

BUILDING CLINICAL LEGAL EDUCATION PROGRAMS IN A COUNTRY WITHOUT A TRADITION OF GRADUATE PROFESSIONAL LEGAL EDUCATION: JAPAN EDUCATIONAL REFORM AS A CASE STUDY

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Japan is transforming its justice system and the way in which it educates lawyers. As a major part of its reforms, Japan recently established graduate professional law schools, largely based upon the model of legal education in the United States. This article examines the roles of the new professional law schools – focusing on clinical legal education – within the broader context of the overall reforms of the Japanese justice system. Japan’s efforts are very significant inside and outside of the country, and other nations are watching with interest. This article treats Japan’s experience as a case study of the issues and challenges in instituting clinical legal education in a country that has not previously had professional graduate legal education, much less professional instruction in lawyering skills and professional values. The authors seek to identify the types of issues that are likely to emerge as more countries consider incorporating clinical legal education into the training necessary to become a lawyer. The issues the authors examine include the role of local culture and institutions, the history of educational institutions, and the nation’s existing legal structure. The authors also examine the various approaches to clinical education in Japan, and they assess the promise of and difficulties faced by clinical programs in Japan. They observe that successfully establishing clinical legal education in Japan will require greater support from judges, prosecutors and the bar. The authors

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conclude that clinical legal education is integral to meeting the goals of the law reform movement in Japan, but that the future of clinical legal education in Japan is far from certain.

INTRODUCTION

Until 2004, Japan did not have a system of graduate professional legal education. But professional law schools and clinical legal education have now arrived, part of far-reaching reforms of Japanese legal institutions. These reforms, which follow the 2001 recommendations of the government-created Justice System Reform Council,¹ respond to major societal factors, including globalization,² the collapse of the “bubble economy,”³ and increasing demands for both domestic and international legal services in Japan.⁴ Among its many recommendations, the Justice System Reform Council called for a complete overhaul of legal education in Japan and the creation of new “professional” law schools that would “bridge . . . theoretical education and practical education”⁵ and provide law students with the op-

¹ The Japanese government created the Justice System Reform Council under the Cabinet of the Prime Minister of Japan in 1999 for the purpose of clarifying the role to be played by justice in Japanese society in the 21st century and examining and deliberating fundamental measures necessary for the realization of a justice system that is easy for the people to utilize, participation by the people in the justice system, achievement of a legal profession as it should be and strengthening the functions thereof, and other reforms of the justice system, as well as improvements in the infrastructure of that system.

Recommendations of the Justice System Reform Council – For a Justice System to Support Japan in the 21st Century, available at <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html> (last visited June 3, 2005) (quoting Article 2, Paragraph 1 of the Law concerning Establishment of the Justice System Reform Council) [hereinafter *Justice System Reform Recommendations*]. Part of the reforms began before the Council’s recommendations were made public in 2001.

² See Takao Suami, *Clinical Legal Education and the Foundation of Japanese Law Schools in the Context of Judicial System Reform*, 25 WASEDA BULL. COMP. L. (forthcoming Mar. 2007).

³ See Robert F. Grondine, *An International Perspective on Japan’s New Legal Education System*, 2 ASIAN-PACIFIC L. & POL’Y J. 1, 1 (2001).

⁴ See *id.* Japan has also made “a conscious move toward more transparent mechanisms of governance based in law.” Curtis J. Milhaupt & Mark D. West, *Law’s Dominion and the Market for Legal Elites in Japan*, 34 LAW & POL. INT’L BUS. 451, 454-55 (2003). This has increased the internal demand for legal services and for lawyers who are better able to adapt to societal and cultural changes. In addition, much of the pressure on the Japanese government to increase the number of and training for attorneys has come from Japanese corporations doing business in the United States. See Koichiro Fujikura, *Reform of Legal Education in Japan: The Creation of Law Schools Without a Professional Sense of Mission*, 75 TULANE L. REV. 941, 943 (2001). The corporations have found that few Japanese attorneys are able to compete with American lawyers when litigation arises, and the firms have been unhappy with the high legal fees they have had to pay when they have retained U.S. lawyers. See *id.*

⁵ *Justice System Reform Recommendations*, *supra* note 1, at ch. III, pt. 2.

portunity to acquire the specialized legal knowledge, lawyering skills, and professional values “necessary for solving actual legal problems.”⁶ As part of the Justice System Reforms, sixty-eight new Japanese professional law schools opened their doors in April of 2004,⁷ and there were seventy-four new law schools by April of 2006.⁸ The new law schools are largely based on the graduate professional law school model of the United States.

This article examines the roles of the new professional law schools – focusing on clinical legal education – within the broader context of the overall reforms of the Japanese justice system.⁹ Japan’s efforts are very significant inside and outside the country, and other nations are watching with interest. South Korea, for example, now plans to establish professional law schools,¹⁰ and delegations from South Korea have visited Japan. We treat Japan’s experience as a case study of the issues and challenges in instituting clinical legal education programs in a country that has not previously had professional gradu-

⁶ *Id.*

⁷ See *New Law Schools Struggling to Fill Space*, DAILY YOMIURI, Apr. 16, 2004, at 4. In July of 2003, the Ministry of Education received seventy-two applications for approval to open U.S.-style graduate law schools. Fifty applications were for private law schools, twenty for state-run law schools, and two for law schools to be run by local governments. See *72 New Law Schools Eyed in Reform Drive*, ASAHI SHIMBUN, July 2, 2003. Although the Justice System Reform Council had recommended that the new law schools be distributed throughout the country, the applications were concentrated in major cities, including twenty-five in Tokyo, and there were no applications for twenty-four of Japan’s forty-seven prefectures or districts. See *id.* The Ministry of Education initially approved sixty-six of the applications, denied four for failing to meet standards, and postponed decisions on two. See Eriko Arita, *66 Institutions Win Approval to Open U.S.-Style Law Schools*, JAPAN TIMES, Nov. 22, 2003.

In addition, Japan continues at present to have over 120 faculties of law at the undergraduate level. See Fujikura, *supra* note 4, at 942. Of these undergraduate law programs, twenty-six are publicly supported and ninety-seven are private. See *id.*

⁸ See Ministry of Education, Culture, Sports, Science, and Technology, *Hokadai-gakuin*, http://www.mext.go.jp/a_menu/koutou/houka/05071101.htm (last visited Sept. 14, 2006).

⁹ The reforms in Japan, although often called “judicial” reforms, refer to reforms of the entire justice system and legal profession and not just reforms associated with the judiciary and court system. The Council identified “three pillars” of justice system reform, including making the judicial system easier to understand, reforming the legal profession (and legal education), and introducing mechanisms for public participation in legal proceedings. See *Justice System Reform Recommendations*, *supra* note 1, at ch. I, pt. 3.

¹⁰ The President of Korea and the Chief Justice of the Supreme Court of Korea formed a committee in 2003 to examine initiatives to reform the courts and the system of legal education. See *Judiciary Reform Still Has a Long Way to Go*, KOREA TIMES, Nov. 1, 2004. The first step identified for reform was a recommendation to introduce U.S.-style graduate level law schools starting in 2008. See *id.* In April of 2005, the Judicial Reform Committee adopted recommendations to open U.S.-style law schools starting in 2008. See *First U.S.-Style Law School to Debut in 2008*, KOREA TIMES, Apr. 22, 2005. The starting date has now been pushed to 2009. See Chung Ah-young, *Law School Opening Delayed to 2009*, KOREA TIMES, July 3, 2006.

ate legal education, much less professional instruction in lawyering skills and professional values. We seek to identify the types of issues that emerge as more countries consider incorporating clinical legal education into the training necessary to become a lawyer. The issues we examine in this article include the role of local culture and institutions, the history of educational institutions, and the nation's existing legal structure.

As scholars explore ways to enrich already-established models of clinical legal education, it may be useful to study a system that is newly-designed and not merely re-tooled. Many Japanese reformers examined American and Canadian law schools and legal professions quite carefully as they designed professional schools for Japan. One might ask what law schools in the United States would look like today if rich clinical programs had been contemplated as professional schools were first established in the U.S. It is interesting to reflect on the aspects of clinical legal education that have (or have not) been incorporated into the design of the new Japanese law schools.

Before we begin our discussion of the new law schools in Japan, there is an important point to note. Although the Justice System Reform Council stated that "in order to build a bridge between theoretical and practical education, participation of practitioner-teachers is indispensable,"¹¹ the Council did not explicitly require the new law schools to include clinical courses within their curricula. The Council left it to each new law school to develop its own curriculum, provided that the schools adopt a practical focus that will foster the development of "highly specialized professionals with social responsibility."¹² In our view, however, clinical courses play a critical role in the reform efforts in Japan. The overarching goals of the reforms are "to reinforce and strengthen the justice system."¹³ The Council started from the premise that "it is indispensable to achieve a legal profession that is rich both in quantity and quality."¹⁴ The Council concluded that building new professional law schools and implementing new teaching methodologies are necessary preconditions to expand the number of

¹¹ *Id.* The "Requirements Regarding Professional Graduate Schools," issued by the Ministry of Education and Science, specify that the ratio of the practitioner-teachers on the law school faculty should be 20 per cent. Bulletin Notice No. 53 (Mar. 31, 2003). With regard to the focus on educating students, the Justice System Reform Council stated; "Needless to say, it is incumbent on universities with the intention of establishing law schools to make considerable efforts to change themselves by shifting their principle from the traditional one focusing on research and study to a new one truly focusing on education of students." *Justice System Reform Recommendations*, *supra* note 1, at ch. III, pt. 2

¹² *Id.* at ch. III, pt. 2.

¹³ *Id.* at introduction.

¹⁴ *Id.*

lawyers and increase their skill level upon entry into the profession.¹⁵ We view clinical programs as integral to this effort. Clinical legal education can help Japan transform its legal profession by training law students in the lawyering skills and professional values necessary for the delivery of high-quality legal services into the 21st century.

In Part I of this article, we begin by describing the history of the legal profession and legal education in Japan, thereby providing a context to understand the role of the new law schools and the growth of clinical legal education. In Part II, we examine the development of the various approaches to clinical programs in Japan, with a particular focus on the new courses being implemented at Waseda Law School. This school is one of the first new professional law schools with a commitment to using clinical legal education to bridge theory and practice. In Part III, we assess the promise of and difficulties faced by clinical programs in Japan. As we explain, to succeed, clinics will require greater support from judges, prosecutors and the bar. Finally, we conclude that clinical legal education is integral to meeting the goals established by the Justice System Reform Council, but the future of clinical legal education in Japan is far from certain.

I. THE HISTORY OF LEGAL EDUCATION IN JAPAN, AND CHALLENGES TO IMPLEMENTING CLINICAL LEGAL EDUCATION PROGRAMS

To appreciate the challenges to implementing clinical legal education programs in Japan, one must first understand the history and development of the Japanese legal profession.

A. *The Legal Profession in Japan*

Prior to 1868, the legal profession did not exist as a distinct occupational group in Japan.¹⁶ Government administrators performed some judicial functions.¹⁷ Litigants were denied representation in court.¹⁸ As the Meiji Government seized power in place of the Toku-

¹⁵ It is beyond the scope of this article to evaluate the work of the Justice System Reform Council and its conclusions. For the purposes of this article, we accept its findings and use them as a starting point for exploring the changes to Japanese legal education.

¹⁶ See Kahei Rokumoto, *The Present State of Japanese Practicing Attorneys: On the Way to Full Professionalization?*, in *LAWYERS IN SOCIETY: THE CIVIL LAW WORLD* 160, 160 (Richard L. Abel & Philip S. Lewis eds., 1988)

¹⁷ Although there was no formal representation of individuals in court, "certain innkeepers and their clerks (called *kujishi*) were authorized to offer their knowledge of procedure and of the location of various offices to guests coming to Edo for litigation." *Id.* at 160. Edo is the former name for Tokyo, and it was established as the seat of government in Japan in 1603.

¹⁸ See Richard W. Rabinowitz, *The Historical Development of the Japanese Bar*, 70 *HARV. L. REV.* 61, 62 (1956). The prohibition against representation in court could be

gawa shogunate in 1868, the Government began to create a centralized legal system modeled after the German legal system, including a court system throughout the country and prosecutors and judges who were distinct from officials in other branches of government.¹⁹ The Ministry of Justice, which controlled both prosecutors and the judiciary, established its own law school in 1871.²⁰ In 1877, the Ministry of Education founded the University of Tokyo,²¹ which included a Faculty of Law that educated prosecutors and judges as well as teachers for other schools in Japan.²²

In 1872, formal legal representation for litigants in civil matters was recognized, and representation for the accused in criminal cases was authorized by 1882.²³ The distinct grouping of professionals providing representation in court was recognized by 1876, when the Ministry of Justice issued regulations for legal practitioners, including a requirement of passing an exam.²⁴ Qualifications to become an attorney, known as “*bengoshi*” in Japan,²⁵ were established with the passage of the first *Bengoshi ho* (“Practicing Attorney Law”) in 1893.²⁶ The key qualification was passing an examination covering knowledge of the law, although graduates from Imperial Universities and the Ministry of Justice law school were exempt from taking the qualifying exam until 1926.²⁷ No formal academic training or graduation from a university or law school was required. Licensed attorneys had exclusive province in civil and criminal matters in “ordinary courts.” There was no explicit prohibition against the unauthorized practice of law.²⁸

From the adoption of the Practicing Attorney Law in 1893 through the early 1920s, the formal status of attorneys improved. As

waived in instances “such as infancy, advanced age, or illness,” provided there was some special relationship between the litigant and the representative such as “kinship, vassalage, common area of residence, or incumbency in an identical status in the four-class feudal hierarchy.” *Id.*

¹⁹ See Rokumoto, *supra* note 16, at 160-61.

