

Justice System Reform in Japan

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Japanese law is in the midst of a period of major change.

From the 1960s through the 1980s, the situation in most of the major fields of Japanese law might best be summed up by the term "gradualism." That term is often associated with the field of employment discrimination,¹ but it might equally be applied to any number of other fields of law. There are exceptions, of course. In the environmental law field, for example, Minamata and other environmental disasters precipitated what, by any measure, rank as far-reaching reforms--reforms that extended to the judicial, administrative and legislative realms. Although coming relatively late in the 1980s, the tax reforms of 1986-1988 warrant special note. Anger over one of those reforms, the introduction of the Consumption Tax, energized the electorate, which in turn played at least an indirect role in laying the groundwork for some of the subsequent major reforms. In field after field, however, from the 1960s through the 1980s change was incremental.

In sharp contrast, the 1990s and the first few years of the twenty-first century have witnessed path-breaking change. The changes are not simply isolated changes to individual statutes, but rather extend to fundamental reform of the justice system. Indeed, in many ways these changes represent a reshaping of Japanese society itself. In the political sector, electoral and other reforms have aimed at strengthening political leadership, centered on a strong Prime Minister and Cabinet. In the administrative law realm, the Administrative Procedure Act of 1993 and the Information Disclosure Act of 1999 have altered the landscape of relations between, respectively, bureaucrats and regulated parties and bureaucrats and the general public. Yet another major trend has been a push for deregulation. The extent of change in the legal realm is exemplified, above all, by one set of events: the Justice System Reform Council of 1999-2001 (hereinafter, the Reform Council or simply the Council) and the reforms resulting from that Council's recommendations. That is the subject of this paper.

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¹ See Note (Loraine Parkinson), "The Japanese Equal Employment Opportunity Law: An Alternative Approach to Social Change," Columbia Law Review, 89 (1989): 604.

Justice System Reform Council

To give some sense of the scope of the recent changes in Japanese law, it may be useful to provide a brief overview of the Reform Council's activities, recommendations, and the resulting reforms.

The Justice System Reform Council was established through legislation enacted by the Diet in July 1999, at the behest of Prime Minister Keizô Obuchi. According to the Justice System Reform Council Establishment Act, the Reform Council was established for the following purposes:

to clarify the role to be played by justice in Japanese society in the 21st century; and to examine and deliberate fundamental measures necessary for the realization of a justice system that is easy for the people to utilize, measures necessary for participation by the people in the justice system, measures necessary for ... strengthening the functions of the legal profession, and other reforms of the justice system, as well as improvements in the infrastructure of that system.²

As that list reflects, the Reform Council's mandate was broad, extending to all aspects of the justice system. And the Reform Council pursued that mandate vigorously.

The Reform Council's Composition and Activities

Of the Reform Council's thirteen members, only three--a practicing attorney, a former judge, and a former prosecutor--came from the legal profession per se. Three more were legal academics. The other seven, constituting a majority of the Council, came from fields other than law, with two professors from non-law fields, two business leaders, a labor leader, a consumer advocate, and a well-known novelist. Each of the members was nominated by name, and all were approved by the Diet.

The composition of the Reform Council was important. In the past, decisions about matters directly related to the justice system had been left largely to the so-called hôsô sansha--the "three branches" of the legal profession, i.e., the practicing bar, the judiciary, and the procuracy, with consensus by all three branches usually required before significant action could be undertaken. Under those circumstances, there had been a marked tendency to maintain the status quo; fundamental reform had proven difficult to achieve. By limiting representation of the hôsô sansha to just three members, and by insuring added legitimacy through Diet approval of each of the members, the structure of the Reform Council was instrumental in enabling fundamental

² Shihô seido kaikaku shingikai setchi hô [Justice System Reform Council Establishment Act], Law No. 68 of 1991, art. 2.

reexamination of the justice system.

The Reform Council was assisted by a secretariat of approximately a dozen members. The executive director of the secretariat was seconded from the Ministry of Justice, and the staff of the secretariat included members drawn from all three branches of the legal profession, as well as other ministries and business. The Reform Council was wary of the danger that its agenda or recommendations might be dominated by the hōsō sansha indirectly, through the influence of the secretariat. To reduce that possibility, in the early stages of its deliberations the Reform Council proceeded by dividing up the major topics and having individual Council members report on those topics; the full Council then discussed those topics collectively in setting its future agenda.³

The Reform Council was empanelled for a two-year term. During those two years, the Council undertook extensive investigation into many aspects of the entire justice system. It held over sixty meetings, including several all-day sessions. Among other activities, it also held public hearings at four locations around Japan; conducted fact-finding visits to justice-related organizations; commissioned a survey of court users, focused on litigants in civil cases; and undertook visits to Europe and the United States to examine other justice systems. In addition to the public hearings and user survey, the Reform Council solicited public comment in various other ways. The meetings themselves were not open to the general public but were open to the press (via video-camera link to an adjoining room), and a number of the sessions received considerable publicity. Moreover, the minutes of the meetings were released and posted on the Internet.⁴ The Reform Council also issued an extensive interim report,⁵ setting forth basic principles for the reforms along with a wide range of tentative recommendations, on which it solicited public comment.

The "Three Pillars" of Justice System Reform

On June 12, 2001, the Reform Council issued a comprehensive set of recommendations, in a final report bearing the subtitle: "A Justice System to Support Japan in the 21st Century."⁶ That report was well over one hundred pages long; and the recommendations

³ See Masahito Inouye, "Nihon ni okeru shihō seido kaikaku no keii to gaiyō" [Background and Overview of Justice System Reform in Japan], Paper prepared for presentation at the International Seminar on Judicial Reform, Taipei, Taiwan, September 23, 2004 (copy on file with author).

⁴ As of this writing, the minutes still may be viewed at: (<http://www.kantei.go.jp/jp/sihouseido/>).

⁵ Shihō seido kaikaku shingikai [Justice System Reform Council], Chūkan hōkoku [Interim Report] (Nov. 20, 2000), available at: (http://www.kantei.go.jp/jp/sihouseido/report/naka_pdfdex.html).

⁶ Shihō seido kaikaku shingikai ikensho--21 seiki no Nihon o sasaeru shihō seido-- [Recommendations of the Justice System Reform Council--A Justice System to Support Japan in the 21st Century--] (June 12,

extended to a vast range of aspects of the justice system.

At the outset of its final report, the Reform Council announced three basic principles underlying the reforms, the so-called "three pillars" of the reforms. These three pillars, which closely paralleled the reform goals set forth by the Diet in the law establishing the Reform Council, were as follows:

First, achieving "a justice system that meets public expectations." In the words of the Council, "in order to achieve 'a justice system that meets public expectations,' the justice system shall be made easier to use, easier to understand, and more reliable."

Second, strengthening "the legal profession supporting the justice system." By reforming the legal profession, the Council concluded, "a legal profession that ... is rich both in quality and quantity shall be secured."

Third, "establishing a popular base for the justice system." In explaining this third pillar, the Council stated, "public trust in the justice system shall be enhanced by introducing systems for popular participation in legal proceedings and other measures."

