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The Reform of Legal Education in China and Japan: Shifting from the Continental to the American Model

Xiangshun Ding

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**THE REFORM OF LEGAL EDUCATION
IN CHINA AND JAPAN:
SHIFTING FROM THE CONTINENTAL TO THE
AMERICAN MODEL**

Xiangshun Ding*

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* Associate Professor, Deputy Director of the Institute for U.S. Law, Renmin University, China.

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There are several common features of the legal profession and legal education in China and Japan.¹ Both China and Japan have traditionally focused on teaching legal knowledge to undergraduate and graduate students rather than providing professional skills education; however, since the end of the twentieth century, legal education in the two countries started to fundamentally change both institutionally and pedagogically.² The first part of this paper will describe the basic characteristics of legal education embraced in China and Japan as traditionally continental countries. The second part will introduce the trend of reforms of legal education in the two countries since the end of last century. In part three and four we will make some comparisons on the approaches to reforms of legal education in the two countries. The fifth part will depict the endeavors of the pedagogies for nurturing lawyers provided in new law schools or Jurist Programs in the two countries. The last

1. For additional information regarding legal education in China and Japan, see RAISING THE BAR: THE EMERGING LEGAL PROFESSION IN EAST ASIA (Alford ed. 2007); Yooncheol Choi, *The Reforms of Legal Education and Bar Examination in South Korea*, 6 THE JURIST (Renmin University of China Law School 2009); Matthew S. Erie, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 59 J. LEGAL EDUC. 60 (2009); Huang Jin *The Structure Of Legal Education In China*, available at <http://www.aals.org/2000international/english/china.htm> (last visited July 10, 2010); Suzuki Ken, *At Crossroad for Japanese Law School System*, 6 THE JURIST (Renmin University of China Law School 2009); Judith A. Mcmorrow, *Introduction to U.S. Legal Education and Preparation for the Practice of Law*, 6 THE JURIST (Renmin University of China Law School 2009); Annelise Riles & Takashi Uchida, *Reforming Knowledge? A Socio-Legal Critique of the Legal Education Reforms in Japan*, 1 DREXEL L. REV. 3 (2009); Takahiro Saito, *The Tragedy of Japanese Legal Education: Japanese 'American' Law Schools*, 24 WIS. INT'L L.J. 197 (2006); Shiho Seido Kaikaku Shigikai (Justice System Reform Council), 2001 Recommendations of the Justice System Reform Council –For a Justice System to Support Japan in the 21st Century, official translation available at <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html> (last visited July 10, 2010); Wang Weiguo *A Brief Introduction To The Legal Education In China*, available at <http://www.aals.org/2000international/english/chinaintro.htm> (last visited July 10, 2010); Ding Xiangshun, *The Reform of Legal Education in East Asia from the Perspective of Comparison*, 6 THE JURIST (Renmin University of China Law School 2009); and Hou Xinyi, *Modern Legal Education in China*, 31 OKLA. CITY U. L. REV. 293 (2006).

2. See Setsuo Miyazawa et al., *The Reform of Legal Education in East Asia*. 4 ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE 333 (2008).

part will concentrate on the opportunities and challenges that the legal educators are facing after drawing the key features of different approaches in terms of education reform.

I. CONTEXT AND GOAL OF LEGAL EDUCATION IN CHINA AND JAPAN

China and Japan trace their legal systems to the influence of western continental legal systems, including Germany and France. The development of codes in China and Japan and the growth of their economies created a demand for new legal talent. The discussion below will highlight the features of legal education in the two countries and provide the context for further discussion.

