The Current Situation and Problems in the Legal Education amongst the Higher Institutions of Japan

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I sincerely hope that this “Asian Pacific Legal Studies Center” in the Far Eastern State University will develop into a core center of legal research in the countries of the Asia-Pacific region, including Japan, and will become a forum that can contribute to deepening of mutual understanding amongst the countries of the Asia-Pacific region through an active exchange of ideas in the field of legal research.

Courtesy demands that I should deliver this address in Russian, but I hope you will pardon me as I do not speak Russian and will instead speak in English. Incidentally, about 10 years ago, I had a student in my tutorial who became a lecturer of Russian language on graduating Soka University. His name is Usuyama. At present, he teaches Russian language at a couple of Japanese Universities and also at the language center of the Japanese Foreign Ministry. Before I left Japan, he advised me on various matters about your country as this is my first visit to Russia. I assure you that I will take special Russian language training from him on the next opportunity I get to visit your country, so that I may be able to speak a few words in Russian to all of you.

1. Introduction and the purpose of this report

Today I will talk briefly on the current situation and problems of the legal education amongst the higher institutions of Japan, with special focus on the university level. The education in Japanese universities faces a big dilemma today. It faces a trial bigger than any it has faced in the past. The dilemma lies in the present trend of a sharp decline in the population of the 18 year olds in Japan. This trend has
brought about a change in the legal regulations of the Japanese Ministry of Education for establishing a university. The legal education in Japanese universities also suffer as a result of this. There is yet another problem faced by the legal education in Japan, i.e., it has to respond to the society’s need to reform the bar examination system.

I will not go to the depth of this problem, as this is not the area of my specialty. I will only introduce the background and contents of this problem in simple words. Also to brief you on the current situation in Japan, I will briefly take up the effects of changing society and its demands on the legal education carried in the Japanese universities.

Before taking up the topic of my paper, I will confirm a few basic facts with you about the history of university education. You must be aware that the first modern university in the world is the Bologna University of Italy. It was established in year 1088. By the way, Soka University has an academic exchange agreement with Bologna University since 1989, for the exchange of students and staff.

It is a well known fact that in its founding years, Bologna University developed around its law faculty. The old documents stating its history mention that the university stood for the free will of the human being and could establish itself only after going through and overcoming a harsh struggle against the Christian church that was negating the freedom of the spirit. Later, in the age of absolute monarchy, and in this century’s totalitarianism, Bologna University relentlessly pursued its struggle to retain its independence and safeguard the freedom of academics by maintaining a critical view of things.

As seen in the typical example of Bologna university, all universities, at one time or other, have faced and coped with the challenges of their respective ages, and they are known today only after they have successfully overcome such trials. These historical patterns prove that a university has to be equipped to face the criticism from outside, and have a tradition to stubbornly resist such criticism. The Japanese uni-
versities too have faced criticism from the society, but unfortunately there were times when the Japanese universities did not respond or resist appropriately to the outside pressure. The essential way for a university is not to bend easily to the demands of the society or the State, but to act in the tradition of its founding spirit, keeping its aims and ideals high to the very end. It should respond with a long foresight and hold a perspective that spans over many centuries.

2. The state of legal education in Japanese universities in post 2nd World War

(1) Historical background

I would like to remind you that the law faculty in the Japanese universities is different from the so-called professional schools of Europe and America, as it is not an institute having the sole purpose of producing lawyers by profession. Keeping this difference in mind, I would like to briefly talk about the historical perspective of the university education system in Japan, which naturally includes the law faculty. The fundamentals of the current university education in Japan was laid in the post 2nd World War, but Japan’s modern higher education, along with other modern systems of Japan, was established after the Meiji Restoration of 1868.

