MEMORANDUM

To: Isokawa-san

From: Jessica Marczyszak

Date: June 23, 2010

Re: Japanese and American Legal Education System

Question Presented:

1. What are the characteristics of the American and Japanese legal education systems and how do they both interact with the bar exam?

Discussion:

I. Overview of Structure of American Legal Education

a. Path to becoming a lawyer

The key to understanding the American legal education system and its structure is first gaining an understanding of how Americans view law and the legal system. Americans believe that the law is a social tool and can help to engineer society and alleviate injustice.[1] Therefore, Americans seek lawyers who can (1) solve client's problems and have an ability to adapt and be flexible in a changing society, (2) who are creative and can imagine new ways of structuring ideas, and (3) master legal analysis.[2] The American legal education system attempts to develop lawyers that meet these needs.

[1] Carl Scheider, *Special Issue: Reform in Japanese Legal Education, On American Legal Education*, 2 APLPJ (2001).
[2] Id.

The path to becoming a lawyer begins in the university. Every lawyer must first earn a B.A. or B.S. in any subject other than law.[3] Law is not taught at the undergraduate level and therefore, students here are expected to learn basic skills such as writing and research in a discipline of their choosing. Next, the aspiring lawyer needs to take the LSAT in order to gain entrance into a law school.[4] The LSAT is a standardized test which measures a person's aptitude for learning law. This is not however a test about substantive law. Instead the three areas which are tested include: logical reasoning, logic games, and reading comprehension.[5] The average LSAT score is around a 152.[6] The top tier schools however require scores in 97th percentile, usually around a 169 or higher. After, taking the LSAT a future lawyer must then apply to law school. Law school admission is based primarily on the LSAT score and undergraduate grade point average; however, most schools also take into consideration soft factors like: work experience, leadership roles at undergraduate university, and diversity.[7] Acceptance rates at American law schools vary; however, the top law schools boast acceptance rates in the single digits.

After gaining admission to law school an aspiring lawyer must then complete three years of legal education to gain a *Juris doctor* (J.D.). The general break down of curriculum is similar at most American law schools. The first year of law school consists of a number of required courses which are considered the building blocks of the common law.[8] These normally include: property, torts, criminal law, contracts, civil procedure, and constitutional law. Most schools also require first year students to complete some form of a legal writing and research workshop.

[3] Id.
[4] Id.
[5] *"About the LSAT,"* Law School Admission Council. http://www.lsac.org/lsat/about-the-lsat.asp.
[6] Id.
[7] Carl Scheider, *Special Issue: Reform in Japanese Legal Education, On American Legal Education*, 2 APLPJ (2001).
[8] Id.

During their second year at law school most students are able to choose their own courses. In fact, most law schools after the first year have very few if any required electives.[9] Many students however actually take similar courses such as corporate law, commercial law, tax, business associations, and evidence.[10] After completion of a student's second year of law school most students work for a law firm in a summer associates program. During the third year of law school most students continue to take elective courses. Finally, after three years the law student is able to graduate. After, graduation almost every law student enrolls in a commercial course to study for the bar examination because American law schools do not teach to the bar. Usually, at the end of the summer the aspiring lawyer takes the bar exam and if they pass begins work at a law firm.

b. Method of Teaching in American Law Schools

The American system is actually less formalized then many other systems. American law schools attempt to teach legal doctrine, legal analysis, and legal practice.[11] This differs from other systems which leave the instruction of legal practice to other institutions like the *Referenderat* in Germany.[12] One major aspect of the American legal education system that needs to be understood is that schools do not actually inculcate students with an actual command of the law for specific jurisdictions. This would be impossible in a federal system like America's where there are fifty-three different jurisdictions with differing laws.[13] Also, the practice of law in America is extremely specialized and neither the student nor the schools know the specialty that

[9] Id.
[10] Id.
[11] Id.
[12] Id.
[13] Id.

will be pursued and therefore instead, schools try to teach how to think like a lawyer, i.e. legal reasoning.

