

# *The State of Legal Education in Japan: Problems and “Re”-Renovations in JD Law Schools*

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## **Abstract**

In Japan, the Juris Doctor (JD)-style law-school system was introduced in 2004 as part of a judicial system reform. As of late, this system seems to have become dysfunctional. The pass rate of the national bar exam (NBE) is around 20% every year, and the NBE puts students under considerable pressure. “Re”-renovation of legal education is, thereby, a huge and pressing issue. Reducing the number of JD students could be a quick solution to the current problems. However, this is not enough, nor is it good for fostering legal professionals “rich both in quality and quantity” (the second aim of the judicial reform). Legal education should go beyond the NBE. The Japanese government and law schools have just begun to re-renoate legal education, giving priority to three challenges: (1) offering continuous legal-education programmes for practitioners; (2) enhancing community service and supporting career development of graduates in the new legal service area; and (3) internationalization. How can the Japanese legal-education system go beyond the NBE? Re-renovation deserves continued attention.

**Keywords:** legal education in Japan, Japanese law school, JD, judicial system reform, national bar exam, internationalization

## 1. INTRODUCTION

Twelve years after the introduction of the Juris Doctor (JD)-style law-school system in Japan, this system seems to have become dysfunctional. “Re”-renovation, or innovation of legal education, is a huge and pressing concern. In this paper, I briefly explain the background of the JD-style law-school system in Japan (Section 2), introduce the new government financial support system as a tool for “re”-renovating legal education at JD law schools (Section 3), and look at “internationalization” of legal education as a key to “re”-renovation (Section 4).

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## 2. BACKGROUND AND PROBLEMS

### 2.1 2004 Judicial System Reform

In 1999, the government of Japan established the “Justice System Reform Council” as a special advisory board to the Cabinet. After two years of research, the council released its final report, entitled *Recommendations of the Justice System Reform Council - For a Justice System to Support Japan in the 21st Century*.<sup>1</sup> The report is based on three basic policies, which are as follows:

1. in order to achieve “a justice system that meets public expectations,” the justice system must<sup>2</sup> be made easier to use and understand, and more reliable;
2. by reforming “the legal profession system which supports the justice system,” a sufficiently large number of legal practitioners as high-quality professionals will be secured<sup>3</sup>;
3. for “establishment of the people’s basis [for the justice system],” public trust in the justice system should be enhanced by introducing systems including people’s participation in legal proceedings.<sup>4</sup>

Under the second policy, the report specifies its recommendations:

With regard to the number of legal professionals, the aim is to achieve 1,500 successful applicants for the existing national bar examination in 2004, and, while keeping watch over the progress of establishment of the new legal training system, to increase the number of successful applicants for a new national bar examination to 3,000 per year in about 2010. With regard to the system for legal training, in order to secure legal professionals with suitable quality to undertake the administration of justice in the 21st century, the system shall not consist of selection based upon the “single point” of the national bar examination. Rather, a system for legal training shall be established that consists of a “process” that organically connects legal education, the national bar examination, and apprenticeship training. As the core of the system, graduate schools specialized in training of legal professionals (hereinafter referred to as “law schools”) shall be established.

In 2004, following the 2001 Recommendations, a new legal-education system was introduced. One characteristic of the new system is the coexistence of two- or three-year American-style JD law schools (JDLSs) and four-year undergraduate law schools (UGLSs). Traditionally, UGLSs have been key institutions in training not only lawyers, but also public employees and business persons with basic legal knowledge. In other words, very few graduates of UGLSs have passed the national bar exam (NBE), which generally has an extremely low pass rate.<sup>5</sup> On the basis of this tradition, the council proposed a dual-track legal-education system—JDLSs shall foster licensed lawyers and UGLSs shall foster public employees and business persons. For this purpose, the government changed the NBE system as well. Under the new system, only (1) graduates of JDLSs and (2) persons who passed the preliminary test for the national bar exam

1. The Judicial Reform Council (2001).

2. In the original English translation by the Japanese government, “shall” is used instead of “must.”

3. This English summary of the second policy is translated and summarized from the official text in Japanese by the author. It is not the original English translation by the Japanese government.

