

The New Accreditation System for Japanese Law Schools:

Its Trends and Problems

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Introduction

The Justice System Reform Council - JSRC, which was founded in July 1999 as an ad hoc council under the direct control of the Cabinet, published a report on 12th June 2001 entitled Recommendations of the Justice System Reform Council—For a Justice System to Support Japan in the 21st Century (2001). This report states that “A new legal training system should be established, not by focusing only on the ‘single point’ of selection through the national bar examination but by organically connecting legal education, the national bar examination and legal training as a ‘process’. As its core, law schools, professional schools providing education especially for training for the legal profession, should be established” (JSRC 2001:49). Following this recommendation, a new system of professional Japanese ‘law schools’, mainly for training those in the ‘legal profession’ (a generic term for judges, public prosecutors and lawyers) was initiated in April 2004. A new accreditation system for these schools was also introduced.

As of March 2007, there are three accreditation agencies for law schools: the Japanese University Accreditation Agency (JUAA), the National Institution for Academic Degrees and University Evaluation (NIAD-UE) and the Japanese Law Foundation (JLF). These agencies respect and adhere to the statement of the 2001 Report and elucidate that their core purpose in accreditation is to improve the quality of education in law schools for the training of legal professionals. For instance, the accreditation standards of the NIAD-UE, which are designed to prevent law schools from becoming mere cramming schools for students preparing for the bar examination, prescribe that the total number of credits for basic law subjects should ideally be 54: public law (10), civil law (32) and criminal law (12). The maximum number of



credits must be 64 (NIAD-UE 2006: 7). This prescription aims to secure time for skill trainings, such as mock trials or practical legal trainings, that are not covered by the bar examination. Similarly, the JLF proposes the concept of ‘two minds, seven skills’, which is regarded as being essential for legal professionals, and devises its own accreditation standards to diffuse the effect of educational activities that emphasise the development of comprehensive skills—particularly powers of rational persuasion and communication skills to get the truth out of people.

This paper suggests the possibility of the risk of law school development becoming too dependent upon the contents of the accreditation standards. However, it is also probable that these standards will contribute to the systematisation of law schools that are directly connected to occupational qualifications because graduates from non-accredited schools would be ineligible to sit for the new bar examination. Hence, it is important to comparatively analyse the differences among the accreditation standards of the three agencies in addition to the visions of law schools held by each of the three agencies.

The argument intends to demonstrate how the differences in accreditation standards and visions can be instrumental in the moderate division of Japanese law schools into two groups. One group consists of purely education-centred institutions with few research activities. The other is composed of theory-oriented institutions in which not only the training of entrants into the legal profession but also that of law researchers and basic research are emphasised. However, it should be noted that the success rate of the new bar examination can also be a crucial factor in complicating this separation process.

Different Visions of Law Schools

This paper proposes that the JLF has a vision of law schools that differs from that of the JUAA or NIAD-UE. The JLF believes that law schools are purely education-centred institutions that do not emphasise research activities, whilst both the JUAA and NIAD-UE consider these schools to be theory-oriented institutions for training not only legal professionals but also law researchers, in addition to performing the functions of basic research.

An organisation that appreciates the JUAA and NIAD-UE and emphasises the research activities of law schools is the Japanese Association of Law Schools (JALS). The JALS, which consists mostly of law academics, comments as follows: “Research activities are useful for the education at law schools and help to form the foundation of law practices”; “If no research is conducted at law schools, there is little reason in why only universities—excluding vocational institutions—are allowed to create their law schools”; “A sabbatical term is highly commendable and education based on the fruits of research is naturally a presupposition” (from an interview with a JALS official on 21st September, 2005).

An important point to be discussed here is why the JALS greatly emphasises the research activities of law schools, because it can be conjectured that the JALS is forced to do so in order to devise a countermeasure against the falling trends in the annual student intake, both of existing law faculties and postgraduate schools (master’s degree level). These trends are shown in Figures 1 and 2.

