uncertain job and salary prospects, uniting to form what one profes-

sor described “as a process of suffering,” student enrolment at many schools, especially those whose graduates perform badly in the NLE, sharply reduced.

Most law schools have suffered reductions in the amount of subsidy they receive for their courses from the government. Of 74 law schools, 23 have stopped accepting new students and many of them are expected to close when existing students have completed their courses. More are anticipated to follow.

Substantial reductions in places available and in students to occupy them – many law schools now report they are undersubscribed – may well lead to fewer taking the National Legal Examination and hence a rise in the success rate, notwithstanding the capping of the number who may pass to 1,500. Freed from intense competition with each other and from the enormous exam anxiety of their students, the remaining law schools may be able to deliver the deeper and broader legal education recommended over a decade ago by the Judicial Reform Council: Certainly this is the optimistic prediction of some law school professors.

Law schools are much exercised about the Preliminary Examination, introduced in 2011, successful candidates in which are allowed to take the National Legal Examination without attending law school. Critics say this exam, intended for people unable to afford law school but who wanted to become lawyers, or those who had practical legal experience, has become a shortcut used by undergraduate law students and law school students to take the NLE. If numbers passing this examination continue to rise it is feared it will become a grave threat to the existence of law schools.

These and other matters are considered in this article which: explains features of the previous system of legal education; presents criticisms that were made of it; describes, in the context of wider social and economic reform, the origins of the Judicial Reform Council and its key recommendations including the creation of law schools; recounts their opening and the preparation beforehand; gives an account of the factors which have obstructed achievement of their goals; sets out how law schools, students and commentators responded; lists the very real achievements of law schools; offers some concluding thoughts about their future and seeks to put them in an international context.

## II. WHAT EXISTED PREVIOUSLY

Before the introduction of graduate law schools (*hōka daigaku-in*) in 2004, and the new form of National Legal Examination in 2006, those who joined the Japanese legal profession, as attorneys,<sup>1</sup> prosecutors or judges, usually obtained a law degree at a universi-

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1 Most tasks of an attorney are performed in court, S.S. MCKENNA, Proposal for Judicial Reform in Japan: An Overview, in: *Asian-Pacific Law and Policy Journal* 2-2 (2001) 122, 145. They have been likened, loosely, to barristers in the United Kingdom, although attorneys have direct access to clients. Attorneys practice either alone, about one third of the total, or with a small number of others in shared offices, though some large firms, usually in-

ty, studied to pass the old National Legal Examination, often with the help of cram schools, and, after succeeding, entered the Legal Training and Research Institute in Tōkyō, where, as apprentices, they received practical legal training, especially in litigation. Entry to the legal profession followed passing a final examination there.

### 1. *The National Legal Examination*

Reports on Japanese legal education often concentrated on the former National Legal Examination (*shihō shiken*), which was taken for the final time in 2011, presided over, like its replacement, by the National Legal Examination Administration Committee. Passing this rigorous and highly competitive examination was necessary to enter the Tōkyō based National Legal Training and Research Institute, which, since after the Second World War, exists as an agency of the Supreme Court of Japan, where unified instruction is given to equip students for careers as either prosecutors, attorneys or judges.<sup>2</sup> Two striking features of this annual exam, not unreasonably described as the most difficult in the world, and compared in this respect to the *Ka Kyo* [auf Chinesisch *kējū*] examination for selecting bureaucrats in ancient Confucian China, were the number of

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volved in international transactions, do exist in Tōkyō and Ōsaka. There are eight firms with 51 to 100 attorneys and nine with 101 or more, see JAPAN FEDERATION OF BAR ASSOCIATIONS (JFBA), White Paper on Attorneys (2014) 26–27. A marked clustering exists of attorneys in the large urban areas, in contrast to an almost, or complete, absence in some rural areas, *id.*, 41. In Japan, much of the work that would be done by solicitors in Britain is carried out by members of paralegal professions. Individual professional bodies, under the jurisdiction of central government ministries, unlike attorneys who are self-governing, regulate persons who draft and register documents about land and property and those who advise and act on clients' behalf in areas such as tax, patents, employment and social security, H. ODA, Japanese Law (Oxford 1999) Chapter 5, and C.P.A. JONES, A guide to navigating Japan's exotic legal-eagle menagerie, in: Japan Times, 9 October 2012. For an earlier, but still useful comparative discussion of the various types of legal professionals in Japan see M. KATŌ, The role of Law and Lawyers in Japan and the United States, in: BYU L. Rev. 1987 (1987) 627. Further for statistics on the size of the paralegal professions, see JFBA, this note, 25. Although attorneys traditionally concentrate on litigation, they increasingly undertake other legal services, competing with those provided by the paralegal professions, such as judicial scriveners, in, for example, debt consolidation and reduction, demand for which has grown. Also, many companies, central and local government employ law graduates, sometimes organised in legal departments, to advise on relevant law. However, none of these people, or those belonging to the paralegal professions, are considered to be members of the legal profession.

- 2 Examinations were held for judges and prosecutions and separately for attorneys until after the Second World War. Graduates of the imperial universities were not required to pass the bar examinations before the 1920s. After passing the qualifying examination, intending judges and prosecutors had to complete a period of apprenticeship administered by the Ministry of Justice. Apprenticeship training, organised by bar associations, was established for attorneys in 1933, but never fully put into effect in the pre-war and war years, R. W. RABINOWITZ, The Historical Development of the Japanese Bar, in: Harv. L. Rev. 70 (1956) 61, 70, 75–77.

candidates and the very low success rate. Whilst tens of thousands took it, fewer than three per cent ever passed. Despite this, the number of candidates increased. Just over 20,000 took the examination in 1990.<sup>3</sup> In 2002 a record 45,622 people applied to attempt the National Legal Examination, up 17.2 per cent from a year earlier and exceeded 40,000 for the first time. According to the Administering Committee, there were 35,637 men and 9,985 women applicants. The percentage of women – 21.88 per cent – was the most ever. The number of successful candidates was set, as it is now under the new National Legal Examination, by the Administering Committee which is responsible to the Ministry of Justice. Therefore, by this means, the government ultimately controls the size of the legal profession. In 1964, representing an increase over earlier years, 500 exam entrants were allowed to pass. This figure remained nearly unchanged until 1990. From 1991, passes gradually increased to 1,000 in 1999.<sup>4</sup> The level was raised to 1200 in 2002 and up again to 1,500 in 2004.<sup>5</sup>

Of those passing the former National Legal Examination, the average age was 28 and most succeeded on their sixth or seventh attempt. Thousands never passed: Many hearts were broken and purses emptied. No restriction existed on the number of times a candidate could attempt the examination. After numerous tries, those who abandon their quest, in recognition that they would never pass, experienced difficulty finding suitable employment. This is because they were generally older than their competitors in an increasingly tight job market where young university graduates (26 or younger) were (and still are) favoured. Many faced an acute dilemma. Should they try one more time in the hope of success, risking further handicap in the severely competitive job market and additional financial strain in the event of failure, or should they cut their losses by seeking what employment might be available? Like many other professional entry examinations in Japan, effective preparation necessitated attendance at a preparatory school,<sup>6</sup> in effect a “crammer,” where tuition, which averaged one million Yen (approximately £5,250), was far from cheap.<sup>7</sup> Most students had to rely solely on support from their families. As well as those who studied full-time for the examination, appreciable numbers of people who had already embarked on a career studied part-time. Working in the legal department of a company or local authority, law librarianship and employment as

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3 S. MIYAZAWA, *The Politics of Judicial Reform in Japan: The Rule of Law at Last?*, in: *Asian-Pacific Law and Policy Journal* 2-2 (2001) 89, 90.

4 JUDICIAL REFORM COUNCIL (JRC), *Recommendations of the Judicial Reform Council for a Justice System to Support Japan in the 21<sup>st</sup> Century* (2001) 42.

5 For an explanation why numbers of successful candidates rose over these decades, see D. FOOTE, *The Trials and Tribulations of Japan's Legal Education Reforms*, in: *Hastings Int'l & Comp. L. Rev.* 36 (2013) 369, 378–383, 412–413.

6 Ken'ichi Yamaguchi, an attorney practising in Ōsaka, explained that before crammers (*yobikō*) became prevalent in the 1980s, voluntary study groups, formed by those simultaneously studying University degree courses and the *shihō shiken*, were an important means of preparation. Interview held on 6 July 2015.

7 A. WATSON, *Training to be a lawyer in Japan*, in: *The Law Teacher* 29 (1995) 64, 67.

court officials, were popular jobs for those who wished one day to become lawyers, as was membership of one of the paralegal professions, whose entrance examinations, though difficult, were less demanding. In one sense they were fortunate in having secured work, giving them social status and financial stability, yet in another respect disadvantaged, because they had less time to devote to the intensive study required to pass the National Legal Examination.

## 2. *Why Did So Many Try?*

It might be of some value to pause for a moment and consider why so many people attempted to enter the legal profession in spite of formidable obstacles. Attorneys were well remunerated in the 1980s and 1990s, although on average they did not receive greatly more than persons who had obtained lifetime employment (“salary men” and “salary women”) with Japanese companies. Judges and public prosecutors were also paid comfortably. In a society where income was amongst the most equally distributed in the capitalist world, status, particularly based on having professional and technical skills, tended to separate people far more than wealth.<sup>8</sup> Much stature attached to being a member of the legal profession, and most of all to judges.

Many hopefuls, however, had more than simply a desire to obtain an interesting and well paid position with high status. The independence enjoyed by attorneys, the majority of whom work in small partnerships or on their own, was a major further attraction. Their freedom was contrasted with the restrictions and controls involved in employment with companies both inside and outside the work place. Increases in those permitted to pass, though tiny in relation to the number of candidates, were put forward as helping to explain why takers rose from 1990 to 2004. A further reason offered was a persistently sluggish economy, motivating people to seek further qualifications, to secure, or safeguard, their positions.<sup>9</sup>

## 3. *The National Legal Examination: A Series of Tests*

The National Legal Examination consisted of a series of increasingly difficult tests. Common to all but the first was memorising law. Unlike professional legal education in Britain, moves were not made to give students materials in examinations and to test their ability to apply law, rather than pure recollection of it. The majority of examinees were law graduates.

The first in the series of tests was a paper to examine candidates’ general academic knowledge. University graduates with a degree in any subject were exempt. The second stage was a multiple choice test of 60 questions (a selection had to be made from five possible answers), equally divided between constitutional, civil and criminal law. The test lasted three and a half hours. Up to 15 per cent of candidates succeeded.

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8 Y. SUGIMOTO, *An Introduction to Japanese Society* (Cambridge 1997).

9 Japan Times, 4 May 2002.

The third in the series comprised seven two-hour essay papers. Four compulsory papers respectively covered constitutional, civil, criminal and commercial law. For the fifth paper candidates chose between civil or criminal procedure. Concerning the sixth essay paper candidates could select the subject not taken for the fifth paper or choose between administrative, labour, public, international and private law and criminology. The seventh paper examined a non-legal subject. Examinees could select from either political economy, public finance, accounting, psychology, economics or social policy. Approximately 10 per cent of the survivors from the second stage passed the third. The fourth and last stage involved oral tests. Subjects taken by candidates in the third stage were examined by experts in their respective fields. Oral tests lasted 20 minutes each and took place on consecutive days. About 90 per cent of candidates passed this final stage.

### III. CRITICISMS OF LEGAL EDUCATION

Over the last one and a half decades or so of the 20<sup>th</sup> Century, legal education in Japan attracted a measure of criticism. Much of this was directed towards the National Legal Examination with its low pass rate, in the final analysis fixed by the Ministry of Justice, effectively limiting the size of the legal profession.<sup>10</sup>

Exposure of many thousands to acute exam stress, uncertainty and financial hardship received adverse comment. Young talent was seen as being squandered and many lives unnecessary blighted. According to critics, years of attendance at cram schools, and arduous single minded lonely study, both usually necessary to pass, deprived most of any significant intellectual background outside law, or indeed of any meaningful social experience, to the great detriment of the legal profession and to the society in which it functioned.<sup>11</sup> Any broadening effect of an education at the National Legal Training and Research Institute, with its spectrum of non-compulsory lectures on literature, art, political science, economics and natural sciences, was considered marginal at best. The legal background of those who entered the Institute was judged to be shallow. In order to pass the entrance examination just six subjects were necessary: constitutional law; civil law; commercial law; criminal law; civil procedure and criminal procedure. As the main emphasis of exam preparation was on patterns of questions and answers in previous papers, it was argued this approach hardly led to an analytically based thorough knowledge even in these subjects. Moreover entrants were seen as lacking in critical and reflective study of law, the judicial system and the legal profession. Regarding practical training at the Institute, once 24 months but reduced to 18 months in 1999, six months in total – divided into the two three month periods at the beginning and the end of the training – was spent in classrooms at the Institute. Critics saw this as too short a period to build an ade-

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10 WATSON, *supra* note 7, 66 f.; A. WATSON, Training for the Legal Profession at the Legal Training and Research Centre in Tokyo, in: Justice of the Peace 162 (1998) 299 f.

11 MIYAZAWA, *supra* note 3, 111.

quately broad and critical comprehension of the law. Further, they pointed to careful selection of teachers at the Institute who, they asserted, only taught orthodox legal doctrines and practice skills acceptable to it. A combination of training at the Institute, appointment of assistant judges following training, rather than after gaining substantial experience as attorneys or prosecutors, and administrative control over judges throughout their careers resulted in the extreme legal positivism and passivity which they claimed to be displayed by most judges in Japan. To counteract this a number of academics<sup>12</sup> called for the replacement of training at the Institute by a decentralised system of professional legal education in universities, where faculty members, who enjoy both academic freedom and independence from the judiciary, could present a wide range of differing views to future lawyers.

Given that most apprentices would become attorneys, the months of field training spent with law firms were criticised as too brief and could never guarantee the quality of lawyers to the public.

In its defence, the Institute maintained that the depth and breadth of training given to apprentices in the classroom and on placement suitably equipped them for practice as attorneys, public prosecutors, and assistant judges. It also said, with some justification, that the facilities available at the Institute and levels of co-ordination between teachers and placement supervisors were amongst the best in the world.

#### IV. CALLS FOR FUNDAMENTAL REFORMS OF THE LEGAL SYSTEM

An important report published in 1998 by Keidanren, the highly influential Japan Business Federation, concluded that as Japan changes from an economy and society dependent on administrative control to a society with a free and fair market, companies and individuals would be required to behave according to principles of “self-responsibility” and “transparency.” Reforming the legal system, considered to lack sufficient personnel and other capabilities for effective use by the public and companies,<sup>13</sup> was proposed in order to make it a major part of the economic and social infrastructure. To accomplish this a series of specific recommendations were advocated, including increasing the number of judges and establishing graduate professional law schools. Also in 1998, after inviting views from a wide variety of sources including Keidanren, the Japanese Federation of Bar Associations and several prominent law professors, the Special Committee on The Judicial System of the Liberal Democratic Party (LDP)<sup>14</sup> produced a report enti-

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12 MIYAZAWA, *supra* note 3, 112.

13 During the 1980's and 1990's contracts became much more commonly used between companies and there was also a rise in litigation, M. WEST, Making Lawyers in Japan, in: *Vanderbilt Law Review* 60 (2007) 439, 440.

14 The LDP is the then ruling conservative party, which dominated government since the 1950s. It was not displaced until the 2009 General Election by the centre left Democratic Party of Japan. The LDP was returned to power in December 2012.

tled “Firm Guidelines for the Judicial System of the 21<sup>st</sup> Century.” It made a number of similar and overlapping proposals to those in the Keidanren Report with the objectives of invigorating the legal system to resolve differences between interests, in a less government-directed, more market-driven society, and providing more protection for citizens. Amongst these were that both the quality and quantity of the legal profession should be increased and that, in order to enter it, study at post graduate law schools should be considered. Both reports expressed doubts that the legal profession could cope adequately with the complicated challenges of economic globalisation. In a remarkable shift, business groups and LDP politicians, traditionally wedded to law playing a subordinate role in society, principally justified by distinctive aspects of Japanese culture, now advocated a greater role for the rule of law and with it an enlarged legal profession: In short they were asking for nothing less than *a new orthodoxy*.<sup>15</sup>

### 1. *The Judicial Reform Council*

In 1999, in the wake of the influential reports by Keidanren and the LDP Special Committee on the Judicial System, the National Diet, in which the LDP had a majority in both Houses, passed a law creating the Judicial Reform Council (JRC) for, as Article 2 set out, the

“purposes of clarifying the role to be played by justice in Japanese society in the 21<sup>st</sup> Century and examining and deliberating fundamental measures necessary for the realisation of a justice system that is easy for people to utilise, participation by 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.”

