

Strengthening Clinical Legal Education in Japan: What Should be Done in the Second Stage of the Law School System?

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Abstract

Clinical legal education started in Japan together with the introduction of the law school system in 2004. This is an experiential pedagogy to “bridge theory and practice” at law schools throughout Japan. It became a prevalent teaching method to integrate knowledge in law, skills to practice law, and professional responsibility in the first stage of the law school system. As the law school system faced vexing difficulties, two important changes were made in law school system in 2020. One is the introduction of the “3+2” program in the legal education process, namely, making it possible to graduate from the undergraduate law program in three years instead of four and to finish the professional law school in two years instead of three. The other change is to make law students eligible to take the national bar examination before their law school graduation.

With these two changes, the law school system entered the second stage. Clinical legal education needs to adapt to these changes. This author proposes three approaches to the “3+2” program: First is early exposure of undergraduate law students to law practice. Second is the incorporation of clinical components in fundamental law courses in the undergraduate law curriculum. And third is the intensive use of legal clinic courses in the final term of the law school curriculum after the bar examination. Legal clinics occupy an essential locus in Japanese legal education to develop lawyers to buttress the rule of law.

KEYWORDS: Legal Clinic, Clinical Legal Education, Experiential Learning, Law School Education, Japanese Law School Reform

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I. Introduction

In 2020, the Japanese law school system entered the second stage. Namely, the Japanese government began to implement two major changes in the law school system that started in 2004.¹⁾ One is the introduction of the so-called “3+2” program. The other is to make law students eligible to take the national bar examination before they graduate from law school. The two changes are intertwined with each other and both have positive and negative sides. The first change is significant in the sense that it is designed to institutionally connect undergraduate legal education and professional law school education. Yet, it would discourage non-law majors in the undergraduate level of university education to pursue a professional legal career and deprive the legal profession of its diversity needed to achieve comprehensive dispute resolutions. The second change is designed to shorten the time gap between law school graduation and taking the bar examination. Yet, it would distort law school education to become more knowledge-centered and detached from a holistic professional education to integrate knowledge, skills, and professional values.

In this article, the author will describe the developments of clinical legal education in the first stage of the law school system in Part II, and examine the merits and demerits of the “3+2” program and its challenges for clinical legal education in Part III. The author will propose ways for clinical legal education to tackle these challenges in Part IV in the second stage of the law school system.

II. Developments of Clinical Legal Education: First Stage

1. Start with the Law School System in 2004

Clinical legal education in Japan started along with the implementation

1) *Hokadaigakuin no Kyoiku to Shihoshikento no Renkei nikansuru Horitsu no Ichibukaisei nikansuru Horitu* [Amendments to the Law Regarding the Coordination and Other Related Matters Between Law School Education and Bar Examination], 44 L. (2019) (Japan.).

of the law school system in 2004. The law school system introduced that year was the most drastic legal education reform in the post-World War II period. With very few exceptions, most of the universities with an undergraduate legal education program joined the movement to establish graduate professional legal education programs on top of their undergraduate programs. These law schools are three-year graduate professional law schools modeled after U.S. law schools. In 2004, 72 brand new professional law schools, and two additional schools in the following year, began their endeavor to educate students for the legal profession. The introduction of the law school system is significant in three respects. First, the sheer number, 74 professional law schools, means that professional law schools were established across Japan from Hokkaido to Okinawa, from the metropolitan areas to the countryside, and along both the Pacific coastal belt and the Japan Sea coastal belt. Second, an officially established school system was incorporated for the first time as part of the system to develop legal professionals. Before the law school system, no official legal education was required to take the national bar examination. Therefore, the legal profession was left out of the official school system, though most of the applicants to the national bar examination were graduates of undergraduate law departments at universities. It is also noteworthy that the law school system was designated as the core of developing legal professionals. Third, 20 percent of the law school faculty members are required to be law practitioners. Because the law school system was designated as the core of cultivating a new generation of lawyers, the law school education is expected to provide both doctrinal instruction and practice training. Judges, prosecutors, and attorneys became faculty members of law schools. In terms of teaching personnel, the law school system signified the “bridge between theory and practice.”

