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**SPECIAL ISSUE:**  
**REFORM IN JAPANESE LEGAL EDUCATION**

**Schooling Lawyers**

Dan Rosen\*

If there is one thing that Japanese legal education needs, it is more legal education. The decades-old system of concentrating the training of lawyers in one institution has long since outgrown its purpose. The system well served a nation struggling to rebuild itself and its legal system after the war. It hardly does justice, however, to the twenty-first century Japan, a country that is among the principal players on the international stage.

As the Tokugawa *bakufu* knew quite well, international trade does not stop with the exchange of goods and money. Inevitably, ideas are exchanged too. What was difficult then—closing off the country to foreign influence—now has become impossible. The Internet brings millions of Japanese in touch with the “outside” every day. The number of Japanese travelling abroad has risen steadily, from 663,000 in 1970 to 15,806,000 in 1998.<sup>1</sup> The number of Japanese living abroad has risen to more than 780,000.<sup>2</sup> Even Japanese sports stars, the most recent being seven-time batting champion Ichiro, have chosen to move to other lands, and Japanese follow their careers through mass media.

At the same time, the number of non-Japanese residing in Japan now well exceeds one percent of the population,<sup>3</sup> and the possibility of extending some voting rights to permanent residents is receiving serious consideration in the legislature.

Japan’s training system for lawyers allowed the country to concentrate its efforts on building a manufacturing and industrial infrastructure and, thus, make itself over into an international power. Now, however, as a mature economy, the nation needs a training system that will give lawyers the skills they need to operate in a diverse environment, both inside and outside Japan’s borders.

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\* Professor, Doshisha University Faculty of Law. I am indebted to Ohara Nozomu (小原 望) of the Osaka Bar for many years of education on the selection and training of legal professionals in Japan. However, neither he nor anyone else should be held responsible for the conclusions I draw in this article.

<sup>1</sup> ASAHI SHIMBUN, JAPAN ALMANAC 272 (2000).

<sup>2</sup> *Id.* at 63.

<sup>3</sup> *Id.* (Japan had 1,512,116 foreign residents as of 1998, according to Ministry of Justice statistics).

The Japanese system has emphasized uniformity: one school for all lawyers, judges, and prosecutors. This has created a high degree of predictability in outcomes, but predictability at the cost of flexibility is ill-equipped to respond to a diverse environment.

The ideal for Japan, or for any country, would be legal education that imbues each individual with both a high level of skill and the flexibility of thought to allow adaptation to diverse ideas. Law schools in the United States strive to achieve that goal through the diversity of faculty in every institution. Although exceptions exist, such as the University of Chicago Law School, which is known for its “law and economics” ideology, American law school faculties, in general, are a collection of individually-minded teachers who adhere to no one approach or point of view.<sup>4</sup> (A few minutes at any law school faculty meeting make that point abundantly clear.)

Although it is true that a huge percentage of American law school *teachers* graduated from the same “top 10” or “top 20” law schools themselves, this still creates much more diversity than in Japan, where a huge percentage of all *lawyers* (not just law teachers) graduated from the same small group of schools, and—eventually—from the one and only Legal Training and Research Institute (“Training Institute”).

For example, 994 persons passed the 2000 Bar Examination in Japan. Of those, two-thirds graduated from the same five universities, and 84% graduated from the top ten schools.<sup>5</sup> These schools certainly have

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<sup>4</sup> There certainly, however, have been attempts to “take over” faculties by warring coalitions. The most famous of these, perhaps, was the standoff between the “Critical Legal Studies” faction and the “traditional” faction of the Harvard Law School, which prevented any hiring of new, permanent faculty for a number of years. Brock Brower, *The Law School and the Law*, HARV. MAG., Jan.-Feb. 2000, also available at <http://www.harvard-magazine.com/issues/jf00/law.html> (last visited May 1, 2001).

<sup>5</sup> Because of a tie for the number-ten spot, there were twelve schools in the top ten.

Rank	School	Pass rate	Number passing
1	Tokyo University	23.1%	198
2	Waseda University	13.2%	140
3	Keio University	20.5%	116
4	Kyoto University	24.2%	108
5	Chuo University	15.0%	102
6	Hitotsubashi University	20.9%	41
7	Doshisha University	19.0%	31
8	Osaka University	18.4%	29
9	Tohoku University	16.7%	18
10	Jochi University	14.0%	17
	Meiji University	7.5%	17
	Nagoya University	20.0%	17

their own personalities,<sup>6</sup> and they tend to reinforce themselves through hiring of their own graduates as teachers to a much greater degree than in the United States. However, the Training Institute—not the universities—exerts the final influence on the education of lawyers. Those who would enter the legal profession must adapt themselves to the Training Institute’s approach.