A. *China*

With the end of the Cultural Revolution in 1976, China began to reconstruct her legal system and the expansion of legal education has been rapid and dramatic. There were only two functioning law institutions at the end of the Cultural Revolution in 1977.³ There are over 620 today, and there has been a corresponding rapid increase in the number of law students in the past 30 years. By the end of 2007, there were 290,000 full-time undergraduate students, 44,000 full-time and part-time master level postgraduate students, and 7,000 full-time and part-time doctoral students registered in the above mentioned institutions.⁴ Although coexisting with diploma programs, correspondence courses, television education programs, etc, the mainstream in China's legal education system is the four-year undergraduate program (LL.B.) offered by law institutions affiliated with public universities, which admit high school graduates through a National Admission Test. At the postgraduate level, there are LL.M. and doctorate programs,

3. See ZENG XIANYI & ZHANG WENXIAN, *ZHONG GUO FA XUE ZHUAN YE JIAO YU JIAO XUE GAI GE YU FA ZHAN ZHAN LUE YAN JIU* 65 (High Education Press 2002) (Zeng Xianyi is Dean Emeritus of Renmin University School of Law and Chairman of the China Legal Education Society. Professor Zhang Wenxian is Deputy Chairman of the China Legal Education Society. Both are prominent law professors who are playing an important role in the development of legal education in China.).

4. See Zeng Xianyi, *FaxueJjia yu Sanshinian Hu huang Chen jiu:Rencai Zhanlue Tuidong Fazhi Zhongguo*, CHINA COMMENT 2008 at 63 (Special Edition, Democratic Politics 2008).

which are academically oriented and mainly aimed at nurturing future scholars. In 1996, an additional postgraduate was created: the Juris Master (J.M.), which was originally modeled on the American J.D. program.⁵

The target of legal education in the four-year program is to teach legal knowledge and provide a general education for students rather than train future lawyers. It is a general arts education program and in principle a theoretical study of the law, lacking practical training.⁶ Law students are required to fulfill at least 16 core legal courses and non-law courses such as foreign languages, physical education, even political theories like Marxism and Deng Xiaoping theories.⁷ Most graduates serve as public employees, businessmen or women, etc, that may or may not relate directly to the practice of law. LL.M. and doctoral programs are originally academic-oriented programs and divided into separate sub disciplines (majors) such as jurisprudence, legal history, civil law, criminal law, procedure law, business law, international law, military law, environmental and natural resources protection law; however, most graduates have careers outside academic circles.

There is no institutional connection between the formal legal education in higher education and the pathway to taking the bar examinations. Historically, there have been few professional requirements for Chinese judges, prosecutors, and lawyers. It was not until 1986 that the national lawyer's professional qualification examination was implemented. Even for judges and prosecutors between the years 1986 and 1995, there were still no qualifying exams. In 1995, the Judges Law and Procurators Law were changed to require the internal staff of the courts and prosecutor offices to take a national qualifying examination. In 2001, the Judges Law, Procurators Law and Lawyers Law were amended to add the provision that judges and prosecutors also needed to take a unified qualification examination. The unified national judicial examination has been administered annually since 2002. The only

5. See Setsuo Miyazawa et al., *supra* note 2, at 335.

6. *Id.* at 336.

7. The 16 core courses are jurisprudence, Chinese constitutional law, administrative law and procedure, Chinese legal history, civil law, civil procedure, criminal law, criminal procedure, commercial law, intellectual property, business law, public international law, private international law, international business law, labor law and social security, and environment law and the protection of resources.

educational requirements to qualify to sit for the unified national judicial examination are that one holds an undergraduate degree or, in some economically deprived regions, completes a shorter, three-year college education. There are no legal educational requirements, so about one half of those who have passed the examination do not have any formal legal education.⁸

B. Japan

In Japan, modern legal education was established during the 1870s in the period of Meiji and reformed after World War II. There are nearly 100 undergraduate law faculties, with approximately 200,000 students.⁹ Since their introduction in the late nineteenth century, though, these undergraduate law faculties have never been considered as part of the educational process for future lawyers.¹⁰ Law faculties have functioned as general education programs to produce a workforce for business, government, and other walks of life. An undergraduate law degree (LL.B.) is not required for one to take the national bar examination, which was established in 1948. As in China, undergraduate legal education in Japan is a general arts education, and therefore, social science courses are mandatory. Compared to China, however, postgraduate legal education is less representative and focuses on nurturing scholars for law faculties.

