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Adjusting Course: Proposals to Recalibrate Japan's Law Schools and Bar Exam System

By ERIC C. SIBBITT*

The introduction of new graduate law schools and a new bar exam system in 2004 as part of a broad-based reform of the legal system has transformed the process of minting new lawyers in Japan. It has diversified the legal profession, reoriented legal education more to educating lawyers, resulted in the opening of more than 70 new law schools and increased the number of lawyers in Japan.

Unfortunately, the new system has not yet fully achieved its lofty ideals and there are signs that progress is reversing course. Law school enrollment has decreased dramatically in the past few years, some of the new law schools are shutting their doors, some new graduates are finding difficulties securing jobs, and the initial spike in diversity represented by matriculating students with prior career experience or nonlaw undergraduate degrees has since been on a steady downward path. Some have also suggested that the quality of lawyers has decreased, and that the legal profession in Japan has become a less attractive professional vocation.¹

Failure of the new system to fully achieve its objectives may be in part traced to compromises that introduced the new law school and bar exam system without eliminating redundant or competing legacy components of the old bar exam and legal education systems,

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1. For a range of opinions from practicing attorneys on the reforms, see, e.g., Bruce E. Aronson, *The Brave New World of Lawyers in Japan Revisited: Proceedings of a Panel Discussion on the Japanese Legal Profession After the 2008 Financial Crisis and the 2011 Tohoku Earthquake*, 21 PAC. RIM L. & POL'Y J. 255 (2012).

as discussed further below. While it may be too early to adequately judge the success or failure of the new system,² this article provides specific recommendations to eliminate legacy components of the old system in order to better enable legal education to achieve stated objectives and serve the needs of Japanese society.

I. Primary Goals of the New Law School and Bar Exam System

The new graduate law school and bar exam system was introduced as a critical component of a broad-based overhaul of the criminal and civil justice system in Japan. The reforms were based largely on the recommendations in the 2001 report of the Justice System Reform Council (JSRC), an advisory council established under the auspices of the Japanese cabinet in 1999.³ Primary goals of the new law school and bar exam system were to both increase the number and quality of new lawyers. To achieve those goals, graduate law schools were established, thereby introducing the American model of post-undergraduate professional legal study prior to sitting for the bar exam.⁴ As discussed in more detail below, among other things, the reforms sought to:

- promote diversity in the legal profession;
- encourage the best and brightest to pursue a career in law;
- enable lawyers to contribute to society both in and beyond the courtroom; and
- improve the quality of lawyers by improving the legal education process.

2. There are a number of articles evaluating the relative successes and failures of the new law school and bar exam system. See, e.g., Shigenori Matsui, *Turbulence Ahead: The Future of Law Schools in Japan*, 62 J. LEGAL EDUC. 3 (2012); Takahiro Saito, *The Tragedy of Japanese Legal Education: Japanese American Law Schools*, 24 WIS. INT'L L.J. 197 (2006); and Mark D. West, *Making Lawyers (and Gangsters) in Japan*, 60 VAND. L. REV. 439 (2007).

3. The Justice System Reform Council, *Recommendations of the Justice System Reform Council for a Justice System to Support Japan in the 21st Century*, June 12, 2001 [hereinafter *JSRC REPORT*], available at <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html>.

4. See Saito and West, *supra* note 2. Prior to the reforms, graduate legal faculties existed primarily for the purpose of educating legal academics, but not for the purpose of training future lawyers.

A. Promoting Diversity in the Legal Profession

The legal profession in Japan represented a relatively narrow band of Japanese society. Most lawyers in Japan were graduates of undergraduate law faculties.⁵ Roughly three quarters of bar-passers graduated from the same ten undergraduate law faculties.⁶ Because only a small, fixed quota out of a large pool of applicants was allowed to pass the bar exam each year, substantially all lawyers were by definition super elite test takers who were among the top 2% to 3% of the annual bar exam.⁷ After passing the bar exam, all aspiring lawyers were then educated for 18 months (two years until 1999) at the same school, the government-run Legal Training and Research Institute (LTRI), then Japan's only professional school for producing lawyers. The LTRI curriculum is oriented primarily toward creating judges, public prosecutors and general-practice litigators.⁸ In addition to LTRI lectures, LTRI students did three month field rotations in a prosecutor's office, a law firm, a criminal court and a civil court.⁹ LTRI graduates then entered the legal profession as career judges, public prosecutors or practicing attorneys. The small pool of lawyers itself also limited the potential for diversity within the legal profession. For many years only 500 new lawyers were created each year in the entire country, with that number gradually being increased to 1,000 lawyers in 2001.¹⁰ As of March 2004 (prior to implementation of the new law school system), there were 20,224 attorneys in Japan and 87.9% of the attorney population was male.¹¹