²⁰ See Setsuo Miyazawa & Hiroshi Otsuka, *Legal Education in Japan: Legal Education and the Reproduction of the Elite in Japan*, 1 *ASIAN-PACIFIC L. & POL’Y J.* 2, 3 (2000).

²¹ See The University of Tokyo, *History*, <http://www.e.u-tokyo.ac.jp/english/enkaku-e.html> (last visited June 3, 2005). The University of Tokyo was known as the Imperial University from 1886-1897 and the Tokyo Imperial University from 1897-1947.

²² See Miyazawa & Otsuka, *supra* note 20, at 4.

²³ See Rabinowitz, *supra* note 18, at 64-67.

²⁴ See *id.* at 65.

²⁵ “*Bengoshi*” is a translation of the English word “barrister” and refers to legal professionals who perform all manner of legal representation of clients, including representing clients in court. For the purposes of this article, the word “attorney” will be used interchangeably with “*bengoshi*.”

²⁶ See Rokumoto, *supra* note 16, at 161.

²⁷ The exemption was repealed in 1923, effective 1926. See JOHN OWEN HALEY, *AUTHORITY WITHOUT POWER: LAW AND THE JAPANESE PARADOX* 101 (1991).

²⁸ See *id.* at 100.

attorneys began to fill government positions, their social status rose as well.²⁹ The Ministry of Justice continued to control the examination process for admission to practice, as well as the organization and discipline of the legal profession. By the late 1920s, however, the number of legal practitioners had increased dramatically, and a survey of attorneys found that more than half were failing to meet living expenses.³⁰ In part, the poor economic conditions were attributable to the lack of regulation over the unauthorized practice of law. In response to these developments, proposals emerged throughout the 1930s for limiting the number of persons admitted to the practice of law, greater regulation of the practice of law, and other measures to improve the economic conditions for attorneys. A law requiring a period of apprenticeship before becoming an attorney was passed in 1933, but budgetary shortfalls prevented the Ministry of Justice from implementing the apprenticeship program until 1946.³¹

The legal profession in Japan was in decline during the 1930s, and not simply because of the poor economic conditions. The press commonly “portrayed the lawyer with notable contempt,” and “*bengoshi* accused of bribery, embezzlement, extortion, and other disreputable conduct were common fare.”³²

The status of attorneys dramatically improved starting in the late 1940s, in large part due to two new developments. First, the apprenticeship program was fully implemented in 1946, and a key feature of the new program was combining attorney training with training for prosecutors and judges through the creation of the Legal Training and Research Institute (Institute) under the control of the Supreme Court of Japan.³³ Second, the passage of the *Bengoshi ho* (“Practicing Attorney Law”) in 1949 made the legal profession self-governing, subject to Supreme Court supervisory authority.³⁴ Autonomy had long been a goal of attorneys in Japan,³⁵ and the Practicing Attorney Law of 1949 achieved autonomy by shifting regulation of the legal profession away from the Ministry of Justice. The Practicing Attorney Law also made clear that *bengoshi* alone had the authority to represent clients in judicial and administrative proceedings and to provide legal counseling, and that others who represented clients would be subject to criminal

²⁹ See Rabinowitz, *supra* note 18, at 71-74.

³⁰ A survey by the Japan Bar Association found that “more than 2,400 lawyers out of 4,100 reporting indicated that they failed to meet living expenses, and 240 had not even managed to pay ordinary office expenses.” *Id.* at 73.

³¹ See *id.* at 77.

³² HALEY, *supra* note 27, at 104.

³³ See Rabinowitz, *supra* note 18, at 74-77.

³⁴ See HALEY, *supra* note 27, at 106 (citing the *Bengoshi ho*, Law No. 205, 1949).

³⁵ See *id.* at 100-112.

prosecution for unauthorized practice of law.³⁶

Because judges and prosecutors have long had high social status in Japan, the consolidation of training of attorneys with that of judges and prosecutors improved the status of attorneys. The Institute also had the effect of reinforcing cohesiveness in the legal profession, as all attendees experienced a uniform socialization into the practice of law. Although the Institute was designed to provide better training for all legal professionals, entry to the Institute was based solely on the National Bar Examination and there were no formal academic qualifications for admission. As a result, the National Bar Examination has been the key barrier to practice for would-be attorneys in Japan. Graduates of the Institute must take a final exam before becoming an attorney, prosecutor, or judge, but virtually all attendees of the Institute pass that exam.

From the creation of law faculties at universities in the 1870s until 2004, university attendance and the study of law have not functioned primarily as training for legal professionals but rather have served chiefly as training for entry into government or business.³⁷ Obtaining a graduate degree in law also has been the path for becoming a law professor in a university law department.³⁸ As a result of this disconnect between university law training and legal practice, the sole source of training for the practice of law until 2004 has been the Legal Training and Research Institute.

As discussed previously, admission to the Institute from 1946 through 2005 was based solely on passing the National Bar Examination, although it is important to note that most who passed the admissions examination attended one of the undergraduate law courses of study in Japan.³⁹ Training at the Institute has consisted of a combina-

³⁶ Article 72 of the Practicing Attorney Law of 1949 stated:

A person other than a practicing attorney shall not, for payment, and as an occupation, engage in the practice of law by giving legal advice, providing legal representation, arbitrating, settling disputes amicably or performing any like acts in respect to lawsuits, non-contentious matters, or appeals filed with administrative agencies such as requests for investigation, the raising of objections, requests for the review of dispositions or similar matters, or act as an intermediary in such matters as are specified in this article as constituting the practice of law: Provided that this shall not apply in such cases otherwise specified in this Law.

Practicing Attorney Law (Law No. 205 of 1949).

³⁷ "Japan's undergraduate law faculties have been a very important source for Japan's government and business leaders for decades, not just a training-ground for future lawyers and judges." Grondine, *supra* note 3, at 2. See also Miyazawa & Otsuka, *supra* note 20, at 4-8, 13-15.

³⁸ See Eric A. Feldman, *Mirroring Minds: Recruitment and Promotion in Japan's Law Faculties*, 41 AM. J. COMP. L. 465, 469-71 (1993).

³⁹ Most of those who pass the National Bar Examination "are graduates of undergraduate law faculties of prestigious universities, such as Tokyo, Keio, and Waseda. It is not

tion of lectures and apprenticeship-like rotations through judicial, prosecution, and law offices. The period of attendance at the Institute was originally two years, but was shortened to eighteen months in 1999.⁴⁰ In 2006, Institute training was further shortened to twelve months and the lecture portion was reduced to two months, as Japan has begun to rely upon the new professional law schools as the principal preparation for those seeking admission to the practice of law.⁴¹

The Institute's apprenticeships differ significantly in at least two respects from the clinical experiences available to students in the United States and other countries. The apprenticeships have been described by one commentator as "learning by seeing" rather than "learning by doing," because attendees commonly observe the lawyering tasks that clinic students in other countries commonly perform, such as conducting hearings or providing legal advice to clients.⁴² Moreover, in contrast to the clinical approach of encouraging students to reflect upon their own work, legal practice, and the legal system,⁴³ the Institute teaches trainees that they must learn, understand and follow present legal practice. Notably several of the new clinics in Japan follow the classic clinical methodologies of "learning by doing" and promoting critical reflection on legal practice.⁴⁴

necessary, however, to be a college graduate, and, on occasion, widespread media attention has been placed on non-traditional persons passing the examination, such as housewives with no college education." Sabrina Shizue McKenna, *Proposal for Judicial Reform in Japan: An Overview*, 2 *ASIAN-PACIFIC L. & POL'Y J.* 121, 124 n.7 (2001). Professor Dan Rosen notes that of the 994 persons who passed the National Bar Examination in 2000, two-thirds graduated from five universities: 198 from University of Tokyo, 140 from Waseda University, 116 from Keio University, 108 from Kyoto University, and 102 from Chuo University. See Dan Rosen, *Schooling Lawyers*, 2 *ASIAN-PACIFIC L. & POL'Y J.* 66, 67 n.5 (2001).

⁴⁰ See Shozo Ota, *Reform of Civil Procedure in Japan*, 49 *AM. J. COMP. L.* 561, 562 n.4 (2001).

⁴¹ See Supreme Court of Japan, *Shin-Shihoshushu nitsuite* (on the New Program for Legal Trainees), http://www.courts.go.jp/saikosai/sihokensyujo/sin_sihosyusyu.html (last visited Sept. 3, 2006).

⁴² See Takashi Takano, *Making a Criminal Justice Clinic in Japan*, 25 *WASEDA BULL. COMP. L.* (forthcoming Mar. 2007).

⁴³ See, e.g., *Report on the Future of the In-House Clinic*, 42 *J. LEGAL EDUC.* 508, 517 (1992) ("No other learning experience in law school combines the extraordinarily varied and dramatic context of real cases and problems with the opportunity for intensive teaching, supervision, growth, and reflection."); Frank S. Bloch, *The Andragogical Basis of Clinical Legal Education*, 35 *VAND. L. REV.* 321, 340-42 (1982) (describing the experiential learning component of clinical legal education); Kenneth R. Kreiling, *Clinical Education and Lawyer Competency: The Process of Learning to Learn from Experience through Properly Structured Clinical Supervision*, 40 *MD. L. REV.* 284 (1981) (describing clinical teaching theory); Stephen Wizner, *Beyond Skills Training*, 7 *CLIN. L. REV.* 327, 328-33 (2001) (explaining that clinical methods lead students to perceive and understand broader social justice issues).

⁴⁴ See, e.g., Nobuo Kojima, *An Experiment of the Civil Law Clinic at Waseda Law School*, 25 *WASEDA BULL. COMP. L.* (forthcoming Mar. 2007). ("[s]eeking new legal prac-

The longstanding system of undergraduate education followed by training at the Institute has severely limited the growth of Japan's legal profession. Bar passage rates (and, hence, admission rates to the Institute) have been very low: approximately 2 to 3 per cent of the total number taking the exam throughout the 1980s and 1990s.⁴⁵ As a result, there are a relatively small number of full attorneys, or *bengoshi*, currently numbering 21,983 for a population of over 127 million people.⁴⁶ Although this small number of *bengoshi* does not include judges or prosecutors or specialized legal professionals (such as the more than 67,300 tax attorneys (*zeirishi*), 5600 patent attorneys (*benrishi*), 17,600 judicial scribes (*shiho shoshi*), and 37,700 administrative scribes (*gyosei shoshi*)),⁴⁷ it is a remarkably modest figure. By contrast, there is an average overall bar passage rate in the United States of 64 per cent, with an average passage rate of 76 per cent for first-time test-takers,⁴⁸ and an eventual passage rate of 94.8 per cent

tices based on the critical reflection of the past practice"); Takano, *supra* note 42, at 3 (describing a goal of knowing the problems in the legal system).

⁴⁵ See *Applicants and Acceptance Statistics for Japan's Legal Training and Research Institute: 1949-1998*, <http://www.tuj.ac.jp/newsite/main/law/lawresources/TUJonline/Japan'sLegalProfession/IrtistajJapan-BarPassStats.html> (last visited June 3, 2005). "In 2002 only 1,183 passed the exam, out of 41,459 who took the exam, a passage rate of 2.85%." Roderick H. Seeman, *2003 Japan Law: Legal Profession*, http://www.japanlaw.info/law-2003/2003_LEGAL_PROFESSION.html (last visited June 3, 2005). See also HALEY, *supra* note 27, at 107 tbl 5-5 (reporting the entrance exam passage rates and the number of applicants taking and passing the entrance exam from 1949-1986).

⁴⁶ The number of attorneys is as of September 1, 2006, obtained from the website of the Japan Federation of Bar Associations (JFBA) at http://www.nichibenren.or.jp/ja/jfba_info/membership/index.html (last visited Sept. 3, 2006). Practicing attorneys are automatically members of the JFBA. See *Outline of the Japan Federation of Bar Associations (JFBA)*, <http://www.nichibenren.or.jp/en/about/index.html> (last visited Sept. 3, 2006). Japan's projected population in April 1, 2006 was 127,720,000. See Statistics Bureau and Statistical Research and Training Institute, Ministry of Internal Affairs and Communications, *Population Estimates*, <http://www.stat.go.jp/english/data/jinsui/tsuki/index.htm> (last visited Sept. 3, 2006). This is approximately one lawyer for every 5810 people.