To become a judge, public prosecutor, or practicing attorney, one must usually pass the bar examination, and complete the training at the Legal Training and Research Institute for one and a half years (two years for those who entered the Institute prior to 1998). Before 2006, the old system of legal education and training of lawyers in Japan consisted only of taking the national bar exam and participating in an apprenticeship administered by the Supreme Court. Under this system of selection of lawyers, anyone is

8. There are no official statistics released. That information, nevertheless, has been disclosed at meetings where the author attended in his capacity of member of the research group for the national bar examination set by the Ministry of Justice. Professor Huai Xiaofeng, president of the national bar examination, disclosed that in 2004 the pass rate for applicants without formal legal education was 2% higher than the one for those applicants with formal legal education.

9. See Setsuo Miyazawa et al., *supra* note 2, at 340.

10. *Id.*

qualified to sit for the examination, but those who have completed the study of liberal arts required for obtaining the bachelor's degree are exempt from the first phase of the examination, which is regarded as a qualification test.¹¹ Because completion of formal legal education is not a requirement, a large number of people take the national bar examination and most of them also attend crammer schools where they concentrate on exam skills education. Therefore, although most of those who pass the bar examination are actually graduates of undergraduate (or postgraduate) law faculties, their legal education is provided to a significant degree by crammer schools.¹² This has led to the double schools phenomenon (a trend of going to two schools, the university and the preparatory school) that was criticized to be a waste of educational resources and as merely acquiring the techniques needed for passing the examination “rather than a sound education by legal educators in Japan.”¹³

11. The bar examination consists of two examinations (i.e., first and second examinations).

The first examination is conducted to determine whether the examinee has a sufficient level of cultural knowledge and academic skills to take the second examination. Those applicants that have completed the study of liberal arts required for obtaining the bachelor degree in university are exempted from this first examination.

The second examination is comprised of a written (Q&As and essays) and an oral test. The Q&As are on the Constitution of Japan, the Civil Code, and the Penal Code. The essays and the oral test are on the Constitution of Japan, the Civil Code, the Penal Code, the Commercial Law, an optional subject on procedural law, and an optional subject on other laws. Since 2000, the optional subjects have been abolished, and the essays are on the six subjects of the Constitution of Japan, the Civil Code, the Penal Code, the Commercial Law, the Code of Civil Procedure and the Code of Criminal Procedure; while the oral test is on five subjects, excluding Commercial Law. See <http://www.kantei.go.jp/foreign/judiciary/0620system.html> (last visited July 10, 2010).

12. See Setsuo Miyazawa et al., *supra* note 2, at 341.

13. See Peter A. Joy et al., *Building Clinical Legal Education Programs in a Country without a Tradition of Graduate Professional Legal Education: Japan Educational Reform as a Case Study* 13 CLINICAL L. REV. 417 (2006).

II. LEGAL EDUCATIONAL REFORMS IN CHINA AND JAPAN SINCE 1990S

Since the end of the twentieth century, legal education in China and Japan started to experience reform both institutionally and pedagogically. A common feature of those changes was the introduction of postgraduate professional law schools to existing undergraduate legal education or replacing undergraduate legal education with postgraduate professional law schools.¹⁴

In China, legal educational reform started from the middle of the 1990s, when the educational authority initiated the J.M., which is similar to the J.D. from American law schools. This program is offered to students without requiring them to major in law during their undergraduate studies. From 1996 to 2009, the number of law schools approved to hold a J.M. program increased from eight to 115, and the number of enrolled students increased from 425 to 40,000. Since its introduction, a total of 50,000 students have received their J.M. degrees.¹⁵

In Japan, in 2001 and upon recommendation of the government, the Justice System Reform Council (JSRC)¹⁶ was created. The JSRC called for a complete overhaul of legal education in Japan and the creation of new “professional” law schools that would “bridge theoretical education and practical education” and provide students with the opportunity to acquire the specialized legal knowledge, lawyer skills, and professional values “necessary for solving actual legal problems.” The JSRC defined law schools as “professional schools providing education specially for the training for the legal profession.”¹⁷ Amongst the goals of JSRC are: (a) to create a three-year program; (b) to ensure

14. See Setsuo Miyazawa et al., *supra* note 2, at 333.

15. See Zeng Xianyi, *Zhong Guo Fa Lv Shuo Shi Zhuan Ye Xue Wei Jiao Yu de Chuang Ban Yu Fa Zhan*, 3 *JURIST REVIEW* 113 (Renmin University Law School 2007).

