SPECIAL ISSUE: REFORM IN JAPANESE LEGAL EDUCATION

Reformist Conservatism and Failures of Imagination in Japanese Legal Education

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When carrying out reform, there can be no great reform unless one sets out an ideal situation stating the contours of what one wants to achieve. When Jack Welsh was appointed the top manager of General Electric, he began with these words: “Reform from within an organization inevitably becomes bureaucratic. Preoccupation with detail makes it impossible to achieve major reforms. We have to discuss those reforms which those outside [the

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organization] see as necessary.” I have always thought that these observations are correct. Likewise, reform of Japan’s national universities will end up being small-scale if it extends only as far as people within the universities tampering with the system, due to vested interests.¹

We suffer in the law from a failure of imagination.²

I. INTRODUCTION

Iwao Nakatani attracted much media attention in mid-1999 when he accepted an offer from Sony Corporation to become one of its (now many) outside directors. He was then a professor of business administration in a venerable and highly regarded national university in Tokyo, Hitotsubashi University. He had been told by the authorities that because of the legislative prohibition on such civil servants holding another regular job, he would have to elect between keeping his academic post and taking up the offer from Sony. To the surprise of many academics, Nakatani chose Sony. He resigned from Hitotsubashi and instead took a professorship at a private institution nearby, Tama University.³ Belatedly, the government has committed to allowing national university staff to serve as outside directors (but not as regular directors) “on certain terms.”⁴

More generally, these developments indicate the pressure for reform of Japan’s university system, especially its national universities, pressure that has built up in the last few years. The primary force for change was a proposal to subject national universities to the regime of

¹ Iwao Nakatani, Jugyoryo 300-man-en de Habado to Kyoso Seyo [Compete with Harvard, Setting Tuition Fees at 3 million!], RONZA, Feb. 2000, at 32, 32-33.


³ The latter’s new president is Australian Gregory Clark, head-hunted recently from another venerable institution in Tokyo, Sophia, or Jochi University.

⁴ Kigyo Yakuin to Kengyo Mitomeru [Allowing Company Directorships and Multiple Jobs], NIKKEI SHIMBUN, Nov. 17, 1999, at 1. Early in 1999, the government was reportedly investigating the possibility of allowing university staff to serve as officers of “technology transfer corporations,” which national universities can establish under legislation introduced in August 1998. The possibility of serving also on boards of normal companies was deferred for further study. Apparently, the National Personnel Office opposed taking that next step because of incidents like the arrest in August 1998, of a former Nagoya University Medical Faculty professor on corruption charges regarding the development of new drugs. See Kigyo Yakin Kengyo OK [OK on Working Currently On Company Boards], YOMIURI SHIMBUN, Jan. 25, 1999, at 10. Extensive media coverage of the incident involving Professor Nakatani in mid-1999 prompted the government to rethink.
“independent administrative agencies” (*dokuritsu gyosei hojin*) enacted in mid-1999.\(^5\) Behind such initiatives lies the government’s policy of cutting back Japan’s bureaucracy, a policy that has already involved merging central government departments and realigning their relationship with local authorities.\(^6\) Specifically, in the wake of the final

\(^5\) Much debate has followed in the Japanese media. However, very little has been written yet in English. A rare exception is the following overview:

The Education Ministry is planning to give Japan’s 99 state-run universities and colleges more freedom in deciding matters of personnel and evaluation of research and education as part of a sweeping reform . . . . Education Minister Akito Arima, a former president of the University of Tokyo, presented the plan Monday to the presidents of the national universities and colleges gathered in Tokyo. The reform is part of a plan to change the universities’ and colleges’ status to “independent administrative institutions” modeled after the British agency system adopted in the late 1980s. The ministry says each university's autonomy and independence will be increased through the reform, as restrictions by the government on their management in such areas as organization and budget will be relaxed. Under the plan, the minister of a new education ministry to be created after January 2001 will be required to take account of the views of state-run universities and colleges in mapping out management policy, and to appoint and dismiss the heads of universities based on the universities’ proposals. It also proposes that a panel to be set up at the new ministry to assess the efficiency of education and research at universities and colleges should carry out its appointed task following evaluation by a third-party body to be established in April next year. State universities and colleges will continue to use their land and buildings but whether they will be given the rights to independently set tuition fees and establish funds based on profits earned by sales of school property will be further studied, according to the plan. The education reform comes against the background of administrative reform bills passed by the Diet in July aimed at cutting costs and the number of central government employees by 25% in 10 years. The ministry’s plan, however, says national school staff should retain their status as central government employees. The ministry will discuss the reform with the Japan Association of National Universities, the government and the ruling Liberal Democratic Party before officially deciding on its policy to make state colleges independent administrative institutions by April [2000], the officials said.


\(^6\) Japan’s most widely read law journal published an early and perceptive overview of the background to the initiative in June 1999. Tokiyasu Fujita, *Kokuritsu*
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report presented by the Administrative Reform Deliberative Council in late 1997, the government now aims to cut back the number of civil servants by twenty-five percent over the next decade. With 135,000 persons employed in state-run educational institutions, a large majority of whom works in Japan’s ninety-nine national universities, those working in the national universities will have to be subjected to cutbacks if this sort of objective is to be achieved. Besides such demands for greater efficiency amidst Japan’s ongoing economic recession, concern is growing about the lack of transparency and accountability in universities. This concern is underpinned by enactment of a new Official Information Act, applicable to national universities (in their present form) when it comes into effect by May 2001. These developments have prompted quite widespread debate about what Japanese society, now and in the foreseeable future, can expect of its university system. Nonetheless, there is considerable resistance to change from regional universities, which will find it harder to compete in such a new environment compared to the larger national universities (especially former imperial universities). The larger universities have been able to develop more critical mass through close

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7 Editorial, "Kara o Yaburu Kikkake ni [A Chance to Break Open the Shell], ASAHI SHIMBUN, Sept. 16, 1999, at 5.


9 See also, e.g., Kinya Abe, Daigaku, Kaigo, Koji Kyoku ... Kokumin no Shiten de Kaikaku o [Reform Universities, Care, School Education from the Citizens' Perspective], KUMAMOTO HINICHI SHIMBUN, Jan. 7, 2000, at 7; Daigaku no Taishitsu Tenkan Isogo [Speed Up the Transformation of Universities], NISHI NIHON SHIMBUN, Jan. 5, 2000, at 1; Akira Morita, Kokuritsu Daigaku Koso, Shutaiteki Kaikakukan Shimesu [National Universities, Above All, Should Present Their Own Reform Proposals], ASAHI SHIMBUN, Sept. 30, 1999, at 4; Masaaki Honma, Kenkyu Kyoiku no Jiyu Sokonau [Loss of Freedom in Research and Teaching], ASAHI SHIMBUN, Aug. 31, 1999, at 5.

10 See generally, e.g., Shikin Kakusa—Chiho no Fuan Okiku [Variations in Funding: Big Concerns from the Regions], TOKYO SHIMBUN, Feb. 16, 2000, at 26 (Part 5 of a useful seven-part series on turning universities into independent administrative agencies). National universities in Kyushu remain the most opposed, but only the presidents of Kagoshima and Kumamoto Universities and a professor from Kyushu University have joined a large investigative committee established by Monbusho in July 1999. Kokuritsu Daigaku "Hojinka" [Turning National Universities into "Corporate Bodies"], NISHI NIHON SHIMBUN, July 30, 2000, at 2.
connections with the Ministry of Education (Monbusho) and other sources of funding. More generally, as indicated by the opening quote taken from a recent essay by Professor Nakatani in one of Japan’s widely read weekly magazines,\(^\text{11}\) there is real concern that major reform will not eventuate in national universities.

The same is true of reform discussions and initiatives regarding law faculties recently, especially in Japan’s national universities.\(^\text{12}\) From its inception over a century ago, legal education in Japanese universities has been conducted at the undergraduate level. With students permitted to take many non-law subjects especially in earlier years, the focus has been more on producing generalists than practicing lawyers (bengoshi).\(^\text{13}\) This focus is related to the post-War policy of making the national bar examination (shiho shiken) extremely

\(^{11}\) Supra note 1.


\(^{13}\) For a very helpful review of developments before and after World War II, see Setsuo Miyazawa (with Hiroshi Otsuka), Legal Education and the Reproduction of the Elite in Japan, 1 ASIAN-PAC. L. & POL’Y J. 2 (2000), at http://www.hawaii.edu/aplpj/pdfs/2-miyazawa.pdf. The authors stress continuities in this focus and argue that it has reproduced power elites in Japan through to the present day. However, they concentrate primarily on how this has occurred through Tokyo University Law Faculty. Further, even that institution is not monolithic, as shown by its recent appointment of a second professor from abroad, Daniel Foote. Rather than the now somewhat dated analytical framework proposed by C. Wright Mills, THE POWER ELITE (1956), a more promising approach to analyzing such contemporary developments (and the transformations in social elites through Japanese law faculties more generally) may be the focus on processes and socio-legal fields proposed by contemporary sociologists such as Pierre Bourdieu. See, e.g., Pierre Bordieu, The Force of Law: Towards a Sociology of the Juridical Field, 38 HASTINGS L.J. 805 (1987). Nonetheless, Miyazawa and his collaborators provide valuable background information on legal education in Japan over the last century, including many statistics. There is otherwise remarkably little writing in Western languages on Japanese legal education. Early exceptions were the overview provided by Yasuhei Taniguchi, Legal Education in Japan, in LAW AND TECHNOLOGY IN THE PACIFIC COMMUNITY 298 (Philip C.S. Lewis ed., 1994); and an interesting snapshot of legal education at Tohoku University provided by Rembert Susse, Das Studium der Rechtswissenschaften in Japan—Eindrucke eines deutschen Dozenten [The Study of Law in Japan: Impressions of a German Lecturer], 1 ZJAPANR 92 (1996). More recently, for a brief survey of Japanese legal education and proposed reforms along U.S. lines, see also Mark Levin, Legal Education and the Next Generation, 1 ASIAN-PAC. L. & POL’Y J. 3 (2000), at http://www.hawaii.edu/aplpj/pdfs/3-levin.pdf; Yukio Yanagida, A New Paradigm of Legal Training and Education in Japan, 1 ASIAN-PAC. L. & POL’Y J. 1 (2000), at http://www.hawaii.edu/aplpj/pdfs/1-yanagida.pdf.
difficult.  Those passing the examination can enter the government-funded Legal Research and Training Institute (shiho kenshujo) (“Training Institute”); and graduates of its program may be accepted for careers as a judges or public prosecutors, although most become bengoshi. As well as the bar examination pass rate being restricted to approximately 500 applicants each year, the range of subjects covered in the exam has been narrowed. The best method of preparation for the exam is through rote-learning and other techniques, which even law students at leading law faculties tended to learn instead at private cram schools (yobiko). In the 1990s, however, agreement was reached to raise the pass rate first to 700, and, since 1999, to 1000 each year.15 Already by 1999, it was clear that the pass rate would continue to rise significantly, to at least approximately 1500 by 2005, as broader discussion had intensified since the late 1990s on widespread reform of Japan’s system for administration of justice. The establishment in July 1999 of the Deliberative Council for Judicial System Reform (Shiho Kaikaku Shingikai) (“Deliberative Council”) further evidenced this trend.16 Over the course of the year 2000, the likelihood that the number


15 Saita no 1000nin Gokaku [Record 1000 Pass], YOMIURI SHIMBUN, Nov. 30, 1999, at 38 (stating that the average age of those passing decreased to 26.82, and that only 287 women passed). Anja Peterson and Miyazawa provide an excellent analysis of the contents and procedures involved in the bar examination and reform discussions, which began in earnest in 1988. Anja Peterson, Das erste japanische juristische Staatsexamen und dessen aktuelle Reformdiskussion [The first bar examination in Japan, and contemporary debates on reforming it], 1 ZJAPANR 32 (1996); Miyazawa, supra note 13.