4. This English summary of the third policy is translated and summarized from the official text in Japanese by the author. It is not the original English translation by the Japanese government.

5. See the Judicial Reform Council, *supra* note 1: 5.31% in 1952, 4.27% in 1962, 2.29% in 1972, 1.74% in 1982, 2.69% in 1992, and 2.59% in 2002.

(PNBE)<sup>6</sup> are eligible to sit the NBE. In 2015, 1,850 out of 9,072 applicants passed the NBE; 186 out of 1,805 came from the PNBE and 1,664 came from JDLSs.

## 2.2 “Chaining Failures” of Legal-Education Reform

Twelve years after the introduction of JDLSs, the government and most lawyers recognize “chaining failures” of the legal-education reforms. Table 1 shows this clearly. The fundamental problem is the gap between the number of JD students (columns 3 and 4) and the number of successful applicants to the NBE (column 9). The pass rate is around 20% every year, and students are under considerable pressure from the NBE. The Japanese government has asked JDLSs to reduce enrolment numbers, and several JDLSs have decided to close. Students at UGLSs avoid enrolling in JDLSs, and JDLSs have lost good students. Most JD students simply concentrate on the NBE and avoid taking advanced courses, joining international programmes, or doing academic research.

On 30 June 2015, the Council for the Promotion of Systemic Reform in the Fostering of Legal Professionals, a government council responsible for the NBE system, promulgated a new policy stating that the number of successful applicants of NBE shall be “more than 1,500” and the accumulative pass rate for the exam shall be “around 70%.”<sup>7</sup>

## 2.3 Need for “Re”-Renovations

Needless to say, in confronting “chaining failures” of legal-education reform, “re”-renovations, or additional innovations, of legal education are needed. But, importantly, we have to consider why and how “re”-renovations shall be needed.

These factors should be counted as important reasons for re-renovations of legal education in Japan. For JDLSs, establishing an educational system that can foster students “beyond NBE” is a fundamental issue. Studying for the NBE is not truly productive, and it is the biggest reason why JDLSs have lost applicants. The primary issue for UGLSs is establishing their educational purpose. Even now, the *raison d’être* of most UGLSs is unclear: Law as a liberal art? Fostering business persons or bureaucrats? Paralegal education? Limited licensed legal specialists?<sup>8</sup> This is a truly important issue of Japanese society because about 35,000–40,000 new students enter about 130 undergraduate schools of law every year. Due to space constraints here, however, I cannot more fully discuss UGLSs.

# 3. JDLSs’ INNOVATION OF LEGAL EDUCATION

## 3.1 Method of Analysis

The Japanese government has a huge budget to support universities. At national universities, all basic costs are covered by the government.<sup>9</sup> Even for private universities, the government

6. Because there is no eligibility requirement for PNBE, anyone can sit for PNBE.

7. kantei.go.jp (2015).

8. In Japan, few limited licensed legal specialists exist, e.g. Certified public tax accountant (*Zeirishi*), Judicial Scriveners (*Shiho shoshi*), and Certified administrative procedures legal specialist (*Gyosei shoshi*).

9. For example, the total amount of revenue from 90 national universities was JPY 2.93 trillion in 2013; 34% of this came from the government’s general budget, 33% from university hospitals, 11.5% from tuition fees, 14.3% from the government’s special budget and donations, and 7.2% from other sources.