The method of teaching in American law school is the Socratic Method. In the Socratic Method the professor leads the discussion but then probes students by asking a series of questions about the case.[14] The series of questions makes student think hard about the case and analyze it more carefully. It also demonstrates to the class what constitutes good and bad legal reasoning. Moreover, the Socratic Method creates an immediate incentive to work hard because it gives the student the instant gratification of success and the embarrassment of failure.[15] Demonstrations of legal reasoning are inadequate and the only way to learn is to practice. This method forces students to actually practice legal reasoning. This method also fosters creative legal arguments by showing to students that there are a plethora of good conclusions.[16]

c. The Bar Exam

1. Admission to the Bar

Most states require attorneys to obtain a J.D. and pass the bar exam to practice law in their jurisdiction. There are fifty-three different jurisdictions in the United States and all have their own bar exam.[17] The overall average passage rate for law schools in 2009 was sixty-eight percent.[18] The bar passage rates, however, vary from state to state. For instance, the 2009 passage rate for both California and the District of Columbia was a mere forty-nine percent

[14] Id.
[15] Id.
[16] Id.
[17] Byron D. Cooper, *The Bar Exam and Law Schools,* 80 Mich. B.J. 72 (2001).
[18] American Bar Association. 2009 Bar Passage Statistics. March 10, 2010. www.abanet.org

where as Illinois reached almost eighty-four percent.[19] The bar passage rate also varies dramatically depending on whether the examiner attended an American Bar Association (ABA) approved law school or a non-ABA approved law school. For example, the bar passage rate for ABA approved examiners in New York was seventy-eight percent where as for non-ABA examiners it dropped to forty percent.

Many states also require potential attorneys to take one or more of the different multi-state tests. The multi-state tests include: the Multi-State Bar Examination (MBE), Multi-State Essay Exam (MEE), Multi-State Professional Responsibility Exam (MPRE), and the Multi-State Performance Test (MPT).[20] The MBE is required by all jurisdictions but Washington and Louisiana.[21] The MBE is a two hundred question, six hour multiple choice exam. The questions come from areas such as: constitutional law, contracts, criminal law and procedure, torts, evidence, and property.[22] The questions are answered by applying fundamental legal principles rather than local or statutory law. Some jurisdictions actually allow attorneys to use their MBE scores to waive into their jurisdiction or transfer it to be used in conjunction with another states bar exam.[23] The states which allow attorneys from other states to waive into their jurisdiction on based solely on MBE score include: Florida, Minnesota, and North Dakota.[24] Most however do allow an attorney to use their old MBE score in conjunction with taking the new jurisdictions bar.

The MEE is composed of a collection of thirty minute essay questions.[25] The test taker is required to choose six out of nine of the questions provided. The essay questions may cover the

[19] Id.
[20] Comprehensive Guide to Bar Admission Requirements, 2010. By, the National Conference of Bar Examiner and the American Bar Association, Section of Legal Education and Admissions to the Bar. 2010.
[21] Id.
[22] Id.
[23] Id.
[24] Id.
[25] Id.

following areas of law: business associations, conflict of laws, constitutional law, criminal law, contracts, civil procedure, evidence, family law, torts, trusts and estates, and the Uniform Commercial Code. This test is required by a number of states; however, popular jurisdictions like New York, California, and Virginia do not require the exam.[26] The American Bar Association allows jurisdictions to decide independently the amount of weight that is allotted to the MEE.[27]

The MPRE is a sixty question one hundred and twenty five minute multiple choice exam. This test is required for bar passage in all but four jurisdictions.[28] Passing scores vary depending on the jurisdiction but range typically between a seventy-five and eighty-six. This test is based on the Law Governing the Conduct of the Lawyers.[29] Finally, there is also the MPT which consists of two, ninety minute skills questions. These questions test skills like: legal analysis, fact analysis, problem solving, resolution of ethical dilemmas, organization and management of lawyering tasks and communication. Many states require this exam as well but states like California or Virginia do not.[30] The MPT was added in 1993 because many believed that the other bar exams did not adequately test fundamental lawyering skills. The MPT was believed to provide valuable supplemental information for making decisions regarding the bar.