a) The higher education in the pre 2nd World War

The Meiji government was faced with the competition from the developed countries of the West, and hence its primary aim became to gain military and economic strength in a short time i. e., the strategy of a rich nation, strong army. In such circumstances, the institutions of higher education in Japan turned into mere tools in the hands of the State to achieve their aim of a rich nation, strong army. The institutes of higher education had to be sucked in the power structure of the State, to obtain their position in society. Especially, the Imperial Universities which aimed to teach and conduct research on “Science and Arts obeying the indispensable matters of the Nation,” procured a core
position in the higher education through their responsibility of producing bureaucrats and other elite, and played the intelligent pivotal role towards modernization. But there was still a lack of able personnel and a need for men of ability to fulfill the aim of modernization. To bring up such talented people, a more practical kind of curriculum was required, something different from the one offered by the Imperial Universities. This need resulted in schools that taught for a shorter term. They were of a lower rank than university and were called as "Vocational College". In this manner, the double track system of education came up as a first and foremost characteristic of higher education in pre-war Japan, with universities and other complementary institutes like Vocational College coming up besides the Imperial Universities.

The second characteristic of the higher education in the pre-war Japan was its heavy borrowing from the German higher education system. In Germany, which lagged far behind the other advanced nations of Europe, higher education was playing a major role in the nation's economic development and modernization of society. For the Meiji government who faced a similar situation in their own country, it was only natural to keep the German higher education as their role model.

Such were the characteristics of the higher education of the pre-war Japan, and the legal education played such a major role in educating bureaucrats who promoted the strategy of a "Rich Nation, Strong Army"; political and business leaders; and lawyers who shouldered the burden of modernizing the Japanese society. Consequently the law faculties strengthened their hold on the Japanese society as "The Almighty Law Faculty".

b) The new university education system in the post 2nd World-War

After the 2nd World-War period, a reform was undertaken in the
university education system like reforms in other systems carried out under the powerful direction of MacArthur's general headquarters (GHQ). Following the demands of General MacArthur, a diplomatic mission for the reform of Japanese educational system headed by G. D. Stuttgart arrived in Japan in 1946. This commission carried out a month long survey and submitted its report on the reconstruction of education, including its basic guidelines and other measures to the GHQ. Thereafter the educational reforms were carried out in accordance with the directions laid out in this report with democratization of the Japanese education system and its curriculum as its major aim. This report recommended a single track system of education along a 6 plus 3 plus 3 plus 4 years system. For a more enriched and diversified general educational curriculum, a wider and more humanistic education was considered necessary and sought for by this report. The report also found the existing higher education had a course specialization too early. The new system was laid out with the aim of cultivating free thinking.

Thereafter, in 1946, the Ministry of Education established an independent council for the management of universities, and this council decided the university establishment standard. This standard formulated the credit system, and set up the general education that included liberal arts courses and physical education courses; and the specialized education that included compulsory courses and elective courses; and decided the credits required for the completion of the course. Based on this standard, the new system of 4 year university education started in 1949 and exists till today. In 1956, the Ministry of Education issued an executive order to make the university establishment standard a legal restriction.

(2) The current situation of legal education and its problems
   a) The variation in the number of nationwide law related faculties and their capacity

I would like to introduce some basic data which points at the
current situation of the law faculties in Japan and the variation in the
number of nationwide law related faculties and their capacity. In
academic year 1965, the number of law related faculties in Japan
consisted of 14 national, 2 public and 34 private faculties. In the
academic year 1992, there were 20 national, 3 public and 84 private law
related faculties. In a span of 27 years, their total number had
doubled, from 50 to 107. To explain this rise, I would like to remind
you that in addition to the increase in the so called traditional faculties
of legal education, there was a growth of new faculties with a wider
curriculum and diverse application, like faculty of the international
politics and economics, faculty of policy management, etc. These new
faculties either have legal education at its core or have included it as
part of its curriculum.

The capacity of these legal education related faculties was
approximately 15,000 in the academic year 1965, and in the academic
year 1992, their numbers rose to 47,000, showing a 3.06 times increase
in a span of 27 years. The total number of new entrants in all the
university faculties during the same period shows an increase of 2.92
times that is of its capacity from 154,000 in 1965 to 448,000 in
1992. From these figures we can conclude that the ratio of new
entrants at these legal education related faculties to rest of the faculties
is quite large.