The thirteen person Council, which first sat in July, was chaired by Kōji Satō, a University professor, expert in constitutional law and known supporter of professional law schools. It consisted of three law professors, three members of the legal profession, two business people, one representative each from the trade unions and consumer groups, the President of the Association of Private Universities and Colleges, the President of the Japan Foundation (a charity) and a writer. In December of the same year the Council set out a list of matters it would discuss. These included:

- Expanding the number of legal professionals;
- Revamping legal education, including the possibility of establishing US-style law schools;
- Encouraging practising lawyers to become judges;
- Removing impediments to court use; speeding up trials;
- The rights of criminal suspects; and
- Lay participation in the judicial system through juries or a mixed court.

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15 MIYAZAWA, *supra* note 3, 103.

To gather information for its deliberations, which led first to an interim report in November 2000 and then a final report in June 2001, the JRC: invited opinions from the public and relevant bodies; held four public meetings; conducted large-scale surveys; made fact-finding inspection visits to courts, public prosecutors' offices and bar associations, where it also engaged in on-the-spot interviews; made research visits to the United States, the United Kingdom, Germany and France; and exchanged opinions with persons concerned in the administration of justice in those countries.<sup>16</sup> Reform of the legal system, and with it legal education, had emerged from almost obscurity to national centre stage.

## 2. *The Judicial Reform Council's Report*

The Judicial Reform Council submitted its final Report to the Prime Minister, Mr Koizumi, in June 2001. Mr Koizumi expressed the determination of his Cabinet to do its utmost to implement a massive set of proposals for root and branch reform of the legal system, which he saw as essential to promote structural reform of society and the economy. A task force was set up to work out details before precise legislation, with a target date of 2004, was to be introduced.

The report (Chapter 1) outlined "three pillars of reform:"

- Making the justice system easier to use, simpler to understand and more reliable;
- Large scale qualitative and quantitative improvements in the legal profession, so that it can respond to the legal demands of society and globalisation; and
- Participation of ordinary citizens in the judicial system to establish "a popular base" and enhance public trust.

In Chapter 3 of the Report, a substantial increase in the size of the legal profession was recommended. This included at least 500 more judges and 1,000 additional prosecutors over the next decade to deal more efficiently and swiftly with cases. They were also seen as very necessary because of planned: preparatory proceedings in criminal and civil cases; greater observance of the principle of continuous, rather than adjourned, criminal trials; and introduction, in serious criminal cases, of mixed courts, on broadly European continental lines, in which judges and lay people sit together; and a projected growth in cases. Lack of prosecutors was noted in the Report. Indeed, expansion in numbers of candidates allowed to pass the National Legal Examination in the 1990s was seen by some observers as mainly an attempt to make good shortfalls that had been pressing for some time.<sup>17</sup> The Report also suggested measures to allow more lawyers and legal academics to become judges, few did so, and to encourage assistant judges to undertake working experience as legal professionals outside court before becoming fully qualified judges. Overall the Council recommended that the number of actively practising legal professionals should rise from about 22,000, at the time of the Report's submission, to a

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<sup>16</sup> JRC, *supra* note 4, Chapter 1.

<sup>17</sup> MIYAZAWA, *supra* note 3, 92.

minimum of 50,000 by 2018; the principal recommended increase, therefore, in attorneys. This was to be accomplished by increasing the number of new entrants to 3,000 annually. As a start, it was said that successful candidates for the existing National Legal Examination should be raised to 1,200 in 2002 and to 1,500 by 2004. The aim should be to have 3,000 candidates passing a national bar examination around 2010, when a full switch to a new system of professional law schools (*below*) should occur. In explaining the requirement for a larger legal profession, the Council<sup>18</sup> referred to: economic and financial globalisation; international human rights questions; environmental issues; trans-national crimes; increases in litigation requiring specialised knowledge in such fields as intellectual property, medical malpractice and labour disputes; the necessity of correcting the scarceness of lawyers in many rural areas as a precondition for realising “the rule of law” throughout Japan; and the need for more lawyers to be what it described as “doctors for peoples social lives” amidst changes in society and the economy. According to the Council, if future demand exceeded 3,000 new members each year then that figure should not be regarded as a maximum.<sup>19</sup>

### 3. *Developing New Legal Training*

Boldly, the Council recommended that a new legal training system should not focus only on a “single point” of selection through the National Legal Examination. Instead, legal education, the National Legal Examination and apprenticeship should be connected as a “process.” Key to this was establishing law schools, graduate professional schools providing education principally for the legal profession, which would start to accept students in April 2003.

The JRC concluded that the existing National Legal Training and Research Institute and university law faculties could not produce a legal profession sufficiently rich in both quality and quantity to meet the needs of Japanese society in the 21<sup>st</sup> century. Less than flatteringly, the Council considered that conventional legal education at universities had not necessarily been adequate as either basic liberal arts education or specialised legal education. Further it was difficult to say that law faculties, with their concentration on academia and research and almost complete lack of clinical and practical training, had played a proper part in fostering the legal profession as a profession. The gap between them and legal practice was certainly highlighted unfavourably in the Report.

“*Daigaku banare,*” the tendency of students intending to take the National Legal Examination to ignore university classes and only attend those at their crammer, was criti-

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18 JRC, *supra* note 4, 41 f.

19 Adherence to a minimum of 3,000 successful National Legal Examination candidates each year would by 2018 have produced a similar number of lawyers per head of population to that of France in 1997, a comparison cited by the Judicial Reform Council. For statistics comparing the number of people per lawyer between Japan, the United States, England and Wales, Germany and France during the period from 2007 and to 2014 see JFBA, *supra* note 1, 19.

cised as seriously adversely affecting the quality of those becoming legal professionals. The nature of the National Legal Examination, generally, was seen as having led to an unhelpful pre-occupation by too many who enter the National Legal Training and Research Institution with exam passing techniques.

#### 4. *Underpinning Educational Philosophy*

The JRC set out what it saw as an essential educational philosophy for law schools in their task of establishing the “human base” necessary for the justice system in the 21<sup>st</sup> century.<sup>20</sup> Students must obtain specialised knowledge, extend their abilities to think and express themselves critically, develop powers of legal and factual analysis and solve problems practically.

Adopting a highly ethical position, the JRC said law students ought to acquire qualities to take direct responsibility for the “rule of law” in society, act as “doctors for people’s social lives” and behave “as persons with kind hearts who can deeply sympathise with the happiness and sorrows of people.” Law students should be presented with “cutting-edge” legal areas; given a broad knowledge of various social problems; encouraged to have a sense of responsibility and morals as legal professionals, based on “their contemplation of how human beings and society should be and on their own observations and experiences;” and offered opportunities to contribute to society.

It is possible that in espousing such a philosophy of learning the JRC was, at least in part, trying to allay criticism that professional law schools would become no more than trade schools where little concern for ethics and right conduct would lead to a quite rapid deterioration in the standards of the legal profession.

#### 5. *Law Schools: Key Points*

Moving from educational philosophy to more concrete details, the JRC called for the creation of law schools, under the School Education Law, affiliated to existing universities or linked to independent institutions, such as bar associations and local public bodies. It was envisaged that some universities would pool their efforts and form joint law schools. In setting up law schools, the JRC made it clear that it was incumbent on universities to change themselves from their traditional role of research and study to one truly centred on the professional education of students. Productive research between law schools and post-graduate departments of law faculties was, however, wholly welcomed.<sup>21</sup>

It was recommended that the standard training term should be three years, while students considered by the law school to have an adequate basic legal knowledge, whether or not they were law faculty graduates, should be allowed to complete the course in two years.

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20 JRC, *supra* note 4, 46.

21 JRC, *supra* note 4, 48.

In order to boost expertise in the legal profession it was proposed people with academic backgrounds other than law such as in economics, science, mathematics and medicine be admitted to law schools as should people with working experience.

The JRC suggested that students be chosen not only on the basis of results in admission examinations but also on their grades at undergraduate schools and on other considerations, including work history. According to the Council, how these factors were weighed should be left to the independent judgement of each law school.

Stressing applicants should be selected fairly and openly, the JRC recommended that law schools adopt an aptitude test, designed not to measure applicants' legal knowledge, but to assess judgement, analytical ability, critical thought and expression. This test should be taken by all applicants whether they had studied law or not. Those who had and were applying to complete the course in two years should also take an examination in law. The JRC thought it was right that law schools should operate common aptitude and legal knowledge tests. Whether a short essay or interview should be additionally required for admission, or how the two tests should be weighted to produce a combined score, could be left to each law school.

The Report said that law schools should combine legal theory and education in legal practice. Teachers with a research background and those whose lay in practice ("practitioner-teachers") would, therefore, need to work together in devising courses and producing materials.

Whilst lectures may have a limited contribution, the Report urged the basic approach should be small group education. The JRC emphasised law school classes, preferably organised in semesters, must not be "one-way" but should be "bi-directional," involving "give and take" between teachers and students, and "multi-directional," with interaction amongst students. This represented a radical departure from traditional law teaching at university where student passivity is often a hallmark. Practical training at the National Legal Training and Research Institute, however, had increasingly used student orientated learning methods. Competition between law schools was considered by the Council to be an important factor in driving up standards of teaching and the quality of courses.

National guidelines for pupil-teacher ratios and for a percentage of practitioner-teachers on each course were urged. To help obtain enough of the latter, given the smallness of the legal profession, the Report called for relaxation of laws preventing judges and prosecutors working outside their jobs. Close co-operation between all three branches of the legal profession was seen as an absolute necessity in securing the numbers of practitioners that would be constantly required.

Strict testing of students' work was considered vital. The Report anticipated that after they had completed a law school education, been awarded a post-graduate qualification, and with this certified as eligible to enter, some 70 to 80 per cent of students would pass the new National Legal Examination; the next stage in the "process" of qualifying.

Aware of the acute geographical imbalance of attorneys in Japan, essentially they are clustered in the large urban areas, and the consequent problems of accessing legal ser-

vices in rural regions, the Report saw it as crucial that law schools were properly distributed throughout the country.<sup>22</sup> According to the JRC, in the interests of fairness, openness and diversity, efforts should be made to allow people who are working to take the course through evening schools and distance learning, although it was accepted that more work on the practicalities of this was needed.

Regarding the cost of introducing and operating a law school system, the Report believed it was correct, notwithstanding restraints in expenditure, that proper public support should be available because of the importance to society of improving the human base of the justice system. Concerning students' costs of attending law schools, the JRC said that, to avoid hardship, scholarships, educational loans and tuition fee exemption should be developed.

The JRC called for the creation of a third party accreditation body composed of informed lay people, as well as those involved in the legal profession and law schools, to ensure: fairness, openness and diversity in student selection; quality of courses at law schools; rigour in evaluating grades and certification as competent to take the new national legal examination.

#### 6. *The New National Legal Examination*

Described as the next stage in the "process" of qualification for membership of the legal profession, the Council recommended introducing a new National Legal Examination which would take law school education into account. The purpose of this new examination would be to test whether candidates had enough legal knowledge and adequate facility in thought, analysis and expression, to become apprentices, the final part of training.

The JRC did not seek to prescribe the form this examination may take. Nonetheless it made the suggestion that the examination could be conducted over a long period of time during which students were presented with a complex created case, cutting across traditional subject areas, which required research, drafting of documents, knowledge of procedure and representation in a mock court.<sup>23</sup> The content of the new examination was to be decided by the National Legal Examination Administration Commission, which administered the existing National Legal Examination.

It was recommended by the Report that candidates who had completed courses at accredited law schools, and hence qualified to take it, should be limited in how many

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22 The JRC heard evidence that 70 per cent of all practising attorneys were members of bar associations in Tōkyō, Yokohama, Ōsaka and Nagoya while 72 of the 253 court districts in Japan had either none or just one. They were described as "zero-one regions" in its report, FOOTE, *supra* note 5, 391.

23 The Council recommended that oral submissions form a greater part of proceedings in Japanese courts and written ones less. It proposed that serious criminal matters should be heard by mixed panels of judges and lay people chosen at random, JRC, *supra* note 4, Chapter IV. This system was introduced on 1 May 2009. Consequently, it anticipated that skills in advocacy would be thoroughly examined.

times they could enter the new bar examination. The JRC suggested they be allowed three attempts. This contrasted with the absence of any restriction on the number of times a candidate could take the old National Legal Examination which led to the number of entrants being swelled by entrants with many failures behind them. Interestingly, the JRC advanced that once transitional arrangements, outlined *below*, were completed, qualification of candidacy to take the new examination should be awarded to persons who, for a number of reasons, including financial or work, had not attended an accredited law school but who had passed a preliminary exam (*yobi shiken*) testing basic knowledge and comprehension of a range of law and procedure. This recommendation seemed rather at odds with the Report's emphasis on the importance of attending law schools for qualification as a member of the legal profession.<sup>24</sup>

The Council called for the new national bar examination to be in place by 2005, to test the first candidates to finish law schools which it said should be set up in 2003.<sup>25</sup> As a transitional step the JRC called for the current National Legal Examination to continue for a period of about five years, so as to avoid undue hardship for candidates who had been preparing for it. Also as a transitional arrangement, the Council proposed that in 2004 the number of successful candidates should be raised to 1,500 per year.

#### 7. *The Need for a Co-ordinated Approach*

To ensure a smooth introduction of the new legal training scheme, the Council called for effective co-ordination between relevant government departments and all interested parties. It recommended work to promptly begin on setting standards to be met by bodies wishing to establish law schools, creating a third party accreditation body to oversee them when functioning, designing the new National Legal Examination and planning apprenticeship afterwards.

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24 It has been suggested that this proposal represented a compromise with, and possibly a triumph for, those who did not want a law school system, see C.P.A. JONES, Japan's New Law Schools: The Story So Far, in: *Journal of Japanese Law* 27 (2009) 248, 254 and Y. KAWABATA, The Reform of Legal Education and Training in Japan: Problems and Prospects, in: *S. Tex. L. Rev.* 43 (2002) 419, 430–431, who describes pressure from the Liberal Democratic Party for an alternative route to take the National Legal Examination. Further see S. MIYAZAWA, Law Reform, Lawyers, Access to Justice, in: McAlinn (ed.), *Japanese Business Law* (Austin u.a. 2007) 65 f., who describes the prominence of the *yobi shiken* in JRC discussions about the reform of education and training of legal professionals. A former assistant professor at Kyōto University Law School and Dōshisha University Law School, and now prosecutor in Ōsaka, interviewed on 12 July 2015, considered the late 1990s and early 2000s spirit, or "tide", of sweeping away obstacles to economic activity contributed to the proposal for the preliminary exam and its acceptance.

25 In the event, this timetable slipped by one year.

## V. TOWARDS A NEW SYSTEM

As mentioned earlier, the Japanese Cabinet accepted the Judicial Reform Council's recommendations in its Final Report, submitted in 2001, for a thorough overhaul of the legal system. Concerning reforms of legal education, a target of 2004, rather than 2003, as proposed by the JRC, was established for the opening of graduate professional law schools.