The new law school and bar exam system sought to both increase the number of lawyers and introduce greater diversity into the bar. The new system initially targeted 3,000 new lawyers

5. Setsuo Miyazawa, *Law Reform, Lawyers, and Access to Justice, in JAPANESE BUSINESS LAW* 46 (McAlinn ed., 2007).

6. West, *supra* note 2, at 441.

7. Matsui, *supra* note 2, at 6.

8. West, *supra* note 2, at 440. For a description of the curriculum, see www.courts.go.jp/english/institute/index.html (last visited Jan. 11, 2013).

9. Hisashi Aizawa, *Japanese Legal Education in Transition*, 24 WIS. INT'L L.J. 131, 146 (2006).

10. Miyazawa, *supra* note 5, at 48-49.

11. JAPAN FEDERATION OF BAR ASSOCIATIONS, WHITE PAPER ON ATTORNEYS (2011), at 13, available at <http://www.nichibenren.or.jp/en/about/whitepaper.html> (last visited Jan. 15, 2013).

annually by 2010.¹² The JSRC did not expressly define diversity in its recommendations, but a stated goal of the reforms was to increase diversity in the legal profession by encouraging mid-career professionals with varied work experience and nonlaw undergraduates to pursue law licenses.¹³ The JSRC Report expressed the view that “legal profession in the 21st century should include a wide variety of people who have learned academic areas other than law, such as economics, science and mathematics, and medicine.”¹⁴ The JSRC Report even encouraged an affirmative action policy of sorts by suggesting that the new law schools should reserve a certain number of seats for graduates of nonlaw faculties and people with working experience.¹⁵

The new law school system sought to achieve these goals by providing aspiring lawyers with a more realistic path to success. Increases in the number of lawyers implied higher bar passage rates, initially targeted at 70% to 80% for those who made the commitment to a graduate law school education.¹⁶ The appeal of law to students who did not major in law as an undergraduate was broadened by providing a three year path to a law degree, while undergraduates with undergraduate law degrees could opt for a shorter two year path.¹⁷

Initially, the new law school and bar exam system demonstrated impressive success in terms of increasing diversity. In its first year, more than 50% of new students had prior work experience and approximately 40% came from nonlaw undergraduate backgrounds.¹⁸ In terms of gender diversity, 16% of the attorney population was female as of March 2011, an increase

12. JSRC REPORT, *supra* note 3, Ch. I., Pt. III, 1.1 (*Substantial Increase of the Legal Population*).

13. *Id.* Ch. III, Pt. 2.2(2)(c) (selection of applicants).

14. *Id.* Ch. II, Pt. 2.2(3)(d) (educational content and methods).

15. *Id.*

16. *Id.*

17. *Id.* Ch. III, Pt. 2.2(3)(b) (standard training term).

18. Chuo Kyoiku Shingikai Daigaku Bunkakai; Hōka Daigakuin Tokubetsu Iinkai, [Special Committee on Law Schools, University Division, National Education Advisory Council]; Hōka Daigakuin no Genjo ni Kansuru Data [Data regarding Law School Conditions] (Jan. 30, 2012) [hereinafter Law School Data], available at http://www.mext.go.jp/b_menu/shingi/chukyo/chukyo4/012/siryo/_icsFiles/afieldfile/2012/02/14/1315904_2.

from 12.1% prior to implementation of the new law school system.¹⁹

Since that first year, however, the percentage of students enrolling mid-career is roughly a third of its peak and the number of nonlaw faculty graduates has roughly halved from its high point.²⁰ The number of students passing the bar exam dropped to 23.5% in 2012 (still better than 2% to 3% under the old exam) and the number of new attorneys has fallen far short of the envisioned 3,000 new attorneys annually by 2010, with just 2,063 attorneys passing the 2012 exam.²¹