2. Rapid Growth of Clinical Legal Education in Japan²⁾

The pedagogy of clinical legal education was little known in Japan at the time of establishment of the law school system, but it rapidly grew at law schools throughout Japan with its high-spirited mission of “bridging theory and practice” in legal education.³⁾ It is the method of integrating knowledge-centered instruction and legal practice training with the mission

of providing legal services to society.

The rapid growth was evidenced by a national survey conducted in 2008.⁴⁾ Among the 74 law schools, 39 schools, namely 52.7%, responded that they offer legal clinic courses in which they allowed students to be involved in providing services to live clients. The pedagogy of clinical legal education is often categorized into three types: legal clinics, simulation, and externship. Among these three, legal clinics are the archetype of clinical legal education. The method of teaching a legal clinic course comprises three essential elements. In a legal clinic, (1) students, who are in the process of professional legal education and have not passed the bar examination, can get involved in providing legal services to (2) live clients in real cases, with (3) the supervision by bar-licensed faculty members. Those law schools that responded to the survey that they offered clinical courses met the definition of legal clinic education. The method of legal clinic teaching attracted great attention of law teachers in Japan. At its peak, fourteen law schools had law school affiliated law firms as a center of clinical legal education at the respective law schools.⁵⁾

Simulation courses are typically provided in the form of moot court practices. In a national survey conducted in 2009,⁶⁾ out of 74 law schools, 60 schools, namely 81.0%, responded that they offered a civil moot court practices course, and 66 schools, namely 89.1%, responded they offered a criminal moot court practices course. As for externships, according to a

2) For detailed discussion of the developments of clinical legal education in the first stage, see Shigeo Miyagawa, *Nihongata Rinshohogaku Kyoiku no Keisei to Tenbo* [Developments and Prospects of Clinical Legal Education in Japanese Version], 85 WASEDA HOGAKU [WASEDA L. REV.] 1137 (2010).

3) Peter A. Joy, Shigeo Miyagawa, Takao Suami & Charles D. Weisselberg, *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); Matthew J. Wilson, *Clinical Legal Education in Japan: A Work in Progress*, SHUVRO P. SARKER, ED., CLINICAL LEGAL EDUC. IN ASIA: ACCESSING JUST. FOR THE UNDERPRIVILEGED 195-214 (2015).

4) Hiroyuki Kabashima, ed., *Rinshohogaku Zenkoku Kurinikku Chosa* [National Survey of Legal Clinics in Japan], 6 RINSHOHOGAKU SEMINAR [CLINICAL L. SEMINAR] 1 (2009).

5) Shigeo Miyagawa, *Developments and Challenges of Clinical Legal Education in Japan*, 15 INHA L. REV. 21, 30-31 (2012).

6) Takafumi Sato, *Rinshohogaku Zenkoku Mogisaiban Chosa* [National Survey of Moot Court Courses in Japan], 8 RINSHOHOGAKU SEMINAR [CLINICAL L. SEMINAR] 1-2 (2010) (In Japanese).

survey conducted in 2012,⁷⁾ 72 law schools had externship programs in which students can earn academic credits for the externship training. In the remaining two law schools, they also had externship programs but did not give academic credits for the externship courses.

The proliferation of these clinical legal education programs did not come overnight. At Waseda Law School where this author teaches a legal clinic course, for example, the university began its planning to offer clinical courses two years in advance of officially opening the law school. Other law schools likewise made careful preparation to offer clinical courses. Questions, such as what legal basis allows students to get involved in providing legal services without having student practice rules like those adopted in the United States, and how to find clients who are willing to get students involved in their real cases, were raised to proponents of clinical legal education. As to the first question, the answer was that students were greatly benefited by being an assistant to the bar-licensed supervising faculty members who take cases for legal representation. As for the second question, the neighborhood community and the university's alumni helped to find clients and legal advice-seekers who consented to have students involved in their cases.