16 The Japan Federation of Bar Associations (Nichibenren) (“JFBA”) has traditionally been the most reluctant of key policy-makers (along with the Supreme Court and the Justice Ministry) in permitting an expansion in numbers passing the bar examination—some would say, to protect the cartel effects generated by such a restriction. However, top officials within Nichibenren, interviewed in late 1999, were already resigned to such a further increase over the medium term. It should also be remembered that well before the further changes in the late 1990s, the Justice Ministry had initially suggested raising the pass rate to 2,000-3,000 per annum, a view approved by some well-known academics. See Peterson, supra note 15, at 41, 47. More recently, much of the pressure for widespread changes in administration of justice (especially civil matters), and increasing numbers of legal professionals, comes from the business sector, which now faces an increasingly complex legal environment both in and outside of Japan. See generally Toshimitsu Kitagawa & Luke Nottage, Globalization of Japanese Corporations and the Development of Corporate Legal Departments: Problems and Prospects (paper presented at the conference on The Emergence of an Indigenous Legal Profession in the Pacific Basin at Harvard Law School, Dec. 11-14, 1998) (copy on file with author). This trend explains the recent interest in judicial reform expressed by the overall regulator for the corporate sector, the Ministry of International Trade and Industry (“MITI”) (in January, 2001, renamed from the “Ministry of the Economy, Trade and Industry” or METI), evident for instance in the REPORT OF CORPORATE LEGAL SYSTEM STUDY GROUP [KIGYO HOSEI KENKYUKAI] FOR
would rise to at least 3000 per annum increased.\(^\text{17}\) Law faculties, even in national universities, are therefore proceeding to develop more courses for students wanting to pass the now easier bar examination. This trend is most striking among law faculties in the larger national universities, especially the former imperial universities. The latter universities will probably be the main institutions permitted by Monbusho to develop two or three year post-graduate programs for such students—the “law school” concept.\(^\text{18}\) This will mean competing with the yobiko, hitherto largely treated with disdain. Nonetheless, the strategy makes some sense as Japanese society continues to age rapidly, creating pressure to decrease the number of students, and given the above-mentioned pressures for reform in universities more generally.

However, this article argues that such changes in legal education, being discussed and implemented in Japanese law faculties at present, are unconvincing. The reformers also miss a rare opportunity for more widespread reform. One particular difficulty facing law faculties in this process is precisely that they are populated mainly by jurists. Mark

\(\text{RESEARCH ON ECONOMIC ACTIVITY AND THE JUDICIAL SYSTEM (May 9, 2000), at} \text{http://www.meti.go.jp/english/report/data/gCorpMaine.html. For a useful summary of the main issues initially tabled for discussion in the newly established Deliberative Council, see the proceedings of a special colloquium, \textit{Shiho Seido Kaikaku no Shiten to Kadai [Topics and Perspectives on Reforming the System for Administering Justice], 1167 JURISTO [JURIST] 52 (1999); and the Council’s The Points at Issue in the Judicial Reform (Dec. 19, 1999), at} \text{http://www.kantei.go.jp/foreign/judiciary/0620reform.html (last accessed Mar. 16, 2001). See also generally Miyazawa, supra note 13.}

\(^\text{17}\) Early in 2000, former Nichibenren President Kohei Nakabo reportedly argued before the Deliberative Council that the number of bengoshi should rise to between 50,000 and 60,000, putting Japan’s per capita ratio on par with jurisdictions like France. \textit{More Lawyers Wanted}, \textit{JAPAN TIMES}, Feb. 24, 2000, at 3. On April 21, 2000, a “Civil Justice Reform Forum” [\textit{Shiho Kaikaku Foramu}], composed primarily of business leaders and law professors, published its “First Recommendations for Reform of Civil Justice” (unpublished report, \textit{cited in Luke Nottage, Separating the “Anglo” from the “American” in Anglo-American Law: Implications for Japanese Legal Education Reform, 3/2 ICCLP REV. [UNIVERSITY OF TOKYO] 76, 78 (2000)). Even more radically, these proposals call for increases in the annual number passing the bar examination by 1000-person increments every year through to 2010, generating a combined total of 90,000 lawyers, judges, and prosecutors. The Deliberative Council’s chair, Kyoto University Professor Koji Sato, then indicated a preference for raising the number to 3000 per annum by 2005. \textit{Shiho Shiken Gokakusha Sanbaino Nenkan 3000nin ni [Bar Exam Passers: Raise Threefold to 3000 Persons Annually]}, \textit{NIKKEI SHIMBUN}, Aug. 9, 2000, at 34. Not surprisingly, therefore, the Deliberative Council’s interim report released late last year proposed raising the number to 3000 per annum. \textit{See Judicial Reform Must be Achieved, JAPAN ECON. NEWswire, Nov. 20, 2000, available at LEXIS, Nexis Library, Nexis Library, News Group File.}

\(^\text{18}\) See, for further discussion, \textit{infra} Parts II.B and III.A.
Ramseyer, cited at the outset, is not the only one to have pointed out that jurists tend to lack imagination. His colleague at Harvard, Roberto Unger, made the same point around the same time, albeit from a very different theoretical standpoint (critical legal theory, rather than law and economics). Difficulties are compounded in Japan, where many law faculties are hidebound by bureaucratic organization.

Accordingly, this article begins by trying to exercise some imagination. Rather than focusing on the present, such as the rights and wrongs of the latest proposals from Monbusho and other policy-makers, or what other law faculties are doing, Part II considers what the legal landscape in Japan might look like twenty years hence. This long-term perspective aims to provide fresh ideas and prompt further discussion, so that large-scale reform will not be stifled in the way feared by Nakatani and others.

Part III then focuses on two particular concerns regarding the reform initiatives so far. The first relates to the emerging consensus, at least among “leading” national universities, that several years of further legal education need to be added to the existing three- or four-year program (Part III.A). This addition entails extra costs and other problems, which have not been fully considered. One major source of inspiration is the United States, as well as other countries such as Germany. Yet the experience especially in New Zealand and other Commonwealth countries shows that it is possible to train students to be effective lawyers with only a few years of—admittedly, challenging—undergraduate legal education. A second concern is the fixation with getting these students to pass the bar examination (Part III.B). A more important challenge and focus for reform

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19 See supra note 2.


21 See also Luke Nottage, Sozoryoku o Hatarakaseyo [Let’s Use Our Imagination], 1170 JURISTO [JURIST] 148 (2000). Commenting generally on an early draft of this paper, Ramseyer suggested that decision-making can simply be left to markets, with legal education and lawyering being seen as services. Although agreeing that market forces should be given freer rein in both respects, I contend that even markets require strategic thinking and, more generally, that law must also revolve around claims of legitimacy. See Luke Nottage, Convergence, Divergence, and the Middle Way in Unifying or Harmonising Private Law 27-29, 34 (EUI Working Paper LAW No. 2000/1, European University Institute, Florence, 2001), at http://www.iue.it/PUB/law_fm.html; also infra note 91.

22 It is no longer enough to think or talk of “the twenty-first century.” That century has already started as you read this article, and so it does not necessarily stretch the imagination enough. A year like 2020 does that more effectively, yet is not too far into the future to make events then totally unpredictable or irrelevant—hopefully, most of us will still be around then!

23 See supra note 1.
discussions—at least for the “leading” law faculties in Japan, which are leading those discussions—should be to develop world-class inter-disciplinary research and teaching. This inter-discipline should train legal professionals in a broad sense and indeed future leaders in Japanese and global society. In the light of these two major problems, Part III.C concludes with some thoughts about what may happen to Japanese law faculties over the next decade or so. Overall, the analysis in Part III suggests that a deep-rooted conservatism dominates reform discussions and initiatives in Japan. Such “reformist conservatism” may well be related to other tendencies in Japanese law and society, because they contrast, for instance, with the “conservative reformism” characteristic of New Zealand.

Nonetheless, the combined inertia generated by universities, as large bureaucracies, and the world of the law is also apparent in such countries as New Zealand. This inertia suggests more universal problems in trying to reform legal education, especially within universities. The following analysis may therefore provide insights for other countries presently considering large-scale reforms to both universities and legal education, although further comparative research is urgently required. Further, the debate that unfolded in Japan last year, partly in response to criticisms like those presented in this article, may lead to more sensible results. Yet the results will depend on ever-expanding participation and information-sharing among diverse stakeholders and citizens. Generally, a key focus should be always on establishing effective processes for maintaining and managing reform over the longer term, not just on substantive objectives and strategies. Part IV ends briefly with some further thoughts along these lines.

II. JAPAN’S LEGAL LANDSCAPE IN 2020?

Two decades hence, two features are likely to stand out in Japan’s legal landscape. First, the number of bengoshi should be close to the current number of students entering Japanese law faculties, approximately 40,000. As Richard Abel has shown in countries as


25 In 1992, for example, around 37,500 students entered separate law faculties as day students (with 4,000 entering evening programs), although another 45,000 or so students entered faculties that incorporate law department or sections with other departments (e.g., economics or arts). See Miyazawa, supra note 13, at Table 10. For some recent projections as to future bengoshi numbers, compare, e.g., Kazuhiro Nakanishi, Hoso Jinko Zoka Mondai no Genzai to Kadai [Issues and Present Situation regarding Increasing the Legal Profession Population], in SAIBAN O KAЕ ВО [LET’S CHANGE COURT PROCESSES] 196, 199-200 (Yoshitomo Oode et al. eds., 1999). Readers can attempt their own arithmetic. For instance, there were 17,142 bengoshi registered in Japan as of March 2000. About 550 bengoshi had been expected to
diverse as the United States and the United Kingdom, large-scale relaxation of control over the supply of lawyers tends to have far-reaching and widespread implications throughout the legal system. This tendency appears to hold for New Zealand as well, and Japan should be no exception. Indeed, many Japanese commentators and policy-makers appear to acknowledge this possibility but without articulating assumptions or considering all the follow-on effects.