16. The JSRC is a panel body created by the government under the cabinet from July, 1999 to June, 2001, for discussing and clarifying the issues and direction of the judicial reform in Japan. On June 12, 2001, the JSRC presented its recommendations for a comprehensive reform of the justice system to the cabinet and the reform was implemented by the Japanese government.

17. See Recommendations of the Justice System Reform Council-For a Justice System to Support Japan in the 21st Century, available at http://www.kantei.go.jp/foreign/policy/sihou/singikai/990612_e.html (last visited July 10, 2010).

diversity by admitting students from a broad range of academic disciplines and students with real-world experience; (c) to enhance critical and analytical skills, creativity, and skill in advocacy through small classes (less than 50 students), with extensive use of interactive discussion (rather than one-way lecture); (d) to bridge theory and practice, partly by hiring a substantial number of adjunct faculty members; (e) to achieve quality control by chartering standards, periodical third-party accreditation after chartering, and other measures of accountability; (f) to practice strict grading and evaluation of students; and (g) to provide a “thorough education such that a significant ratio of successful graduates (e.g., 70 to 80%) can pass the new exam,” so that “students can concentrate on their coursework.”¹⁸

As part of the reforms in Japan, 68 new Japanese professional law schools (*Houka Daigakuin*) opened their doors in April 2004, and there were 74 new law schools by April 2008. The annual enrollment of students is over 6000.¹⁹

With the establishment of new law schools, the new national bar examination (which only admitted graduates of new Japanese law schools) was established in 2006. The current national bar examination and the new Japanese law examination will coexist during the period 2006 to 2011. In 2011, the new national bar examination will completely replace the current one (old bar examination), which means basically only graduates from Japanese law schools will be qualified to sit for the bar examination and to practice law in Japan.

III. WHY MODELED ON AMERICAN LAW SCHOOLS? SOME COMPARISONS ON BACKGROUND AND MOTIVE

Some scholars view the reforms in the two countries as the introduction of elements of the American system of legal education.²⁰ American-style professional education has had an impact on the reforms of legal education in these two countries; therefore, it is better to make an analysis on why the two countries introduced American legal education elements as the direction of

18. See Setsuo Miyazawa et al., *supra* note 2, at 343.

19. *Id.* at 346.

20. *Id.* at 343.

the reforms and how American professional legal education systems affected the new systems in China and Japan.

The motivations and inspirations for initiating the reforms of legal education in the two countries are different. Nevertheless, since the late 1990s, both in China and Japan emerged demands for numerous legal talents with high quality. The knowledge-oriented legal education could not meet the demand for nurturing competitive legal talents in the newly complicated legal services environment.

In China, the authority described the motivations of establishing the J.M. degree in the official approving document, and stated:

With the development of the socialist market economy and the deepening of reform and opening to the outside world, the legal matters relating to all kinds of economic activities and social development and social stability is getting complicated, specialized and international in terms of scale and level, thus a large number of high quality professionals and managements talents, especially a number of high level legal practical and managerial legal talents who may meet the need of market economy and legal construction, are required in the legislature, judiciary, prosecution and legal service. But the current legal graduate education and the situation of the legal profession can not meet such need as following: first, generally the graduate education is still academic-oriented and far away from the practical requirement; second, the scale of graduate education can not meet the increasing demand in terms of quality and quantity from practical circles.²¹

Since the late 1970s, China has begun to take the policy of reform and opening up, by reconstructing its legal system. In the past 30 years, there has been rapid and continuous economic growth in China. Meanwhile, legal matters have become increasingly complicated leading to a rapid and substantial increase in legal needs and a demand for high-level legal talent. Thus, the