⁴⁷ See Japan Federation of Bar Associations, *Japanese Attorney System*, available at <http://www.nichibenren.or.jp/en/about/system.html> (last visited Sept. 3, 2006).

⁴⁸ See THE BAR EXAMINER 32 (May 2006), available at http://www.ncbex.org/fileadmin/mediafiles/downloads/Bar_Admissions/2005stats.pdf (last visited Sept. 4, 2006) (Ten-Year Summary of Bar Passage Rates 1996-2005). The United States does not have a national bar exam; rather, each jurisdiction administers its own examination. Average passage rates among the States range from a high of 86 per cent for overall test takers (Utah) and 90 per cent for first-time test takers (North Dakota and Utah) to a low of 46 per cent for overall test takers (California) and 61 per cent for first-time test takers (New Hampshire). See *id.* at 23-34 (Persons Taking and Passing the 2005 Bar Examination); *id.* at 27-28 (First-Time Exam Takers and Repeaters in 2005).

California's passage rate is depressed by the high number of test-takers from unaccredited law schools. The National Conference of Bar Examiners has reported a 2005 California bar passage rate of 54 per cent for all California test-takers from law schools approved by the American Bar Association (ABA). The passage rate for test-takers from non-ABA-approved law schools was 16 per cent. See *id.* at 25 (Persons Taking and Passing

for those who retake the bar exam.⁴⁹ The State Bar of California has over 140,000 active members who reside in California, a state with a total estimated population of over 36 million people.⁵⁰ The City of San Francisco alone, with an estimated population of 739,436, has 15,352 active members of the California Bar, more than two-thirds of the number of *bengoshi* in all of Japan.⁵¹

The Justice System Reform Council concluded that the legal profession in Japan is far too small, and is not sufficiently equipped to meet the legal needs of Japan in the 21st century.⁵² Accordingly, the Council recommended a bar passage rate of approximately 70 to 80 per cent,⁵³ and set a goal of “securing 3,000 successful candidates for the national bar examination annually” as soon as possible, but in any event by the year 2010.⁵⁴ Significantly, the Council specified that “this number does not signify the upper limit.”⁵⁵

The Justice System Reform Council also recognized that the old system of undergraduate education, combined with a difficult National Bar Examination, failed to provide a sound education for those entering the legal profession. Because admission to the Institute did not require an undergraduate degree and prior formal legal studies, the undergraduate study of law has been disconnected from the education of legal professionals. Those seeking to pass the National Bar Examination commonly prepare by attending “cram schools” – year-long programs devoted to memorization of the material likely to ap-

the 2005 Bar Exam by Source of Legal Education).

One State, Wisconsin, admits a significant percentage of lawyers to practice by “diploma privilege” and not by examination. *See id.* at 33 (2005 Admissions to the Bar by Examination, on Motion, and by Diploma Privilege).

⁴⁹ *See* Linda F. Wightman, LSAC National Longitudinal Bar Passage Study viii, 2 (1998) (reporting on the results of a longitudinal study that tracked students who entered law school in the fall of 1991 through three years of law school and up to five administrations of the bar examination).

⁵⁰ As of September 4, 2006, there were 154,594 active members of the State Bar of California, a figure that excludes judges, inactive lawyers, and attorneys who are no longer eligible to practice. *See* State Bar of California, *Member Demographics*, <http://members.calbar.ca.gov/search/demographics.aspx> (last visited Sept. 4, 2006). Of these active lawyers, 13,666 reside out-of-state, *see id.*; thus 140,928 active members of the California Bar live in California. The latest U.S. Census Bureau population estimates are as of July 1, 2005. The Census Bureau has estimated California’s population on that date as 36,132,147. *See* U.S. Census Bureau, *Annual Estimates of the Population for Counties in California: April 1, 2000 to July 1, 2005*, tbl. 1, available at <http://www.census.gov/popest/counties/tables/CO-EST2005-01-06.xls> (last visited Sept. 4, 2006). This is approximately one lawyer for every 256 residents of California.

⁵¹ *See* State Bar of California, *supra* note 50. It is sometimes said that it is harder to find a plumber than a lawyer in San Francisco.

⁵² *See Justice System Reform Recommendations*, *supra* note 1, at ch. I, pt. 2.

⁵³ *See id.* at ch. III, pt. 2.

⁵⁴ *Id.* at ch. III, pt. 1.

⁵⁵ *Id.*

pear on the National Bar Examination.⁵⁶ Even with such a “cram” course, exam takers might need as many as five tries in order to pass the annually-administered exam.⁵⁷ As a result, there has been unemployment and under-employment of would-be legal professionals who fail to gain entrance to the Institute.⁵⁸

Because the primary path to legal practice has been through rote memorization in cram schools rather than through serious professional school study, the Justice System Reform Council acknowledged that exam-takers focus on “acquiring techniques for passing the examination” rather than a sound education.⁵⁹ As the Council put it, this has led to the “‘double school phenomenon’ (trend of going to two schools, the university and the preparatory school) or the ‘phenomenon of leaving universities’ (*daigakubanare*; the tendency to ignore university classes and focus only on preparatory schools).”⁶⁰

The Council’s recommendations seek to increase the number of lawyers in Japan, especially in grossly underserved rural areas, as well as to instill better preparation for practice. The creation of professional law schools and, we believe, the use of clinical methodology, are key to the success of the reforms. But, as the next section of this article discusses, there are institutional and cultural impediments. Some of the most difficult obstacles relate to the divergence between the worlds of academia and practice, the low bar passage rate, and the lack of certain institutional structures necessary for reform, such as a student practice rule or a common understanding of an accepted role for a clinical student.

⁵⁶ See, e.g., Setsuo Miyazawa, *Education and Training of Lawyers in Japan – A Critical Analysis*, S. TEX. L. REV. 491, 493 (2002) (stating that most applicants are undergraduate law students who “spend most of their time at cram schools” that are “full-time yearlong programs”); James R. Maxeiner & Keiichi Yamanaka, *The New Japanese Law Schools: Putting the Professional into Legal Education*, 13 PAC. RIM L. & POL’Y 303, 310 (2004) (successful exam takers likely attend cram schools focusing on the Institute’s entrance exam). One journalist has stated: “More than five years of study – at cram schools, not universities – has been the norm to pass Japan’s extremely competitive bar exam.” Eriko Arita, *U.S.-Style Law Schools to Offer Practical Approach*, JAPAN TIMES, July 2, 2003.

⁵⁷ See Maxeiner & Yamanaka, *supra* note 56, at 310.

⁵⁸ Professor Rosen has observed:

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

Rosen, *supra* note 39, at 73.

⁵⁹ Justice System Reform Recommendations, *supra* note 1, at ch. III, pt. 2.

⁶⁰ *Id.*

B. Institutional and Cultural Issues Affecting the Development of Clinical Legal Education in Japan

A central goal of Japan's new professional schools is to "bridge theory and practice." The Justice System Reform Council expects Japan's new professional law schools to provide law students with "the specialized qualities and capacity required for legal professionals to take direct responsibility for the 'rule of law'."⁶¹ The schools should afford students "specialized knowledge as well as foster their creative thinking ability to critically review and develop such knowledge and their capacity for legal analysis and legal discussion necessary for solving actual legal problems according to the facts."⁶² Further, the new law schools should provide opportunities for students to develop a "basic understanding of cutting-edge legal areas[,] . . . a broad interest in various problems arising in society and . . . a sense of responsibility and morals as legal professionals," and should afford students "opportunities for actually contributing to society."⁶³ Although the prime objective of the new law school system is to provide professional legal education at the graduate level, the new system also seeks to "bridge theory and practice" in legal scholarship. Yet Japan faces significant challenges in achieving both goals. Schools must find faculty who are familiar with the practice of law and the new law schools must foster a model of legal scholarship that is more closely related to law practice and law reform.

A principal difficulty is that the career of Japanese law professors has, at least until now, been distinctly separate from that of law practitioners. Though both scholars and lawyers studied law at the undergraduate level, their training and career paths diverged after graduation and the two worlds rarely overlapped. Those who sought to be legal scholars proceeded to graduate school without taking the bar examination, while those who wished to practice law continued their study on their own and/or by attending a cram school that focused narrowly on passing the bar examination. Would-be scholars usually took up one particular area of law as a research field of concentration. In contrast, would-be practitioners studied a wide range of law in order to pass the bar examination and became a general practitioner of law.

With these divergent paths, mobility has been limited. Once those with legal training are appointed as law professors or admitted to the bar, there have been very few opportunities to move from one

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

sphere to the other.⁶⁴ The majority of law professors teaching in the new law schools in Japan do not have practical experience in law. Practice training at the Institute would not have been counted as an academic credential to become a law professor in the pre-justice-reform-style undergraduate and graduate law departments. Indeed, law practice was often prohibited by the terms of the employment contract with the university. University administrations expected law professors to dedicate their time and efforts to research and education and not to participate in litigation, except perhaps as a consultant who renders an expert opinion. Prior to 2003, Japanese law also prohibited practicing lawyers from assuming any paid public post, with narrow exceptions.⁶⁵ The rigidity of career paths in the legal profession also generally reflects the low level of job mobility that prevails in Japan.

The separation between these two sectors of the legal profession has affected legal scholarship. There have been few opportunities for interaction between scholars and practitioners. Scholars pursue research related to their academic interest, which may not reflect the current state of law practice. Research themes that are important for law practice may be ignored by scholars. In international human rights law, for example, research themes such as the judicial applicability of international treaties to domestic violations of human rights have only recently gained academic attention. The chasm dividing scholars and practitioners has also resulted in a dearth of courses on professional ethics or lawyering skills at the undergraduate faculty of

⁶⁴ Even within legal academia, there are a limited number of universities that produce legal scholars. More than 40 per cent of all law faculty members of the nine major national universities (Hitotsubashi, Hokkaido, Kobe, Kyoto, Kyushu, Nagoya, Osaka, Tohoku, and Tokyo universities) in Japan are graduates of the University of Tokyo and nearly 20 per cent are graduates of Kyoto University. See Miyazawa & Otsuka, *supra* note 20, at 25.

⁶⁵ Prior to 2003, article 30, paragraph 1 of the former Practicing Attorney Law provided:

A practicing attorney shall not concurrently assume any paid public post; provided, however, that this shall not apply in cases where he/she assumes the post of the President or Vice President of the House of Representatives or the House of Councilors, Prime Minister, Minister of State, Deputy Chief Cabinet Secretary, Deputy Chief Cabinet Secretary for Crisis Management, Assistant Chief Cabinet Intelligence, Special Public-Relations Secretary, Director of Cabinet Intelligence, Special Advisor to the Prime Minister, Senior Vice-Minister (including Vice-Director of each agency, in cases where the law provides that the Minister of State shall be assigned as Director of such agency), Parliamentary Secretary of each ministry (including the Parliamentary Secretary of each agency), Secretary to the Prime Minister, or Secretary to Minister of State, or where he/she becomes a member of the National Diet or assemblies of local public entities, or a chief of a local public entity, or assumes any other elected public post, or where he/she becomes a public employee with a fixed term . . . , a self-defense official with a fixed term . . . , or in which he/she becomes a public servant of whom full-time service is not required, or performs functions relating to any specific matter at the request of the government or a public office.

Practicing Attorney Law (Law No. 205 of 1949) (amended 2002).

law in university. Because scholars are insulated from the practice of law, professors cannot readily teach these courses to law students. Some scholars are even unaware of their importance. The new professional schools, which are bringing together legal scholars and law practitioners, may facilitate the development of a model of scholarship that bridges theory and practice. The pedagogy of clinical legal education provides a particularly suitable vehicle for these interactions and for integrating theoretical studies of law and practical training of lawyering skills and values for students.

The longstanding disjuncture between those who teach and those who practice law also complicates and impedes the threshold task of finding professional school faculty members. Not all law faculty members are familiar with or interested in the actual practice of law. Accordingly, the new law schools need to identify, recruit, and retain experienced attorneys to become professors, especially for courses that instill lawyering skills and professional values. Because professors generally earn less than attorneys in Japan, the recruitment and retention issue has prompted the government to subsidize judges and prosecutors to take leaves of absences to teach.⁶⁶ No such subsidies or programs exist for private attorneys who elect to teach.

