

## South Korea and Japan

### *Contrasting Attacks through Legal Education Reform on the Traditional Conservative and Insular Bar*

India and Hong Kong are both former British colonies in which Britain made substantial legal system investments; yet they are also strikingly different from each other. Japan and South Korea, by contrast, look very similar in structure and approach as a result of Japan's colonial relationship with Korea from 1905 until the end of the Second World War. That relationship strongly marked South Korea's legal system and legal profession (and we find a similar story in Taiwan, also a former Japanese colony). Korean professors studied in Japan and taught with Japanese-language textbooks. The faculties of law and the legal profession were replicas of what existed in Japan after the Meiji Restoration. Legal scholarship was very much in the German tradition as replicated by the Japanese. The similarities make especially stark the differences in how each country has enacted and accommodated the recent legal revolution inspired by the United States. Both, to be sure, have absorbed much of that revolution, including a magic circle of corporate law firms, but in South Korea the very powerful Judicial Research and Training Institute (JRTI)—the fount of professional unity and conservatism—was ultimately dismantled through the reform of legal education.

#### HISTORICAL LEGACIES AND POSTWAR LAW AND DEVELOPMENT EFFORTS

Historical accounts of lawyers in Japan usually begin with the Meiji Restoration in 1868, although Flaherty (2013) in particular points to important antecedents that made litigation a prominent social phenomenon much earlier in Japanese history. The explicit borrowing of Western institutions, including lawyers and judges as such, however, began in the Meiji period (Feeley and Miyazawa 2007). And as

Feeley and Miyazawa noted, that borrowing was consistent with the interests of those holding state power: “When Western-style law and legal training were introduced, they were imposed for purposes of state. Western-style law was adopted to head-off Western imperialism, and law schools were established to train government officials” (2007: 153). Hattori’s history of the legal profession in Japan (1963) notes the predominance of training for government officials and relates it to the history of Japan prior to the Meiji Restoration. Law was to be in the service of state power.

Hattori also suggests that samurai rivalries in pre-Meiji times are also an important part of the story of subsequent developments. According to Hattori, “those who played leading roles in the Meiji Restoration were principally samurai of two of the major feudal fiefs, Satsuma and Choshu” (1963: 113). They understandably gravitated toward the executive branch and the military arm of the new government, “believing as they did that leadership in the executive and the military meant assumption of hegemony over the government as a whole” (113). In contrast, according to Hattori, “those who came from smaller and less powerful fiefs tended to enter the judiciary or take up other occupations within the administration” (113). His conclusion was that “movements for independence and strengthening of judicial power can be considered a reflection of opposition by the small clans to Satsuma and Choshu domination” (113). This historically weaker social position of those who went into the judiciary or private legal practice helps account for the sense of insecurity and embattlement that remains present within the judiciary and the practicing bar.

As it played out in the early years, according to Feeley and Miyazawa, the hierarchy kept those in the lower positions in check: “Ministry officials were quick to apply their influence on the judges” (2007: 162). The bar made arguments for more autonomy, insisting “that judges should be selected from among practicing lawyers and be wholly independent of the justice ministry” (162). Judges self-consciously pursued autonomy and independence (162), but they could not escape their subordinate position. They were careful to show deference to the state and to distance themselves from private practitioners.

Private practitioners faced a similar uphill battle and were looked down on by state officials. The first bar examination committees were “composed of judges, procurators, and some officials of the Ministry of Justice, but no lawyers” (128), reflecting the low status of lawyers. When some of the early law graduates gravitated toward private practice, the government quickly steered legal education away from Anglo-American approaches toward German-style ones, which were “thought to be more in line with strong state control” (Feeley and Miyazawa 2007: 161).

We lack sufficient data to complete this early history of the legal field, but it appears that the social hierarchies that preceded the creation of a Western-modeled legal field have structured not only Japan’s legal hierarchies but also the

politics of its legal field. The bar has retained an adversarial yet subordinate position vis-à-vis the state (160), and the judiciary—even after the 1947 constitution provided more formal independence and created a Supreme Court—has remained deeply conservative with respect to the state. That conservatism has been criticized for failing to protect individual rights but has also been defended as necessary to “ward off more aggressive political intervention into the affairs of the judiciary and . . . to assure the integrity and autonomy of the judiciary” (168).

It is not surprising that US influence in Japan in the years after the Japanese defeat in the Second World War involved efforts to reform Japan’s highly German- and state-oriented legal education. The Ford Foundation in particular saw legal education as one place to revamp Japanese society so as to align it more closely to “modern” US values and approaches, including democratic ones. According to Levi, Dinovitzer, and Wong (2017), in 1954 the foundation granted \$350,000 to promote the exchange of law students and professors between American and Japanese universities. The program began “with Japanese professors coming to the US, with institutions reflecting the legal academic elite of both countries: Harvard, Stanford, and the University of Michigan in the US, along with the Universities of Kyoto, Tohoku, Tokyo, Chuo, Keio and Waseda in Japan” (13). The foundation seems to have hoped that legal education would help build leadership in postwar Japan.

Levi, Dinovitzer, and Wong (2017) quote the foundation documents as follows:

The need for cooperative research and study arises out of postwar changes in Japanese laws. Originally drawn largely from German sources, the legal system of modern Japan was extensively revised during the Occupation and now has a considerable deposit of elements of Anglo-American legal traditions, in addition to those of German and Japanese origin. The new Japanese Constitution embodies many of the democratic ideals and institutions found in the United States Constitution; there has also been enacted in recent years important legislation similar to that of the United States in such fields as criminal law and procedure, corporation law, labor law, antimonopoly law and tax law. (13)

In short, there was a place to build legal ties to the US and its educational programs.

As with virtually all law and development initiatives at the time, this program had little immediate impact. Its activities are summarized in *Law in Japan*, edited by Harvard’s comparative law scholar Arthur von Mehren (1963) (who also played a role in India’s Ford Foundation initiatives for legal education reform). The project in Japan may have influenced the reform proposals of the Provisional Justice System Investigation Committee, which reported in 1964 and focused on the legal profession. Foote summarizes that committee’s work as follows: “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” (Foote 2013: 384).

This may have led to a slight increase in the size of the bar, but as Foote also notes, “recommendations [for reform were] doomed in large part by failure to achieve consensus among the *hōsō sansha* [the term for the combined judiciary, prosecutors, and private lawyers],” which had the power to resist reform (2008: xxiv). The modernist agenda did not at that time move the institutions of the legal profession in Japan, which were able to protect their own relatively privileged positions, though they continued to be subordinate to the state.

The origins of the similarly conservative Korean legal profession are closely linked to Japanese colonialism. For South Korea, Jae-Hyup Lee (2009) chronicled this history in terms of law and development initiatives, with a focus on the founding of the Graduate School of Law (GSL) at Seoul National University. This was a local effort with some US law and development involvement. As quoted in Jay Murphy’s *Legal Education in a Developing Nation: The Korean Experience* (1967), the 1963–64 Bulletin of the GSL argued that prior to Japanese annexation, “political factionalism, on the one hand, and corruption, on the other, paralyzed any effort at accomplishing an autonomous Korean law reform” (1967: 211). Reform in Korea would come only with the “occupying power, Japan, after her annexation of Korea in 1910” (211) and the establishment of two faculties of law. Japan’s agenda regarding the legal profession was very narrow: “Japan was . . . bent on molding the young and able Korean lawyers into loyal imperial subjects” (211).

The Korean initiative to establish the GSL was supposed to help make lawyers more useful to democracy—to encourage them to move beyond their traditional subservience to empire (and state). The Bulletin of the GLS for 1962–63 made the following case: “We did not possess a sufficient number of lawyers prepared to assume the responsibilities of the legal profession in a democratic society” (211). That situation had been exacerbated by the Korean War, during which half of Korea’s 400 lawyers died (212). Those who were left provided little to build on.