21. GUAN YU ZAI WO GUO SHE ZHI HE SHI BAN FA LV ZHUAN YE SHUO SHI XUE WEI DE JI DIAN YUAN ZE YI JIAN (Commission of Degree of State Council, May 12, 1994). *See* ZHONGGUO FALV SHUOSHI ZHUANYE XUEWEI JIAOYU DE SHIJIAN YU TANSUO 10 (Huo Xiandan ed. 2001).

need arose for a legal education program at a postgraduate level that could produce a large number of high-level talents to work in practice.²² But obviously as traditional lecture-oriented courses could not meet the demand, some officials in the Ministry of Justice joined with scholars to submit a report in 1994 proposing to introduce an American-style legal education. Afterwards, a committee jointly with the Ministry of Justice, the Ministry of Education, as well as some prominent scholars was established for the preparation of a new program. Although this new program is modeled on the American J.D. program, it was named Jurist Master because it is equivalent to a master degree in the Chinese degree system. Throughout this process, the Ministry of Justice played an important role in pushing the adoption of a new legal education program and is still involved in the approval and supervision in J.M programs. In China, usually the administration of education, not administration of justice, controls the legal education. The two ministries jointly approving and supervising the J.M. programs shows the determination of bridging education and practice: so that law graduates may meet the demand of legal practice.

Whereas in China reformation originated with the government, in Japan the pressure came from within the business community, especially from Kendanren (Federation of Economic Organizations), which has been the most powerful interest group in postwar Japan. In May 1998, Kendanren proposed to establish postgraduate professional law schools as a measure to increase the number of better-educated lawyers with a broader background.²³ Such proposal was adopted by the then governing Liberal Democracy Party (LDP). LDP's proposed report for comprehensive reform, issued in June 1998, led to the establishment of the Justice System Reform Council (JSRC), under the cabinet on July 27, 1999. The composition of JSRC also indicated the impact and concern from society: seven of the 13 members of JSRC were appointed from outside legal circles. In the recommendation submitted by JSRC on June 12, 1999, JSRC called on a comprehensive reform to meet the demand to access to justice for Japanese citizens. In order to access justice, a greater number of practicing lawyers was required, more than those Japan

22. See Setsuo Miyazawa et al., *supra* note 2, at 336.

23. *Id.* at 342.

had to offer at the time. Hence, JSRC prioritized an increase in the number of lawyers, setting a goal to triple the number of new lawyers by 2010 and recommending the establishment of law schools at a postgraduate level by 2004 as a centerpiece of the new system.²⁴ In the JSRC recommendation, the system of selection of lawyers was criticized because lawyers (including judges and prosecutors) were selected by a single method—the national bar examination administered by the Ministry of Justice. The disconnection between bar examination and legal education in universities implied a waste of social resources, which in turn led to a lower quality of future lawyers.

Since the systems could meet the demand of increasing a large number of lawyers with high quality needed in a transformed society, a new system that was designed to educate a large number of lawyers with high quality legal talents emerged in 2004 in Japan.

Both in China and Japan, increasing the number of high quality lawyers became the motivation and goal behind creating new law schools, which also contributed to the introduction of an American influenced legal education. However, different from the demand of increasing the number of lawyers (addressed by the Economic Organization in Japan), was the discussion in China relating to increasing the number of high quality legal professionals. This discussion in China remained within the legal circles of the country and the introduction of a new legal education system was conducted by the internal documents issued by the Chinese Ministries of Justice and of Education. It is obvious the reform of legal education and the establishment of Japanese law schools emerged within the context of comprehensive reform initiated by the cabinet and stipulated by laws passed by the legislature. The reaction to the demands for creating a new legal education system and the approaches that introduced an American type legal education determined partly the contents and characteristics of the new legal education systems in the two countries.

24. *Id.* at 340.

IV. EXTENT OF SIMILARITIES BETWEEN THE AMERICAN LAW SCHOOLS AND THE J.M. PROGRAMS AND JAPANESE LAW SCHOOLS

Although the designers of the new legal education systems claimed they modeled or took as reference the American-style legal education, the characteristics are quite different from American law school. Therefore, a comparison with American law schools becomes crucial for observing the new legal education systems in the two countries.

