

Japan's New Legal Education System: Towards International Legal Education?

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INTRODUCTION

Since April 1, 2004 Chuo Law School has been part of a national effort by Japan to improve the quality of its administration of justice by radically restructuring legal education and admission to legal practice. Dean Masahiko Omura has played a key role from within the Chuo system, from early 2002, first on the Planning Committee of the new Chuo Law School, and then as its founding Dean. Professor Satoru Osanai, who was also at the Melbourne Conference from Chuo Law School, is Chair of the new law school's International Committee, and has a long career in international legal education. Professor Malcolm Smith joined Chuo as an "outsider-insider" from April 1, 2004. This

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paper tries to capture our respective views and experiences as it describes and evaluates the Japanese experiment in legal education.

In a very explicit way, the Japanese project we have joined is intended to equip Japan to play a more prominent role in the globalization movement, and in particular to protect its economic position in the Asian region. The underlying, but explicit, objective of the reform program is to internationalize the Japanese legal profession through legal education. Stated in that way, it is one of the boldest restructuring programs in a developed legal system in many years.

I. THE NEW SYSTEM

A great deal has been written about the background to the reforms in legal education that formally commenced on April 1, 2004. On that day, 68 new graduate law schools commenced operation. Another four had unsuccessfully sought accreditation. Six institutions successfully applied to commence operations on April 1, 2005. An intensive period of preparation led up to April 1, 2004. The first 68 law schools were established from a standing start within a year. They received formal government accreditation only in November 2003. New degree structures and new curricula were developed and approved by both the sponsors of the schools and the two relevant ministries. Staff had to be recruited and new teaching facilities built. Entrance exams were held and a new cadre of law students recruited, and classes commenced on April 2, 2004. All this occurred within a six-month time scale.

This scale of activity could only be successful if there was already a strong infrastructure on which to build. For example, Chuo University had been established almost 120 years earlier, in 1885, as the English Law College, so it was building on a very long tradition of teaching law. Many other new law schools shared a similar heritage, especially the rest of the “big five”, the University of Tokyo and Kyoto University, as the leading public universities and Waseda and Keio as the leading private universities. Over the past 50 years, these five universities account for almost 19,000 of the 25,000 successful candidates for admission to the Legal Research and Training Institute (LRTI), and therefore the careers of judge, prosecutor and lawyer.

This long history of legal education occurs in the context of an equally long legal tradition. The legal infrastructure in Japan in its independent “modern”, or “westernized”, phase is at least 125 years old. This sets Japan apart from its Asian geographic neighbors. Just as 125 years ago the planned adaptation and adoption of European legal principles and institutions was accompanied by the establishment of the predecessors of the first law faculties, it seems significant that one of the three pillars of the 2001 recommendations for reforms of the justice system in Japan would be a renovation of legal education.

Evaluating the new legal education system from the perspective of International Legal Education can be approached at a number of levels.

- Does the new system attempt to incorporate a foreign model, the North American legal education system, thereby contributing to the emergence of a more internationally accepted model for legal education?
- Does the new system adopt techniques of teaching that may be said to be international?
- Does the new model call for internationalization of the curriculum?
- Does the new model involve internationalization of the teaching staff?
- Does the new model offer new opportunities for international legal educational experiences for its students, opportunities not available under the previous system?

We will try to answer these questions as we discuss the new reforms in this paper.

II. THE REFORM PROJECT IN JAPAN – A HISTORY OF TRANSPLANTATIONS¹

Japan is a good model to discuss in relation to internationalization, or transplants, of laws and legal education, as it was the first major Asian nation to successfully establish an industrial economy and a legal system to match. Legal education was an integral part of that process. Transplants of laws, internationalization of legal systems and the emerging globalization debates are all interwoven into the last 125 years or more of Japanese history.

If we adopt the generally accepted date of the beginning of the modern era of Japanese history, and legal history, from the establishment of the Meiji government in 1868, we can say that there have been three major periods of legal renovation in Japan in the modern era, all involving elements of globalization, internationalization and legal transplantation. Japan is now launched on the third major period of legal renovation, in which building an internationally competitive legal profession is seen as a crucial element.