Universities admit the students when they have only just graduated from high school. At my university, we offer guidance at freshman orientation to those who believe they would like to take the Bar Examination. Although this is practical and useful given the current method of educating lawyers, I personally am troubled by the idea of eighteen year-olds having to decide on a career path (and curriculum) at such an early age. The introduction of post-graduate law schools would, I hope, allow university students to learn more broadly during their undergraduate years. A lawyer who knows about sociology and science is much more valuable than one who only understands civil procedure and the civil code.

The fault is not in the universities. The one-track system forces them to ask that question to their students when they are still in their teens and pushes those teenagers into foregoing the adventure of an education in order to prepare for one examination. Compounding the problem, the *shushoku katsudo* system emphasizes employment offers for fourth-year students and no others. Thus, from the moment of entering a university, a would-be lawyer is placed under tremendous pressure. The decision to take the exam is typically a decision not to spend the time on *shushoku katsudo*, a decision that means foregoing the chance of employment at most of the best-known companies if he does not become a lawyer.<sup>7</sup>

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<sup>6</sup> Chuo University, for example, “was founded as *Igirisu Horitsu Gakko* [The English Law School] in 1885 by a group of eighteen young attorneys and scholars in central Tokyo. The founding fathers endeavored to establish a university which would teach in the spirit of English law and democracy, a courageous effort reflecting the founders’ resolve to modernize the Japanese legal system through progressive legal education.” Chuo University Web site, <http://www2.chuo-u.ac.jp/intlcent/english/founding.htm> (last visited Feb. 1, 2001).

<sup>7</sup> Fourth-year students spend a substantial amount of time and effort on searching for and interviewing for jobs. Those who want to take the Bar Exam usually decide to use that time for studying for the exam, rather than searching for a job. Beyond that, job interviews and offers generally occur in the Spring and Summer months, but the Bar Exam results come in the Fall. So, a student who accepts a job offer but then learns he has passed the Bar is in the position of having to call the company back and withdraw his acceptance. Not only is this personally uncomfortable, it is disruptive to the company, which has by that time essentially completed its hiring for the season. It is also unfair to other job seekers who might have received the offer had the Bar Exam student not accepted.

Not only are Bar Exam candidates forced to begin concentrating their efforts on law at a very early age, they often believe it is necessary to enroll in private “cram schools” whose lectures are aimed directly at passing the exam, rather than on creating well-rounded legal professionals. As a result, Bar Exam candidates are quite often absent from law courses at their universities. Instead, they are attending lectures at the “cram schools.”

Bar Exam *ronin*, those who never pass the Exam even after multiple attempts, often end up working at jobs far below their real skill level. This is both a personal and social waste. Even those whose stories have happy endings may devote many years of their lives to cram school study and self-study, getting by on part-time jobs after graduation before finally passing the Exam. A substantial number of applicants do not pass until they are into their thirties and sometimes forties. Is this truly the best and highest use of their talents? Is it really the best way of producing lawyers?

A consensus has developed in Japan that the answer to those questions is “No.” Both the *Asahi Shimbun* and the *Yomiuri Shimbun*, which rarely agree about anything, have editorialized in favor of reforming legal education and increasing the number of new lawyers.<sup>8</sup>

The interim report of the government’s Judicial Reform Council called for both an increase in the number of legal professionals and for the creation of law schools to train them.<sup>9</sup> Anticipating this conclusion, universities across the country have hosted countless symposia and produced mountains of reports on the issue of law schools. Not surprisingly, most of those universities also covet government permission to set up such law schools themselves.

For better or worse, the United States is the world’s leading producer of lawyers. Its training system for lawyers also provides the prototype for law as a separate professional school. Thus, much of the discussion in Japan has concerned how much of the American model is appropriate for use here. Even the name of such institutions shows something of the differing approaches. Many of the seminars and reports

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<sup>8</sup> Judicial reform must be achieved, DAILY YOMIURI, Nov. 22, at 6; Justice system needs reform, not slogans and gestures, ASAHI EVENING NEWS, Oct. 22, 2000, at 8.

<sup>9</sup> JUDICIAL REFORM COUNCIL, INTERIM REPORT OF COMMISSION ON LEGAL REFORM (2001) (司法制度改革審議会、中間報告、平成12年11月20日) [hereinafter INTERIM REPORT].

produced at universities have used the phrase *ro-sukuru* (「ロー・スクール」), a transliterated version of “law school,” and that is how it has come to be known colloquially.<sup>10</sup> However, the Judicial Reform Council’s report avoids the katakana phrase and its American overtones in favor of a more pure Japanese rendering, 「法科大学院」, which translates as specialized graduate institute of law.