**Table 1.** Statistics on Juris Doctor (JD) law schools and the national bar exam (NBE) in Japan 2004–15

1 Year	2 No. of law schools	3 Students entered	4 Authorized no. of enrolment	5 Rate (3/4)	6 Applicants	7 Rate (6/3)	8 Preliminary exam. applicants	9 Bar exam passed	10 Bar exam applicants	11 Rate (9/10)
2004	68	5,767	5,590	103.20%	72,800	1,262.40%				
2005	74	5,544	5,825	95.20%	41,756	753.20%				
2006	74	5,784	5,825	99.30%	40,341	697.50%		1,009	2,125	47.48%
2007	74	5,713	5,825	98.10%	45,207	791.30%		1,851	5,280	35.06%
2008	74	5,397	5,795	93.10%	39,555	732.90%		2,065	7,710	26.78%
2009	74	4,844	5,765	84.00%	29,714	613.40%		2,043	9,564	21.36%
2010	74	4,122	4,909	84.00%	24,014	582.60%		2,074	10,908	19.01%
2011	73	3,620	4,571	79.20%	22,927	633.30%	8,971	2,063	11,686	17.65%
2012	73	3,150	4,484	70.20%	18,446	585.60%	9,118	2,102	11,100	18.94%
2013	69	2,698	4,421	61.00%	13,924	516.10%	11,255	2,049	10,178	20.13%
2014	67	2,272	3,809	59.60%	11,450	504.00%	12,622	1,810	9,159	19.76%
2015	54	2,201	3,169	69.50%	10,370	471.10%	12,543	1,850	8,957	20.65%

\*Anyone can sit the “Preliminary Exam for National Bar Exam” and a person who passes the exam is eligible to sit the NBE.

supports about 10% of their general expenditures.<sup>10</sup> In addition, the government's financial support is the *de facto* standard by which it endorses schools. Universities receiving additional financial support from the government enjoy higher reputations as good schools.

The government thereby uses its budget as an effective tool for the enforcement of its policies. For example, at the beginning of the new JD-style law-school system, the Ministry of Education, Culture, Sports, Science and Technology in Japan ("MEXT") offered special funds to improve JDLSs educational programmes, and almost all JDLSs successfully received additional budgets.<sup>11</sup> Using its budget, MEXT powerfully advanced educational reform at universities.

In the government budget for the 2015 fiscal year (FY 2015),<sup>12</sup> MEXT introduced a new framework for public financial support to JDLSs, entitled "The Additional Public Support Program to Law Schools by Enhanced Review." Before introducing the programme, the government provided its fiscal support to JDLSs based on a required number of tenured teachers<sup>13</sup> at each JDLS. However, in FY 2015, the government introduced a new calculation method, with a single-tier review process. For FY 2016, the system has been changed again, incorporating a two-step review process. The second step in this process is the policy tool used by the government for re-renovation of legal education at JDLSs. At this second step, a special committee evaluates projects proposed by JDLSs that aim at legal-education reform. The government provides additional financial support to each JDLS based on this evaluation.

The committee's evaluation, and the process of evaluation itself, clearly shows the current situation of legal-education reform at the level of JDLSs.

### 3.2 *New Framework of Government Support to Law Schools*

As mentioned above, the new evaluative framework is composed of two steps. The first step consists in the classification of JDLSs into one of three groups, based on four factors that include (1) the accumulative pass rate for the NBE by its graduates (successful applicants/all applicants), (2) the latest pass rate for the NBE by its three-year course graduates (*Mishusha*)<sup>14</sup> (successful applicants who graduated the three-year course/applicants who graduated the three-year course), (3) the latest ratio of new students to authorized enrolment, and (4) the latest number of new students who have bachelor's degree other than law, or who have working or social experience before entering JDLS, and the ratio of these new students to all new students. In September 2014, MEXT released the first review results of the programmes for the FY 2015.<sup>15</sup> Fifty-two JDLSs,<sup>16</sup> which applied to the government

10. In 2013, the government spent JPY 320 billion for 880 universities, including technical colleges.

11. See [mext.go.jp](http://mext.go.jp) (2004) for the list of MEXT's special funds, entitled "FY 2004 Supporting Program for Establishment of Professional Graduate Schools (Law School)."

12. See Art. 11, Public Finance Act (Act No. 34) (1947). In Japan, the fiscal and academic year starts on 1 April and ends on 31 March of the subsequent year.

13. The required number of tenured teachers shall be calculated in terms of the *Standards for Establishment of Professional Graduate Schools* (Ordinance of the MEXT No. 16 of 2003).

14. In Japan, the standard duration of a JD programme shall be three years. However, each law school can offer a two-year JD programme for students who have basic knowledge of law. Generally, a two-year JD programme is called a "*Kishusha course*" and a three-year JD programme is called a "*Mishusha course*." See, Arts 18, 23, and 25 of the *Standards for Establishment of Professional Graduate Schools* (Ordinance of the MEXT No. 16 of 2003).