In the view of the Reform Council, all three pillars were closely interrelated. As a prominent example, one of the concerns underlying many of the Council's recommendations was the perception that the justice system--not only the courts and judges, but all three branches of the legal profession--were too insulated and did not sufficiently respond to or reflect the views of the public. One part of the solution to this perceived shortcoming lay in the first pillar, in the form of recommendations for measures to enhance access to and understanding of the justice system by the general public. Yet, while such measures might "respond to popular expectations," they would still in essence emanate from the top down. To ensure that the views of the public would be directly reflected in the justice system in the future, the third pillar, popular participation, also was vital. In connection with popular participation, the so-called saiban'in system--the Japanese style jury system (discussed in more detail below)--has received the lion's share of the publicity, but the Reform Council recommended expansion of existing systems and establishment of new systems for popular participation in many other settings, as well, so as to ensure that the views of the public would be reflected throughout the justice system.

In the view of the Reform Council, the second pillar--strengthening the legal profession--also was crucial to each of the other pillars. A strengthened legal profession was seen

2001), available at (<http://www.kantei.go.jp/jp/sihouseido/report/ikensyo/pdf-dex.html>); English translation available at (<http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html>).

as vital not only for expanding access to and understanding of the justice system, but for enabling meaningful popular participation in the justice system. Accordingly, both of the other pillars envisioned an expanded role for the legal profession, and thus depended heavily on a legal profession strengthened both in terms of quantity and quality. Indeed, in a reflection of how important this second pillar was to successful achievement of the other reforms, strengthening the legal profession was placed first on the agenda at the implementation stage.

Prior Proposals for Justice System Reform

The deliberations of the Reform Council were not the first time many of the same concerns had been raised. The Reform Council was not even the first official body to investigate the justice system as a whole and offer recommendations for fundamental reform. That distinction belongs to the Provisional Justice System Investigation Committee (hereinafter, the Investigation Committee), a twenty-member committee (consisting of seven Diet members, three judges, three prosecutors, three attorneys, and four scholars, and chaired by leading legal scholar Professor Sakae Wagatsuma), which was established in 1962.

Like the Reform Council, the Investigation Committee met for two years. Its investigation was narrower in scope than that of the Reform Council, focusing primarily on the legal profession and the court system. Within that more limited range, the Investigation Committee's final recommendations,⁷ issued in 1964, bear a number of striking similarities to the Reform Council's Recommendations, issued thirty-seven years later. Just as with the Reform Council, for example, the Investigation Committee called for increasing the number of judges, recruiting more judges from among practicing lawyers and prosecutors, increasing legal aid, placing greater emphasis on legal ethics, and taking steps to encourage lawyers to practice in areas other than the large cities. Most notably, the Investigation Committee also emphasized the need for substantial increases in the size of the bar.

The recommendation for increasing the size of the bar may have had a slight impact. The year the Investigation Committee issued its recommendations, 1964, the number of successful passers of the bar examination exceeded 500 for the first time. The increase was only 12 from the year before, however, from 496 to 508. Moreover, despite a thirty percent increase in

⁷ See Rinji shihô seido chôsakai, Ketsugi yômoku [Provisional Justice System Investigation Committee, Main Points] (Aug. 28, 1964), reprinted in Sankô shiryô [Reference Materials] for Meeting No. 2 of the Justice System Reform Council (Sept. 2, 1999), available at (<http://www.kantei.go.jp/jp/sihouseido/dai2kai-append/husamura3.html>).

Japan's population and a dramatic expansion in economic activity over the subsequent twenty-five years, the number of passers remained virtually unchanged, at approximately 500 per year, until 1990, followed by only gradual increases thereafter. Most of the Investigation Committee's other recommendations languished for a number of years and then disappeared from view--doomed in large part by failure to achieve consensus among the hōsō sansha. As the experiences of the Investigation Committee reflect, in the past, wide-ranging proposals for justice system reform typically had withered on the vine.

Rapid Implementation of Reform Council Recommendations

In sharp contrast, the reforms proposed by the Reform Council have taken shape at a remarkable pace. The Council issued its Recommendations in June 2001. In November of that year, the Diet, with a view toward assuring the implementation of key recommendations, enacted the Act for Promotion of Justice System Reform.⁸ Pursuant to that Act, the following month, December 2001, the Headquarters for Promotion of Justice System Reform (hereinafter, the Headquarters) was established for a three-year term. By law, the Headquarters was to be located "within the Cabinet." In fact, the Headquarters was comprised of the entire Cabinet itself, with the Prime Minister serving as the chair (and with the Reform Council's chair, Professor Kōji Satō, appointed as special advisor to the Headquarters). The composition of the Headquarters reflected and, at the same time, offered a potent symbol of the importance accorded to the reforms in political circles. Its composition also presumably aided in overcoming differences of opinion among ministries.

In March 2002, the Headquarters issued, in the form of a Cabinet resolution, a Plan for Promotion of Justice System Reform (hereinafter, the Promotion Plan).⁹ It also established eleven Expert Advisory Committees (kentōkai), responsible for the following subject areas: labor, access to justice, administrative litigation, saiban'in system/criminal justice, publicly provided defense counsel system, internationalization, legal training, legal profession (hōsō seido), and intellectual property. The Headquarters set forth rather specific mandates for each of the Expert Advisory Committees, and also established a clear timetable for implementation of specific elements of the reforms.

The reforms moved forward rapidly. By the time the three-year term of the

⁸ Shihō seido kaikaku suishin hō [Act for Promotion of Justice System Reform], Law No. 119 of 2001.

⁹ Shihō seido kaikaku suishin keikaku [Plan for Promotion of Justice System Reform], Cabinet Resolution of March 19, 2002, available at: (<http://www.kantei.go.jp/jp/singi/sihou/keikaku/020319keikaku.html>).

Headquarters expired in November 2004, well over twenty significant pieces of legislation implementing proposed reforms were enacted, including nearly all of the major legislative measures set forth in the Promotion Plan. In addition, many other reforms that did not require legislative action were implemented. In sum, sweeping reform of the justice system has occurred at a speed that would have been unthinkable even a decade ago.

Why So Far and So Fast?

Leaving for later an examination of some of the major reforms, an obvious initial question is what accounts for the breadth and speed of reform on this occasion. Two interrelated factors have already been mentioned. First, unlike earlier efforts at justice system reform, reform was not left to the hōsō sansha but instead was treated as a matter of wide public concern. Secondly, the political branch accorded high priority to the reform efforts. Prime Minister Obuchi, who first pushed for establishment of the Reform Council, passed away suddenly less than a year after the Reform Council had begun its deliberations. By the time the Reform Council issued its Recommendations in June 2001, the post of prime minister had been assumed by Jun'ichirō Koizumi. Koizumi, who already had achieved a reputation as a reformer, quickly embraced the reform efforts. His support undoubtedly played an important role in the rapid implementation of the reform proposals.

Yet why was it that, after decades of having been left largely to the hōsō sansha, on this occasion justice system reform was treated as a matter for public debate and political action? The reasons are complex; and any attempt to answer that question concisely is bound to miss important elements. Let me offer a few speculative comments.