By the end of 2001 an education ministry advisory panel, the National Educational Advisory Council, had compiled guidelines for setting up law schools.<sup>26</sup> These functioned as *de facto* legal norms. In keeping with the Council's Report, the standard period of study was to be three years, but those who had studied law previously and able to demonstrate sufficient knowledge of it, could finish in two years. The panel stipulated 12 as the minimum number of lecturers a law school should provide and recommended that there be at least one lecturer per 15 students. At least 20 per cent of lecturers ("practitioner-lecturers" in the JRC Report) were required to be, or have been, members of the legal profession. Because it was foreseen that universities, especially those away from densely populated urban areas, would experience difficulties in recruiting enough practitioner-lecturers, law schools across the country were to be allowed to "loan" judges and prosecutors either full time for a fixed term or on a part-time basis. Their wages would be paid by the law schools, but where less than their previous earnings, as would frequently be the case, they would be made up by the government.<sup>27</sup>

Under National Educational Advisory Council guidelines the law school curriculum was divided into four categories: basic legal subjects, basic practical subjects, legal theory and related subjects, and advanced subjects. Basic legal subjects include public law (constitutional law and administrative law), civil law (civil law, commercial law and civil procedural law), and criminal law (criminal law and criminal procedural law). Basic practical subjects include legal ethics, legal research, legal writing, moot court, advocacy, clinic, and externship. Legal theory and related subjects comprise jurisprudence, foreign law, politics, and law and economics. Advanced subjects include labour law, economic law, tax law, intellectual property law, international transaction law, and environmental law. In addition to subjects, the National Educational Advisory Council also established teaching guidelines. Teachers should combine lectures, seminars, research and report projects, and learning should be interactive and multi-dimensional. Additionally, it was stipulated that law school classes should be small and taught in classes of less than 50. The use of the case method or Socratic Method was clearly anticipated. Each instructor was required to publish the course syllabus and grading policy and was advised to take class attendance and class participation into consideration. Further, it was set out that in order to graduate students must earn 93 total credits including 54 credits in basic legal subjects; 10 credits in public law (constitutional law and adminis-

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26 Japan Times, 28 December 2001; see also FOOTE, *supra* note 5, 397.

27 Mainichi Shinbun, 7 December 2002.

trative law); 32 credits in civil law (civil law, commercial law, civil procedure law) and 12 credits in criminal law (criminal law and criminal procedure law). Professional ethics is also compulsory. In addition, law schools should require at least 6 credits in basic practical subjects, 4 credits of legal theory and related subjects, and 33 credits in selective subjects. Law schools must also limit students to 36 credits per year (44 credits for the senior year).

The National Diet passed three Acts concerning legal education at the end of 2002.<sup>28</sup> The first of these was framework legislation to institute law schools by 2004, set up a National Legal Examination and link them to apprenticeship, the last stage in the process of qualification. The second Act, closely following the JRC's recommendations, commented on *earlier*, provided for the introduction of a preliminary examination to confer candidacy to take the new national bar examination on persons who have not attended graduate professional law school. The "preliminary exam" (*yobi shiken*) would commence in 2011, after the current National Legal Examination ceased in 2010. This Act also limited the number of times a person could take the new National Legal Examination to three in five years. Significantly the Act shortened legal apprenticeships from eighteen to twelve months. The third Act established third party accreditation of courses and standards by which students are assessed.

In short the foundations thus laid for a new structure of legal education, greatly matched the Council's plans.

### *1. Law School Applications and the Run-Up to Opening*

The Ministry of Education announced a deadline of the end of June, 2003 for applications to open graduate professional law schools the following April. Some 72 were received.<sup>29</sup> Two applications were for universities run by local governments, 20 were from national universities and 50 from private bodies, the great majority of these were existing private universities.<sup>30</sup> Schools planned to enrol between 30 and 300 students annually. Waseda University in Tōkyō sought approval to admit 300 students each year to its law school. In a press interview Michitaro Urakawa,<sup>31</sup> a law professor and chairman of the university's executive law school creation committee, outlined a broad curriculum. He described the proposed institution as a "shopping mall" offering a variety of courses to train legal professionals able to be active in numerous spheres including intellectual property, international commercial transactions, civil and criminal litigation. Radically, as part of a pioneering clinical approach to teaching law and practice in Japan, Waseda

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28 Japan Times, 30 November 2002.

29 If all had been approved, a total of 5,950 students would have been accommodated. The 20 state-run law schools would accept 1,650 students in the first year, the Tōkyō and Ōsaka city run public schools 140 each and the 50 private institutions a combined figure of 4,160.

30 Asahi Shinbun, 2 July 2003.

31 Japan Times, 2 July 2003.

law school intended to open a law firm in which students, under supervision from lawyer staff, would advise clients and prepare cases for court. Of the proposed school's approximately 70 members, 20 had experience as a member of the legal profession, a higher proportion than the minimum 20 per cent required by the Ministry of Education.

Not all universities prepared such a broad curriculum as Waseda University. Many envisaged law schools that would appeal to students' specific interests and meet particular social needs. Ryūkoku University, for instance, planned to set up a school on campuses in Kyōto and Tōkyō with the prime object of training lawyers to work with the general public, including the disadvantaged. Professor Shinichi Ishizuka explained this was necessary because although membership of the legal profession would rise there was no guarantee that the number of lawyers who worked for the weak in society would grow or that legal services to them would be strengthened.<sup>32</sup> On account of the fact that many rural areas have just one lawyer, or even none, registered in the jurisdiction of the local court, Professor Ishizuka said that the school's Kyōto campus would have courses to help address this regional gap, as well as those that focused on criminal law and procedure. Despite calls by the Judicial Reform Council for the new institutions to be "properly distributed nation-wide,"<sup>33</sup> the proposed schools clustered in major cities, including 25 in Tōkyō and 21 in urban areas of the Kansai region. Aomori University, applied to open a school in Tōkyō, the national capital, not in rural and relatively thinly peopled northern Honshū where it is based. No plans were put forward for a law school in 24 of the nation's 47 prefectures.

Ryūkoku University's intended law school's Tōkyō campus planned courses on human rights law, gender issues and civil litigation. Because the law school believed it was important for students to pass the new bar examination, it decided to co-operate with the large cram school, Itō Juku, which would provide tutorial staff and teaching assistants. Professor Ishizuka was of the opinion that as long as a bar exam exists anxious students would attend crammers. Therefore, as going to two schools whose lessons overlap would be wasteful, a more efficient approach would be to have tutors at law school teaching students examination preparation.<sup>34</sup> The Ministry of Education emphatically rejected Ryūkoku University's rather astonishing proposed link with Itō Juku. This was

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32 Japan Times, 2 July 2003.

33 JRC, *supra* note 4, 49.

34 By contrast, some universities considered that getting a high percentage of students to pass the bar examination was secondary to providing a top quality and wide legal education. Such a view was expressed by Professor Michitaro Urakawa of Waseda University. He understood the fate of his school would "be decided by the fields our graduates successfully work in," Japan Times, 2 July 2003. Implicit in this was a belief that a qualification from a post-graduate professional law school would be of worth in itself, not merely just a qualification to enter the new bar examination, enabling holders to be employed as specialists or generalists in numerous work settings.

taken at the time as a clear signal to law schools that they should not contemplate becoming cram schools.

Ōmiya Law School, in Tōkyō, was established by a private educational institution in Saitama Prefecture, with the support of Second Tōkyō Bar Association, to specialise in intellectual property rights and media law. As well as being offered on a full-time basis, a part-time course was also planned for evenings and on Saturdays for people in employment. Professor Setsuo Miyazawa, a long-time advocate of law schools (and whose work on legal education in Japan has been extensively cited in this article) became a key member of staff. Ōmiya Law School's application for approval by the Ministry of Education contained a high proportion of legal professionals, out of a teaching staff of 31. Some universities that hoped to set up law schools encountered difficulty in finding sufficient means. Because of the low teacher to student ratio (1 to 15) insisted upon by the Ministry of Education, staffing represented a very considerable expense. Recruiting lecturers in enough numbers was hard for many and law teachers were "head hunted" from rivals in what one professor described as "a battle without mercy;" all very far from traditional academic life in Japan, where movement from university to university is not very common. Much trouble was encountered in employing the 20 per cent of teachers required by the Ministry to be members, or former members, of the legal profession ("practitioner professors"). In many instances high salaries had to be agreed to attract attorneys.<sup>35</sup> Because they could not obtain enough staff a number of universities including Iwate, Shizuoka and Shinshū decided not to apply for Ministry of Education approval in 2003; Shinshū University was unable to obtain people sufficiently experienced in the Criminal Procedure Code. Because of the resource intensive nature of the planned law schools, high student fees were envisaged. Tuition fees between 1.5 million to 2 million Yen (roughly £7,900 to £10,500) a year at private universities, and up to 1 million Yen (£5,250) at national universities were put forward. Some politicians called for a government subsidy to even out the difference between the two and thus extend choices for many students who might otherwise be limited because of cost.<sup>36</sup>

In what might be described as the "run-up" to the introduction of the law school system, many universities held public meetings to explain their curricula to potential applicants. The point was made that potential students might find it difficult to decide between institutions genuinely enthused to offer high quality education and those, even including prestigious universities, that submitted proposals for law schools mainly to boost, or maintain, existing law faculties. To help them choose it was said that universi-

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35 In comparison, universities at the top of the university hierarchy had little difficulty in attracting part-time professors from amongst practitioners who were former students and usually members of alumni associations. Some universities, not in that fortunate position, principally resorted to attracting retired judges, prosecutors and attorneys as practitioner professors.

36 Japan Times, 3 June 2003.

ties should present adequate information about their planned programmes and most importantly disclose the names of their lecturers.<sup>37</sup>

Law school aptitude tests, as recommended by the Judicial Reform Council,<sup>38</sup> were sat in August 2003, some months before the Ministry of Education announced the schools it would approve. More than 18,000 prospective law school students in 31 locations took a test organised by the Japan Law Foundation, which is affiliated to the Japan Federation of Bar Associations. The test consisted of four questions covering logical thinking, analytical skills, reading comprehension and clarity of expression. It did not include any related to legal matters. A number of universities insisted potential students took the more general post graduate aptitude test organised by the independent National Centre for University Entrance Examinations instead.<sup>39</sup> Some wanted applicants to take the two tests so that the results of both might be considered when deciding on entry. As well as these admission tests, a number of universities required applicants to be interviewed and or write a short thesis.

Before the Ministry of Education announced which law schools would be granted permission to open, it had been noted, in the press and elsewhere, that if the number of National Legal Exam passers was capped the Judicial Reform Council's picture of a 70 to 80 per cent success rate could only be achieved if the number of law schools was low. Acceptance by the Ministry of Education of all 72 applications, and enrolment of 5,950 students, would mean only about a fifty per cent pass rate would be required to meet the JRC's target of 3,000 new entrants to the legal profession each year. Indeed for first time takers of the examination the pass rate could be expected to fall further in future years as they competed with candidates who had previously failed.

Speaking at a press conference, shortly after applications to establish law schools had been received, Shinjirō Komatsu, the Ministry's chief university reform director, said that the number of candidates for the new bar examination would reduce. This was because of a combination of high standards for establishing law schools, meaning not all those planned might be approved, and strict grading by universities, overseen by third party accreditation bodies, resulting in failure by some students to pass law school. Further, in years to come, the accreditation bodies, on reviewing the quality of their courses, might "advise" some law schools to "downgrade" to graduate school status.<sup>40</sup>

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37 K. MARUYAMA, Government must protect law school applicants, in: Daily Yomiuri, 2 July 2003.

38 JRC, *supra* note 4, 47.

39 Additional entrance examinations, set by each university, for those who had already studied law as undergraduates, and wished to complete law school in two years rather than three, were taken between December and March 2004, Daily Yomiuri, 4 August 2003. The uniform entrance examination for law and non-law graduates, proposed by the Judicial Reform Council, was introduced in subsequent years and administered by the Japan Law Foundation. For details see <http://www.jlf.org.jp/index.php>.

40 Daily Yomiuri, 2 July 2003.

Competition between law schools, resulting in some closures, was predicted by some. A low rate pass in the new National Legal Examination, to be introduced in 2006, they asserted, might lead to a lack of applicants and financial difficulty. Professor Ishizuka, of Ryūkoku University, and he was not alone, foresaw a “survival of the fittest.” By 2010, according to him, about 60 per cent of law schools that planned to open in 2004 would continue to exist because they had attracted talented teachers and seen large numbers of their graduates through the new National Legal Examination. Predictions were also made that concentration on passing the examination could thwart the JRC’s aim of a more broadly educated legal profession and would give new business to cram schools that may otherwise be suffering a big reduction due to the phasing out of the National Legal Examination.

## 2. *Law Schools Become a Reality*

In November 2003 the Ministry of Education approved 68 law schools. (They were joined by a further 6 law schools in 2005.) It is said that the Ministry only really concentrated on checking whether the prescribed student staff ratio could be met. This number was over three times more than the 20, nine at leading national universities, 2 or 3 at top private universities and several at regional universities, reportedly envisaged originally. Abandonment of this plan, described by one commentator as “an uncharacteristic burst of apparent free-marketism,”<sup>41</sup> was driven by a complex mixture of politics. It is said to have included the Koizumi LDP government’s belief in the free market; political pressure from parliamentary representatives that their prefecture should have a law school, especially if lawyers were few, as in many rural areas; Bar Association opinion that an increase in the number of lawyers was desirable; lack of co-ordination between the Ministry of Justice and the Ministry of Education; the wish of lawyers in more rural parts that their children, who wanted to join them in their profession, should be able to study at, or near, home where they could assist them; concerns in universities that without a law school they would not attract sufficient undergraduates and the ambitions of some universities to raise their ranking against other universities by having a successful law school (Academics who foresaw possible difficulties ahead may have muted their reservations).<sup>42</sup> Whatever the reasons and how much weight to be attached to each, approval of this high number of law schools had profound consequences.

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41 JONES, *supra* note 24, 250.

42 Interview with a Professor of Law at Ōsaka City University, Graduate School of Law, 25 July 2011. A former practitioner professor at both Dōshisha and Kyōto University, interviewed on 12 July 2015, believed the LDP Law Committee was highly influential in the decision but added that what happened will probably never be fully known.

### 3. *A Landmark*

April 2004 was a landmark in Japanese legal education when law schools opened their doors to 5,770 students who had been accepted out of 72,800 applicants.<sup>43</sup> From then two routes existed to become a lawyer:<sup>44</sup>

“*Kishū-sha*”: Major in law as an undergraduate and pass a law school admission test to demonstrate sufficient legal knowledge, possibly helped by cram school attendance; succeed in an aptitude test, go to law school for two years; successfully take the National Legal Examination; become an apprentice at the Legal Training and Research Institute<sup>45</sup> and pass the Final Examination, or

“*Mishū-sha*”: Graduate in a non-law subject; pass an aptitude test; attend law school for three years, one more than law graduates; be successful in the National Legal Examination; enter the Legal Training and Research Institute as an apprentice and pass the Final Examination.

Ministry of Education Guidance issued to Law Schools clearly stated law schools were not to teach to the National Legal Examination. Test taking techniques as part of classes, or outside them, were not to be undertaken.<sup>46</sup> Providing a deep and intellectual education in law was emphasised.

The first part of the National Legal Examination, a multiple choice examination completed in one day, takes place in May and covers public law, civil law, and criminal law. Those who pass may take the second part of Examination comprising essay tests, held over three days, some months later. Candidates must answer essay questions in public law (four hours), civil law, including commercial law and civil procedure law (six hours), criminal law, including criminal procedure law (four hours), and one of the selective subjects (three hours), chosen from bankruptcy law, tax law, economic law, intellectual property law, labour law, environmental law, public international law, or private international law. Based on the marks of the bar examination examiners, the National Legal Examination Committee (NLEC) decides, from candidates who achieve the minimum score requirement in all essays, who passes. There is no oral examination, a change from the old bar examination.<sup>47</sup> The NLEC, created by the Ministry of Justice,

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43 JFBA, *supra* note 1, 14.

44 Until its final phasing out in 2011, it was also possible to take the old National Legal examination, success in which would enable entrance to the Legal Training and Research Institute. A third route, passing the preliminary examination, the *yobi shiken*, bypassing attendance at law school, and then taking the National Legal Examination was introduced in 2011.

45 In accordance with the second Legal Education Act 2002, the length of the apprenticeship course was shortened in 2006 to one year, mainly by reducing the amount of classroom instruction.

46 This differed very much from the approach of co-operating with a cram school, to help ensure a high pass rate in the National Legal Examination, Ryūkoku University hoped to adopt, *earlier*.

47 The Judicial Reform Council’s suggestion of holding the National Legal Examination over a lengthy period in which students would be presented with a complex simulated case, span-

which administers the National Legal Examination, consists of seven members, chosen from judges, prosecutors, attorneys, and scholars. Examiners, appointed by the Justice Minister upon recommendation by the committee, administer the test. A substantial number of law school professors were involved in drafting the examinations and marking them. However, as a result of a reform in 2008, the number of law professors who set questions for the examination reduced considerably.