15. [mext.go.jp](http://mext.go.jp) (2014).

16. Closed/closing 20 law schools who were not eligible to apply this programme. Due to the fact that this programme is only for national and private law schools, two public (Tokyo metropolitan and Osaka City) law schools are exempt.

support, were classified into three groups: 13 were classified under Group One (G1), 32 schools were classified under Group Two (G2)—with three subclassifications: seven schools in G2A, five schools in G2B, and 20 schools in G2C—and seven schools were classified under Group Three (G3).<sup>17</sup>

In September 2015, MEXT released the latest review (first-step) results for FY 2016 on 43 applied JDLSs.<sup>18</sup> Thirteen JDLSs were classified under G1, 26 under G2 (six in G2A, ten in G2B, and 20 in G2C), and four under G3.<sup>19</sup> Following this classification, JDLSs are eligible for basic financial support from the government. At first, the government calculates the hypothetical amount of financial support (HA) for each JDLS based on the size of each school, namely the statutory requirement of the number of tenured teachers. JDLSs in G1 can expect to receive 90% of the money for each HA. Those in G2 can expect to receive at least 60% (up to 80%) of the money for each HA. Those in G3 are not eligible for any basic public financial support.

On 25 December 2015, MEXT released its final review (second-step) results for FY 2016.<sup>20</sup> The second step was added for FY 2016 to calculate additional amounts of government financial support based on proposed projects. JDLSs are eligible to propose projects related to renovating or improving their legal education, which they submit to the “Review Committee” attached to “The Additional Public Support Program to Law Schools by Enhanced Review.” The Review Committee is authorized to allocate additional financial support through its evaluation of these projects. For FY 2016, 41 out of 43 JDLSs proposed a total of 189 projects (75 from national JDLSs, 114 from private) and they were ranked into five categories: seven “excellent,” 13 “superior,” 58 “good,” 81 “normal,” and ten “need improvement.”<sup>21</sup> “Excellent,” “superior,” and “good” projects are given additional support, and 32 JDLSs were awarded additional support for FY 2016. In summing first- and second-step results, 17 JDLSs<sup>22</sup> will receive more than 90% of the money for each HA. Especially, ten JDLSs are eligible to receive more than 100% for each HA.

17. G1: eight national law schools including Hokkaido, Tohoku, Tsukuba, Tokyo, Hitotsubashi, Nagoya, Kyoto, and Osaka; five private law schools including Gakushuin, Keio, Sophia, Chuo, and Waseda.

G2A: four national law schools including Chiba, Yokohama National, Kobe, and Kyushu; three private law schools including Seikei, Soka, and Aichi.

G2B: two national law schools including Okayama and Ryukyuu; three private law schools including Rikkyo, Doshisha, and Konan.

G2C: four national law schools including Kanazawa, Shizoka, Hiroshima and Kumamoto; 16 private law schools including Aoyama Gakuin, Toyo, Nihon, Hosei, Meiji, Kanagawa, Yamanashi Gakuin, Chukyo, Nanzan, Meijyo, Ritsumeikan, Kansai, Kinki, Kwansai Gakuin, Seinan Gakuin, and Fukuoka.

G3: seven private law schools including Hokkai Gakuen, Kokugakuin, Komazawa, Senshu, Toin University of Yokohama, Aichi Gakuin, and Kyoto Sangyo.

18. Nine law schools decided not to have new students for FY 2016. They are Shizuoka, Kumamoto, Toyo, Aichi Gakuin, Kyoto Sangyo, Yamanashi Gakuin, Kanagawa, Kokugakuin, and Chukyo.

19. G1: Tohoku, Chiba, Tokyo, Hitotsubashi, Yokohama National, Nagoya, Kyoto, Osaka, Kobe, and Kyushu (national); Keio, Chuo, and Waseda (private). G2A: Hokkaido and Tsukuba (national); Gakushuin, Aichi, Doshisha, and Konan (private). G2B: Okayama, Hiroshima, and Ryukyuu (national); Sophia, Senshu, Soka, Nihon, Hosei, Ritsumeikan, and Kansai. G2C: Kanazawa (national); Aoyama Gakuin, Seikei, Meiji, Rikkyo, Toin University of Yokohama, Nanzan, Meijyo, Kwansai Gakuin, and Fukuoka (private). G3: Hokkai Gakuen, Komazawa, Kinki, and Seinan Gakuin.