One reason for the success of the reform efforts this time is simply that certain problems with the justice system had festered for so long they could no longer be ignored. The most prominent examples are the size of the legal profession and access to legal services in areas of lawyer scarcity. As far back as 1964, the Investigation Committee had highlighted both concerns. Despite modest increases in the number of new entrants to the legal profession in the 1990s, as of 2001 there were still fewer than 19,000 practicing lawyers in the entire nation of over 130 million--far too few to meet the growing demand for legal services. And, if anything, the problem of lawyer scarcity had gotten even worse over the intervening four decades. As of 1964, sixty-five percent of all practicing lawyers were members of the local bar associations in just four

cities: Tokyo, Yokohama, Osaka, and Nagoya.¹⁰ By 2001, that proportion had risen to over seventy percent.¹¹ For people living in many other areas, lack of access to legal services had become an acute problem. The Reform Council captured the concern over lawyer scarcity well with the phrase "zero-one regions," using that phrase as shorthand for regions having either no lawyers at all, or just one lawyer. As of 2000, of the 253 court districts in Japan, 72 were zero-one districts. More strikingly, out of 3371 registered cities and towns in Japan, 3023, or nearly 90 percent, were zero-one regions.¹² In sum, the inadequate size of the legal profession and the issue of lawyer scarcity had persisted for so long and become so acute they demanded attention. Many of the other reforms proposed by the Reform Council also addressed longstanding problems that had become increasingly difficult to ignore.

As Professor Kôya Matsuo has observed,¹³ two symbolic factors also may have played a role in the speed and scope of reform: the shift from the Shôwa to the Heisei era and the advent of the 21st century. Both of these events carried psychological overtones of a new beginning. The fact that most of the key figures in the reform movement grew up and were educated in the postwar era likely contributed to their desire to embrace the opportunity for a new beginning. And the fact that very few had played any role in the last prior set of major reforms--those following World War II--may have fostered a greater willingness to undertake a fundamental reexamination of the justice system.

Another important factor underlying the reforms is internationalization. By this, I do not mean foreign pressure (or gaiatsu). One of the striking aspects of the justice system reform process is how little direct foreign pressure there was. The impact of internationalization extends far beyond foreign pressure and manifests itself in many ways, however. Increasing internationalization, for example, brought greater demand for legal services and demand for new types of legal services (in areas such as arbitration and intellectual property, for example). And the growing presence of foreign law firms in Japan increased competitive pressure on Japanese business law firms to expand and develop greater specialization.

More significantly for placing justice system reform on the political agenda, internationalization played an important role in generating business support for reform.

¹⁰ See Shiryô 14 [Material 14], Sankô shiryô [Reference Materials] for Aug.8/9, 2000, session of the Justice System Reform Council.

¹¹ See Nihon Bengoshi Rengôkai [Japan Federation of Bar Associations], ed., Bengoshi hakusho [White Paper on Bengoshi], 2003 ed. (2003), 21.

¹² See Inouye, supra n. 3.

¹³ Kôya Matsuo, "The Development of Criminal law in Japan since 1961," in Law in Japan: A Turning Point (Daniel H. Foote ed., University of Washington Press [expected publication in 2005]).

Throughout much of the 1980s, Japanese business leaders viewed the United States as a nation with too many lawyers, leading to excessive litigation, which in turn hampered the competitiveness of U.S. businesses. In contrast, according to that view, the limited number of lawyers in Japan was one reason for Japan's economic success. (Notably, many U.S. business leaders--and even Derek Bok, former president of Harvard University¹⁴--expressed similar views.) Accordingly, in the past many Japanese business leaders sided with the bar in opposing substantial increases in the number of lawyers in Japan.

In large part as a result of internationalization, though, business views shifted. Through their own experiences after their companies had become involved in disputes in the United States and elsewhere, business leaders developed a greater appreciation for the valuable roles played by lawyers in resolving disputes and, through advance planning, heading off potential future disputes. Moreover, business leaders came to recognize the broader roles served by the legal profession. In the past, businesses tended to view lawyers primarily as litigators, who would seek only to divide the pie (and take a cut for themselves at the same time). Over the years, however, many Japanese businesses utilized U.S. and other foreign lawyers, as well as an increasing number of Japanese lawyers, to provide general business advice, negotiate, or otherwise facilitate business transactions, or to advise on regulatory matters or handle other non-dispute matters. Through these experiences, business leaders came to realize that lawyers not only divide the pie through litigation, but also often help to expand the pie through other activities. Accordingly, many Japanese business leaders came to support an increase in the size of the legal profession, coupled with an expansion in the legal profession's role. This growing business support for justice system reform in turn served as one factor underlying the increased support by the ruling Liberal Democratic Party.

A further reason for support for reform by the business community and the LDP related to the broad issues of deregulation and administrative reform. A fundamental goal embraced by the Reform Council was "to transform the excessive advance-control/adjustment type society to an after-the-fact review/remedy type society." This goal in turn tied to the final recommendations of the Administrative Reform Council [hereinafter, ARC] (on which Prof. Satô, who chaired the Justice System Reform Council, also served). The recommendations of the ARC, issued in late 1997, helped bring about a reorganization of the central government ministries and agencies and a strengthening of political control and the functions of the Cabinet. In addition, the ARC

¹⁴ See Derek Bok, "A Flawed System of Law Practice and Training," *J. Leg. Educ.*, 33 (1983): 570.

advocated reinforcing "the rule of law," as "an essential base for promoting deregulation, aimed at abolishing unclear advance administrative control and converting to an after-the-fact review/remedy type society."¹⁵ In other words, the ARC supported the goal of replacing vague, ambiguous, and highly discretionary administrative guidance with a system of clear, enforceable rules. The Justice System Reform Council endorsed the same objective.

Many business leaders and politicians welcomed that shift. Over the years, a number of business leaders have voiced frustration at instances of administrative guidance by bureaucrats. Those leaders would have welcomed the prospect of reducing the seemingly unreviewable discretion of bureaucrats. In the case of the LDP, support for this "transformation" in turn related to the fact that party no longer could count on the absolute majority it had enjoyed for so much of the postwar era. By moving to an after-the-fact review system, the politicians presumably could entrust the courts to enforce policy preferences embodied in legislation supported by the LDP, even in the event of a subsequent shift in control of the Cabinet.

For both the business community and the LDP, moreover, a major factor in support for reform undoubtedly was the seemingly never-ending recession that began in the early 1990s and continued well into the 21st century. Administrative guidance--the "advance-control/adjustment" approach--was seen as having failed. Perhaps deregulation would hold the answer to Japan's economic doldrums.

In turn, in the view of the Reform Council, an essential precondition to deregulation and the shift to an "after-the-fact review/remedy type society" was raising the quantity and quality of the legal profession. As the Reform Council emphasized, the legal profession would need to play a vital role both in shaping and in implementing the rules underpinning the review/remedy approach. A strengthened legal profession was indispensable for doing so.

Granted, the business community and politicians may have supported the broad goals of deregulation and a strengthened legal profession, along with many of the more specific reforms, such as reforms relating to arbitration and intellectual property litigation, but it is hard to imagine great business support for many of the other reforms, including the establishment of the saiban'in system and other reforms relating to criminal justice. Yet business support helped break through the mindset that justice system reform was a matter reserved for decision by the hôsô sansha, and once the justice system became an object for debate among a broad range of constituencies, the

¹⁵ Gyôsei kaikaku kaigi [Administrative Reform Council], Saishû hôkoku [Final Report] (Dec. 3, 1997), available at: (<http://www.kantei.go.jp/jp/gyokaku/report-final/>).

door was opened for wide-reaching reforms.