Secondly, ongoing developments in Information Technology (“IT”) will dramatically change the legal world by 2020. Several years ago, Richard Susskind outlined some of the existing and foreseeable changes in the United Kingdom, drawing also on pioneering developments in the United States. These changes are likely to become increasingly important for Japan as well. Yet, current reform discussions have neglected the likely broader relationships between IT innovation and legal practice, legal education, and political processes in contemporary democracies. This failure of imagination becomes register in April 2000, then 750 more in October 2000, (out of the 1000 LRTI graduates), bringing the total to around 18,400. On average about 75% of LRTI graduates have become bengoshi in recent years. Telephone interview with the Information Dep’t of the Nichibenren (Mar. 9, 2000). Accordingly, even if the number permitted to pass the bar examination (the vast majority of whom went on to the LRTI) thereafter remains 1000 per annum, the number of bengoshi should increase by 750 each October thereafter, giving 33,400 in 2020. Further, as mentioned above (supra note 16), it is almost certain that the passing rate will rise further. If increased to 1500 per annum from 2005, for instance, this will produce 40,900 bengoshi in 2020. If increased to 3000 per annum from 2005, then 57,150 bengoshi will be produced by 2020. Of course, if such increases lead to greater competition and significantly lower fees and incomes for this generation of bengoshi, a higher proportion of Training Institute graduates may try to become judges and prosecutors; but the rise will still be dramatic.


28 Comparative theoretical and empirical research, funded by the International Communications Foundation (“ICF”) in Tokyo, is now underway on those broader relationships. See IT, Legal Education, Practice, and Politics: A Cyber
particularly conspicuous when we appreciate that developments in IT mesh closely with some of the follow-on effects from rapid expansion in bengoshi numbers.

A. Transformations in the Legal Profession

By 2020, transformations in the legal profession should reconfigure the administration of justice in Japan. The first major change to be expected is that much more legal work will be proactive rather than reactive. For some time now, commentators have been arguing that this change is or should be occurring in Japan. The possibility has now become very real. It draws firstly on Japanese corporations' ongoing attempts to strengthen their legal departments, including the use of IT such as intranets. The strengthening of corporate legal departments piggybacks on the growth of electronic data interchange ("EDI") and now electronic commerce more generally, affecting entire organizations or corporate groups. Outside corporate legal advisors must and can match these technological developments, especially as more and more begin to compete in providing business law advice. Market incentives paralleled by technological developments, however, will also push the legal advisors of the future, called "legal information engineers" by Susskind, to provide more proactive advice to individuals, organizations, and government agencies.

Moreover, as advisors become literally enmeshed in their clients’ everyday operations and longer term planning, they will need to draw on a broader array of skills and expertise. “Multi-disciplinary practices” very probably will become the norm, not the exception, by 2020. However, they may not be colossal “firms” like the biggest law offices in the world nowadays. Incidentally, the biggest such firm since 2000 grew from an English firm, Clifford Chance. See Robyn McArtney, A Global Law Firm, NEW ZEALAND L.J., Oct. 1999, at 350.
largest accountancy firms, some of which are moving into provision of legal services. The emergence of mega-law firms, at least, arguably was related to the technique developed in the early 1970s of assigning multiple junior lawyers to one more senior one, a technique that more efficiently uses the firm’s human capital. However, even with the technology of the late 1990s, those sorts of economies should be achievable through looser forms of networking. Rather than more mega-law firms, certainly by 2020, we should see sometimes large, but often transitory, networks of legal information engineers.

These networks will be able to cross national boundaries, not just disciplinary boundaries, even more readily than law firms today in many parts of the world. Facilitating this crossover, mutual recognition of professional qualifications will grow. Mutual recognition has already been largely achieved not only within customs unions such as the European Union, but also in such looser free trade zones as that between New Zealand and Australia, in existence since 1982. Is it too


35 See generally Mark Galanter, Law Abounding: Legalization Around the North Atlantic, 55 MOD. L. REV. 1 (1992). But see Stephen Franks, Has the Brand “Lawyer” Lost its Special Value?, COUNCIL BRIEF, Jan. 2000, at 5. A former partner in one of New Zealand’s largest law firms and newly elected to Parliament, Franks agrees that the legal profession is likely to be dominated by inter-disciplinary firms but believes that these firms (especially the big transnational accountancy firms) will continue to develop as the main “screening” or “branding” institutions, instead of universities. Even if this is so, however, it remains to be seen whether that role will be enough to secure the continued growth of mega firms, even in the new IT environment.

36 Other New Zealand lawyers are already showing how this can be done. See, e.g., Wendy London, Lawyer on the Go, LAWTALK, Issue 535 (Feb. 2000), at 10, also at http://www.nz-lawsoc.org.nz/lawtalk/wendy2.htm (a longer version is published in the INTERNATIONAL LAWYERS NEWSLETTER); Nottage, supra note 30, pt. 1 (discussing transnational “legal information engineering”). LAWTALK is the journal of the New Zealand Law Society.

Lorenz Koedderitzch has suggested that lawyers (especially senior partners in large firms) may prefer real-time interaction (especially with in-firm junior lawyers) to obtain more prompt legal advice. Related to this is whether looser networks can generate sufficient trust in those called upon to provide advice. However, advanced IT usage generally should result in much faster provision of legal advice, while we can expect the emergence of new means for creating trust in a “virtual” environment (as in eBay.com). See, e.g., Luke Nottage, Contract and Trust in Cyberspace, LAWTALK, Issue 549 (Oct. 2000), at 13, also at http://www.nz-lawsoc.org.nz/lawtalk/nottage2.htm. These are other issues now being explored in the ICF funded collaborative research project. See supra note 28.

farfetched to imagine that, by 2020, Japan and South Korea may have
agreed on mutual recognition of qualifications to practice as a lawyer?
Or even to practice as a legal information engineer in a
multi-disciplinary practice? Interestingly, multilateral initiatives
already underway have focused on mutual recognition of accountancy
qualifications, and, already, it seems likely that this will provide the
framework for the legal profession.38

Flexible networks bringing together a broader array of experts in
more proactive work, less subject to the vagaries of intense bursts of
work required of today’s more “reactive” lawyers, should result in a
more diverse legal profession in other ways. Even without the startling
developments in IT that we witness today, a rapid increase of the
numbers admitted to legal practice has led recently to a much stronger
presence by women even at higher levels of the legal profession. For
example, New Zealand has just appointed its first female Chief Justice,
and the Supreme Court of Canada was headed by Bertha Wilson in the
1980s, and presently by Beverley McLachlin.39 So, the discussion of
“part-time judges” nowadays in New Zealand is closely related to
gender issues, in sharp contrast to the discussion in Japan so far.40 The
greater presence of female judges and lawyers also underpins the
concerns about “women’s access to justice,” as evidenced by detailed
reports in the 1990s from law reform bodies throughout the
Commonwealth.41 In contrast, contemporary discussions about judicial
reform and access to justice in Japan remain too abstract. Rather than
talking about “citizens’” access to justice, attention should be focused
on problems faced by women or foreigners. In twenty years, with a
more diverse legal profession, such issues certainly will be on the
agenda.

38 See Ohara, supra note 34.

39 The newly elected President of the New Zealand Law Society is also
female, although another (now a High Court Judge) was President already from
jurisdictions more generally, see, e.g., Kathleen E. Hull, Gender Inequality in Law:
Problems in Structure and Agency in Recent Studies of Gender in Anglo-American

40 Compare, e.g., Rowena Lewis, The Case for Part-Time Judges, LAWTALK,
Issue 510 (Nov. 1998), at 9, with Hideki Akiga, Hijokin Saibankan Seido no Donyu o
[Introduce a System of Part-Time Judges], in 21 SEIKI SHIHO E NO TEIGEN [PROPOSALS
FOR THE ADMINISTRATION OF JUSTICE IN THE 21ST CENTURY] 88 (Setsuo Miyazawa et
al. eds., 1998).

41 See, e.g., New Zealand Law Comm’n, Women’s Access to Legal Services,
(Mar. 31, 1999); AUSTRALIAN LAW REFORM COMM’N, REPORT NO. 21, EQUALITY
BEFORE THE LAW: JUSTICE FOR WOMEN, PART I (1994),
http://www.austlii.edu.au/au/other/altc/publications/reports/69/vol1/ALRC69.html#A
LRC69 (last visited Apr. 25, 2001).
This diversity also has potentially far-reaching implications for legal ethics as taught and practiced in Japan. Even the substantial increases already agreed for the bar examination passage rate will undermine the existing approach to legal ethics. This approach has been characterized by broadly worded Rules, a reliance on learning by osmosis from a small band of colleagues, and limited instruction at the Training Institute.\textsuperscript{42} Anyway, the Training Institute’s long-term future is already shrouded in uncertainty. For instance, as the number of those passing the bar examination has risen to 1000 each year, the training period at the Training Institute has been shortened from two years to eighteen months. Further contractions can be expected as the number of those passing continues to rise, if only due to budgetary constraints. Moreover, if universities begin to compete in providing more “practice-oriented” courses and programs, the Training Institute’s future role may be subject to even greater pressure.

More generally, lawyers and their law firms will need to find a new balance between the demands placed on them as key actors in a fundamentally normative environment, on the one hand, and as service providers in an increasingly competitive market, on the other.\textsuperscript{43} As the latter aspect becomes more apparent, another implication is surfacing that has not yet been imagined in Japan. It seems that law society membership may become voluntary. This possibility remains very real in New Zealand, for instance, despite the recent election of a Labor Party-led coalition.\textsuperscript{44} Generally, compulsory membership is seen as risking inefficiency. Another factor weighing in favor of voluntary membership has been that large law firms have developed their own sources of legal information. These firms object to their compulsory membership fees being used to fund Law Society Law Libraries used by small firms and individual practitioners who are often, indeed, their competitors. This factor may be, or become, relevant in other countries too, including Japan, although it may also lose significance if legal information becomes more widely available thanks to ongoing developments in IT. In a more market driven environment, however, the future of law societies themselves will need to be reassessed. Their current role in setting and regulating ethical standards cannot be guaranteed.

Finally, consider what the functions of adjudicators may be by 2020. Because IT will have subjected many mundane legal tasks to


\textsuperscript{43} For a typically thoughtful discussion of this tension, see, e.g., Takao Tanase, Bengoshi Rinri no Gensetsu Bunseki [Analysis of Discourse on Legal Ethics], 68/1-4 HANREI JIHO [CASE LAW INFORMATION] (1996).

\textsuperscript{44} See, e.g., Open Letter from Ian Haynes [then NZLS President], to New Zealand Law Society Practitioners (Oct. 20, 1999) (on file with author).
“expert systems” or file management systems, the possibly fewer disputes that do arise, requiring reactive rather than proactive thinking, will tend to involve “supra-system” difficulties. Judges will have to develop the ability to think at this more abstract level. Training them in legal philosophy, comparative law, or even mathematics may best foster this ability. At least, the need for judges to think more abstractly suggests caution about current proposals for hosoe ichigen (“unifying the profession, specifically by encouraging experienced bengoshi to become judges”). Many of these proposals assume that this is needed to make Japanese judges more able to appreciate specific social or business environments, and to follow the nitty-gritty of everyday legal tasks.