3. Establishment of the Japan Clinical Legal Education Association in 2008

With the rapid growth of clinical legal education in Japan, those academics and practitioners involved in clinical course offerings became aware of the need to establish an academic association to promote research on the clinical pedagogy and facilitate exchanges of teaching experience among them. The Japan Association of Clinical Legal Education (JCLEA) was founded in 2008.⁸⁾ The membership started at 206 law teachers and practicing lawyers at the time of the establishment. The current number of

7) Waseda University Institute of Clinical Legal Education, *Zenkoku Hokodaigakuin Ekusutanshippu Chosa Kekka [National Survey of Law School Externship Programs in Japan]*, 12 RINSHOHOGAKU SEMINAR [CLINICAL L. SEMINAR] 53 (2015) (In Japanese).

8) JAPAN CLINICAL LEGAL EDUCATION ASSOCIATION, <https://www.jclea.jp/> (last visited Feb. 15, 2021).

members is kept at the same level even though the number of law schools in operation⁹⁾ declined from 74 to 47 due to vexing situations of the Japanese law school system.¹⁰⁾

The association holds an annual academic conference. In 2020, the 13th conference was held. The theme of the conference was “Clinical Legal Education as an Axis to Link the Undergraduate Legal Education and the Professional Law School Education: Integration of ‘Knowledge, Skills and Responsibility’.” This conference specifically discussed the issues involved in the introduction of the “3+2” program. The JCLEA promotes research on the pedagogy of “bridging theory and practice” in law school curricula, the role of clinical legal education to serve communities, the extension of professional legal education beyond the tripartite professional body consisting of judges, public prosecutors, and attorneys, among others. Because the pedagogy of clinical legal education has unique characteristics, conference themes covered a wide scope of issues such as incorporating law practice training in courses of academic subjects, making a social contribution to the public, broadening the scope of professional legal education from litigation-centered cases to legal work at corporate offices and national and municipal government offices. At the first annual conference in 2008, the theme was “Making Clinical Components Integrated in Civil Law Subjects.” Likewise, the conference theme in 2010 was “Developing Lawyers as ‘Doctors in Society’ by Clinical Legal Education”; and in 2013, “Expanding the Services of the Legal Profession and the Mission of the Law School System.”

The JCLEA is the first academic society on legal education in Japan. Though its particular emphasis is on the clinical aspect of the pedagogy, its activities encompass both academic and practice aspects of the legal profession. It started as an academic society of law professors and

9) NUMBER OF JAPAN ASSOCIATION OF LAW SCHOOLS MEMBERS, <http://www.lskyokai.jp/school/> (last visited Feb. 15, 2021).

10) There are many publications on the professional law school system. An article by Dan Rosen, *Japan’s Law School System: The Sorrow and the Pity*, 66 J. Legal Educ. 267 (2017) offers an illuminating account of the system. For more detailed discussion on difficulties Japanese clinical legal education faces, see Shigeo Miyagawa, Takao Suami, Peter A. Joy & Charles D. Weisselberg, *Japan’s New Clinical Programs: A Study of Light and Shadow*, in THE GLOBAL CLINICAL MOVEMENT: EDUCATING LAWYERS FOR SOCIAL JUSTICE 105-120 (Frank S. Bloch ed., 2011).

practitioners involved in law school education. Its directions of activities have begun to go towards undergraduate legal education when the law school system was steered to link undergraduate legal education with professional legal education through the introduction of the “3+2” program.

III. Recent Changes in the Japanese Law School System: Starting the “3+2” Program

1. *What is the “3+2” Program?*

The “3+2” program refers to a process of legal education in which students in the undergraduate law department can finish the curriculum in three years instead of four, and go on to a law school to finish it in two years instead of three. In order to pursue this expedited path, students have to satisfy a high standard of academic achievements at their respective undergraduate law department and have to be certified by the admitting law school to have a good academic standing to skip the first-year curriculum at the admitting law school. The “3+2” program in Japanese legal education is intended to stimulate the motivation of undergraduate law students to pursue the career path to join the legal profession by shortening the number of years and lightening the financial burden entailed to be eligible to take the national bar examination.

One of the reasons to introduce this expedited path is the declining number of students aspiring to be a lawyer. In 2007, the first year when graduates from the three-year program of the law school system took the national bar examination, the number of applicants was 8,387. However, the number declined to 4,466 in 2019. One of the major reasons for the decline is the stagnant bar passage rate. It was 25.6% in that year.¹¹⁾ The number of law schools in operation dropped to 41 in 2020. The decline in the number and popularity as a profession of lawyers is a growing concern.