These trends are troubling. Japan needs a more diverse bar with more lawyers with multidisciplinary backgrounds. Japanese corporations seek lawyers with more specialized expertise, such as lawyers with engineering backgrounds that can offer multidisciplinary perspectives on complex intellectual property issues or lawyers with life science backgrounds that can ably negotiate life science licensing transactions. The reforms were in fact motivated in part by substantial pressure from the Japanese business community which viewed the legal service market as inadequate.²² Similarly, mid-career employees from corporations may be more attuned to the way law intersects with business operations, while students with nonprofit experience may have better insights on how to use the law as a tool to achieve positive social change. As a result of the shortage of specialized professionals with multidisciplinary backgrounds, Japanese multinational corporations sometimes turn to more specialized foreign lawyers to assist them on complex legal matters that could be done in theory by Japanese attorneys if there were sufficient numbers of Japanese attorneys with the requisite background.²³ Systemic changes are needed to diversify the legal profession and more effectively serve the legal needs of Japanese society.

19. WHITE PAPER ON ATTORNEYS, *supra* note 11, at 13. As the population of female attorneys has gradually increased over time, it is difficult to isolate any specific effect of the new law and bar exam on gender diversity.

20. Law School Data, *supra* note 18.

21. *Id.*

22. See Miyazawa, *supra* note 5, at 49-53.

23. See, e.g., Matsui, *supra* note 2, at 9.

B. Encouraging the Best and Brightest to Pursue Law as a Vocation

Improving the quality of lawyers was also a central objective of the reforms.²⁴ In addition to quality of the legal education process itself, the quality of lawyers depends on the qualifications of students pursuing legal careers. Gifted and ambitious students have many career options. Assuming a certain amount of rationality among aspiring lawyers, the pool of potential lawyers is likely to be smaller if the time it takes to become a lawyer is longer, if the costs of pursuing a law license increase (e.g., through lost opportunity costs and tuition) and if there is increased uncertainty of obtaining a law license after committing substantial time, effort and expense.

Under the old system, students could take the bar exam even before graduating from college, which made the opportunity of at least registering to take the bar exam accessible. In reality, however, a law license was far from obtainable to the overwhelming majority of aspirants. Only 2% to 3% actually passed the exam each year.²⁵ Even successful applicants took an average of over six years to pass.²⁶ Substantially all applicants paid to attend bar exam preparatory schools leading to the so-called "double school" phenomenon of attending (or skipping) undergraduate university classes to attend bar exam preparation courses.²⁷ The fact that lawyers had a monopoly on certain areas of legal practice along with the limitation on the number of lawyers did, however, ensure that those who passed were well positioned to enjoy job security, comfortable incomes and high social status.

The new law school and bar exam system narrowed the pool of persons able to take the bar exam on the front end by generally imposing the requirement of two to three years of law school education. The new system was intended to broaden the base of practicing lawyers by making a law license easier to obtain through increasing the bar passage rate and appealing to mid-career professionals and nonlaw undergraduate majors. The potential of the new system, however, has been limited by bar passage rates that

24. JSRC REPORT, *supra* note 3, Ch. I, Pt. 3.2(2).

25. Katsumi Yoshida, *Legal Education Reforms in Japan, Background Rationale, and the Goals to Be Achieved*, 24 WIS. INT'L L.J. 210, 211 (2006).

26. Matsui, *supra* note 2, at 6.

27. JSRC REPORT, *supra* note 3, Ch. III, Pt. 2(2) (Development of a New Legal Training System).

are far below goals. Reports that new lawyers have difficulty finding employment have also been discouraging.²⁸ The result has been a significant decrease in law school applicants in recent years.²⁹ To help ensure that sufficient numbers of high quality students aspire to pursue legal careers, the new law school and bar exam should be recalibrated to reduce the opportunity and financial costs of seeking a law degree.

