

# **Integrating Alternative Dispute Resolution into Japanese Legal Education**

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## I. INTRODUCTION

The current legal education reform in Japan represents a massive exogenous institutional shock. The implementation of this reform thus offers opportunities to advance theory development within the neo-institutional paradigm in sociology and organizational analysis as it represents a case of the wholesale restructuring of an entire organizational field, rather than the mere institutionalization of organizational innovation or the de-institutionalization of existing practices. We propose to examine the teaching of alternative dispute resolution (ADR) in Japanese legal education before and after this exogenous shock in order to test the prediction of pervasive isomorphism in the context of the adoption of a foreign/international model (American law schools) in a substantially different local institutional environment. This paper presents preliminary analyses of processes that are very much in flux and occurring in Japan as we write. While contributing broadly to a sociological understanding of institutions and legal education, our research also illuminates the diffusion of particular dispute resolution mechanisms from North America to Japan and possibly around the world.

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## II. NEO-INSTITUTIONALISM: WHY ARE ORGANIZATIONS SO SIMILAR IN STRUCTURES AND SUBSTANCE?

The neo-institutional perspective in sociology grew out of organizational analysis in the 1980s and has come to be a widely applied theoretical perspective across sociology's subdisciplines and in neighbouring social sciences.<sup>1</sup> Neo-institutionalism is grounded in the insight that many organizations in a given organizational field share a wide variety of structural and substantive features, i.e. are characterized by isomorphism.

One of the first hypotheses suggested within the neo-institutional perspective has been that isomorphism will prevail particularly under situations of great uncertainty. Under such conditions, three mechanisms can be distinguished: 1) normative isomorphism, 2) coercive isomorphism, and 3) mimetic isomorphism.<sup>2</sup> Among these three types, North-American organizational researchers tend to place considerable weight on mimetic isomorphism and disproportionately neglect isomorphism caused by power and coercion.<sup>3</sup>

One of the major criticisms of the neo-institutional paradigm has been that it tends to ignore variation in organizational responses to institutional pressures toward conformity.<sup>4</sup> Several organizational researchers have taken up the study of variation in organizational practices. Edelman explains that organizations that are subject to normative pressure from their environment elaborate their formal structures to create visible symbols of their institutional adoption.<sup>5</sup> Westphal, Gulati, and Shortell note that economic causes govern early adoption and normative causes govern later adoption.<sup>6</sup> Oliver proposed a typology of organizational responses that vary according to the degree of active agency and resistance exerted by the organization.<sup>7</sup>

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- 1 W. POWELL / P. DIMAGGIO (eds.), *The New Institutionalism in Organizational Analysis* (Chicago 1991).
  - 2 P. DIMAGGIO / W. POWELL, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Field*, in: *American Sociological Review* 48 (1983) 147-160.
  - 3 M. MIZRUCHI / L. FEIN, *The Social Construction of Organizational Knowledge: A Study of the Uses of Coercive, Mimetic, and Normative Isomorphism*, in: *Administrative Science Quarterly* 44 (1999) 653-683.
  - 4 M. LOUNSBURY, *Institutional Sources of Practice Variation: Staffing College and University Recycling Programs*, in: *Administrative Science Quarterly* 46 (2001) 29-56; M. LOUNSBURY, *Institutional Transformation and Status Mobility: The Professionalization of the Field of Finance*, in: *Academy of Management Journal* 45 (2002) 255-266.
  - 5 L. EDELMAN, *Legal Ambiguity and Symbolic Structures Organizational Mediation of Civil Rights Law*, in: *American Journal of Sociology* 97 (1992) 1531-1576.
  - 6 J. WESTPHAL / R. GULATI / S. SHORTELL, *Customization or Conformity? An Institutional and Network Perspective on the Content and Consequences of TQM Adoption*, in: *Administrative Science Quarterly* 42 (1997) 366-394.
  - 7 C. OLIVER, *Strategic Responses to Institutional Processes*, in: *Academy of Management Review* 16 (1991) 145-179.