In 2006, 2,087 students, law graduates who had completed the two year course for graduates in law,<sup>48</sup> sat the first new National Legal Examination; 1,009 were successful, producing a pass rate of about 48 per cent.<sup>49</sup>

The pass rate varied much between law schools: four did not have any successful students at all. Although the number permitted to pass slowly increased in successive years, numbers of entrants rose as graduates from both each year's two year and three years programmes competed with each other and with candidates who had previously failed,<sup>50</sup> depressing the success rate.

The pass rate for the second exam, in September 2007, was 40.2 per cent with 1,851 passes out of 4,607 applicants. The pass rate for graduates of three-year programmes for non-law graduates was 32.3 per cent, in contrast to 46.0 per cent for law graduates on two-year programmes. The success rate diverged widely amongst law schools. All had at least one candidate who passed the bar examination, but some law schools had a very low pass rate.

In 2008 the pass rate was 33.3 per cent; 22.5 per cent for three-year law school course candidates and 44.3 per cent for law graduates. The overall pass rate fell in 2009 to 27.6 per cent – 18.9 per cent for non-law graduates and 38.7 per cent for law graduates. Of 9,743 applicants, 2,043 passed. Although every law school produced at least one success-

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ning traditional subject areas, which required research, drafting of documents, knowledge of procedure and mock court representation was not followed. Indeed lawyers' skills of advocacy and negotiation are not examined at all, apparently rejected as unfeasible, FOOTE, *supra* note 5, 401. Conspicuously, legal ethics are not included in the National Legal Examination, despite concerns by some attorneys, for example Hirohiko Harada, who practises in Ōsaka, interviewed on the 21 July 2015, that professional misconduct is increasing.

48 They were fortunate in not competing against those from three year courses and exam re-takers. For a helpful graph and statistical table showing the annual pass rate for the new National Legal Examination and the pass rate of law graduates and non-law graduates for the years 2006–2014, see JFBA, *supra* note 1, 15.

49 The pass rate is derived from the number of entrants to the number permitted by the government to pass, rather than from an objective minimum score – exactly as under the old system. The figure of 48 per cent stands in stark contrast to the results of the old bar examination for that year when only 549 candidates out of a total of 30,248 passed, giving a success rate of 1.81 per cent.

50 Candidates were allowed three attempts within five years of graduating from law school. An amendment in May 2014 of the legislation establishing the National Legal Examination permits law school graduates to take the examination up to five times starting from the 2015 exam.

ful candidate, 14 law schools had a pass rate under 10 per cent. The overall pass rate for the 2010 examination fell again to 25.4 per cent. 2,074 passed out of 8,163 candidates. The pass rate for three-year course students was just 17.3 per cent, while the pass rate for two-year course students was 37 per cent. 1,482 of the successful were men and 592 were women. The average age was 29.07. The oldest person was 66 years of age. 201 of those who passed came from Tōkyō University, 189 from Chūō University, and 179 from Keiō University. Of 74 law schools, 11 had 50 or more passes, totalling 1,233, or about 60 per cent of the total; 33 had fewer than 10. Eighteen law schools produced fewer than five successful applicants and two law schools were unable to produce any successful applicants. In 2011, 2,063 people passed, an overall success rate of 23.5 per cent. The pass rate for non-law graduates was 16.7 per cent, whilst law graduates scored 25.9 per cent. The overall pass rate in 2012 was 24.6 per cent – 17.7 per cent for non-graduates in law and 26.8 per cent for law graduates, a total of 2,044 people. In 2013 some 1,929 persons passed, resulting in a 25.8 per cent total success rate, comprising a 19.6 per cent pass rate for non-law graduates and 27.7 per cent for law graduates. Figures for 2014 show that 1,810 persons passed the National Legal Examination, giving an overall success rate of 21.19 per cent: 14.4 per cent for non-law graduates and 23.1 per cent for law graduates. In 2015 out of a total of 8,016 candidates, 1,850 were successful, slightly more than the previous year, making an overall pass rate of 23.8 per cent.

Strong trends stand out in these statistics: a decreasing pass rate and a considerable difference in success between law graduates and graduates in other disciplines. Statistics also show law school applications have dramatically fallen, 11,450 in 2014 compared with 72,800 in 2006, and yearly declines in enrolment of non-law graduate students and those with work experience.<sup>51</sup>

## VI. THE SKIES DARKEN

### 1. *The Quality of Graduates*

In 2007 largely anecdotal reports began to appear in the press that a number of judges, prosecutors, individual attorneys and bar associations did not consider some newly qualified lawyers under the new system were of the highest quality. It was said certain apprentices at the Legal Training and Research Institute could scarcely read a statute book.<sup>52</sup> Scathing criticisms of law school graduates did not diminish. Their makers pointed to the fact there had been a big increase in people who fail the Final Examina-

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51 JFBA, *supra* note 1, 14; see also FOOTE, *supra* note 5, 412–413.

52 See JONES, *supra* note 24, 250–251. More measured concern was expressed by some instructors at the Legal Training and Research Institute about declining quality of law school graduates, see S. MATSUI, Turbulence Ahead: The Future of Law Schools in Japan, *Journal of Legal Education*, 62-1 (2012) 26.

tion at the Institute, the passing of which was once seen as a mere formality.<sup>53</sup> It was alleged some law schools did not set demanding work standards and allowed graduation with insufficient scrutiny.<sup>54</sup> Though receiving hardly any mention in the press, it was said in defence of law schools that their detractors, who had passed the old exam, might not be entirely capable of assessing the merits of those trained differently to give them a deeper and more intellectual legal education. Indeed persons who passed a much more competitive exam might have a professional, and in the case of attorneys a commercial, interest in distinguishing themselves as an elite from those who had taken an *easier* route.<sup>55</sup> It was also said the supposed shortcomings of some Institute entrants and the higher failure rate for the Final Examination might be because the new National Legal Examination ineffectively filters unsuitable candidates and the Institute inadequately instructs apprentices in what they are examined.<sup>56</sup> Further, the view was expressed it was too early to draw general conclusions on the abilities of law school graduates after so few years.

In 2009, the Special Committee on Law Schools, a body established by the Ministry of Education, found some law school graduates had insufficient understanding of core areas of law and of legal thinking whilst a number had not mastered logical exposition. The content of legal skills education was said to vary from law school to law school. Overall, however, the Committee was very laudatory and saw law schools effectively bridging the gap between theory and practice. Drawing on appraisals made by their instructors at the Legal Training and Research Institute, the Committee did not find that apprentices were inferior to those in the past, rather they excelled in commitment to learning; ability to research; powers of communication and self-presentation; comprehension of professional ethics and social mission and understanding of not only core areas of law, but also other useful fields. Another report issued by the Committee in 2012, referring to assessments made by members of the legal profession and those with connections to legal practice, reiterated the strengths it had found earlier and noted oth-

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53 In 2010, 90 people, 4.4 per cent of apprentices, failed the Final Examination: Figures supplied by the Supreme Court. Also see MATSUI, *supra* note 52, 26, who refers to statistics from 2007 which showed a failure rate of 4.8 per cent, 71 persons out of 1,468.

54 A Japan University Accreditation Association (JUAC) report, following research in 2008, did find that some law schools failed to meet Ministry of Education Standards. See MATSUI, *supra* note 52, 26. The JUAC is one of three bodies licensed to conduct third party evaluation of law schools which must take place every five years.

55 Interestingly, it is reported that lawyers who have qualified under the new system criticise those who did under the former one for alleged inability to conduct research and formulate broader legal arguments. The *new lawyers* are also said to have developed a strong sense of solidarity. Interview with Masako Wakui, Professor of Law, Ōsaka City University, 25 July 2011.

56 JONES, *supra* note 24, 251. Similar views were expressed by members of Ōsaka City Graduate Law School at a seminar to assist the writer's research held on 7 July 2015. One participant thought that reduction of time spent at the LTRI to one year may have contributed to the higher Final Examination failure rate.

ers including logical persuasion and the ability to identify relevant interests of clients. The Committee praised law schools as a model for university reform providing highly interactive education in small classes, shifting away from large lectures and connecting theory and practice.<sup>57</sup> Attorneys, prosecutors and former judges, interviewed during July 2015 in Ōsaka and Tōkyō by the writer,<sup>58</sup> were asked if they had observed any difference in quality between members of the legal profession, now accounting for slightly more than a quarter, who had attended law school and those who had not. Only one said he was aware of any deterioration.<sup>59</sup>

## 2. “A Vigorous Counter Offensive about the Size of the Legal Profession”

Perhaps the first shots in what has been described as a “vigorous counter-offensive”<sup>60</sup> about the size of the legal profession began in Autumn of 2007 when regional bar associations across Japan said there were too many attorneys and not enough work, especially outside the business centres of Tōkyō and Ōsaka. In their view, even more new attorneys, that would result from implementing the target of allowing 3,000 law school graduates to pass in 2010, could only make things worse. The Kanazawa Bar Association noted, in a resolution, litigation was decreasing, not increasing. The Association argued that greater competition meant attorneys would have to concentrate largely on making money, limiting time to engage in advocacy for the public good. Excessive competition would lead to a lower quality of service and that bad, even hopeless, cases would have to be taken just to earn a living. Also in Autumn 2007, the Justice Minister, Mr Kunio Hatoyama, in an article in *Shukan Asahi* magazine, expressed fears that more lawyers would mean more lawsuits and that Japan, where people solved problems by discussion, would become a *litigation society*, similar to the United States. He attacked the target of 3,000 additional lawyers each year by 2010, a key expectation of law schools and law students, as too many for the country. A few months later the Ministry of Justice announced this number would be revised. Mr Hatoyama’s pronouncements showed a remarkable departure from the recommendations made by the Judicial Reform Council, accepted by the Cabinet, some five years earlier. Support for Mr Hatoyama’s position by numerous bar associations indicated that the strength of activists, who supported expansion of the profession, against sizeable opposition, in the 1990s in the Japan Federation of Bar Associations had been eroded. This was confirmed in 2008 when the newly elected President of the Association, Mr Makato Miyazaki said he would seek to per-

57 FOOTE, *supra* note 5, 409–410.

58 Interviews on 6, 7, 11, 21 and 24 July 2015.

59 In an interview on 7 July 2015 a senior attorney thought older judges were more thorough in finding facts than younger ones who, in his experience, reached conclusions too quickly. He did not, however, want to put this forward as a general statement about judges and was eager to point out that the three attorneys in his firm who had attended law school were of equal in talent and ability to those who had not.

60 FOOTE, *supra* note 5, 413–414

suade the government to restrict the number of National Legal Examination passers to between 2,100 and 2,200 per year. After a JFBA election, with the matter very much at its centre, his successor, in the following year, called for a radical cut in numbers.<sup>61</sup> Notwithstanding a change of government, the previous year, with an emphatic win for the Democratic Party of Japan,<sup>62</sup> the goal of 3,000 successful National Legal Examination candidates was not achieved in 2010.<sup>63</sup> At the time it was commonly thought to have been indefinitely postponed, if not forsaken altogether, with important ramifications for law schools set up on the basis the original aim would be met. Various bar associations called for lower targets of 2,000, 1,500 and even as few as 1,000 per year.

In 2011 The Japan Federation of Bar Associations made a number of recommendations including: substantially reducing the number of successful National Legal Examination candidates; decreasing the number of law school students by abolishing or merging schools and temporarily increasing the number of times a candidate could take the National Legal Examination from three to five times.<sup>64</sup> Although the effects of the latter proposal were not discussed, acceptance of it in isolation could lead to a further decline in the pass rate of the National Legal Examination by increasing the pool of examinees.<sup>65</sup> However, in the context of the other recommendations, this would be offset by fewer law school students entering the examination.

Two arguments were put for limiting the number of those allowed to pass the National Legal Examination, and hence qualify as lawyers: an oversupply of lawyers and decline in quality of legal training.

Concerning the first argument, the large increase in attorneys, up from 18,243 in 2001 to 30,485 in 2011,<sup>66</sup> did not correspond with an increase in domestic litigation or other work.<sup>67</sup> Neither was there a significant increase in the appointment of prosecutors and judges,<sup>68</sup> contrary to expectations in the JRC Report, Chapter 3. Because of what has been described as a *glut* of new attorneys some are forced to start their own firms

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61 MATSUI, *supra* note 52, 25–26.

62 The Democratic Party of Japan was in office until it was defeated by the Liberal Democratic Party in the general election of December 2012.

63 The number was 2,074.

64 JAPAN FEDERATION OF BAR ASSOCIATIONS (JFBA), Urgent Recommendations on Improvement of the Professional Legal Training and Education System, 27 March 2011.

65 See B. E. ARONSON, The Brave New World of Lawyers in Japan Revisited, in: Pacific Rim Law & Policy Journal 21-2 (2012) 255.

66 JFBA, *supra* note 1. The number of attorneys in March 2014 was 35,045.

67 For a discussion of the effects of the international financial crisis of 2008 and of the aftermath of the Tōhoku earthquake in 2011 on the legal profession in Japan, see ARONSON, *supra* note 65.

68 Whilst attorneys increased by 70 per cent from 2002 to 2012, numbers of judges and prosecutors only rose by twenty four per cent and twenty three per cent respectively during the same period.

immediately after being called to the bar<sup>69</sup> and others work for nothing, or very little, with experienced attorneys to obtain training. A number are forced to wait much longer than they expected to find a position. Graduates from middle to low ranked law schools have less chance to be hired by good law firms, especially if their marks in the National Legal Examination are below those of the first five hundred passers. According to the Ministry of Health Labour and Welfare, in 2005, before the influx of new lawyers was felt in the market place, attorneys earned on average between 16 and 20 million Yen. This had fallen to 8 million Yen in 2009.

Despite concerns frequently expressed by the JFBA about unemployment awaiting LTRI graduates, the overall picture seems to be one of uncertainty, underemployment and less advantageous conditions.<sup>70</sup> It is of note that some criticise the JFBA for exaggerating newly qualified lawyers poor prospects and believe this will discourage good students from joining the legal profession.<sup>71</sup>

As to the second argument, that quality had declined, the JFBA referred to unevenness in skills training at law schools, the shortened period of apprenticeship training at the Legal Training and Research Institute and lack of enough senior attorneys to provide adequate mentoring for so many new entrants. The main thrust, however, was lack of legal knowledge. Much of the evidence for this was anecdotal or else highly selective. Weight was given to the part of Special Committee on Law Schools 2009 report, *earlier*, which found some law school graduates had insufficient understanding of core areas of law and legal thinking whilst a number had not mastered logical exposition. Overall positive findings in the report about law schools were ignored. The negative image of declining quality took hold and was to have serious consequences for law schools.

### 3. *Removing the Target: The Right Thing to Do?*

In July 2013 the target figure of 3,000 successful National Legal Examination candidates was formally abandoned. During the following September, the Liberal Democratic Party and its junior partner in coalition government, New Kōmeitō proposed 1,500 each year.<sup>72</sup> This figure was adopted by the government in January 2015.<sup>73</sup> Discarding the aim of 3,000 passers prompted more debate about the size of the legal profession, whether the legal market was saturated as well as the extent of legal consciousness in Japan.

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69 A senior attorney interviewed on 21 July 2015, spoke of it never before being so important to be able to invest money to become established as an attorney.

70 FOOTE, *supra* note 5, 424–425.

71 A government official involved with law schools was reported as saying that by “spreading negative information” about job prospects the JFBA “in the long run is digging its own grave,” “Government moves to put floor under bar exam failures”, Japan Times, 22 May 2015.

72 Yomiuri Shinbun, 11 September 2014.

73 Japan Times, 30 January 2015.

The position of the Japan Federation of Bar Associations was that the employment difficulties experienced by newly qualified attorneys and deterioration in the income of attorneys demonstrated that the market was oversupplied.

A law school head interviewed<sup>74</sup> was not alone in saying that the figure of 3,000 had not been based on a realistic assessment of legal needs and that expansion in the number of attorneys had not led to a corresponding increase in legal work.