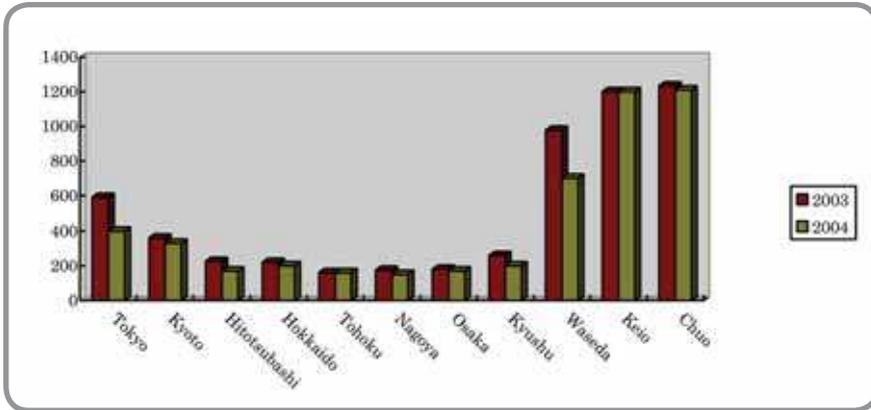


Figure 1. The decrease in the annual student intake of law faculties

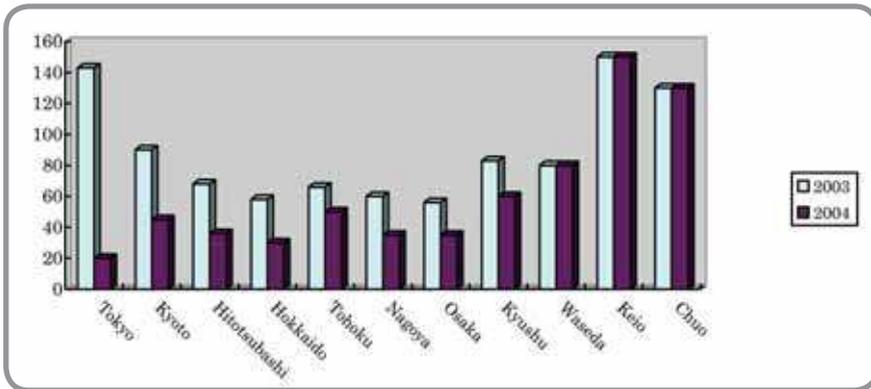


Figure 2. The decrease in the annual student intake of postgraduate schools (Master’s in Law)

Figure 1 presents the decrease in the annual student intake of law faculties at certain universities with a steady success in the training of legal professionals, when the law school system was officially introduced in 2004. As can be seen, apart from Tohoku University, almost all national universities with law schools—including other national institutions that are not mentioned in this figure—reduced the capacity of their law faculties. Many private institutions, especially Waseda University, followed suit. Similarly, Figure 2 displays the general scaling down trend in postgraduate schools (master’s in law) for the training of law scholars. In particular, the University



of Tokyo dramatically decreased its intake capacity from 143 to merely 20, though this was partially influenced by the creation of a new postgraduate school for policy study.

It is widely predicted that the decline in the capacity of both existing law faculties and postgraduate schools will be evident thereafter, especially in 2013. This is commonly referred to as the so-called “2013 Problem”. It is expected that until 2013,

- ➔ all full-time teaching staff of a law school can officially be included among the full-time teaching staff of an existing postgraduate law school (doctoral level);
- ➔ up to one-third of all full-time law school staff can officially be included among the full-time teaching staff of an existing law faculty and postgraduate school (master’s level).

However, as of 2013,

- ➔ such an inclusion will no longer be legally permitted.

Most staff members are willing to remain in their present posts at law schools after 2013, thus resulting in the further downsizing and weakening of the existing law faculties and postgraduate courses.

Due to the 2013 Problem, the JALS anticipates an impending crisis with regard to the training of law scholars in the future. It is true that the number of those who wish to enter into existing master’s courses in law has been diminishing constantly, in addition to the shift of many eminent law researchers to law schools. Accordingly, the JALS believes that even though the graduates of a law school earn a Juris Doctor, a new academic route for law scholars should be as follows: a faculty of law (an undergraduate track) → a law school → a postgraduate school of law (a doctoral track). The establishment of this route requires accreditation standards to encourage law schools to develop into theory-oriented institutions with the function of training legal professionals (from an interview with JALS official on 21st September, 2005).

Contrary to the JALS, the JLF, which is a professional organisation for lawyers, regards law schools not as institutions for training law researchers but as the preparatory platform for training new members of law offices. Therefore, the JLF does not stress the importance of theoretical research at law schools, and contends that law schools should engage more legal practitioners as full-time teachers to fulfil this function properly. This stand originates in the JLF’s critical view that “Legal practitioners were pointlessly kept away from law schools, thanks to the Standards for the Qualification as a Teacher at Law Schools” (from an interview on 1st August, 2005).