### III. STATUS HIERARCHIES AND ORGANIZATIONAL INNOVATION

However, few organizational studies have emphasized status hierarchies as a key component of institutional isomorphism. Status hierarchies are important because uncertainty is often associated with a struggle to gain or maintain status while simultaneously engaging in efforts to construct a new set of rules.<sup>8</sup>

Status hierarchies have been examined by researchers of the diffusion of innovations and by social psychologists. Both literatures typically have classified organizations based on their status into three groups (high, middle, and low), and have illustrated that organizations of a different status adopt innovations at different rates and with different scope.<sup>9</sup> Research on the diffusion of innovations has tested a U-shaped relationship between status and innovation; that is, high-status actors are more likely to adopt innovations that conform to institutionalized behavioural norms, while low-status actors originate counter-normative innovations. On the contrary, socio-psychological researchers presented an inverted U-shaped relationship between status and conformity.<sup>10</sup> High-status actors feel confident in their social acceptance, so that they are emboldened to deviate from conventional behaviour, and low-status actors feel free to deviate from accepted practices because they are excluded regardless of their actions. However, middle-status actors tend to become conservative because of their insecurity: they aspire to a higher social status but fear disenfranchisement.<sup>11</sup>

### IV. LEGAL EDUCATION REFORM: RADICAL, BUT VAGUE

An examination of the recent reform of legal education in Japan offers an interesting field for the application of the neo-institutional perspective. While most institutional changes have been relatively ill-defined in existing studies, the case of state-initiated legal education reform makes for a very clear delineation of the scope of uncertainty and the timing of its arrival, particularly in a situation as that currently experienced in Japan where reform has been mandated, but has not been prescribed in very specific terms. This situation is akin to a number of organizational analyses that have examined relatively vague legal mandates for affirmative action for U.S. corporations and the institutionalization of a small number of highly legitimated responses to this vague-

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8 N. FLIGSTEIN, Markets as Politics, in: *American Sociological Review* 61 (1996) 656-673; W. POWELL, Expanding the Scope of Institutional Analysis, in: Powell / DiMaggio (eds.), *The New Institutionalism in Organizational Analysis* (Chicago 1991).

9 D. PHILLIPS / E. ZUCKERMAN, Middle-Status Conformity: Theoretical Restatement and Empirical Demonstration in Two Markets, in: *American Journal of Sociology* 107 (2001) 379-429.

10 P. BLAU, Patterns of Deviation in Work Groups, in: *Sociometry* 23 (1960) 245-261; J. DITTES / H. KELLEY, Effects of Different Conditions of Acceptance upon Conformity to Group Norms, in: *Journal of Abnormal and Social Psychology* 53 (1956) 100-107.

11 PHILLIPS / ZUCKERMAN, *supra* note 9.

ness.<sup>12</sup> However, Japanese legal education is being reshaped much more radically and rapidly by the current reforms, leading to more “existential uncertainty” rather than policy-implementation uncertainty among the organizations effected.

The fact that the current Japanese reforms are not only remoulding institutionalized behavioural norms, but are in fact reshaping an entire organizational field, is of particular relevance to the continued development of neo-institutional theory and to the examination of the emergence and process of institutionalization. While state-credentialed legal education by universities is continuing, it is continuing under very different circumstances utilizing very different structural forms. Legal education as an organizational field had thus continued with only minor changes for over 100 years in Japan, but is now being rebuilt from the ground up, though using some existing organizational shells and templates. This wholesale reconstruction of an organizational field not only creates uncertainty about actors’ choices for specific organizational models, but about the institutionalized ordering of the organizational field itself. Highly legitimate aspects of legal education up until now (for example, the exceedingly small number of lawyers, the dominance of the Legal Training and Research Institute operated by the Supreme Court in the training of lawyers, etc.) have thus lost some of their legitimacy and would seem to need to be re-institutionalized if they are not to be supplanted by alternative institutions.

As the universe of organizations that are subject to this institutional change is bounded (only current Japanese law schools would be at immediate “risk” of adopting the dominant modes of organization that will emerge from the current institutional uncertainty), legal reform in Japan offers an ideal field for data collection and analysis for several reasons. First of all, we are examining shifts in legal education from the inception of reforms onward. This leads to the possibility of great variability in organizational responses. As we continue to examine the adoption or organizational innovations, we may pinpoint a rate of adoption over time but fail to understand why such an adoption has occurred, or what it substantively means for legal education and legal practice. Secondly, few other cases of institutional change take place with such remarkable scope and speed. Thirdly, U.S. organizational scholars often examine institutional change driven by technology, professionalisation, and ambiguous regulation. Outside of the U.S., states are major initiators of institutional change because the influence of Ameri-

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12 EDELMAN, *supra* note 5; J. SUTTON / F. DOBBIN, The Two Faces of Governance: Responses to Legal Uncertainty in American Firms, 1955-1985, in: *American Sociological Review* 61 (1996) 794-811; E. KELLY and F. DOBBIN, How Affirmative Action Became Diversity Management: Employer Response to Antidiscrimination Law, 1961-1996, in: *American Behavioral Scientist* 41 (1998) 960-984; J. BURK, Values in the Marketplace: The American Stock Market under Federal Securities Law (New York 1988); W. CLUNE, A Political Model of Implementation and the Implications of the Model for Public Policy, Research, and the Changing Role of Lawyers, in: *Iowa Law Review* 69 (1983) 47-125; K. HAWKINS, *Environment and Enforcement* (Oxford 1984).

canization is so significant that foreign governments often need to adopt American practices intentionally and immediately. In many polities, state-initiated reforms are a historically dominant response to the perceived need to respond to challenges.<sup>13</sup> State-initiated legal reform in Japan is an ideal case to illustrate how institutional isomorphism takes place when a state deconstructs an old institution<sup>14</sup> and constructs a new one in response or at least in reference to perceived Americanization.