20. [mext.go.jp](http://mext.go.jp) (2015).

21. The total number was 169, which is different from the number of proposed projects, since the Review Committee treated some projects as parts of bigger ones.

22. Seventeen are Waseda (145%), Tokyo (135%), Hitotsubashi (130%), Kyoto (120%), Keiko (120%), Osaka (115%), Kobe, Doshisha (110%), Hokkaido, Kyushu (105%), Chuo (96%), Tsukuba, Chiba, Nagoya, Sophia (95%), Tohoku, and Yokohama National (91%).

### 3.3 Overview of the 2015 Review Results

From the perspective of renovation and improvement of legal education, it is important to analyze the applications and results of the second step. This shows how JDLSs try to renovate and/or improve legal education, and where the government, as a systemic planner, is willing to go. I would like to begin the analysis with a quick overview of the results.

Projects are divided into nine categories: (1) enhancing *Mishusha* (literally, persons who have not studied law<sup>23</sup>) education,<sup>24</sup> (2) early entry to JD programmes, including early graduation from undergrad and continuous education through undergraduate and JD programmes, (3) continuous legal education, (4) internationalization, (5) enhancing community service and supporting career development of graduates in the new legal service area, (6) educational co-operation among JDLSs, (7) fostering legal academics, (8) fostering female lawyers, and (9) fitting various needs by using information and communication technologies (ICT) and other methods. Table 2 shows the number of adopted projects by these categories.

Unfortunately, there is not enough space to analyze all nine of these categories in detail. However, from Table 2, we can discern broader tendencies within renovation and the improvement of legal education. Here, I would like draw attention to categories (3) and (5), and (4).

First, the Review Committee adopted the largest number of projects from category (3) (CLE), including two categorized as “excellent” and four categorized as “superior.” The second largest category was (5) (career development). These two categories, of course, overlap with regard to post-graduate education and support. This means that CLE and career development were the two most interesting topics to both JDLSs and the Committee. Facing a rapid increase in the number of lawyers, JDLSs and the legal services community are jointly trying to expand CLE and career-development programmes. In 1994, 14,809 *Bengoshi* lawyers were registered in Japan and, as of 1 February 2016, 37,704 are working.<sup>25</sup>

However, Table 2 also shows that new career-development programmes are still developing: 11 out of 14 projects in category (5) were classified as merely “good.” On the other hand, six out of the 15 proposed CLE programmes were evaluated as “excellent” or “superior.” This difference, probably, shows different faces of JDLSs to the communities, such as lawyers, business, local, international, or academic community. CLE programmes in category (3) are educational programmes offered by JDLSs to JD graduates and practising lawyers. This relationship would be one of service provider–customer. By contrast, the career-development projects are “joint ventures” among JDLSs and communities. At present, however, the establishment of such “joint ventures” is a model still relatively foreign to most JDLSs. In fact, most of the 11 projects ranked as “good” in category (5) proposed only very limited relationships with local bar associations and governments. Only a few proposed projects were based on close ties to business corporations, companies, or international organizations. In sum, it is truly important to develop career-development projects.

23. See *supra* note 14.

24. Most JD students studying in a three-year “*Mishusha course*” are graduates of undergraduate schools of law who failed to pass the two-year “*Kishusha course*” entrance exam. Only a small number of students in these programmes have not studied law as undergraduates.

25. See the Japan Federation of Bar Associations (2015). In 1994, 14,809 *Bengoshi* lawyers were registered in Japan, 20,224 in 2004, 26,930 in 2009, 30,485 in 2011, and 35,046 in 2014: p. 63. For the latest number of *Bengoshi* lawyers, see JFBA’s website as well: nichibenren.or.jp (2016).