C. Broad Contribution of Lawyers to Society

A stated objective of the reforms was to obtain a legal profession that “forms a broad class and plays an active role in various fields of society.”³⁰ The number of lawyers in Japan has been limited in part out of a belief that the role of practicing attorneys should be reserved primarily for those involved in litigation. Japan has less of a tradition of licensed lawyers practicing in non-litigation areas compared to attorneys in the U.S. or U.K.³¹ In the American legal education model, which served as an influential model of the reforms, a law school education is seen as training for a variety of career options with lawyers represented at the highest level of many professions, including both candidates in the recent presidential election, CEOs and general counsel of major corporations, leaders of nonprofit organizations, media personalities, university presidents and successful entrepreneurs. The ability of the new law school in Japan to enable broader contributions in Japanese society depends in part on increasing the number of lawyers, the diversity of their backgrounds and making law an appealing option for students. This in turn requires dismantling systemic impediments to those objectives as discussed further below.

D. Improving the Quality of Legal Education

Under the old bar exam system, legal education was limited to what was gleaned from a generalist undergraduate legal education

28. See, e.g., Miki Tanikawa, *A Japanese Legal Exam That Sets the Bar High*, N.Y. TIMES (July 11, 2011), http://www.nytimes.com/2011/07/11/world/asia/11iht-educLede11.html?pagewanted=all&_r=0.

29. Law School Data, *supra* note 18.

30. JSRC REPORT, *supra* note 3, Ch. I, Pt. 3(2)(2) (How the Legal Profession Supporting the Justice System Should Be (Expansion of the Human Base)).

31. HIROSHI ODA, JAPANESE LAW 95 (2d ed. 1999).

taught by legal academics that were not practicing lawyers, bar-exam specific knowledge and test taking techniques from bar exam preparatory schools and self-study and apprenticeship-focused training at the LTRI.³² Because of the small, fixed quota of attorneys permitted to pass the bar each year, students gave priority to acquiring techniques to pass the bar exam.³³ Law firms recruited out of the LTRI with the knowledge that candidates had already passed the bar exam. In light of the scarcity of lawyers, law firms looked primarily at when the bar exam was taken, how many times it was taken and the undergraduate university attended, with little regard for grades (and accordingly incentive for students to engage in the classroom).

The JSRC proposed the introduction of graduate law schools in part to combat this focus and provide a more integrated education linking undergraduate education, the new graduate law schools with practical training in the LTRI.³⁴ The new law schools were tasked with better bridging theory and practice, offering more diverse course offerings, including transactional courses, use of the Socratic method and more interactive teaching styles and making clinical education available.³⁵

The quality of legal education varies from institution to institution and what should constitute appropriate courses and teaching styles for a quality education should be a subject of ongoing debate and constantly refined. It is important, however, that this debate have the systemic freedom to flourish. One positive change is that grades now matter in the recruiting process, thereby incentivizing students to engage in the classroom. Recruiting now starts in law schools for internships and, with bar passage far from a certainty, firms look to grades as a predictor of success on the bar exam.

The ability of law schools to focus on professional training, however, is mortally threatened by the *de facto* continued restrictions on the number of applicants allowed to pass the bar exam discussed

32. For an overview of the old system, see Kahei Rokumoto, *Legal Education, in LAW IN JAPAN: A TURNING POINT* 110-215 (Daniel H. Foote ed. 2007).

33. JSRC REPORT, *supra* note 3, Ch. III, Pt. (1)(2)(3) (Development of a New Legal Training Systems).

34. JSRC REPORT, *supra* note 3, Ch. III, 2(1)(c) (Basic Principles in Designing the System).

35. See, e.g., Matsui, *supra* note 2, at 11-18.

below. Under the old system, there was a fixed quota of applicants that were allowed to pass the bar exam. The new exam promised more lawyers and higher passage rates, but the number of new law schools and law school students greatly exceeded expectations, leading to lower bar passage rates.³⁶ The uncertainty resulting from low bar passage rates hampers the ability of law schools to focus on educating lawyers. If bar passage rates are low and law faculties are judged primarily on the ability to generate lawyers that pass the bar, law schools may focus on educating students to pass the bar exam, rather than the tools needed to succeed as a legal professional. If a law school education does not create value beyond passing the bar exam, then it is little more than a bar exam preparatory school.

II. Needed Reforms

Implementation of the following proposals would better align the law school and bar exam system with serving the above goals.