We examine how different status organizations respond to institutional pressure toward conformity. We focus on the teaching of alternative dispute resolution mechanisms (ADR) in Japanese legal education. ADR is a relatively new subject and has been emphasized by the recent legal reform. ADR started being addressed in the early 1980s in courses on Dispute Resolution, Court Law and Sociology of Law at universities.<sup>15</sup> However, ADR was considered a minor and “trivial” subject in Japanese legal education. This conception has gradually changed in the 1990s and in the course of the current legal reforms. ADR is now regarded as a minor but “important” subject.<sup>16</sup> When the Ministry of Education provided model course syllabi for new law schools, ADR was used as an item in the syllabus of Civil Procedure.<sup>17</sup> Given the relative newness and unique emphasis during the legal reform, ADR is a prism on change in legal education.

## V. GLOBALIZATION OF LAW: DIFFUSION OF ADR ACROSS NATIONS

Given the place of the United States in the world economy and the globalization of legal practice, certain North American legal practices are being diffused throughout the world and ADR is no exception to this international trend.<sup>18</sup> ADR started receiving attention in the U.S. in the 1970s as a possible response to a significant increase in the incidence of litigation.<sup>19</sup> Alternative dispute resolution generally refers to conflict resolution among

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13 F. DOBBIN, *Forging Industrial Policy* (New York 1994).

14 Undergraduate law faculties continue to exist in Japan, but the emphasis in legal education has clearly shifted to graduate law schools. Cf. the contribution by P. LAWLEY, *The Post-‘Law School’-Future of Japanese Undergraduate Legal Education*, in this issue, p. 81; S. MIYAZAWA, *The Politics of Judicial Reform in Japan: The Role of Law at Last?*, in: *Asian-Pacific Law & Policy Journal* 2 (2001) 89-121.

15 Y. HAYAKAWA / Y. TANIGUCHI / R. HAMANO / H. TAKAHASHI / Y. WADA / A. YAMADA / H. KAKIUCHI / Y. HASEBE, *ADR no kihonteki shiza* [Fundamental Perspectives on ADR] (Tokyo 2004).

16 *Supra* note 15.

17 MINISTRY OF EDUCATION, CULTURE, SPORTS, SCIENCES, AND TECHNOLOGY, *Hōka daigakuin ni okeru kyōiku naiyō hōho ni kansuru kenkyū-kai* [Research Group on the Content and Teaching Method of Graduate Legal Education], April 24, 2001.

18 M. SHAPIRO, *The Globalization of Law*, in: *Indiana Journal of Global Legal Studies* 1 (1993) 37-64; A. KAWAMURA, *WTO taiseika ni okeru bengoshi-gyō no hōteki wakugumi* [Legal service systems under the WTO], in: Japan Federation of Bar Association ed., *Atarashi seiki no bengoshizō* [Image of Lawyers in a new century] (Tokyo 1997).

19 L. RISKIN / J. WESTBROOK, *Dispute Resolution and Lawyers* (St. Paul, Minn. 1998);

disputants through means other than trial, for example through mediation, conciliation<sup>20</sup>, and arbitration. The use of ADR mechanisms has been diffused across many countries. However, the reasons behind the evolution of ADR differed among these jurisdictions.<sup>21</sup> In contrast to the U.S., ADR has been preferred to litigation in Japan because of a presumed antipathy to litigation and/or inadequate legal infrastructure.<sup>22</sup> In the U.K., ADR has been utilized in response to the delay and the increasing cost of litigation. In Germany, demand for ADR has increased with the unification of East and West Germany. When the former East Germany states needed to adopt the West-German judicial system, a shortage of judges and other court staff was so serious that ADR was considered as a supplement.<sup>23</sup>

In response to these various pressures toward the application of ADR in the legal system, legislation promoting the use of ADR has been introduced in several jurisdictions in the 1990s. Two federal ADR laws were introduced in the U.S.: one in 1990 and the other in 1998. The ADR Act in 1998 requires federal district courts to authorize the use of ADR in all civil actions and to encourage litigants to use ADR. In the U.K., the use of ADR was included in a recommendation by a reform committee on civil judicial system in 1996, and a new civil procedure act in 1999 requires courts to encourage litigants to use ADR. Similar acts were introduced in Germany and France in the late 1990s.