**Table 2.** Nine categories

	Excellent	Superior	Good	Total
(1) <i>Mishu</i> education	1		7	8
(2) Continuous education though undergrad. and JD programme			10	10
(3) Continuing legal education (CLE)	2	4	9	15
(4) Internationalization	3	3	6	12
(5) Community service and career development	1	2	11	14
(6) Educational co-operation among JDLSs			7	7
(7) Fostering law academics		2	2	4
(8) Fostering women lawyers		1	1	2
(9) Using ICT for various needs		1	5	6
Total	7	13	58	78

ICT, information and communication technologies; JDLSs, Juris Doctor law schools.

Second, “internationalization” was the third-largest category by proposed projects. This could be a sign of “re-renovation” of legal education at the JD programmes. Actually, “internationalization” of lawyers and/or legal services was one of main reasons for introducing the JD-style law-school system in 2004.<sup>26</sup> Therefore, following the new policy of legal-education reform, in 2004, MEXT provided 48 special sets of funds to support the establishment of distinctive JD courses. Nine of a total of 48 of these projects aimed at international education programmes and 11 JDLSs received special government funds through this framework.<sup>27</sup>

Unfortunately, faced with the low pass rate of the NBE, most JDLSs and JD students lost their enthusiasm for internationalization in around 2008. For example, when the government offered follow-up funding to the JDLSs in 2008, only one international education project proposal was adopted by MEXT: a joint project by three JDLSs—Chuo, Meiji, and Ryukyu.<sup>28</sup> Additionally, the Japan Law Foundation (JLF), one of three accreditation authorities for JDLSs in Japan, abandoned its requirement concerning international education on 11 May 2010. “[F]ostering internationality” was originally an independent accreditation requirement. By 2010, when amending its accreditation standards, the JLF deleted the requirement of “fostering internationality” from the standards.<sup>29</sup> These two examples show that “internationality” has lost priority in JD curricula within the first decade of the new law-school education system.

However, today, there are signs of “re-renovation,” the beginning of fresh improvements. First, in 2015, the JLF amended its accreditation standards. The JLF asked the public for input regarding the amendment of its accreditation standards in March 2015 and announced its 2015 amendments on 20 May, 19 June, and 1 December 2015. The latest version of the standards was come into effect on 1 April 2016. In this version, the JLF restored the requirement of “fostering internationality,” which appeared in the sixth chapter regarding “coursework.”<sup>30</sup> In the original standards promulgated in 2004, the requirement was placed

26. The Judicial Reform Council, *supra* note 1.

27. [mext.go.jp](http://mext.go.jp), *supra* note 11.

28. [mext.go.jp](http://mext.go.jp) (2008).

29. See [jlf.or.jp](http://jlf.or.jp) (2010). The JLF released a supplementary comment: “internationality shall be an element of other requirement, i.e. mind and skills that shall be required to lawyers.”

30. See JLF (2015).



in the eighth chapter regarding “studying environment.” In sum, the 2015 Amendment not only restores the requirement for internationality, but also moves this requirement from the periphery to the centre of the standards.

Second, the nature of the results of the Review Committee has changed. Twelve of the projects adopted by the Review Committee for additional financial support were international in nature. There were three projects categorized as “excellent,” submitted by Tokyo, Waseda, and Doshisha; three projects categorized as “superior,” submitted by Kobe, Keio, and Ritsumeikan; and six projects categorized as “good,” submitted by Yokohama National, Nagoya, Kyoto, Hiroshima, Kyushu, and Chuo. Surprisingly, almost all the major JDLSs made this list. As I mentioned above, only one international proposal (three JDLSs) was successfully funded by the government in 2008.