Therefore, to gain admission to the bar in many American jurisdictions this requires the passage of several tests, which examine a myriad of different skills. In fact, depending on the jurisdiction a person would have to take five different tests and have a J.D. to gain admission to the bar. Also, even after practicing in one jurisdiction for several years if an attorney wishes to

[26] Id.
[27] Id.
[28] Id.
[29] Id.
[30] Id.

practice in another jurisdiction they will need to obtain another bar admission which could include another round of exams.

2. Proponents of the Current Bar Exam

There are many legal scholars and practitioners who espouse the benefits of a standardized bar exam. First, many believe that the bar exam promotes good preparation.[31] The hallmark of a successful lawyer is proper preparation and in order to pass the plethora of exams needed for bar admission the burgeoning attorney must expend large amounts of time preparing. Second, many assert that general testing gives the students a broad area to pull from so they can pursue a career in whatever area they choose.[32] Most, bar takers have not yet chosen a specialty and therefore an exam that was limited to certain of areas of laws would not be conducive. Third, many proponents admit that the bar examination might influence law school curriculum but argue that is not problematic because schools do not design a curriculum around the subjects tested because the skills needed to pass are the reading, writing, and analytical skills which are learned in law school no matter what the course's subject matter.[33] The bar exam clearly has several attributes and therefore it has currently withstood the test of time.

3. Critics of the Current Bar Exam

The bar passage rate has become a concern for many American law schools and legal scholars in the last decade. Bar passage rates in the last decade have dropped by almost ten percent. This has lead to many legal scholars reanalyzing the bar exam.[34] One of the main

[31] Lorenzo Trujillo, *"The Relationship between the Law School and the Bar Exam: A Look at Assessment and Student Success"* 78 U. Colo. L. Rev. 69 (2007).
[32] Id.
[33] Id.
[34] Id.

criticisms of the current bar exam is that it does not test skills that lawyers often use.[35] For example, one of the main skills of being a competent lawyer is legal research. None, of the current bar examinations including the multi-state exams however include a legal research element.[36] Additionally, many critics complain that the examination does nothing to encourage or test the development of other qualities in applications that may be beneficial to the profession as a whole. These critics normally cite the lack of encouragement for empathy for clients and lawyering ethics.

Others criticize that the exam over emphasizes the memorization of legal doctrine.[37] These critics disparage the commercial bar preparation courses and the student's need to memorize obscure legal doctrine. They cite that a good lawyer should never rely solely in memory in fact in many cases it may be legal malpractice to do so. Instead, a good lawyer needs to conduct research and the bar examination should do a better job of testing this skill. Another often cited point of contention is that bar examination is simply an artificial test taking technique that has little to do with the actual practice of law.[38] Lawyers never actually answer multiple choice questions nor do they have to pick between a set number of solutions. Moreover, some critics disparage the fact that some state bar exams do not require any actual knowledge of that state's law.[39]

Finally, there are numerous critics which believe that the bar exam in problematic because it drives curriculum in law school and admission decisions.[40] They argue that students are forced to concentrate on "bar courses" at the expense of clinical or more specialized courses.

[35] Id.
[36] Id.
[37] Id.
[38] Id.
[39] Id.
[40] Id.

These critics purport that by ignoring clinical courses students are only exposed to the black letter law and not to the soft skills required for the actual practice of law.[41] Also, they assert that the bar exam forces school admissions to put an over emphasis on LSAT scores because the LSAT score is essentially the same type of test as the bar examination.[42] High LSAT scores are an accurate predictor of passage rate of the bar exam. Therefore law schools choose to admit students who score highly because then they have to do less to ensure their students' success on the bar exam. Many claim that this is done at the expense of admitting students who could be good lawyers but are not good at standardized tests.