B. Implications for Legal Education

If even some of the above-mentioned transformations in the legal profession are real possibilities over the next few decades, imagine some implications for legal education. In Japan, proposals for reform increasingly seem to be influenced primarily by U.S. or German models. Both models assume the necessity of lengthier education to develop “lawyerly” skills to take into legal practice. Under the German model, to obtain one’s degree requires at least four and often five years, meaning in effect that the latter is recognized as a Masters’ degree. Under the U.S. model, three years of undergraduate study majoring in other disciplines is followed by three years of J.D. postgraduate study in law. Particularly because the latter phase can allow for ongoing interdisciplinary study, as discussed infra (Part III.B), the U.S. model may be more suited to training “legal information engineers” in multi-disciplinary practices, who may one day become judges adjudicating supra-systemic problems from a broad vantage point.

However, another even more suitable model is conceivable. Why not actively promote double undergraduate degrees, one majoring in law and one in at least one other discipline? For instance, many

45 See, e.g., Nottage, supra note 27; Nottage, supra note 21, at 150 n.15.

46 See generally the special issue in 51/1 JIYU TO SEIGI [LIBERTY AND JUSTICE] 50-89 (2000).

47 See, e.g., HOSO YOSEI SEIDO KAICAKU TO HOGAKU KYOIKU NO KADAI [ISSUES IN LEGAL EDUCATION AND REFORMING THE SYSTEM FOR TRAINING LEGAL PROFESSIONALS] (Kyoto Daigaku Daigakuin Hogaku Kenkuka ed., 1999).

48 Note, however, that Hitotsubashi University announced plans for a tie-up with other national universities in Tokyo, which reportedly aims to facilitate cross-crediting of courses at the various institutions. Kokuritsu Godaigaku Rengo Kessei e [Towards Concluding a Federation of 5 National Universities], NIKKEI SHIMBUN, Nov. 4, 1999, at 1; Gakumon no Fukugo, Rengo Sokushin: Daigaku wa doko e [Overlapping Disciplines, Encouraging Mergers: Where Are Universities Heading?], NIKKEI SHIMBUN, July 29, 2000, at 39 (Part One of a three Part series).
students have chosen this option in New Zealand and Australia since the 1980s. Those graduating with double degrees gain an edge over those majoring only in law, amidst increasing competition to be hired by a good law firm. They are also better equipped to move into neighboring areas of work, such as accountancy or business consultancy, more like legal information engineering. Ultimately, should they want to become the judges of the future, they may retain a distinct advantage over those who have studied only law. At the least, the New Zealand and Australian experience shows that it is not necessary for law faculties to train students for five or six years, just to become an effective practicing lawyer. The discussion and changes made so far in Japan tend to that conclusion not only because of a fixation on German or U.S. models. One also gets the distinct impression that they are taking the easy route, by merely adding a few more postgraduate programs to existing structures—an aspect of “reformist conservativism” discussed infra (Part III.A). What should be more boldly addressed is the much bigger issue of tangible objectives for the initial three or four years of university education. Again, New Zealand and Australian law faculties have been able to improve their undergraduate programs to provide both professional and general education.49

Some thoughtful commentators in Japan have considered this option, only to dismiss it primarily on the basis that the Japanese bar

However, one rationale for the tie-up is simply to merge institutions with gaps in their curriculum arising from limited academic departments; pedagogical and further institutional innovations are not assured. In addition, Kyushu University has announced a “21st Century Program,” effective April 2001, in which gifted undergraduate students mainly admitted on a more broadly based assessment scheme (rather than the usual written examinations) can receive new combinations of courses hitherto compartmentalized into various faculties. Zeneraristu o Yosei [Training Generalists], NISHI NIHON SHIMBUN, June 24, 2000, at 1. However, the initial focus is to be on “environmental issues” and “training international businesspeople,” and whether the Law Faculty will contribute significantly to this new program remains to be seen. There is also no indication that students in the new program might be able to graduate with multiple undergraduate degrees.

To be sure, at least in New Zealand, this multiple focus has diminished in the 1990s, with greater emphasis arguably being placed on more professional subjects. Yet, this is probably due primarily to the government’s policy over this period of encouraging high school graduates to go on to study at universities, funding them depending on student numbers while lowering funding overall. Universities have had to cut costs and raise fees charged to students. The immediate response has been for law faculties to offer courses that promise more immediate “return” to students, most of which are the more “professional” ones. See Nottage, supra note 24; Barry P. Roser, A Sketch of New Zealand Universities and Recent Tertiary Reforms, in III INTERNATIONAL HIGHER EDUCATION RESEARCH (Hokkaido University) 105 (1999). On the development of legal education in Australia, and particularly on further reorienting it away from a narrow focus on reactive lawyering, see, e.g., AUSTRALIAN LAW REFORM COMM’N, ISSUE PAPER NO. 21, REVIEW OF THE ADVERSARIAL SYSTEM OF LITIGATION: RETHINKING LEGAL EDUCATION AND TRAINING (1997), http://www.austlii.edu.au/au/other/altc/publications/issues/21/ ALRCIP21.html (last visited June 16, 2001).
examination will never become easy enough for the majority of law students to pass. Yet, that argument is based on a surprisingly narrow definition of “professional” legal education, namely one centered on training those wanting to become bengoshi, judges, or prosecutors. As shown by the “thought experiment” about likely transformations in the legal landscape in Japan, its law faculties should consider how to educate “legal” professionals in a much broader sense. Already, of course, there exist many “lawyer-substitutes” in Japan: patent attorneys; tax attorneys; new generations of judicial and administrative scriveners (surely likely to take full advantage of developments in IT), paralegals, and so on. The fixation on reform directed towards training students to become bengoshi, or to pass the bar examination, therefore, seems remarkably short-sighted. Fortunately, criticisms from various sources appear to have encouraged the Deliberative Council to take a somewhat more expansive view of the roles of future legal practitioners and hence Japan’s new law schools. Nonetheless, the starting and focal point in the law school reform remains the increase in the number of examinees permitted each year to become lawyers, prosecutors, and judges.

50 See, e.g., Yanagida, supra note 13, at 21-22; Miyazawa, supra note 13, at 28.

51 See supra Part II.A.

52 It is ironic that Japanese law faculties ignored most of the issues regarding education and training of these many “lawyer-substitutes,” at least over 1998 and 1999. Although casual commentators from abroad still occasionally focus on the role and numbers of bengoshi when talking or writing about Japanese law and society, most have finally appreciated that this focus is too narrow, thanks largely to the efforts of scholars like Dan Henderson. See Dan Henderson, The Role of Lawyers in Japan, in JAPAN: ECONOMIC SUCCESS AND LEGAL SYSTEM 27 (Harald Baum ed., 1997). On training of paralegals, compare, e.g., Legal Executive Certificate Emphasizes Practical Skills, LAWTALK, Issue 528 (Oct. 1999), at 8, with Editorial, “Pararigaru (Bunyasei—Ikkyu Hisho) no Yosei to Katsuyo [Training and Using “Paralegals” (Specialisation/First-class Secretaries)], 50 JIYU TO SEIGI [LIBERTY AND JUSTICE] 163 (1999).

53 Kobe University presented an early view tending in this direction. See, e.g., Tamotsu Isomura & Takehisa Nakagawa, Kobe Daigaku ni okeru Hogaku Kyokaku Sainen no Kozo [The Structure for Realigning Legal Education at Kobe University], 1168 JURISTO [JURIST] 58, 59, 62 (1999); Miyazawa, supra note 13. Kyushu University belatedly and partially moved in this direction too, now taking credit for influencing the Deliberative Council. Cf. Shiro Kawashima, “Kyudai-an”, Zenkoku no “Hoka Daigakunin (Ro-sukuru) Kozo” o Rido [“Kyudai Proposal” Leads in the Graduate School of Law (Law School) Structure], KYUSHU DAIGAKU HOKAGAKUBU DOSOKAIHO [NEWSLETTER OF THE KYUSHU UNIVERSITY LAW FACULTY ALUMNI ASSOCIATION] (Kyushu Univ. Law Faculty Alumni Ass’n, Fukuoka, Japan), Sept. 8, 2000, at 12. For a recent overview of the emerging consensus presented by the Chair of a committee established within Monbusho to advise the Deliberative Council, see Takeshi Kojima, Niju isseiki no Daigako to Rosukuru Kosu [The Image of the 21st Century University and the Law School Concept], 501 SHOSAI NO MADO [WINDOW ON BOOKS] 4 (2001).
Other failures of long-term vision are apparent too. Where, for instance, are the concrete proposals to set up new Chairs in legal ethics or in “IT and Law”? Why is no stress laid on simultaneously promoting teaching the fundamentals of law (kisoho), such as legal sociology and inter-disciplinary approaches more generally? Will law faculties attempt to diversify their staff (beginning with more female professors and tenured professors from abroad, for instance) to match growing diversity expected among their students and those graduating with professional qualifications? Also of concern is that we no longer hear much about “internationalization” of Japanese universities and law faculties in particular, compared even to the discussion in the 1980s. Talk then may have been a fad, but the relative silence now is deafening, considering the way the world continues to change around us. Admittedly, some of the new postgraduate courses established recently are aimed at educating students to be “international civil servants.” However, where is the follow-up on efforts of the late 1980s and early 1990s to train law students for the world of transborder commercial transactions, for instance? Perhaps that world appears to be shrinking, particularly given Japan’s protracted recession in the 1990s. From a longer term perspective, this needs attention too.

54 Exceptionally, early on in the debate, Yanagida suggested briefly that Japanese universities teach more about the use of IT. Yanagida, supra note 13, at 27. Yet, this proposal was only for a new undergraduate “liberal arts” curriculum, which would not focus on law; legal focus would follow in a new postgraduate “law school” dedicated to training practicing lawyers, ostensibly along U.S. lines.

55 At Kyushu University, for instance, forty percent of law students are women; but until 2000, there was only one woman (an associate professor in politics) out of over sixty Law Faculty academic staff—eight of whom were added in calendar 1999. Most of these were hired on short-term contracts, “in principle not renewable” for those who arrived after April 1999, most of whom were foreign academics. The Faculty has yet to appoint a foreign academic on a tenured basis. However, both problems were highlighted in an outside review in late 1999. See Frank Upham, Outside Evaluation Report of Graduate School of Law, Kyushu University pt. I (Dec. 16, 1999), at http://www.law.kyushu-u.ac.jp/~review/upham.htm (last visited Apr. 25, 2001); [九州大学大学院法学研究科外部評価書], at http://www.law.kyushu-u.ac.jp/~review/ishii.htm (Part III). The Law Faculty hired a second female professor in April 2001, mediation expert Hisako Kobayashi-Levin, but on a short-term contract. Another female professor, a Kyushu University graduate, is expected to take a tenured associate professorship soon. Nonetheless, the proportion of women Faculty members in Japan’s “leading” national university law faculties remains remarkably low. The situation has improved somewhat in other national law faculties. The problem is endemic, however, to national universities and has recently attracted broader attention. In June 2000, the Association of National Universities urged a three-fold increase in the proportion of female Faculty members, to reach twenty percent by 2010. Kokuritsu Daigaku Josei Kyoin 20% ni [Lift Women Faculty Members to 20%], ASAHI SHIMBUN, June 6, 2000, at 1.