The J.M. program allow students from diverse backgrounds at undergraduate level to study law in their postgraduate law schools, which is quite similar to the American system. However, different from the four LSAT subjects in the United States, the scope of subjects for the admission test includes law subjects such as Chinese legal history, constitutional law, civil law, criminal law, etc. The diversification of law students in Japan is implemented by admitting students who major in non-law degrees in undergraduate studies. But quite different from China, and similarly to the United States, Japan's Ministry of Education authorized two organizations to administer aptitude tests for law school applicants. These tests exclude the subjects of law, and law schools are allowed to choose either of them as the standard for admission. Students who achieve a good score on either or both of these tests and obtain a good GPA in their undergraduate studies are admitted to Japanese law schools. In China, many scholars criticized that it does not make sense to test the legal knowledge of those who have not yet studied law, but there are no signs of change to the current way of testing and offering admission.²⁵

Unlike the U.S. law schools, the new J.M. program (or new law school system) is based on the old undergraduate-oriented legal education systems in China and Japan. Therefore, the new programs have to deal with the graduates who have already obtained LL.B. degrees.

In China, J.M. programs recruit two types of students: full-time students and part-time students from 1995 to 2009. Only those who were non-law majors could be qualified to apply as full-time students and sit for the admission examination. But for those who

25. Wang Jian, *Zhongguo Falv Shuoshi Jiaoyu de Chuangban Fazhan yu Chengjiu: 1996—2006*, 5 LAW AND SOCIAL DEVELOPMENT 59 (2007); and Fang Liufang, *Falv Shuoshi Jiaoyu Mianlin de Sange Wenti*, 1 THE JOURNAL OF CHINA UNIVERSITY OF POLITICAL SCIENCE AND LAW 101 (2007).

have working experiences and apply for the part-time program, even law major undergraduates, are eligible. Nevertheless, since 2009, the Education Administration decided to extend the scale of J.M. programs and even those who major in law as undergraduates are permitted to apply for full-time J.M. programs. This raised a new problem of how to teach students who have different backgrounds and various levels of legal knowledge. In Japan, the length of studying terms differed based on the backgrounds of students: two-year programs for law major students and three-year programs for non-law major students as undergraduates. But even graduates from law schools are required to pass a legal ability examination to test whether the ability of the examinee on legal knowledge is eligible for the two-year program. Students who fail the exam have to attend the three-year program in law school although they may have completed their undergraduate legal education.

To reach the goal of educating highly qualified lawyers or legal talents, the new J.M. program or new law schools have to find qualified faculty with real world experience practicing law. But different from American law faculty with practical experiences, Japanese and Chinese law professors rarely have practical experience outside the classroom. To resolve such a problem, the Japanese legislature passed a law in which judges and prosecutors are dispatched to teach at Japanese law schools for some time when their positions are suspended. However, there are no complete changes in the teaching faculties in Chinese J.M. programs and the old academic-oriented faculty members are still the main teaching body in J.M. programs. Therefore, although some changes in pedagogies emerged, the new J.M. program does not distinguish from the old legal education system in China. However, in Japan, lined up with practical legal education, the government set up many guidelines regulating new law schools. These guidelines include: limitations on class size, and the initiation of new practical curriculum; these regulations have made the new Japanese law schools more independent.

Since 2006, and as part of a systemic comprehensive reform in Japan, the new bar examination—to which only graduates from Japanese law school are allowed to sit—coexists with the old bar examination system. In 2011, and once the old examination that everyone can sit is cancelled, those applicants who have never

graduated from a Japanese law school will have to take a special examination in order to obtain qualification to sit at the new (predictably limited) bar examination. In China no changes connected with the qualification for the bar examination have been produced by the creation of the J.M. program. The system for obtaining legal professional qualification is still separated from legal education. There are no limitations for applicants on whether they have finished formal legal education, for sitting for the unified professional examination. There are no institutional connections between legal education (even in the J.M. program) and bar examination in China, and hence this is different from the new Japanese law schools and American law schools.

From the comparison of institutional changes between Japanese law schools and Chinese J.M. programs, we may conclude that the system of Japanese law schools is much closer to the American legal education than the Chinese J.M. program. The J.M. program does not bring new elements into the Chinese legal education system except the diversity of backgrounds for J.M. students.