Concrete Reforms

To give some sense of just how wide-reaching the resulting reforms have been, the following is a partial list:

- Sweeping reform of the legal education system, including establishment of a new tier of graduate-level law schools and substantial increases in the number of new entrants into the legal profession.
- Establishment of the saiban'in system, a new system for lay participation in the judging of serious criminal cases, which is to commence by the year 2009.¹⁶ (Legal education and the saiban'in system are described in more detail below.)
- Enactment of the Comprehensive Legal Assistance Act,¹⁷ which, as its centerpiece, establishes a new nationwide legal assistance network, the so-called Shihô Netto (Justice Network). This network, which is scheduled to begin operations by mid-2006, will consist of a centrally administered system, with branches throughout the nation staffed by full-time attorneys. It is designed to provide expanded legal assistance in civil cases, a strengthened public defense system for criminal cases, assistance to victims of crime, and a variety of other legal consultation services, with especial attention to overcoming problems with access to legal services in the regions of lawyer scarcity.¹⁸ This new network is of such potential importance in expanding access to legal services that Professor Satô, who chaired the Reform Council, has referred to it in public remarks as the "hidden fourth pillar" of justice reform.
- Enactment of the Act concerning Speeding Up of Trials,¹⁹ pledging efforts to achieve the goal of completing all first-instance trials (civil and criminal alike) in no more than two years.
- Establishment of an appeals court specializing in intellectual property matters, to ensure greater expertise in handling of intellectual property cases.²⁰

¹⁶ See Saiban'in no sanku suru keiji saiban ni kansuru hôritsu [Act concerning Criminal Trials in which Saiban'in Participate], Law No. 63 of 2004.

¹⁷ Sôgô hôritsu shien hô [Comprehensive Legal Assistance Act], Law No. 74 of 2004.

¹⁸ An overview of and commentary on Shihô Netto are contained in "Tokushû, Shihô netto no seibi" [Special Topic, Preparation of Shihô Netto], Jurisuto, 1262 (2004): 6-77.

¹⁹ Saiban no jinsokuka ni kansuru hôritsu [Act concerning Speeding Up of Trials], Law No. 107 of 2003.

²⁰ Chiteki zaisan kôtô saibansho setchi hô [Intellectual Property Appeals Court Establishment Act], Law No. 119 of 2004.

- Establishment of a new system for judging individual labor disputes, with a three-member panel composed of two lay members knowledgeable about labor matters sitting together with one professional judge.²¹
- Expansion in ADR mechanisms.²²
- Enactment of a new Arbitration Act,²³ designed to embody prevailing international arbitration standards.
- Various reforms to civil procedure, including expanded pre-trial procedures to expedite trials and some expansion in discovery mechanisms.²⁴
- Various reforms to the administrative litigation system, including some expansion in standing, increased access to evidence, and expanded rights to preliminary relief.²⁵
- Various reforms to criminal procedure, including expanded pre-trial procedures to expedite trials, expanded discovery, and steps to effectuate concentrated trials.²⁶
- Expansion of the right to publicly provided counsel in criminal cases, with publicly provided counsel to be made available from the point at which an order for detention is issued to a suspect (as opposed to upon indictment, as at present), initially limited to a specified range of relatively serious cases.²⁷
- Strengthening of inquest of prosecution (kensatsu shinsakai) functions, by providing the inquests (committees composed of members drawn from the general public) with authority to demand explanations for decisions not to prosecute and, in certain cases, to insist upon institution of prosecution.²⁸
- Various reforms to the Attorneys (Bengoshi) Act, Foreign Attorneys (Gaikokuhô jimu bengoshi) Act, Patent Attorneys (Benrishi) Act, Tax Attorneys (Zeirishi) Act, and other laws and rules relating to the legal profession, including reforms permitting attorneys (bengoshi) to work freely in public institutions and private companies; reforms allowing

²¹ Rôdô shinpan hô [Labor Judgment Act], Law No. 45 of 2004.

²² Saibangai funsô kaiketsu shudan no riyô no sokushin ni kansuru hôritsu [Act Concerning the Promotion of Use of Extrajudicial Mechanisms for Resolving Disputes] (The ADR Act), Law No. 151 of 2004.

²³ Chûsai hô [Arbitration Act], Law No. 138 of 2003.

²⁴ See Minji soshôhō tō no ichibu o kaisei suru hôritsu [Act Partially Amending the Civil Procedure Code, etc.], Law No. 108 of 2003.

²⁵ Gyôsei jiken soshôhō no ichibu o kaisei suru hôritsu [Act Partially Amending the Administrative Case Litigation Act], Law No. 84 of 2004.

²⁶ See Keiji soshôhō tō no ichibu o kaisei suru hôritsu [Act Partially Amending the Criminal Procedure Code, etc.], Law No. 62 of 2004.

²⁷ See id.

²⁸ See id.

foreign law firms to hire bengoshi and to enter into partnerships with bengoshi; and reforms permitting patent attorneys and tax attorneys to handle litigation matters in their respective areas of expertise, in association with bengoshi.

- Establishment of a committee, the Advisory Committee on Appointment of Lower Court Judges,²⁹ containing a majority of members from outside the judiciary, to screen candidates for initial appointments to the judiciary and to screen judges being considered for reappointment. (In Japan's career judiciary, each new entrant to the judiciary normally is appointed for a ten-year term as assistant judge upon completion of the Legal Training and Research Institute, followed by reappointment as judge, again for a ten-year term, and reappointment every ten years thereafter until retirement.)
- Efforts to invigorate the system for recruiting judges from among the ranks of practicing attorneys.
- Enactment of a law permitting assistant judges and prosecutors to work in private law firms for up to two years, then return to the judiciary or procuracy.³⁰