Further, even to promote better “practical” skills in a narrow sense, is hiring lawyers or other professionals on a part-time basis for periods only of a few years sufficient? Or should increasing the proportion of tenured faculty with considerable experience as some sort of “legal information engineer” be the objective? Many U.S. law schools have a combination of both, namely dozens of “adjunct professors” (mainly practicing lawyers), but also many tenured or tenure-track professors with strong backgrounds in legal practice in a broad sense (before or in parallel with their academic appointments). The adjunct professor system has generated considerable debate, however.\(^{57}\) Will it really be enough to treat those brought in for the crucial task of training the next generation of Japanese lawyers as merely a few more part-time lecturers (hijokin koshi)? Also, rather than just bringing in staff from the outside, Japanese law faculties should consider sending their academics out to work in courts, law firms, or corporate legal departments, for instance on sabbatical. That is surely more consistent with developing more “professional” education than continuing the long-established practice of one or two years of study abroad, mainly at the heavy expense of Japanese taxpayers. Japanese law faculties also will need to think much harder about how to engage their students with the world of legal practice, for example, through clinical programs and internships. Developments in IT and experiments in more and more law schools add a world of possibilities both for practical skill training and legal education more generally.\(^{58}\)

Experiments and transformations over the next decades—hopefully involving more diversity in teachers, techniques, and subjects—deserve a supportive environment. One aspect is training or continuing education for university teachers and administrators themselves.\(^{59}\) Another is more feedback from students. Although many in Japanese law faculties view this more as a threat, properly institutionalized course evaluations by students represent an important opportunity for self-improvement. They also can help uncover and monitor broader trends among students, and hence open the world beyond the doors of Japanese law faculties. To be sure, a partial substitute is offered by evaluating the results achieved by graduates from particular law faculties in professional examinations, but such


\(^{58}\) See, e.g., Nottage, supra note 27.

\(^{59}\) Finally, “faculty development” is emerging on the reform agenda. See, e.g., Daigakusei ni, Do Oshieru [How to Teach University Students?], ASAHI SHIMBUN, July 3, 2000, at 21. Hopefully, these initiatives will also be broadened to encourage and allow administrative staff development. A good place to begin would be training for librarians, especially law librarians in national universities, which in turn requires reforming job rotation practices amongst administrative staff generally.
results provide only a rough measure in comparison to course evaluations. Even better may be to unleash market forces through initiatives such as making national universities independent administrative agencies. In particular, allowing universities to carry over profits generated into ensuing fiscal years can provide further unique incentives for law faculties to innovate and diversify, rather than just to “follow the leaders.” Such incentives can help them anticipate and keep pace with the major changes expected by 2020.

III. REFORMIST CONSERVATISM IN JAPANESE LEGAL EDUCATION

By this stage, readers may well conclude that I suffer from an overactive imagination. As indicated above, however, many of these ideas about practice and legal education in 2020 are prompted by developments around the world, either in place already or expected in the near future. In that sense, particularly because I draw mostly on countries that I know best, like New Zealand, perhaps Part II above still reveals a lack of imagination.

Part III now turns to some particular problems with the emerging consensus on reforming Japanese law faculties, at least the “leading” ones: the “law school” concept of adding a few years of legal education on top of the existing four years (Part III.A), and the idea that law faculties should concentrate on “practical training” needed to help their students pass the bar examination (Part III.B). My criticism of the latter proposal, which risks failing to equip graduates with the broader skills required of tomorrow’s legal information engineers, is partly based on my expectations regarding developments in the legal profession and in IT. Yet, it also involves broader concerns, such as what else university legal education should be aiming at. Readers may sympathize with these broader concerns even if they are not convinced by my views on future developments in the legal profession, generally or in Japan. Similarly, my criticism of the proposal to increase the number of years of university legal education addresses broad issues, such as the extra cost involved. Ultimately, moreover, both problems uncover a strong conservative orientation in the present Japanese legal education reform process: “reformist conservatism.”

A. Adding Years of Legal Education in “Law School”?

The present trend to reform legal education primarily by adding further years of legal education is disturbing, first, because it ducks the far greater challenge of revitalizing the existing undergraduate law program. Adding on a few more years looks suspiciously like a soft option. It is easy to implement, because it does not really disturb the first three or four years of the existing structures and vested interests

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60 See supra Part II.A.
involved in teaching and administering. In particular, it minimizes the potential for personal conflict. A cynic might add that it promises, at least superficially, some proof to outsiders that “reform” is being undertaken. Additionally, this sort of partial reform, superimposed on—but not disturbing—existing structures, has characterized other areas of society and the economy in post-War Japan. The problem is that this sort of approach is only really possible in a growing economy, in which people are generally happy and confident about their lot and that of the next generations, and in which they trust their leaders and time-honored practices. Its stagnant economy over the last decade and growing distrust of bureaucrats and politics mean that Japan will increasingly have to make hard choices in reform initiatives. That is, Japan will have to reallocate existing resources, even if it means some painful “restructuring” and consequently more social tension. Those affected by these processes will require no less of reform in universities, including law faculties.

The second and perhaps most serious difficulty with the strategy of just adding several years of legal education onto the existing three or four years is the extra cost involved. For national universities, much of this cost will have to be borne by the state, but Japan is strapped for funds due to a decade-long recession, and the population is aging rapidly. In addition, seeking more funding by charging students higher fees for these extra years of legal education may hold little attraction for students themselves. Again, the ongoing economic recession makes this option particularly significant, as it affects students’ opportunities for part-time work during or leading up to study, as well as support available from their families. Further, there is yet almost no discussion regarding scholarships or loans to students, for instance. Financial

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61 One example is the way in which Nippon Steel diversified into areas in which the company had no experience, primarily to continue employing workers who would otherwise become redundant due to restructuring in steel production. See Takeo Hoshi, Japanese Corporate Governance as a System, in COMPARATIVE CORPORATE GOVERNANCE 847, 861 (Klaus H. Hopt et al. eds., 1998).

62 See, e.g., “Seiji ni Henka o” 82% [82% Call for “Change in Politics”], ASAHI SHIMBUN, Jan. 5, 2000, at 1.

63 National universities charge an annual fee of approximately Yen 500,000; private universities charge approximately double this amount. Living away from home, as may happen increasingly since not all national universities will be allowed to create a “law school” or extra post-graduate program, will add approximately Yen 2,000,000 per annum.

64 However, surely a sign of changing times already, Kitakyushu City has agreed to offer a subsidy to families with tertiary students and in which the main breadwinner has been “restructured.” Risutora Katei ni Shogakukin [Scholarships for Families Affected by Restructuring], ASAHI SHIMBUN, Feb. 5, 2000, at 1. Belatedly recognizing these problems even for law students, perhaps, the Committee advising the Deliberative Council now acknowledges the need for a “system for financially supporting entrants [to the proposed law schools], involving scholarships and so on.”
institutions in Japan remain notoriously weak, creating a severe credit crunch. They would need considerable persuasion and financial incentives to risk precious funds lending to students to help finance an increasingly expensive legal education.

Further, for financial institutions and even law students themselves (or their families), the extra cost of additional years of legal education is particularly problematic precisely because of the existing and expected increases in numbers of those passing the bar examination. Those increases follow from pressure from business circles, concerned about the high cost of lawyers as well as their inadequate skills.\footnote{Miyazawa, supra note 13, at 20-22 (Part I.D. discussing the positions of law graduates in business); see also generally Kitagawa & Nottage, supra note 16.}

Surely, as the number of lawyers entering legal practice over the next few decades doubles, the fees each will be able to earn will decrease. In some countries, rapid increases in lawyer numbers have been paralleled by high fee earning potential; but this has been for lawyers able to join and work in large, elite law firms. Such firms have yet to emerge in Japan, of course.\footnote{See generally Hamano, supra note 29.} It seems risky for students, or their families or financial institutions, to bet that this will happen in the foreseeable future.

In any event, there is no guarantee that the additional years of legal education will result in law students passing the bar examination in the first place. The risk is particularly high given that almost all “leading” law faculties in Japan are proposing new courses aimed at passing the examination, which of course heightens competition. Those making little effort to reform undergraduate programs have additional problems of credibility: why can students there expect now to pass the bar exam in six years, when they have not been able to do so in four years? Further, it seems that law faculties hope to obtain control over bar examination content. That is far from certain, however, and it will surely not favor a particular university—representatives from all major law faculties would have to be involved, and each would then ensure that changes to content do not harm their students’ relative chances of success.\footnote{New Zealand’s Council of Legal Education adopts this approach. See Nottage, supra note 24.} Further, skepticism about the quality of legal training available through universities appears to remain strong not only among judges, bengoshi, and the Ministry of Justice, but also now among business leaders, the other main player in the reform debate. The Committee advising the Deliberative Council, therefore, can expect strong opposition, to its recent proposal to permit only graduates of

\footnote{Kojima, supra note 53, at 7.}
Japan’s new law schools to take any revamped bar examination.68

In short, ignoring the extra costs involved for students and others appears a typical example of a deep-rooted public sector mentality: “Who cares about extra costs, if the taxpayer pays most of them? Who cares, if it does not matter much whether this law faculty’s new course attracts students in the first place (we will get state funding, anyway, at least in the short run); and who cares whether our graduates actually pass the bar exam?”69 The current reform process, therefore, seems “supply-side” driven (“what shall we law faculties offer?”), rather than “demand-side” oriented (“what do law students or their employers want and need, now and in the foreseeable future?”). In this respect, it is extraordinary that almost no empirical studies have yet been done examining the attitudes and expectations of law students themselves,70 nor of potential employers and other likely future users of their services. This lack of sensitivity to the needs of the main stakeholders in universities, the students, is arguably related to Japanese universities remaining wedded to the focus on research adapted from nineteenth

68 Cf. Kojima, supra note 53, at 7. It is worth recalling that a proposal to allow Japanese law faculties to “recommend” 1000 bright students for preferential entry into the Training Institute was made as far back as 1988, but came to naught. See Peterson, supra note 15, at 40.

69 A particular irony over the last year or so, in light of the government’s policy of reducing the number of civil servants, is that major national law faculties have successfully applied to Monbusho for rapid increases in the number of academic staff. See, e.g., supra note 55. The fears of smaller, regional universities, see supra note 10, therefore seem to be well founded. To be sure, national universities as a whole have complained vigorously and frequently to policy-makers and the media that higher education is underfunded in Japan (0.4% of GDP) compared to other leading industrialized countries (the United States, Germany, and France all provide funding of over 1% of their GDP). See, e.g., Sekiguchi, supra note 6; Daigaku no Shitsu Kojo e—Shingi Kikan [Raising the Quality of Universities: New Deliberative Body], ASAHI SHIMBUN, July 5, 2001, at 1. Such arguments seem to be bearing fruit, at least for leading national universities applying for new funding from Monbusho, and presumably for the latter in seeking budget allocations through Japan’s Ministry of Finance. However, there seems little heightened appreciation that government funding is received “on trust” from taxpayers in Japan, such as myself and millions of others, and that this entails responsible and accountable usage of those funds. This attitude may well stem from the post-Meiji Era disjunction between the “state” and “civil society” stressed recently by Yoshiko Terao, A Riddle in Japanese Land-Use Planning Law, and the Public and the Private in Japan (paper presented at the conference on Change, Continuity and Context: Japanese Law in the Twenty-First Century, University of Michigan, Apr. 6-7, 2001). However, it may slowly be changing, as information-sharing and participation gradually expands, as discussed infra (especially Part IV).