Although one can certainly find distinctions in training and background between practitioners and academics in the United States, the divergences are not nearly as substantial as in Japan. Most tenured or tenure-track law school faculty members in the United States have earned at least a J.D. degree, the same basic law degree as practitioners, and the majority have earned their degrees from one of twenty elite law schools.⁶⁷ A 1991 study found that 79 per cent of full-time,

⁶⁶ The Ministry of Justice and Supreme Court of Japan implemented a system to permit prosecutors and judges to teach at law schools for terms of three years, with the government supplementing their salaries so that there is no loss in income. See Maxeiner & Yamanaka, *supra* note 56, at 325-26.

⁶⁷ There have been two substantial empirical studies of tenure or tenure-track law professors and their educational backgrounds in the last twenty-five years, though both studies are now fairly dated. One study, published in 1980, is based upon the 1975-76 *Directory of Law Teachers*, published by the Association of American Law Schools (AALS). See Donna Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 1980 AM. B. FOUND. RES. J. 501, 503 (1980). The other article, published in 1991, is based upon a sample of 872 of the 5528 assistant, associate and full professors (15.8 per cent) profiled in the 1988-89 *AALS Directory of Law Teachers*. See Robert J. Borthwick & Jordan R. Schau, *Gatekeepers of the Profession: An Empirical Profile of the Nation's Law Professors*, 25 U. MICH. J. L. REFORM 191, 194 (1991). Some commentators lament that there is still very little known about law teachers. See James R. P. Ogloff, David R. Lyon, Kevin S. Douglas & V. Gordon Rose, *More than "Learning to Think Like a Lawyer:" The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73, 129 (2000).

Although neither of the two studies provides data on tenured or tenure-track faculty who possess *only* an advanced degree other than a J.D., both studies emphasize that law

permanent U.S. law professors had at least some experience in the practice of law prior to teaching.⁶⁸ Of course, many faculty members (other than clinicians) only practice for a short time.⁶⁹ Moreover, even with this practical experience, the work of many legal scholars is sometimes characterized as removed from the practice of law.⁷⁰ Nevertheless, there is still far more mobility between law teaching and practice in the United States than in Japan. Law schools in the United States do not face the same difficulties in recruiting clinical and non-clinical faculty members who are well-grounded in legal practice.

A different issue, but one that is absolutely critical to the success of the new Japanese professional schools – and to clinical legal education in Japan – is the bar passage rate. The low passage rate not only has contributed to a very small number of lawyers per capita, but has led to an extreme shortage of lawyers in some areas of Japan, principally the rural jurisdictions which may have no attorneys or only a single attorney.⁷¹ The justice system reforms seek to increase the overall number of attorneys and foster wider dispersion of attorneys

faculty members are J.D. graduates “in disproportionate numbers of a small, select group of law schools.” Fossum, *supra* at 507. “[B]y far the most important credential for law teachers . . . [is] a J.D. degree from one of 20 producer law schools.” *Id.* at 527-28. Fossum reported that 59 per cent of the faculty members received their J.D. degrees from one of twenty elite law schools, which is fewer than 15 per cent of the accredited law schools. *See id.* A decade later, Borthwick and Schau made an almost-identical finding. *See Borthwick & Schau, supra* at 226 (“the nation’s twenty top-ranked law schools produced nearly 60 per cent of all sampled professors”).

⁶⁸ *See Borthwick & Schau, supra* note 67, at 213. This was an increase in the percentage of law professors from Fossum’s 1975-76 data. She reported that 67 per cent of tenured or tenure-track faculty had some practice experience prior to teaching. *See Fossum, supra* note 67, at 510-11.

⁶⁹ Borthwick’s and Schau’s 1991 study reports that only one-fourth of all professors had more than five years of practice experience. *See Borthwick & Schau, supra* note 67, at 219. Faculty members at the most elite schools were least likely to have had substantial practice experience. *See id.* (finding that faculty sampled at the “top seven” schools had 2.7 mean years of experience, versus 4.3 mean years of experience among sampled faculty at all schools). Fossum found a median length of time of five years spent in career activities prior to teaching. *See Fossum, supra* note 67, at 511-12.

⁷⁰ *See, e.g.,* Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 35 (1992) (criticizing the “impractical scholar” who “produces abstract scholarship that has little relevance to concrete issues, or addresses concrete issues in a wholly theoretical manner”); Richard A. Posner, *Legal Scholarship Today*, 45 STAN. L. REV. 1647, 1655 (1993) (“The law faculties of our universities now produce a formidable quantity of scholarship intended mainly to be read by other scholars rather than by lawyers and judges.”); Reinhard Zimmermann, *Law Reviews: A Foray Through a Strange World*, 47 EMORY L. J. 659, 679-81 (1998) (criticizing, from a comparative perspective, the relative lack of real-world relevance of American law review writing); *United States v. Six Hundred Thirty-Nine Thousand Five Hundred and Fifty-Eight Dollars (\$639,558) in United States Currency*, 955 F.2d 712, 722 (D.C. Cir. 1992) (Silberman, J., concurring) (“many of our law reviews are dominated by rather exotic offerings of increasingly out-of-touch faculty members”).

⁷¹ *See Arita, supra* note 56.

so that they are more accessible throughout Japan. Yet, at this point, there is significant uncertainty about what the bar passage rate will be over the long term.

As explained above, the 2001 Justice System Reform Report called for a passage rate of approximately 70 to 80 per cent for the new National Bar Examination,⁷² the exam given to graduates of the new professional law schools.⁷³ The Council recommended a phased increase in the number of successful candidates for the bar examination each year, targeting 3000 new lawyers annually by the year 2010, which was not intended as an upper limit.⁷⁴ However, the numbers of approved new law schools and admitted students were both greater than originally expected. It has now begun to appear that some officials within the Ministry of Justice and others view the annual targets as rigid caps. If the targets are treated as fixed upper limits, with a higher-than-expected number of students in the pipeline, the bar passage rate would drop substantially below 70 to 80 per cent. Thus, even by early 2004, many people began projecting a low bar passage rate.⁷⁵

The projections of continued low bar rates, and accompanying concerns about the effects on law students in the new law schools, have become widely-known. In October 2004, a major Japanese newspaper, *Asahi Shimbun*, reported that the passage rate would be approximately 34 per cent, much lower than the Justice System Reform Council had originally recommended.⁷⁶ Bar Examination Committee officials did not contradict these rumors, and speculation about new lower bar passage rates continued to persist.⁷⁷ Acting on these wide-

⁷² See *Justice System Reform Recommendations*, *supra* note 1, at ch. III, pt. 2.

⁷³ The new bar examination requirements limit an applicant to taking the bar exam no more than three times within a five year period. See Japan Federation of Bar Associations, *supra* note 47. Bar applicants who have not graduated from a new law school may continue to take the old exam if they pass a preliminary test. See *id.* The old bar examination will be phased out in 2011. See Kaho Shimizu, *New Bar Exam System Explained*, JAPAN TIMES, May 20, 2006; see also *Number Allowed to Pass New Bar Exam Upped*, DAILY YOMIURI, Mar. 2, 2005, at 4 (stating that the number of persons permitted to pass the old exam is projected to be lowered in 2006 to no more than 500 to 600 persons, and to no more than 300 persons in 2007).

⁷⁴ See *Justice System Reform Recommendations*, *supra* note 1, at ch. III, pt. 1.

⁷⁵ See, e.g., Yasutaka Abe, *Law School Setchi ni Koredakeno Mondaiten* [Problems on the Establishment of Law Schools], Causa No. 11, 28, 32 (Feb. 2004); Hiroyuki Kabashima, *Shihoshiken wo meguru Saishin no Jyokyo* [Current Situation on Bar Examination], Causa No. 11, 49, 51-52 (Feb. 2004); Hiroyuki Kabashima, *Mietekita "Shin-Shihoshiken"*, in HOKADAIGAKUIN PERFECT GUIDE [PERFECT GUIDE TO LAW SCHOOLS] 47, 48-49 (Kawaijyuku License Center & Kyodo Editing Center eds., Dec. 2003).

⁷⁶ Kanako Ida, *Hokadaigakuin no Ikkisei, Shihoshiken Gokaku 34%, Toshokoso 7, 8 Wari to Taïsa* [34% Projected Passage Rate of the New Bar Exam for the First Graduates of Law Schools; Big Diversion from the Originally Projected Passage Rate, 70-80%], ASAHI SHIMBUN, Oct. 8, 2004, at 1.

⁷⁷ See, e.g., Special Report, *Jyojyo ni Hokaisuru Riso no Kyoiku, Hokadaigakuin*

spread rumors, approximately 1900 law students submitted a petition to the government in November 2004, asking to increase the projected bar passage rate.⁷⁸ In the face of this criticism, Bar Examination Committee officials announced in March, 2005 that approximately 50 per cent (or between 900 to 1100 law school graduates) would be expected to pass the new bar exam in 2006.⁷⁹

The new bar examination was administered for the first time on May 19, 2006, to 2091 graduates of the new law schools, and 1009 (48 per cent) passed the exam.⁸⁰ This first group of test-takers graduated from the new professional law schools after only two years of study, finishing early because of their prior education at the undergraduate level. The first class to graduate from the new law schools after three full years of study will sit for the new bar examination in 2007. The passage rate for this group remains uncertain – it may be as low as 20 to 30 per cent⁸¹ – though the absolute number expected to pass the new bar exam in 2007 is projected to be approximately double the number in the preceding year because a larger cohort will be eligible to sit for the exam.⁸²

Although the long-term bar passage rate has not stabilized, there is a widespread expectation that the rate will be low. This expectation has, in our view, led to a decline in law school applications from the schools' first year, and now threatens the success of graduate professional education in Japan. The passage rate means more to prospective law students than the absolute number of successful test-takers. When law schools were first established, many people enrolled with the expectation that they would have a realistic opportunity to pass the bar exam after incurring the time and expense of an additional two or three years of professional school education. Law school applications have now declined by more than 50 per cent from 2004 to

Ninenmeno Kiro [Gradual Collapse of Ideal Education, A Crossroad of Law School in its Second Year], in SHUKAN DAIAMONDO 132, 133-34 (July 2005).

⁷⁸ See *Law School Students Want Higher Success Rate in Bar Exam*, JAPAN ECON. NEWSWIRE, Nov. 25, 2004.

⁷⁹ See *'06 Bar Exam Pass Rates Raised*, ASAHI SHIMBUN, Mar. 2, 2005, available at <http://www.asahi.com/english/nation/TKY200503020175.html> (last visited Oct. 1, 2005). In 2005, only 3.19 per cent, or 1464 out of 45,885 exam takers, passed the old exam. Kaho Shimizu, *Boosting Legal Professional Ranks*, JAPAN TIMES, May 20, 2006.

⁸⁰ See *New Bar Exam Sees 48% Success Rate*, ASAHI SHIMBUN, May 20, 2006, available at <http://www.asahi.com/english/Herald-asahi/TKY200609230137.html> (last visited Sept. 23, 2006).

⁸¹ See *Law School Meian* [The Bright and Dark Sides of Law School], ASAHI SHIMBUN, Sept. 22, 2006, at 2.

⁸² See *'06 Bar Exam Pass Rates Raised*, *supra* note 79. Those who will be eligible to sit for the exam in 2007 will include both 2007 graduates of the new law schools and those who graduated in 2006 but either did not take the bar exam in 2006 or were unsuccessful in their first attempt.

2005.⁸³ One might attribute some of the drop to a lessening of pent-up demand, but that cannot be the major cause of the decline. Notably, the number of Japanese LSAT administrations has decreased among both university graduates and *current* university students, indicating that many people with an interest in legal practice have lost trust in the new law schools as a reliable gateway to the profession.⁸⁴

It is difficult to overstate the importance of this problem. A prominent professor has predicted that if low bar passage rates persist, “the system of graduate law schools will collapse.”⁸⁵ There are other less ominous, but still unattractive, possible outcomes. Law faculty at the professional schools may begin to emulate the cram schools by emphasizing memorization of the information needed for bar passage, rather than the legal analysis necessary to be an effective practitioner. Also, some of the law schools whose graduates have the lowest bar passage rates may be forced to close.

Even if the graduate professional schools survive a reduction in bar passage rates from the originally projected rates, low passage rates are likely to affect the students’ education. Students will likely spend their time in cram schools once again, and focus less on courses that are unrelated to the new bar exam. Law faculty and students of the new law schools have already expressed this concern.⁸⁶ If clinics are perceived by students as solely preparing them for practice rather than directly helping them to pass the new National Bar Exam, there will be less student demand for clinical courses in the new professional schools, notwithstanding the importance of such courses in teaching students to be skilled and effective professionals and in helping them learn substantive law. Because the opportunity to practice law is still

⁸³ See Alan Brender, *Enrollment Plunges at Japan’s American-Style Law Schools*, CHRON. HIGHER EDUC., Dec. 3, 2004, at 39.