The GSL in Seoul tapped into US approaches to raise the level of legal education: “The need for raising the level of our law colleges generally from colleges of general education to graduate schools of law. Our law colleges at this time are not comparable to law schools in the United States. . . . The Graduate School of Law, then, is expected to be a true law school, providing our society with the type of lawyers we need in the period of social reconstruction.” “[Another] reason lies in a need for reducing the wide gap now existing between the Bench and the Bar and between the judiciary and the academic law teacher.” Finally, “the Graduate School of Law should be the hub around which the democratization idea of Korean law is channeled to the Korean legal profession and to Korean legal education” (216).

The picture that emerges is of a profession too closely identified with the Japanese, as well as narrowly trained and characterized by deep divisions between academics, legal practitioners, and the judicial branch. Law professors in particular

were looked down upon by the rest of the profession as individuals not good enough to pass the bar. Consistent with US law and development programs and inspired in part by the US example, the GSL was meant to provide a much broader graduate education for all South Koreans who passed the bar. The faculty was to be a mix of academics, judges, and practitioners. Despite all the rhetoric, however, the reform brought by the GSL mainly provided an add-on to the education of the small number of bar passers; it was hoped that this would expand the horizons of the graduates and expose them to critical thinking. The GSL operated from 1962 to 1970 and produced 508 graduates. At that point, it was renamed the Judicial Research and Training Institute (JRTI), which would go on to become the dominant organization in the training of bench and bar.

Jae-Hyup Lee sees the GSL as a key example of locally inspired reform, one that presaged the current reforms in graduate legal education, discussed below (Lee 2009). The GSL “was the only institution established in a post-graduate level, in order to provide professional legal education with a full approval of the Supreme Court of South Korea. . . . It clearly demonstrates that South Korean experimentation of the post-graduate professional law school system in 1962 was not the result of external forces such as the globalization” (607).

To be sure, the local processes were not inconsistent with the linkages to US law and development, as Lee notes. Jay Murphy of the University of Alabama, with funding from the Asia Foundation, came to South Korea in 1963 as a visiting professor to study legal education there. Murphy’s book stemming from his research (1967) perfectly reflects the idealism exported by US legal academics at the time, who included the Dean of NYU Law School, Russell Niles, and Yale’s Myres S. McDougal (1967: 183). The United States’ idealistic ambitions for the South Korean legal profession in the 1960s were not very different in broad outline from what local reformers supported.

The GSL did not realize its ambitions, however. Lee notes that the its rhetoric about democracy fit what were then the political ambitions of many South Koreans—a number of whom resurfaced later and helped galvanize new reform efforts. But the political support for those reforms was not strong enough in the 1960s, and Park Chung-hee’s declaration of martial law in 1972 greatly impeded any democracy agenda. Probably not coincidentally, the shift from the GSL to the JRTI, which cut law professors out of the process, helped solidify Park’s authoritarian control. The events suggest that President Park felt that the Supreme Court could be counted on not to make waves against his regime. That court’s innate conservatism and its history of subordination to the Japanese empire played well with the authoritarian regime. According to JaeWon Kim, “following the Japanese model, the only path to becoming a licensed lawyer was through the Judicial Research and Training Institute (JRTI), directly controlled by the Supreme Court, which did not respect or trust law professors and did not want to surrender control over the production of lawyers” (2020: 790). The legacy of the Japanese system had

overcome the idealistic US- and democracy-inspired reform of the 1960s, consistent with US support of Park's authoritarian government.

The continuity of the transformation from Japanese empire to South Korea can be seen in family biographies. Hong Jin-Ki was one of the very few Koreans who had passed the Japanese-language bar exam under colonialism. He came from a well-off family identified with successes on the earlier Confucian administrative exams (Int. 13–Korea). He attended Keijō Imperial University, graduating with an LL.B., and passed the bar examination, one of only fifty-seven Korean bar passers during the thirty-five years of Japanese control. He became a judge of the Jeonju District Court in 1943. Though he had worked with the Japanese, the first South Korean president, Syngman Rhee, believed he needed such individuals to govern and build the legal system. Hong Jin-Ki was named Deputy Justice Minister in 1954, Justice Minister in 1958, and Home Office Minister in 1960. He then resigned, and was later prosecuted for his activities in quelling an uprising in 1960. That uprising led also to Rhee's resignation.

The rest of the story of continuity is also instructive. As a private citizen, Hong Jin-Ki linked up with his friend, the founder of Samsung, Lee Byung-chul, to build the largest South Korean media company, Joongang Media. His son, Hong Seok-hyun, who had earned a Ph.D. in economics from Stanford, took over in 1994. Among other high-profile activities, Hong Seok-hyun was Ambassador to the United States. He resigned recently from Joongang for his son, Jeongdo Hong, to take over. Hong Seok-hyun's sister, Hong Ra-hee, is the wife of Samsung Group Chairman Lee Kun-hee, South Korea's richest person.

#### THE SITUATION PRIOR TO THE RECENT REFORMS

Both Japan and South Korea possessed small independent legal professions (and a much larger legally educated civil service). Bar passage rates for many years were at most 3 to 5 percent of those taking the examinations. Passage of the exam led to admission to the JRTI in South Korea and to the Legal Research and Training Institute (LRTI) in Japan. There the graduates learned practical skills, with a focus on crafting judicial opinions; they also absorbed the expectations and values that underpinned the legal profession. At these institutes, they forged a quasi-familial solidarity and absorbed patterns of behavior that brought them great prosperity if they later turned to private practice, typically after careers in the judiciary or prosecutors' offices. They did not make waves for the government or the national economic powers. They resisted any change that might endanger their status and prosperity.

Until 1981, the number of bar passers each year in South Korea was only 100. The number of those admitted to the bar each year slowly rose, reaching a plateau of 500 for Japan and 300 for South Korea. In the 1990s each country expanded to more than 1,000 (Ginsburg 2004). South Korea as of 2001 had around 6,900

licensed lawyers, including 1,400 judges, 1,200 prosecutors, and 4,300 practicing attorneys—all for a population of 46 million (Kim 2001: 46). In Japan as of 2001, there were fewer than 19,000 practicing lawyers for a population of more than 130 million (Foote 2013). The very small numbers ensured that those who passed the bar in both countries earned substantial monopoly profits and garnered elite status.

In each country, prompted in part by the Asian financial crisis of 1997 and more generally by the rise of global financial capitalism, interrelated proposals emerged for radical changes in legal education and the legal profession. Legal education reform became a key battleground for a number of contending groups. The first initiative was in South Korea; it was defeated before any reforms were actually carried out. Japan then embraced the three-year JD and an increase in the number of newly admitted lawyers, at which point South Korea followed suit. As we shall see, reform in South Korea has been much more successful than in Japan. We begin with a study of South Korean developments and then contrast them with those in Japan. In both countries the bar was quite conservative and sought to protect its position; only in South Korea did substantial change take place.

We focus on three dimensions of legal revolution. The first is the increasing power of the new global hegemonic state, the United States, relative to Europe, including Germany. That hegemonic power was especially felt in South Korea and Japan because of the close links between those countries and the United States during and after the Cold War. The second is the financialization and marketization of the economy, promoted strongly within Asia especially after the 1997 financial crisis. A greater role for law and especially corporate law firms is a part of what we have called the neoliberal legal revolution. The third is the emerging combination of meritocracy and exclusivity that has shaped the new winner-take-all economy. Legal education and the legal profession well exemplify this stratification and growing inequality. In each case, we see the efforts of an entrenched, quasi-familial legal elite to hold back the legal revolution.

#### THE LATE TWENTIETH-CENTURY MOVES FOR CHANGE TOWARD LAW SCHOOLS IN SOUTH KOREA: THE RESISTANCE OF THE LEGAL ESTABLISHMENT

The alliance that originally promoted reform in South Korea in 1995 included groups supporting more investment in the globalization of the South Korean economy and a legal profession serving the new democracy. These activities took place during the first civilian government in South Korea in thirty years, led by a long-time leader of the opposition, Kim Young Sam. These years of recent democratization coincided with the emergence of “civil society organizations” in South Korea, notably the Citizens’ Coalition for Economic Justice (CCEJ) and People’s Solidarity for Participatory Democracy (PSPD), which helped build

the momentum of related groups of pro-democracy and human rights lawyers (Dezalay and Garth 2010: 238–42).