To assist the writer, Ōsaka City University Graduate School of Law kindly held a seminar on legal education which was attended by both research professors and practitioner professors.<sup>75</sup> A professor of socio-legal studies explained that even with 1,500 persons, rather than 3,000, the legal profession will continue to expand. In his view there will be adequate work if attorneys move more into drafting and advice, areas covered by the paralegal professions, who do much of the work done by lawyers in other countries. Attorneys are licensed to perform all categories of legal work. A practitioner professor, who is a senior attorney in Ōsaka, was cautious about attorneys switching to work done by paralegals because their training at the Legal Training and Research Institute in Tōkyō concentrated on litigation and was insufficient in these other areas. A professor who had worked as a law graduate in a very large company concurred with this opinion and explained that her former company's legal department preferred to use judicial scriveners rather than attorneys for drafting contracts and other documents. There was agreement potential exists for further enlargement of the still small number of attorneys employed by companies in-house and by central and local government.<sup>76</sup> As in-house lawyers attorneys were seen as valuable to help avoid disputes that might arise, for example in an agreement with another company. Beyond dispute prevention they were considered useful in negotiations, especially with other lawyers. The example of an attorney working for a life insurance company in Ōsaka talking to a plaintiff's lawyer about a claim was given. Employed lawyers were understood to be better able to discover facts and write decisions than company employees and bureaucrats in government. In addition to companies and government bodies, mention was made of other organisations, including Non Government Organisations (NGOs), that are beginning to become interested in employing attorneys.

On the basis of supervision at the law clinic run by the law school, a practitioner professor considered there was scope for attorneys to increasingly involve themselves in advice work, some of which would generate litigation.

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74 At Ōsaka City University Graduate School of Law on 6 July 2015.

75 Held on 7 July 2015.

76 As of June 2014 there were 1,179 in-house attorneys and 151 employed in national or local government: JFBA, *supra* note 1, 53–55. The graph on page 53 shows a nearly tenfold increase in the former from 2005 to 2014 and a more than doubling of the latter in the same period.

There was general agreement at the seminar that there would be little increase in numbers of prosecutors and judges over the coming years principally because of budgetary constraints.

The writer's understanding of contributions to the seminar at Ōsaka City University Graduate School of Law was that attorneys may be able to take more of existing legal work and additionally develop some. However in the opinion of a leading professor of competition law and economics interviewed at Kyōto University Graduate School of Law,<sup>77</sup> the overall size of the legal market is unlikely to grow substantially over the next decade, notwithstanding some increase due to the aging of society, new types of consumer issues and possibly the use of administrative law by companies in de-regulation and tax cases. At the top end business disputes before the Intellectual Property High Court were decreasing and mergers and transactional work has become less profitable as it has become increasingly routine.

A group has been formed to oppose removing the target of 3,000 successful candidates in the annual National Legal Examination. Prominent in the campaign is Ken'ichi Baba, a sociology of law professor at the Graduate School of Law at Kobe University who kindly agreed to be interviewed.<sup>78</sup> In his view there was sufficient work for lawyers to do and more lawyers were necessary to build the rule of law in Japan. Additional competition between attorneys and the paralegal professions was welcomed. He considered too many attorneys wanted to do what had been done in the past rather than trying hard to find new types of work. In his view "the size of the pie is not fixed" and approvingly mentioned lawyers in other countries, including Britain, who had found new work. He spoke of the many small cities with populations of less than 100,000 with none or just one lawyer, despite the number of attorneys doubling over the last one and a half decades. The question was asked, partly rhetorically, why more had not moved to these areas?<sup>79</sup>

The professor saw a great need for more attorneys to be employed by companies to bring about compliance with legal standards in areas including health and safety, pollution and financial accounting. Indifference to legal regulation had been a feature of corporate life for decades and had been little altered by the judicial reforms. He thought scandals like the cover up of massive losses at Toshiba in 2015, and similar behaviour at Olympus four years before, would be less likely had attorneys been employed there.

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77 Interview held on 22 July 2015.

78 Interview held on 11 July 2015.

79 Some support for the existence of work outside traditional areas and fields of expertise is given by reports of newly qualified attorneys going to parts of the country particularly affected by consumer credit companies charging exorbitant rates of interest, a feature related to the economic recession, and bringing cases on behalf of debtors. Connections with communities thus established and recognition within them of the value of legal services may well lead to additional work, FOOTE, *supra* note 5, 424–425. In the course of his research, however, the writer was told of freshly qualified lawyers who had gone to areas with few or no lawyers and not prospered.

This was because of their greater appreciation of what is unlawful, more independence of mind than other employees, whose loyalties often lie exclusively with the company, and professional code.

The small number of attorneys working in local governments, with their powers to legislate locally and enforce regulations, was a matter of concern. The professor called for an increase to help ensure that they complied with their laws and standards and did not abuse their discretion. He spoke of few citizens suing local governments. In rural areas this was because there are no, or hardly any, lawyers, and actions have to be brought in courts of prefectural jurisdiction, often a great distance from their homes. To hold national and local government and its officials to account, additional lawyers were absolutely necessary.

The professor spoke of neglected problems across the country which could be helped by more lawyers, for example non-, or insufficient, payment of maintenance by separated fathers to the mothers of their children.

Whilst he would like to see numbers of judges and prosecutors increase in line with what was recommended by the Judicial Reform Council, the professor believed this was unlikely to happen because of budgetary constraints.

In short it was the professor's position that there were manifold advantages to society, not least in building the rule of law, by implementing the target of 3,000 successful candidates each year in the National Legal Examination. Present difficulties obtaining enough work experienced by some newly qualified attorneys was insufficient reason to depart from a key reform proposed by the Judicial Reform Council.

It is worthy of note that a temporary increase in the demand for newly qualified lawyers could occur in two years when major and complex changes in civil law take effect and some older attorneys may conclude it may be time to retire.<sup>80</sup>

#### *4. Government Investigation of Law Schools, Reduction of Subsidies and Closures*

In the wake of publicity, much of it owing its origins to the JFBA, about the quality of entrants to the Legal Training and Research Institute, poor prospects for newly qualified attorneys in an apparently satiated legal market, reduced numbers of applicants for law schools and falling pass rates for the National Legal Examination, the Ministry of Education began, in 2008, to investigate the quality of education at law schools, especially those with a low pass rate. A panel of experts was appointed for the purpose. Heads of law schools were summoned to explain their plans for improvement, including lower class sizes. It was thought that the Ministry was actively considering cutting budget allocations and subsidies to law schools with high National Bar Examination failure rates. In 2009, the Ministry of Education encouraged each law school to reduce their

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80 Interview with a professor of civil law and head of Ōsaka City Law School, held on 6 July 2015.

admissions by between 20 and 30 per cent. This “across the board” policy was controversial as it did not take into account differences in performance between schools.<sup>81</sup>

The total number of new students admitted in 2010 fell to 4,900. The Ministry warned some two dozen law schools with a very low pass rate that they must improve. In that year Himeji Dokkyō University Law School announced it would not accept any new students for 2011 and would close after existing students had graduated. By using two criteria – the pass rate for the National Legal Examination and the ratio of total and successful applicants for entrance exams – the Ministry commenced to decrease financial subsidies for law schools whose performance was low. This led to eight law schools stopping admitting new students in 2013. In 2014 the Ministry began to use an additional criterion – the “fill-rate” of the enrolment capacity – and reduced subsidies for 18 law schools that failed to meet these three measures. Applying the criteria in 2015 to 52 law schools,<sup>82</sup> subsidies were reduced for 42 and increased for 8 others. Twelve saw reductions of 40 per cent. Seven, who were given the lowest grade in the Ministry’s assessment, experienced cuts of 50 per cent and face withdrawal of subsidies altogether in 2016 unless they form curriculum alliances with other schools. Cuts in subsidies, used to pay salaries for teaching staff and other expenses, will have a serious impact on all law schools affected. Of those that received high ratings, subsidies rose for Waseda University (30 per cent), Hitotsubashi University (25 per cent), Tōkyō University (25 per cent), Kyōto University (20 per cent) and Keiō University (20 per cent).

Reduced government subsidies, unemployment and under-employment amongst newly qualified lawyers, because demand for their services had not increased, confounding expectations of the Judicial Reform Council, and the government which accepted its proposals, lesser pay prospects, and a reducing pass rate in the National Legal Examination resulted in twenty law schools deciding in 2014 to stop accepting new students.<sup>83</sup> In spring of that year 61 law schools did not have sufficient new students to fill their places; 44 were less than half full and of these 28 had fewer than 10 new students. Since law schools were introduced in 2004 applications to law schools have steadily declined from some 72,800, when only 7.8 per cent were admitted, to 13,000 in 2014.<sup>84</sup>

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81 See ARONSON, *supra* note 65, 275, contribution of Mr Hara, Chairman of Ohno and Tsunematsu (a large firm of attorneys) to a panel discussion. In Mr Hara’s opinion good law schools, like the University of Tōkyō, should have maintained their number of students while the worst should have disappeared.

82 Because they are funded municipally, the criteria are not applied to Ōsaka City University and Tōkyō Metropolitan University.

83 The predictions of closures and mergers of law schools, made in 2003 by Professor Ishizuka, of Ryūkoku University, and others, *earlier* would appear to have come to pass.

84 See graph, which shows yearly numbers of applicants, in JFBA, *supra* note 1, 14.

### 5. *Ramifications of the Preliminary Examination*

Applications to law schools may well have been reduced by the introduction in 2011 of the preliminary examination, *yobi shiken*, after the old bar examination was sat for the last time. It was recommended in the Judicial Reform Council Report for those who could not afford to attend law school, or do not need to go because of experience acquired in law-related jobs. The preliminary examination includes multiple choice examinations in constitutional law, administrative law, criminal law, commercial law, criminal procedure, civil procedure plus general knowledge essay examinations in these subjects and basic practise skills, and an oral examination on basic practice skills. Those who pass this examination are permitted to take the National Legal Examination. It has been referred to as the *bypass procedure*.<sup>85</sup>

In its first year, 2011, 6,477 people took the preliminary examination and 116 were successful. The following year, 2012, 7,183 candidates entered of whom 219 passed, almost doubling the pass rate to 3 per cent. Numbers both entering and passing this examination have increased. In 2013 there were 9,224 candidates, of whom 351 passed, giving a pass rate of 3.8 per cent.<sup>86</sup> 66.8 per cent of candidates – some 163 people – who took the National Legal Examination after passing this preliminary examination were successful in 2014. Of 307 preliminary exam passers who entered the National Legal Examination in 2015, 186 were successful, producing a pass rate of 60.59 per cent, a small numerical increase on the previous year, but a small percentage reduction.<sup>87</sup>

Comparisons with the overall pass rate of 22.6 per cent in the National Legal Examination were drawn by the press in 2014.<sup>88</sup> One newspaper reported that students in university law departments were using the preliminary exam as a short cut to enter the bar exam, saving both time and money.<sup>89</sup> This is borne out by evidence: Of 219 successful candidates in 2012, 69 were law undergraduates, whilst 61 were law school students.<sup>90</sup> The trend amongst undergraduates to take the preliminary examination is reported to be strongest in the Tōkyō area. It was explained that the majority enter in their third year by which time they have studied substantive law necessary for the examination, and attend-

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85 MATSUI, *supra* note 52, 30.

86 Figures kindly supplied by Mr Fumihiko Sakamoto, First Secretary (Legal), Embassy of Japan, London.

87 However above the 55.63 success rate of Hitotsubashi Law School, the highest performing law school.

88 Yomiuri Shinbun, 11 September 2014.

89 “Weaker case for the law schools,” Japan Times, 2 October 2014. The Japan Federation of Bar Associations called for a review of the *yobi shiken* to ensure that it does not “undermine the philosophy of the new professional legal training and education system in which law schools play a central part,” JFBA, *supra* note 64.

90 Statistics, available from the Ministry of Justice, for 2012 show that of 7,183 candidates for the preliminary examination 1,657 (23 per cent) were undergraduates and 555 (7.5 per cent) were students attending law school. This meant that well over 5 per cent of students enrolled at law school took the examination.

ed cram school, *yobikō*, perhaps beginning in their first year. Established cram school techniques are said to be compatible with the style of questions in the exam. Law school students intending to take the preliminary examination also attend cram schools. Both at undergraduate and law school level going to crammers may result in failure to attend classes leading to the re-emergence of “double school,” a notable feature of university legal education in times of the old National Legal Examination.

Those who pass the preliminary examination and then the National Law Examination are reported to be popular with larger firms of attorneys who sometimes issue invitations to parties as a means of recruiting them. They are said to be liked because they are usually young, can learn easily and have strong cognitive ability. It is believed they are preferred especially by older attorneys who draw similarities with the individual and single minded study that was required of them to pass the previous National Legal Examination. One attorney interviewed<sup>91</sup> said a recruitment hierarchy had developed with young preliminary exam passers at the top followed by those who have passed the National Legal Examination first time and attended elite universities such as Tōkyō and Kyōto. Below them are graduates from less prestigious universities but with good scores in the National Legal Examination. Those outside the top 500 scores are less favoured but more so than persons who have taken the National Legal Examination more than once.

The preliminary examination has critics not merely confined to law school. They doubt candidates can attain the same level as those who complete law school where bridging theory and practice, interactive teaching, skills in research, drafting, problem solving, appreciation of ethics and the wider social mission of lawyers are emphasised. Stimulation from teaching by practitioners is also provided, as are optional legal subjects, some with international dimensions. Further, there are opportunities to participate in mootings and clinical education. It is asserted by opponents that the preliminary examination runs contrary to the Judicial Reform Council’s Report philosophy that entry to the legal profession should be a process giving students specialist knowledge, fostering analysis, critical thought and presenting them with cutting-edge legal issues and theories, rather than purely selection examinations.

Before the introduction of the preliminary examination the JFBA recognised its potential to conflict with and damage education provided by law schools.<sup>92</sup> It called for the matter to be reviewed and has since done so again.<sup>93</sup>

To limit the effect of the preliminary exam it has been suggested that undergraduates and attendees of law schools be disqualified from taking it. Another proposal, true to the

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91 On 6 July 2015 at the offices of Yamaguchi Attorneys in Ōsaka. A senior public prosecutor, interviewed on 12 July 2015 said that preference was not given to those who had passed the preliminary examination by the Public Prosecutors Office where the criteria for employment was personality, capability and willingness to work.

92 See JFBA, *supra* note 64.

93 JAPAN FEDERATION OF BAR ASSOCIATIONS (JFBA), Statement Concerning the “Report of the Study Council for the Professional Legal Training System” (2013).

Judicial Reform Council's reasoning to establish the preliminary examination, is that exam entry be confined to those in financial hardship or with legal experience.<sup>94</sup>

An urgent proposal was made in 2015 by six law schools, Kyōto, Chūō, Keiō, Tōkyō, and Hitotsubashi and Waseda, who between them account for the vast majority of undergraduates and law school students who pass it, for the abolition of the preliminary examination. A professor from the law school at Kyōto University described the preliminary examination as "corrupting the law school system,"<sup>95</sup> whilst another from Chūō University Law School described it as "a grave threat" especially if numbers allowed to pass it are increased.<sup>96</sup>

Assuming abolition of the preliminary examination is unlikely, or the ability to take it will be restricted, a former practitioner professor<sup>97</sup> who had worked at Kyōto University and Dōshisha Law Schools, believed law schools must demonstrate it is far better to attend them.

In this regard he put forward a number of proposals to strengthen their position against the preliminary examination. These included teaching, and giving students the confidence to study, subjects which would be useful in practice, or inherently interesting, outside those necessary to pass the National Legal Examination and the preliminary examination. Confidence would be built by providing students with sufficient preparation and practice in those subjects examined in the National Legal Examination to relieve their anxiety about passing them. Teaching wider subjects and offering support could best be undertaken between May and September, when less instruction takes place. Making it plain that assistance would be available to students who did not initially pass the National Legal Examination was seen as important as was better career and general support for those who did. He said it was vital to end any impression that law schools had few interests in students beyond enrolment and first time exam success.

#### 6. *Abolition of the LTNI Apprentice Allowance, Financial Burdens and Consequences*

Applications to law schools, especially by the less affluent, may have been reduced by the abolition of the allowance paid to apprentices at the Legal Training and Research Institute and its replacement by a loan in 2011. The Ministry of Justice said it could not afford to pay wages for an increasing number of apprentices. Apprentices are not permitted to take part-time jobs. This led to a series of cases alleging violation of their right to work.<sup>98</sup> Some plaintiffs complained they had already incurred significant debt after

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94 FOOTE, *supra* note 5, 440.

