

# Transferability of Experiential Legal Education and the Reform of Professional Legal Education in Japan

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## I. Introduction<sup>1</sup>

This article discusses the transferability of experiential legal education, namely, clinical legal education, and the reform of professional legal education in Japan. The author is aware of the shift in terminology from “clinical legal education” to “experiential legal education” in the United States around 2010, though they are interchangeably used in many cases. While “clinical legal education” tends to focus on legal clinics, the “experiential legal education” encompasses a wider pedagogy to teach law in legal clinics, externships, simulations, classroom components, and in a hybrid of these formats. The author uses “experiential legal education” more often than “clinical legal education. The latter terminology is used to mention the historical development of the pedagogy in Japan, because “clinical legal education” or *Rinsho Hogaku Kyoiku* was the term used when the pedagogy was introduced in the beginning stage of its studies.

In the past 16 years, Japan learned many lessons in professional legal education. The author will examine here the design of the professional law school system that started in 2004 in Part II, goals set for launching the professional law school system in Part III, the transferability of experiential legal education in the professional law school system in Part IV, challenges

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of experiential legal education in the recent reform to change the core portion of the professional law school system in Part V, and conclude in Part VI.

## **II. The Design of Professional Law School System in Japan**

In 2004, Japan launched 72 new professional law schools and in the following year two additional law schools started. In total, 74 professional law schools came to operate. This new type of law school was modeled after American law schools. That is, graduates with an undergraduate bachelor's degree in any major field are eligible to apply to these newly launched professional law schools in Japan. They have a three-year curriculum designed to confer a juris doctor degree. Their curricula consist of not only doctrinal courses but also law practice courses and experiential legal education courses with goals to teach legal theories, skills, and professional values by the integrated pedagogy.

These professional law schools were established on top of the undergraduate faculties of law that developed throughout Japan's modernization history since the Meiji Restoration in 1868. In the post-World War II era, the ordinary track to become a licensed lawyer in Japan before the professional law school system was four-year undergraduate legal education at universities and passing the national bar exam and the two-year (later shortened for a year and a half) judicial apprenticeship training administered by the Supreme Court.

The professional law school system made three breakthroughs in legal education in Japan. First was the widening of the eligibility to be admitted to the professional law school for those graduates with a bachelor's degree in any major field of studies. Second was the requirement of 20% of law school faculty members to be law practitioners. It was designed to make the law school curriculum more practice-oriented rather than with doctrinal orientation. Third was that the juris doctor degree conferred by the professional law school was made the requirement to take the national bar examination. Thus, the postgraduate and professional university education was made an integral part of the professional legal education in Japan. Before the start of professional law school education in 2004, no university education was required to be licensed to practice law in Japan.

The introduction of the professional law school system was the most drastic reform of legal education in the post-World War II. The sheer number of 74 new professional law schools itself showed the width of the reform. It was unprecedented to appoint the 20% law faculty members from law practitioners and to incorporate post-graduate professional university education in the process of developing lawyers in Japan<sup>2</sup>.

### **III. Goals of the Professional Law School System**

The professional law school system had high-spirited goals: the increase of the yearly number of bar-exam passers from 1,500 to 3,000 in ten years and improving the bar-exam passing rate to 70 to 80%, and producing well-trained lawyers to more diversified fields of law practice, not limited in the litigation area, and making the education of lawyers, not just a point of selecting students by the bar exam but the process of developing lawyers who can contribute to the realization of the “rule of law” in Japan<sup>3</sup>.

In terms of numbers, the goal of increasing the number of lawyers in Japan through the professional law school system has not been attained. The number of bar-exam passers was 1,502 and its passage rate was 33.6% in 2019. The largest number of bar-exam passers since 2007 was 2,102 in 2012 and the highest passage rate 40.2% in 2007. With the outcry of the difficulty of finding employment by newly licensed lawyers educated via the professional law school system, the number of bar-exam passers was tightly and artificially controlled by the national bar exam committee<sup>4</sup>.

Since the number of newly filed cases in court dockets increased only little by little, annually by one percent, with the total number of 3.6 million cases in 2018<sup>5</sup>, employment opportunities in litigation-centered law firms

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<sup>2</sup> There are many publications on the professional law school system. An article by Dan Rosen, *Japan's Law School System: The Sorrow and the Pity*, 66 J. LEGAL EDUC. 267 (2017) offers an illuminating account of the system.

<sup>3</sup> Recommendations by the Justice System Reform Council, June 12, 2001, available in English at [https://japan.kantei.go.jp/policy/sihou/singikai/990612\\_e.html](https://japan.kantei.go.jp/policy/sihou/singikai/990612_e.html).