The key lawyers' organization was Minbyun—Lawyers for a Democratic Society—founded by fifty-one lawyers in 1988, one year after the collapse of the military government. Among its members were Roh Moo-hyun, who in 2003 became the sixteenth president of South Korea; Park Won-soon, principal founder of the PSPD and the mayor of Seoul from 2011 to 2020; and Moon Jae-in, the current president of South Korea. Park Won-soon, according to a source close to him, saw after he passed the bar that prosecutors in South Korea had the power to promote justice, but that in actual practice they promoted law as simply a “tool of the dictatorship.” He thought that law needed to be a vehicle for “democracy” and for the people to claim their “rights” in the post-authoritarian period (Int. 1–Korea).

This alliance for reform, which supported the creation of new graduate JD programs and a strong expansion of the bar, represented a relatively small group from among the civil society organizations and human rights organizations that had abandoned radical opposition in the name of rights and anti-corruption through legal reform. Inspired in part by civil society activism in the United States, they sought change through law and professional initiatives. The PSPD, for example, used shareholder derivative lawsuits as a means to control corruption linked to the *chaebols*—the large, family-owned business conglomerates in South Korea (Ohnesorge 2003). The civil society groups provided credibility and a legal program for an emerging and overlapping political group seeking to take on both the *chaebols* and remnants of the authoritarian regime.

Park Se-II, a founder of the CCEJ (with Reverend Kyungsuk Suh), was a key figure in these developments. From 1995 to 1998, he was President Kim Young Sam's senior secretary for policy planning and social welfare. In that position he was instrumental in developing the first initiatives to establish law schools for the Commission on the Promotion of Globalization (Kim 2001). A professor of economics and law at Seoul National University, he had studied globalization, and he had just returned from a sabbatical at Columbia Law School. Among his allies at the time were “critical jurists” of the South Korean Law and Society Association, identified with “campaigning for democracy and the rule of law” (Lee 2014). The idea of legal education reform, as Chulwoo Lee stated, was “packaged in globalization discourse,” which gained support even in the conservative press despite the fact that “businesses were indifferent” (296). The idea, as noted below, initially failed, but it did result in a concession to increase the number of bar passers to 1,000.

The failure of this initiative was the result largely of the power of the entrenched elite in the legal profession at that time, represented especially by the Korean Bar Association. That association had evolved toward a reputation supporting human rights lawyers in the 1980s, which in fact had led the government at one point to

double bar passage from 100 to 200 to try to weaken the bar's prestige (Dezalay and Garth 2010: 239). But the mainstream of the bar through the 1990s was deeply conservative and reluctant to change a system that had been very good to its members. It was far from embracing a new legal revolution.

According to JaeWon Kim, the opposition was uniform among "Korea's legal establishment, including the Supreme Court and the Korean Bar Association" (Kim 2001: 66). The details of their opposition are instructive. The bar and the judiciary emphasized division and hierarchy within the profession. They insisted that "Korean law professors were incapable of producing lawyers through the proposed graduate law school system" (66). They looked down on law professors as not good enough to pass the bar and therefore not good enough to be entrusted with the real preparation for practice. Furthermore, as JaeWon Kim also notes, the obvious self-interest was clear: "Practicing lawyers feared a dramatic increase in new lawyers and equated the proposed graduate law school system with a loss of control over barriers to entering their profession. The legal establishment saw themselves as members of a privileged small group threatened by a potential increase of lawyers" (66). The judiciary's opposition was also linked to their desire to retain the opportunity to retire from the bench into positions as highly paid litigators in a market of scarcity (Ginsburg 2004).

Law professors acting through the Association of Korean Law Professors also did not favor reform. They joined the opposition despite the potential increase in status that the law schools might bring. One argument was that "the education system of a common law country would be inappropriate for a civil law country like Korea" (Kim 2001: 66).<sup>1</sup> They were also seeking to protect their turf: "The overwhelming majority of South Korean law professors who studied abroad have done so in Germany. They seemed to worry that a shift to the American law school system might relegate them to second-class status. Their nightmare was of being subordinate to the few law professors educated in the United States" (67).

The opposition to reform from the interlocking parts of an entrenched legal establishment thus began with its strong commitment to maintaining a very low bar passage rate, which gave great stature and ultimately economic rewards to those who passed the bar. The traditional story was that bar passage brought three keys arranged by a marriage broker—to a house, to an office, and to a car. The unity of the bar arose also from social homogeneity. Many of those who passed the bar exam had attended the same high schools, and typically they had also attended one of the handful of schools that offered the best chances of bar passage, above all Seoul National University (SNU). SNU produced about 50 percent of the successful bar passers. The intense regime of study and attendance at the two-year JRTI—taught by judges and prosecutors—cemented their bonds through shared experiences and approaches. Again according to JaeWon Kim, "the South Korean Supreme Court supervises the JRTI, whose faculty is composed of judges and prosecutors. The training focuses on developing litigation skills to produce future

judges, prosecutors, and trial lawyers. Undergoing the unified training course has built a military-like hierarchy among South Korean lawyers. This kind of hierarchy has been reinforced by the Confucian tradition in which seniority carries great privileges” (Kim 2001: 48).

According to a prominent graduate from the 1990s, the members of the bar were homogeneous in “values, methods, goals, and in excellence,” and they were “most proud of being smart,” as evidenced by success on the bar exam (Int. 2–Korea). Being smart meant excelling in memorization, which required one to in effect “memorize all the textbooks and theories” (Int. 3–Korea). As noted above, the JRTI was central to this familial relationship. As Yong Chui Park states, “the JRTI has been heavily criticized as the cradle of the ‘legal mafia’ in which students of the JRTI bond together more closely than any group of other professionals” (2018: 180).

The result of this formation process was an entrenched and complacent legal oligarchy that was reluctant to change and closely connected to governance by an authoritarian regime and the economic power concentrated in the *chaebols*. Also, the concentration on criminal and civil litigation left little room for the development of linguistic skills or business expertise, which led the relatively few corporate law firms to rely considerably on non-bar passers with US degrees. That group included some who were native South Koreans and who had studied in South Korea; others were “American-born Koreans” educated in the United States. A study used in support of reform found that 70 percent of South Korean corporations said they would pick foreign over domestic law firms (Int. 4–Korea). The *chaebols* in any event did not rely very much on law and lawyers within South Korea to shape their relationships with the state. According to JaeWon Kim, “under the circumstances, cordial personal relationships, not convincing arguments or technical legal skills, play a major role in legal practice. Heavy reliance on such personal connections has undoubtedly contributed to unethical practices within the South Korean legal community” (2001: 49).

Despite the activities of a few human rights lawyers, there was little incentive for members of the legal profession to challenge activities of the state or the *chaebols*. Those favoring the reform of legal education thus sought to transform what they considered to be “justice” based on the “elitism” of a small, complacent, and homogeneous group in favor of a more open and competitive legal system linked to a more legalized regime of governance. They also made very pragmatic arguments, for example, pointing to “the lack of qualified international trade lawyers during the Uruguay Round and professional corporate lawyers specialized in M & A” (Lee 2009: 611).

This pro-democracy and rights-oriented group of reformers tended also to be those most likely to oppose neocolonial policies promoted by the United States, such as an aggressive stance toward North Korea. Many of these individuals had long opposed the US support of authoritarian but anti-communist regimes in South Korea. Nevertheless, they supported US-style law schools and a US-style legal profession as a means to take on the remnants of the authoritarian regime.

They joined with those who sought to modernize the profession in relation to corporate law and globalization.