V. PEDAGOGICAL CHANGES FOLLOWING THE REFORMS OF LEGAL EDUCATION IN THE TWO COUNTRIES.

China and Japan share many similarities in legal education. The goal of legal education was not traditionally to nurture legal professionals. Most applicants who successfully pass the bar examination are law graduates and the demands from legal circles also require law institutes to conduct skill education, combining theory and practice.

Although the approaches on the legal education reforms in China and Japan are different, the goals for the new programs are similar. Both seek to foster highly specialized professionals with social responsibility, which means building new teaching methodologies. Since the beginning of the twenty-first century, both countries started to take some measures to teach law students legal skills rather than doctrinal education. The main methodologies of teaching lawyering skills in China and Japan are emerging in J.M. programs and Japanese law schools.

A. Simulation and Moot Court Programs

In both China and Japan, the simulation teaching method is used widely in lecture and seminar classes. To encourage students to master lawyering skills, law schools in China usually provide context to simulate the true case and use a moot courtroom for simulation training. Some law schools organize moot court competitions as a student activity rather than a credit course. Sponsored by grants, some top law schools have even organized national moot court competitions, such as the Jessup International Law Moot Court Competition organized by Renmin University School of Law.

In Japan, simulation combined with case method and seminars has been adopted in the traditional law faculties gradually. Since 2004, they are widely used in the new Japanese law schools.²⁶

B. Internship and Externship

Externships are required for law students with a high GPA in China. Students are typically assigned to institutions relating to law enforcement or judicial organs, such as courts and offices of prosecutors at all levels, in addition to law firms as well as governmental agencies to observe legal practices.

However, because of the rapid increase in the number of law schools, some schools cannot provide opportunities and platforms for externships for all law students. Furthermore, due to the lack of supervision by experienced faculty members or lawyers, the effect of an externship depends on law schools and the supervisors, and hence, does not play an important role in legal education.

C. Clinical Legal Education

Clinical legal education was introduced into China and Japan in the beginning of the twenty-first century. Educators in the two countries are starting to be convinced that clinical legal education can help train law students on the lawyering skills and values necessary for the delivery of high-quality legal services into the new century.

26. See Peter A. Joy et al., *supra* note 13, at 441.

In September 2000, with the support from the Ford Foundation, clinical legal education programs based on the American model were offered by seven top law schools in China. In addition, as of January of 2009, 87 law schools in China opened clinical legal education courses as selective two or three-credit courses.²⁷

In Japan, with the establishment of the new J.D. program, clinical legal education has been transplanted into the new legal education system as an important approach to help Japan transform its legal profession. According to a study of 2006, from the 74 new Japanese law schools, as many as 52 schools claim to offer clinic courses. Though some of these law schools have only externship programs, a majority of the law schools offering clinical courses have adopted a combination of legal clinics, simulation courses, and externships. Among these, there are ten law schools that are known to have established in-house law offices on campus.²⁸

VI. FACING THE FUTURE OPPORTUNITIES AND CHALLENGES OF LEGAL EDUCATION IN CHINA AND JAPAN

In China and Japan, the demand for high-level legal talents in the development of a global market economy is the motivation and inspiration for the reforms of legal education and the legal profession. As mentioned above, the legal education systems in these two countries are in a transitional process from the tradition of lecture-oriented to more professional and more skill-oriented education. How to train law students to master lawyering skills and have law students with practical abilities enter into the legal community is becoming critical to complete these goals, for this reason, the J.M. program in the Chinese and the Japanese law schools was introduced as one important step of nurturing better trained lawyers.

Nevertheless, in China, neither the J.M. program nor other programs like undergraduate law programs and LL.M. programs relate to obtaining legal professional qualification, either for the purposes of taking the bar exam or for demonstrating that the

27. See the contents of the official website of the Committee of Chinese Clinical Legal Educators (CCCLE), available at www.cliniclawn.cn (last visited July 10, 2010).