<sup>4</sup> Data available in Japanese at the website of the Ministry of Justice, [http://www.moj.go.jp/jinji/shihoushiken/jinji08\\_00026.html](http://www.moj.go.jp/jinji/shihoushiken/jinji08_00026.html) (last visited July 7, 2020).

<sup>5</sup> Data available in Japanese at the website of the Supreme Court of Japan, <https://www.courts.go.jp/app/files/toukei/758/010758.pdf> (last visited July 7, 2020).

did not increase. Yet, there is a significant increase in the demands for in-house lawyers in Japan. In 2001, the number of lawyers registered as in-house lawyers was just 66, but it increased to 2,418 in 2019. Those in-house lawyers are employed in private business corporations and public interest/non-profit organizations<sup>6</sup>. The number of those in-house lawyers in 2019 comprised approximately 5.9% of the total 41,095 lawyers registered with all the bar associations in Japan. More than half of those in-house lawyers can be imputed as graduates of professional law schools. In this regard, the professional law school system contributed to the diversification of the legal profession in Japan.

The increased supply of new lawyers via professional law schools facilitated to diversify geographic areas where lawyers are employed. Most of all, it helped to solve the problem of the “zero/one” district, that is, an inner district of a district court venue where no lawyer or one lawyer was available for legal representation. Before the start of the professional law school system, for example, in 1996, there were 78 “zero/one” districts. There existed a conspicuous imbalance between the scarcity of legal services in rural areas and the high availability of those provided by lawyers in urban areas. With concerted efforts by the Japan Federation of Bar Associations (JFBA) and the Ministry of Justice, 109 Himawari Fund law offices and Japan Legal Support Center were established to provide legal services in less populated areas. JFBA announce the end of “zero/one” districts in 2011<sup>7</sup>. High-spirited lawyers educated via the professional law school system moved to these areas to support the legal infrastructure of the “rule of law” throughout Japan.

Concerning the goal of making legal education the process of developing lawyers rather than a point of selecting students to be a lawyer by the bar examination, the professional law school system elaborated to adopt non-conventional methods of teaching law to students. The pedagogy of experiential legal education, or clinical legal education, was such a method. The case method and the Socratic method were well known and adopted

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<sup>6</sup> Date available in Japanese at the website of Japan In-House Lawyers Association, <https://jila.jp/wp/wp-content/themes/jila/pdf/transition.pdf> (last visited July 7, 2020).

<sup>7</sup> JFBA announcement in December 2011, available at <https://www.nichibenren.or.jp/document/statement/year/2011/111219.html> (last visited July 1, 2020).

by law teachers at undergraduate faculties of law when professional law schools came to operate in 2004. Yet, clinical legal education was little known. Some Japanese scholars who studied at American law schools in the 1970s made good observations on this method<sup>8</sup>. Nonetheless, there was a solid notion in Japan that the doctrinal instruction should come first and the practice training should be offered next. This division of labor was reinforced by the judicial apprenticeship training in Japan. Though “Bridging Theory and Practice” was a motto of the professional law school system by the pedagogy and curriculum, the idea of integrating the two did not clearly come to the mind of law teachers. The idea of integrating knowledge, skills, and professional values came to Japan only after the introduction of the professional law school system. The Carnegie report on the law school education gradually shed light on how to apply the experiential legal education. Educating lawyers in the academic environment was the main message that reached the mind of law teachers in Japan through the pedagogy of clinical legal education or experiential legal education<sup>9</sup>.

#### **IV. Transferability of Experiential Legal Education to Japan**

##### **1. Introduction of Clinical Legal Education to Japan**

The pedagogy of clinical legal education was little known before the start of the professional law school system in Japan. Nonetheless, the Recommendations of the Justice System Reform Council made public in 2001 referred to the idea and the system of clinical legal education in Japan. The pedagogy became a prevalent method of teaching at professional law schools soon after the professional law school system began operating in 2004<sup>10</sup>. The national survey on legal clinics conducted in 2008 found that

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<sup>8</sup> HIDEO TANAKA, *AMERIKA NO SHAKAI TO HO: INSHOKITEKI SUKECCHI* (American Society and Law: Personal Sketches) (1972) made a good observation on developments of clinical legal education through legal aid services in the United States.