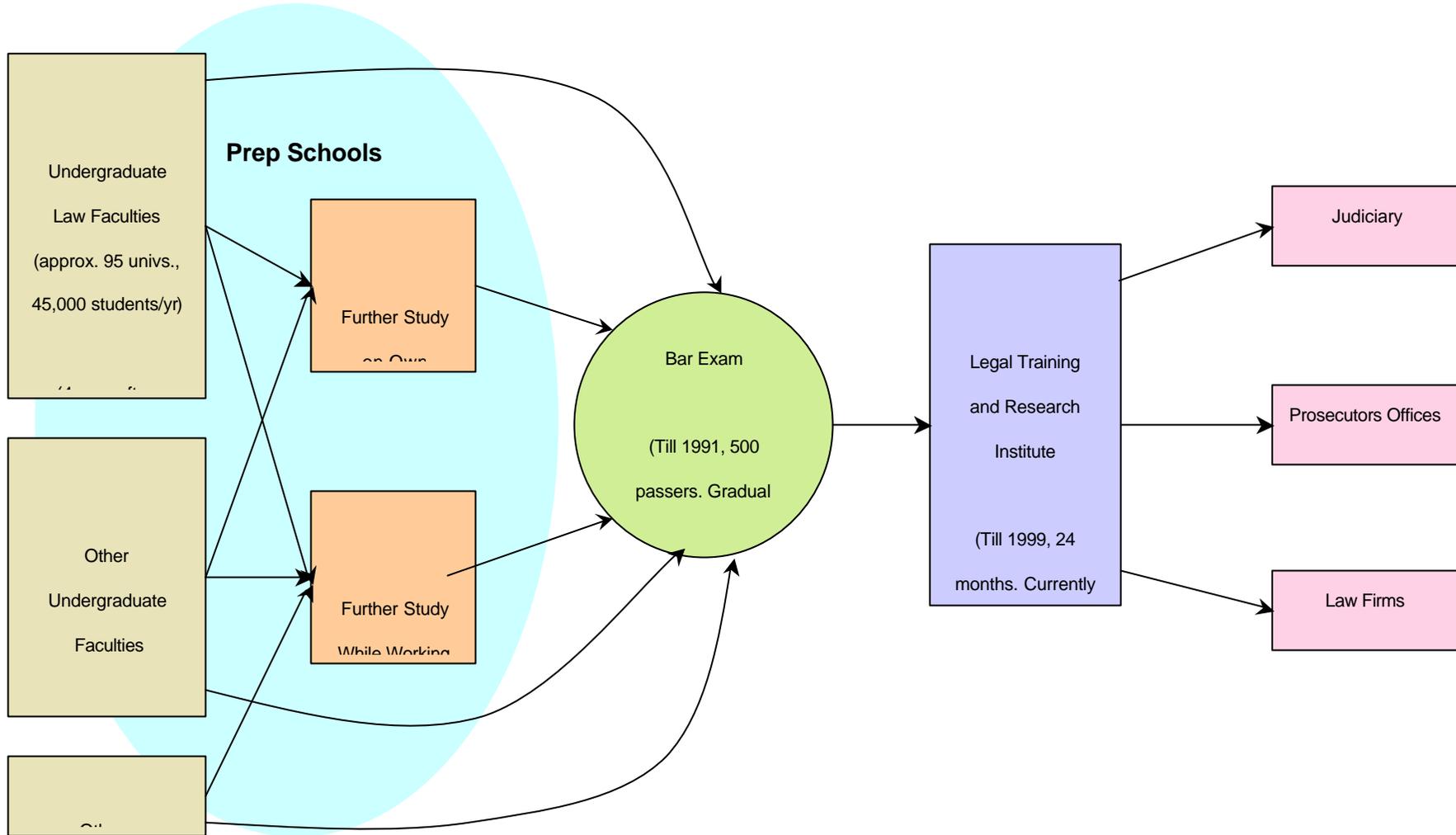
²⁹ See Kakyû saibansho saibankan shimei shimon iinkai no setchi ni kansuru kisoku [Rule concerning Establishment of the Advisory Committee on Appointment of Lower Court Judges], Supreme Court Rule No. 6 of 2003. Under the new system, which commenced operation in 2003, a central advisory committee screens candidates and forwards recommendations to the General Secretariat of the Supreme Court. That central committee is assisted by eight regional committees, which assemble information on the candidates. Initially, the central committee was comprised of eleven members: two judges, one professor who formerly was a judge, one prosecutor, two practicing attorneys, two other professors, and three members from other fields. In its first year of operation, the committee screened 108 recent graduates from the Legal Training and Research Institute who sought initial appointment as assistant judges, of whom eight were not recommended (and not appointed). In its first year the committee also reviewed 181 assistant judges and judges being considered for reappointment. Of those 181, six were not recommended (and those six evidently were not reappointed). This was by far the largest number of judges in history to be denied reappointment. Another noteworthy feature of the new system is that those denied appointment or reappointment have the right to receive an explanation of the reasons for the decision.

³⁰ See Hanjiho oyobi kenji no bengoshi shokumu keiken ni kansuru hôritsu [Act concerning Assistant Judges and Prosecutors' Experience in the Work of Practicing Attorneys], Law No. 121 of 2004.

Figure 1: Prior Legal Training System (through March 2004)

(grossly over-simplified) (Prepared by Daniel H. Foote, University of Tokyo) Bar Exam

(Till 1991, 500 passers. Gradual increases thereafter. As of 2003, 1200 passers; over 45,000 takers.)



Overview of the Legal Education Reforms

Prior Legal Training System

An explanation of the legal education reforms must begin with a brief description of the prior legal training system. As indicated in Figure 1 (Prior Legal Training System), in terms of the total number of persons receiving training, the largest formal category of legal training occurred at universities, where legal education was conducted primarily at the undergraduate level. Nearly one hundred universities had undergraduate law faculties, which together enrolled a total of approximately 45,000 students per year. Those undergraduate programs typically included one to one and a half years of general liberal arts education, with the remainder of the four-year program focused on law. Nearly all faculty members had spent their entire careers in the world of legal academics; very few of the faculty members had undertaken advanced study in fields other than law, and even fewer had experience in legal practice. Legal education emphasized theory, with a heavy focus on mastery of legal doctrine and, with rare exceptions, virtually no attention to training in practice-related skills. Except in the case of a handful of the top-rated universities, very few of the graduates actually entered the legal profession. Rather, most entered companies after graduation.

The legal profession in Japan is formally regarded as consisting of judges, prosecutors, and practicing attorneys, these constituting the so-called "three branches of the legal profession." To enter the legal profession, one must pass the bar examination and then successfully complete the apprenticeship training program conducted through the Legal Training and Research Institute (hereinafter, LTRI). Competition on the bar examination has been fierce. Until 1991, the number of passers was capped at approximately 500 persons per year, that being the capacity of the facilities of the LTRI then in use. The LTRI moved to a new location, and since 1991 the number of passers has gradually increased. As of 2003, though, the number of passers still stood at under 1200. That year, over 45,000 candidates sat for the bar examination, meaning the pass rate was under two and a half percent. Indeed, the last time even five percent of the applicants passed the bar exam was in 1952. For many years, successful applicants have on average been some 27 years old by the time they pass and have taken the exam (which is offered once per year) at least five times.

The difficulty of the bar exam relates to another element reflected on the figure: the role played by examination preparatory schools. Many of the successful applicants have spent several years cramming for the bar exam, and most have utilized prep schools to facilitate their preparation. According to a survey of those who passed the bar exam in 1999, all but one of the

626 respondents had utilized prep schools.³¹ Fully two-thirds had attended the prep schools for at least three years, and over one-quarter for more than five years. Ten percent attended the schools nearly every day; forty-eight percent more attended at least a few days per week. As this suggests, prep schools have represented an important, but relatively hidden, aspect of legal training.

For those who do pass the bar exam, the final stage of the training process has been so-called apprenticeship training conducted through the LTRI. Training through the LTRI is focused primarily on practice-related skills. Until 1999, the period of apprenticeship training was two years. Candidates spent the first four months at the LTRI itself, primarily studying the following five subjects: civil trial, criminal trial, civil defense, criminal defense, and prosecution. Candidates then spent the next sixteen months in actual apprenticeship training, with four-month rotations (field placements) in each of four separate practice settings: criminal division of a court, civil division of a court, law firm, and prosecutors office. Following the apprenticeship training, all candidates again returned to the LTRI itself, for four more months of instruction in practice-related skills. In 1999, when the number of passers on the bar exam was increased to 1000 for the first time, the period of training was reduced from two years to eighteen months. Otherwise, however, the content remained nearly the same, with each of the four-month blocks simply being shortened to three months. Following successful completion of the LTRI training (nearly all those admitted have passed), candidates were qualified to enter the legal profession. Traditionally, the vast majority of successful candidates have chosen one of the three branches of the profession.