U.S. law schools gradually responded to the rise of ADR, and training for ADR has become a growth industry in U.S. law schools.<sup>24</sup> The concept of teaching negotiation and related skills was endorsed by the 1979 American Bar Association Task Force on Lawyer Competency.<sup>25</sup> Since 1983, the American Bar Association Section on Dispute

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L. EDELMAN / M. SUCHMAN, When the 'Haves' Hold Court: Speculations of Organizational Internalization of Law, in: *Law and Society* 33 (1999) 941-991.

- 20 In common law jurisdictions, the term "mediation" is preferred, while "conciliation" is used more frequently in continental law jurisdictions including Japan, as well as in the United Nations Commission on International Trade Law (UNCITRAL) context (Y. SATO, Hybrid Dispute Processing in Japan: Linking Arbitration with Conciliation, in: Meijo University Institute for Socioeconomic Dispute Studies Project Final Report 2004 <<http://cccow.meijo-u.ac.jp/wwwll/isds/index.htm>>).
- 21 Reference materials provided by Office for Promotion of Justice System Reform. 2002 <[www.kantei.go.jp/jp/sihouseido/kentoukai/adr/dai1/1siryou1\\_2\\_08.html](http://www.kantei.go.jp/jp/sihouseido/kentoukai/adr/dai1/1siryou1_2_08.html)>, last accessed October 15, 2005
- 22 T. KAWASHIMA, *Nihon-jin no hōishiki* [The Legal Consciousness of the Japanese] (Tokyo 1967). J. HALEY (1978) *Saiban girai no shinwa I* [The Myth of Antipathy Toward Trials I], in: *Hanrei Jihō* 902 (1978) 14-22 and *Saiban girai no shinwa II*, in: *Hanrei Jihō* 907 (1979) 13-20.
- 23 H. PRÜTTING, ADR in Germany, in: Mikami / Ishikawa (eds.) *Hikaku saiban-gai funso shori kaiketsu seido* (Tokyo 1997).
- 24 R. MOBERLY, ADR in the Law School Curriculum: Opportunities and Challenges At mediate.com <<http://www.conflict-resolution.net/articles/moberly.cfm?plain=t>>
- 25 AMERICAN BAR ASSOCIATION, Report and Recommendation of the Task Force on Lawyer Competency: The Role of the Law Schools (Chicago 1979).

Resolution has periodically surveyed law schools about their ADR offerings. The first survey in 1983 listed 43 law schools, or about a quarter of U.S. law schools, as offering ADR courses. By the next survey in 1986, a majority of the ABA-approved law schools offered courses on ADR. The survey described it as “a significant achievement in a field that was barely known a decade ago”.<sup>26</sup> In the 1997 survey, 714 courses in 177 law schools were listed. In addition to ADR-related courses, some twenty-one law schools offered clinical programs focusing on the use of dispute resolution as an alternative to litigation in resolving clients’ problems. Several elite law schools, including those at Stanford University, Harvard University, and the University of Wisconsin, have established centres for dispute resolution encouraging research, writing, and advanced training in this field. Three law journals are now published by law schools with a focus on dispute resolution: the *Journal of Dispute Resolution* at the University of Missouri at Columbia, the *Ohio State Journal of Dispute Resolution*, and the *Journal of Negotiation* from the Program on Negotiation at Harvard Law School.<sup>27</sup>

## VI. ADR IN JAPAN

The concept of out-of-court dispute resolution has existed for centuries in Japan and has often been used to explain why Japanese disputants are reluctant to resort to the formal court system.<sup>28</sup> Even within the court system, conciliation has been integrated as an important court procedure. Civil and family conciliation made up almost three quarters of the number of civil litigations: in 1998 the number for these conciliation procedures was 356,000, while the incidence of civil litigation in a first trial was 476,000.<sup>29</sup> Conciliation has thus been commonly practiced in the Japanese legal system. However, when reintroduced under a new name, “alternative dispute resolution”, this old concept is now seen as an innovation based on foreign models.<sup>30</sup> ADR has received much attention in the current legal reform. In legal education, ADR had been mainly taught by scholars of Sociology of Law and Dispute Resolution until the 1990s. However, due to

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26 AMERICAN BAR ASSOCIATION, *Law School Directory of Dispute Resolution Programs* (Chicago 1986).

27 J. BOSKEY, *Alternative Dispute Resolution in the Law Schools*, in: *The Fourth R*, Newsletter of the National Association for Mediation in Education 55 (1995).

