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FAILED DREAMS OF TRANSFORMATIVE LEGAL EDUCATION: THE (NON)-AMERICANIZATION OF EAST ASIAN LAWYERS

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I. ABSTRACT

During the 1990s, Japan, Korea, and China all undertook significant reforms of their systems of legal education. These reforms occurred during the high tide of global optimism about legal reform's ability to catalyze positive social change, and the rise of what might be called an era of "transformative legal education reform." Impacted by the late 20th-century prestige of American lawyers, each country's reforms drew on interpretations of American postgraduate legal education and the potential of reforms based on its example to improve economic or political development.

Neither democratic vitality nor economic dynamism marks the evaluation of these reforms today. Instead, these reforms have produced contested diagnoses, leaving domestic debates solely focused on more localized issues of lawyer employment and law schools' financial sustainability. These experiences match broader acknowledgment of the limited concrete impact of the American legal education model abroad—once a reflexive assumption among many scholars and reform proponents. Ironically, postgraduate "JD" programs have recently spread across the world, but without any accompanying expectations of legal or social transformation—primarily seen by many universities as lucrative income streams.

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The comparative lessons of these experiences are synchronous with recent critical studies of global legal change, as well as the contentious history of American postgraduate legal education itself—often absent from the model's international promotion. These modern East Asian experiences provide powerful examples of the potential liabilities of both advancing legal education reform as a solution to systemic social problems and using foreign legal examples without a sufficiently critical lens. The consonance of these comparative and historical lessons urges ongoing debates concerning legal education in any country to adopt a position of cosmopolitan humility and acknowledge the limitations of legal education reform within the larger political economy of lawyering.

II. INTRODUCTION

Over the past century, the rapid economic, social, and political changes induced by deepening processes of globalization have often stimulated new visions of lawyering. The unprecedented mobility of financial capital led to a scale and intensity of transnational interactions, and bringing with it a host of legal issues in nearly every regulatory arena. How domestic legal professions would adapt to, or in some cases precipitate, these challenges both resurrected long-standing comparative debates about the social function of lawyers and stimulated new conversations about whether the shape of modern globalization demanded certain universal forms of lawyering. Even some of the world's oldest and most prestigious legal professions found themselves responding to local and transnational pressures to reform.

Whenever concern with changing legal practice becomes acute, reform of legal education is near-reflexively introduced. The idea that legal education has a formative impact on modes of lawyering has always had a commonsensical appeal to non-lawyers as the first formal stage in future lawyers' careers. This idea is also inherently attractive to legal academics, for whom legal pedagogy is both part of their vocation and the professional context in which they are most immediately empowered. For legal instructors, the counterfactual is almost identity-deconstructing—that what happens within law schools and their classrooms has little to no impact on how their students come to practice law. For professional associations of lawyers, this reasoning also has a natural attraction, as it leans into their one shared experience amid an increasingly diverse array of modern legal practices. Among many reasons, it is thus not surprising that historical debates over legal education reform tend to recapitulate broader socio-political disagreement, much like debates over legal ethics. Nor is it surprising that reference to foreign forms of legal practice in legal education reform debates was largely driven by their ability to rearticulate domestic lines of contest.

Yet, for most legal professions, the pressures of modern globalization invariably trans-nationalized their internal debates in new ways. Lawyers have always played some role in mediating trade and other forms of social interaction, especially among geographic

neighbors. However, the deepening of global economic integration intensified concerns over both regulatory clashes and adaptation, as well as the international circulation of legal knowledge, expertise, and exchange on which it depended. Even for countries with historically established legal professions, these changes prompted concern over how domestic legal systems would interface with foreign and international legal institutions and actors.

As a result, traditional forms of legal prestige, though invariably intertwined with the legacies of colonialism, could no longer simply be symbolic or abstract in nature but had to face the reality that certain national legal traditions were disproportionately impacting economic globalization regardless of how they might have been otherwise evaluated normatively. In this context, legal education reform began to not simply recapitulate domestic debates about ideal forms of lawyering but also global debates. Even long-standing debates in comparative law about the nature of legal change or legal cultures were quickly sidelined to the exigencies of global competition in which legal cross-fertilization and influence was a material fact of life. Thus, debates about legal education reform often became centrally concerned with whether domestic lawyers could facilitate their nation's global competitiveness, but could contemplate wholesale revision based on what could be cast as successful global exemplars.