⁸⁴ From 2004 to 2005, the number of university graduates taking the Japanese LSAT decreased by 3313 (19.4 per cent) and the number of current students taking the test decreased by 731 (11.6 per cent). See <http://www.dnc.ac.jp> (last visited Sept. 10, 2005). At Waseda Law School, the average age of the students in the entering class declined from 27.0 in 2004 to 25.7 in 2005, and further to 24.3 in 2006. See <http://www.waseda.jp/law-school/topics/06result/20051013.htm> (last visited Sept. 3, 2006). We believe that the low expected passage rates are preventing working people from leaving their jobs to go to law school.

⁸⁵ Brender, *supra* note 83 (quoting Professor Setsuo Miyazawa, then Vice President of Omiya Law School). As noted, South Korea has postponed – by one year – its plans to open graduate professional law schools. See *supra* note 10. A main reason for the delay is a continuing disagreement over the number of law schools and of students who may be enrolled. See Ah-young, *supra* note 10. Resolving this issue is critical to establishing a stable system of professional legal education.

⁸⁶ The November 2004 law students’ petition stated: “With the expected low success rate in the bar exam, many students will focus only on examination studies, making it difficult for them to acquire a broad range of general as well as expert knowledge.” *Law School Students Want Higher Success Rate in Bar Exam*, *supra* note 78 (quoting petition).

based principally on passing a National Bar Exam that focuses on legal doctrine alone and not on how to apply legal knowledge to solve client problems, entrance to the Institute understandably looms as the primary, if not the sole, focus of students in the new law schools.

An additional difficulty for those who seek to introduce clinical methodologies in Japan is the lack of direction from the top. The Justice System Reform Recommendations provide little guidance beyond calling for law schools to implement “bi-directional (with give-and-take between teacher and students) or multidirectional (with interaction among students, as well)” methodologies, rather than the “one-way lectures” that have previously been the norm.⁸⁷ The report also calls upon law schools to offer courses that go beyond legal theory and address skills such as fact finding and problem solving.⁸⁸ However, nothing in the report explicitly calls for the creation of clinical legal education programs.

By contrast, law schools that seek accreditation from the American Bar Association (ABA) in the United States are required to provide “substantial” instruction in “legal analysis and reasoning, legal research, problem solving, and oral communication,” as well as “other professional skills generally regarded as necessary for effective and responsible participation in the legal profession.”⁸⁹ These schools must afford “substantial opportunities” for “live-client or other real life practice experiences.”⁹⁰ The law schools in Japan that include clinical courses within their curricula do so because they regard such programs as an excellent way of bridging theory and practice, and not because clinical methodologies are required.

Finally, Japan lacks certain institutional structures that have enabled clinics to flourish in the United States. A principal difficulty is the absence of a student practice rule or any accepted custom in the judicial system of having would-be *bengoshi* “learn by doing.” As already noted, even trainees at the Institute are usually relegated to observing rather than participating in legal work. For that reason, a number of people have asked why clinic students – who have not yet passed the National Bar Examination – should be permitted to do more legal work than Institute trainees – who have already passed the exam. In addition, some courts and government officials in the Justice Ministry have raised privacy concerns and have precluded law stu-

⁸⁷ *Justice System Reform Recommendations*, *supra* note 1, at ch. III, pt. 2.

⁸⁸ *See id.*

⁸⁹ American Bar Association, Standards for Approval of Law Schools, std. 302(a)(2), (4) (“Curriculum”) (2005).

⁹⁰ *Id.*, std. 302(b)(1).

dents from accessing court files,⁹¹ or even accompanying attorneys as they interview clients in jail,⁹² even when the client has given informed consent to student participation, and even when the students have signed a confidentiality oath that includes expulsion from law school as a sanction for breaching confidentiality. Practices vary, but some law students have been told that they may not attend closed court proceedings, such as those in family court.⁹³ In other courts, such as the Tokyo District Court, students may attend closed proceedings with consent of the opposing party. No court in Japan thus far permits students to sit at counsel table; rather, they are relegated to the public parts of the courtroom.

Again, by contrast, the ABA promulgated a Model Student Practice Rule over thirty-five years ago to facilitate the growth of clinical courses in American law schools.⁹⁴ All fifty states, plus the District of Columbia and Puerto Rico, now have adopted student practice rules,⁹⁵ which legitimize clinics and facilitate their operation. Japanese bar associations do not have a clear position on the role of students in court. The lack of a student practice rule in Japan is not necessarily fatal to the development of clinics – just as there is no rule that affirmatively *requires* courts to permit student practice, no rule

⁹¹ A public prosecutor at the Tokyo Appellate Division of the National Prosecution Agency wrote an article, in his individual capacity, arguing that the use of materials disclosed by a prosecutor to a defense attorney at pre-trial criminal proceedings for the educational purpose of law students is prohibited because these materials are disclosed solely for the purpose of the administration of justice. Hideo Takasaki, *Kaijishoko no Mokuteki-gaishiyō no Kinshi to Hokodaigakuin niokeru Kyoiku tonō Kankei* [*The Relationship between the Prohibited Use of Disclosed Evidence for Non-Judicial Purposes and the Education in Law School*], 69 *KENSHU* 31 (2006).

⁹² See Takano, *supra* note 42.

⁹³ See *id.* at 11.

⁹⁴ See *Proposed Model Rule Relative to Legal Assistance by Law Students*, A.B.A. REP. 290, 290 (1969) [hereinafter *Proposed Model Rule*]. The ABA Model Student Practice Rule states that its purpose is to assist the bench and bar “in providing competent legal services for . . . clients unable to pay for such services and to encourage law schools to provide clinical instruction.” *Id.* Prior to the ABA’s adoption of the Model Student Practice Rule, only fifteen jurisdictions had their own student practice rule. See Michael D. Ridberg, *Student Practice Rules and Statutes*, in *CLINICAL LEGAL EDUCATION AND THE LAW SCHOOLS OF THE FUTURE* 223, 231-64 (Edmund W. Kitch ed., 1970). Six additional states adopted student practice rules in 1969. See *id.* at 235-61.

⁹⁵ See Joan W. Kuruc & Rachel A. Brown, *Student Practice Rules in the United States*, 63 *B. EXAMINER*, No. 3, at 40, 40-41 (1994). In addition to Kuruc’s and Brown’s article discussing the features of the various state student practice rules, other commentators have compared the requirements, privileges, and responsibilities under the student practice rules throughout the United States. See, e.g., David F. Chavkin, *Am I My Client’s Lawyer?: Role Definition and the Clinical Supervisor*, 51 *SMU L. REV.* 1507, app. A, at 1546-54 (1998) (citing each state’s student practice rule and the supervisory obligations for attorneys); Peter A. Joy, *The Ethics of Law School Clinic Students as Student-Lawyers*, *S. TEX. L. REV.* 815, 825-28 (2004) (discussing the ethical obligations of law students certified under state student practice rules).

expressly *prohibits* such practice. But that leaves it to clinical faculty to advocate for the greater participation of students in courts, jails, and other settings where lawyers do their work.

The next section is a more detailed examination of the beginning of clinical legal education in Japan.

II. “BRIDGING THEORY AND PRACTICE”: THE NEW CLINICAL PROGRAMS IN JAPAN

Despite the many challenges, clinical legal education is becoming rooted in a number of Japan’s new professional schools. Waseda Law School has developed the most extensive clinical program to date. The first two parts of this section describe the new programs at Waseda Law School and highlight their essential features. We then report on developments at other professional schools in Japan.

A. *Clinical Legal Education at Waseda Law School*

In 2002, Waseda law faculty members visited approximately ten American and Canadian law schools to learn about clinical legal education. What most impressed the Waseda faculty about clinical legal education in North America was the diversity of the clinical programs. The Waseda faculty found that there are alternative models of clinical programs as well as critical, indispensable features to clinics.

One question for Waseda was whether to build a general legal clinic that is oriented towards preparing students to be general practitioners or to create a specialized legal clinic that serves a specific population of clients, such as neglected children, persons with disabilities, or refugees. The faculty decided that the school, which has an entering class of 300 students and 70 full-time faculty members, is large enough to house both a general clinic and specialized clinics. The faculty settled upon a general civil law clinic and a criminal law clinic, and made plans for clinics in family, labor, gender, intellectual property, constitutional, and refugee and immigration law. In the fall of 2003, the school initiated pilot programs to try out the civil law clinic, the criminal law clinic, and the refugee and immigration law clinic. Beginning in the spring of 2006, the school began to offer clinical courses to law students for credit.

From the start, the Waseda faculty set out to integrate clinical and academic components into the clinical pedagogy. What follows is a description of the pilot programs of clinical legal education at Waseda Law School, which endeavor to “bridge theory and practice.”⁹⁶ Un-

⁹⁶ An overview of the Waseda Law Clinics appears in Peter A. Joy, *The Birth of the Waseda Law Clinics: Bridging Theory and Practice*, Keynote Address at the Opening Cele-

like the Legal Training and Research Institute, where trainees engage in “learning by seeing,” the overriding approach in Waseda’s clinics is “learning by doing.”

1. The Civil Law Clinic

The Civil Law Clinic, which is taught by teams of academic faculty members and practicing attorneys who are new to the faculty, seeks to allow law students to do as much as possible in the representation of clients. After scheduling a new client for an appointment, the law student works with the supervising attorney to outline a plan for the client interview. The student conducts research on the type of legal problem and consults with the supervising attorney prior to the client interview. The student takes the lead in interviewing the client, and the faculty supervisor only asks questions if it is necessary. After the interview, the student discusses the legal issues with the faculty supervisor and then the student explains the legal options to the client. At each step in this process, the faculty supervisor provides the student with feedback, designed to help the student understand how to improve and to become a more effective practitioner.

From June of 2004 until March of 2005, sixty-six students handled seventy-nine cases. Students worked in four-person teams over a period of two months. Each team of students handled approximately five cases, including, for example, landlord/tenant disputes, inheritance matters, divorce or custody, real estate, employment, accident, and money problem cases. Some cases were in litigation; others were involved in negotiation, mediation, or family court procedures.

One of the faculty supervisors reported that clients sent him seven thank-you letters in the preceding ten months. These are the only thank-you letters he has received in twenty-one years as an attorney! The comprehensive and excellent representation of students working with faculty led to this high level of client satisfaction.

When the Civil Law Clinic students reflected on their experiences, they commented most frequently on the difficulties of communicating effectively with clients. This is a lesson that can only be learned in real practice. The second most common student comment was the realization of how important the legal theories learned in the classroom course are to understanding and solving concrete client problems. Finally, students observed that their experiences showed them the importance of critical thinking, and the need to evaluate the merits of each client’s case in light of the actual evidence and the op-

eration of the legal system. These are lessons that a law student can neither learn inside the traditional classroom, nor fully appreciate through simulation courses.⁹⁷

2. *The Criminal Justice Clinic*

The Criminal Justice Clinic is a course that started in the summer of 2004. It is taught by two clinical faculty members who have roughly twenty years of criminal defense practice experience. Prior to April 2005, when the clinic was made part of the formal curriculum, thirteen students worked on five cases in teams of three or four students per group. The faculty supervisors acquired the cases through the duty attorney system.⁹⁸ Since the spring of 2005, sixteen students have worked in groups of four on four more cases. Three cases came through the duty attorney scheme and one came through a referral from a client. The nine cases accepted through the duty attorney system were taken at the pretrial stage, and the one referral case was taken at the appellate stage.

There are four goals of the Criminal Justice Clinic: to provide basic skills instruction in criminal law advocacy; to use experiential learning techniques to convey how the criminal justice system works; to show the treatment that clients receive in the criminal justice system; and to provide assistance of highly skilled counsel to clients who are unable to afford attorneys.

Although there are barriers to students' participation, they truly engage in "learning by doing." Whenever permitted by the police, students attend confidential interviews in the station house with their faculty supervisors. In the interviews, students are encouraged to participate. Students also work on pretrial motions and take action on behalf of clients to seek their release.

The results for the clients have been remarkable. In two of the nine cases taken at the pretrial level, the judge dismissed the prosecutors' warrant requests. This is a dismissal rate of 22 per cent, which is over seventy-three times greater than the average dismissal rate of approximately 0.3 per cent. Even though the sample is very small, the clinic students and faculty are providing legal representation that is equal to or exceeds the representation of the most respected criminal defense attorneys in Tokyo.

⁹⁷ See Kojima, *supra* note 44.

⁹⁸ The duty attorney system provides free legal advice for criminal suspects detained at detention sites by participating attorneys. The system is operated by the prefectural bar associations in Japan. See Masayuki Murayama, *The Role of the Defense Lawyer in the Japanese Criminal Process*, in *THE JAPANESE ADVERSARY SYSTEM IN CONTEXT: CONTROVERSIES AND COMPARISONS* 42, 47-48 (Malcolm M. Feeley et al. eds., 2002).

Clinic students do all of the out-of-court work, including, for example, witness interviews and drafting arguments. Students are not permitted to conduct trials, because there is no student practice rule in Japan authorizing law students to handle court appearances. Thus far, judges have not permitted law students to sit at counsel table at trial. Instead, students must observe trials from the spectators' seats.