4. Suggested Alternatives

The recent wave of bar exam critics have attempted to create several possible alternatives to the bar exam. The Public Service Alternative to the Bar Exam (PSABE) is a recent purposed alternative that has gained enormous praises from the critics.[43] The PSABE would be a ten to twelve week evaluation in a local court which would occur right after law school graduation. This would basically consist of a short clerkship that would have an evaluation at the end. Another suggestion is the Community Legal Access Bar Alternative (CLABA), which would be a one year required post-graduate apprenticeship with a newly created charitable organization.[44] Most proponents of both these tests claim that they would be more effective at ensuring competence by evaluating the essential skills necessary for actual legal practice. Criticisms, however, include that there would be no way to standardize each prospective attorney's evaluations or experience. Also the CLABA requires a long period of time of basically free work; many students have large loans to pay off and could not afford a year of low or no income.

[41] Id.
[42] Id.
[43] Id.
[44] Id.

One suggested alternative that has actually been implemented is diploma privilege.[45] Diploma privilege grants a law license to any student who graduates from one of the state's law schools with a certain grade point average. The only state has currently implemented this program is Wisconsin. [46]This policy can also be a tool to incentivize law school students to remain in that state. Another alternative is a combination of new testing ideas.[47] This includes both computers testing and staggered testing. Computer testing would do away with the pen and paper exam. It would also allow the bar examination to test certain skills like research which the current exam is unable to test. This however would be costly because it would require the creation of software and testing materials as well as supplying the computers. Staggered testing is a technique based on the medical board exams.[48] Here the students would be required to pass a series of tests at different points in their legal education in order to gain admission to the bar. This method has the advantage of weeding out students early and assessing students' work over time.[49] Also, depending on the type of exam it would possibly be able to test clinical skills not tested by normal exams. This however would be costly as well and unless the tests are structured differently it would suffer the same shortcomings as the current bar exam.

All in all, however it looks as if the current bar exam is here to stay, at least for the near future. The expense and in ability to standardize many of the proposed solutions limit their usefulness. At best some of these alternatives might be used as an alternatives in a small number of individual jurisdictions. A total overhaul of the bar examination system in the near future is extremely unlikely.

[45] Id.
[46] Id.
[47] Id.
[48] Id.
[49] Id.

d. ABA and The Bar's Influence on Law School Curriculum

One key insight to the structure of the American Legal Education system is that the American Bar Association (ABA) actually sets the standards and Rules of Procedure for the approval of law schools. The American Bar Association is a voluntary professional organization comprised of legal professionals. Therefore, it is basically a group of attorneys which set the standards for law schools. American law schools maintain close ties with practicing attorney's and the ABA because law firms are practically the exclusive employers of American law students.[50] Also, many practicing attorneys and ABA members actively participate in law schools on law school advisory boards, as adjunct faculty, mentors for students, and judging moot competitions.[51] Therefore, there is always an ongoing dialogue between the practicing bar and law schools on how effective they are at preparing their graduates to become practicing attorneys. For example as firms saw an increase in the number of international cases, many law schools also began to add more foreign law courses.

The most common criticism from the practicing attorneys has been the need for law schools to focus more on practical training. This is reflected in the ABA's rules which require accredited schools to offer substantive opportunities for live client or real life experiences.[52] This has in turn led to two recent additions in experiential learning at many American law schools: clinics and practicing attorney's as adjunct faculty.[53]

[50] *"Impact of the Close Relationship between American Law Schools and the Practicing Bar,"* 51 J. Legal Educ. 346 (2001).
[51] Id.
[52] David M. Siegel, *Special Issue: Transnationalize Legal Education "The Ambivalent Role of Experiential Learning in American Legal Education and the problem of legal culture"* German Law Journal, July 1, 2009.
[53] Id.