The fact that legal education reform was seen as such an important arena for reform further resonated then-popular logics of development which presumed that institutional changes could catalyze larger, positive social changes.[1] Legal institutions become a particular focus of late 20th-century global debates in all areas of social development. This era thus also marked the relative high-point of the notion of "legal transplants" where the existing legal institutions of particular nations were held out as possible universal inspirations for reform.[2] In particular, various "end of history" arguments were made that many forms of law had clear universal models which would, and some felt should, be spread globally.[3]

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1. *See generally* MARIANA PRADO & MICHAEL TREBILCOCK, ADVANCED INTRODUCTION TO LAW AND DEVELOPMENT (2d ed. 2021).

2. *Compare* ALAN WATSON, LEGAL TRANSPLANTS 21–22 (1993), *with* Daniel Berkowitz et al., *The Transplant Effect*, 51 AM. J. COMPAR. L. 163, 163 (2003).

3. *E.g.*, Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, *in* CONVERGENCE AND PERSISTENCE IN CORPORATE GOVERNANCE 33 (Jeffrey Gordon & Mark Roe eds., 2010).

In particular, Anglo-American modes of regulations were cast by many as a reservoir of ideal types for countries to draw on to improve both their integration into the global economy and their own social dynamism. In particular, the immediate post-Cold War moment became halcyon days for the international status and prestige of American law. Herein, American legal institutions and lawyering were portrayed by many as the motor forces of the United States' economic success and democratic vitality.[4] Law students from around the world—even foreign law professors—enrolled at American law schools in growing numbers to seek some of this same dynamism for their own careers and aspirations.[5] Notably, this perspective was eagerly embraced by many American lawyers and scholars who actively promoted American legal education as a desirable global transplant.[6]

In this context, postgraduate legal education, specifically based on the American model, was promoted by private and public actors as one such developmental ideal type.[7] The 1990s witnessed a rapid rise in conferences and scholarship dedicated to the "globalization" of legal education—leading to what could be called an era of "transformative legal education reform." Herein, legal education reform was considered transformative, not only for the practices of lawyers but also for society at large. More specifically, debates about legal education reflected the influence of the world's emergent superpower as in most every country debate concerning legal education reform took on an often-central concern with the impact of American-influences.[8]

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4. Robert Gordon, *The Role of Lawyers in Producing the Rule of Law: Some Critical Reflections*, 11 THEORETICAL INQUIRIES L. 441, 442, 463 (2010).

5. Mindie Lazarus-Black & Julie Globokar, *Foreign Attorneys in U.S. LL.M. Programs*, 22 IND. J. GLOBAL LEGAL STUD. 3 (2015). This international inequality in international legal status is described by Anthea Roberts as the impact of "asymmetrical transnational educational dynamics." *See* Anthea Roberts, *Cross-Border Student Flows and the Construction of International Law as a Transnational Legal Field*, 3 U.C. IRVINE J. INT'L TRANSNAT'L & COMPAR. L. 1, 3 (2018).

6. David Clark, *American Law Schools in the Age of Globalization*, 61 RUTGERS U. L. REV. 1037 (2009).

7. Jedidiah Kroncke, *Law and Development as Anti-Comparative Law*, 40 VAND. J. TRANSNAT'L L. 477, 492 (2012).

8. *See*, *e.g.*, JAN KLABBERS & MORTIMER SELLERS EDS., THE INTERNATIONALIZATION OF LAW AND LEGAL EDUCATION (2008).

Traditionally, systematic legal education reform has been relatively rare, requiring some level of social crisis to dislodge entrenched forms of regulation and social coordination. Thus, it was often most common in revolutionary contexts, or assumed to apply most acutely to small or lower-income nations. However, starting in the 1990s, three of the world's largest economies began to debate wide-ranging reforms to their systems of legal education. With varied yet overlapping motivations, concerns over global competitiveness led Japan, Korea, and China to implement systemic structural reforms to how lawyers would be educated. Not only were these reforms imposed on each country's often resistant legal professions, they also remain the most significant national reorientations of legal education in the last fifty years of rapid global legal change.