1. *The first period: from the arrival of the Black Ships from America in 1853 to the arrival of General MacArthur in August 1945*

In an early example of globalization, Commodore Perry forced Japan to re-enter the world economy by requiring it to provide shelter and provisions for the US whaling fleet.² The monopoly of trade enjoyed by the Dutch from 1635 to the early 1850s was overthrown. Other Imperial powers followed and by the mid-1860s the failure of the

1 A standard outline of modern Japanese Legal History to 1961 may be found in K. TAKAYANAGI, *A Century of Innovation: the Development of Japanese Law 1868-1961* in: A.T. von Mehren (ed.), *Law in Japan: the Legal Order in a Changing Society* (Cambridge MA, 1963) 15; for an extensive treatise cf. W. RÖHL (ed.), *A history of Law in Japan Since 1868* (Leiden/Boston 2005).

2 See D.F. HENDERSON, *Foreign Enterprise in Japan* (North Carolina 1973) 8-13 for a brief summary.

Tokugawa government to maintain Japan's isolation resulted in its overthrow as well. There followed a thirty year period of intensive legal renovation during which a new system based largely on transplantation and adaptation of European models was adopted by the Japanese government under external pressure. Japan retained its sovereignty, but not its traditional legal system.³ In the process, new legal education institutions were born. Chuo University's first incarnation was as the English Law College, established in 1885 by 18 young lawyers, some of whom had trained in the UK and the USA, who wanted to see Japan adopt English law. They failed but Chuo prospered.

By 1889, Japan had its first written Constitution.⁴ By 1900, it had fully implemented a criminal law and civil law system, with private law based on a Civil Code⁵, Commercial Code⁶ and Code of Civil Procedure⁷ whose structures were largely based on the then German model. The new codes, however, also extensively borrowed from other contemporary legal systems.⁸ There followed 45 years of maturation, as Japan adapted the implants to its own civil society. In that period, German legal theory dominated legislative developments and judicial interpretations of the Codes, no matter from where a provision originated.⁹

It is important to note one element of the transplantation process that proved to be crucial. Japan had educational traditions that could evolve to meet the need for new educational institutions, and it had an educated elite that could adapt to the roles demanded of legal professionals. Legal education in Japan was in a significant sense "international" in this period (1900-1945), as it relied so much on understanding foreign, predominantly German, legal institutions. Many Japanese legal professionals completed their educations in German law faculties in this period, but others studied in France, the UK and the US.

3 TAKAYANAGI, *supra* note 1,

4 *Meiji Kempō* 1889, Semi-official translation in H. ITÔ, Commentaries on the Constitution of the Empire of Japan (M. Itô transl. 1889) reproduced in: H. TANAKA, The Japanese Legal System (Tokyo, 1976) 16-24, superseded by the Constitution of Japan, November 3, 1946; Engl. transl.: EIBUN HÔREI—SHA (ed.), EHS Law Bulletin Series (loose leaf, Tokyo) Vol. I, AA, No. 1000.

5 *Minpō*, Law No. 89/1896 and No. 9/1898, as amended by Law No. 41/2001; Engl. transl.: EIBUN HÔREI-SHA (ed.), EHS Law Bulletin Series (loose leaf, Tokyo) Vol. II, FA-FAA, No.2100-2101 (as of 2001).

6 *Shôhō*, Law No. 48/1899, as amended by Law No.86 /2005; Engl. transl. EIBUN HÔREI-SHA (ed.), EHS Law Bulletin Series (loose leaf, Tokyo) Vol. III, JA-JAA, No. 2200-2201 (as of 2001).

7 *Minji Soshō-hō*, replaced by Law No. 109/1996, as amended by Law No. 153/2001; Engl. transl.: EIBUN HÔREI-SHA (ed.), EHS Law Bulletin Series (loose leaf, Tokyo) Vol. IV, LA, No. 2300 (as of 2001).

8 *Ibid.*

9 Z. KITAGAWA, Theory Reception – One Aspect of the Development of Japanese Civil Law Science, in: Law in Japan 4 (1973) 1 (trans. Ronald E. Lee) provides an excellent analysis of this process.

2. *The second period from 1945 through to the 1990s*

The arrival of General MacArthur heralded a move towards United States' legal models. The Allied Occupation of Japan saw virtually no resistance and the activities of the occupiers culminated in almost universal acceptance by the people of Japan. The Allies chose to work through the existing state structures, with a limited purge over a period of years of political and business leaders who were seen as leaders of the prior regime. Consequently, the government and business elites survived institutional and legal reforms of a fundamental character, and indeed were able to play a leading role in the development and implementation of those reforms.¹⁰

Part of this renewal involved the restructuring of the University system, and the law faculties. They remained European-style faculties offering a four year undergraduate law degree, made up of two years of general education and two years of legal subjects. The pre-war divide in training Judges and Prosecutors on the one hand, and private lawyers on the other, was eliminated, and a common entry examination now governed entry to the two year professional training program provided by the Legal Research and Training Institute (LRTI), managed by the Supreme Court.