95 Interview held on 22 July 2015.

96 Interview held on 23 July 2015.

97 Interview held on 12 July 2015.

98 Article 27 of the Constitution of Japan.

taking out loans to pay for law school where tuition is not cheap.<sup>99</sup> It has been said that need to repay this loan, and others taken during law school, means that newly qualified lawyers must try to get a job as soon as possible and may prevent them seeking less well paid work on behalf of the socially weak and in rural areas, thwarting one of the Judicial Reform Council's key intentions. The Japan Federation of Bar Associations argued vigorously that the allowance paid to legal apprentices should be maintained and also proposed that financial assistance to law school students be enhanced.<sup>100</sup> A senior attorney, active in the Ōsaka Bar Association, interviewed voiced unease that the financial burden now involved in becoming a member of the legal profession was deterring those who were not wealthy.<sup>101</sup> It has been suggested that law school students who commit themselves to a period of years in public service or voluntary sector work after they have qualified should have the cost of their tuition subsidised by the government. Concern about the cost of becoming a member of the legal profession has led to calls for the replacement of the last year of law school by a one year paid apprenticeship. Leaving aside whether the legal profession could accommodate the numbers involved, there was considerable support for this idea on educational grounds amongst law school professors at a seminar on legal education at Ōsaka City University Graduate School of Law, kindly organised to assist the writer,<sup>102</sup> although one contributor wondered how well some students might cope with the demands of a full apprenticeship.

## VII. SOME RESPONSES TO EVENTS BY UNIVERSITIES, STUDENTS AND COMMENTATORS

Law schools are beset by a declining overall pass rate for the National Legal Examination; by many fewer persons taking the aptitude test and applying to enter,<sup>103</sup> by reports of diminished prospects for lawyers because there are now too many; by criticisms of both the quality of their courses and graduates; by growing fears they may be by-passed by the preliminary examination, *yobi shiken*; and by anxiety, felt most acutely by small schools

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99 National university law schools require an admission fee of ¥282,000 (£1 = ¥160). They may set annual tuition fees up to 120 per cent of the standard fee of ¥804,000. Most charge the standard fee.

Private law schools' admission fees are between ¥200,000 and ¥300,000. Annual tuition varies from one million yen to two million yen. Many offer scholarships, including complete waiving of tuition fees, for students with high entrance examination scores. According to JFBA research in 2010, conducted before loans were introduced, some apprentices had debts over 10 million Yen.

100 JFBA, *supra* note 64.

101 Interviewed at the offices of Yamaguchi Attorneys on 6 July 2015.

102 Held on 7 July 2015.

103 The fall in applications to law schools is especially marked amongst those without a law degree and in those employed by companies, *salary men*, who entered in significant numbers during the first two years of their operation – see ARONSON, *supra* note 65, 274, contribution of Mr Hara, Chairman of Ohno and Tsunematsu (a large firm of attorneys) to a panel discussion upon which Mr Aronson reports.

and those with low pass rates, about their very existence and the effect that closure, or being forced to merge, would have on their university's prestige and ability to recruit students for undergraduate degrees. They responded in a number of ways. In order to increase their success rate a number of the more wealthy law schools offered scholarships and interest free loans to potential students identified as particularly gifted. Some universities noting the marked, but perhaps not entirely unsurprising, disparity in the National Legal Examination success rate between law graduates and non-law graduates<sup>104</sup> changed their entrance requirements to favour candidates who had previously studied law in an effort to boost their pass rate.<sup>105</sup> Waseda Law School, for instance, did so in 2010 and has moved furthest in this direction. Its National Legal Examination pass rate was about one third. The School attributed this, which was appreciably lower than other prestigious universities, to previous enthusiastic recruitment of non-law students and teaching a wide syllabus, in the belief that law school graduation was a worthwhile qualification in its own right,<sup>106</sup> not merely preparation for the National Legal Examination.

Because both law schools and students are much pre-occupied with success in the National Legal Examination, many of the former complied with the latter's requests that much teaching should correspond with what is tested in the Examination. Few law schools resisted for fear of losing market share. Care, however, has to be taken not to cross the line set by the Ministry of Justice by teaching what could be expected to appear on the exam papers. Preparing students for the National Legal Examination was brought into sharp relief in 2007 when a professor at Keiō Law School, who was a National Legal Examination examiner, held several practice sessions for his students. He was accused of providing them with questions that were very similar to those on the examination. An investigation revealed that although confidential information was not divulged, the professor breached the policy against holding practice sessions by National Legal Examination examiners. As a result he was released from his responsibilities as an examiner.<sup>107</sup> After this incident the Ministry of Education conducted a survey which

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104 See earlier section, Law Schools Become a Reality (page 1), and JFBA, *supra* note 1, 15, Table 1-2-4. See FOOTE, *supra* note 5, 435 for proposals made to assist non-law graduates, including lectures in their first year, to enable them to master core legal subjects more quickly, and relaxing the requirement they earn credits in subjects not examined in the National Legal Examination, so they may concentrate on those that are tested.

105 To raise National Legal Examination pass rates by obtaining students with an already solid understanding of core subjects examined, it was reported that some universities introduced, or reintroduced, advanced courses in these fields at undergraduate level, FOOTE, *supra* note 5, 429.

106 Professor Suichi Furuya, curriculum coordinator, Waseda Law School, interviewed by the Daily Yomiuri, 11 September 2010.

107 For a fuller account see MATSUI, *supra* note 52, 25 and T.C. CHEN, Legal Education Reform in Taiwan: Are Japan and Korea the Models?, in: *Journal of Legal Education*, 62-1 (2012) 32. Following the Keiō Law School episode professors who draft National Legal Examination questions are prohibited from teaching law students in their final year.

showed that 54 law schools out of the 74 offered bar examination preparatory sessions in which a total of 467 law professors, including seven National Legal Examination examiners, participated.<sup>108</sup> The Ministry issued a warning that preparatory sessions taken by National Legal Examination examiners were to stop. It also issued a statement reiterating that practice and preparation sessions for the National Legal Examination should not be offered as part of the law school curriculum. Facing strong demand from students, this put many law schools in a dilemma. Some have interpreted the statement as not forbidding preparation and practice on an informal basis or through organisations other than the law school itself. Large law schools at established universities, for example that at Chūō University, are better placed to do this than smaller and less prestigious universities. This is because they have strong alumni organisations that assist current students to pass the National Legal Examination by teaching examination skills and assessing their mock essay papers. Law school teachers at Chūō University are reported as saying they do not see a need to teach examination techniques as this is done by alumni. It is reported that a number of law schools provide National Legal Examination preparation and practice officially, but not in way to draw outside attention to themselves, while some characterise this activity as voluntary.

Unfortunately examination question leaking arose again in 2015 when a professor of constitutional law at Meiji University Law School, one of 132 experts employed to write the National Legal Examination, admitted to the Ministry of Education he had revealed questions to a student and faced criminal prosecution. There was press speculation that unlawful disclosures might not be limited to him but could be more widespread because of fierce pressure in law schools to boost their numbers of exam passers.<sup>109</sup>

Some university law lecturers were known to be put off teaching in law schools because any focus on their particular area of interest in a subject might be resented by students if thought irrelevant to National Legal Examination.<sup>110</sup> Against a background of a falling National Legal Examination pass rate and less bright prospects for lawyers, some teachers reported a less easy atmosphere, greater tension in classes and also that some students appear to be suffering from psychological illnesses.

It is said many students avoid areas not directly related to the National Legal Examination, especially legal theory, jurisprudence and specialised subjects and in their study of relevant subjects focus on solving examination problems, neglecting deeper and critical analyses of cases, and, if possible, rely on superficial summaries available. Accord-

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108 See MEXT, *Hōka daigaku-in ni okeru shin-shihō shiken ni kanren shita shidō no jōkyō ni tsuite* [Survey Result on the Advice Given toward Passing New Bar Examination], available at [http://www.mext.go.jp/b\\_menu/shingi/chukyo/chukyo4/houkoku/07122014/002.pdf](http://www.mext.go.jp/b_menu/shingi/chukyo/chukyo4/houkoku/07122014/002.pdf).

109 “Legal scholar admits leaking bar exam questions to students,” Japan Times, 8 September 2014.

110 JONES, *supra* note 24, 252.

ing to some accounts, a number of students are placing little importance on practical skills courses.<sup>111</sup>

Over-concentration on the National Legal Examination limits the broader professional legal education sought by the JRC with its emphasis on specialist knowledge, fostering analysis, critical thought, presenting students with cutting-edge legal issues and theories and acquiring practical lawyers' skills. Some years ago unease was expressed that law schools could become "glorified exam schools"<sup>112</sup> and even "new expensive, university-run cram-schools."<sup>113</sup> In the opinion of two professors interviewed in 2015 this is exactly what many have become instead of places of wider learning and knowledge.<sup>114</sup>

Since teaching examination techniques, at least as part of the official law school curriculum, is not permitted, an increasing number of students are attending cram schools, *yobikō*. It had been thought that this prominent feature of the past would almost be absent in the new system. Since it could make a considerable difference to passing the National Legal Examination, attending a cram school may be entirely rational, although expensive and not within the means of all.<sup>115</sup> Not only are law school students going to cram schools, many are absenting themselves from classes to do so. Before the changes

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111 MATSUI, *supra* note 52, 24. The Head of Ōsaka City University Law School reported falling numbers taking mootings, organised by a practitioner-professor, because students wished to concentrate time on examinable core subjects. Interviewed on 6 July 2015.

112 JONES, *supra* note 24, 252.

113 WEST, *supra* note 13, 446.

114 "Government moves to put floor under bar exam failures," *supra* note 71. Similar views were expressed earlier by ARONSON, *supra* note 65, 260, who wrote: "While graduate law schools were seen as a means of facilitating more broad-based and practical training for attorneys, falling bar passage rates have encouraged, if not forced, law schools to assume the role once filled by preparatory schools." Mr Hara, Chairman, Nagashima Ohno and Tsunematsu (a large firm of attorneys), and a contributor to a panel, upon which Mr Aronson reported in his article, saw almost all law schools focused on how many of their students could pass the national Legal Examination. In the context of Japan, Daniel Foote thinks it inevitable that the law school curriculum will be driven by the content of the National Legal Examination. Minded by this, he would extend the Examination to include skills in communication, research, problem solving, identifying the interests of clients and others and ethical responsibilities. He would also import testing a broad range of abilities and qualities into the Preliminary Examination, FOOTE, *supra* note 5, 441. Similar views about expanding what is examined beyond the present core subjects and electives were expressed by Tsuyoshi Hamada, formerly a professor at Kyōto University Law School and Dōshisha University Law School, interviewed on 12 July 2015.

115 A recently qualified attorney who had attended Kyōto University Law School said that unlike some others on her course, she had not attended *yobikō*, but had in common with others used written material produced by them to assist her study. Interview held at Yamaguchi Attorneys, Ōsaka, on 6 July 2015. At one point it had been thought the value of *yobikō* attendance was diminishing. Candidates who took the essay section of the National Legal Examination in 2010 were surprised to find far greater weight attached to application of knowledge and rational thought and less to reproducing facts and examination technique than previous years. The picture was similar in 2011 Interview with a professor of law, Ōsaka City University, held in London on 25 July 2011.

students would miss undergraduate lessons and some would abandon university altogether. It might be thought that if students are allowed to pass the National Legal Examination with low attendance, the very purpose of law school is called into question. Law school graduates who initially fail the National Legal Examination, facing debt, broken dreams and limited opportunity if they are not ultimately successful, and who do not receive assistance from their law schools for their subsequent attempts, often also resort to cram-schools – increasing further their role in professional legal education.

Because they did not wish to jeopardise numbers enrolling, most law schools did not object to law graduates, who require only two years study, opting for the three year course, designed for graduates in other subjects, because they considered this would improve their chances of passing the National Legal Examination. Teaching a mixture of relative experts and complete beginners in law in the same classroom has led teachers to struggle and may even be unhelpful, rather than advantageous, to law graduates.

After the new system was implemented many law schools absorbed the *remains* – students who had taken the old bar examination but had failed. Generally, they tended to be mature, not only in years but also attitude, and knew how to study independently. There was no need for teachers to stress the importance of understanding basics and memorising essential provisions. These students shared their learning and examination skills with others in voluntarily formed study groups. As most professors were then unfamiliar with the role of a law school teacher, rather than being an academic in a law faculty, students with these techniques and qualities were of much assistance. In return law schools added analytical, theoretical and practical perspectives to what they already knew.<sup>116</sup> However, as the years passed, their numbers decreased. It was relayed that law schools, particularly those of middle ranking and below, faced challenges in teaching young and less mentally mature students about how to study law and commit key aspects to memory. Top law schools were apparently largely free of these concerns.<sup>117</sup> As applications have decreased sharply since 2008, many law schools are unable to fill their quota of places.<sup>118</sup> Apprehensions were expressed to the writer in July 2015 that the quality of students accepted by law schools was falling.<sup>119</sup> Because of newly qualified

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116 In effect there are three types of lawyers in Japan: those who passed the old bar exam, those who failed it but succeeded in the new examination and those who have only experienced and passed the new. There are of course unfortunate people who have been unsuccessful in both examinations.

117 Interview with a professor of law, Ōsaka City University, 25 July 2011.

118 The Dean of Ōsaka City University Law School, Hiroe Moriyama explained how many students at her university no longer entertain ideas of law school and the National Legal Examination and instead aim straight away for non-legal jobs in companies and government. Interview in “Government moves to put floor under bar exam failures”, *supra* note 71.

119 A similar impression was formed by Shin’ichi Sakano, an Ōsaka attorney, who, in a press interview in *The Japan Times*, 8 September 2015, unambiguously saw it as the result of the 2000s’ legal reforms: “Under the old bar exam system, where only 2 per cent of the total applicants passed, clearing the exam was seen as a ‘platinum ticket’ to a successful life with

lawyers' diminished prospects it appears that demand for undergraduate law courses has also reduced. At Kyōto University, for instance, it is reported that law has been replaced in popularity by economics.

The vast majority of entrants to law school desire nothing more than to pass the National Legal Examination so they can attend the Legal Training and Research Institute in Tōkyō, the last stage in joining the legal profession. Despite the fall in the pass rate, and the restriction to five attempts at the examination (an increase from three before 2015), their chances of doing so are much higher than under the old system when many more took the annual examination and only between 2 and 3 per cent were allowed to succeed. Whilst some law school graduates who have not got through the National Legal Examination have found employment with government bodies, legal departments of companies and legal publishers, obtaining work is difficult.<sup>120</sup> Many employers consider them too old compared with new graduates. Also, because most law schools portray themselves as places where judges, prosecutors and attorneys are trained, those who do not become one may be labelled as failures. The way many law schools have marketed themselves may have done much to undermine the value of law school graduation as a qualification in its own right.

In its Report the Judicial Reform Council recommended legal training should be a “process” connecting law schools, described as its “core,” the National Legal Examination and apprenticeship. Unfortunately, for many, in the words of a former law school professor, this has become a “long process of suffering.”<sup>121</sup> The financial cost of attending law school is followed by anxious uncertainty about passing the National Legal Examination and if unsuccessful having to take it again, involving additional stress and financial outlay, especially to attend cram school. Because government salaries were abolished, the process continues with acquiring more debt by taking a loan to pay for maintenance whilst attending the Legal training and Research Institute in Tōkyō. Suffering may then persist with difficulties experienced in finding work, underemployment or job security. Although law schools have done very little to bring about this chain of events, they feel its consequences in dramatically reduced applications, closures and mergers of necessity.

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the promise of high income. But because the government increased the number of lawyers so drastically over such a short time, while the number of legal cases in courts has fallen, the lawyers' income levels have significantly suffered. It is no longer the exam for the smartest people. The quality of law students has also declined.”

120 After studying and passing their highly competitive and demanding examinations, with low pass rates, some have joined the paralegal professions, such as judicial scriveners (whose entrance exam has a 2.8% success rate), patent and tax attorneys, which are such a prominent feature of the legal system in Japan. See JONES, *supra* note 1.

121 A former professor at Kyōto University Law School and Dōshisha University Law School, interviewed on 12 July 2015.

## VIII. ACCOMPLISHMENTS OF LAW SCHOOLS

An account of law schools would be severely lacking without listing their very real accomplishments. All too often these have been obscured by news of declining National Legal Examination pass rates, diminished prospects for newly qualified lawyers, shrinking numbers of applicants, concerns about the abilities of their graduates, reduced government subsidies and the closure of many.