At the same time, while broad arguments about legal reform remained common across the world, critical engagement with the outcomes of such East Asian experience has remained largely absent from domestic legal debates—even as they remained suffused with highly confident empirical predictions about the consequences of proposed legal education reforms. Yet, these three East Asian experiences remain the most significant national reorientations of legal education in the last fifty years of rapid global legal change. These three examples also stand out because their reforms were not initiated by lawyers or their associations—historically most concerned with advancing arguments about legal education reform—but were dictated by the state and largely dominated by non-lawyers who embraced the transformative logic underlying such reforms.[9]

It was no coincidence that during the 1990s, both Japan and Korea suffered economic downturns and public crises of democratic accountability. Concurrently, the Chinese government was eager to aggressively experiment with new legal institutions and modes of governance to sustain its still-rapid economic development. How to respond to these and other local concerns were enmeshed within this

9. Countries throughout Asia engaged in similar, often post-colonial, debates regarding modern legal education but none resulted in systemic reform on the scale and scope of these three reform agendas. *See, generally*, Simon Chesterman, *The Fall and Rise of Legal Education in Asia: Inhibition, Imitation, Innovation*, *in* LEGAL EDUCATION IN ASIA 1 (Jiaxiang Hu et al. eds., 2017).

larger global discourse regarding ideal legal institutions, and more long-standing debates on the comparative function of legal professions.[10] Arguments were advanced in all three countries that legal education could change the practice of lawyers and, in turn, these changes would lead to desirable social developments and improved global competitiveness.

Historically, each country's system of legal education had been influenced by the German system of undergraduate legal training—itself once taken as a global exemplar in the early 20th-century. The dynamic image of American lawyering and its ties to American preeminence was contrasted to this tradition by reformers in Japan, Korea, and China with their own comparatively conservative, though still often prestigious, domestic traditions.[11] As in most countries, varied institutional and pedagogical elements of American legal education stood out from legal education in each country and thus effectively served as potential sources of aggressive institutional change. The stylized vision of American law schools that emerged in these debates was one portrayed as thoroughly pragmatic, internationalized, and interdisciplinary—all of which were claimed to contribute to its larger social impact.

Thus, reform of legal education following the comparatively unusual American postgraduate model of education could jumpstart a causal chain of social development—even given the extant social accomplishments of all three legal professions.[12] Japan initially added postgraduate law schools in parallel to its undergraduate programs; Korea similarly created postgraduate law schools while eventually abolishing its undergraduate system; and China added postgraduate law programs as one of its then ongoing experiments in legal education.

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10. Richard Abel, *Comparative Sociology of Legal Professions*, 10 LAW & SOC. INQUIRY 5 (2006).

11. *See*, *e.g.*, Richard Abel, *Comparative Sociology of Legal Professions: An Exploratory Essay*, 10 AM. BAR FOUND. RSCH. J. 1, 10 (1985).

12. *See* John Ohnesorge, *Developing Development Theory: Law and Development Orthodoxies and the Northeast Asian Experience*, 28 U. PA. J. INT'L ECON. L. 219, 261 (2007).

However, in the decades after these reforms were discussed and implemented, their domestic evaluations remained quite mixed. Rather than concerns focused on broad social change, more pragmatic concerns came to predominate. This shift partly reflects a global decline in the developmental optimism of the 1990s, after which faith faded in any truly "end of history" legal models. But this shift was more directly driven by decidedly local concerns and outcomes.[13] Even systemic changes in the structure of legal education had to contend with variations in the reform—or lack thereof—of professional licensing systems, particularly bar exams. Moreover, the market for legal services and patterns of legal employment in each country were shaped by entrenched modes of dispute resolution and business cultures.[14] Critically, most lawyers and lawyers' associations in each country resisted the reforms—especially in Japan and Korea, though less openly in China.

In the wake of these reforms, each country faced increased levels of lawyer unemployment or under-employment, along with questions regarding the financial sustainability of postgraduate law schools. These essentially localized concerns eventually displaced more sweeping concerns with social development which had inaugurated these reform efforts. Even the pedagogical elements which were held up as the hallmark of American postgraduate education—such as Socratic instruction or clinical legal education—emerged as marginal, if not distressed, aspects of new postgraduate schools.