Once the period of frenetic renovation was over, by the mid 1950s, Japan again went through a maturation period as the reforms bit into the local fabric, or failed and were replaced. While the beginning of this period was one of economic devastation, and the latter part was of economic stagnation, the great majority of the middle years from the Korean War to the pricking of the Bubble Economy in 1990, were years of growth and increasing prosperity. The legal education and admission to practice structure was essentially unchanged for 50 years. However, the influence of US legal models led to a reorientation of the post-graduate destinations of Japan's legal elite. The US came to attract the great majority of legal professionals during this period, and US educational developments fed back into Japan's law faculties.

3. *The third period: the 1990s and beyond*

Japan entered a period of prolonged economic recession from about 1990. By the end of the 1990s Japan's confidence in its growth model of the earlier period had diminished. There was also a greater sense that Japan was not an island, but part of the world economy, and subject to changes in that economy. There was significant internal and external pressure for legal reform that might help Japan's economy recover. However, Japan was and is a mature legal system. In looking for new models, would it favor the US or Europe? Would the model for legal education change?

10 A. OPPLER, *Legal Reforms in Occupied Japan: A Participant Looks Back* (Princeton, 1976) is an excellent interpretative overview of Occupation legal activities by a former German administrative law judge who was part of the Occupation legal team.

Not only has Japan worked with the best of German legal science since the 1880s and US models since the late 1940s, it has a legal infrastructure to match its “black letter laws”. Japan’s economic success has been very much based on the high priority given to education and literacy since the earliest years of the Meiji period (from 1868). Japan’s literacy rate is said to be over 95%. Over 90% of the relevant age group successfully complete 12 years of formal education. Japan has one of the highest levels of tertiary education in the world, with 49.4% of the eligible age group proceeding to higher education.¹¹ Legal education was not neglected in this system.

Over the last 60 years a very large number of Japanese have received the European style four-year undergraduate legal education. The focus from abroad has been on how many Japanese each year gain access to the training program leading to the formal qualification equivalent to the English barrister or the French advocate. While this figure is low¹², the number actually enrolling in LL.B. degrees has been over 30,000 a year for at least the last 30 years, rising to over 50,000 during the last decade. There is an enormous pool of legally trained people in government and in business, as well as other walks of life. Interestingly, it has not been necessary to complete a law degree to sit the current Bar Exam. That is about to change as the new system, described elsewhere in this issue, is implemented.¹³

III. IS THE GRADUATE LAW SCHOOL AN INTERNATIONAL MODEL?

We think we can say that the new experiment in legal education is an example of at least a partial transplantation of the US model. We don’t think we can yet talk of the graduate law degree as a global model for legal education or admission to practice, nor even as a regional model in Asia, as Japan is the first Asian country to move towards a graduate law school model. South Korea will follow in 2006. However, although it looks like the US model, there are significant differences in the structure Japan has adopted. Japan offers fertile soil for a new graduate school model, but there are important differences to the North American model.

First, the law faculties will continue to operate and will continue to offer an undergraduate law degree program to significant numbers (in excess of 50,000 graduates per year). There are no undergraduate law programs in North America. It must be remembered that the existing Japanese legal education system is very mature, with the oldest law faculties dating from the 1880s. They long have had highly developed post-graduate programs, offering LL.M. and PhD degrees. Many professors have extensive research and teaching experience in overseas law faculties or schools, especially in Europe and North America. The graduates of law faculties will continue to flow into government

11 Japan 2004, published by Keizai Koho Center, Tokyo 2004, 120, chart 10-10.

12 Between 450-500 in the years between 1950 and 1990, rising to about 1250 in 2003.

13 Cf. the contributions by K. ROKUMOTO, P. LAWLEY, and K. NISHIDA in this issue.

and industry positions, as the graduates of the new Law Schools are intended to almost exclusively enter legal practice, subject to passing the LRTI Entrance Exam.