11) *Shihō Shiken no Kekka ni tsuite* [About the Results of the National Bar Examination], THE MINISTRY OF JUSTICE OF JAPAN, http://www.moj.go.jp/jinji/shihoushiken/jinji08_00026.html (last visited Jan. 7, 2021) (In Japanese).

2. *Merits and Demerits of the "3+2"*

The "3+2" program may be able to shorten the lengthy years of legal education and make the financial burden lighter. This may be the only merit of this change. This expedited path may ostensibly serve a small number of very talented students. Nonetheless, this may not be an answer to stimulate a younger generation of students to pursue a legal career.

There are criticisms both from the viewpoint of undergraduate legal education and that of law school education. Those who are committed to undergraduate education argue that the introduction of the "3+2" program would distort the goal of their education and fail the expectation of students who come to the undergraduate law departments at universities. Their arguments are as follows: The goal of undergraduate legal education is not limited to the education of legal professionals. Its main purpose is the development of good citizenry with a solid understanding of the law and its functions. Therefore, it encompasses a greater scope of potential careers such as business people, national and local government employees, workers in non-profit organizations, personnel in international organizations, among others. With these various career paths in mind, students come to undergraduate law departments at universities. If their university education weighs the development of lawyers more than that of other careers, it would fail the expectation of students who come to undergraduate law departments.

Conversely, those committed to law school education argue that the law school system would deteriorate into a system of "cram schools" to educate good exam-takers for the bar examination and fail to produce competent lawyers. They argue as follows: Under the "3+2" program coupled with the introduction of the eligibility to take the national bar examination while in the law school, law students would focus on the preparation to take the bar exam. The main objective of their studies would digress from becoming a competent lawyer capable of tackling problems with legal measures towards getting knowledge of the law itself. The law school system would no longer serve its core function of developing legal professionals.

In order to meet the demand of getting students ready to take the bar exam rather than to practice law in real cases, the curriculum for those

students who are allowed to skip the first-year courses would be dominated by subjects to be tested by the bar exam. Very few courses on skills training and professional value inculcation would be available. This may lead to a drastic decrease of students who would take clinical courses.

3. Challenges for Clinical Legal Education

The “3+2” program would bring challenges to clinical legal education in the law school system. Demerits of introducing the “3+2” program are not limited to the decrease of opportunities for law students to be exposed to law practice and get involved in dispute resolution. More problematically, the presumption of the division between doctrinal instruction and skills training would be reinforced by increasing knowledge-centered doctrinal courses.¹²⁾ The essence of clinical legal education is the integration of knowledge, skills, and professional values through experience-based legal education, not the separation of practice training from academic studies of law.

The discipline of law involves the intertwining of “theory” to analyze problems and “practice” to solve them. “Theory” cannot be separated from “practice.” The study of law is abstract, while the practice of law is concrete and tangible. Theories of law can be modified and developed by examining problems through the practice of law. The practice of law can be improved and reformed by theories of law. “Theory” and “practice” are in a pendulum relationship and both can benefit from mutual feedback. In the process of legal education, particularly professional legal education to develop practitioners, the experience of real cases can make the learning of abstract law easier, and can lead students to deeper understanding and self-initiated study. Students would turn to improving and reforming the state of practice that will lead to developing further theories. Clinical legal education serves as the pendulum between “theory” and “practice.”

“Theory” cannot be taught without the context of “practice.” “Practice” cannot be conducted without “theory.” In Japan, there is a persistent

12) For a brief discussion of challenges posed by the “3+2” program on clinical legal education, see Shigeo Miyagawa, *Transferability of Experiential Legal Education and the Reform of Professional Legal Education in Japan*, 39 WASEDA BULL. OF COMP. L. 3, 10-11 (2021).

presumption that “theory” should be learned first at universities, and that “practice” can be trained by the judicial apprenticeship program administered by the Supreme Court.