This mixed legacy of attempts to re-engineer lawyering in Japan, Korea, and China points to the larger political economy of lawyering as the centrifugal force that ultimately shapes the world law school graduates face. These political economies are foundationally constructed by the private and public institutions that employ lawyers and sustain their livelihoods. While legal education remains on the

13. *See, generally*, THE GLOBALIZATION OF LEGAL EDUCATION: A CRITICAL PERSPECTIVE (Bryant Garth & Gregory Shaffer eds., 2022); AMERICAN LEGAL EDUCATION ABROAD: CRITICAL HISTORIES (Susan Bartie & David Sandomierski eds., 2021).

14. Yaniv Roznai, *Revolutionary Lawyering? On Lawyers' Social Responsibilities and Roles during a Democratic Revolution*, 22 S. CAL. INTERDISC. L.J. 353 (2013); John Harrington & Ambreena Manji, *Pericles and the Professors: Legal Education in Ghana*, in AMERICAN LEGAL EDUCATION ABROAD: CRITICAL HISTORIES, supra note 13.

agenda in many jurisdictions for a variety of justifiable reasons, few nations today still view it as a means of transformative legal change.

The lessons of these reform efforts remain comparatively understudied, even though they represent the most systemic and comprehensive reforms to emerge from the late 20th-century excitement over international legal education reform. While consonant with the larger move away from "legal transplants" as a constructive framing for legal development,[15] the less-than-transformative—if still consequential—outcome of these reforms exists alongside a recent explosion in postgraduate law programs worldwide. However, the recent creation of varied "JD" programs in other East Asian jurisdictions and elsewhere around the world has not been motivated by hopes for social transformation, but instead been motivated by similar concerns about legal employment and university finances. Simultaneously, the American system of legal education, once considered an exemplar just a few decades earlier, now faces intense criticism—not only on the grounds of lawyer employment and financial sustainability but also regarding its claim to sustain democratic, if not economic, vibrancy. Thus, the global era of transformative legal education has ended, even as the dilemmas of lawyering and lawyer regulation are perhaps now more widely shared across the globe. These shared global dilemmas point to the continued relevance of studying legal education comparatively with a cosmopolitan humility.

Thus, even if the exuberance of the transformative era is over, the East Asian reform experience is still a critical comparative resource that speaks to concerns which currently grip legal professions across the globe. However, domestic concern with legal education reform remains attractive to legal academics and lawyers' associations who largely appear either unchastened or unconcerned with reconciling their assertions with comparative experience. This condition is all the

15. *See* Kien Train et al., *Negotiating Legal Reform through Reception of Law: The Missing Role of Mixed Legal Transplants*, 14 ASIAN J. COMPAR. L. 175 (2019).

more evident for countries like the United States who were once taken as exemplars and still resist critically interrogating comparative examples.[16] If there is a universal lesson, it is that any nation seeking to reform its system of legal education must ensure that new reform agendas center the larger political economy of lawyering outside of law schools.

Indifference or resistance to fully contemplating the lessons of these three systemic East Asian experiences with legal education reform is likely perpetuated by such general aversion to critical comparative dialogue. However, it is likely no coincidence that their primary lesson reinforces the very counterfactual that legal academics and wider legal professions inherently resist. Rather than serving as the first, foundational moment shaping legal practice, the content and structure of legal education are largely subordinate to the larger political economy of lawyering and the resulting market for legal services. Moreover, even the tenuous link between legal education and broad economic dynamism is less unsettled by these experiences than any hypothesized relationship between any legal pedagogy or training and democratic vitality. While such implication questions the very foundations of lawyers' regulatory autonomy, it also reflects the now global discomfit—not least of which is now resurgent in the United States—that lawyers are invariably servants of market forces rather than inherent agents of social progress, much less democracy.