Clinical education offers an opportunity to apply concepts and skills to real world problems. They also create opportunities for social change and engagement with people who are under-served.[54] There have been several types of clinics implemented in American law schools. First and most popular is the in-house live client clinic.[55] This type of clinic is built around an actual law office located within the law school itself. It provides students with faculty supervised setting in which to learn the law by handling actual cases. The next is externships which place students in professional settings. These are external to the law school and typically place students in law firms, nongovernmental organizations, and government offices or agencies. This is possible because every state has a student practice rule, which permits students to work on real cases under supervising faculty. Here a student can earn credit while working with clients in a real business setting. Both of these types of clinics include transactional and litigation. Some also specialize in certain areas of law such as domestic violence, tax, or international human rights.[56]

The other response from American law schools due to pressure from the legal practice to better prepare law students for legal practice was the addition of adjunct faculty. Adjunct faculty are actually practicing attorneys or judges who teach part time at a law school in their area of specialty. Adjunct faculty currently teaches around twenty-five percent of classes. They mainly teach courses like trial advocacy, and specialty courses such as bankruptcy or sports law. Surprisingly, however this trend has been stymied by ABA regulations which require "full time faculty to teach the major portion of the law school's curriculum including all of the first one third of a student's courses."[57] The ABA has set twenty percent as the acceptable percentage of

[54] Id.
[55] Elliot S. Mullston, *"Clinical Legal Education in the United States: In-house Clinics, Externships, and Simulation,"* 51 J. Legal Educ. 375 (2001).
[56] Id.
[57] Id.

adjunct faculty. These recent additions to the American legal education system demonstrate the interplay between law schools, practicing attorneys, and the ABA.

The ABA has also attempted to set standards for the bar exams influence on law school curriculum. One of the main standards for ABA approval is standard 302(f) which states that for a "law school to gain accreditation it must not require bar preparation courses or offer for them for credit.'[58] This might give the impression to the outsider that the bar exam does not affect the content of law school curriculum. This belief however would be extremely misguided because the bar exam and the legal profession have significantly impacted law school curriculum. It also often affects what courses a student chooses to take while in law school.

One recent example of how the bar exam can directly impact a student's course choice was Michigan's bar addition of "workers' compensation" as a subject tested on its bar.[59] This course was typically overlooked by students prior to its addition to the bar exam but afterwards nearly all students took the course at Michigan's public law schools.[60] The bar exam also effects course offerings, required courses, and course content. It is not merely a coincidence that all required courses directly coincide with what is tested on the bar exam. Also, professors who teach courses like property have often included arcane subject matters in their course curriculum simply because it is on the bar exam.[61]

Therefore, in the American legal education system the law schools are not uninfluenced islands of legal academia instead they are extremely influenced by both the bar examination and the legal profession.

[58] Byron D. Cooper, *The Bar Exam and Law Schools*, 80 Mich. B.J. 72 (2001).
[59] Id.
[60] Id.
[61] Id.

e. Critics

There are currently two mainstream criticisms of the American legal education system. The first is that the American legal education system has focused too much on theory and not enough on practical education.[62] This has been a common complaint for the last few decades. American law schools have attempted to respond to this criticism by adding clinics and adjunct faculty, but many complain that not enough has been done. First, some critics chastise the ABA for not requiring accredited law schools to require clinical coursework as a prerequisite for graduation. Currently, only nine percent of the 175 accredited law schools actual require it for graduation. Participation in clinical or experiential learning programs has risen in recent years but still barely reaches thirty percent of law school graduates. Second, they criticize that there is no requirement for practical training for bar admittance either. Third, critics also fault the ABA with stymieing more practical education by expounding a limit on the number of adjunct faculty that can teach at accredited law schools.