28 KAWASHIMA, *supra* note 22; HALEY (*supra* note 22) countered that the inadequacy of the legal system including the low number of legal professionals, high legal costs, and long delays in litigation have prevented Japanese disputants from using litigation.

29 SUPREME COURT. 1999. *Shihō tōkei nenpō* [The Annual Report of the Justice System]. <[http://courtdomino2.courts.go.jp/tokei\\_y.nsf](http://courtdomino2.courts.go.jp/tokei_y.nsf)>, last accessed October 15, 2005.

30 AMERICAN CHAMBER OF COMMERCE IN JAPAN (ACCJ), *Arbitration & ADR Task Force*. 2004. ACCJ View Point: Harmonize Japan’s Proposed Out-of-Court Dispute Resolution System with International Standards. <[http://www.accj.or.jp/document\\_library/Viewpoints/ADR.pdf](http://www.accj.or.jp/document_library/Viewpoints/ADR.pdf)>, last accessed October 15, 2005.

the international development of ADR, it has been reconsidered from a minor and trivial subject to one that is seen as minor but important.

The diffusion of ADR is one of the central issues for Japan's judicial reform since the late 1990s. In December 2004, new ADR legislation, entitled the "Law for Promoting the Use of Out-of-Court Dispute Resolution Procedures", was proclaimed and will be enacted by June 8, 2007.<sup>30a</sup> The ADR law has drawn criticism because one must be a licensed legal or technical expert to engage in the field.<sup>31</sup> The law has implicitly envisioned ADR to be primarily initiated by governmental agencies and has made it difficult for private and grass-roots ADR agencies to participate. After in-court ADR, the next significant ADR type is conducted by governmental agencies, including the Environmental Dispute Coordination Commission (*Kôgaitô Chôsei I'inkai*), the Committee for Adjustment of Construction Work Disputes (*Kensetsu Kôji Funsô Shinsakai*), and the National Consumer Affairs Center of Japan (*Kokumin Seikatsu Sentâ*). Unlike the U.S., ADR initiated by the private sector is very rare in the overall Japanese ADR picture.<sup>32</sup>

## VII. TRACING THE TEACHING OF ADR IN JAPANESE LEGAL EDUCATION

In order to examine the process of the institutionalization of specific models of legal education under the extreme uncertainty created by a sudden shift in policy, we examine a specific aspect of legal education, the teaching of ADR. This focus allows us to trace continuities and changes through the institutional disruption created by the establishment of graduate law schools. The content of courses in turn offers unique possibilities to trace substantive changes associated with graduate law schools, because the main thrust of this shift to graduate professional education is seen to be a reform of teaching methods. We asked all 68 law schools for their 2004 course catalogues as well as their 2003 and 2004 undergraduate law faculty's course catalogues. Two law schools do not have undergraduate law faculties. In terms of the undergraduate law faculties, we looked for 2003 and 2004 course catalogues in order to examine both structural and substantive isomorphism before and after an exogenous shock of the introduction of law schools. In those course catalogues, we searched for the coverage of ADR. As we explained earlier, conciliation and mediation have been widely practiced in Japan, and those concepts started to be known as ADR in the 1980s. However, many practitioners and researchers still prefer to use the terminology of "conciliation" and "mediation" to "ADR". Because we intend to test isomorphism in Japanese legal education in response to the exogenous

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<sup>30a</sup> The new Japanese ADR Act is introduced in the contribution by YOSHIDA in this journal, *infra* at p.193 (*the editors*).

<sup>31</sup> AMERICAN CHAMBER OF COMMERCE IN JAPAN, *supra* note 30.

<sup>32</sup> Various product liability centers are often included as a type of private ADR. However, those PL centers are initiated by Ministry of Economy, Trade, and Industry (HAYAKAWA ET AL., *supra* note 15).

shock of the introduction of a new law school system, we specifically focused on the term “ADR”.

We are investigating several research questions including, how many courses include coverage of ADR?; how is ADR placed within the context of courses?; what are those courses?; and who teaches those courses? We are coding the collected materials in order to trace any emerging models of curricular content that might be institutionalized as legitimate responses to the current uncertainty.

For our analysis, we classify the 68 law schools into three prestige groups: high-status, middle-status, and low-status. This status ordering is based on graduates’ results in the bar exams of the last six years. Among high-status schools we include the five schools that have recently been most successful in having their graduates pass the bar, middle-status schools include the sixth to the twentieth school in this ranking, and the rest are grouped as low-status schools. In terms of a school’s average number of successful applicants of the bar exam per year, the range of high-status schools is from 90 to 220, while middle-status schools have an average number from ten to 45. Low-status schools have up to nine successful applicants although many of them have never had students who passed the bar exam.