To further substantiate and draw out these arguments, this article will proceed as follows. Part I provides an account of the Japanese postgraduate legal reforms, starting with their debate in the late 1990s and implementation in 2004. It details how the attempt to fuse postgraduate law schools onto existing undergraduate system has led to a still ongoing process of reform marked by perpetual dissatisfaction. Part II provides an account of the Korean legal education reforms starting in the mid-1990s and their later implementation in 2007. It details how Korea fully substituted postgraduate legal education for its traditional undergraduate system and the mixed professional and social legacy of these reforms. Part III provides a short historical background to the modern Chinese postgraduate legal reforms and the course of its resulting Juris Master programs. It details JM programs' place within

16. *See* Ernst Stiefel & James Maxeiner, *Why Are U.S. Lawyers Not Learning from Comparative Law?*, *in* THE INTERNATIONAL PRACTICE OF LAW: LIBER AMICORUM FOR THOMAR BÄR AND ROBERT KARRER (Nedin Peter Vogt et al. eds., 1997).

the Chinese Communist Party's broader experiments with legal education and their somewhat surprising success, despite abandoning most of their original American-inspired elements. The Conclusion addresses the larger lessons of these reforms and their resonance with both critical histories of American legal education and broader issues of import for legal professions across the globe today.

III. POSTGRADUATE LEGAL EDUCATION AND REVITALIZING JAPANESE LAWYERING

A. The "Lost Decade" and Catching Up to American Lawyers

The history of what might be called modern Japanese legal education reform reaches back over one hundred and fifty years. In 1868, the Meiji regime initiated a number of wide-ranging legal and political reforms in an effort to strengthen its position relative to the Western powers that were then encroaching on Asian sovereignty. Eventually, the prestige of German law drew the majority of Meiji interest and left a lasting imprint on Japanese law.[17] This influence survived the post-World War II legal reforms that the United States imposed on Japan, which largely failed to systemically reshape Japanese legal education.[18]

As a result, modern legal education in Japan was shaped by Germany's generalist, publicly oriented legal profession.[19] Law became a university discipline centered on undergraduate programs, staffed by academics pursuing doctoral degrees who often forwent any legal practice. Legal instruction was almost exclusively delivered by lecture, with an emphasis on comprehensively transmitting the content of Japan's civil codes. Law was a highly prestigious discipline. However, as with most undergraduate-based legal education systems, the vast majority of law graduates would never become lawyers.

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17. *See* Emi Matsumoto, *Lost in Translation: The Reception of German Law in Japan*, 42 HOUSEI RIRON 110 (2010).

18. Setsuo Miyazawa & Hiroshi Otsuka, *Legal Education and the Reproduction of the Elite in Japan*, 1 ASIAN PAC. L. & POL'Y J. 1, 3 (2000).

19. Katsumi Yoshida, *Legal Education Reforms in Japan: Background, Rationale, and the Goals to Be Achieved*, 24 WISC. INT'L L.J. 209, 209–11 (2006).

Instead, law graduates would go on to administrative or other law-adjacent positions in the public and private sectors.

The Japanese bar exam was notoriously difficult, with a historical passage rate of two to three percent, that yielded approximately seven hundred potential new lawyers each year. Those who attended undergraduate programs subsequently often spent years at "cram schools" studying full time in preparation.[20] Actually sitting for the exam did not, in fact, require a law degree, and passing the exam without formal legal instruction was considered a great intellectual accomplishment.

Success on the exam allowed candidates to enroll in two years of training at the Legal Research and Training Institute while supported by the state. Afterward, additional examinations allowed a small percentage of candidates to move into the judiciary, the next tier of performers to pursue careers as prosecutors, and the remaining exam takers to enter private practice. These years of investment resulted in the average starting age of a Japanese lawyer hovering around twenty-nine, with many taking the exam multiple times to pass.[21] The net result of this system was a comparatively low number of lawyers in Japanese society, at an equilibrium of around seventeen thousand in 2003—a ratio of one lawyer per seven thousand people.[22]

For most of the 20th century, Japan's relative success in economic modernization led its interpretation of the German legal education to serve as a prototype for many Asian legal professions. Throughout the 1980s, there was frequent global discussion of the comparative merits of the Japanese legal system's reliance on a small number of lawyers—among, amid broader discussions of the desirability of Japanese economic and regulatory models.[23] Yet, for all its relative prestige and success, Japan's rapid economic growth and expanding international

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20. Mark Steiner, *Cram Schooled*, 24 WIS. INT'L L.J. 377, 377 (2006).