The Review Committee has not explained the reason projects associated with “internationalization” placed as the third-largest category. However, I would point out the influences of two other government policies related to JDLSs. First, at the beginning of the twenty-first century, facing serious concerns regarding rapid ageing and low birth rates, MEXT initiated a policy aimed at the globalization of Japanese universities. Three major government projects and sets of funds have been made available to top universities for last two decades, which include the “Global 30” (inbound project),<sup>31</sup> “Global Human Development” (outbound project),<sup>32</sup> and “Super Global University” (comprehensive project).<sup>33</sup> In addition, in 2013, MEXT began a new project, the “Leap for Tomorrow, Study Abroad Initiative.”<sup>34</sup> In Japan, these policies and programmes affect universities’ views of internationalization. Of course, although these are forms of financial support for specific programmes and projects, they are also *de facto* endorsements by the government, to both universities and JDLSs. Further, within several years, the pass rate of the NBE could rise to 70%. In 2015, although the authorized enrolment of JD was 3,169, only 2,201 students enrolled. The same year, 1,850 applicants passed the NBE—a pass rate of 20.65%. However, since Article 4, clause 1 of the Bar Examination Act<sup>35</sup> allows only five years to JD graduates to sit the NBE, all applicants who graduated JDLSs before introduction of the new framework of government support to law schools will lose his/her eligibility to sit the NBE by 2019. Therefore, after 2020, the pass rate of the NBE could reach around 70%. Confronting this sensitive issue, most JDLSs have to re-establish their international programmes for building sustainable competitive advantage.

## 4. THE “INTERNATIONALIZATION” OF LEGAL EDUCATION BY JDLS

### 4.1 Overview

Focusing on categories (3) and (5), and (4) above, I offered a quick overview of the 2015 review results. Here, I would like to more closely examine “internationalization” because it is

31. uni.international.mext.go.jp (2016).

32. go-global-japan.com (2016).

33. jsps.go.jp/j-sgu (2016).

34. tobitate.mext.go.jp (2016).

35. Act No. 140 of 1947.

distinctive, rather than the other two points, to see how each JDLS tries to build sustainable competitive advantage. In this context, “internationalization” could be central to the “re”-renovation of legal education in Japan now.

The fourth category includes projects aimed at fostering lawyers who are active internationally. In 2015, 12 projects were awarded funding in this category. Analyzing these 12 projects highlights features showing recent efforts by JDLSs.

#### *4.2 Long-Term Study Abroad Programmes for JD Graduates*

First, some projects offer JD graduates with the opportunities to study abroad for long periods of time. Generally speaking, JD students are under considerable pressure from the NBE, and they are inclined to concentrate their attentions on that. Therefore, many JDLSs are offering, not to their students, but to their graduates opportunities to study abroad in a foreign jurisdiction, such as New York, California, or other states in the US, Australia, England, Germany, or France. Even now, to sit the New York bar is an attractive career path to the young lawyers in Japan. However, only a few JDLSs (Waseda, Doshisha, and Keiko) have long-term study-abroad programmes for their JD students and very few students apply to the programmes.

#### *4.3 Short-Term Study-Abroad Programmes for JD Graduates*

Second, several JDLSs offer short-term study-abroad programmes and short-term externship programmes abroad for their JD students. For example, Ritsumeikan manages a “Washington Seminar” in Washington, DC, in the US, while Chuo organizes a “Study Abroad Program in Melbourne” and a “Study Abroad Program in Hong Kong.”

Chuo’s Hong Kong Program is especially unique. This programme was started in 2005 by Chuo and the University of Hong Kong (HKU). Some years later, the Korean government introduced a JD-style law-school system as well. Chuo and HKU opened their programme to some Korean law schools. Now the Hong Kong programme is jointly managed by Chuo, HKU, and five Korean law schools, including Hanyang, Kyunghee, Ewha Women’s, Seoul City, and KonKuk. Law students from three different jurisdictions can participate in a one-week programme at HKU. The programme includes lectures, study visits to law firms, government, and the court, and students’ presentation, which is the highlight of the programme. All students make group presentations in English on a legal issue in his/her jurisdiction to the students and professors from other jurisdictions. During a one-week stay in Hong Kong to prepare their presentations, students from different jurisdictions discuss the differences in law and societies between each other’s backgrounds. It is a truly attractive “peer-learning” opportunity for the students.