The 2001 Report of the Reform Council, which mentions the qualifications of law school teachers, emphasises the following:

Since law schools should provide highly advanced legal education especially for training legal professionals in order to build a bridge between theoretical education and practical education, participation of practitioner-teachers is indispensable. As practitioner-teachers, not only those included in the legal profession within a narrow sense, but also those who are otherwise qualified, should be broadly recruited (JSRC 2001:54).

Many of the institutions that had supported this view entered into contracts with bar associations in order to recruit their members as practitioner-teachers before applying for the creation of their law schools. Although the deadline for these applications had been June 2003, it was not until two months later that the Standards for the Qualification as a Teacher at Law Schools were announced.

According to these Standards, practitioner-teachers are required to submit lists of their research achievements that establish their ability to instruct in basic law subjects or theoretical subjects, if they were asked to teach. This requirement was simply “a bolt from the blue” for institutions that were intending to engage pure practitioner-teachers who lacked any research achievements. Accordingly, Hidenori Sakakibara writes,

At least 33 among 72 institutions that had applied for the creation of a law school hired roughly 54 law scholars from other institutions, in only about one month soon after the Standards were proclaimed (Sakakibara 2004: 81).

This resulted in many less prestigious universities suffering from a shortage of law teachers. These universities were constrained to fill the vacant posts either with people who had already retired or with those whose areas of academic expertise did not exactly match the available posts. The JLF is expecting its accreditation standards to contribute to the rectification of this situation.

In the next section, this paper will comparatively examine the accreditation standards of the JLF with those of the JUAA and NIAD-UE. This examination focuses on the definition of the qualifications of law school teachers and their research conditions. More precisely, these are some sections from the chapter on ‘Teaching Organisation’ or ‘Educational System’.

Comparison of Accreditation Standards

The differences among the accreditation standards of the JLF, JUAA and NIAD-UE are not quite apparent. One reason for this can be found in the fact that the standards consist largely of articles stipulating the observance of ordinances concerning law schools, such as the Law on Coordination of Graduate Law School Education and the National Bar Examination, The 53rd Notification of the Ministry of Education,



Culture, Sports, Science and Technology (MEXT) and the Standards for the Establishment of Professional Schools: this makes it very difficult to present vast distinctions among the three standards. Nonetheless, some fundamental differences can still be detected with scrupulous attention to detail.

One difference that can be found within the articles is with regard to the research conditions of law school teachers. For example, Article 15 in Chapter 3 of the JUAA's Standards for Law Schools demands that "Opportunity to concentrate on doing research, like a sabbatical term, should be guaranteed for full-time teachers" (JUAA 2005:17). Article 16 in the same chapter prescribes that "Research funds for individual full-time teachers should be distributed adequately" (JUAA 2005:17). These articles imply that the JUAA has an ingrained belief that law school teachers ought to actively conduct their own research as do other academics in law. The NIAD-UE also lays stress on the research activities of law school teachers. Section 2 of Article 5 in Chapter 8 of its Standards for Law Schools stipulates that "A reasonable sabbatical term in some years should be given to full-time teachers of law schools, according to their educational, research and managerial achievements" (NIAD-UE 2006: 33).

In contrast, the JLF does not specify the necessity of sabbatical terms in its Standards, although Section 3 of Article 2 in Chapter 3 of the Standards maintains that "Systems and conditions to support research activities of teachers should be of consideration" (JLF 2005: 13). The JLF also provides an explanation for this; "Law school teachers should be able to secure their opportunity to pursue research; notwithstanding this, law school teachers must firstly devote themselves to education" (JLF 2006: 41). This can be interpreted as research for education, but not as education for research.

Furthermore, it is noteworthy that the JLF provides its comments on teachers' qualifications for law schools with a view to augmenting the number of practitioner-teachers. According to these comments, while law school teachers are required to submit a list of their research achievements if their lectures involve highly scientific elements of basic, adjacent, forefront and extending law subjects, the proof of their research abilities is not an essential prerequisite for teaching subjects with highly practical elements. Instead, their abilities to instruct are judged comprehensively based on requirements one and three (JLF 2006: 26). These requirements are as follows:

Requirement one: Previous teaching experience at a law school and its contents are mainly assessed. If it is nothing or less than three years, experience in instructing apprentice or junior legal professionals and its educational contents are subject to the assessment.

Requirement three: Practical experience to execute an idea, 'education to bridge the gap between theory and practice' is a basic precondition (JLF 2006: 26).

Every veteran has at least "experience in instructing junior legal professionals" within requirement one, and it is easy to meet requirement three depending on the interpretation of practical experience. Hence, these requirements are designed to promote the augmentation of the number of practitioner-teachers.