Lecturers and former students spoken to in the course of the writer's research agreed great strides in teaching had been made. Unlike undergraduate teaching, where large group lecturing is the norm, instruction, as recommended in the JRC Report, is interactive and centred on small groups. Students answer questions, state their opinions and are encouraged to ask instructors about points. Apprehension that the question and answer "Socratic" approach would be a failure because of students' inhibitions about speaking in public and expressing views proved unfounded, as were fears it was unsuited to a civil law system.<sup>122</sup> One recently qualified attorney who attended law school at Kyōto University<sup>123</sup> said this technique helped build self-confidence and, coupled with the generally high level of interaction with professors, was one of the best parts of education there, an assessment she felt that was widely shared by her contemporaries. Hearing viewpoints of practitioner professors was also greatly appreciated by her. The head of a law school<sup>124</sup> spoke of the stimulating effect of being taught by practitioners on students and how this contributed to uniting theory and practice.<sup>125</sup> Measured against undergraduate courses, student participation and attendance at law school classes is high.

A professor of the sociology of law<sup>126</sup> described how the arrival of law schools had "forced" law professors to be innovative and more "serious" in their commitment to teaching, which many previously prioritised less than research. He compared this with teaching on undergraduate law degrees, where methods remained largely unchanged, and which may now receive less attention because of effort and resources channelled into law schools. Another sociology of law professor<sup>127</sup> explained that whilst a sophisticated form of education is provided through a variety of high quality materials and

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122 Fears that simulated conferences and negotiations, heavily influenced by what is done in law schools in the United States, would be unsuccessful were also groundless.

123 Interviewed at the offices of Yamaguchi Attorneys on 6 July 2015.

124 Interviewed on 6 July 2015.

125 A difficult, and expensive, feature of running law schools has been maintaining the ratio of professionally qualified lawyer instructors to students. In recognition of this the Ministry of Justice recommended, as a partial solution, newly qualified attorneys be encouraged to return to university to study for a Ph.D. and then to follow careers as a law professor. Success in recruiting them may well depend on the amount of remuneration, given that many newly qualified lawyers face repayment of debts.

126 Interviewed on 11 July 2015.

127 Speaking at a seminar on law schools at Ōsaka City University Graduate School of Law, kindly organised to assist the writer, held on 7 July 2015.

methods, the amount of preparation necessary for law school classes had reduced time available to teachers for research and the study of foreign law. Although law school means of instruction had been little applied to undergraduate teaching they had led to new imaginings how this could be altered. In Reports written in 2009 and 2012 the Special Committee on Law Schools praised law schools as a model for university reform providing highly interactive education in small classes, shifting away from large lectures and connecting theory and practice.<sup>128</sup>

Albeit to comply with accreditation requirements, law schools might also be seen as exemplars for other university departments in the way they have introduced peer observation of teaching, development of workshops in teaching practise and subject matter and student appraisal of courses, hitherto rare in Japanese Universities.<sup>129</sup>

For classes and assignments students are required to read cases thoroughly and understand the codes of law and applications of theory involved. It was explained that the level of analysis far exceeds that necessary to pass the old National Legal Examination with its concentration on memorising material and provides a much better preparation for legal practice. The width of the law school curriculum compared to that of old National Legal Examination was seen as a considerable enrichment of knowledge.<sup>130</sup>

Mention has been made earlier of the findings in 2009 and 2012 of the Special Committee on Law Schools that law school graduates excelled in commitment to learning; ability to research; logical persuasion; facility to identify relevant interests of clients; powers of communication and self-presentation; comprehension of professional ethics and social mission; understanding of not only core areas of law, but also other useful fields.

According to a law school head<sup>131</sup> the effect of theories of jurisprudence taught at law schools, although limited at present, may be of great future importance for providing the basis for legal submissions and better judicial decisions. In the opinion of a law school professor, the quality of legislation might also be improved because some law school graduates, who usually also pass the National Legal Examination, become researchers at the National Diet.<sup>132</sup>

Of somewhat more immediate and identifiable impact has been the effect of law school teaching on an important aspect of civil procedure. Japan, like other civil law countries, has shifting burdens of proof in civil cases. What has to be proved and who has the burden of doing so is not set out in the Codes. Because of this the judiciary set strict rules on factual allegations and proof necessary. Failure to comply with them may

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128 FOOTE, *supra* note 5, 409–410.

129 FOOTE, *supra* note 5, 407.

130 A Director of Prosecutions (Traffic), Ōsaka District Public Prosecutor's Office, and former Professor at both Kyōto and Dōshisha University Law Schools, interviewed on 12 July 2015.

131 Interviewed on 6 July 2015.

132 Interviewed on 7 July 2015.

result in a case being dismissed. Originating in the 1960s, the rules (*yōken jijitsu-ron*) were drafted by the Legal Training and Research Institute in Tōkyō.<sup>133</sup> Independent legal scholars were not involved in their formulation and at the LTRI they were taught rigidly and isolated from their social impact.<sup>134</sup> Law schools have educated students in other theories about shifting burdens and what must be proved which take into account broader considerations including societal fairness. Following what has been described as a dialogue between the LTRI and law schools the rules (*yōken jijitsu-ron*) are being taught more flexibly and with an awareness of other theories. It is now reported to be a less prominent feature in the education of apprentices. Greater latitude in applying these rules may benefit less affluent plaintiffs and consumers now and in the future.<sup>135</sup>

Law schools offer valuable training in courtroom advocacy in moot courts, often specially built for the purpose. A practitioner professor, who teaches mooting, believed it should be compulsory because it put law and procedure learnt into context, inspired students and gave them confidence.<sup>136</sup> Similarly important practical skills are obtainable by working in legal clinics established at most law schools. Insights about practice are gained by placements organised with firms of attorneys, prosecutors and others.

The Special Committee on Law Schools Reports saw law schools effectively bridging the gap between theory and practice. Even in core doctrinal, black letter law subjects there has been extensive use of real cases and incorporation of experiences from practice. At many law schools research professors and practitioner professors collaborate in designing and teaching courses. Further some law schools encouraged research professors to become attorneys, via fast track procedures open to university professors, and obtain practical experience. Co-operation between researcher and practitioner professors opened the door for applied research on aspects of legal practice.

It was explained that the creation of law schools had led to much more professional communication between law professors and members of the legal profession and that this was mutually advantageous. One attorney<sup>137</sup> described how for some decades there was little interaction and contrasted this with the 1960s when it was considerably greater, especially amongst professors who had passed the old National Legal Examination and those in practice.

Law schools were very successful in attracting students with non-law degrees and those with work experience – increasing the legal profession's stock of knowledge, expertise and knowhow, enabling it to function more effectively in the modern world, was a key objective of the Judicial Reform Council.

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133 See I. KITAMURA, *The Judiciary in Contemporary Society: Japan*, in: *Case W. Res. J. Int'l. L.* 25 (1993) 263, 270–275, especially 270.

134 It was suggested that the strictness of these rules contributed to the low level of litigation in Japan. KITAMURA, *supra* note 133, 275.

135 Interview with a professor of law at Ōsaka City University on 17 July 2015.

136 Interview held on 7 July 2015 at Ōsaka City University, Graduate School of Law.

137 Interviewed on 21 July 2015.

Of students enrolled at law schools during their first year (2004), nearly one half had prior work experience (*shakai-jin*) and over a third had non-law degrees (*mishū-sha*).<sup>138</sup> Because of the declining National Legal Examination pass rate and diminished prospects for new attorneys the percentages for both are now very much smaller and in 2014 stood at approximately 19 per cent and 15 per cent respectively. Nonetheless it is relevant to note that until 2008 the percentage of *shakai-jin* at law school was thirty per cent and above and more than twenty five per cent for the next two years. For *mishū-sha* the percentage enrolled was over twenty five per cent until 2010.<sup>139</sup> Whilst the downward trend is troubling,<sup>140</sup> and the difference in pass rate between graduates in law and other disciplines a concern,<sup>141</sup> it is correct that law school led to many more without law degrees and in their mid-careers entering the legal profession. Although their numbers have decreased they remain higher than under the previous system.

Since the introduction of law schools to 2014 the percentage of female attorneys rose from 12.1% to 18%. The law schools system may well have contributed to this, but it is difficult to isolate it as a factor because the population of women attorneys has gradually increased over time.<sup>142</sup>

A former law school head<sup>143</sup> believed that law schools had laid strong foundations for the legal profession by encouraging independent thinking, commitment to innovative teaching, presenting a wide curriculum, providing practical training and admission of non-law graduates and people with a variety of work. Whilst presently encircled by criticism and negativity, largely for matters beyond their control, he considered the value of what had been constructed would be appreciated more clearly in future years.

## IX. CONCLUSION

Post-graduate law schools, with their wide curriculum, committed teachers, and innovative teaching methods, strongly influenced by those in the United States, offer enormous potential to educate the legal profession in Japan. However, despite some achievements, its fulfilment was limited by allowing many more law schools than originally envisaged and also by the later decision not to expand the legal profession's size to that planned. A combination of an essentially free market, or at least lightly regulated, approach to the number of places and government restrictions on the number of new attorneys, influenced by a lack of growth in demand for legal services, led to an increasing failure rate

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138 The two categories are not exclusive and overlapping occurs. Also counted as *shakai-jin* are persons with law degrees who have worked for at least one year before entering law school.

139 JFBA, *supra* note 1, graph on page 14.

140 E. SIBBIT, Adjusting Course: Proposals to Recalibrate Japan's Law Schools and Bar Exam System, in: *Hastings Int'l & Comp. L. Rev.* 36 (2013) 443, 446–447.

141 JFBA, *supra* note 1, graph and table on page 15.

142 JFBA, *supra* note 1, table on page 12. There were 6,336 women attorneys in 2014.

143 From Kansai University Law School, interviewed in London on 22 June 2015.

in the National Legal Examination. Unsurprisingly, students and law schools, in competition with each other, became very pre-occupied with success in this examination – the gateway to legal apprenticeship. With this over-riding concern, features of the old system returned, such as students attending expensive cram schools to learn exam techniques and missing university classes to do so. Also, as law schools responded to student demands, they concentrated more narrowly on subjects examined in the National Legal Examination. Hope that law school graduation would be seen as a valuable qualification in itself, opening the doors to a variety of employment, has not materialised.

The number of places at law school has declined, and will do so further, because of closures and mergers promoted by the Ministry of Education and by the operation of market forces. Substantial reductions in seats available and in students to occupy them – many law schools now report they are undersubscribed – will lead to fewer taking the National Legal Examination and hence a rise in the success rate, notwithstanding the capping of the number who may pass to 1,500. Freed from intense competition with each other and from the enormous exam anxiety of their students, the remaining law schools will be able to deliver deeper and broader legal education,<sup>144</sup> as recommended over a decade ago by the Judicial Reform Council: Certainly this is the optimistic prediction of some law school professors.<sup>145</sup>

Two distinct outlooks have emerged about the future of law schools and legal education in Japan. The first, which appears to be government policy, would reduce the number of law schools and law school students and more tightly restrict numbers who pass the National Legal Examination to help ensure the supply of newly qualified lawyers more evenly matches demand for legal services. Following this approach may lead to higher pass rates in the National Legal Examination, less exam-driven study at law school and greater achievement of the Judicial Reform Council's educational ideals.

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144 That reduced quantity does not necessarily mean increased quality was recognised in an editorial in the Japan Times, "Law School and bar exam reform," 3 October 2013, which urged the government to concentrate on improving the standard of education at law schools and to encourage talented people to enter them.

145 For example a professor of sociology of law, Ōsaka University Graduate School of Law, speaking at a seminar on legal education held on 7 July 2015, kindly organised to assist the writer's research. Another professor of sociology of law, at Kōbe University Law School, interviewed on 11 July 2015, was more cautious about the ability of law schools to provide a more wide-ranging education because success in the bar examination would always be a pre-occupation for students and also the pass rate was a key factor for the amount of subsidy they receive from the government. Interestingly, because he thinks the law school curriculum will inevitably be driven by the content of the National Legal Examination, Daniel Foote would extend the Examination to include skills in communication, research, problem solving, identifying the interests of clients and others and ethical responsibilities. He would also import testing a broad range of abilities and qualities into the Preliminary Examination, FOOTE, *supra* note 5, 441. Similar views about expanding what is examined beyond the present core subjects and electives were expressed by a former professor at Kyōto University Law School and Dōshisha University Law School, interviewed on 12 July 2015.

The second position, arguably more in keeping with the deregulatory and competitive spirit of the Judicial Reform Council, advocates completely removing the cap on numbers allowed to pass the National Legal Examination, or very much loosening it.<sup>146</sup> Qualification to practice law would show acquisition of the minimum legal knowledge and skills necessary to do so competently, rather than the amount possessed compared to other candidates.<sup>147</sup> A professor of competition law<sup>148</sup> likened this to the National Medical Examination. In order to pass this difficult examination, candidates must obtain a minimum mark which is set high. There is no quota on the number who succeeds. Competence is measured by an absolute standard of knowledge rather than one that is relative to other candidates. Adopting a similar approach for the National Legal Examination, which more people could be expected to pass, might necessitate significantly expanding the capacity of the Legal Training and Research Institute in Tōkyō or abolishing it altogether and transferring its functions to law schools, both of which would require extra resources to achieve. Removing the quota for successful candidates in the National Legal Examination might lessen concerns of law school students and law schools about passing, leading to more study of practical skills and subjects wider than its curriculum. There is acceptance not all will succeed in finding employment or, if they do, be successful in practice.<sup>149</sup> It would be up to the market to decide how many lawyers society requires, as in the United States, and Britain, where there are now considerable surpluses of legally qualified young people, many of whom find employment as paralegals or in jobs that require some knowledge of the law. Against this view it has been said that failure by appreciable numbers of the legally qualified persons to find work, or good positions, may deter the highly able from seeking to join the legal profession. This is answered by a belief that it is unlikely that the talented and confident would be deflected.

Law schools in Japan are of definite interest in the neighbouring Republic of Korea, which like Japan has a civil law system. Following legislation in 2007, a new system of legal education based on a postgraduate law school model was introduced in 2009. The reasons for doing so, bearing similarity to those behind reform in Japan, included: to diversify the academic background of lawyers; to broaden education beyond merely memorising; to provide high quality legal services at reasonable costs, partly by increasing the number of attorneys; and to strengthen national competitiveness in legal services, in preparation for opening the legal services market to international competi-

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146 See MATSUI, *supra* note 52, 28–30.

147 Several of the eminent legal panellists reported in ARONSON, *supra* note 65, 263, urged that a license to practice law should be like a “driver’s licence” enabling competition amongst holders to fill a wide variety of law related needs in society rather than signifying membership of a small elite with a narrow focus.

148 From the Graduate School of Law, Kyōto University, interviewed on 22 July 2014.

149 ARONSON, *supra* note 65, 262–263 and MATSUI, *supra* note 52, 29.

tion.<sup>150</sup> The old system, which ran in parallel to the new until 2013, quite closely resembled the pre-law school system in Japan. Intending lawyers obtained a law degree and attended a preparatory school for two or three years to ready them for the Korean Bar Examination (some students abandoned law degree studies to join bar preparation classes at cram schools and did not graduate) which had a success rate of less than 5 per cent. Those who passed entered the Korean Judicial Research and Training Institute, where they studied for two years before taking a final examination, success in which allowed admission to practice.<sup>151</sup> Under the new system the Ministry of Education permitted 25 universities to establish law schools which altogether admit a total of 2,000 students each year.<sup>152</sup> On completing a three-year course they receive a J.D. degree.<sup>153</sup> They then take the Lawyer Admission Test, which, after passing, leads to qualification as a lawyer. The first sitting of the Test was in 2012 when 87.15 per cent of candidates passed. In 2013 a 75.17 per cent success rate was recorded and in 2014 one of 67.63 per cent. It will be immediately apparent that these figures are very much higher than the National Legal Examination in Japan. A key explanation for this is that the number of law schools and law students was tightly controlled in Korea, unlike Japan, where the number of law schools created exceeded that expected.<sup>154</sup> As a result of the reform the number of lawyers in the Republic of Korea has increased more rapidly since 2012 and is expected to reach 20,000 in the next three to four years.<sup>155</sup> The new system is not without its critics, some of whom insist there should not be a quota for student admissions and that the Korean law schools should emulate a more American model. They

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150 Information kindly supplied by Mr Yunil Kim, counsellor, The Embassy of the Republic of Korea, 60 Buckingham Gate, London, SW1E 6AJ.