<sup>9</sup> WILLIAM M. SULLIVAN, ANNE COLBY, JUDITH WELCH WEGNER, LLOYD BOND, LEE S. SHULMAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

<sup>10</sup> Peter A. Joy, Shigeo Miyagawa, Takao Suami & Charles D. Weisselberg, *Building Clinical Legal Education Programs in a Country Without a Tradition of Graduate Professional Legal Education: Japan Educational Reform as a Case Study*, 13 *CLINICAL L. REV.* 417 (2006); Matthew J. Wilson, *Clinical Legal Education*

52.7% of all 74 law schools in Japan, namely, 39 schools offered legal clinic courses in which law students offered direct supports or advice to live clients or help-seekers with supervision by licensed attorneys<sup>11</sup>. In 2011, fifteen law firms were established as law-school- affiliated limited liability entities on university campuses. The Japan Clinical Legal Education Association was founded in the wake of rising developments in 2008.

There are definite reasons why clinical legal education rapidly came on the rise. Three major reasons can be identified. First, the guideline of the Ministry of Education and Science to founding a professional law school requires that 20% of faculty members be practitioners. They are called practitioner-professors. They were eager to get involved in clinical legal education. They were the driving force to make the curriculum of the professional law school practice-oriented.

Second is that one of three major formats of clinical legal education, namely, externship, is similar to the long-adopted format of judicial apprenticeship administered by the Supreme Court. The judicial apprentice program took this format to expose trainees to law practice, namely, to show them how lawyers work in practice but not to get them involved in providing legal services. In contrast, externship programs offered by professional law schools tried to get students involved in providing legal services as much as possible. Professional law schools widened the scope of fieldwork to which students were sent. Students were sent not only to law firms but also to legal departments at business corporations, offices of human rights NPO/NGO, and so on. Through this experience, students were able to envision their prospective workplaces beyond law firms.

Third is that legal clinic courses offered at professional law schools tended to incorporate academic components into clinical settings. This type of course offering is something very different from practice training provided at the judicial apprenticeship program which is exclusively conducted by practitioners. Many professional law schools made good efforts to establish teams of teachers composed of academic professors

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*in Japan: A Work in Progress*, at SHUVRO P. SARKER, ED., CLINICAL LEGAL EDUCATION IN ASIA: ACCESSING JUSTICE FOR THE UNDERPRIVILEGED 195-213 (2015).

<sup>11</sup> Hiroyuki Kabashima ed., *Rinshohogaku Zenkoku Kurinikku Chosa* [National Survey of Legal Clinics in Japan], 6 RINSHOHOGAKU SEMINAR [Clinical Law Seminar] 1 (2009).

and practitioner-professors. This integrated team of teachers can bring academic insight into cases they handle with students. Real cases can shed light on weaknesses in theoretical considerations. Clinical courses such as gender law at Ritsumeikan Law School and immigration and refugee law offered at Waseda Law School can serve the social justice mission as well<sup>12</sup>.

## **2. Professional Law School System Faces Difficulties**

Despite the stable growth of experiential legal education in Japan, the law school system itself faces a critical setback. While starting with 72 professional law schools in 2004 and two additional ones in the following year, there are only 47 schools in educational operation in 2020<sup>13</sup>. One can identify three major reasons for this difficulty. First is the tight control of the number of the bar-exam passers. As explained in the earlier portion of this paper, only 1, 512 passed the 2019 bar-exam, which is about the same number as the bar-exam passers just before graduates of the professional law schools became eligible to take the bar exam. Second is the strong opposition from existing bar associations not to increase the number of bar-exam passers to maintain the status quo and the elitist prestige of the legal profession. Third is the failure on the side of professional law schools not being able to get public support by showing that these schools produce lawyers to serve the unprivileged people with problems for whom a little help from a licensed lawyer will make their life much better worth living, not the socially privileged class of people. Professional law schools in Japan have not successfully shown that they are to educate lawyers to support the rule of law and to serve the social justice mission for which the clinical legal education movement originally started in the United States<sup>14</sup>.

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<sup>12</sup> This type of challenging clinical course offerings were examined by Shigeo Miyagawa, *Nihongata Rinshohogaku Kyoiku no Keisei to Tenbo* [Developments and Prospects of Clinical Legal Education in Japanese Version], 85 *Waseda Hogaku* [Waseda Law Review] 1137 (2010). Its shorter version in English is available in Shigeo Miyagawa, *Developments and Challenges of Clinical Legal Education in Japan*, 15 *INHA L. REV.* 21 (2012).

<sup>13</sup> Data available at the official website of Japan Association of Law Schools at <http://www.lskyokai.jp/school/> (last visited July 7, 2020).