The role of law professors was largely secondary. They had not gone through the JRTI mainly because they had not passed the bar. In this context, there was “little exchange between the practicing bar and academia,” and “very few university law professors were admitted to practice” (Int. 3–Korea). Accordingly, before the reforms, “the lawyer, judge or prosecutor eclipses the law professor in status” (Miyazawa, Chan, and Lee 2008: 352). A handful of US-educated professors supported the proposed move to the US law school system, but they were in the minority, as noted earlier.

The legal academy in the South Korean context sought to build on its connections to Germany (originally through Japan), studying German legal theories focused on the civil, criminal, and commercial codes. The style of research was highly theoretical, working toward the publication of books and especially treatises, not articles. With respect to German and Japanese law professors (Feldman 1993), hiring was generally a matter of selecting protégés from among the students (Int. 5–South Korea). Unlike the German professors, however, the South Korean professors did not have sufficient status to be called upon to issue legal opinions. The law professors, who were focused on their formal theories, also had no interest in hiring practicing lawyers experienced in the transactions identified with the expanding corporate law firms and the more open and competitive economy. In the words of a corporate law partner turned professor after the law schools were founded, “practice experience was discounted” in relation to “pure academics” (Int. 3–Korea). As stated in a recent article by Yong Chui Park, “law professors used to be a group of people . . . with a higher purpose of making monumental academic landmarks and teaching their great works . . . [and whose] teaching is irrelevant to preparation for the Judicial Examination” (2018: 182).

The almost uniform opposition of the relevant groups was sufficient to kill the original reform proposal. The idea, as noted, then gained traction in Japan (Chan 2011). There appeared to be a new emphasis on the rule of law and some weakening of the *keiretsu*— counterparts to the South Korean *chaebols* but different in that the Japanese business conglomerates are more bank-dominated as opposed to family-dominated— and the Japanese legal establishment at the time wanted to expand in part because corporate law firms were drawing from the talent pool available for the judiciary (Int. 1–Japan; Ginsburg 2004: 438). Japan then moved to establish law schools in 2004, as discussed below. We return now to the story in South Korea.

#### THE NEXT EFFORT, WITH A STRENGTHENED POLITICAL COALITION

The idea of substantially reforming legal education, including by moving to the JD graduate degree, was reimported back to South Korea in part because of

the apparent success in implementing the reform in Japan. The reform then became law in 2007 under President Roh Moo-hyun, the former human rights lawyer and a long-time pro-democracy reformer. His government picked up the mantle of Kim Young Sam. This time, some progressive judges joined in support of the movement (Lee 2014: 296; Kim 2020). At that point, the emerging and overlapping political groups, according to one observer, reached “a critical mass on both markets and democracy” (Int. 4–Korea). They could now take on the alliance that had long existed among the *chaebols*, the authoritarian government, and a legal profession that had long stayed out of the way while profiting handsomely. As Chulwoo Lee stated, “at least partly, the legal education reform marked a struggle between a rising ‘progressive elite’ in various corners of South Korea and the traditional legal elite” (Lee 2014: 297). It also represented an alliance of legal groups who may not have agreed on political strategies but were united in their challenge to the “hegemony of dogmatic jurisprudence of Japanese and Continental origins” (299).

The South Korean reformers learned from the difficulties in Japan caused by the continuation of the undergraduate legal education system (see below). Despite their success in getting the reform passed, however, they faced continued opposition from the legal profession and especially the South Korean Bar Association. The result was a combination of law schools and undergraduate programs. Unlike in Japan, however, the reforms clearly shifted the center of legal education to the graduate law schools and the JD degrees.

There was thus strong competition to establish law schools. Twenty-five of them gained approval—twelve in Seoul and thirteen outside of Seoul. Universities without law schools could continue to offer undergraduate law courses, but the critical idea was to phase out the judicial examination in favor of a bar exam for law school graduates.

At the core of the attack on the legal establishment was the idea that the post-graduate, three-year law school system should replace the JRTI—the key institution in sustaining the conformity and conservatism of legal actors. Law school eligibility under the reformed system depended on the completion of a four-year undergraduate degree, and admission depended in part on one’s score on a legal education eligibility test (LEET). Jae-Hyup Lee notes that “on its face, the South Korean law school system is modeled after the U.S. law schools, with two important exceptions” (2009: 611). One is that “a quota of total number of students (2,000) is set and strictly enforced by the Ministry of Justice” (611). The other is that “existing law undergraduate programs are eliminated in exchange for the establishment of the law school” (611). But “the curriculum, the method of teaching, and any other aspects of the internal operation of the law school are supposed to follow the U.S. model” (611). Legal education was supposed to promote global exchange, English-language courses, practical experiences, and interdisciplinary hiring and scholarship (611). Meanwhile, faculty/student ratios became much more favorable—set to be 1:15—and this led to substantial new faculty hiring.

The allocation of maximum students per law school depended on the reputation of the school. SNU accordingly gained the most law students, 150, and some schools were limited to only 40 students (611). One reform, ostensibly created to foster competition and to challenge the oligarchy of the three elite schools, SNU, Korea University, and Yonsei (known as the SKY schools) but especially SNU, prevented the law schools from enrolling more than two-thirds of their students from their own undergraduate universities.

Compared to Japan, the reform has been a success. One disappointment is that the percentage of bar passers has not stayed at 75 percent, as reformers originally sought. The recent rates have hovered around 50 percent. There are roughly 1,500 bar passers admitted each year compared to the 2,000 annual graduates, but repeat test takers reduce the bar passage rate. The signature accomplishment is that, despite some controversy, which continued until very recently (Yeo 2015), the Judicial Examination has been phased out, which in turn has meant the end of the role of the JRTI in training and socializing new admittees. Those opposed to the new system continue to assert that the openness of the Judicial Examination was key to social mobility, since anyone could take that exam. They ultimately lost the debate, and the numbers of those allowed to enter the profession through the Judicial Examination followed a downward pattern, with the last examination held in 2017. From then on admission was from the bar exam and law schools only.

The long-standing opposition of the Korean Bar Association has formally ended. The leadership elected in the spring of 2017 supported the law school reforms, and the numbers suggest that support will continue. As one interviewee noted, 9,000 out of the 20,000 lawyers in South Korea are now graduates under the new system, and this has shifted the balance of power toward the JDs and the new system (Int. 5–South Korea). It seems that the corner has turned. Indeed, the alliance in support of the law schools consolidated after the recent impeachment of President Park Geun-hye, herself linked not only to corruption but also to the military dictatorship. Interviewees referred to her impeachment as the “culmination” of legal reforms in South Korea, and the current president is a strong supporter of the reform agenda (Int. 5–South Korea).

#### IMPACTS OF REFORM

The gradual shift toward law schools has had a number of impacts. With respect to the question of shifting hegemony and a revolution in legal expertise, we can point to differences in the faculty and the courses that are taught. The number of faculty members increased immediately after the shift, especially at the law schools with larger quotas of students. The SNU law school expanded its physical facilities substantially and increased the faculty by 50 percent (Int. 5–Korea). SNU and other law schools hired professors who could teach in English as well as teach courses linked to large law firm practice and public interest law. SNU, for example,

hired two leading partners from Kim and Chang, one of the top law firms in Seoul. This never would have happened prior to the establishment of the law schools, for the heavily code- and academic-theory-oriented teaching had no place for courses on mergers and acquisitions, for example. The prestige of the law professors also increased, in part because of the moves into teaching by senior partners and important members of the judiciary.

The heavily German-trained faculty is now much more US-oriented. SNU is described now as moving from “German heavy” to “more from the US,” with roughly one third holding South Korean PhDs, one third US-trained, and one-third from other jurisdictions (mainly Germany). US training is especially relevant for constitutional law, commercial law, and financial and economic law (Int. 5–South Korea). Another faculty member said that the German influence was “less and less” (Int. 6–South Korea). No longer are faculty protégés hired as in the past. There is a much more open and competitive hiring process. More individuals with dual degrees are found now in the South Korean law schools than were on the undergraduate law faculties. And faculty positions are strongly desired, even though the pay—which is linked to salaries in the humanities and social sciences—is much less than corporate partners make (Int. 5–Korea).