70 A rare exception, but driven by broader concerns, is the study by Takao Tanase, Hoso Shiko to Hogaku Kyotoku—Kyodai Hogakubusei no Ishiki Chosa kara [Training Legal Professionals and Legal Education: Survey of Consciousness of Kyoto University Law Faculty Students], 145 HOGAKU RONSO [UNIVERSITY OF KYOTO LAW REVIEW] 1 (1999).
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century Germany. This focus remains despite attempts after World War II to reorganize the university system to provide accessible education, one driving force in the United States over the last one hundred fifty years.71

A third and related concern is precisely the emergence of a strong consensus about the need to add extra years of university education, despite the above-mentioned likely disadvantages with this strategy. There may well be advantages; but often they are not well articulated, and alternatives are therefore ignored. For instance, one driving force behind extending the period of legal education seems to be that graduates, especially those who do pass the bar examination, still lack “maturity.” The evidence for that remains anecdotal, however.72 Even if it can be shown systematically that Japanese law students, even the highly motivated and intelligent ones that currently pass the bar examination, lack basic maturity,73 it need not follow that they should spend more time at law school. If the real problem is unawareness of contemporary society or business practices among that those who go on to a career as a judge, for instance, then a better solution may be to improve the systems for selecting judges (e.g., hoso ichigen) or for training them (including continuing education). Yet, law faculties are not presenting such alternative proposals in the current debate to reform


72 At least at Kyushu University, for instance, I have been impressed by the maturity of many of my undergraduate students from 1997-1999. Maybe this was a biased sample—that is, perhaps I attracted a disproportionate number of “mature” students—but this uncertainty just reinforces the need to do some empirical research on this point as well.

73 This notion probably indicates more about the ethnocentrism and power of the professors than anything about the students. As put eloquently by two French sociologists:

Defined by their lesser knowledge, students can do nothing which does confirm the most pessimistic image that the professor, in his most professional capacity, is willing to confess to; they know nothing; and they reduce the most brilliant theories to logical monstrosities or picturesque oddities, as if their only role in life was to illustrate the vanity of the efforts which the professor squanders on them and which he will continue to squander, despite everything, out of professional conscience, with a disabused lucidity which only redoubles his merit.

legal education, at least in their written public statements. Instead, their statements rapidly converged on the need to extend the period of legal education through law schools, without adequately considering alternatives.

Another deep-rooted factor probably underlies this tendency not to put forth radically different proposals: pressure to lock-step with other “leading” national universities. Again, part of the reason for such pressure is the public sector mindset. Because national universities do not have to earn profits, they have few incentives to innovate in their reform efforts.74 Because they still rely on year-by-year government funding and cannot retain profits, they focus more on the short-term rather than the long-term. However, since even private universities are not presenting many distinctive reform proposals, there may be other reasons for the lack of further innovations. On the one hand, Japanese decision-makers may be more averse to risks generally, compared to their counterparts overseas. They may also be more concerned about maintaining their status, viewing extra years of legal education offered through a law school as part of the definition of a “leading” university. On the other hand, maybe Japanese law faculties just share the seemingly universal failures of imagination characteristic of large bureaucracies and the way in which jurists think about “law.”

B.  Focus on the Bar Examination?

A second disturbing feature of the present discussion is the focus on reform initiatives, for instance by adding several years of legal education, to increase the numbers of graduates passing the bar examination. To be sure, in the short run, the existing and expected increases in the passage rate do create a new opportunity for law faculties. Yet, those increases are only the tip of much broader transformations in Japan’s social, economic, and legal infrastructure. At present, businesses and citizens indeed may want more lawyers and judges to enforce their rights in courts, or in the “shadow” of the courts, and the state may want more prosecutors to deal with the growing complexity of social and business relations in Japan. However, Japanese society also needs those able to plan transactions and order relations between the state and individual citizens, so that problems do not get anywhere near courts. Existing and foreseeable developments in information technology will further fuel the demand for a more pro-active legal profession, bringing together extended and dynamic networks of legal professionals in a very broad sense.75 Japanese law

74 Tsukuba University President Ezaki has made the same point. See Editorial, supra note 7. Lack of competition among universities is also related to the enduring influence of the German model on Japan’s higher education, according to Professor Amano. See Amano, supra note 71, at 6.

75 See supra Part II.A.
faculties should already be introducing reforms to meet the need for these professionals, establishing, for instance, special programs in intellectual property, tax law, and international business transactions.

Further, law faculties should focus on training Japan’s future leaders generally, not merely future lawyers or judges. This is what Japan’s leading law faculties have tended to do, of course, with many graduates making their careers in business, politics, and the civil service. They should not now throw the baby out with the bath water and encourage their most promising students to devote their talents to studying for the bar examination during an extra few years of law school. They should, however, comprehensively and radically reform their courses, programs, and administrative structures to better train their students for a wide range of leadership positions. Like training legal information engineers, this broader reform should involve a much greater dedication to interdisciplinary study, at both undergraduate and postgraduate levels. Again, Japanese law faculties have a latent advantage in this respect, in that they have long included political scientists as well as jurists. So far, however, there has been little collaboration in research, let alone teaching. Now is a perfect

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76 See generally Miyazawa, supra note 13.

77 In a report presented following an intensive course on Commonwealth Law taught at Kagoshima University on January 26-28, 2000, which included comparison of legal and professional education in Japan and in various Commonwealth countries (England, Australia, Canada, New Zealand), one—clearly mature!—student wrote (originally in Japanese):

I think Japanese legal education is lacking in … practical orientation. When law students begin study, they think “let’s get stuck into the law,” but they apparently feel that lectures slowly become less attractive. This is not just a question at the level of students selfishly saying that “there are problems with lectures of the professors.” I think it arises because they start to doubt “whether they will be able to use the legal knowledge which can be acquired.” The high barriers to making law part of one’s future career cause this degeneration in the will to study law, and result in students becoming discouraged. I hope that henceforth the universities can construct an environment in which legal knowledge can be linked to legal work, with law students equaling legal practitioners.

Given the content of my course and that it was held in a small regional national university, it is apparent that this student was thinking of practical training at universities in a much wider sense than just passing the bar examination. If her view is widely shared among students, which I suspect is so, it seems important that “practical training” be given a broad interpretation (not focused on passing the bar examination) to ensure that as many students as possible retain and develop a sense of the relevance of what is taught in Japan’s law schools of the future.

78 For instance, Kyushu University Law Faculty offers an LL.M. program in International Economic and Business Law and a M.Phil program in Comparative Studies of Politics & Administration in Asia. Both are taught in English, but the programs do not allow cross-crediting.
opportunity to reverse that factionalism and, further, to reach out to
work with those in other disciplines such as economics or sociology. To
best develop this potential, they should also work closely with other
universities, both in Japan and abroad, attracting international students
and sending their own students abroad. To ensure their own courses
reach global standards, Japanese law faculties could subject themselves
to transparent processes of external review, for instance, for
accreditation by organizations based abroad.79

Japan’s leading universities have a particular responsibility in
these respects. After all, in the United States, the “top-tier” law schools
are characterized precisely by a dedication to path-breaking
interdisciplinary research and to being international centers of
learning.80 They know that they will attract the best students, and that
these students will be able to pass the bar examination with only
minimal help from the law schools. Hence, they adopt a more practical
approach in first-year or core courses, but then leave it to students
(usually with a few months’ training from a cram school) to prepare for
and pass the bar examination. The top law schools can then move on to
more interdisciplinary and challenging courses, which can prepare
students also for a broad range of careers and leadership positions.81 To
be sure, the top law schools can do this, because the bar examinations in
the United States remain much easier than that in Japan. As the
Japanese bar examination continues to become easier to pass, however,
it should become more and more peripheral to leading Japanese law
faculties. Japanese law faculties too should be judged on their ability to
produce world-class interdisciplinary research and to train new
professionals and leaders for the twenty-first century. They also should

79 Already, for instance, Victoria University of Wellington’s Law Faculty has
undergone a review by the American Bar Association. See The American Bar
Association’s Role in the Law School Accreditation Process (1999), at
http://www.abanet.org/legaled/Abarole.html (last visited Apr. 25, 2001); Law School
News, COUNCIL BRIEF, Nov. 1999, at 5. Doshisha University in Kyoto and Temple
University’s campus in Tokyo, both of which attract law students from the United
States, have also completed similar reviews.

80 See Frank Upham, Current Issues and Trends in American Legal
Education, 66/4 HOSEI KENKYU 1663 (2000). Unfortunately, when he presented this
paper at the Kyushu University Law Faculty Symposium, Daigaku Kyoku to Horitsu
Jitsumuka Yosei ni kansuru Renzoku Shimupojiumu [Ongoing Symposium on Legal
Education and Training Legal Practitioners], in Fukuoka on December 13, 1999, the
parts stressing these points were given little coverage compared to those emphasizing
that even the top U.S. law schools also aim to impart legal skills suitable for legal
practice in a narrower sense.

81 The tradition of grooming law students for public service, at least, goes
back more than two hundred years. See Paul D. Carrington, Moths to the Light: The
Dubious Attractions of American Law, in FESTSCHRIFT FÜR BERHARD GROSSFELD
ZUM 65 GEBURTSTAG [ESSAYS COMMEMORATING BERNARD GROSSFELD ON HIS
be able to leave preparation for the bar examination primarily to the
students themselves, with minimal help (probably in their first few years
at the university, possibly with a few outside cram school courses), or to
“second-tier” or even “third-tier” law schools—as in the United States,
for instance. If the leading Japanese law faculties do not position
themselves in this way, and instead focus increasingly on “black-letter
law,” where can world-class interdisciplinary research and teaching take
place in Japan?

C. **Possible Medium-Term Developments**

A major problem for leading Japanese universities in trying to
mimic the focus of the top U.S. law faculties, however, is cost: the latter
charge huge fees. These fees must pay for professors who can impart
both practical legal skills (so academic salaries have to bear some
relation to law firm salaries), and knowledge of other disciplines (so that,
for example, a teacher of corporate governance might have to be paid
enough to be lured away from a lucrative job as a securities analyst).
American students willingly incur these fees, because they can obtain a
very well-paying job at an elite law firm upon graduation and pay off
their loans within a few years. Although this sort of system may evolve
in Japan over the longer term, it is difficult to see it happening soon.
The challenge therefore remains: to devise a system of legal education
that does not cost too much, yet can adequately train students for jobs as
legal professionals both in the narrow sense (passing a bar examination)
and a broader sense (as legal information engineers) or as future leaders.
In other words, how can legal education be reformed to cost-effectively
train both practitioners and generalists, teaching both “black-letter law”
and interdisciplinary approaches to law in society?