Conversely, the accreditation standards of the JUAA and NIAD-UE are not quite instrumental in expanding the number of practitioner-teachers. They have only one clause that requires the observance of the 53rd Notification of the MEXT: "Over 20 percent of full-time teachers should have more than five-years of practical experience as legal professionals, and most of them should have an advanced level of practical competence" (JUAA 2005:16).

Thus, it is predictable that law schools will be gradually differentiated in function, when they have to choose either of the two different accreditation standards: (1) the standards of the JLF with the strong conviction that law schools—where practitioner-teachers play a crucial role—should be purely education-oriented institutions for training legal professionals and (2) the standards of the JUAA or NIAD-UE, both of which deem law schools to be theory-oriented institutions with functions not only of training legal professionals but also of basic research and training researchers.

Other Evaluation Standards

It should be noted that the development of law schools is affected not only by accreditation standards but also by other evaluation standards—that is, the success rate of the new bar examination. The 2001 Report of the Justice System Reform Council prescribes the following:

On the essential condition that people with the ability and motivation to become legal professionals are admitted to law schools and their grades are strictly evaluated and their completion of the coursework is rigidly certified, productive educational programs should be provided so that a certain ratio of those who have completed the course at law schools (e.g., 70 to 80 %) can pass the new national bar examination (JSRC 2001: 53).

However, the Ministry of Justice, which submitted a rough draft of the success rate in the bar examination on 7th October 2004, ignored this prescription. According to Hisaya Kamei (2004), the basic ideas of this draft can be summarised as follows: (1) the number of those who pass the new bar examination should gradually be allowed to increase to 3,000 by 2010; (2) as a transitional measure, the old bar examination system should coexist with the new one; nonetheless, the number of



successful candidates from the old system should decrease smoothly, and the system should finally be abolished by 2010; (3) as it is difficult to immediately expand the capacity of the Legal Training and Research Institute, the upper limit of successful candidates must be held at 3,000; (4) while the number of law school graduates is expected to grow every year until 2008, it is desirable that the pass rate of the new bar examination should be held fairly constant (this idea is emphasised); (5) as law school graduates are to be allowed to attempt the new bar examination up to three times, the number of examinees should become roughly constant by the year 2008: the examination system should be designed to achieve a success rate appropriate to that date; and (6) the conclusion is that the success rate should be fixed at approximately twenty percent.

Unsurprisingly, this draft, advising the stabilisation of the success rate of the new bar examination at approximately twenty percent, raised a storm of protest from law school teachers and students who believed, in line with the 2001 Report, that more than seventy percent of law school graduates would be able to pass the new bar examination. Due to this fierce protest, the Ministry of Justice was compelled to seek a compromise, and it proposed that the passing rate should be raised to approximately thirty percent. Despite this compromise, two-thirds of law school graduates would still be unable to immediately achieve legal professional status, and this fundamental problem remains unresolved (Urakawa 2006). In particular, the figure of thirty percent was considered to be harsh for the adult students, who needed to resign from their jobs and to obtain a loan from a bank in order to attend law school. As students succinctly stated:

The risk is too high to take out a student loan. Thanks to this in addition to a very high tuition fee, only economically rich people are now willing to take up a challenge in the system (Nakayama et al 2005: 54).

Further, if the figure of thirty percent poses problems for attracting students, it could be terminal for some institutions that have spent a large amount of money on establishing their own law schools. A number of these institutions, which would suffer a financial disadvantage, are likely to file civil lawsuits.

A success rate of approximately thirty percent is not too low a figure for prestigious institutions such as Tokyo, Waseda, Kyoto, Keio, Chuo and Hitotsubashi Universities. More than half of the law school graduates of these universities will perhaps be successful in passing the new bar examination. In contrast, it is surmised that some of the other law schools will only produce a few successful candidates (the result of the 2007 examination is provided in the Appendix). If this is the case, such law schools might, as a matter of survival, consider dramatically shifting their educational programmes explicitly towards achieving examination success. In other words, the core object of many lectures will gradually be changed to usefulness for passing the examination.

The accreditation agencies for law schools should make a recommendation to reform those lectures that are only useful for the examination; however, the agencies are not able to condemn the increase in the number of lectures that are also useful for the examination. At the same time, it is difficult for the agencies to prevent the decrease in the number of lectures that are not directly useful for the examination, such as lectures for improving communication skills. If the agencies impose strict standards of educational contents, some law schools that cannot produce many successful candidates will be weeded out, whereas the lenient standards will assist some law schools in transforming themselves into mere preparatory schools for the examination. Thus, the accreditation agencies will probably face this dilemma, unless the new bar examination is changed from being competitive to being qualifying—like the national examination for medical license, which nearly 90 percent of the appearing candidates can pass.