Second, there is no Bar Exam in the US sense of exams that immediately qualify passing candidates for admission to the Bar. US Bar Exams are based on intensive short courses offered in each State, which can be taken immediately after graduation from a law school. It is usual in Japan to call the Entry Exam to the LRTI training program the Bar Exam, as almost no one fails and so to gain entry is tantamount to entering the profession, albeit after a lengthy (by North American standards) training program. The Japanese name for the exam (*shihô kenkyûjo nyûgaku shiken* = entrance exam to the LRTI) more accurately reflects its purpose than does the translation as 'Bar Exam'. The LRTI training program will continue, albeit reduced to one year. The original government Report proposed a pass rate in the new Entry Exam for Law School graduates of 70-80%, a far cry from the 2-3% permitted over the last 50 years. A retreat from this proposed pass rate created a major controversy in late 2004-early 2005, and cast doubt on some of the internationalization objectives of the reforms. This is discussed below.

IV. ARE THE TEACHING METHODS INTERNATIONAL?

There also is a lot of interest among members of the Japanese Bar who have studied in the US in introducing US teaching methods, particularly the Socratic method, into the new model. Practitioners have been recruited in significant numbers to teach in the new Law Schools. The law faculties' teaching methods were criticized in the process that led to the establishment of the law schools. The main criticisms seemed to be that the dominant teaching method was European-style lecturing to large classes with an emphasis on rote learning for exams, and especially for the LRTI Entrance Exam. While these criticisms have overlooked the extensive use of small group seminars in later year subjects in the law faculties, and in graduate courses for LL.M. and PhD students, the fact that the new Law Schools have instituted small class sizes (usually less than 50 students) for all subjects, and have been strongly identified with the Socratic method of teaching, is seen as a critical difference in approach. The question most frequently asked of Professor Smith in Japan is, "do you use the Socratic method?" There is some disappointment when he says "no" and then tries to explain that, at least in Australia, most teachers feel they have moved beyond the Socratic approach, as traditionally understood. Most US law teachers would probably agree.

For the sake of argument, if we contrast a large lecture style format, designed for transferring information, with a small interactive group format designed to build the individual student's own skills in acquiring knowledge and understanding, then the Law Schools in Japan are moving to the second model.

V. IS THE CURRICULUM INTERNATIONAL?

In terms of curriculum content, the new law school reform offered some major opportunities. The proposed high pass rate to the LRTI was intended to take the students' minds off an entrance exam and allow them to focus on enjoying and broadening their legal studies. In turn, it was hoped that the curriculum would be expanded to include a range of internationally oriented offerings in both comparative law and international law, as well as allow scope for programs developed overseas, such as Clinical Legal Education programs. These curriculum developments are clearly present at many of the new law schools, especially the larger ones. As an example, the Chuo Law School 2005 Guidebook includes 96 teachers, of whom 20 teach in the above areas, four in the Clinical program. There were 25 approved subjects in the above fields in 2004, out of 92 standard subjects. There were another 14 electives and directed research subjects in these fields out of about 60 offerings. Of six recommended course structures, one is designed for those with an interest in international careers. It must be remembered that because of the received nature of much of Japanese Law, a good deal of comparison to other countries is part and parcel of the core subjects as well. The point of our earlier discussion of the three periods of legal renovation was to stress that studying law in Japan has necessarily involved studying the origins of many laws in other countries.

Unfortunately, the internationalizing objective is being undercut by the continuation of the LRTI Entrance Exam, and a retreat by the government from the promised high pass rates. Significantly for the world's second largest economy, Business Law and International Transactions are not part of the current LRTI Entrance Exam, nor are they part of the subsequent training program, which focuses almost entirely on domestic legal issues. At the moment only Conflicts of Laws, or Private International Law, is a required area for the Exam.

The format for the new exam from 2006 for law school graduates was announced in August 2004.¹⁴ There will be three required subjects, namely, Public Law (covering the Constitution¹⁵ and Administrative Law), Private Law (covering the Civil Code¹⁶, Commercial Code¹⁷, and Civil Procedure Code¹⁸), and Criminal Law (covering the Criminal Code¹⁹ and Criminal Procedure Code²⁰). Applicants may then choose one

14 The Bar Exam Committee of the Justice Ministry, Tokyo, August 2004. The other elective areas are: Labor Law, Bankruptcy Law, Tax Law, Antitrust Law, Intellectual Property Law, and Environmental Law.

15 *Supra*, note 4.

16 *Supra*, note 5.

17 *Supra*, note 6.

18 *Supra*, note 7.