21. Takeshi Wada, *19 Yr. Old Passes Japan's Bar Exam, Youngest Under Current Test Format*, MAINICHI (Sept. 12, 2018).

22. Mayumi Nakamura, *Legal Reform, Law Firms, and Lawyer Stratification in Japan*, 1 ASIAN J.L. & SOC'Y 99, 100 (2014).

23. *See, e.g.*, Derek Bok, *A Flawed System of Law Practice and Training*, 33 J. LEGAL EDUC. 570, 573-74 (1983). There have been decades of debates regarding the past and present of Japanese law in comparative frame. *See generally* John Haley, *Litigation in Japan: A New Look at An Old Problem*, 10 WILLAMETTE J. INT'L L. & DISP. RES. 121, 132–33 (2002).

influence after World War II declined significantly during the 1990s. This change shook Japanese confidence and led to what many called its "lost decade." In 1999, the Justice System Reform Council (JSRC) was formed to analyze the whole gamut of Japanese legal institutions to make recommendations to improve both democratic accountability[24] and economic performance.[25]

The reforms that the JSRC ultimately recommended were wide-ranging and touched on many aspects of both Japan's civil and criminal law systems.[26] In this context, the reform of Japanese lawyers was posited as an effective means of reforming Japan at large. A small coterie of legal academics had long argued for what they saw as pro-democratic reforms of legal education.[27] During this time, the comparative example of US legal education became prominent. American success during the 1990s quickly reversed the more optimistic comparative evaluations of Japanese legal institutions that many made during the 1980s.[28] Moreover, academic writing in English by American scholars had, for decades, criticized not only Japanese law but also Japanese legal education. Many of these scholars promised that reform imitating American legal education would induce needed change in Japan.[29]

However, the reform agenda was primarily driven by non-lawyers from the business-allied Liberal Democratic Party administration. The Council's deliberations were informed by then-common critiques that

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24. Yoshiharu Matsuura, *The American Case Method and New Japanese Legal Education, in* AMERICAN LEGAL EDUCATION ABROAD: CRITICAL HISTORIES, *supra* note 13, at 225.

25. MATTHEW WILSON, *Seeking to Change Japanese Society Through Legal Reform*, *in* CRITICAL ISSUES IN CONTEMPORARY JAPAN 265–68 (Jeff Kingston ed., 1st ed. 2013).

26. LEON WOLFF, LUKE NOTTAGE, & KENT ANDERSON, WHO RULES JAPAN? POPULAR PARTICIPATION IN THE JAPANESE LEGAL PROCESS 1, 4 (2015).

27. Setsuo Miyazawa et al., *The Reform of Legal Education in East Asia*, 4 ANN. REV. L. & SOC. SCI. 333, 340 (2008).

28. Yukio Yanagida, *A New Paradigm for Japanese Legal Training and Education (In Light of the Legal Education at Harvard Law School)*, 1 ASIAN PAC. L. & POL'Y J. 1, 7–8 (2000).

29. Gerald McAlinn, *Japanese Law Schools: "A Glass Half Full,"* 15 J. JAPAN. L. 225, 228–29 (2010).

the Japanese system of legal education produced too few lawyers and that they were ill-equipped to compete in the global market dominated by British and American lawyers.[30] Private lawyers across Asia were then generally considered less critical to business practice than in common law systems, and there were also strong restrictions on the ability of foreign lawyers to operate within the Japanese legal system. As with the Meiji and post-World War II reforms, the Council engaged in systematic comparative analysis, which included field visits to what were considered to be the four leading legal jurisdictions: the United Kingdom, France, the United States, and Germany. Ultimately, the JSRC concluded that increasing the number of lawyers trained in "American-style" lawyering would help restart Japan's flagging growth and enhance its international competitiveness.[31]

Discussions of American lawyering were then tied to specific discussion of the postgraduate American model and claims regarding its particular pedagogical elements, such as the Socratic and case methods. These discussions were further intermixed with assertions that American law schools emphasized practical training, interdisciplinary study, and internationalization—and it was this combination of pedagogical traits that enabled their graduates to dominate international practice. Thus, it was argued that reforms based on the American model could produce a new generation of Japanese lawyers who would help Japan escape the "lost decade."