Along these two dimensions, the emerging direction of Japanese
legal education reform seems problematic, as described above. Simply
adding extra years at a new “law school” ignores the problem of cost.
Focusing on training legal professionals, in a narrow sense, risks
missing important opportunities to realize the potential for world-class
interdisciplinary research and teaching in Japanese law faculties. The
former aspect suggests considerable conservatism generally. The latter

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82 Similarly focusing on problems of cost and the balance between practical
and interdisciplinary study in top law schools in the United States, but without drawing
express implications for Japan, is the recent article by Tokyo District Court Judge
Tasuro Maegiwa, *Beikoku no Rosukuru ni okeru Hoso Yosei no Genjo to Mondaiten*
[Problems and Present Situation in Training Legal Professionals in U.S. Law Schools],
1169 *JURISTO [JURIST]* 89 (1999).

83 Recall that Nakatani (opening quote, *supra* note 1) has recently proposed
charging very high fees precisely to create truly world-class business schools in Japan.
Perhaps this proposal is already a realistic strategy, given the rapid influx of foreign
investment and growth in looser alliances involving foreign firms in certain sectors of
the generally stagnant Japanese economy, notably the financial sector.
may be tied to a resilient formalist streak in Japanese law itself, despite its overall more substantive orientation. In any event, reform of Japanese law faculties by adding an extra few years of “law school” aimed at passing the bar examination seems likely to prove unsustainable. Nonetheless, like the Titanic, it seems too late now for Japanese universities and policy-makers to change course. Of course, even if the law school programs do not really succeed—and even if they do—undergraduate legal education will remain a distinctive feature in Japan. Yet, an important opportunity for fundamental rethinking and reform at that level is being lost by the present preoccupation with adding extra years of legal education.

Many thoughtful Japanese legal academics might agree with these conclusions. So far, however, such views have been rarely expressed in public. One rationale for this, put to me privately, is that the mere fact of change should be significant, because change generates discussion even within universities. Further, even if the law school reform does not work well or at all, Japan may still have enough resources to fall back on to try for better reforms. I agree that initiating and maintaining a process of change can be just as important, sometimes more important, than the success or failure of substantive outcomes. The degree of importance depends on the circumstances, however, and, for Japan, I remain less sanguine about the economy, demographics, and citizens’ satisfaction with social leaders or universities generally. In addition, the longer the focus of reform remains on the “law school” proposal, the more difficult it may become to retain and prepare university researchers and teachers able to initiate and implement the next phase of reform. Thus, the much bigger task involved in reorienting both undergraduate and postgraduate legal education in Japan is to achieve a cost-effective and sound balance of practical and interdisciplinary education and research. This task should involve a next generation of reformers as soon as possible.

Some critics observe that the alternatives proposed to the law school, namely reform of legal education in Japanese universities to better train both specialists and generalists, have already been attempted for more than a decade—to little avail. In my view, however, the problem has been that the reforms attempted have been insufficient. For

84 See generally Nottage, supra note 26.

85 This point is developed further in Part IV, infra.

instance, post-graduate “specialist” law courses aimed initially at law faculty graduates who had joined the work force were established throughout the country over the 1990s. Just as in the present law school context, however, this seems to have been primarily a case of following the leader. Tokyo University established the first such course, then—predictably—the other leading national (and private) universities followed. Again, there seems to have been little research beforehand into what types of specialization might be most welcomed, few far-reaching organizational changes (despite a few more tenured professors being hired from the business sector), and hardly any published appraisals of how successful these various programs have been. The integration of these specialist programs with, and influence on, other programs—especially at undergraduate level—appears to have been minimal too. As already mentioned, superimposing a new program without disturbing what is already in place represents merely another soft option. Thus, although such specialist courses should be welcomed because they may help better train the next generation of legal information engineers, their full potential has not yet been tapped. Further, making the law school into the centerpiece of reform makes achieving that full potential all the more unlikely and diverts attention from the potential for radical reforms at the undergraduate level, such as collaboration with other faculties, development of computer-assisted learning, and diversifying full-time Faculty members.

In view of the two major flaws in the law school concept, one possibility over the next decade is that some leading Japanese law faculties will go the way of the top-tier U.S. law schools. Japanese law schools may gradually become less preoccupied with training students to pass the bar examination and focus instead on educating more generally a broader array of future leaders in Japanese society. Lower-tier law faculties could be left to focus on the bar examination, depending on the examination continuing to become much easier. Reform also may well lead to a very high cost structure in the leading law faculties, with private universities taking the lead but at least some national universities able to follow.

A second possibility is that some universities will try to compete for more students by aiming to train them to pass the bar examination in a total of four years, for instance, rather than six years. Again, private law faculties are likely to do this first; but if they clearly succeed, national universities will be forced to adapt too. This also depends on just how easy the bar examination becomes. Contemporary legal education in New Zealand and other Commonwealth countries suggests, however, that it is perfectly feasible to train students in four years (in fact, often effectively two years of compulsory, largely “black letter

87 See supra note 61 and accompanying text.

88 Cf., respectively, supra notes 48, 54, 55.
law” courses) to meet the needs of today’s legal practice. The problem with this in New Zealand, and potentially also in Japan, is that it risks failing to adequately prepare students to become tomorrow’s lawyers—legal information engineers—and tomorrow’s leaders.89

To allow these creative developments to occur, however, the new system now being finalized should be as flexible as possible. In particular, it is essential that the Monbusho-proposed law schools not be the sole or immutable gatekeepers to the bar examination. One way of assuring this is to decide that graduating from one of these new law schools should not be a prerequisite to passing the examination, as presently envisaged by the Deliberative Council.90 Behind that proposal lies the idea that the bar examination has relied too much on “one-off” assessments (a single examination, albeit divided into three main parts), and that more varied processes of assessments in law schools would be fairer on the students. That may be true for some of them, but others might still prefer more one-off assessment, for which private yobiko could continue to provide better and cheaper instruction. Alternatively, if graduating from a new law school is believed to be required, accreditation of law schools should be greatly expanded beyond the charmed circle of leading universities currently positioning themselves to create law schools, allowing competition among varied programs along the two lines projected above.

In the long term, movements in these directions may lead to the numbers joining the legal profession, and hence centers for legal education, being driven primarily by the employment market, i.e., whether and how those qualifying for legal practice actually find jobs. If individuals decide that obtaining a qualification will help them get a job, they will go through the training for the qualification. The total number of entrants or graduates is not capped and depends on individual merit and effort. The pressure to find a job after obtaining the qualification, however, can have salutary ripple-on effects on the legal education demanded. The system basically operates in most Anglo-Commonwealth and U.S. jurisdictions. This system, however, may undermine research capacity, as has happened in New Zealand. The New Zealand experience, however, is more due to inadequate government and private funding for research, suggesting that this more market-driven system for producing legal professionals has not fatally undermined the quality of justice and subverted legal ethics.91

89 See Nottage, supra note 24.

90 Kojima, supra note 53.

91 See Nottage, supra note 24 (describing the rapid expansion of those qualified to practice law in New Zealand since the 1960s, as gatekeepers have been dismantled); Franks, supra note 35 (stressing the parallel emergence of large law firms; in my view, usually also helping to maintain legal ethics, albeit with occasional spectacular failures). Maintaining basic standards of legal ethics, and hence the legitimacy of the law overall, can therefore be married with highly market-driven
Nonetheless, it is unrealistic to think that Japan’s existing legal profession, key decision-makers in government, and even the universities will move quickly towards this seemingly radical state of affairs.

IV. CONCLUSIONS

Overall, the foregoing analysis may seem to paint a rather gloomy picture of ingrained conservatism within Japanese legal education reform. On the one hand, there remains an urgent need for long-term vision, followed by an imaginative analysis of implications, as attempted in Part II supra. On the other hand, Part III revealed obvious problems in the current law school reform, which suggest various types of conservativism. Yet, conservativism in legal education reform is also apparent in countries like New Zealand, despite its tradition of “socio-legal experimentation.”92 This observation may reinforce Nakatani’s point about the more universal problems of trying to implement reform in big bureaucratic organizations such as universities and Ramseyer’s and Unger’s point about the lack of imagination peculiar to the legal world.93 No doubt, it also says something about the power relations and other sociological aspects to relationships between students and university academics.94 These more theoretical implications deserve further examination in a broader comparative context.

Further, criticisms of the initial law school and “independent administrative agency” proposals, which have gradually emerged in Japan especially over the year 2000, appear to have underscored some more promising developments. In July, Monbusho finally decided to establish a new deliberative body to examine the broader issues involved in higher education, such as the balance between research and education, in a more comprehensive and strategic form than had occurred in its Deliberative Council on Universities.95 There is a risk that this new study will simply serve to preserve the narrow interests of Monbusho and conservative university administrators or senior academics, in the face of calls for more financial accountability and efficiency implicit in the initial proposal to subject universities to the regime of independent administrative agencies. It may, however, offer a new forum to exercise imagination and develop sound long-term visions

92 See Nottage, supra note 24.

93 See Unger, supra note 20; Nakatani, supra note 1, and accompanying quote; Ramseyer, supra note 2, and accompanying quote.

94 See Bourdieu, supra note 73.

95 Daigaku no Shitsu Kojo e—Shingi Kikan, supra note 69.
for Japan’s entire system of higher education. Key determinants will be broad participation and transparency in its deliberations, including ongoing media scrutiny.96

In addition, some of the concerns raised about the initial law school proposal appear to have influenced the current thinking of key decision-makers. For example, Monbusho’s advisory committee on law schools argues that:

(i) entry should be permitted from undergraduate programs other than law, because the next generation of lawyers will need more diversity and specialized backgrounds;97

(ii) access to law schools should be promoted through initiatives like night school and financial support packages;98

(iii) the law school curriculum should cover not only the “black letter law” courses centered on the six Codes, but also courses covering a range of professional skills and ethics, “pioneering topics” such as IT, “international relations,” “interdisciplinary fields,” as well as “practical topics”;99

(iv) law schools should be able to issue a range of specialist professional qualifications;100

(v) third party review should be instituted;101 and

(vi) “a structure attuned to internationalization should be refined, accepting foreign students and so on.”102

Assuming that creation of law schools is now a fait accompli, these refinements represent significant progress compared to early conceptions. The most disturbing feature now remains the Committee’s view that graduation from such a law school should be a prerequisite to passing the revamped bar examination, but this proposal may not prove palatable to other interest groups. Even if accepted, it may be in

96 This is a very subjective impression, but the media coverage in Japanese of university reform appears to have improved considerably over the last few years. Some articles persist in parroting the pronouncements of some university administrators as to specific reforms, as if great change had resulted or would eventuate. Journalists now appear, however, to exercise more judgment. Similarly, in addition to simply publishing contributions from particular administrators or professors or summarizing their views, there appears to be more sustained and careful analysis, evidenced for instance by series of articles on particular topics. See, e.g., supra notes 10, 48.