#### *4.4 Teaching/Learning Japanese Law in English*

Third, some Japanese law courses are taught in English. At least five JDLSs—Tokyo, Waseda, Keio, Ritsumeikan, and Chuo—offer courses on Japanese law in English. It is a truly new approach to foster global lawyers. For a variety of reasons, Japanese law courses have been taught only in Japanese. Most importantly, since its period of modernization in the late nineteenth century, Japanese law has been based on the civil-law tradition. In line with this civil-law tradition, statutes should be a primary source of law. Using hermeneutics, the

duty of lawyers is to discover the exact meanings of provisions of statutes. Written in the Japanese language, Japanese law should be learned and interpreted using the Japanese language. Even now, this is a typical argument within Japanese academia.

However, a new trend can be discerned within several JDLSs projects on teaching/learning Japanese law in English, with strong reasons in support of this approach. Here, I would like to discuss three of these.

First, legal services are becoming increasingly globalized: Japanese law governs many agreements and contracts written in English. Young lawyers have to prepare for these trends in “globalization.”

Second, in terms of education, law should be learned from a comparative perspective. An example of this is the following: in the common-law jurisdictions, “consideration” is the essential concept to learn law of contract. “[T]he doctrine of consideration is too firmly fixed to be overthrown by a side-wind.”<sup>36</sup> On the other hand, civil law does not know a concept of consideration at all. This presents an opportunity to study these traditions from the perspective of not only concepts (common-law contract and Japanese law *keiyaku*, literally, contract), but also socioeconomic meanings (*keiyaku* compared with common-law contract). Why does common law need “consideration” even now? In thinking about this question, we have an opportunity to consider the meaning of Articles 549 and 550 of the Civil Code concerning the term “gift” from a comparative perspective.<sup>37</sup>

Third, learning Japanese law in English is a good method for “peer leaning” with local and international students. For example, Tokyo, Ritsumeikan, and Chuo host their summer programme and intensive courses for local and international students. In these courses, students can learn law from each other by exchanging their knowledge and ideas. Allow me to more fully explain Chuo’s case as an example.

Chuo has been hosting its summer programme, entitled “Introduction to Japanese Law in English,” since 2010. In its constitutional-law class, religious freedom and secularism are popular topics. At the beginning of the class, the teacher explains the basic nature of religion and religious organizations in Japan, including the relationship between Buddhism and *Shinto*.<sup>38</sup> After the class lecture, participants visit the Shinto Shrine in the Chuo Campus<sup>39</sup> and discuss the meaning of the principle of a “secular state.” Participants thereby become more familiar with the ways the notion of a “secular state” exists in different jurisdictions.

#### 4.5 Focus on Asia

Five out of 12 projects in category (4) have mentioned Asia or Asia-Pacific as important to their education. Of course, because Japan is a part of Asia-Pacific and emerging economies in this area attract people, more attention should be paid to Asia-Pacific law. However,

36. *Combe v. Combe* [1951] 2 KB 215, 220.

37. See Civil Code (Act No. 89 of 1896). Art. 549 reads: “Gifts shall become effective by the manifestation by one of the parties of his/her intention to give his/her property to the other party gratuitously, and the acceptance of the other party thereof.” Art. 550 reads: “Gifts not in writing may be revoked by either party; provided, however, that this shall not apply to any portion of the gift for which performance has been completed.”

38. See Honma & Hoffer (1986). Defining Shinto is difficult, since it has been described in various ways, including in terms of animism. The following is an example of its various elements: “Shinto is Japan’s native religion. It is based on the Providence of *Kami* (God), the laws of nature, and ancestor worship. Historically, it existed from dawn of Japanese civilization, but is became more clearly defined after Buddhism entered Japan in the middle of the sixth century.”

39. Establishing small shrines is a tradition within Japanese construction.

language differences present problems. English generally serves as an “intermediate” language in Asia-Pacific, for both people in general and lawyers specifically. Additionally, English is the “common-law” language. Thus, further development should occur regarding issues of legal language within the Asia-Pacific region.

## 5. CONCLUSION

Most people in Japan, including lawyers, have pessimistic views regarding the dual-track legal-education system within Japanese JDLSs. However, in my opinion, now is the time to “re”-renovate legal education at such schools. The fundamental problem is not the education system as such, but the gap between the law-school and bar-exam systems. Government financial support in 2015 could act as a point of “re”-starting necessary reforms.

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