The publications of faculty members reflect change as well. No longer is there an overwhelming emphasis on books and especially treatises. The focus is now on articles, and there is some emphasis on publishing abroad in English in “impact journals.” Research and scholarship are not as internationalized as in the social science departments in the universities, but the situation is considerably different than it was in the pre-reform faculties of law.

The qualifications of the students match the shift in the kind of expertise valued within the legal field. Law firm partners in particular noted that they seek law graduates with experience and degrees in the sciences, accounting, economics, pharmaceuticals, intellectual property, and other areas (Ints. 7 and 8–Korea). They are less concerned than before about how well someone performed with their grades or on the bar exam. They also value “cultural experience” and skill in languages, especially English (Ints. 7 and 8–Korea). The law school graduates fit the needs of the large corporate law firms better than the products of the old system (Int. 9–Korea). One interviewee suggested that the graduates today are better because they give “different answers” in their work instead of the answers “they were supposed to have” (Ints. 6 and 10–Korea). Also, the large firms have changed their hiring practices. They now make offers to first-year students after their first-year internships (Int. 11–Korea)—at least at SNU—rather than waiting until bar passage. As in India with the creation of the National Law Schools, corporate law firms were not leaders of legal educational reform, but their growing presence, the specter of more competition from international law firms setting up shop to Seoul, and their association with US-style globalization meant that the system evolved to suit their needs.

There are still complaints from legal traditionalists. Critics lament a decline in the quality of the bar, distinguishing between the recent law school graduates and the “real lawyers” who passed when the standards were much tougher. One way to depict the criticism is to note that in the past, 1,000 students studied for seven years before entering practice. They had four years of law school, at least one year in bar prep, and then two years in the JRTI (Int. 4–South Korea). Now there are 1,500 students who study “only” for three years before entering practice. This is bound to make a difference, according to one professor (Int. 4–South Korea). Another partner of a corporate law firm suggests that there has been a decline in preparedness at least for those planning to go into litigation (Int. 12–Korea). But the corporate law firms notably are not concerned, according to our informants. They prefer the mix of qualities of today’s law school graduates.

The bar examination is not so different from the prior judicial examination. It still requires a great deal of memorization, and the result has been a weakening of the law school system in several ways. First, the courses relevant to the new expertise, such as mergers and acquisitions or corporate governance, are not tested on the bar exam. There is a strong tendency for students as they move on in their law school careers to focus on bar passage and on courses that address the bar exam material (J.T. Lee 2017). According to one critic, “the law schools have become merely ‘cram’ schools for the bar examination preparation, and not places for innovation of legal discussion” (Park 2018: 178). Indeed, the focus on bar passage means that many students spend their time taking private cram courses while in law school. Students also tend to avoid courses taught in English, for example, or clinics, or courses about such matters as corporate governance, since they are not instrumental for bar preparation (Ints. 4 and 10–Korea). One professor noted that it was necessary to work doubly hard to recruit students to clinics, for example, by providing pass/fail grading to induce students to sign up. Another noted that students who started law school with excellent English would often see a decline in their skills over time while in law school (Int. 10–Korea). Professors, in addition, were being pulled toward the traditional lecture system by the incentive of the bar exam.

#### STRATIFICATION AND HIERARCHY AFTER REFORM

One ostensible goal of the reform was to foster competition in the legal profession and among the law schools so as to challenge a deeply conservative oligarchy that was reluctant to challenge the government or the *chaebols*. The “elite justice” criticized by the reformers was seen as controlled by a homogeneous group of individuals, a large portion of whom had graduated from SNU. Part of the effort of reformers was to open up the profession and diversify the backgrounds of those who would obtain law degrees and pass the bar. The requirement that no law school could have more than two thirds of its students from the same

undergraduate university as the law school was meant to further this process (Int. 5–Korea).

In fact, the hierarchical structure remains intact despite a number of modifications under the new system. One criticism raised frequently today amounts to a new version of the criticism of the legal elite: only the rich can attend law school because of the increased tuition and the three years that have been added to a legal education. Law school tuitions—which averaged about \$14,000 in 2015—reportedly are three times the tuition at other graduate schools (Lee 2018). Tuition is increasing in part because of the low faculty-to-student ratio (Kim 2020). According to JaeWon Kim, “Public opinion about the new law schools has been generally unfavourable. They have been ridiculed as ‘money schools’ for the rich, a label the mass media constantly repeat” (2020).

Entrance into law school depends now on more than test scores. This can introduce biases in favor of those able to travel, learn languages, and acquire experiences that gain the attention of admissions departments. Most students appear to be “upper middle class” (Int. 6–Korea). Reportedly the scholarships that are offered tend not to attract the more disadvantaged South Koreans. It is “hard to find students for full scholarships” (Int. 4–Korea). Even so, the romanticization of the prior system of open access to the judicial exam appears misplaced.

The South Korean version of the US “After the JD” study of lawyer careers, organized by Jae-Hyup Lee of SNU, compared students taking the different routes to passing the bar. The study has noted that there is little difference in terms of socioeconomic background between those who relied on the cram courses and those who attended law schools (J.H. Lee 2019). The reason is that it takes considerable resources for any individual to take the time, secure proximate housing, and pay the money required to pursue the cram courses. In any event, access to legal careers today is not very open to those without resources (S. Kim 2014), and the law school system has certainly raised the cost of that access.

There is also a very strong division between the elite law schools and the rest (Kim 2020). Those who are not admitted to one of the fifteen law schools in Seoul have much less chance of passing the bar than those who gain entry to the Seoul schools. The non-Seoul schools, a number of which maintain very low enrollments, purportedly attract only those who cannot gain admission to a Seoul law school. Law students also cannot transfer. The first-time bar passage for the Seoul schools is reportedly around 70 to 75 percent, while the figure for those from outside Seoul hovers around 50 to 55 percent at best (Ints. 6 and 10–Korea). Also, the very top schools, including the SKY schools and Sungkyunkwan University Law School, are closer to 80 to 90 percent in bar passage.

The top schools also perpetuate the undergraduate hierarchy even though they must take one third of their students from off-campus. They simply recruit from one another (Int. 11–Korea; Park 2018: 193). The division between elite schools and the rest also relates to the resources available to the schools. The *Korea JoongAng*

*Daily* reported in 2014: “According to data submitted by 13 of 25 total law schools—including Ewha Womans University, Konkuk University and Kyungpook National University—to Rep. Kim Jae-yun, from the minor opposition Unified Progressive Party, five schools had a deficit of 22.6 billion won between 2009 and 2011. The situation was tougher for these ‘mini-law schools,’ with less than 80 students enrolled in classes” (S. Kim 2014). The law schools acting through the Korean Law Schools Association maintain a united front in support of all twenty-five law schools, but there is discussion about raising the overall bar passage by reducing the number of students in the lower-performing law schools (Int. 12–Korea; Park 2018: 192). If that happens, the schools that admit those likely to be from less advantaged backgrounds will become weaker and weaker.

Most tellingly, the position of the SKY schools and above all SNU law school remains unchallenged. The winner-take-all economy is especially evident here. SNU’s dominant position is clear from the fact that it has no Korea Law School graduates on its faculty—one is from Yonsei Law School and two from Ewha Women’s University (Int. 11–Korea) The hierarchy is intensely felt. Professors at Korea Law School, for example, criticize SNU for mainly hiring its own graduates. Meanwhile, KU brags about the number of its own graduates on the KU faculty.