A. Eliminate the LTRI (or Make it Optional)

The continued existence of the LTRI, when taken together with the new law school requirements, acts as a disincentive for students to pursue a law license by lengthening the period of time required to become a lawyer and increasing its cost. Prior to the reforms, the LTRI was the only source of formal professional legal education required to become a lawyer. Because formal education of lawyers was otherwise in effect limited to a generalist curriculum as an undergraduate law major and test-taking techniques and legal knowledge acquired from private bar preparation schools and self-study, the LTRI arguably filled an important gap in professional legal education. The LTRI is highly regarded by many Japanese practicing attorneys for providing practical training from practicing attorneys. Because top LTRI students at the government-run LTRI were viewed as public servants, LTRI students previously even received salaries from the government to attend.

Curiously, however, the introduction of graduate law schools did not mean the end of the LTRI.³⁷ The new law school and bar exam system added two to three years of formal legal education yet

36. Matsui, *supra* note 2, at 11.

37. The Ministry of Justice and Supreme Court opposed abolishment of LTRI. See Matsui, *supra* note 2, at 11.

only shortened the LTRI period by six months to 12 months from 18 months. Students also continue to rely on preparatory schools to maximize chances of passing the bar. The net effect is to further extend the period required to become a lawyer, assuming of course that students are ultimately able to pass the bar exam at all. Moreover, in addition to the lost opportunity costs of a protracted formal legal education, the LTRI stipend has been eliminated, thereby increasing the economic costs of pursuing a career as a lawyer.

The curriculum of the LTRI is still heavily weighted toward creating litigators for judges and prosecutors, making it less useful for attorneys that aspire to make contributions outside of the court room.³⁸ If LTRI continues to serve a valuable function, law schools are arguably failing in their mission of professional education. The LTRI should be eliminated and law schools should perform the same professional education function through exposure to practicing lawyers, legal clinics, externships and coursework.

A solution short of abolishing the LTRI would be to make the LTRI optional, akin to a judicial clerkship in the U.S. or internship with the Department of Justice or other government agency. In the U.S., graduating law students that think a clerkship or internship is a worthwhile experience or enhances their career prospects compete for these opportunities. On the other hand, law students with a different focus or career aspirations need not further delay the start of their careers with experience in an area that may be of limited utility to them. By making LTRI optional, lawyers, employers and the market can then determine if the LTRI performs a useful function, and if so, for which lawyers. If law students or future employers value it, students will continue to enroll. If they vote with their feet, perhaps the institute will change its training to become more relevant to all students or appeal primarily to students focused on the judiciary, government work or litigation. A scaled down LTRI might then even be in a financial position to offer stipends to applicants, perhaps to those most interested in pursuing a career in government or public service.

38. Although the LTRI currently has become more diverse insofar as it does also include components on contract negotiation, cross border matters, intellectual property law, bankruptcy, juvenile and family matters, one wonders why these subjects are not adequately addressed by law school courses.

B. Abolish Law as an Undergraduate Academic Major at Japanese Universities

The introduction of graduate law schools without changing the undergraduate system resulted in the perverse situation that undergraduate law majors may now have 4 years of generalist undergraduate legal education (most law school applicants continue to be law school undergraduates),³⁹ two to three years of graduate legal education and 12 months of the LTRI. This contrasts with three years of graduate legal education in the “overlawyered” United States. In the United States, undergraduate degrees in legal studies are relatively uncommon, where law is viewed as a professional degree that is best undertaken in graduate school after having exposure to another academic discipline. As a result, almost all U.S. lawyers have some degree of a multidisciplinary background by definition. In Japan, however, the continued parallel existence of an undergraduate law degree acts as a structural impediment to the diversification of the legal profession.

To promote a more diverse legal profession, law as an undergraduate major should be abolished. This is not to say that exposure to law should not continue to be a part of a well-rounded undergraduate liberal arts education. Undergraduate law faculties should be transitioned into closely related political science, public policy or other academic functions. Abolishing undergraduate law faculties would diversify the legal professional in a single stroke.

C. Eliminate the Undergraduate Law Major Shortcut to Becoming a Lawyer

As an interim measure to the abolishment of undergraduate law faculties, the special accommodation allowing undergraduate law majors the option to go to two years of law school instead of three, while nonlaw undergraduate majors must attend for three years, should be eliminated. While this has the benefit of allowing non-law undergraduate majors to “catch-up” and eliminated potential redundancies in legal education for students with undergraduate law degrees, it systemically rewards law school undergraduates who pursue undergraduate law degrees and puts non-law school majors on a longer path, thereby acting as a disincentive for lawyers with diverse academic backgrounds to

39. Law School Data, *supra* note 18.

pursue legal careers. An alternative to this approach would be to shorten law school to two years for everyone and allow non-law majors to attend a one-year preparatory course solely at their election.