## VIII. ADOPTION OF ADR IN LAW SCHOOLS

### 1. *Is ADR taught in new law schools?*

We have collected 62 catalogues from law schools yielding a response rate of 91.2%. Out of the 62 law schools, 48 (77.4%) offer 111 distinct courses covering ADR. This number is quite high compared with the first survey on ADR offerings in U.S. law schools (25%). In the first year of Japanese law schools’ operation, over three quarters of the schools included ADR in their curriculum. When we look at the adoption rate by status categories, the higher a law school’s status the greater the likelihood of inclusion of ADR in the curriculum: all high-status schools include ADR in the curriculum, while 78.6% of middle-status schools and 74.4% of low-status schools do so. When we break these categories down into national vs. private law schools, we see that national low-status schools have the lowest rate of adoption at 54.5%, relative to private low-status schools, 81.3%. A similar tendency is found in the average number of ADR-related courses: high-status schools offer 4.6 courses on average, middle-status schools 2.6, and low-status schools provide 1.8.

### 2. *Who teaches ADR?*

According to the law school establishment standards mandated by the Ministry of Education,<sup>33</sup> at least 20% of the faculty members hired should be practitioners, includ-

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33 *Hōka daigakuin no setchi kijun tō ni tsuite* [Japanese law school standards]. Central Council

ing lawyers, judges, and public prosecutors (so-called “*jitsumu-ka kyōin*”). The new law school system envisions a clear division of labour between academics and practitioners: academics teach core legal theory courses, including Constitutional Law, Civil Law, Commercial Law, and Criminal Law, while practitioners teach legal practice courses, including Legal Writing and Lawyering. In other words, practitioners are not allowed to teach legal theory courses, and likewise, academics are discouraged from teaching legal practice courses. There are some courses that are not assigned clearly, for example, Civil Procedure, Criminal Procedure, and International Law. These courses exist in the undergraduate law faculties. The assignment of instructors for those courses falls within the discretion of law schools. Since ADR is more likely to be taught in such “grey-zone” courses, academics and practitioners can both be expected to teach ADR in law schools. However, we assume that national law schools have more academics to cover ADR courses than practitioners due to their relatively abundant teaching staff in their law undergraduate programs, whereas private universities, lower-status universities in particular, have more practitioners to teach ADR. In general, national universities have smaller classes than private universities. This gap in class size represents a large difference in the faculty-student ratio of law undergraduate faculties between national and private universities. For example, the faculty-student ratio for national universities’ undergraduate law faculty is approximately 1:30, whereas the ratio for private universities is 1:50 or sometimes 1:80. Among private universities, the faculty-student ratio tends to become more skewed in lower-status universities. Since the law school establishment standard prohibits younger academics with less than five years of teaching experience from teaching at new law schools, we can assume that lower-status private universities are likely to assign practitioners to the grey-zone courses. Therefore, ADR is predicted to be taught by practitioners more than academics at lower-status private universities.

Our research shows that out of the total 111 courses, roughly a third (35 courses) are taught by practitioners, while the majority of the courses are taught by academics (61.3%). The remaining eight courses are taught jointly by academics and practitioners. Among high-status schools, about 60% of the courses are taught by academics and about 30% by practitioners. Middle-status schools have the lowest rate of courses taught by practitioners, 10.3%. Low-status schools have the highest rate of practitioners, 42.4%, among the three-status levels, and 52.5% of the courses taught by academics. At all levels, as we predicted, private schools have greater numbers of practitioners teaching ADR courses. Among private low-status schools, the rate of practitioner (44.9%) is the highest of all categories, and this figure is the same as that of academics. This figure is less than what we expected. We assumed that more practitioners would teach ADR than academics at private low-status schools.

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for Education, Ministry of Education, Culture, Sports, Sciences, and Technology. August 5, 2002.

### 3. *What Courses Include Coverage of ADR?*

Out of the total 111 courses, twelve courses are actually entitled “ADR”. Of these twelve courses, six courses are taught at high-status schools, two by middle-status, and four by low-status, and eight courses are offered by academics. Other courses include Civil Procedure (18 courses), Lawyering (14), Judicial System (12), International Law (9), and Sociology of Law (9). Civil Procedure is the biggest area covering ADR. We assume that this is because conciliation has been practiced as an element of civil proceedings in Japan. Unlike “ADR”-titled courses which are dominated by high-status schools, about 80% of the Civil Procedure courses are offered at low-status schools, and none at high-status schools. Overall, 66% of Civil Procedure courses are taught by academics and 33% by practitioners, and this difference is the smallest at low-status schools (academics 57.1%; practitioners 42.9%). The second most common area is Lawyering. As we expected, ten of 14 courses (71%) are taught by practitioners: two are taught jointly, and two by academics.