b) The problems in the legal education in universities

There are several problems faced by the legal education in Japan
today. The main problem that has been identified till now is, the lack
of a clear purpose or goal of legal education. This is considered the
root cause of many related problems. As mentioned earlier, the legal
education in our universities do not prepare a student to become pro-
fessional lawyers like in America. Amongst the students of the law
faculty at the Japanese universities, of course there are a few who aim
to be lawyers in the future, but there is also a large number of students
that want to join the national and regional public services, and the
majority join business enterprises. The students aiming to become lawyers in the future is a minority. Moreover there are only 700 candidates out of a total of 37,000 who are selected to the bar examination every year, the details of which I will discuss later. Hence in the current legal education in the Japanese universities, there is a lack of attention given to the minority students interested in the legal profession, as the curriculum is laid keeping in mind the majority of general students. Thus the main reason for a lack of thoroughness in the Japanese legal education is that it fails to differentiate between the curriculum for students aiming for a legal profession and for others who do not.

3. The sharp decrease in the population of the 18 year olds in Japan and the reform of the university establishment standard

Here I will take a general view of the entire university education in Japan, without restricting to the law faculty. Japanese universities today, especially the private universities, are facing their biggest post-war dilemma of a sharp decrease in the population of the 18 year olds, and the change of the university establishment standard by the Ministry of Education in 1991.

(1) The trend of a sharp decrease in the population of the 18 year olds and the popularization of higher education

The age of students entering a Japanese university is 18 years and their population reached a peak in 1992 at 2050,000, but thereafter it declined sharply. By 2009, it will be reduced to only 1200,000. The university administration foresees that in the academic year 2009, if the students enter universities without being choosy, the entire population of the 18 year olds aiming universities will be able to enter a university or a junior college.

In such circumstances, it is forecast that the popularization of higher education will eventually take place. The rate of entering a
university or a junior college was 10.3% in 1960, and it rose to 36.3% in 1990, and rose further to 43.9% in 1994. This rate of increase of students entering a university or a junior college will further continue. Prof. M. Trow grouped the higher education system into 3 steps. The elite higher education, when the rate of entering a university or a junior college is below 15%, the mass higher education, when the rate of entering a university or a junior college is between 15% to 50%, and the universal type of higher education, when the rate of entering a university or a junior college is above 50%. According to this grouping, the Japanese higher education, like its American counterpart, will soon change from the elite system, via the current phase of mass higher education, to the universal type of higher education.

(2) Reform of the university establishment standard

The Ministry of Education enacted the executive order for university establishment standard in 1956. Since then, the Ministry has amended the establishment standard in order to maintain the quality of university education. This, of course, played a certain role in maintaining the quality of university education, but on the other hand, it made the university education uniform, creating the danger of robbing each university of its individuality and originality. This kind of standard has also obstructed the realization of society's demand for the universities to educate and produce a diverse range of capable people who possessed a high level of ability and knowledge. In 1991, the Ministry of Education simplified this by making the standard close to guidelines. This ensured some flexibility, like the liberal arts courses and the physical education courses which existed as a compulsory course ceased to be so, and each university was given more freedom to decide its course curriculum. Ever since, each university is responsible for its internal inspection and evaluation.

This change of the standard along with the recent trend in the decreasing population of the 18 year olds, seeks for more individuality on the part of each university and introduces free competition within the
university world. As a result of this, the university that can not keep pace with such changes will have to opt out.

4. The background and content of the bar examination reform

Next I would like to introduce the background and the content of the recent reform of the bar examination in Japan, which will influence the future legal education system.

(1) The background: To overcome the “20% Judicial System”

“20% Judicial System” means that the Japanese judicial system can only solve 20% of all disputes faced by the Japanese people. This term is an exaggerated expression of a Japanese newspaper headline, but it rightly expresses the common man’s feelings about the Japanese judiciary. The main reason for the reform in the Japanese bar examination system was to overcome the so called “20% Judicial System”.

Let us try and compare the ratio of the population to the number of lawyers present in the legally advanced countries. Approximately speaking, in the US there is a lawyer for every 300 people, in the United Kingdom for every 650 people, in Germany for every 990 people, in France for 1,730 people, and in Japan there is a lawyer for every 6,600 people. The ratio of Japanese lawyers is one fourth of its French counterparts, and is approximately one twentieth of the lawyers in America.