The prescribed reforms were sweeping. Although the old undergraduate program would be retained, postgraduate law schools would be established and were intended to eventually become the exclusive pathway to sit for a reformulated bar exam. The JSRC imagined that new graduates would pass the bar exam at an exponentially higher rate of eighty percent, and that the system would come to produce three thousand new lawyers each year. Moreover, law school faculties would have a minimum quota of twenty percent of instructors with practice experience. Additionally, the Legal Research and Training Institute would be reduced to one year with a focus on trial skills rather than generalist judicial training. In short order, sixty-eight new postgraduate programs were formed and accredited by 2004,

30. *See* Masako Kamiya, *Structural and Institutional Arrangements of Legal Education*, 24 WIS. INT'L L.J. 153 (2007).

31. Mayumi Saegusa, *Why the Japanese Law School System Was Established: Co-optation as a Defensive Tactic in the Face of Global Pressures*, 34 LAW & SOC. INQUIRY 365, 391 (2009).

with six more coming online in 2005. Students from either undergraduate or postgraduate law programs could still take the bar exam, though undergraduate eligibility was planned to eventually phase out. Other ancillary reforms included allowing lawyers to enter full-time government employment and generally increasing permeability between private and public practice, more akin to the common law tradition.

B. Market Realities, Professional Resistance, and the New Anxieties of Japanese Lawyering

The decades following the formation of Japan's postgraduate law schools witnessed what might be characterized as an unfolding, and still unresolved, drama. Criticism of the JSRC reform agenda has become a near cottage industry both within and outside of Japan.

It is critical to note that the Japanese legal profession had many reservations about the reforms and persistently resisted their imposition by the government.[32] The attractiveness of American legal education models in many parts of the world was driven by the social importance and influence of American lawyers. However, in Japan, law was already a highly lucrative and prestigious profession. Moreover, the extant status of judges and prosecutors was matched by the private bar's monopolistic concerns over loosening their hold over the market for legal services. Additionally, most academics objected to the reforms but feared the Ministry of Education's wide-ranging powers over university funding and career advancement.[33] This large domestic resistance was often less evident to outside observers given that proponents of American-styled reforms in Japanese academia made up a vastly disproportionate share of English-language publications on

32. Masahiro Tanaka, *The New Accreditation System for Japanese Law Schools*, *in* QUALITY AND EQUALITY IN EDUCATION POLICIES AND PRACTICES IN COMPARATIVE PERSPECTIVE 155, 157 (CESE ed., 2010).

33. *Id.* at 387; Daniel Foote, *The Trials and Tribulations of Japan's Legal Education Reforms*, 36 HASTINGS INT'L & COMPAR. L. REV. 369, 371 n.3 (2013).

Japanese law, proactively sought out American legal interlocutors, and developed their own career capital by studying in the United States rather than in Europe.

All of these groups argued that these reforms were unnecessary and threatened the quality of the profession,[34] which they viewed as central to Japan's still globally eminent historical successes. While the ability of the profession to fully resist these externally imposed reforms was limited, they marshaled all of their social resources to achieve a crucial compromise. The legal profession retained control over the bar exam and even gained influence over law school accreditation.[35] By 2010, for the first time in history, the President of the Japan Federation of Bar Associations was elected from outside its current leadership on a platform of resisting the further expansion of the profession at all costs.[36]

The resistance of the profession was matched by more practical logistical challenges within the new law schools themselves. Most critically, reforming law schools did nothing to immediately change the actual operation of the Japanese legal system. Japan was still a civil law country, which operated according to traditional civil law norms grounded in code-based reasoning and primarily written, non-oral pleadings—not inherently resonant with the case method or Socratic instruction. Furthermore, almost all existing professors and other instructors had been trained under the traditional system. The majority of faculty members with international exposure had educational experience in Germany and France, and almost exclusively so for those working in core doctrinal areas. The JSRC's reforms did not specifically allocate resources for existing faculty to transition to new forms of instruction, either substantively or pedagogically.[37] In parallel, the formal requirement for practitioner instructors contrasted with the reality that teaching salaries were far below those in the private market and o little compensatory social prestige within the profession. In sum, the basic components of the American pedagogical package were a poor fit.[38]

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34. Masahiro Tanaka, *Ideals and Realities in Japanese Law Schools*, 20 HIGHER EDUC. POL'Y 195 (2007).