Almost all of the clinic students have described the clinic experience as the best method to learn criminal law and procedure. Most are surprised by the gap between what they read about the law in books and how law is actually practiced. Meeting with their clients motivates them to work harder than they have ever worked before. The students also develop the sense of ethical values imbedded in the legal profession. One student recounted that she found herself looking at every case from the client's point of view and thereby came to appreciate the importance of even ostensibly routine matters.⁹⁹

3. The Refugee and Immigration Law Clinic

The Refugee and Immigration Law Clinic is jointly offered by an academic faculty member who specializes in this field of law and an attorney with roughly fifteen years of law practice in this field who joined Waseda Law School as a visiting professor. Third-year law students provide legal services to refugees and non-citizens.

A prerequisite for the clinic is a classroom course on refugee and immigration law that the clinic's teachers jointly teach. This course introduces students to not only the current theories concerning domestic immigration law and international human rights law but also a variety of legal practice issues and lawyering skills, such as legal drafting and communication with foreign clients. With this preparation, students provide legal services for clients.

One year before the start of the new professional law school, the Refugee and Immigration Clinic had a graduate student "try out" a clinical course. He was assigned to interview a political dissident from Burma about leaving his country and seeking refugee status. This interview required an interpreter. Based on the interview, the student prepared a draft, for faculty review, of written testimony for submission to the court. The student's central task in preparing the testimony was to reconstruct the client's story to make it as persuasive as possible to a Japanese judge. In pursuing this goal, the student found himself facing language barriers in trying to communicate with the client and cultural barriers in reformulating the client's story for the judge. Such student experiences in cross-cultural communication have

⁹⁹ See generally Takano, *supra* note 42.

benefits extending far beyond an individual case or course. Law students become sensitized to foreigners' varied assumptions, expectations and perspectives about the legal process, and, as a result, are in a better position to serve foreign clients not only in human rights cases but also in other types of matters.

The Refugee and Immigration Law Clinic also seeks to imbue students with academic curiosity. With the establishment of the new law school system, the training of legal scholars will shift from the existing graduate schools of law where academic research is emphasized. By exposing students to the reality of legal practice through legal clinics and externships with non-governmental organizations (NGOs) and international organizations, advocates of the new law school system hope that students will pursue research relevant to the legal problems they have seen first-hand. The student who participated in interviewing the refugee applicant wrote a case note for publication on the subject of the endless detention of non-citizens who, after being issued a deportation order, have been denied re-entry by their home country.

In creating the Refugee and Immigration Law Clinic, a group of law practitioners, scholars, and NGO staff members helped the teaching team in many ways, such as providing externship opportunities for students and giving advice on the course. As a result of this collaboration, the group published a textbook for students who take the Refugee and Immigration Law Clinic and similar clinical courses at other law schools.¹⁰⁰ This textbook distinguishes itself from existing law school textbooks because of the interdisciplinary perspectives offered by the authors, who include an authority on refugee law, an expert on international human rights law, a long-term member of the United Nations Human Rights Committee, an interpreter, and experienced attorneys in the field of refugee and immigration law. This group literally represents the ideal of "bridging theory and practice."¹⁰¹

4. *Externship Program*

Most of the newly established professional law schools, including Waseda, make effective use of externships in law offices. Waseda, which provides over sixty slots for externships, differs from other Japanese law schools by encouraging students to go to sites other than law offices. Placements include NGOs, central government ministries and agencies, municipal governments, and domestic regional offices of

¹⁰⁰ See GAIKOKUJINHO TO LAWYERING [ALIEN LAW AND CHALLENGES IN LAWYERING] (Shigeo Miyagawa ed., 2005).

¹⁰¹ See Shigeo Miyagawa, *Bridging Theory and Practice: The Waseda Refugee Law Clinic Pilot Program*, 25 WASEDA BULL. COMP. L. (forthcoming Mar. 2007).

international organizations, where traditionally few lawyers are employed (due to the small number of lawyers in Japan) but a considerable demand exists for legal professionals. Lawyers can play a key role as autonomous actors who are relatively insulated from pressures and constraints. It is also possible that lawyers who become involved in advocacy may embrace the work as a career and thereby contribute to the professionalization of NGOs.

The Refugee and Immigration Law Clinic takes responsibility for externships with NGOs and international organizations. Every year since 2004, one student has been sent to the office of a refugee-related NGO where all staff were non-lawyers. Such offices provide a variety of services to refugees, including assistance in filling out application forms for refugee status and researching the likelihood that the refugee would face persecution if forced to return to his or her home country. By working at an NGO and providing such services to refugees, students found themselves reflecting upon the role of lawyers in non-litigation settings and the unique contributions that a lawyer can make at an NGO with non-legal staff. This experience helped students appreciate what it means to be a lawyer and what kinds of training are essential for the role. An externship experience of this sort broadens the horizons of law students in ways that have been unavailable to lawyers trained in the government's Legal Research and Training Institute. Thus, the revamping of legal training and the shift from a governmental to an academic setting carries the potential for significant transformation of the role of lawyers in society.

B. Three Approaches to "Bridging Theory and Practice," and Values Inherent in the Clinical Pedagogy

Three features of the Waseda Law Clinics are important to highlight here as means of "bridging theory and practice." First is the formation of a teaching team with academic and clinical faculty members. Academics and practitioners work together in teaching courses and supervising students. The second feature concerns the relationship between doctrinal and clinical courses in the law school curriculum. There are issues of timing of clinical courses and prerequisites. The third feature involves teaching values, skills, and reflection. In Waseda Law Clinics, students not only learn lawyering skills but engage in self-reflection about the role of the lawyer in society and professional responsibility.

The legal academics and practitioners who work together in teaching teams tend to come to the task with different perspectives on clinic cases. Students benefit from the dynamic tension between teachers from such different professional backgrounds, which, among

other things, facilitates reflection about the legal profession.

Before taking clinical courses in the third year, Waseda students take doctrinal courses such as constitutional law, contracts, torts, civil procedure, criminal law, and criminal procedure, and some of the lawyering skills courses on civil trial advocacy and criminal defense advocacy. The subsequent clinical courses provide good opportunities for students to integrate doctrinal aspects of legal studies and practical training of skills and values in the context of actual cases. For those students who seek to enroll in specialized clinical courses such as the Refugee and Immigration Law Clinic, Waseda requires foundational courses that provide instruction on the theoretical context and the lawyering skills needed for the particular field. Waseda is currently considering whether to offer clinical courses earlier in the curriculum by, for example, incorporating clinical components in the first-year survey course on the judicial process. This idea stems from the belief that clinical pedagogy provides students with a strong incentive to learn doctrine and helps them acquire a better grasp of the procedural aspects of cases.

The Waseda clinics seek to instill ethics and values that will improve the legal profession and make lawyers more aware of their social responsibilities. Although the number of cases the clinics have handled is small, each case provides multiple opportunities to apply ethical obligations such as, for example, the obligation to maintain client confidences. An example of the impact on students' awareness of professional responsibility can be seen in the above-described student statement about coming to look at cases from the viewpoint of the client and the importance of the case to the client. The foregoing accounts of the letters of appreciation from Civil Law Clinic clients and the Criminal Justice Clinic's success in opposing detention warrants demonstrate that students are inculcating the fundamental value of providing high-quality legal services for clients.

The externship program at Waseda provides good opportunities for students to reflect upon the role of the lawyer in society. It is particularly true of externships at NGO offices where lawyers traditionally are not involved. In these settings, students can explore the broader potential of the legal profession and bring their skills to bear in new fields.

The values underlying the Waseda Law Clinics are inherently clear in the program's pedagogy. The fulfillment of these values – including but not limited to the collaboration of academics and practitioners, the reinforcement of students' understanding of law with clinical experiences, the improvement of legal practice, the critical self-reflection on the role of the lawyer and professional responsibility

– all are essential to the program’s “bridging of theory and practice.”

C. Clinical Programs at Other Japanese Law Schools

According to a 2006 study of the seventy-four new Japanese law schools, as many as fifty-two schools claim to offer clinical courses.¹⁰² Though some of these law schools have only externship programs, a majority of the law schools offering clinical courses have adopted a combination of legal clinics, simulation courses, and externships. Among these, there are ten law schools that are known to have established in-house law offices on campus.¹⁰³ The method of clinical teaching, particularly the involvement of students in attorney-client relationships, varies from school to school. Legal clinics at some law schools let law students provide legal services for clients with close supervision by faculty members who have many years of law practice, while other law schools only provide students with opportunities to observe attorney-instructors in legal counseling settings.¹⁰⁴

A number of schools have already started clinics, or plan to begin them shortly. The next part of the article describes some of these clinical programs.¹⁰⁵ As the summary shows, there is already great diversity and experimentation.

1. Shibuya Public Law Office: A Collaboration of the Tokyo Bar Association, Dokkyo, Kokugakuin, Meiji Gakuin, and Tokai University Law Schools

One approach to implementing clinical legal education in Japan is a joint initiative of the Tokyo Bar Association, the largest bar association in Tokyo, and four Tokyo professional schools: Dokkyo, Kokugakuin, Meiji Gakuin, and Tokai University Law Schools. The Tokyo Bar Association provided the funds to convert space in the Kokugakuin University Law School into a law office, called the Shibuya Public Law Office. Kokugakuin University contributes the space rent-free and provides the utilities. The other law schools in the collabora-

¹⁰² Kazuhiro Nakanishi, *Hokadaigakuin niokeru Rinshohogakukyoku* [*Clinical Legal Education at Japanese Law Schools*], 1 HOSOYOSEI TAISAKUSHITSU HO 1, 6-7 (2006).

¹⁰³ The authors believe the ten law schools with in-house law offices on campus to be Chuo, Hosei, Kumamoto, Kyushu, Okayama, Omiya, Senshu, Tsukuba, Waseda, and Yamanashi Gakuin.

¹⁰⁴ Though fifty-two law schools claimed to offer clinical courses, it is not clear how many of these courses in fact employ established clinical teaching methodologies. At a number of the schools, students simply observe lawyers in practice. In this article, we seek to report on the development of clinics that offer true experiential learning experiences.

¹⁰⁵ A complete description of all of the clinical programs in Japan is beyond the scope of this article. The authors regret that not all of the new programs can be included here. We look forward to future scholarship on the clinical legal education movement in Japan.

tion provide some support.¹⁰⁶ Clients of the Office are charged fees, which go towards the attorneys' salaries and the office's operating expenses. The Shibuya Public Law Office is located in the Shibuya district of Tokyo, and is close to major rail and subway connections.

The Office is the site of two practice experience courses for law students from the four law schools. The first experience is a simulation course called "Beginners' Legal Clinic." In this course, students participate in simulations involving various aspects of client representation. The second course is the Advanced Legal Clinic, in which law students work with attorneys in the Office and help to provide legal representation to Office clients.

In the Advanced Legal Clinic, students work in teams of two, observing the attorneys practice law and participating in some aspects of client representation. For example, students participate in client interviews and consultations, analyze the relevant facts and identify legal issues, conduct legal research, and assist with the preparation of pleadings.¹⁰⁷

This model of clinical legal education faces some challenges, however. At the present time, students participating in the Advanced Legal Clinic are required to spend only two hours per week working on client matters. Attorneys in the Office find that this is not enough time for the students to be fully engaged in client representation, and that there is not much that students are able to do in such a short amount of time.¹⁰⁸

Payment of attorneys' salaries with client fees creates another structural problem because the time that attorneys devote to teaching detracts from the time they could allot to earning fees. The monetary contributions of the participating law schools are not sufficient to compensate the attorneys for the time spent teaching, and the Tokyo Bar Association does not supplement the attorneys' salaries to compensate for the student supervision. This situation places the full responsibility, and most of the cost, for clinical legal education directly on the attorneys in the Office.

The limitations on student time and the financial structure for

¹⁰⁶ See Katsumasa Hirabayashi & Eishi Misawa, *Shibuya Public Law Office's Approach to Clinical Legal Education: The Collaboration of the Tokyo Bar Association with Four Law Schools in the Tokyo Metropolitan Area*, 25 WASEDA BULL. COMP. L. (forthcoming Mar. 2007). The description of the clinical program at the Shibuya Public Law Office is drawn from a paper presented by Dean Hirabayashi and Eishi Misawa, as well as first-hand observations of the authors, and interviews with attorneys working at the Shibuya Public Law Office.

¹⁰⁷ See *id.* at 4-5.

¹⁰⁸ Interview with Eishi Misawa, Attorney with the Shibuya Public Law Office, in Tokyo, Japan (May 18, 2005).

paying attorneys' salaries stand in the way of creating an optimum learning environment. These aspects of the program tend to promote a use of a "learning by observing" style of instruction rather than the ideal "learning by doing" approach.