D. Eliminate the Three Strikes You're Out Approach to the Bar Exam

Under the old bar exam, even for successful applicants, it took an average of six years of trying to pass the bar exam.⁴⁰ This resulted in a class of youth spending valuable years of their lives preparing to pass a single standardized test, with the overwhelming majority never successfully passing the bar exam. Often these aspirants worked at convenience stores or other part time jobs, attended private bar exam preparatory schools and lived off of or with their parents at a time when they could have been launching alternative careers.⁴¹ To address this problem, the new law school and bar exam system required that law school graduates could only take the bar exam three times in the five years following law school graduation. This "three strikes you're out" policy was intended to combat this problem, and to force unsuccessful test takers to choose a different path to success.⁴²

While the three strikes policy helps put an end to this problem, it acts as a disincentive to pursue a career as a lawyer. With the exception of the "law school bypass test" discussed below, lawyers cannot even take the bar exam for the first time until after finishing two to three years of law school. In addition to the lost opportunity costs of extended formal legal education and costs of law school tuition, being barred from trying multiple times creates greater uncertainty that even if money and time is committed, a license to practice will ever be obtained. The arbitrary "three strikes you're out" limitation may have been less problematic if bar passage rates were the originally contemplated 70% to 80%, but with passage rates closer to 20%,⁴³ it is a significant factor for students to weigh in

40. Matsui, *supra* note 2, at 6.

41. See, e.g., Aizawa, *supra* note 9, at 145.

42. It has also more narrowly been suggested to be motivated by Ministry of Justice's desire to recruit younger prosecutors by forcing older (in the sense of having spent years to pass the exam) applicants out of the pool. See Colin P.A. Jones, *Japan's New Law Schools: The Story So Far*, 27 JAPAN L.J. 248, 249 n.3 (2009).

43. Law School Data, *supra* note 18.

considering law school. Some law school graduates are even deferring taking the test after graduation to have more time to prepare in light of the limited number of opportunities to take the exam.⁴⁴ Although many employers are likely to continue to view multiple failures of the bar exam negatively, graduates of law schools should be permitted to take the exam an unlimited number of times and have the chance to succeed or fail in the job market.

E. Eliminate the Law School Bypass Test

An odd compromise of the new law school and bar exam system is that it is still possible to become a licensed lawyer by passing a special preliminary exam without a law school education. Passing this preliminary exam qualifies a student to take the bar exam. For a transitional period ending with the 2010 exam, lawyers could continue to pass the old standardized exam, arguably a just result for the generation of applicants that had spent years preparing for the old exam. The old exam has now, however, been replaced with a new preliminary exam which allows successful passers of the preliminary exam to take the bar exam without a law degree. 1.8% passed the preliminary exam in 2011 and 3% in 2012.⁴⁵

This sends a very bad message that the ability to score high on the bar exam is in effect a substitute for the education provided through a law school. Why is a law degree no longer necessary if the new standardized test is passed? Does this suggest that law school's sole purpose is to create lawyers that can pass the bar exam? Eliminating the standardized test bypass would help underscore the message that the legal system seeks to train legal professionals rather than simply to train students to pass the bar exam.

44. See, e.g., Tanikawa, *supra* note 28.

45. See MINISTRY OF JUSTICE, Heisei 23nen shihōshiken yobishiken [2011 Bar Examination Preliminary Examination], Sankō jōhō [Reference information], available at <http://www.moj.go.jp/content/000080863.pdf>, and Heisei 24nen shihōshiken yobishiken [2012 Bar Examination Preliminary Information], Sankō jōhō [Reference information], available at <http://www.moj.go.jp/content/000103364.pdf>.