One Possible Scenario

This paper has attempted to scrutinise the impact of the external evaluation which determines the direction of further development for law schools by mutually comparing and analysing the visions of law schools and the accreditation standards of accreditation agencies for law schools. To conclude, one possible scenario derived from the discussion is that the differences between the standards reflecting the gap in the ideal vision of the accreditation agencies will contribute to the gradual separation into two types: purely education-centred institutions with little research activities and theory-oriented institutions for the training of not only legal professionals but also law researchers, in addition to the function of basic research. However, this separation process will be significantly affected by the success rate of the new bar examination.



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Appendix 1

The Result of the New Bar Examination in 2007

Law Schools	Applicants	Candidates	Successful candidates in the first examination	Successful candidates in the final examination	The ratio of successful candidates (%)
Chiba University	66	62	56	40	64.5
Kyoto University	228	211	192	135	64.0
Keio University	285	271	237	173	63.8
Hitotsubashi University	101	96	85	61	63.5
Nagoya University	72	65	50	41	63.1
The University of Tokyo	331	304	258	178	58.6
Chuo University	313	292	254	153	52.4
Waseda University	255	223	175	115	51.6
Soka University	46	39	30	20	51.3
Kobe University	100	91	80	46	50.5
Hokkaido University	105	98	81	48	49.0
Tohoku University	102	96	81	47	49.0
Osaka University	89	73	54	32	43.8
University of the Ryukyus	17	16	14	7	43.8
Okayama University	32	23	19	10	43.5
Osaka City University	77	72	55	31	43.1
Fukuoka University	42	14	13	6	42.9
Sophia University	109	94	82	40	42.6
Tokyo Metropolitan University	77	69	58	28	40.6
Meiji University	223	200	163	80	40.0
Kyushu University	81	74	45	29	39.2
Kanto Gakuin University	33	23	14	9	39.1
Nanzan University	33	26	20	10	38.5



Seikei University	59	42	33	16	38.1
Ritsumeikan University	199	169	130	62	36.7
Kobe Gakuin University	17	11	7	4	36.4
Doshisha University	189	161	122	57	35.4
Hiroshima University	44	32	28	11	34.4
Yokohama National University	51	38	26	13	34.2
Kanazawa University	29	24	15	8	33.3
Kagawa University	17	9	5	3	33.3
Yamanashi Gakuin University	37	31	25	10	32.3
Kanagawa University	39	25	18	8	32.0
Kwansei Gakuin University	144	130	98	39	30.0
Meijo University	26	20	11	6	30.0
Rikkyo University	68	59	39	17	28.8
Hiroshima Shudo University	34	21	11	6	28.6
Gakushuin University	75	67	46	19	28.4
Toyo University	56	44	23	12	27.3
Aichi University	33	27	18	7	25.9
Toin University of Yokohama	44	35	18	9	25.7
Senshu University	85	76	57	19	25.0
Konan University	49	44	33	11	25.0
Seinan Gakuin University	43	28	19	7	25.0
Kansai University	164	130	90	32	24.6
Niigata University	41	36	25	8	22.2
Chukyo University	21	18	16	4	22.2

Komazawa University	47	37	23	8	21.6
Kokugakuin University	37	28	15	6	21.4
Hakuo University	22	19	12	4	21.1
Meiji Gakuin University	61	54	32	11	20.4
Dokkyo University	33	30	16	6	20.0
Surugadai University	68	46	25	9	19.6
Kyoto Sangyo University	48	36	20	7	19.4
Hosei University	148	128	82	24	18.8
Aoyama Gakuin University	53	40	25	7	17.5
Shimane University	27	18	11	3	16.7
Osaka Gakuin University	30	14	6	2	14.3
Omiya Law School	62	43	24	6	14.0
Nihon University	139	111	67	14	12.6
Tokai University	21	16	6	2	12.5
Kinki University	24	17	6	2	11.8
Daito Bunka University	45	36	19	4	11.1
Kumamoto University	26	20	11	2	10.0
Tohoku Gakuin University	34	32	18	3	9.4
Kagoshima University	29	25	8	2	8.0
Himeji Dokkyo University	26	19	12	1	5.3
Kurume University	40	29	12	1	3.4
Total	5,401	4,607	3,479	1,851	40.2

Note: The number of candidates includes four absentees who changed their minds on the way to the examination.

Source: Ministry of Justice. (2007) The Number of Those Who Passed the New Bar Examination in 2007.