The other current criticism of the American legal education system is that there is not enough focus on ethics.[63] These critics emphasize that law firms only pursue profit and do not take the time to instill ethics or offer pro bono work; therefore it is the law schools job to ensure that law students receive the proper ethical training.[64] Proponents of ethics teaching believe that professors should be addressing ethical problems every time they teach a case. Also in line with the ethics criticism, many critics also believe that laws schools do not pay enough attention to the

[62] David M. Siegel, *Special Issue: Transnationalize Legal Education "The Ambivalent Role of Experiential Learning in American Legal Education and the problem of legal culture"* German Law Journal, July 1, 2009.
[63] Harry Edwards, *"The Growing Disjunction Between Legal Education and the Legal Profession,"* 91 Mich. L. Rev. 34 (1992-1993).
[64] Id.

social and cultural contexts of legal institutions and varied forms of practice.[65] Many believe there is too much of an emphasis on the traditional route of law firm practice and instead schools should highlight the other potentials careers for law school graduates.[66] Furthermore, they believe that there should be a greater emphasis on public interest careers and how lawyers can work to serve the underprivileged and initiate social change.[67]

## II. New Japanese Legal Education System

### a. Background on Reform

Many people in the 1980s believed that Japan had developed an alternative to the free market system as a capitalism-based activist state, however, the bursting of the "bubble economy" in the early 1990s led to an increased belief in the need for reforms.[68] Japan in turn began to transform itself into a more market-oriented economy.[69] The reform led many to believe to that the Japanese people now needed to become more engaged in their own governance.[70] The judicial system was supposed to be the primary tool for this transformation.[71]

The judicial reform was based on the improvement of three pillars[72]. First, was to create a more user friendly legal system that would be understandable and reliable.[73] Second, was to foster improved public participation in legal proceeding to enhance public trust in the system.[74]

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[65] *"Summary of Educating Lawyers: Preparation for the Profession of Law,"* The Carnegie Foundation for the Advancement of Teaching.
[66] Id.
[67] Id.
[68] Katsumi Yoshida, *"Legal Education Reforms in Japan: Background, Rationale, and the Goals to be achieved,"* 24 Wis. Int'l. L.J. 209 (2006-2007).
[69] Id.
[70] Id.
[71] Id.
[72] Joseph Nadeau, *"Judicial Reform in Japan,"* 44 Judges. J. 34 (2005).
[73] Id.
[74] Id.

Third, was to redefine the legal profession in its function and to make it more accessible and accountable to the public.[75]

Reform of the legal education system was seen as an essential part in achieving these goals. The legal education system "is a window on a country's legal system and tells what law is, what lawyers do, and how the system operates and how it should operate."[76] The legal education reforms were intended to produce more attorneys because Japan was experiencing a shortage of legally trained professionals.[77] Additionally, as part of the larger goal of increasing the rule of law there was going to be an increased need for legally trained professionals and the new law schools are intended to meet this need.[78] Also, the reforms were intended to broaden the human base of people involved in the legal system.[79] Therefore, the change in the legal education system was designed to produce a large stock of legal professionals of sufficient quality and quantity to assist in the transformation of the Japanese legal system as a whole.[80]

b. Structure

Prior to the reform of the Japanese legal education system, there were actually no law schools in Japan. Law was only an area of study at an undergraduate institution. Most aspiring lawyers would major in law at that their undergraduate institution and then spend the next couple years either studying alone or attending a "cram school" to prepare for the bar exam. After years of preparation and study the aspiring lawyer would take the bar examination, but most likely

[75] Id.
[76] James Maxiener & Keiichi Yamanaka, *"The New Japanese Law Schools: Putting the Professional in Legal Education,"* 13 Pac. Rim L. & Pol'y. J. 303 (2004).
[77] Id.
[78] Masahiko Omura, Saturu Osanai, and Malcolm Smith, *"Japan's New Legal Education System: Towards International Legal Education?"* J. Japan. L. 20 (2005).
[79] Katsumi Yoshida, *"Legal Education Reforms in Japan: Background, Rationale, and the Goals to be achieved,"* 24 Wis. Int'l. L.J. 209 (2006-2007).
[80] Id.

would not pass because for most of the post-World War II period the bar passage rate has remained one of the lowest in the world, hovering around two or three percent.[81] The legal education reforms in Japan were designed to create a more American style graduate law school style education with the hope of increasing the bar passage rate and in turn the number of eligible attorneys[82].