28. See Peter A. Joy et al., *supra* note 13, at 446.

student acquired lawyering skills. If students intend to take the bar examination, they focus heavily on the doctrinal courses. Therefore, even if law schools provide some lawyering skills education for students, these kind of courses are not considered as important as some basic courses like civil law, procedure laws, etc. which are tested in the national bar examination. In China, there are no mandatory courses of lawyering skills in the curriculum of law schools.

In Japan, due to the great number of approved new law schools and the low pass rate of the national bar examination, students at law schools have to struggle with the examination after graduation as the first step to becoming a lawyer. It is not surprising that students also focus on all examination skills or knowledge that helps them pass the national bar examination.²⁹

The critical element of expanding lawyering skills is to convince students that, not just the bar examination, but also skills training is important for becoming a lawyer. Better training will help in their future performance. In my view, the development of lawyering skill education in both China and Japan must come from those who design the bar examination and from the legal educators. For China, the legal educators have to redesign the goal of legal education to give greater importance to training lawyers and should include required courses in practical skills along with those providing doctrinal legal knowledge. The bar examination process must consider whether to grant law graduates only the privileges to sit for the examination. The bar examiners should also consider whether there are ways to evaluate, not only knowledge, but also skills.³⁰ Japan similarly has to face adjustments in its bar examination, especially if the bar passage rate does not improve.³¹

We can expect resistance because of the concern that law schools will become university-based versions of crammer schools, geared only towards passing the national bar examination. Law schools also are facing some difficulties from inside and outside in providing an education on lawyering skills. Unlike in the United States and many other countries, in China and Japan there is no

29. See Setsuo Miyazawa et al., *supra* note 2, at 459.

30. See Zeng Xianyi, *Gouzhu Faxue Jiaoyu yu Sifa Kaoshi de Xinxing Hudong Guanxi*, 4 CHINA LAWYER 18 (2002).

31. See Setsuo Miyazawa et al., *supra* note 2, at 459.

established pool of experienced practitioners to serve as practical law professor. Law professors usually hold practical experience in contempt. Law schools have no pressure to attract experienced lawyers to join the law faculty. In Japan, many new law schools have recruited a selection of talented attorneys to join the faculty, although these new members have not yet been fully integrated into the faculty.³² The U.S. experience also indicates that expanding skills and clinical courses is more expensive because classes need to be smaller to allow time for close supervision and feedback.

In addition, the support from the bench and bar is important for the development of lawyering skills training and clinical legal education. In the U.S., a model student practice rule helped pave the way for students to practice law. In China and Japan, the status of student representation of clients in clinical legal education is uncertain. There is a need for a student practice rule. Lawyering skill training will not develop in both countries without legislation permitting students to practice or without a willingness on the part of judges, prosecutors, attorneys, and bar associations to permit a greater number of students to be involved in legal representation.

Although the two countries are facing difficulties in conducting professional education, opportunities also exist and more people are convinced that lawyering skill education is highly effective in educating future attorneys. The acceptance of the U.S. graduate school model shows that some common legal skills exist beyond legal systems and lawyering skill education is possible in East Asia. The rapid development of legal clinical education in the two countries is a good opportunity.

We can expect that the need for better trained lawyers will only continue. First, the transition of legal practice is creating a need for high quality legal skills. In China and Japan, the legal system is becoming more and more adversarial. The lawyers increasingly have to question witnesses in the court, and therefore have to master advocacy skills. Second, law schools and law students also demand more lawyering education. The rapid development of legal education in the two countries has caused some chaos, but has also brought a hard competition. Only the law schools that may provide high quality education may survive and only law students with high professional ability may get labor opportunities

32. *Id.* at 457.

in the future. Therefore, the market mechanisms will likely affect how both countries provide legal education in the future. Third, private organizations and law firms have started to explore the new way of legal skill education. International foundations have started to sponsor more programs relating to lawyering skill programs.³³

33. For example, since 2000, the Ford Foundation in China has provided the China Clinic Legal Program. A joint program with the China Advocacy Institute has conducted advocacy skill training in over 50 law schools over the past four years. In addition to law schools, the trend of lawyering skills education provided by private agencies initiated by practicing lawyers is also developing in China.