The judicial apprenticeship training has a history of some 70 years in training bar-exam passers before being appointed as junior judges and prosecutors and being admitted to the local bar associations as attorneys. For most of those 70 years, the length of the judicial apprenticeship was two years. Then, it was shortened to one year when the law school system was established. It was the 2001 report of the Justice System Reform Council¹³⁾ that led to the establishment of the law school system in 2004 and impressed law professors and law practitioners with the need for a drastic reform of the professional legal education system. One of the catch-phrases to signify the major recommendations of the 2001 report was a change “from the one-point selection by the national bar examination to the process of developing legal professionals.” The “process” was meant to be the continuum of a three-year law school education, the bar examination, and the judicial apprenticeship. With the judicial apprenticeship being shortened to one year, the law school education was expected to encompass the introductory stage of the practice training. It may be understood as a sign of the shift away from the dichotomy between theory education at law schools and practice training through the judicial apprenticeship. Yet, with the “3+2” program focusing more on knowledge-centered legal education rather than experience-centered education, this shift would be reversed and the significance of integrating knowledge, skills, and professional values through the pedagogy of clinical legal education would be devalued in the law school curriculum.¹⁴⁾

13) The Justice System Reform Council, *Report by the Justice System Reform Council*, THE CABINET OF JAPAN (June 12, 2001), https://japan.kantei.go.jp/policy/sihou/singikai/990612_e.html.

14) The importance of integrating knowledge, skills and professional values through clinical legal education is discussed in the context of American law school education by WILLIAM M. SULLIVAN, ET AL., *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

IV. Proposals for Clinical Legal Education in the “3+2” Program: Second Stage

1. *Three Approaches to the “3+2” Program to Strengthen Clinical Legal Education*

The introduction of the “3+2” program in the process of the university legal education poses challenges to clinical legal education as explained in the preceding Part III. Yet, this may turn out to be a good opportunity for the pedagogy to proliferate in undergraduate legal education. To strengthen clinical legal education in the second stage of the law school system, this author proposes three approaches to the “3+2” program.¹⁵⁾

1) *Early Exposure to Law Practice*

Though undergraduate law departments are not geared to develop legal professionals, early exposure of undergraduate law students to law practice will effectively motivate them to learn how the law works at a practical level and will cultivate a younger generation to pursue the path of the legal profession. It would be recommended to offer an introductory course to examine how lawyers work in society, as well as to teach how the legal system works in society. Such course titles as “Introduction to the Legal Profession” or “Business of Legal Professionals” may be suggested. To make the course clinical, it is important to incorporate a “hands-on” learning experience such as drafting a simple contract or a local government ordinance. If possible, making students attend an interview by an attorney of a real client or legal advice-seeker may be recommended. The course may be recommended to be offered to second-year undergraduate students.

15) These approaches proposed here are this author’s own description of the interim opinions on the role of clinical legal education in the “3+2” program submitted to the Board of Trustees of Japan Law School Association on December 12, 2020 by its Committee of Clinical Legal Education, of which this author serves as chair.

2) *Incorporation of Clinical Components in Fundamental Law Courses*

In courses on constitutional law, civil law, and criminal law, it may be recommended that students have opportunities to meet and have discussions with lawyers in their workplaces. There may be one class meeting for one semester. Students may be allowed to attend a conference of attorneys in which they discuss how to proceed with a case for resolution. The case may be real or simulated. What is important is to have students discuss unsolved cases rather than discussing already decided court cases as in the case method. These opportunities in fundamental law classes may be arranged for third-year undergraduate students. This type of once-a-semester arrangement for students to get involved in real/simulated settings would require intensive preparation on the part of teachers. It would entail close collaborative work between academic and practice professors and between professors in the undergraduate law department and the law school.