2. *Omiya Clinical Program*

Omiya Law School inaugurated its clinical program by opening two legal counseling centers in December of 2004. One center is located within the law school, which is in a suburb of Tokyo. The second is in the Shibuya district. These counseling centers are known as the "All Day Clinic" because they are open on evenings and weekends. They are designed to accommodate Omiya law students, many of whom attend the night program, and clients who may work or have other obligations during the work day.¹⁰⁹

The counseling centers provide free legal advice and counseling. Although other forms of representation were not offered initially, clients who received advice could arrange for further representation by the attorney in charge of the counseling services. In January of 2006, Omiya Law School began to provide full representation in civil and criminal matters through the clinic office that is inside the law school.

Students who participate in the in-house clinic based inside the law school enroll in either a two or four credit course for a six month period. All of these students attend a two hour seminar class component. Students in the four-credit course work on behalf of clients for at least eight hours per week, and students in the two-credit course are expected to do client work for at least four hours per week.¹¹⁰

From December of 2004 through April of 2005, the counseling centers conducted over 200 counseling sessions. Because these activities were part of the pilot program, students received no credit for their work and the number of students who elected to participate was small. The students who took part indicated that the sessions provided them with a realistic view of law practice and thereby gave them a richer context for their studies. Students noted that the counseling sessions also provided insights into what may be redressed through the legal system, as well as the difficulty in effectively interviewing and counseling clients.¹¹¹

¹⁰⁹ The description of the Omiya Law School clinical program is based on the observations of the authors as well as the article by Lawrence Repeta, *Omiya Law School and the "All Day Clinic,"* 25 WASEDA BULL. COMP. L. (forthcoming Mar. 2007).

¹¹⁰ *See id.*

¹¹¹ *See id.*

3. *Hosei University Law School Clinic*

Hosei University, one of six major universities that form the oldest baseball league in Tokyo, has an enrollment of 100 students per class. It offers four-credit courses entitled “Clinic I” (for second-year students) and “Clinic II” (for third-year students). The Hosei clinical program is unique in that it is supported by two on-campus law centers: the Liaison Law Office, which began operation in the spring of 2003, a year before Hosei Law School was established, and which is entitled “Liaison” because it is designed to bridge the university’s academic resources and the need for legal services for socially disadvantaged people; and the Center of Alternative Dispute Resolutions (ADR Center), which provides conciliation and arbitration services for a general clientele.

In the Liaison Law Office, six attorneys on the law faculty are available for legal counseling. In addition, about ten supporting private practice attorneys (alumni of Hosei University) provide a legal counseling session once a month on campus. Legal counseling is provided free of charge, and attorneys’ fees are charged only when clients need legal representation. Students participate in legal counseling with the consent of the clients. In the ADR Center, students participate in conciliation and arbitration as observers, with the consent of the clients.

Clinic students are able to observe different styles of client-attorney communication and can sometimes ask supplementary questions of the clients. Although students can attend the legal counseling sessions of any attorney who is on duty, students are assigned in groups of three to seven to a particular faculty supervisor for any case that progresses to the point of legal representation. Roundtable case discussions are held every week. Students are expected to participate in these sessions, which are attended not only by faculty supervisors but also other professors in related academic fields.

One of the Liaison Law Office’s specialties is representation of clients who have mental disabilities. Although the legal issues in these cases are often identical to those involving non-handicapped clients, there may be issues directly relating to the client’s disability, such as, for example, questions about the client’s competency to contract for consumer goods. The central difficulty in cases often concerns the social position of mentally disabled people and stereotypes mental disabilities. Students who participate in this practice typically gain a much deeper appreciation of the degree to which a lawyer must think about legal problems within the context of the client’s entire life, and the lawyer’s responsibilities as an advocate for socially disadvantaged people.

Because these programs are just in their inception, students thus far have been passive observers. The Hosei clinical program places a premium on exposing students to different types of client-attorney communication skills and giving students a basis for identifying infirmities of the current state of law practice. Such critical reflection on the legal profession is something that cannot be obtained in the apprenticeship training provided by the Legal Training and Research Institute.¹¹²

4. Dokkyo University Law School Clinic

Dokkyo University is in Soka City, Saitama Prefecture, on the outskirts of the Tokyo metropolitan area. The Law School's clinical program is operated in cooperation with the local city government and the prefectural bar association. Dokkyo Law School participates in the clinical program of the Shibuya Public Law Office but also offers a program of its own for students. "Legal Clinic I" is required for all second-year students. "Legal Clinic II" is an elective for third-year students. The Law School also offers an elective externship course for third-year students.

Dokkyo Law School offers "Legal Clinic I" as part of the legal counseling services program of Soka City, which the city offers to its citizens with the help of the Saitama Bar Association. Clients who consent to student participation are assigned to a team of a supervising attorney and two or three students. Although students are mostly limited to observing the attorney, they are sometimes allowed to ask questions. After the counseling session, students discuss legal matters with the supervising attorney. Students in the elective course, "Legal Clinic II," are trained in the supervising attorneys' law offices, the Shibuya Public Law Office, or the Kitasenju Public Law Office, which is in Tokyo.

Of the fifty students in each graduating class, roughly half take the required course "Legal Clinic I" in the spring and the other half do so in the fall. Because the clinical activities of this course are closely related to the legal counseling services of the local government and the prefectural bar association, the strong support and good will of these two bodies are indispensable. This close relationship may have the effect of limiting student involvement if the City and the bar

¹¹² The description of the Hosei Law School clinical program is based on the unpublished Japanese transcript of a speech by Yoshihiko Nakamura on the Hosei clinical program, presented at the Waseda Symposium, Comparison of the Clinical Legal Education and Medical Education (Dec. 4, 2004) (on file with authors), and information obtained from the website of Hosei Law School at <http://www.hosei.ac.jp/pro1/law/index.html> (last visited Sept. 1, 2006).

association insist that the primary goal of the program is to provide *pro bono* legal services, rather than to further the school's educational mission.¹¹³

5. *Ritsumeikan University Law School Clinic*

Ritsumeikan University is in Kyoto, the old capital of Japan, about 500 kilometers southwest of Tokyo. Ritsumeikan's undergraduate faculty of law has provided legal counseling to Kyoto citizens for many years; the faculty has supervised students who provide counseling as an extracurricular activity. The law school now offers a specialized clinical course in the field of women and law, called "Legal Clinic II (Women and Human Rights)," as well as "Legal Clinic I (Legal Counseling)." The school also offers an externship course. These three courses are for third-year students, who are required to take one of the three for graduation.

A practitioner-professor and non-practitioner professor teach the "Legal Clinic II (Women and Human Rights)" course. Students counsel victims of domestic violence, sexual harassment, and employment discrimination. The course is designed to teach the skills of counseling, negotiation, and identifying primary facts and legal issues of the case, and to instill professional values and professional ethics. The clinic makes good use of the university's academic resources. Ritsumeikan University is home to the Graduate School of Science for Human Services, which offers a course on therapeutic psychology and law, and the Counseling Center of Psychology and Education, which counsels victims of domestic violence sexual harassment and individuals with learning disabilities. The "Legal Clinic II" collaborates with the Graduate School and the Counseling Center in an interdisciplinary approach that offers learning experiences that are not available at the Legal Training and Research Institute.¹¹⁴

6. *Kagoshima University Law School Clinic*

Kagoshima University is located in the Kagoshima Prefecture, which occupies the southernmost area of the southwest island of the

¹¹³ The description of the Dokkyo Law School clinical program is based on information presented by Dokkyo Law School at the Waseda Colloquium on Clinical Legal Education (Mar. 15, 2005) and the website of the Law School at <http://www.dokkyo.ac.jp/lawschool/> (last visited Sept. 1, 2006).

¹¹⁴ The description of the Ritsumeikan Law School clinical program is based on a speech by Shuhei Ninomiya at the Waseda Open Seminar on Clinical Legal Education (July 22, 2003) that is published in *HOKADAIGAKUIN TO RINSHOHOGAKUKYOIKU [CLINICAL LEGAL EDUCATION IN LAW SCHOOL]* 172-78 (Shigeo Miyagawa ed., 2003), and information obtained from the website of Ritsumeikan University at <http://www.ritsumeikai.ac.jp/> (last visited Sept. 1, 2006).

four main islands of Japan. The Prefecture is one of the least well-served by attorneys. There are ninety-one registered attorneys in Kagoshima Prefecture for a population of 1,769,000, or one attorney for every 19,439 people. Tokyo, by contrast, has one registered attorney for every 1210 residents, or sixteen times the number of lawyers per capita in Kagoshima.¹¹⁵

Because of the scarcity of legal services in the Prefecture, Kagoshima Law School's clinical program emphasizes service, particularly to those living in the Prefecture's small islands. The Law School's clinical program consists of "Legal Clinic 1," "Legal Clinic 2," and "Externship." The first of these courses sends a group of supervising attorneys and students to a small island where they provide legal counseling to local residents. Because of the distance from campus and because of student workload, the course is intensively offered for approximately one week during the winter and spring recesses.

Before the law school began offering clinical courses for credit, the school conducted a pilot program in January 2005, using the format that would later be formally adopted in "Legal Clinic 1." Two practitioner-professors, two non-practitioner professors, and six students participated in the counseling for island residents. Although the counseling was mainly conducted by the practitioner-professors, students were allowed to ask supplementary questions and took turns taking notes of counselees' case stories to prepare materials for the later roundtable discussion with the faculty members and students. Notwithstanding the limitations on the role that students played, the experiences enabled students to gain greater appreciation of the difficulty of communicating with counselees and identifying primary facts for the application of law. The students' exposure to the reality of life in the isolated island community, where attorneys are not available, provided a compelling basis for reflecting on the essential role of attorneys to promote the rule of law and effect equal access to legal services.

Kagoshima Law School ambitiously requires "Legal Clinic 1" for graduation. The entering class is thirty students each year. The Law School plans to increase the number of supervising attorneys in order to effectuate a low student-faculty ratio. The school expects strong support from the Kagoshima bar association, which will recruit private

¹¹⁵ The statistical data on the population are as of October 1, 2004, obtained from the website of the Statistics Bureau at <http://www.stat.go.jp/data/jinsui/2004np/index.htm> (last visited Sept. 3, 2006). The numbers of attorneys are as of September 1, 2006, obtained from the website of the JFBA at http://www.nichibenren.or.jp/ja/jfba_info/membership/data/060901.pdf (last visited Sept. 3, 2006). Although the data for population and for the numbers of attorneys are provided for two different periods of time, the time differential does not grossly distort the general picture.

practice attorneys to supervise students. The Law School has also made good efforts to raise funds from the local bar association and business groups in order to send students and supervising attorneys to distant islands and to provide accommodations for them.

“Legal Clinic 2,” which is an elective course, involves legal counseling in the city of Kagoshima. This course is offered in the same format as “Legal Clinic 1” with the support of the local bar association. The “Externship” course, which is also elective, is supported by not only the local bar association but also two other bar associations in neighboring prefectures.¹¹⁶

III. THE FUTURE OF CLINICAL LEGAL EDUCATION IN JAPAN

We should acknowledge, at the outset, that clinical legal education has a future in Japan only if professional graduate legal education has a future. Japan’s law schools are only two and a half years old, and already there is uncertainty about their ability to survive – or at least about their ability to succeed with a model of professional education that can accomplish the ambitious goals of the Justice System Reform Council. One of the Council’s goals, of course, was to increase the number of *bengoshi* and thus make legal services readily available to a far greater number of people. The Council also sought, however, to transform the ways in which lawyers are trained. Japan needs lawyers who are better attuned to cultural and societal changes, and better able to adapt to such changes in the future. The Council adopted the professional graduate law school model because of the need to go beyond teaching of doctrine and to teach new skills and values. In our view, the Council’s goals will be thwarted if bar passage rates are set significantly lower than the 70 to 80 per cent originally recommended. Schools will have far fewer applicants, and some of the new professional law schools may be forced to close. Schools will begin merely “teaching to the test” instead of ensuring that students are well-grounded in skills and values. The net effect may simply be to replicate the “cram school” experience within a university setting. The next few years will reveal whether our concerns are well-founded.

Putting this issue partly to the side, we think that clinical legal education has a promising future in Japan – at least as long as graduate professional legal education continues to exist – but that there are very substantial challenges to implementing an effective model of clinical pedagogy. Many of these challenges are products of the current state of Japan’s justice system and legal culture, including the lack

¹¹⁶ The description of the Kagoshima Law School clinical program is based on information provided by the Kagoshima Law School at an interview (July 7, 2005) and the website of the Law School at <http://www.ls.kagoshima-u.ac.jp/> (last visited Sept. 1, 2006).

of a pool of legal educators with practice experience.