19 *Keihō*, Law No. 44/1907, as amended by Law No. 153/2001; Engl. transl. EIBUN HÔREISHA (ed.), EHS Law Bulletin Series (loose leaf, Tokyo) Vol. V, PA-PC, No. 2400-2402 (as of 2001).

elective subject from a list of eight subjects, which include public international law and private international law. The latter elective will cover Private International Law, International Civil Procedure and International Transaction Law, including international sales, international conveyances and international payments. This elective covers such a wide area of knowledge that students may be deterred from attempting it. However, the elective's presence in the optional list offers encouragement for proponents of an international element in the professional admission process. These electives may in turn encourage students to study these areas in their law school courses.

However, the existing system has its supporters, as we saw with the imbroglio over the proposed pass rates for the first of the new bar exams in early 2006, which raged from October 2004 to March 2005. There is a professed concern for the "quality" of future lawyers. The exam based admission system is seen by many as the best "gate keeper". Critics of the Entrance Exam saw it as a narrow test of memory skills, which required the assistance of cram schools set up to tutor examinees. Interestingly, the cram schools have started to migrate from preparations for the Entrance/Bar Exam to preparations for law school admission tests.

To an outsider, the query remains "if Japan was adopting a US model, why did it not go all the way and replace the training in the Judicial Research and Training Institute by suitable subjects in the law school curriculum, augmented perhaps by a US style short course Bar Exam?"

Instead, we have a government on the one hand approving 74 new law schools with over 5,000 enrolled students, and on the other hand threatening in October 2004 to allow just 800 law school graduates to pass in the first exam in 2006. After widespread protests, the number was raised to 900-1100 places for law school graduates in the first 2006 Entrance Exam, rising to 1800-2200 in 2007, and perhaps rising to 3000 by 2011.²¹ The numbers passing the old entrance Exam for non-law school graduates will be cut to 500-600 in 2006, then to 300 in 2007 and then to zero in 2011. Inevitably, the students' attention has swung back towards the subjects on the Entrance Exam as the promised 70-80% pass rate has shrunk to below 50% in the first year. The inclusion of internationally oriented electives in the LRTI Entrance Exam may not be a sufficient incentive to encourage large student enrolments.

20 *Keiji Soshô-hô*, Law No. 131/1948, as amended by Law No. 153/2001; Engl. transl.: EIBUN HÔREI-SHA (ed.), EHS Law Bulletin Series (loose leaf, Tokyo) Vol. V, RA-RB, No.2600-2601 (as of 2001).

21 See Appendix 1: Declaration by Law School Deans

VI. INTERNATIONALIZATION OF THE TEACHING STAFF

Chuo Law School has recruited two fully tenured non-Japanese professors, one from the USA and one from Australia, to teach in the international and comparative law fields. They are members of a small group of about 10-15 foreign professors with various roles in legal education in Japan, not counting English instructors. This group has a particular interest in the success of the internationalization project in Japanese legal education, and made its views known to the Japanese government in relation to the LRTI Entrance Exam numbers.²² However, given the scale of the new law school reform, the number of full-time foreign teachers is small. This situation is augmented by visiting appointments at many of the law schools, many of which are building into their curricula intensive teaching programs involving visitors.

VII. INTERNATIONAL PROGRAMS

While the main focus of the 2004 entrants is the LRTI Entrance Exam, many have shown an interest in a wider training. There are now 74 new law schools in Japan, in addition to the existing 90 plus law faculties. Many are seeking to establish international experiences for their students. This may place some strains on existing linkages, but it also creates many opportunities for legal training institutions outside Japan. The new law schools are exploring the full range of existing programs: from permitting enrolment in subjects at institutions outside Japan; to participation in existing Summer Schools; to establishing joint programs with overseas law schools; to taking their own programs off-shore; to setting up internships in international organizations; to promoting student exchanges and visiting professorships.

To give just one example, Chuo was among many law schools to receive funding support from the Ministry of Education, Science and Culture in late 2004 for international programs for its students. A total of US\$ 10 million was offered to all the Law Schools for suitable programs to be implemented over the period 2004-7. Chuo proposed a project involving eight programs, under the leadership of Professor Osanai, and secured some US\$ 300,000 per annum in funding. Professor Smith is responsible for two programs, which can be used as examples. One program was a joint class on Commercial Alternative Dispute Resolution in Asia, held at Chulalongkorn University in Thailand in late December 2004.²³ Twenty-seven (27) Chuo students participated. In early February 2005, 16 students attended a summer program in Melbourne in which three Chuo subjects were on offer. Three students attended both programs. The programs were essentially for the 2nd year level, so about forty (40) students out of the

22 See Appendix 2 "Statement of the Foreign Professors Teaching at Japanese Law Schools"

23 Described in M. SMITH, A Small Experiment in International Negotiations, in: ZJapanR / JJapan.L. 19 (2005) 216.

2nd year group of 250 (16%) were prepared to undertake an overseas program. For most participants, it was their first visit abroad. This was encouraging, as were steady enrolments in the internationally oriented subjects held during the regular Semesters.