<sup>14</sup> More detailed discussion on difficulties Japanese professional law schools face, see Shigeo Miyagawa, Takao Suami, Peter A. Joy, & Charles D. Weisselberg,

## V. Prospect of Professional Legal Education Reform and Challenges of Experiential Legal Education in Japan

### 1. Making the Bar Exam Eligibility Available Before the Law School Graduation in Conjunction with the “Three-Plus-Two” Program

In June 2019, the Japanese Parliament passed a law<sup>15</sup> to amend a core element of the professional law school system. That is, the professional law school was designed to be independent of the undergraduate faculty of law, and it was the graduation from the professional law school that made students eligible to take the national bar examination. Nonetheless, the law was geared to attain two major changes to the professional law school system that started in 2004. The first change is to strengthen the link between undergraduate legal education and professional law school education. It is symbolized in the adoption of the so-called “three-plus-two” program. Namely, those undergraduate law students with high academic credentials can finish the four-year undergraduate legal education in three years and go onto the two-year program at the professional law school. In the original professional law school design, the emphasis was on the diversifying the academic background of legal professionals. Therefore, there was no official linkage between undergraduate legal education and professional law school education. Rather, the detachment of the professional law school system from the undergraduate faculty of law was encouraged. The strong link between undergraduate legal education and professional legal education can be seen as abandoning one of the goals of the professional law school system.

The second change is to make it possible that students at professional law schools can take the national bar exam before graduation. It is

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*Japan's New Clinical Programs: A Study of Light and Shadow*, at FRANK S. BLOCH, ED., *THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE* 105-120 (2011).

<sup>15</sup> Hokodaigakuin no Kyoiku to Shihoshikento no Renkei nikanssuru Horitsu no Ichibukaisei nikanssuru Horitu [Amendments to the Law Regarding the Coordination and Other Related Matters Between Law School Education and Bar Examination], Law No. 44 of June 26, 2019, [https://www.mext.go.jp/b\\_menu/houan/kakutei/detail/\\_icsFiles/afieldfile/2019/06/25/1415450\\_02.pdf](https://www.mext.go.jp/b_menu/houan/kakutei/detail/_icsFiles/afieldfile/2019/06/25/1415450_02.pdf) (in Japanese).



intended to shorten the length of time before the start of judicial apprenticeship training, which is required for one year to be licensed to practice law. Taking the bar exam before graduation means that the last year of professional law school education is interrupted by the preparation for taking it. This will necessarily make students concentrate on memorizing knowledge to be tested by the bar exam. The first and second changes combined are criticized as deteriorating the professional law school to be a cram school with rote memory of narrowly focused knowledge.

Concerns over this educational degrading from the viewpoint of proponents for experiential legal education are such that students will lose incentives to take clinical courses and opportunities to learn professional values with experience. Most of all, ways in which law students learn law will remain ineffective in the old-fashioned lectures and without the experiential pedagogy of teaching knowledge, skills, and professional values in the integrated fashion.

## **2. Challenges of Experiential Education in Japan**

Proponents of experiential legal education need to realize that these challenges are good opportunities in which students in the “three-plus-two” program can take clinical courses at the earlier stage and have more exposure to real cases if the curriculum is carefully designed. Experiential courses or clinical components can be introduced to motivate students to learn substantive courses, understand law deeper, and enhance the retention of knowledge. The earlier students acknowledge these efficient learning effects, the more they will achieve learning results in the “three-plus-two” program. The curriculum should be also incrementally designed for students to acquire lawyering skills in applying their knowledge and understanding of law in real cases or simulated cases, and then to nurture professional values to serve clients and social justice.

It may be idealistic and difficult to make a good preparation for the bar exam while working on real cases in clinical courses. Yet, making the learning process more serious by getting students involved in real cases will make a good preparation not only for the bar exam but also to be a competent lawyer with the commitment to the social justice mission.

## **VI. Conclusion**

The pedagogy of experiential legal education was introduced in Japan as clinical legal education in the early years of the 2000s in preparation for the professional law school system that started in 2004. The professional law school system was designed to provide graduate professional legal education where not only doctrinal courses but also courses on law practice were offered. Clinical legal education was considered as a well-suited method to “bridge theory and practice.” As educational activities developed with clinical legal education, the pedagogy soon became prevalent among professional law schools. It proved to be an effective method of teaching knowledge of the law, training skills of law practice, and nurturing professional values.

As the professional law school system faces the critical difficulty for its existence, professional law schools need to show its competence to educate lawyers for the people and support the rule of law. They need to exert not only academic appeal but also to exemplify their commitment to making society better.