### 4. *ADR Adoption at Undergraduate Law Faculties*

The data collection rates for undergraduate law faculties so far are 65.2% of 2003 catalogues and 81.8% of 2004 catalogues. The rates for ADR inclusion in the curriculum are almost the same between the two years: 46.5% in 2003 and 46.3% in 2004. This shows that the introduction of graduate law schools has had little impact on the inclusion of ADR in undergraduate legal education so far. However, when we look at inclusion by status levels, a different picture emerges. Middle-status schools significantly decreased ADR inclusion from 57.1% in 2003 to 27.3% in 2004, while high-status and low-status both increased the rate from 50% to 60% and 43.8% to 50% respectively. When we divide middle-status schools between national and private groups, the picture gets even clearer. National middle-status schools dropped the rate from 66.7% in 2003 to 14.3% in 2004, whereas private middle-status schools maintained the same adoption rate in 2004 (50%) as that of 2003 (50%). We assume that this considerable drop at national middle-status schools might have something to do with the remarkable mobility in the academic labour market caused by the introduction of a law school system. It was essential and urgent for each law school to secure acceptably qualified instructors. Unlike Japan’s typically non-mobile academic labour markets, there has been a large-scale shift among legal scholars from undergraduate law faculties to law schools, and across universities. As a result of the competition for qualified scholars, we can assume that undergraduate faculties at national middle-status schools have been damaged the most.

Among the ADR-related courses offered at undergraduate law faculties, Sociology of Law, Civil Procedure, and Dispute Resolution are the major areas. While Sociology of Law (ten courses in 2003, six in 2004) and Dispute Resolution (five courses to three courses) both decreased the number from 2003 to 2004, Civil Procedure increased from

six to nine. Unlike graduate law schools, undergraduate law faculties are not required to hire practitioners and thus their existence is very rare.

## IX. DISCUSSION

Our research indicates the remarkable adoption of the teaching of ADR by new Japanese law schools. The overall adoption rate is high, particularly compared with the early stage of ADR adoption at U.S. law schools. This radical ADR adoption is unique to the law schools, and not replicated in undergraduate law faculties. Teaching ADR is not mandated by the ministerial law school guidelines, but the development of ADR in the legal system was recommended by the Justice System Reform Council. Despite the absence of any policy mandate to introduce ADR into the legal education curriculum, many law schools have immediately integrated ADR. Although ADR has been widely diffused across law schools, we can see variation among different status schools. Higher status schools have included ADR more in their curricula. In our study, the relationship between status and ADR adoption takes a linear, not a U-shape or an inverted U-shape: the higher a law school's status, the greater the likelihood of inclusion of ADR in the curriculum. Middle-status law schools do not seem to face legitimacy pressures at this point. Low-status schools also do not seem to defy institutional pressure. Instead, given the scarcity of their resources in relative to higher status schools, low-status schools must struggle to adjust to a new institution for their survival. In fact, while all high-status schools offer ADR-titled courses, low-status schools are more likely to address ADR in other courses like Civil Procedure and Judicial System. Similar to studies of diffusion of innovations, high-status schools adopt changes, but we assume their adoption is not due to meshing with prevailing group norms but a status competition. Among top 5 schools, according to media coverage of law schools and some interviews that we have done with Japanese law scholars, there seems to be a keen competition for the No. 1 status in a new institution of law schools.

It remains to be seen, of course, how durable the integration of ADR into the Japanese legal education curriculum will be. While courses on ADR have been integrated into legal education curricular in other countries along with the global spread of the ADR model, these courses have frequently been marginalized as a specialization that a Law School should have represented, but need not address across the curriculum. The prevalence of ADR-titled courses at high-status law schools in Japan could suggest a future trajectory of segregation into a sub-speciality, while the more prevalent inclusion of ADR in civil procedure and lawyering courses would suggest an integration of ADR across the curriculum. This trajectory will also depend in large part on the availability of teaching personnel qualified to offer ADR-courses. Professor Yoshitaka Wada, a leading scholar in ADR, however mentioned that there is almost no one in Japan who can teach both theoretical and practical aspects of ADR. Another law school professor also explained that a shortage of scholars to teach ADR was due to students' limited interest

in ADR. In this sense, the diffusion of ADR-titled courses to middle and low-status law schools may not take place until ADR receives more recognition as an effective means of dispute resolution. Furthermore, we noticed that the term conciliation and mediation have not been fully replaced by ADR in many courses on civil procedure and international business law. We need to examine reasons behind the preference for older terminology. The re-shuffling of courses offerings that is expected after the first three years of existence of the new law schools might determine the institutionalization of ADR as a legitimate element in legal education.