Other law schools have had similar successes. We take this to be an encouraging sign that there is intellectual curiosity among the new group of law students. However, there are curious anomalies. While most law schools thought to build into their degree structures the possibility of their students receiving credit for work at overseas law schools, there is no such cross-crediting arrangement between Japanese law schools. This means that international programs pioneered by one Japanese school are not open to students at the other schools. The Chuo programs described briefly above were limited to Chuo students, in spite of efforts to involve students from other Japanese law schools.

Again, the focus on professional accreditation and the limited time allowed for establishing the new law schools mean that few schools have given much time or thought to the possibility of welcoming overseas law students. One old objection to student exchanges with US law schools has been eliminated, since the new Japanese law schools are also graduate level. However, it may take a little time before there is an infrastructure to look after incoming students, who may find it easier to continue in existing exchanges with the law faculties in Japan.

VIII. INTERNATIONAL STANDARDS IN FACILITIES

The standard of the classroom facilities in most of the new law schools is a major advance on facilities in the law faculties, and our colleagues have invested a lot of thought to teaching methods to take advantage of those facilities, and to evaluations of those methods by students. The creation of 74 institutions from a standing start was no small accomplishment, but the fact that many have built new buildings to house the law schools suggests a long-term commitment. Most new law schools boast brand new facilities, either in expensive new buildings, or extensively renovated facilities, as at Chuo. Most of the new law school teaching rooms have international standard teaching facilities, including internet access in classrooms, computer access in all classrooms, audio-visual aids including PowerPoint Presentation facilities and Moot Court Rooms. Many can run live joint teaching programs with overseas law schools via the Internet. In most schools, every student has a private study space and it appears that students in the competition for places in the second intake in 2005 placed some emphasis on the quality of facilities offered by each of the law schools to which they applied.

The infrastructure investment is very substantial, which makes the recent developments about the LTRI Entrance Exam numbers all the more implausible and incredible.

IX. OTHER INTERNATIONAL STANDARDS

Chuo Law School, like many others, is conducting an extensive feedback evaluation dialogue with its students. This is an international standard, which was seldom used in the law faculties in Japan. Some schools are discussing the introduction of student managed Law Review, another feature of the US model. Chuo has already launched the Chuo Law Journal as a staff managed publication.

CONCLUSION

The graduate law school experiment in Japan is a further example of the openness of Japan to international influences in the legal sphere. Building on over a century and a quarter of legal education based on European models, Japan is now searching for a new system of legal education leading to professional admission. However tempting it may be to seize on the graduate degree program as a sign that Japan is adopting a US model, the strength of the traditional professional admission pathway has led to a hybrid, which now requires a minimum of three years' university legal training followed by one year of professional training. In fact, large numbers of law school entrants already have an undergraduate law degree, so will complete a minimum of four years' of university training before embarking on the one year professional program.

Whether this new approach to professional admission will produce the type of lawyer desired by the government and business, or perhaps required by Japanese society, will be demonstrated over the next decade. Whatever the outcome, the vision of the Justice Reform Council and the law school founders over the past five years deserves recognition. It is a bold experiment that is explicitly international in its educational objectives and focus.

APPENDIX 1

**Declaration Concerning the Number of Passing
Examinees under the Old and New Judicial Examinations**

According to a recent newspaper report, a Ministry of Justice proposal concerning the number of examinees allowed to pass the new and old judicial examinations was presented at the October 7 meeting of the Judicial Examination Committee. For 2006, the Ministry proposal was said to provide for a total passing number of only 1600 persons, allocated to 800 each from the old and the new judicial examinations. For 2007, 1600 examinees would pass under the new examination and 400 would pass under the old examination.

This proposal does not adequately reflect the philosophy of reform, featuring the change to a system of legal training with law schools at the center, either with regard to the total number of successful examinees or the allocation between old and new examinations. It constitutes a severe threat of injury to the healthy development of the law school system. Therefore we completely disagree with the proposal.