Concerns With the Existing System

As mentioned earlier, the Reform Council viewed a strengthened legal profession as vital to underpin the entire range of reform efforts. The Council highlighted two major sets of concerns regarding the existing system: concerns over quantity and quality. To meet the needs of Japanese society, the Council called for substantial increases in the size of the legal profession. In the words of the Reform Council, “[C]ompared with other developed countries, the population of Japanese legal professions is extremely small ...; and the legal profession truly cannot respond adequately to the legal demands of our society. ... [S]ubstantially increasing the size of the legal

³¹ See Shihô seido kaikaku shingikai jimusôkyoku, Hôshô yôsei seido kaikaku no kadai <Sankô shiryô>, Shiryô 7, Juken no tame no yobikôtô no riyô jôkyô ni tsuite [General Secretariat, Justice System Reform Council, Issues for Reform of the Legal Training System <Reference Materials>, Material No. 7, Regarding Circumstances of Use of Bar Examination Preparatory Schools, etc.], distributed at the 14th session of the Reform Council, March 2, 2000.

profession is an urgent task.” More concretely, the Reform Council called for raising the number of passers on the bar exam to about 3000 by the year 2010. (This number evidently was based on a comparison to the size of the legal professions in various nations, and, especially, that in France. Of the nations included in the Reform Council's comparative data, France had the smallest legal profession, in per capita terms. By raising the number of passers to 3000, the Reform Council estimated that Japan could reach France's level by about the year 2018. [That, of course, rests on the further somewhat questionable assumption that France's level will not increase in the interim.]

As to quality, the Reform Council offered rather ambitious goals:

The legal profession bearing the justice system of the 21st century will be required to be equipped with such basics as rich humanity and sensitivity, broad education and expertise, flexible mentality, and abilities in persuasion and negotiation. It will also need insight into society and human relationships, a sense of human rights, knowledge of up-to-date legal fields and foreign law, an international vision and a firm grasp of language.

Several other related concerns warrant mention. The very low pass rate on the bar exam has resulted in extreme competition, which has had a wide range of deleterious effects. For decades, many thousands of talented and highly committed individuals have spent valuable years of their lives cramming for the bar exam, with the great majority failing in the end. Needless to say, this represents a significant drain of resources from society. Moreover, in a concern expressed by the Ministry of Justice, those who do not pass the bar exam until their late 20s or 30s are likely to have debts, family commitments, or other obligations that lead them to opt for private practice in law firms, rather than pursue a career as a prosecutor.

The hyper-competitive nature of the bar exam has also fueled a steadily increasing role for the exam prep schools. This in turn has resulted in what the Reform Council referred to as the “double school” phenomenon, in which college students divide their attention between university and preparatory school, and the “university flight” syndrome, in which students ignore their university classes in order to concentrate on studies at the preparatory schools.

For the vast majority of those who have their sights set on entering the legal profession, the prior system almost mandated a form of tunnel vision: concentrated preparation centered nearly exclusively on the content of the bar exam. When coupled with the relatively limited range of subjects tested on the bar exam, the heavy emphasis on doctrine, and the puzzle-like form some questions have taken, the design of the prior system seemed geared to producing narrowly-focused applicants who have spent years concentrating on a limited range of legal

subjects--quite the opposite of the broad, well-rounded, and diverse legal profession envisioned by the Reform Council.

Content of Reform Proposal

Having concluded that this broad range of qualities could not be achieved either simply by increasing the number of passers of the existing bar exam or reforming undergraduate legal education, the Reform Council proposed the creation of a new set of graduate-level professional law schools. The Reform Council set forth numerous principles to be embodied in the new law schools, including the following:

- *In principle, a three-year term.
- *Admission of students from a broad range of academic disciplines and students with real-world experience, to ensure diversity.
- *Small classes (of no more than approximately 50 students each), with extensive use of interactive discussion (rather than one-way lectures), to enhance critical analytical skills, creativity, and skill in advocacy.
- *Education bridging theory and practice, achieved in part by hiring substantial numbers of faculty members with broad experience in the legal profession.
- *Chartering standards, an ongoing third-party accreditation system, and other accountability mechanisms to ensure the quality of the law schools.
- *Strict grading and evaluation of students, to ensure their commitment to and successful completion of their studies.
- *Provision of “thorough education such that a significant ratio of successful graduates (e.g., 70 to 80%) can pass the new bar exam,” so as to afford students the ability to devote themselves to their study at law school (rather than feel compelled to spend most of their time attending exam prep schools or otherwise cramming for the bar exam).

One further point bears note. In its Recommendations, the Reform Council explicitly stated that there would be no fixed limit on the number of law schools. Any law school meeting the minimum standards for chartering and accreditation was to be recognized. In addition to diversity among students, diversity among law schools would be welcomed. In fact, according to the Reform Council, law schools need not necessarily be affiliated with a university at all.

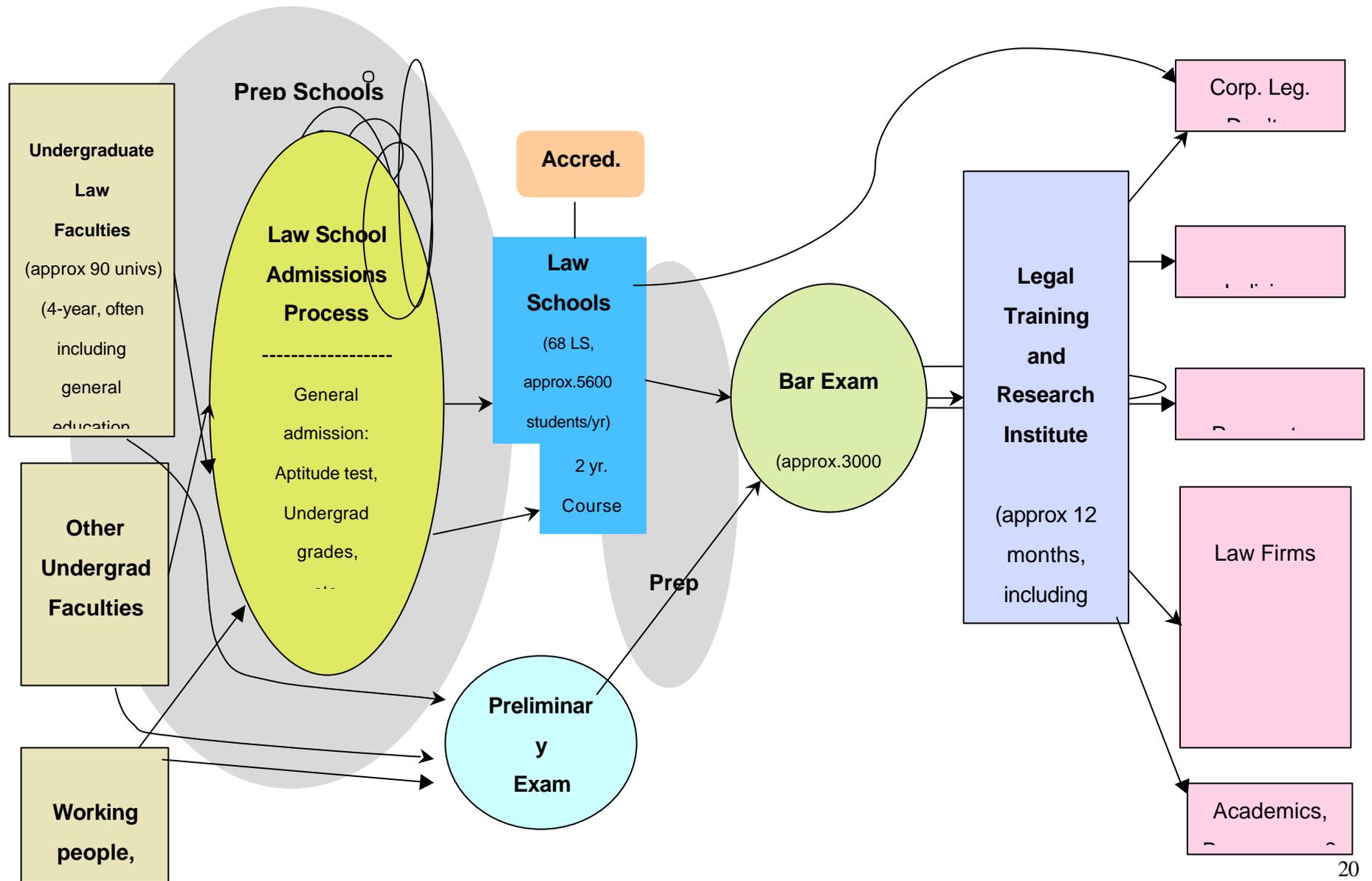
With law schools based on the above principles at the core, concluded the Reform Council, the new legal training system would “not focus only on the ‘single point’ of selection