97 Kojima, supra note 53, at 6-7.

98 Id.

99 Id.

100 Id.

101 Id.

102 Id.
exchange for an explicit or implicit commitment for expansive accreditation of law schools.\textsuperscript{103}

Generally, the debate seems to have evolved from an initially closed discussion revolving around limited participants, particularly Monbusho officials, administrators, and senior professors in “leading” universities, into a transparent forum involving more diverse interests. This development parallels the way in which, over the 1990s, more and more participants—not just the Ministry of Justice, the Supreme Court, and Nichibenren—have come to have a voice in broader debates about reforming Japan’s entire justice system, including the central issue of raising the bar examination pass rate.\textsuperscript{104} That progression, in turn, may reflect a belated but highly significant move towards a more participatory democracy in Japan, prompted by events like Japan’s protracted economic slump.\textsuperscript{105} Perhaps Japan is realizing that successful reshaping of key aspects of the state are premised on information-sharing and less hierarchical debate among diverse participants, principles refined in some areas of post-War industrial organization and now perhaps slowly transforming corporate governance.\textsuperscript{106}

\textsuperscript{103} See \textit{supra} notes 68, 90 and accompanying text.

\textsuperscript{104} Cf. Miyazawa, \textit{supra} note 13.

\textsuperscript{105} See generally Advisory Council Report, \textit{supra} note 86. Ironically, for those who perceive its predecessor (MITI) as a prime example of strong and opaque bureaucratic domination, the Ministry of Economy, Trade and Industry (“METI”) now proclaims the need for a more participatory regime to bolster economic development. \textit{See Challenges and Prospects for Economic and Industrial Policy in the 21st Century: Building a Competitive, Participatory Society} (Mar. 16, 2000), at http://www.meti.go.jp/english/report/data/gPros21e.pdf (last visited Apr. 25, 2001). Cynics may view this discussion of broader engagement of diverse interests as mere lip service, designed to slow down market opening and deregulation, drawing for instance on reactions to the World Trade Organization in Seattle in late 1999. However, this observation seems truer of the Ministry of Agriculture, Forestry and Fisheries. \textit{See, e.g.}, MINISTRY OF AGRICULTURE, FORESTRY AND FISHERIES, NEGOTIATING PROPOSAL BY JAPAN ON WTO AGRICULTURAL NEGOTIATIONS (Feb., 2001), at http://www.maff.go.jp/ WTO/ wto_ nihon _ tetan _ e.htm (last visited Apr. 25, 2001). METI genuinely seems to have realized, even if primarily to favor larger businesses and key industrial sectors (such as telecommunications), that more “closed shops” need to be opened up to overcome Japan’s protracted recession and declining international competitiveness. \textit{See also} MINISTRY OF AGRICULTURE, FORESTRY AND FISHERIES, \textit{WHITE PAPER ON INTERNATIONAL TRADE 2000} ch. 4, at http://www.meti.go.jp/english/report/data/gWP2000e.html (last visited Apr. 25, 2001) (dealing with regulatory reform in some key remaining sectors, and Chapter Five discussing judicial reform).

These wider developments and the evolving debate about law schools, legal education, and Japan’s justice system provide grounds for guarded optimism about future developments, at least over the medium to long term. However, there should be no complacency. To overcome the problems with the law school proposals discussed above, the reform of legal education must be treated and debated as a continuing process, not a one-time event. Legal academics and other policy-makers for legal education should not become fixated on devising and immediately implementing the optimal substantive solution, losing sight of the forest for the trees. New mechanisms must be developed to generate and monitor a broad range of innovations, underpinned by long-term imagination as well as short-term reactions to specific issues.

Many mechanisms are conceivable in Japan. One mechanism entails involving the university support staff and academics in the debate and decision-making. Younger Japanese academics on, or recently returned from, sabbatical abroad, rather than those already promoted to professorships (and hence, traditionally, committee memberships), should also be allowed greater participation. Perhaps most importantly, Japanese law faculties should listen carefully to law and other students, their families, law faculty alumni, and potential employers or users of their graduates. All should participate in or at least influence both the generation of new ideas and the objective monitoring of the path of reform.

Generally, as suggested by the opening quote from Nakatani,\footnote{In explaining why views expressed by foreign commentators on Japanese law (usually encompassing the wider “law in action”) generally have had little impact on scholarship within Japan, Makoto Ibusuki argues that such peripheral vision among Japanese legal academics relates to the strong tradition of legal positivism in Japan. See Makoto Ibusuki, A Response from a Nihon-ho Scholar: Why Do We Look at Trees, Not the Forest? (paper presented at the CAPI Japanese Law Colloquium, The Multiple Worlds of Japanese Law: Disjunctions and Conjunctions, University of Victoria, Apr. 3, 2000) (forthcoming also in Tom Ginsburg, Luke Nottage & Hiroo Sono eds., The Multiple Worlds of Japanese Law: Disjunctions and Conjunctions (2001)).} it is essential that “outsiders” are involved as much as possible. The most prominent outsiders, namely foreign legal scholars familiar with one or several systems of legal education outside Japan as well as that within Japan, did not participate much at the initial stage, during which establishing post-graduate law schools became the point of departure for subsequent and present discussions. Even those in senior positions within Japanese universities do not participate in the committees, which may still influence decisions yet to be finalized or processes to encourage further reform initiatives. Some foreign legal scholars, however, did begin to be heard, especially in the year 2000, through new journals like GEKKAN SHIHO KAIKAKU [REFORMING THE ADMINISTRATION OF JUSTICE] and even mainstream law journals such as

\footnote{See Nakatani, supra note 1, and accompanying quote.}
Hopefully, this engagement will grow, along with ongoing broader discussions about reforming Japan’s entire system of higher education. Hopefully, there has been some improvement since the Australian now heading Tama University wrote the following almost a year ago:

... when problems are of a more abstract nature[,] Japan seems unable to concentrate on proper solutions. In the face of a concrete crisis, the Japanese are the world’s strongest people. Without such a crisis they can be among the world’s weakest.

... Sensing and reacting to pressure before a crisis occurs is not easy. Japan’s Pollyanna attitude applies in particular to the education system. It is obvious that the present system is failing, both in the elementary, middle, and high schools and at the university level. But in seeking improvement, time is being wasted on endless discussions over minor adjustments, as if the basic problems will eventually resolve themselves. What is really needed is a complete change of strategy. For a start, Japan should take a detailed look at the methods European and American societies have used to overcome major problems in university education.110

Yet, attracting and keeping outsiders may be the most difficult challenge facing any law faculty. When Victoria College Law Professor Robert McGechan visited Harvard Law School half a century ago, for instance, one of the first things that caught his eye in the staff common room notice board was a quotation from Saint Benedict placed there by

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109 *See*, e.g., Nottage, *supra* note 21 (part of a special issue also including a contribution by Daniel Foote); Nottage, *supra* note 24. Hopefully, more recent contributions to GEKKA SHIHO KAIKAKU [REFORMING THE ADMINISTRATION OF JUSTICE] by foreign legal academics, whose English versions are included in this special issue, will prompt further engagement. A key will be for contributions in English to be published also in Japanese and vice versa. For some of my further recent contributions, see, e.g., Luke Nottage, *Eibei no Ei-bei no Bunri [The Anglo and the American in Anglo-American Law]*, TOKI NO HOREI [CURRENT LAW], May 2000, at 2-3; Luke Nottage, *Honto no Daigakuin Daigaku ni okeru Hogaku Kyoiku [Legal Education in a Real Graduate School of Law]*, TOKI NO HOREI [CURRENT LAW], Oct. 2000, at 4-5; Luke Nottage, *Kanado no Rosukuru [Canada's Law Schools]*, TOKI NO HOREI [CURRENT LAW], Mar. 2001, at 4-5.

Dean Prosser:111

If any pilgrim monk come from distant parts, if with wish as a guest to dwell in the monastery, and will be content with the customs which he finds in the place, and do not perchance by his lavishness disturb the monastery, but is simply content with what he finds, he shall be received, for as long as a time as he desires. If, indeed, he finds fault with anything, or expose it, reasonably, and with the humility of charity, the Abbot shall discuss it prudently, lest perchance God had sent him for this very thing. But, if he have been found gossipy and contumacious in the time of his sojourn as guest, not only ought he not to be joined to the body of the monastery, but also it shall be said to him, honestly, that he must depart. If he does not go, let two stout monks, in the name of God, explain the matter to him.

Postcript on the Judicial Reform Council's Final Report of June 12, 2001112

Generally, the Final Report113 appears to remain very much focused on redirecting legal education at Japanese universities towards training “practitioners” in a traditional and restricted sense, namely bengoshi, judges and prosecutors. This follows from its key recommendation to increase the number allowed to qualify for such careers by passing a national bar examination, from the present 1000 per annum to 1500 in 2004 and 3000 per annum in 2010, thus raising the number of these legal professionals to around 50,000 by 2018. Accordingly, the new “law schools,” which the JRC confirms should begin operating as three-year postgraduate programmes from April 2004, at an unspecified number of universities, are supposed to be “professional schools” integrated into the bar examination and the subsequent (still government-sponsored) traineeship programme.

The focus on boosting the numbers of legal practitioners in this narrow sense helps explain why the Final Report envisages the vast majority of law school students coming from undergraduate law


112 For an amplification of these points, see Luke Nottage, Japan’s Impending Reform of the Administration of Justice: Far from Final (forthcoming, 2001) 48 CCH Asiawatch Newsletter.

programmes, which will remain and which are not subjected to any specific reform recommendations by the Council; only “some proportion” may be permitted to enter the law schools from other faculties. Consistently, the Final Report makes no specific recommendations as to curriculum for the law schools, except that it should accommodate “practice” in a rather narrow sense (such as yokenjijitsuron, which evolved from Japanese court practice).

Further, while urging law schools to hire and engage more with practitioners, the JRC again appears to view these in a restrictive fashion. The Final Report does not mention, for instance, the possibility of hiring foreign academics with broader practical experience, presumably because the JRC believes that they will remain marginal to the practice of bengoshi and Japanese judges or prosecutors, although other parts of the Final Report proclaim the need to internationalize bengoshi and Japan’s civil justice system.

Finally, little avenue is left to bypass university legal education on the way to becoming a practitioner even in this narrow sense, as is presently the case thanks to private cram schools (yobiko). Basically, only those who graduate from the new law schools will be allowed to sit for the bar examination, which is to be revamped to accord with law school education, but without any specific curriculum recommendations given in the Final Report. After a transitional period, the only remaining alternative to entering a Law School will be to pass a preliminary test of “broad legal knowledge,” which will bring an entitlement to sit for the new bar examination.

All this will make it even more difficult, if not impossible, for the proposed law schools to draw on and develop an inter-disciplinary approach to legal problem solving and risk management, an approach that is arguably better suited to legal practice in its broad sense today and in the foreseeable future. On the other hand, it is up to the individual law schools to devise a curriculum that will take these needs into consideration, which may well turn out to be their competitive advantage.