151 J. KIM, *Socrates v. Confucius: An Analysis of South Korea's Implementation of the American Law School Model*, in: *Asian-Pacific L. & Pol'y J.* 10-2 (2009) 322, 326 and S.S.R. LEE, *Legal Education in Korea*, in: Steele/Taylor (eds.), *Legal Education in Asia* (London u.a. 2010) 169, 170 f.

152 The largest law schools are located at Seoul National University (150 students), Korea University (120), Yonsei University (120) and Sungkyunwan University (120). The smallest school has an enrolment of 40 students.

153 The law school curriculum consists of the: "Basic" element – Public Law (Constitutional Law and Administrative Law), Private Law (Civil Law, Commercial Law and Civil Procedure) and Criminal Law (Criminal Law and Criminal Procedure); and the "Practice Curriculum" element which is made up of studying the Lawyers' Code of Conduct, Legal Research, Legal Documents Writing, and participating in mock trials and other practices. In keeping with the objective of broadening lawyers' education the curriculum also comprises a "Related" element which includes Sociology of Law, Comparative Law, Economics, Politics and Statistics. Information kindly supplied by Mr Yunil Kim, counsellor, The Embassy of the Republic of Korea, 60 Buckingham Gate, London, SW1E 6AJ.

154 See CHEN, *supra* note 107, 33.

155 Information kindly supplied by Mr Yunil Kim, counsellor, The Embassy of the Republic of Korea, 60 Buckingham Gate, London, SW1E 6AJ. In 2009 there were 9,619 lawyers in Korea; 2010: 10,263; 2011: 10,976; 2012: 12,533; and 2013: 14,242.

assert that the enormous competition to pass the bar examination has simply been replaced by that to enter law school.<sup>156</sup>

A symposium attended by faculty members of both Korean and Japanese law schools was held in Korea in 2013 to discuss their respective experiences. In a newspaper interview the president of Waseda University and chairperson of the Japan Association of Law Schools, Kaoru Kamata, said he had come to learn about Korea's law school system and to explain about that in Japan. He warned Korea not to make mistakes similar to Japan.<sup>157</sup>

Law schools in both Japan and Korea have featured prominently in discussions by academics and government bodies about reforming legal education in Taiwan, another country in Asia with a system of codified civil law. Legal education in Taiwan resembles that in Japan and Korea before the introduction of law schools. In essence it involves undergraduate study of law, necessary to take a national admission licensing examination – the Attorney Qualification Exam – which has a low pass rate, pre-practice training at a central government institute and, finally, membership of a bar association.<sup>158</sup>

Interest about reform of legal education in Japan should extend beyond Korea, Taiwan and scholars of comparative law to include law teachers around the world: There is an opportunity to learn much from it. Certainly few will be able to see the formulation and implementation of such thorough going plans in their own countries.

Although most overseas assistance to create graduate law schools in Japan came from North America, British expertise, now accumulated over some years, of teaching professional legal skills in small and interactive groups could also be helpful in contributing to their success. If requested, this should be made available readily. Given greater weight has recently been placed on oral presentations in criminal trials in Japan, a most useful contribution from Britain might be knowledge of teaching techniques in advocacy. Experience of running the one year post-graduate diploma course in law (GDL) may also be of assistance. A similar course in Japan might be valuable preparation for non-law graduates, the number of whom has much declined at law schools and whose pass rate in the National Legal Examination is significantly lower than of those with law degrees.

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156 See, for example, Kyung Sin Park, a law professor at Korea University in Seoul. Reported in "A Japanese Legal Exam That Sets the Bar High", *The New York Times*, 10 July 2011.

157 "Korea warned against Japan's law school mistakes," *JoongAng Ilbo*, 22 August 2013.

158 CHEN, *supra* note 107, 35.

## X. APPENDIX – CHRONOLOGY OF EVENTS

July 1999	Justice System Reform Council established to examine the legal system
2000	Number of attorneys is 17,126
2001	990 (2.5%) examinees pass the National Legal Examination
June 2001	The Justice System Reform Council recommends reforms of the justice system including: <ul style="list-style-type: none"> <li>– Establishment of new law schools post graduate law schools which must be attended before taking the new National Legal Examination with a pass rate of 70–80%</li> <li>– A goal of at least 1,500 successful bar examinees annually by 2004 under the old bar examination</li> <li>– A target of at least 3,000 successful bar examinees annually by 2010 under the new National Legal Examination and ending the old National Legal Examination during that year</li> <li>– Aspiring to 50,000 practicing lawyers by 2018</li> </ul>
April 2004	Sixty-eight law schools open; out of 72,800 applicants, 2,792 are admitted
2006	Training period at the Legal Training and Research Institute further shortened to one year
April 2006	74 law schools are open
September 2006	Pass rate for National Legal Examination (taken, that year, only by law graduates) 48 per cent (1,009 out of 2,087 persons)
September 2007	Pass rate for National Legal Examination 40.2 per cent (1,851 out of 4,607 persons); 32.5 per cent for non-law graduates
Autumn 2007	Mr Hatoyama, The Minister of Justice, expresses fears that more lawyers will result in Japan becoming a litigation society
September 2008	Pass rate for National Legal Examination 33.3 per cent; 22.5 per cent for non-law graduates
2008	The Ministry of Education begins investigating the quality of education at law schools
September 2009	Pass rate for National Legal Examination 27.6 per cent (2,043 out of 9,743 persons); 18.9 per cent for non-law graduates
2009	The Ministry of Education encourages law schools to reduce their admissions
September 2010	Pass rate for National Legal Examination is 25.4 per cent (2,074 out of 8,163 persons); 17.3 per cent for non-law graduates
2010	The Ministry of Education warns some two dozen law schools that their pass rates must improve
2010	Himeji Dokkyō University Law School announces it will not accept any new students for 2011

December 2010	Number of attorneys is 28,868
2010	Target of at least 3,000 successful bar examinees annually by 2010 under the new National Legal Examination not met
September 2011	Pass rate for National Legal Examination is 23.5 per cent (2,063 persons); 16.7 per cent for non-law graduates
2011	Introduction of <i>yobi shiken</i> , the preparatory exam which, if passed, allows entrance to the National Legal Examination without attending a law school. Taken by 6,477 people of whom 116 were successful
2011	The old National Legal Examination is taken for the last time
2011	Number of attorneys exceeds 30,000
2011	The Japan Federation of Bar Associations recommends substantially reducing the number of law school students, merging or abolishing some law schools and a temporary increase in the number of times candidates can take the National Legal Examination
September 2012	Pass rate for the National Legal Examination is 24.6 per cent (2,044 persons); 17.7 per cent for non-law graduates
2013	After Ministry of Justice reduce financial subsidies, 8 law schools stop admitting new students
September 2013	Pass rate for the National Legal Examination is 25.8 per cent (1,810 persons); 19.6 per cent for non-law graduates
2013	<i>Yobi shiken</i> taken by 9,224 people of whom 351 (3.8 per cent) passed.
July 2013	Target of at least 3,000 successful bar examinees annually by 2010 under the new National Legal Examination formally abandoned
2014	163 candidates who had passed the <i>yobi shiken</i> were successful in the National Legal Examination, giving a pass rate of 66.8 per cent
Spring 2014	61 law schools did not have sufficient new students to fill their places.
September 2014	Pass rate of 21.9 per cent
2014	Number of applicants to law schools is 13,000
2014	The number of law schools that have decided to stop accepting new students rises to 20
2015	Pass rate for the National Legal Examination is 23.8 per cent (1,850 persons)

## SUMMARY

*This article seeks: to explain features of the previous system of legal education in Japan; to present criticisms made of it; to describe, in the context of wider social and economic reform, the origins of the Judicial Reform Council and its key recommendations including the creation of law schools, the most important development in Japanese legal education for sixty years; to recount their opening and the preparation beforehand; to give an account of*

*the factors that have obstructed achievement of their goals; to set out how law schools, students and commentators responded; to list the very real achievements of law schools and finally to offer some concluding thoughts about their future and attempt to put them in an international context.*

*At the beginning of the last decade the Japanese government saw a reformed legal system as key to social ordering and resolving disputes, which were expected to rise as the country moved away from organisation by central administrative planning and guidance towards the free market, individualism, personal autonomy, and fuller participation in globalisation. Vital to this was the creation of graduate law schools intended to increase both the size and capabilities of the legal profession.*

*The most striking – and much commented upon – characteristic of the old system, that of tens of thousands of candidates sitting the National Legal Examination, and on average two per cent passing, vanished as a result of the inception of law schools in 2004.*

*However, although capable of teaching a deeper intellectual, critical and more reflective understanding of law and many useful lawyers' skills, law schools have been hindered in their ability to do so by a decision taken in 2003 which permitted many more to be created than was originally anticipated and subsequently by government refusal to allow the number of their graduates who pass the new National Legal Examination to rise to that initially projected because, contrary to predictions, demand for legal services did not increase. These factors combined to produce an annually decreasing pass rate. Understandable pre-occupation by students, and their teachers, with success in the National Legal Examination led to concentration at many law schools only on examinable subjects and marginalisation of those not but nonetheless beneficial. Also features from the previous system appeared, including students attending cram schools for exam techniques and even absenting themselves from classes in order to do so.*

*Because of considerable anxiety about passing the National Legal Examination, substantial expense and uncertain job and salary prospects, uniting to form what one professor described "as a process of suffering," student enrolment at many schools, especially those whose graduates perform badly in the NLE, sharply decreased.*

*Most law schools have suffered reductions in the amount of subsidy they receive for their courses from the government. At the time of writing, 23 out of the 74 law schools had stopped accepting new students, more were anticipated to follow, and many of these were expected to close when existing students completed their courses.*

*Substantial reductions in places available and in students to occupy them – many law schools now report they are undersubscribed – may well lead to fewer taking the National Legal Examination and hence a rise in the success rate, notwithstanding the capping of the number who may pass to 1,500. Freed from intense competition with each other and from the enormous exam anxiety of their students, the remaining law schools may be able to deliver the deeper and broader legal education recommended over a decade ago by the Judicial Reform Council: Certainly this is the optimistic prediction of some law school professors.*

*Law schools are much exercised with the Preliminary Examination, introduced in 2011, successful candidates in which are allowed to take the National Legal Examination without attending law school. Critics say this exam, intended for people unable to afford law school but wanting to become lawyers, or those who had practical legal experience, has become a shortcut used by undergraduate law students and law school students to take the National Legal Examination. If numbers passing this examination continue to rise, it is feared it will become a grave threat to the existence of law schools.*

#### ZUSAMMENFASSUNG

*Dieser Beitrag erläutert zunächst die Charakteristika des bisherigen Systems der Juristenausbildung in Japan. Er stellt die an diesem geübte Kritik vor und beschreibt dann im Kontext einer weitreichenderen Gesellschafts- und Wirtschaftsreform den Hintergrund des Judicial Reform Council und dessen Kernempfehlungen einschließlich der Schaffung von Law Schools als der bedeutendsten Entwicklung in der japanischen Juristenausbildung in den letzten 60 Jahren. Es folgt ein Blick zurück auf die Vorbereitung und schließlich Eröffnung der Law Schools. Es werden die Faktoren beschrieben, die verhindert haben, dass die mit ihr verfolgten Ziele erreicht wurden. Ferner wird dargestellt, wie Law Schools, Studenten und Kommentatoren darauf reagiert haben. Der Beitrag benennt auch die erreichten Erfolge der Law Schools, gibt abschließend einen Ausblick auf deren Zukunft und unternimmt den Versuch einer Einordnung in den internationalen Kontext.*

*Zu Beginn des letzten Jahrzehnts sah die japanische Regierung eine Reform des Rechtssystems als Schlüssel zur Ordnung der Gesellschaft und zur Lösung von Konflikten. Man erwartete, dass deren Zahl steigen würde, da das Land sich weg von einer zentralen Planung und Führung durch die Verwaltung hin zu einem freien Markt, Individualismus, persönlicher Selbstbestimmung und weitreichender Teilnahme an der Globalisierung entwickelte. Zentral für das Vorhaben der Regierung war die Schaffung von Law Schools für Graduierte, welche sowohl die als auch die Fähigkeiten des Berufsstands der Juristen ausbauen sollte.*

*Das markanteste und wohl am meisten kommentierte Charakteristikum des alten Systems, ein Staatsexamen (National Legal Examination), welches von zehntausenden Kandidaten durchlaufen, aber nur von durchschnittlich 2,5% bestanden wurde, verschwand mit der Einführung der Law Schools im Jahr 2004.*

*Obwohl die Law Schools ein intellektuell tieferes, kritisches und reflektiertes Verständnis des Rechts sowie viele nützliche juristische Fähigkeiten vermitteln könnten, wurden sie daran gehindert, dies zu tun. Zum einen ermöglichte eine Entscheidung aus dem Jahr 2003 die Schaffung von weitaus mehr Law Schools als ursprünglich vorgesehen, zum anderen weigerte sich die Regierung, die Zahl der Absolventen, welche das Staatsexamen bestehen dürfen, auf die ursprünglich anvisierte Zahl anzuheben, da sich der Bedarf an rechtlichen Dienstleistungen entgegen den Erwartungen nicht erhöhte. Die Summe dieser Ursachen führte dazu, dass die Bestehensquote sank. Die nachvollziehbare Sorge seitens der Studenten und ihrer Lehrer um den Erfolg im Staatsexamen veranlassten in vielen Law Schools eine*

*Konzentration auf prüfungsrelevante Inhalte und eine Marginalisierung der nicht prüfungsrelevanten, aber dennoch nutzbringenden Inhalte. Darüber hinaus kehrten Charakteristika des alten Systems zurück, etwa dass Studenten Repetitoren (cram schools) besuchten, um die Prüfungstechniken zu erlernen, und dafür sogar dem Unterricht der Law Schools fernblieben.*

*Eine beträchtliche Angst, das Staatsexamen nicht zu bestehen, erhebliche Kosten der Ausbildung und unsichere Berufs- und Gehaltsaussichten verdichteten sich zu einem von einem Professor so beschriebenen „process of suffering“, der dazu führte, dass die Zahl der Einschreibungen insbesondere an den Law Schools mit schlechten Examensergebnissen zurückging.*

*Die meisten Law Schools erlitten Kürzungen der staatlichen Zuschüsse. Zur Zeit der Erstellung dieses Beitrags hatten 23 von 74 Law Schools aufgehört, neue Studenten aufzunehmen, und es wird erwartet, dass mehr folgen und viele schließen werden, wenn ihre derzeitigen Studenten abgegangen sind.*

*Ein erheblicher Rückgang an Studienplätzen und Bewerbern – viele Law Schools berichten von einem Bewerbermangel – dürften wohl dazu führen, dass weniger Kandidaten das Staatsexamen schreiben und die Bestehensquote steigen wird, auch wenn die Zahl derjenigen, die bestehen dürfen, weiterhin auf 1.500 beschränkt bleibt. Befreit von erheblichem Konkurrenzdruck und der enormen Prüfungsangst ihrer Studenten können die übrig gebliebenen Law Schools möglicherweise die vertiefte und breitere Rechtsausbildung leisten, die bereits vor über einem Jahrzehnt vom Judicial Reform Council angeregt worden war: Dies jedenfalls ist die optimistische Vorhersage einiger Law School-Professoren.*

*Große Aufregung herrscht an den Law Schools angesichts der sogenannten Preliminary Examination, eingeführt im Jahr 2011, welche es erfolgreichen Kandidaten erlaubt, das Staatsexamen zu schreiben, ohne vorher eine Law School besucht zu haben. Kritiker bemängeln, dass diese Prüfung, gedacht für Personen, welche Juristen werden wollen, die Kosten eines Studiums an einer Law School aber nicht tragen können, oder diejenigen, die bereits juristische Berufserfahrung gesammelt haben, sich zu einer Abkürzung für Studenten der juristischen Fakultäten sowie Studenten der Law Schools entwickelt hat, um direkt zum Staatsexamen zugelassen zu werden. Es wird befürchtet, dass dies sich zu einer ernsthaften Bedrohung für die Law Schools entwickeln wird, falls die Zahl derjenigen, die diese Prüfung bestehen, zunehmen wird.*

*(Die Redaktion)*