The Judicial Reform Council itself proposed the establishment of the law school system. Regarding the education to be provided by the law schools, the Council's opinion statement says the law schools "should conduct a complete education so that a substantial number of persons who completed the program (e.g., 70-80%) shall be able to pass the new judicial examination." In response to this proposal, law schools across the country have fully committed themselves to creating "professional schools specialized in developing legal professionals," as described in the Council's statement. For their part, the students have responded to heavy daily schedules by sacrificing sleep and comfort to devote themselves to study. The law school system has commenced operations completely as expected in pursuit of this objective. The greatest cause for concern is the nature of the new judicial examination, in particular the passing rate.

If we project the results of the proposal described above, the pass rate in 2006 will be approximately 34% and in succeeding years will be approximately 20%. However the risk related to attracting talented students to commit to such a difficult course of study will be much too great; the inevitable result will be the destruction of the law school system placed at the center of the new system for cultivating legal professionals.

This will affect all who seek to become legal professionals, without exception due to age or undergraduate field of study, but it will cause especially severe damage to the spirit of people who have already entered the workforce (*shakaijin*) and those from undergraduate departments other than law who courageously seek to become legal professionals against long odds. Inevitably, the great majority of applicants to the law schools will be graduates of undergraduate departments of law.

If so, the ideal of diversity declared by the Council: "In order to accept a large number of people with diverse backgrounds into the legal profession, the law schools must broadly accept students without regard to undergraduate specialties, and must open their doors wide to all members of society," will immediately run aground.

There is more. The interest and consciousness of the students will tilt away from the structured studies of the law school and toward exam preparation in order to compete under the new judicial examination. The law schools were designed to bring about a shift from "selection on points" to "cultivation of legal professionals as a process" as envisioned by the Council, so this development will shake their foundations and cause a transformation of law school

education. No one will care about the diverse specialized courses, including practical training, overseas study, and others that many law schools have created to cultivate legal professionals with the specialized abilities needed by Japanese society of the future.

Some may claim that the law schools are asserting their own self-interest in demanding that pass rates for the new judicial examination be raised. However, the same opinion has already been expressed by the Citizens Judicial Reform Council, the Legal Professionals Training Committee of the Judicial System Reform Promotion Headquarters, the bar associations and various other forums and is gaining broad support.

From the beginning, the law schools were not merely the exclusive possessions of the universities that created them; as an integral part of the reform of the judicial system they also have the purpose of serving the public interest. The establishment and operation of the law schools has been supported by important contributions and cooperation not only from the Supreme Court, the Ministry of Justice and the bar associations, but also from volunteers in the legal and business communities with regard to providing and training instructors, providing opportunities for training of students and in other ways. Needless to say, these contributions are based on the recognition that the government and the Diet have made the law schools the core of the new system for training legal professionals and their contribution is indispensable to the public interest of dramatically enriching the legal profession with regard to both quality and quantity and therefore is in the interest of the people.

We strongly request that the judicial examination committee direct its focus to the philosophy of reform of the system for training legal professionals and, from the viewpoint of the healthy development of the law schools (the core of the system for training legal professionals), that the committee not pursue the above reported proposal, but instead consider the issue of the number of passing examinees with a view toward enabling the great majority of persons who complete the law school course of instruction to pass the examination.

October 28, 2004

Supporters of the Law Schools:

Aono Hiroyuki	Komazawa University Law School
Awaji Takehisa	Rikkyo University Law School
Ito Susumu	Meiji University Law School
Usaki Masahiro	Dokkyo University Law School
Urakawa Michitaro	Waseda University Law School
Omura Masahiko	Chuo University Law School
Kaminaga Isao	Aoyama Gakuin University Law School
Kyoto Tetsuhisa	Meiji Gakuin University Law School
Suami Takao	Waseda University Law School
Takizawa Tadashi	Sophia University Law School
Nonaka Toshihiko	Hosei University Law School
Higasa Kanji	Komazawa University Law School
Hirai Yoshio	Senshu University Law School
Hiraragi Tokio	Keio University Law School
Fukuhara Tadahiko	Chuo University Law School
Miyazawa Setsuo	Omiya Law School
Yamada Takao	Nihon University Law School

(translation by L. Repeta)

APPENDIX 2

Statement of Foreign Professors Teaching at Japanese Law Schools

To: Mr. Kiyoshi Uetani, Chairperson
Judicial Examination Committee

The undersigned are foreign professors teaching at Japanese law schools. We write to express our concern that the initial pass rate on the national judicial examination for Japanese law school graduates may be substantially lower than the 70-80% recommended in the Judicial Reform Council (JRC) Report of June 2001. Because we believe that a low pass rate is inconsistent with the JRC Report and is likely to cause severe damage to Japan's new law schools, we urge that the Committee adopt a pass rate for law school graduates at the level recommended by the Judicial Reform Council.