through the national bar examination [as in the past], but would organically connect legal education, the national bar examination and apprenticeship training as a ‘process.’” Students would be freed from pressure to devote all their time to preparing for the “single point” of the bar exam. Instead, they would be able to devote themselves fully to law school education. (At the same time, strict grading standards would compel them to do so.) Law schools would provide intensive, stimulating education, linking theory and practice. And the quality of the education provided by law schools would be ensured through accreditation and other mechanisms. In sum, legal training would become a continuum, beginning in undergraduate education (whether in law or in other fields); extending through the new graduate-level law schools, the bar exam, and apprenticeship training; and continuing on thereafter, through continuing legal education programs for those in practice.

Overview of New System of Legal Training

As mentioned above, the legal training reforms advocated by the Reform Council were placed first on the reform agenda, and quickly moved through the planning process and into the implementation stage. As set forth on Figure 2, the new system of legal training closely tracks the vision set forth by the Reform Council. That vision, in turn, bears striking similarities to the US law school model. Given major differences between the US and Japanese settings, though, it is not surprising that the new Japanese system differs in many respects from the US model. Most notably, in Japan it was felt necessary to accommodate certain existing institutional structures in designing the new system. Two such existing institutional structures are undergraduate law faculties and the LTRI.

Figure 2: New Legal Training System (from April 2004)
 (grossly over-simplified) (Prepared by Daniel H. Foote, University of Tokyo)
 Bar Exam (approx.3000 passers by 2010; no. of takers?)



As mentioned earlier, prior to the introduction of the new system, nearly 100 Japanese universities had undergraduate law faculties, which together enrolled some 45,000 students. Reconfiguring these law faculties as graduate-level law schools and shifting all the faculty and staff members to the law schools, while at the same time maintaining a cap on the number of passers on the bar exam, would have been impossible. And, while a few universities have combined their law faculties with other social science disciplines or have merged them into a general liberal arts faculty, that approach was not feasible for many universities. Accordingly, the new law school system had to take into account the reality that a large proportion of law school students would already have completed two or more years of concentrated legal study at the undergraduate level. The Japanese system achieved this accommodation by establishing a mechanism by which those who have already studied law can skip the first year of law school, after passing an exam attesting their knowledge of law, whereas those who have not previously studied law must complete the full three-year course.

Arguably, eliminating the LTRI would have been considerably easier than eliminating the undergraduate law faculties. As one possible approach, the practice-related training that has been provided at the LTRI could have been incorporated into the law school curriculum, and the on-site apprenticeship training could have been accomplished through externships. For various reasons, however, eliminating the LTRI was not acceptable to the legal profession. Nonetheless, with the impending increase to 3000 candidates per year, accommodating the LTRI has led to some difficulties. The apprenticeship training period is to be reduced again, this time to approximately one year. The initial training period at the LTRI is to be sharply curtailed, in effect becoming a short orientation prior to the field placements. Rather than reducing the number of field placements, though, the number will actually be increased. Each of the existing four field placements (in civil court, criminal court, prosecutors office, and law firm) will be retained; and a fifth field placement will be added, with candidates allowed to choose from among areas of special interest (such as corporate law, criminal law, etc.). To fit all of this into the one-year period, each of the five placements will be just two months long. Finally, after the placements are over, candidates will return to the LTRI for approximately two months of training.

The institutional feature likely to have the most profound impact on the Japanese system, however, is the bar exam. In the United States, there are no fixed numerical limits on the number of lawyers who can be admitted each year. Despite recent declines, the overall nationwide pass rate for first-time takers is approximately 75%. Given these high passing rates, US law schools do not need to gear their curricula to the bar exam. Rather, they can provide a broad range

of courses, encompassing theory and practice-related skills. And students have great flexibility in pursuing courses that fit their own interests, without feeling bound to concentrate their efforts on courses that will appear on the bar exam.

As mentioned above, the Reform Council embraced a similar vision for Japan, with a projected pass rate of 70-80% that would enable law school students to pursue broad educational goals without feeling compelled to focus primarily on bar exam preparation. Several features of the existing Japanese system render this vision very difficult to achieve, however. First, the physical capacity of the LTRI inevitably places limits on the total number of candidates who can be admitted each year. Second, uncapping the number of bar passers entirely, or even moving to a much higher number of annual passers than 3000, almost certainly would have been met by very strong opposition by the bar, which might have doomed the proposal politically. Third, many people undoubtedly do not trust the law schools to uphold the quality of the legal profession adequately. From that standpoint, a strict bar examination is seen as an essential check on the law schools. Fourth, the heavily ingrained image of an intensely competitive bar exam serves as a psychological barrier to achievement of the Reform Council's vision. Fifth, the number of new law schools evidently exceeded initial expectations. Even though applications from four law schools were rejected the first time around, sixty-eight law schools, with an official capacity of 5590 students per year, were approved and began operations in April 2004. Another half-dozen law schools are began operations in 2005. Even after the figure of 3000 passers per year is reached in 2010, if all those law schools survive and most of their students graduate successfully and sit for the bar exam, the pass rate will drop far below the target of 70-80%. And that does not even take into account repeat takers (candidates will be allowed up to three tries at the bar exam). Sixth and finally, the bar exam will not be limited to law school graduates. In addition, a so-called "bypass" route will be available--a "preliminary exam" designed to test whether candidates have achieved knowledge and skills equivalent to what students acquire in law school. Candidates who pass this preliminary exam will gain qualification to sit for the bar exam, alongside law school graduates.

In May 2006, the first cohort of graduates from the new law schools will take the bar exam--a new bar exam, with somewhat different coverage and somewhat different types of questions from the existing bar exam. How they will fare is naturally a matter of great concern, not only to the students, but to the law schools themselves (since, for many schools, their continued existence is dependent on the pass rate of graduates). A newspaper article, published in October 2004, projected a pass rate of only 30% for law school graduates. That article sent shock

waves among law school students and law schools. Although the committee responsible for planning and administering the new bar exam subsequently released assurances that the pass rate for law school graduates in the first year of the new exam will be at least 50%, many students and law schools feel great pressure to focus their efforts on the bar exam. The Reform Council's grand vision for the new system of legal training is in danger of falling victim to the narrowing pressure generated by the bar exam.