So, the question is presented: what should Japan’s professional legal education system become—a translated version of American law schools or something intrinsically Japanese? The answer, I believe, is between the two.

On one hand, legal education in the United States is surely the most robust in the world. It has continuously been in the midst of self-scrutiny, from at least as early as Christopher Columbus Langdell’s introduction of the case method of study in the late nineteenth century.<sup>11</sup> It has passed through any number of movements, including Legal Realism,<sup>12</sup> Law and Economics,<sup>13</sup> and Critical Legal Studies,<sup>14</sup> to name only a few.

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<sup>10</sup> At least one university goes beyond katakana and even uses the English letters “LSP” to refer to its law school project, seemingly making the identification with American-style legal education quite clear.

<sup>11</sup> Langdell’s method spread across the United States, but its acceptance was less rapid in areas farther removed from Cambridge. *See generally* Paul M. Pruitt, Jr., *The Life and Times of Legal Education in Alabama, 1819-1897: Bar Admissions, Law Schools, and the Profession*, 49 ALABAMA L. REV. 281, 299-301 (1997) (describing the University of Alabama School of Law’s gradual adoption of Langdell’s method), available at <http://www.law.ua.edu/lawreview/pruitt.htm>. Even Yale rejected the case method at the outset. BROOKS MATHER KELLEY, *YALE: A HISTORY* 257 (1974).

<sup>12</sup> Professor Fred Rodell of Yale was the spiritual leader of the realists. *See generally* Charles Alan Wright, *Goodbye to Fred Rodell*, 89 YALE L.J. 1455 (1980).

<sup>13</sup> Japan scholar J. Mark Ramseyer’s work is heavily influenced by the Law and Economics movement. *See, e.g.*, J. MARK RAMSEYER & FRANCES MCCALL ROSENBLUTH, *JAPAN’S POLITICAL MARKETPLACE* 142-81 (1993) (commenting on the behavior of Japanese judges). Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit and long-time Yale Law School professor, is one of the seminal figures in Law and Economics. Calabresi’s approach is less far severe than some of his successors, however, and relies on economics as one of any number of factors to consider. *See, e.g.*, GUIDO CALABRESI & PHILIP BOBBITT, *TRAGIC CHOICES* (1978); GUIDO CALABRESI, *THE COST OF ACCIDENTS* (1970).

<sup>14</sup> Harvard Professor (and former Yale Law student) Duncan Kennedy led the “Critical Legal Studies” movement through its early years, advocating a breakup of elitism in law and legal education. *See, e.g.*, Duncan Kennedy, *A Cultural Pluralist Case for Affirmative Action in Legal Academia*, 1990 DUKE L.J. 705.

Its practitioners—law professors—belong to a professional association entitled the Association of American Law Schools. That association holds an annual meeting attended by many of the country’s 8,719 full-time law teachers<sup>15</sup> and for fifty years has produced a professional journal devoted to the subject of law teaching itself, the *Journal of Legal Education*.

The organization itself began in 1900 with many of the same issues facing Japan in 2000:

At the turn of the century, the law schools were divided among those that used the Langdell case method, those that used the text method and those that depended upon lectures. There was disagreement about how much the curriculum should be broadened at the expense of teaching the technical subjects of the law. Law schools also differed in the amount of pre-law education required (not all required a high school diploma and only Harvard expected college), the length of the course of study with a range from 2 semesters to 3 years, with most requiring 2 years. In 1897, the [American Bar Association (“ABA”)] for the first time recommended that states require 3 years of law school and that no one be admitted to law school who hadn’t the equivalent of a high school degree, but their recommendation bound no one since there was no accreditation system.

In 1900, 34 law schools, fewer than half of those then operating, sent representatives to an organizational meeting called by the then seven-year old ABA Section on Legal Education to “bring the reputable law schools of the country into closer relations with each other and with the Section.” This group formed the Association of American Law Schools with its object of improving legal education in America. They agreed to membership requirements that included schools requiring the high school diploma, a two year course of study, increasing to three years by 1905, and a library that had at least the reports of the local state court and the United States Supreme Court. At least among these schools, a consensus was achieved on the general shape of the modern law school, as well as the regulatory scheme

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<sup>15</sup> AALS, *Statistical Report on Law School Faculty* (R.A. White ed., 1989-99), at <http://www.aals.org/statistics/rpt9899w.html> (last visited Feb. 1, 2001).

that would be used to bring it about.<sup>16</sup>

Nowadays, meetings among law school faculty occur in an instant in cyberspace. Although it holds no official status, an Internet website for the benefit of law professors serves as a gathering place, a resource center, and a sounding board for members of the profession. Among its many sections, “Jurist: The Legal Education Network”<sup>17</sup> includes “Law School News,” “Faculty Services,” “Student Services,” “Courses” (links to course syllabi websites), “Law Lectures and Speeches” (on video), “Online Legal Education,” “Law School Exams” (test-taking guides, exam collections), “Professors’ Pages,” “Positions Available,” “Conferences,” and “Accreditation Watch” (information on accreditation standards and actions).