The new system has led to the creation of over sixty-eight new law schools. Some are branches of already established universities and some are privately created law schools. As stated earlier the new system more closely mirrors the American system. Aspiring lawyers in Japan can still major in law at their undergraduate institution but it is not required.[83] After completing their four year degree in either law or a subject of their choosing, the aspiring lawyer would next apply to a law school. Law school is three years in length, unless the person majored in law as an undergraduate then he or she is only required to study for two years at the law school.[84] For the first year of the three year program the student will be required to take entry level classes on the fundamentals of Japanese law.[85] The second and third years of the three year program or the two years of the two year program will consist of three principle types of courses, many of which will be compulsory.[86] The first are seminars and other in depth courses in basic areas law studied at the undergraduate level. These will include courses on the civil law. The second type is practical

[81] Mark Reutter, *"Japanese Legal Education System Undergoing Radical Transformation,"* News Bureau of Illinois, (2003).
[82] Id.
[83] James Maxiener & Keiichi Yamanaka, *"The New Japanese Law Schools: Putting the Professional in Legal Education,"* 13 Pac. Rim L. & Pol'y. J. 303 (2004).

[84] Id.
[85] Id.
[86] Id.

instruction by experienced practitioners in areas like civil and criminal law. The third type of class will be electives like international law, intellectual property and tax law.[87]

Furthermore, the reforms also intend to change the teaching style at the Japanese schools. Traditionally, Japanese classes are taught in a unilateral mass lecture style. The reforms will require a more American style of teaching which will consist of bi-lateral or multi-lateral communication.[88] Therefore, the professors will be engaging the students in discussion about the particular subject matters. This will take effort because Japanese students are not used to participating in class.[89]

After completing either the two or three years at law school and receiving their degree students will then sit to take the bar exam. The goal of the reforms was eventually to have 3,000 potential lawyers pass the bar in 2010.[90] The bar passage rate however has not lived up to its goal of seventy to eighty percent; instead in 2009 it only reached thirty-three percent.[91] This is in part due to the fact that the number is set arbitrarily by the Supreme Court's Legal Training and Research Institute which every aspiring lawyer, judge or prosecutor must attend to practice in Japan.[92] If the aspiring lawyer does manage to pass the bar exam, they would then enter the Institute. Here they would spend a year in a legal apprentice course where they would apprentice for a few months in all three of their possible careers: judge, prosecutor, *bengoshi* (attorney).[93] After, completion of there one year apprenticeship at the Institute the attorney will have finally completed their training and then will choose which of the three paths to follow.

[87] Id.
[88] Id.
[89] Id.
[90] Takahiro Saito, *"The Tragedy of Japanese Legal Education: Japanese 'American' Law Schools,"* 24 Wis. Int'l. L.J. 197 (2006-2007).
[91] Id.
[92] Id.
[93] Id.

c. Criticisms

Although, the new reform has led to an increase in the number of attorneys there has been many critics. One of the major criticisms of the new system is that it is redundant because it imported the American system while maintaining certain Japanese institutions.[94] The first tier of redundancy is the overlap between the L.L.B and the J.D.[95] In the American system, a student can only study law at the graduate level while obtaining a J.D. The Japanese system however has added the J.D. at law schools but has maintained the law degree at the undergraduate university level. Both the L.L.B. and the J.D. provide students with basic legal knowledge and therefore by keeping both there is large amount of unneeded redundancy in the system.[96] The second tier of redundancy is that the Japanese system still maintains the one year mandatory apprenticeship at the Institute.[97] Here students learn how to apply the basic legal knowledge for future law practice. In America, there is no such institution; therefore it is the law schools responsibility to prepare the student for practice. Here, in Japan, there is no need for the law schools to serve this function because the Institute already does it.[98] Thus, when Japan imported the American system they really just added another three years of basic legal training, so now in Japan an aspiring lawyers faces up to eight years of basic legal training where as in the United States its only three years.