There is an ever increasing Japanese public demand for the judiciary. It is because of the increasing pace of the complicated life style, sophistication, and internationalization in Japan, that the people are becoming keen to solve their daily disputes reasonably with legal rules. Also, because the Japanese society is entering the age of deregulation. The deregulation of all fields will ensure realization of the free competition principle and increase the legal disputes and eventually more demand for the judicial system and legal professions.
The second reason for the bar examination reform lies in the following facts. The passing rate of the examination is about 2% and the average age of successful candidates is about 28 years old, making it difficult to get persons with ability and personality required for a good lawyer. Five years ago, I went to Harvard University as a visiting scholar for one year. At Harvard, I got acquainted with a young lawyer working at a large law-firm in Boston. When I visited his office, I happened to tell him the situation of the bar examination in Japan. He was very surprised and said, "I know Japanese students graduate from their universities at 22. How do these people survive for 6 years after graduation? Is there any national program to train them as lawyers?" I answered, "No, there is no such program. Most of students make a living by doing part-time job, while they prepare for the bar examination."

(2) The content of the reform and its impact on the legal education

In 1995, the national council for reform of the lawyer’s training system (Hoso Yosei Seido Kaikaku Kyogi-kai), consisting of judges, prosecutors, and attorneys, announced a reform proposal. The proposal asked the state to increase the number of passing candidates from 700 at present to 1000 by 1999, and further to 1500 after a few years. Though only the attorney’s sector did not agree with the second point, i.e. increasing to 1500, we can appreciate that the 3 sectors of lawyers had a common consent about the big increase in the number of passing candidates.

I think the current reform will have two main impacts on the future legal education at the university. The first direct impact is that, with the big increase in the successful candidates, we, the legal educators, can lay more emphasis on and devote more energies to training students who aim to be lawyers. The indirect impact is not the result of the reform itself, but the impact of social necessity of the reform. As I mentioned, the Japanese society has an increasing public demand for the
judiciary and legal solutions of many economic and social disputes. Therefore we have to actively educate people for “the legal profession in a broad sense”. This term, “the legal profession in a broad sense”, includes judicial scriber, patent agent, licensed tax accountant, and legal staff of companies who are entitled to do business without passing the bar examination.

5. Conclusion

As discussed earlier, Japanese universities and their law faculties are facing the task of correctly responding to the demands of the society by making the required reforms in the legal education. Like the case of Bologna University, a university should independently listen and respond to the social changes and demands. Thereafter a university is required to act with a long foresight, in keeping with its founding spirit and goals.

The Japanese universities on the other hand, dislike reform. Even if they do carry out reforms, like other areas of the society, it is done with a strong tendency to function in a similar or a standard way. It is comparatively simple for them to introduce the reforms carried out by the majority of the universities. The problems faced by the Japanese universities and by the law faculties are the sharp decrease in the population of the 18 year olds and the reforms of the university establishment standard. These problems will force the Japanese universities to have more individuality.

The university where I teach, Soka University, was founded by Dr. Daisaku Ikeda in 1971 with the following 3 founding spirits:
Be the highest seat of learning for humanistic education.
Be the cradle of a new culture.
Be the fortress for the peace of mankind.

Especially under the last founding spirit, Soka University has carried out international exchanges at a wide scale even in the midst of
the international tensions of the cold war. Overlooking ideological barriers, it went ahead to build bridges across the world on human to human level. It started the academic exchange program with Beijing University and Moscow University in 1970’s and today we have academic exchange agreements with 58 universities of the world.

The Soka University law faculty too is working towards becoming a faculty “that can realize the human rights of masses.” Since our law faculty was established 26 years ago, our students have been regularly selected to the bar examination. In the last 10 years, our university comes in the top 10 private universities, where the bar examination results are concerned. And now, in the law faculty, we are gradually trying to chalk out a core curriculum that can help produce “legal profession in a broad sense.”

As we stand on the threshold of the 21st century, we at the law faculty of Soka University are determined to exert our best to help produce more legal professions so that the coming century can truly be a “century of the masses” and “a century of human rights.”