The hierarchy is strongly evident in the allocation of elite jobs. The most desired careers remain in the judiciary and in the prosecutor’s office, and those careers can be converted later into teaching positions or lucrative positions in law firms. Those seeking careers in the judiciary can no longer go directly into those positions, but they typically will still begin with a judicial clerkship and return to the judiciary after a few years’ experience. The number of elite positions totals about 400 annually, according to interviewees from the law schools and law firms. That number includes fewer than 100 serving as clerks for judges and a similar number for prosecutors. It also includes about 200 annual hires into the “big six” Seoul law firms—Kim and Chang; Lee and Ko; Bae, Kim and Lee; Shin and Kim; Yulchon; and Yoon and Yang—that comprise the elite of the corporate bar. Among those going into these elite positions are reportedly one third of SNU law graduates, who constitute one quarter of new hires (Ints. 2, 6, and 10–Korea). The corporate law firms are still not large by global standards: “As of 2017, 11 Korean firms had more than 100 lawyers: Kim & Chang (654), Lee & Ko (454), Bae, Kim & Lee (414), Shin & Kim (325), Yoon & Yang (272), Yulchon (257), Barun Law (192), DR & AJU (146), Dongin Law (135), Jipyong (125) and Logos (111)” (Kim 2020). In-house legal departments are also now increasing their hiring, providing another relatively elite position.

Data compiled by Jae-Hyup Lee show the dominance of SNU and the SKY schools (2017). The big six hired 159 lawyers in 2014—73 law graduates from SNU, 25 from Yonsei, 24 from Korea University, and then 13 from Songyunkwan—leaving a total of 25 from the other law schools. Furthermore, with respect to the undergraduate university attended, 88 were from SNU, 21 from Korea University,

and 18 from Yonsei, with only 32 from elsewhere (Lee 2017). Partners at the firms report hiring predominantly from the SKY schools, and this is certainly borne out by this study. Associates reportedly start pay at about US \$90,000, substantially more than in other legal positions.

At the same time, the market is much more competitive generally. One newspaper article stated that more than 3,300 lawyers were unemployed in 2014. Starting salaries generally are not what they once were, and even those who get into the big six are no longer guaranteed support for an LL.M. in the United States. There is also little evidence that the increased competition has led to more access to justice for individuals. One scholar (Int. 4–Korea) stated that 70 percent of civil cases involve *pro se* representation. He contrasted this with the position of the *chaebols*, which, he said, have learned to use the law as a “legalized arsenal” against critics, including through criminal “defamation” actions with the aid of top prosecutors still “more friendly to corporations and the rich” (Int. 4–Korea).

At the same time, there has been considerable growth in pro bono and public interest law. Thirty hours of pro bono—termed “public interest activities”—were made mandatory in 2000, although without apparent penalties for non-compliance. Increased pro bono activity led to the creation of foundations by the big six law firms to coordinate and encourage pro bono, a notable example being the Dongcheon Foundation created by and housed at Bae, Kim and Lee.

The story of the small but growing public interest law sector is part of the story of legal education reform. First, the public interest law sector is an outgrowth of the same people and constituency promoting legal education reform to challenge the entrenched elite. One expert reports, for example, that the leaders of public interest law all met through Mingbyun and “all know each other” (Int. 10–Korea). Gonggam, one of the most important public interest organizations, was founded in 2004 by Park Won-soon. He was earlier a key founder of the PSPD and Minbyun, and he later founded Hope and Law (Int. 10–Korea). The budget of Gonggam is around \$800,000; of Hope and Law, around \$400,000. A substantial portion of the budgets of these organizations comes from individual donations. Students are also pushing the market by searching out nonlegally oriented NGOs and offering to provide a legal component to their work.

Second, there is a connection between the pro bono foundations, the law firms, and public interest in part because many of the important partners in law firms today are members of the ’86 generation that demonstrated for democracy (Int. 10–Korea). They are inclined to support their friends in public interest law and to encourage pro bono. Third, the law schools, through their clinical programs and professors, build relationships that encourage pro bono and public interest. Finally, although this is not easy to document, it appears that the leading pro bono and public interest organizations, such as the elite law firms, are disproportionately linked to the graduates of the most elite law schools. It is indicative that seventy graduates of one class at SNU law school got together to fund a position for

advocacy for transgender rights (Int. 10–Korea). The increase in numbers in public interest law sustains a more diversified professional practice in some respects, though not necessarily in terms of the lawyers who staff the leading organizations.

Finally, the global shift toward a new legal hegemonic relationship has brought other challenges in South Korea. The Ministry of Justice, under pressure from Europe and the United States, is gradually opening its markets to international law firms. As of 2017, the Minister of Justice had authorized 145 Foreign Legal Consultants: “109 from the US, 23 from the UK, eight from Australia, and one each from other countries like France, Scotland, New Zealand, Singapore and China” (Kim 2020). Among the global law firms active in Seoul are Baker McKenzie, Clifford Chance, Latham and Watkins, Ropes and Gray, Sheppard Mullin, Skadden Arps, and White and Case (Int. 10–Korea).

At least one interviewee stated that the domestic big six are increasing their hiring to compete with the international law firms (Int. 12—South Korea). An ex-partner opined that these international law firms were likely to favor American-born South Koreans in order to gain bilingual fluency. To some extent, therefore, there is the possibility here too—as in Hong Kong—of individuals bypassing South Korean legal education but still gaining a strong position in corporate law practice in South Korea. The relationships of core and periphery are more present to the extent that the market is more open.

Legal education in South Korea has substantially retooled itself to align more with the expertise valued and current in post–Cold War global legal practice. It has transformed the traditional legal oligarchy and the criteria for gaining admission. There are also strong continuities. Prosecutors and judges remain at the top of the hierarchy and still are mostly quite conservative. The same schools dominate the legal profession as in the past. And the students focus much more on bar passage than on clinics and business courses. We turn now to the situation in Japan, which is similar but so far with a very different outcome.

#### THE JAPANESE CONTRAST: CO-OPTATION AND RESISTANCE

The Japanese initiatives for the reform of legal education began after the financial crisis of 1997, when the cabinet established a Justice System Reform Council in 1999 (Rosen 2017: 267). The “main initiator,” according to Kay-Wah Chan, was the “business sector” (2011: 185), which then as now “exerted a powerful influence on the Liberal Democratic Party (LDP)” (186). In the wake of the financial crisis, there was also a weakening of the *keiretsu* and the banks with which they worked, as well as a growing call for more regulation by law and lawyers (188). Corporate interests “began to agitate for more and better lawyers,” both for negotiations with international businesses and their lawyers and for “locating lawyers who know anything about the substance of their businesses” (Rosen 2017: 271). As in South

Korea, lawyers qualified for the bar by knowing only what it took to pass the bar exam.

There were also arguments against the “close ties within the iron triangle, comprised of the ruling Liberal Democratic Party (LDP), the bureaucracy, and big business” (Saegusa 2009: 367). Rosen refers to “an orthodoxy that perpetuates the status quo” and “lays the groundwork for the ‘extreme form of positivism and passivity of most judges in Japan’” (2017: 282, citing Miyazawa 2002). Legal scholars educated in the United States in particular also supported the change (368). According to Saegusa, among those she interviewed about legal education reform, “there is a taken-for-granted assumption that Japan should look for American models when reforms are discussed” (375).

At that point Japan allowed 1,000 bar passers per annum, leading to a 2 to 5 percent passage rate. The 1,000 reflected a gradual increase from the 500 per year between 1960 and 1990 (371). Big business and the state had not taken an interest historically in increasing the number because, as in South Korea, the small and homogeneous bar was deeply conservative and unlikely to hinder corporate or state interests (373). But now they argued strongly that the number should be increased to 3,000 per year (391).

The Justice System Reform Council established in 1999 had thirteen members, only three of whom came from the legal profession. Three were law professors and seven came from other sectors of Japanese society. The council argued for a strengthening of the legal profession both for ordinary people and for business. It seized on initiatives suggested by US-oriented law professors (Saegusa 2009).

There was resistance to the reforms. As in South Korea, “civil law professors tended to express stronger resistance to the law school proposal than professors of other disciplines” (386), fearing the Americanization of legal education. Furthermore, “professors at elite universities were reluctant to endorse the new system, but at the same time it seemed to them a good opportunity to eliminate many lower-status universities” (386). Law professors generally were skeptical but did not speak out because they did not want to alienate the Ministry of Education (387).