F. Enable Law Schools to Fulfill their Professional Mission by Making the Bar Exam a Test which Measures the Ability to Meet Certain Minimal Legal Standards Rather than Enforces a Quota on the Number of Lawyers

Low bar exam passage rates harm the ability of law schools to fulfill their mission of professional education. If passage rates were the anticipated 70% to 80%, rather than the existing 20% to 30%, both law schools and law students would have greater freedom to pursue aspects of professional education that do not relate strictly to bar passage. Law faculties for their part are incentivized to focus on bar exam subjects to succeed. The pursuit of other elements of professional education that do not relate to the bar exam passage is thus minimalized. If law schools function more as bar exam preparatory schools than as legal professional preparatory schools, the core goal of improving the quality of legal education cannot be met. An important indicia of success of law schools will be whether future employers such as law firms, government and business view the education and training from graduate law schools as creating substantial value independent of likelihood of bar passage.

The bar exam should be a gatekeeper of quality for the legal profession, but rather than simply testing the achievement of a certain amount of legal knowledge (and what that standard should be is a valid subject for debate), bar exam passage continues to be influenced by restrictions on the number permitted to pass. Restrictions have been justified in part as a result of the limited number of seats in the LTRI through which all new lawyers must still be funneled.⁴⁶ As discussed above, this artificial gatekeeper should be abolished and LTRI capacity should not be used as a proxy for determining qualification to practice law. The Japanese bar, which has a vested interest in maintaining high fees and limiting competition from new lawyers, has also called for limiting the number of new attorneys,⁴⁷ invoking insufficient demand for legal services. The bar exam should not be used as an *ex ante* device to regulate full employment of lawyers.

46. Matsui, *supra* note 2, at 19-20.

47. JAPAN FEDERATION OF BAR ASSOCIATIONS, *Hōsō jinkō seisaku ni kansuru teigen* [Proposal Regarding the Policy on the Size of the Legal Profession], Mar. 15, 2012, available at <http://www.nichibenren.or.jp/activity/document/opinion/year/2012/120315.html> (proposing to reduce the number of bar passers to 1,500 or fewer).

Suggestions that new lawyers are of lower “quality”⁴⁸ have also been invoked as a reason to cut back on the number permitted to pass. Even assuming such assertions have any validity, criticism should be directed at the improving quality of legal education provided by new law schools and the effectiveness of the bar exam itself in measuring which attorneys will be high quality lawyers. If the quality legal education process itself is at fault, that should be remedied through curricular reform and empowering law schools to focus on their mission of professional education. It may be that the bar exam should be reformed or even broadened to seek to measure a wider range of skills, including performance tests.⁴⁹ However, while the bar exam may be useful in demonstrating the achievement of a certain amount of legal knowledge, a standardized test by itself cannot hope to screen for all the attributes and experience required to be a successful attorney. On the other hand, some have in effect suggested a lowering of standards in that a law license should be more like a driver’s license.⁵⁰ Rather than only allowing the highest scorers to drive, everyone that has shown the ability to drive safely should be permitted to drive. What the minimum qualifications should be is an important subject for debate, but if that standard is met, lawyers should have the freedom to make their own success in the legal market rather than being culled in advance simply due to LTRI capacity limitations or concerns of full employment of new lawyers.

If Japan needs fewer practicing lawyers and law students, and future employers do not value the training from the new law schools (whether as practicing attorneys in law schools or in businesses, non-profit, academia or otherwise), it may be appropriate that fewer people seek to enroll in law school, law schools accept fewer students, and some law schools shut down to establish an appropriate equilibrium. Lawyers not able to find positions with established legal employers may be forced to become more entrepreneurial and find new ways to contribute to the role of law in Japanese society. For example, more lawyers may seek to join in-house legal departments or nonprofits. Perhaps Japan could develop a more robust plaintiff’s bar to assist underrepresented

48. E.g., Tanikawa, *supra* note 28.

49. See Daniel H. Foote, *The Trials and Tribulations of Japan’s Legal Education Reforms*, 36 HASTINGS INT’L & COMP. L. REV. 369 (2013).

50. See, e.g., Aronson, *supra* note 1, at 263.

parties in litigation or advisory matters or enforcing arguably under-enforced legal norms in environmental law or securities law.

III. Conclusion

While the new law school system has put a career as a lawyer within reach of a broader segment of Japanese society, the introduction of the new system without eliminating overlapping features of the old system creates systemic disincentives to fully achieving the goals of the reform. Implementing the above reforms would help better calibrate legal education and bar system in Japan to diversify it, encourage the best and brightest to become lawyers, focus law schools on producing high caliber attorneys and enable Japanese attorneys to better contribute broadly to Japanese society.