Reflections on the Saiban'in System and Popular Participation

With the possible exception of the new law school system, the reform that has received the most publicity is the saiban'in system. Under this system, which is to commence operation by the year 2009, mixed panels of lay judges (saiban'in) and professional judges will in principle judge all criminal cases involving potential penalties above specified levels. In contested cases, the panel is to consist of nine members: six lay members and three professional judges. Mixed panels are to be convened even in uncontested cases; in those cases, the panel is to consist of five members: four lay members and one professional judge. These mixed panels will be responsible not only for fact-finding, but for decisions on application of law and determination of penalties.³²

The saiban'in system represents one of the centerpieces of the reform efforts. Yet, at least initially, public reaction to the new system has been at best lukewarm. According to a survey conducted by Yomiuri Shinbun in May 2004, slightly over half of those surveyed voiced approval for the saiban'in system. When asked whether they themselves would want to serve as saiban'in, however, 69% said no. Furthermore, 33% said they had "no confidence" they would be able to judge cases properly, and another 38% said they had "little confidence" they could do so.³³ A transition period of five years was established for implementation of the new system. The primary purpose of the transition period presumably was to afford sufficient time to construct facilities and to introduce and fine-tune all of the necessary changes in procedures; but another major task for the transition period is a public relations campaign to generate greater public understanding of and support for the new system.

Notwithstanding the lukewarm public reaction, the saiban'in system carries fundamental importance in two major respects, quite apart from its significance for the fact-finding process. First, it serves as the linchpin that ties together a set of interrelated criminal

³² See *Saiban'in no sanko suru keiji saiban ni kansuru hôritsu* [Act concerning Criminal Trials in which Saiban'in Participate], Law No. 63 of 2004, art. 6.

³³ Survey results available at: (http://www.yomiuri.co.jp/yoron/p_total01.htm).

justice reforms. In theory, in Japan: (1) criminal justice is governed by the adversary system, (2) concentrated trials are the goal, and (3) trials are to be conducted in accordance with the basic principles of "directness" and "orality." Those two principles in turn signify, respectively, that trials are to be decided based on direct evaluation by the judges of evidence and witness testimony, and that trials are to be centered on oral testimony of witnesses and oral arguments of the parties in open court. The reality, however, has been quite different from these ideals.

While in form the criminal justice system is an adversary system, in practice prosecutors have played such a central role that many respected observers characterize Japan's system as one of "prosecutorial justice."³⁴ In a 1991 article, leading criminal procedure scholar Professor Masahito Inouye (who was a member of the Reform Council and later served as chair of the Expert Advisory Committee on the saiban'in system and criminal justice), suggested that the dominance of the prosecutors had left such a limited role for defense counsel that criminal defense was losing its appeal for practicing lawyers.³⁵ To avoid that crisis, he argued in that article, the role of defense counsel should be invigorated.

With respect to concentrated trials and the principles of directness and orality, as well, the reality has been far different from the theory. While minor or uncontested cases often are disposed of in a single court session or in two or three sessions held on consecutive days, most other trials are not conducted in a concentrated fashion, but rather are spread out over months or in some cases even years, with court sessions scheduled every few weeks. As to the principles of directness and orality, in practice many trials, even in contested cases, consist of so-called chôsho saiban (written record trials), in which virtually all evidence is introduced in the form of written statements by witnesses and the defendant, prepared by prosecutors and submitted as evidence either with the consent of defense counsel or pursuant to exceptions to the hearsay rule. Indeed, in a telling reflection of how little weight is currently placed on the principles of directness and orality, it is not uncommon for judges to switch midway through trials. Given the practice of transferring judges every three or four years, in some long-running trials not one of the three judges involved in the final judgment has heard the case from beginning to end.

The Reform Council sought to conform actual practice to the stated ideals in all three

³⁴ See David T. Johnson, The Japanese Way of Justice: Prosecuting Crime in Japan (New York: Oxford University Press, 2002); Malcolm M. Feeley and Setsuo Miyazawa, eds., The Japanese Adversary System in Context: Controversies and Comparisons. (Hampshire, UK: Palgrave Macmillan, 2002).

³⁵ Masahito Inouye, "Keiji saiban ni taisuru teigen" [Suggestions for Improving the Administration of Criminal Justice], Shihô kenshûjo ronshû [Collection of Works for the Legal Training and Research Institute], 1991-I (1991): 93.

of the above respects. However much the Reform Council might have advocated realization of the above ideals, in the absence of fundamental structural reform it seems likely that such calls would have ended up as little more than empty rhetoric. The saiban'in system is the glue that binds together these other reforms. Introduction of the saiban'in system will necessitate concentrated trials; and the participation of lay members will entail much greater reliance on live, in-court testimony (in other words, realization of the principles of directness and orality) than in the past, thereby presumably breaking the pattern of chôsho saiban. In turn, achieving concentrated trials with live testimony will require advance preparation by defense counsel as well as prosecutors. Expanded discovery is important for facilitating advance preparation; and invigoration of the criminal defense system is vital to the success of the reforms. Viewed in this manner, it is the saiban'in system that ties together the entire set of criminal justice reforms.

The saiban'in system carries fundamental importance at an even broader level, as well. It serves as the most concrete symbol of the third "pillar" of justice system reform: popular participation. As mentioned above, the Reform Council's recommendations called for establishment of a wide range of other mechanisms for popular participation in the justice system, and many of those mechanisms have been adopted, some through legislation and others that have not required legislation.

At least in the criminal setting, however, it is the saiban'in system that is viewed as having the greatest potential for overcoming the perceived insulation of judges and prosecutors and for ensuring that the views of the public are reflected in the justice system. Through the saiban'in system, professional judges in criminal cases will be exposed directly to views of members of the general public, and prosecutors handling the cases presumably will need to be more sensitive to those views than in the past. At the same time, members of the general public will themselves directly participate in the justice system. Through that experience, they are expected to develop a deeper understanding of the system and a greater capacity for identifying problems with the system.

In this connection, one additional aspect of the saiban'in system bears note. The three branches of the legal profession have established various committees and advisory councils designed to reflect the views of "the public." All or a majority of the members of those bodies come from outside the legal profession; but nearly all of the members still are drawn from rather elite segments of society. In contrast, the saiban'in are to be selected by lot from among the general public. Accordingly, participation in the justice system will extend to a much broader swath of society.

From "Popular Participation" to "Popular Sovereignty"

The fundamental philosophy of the Reform Council recommendations does not stop at popular participation. Rather, the Council's ultimate aim is to strengthen popular sovereignty. In the words of the Council:

[These] various reforms assume as a basic premise the people's transformation from governed objects to governing subjects and at the same time seek to promote such transformation. This is a transformation in which the people will break out of viewing the government as the ruler and instead will take heavy responsibility for governance themselves, and in which the government will convert itself into one that responds to such people.³⁶

The three pillars of justice system reform--a justice system that meets public expectations, a strengthened legal profession, and a strengthened popular base for the justice system--all are closely related to this ultimate goal of enhanced popular sovereignty. So, too, are three other major trends referred to earlier: political reform, deregulation (the shift from an "advance-control/adjustment type society" to a "review/remedy" type society), and various reforms designed to promote transparency and accountability. All represent fundamental philosophical shifts. Only time will tell just how successful these reforms ultimately prove to be in transforming Japanese society.

³⁶ Recommendations of the Justice System Reform Council, 4.