The second criticism which originates from many academics is that new law school system will lead to a decrease in the level of research and legal scholarship.[99] The Japanese faculties have a rich academic tradition. This differs from the American system where there is

[94] James Maxiener & Keiichi Yamanaka, *"The New Japanese Law Schools: Putting the Professional in Legal Education,"* 13 Pac. Rim L. & Pol'y. J. 303 (2004).
[95] Id.
[96] Id.
[97] Id.
[98] Id.
[99] Id.

less of a tradition of legal scholarship. Also, the American legal scholarship tends to be more inter-disciplinary. Japanese academics worry that the introduction of the American system will lead to less academia and more of an emphasis on practical study.[100]

Another popular criticism is that the American system is only suited for common law societies.[101] Critics argue that the Japan is a civil law country and that the American system will not meet its needs. Here the main argument is that the American system is structured a certain way because it has to deal with and teach the large amounts of case law which comes with the common law system.[102] This has lead American schools to focus primarily on teaching legal reasoning and argument instead of teaching the actual laws. Japan is a civil system and therefore has codes which need to be taught. Thus, the American system is not applicable to Japan because its method is suited for teaching reasoning and not the actual law.

Another criticism is that new legal education system will lead to a more litigious society. Many have complained that the increase in lawyers will lead to an increase in lawsuits because the lawyers will be out looking for cases.[103] This will in turn cause Japan to more closely resemble the United States. In conjunction with this complaint is the growing criticism that the addition of law schools will lead to a degeneration of the legal system in general.[104] These critics' reason that the increase in lawyers, will lead to an increase in competition and because there is not enough business to currently go around the new lawyers will have to take any case and make immoral decisions to make money.[105] Therefore, the system is producing immoral lawyers. It also stems from the perhaps unfounded belief that because the old exam has a lower

[100] Id.
[101] Id.
[102] Id.
[103] Colin Jones, *"Law Schools Come under Friendly Fire,"* The Japan Times. January 29, 2008.
[104] Id.
[105] Id.

passage rate, and therefore, attorneys who took the old exam are better lawyers and the system is now being inundated with less qualified attorneys.[106] These criticisms however need to be read with caution because many of these arguments are made by attorneys from the old system that might be actually concerned about what the new competition is going to do for their business and not about the fate of the legal system is general.[107]

Finally, there is the argument that these reforms were superfluous because there is actually no need to increase the number of attorneys in Japan. The average person in Japan may never actually meet with an attorney in his or her whole life. This is because the average Japanese person does not see the Japanese legal system as a useful to way to solve his or her problems. The law is seen as being imposed from above as a way for the state to increase its authority. The mere change in the number of lawyers is not going to change the structural dynamic of the Japanese legal system. Another reason there might not even be a need for the increase is the way the Japanese system is set up. The *bengoshi* do not handle many types of claims and services that an attorney in the United States would handle. This is because Japan actually has a multiplicity of legal professions.[108] These professions have their own exams. Some of these professions include: judicial scriveners, social insurance and labor consultants, patent agents, maritime law specialist, and tax consultants.[109] Therefore it is many of these legal professionals who meet the daily legal needs of the Japanese citizens. This is different from America where a person would have to hire a lawyer to handle their house closing or write their

[106] Id.
[107] Id.
[108] Colin Jones, *"Attorney glut may hit foreign firms: ministry ditching its 'French Model' as bar graduates grope for a raison d' etre,"* The Japan Times. March 2, 2010.
[109] Id.

will. Therefore, the reform of the system was not needed because unlike in American society there is not as much of a demand for lawyers in Japan.

Many of these criticisms highlight the differences between the American and Japanese legal systems as a whole. These differences may lead to some reevaluations and modifications to the Japanese legal education system in the near future to ensure the system is tailored to fit the Japanese legal system's specific needs.