The prevailing arguments among supporters were for a “more diverse, internationalized” set of lawyers (Rosen 2017: 272), new expertise in such areas as technology (272), more competition leading to more lawyers locating outside of Tokyo and Osaka (273), and more engaged students and teaching. In Rosen’s words, the argument for Americanization was that “American-style law practice and lawyers had become the default for global legal practice in the twenty-first century. American lawyers were everywhere. Their standards, to a great extent, had become the global standard. If Japanese lawyers were to hold their own in this environment for the benefit of their clients, they needed to know how to operate” (277). The law school plan for “twenty-first century global practice” became law in 2002 (275).

The timing coincided with an expansion of corporate law firms in Japan (Murayama 2020). Indeed, an initial impetus to expand the number of lawyers

from 500 in 1990 to 1,000 in 1996 came after, in response to US demands in 1982, the Foreign Lawyers Act (No. 66) was enacted in 1986, “allowing lawyers licensed to practice in a foreign country to practice in Japan but not litigate. Because the Japanese economy was expanding rapidly, large Anglo-American law firms began to open offices in Tokyo. Most international transactions were out-bound as Japanese companies invested in the US and Europe” (755).

Then, facing international competition, “Japanese law offices specializing in international transactions began actively to recruit graduates of the Legal Training and Research Institute (LTRI) . . . Although those Japanese law offices were relatively small, with 30–40 lawyers, they tried to recruit the best graduates by offering a high starting salary. As a result, SC [Supreme Court] and in particular MOJ [Ministry of Justice] began to have problems recruiting enough judges and prosecutors and sought to increase the number passing the bar examination” (755).

At that time, as a result of the deregulation coincident with the Asian financial crisis in the late 1990s, foreign investors could buy Japanese companies more easily (757): “Unlike out-bound investment, in-bound capital required Japanese lawyers. Responding to increasing demand for corporate and cross-border legal work and, especially, the ability to handle M&A, Japanese firms specializing in corporate law and finance began to merge, growing to more than 100 lawyers. The *Big Four* [elite of Japanese corporate law] were created by such mergers between 2000 and 2007. A gradual increase in the number passing the bar exam in the late 1990s also helped them expand” (757).

#### CO-OPTATION AND THE HYBRID LAW SCHOOL SYSTEM

The new legal education system, as a compromise with the legal establishment, allowed the undergraduate law schools to continue their operations, but it also established sixty-eight new law schools, which began operating in 2004. Undergraduate law majors would enroll in a two-year JD program and non-law graduates in a three-year program. The compromise still purported to make major change and to open up legal education and the profession. There was considerable optimism at the time (e.g., Foote 2008).

From today’s perspective, however, we can see the limits of this “legal revolution” in Japan. As Saegusa pointed out in 2009, the “legal establishment” from the start controlled the specifics of law school reform for their own benefit. First, she noted, “the law school system is supervised by the Ministry of Education, which, in the hierarchy of Japanese public agencies, is less powerful than either the Supreme Court or the Ministry of Justice” (388). That meant that legal education could not get too far away from the centers of power in the profession and the Ministry of Justice.

Second, control of the number of admittees was kept in the hands of the Ministry of Justice, which meant that, even if the reform council had suggested 3,000 new admittees a year might be too small, it would be the Ministry of Justice that controlled the actual numbers on grounds of “quality”: “the Ministry of Justice has not exhibited full trust that the new law schools will sustain the quality of legal education, so it maintains the strict bar exam as the essential check on the law schools” (389).

Finally, and most importantly, “the introduction of the law school system could have jeopardized the existence of the Institute [LRTI]. However, representatives of the Supreme Court on the Reform Council emphasized the excellence of training that the Institute offered and insisted that the Institute remain responsible for practical training, even after law schools were established” (388). Saegusa quotes a Supreme Court official who stated that this was necessary because of the “uncertain quality of education in the law schools” (288). The institute remains the key to the socialization of the legal profession into the traditional roles that have helped hold together the political and economic elites. It is staffed not by law professors but, as was the case in South Korea, by the judiciary and prosecutors. According to leading Japanese scholars, it is very clearly in place to preserve traditional roles and approaches against the potential influence of law school faculties (Ints. 2 and 3–Japan). This situation is quite different than in South Korea.

Nevertheless, the beginnings were relatively auspicious from the perspective of reformers, with a diverse student body and many new courses focusing on non-bar topics relevant to global legal practice. But the bar passage on the first exam was 48 percent, declining the following year to 40 percent (Saegusa 2009: 278). The number of non-law majors entering the JD programs also declined.<sup>2</sup> The opposition then grew even stronger against having even the 3,000 bar passers, and the numbers were reduced (279). The current number is about 1,500. As in South Korea, the “declining quality” argument had strong adherents among the members of the bar and the Ministry of Justice. There were also fewer job openings than had been anticipated (279).

In addition, unlike in South Korea, the existence of the undergraduate schools along with the law schools, as well as the availability of the bar exam to non-law students (who now must pass a preliminary exam to qualify for the bar exam), undermined the law school system and the importance of law schools more generally. Bar passage declined to under 23 percent in 2016 (6,899 sat and 1,583 passed) (Rosen 2017: 283). Even University of Tokyo graduates passed at only a 48 percent rate (283). The 2017 results were even worse. Keio University produced the most passers in this category, at 144. The University of Tokyo came in second, with 134. Chuo University had 119, Kyoto University 111, and Waseda University 102. The following year, five law schools saw none of their test takers pass (*Nikkei Asian Review* 2017).

Even more troubling for proponents of reform is that individuals who took the alternative route through the cram schools and preliminary exam did much better on the bar exam: “Those going through this program and passing the exam increased 55 on the year to a record 290. This subgroup’s pass rate came to 72.5%, and the applicants accounted for about 18% of all passers” (283).

Skills training, elective courses, courses in English, and even classroom attendance gave way to bar courses and especially to a focus on the cram courses outside of the law schools (Rosen 2017: 283–86). The trend now is for even those enrolled in the law schools to drop out and take the alternative route to bar passage. All of these trends challenge the role of any new expertise taught in law schools.

The political will for reform also evaporated. According to Murayama (2020), the “rapid increase during a short period provoked a strong reaction against further increases, and the new law school system began to disintegrate under lawyers’ harsh criticism.” In 2007, furthermore, “some LDP members, including the Minister of Justice, declared they would reconsider the lawyer population policy” (759). Then

in 2009, a group of Diet members across party lines also demanded a drastic reduction in the number of law schools and students. In 2010 a lawyer who opposed increasing the lawyer population was elected JFBA president. At the end of his term in 2012, JFBA proposed reducing the number passing the bar exam to 1,500. That year the Ministry of Internal Affairs and Communications (MIC) officially endorsed the opposition. . . . It bitterly criticized the quality of professional education at the new law schools and argued that allowing 2,000 to pass the bar examination had created an oversupply of practicing attorneys. (761)

Lawyers across parties backed away from further expansion.

Finally, law school applications have gone from 73,000 in the first year to fewer than 10,000 now (Rosen 2017: 287). There is also discussion about cutting funding or defunding the schools with low pass passage (287). The number of law schools is already dramatically down from a high of seventy-four. Only thirty-nine law schools enrolled students in April 2018 (Int. 4–Japan; Murayama 2020).

#### STRATIFICATION AND THE CURRENT LEGAL MARKET

The promise of dramatic expansion in access to Japan’s legal profession has certainly not been realized. There has been an increase in the number of lawyers. The bar expanded from 23,117 members in 2007 to 37,680 in 2017 (Int. 1–Japan). That has meant there are more lawyers now in places that had very few of them prior to the reforms. But the market has not expanded in the ways that were predicted. As noted by Nakamura (2014: 104), “due to the introduction of the new system and an increase in the number of lawyers, competition among lawyers increased. The average income dropped from 17,010,000 yen in 2000 to 14,710,000 yen in 2010.