The new law school system was created at the recommendation of the JRC "for the purpose of establishing the human base necessary for the justice system to play its expected role fully in Japanese society of the 21st Century." The JRC recognized that the existing system of legal training was no longer able to produce the number or type of legal professionals that Japan needs in the current era of internationalization and social change. It charged the new law schools with creating new courses and educational experiences designed to prepare legal professionals for the needs of the future.

The JRC especially criticized Japan's existing bar examination system. The Report explained that the low pass rate on the bar examination causes students to place the highest priority on learning the techniques to pass a test (*juken gijutsu yusen*) and that it drives them away from studying in school (*daigaku banare*). The pass rate recommended by the JRC is intended to enable students to focus on law school study rather than learn techniques to pass a bar examination that functions more as a barrier to entry than a true test of competence.

The purpose of a licensing examination should be to ensure that entrants have a minimum standard of expertise before joining a profession. The bar examination should not be used as a method to restrict the number of entrants to the profession. If a low pass rate is adopted, the inevitable result will be that students will focus on learning tricks useful in obtaining high examination scores and will abandon the broader and more meaningful studies offered by Japan's new law schools.

As long-term residents and friends of Japan, and as legal practitioners and educators who have experienced firsthand the benefits of a legal education unbounded by the pressure of artificial limitations on bar passage rates, we strongly believe that the success of the new law school system depends on adopting a policy that encourages students to focus on their studies in law school rather than on a single examination. An artificially low pass rate will undercut the ability of the law schools to prepare students for the task of serving as "doctors for a modern society" and to equip them for the full range of legal services demanded by an increasingly global economy. As importantly, the low pass rate will deprive Japan of a unique opportunity to boldly forge a new course for the future.

For the above reasons, we respectfully urge you to adopt bar examination pass rates at the levels recommended by Japan's Judicial Reform Council.

Respectfully submitted:

Lawrence Repeta, Professor, Omiya Law School
Gerald Paul McAlinn, Professor, Keio University Law School
Malcolm Smith, Professor, Chuo University Law School
Daniel Rosen, Professor, Chuo University Law School,
Richard Barron Parker, Professor, Hiroshima Shudo University
Kent Anderson, Visiting Associate Professor, Waseda University Law School

January 18, 2005

s/ Lawrence Repeta, Representative

ZUSAMMENFASSUNG

Die Autoren vertreten die Auffassung, daß sich die Reform der Juristenausbildung in Japan als Teil einer Internationalisierung begreifen läßt und durch diese in wesentlichen Teilen gekennzeichnet ist. Ihrer Meinung nach wird mit den Reformen die Tradition, ausländische rechtliche Konzepte und Methoden an nationale Erziehungskonzepte und –traditionen anzupassen, fortgesetzt. Die Tatsache, daß es innerhalb von weniger als vier Jahren gelang, 74 neue Law Schools aufzubauen, beruht auf der Stärke der zuvor existierenden Struktur der universitären Juristenausbildung.

Die Reformen zielen darauf ab, die internationale Wettbewerbsfähigkeit Japans zu stärken. Vor diesem Hintergrund untersuchen die Verfasser, bis zu welchem Grad die neuen Law Schools ihre Curricula, ihre Unterrichtsmethoden, ihren Lehrkörper und ihre international ausgerichteten Programme tatsächlich internationalisiert haben. Zugleich untersuchen sie, inwieweit die institutionellen Gegebenheiten der Law Schools internationalem Standard entsprechen.

Die Ergebnisse sind weitgehend positiv. Erhebliche Bedenken werden jedoch bezüglich des offensichtlichen Versagens des Justizministeriums erhoben, eine zentrale Empfehlung der juristischen Reformkommission unmittelbar umzusetzen. Diese hatte vorgeschlagen, das Eingangsexamen zum zentralen nationalen Ausbildungsinstitut für Referendare so zu ändern, daß die Durchfallquote gesenkt wird, um so die Fixierung der Ausbildung auf technische Fertigkeit aufzuheben. Das Beibehalten einer künstlich niedrig gehaltenen Erfolgsquote werde, so argumentieren die Verfasser, die Studenten der Law Schools davon abhalten, sich ganz für die intendierten internationalen Aspekte der Reform zu interessieren und sich nicht in erster Linie darauf zu konzentrieren, wie man am besten das Examen besteht. (Deutsche Übersetzung durch d. Red.)