3) *Best Use of Legal Clinic Courses in the Final Term of the Law School Curriculum*

It would be recommended that legal clinic courses be intensively offered for students in the final term of the law school curriculum. Because the bar examination has been decided to be scheduled in the second half of July, the fall semester by the Japanese academic calendar is the final term before graduation. Students, having finished the bar examination, would be inclined to take legal clinic courses. Currently, students are said to stay away from taking legal clinic courses, because they are busy studying for the bar examination. Law schools with clinical course offerings can make the best use of legal clinic courses with their respective areas of legal expertise, such as "human rights clinic," "women and law," "international business negotiation," "clinical activities for victims of natural disasters" as well as legal clinics with a general scope of legal services such as "civil transactions clinic" and "criminal justice clinic." Learning activities in these legal clinic courses can integrate knowledge, skills, and professional responsibility. The experience of helping people in need of legal services would inculcate professional values in students to support and carry out the rule of law.

2. Waseda's Immigration and Refugee Law Clinic

Since 2006, this author has been teaching a legal clinic course¹⁶⁾, "Immigration and Refugee Law Clinic," at Waseda Law School with an attorney who is a visiting professor of law at the Law School. The following are some ideas to make the clinic adopted to the "3+2" program. This clinic is taught by an academic professor and a practice professor. To provide an early exposure of the work of lawyers to undergraduate law students, the teaching experience can be easily applied to offer an introductory course on the legal profession for second-year undergraduate law students. Students can learn the daily work of a practicing lawyer and how the mission of protecting human rights for the most marginalized people is pursued and carried out along with the ordinary business cycle of the legal profession. Concerning incorporating clinical components to a fundamental law course in the undergraduate law curriculum, our team of academic and practice professors can arrange a once-a-semester opportunity as a class meeting for the students to attend a conference of attorneys to discuss how to proceed with a real pending case in refugee/asylum-seeker litigation. Students would be provided with relevant case materials for reading and discussion so that students would be able to nurture a sense of professional responsibility about real clients in litigation. As for the intensive use of legal clinic courses in the final term of the law school curriculum, the Immigration and Refugee Law Clinic has been offered as a course in the final term of Waseda Law School for 15 years. Another seminar course on human rights protection for foreigners has also been offered for 15 years as a substantive course on the law of non-citizens and refugees. Taking this seminar is recommended for students who are interested in this legal clinic course. It has been demonstrated that students can learn aspects of constitutional law, administrative law, and international law, and simultaneously acquire skills of, for example, interviewing clients and drafting court documents. Through this experience, the sense of

16) For the discussion of this legal clinic at its starting stage, see Shigeo Miyagawa, "Bridging Theory and Practice": *The Waseda Refugee Law Clinic Pilot Program*, 25 WASEDA BULL. OF COMP. L. 28 (2006).

responsibility and the mission of the legal profession can be developed in the minds of students. This legal clinic course on immigration and refugee law is a typical course offering to integrate knowledge, skills, and professional responsibility.¹⁷⁾

V. Conclusion

Clinical legal education began to rapidly develop in Japan alongside the start of the law school system in 2004. The pedagogy was introduced as a method of “bridging theory and practice” at law schools throughout Japan. It became a prevalent method of teaching law and skills to apply law within a short period. It has led to the establishment of the Japan Association of Clinical Legal Education in 2008.

As the law school system faced vexing difficulties, two important changes began to be implemented in the law school system in 2020. One is the introduction of the “3+2” program in the legal education process at universities. The other is to make law students eligible to take the national bar examination before graduation from law school.

With these two changes, the law school system entered the second stage. Clinical legal education needs to adapt to these changes. This author proposes three approaches to the “3+2” program: First is early exposure of undergraduate law students to law practice. Second is the incorporation of clinical components in fundamental law courses in the undergraduate law curriculum. And third is the intensive use of legal clinic courses in the final term of the law school curriculum after law students finish taking the bar examination.

These proposals are made in the context of Japanese legal education, but this author believes that they have practical relevance for clinical legal education in both the undergraduate legal education and the professional graduate legal education in the Republic of Korea.

17) For analysis and evaluation of the Immigration and Refugee Law Clinic, see Shigeo Miyagawa, *Gaikokujinho Kurinikku to Kanren Ekusutanshippu no Kyoiku Jissenn to Kadai*, [Implementation and Challenges of Waseda Immigration and Refugee Law Clinic and Related Externship], 1 WASEDA DAIGAKU HOMU KENKYU RONSO [WASEDA L. SCH. J.] 5 (2016) (In Japanese).