The website reflects the fact that despite their specialties and different institutions, American law professors are all members of the same profession. In contrast, Japanese law professors—in general—more closely identify with their academic specialties. Japanese academics frequently attend national and regional *kenkyuu kai* (研究会) (study meetings) in their own fields. Until the advent of the law school debate, however, there has been little mutual discussion about overall issues in legal education.

The unity of the legal education profession in the United States also is reflected in the testing for admission to law school. Essentially every accredited law school in the country<sup>18</sup> relies on the standardized Law School Aptitude Test (“LSAT”), at least in part, for its admissions decisions. The Law School Admissions Council (“LSAC”) creates and administers the test and reports the results directly to schools, combining the test scores with an analysis of applicants’ grade point averages using any formula each law school desires. Thus, for example, a law school that

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<sup>16</sup> Elliott S. Milstein, *Striving for Equal Justice: The AALS in its Second Century*, AALS President Address before House of Representatives, AALS Annual Meeting (Jan. 2000) at <http://www.aals.org/speech00.html> (last visited Feb. 1, 2001) (footnotes omitted).

<sup>17</sup> Jurist: The Legal Education Network, at <http://jurist.law.pitt.edu> (last visited Feb. 1, 2001).

<sup>18</sup> The American Bar Association (“ABA”) has accredited 182 law schools in the United States as of October 1, 1998. OFFICIAL AMERICAN BAR ASSOCIATION GUIDE TO APPROVED LAW SCHOOLS, 2000 EDITION 7 (R.L. Morgan & K. Snyder eds., 1999). See also ABA Website, Section of Legal Education and Admission to the Bar, at <http://www.abanet.org/legaled> (last visited Feb. 1, 2001). The Association of American Law Schools (“AALS”) also accredits law schools and is somewhat more restrictive in its criteria. One hundred sixty-two schools hold both AALS and ABA accreditation. AALS, Statistical Report on Law School Faculty (R.A. White, ed., 1989-99), at <http://www.aals.org/statistics/rpt9899w.html> (last visited Feb. 1, 2001).

values the test score more highly than undergraduate grades can ask the LSAC to create a composite index score giving 60% of the value to the test result and 40% to the college grades. Another school might request an index formula weighted 55% for college grades and 45% test score. In this way, there is both unity and diversity in the admissions process.<sup>19</sup>

The use of a standardized test, at least as a starting point for admissions decisions, means that the entire legal education profession is involved in decisions about what kind of test should be used and how it should be used. In Japan, by contrast, until now each university law department administered its own separate admissions exam, written and scored within the university itself. These exams, however, typically test for knowledge in particular subject areas, such as Japanese History, World History, Mathematics, English, and Japanese Language. In contrast, the American LSAT concentrates on identifying thinking and analytical skills that are important to lawyering. It is a test of aptitude to undertake a particular kind of study (law), not knowledge of any particular subject.

The interim report of the Judicial Reform Council moves in the American direction. It recommends basing law school admissions on a combination of factors, including a test that measures aptitude.<sup>20</sup> This will have the benefit of opening the profession to a more broad range of students and, thus, perhaps eventually broadening the outlook of the profession itself.

Nevertheless, Japan should be wary of committing itself fully to American-style legal education. One reason is that by and large, American law schools have the reputation of being singularly unhappy places.<sup>21</sup> The training typically emphasizes analytical and confrontational skills, made sharper through argument and competition with classmates. Teachers are often viewed as tormentors rather than mentors. The ranking system turns classmates into rivals, with everyone struggling against everyone else for the top spots and access to the best jobs.

The response to these criticisms is that American law schools simply reflect the profession itself. A law school that failed to train its students to clinically dissect and dismember opposing counsel's arguments

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<sup>19</sup> Of course, schools also can consider letters of recommendation, accomplishments in and out of school, and other factors.

<sup>20</sup> INTERIM REPORT (司法制度改革審議会、中間報告), *supra* note 9, at 15-16.