## X. CONCLUSION

This paper is a snapshot of our preliminary research on ADR adoption in Japanese legal education. We need to do further data collection especially for the undergraduate course catalogues as well as further analysis.<sup>34</sup> However, we have had several suggestive findings. When the Japanese government initiated the transformation of legal education by creating new graduate law schools, many of these new law schools immediately responded to the government's ambiguous recommendation on teaching ADR. Such isomorphism may not be an unexpected outcome in a state-initiated institutional change, but the remarkable scope and speed of ADR adoption into the curriculum of Japanese law schools is unexpected. We thus conclude pending further results that an institutional shock initiated by a state gives organizations an impetus for the immediate adoption of innovations legitimated in similar terms to those justifying the reordering of the organizational field. This is even so in organizational fields like education where status is a major component of institutional isomorphism.

In our analyses, status emerges as a key variable to show the variation of organizational responses to institutional pressure toward conformity. Our study shows that the relationship between status and conformity is a linear one. Higher status organizations are more likely to adopt new institutional components. Further research will have to investigate the degree to which this variation of adoption along a status hierarchy is caused by the availability of personnel. Future research will also specifically investigate where the association of ADR with high status law schools leads to the diffusion of ADR-courses across the status hierarchy and thus an institutionalization of ADR in the Japanese legal curriculum.

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34 We are collecting the 2005 law school course catalogues because legal training courses including lawyering will more likely be taught in the second year.

## ZUSAMMENFASSUNG

*In diesem Beitrag untersuchen wir anhand der Vorlesungsverzeichnisse für die neue juristische Ausbildung, inwieweit alternative Streitbeilegungsverfahren als Lehrgegenstand in den japanischen Lehrplan mit aufgenommen werden. Die Untersuchung lehnt sich an die Erkenntnisse der Organisationssoziologie an, nach denen Organisationen in einem ungewissen institutionellen Umfeld eine starke Tendenz zu isomorphen Strukturen und Inhalten aufweisen. Da die Reform der juristischen Ausbildung in Japan nicht nur einzelne Handlungsweisen institutionell in Frage gestellt hat, sondern durch diesen legislativen Schock ein gesamtes Organisationsfeld in einen Umbruch geraten ist, erwarten wir besonders starke Trends zur Isomorphie. Gleichzeitig untersuchen wir aber auch, ob die Reaktionen auf den institutionellen Schock ungleich über eine Statushierarchie verteilt auftreten, ob nämlich gerade Organisationen von hohem und niedrigem, nicht aber von mittlerem Status, Innovationen aufnehmen.*

*Die Integration von alternativen Streitbeilegungsverfahren eignet sich für diese Untersuchung in besonderem Maße, da diese Verfahren generell mit nordamerikanischer Rechtspraxis assoziiert werden, also mit dem vermeintlichen Ursprung der Modelle juristischer Ausbildung, die den neuen Ausbildungsverfahren in Japan Pate gestanden haben soll.*

*Wie nach unserer Isomorphie-Hypothese erwartet, sind diejenigen Kurse, die auch alternative Streitbeilegungsverfahren behandeln, an den neuen Rechtsfakultäten stark vertreten. In den Vorlesungsverzeichnissen dieser Fakultäten finden sich für das erste Studienjahr III Unterrichtsangebote mit derartigen Inhalten. Die Kurse reichen von solchen, die sich explizit und exklusiv mit den Streitbeilegungsverfahren beschäftigen, bis hin zu solchen, z.B. oftmals im Zivilrecht, die die Streitbeilegungsverfahren nur zu einem von mehreren behandelten Themen machen. Überwiegend werden diese Kurse an Institutionen mit hohem Prestige und von Akademikern angeboten und nicht von den sogenannten Praktikern. Insbesondere die Kurse, die die Streitbeilegungsverfahren als solche zum Gegenstand haben, werden fast ausschließlich von Hochschullehrern angeboten.*

*Auf Grund unserer hier vorgestellten ersten Ergebnisse erwarten wir, dass sich die Tendenz zur Isomorphie in den nächsten Jahren weiter verstärken wird und so alternative Streitbeilegungsverfahren zu einem weit verbreitetem Thema in der juristischen Ausbildung werden. Wir verfolgen diese Entwicklung auch weiterhin empirisch und werden dabei durch eine genauere Messung der Integration von Streitbeilegungsverfahren (Biographien der Lehrenden, Umfang und Art der gelehrten Texte, etc.) besser aufzeigen können, wie der Prozess der Integration einer global legitimierten Rechtspraxis in Japan über die juristische Ausbildung stattfindet.*