Since lawyers no longer enjoy privileged status and have difficulties finding jobs, the number of applicants to law schools dropped from 72,800 in 2004 to 13,924 in 2013.” There are roughly half the number of law schools today than at the peak period after the reform.

The increase in the size of the corporate law firm sector has been substantial. In 1990 there were some 756 lawyers in business law firms, representing about 9 percent of the bar; the number in 2017 was more than 3,000 in firms of more than 100 lawyers (Int. 2–Japan; Murayama 2020). There were eleven firms with more than 100 lawyers and five with more than 350. The number of foreign lawyers permitted to work in Japan was 407 as of 2017. Foreign firms since 2005 have been able to hire local Japanese attorneys, but they have struggled to compete within Japan (Brennan 2013).

A big four—now big five—law firms in Japan make up a Magic Circle. The number of lawyers they hire annually is still not large. One recent study found that about 6.7 percent of the graduates of 2004 remain in “big law” in Japan, defined in terms of law firms of more than seventy lawyers (Int. 5–Japan). The big five offer high starting salaries, “around 12 million Yen (about \$110,000) per year, the best fringe benefits, and opportunities to study abroad, often in the U.S.” (Murayama 2020: 763). The number of offices of international corporate law firms has gradually increased, and the number of Japanese partners and associates had more than doubled by 2017. Large international corporate law firms have also formed partnerships with Japanese firms, although the largest ones have remained independent.

The stratification is strongly evident today. According to Rosen, “those that are doing well are, by and large, those that were on top in the old system: big-name institutions in large cities” (2017: 288). A study of large law firm hiring found that the tendency to hire from only the top law schools has increased since the law schools were founded (Nakamura 2014). According to Nakamura’s research, which masked the actual names of the law schools, “school prestige did affect the size of one’s first firm, and this effect is increasing, but in an unexpected way.” The difference only “occurred between a limited number of elite individual institutions . . . versus the rest” (2014: 120).

In particular, one law school was at the top: “University A [likely the University of Tokyo] was the most striking example, where its graduates are overrepresented as new entrants to very large institutions, and this trend has increased” (120). Nakamura quoted a partner on the increased importance of the school attended: “Due to the introduction of the new bar exam system, the role of alma mater has increased. Before the judicial reform, a very limited number of people passed the bar. The fact that someone passed the bar could provide assurance of her/his ability. However, as the number of lawyers increases rapidly, passing the bar in itself can no longer ensure the ability of the person. Thus, school prestige became more important at the time of hiring as an index for ability” (120). One scholar reported, in addition, that many of the non-law school graduates who pass the bar

are individuals who have left the more elite law schools, again suggesting the same stratification (Int. 5–Japan).

One result of the reforms, therefore, is that stratification, ostensibly based on merit, has increased. Furthermore, only a very few law schools and a very few law firms occupy positions in Magic Circles of the elite. At the same time, however, we do not know the extent to which the recent legal revolution has taken hold within the Japanese legal profession. The “failure” of the law school system in Japan, documented extensively in recent scholarship (e.g., Foote 2013; Rosen 2017), suggests that the purveyors of the new expertise did not find sufficient allies within emerging political movements. The relatively diminished role of the law schools even in supplying bar passers is an indication that new modes of teaching and new kinds of expertise are not at this point central to legal practice.

It is not clear whether there has been a major change in hiring within legal education or in the scholarship that is produced. Law professors at the time of the reform mainly “had come up through the graduate schools, which grant master’s and Ph.D. degrees and primarily are devoted to training scholars, not lawyers” (Rosen 2017: 276). As noted earlier, they typically gained their positions through their relationships with a mentor-professor (Feldman 1993). The number of Japanese professors who are active in the new Asian Law and Society Association, organized by the many law professors who supported legal education reform, suggests a greater openness to interdisciplinary work oriented toward US approaches. The *Asian Journal of Law and Society* provides an outlet for that research. Japanese scholars state that the influx of new law teachers is “changing legal education” from inside (Int. 2–Japan). But certainly the situation is quite different from the Korean experience.

#### CONCLUSION: CONTRASTING STORIES BUT CONTINUING PROCESSES OF CHANGE IN BOTH SETTINGS

There has been no dramatic legal revolution in Japan in the sense that we saw in South Korea. Reformers initially used the Asian financial crisis to argue against the world of personal relations among the so-called iron triangle and the corruption it engendered. But the Iron Triangle did not draw the same kind of political opposition seen in South Korea. The *chaebols* in South Korea were linked to an authoritarian military regime, as were many of those in power within the legal field. The reform efforts and the politics behind them in South Korea did not face as strong opposition as the alliance among the state, the *keiretsu*, and the LDP in Japan. There is no strong and emerging political group united with the broader reform agenda in Japan. Political families in Japan do not have the links to authoritarianism that undermined the opponents of Roh and Moon. After the initial reform in the wake of the financial crisis, it is not surprising that the corporate

initiators backed off and allowed the traditional oligarchy of the bar—which coexisted well with the Iron Triangle—to undermine and co-opt any movement for major change.

This conclusion, however, is not inconsistent with gradual shifts within the *keiretsu* and the Liberal Democratic Party. We need to know much more to see whether there is a more subtle legal revolution taking place that is consistent with global political and economic hierarchies. Turning to the legal profession, however, we can see some signs of movement despite the apparent failure of legal education reform.

A meeting of the Asian Law and Society Association in Taiwan in 2017 provided two perspectives on change within the profession. Atsushi Bushimata of Fukuoka University reported on a study of law graduates in Japan and found little evidence of change. He suggested that the practice of law today remains overwhelmingly in the long-standing core fields of traffic accidents, family, wills, and criminal defense—all components of a litigation emphasis. He found much less evidence of mergers and acquisitions, international business transactions, and corporate law, suggesting that the “corporate effort” is much smaller in Japan compared, for example, with what is found in the United States. He concluded that the “long-standing characteristics of the Japanese Bar still persist” and that the “structure of the Japanese Bar remains undifferentiated and homogeneous.” (Quotations from notes taken at the conference by Bryant Garth.)

Daniel Foote of the University of Tokyo, a strong critic of the legal education reforms as they were implemented, suggests some paths that indicate change. Without disputing Bushimata, he emphasized the role of in-house counsel, which Bushimata left out of his sample. The bar after 2003 relaxed its restrictions on *bengoshi* working in for-profit companies. The number has grown from only 66 in 2001, working for 29 companies, to some 2,000 today—5 percent of registered lawyers. There are also relatively more women in this setting—almost 11 percent of women lawyers work in-house, versus 3.7 percent of men. There are also a number of non-bar passers in-house, and many are involved in issues of compliance that have a strong legal component. Of particular note is that some 45 percent of those completing the LTRI went in-house.

He also noted a great increase in lawyers in firms working essentially in government (since published as Foote 2018). Again, *bengoshi* were precluded from government employment until after 2000, and they are still limited to service for fixed terms, but Foote noted a major increase in lawyers building their careers in part through government service of one to three years. To Foote this suggests that there has been a shift in the nature of practice consistent with a greater legalization of business–governmental relations. In contrast to South Korea, however, Foote found no lawyers working in the not-for-profit and public interest sectors.<sup>3</sup>

There is thus evidence of a slow process of change consistent with the preservation of the basic practices and hierarchies of the Japanese bar. But, as noted before,

there is not the drama of the more pronounced legal and political transformation that took place in South Korea. The ability of the entrenched legal elite to withstand the push for change was much stronger in Japan than in South Korea, largely because of the different relationship of the legal field to movements for political change. There are similarities, however, especially in the increased stratification that came with the apparent expansion of opportunity. In each setting the corporate law firm sector expanded notably—while still providing jobs for a relatively small group. And the actual changes that accompanied the reform of legal education were consistent with the increasing inequality of access to the legal profession generally and especially to the top positions in the profession. The cost of legal education is much higher, leading law schools are rewarded disproportionately, and the schools that serve the relatively less privileged gain fewer resources, face great challenges in bar passage, and are even threatened with closure.