<sup>21</sup> See generally Ann Iijima, *Lessons Learned: Legal Education and Law Student Dysfunction*, 48 J. LEGAL EDUC. 524 (1998); Stephen B. Shanfield & Andrew H. Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65 (1985); Phyllis W. Beck & David Burns, *Anxiety and Depression in Law Students: Cognitive Intervention*, 30 J. LEGAL EDUC. 270 (1979).

would be abandoning its duty to the students and their future clients. This, of course, assumes that the law schools do nothing to shape the profession—a line of thinking that even traditionalist professors would likely reject.<sup>22</sup>

Beyond this, there remains in the United States a gap between what legal academics generally view as appropriate content for legal education, and what practicing lawyers generally view as necessary. The frustration of some is revealed by the comments of several faculty members at Massachusetts School of Law, a non-mainstream law school:

Our school's effort to offer a different type of legal education began with a few practical questions. Among them: "Why doesn't law school teach what students need to know to practice law?" and "Why doesn't it teach what students need to know to pass their bar examinations?" It seems absurd that law school *doesn't* teach what students need to know to practice law or even to pass the professional examinations, given soon after graduation, that are the gateway to the profession.<sup>23</sup>

For most law professors, a reputation for teaching aimed directly at passing the Bar Exam is an insult. Such instruction is viewed as a lower-level activity, quite rightly relegated to self-study or a summer cram school. Law school, they believe, is supposed to provide an educationally invigorating experience, not simply test preparation. Indeed, schools that do focus their energies on the Bar Exam are often referred to, or dismissed as, "trade schools."

Thus, no one at the Yale Law School teaches to pass the Bar. However, other schools with less exalted reputations—especially those (rightly or wrongly) at the lower end of the prestige scale—may well view Bar passage rates as their claim to fame.<sup>24</sup> Nevertheless, students at the "top" schools, which do not teach "to" the Bar, tend to do better on the exam than those at the "lower" schools, which do teach "to" the Bar. The obvious explanation: students at the top schools are smarter and can

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<sup>22</sup> I note that in suggesting the possibility of a less confrontational style of legal education, I am myself employing the confrontational style—extending an "opponent's" argument to its logical conclusion and then pointing out its inconsistency.

<sup>23</sup> Andrej Thomas Starkis, Paula Dickinson & Thomas H. Martin, *Meeting the MacCrate Objectives (Affordably): Massachusetts School of Law*, 48 J. LEGAL EDUC. 229, 229 (1998) (emphasis in original). All the authors are also practicing lawyers.

<sup>24</sup> The prestige of the "top ten" law schools in the United States has remained almost constant over a long period of time. See Richard Schmalbeck, *The Durability of Law School Reputation*, 48 J. LEGAL EDUC. 568, 569-71 (1998).

concentrate on more subtle matters, while less gifted students need to devote more of their energies to the test itself.<sup>25</sup>

Beyond the Bar, however, is the practice of law itself. Almost no one believes that law school, by itself, adequately prepares a student to do the job of lawyering. Two influential reports on legal education have suggested placing greater emphasis on developing lawyering skills.<sup>26</sup> Even students at “elite” law schools have called for more practical training.<sup>27</sup> In response, law schools have expanded their clinical and applied programs. In most cases, however, such programs are still optional.

Thus, the American model of law schools has no shortage of disagreements within its own ranks. Even if Japan decides to fashion its law schools in the image of U.S. law schools, it will have to confront the question *which* U.S. law schools? American legal education is remarkable for its wide varied responses to the question of how to teach law. This diversity, rather than any one approach, is something that Japan would do well to emulate.

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<sup>25</sup> Although widely criticized, the rankings by U.S. News & World Report magazine are also widely cited and followed, especially by prospective students. According to the magazine’s most recent study, the top ten American law schools are:

1. Yale
2. Stanford
3. Harvard
4. New York
5. Columbia
6. Chicago
7. Michigan, Ann Arbor
8. California, Berkeley
8. Virginia
10. Cornell
10. Duke

*Top Law Schools*, U.S. NEWS ONLINE, (2000), at <http://www.usnews.com/usnews/edu/beyond/gradrank/gdlawnf.htm>.

<sup>26</sup> *Legal Education and Professional Development—An Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSION TO THE BAR (Robert MacCrate ed.); *Report and Recommendation of the Task Force on Lawyer Competency: The Role of the Law Schools*, 1979 A.B.A. SEC. LEGAL EDUC. & ADMISSION TO THE BAR (Roger Cramton ed.).

<sup>27</sup> See, e.g., Sophie Bryan, *Personally Professional: A Law Student in Search of an Advocacy Model*, 35 HARV. C. R.-C.L. L. REV. 277 (2000).