The story of the development of law school clinics in Japan is very different from that of the United States. In the U.S., professional graduate law schools were in place long before clinical methods were accepted as an important part of legal education. Although there was a limited movement to build clinics in the early part of the twentieth century, clinical legal education really did not begin to take root until the late 1960s and early 1970s as a result of seed funding broadly available from the Ford Foundation's Council on Legal Education for Professional Responsibility (CLEPR).¹¹⁷ Many clinics were initially based on two well-established service delivery models: public defender and legal services offices. There is now a proliferation of different clinical models in U.S. law schools.

Before opening graduate professional law schools in Japan, many *bengoshi* and legal scholars visited law schools in the U.S., Canada, and other countries. They were exposed to a rich assortment of clinical models. Although it is perhaps disappointing that clinical legal education is not more firmly rooted in more of Japan's new law schools, it is encouraging that clinical methods are being employed in more diverse ways than when clinics first became well-established in U.S. law schools. Waseda Law School offers general civil and criminal clinics as well as specialized clinics in fields such as immigration and refugee law. Other unique programs include the Shibuya Public Law Office, which is a four-school collaborative, and clinics in such areas as alternative dispute resolution, representation of people with mental disabilities, and the provision of legal services to a remote island community. The best of the new clinical programs in Japan are being led by people who are thinking about clinics in a very sophisticated way.

Also encouraging is that the new law school clinics provide legal services to people who would otherwise have difficulty obtaining legal counsel, and that the legal assistance being provided is first-rate. The stories are poignant and ring true: the practitioner-professor who has received his first thank-you letters after many years in practice; the high rate of dismissals recorded in the cases of a leading criminal clinic; and the difficult and unique work done by students and faculty in the Kagoshima Prefecture, who bring legal services to residents of a remote island. Such programs increase the amount of legal services to needy people and, at the same time, establish a public service mission for the law schools.

And there are more good tidings still: Many of these programs

¹¹⁷ See generally Margaret Martin Barry, Jon C. Dubin, & Peter A. Joy, *Clinical Education for this Millennium: The Third Wave*, 7 CLIN. L. REV. 1 (2000) (describing the development of U.S. clinical legal education).

team traditional legal scholars with practicing lawyers hired as clinical faculty members. This approach integrates the teaching of theory and practice and should go a long way to fostering legal scholarship related to practice, thereby furthering the law reform goals of the Justice System Reform Council.

Nonetheless, as we have seen, there are substantial challenges. Some of the difficulties now faced by clinical programs are due to the current structure of the legal profession, and to resistance to change. First, there is an historical concern that a possible oversupply of attorneys may hurt the economic well-being and social status of *bengoshi*.¹¹⁸ This underpins some of the resistance within the legal profession to a substantial increase in the number of attorneys.

Second, many of the clinical programs currently limit student participation to attending counseling sessions. The constricted view of a law student's capacity is grounded in part on the experiences of prosecutors, judges, and attorneys who were largely limited to "learning by watching" during their time at the Legal Training and Research Institute. The current members of the legal profession are all products of the Institute, which has been the sole locus of legal training and socialization into the legal profession prior to admission to practice. Having had no experience with professional law schools, much less clinical courses within law schools, members of the legal profession often approach the issue of clinical practice with skepticism and resistance. Some find it difficult to imagine that a student who has not even been admitted to the Institute can provide (or meaningfully participate in providing) competent legal representation to clients.

If there is to be a greater degree of experiential learning in Japan's new law schools, there must be more support from law faculty and members of the legal profession. When clinics began to flourish in the U.S. starting in the late 1960s, they had broad support from the American Bar Association and prominent players in the legal system. They also started within a system of stable (some might say entrenched) professional law schools. Although many law faculty members did not support clinical legal education in its formative years, respected faculty such as John Bradway, Jerome Frank, Karl Llewellyn, and Robert Storey advocated the teaching of lawyering skills and recognized the value of clinical legal education and nurtured its growth in the first part of the 20th century.¹¹⁹

It would be beneficial if some Japanese intellectual giants, comparable to historic American figures like Jerome Frank and Karl Llewellyn, would speak in favor of clinical legal education as have some of

¹¹⁸ See *supra* notes 30–45 and accompanying text.

¹¹⁹ See Barry, Dubin & Joy, *supra* note 117, at 6–16.

the pioneers of clinical education. This of course presupposes that an even larger number of prominent law faculty would support the new professional law schools. The continuation of the undergraduate old-style law faculties or departments perpetuates a certain divide between legal theory and practice. It is not uncommon to find law faculty not only skeptical of but resistant to the new law schools.

In addition, it is important for some prosecutors and judges, particularly some members of the Supreme Court of Japan, to advocate on behalf of the new professional law schools. Although clinical programs existed in the U.S. for a number of years, it was not until the late 1960s that members of the bench and bar in the U.S. began to emphasize the importance of lawyering skills training and clinical legal education.¹²⁰ By the early 1990s, the essential role of law school clinics in teaching fundamental lawyering skills and values of the legal profession was formally recognized by the ABA in its MacCrate Report.¹²¹ If the new law schools are to grow, the legal profession in Japan must endorse these efforts within a matter of a few years.

In the U.S., a model student practice rule helped pave the way for students to practice law in a meaningful fashion under careful supervision. In some other countries, legislation permitting student practice,¹²² or at least a willingness of the judiciary to permit law students to participate in many aspects of providing client representation, has spurred the development of clinical legal education. Without a student practice rule, legislation permitting student practice, or a willing-

¹²⁰ See, e.g., *Jordan v. United States Dep't of Justice*, 691 F.2d 514, 522-23 (D.C. Cir. 1982) ("This [student intern] practice has been praised by members of the judiciary and encouraged by the Judicial Conference of the United States, and we have ample reason to extend our commendation." (footnotes omitted)); Final Report of the Committee to Consider Standards for Admission to Practice in the Federal Courts of the Judicial Conference of the United States, 83 F.R.D. 215, 222 (1979) (recommending support for "student practice programs" in law schools); Final Report of the Advisory Committee on Proposed Rules for Admission to Practice, 67 F.R.D. 161, 164, 167-68 (1975) (recommending that law schools teach trial skills); Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 *FORDHAM L. REV.* 227, 233-36 (1973) (advocating more hands-on lawyering skills as a way to improve the quality of lawyering; Burger was Chief Justice of the Supreme Court of the United States from 1969 to 1987); Benjamin R. Civiletti, *Clinical Legal Education in Law School and Beyond*, A.B.A. J., May 1981, at 576, 576 (calling for more clinical legal education; Civiletti served as United States Attorney General from 1979 to 1981).

¹²¹ SECTION ON LEGAL EDUC. AND ADMISSIONS TO THE BAR, AMERICAN BAR ASS'N, *LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT – AN EDUCATIONAL CONTINUUM* (1992).

¹²² See, e.g., Richard J. Wilson, *Three Law School Clinics in Chile, 1970 – 2000: Innovation, Resistance and Conformity in the Global South*, 8 *CLIN. L. REV.* 515, 536 (2002) (citing Chilean law that permits law student practice in and out of court); Leah Wortham, *Aiding Clinical Education Abroad: What Can Be Gained and the Learning Curve to do so Effectively*, 12 *CLIN. L. REV.* 615, 630 (2006) (stating that Russian law permits anyone to represent persons in civil court proceedings).

ness on the part of judges, prosecutors, attorneys, and bar associations to permit greater student involvement in legal representation, clinical legal education in Japan will not come close to meeting its potential.

Greater participation in legal education by practicing attorneys is also critical to the success of clinical legal education. Unlike in the U.S. and many other countries, there is no established pool of experienced practitioners to serve as professors in Japan. It is unclear, however, whether the new law schools will develop policies to attract and retain the best practitioners available. Although many new law schools have recruited a corps of talented attorneys to join the faculty, these new members of the academy have not yet been fully integrated into the faculty. Nor have the new practitioner-teachers been given long-term commitments such as tenure or long term contracts. As one of the authors of this article commented with respect to U.S. clinical legal education, "equal treatment for clinical faculty" is essential if law schools are to "attract and retain attorneys who are sacrificing the opportunity to earn more money practicing law to become professors."¹²³

It is difficult to assess whether the new law schools will overcome these challenges. The effort will surely take a substantial period of time, and it would be enormously helpful to gain support from educators, lawyers, prosecutors, and judges around the world who support clinical legal education.

Other difficulties faced by the new law school clinics in Japan seem endemic to the enterprise, replicating experiences in the U.S. and other countries. Japanese law schools face challenges in funding clinics. For example, some programs, such as the Shibuya Public Law Office, are expected to raise most of their own funding. Law schools also are addressing issues concerning integration of the clinical and non-clinical curriculum, sequencing of courses, student course credit, questions about quality of supervision in clinics and externships, status of faculty, and how to promote scholarship that integrates theory and practice. For these issues, clinical faculty in other countries may say, "Welcome to the world of clinical legal education." These are issues that are important to the success of law school clinics, but which are unlikely to be definitively resolved any time soon.

CONCLUSION

Japan's justice system is clearly in transition. The Justice System Reform Council set ambitious goals to expand the Japanese legal profession, both numerically and with respect to its capacity to cope with

¹²³ Joy, *supra* note 96, at 12.

modern legal practice domestically and internationally. In our view, the development of clinical legal education in Japan is vitally important if the new law schools are to help transform the legal profession, as envisioned by the Council. Yet, there are many hurdles. The new law schools must resist pressure to become university-based versions of cram schools due to extremely low bar passage rates. The law schools must also resolve internal issues such as awarding commensurate academic credit to clinical students and faculty and designing programs to hire and retain qualified attorneys to become clinical faculty. Clinical legal education in Japan also needs the support of the legal profession to permit student practice or at least greater participation of students in providing legal services. If these obstacles are not overcome, then the new law schools will fail to achieve the goals envisioned by the Council.

In many ways, the developments in Japan are a case study for other countries considering the reform of their legal professions. South Korea, for example, has been following developments in Japan closely as it has adopted a U.S.-style professional law school system effective in 2009.¹²⁴ In April of 2005, based in part upon the experience in Japan, South Korea's Judicial Reform Committee recommended that the number of new law schools in South Korea be limited to ten, that enrollments in the new law schools be limited to approximately 150 per class, and that the number of graduates passing the bar exam be limited to 1200, with a bar passage rate of approximately 80 per cent.¹²⁵ Thus, South Korea plans to limit the number of persons admitted to the new law schools in an attempt to avert pressures to institute a law bar passage rate, which in turn could lead to reliance on cram schools and rote memorization in the new law schools. Universities and law faculty in South Korea are opposed to the contemplated limits on the number of law students and new law schools.¹²⁶ The continued debate over enrollments has led the South Korean government to delay the opening of the new schools for one year. Yet, it is possible that the limited enrollment may prove beneficial to the development of innovative curricula, such as clinical legal education and other lawyering skills courses, in the few new law schools.

In Japan, there was resistance by university and law faculty to limiting the number of law students and new law schools. Ultimately,

¹²⁴ See *supra* note 10.

¹²⁵ See *Law School Measures Stir Controversy: Universities Oppose Panel's Decision to Limit Number of Students*, KOREA HERALD, Apr. 22, 2005; Alan Brender, *New American-Style Law Schools Face Obstacles in Japan and South Korea*, CHRON. HIGHER EDUC., Aug. 12, 2005, at 42.

¹²⁶ See *Law School Measures Stir Controversy: Universities Oppose Panel's Decision to Limit Number of Students*, *supra* note 125.

the Ministry of Education and Science in Japan approved every law school that satisfied the established criteria and qualification procedures, resulting in an approved capacity of approximately 6000 students per year – twice the projected limit of 3000 new attorneys per year. This approach places the burden on the new law schools to develop quality professional legal education programs and not to become university-based versions of cram schools. For this approach to succeed, we believe that either the bar passage rate has to be higher, or, as some have argued, evaluation or accreditation bodies will need to favor law schools that focus on “graduating legal professionals capable of meeting new demands” and able “to think independently as professionals” rather than graduates “good at answering questions on paper.”¹²⁷ In either case, we believe that clinical education is essential to prepare attorneys to meet the challenge of today’s legal profession and to reform the justice system in Japan.

As this article is written, we have had only two and a half years of experience with the new law schools and clinical education in Japan. There are many difficulties still to face in this transformation, even assuming that the Ministry of Justice, judges, bar associations, and attorneys eventually learn about and support clinical legal education. However, we are convinced that clinical legal education is highly effective in educating future attorneys about the practice of law. Only clinical programs afford an opportunity for students to learn the ethos and soul of legal practice by actually engaging in such practice under the close supervision of clinical faculty who are experienced practitioners. By representing real clients with legal problems, law students in Japan’s clinical programs are beginning to learn how to analyze the legal issues presented by the clients, how to communicate with these clients, and how to solve their clients’ problems. There is no substitute for this clinical training, even with the continued existence of the Legal Training and Research Institute.

¹²⁷ *Evaluation Organizations Is a Key for Reform*, INT’L HERALD TRIB. (HERALD ASAHI), Nov. 25, 2003.