35. *See* Kamiya, *supra* note 30, at 159.

36. Bruce Aronson, *The Brave New World of Lawyers in Japan Revisited*, 21 PAC. RIM L. & POL'Y J. 255, 260 n.18 (2012).

37. Foote, *supra* note 33, at 439.

38. Yoshiharu Matsuura, *American Case Method and New Japanese Legal Education*, *in* AMERICAN LEGAL EDUCATION ABROAD: CRITICAL HISTORIES, *supra* note 13, at 225.

These internal changes were quickly overshadowed by the more powerful implications of the profession's retained control over the bar exam itself. Instead of the targeted eighty percent bar passage rate, the first administration of the new exam yielded a one-time high of approximately fifty percent, which subsequently dropped to twenty five percent within a few years. As a result, at most two thousand one hundred exam takers passed initially, with more recent numbers dropping closer to one thousand five hundred. In lock step, the incentive structure for students to invest in anything except bar passage did not shift. Moreover, students now required at least six formal years of education and still had to engage in significant post-graduate "cram school" preparation—often even later in their lives than when the system had no formal requirements. The rise in the number of graduates attending the Legal Research and Training Institute led to a shift from stipends for bar exam passers to loans, again further increasing the total effective cost of licensing.[39]

The profession's control over the bar exam's content continued to drive decisions regarding law school curriculum,[40] such as excluding international law.[41] The persistence of such a low passage rate for the bar further undermined the development of new practical,[42] interdisciplinary, or international[43] initiatives—leading even postgraduate programs to strictly emphasize bar preparation and providing students little time for other endeavors.[44] Moreover, professors were given little incentive to innovate while juggling the

39. Andrew Watson, *Changes in Japanese Legal Education*, 21 J. JAPAN. L. 1, 35 (2016).

40. Luke Nottage, *Reformist Conservatism and Failures of Imagination in Japanese Legal Education*, 2 ASIAN PAC. L. & POL'Y J. 28, 42 (2001).

41. Noboru Kashiwagi, *Creation of Japanese Law Schools and Their Current Development*, *in* LEGAL EDUCATION IN ASIA 185, 192 (Stacey Steele & Kathryn Taylor eds., 2010).

42. Dan Rosen, *Schooling Lawyers*, 2 ASIAN PAC. L. & POL'Y J. 66 (2001).

43. Masahiko Omura et al., *Japan's New Legal Education System: Towards International Legal Education?*, 20 J. JAPAN. L. 39, 48 (2005); Dan Rosen, *Japan's Law School System: The Sorrow and the Pity*, 66 J. LEGAL EDUC. 267, 285 (2017).

44. Rosen, *Japan's Law School System*, *supra* note 43.

multiple demands created by government reviews, which ultimately dropped criteria such as internationalization.[45] Most decisively, Japanese firms made few changes to their hiring practices, further reducing student incentives to deviate from past practices.[46]

These initial developments led to an ongoing discourse on how to reconcile all the now-moving elements of Japanese legal education. Another aim of the reform was to encourage non-law undergraduates to apply to postgraduate programs, but many perceive the competition as too fierce to catch up with undergraduate law degree holders. The number of postgraduate law schools admitting new cohorts has sharply decreased to thirty-nine.[47] Some of this decline has not been completely voluntary, as the accreditation process resulted in twenty-two schools losing their accreditation within just five years of opening.[48] The initial rush of nearly seventy thousand applicants in 2004 quickly dropped below twenty thousand within ten years, leading to an increasing trend towards the employment domination of just a few elite schools as in the prior system.[49] Moreover, in 2011,pressure from the profession led to the introduction of a bypass examination in lieu of a law degree to sit for the bar. With a still low passage rate, this bypass offers a much lower-cost point of entry, and succeeding on it is still seen by many as a marker of individual brilliance.[50]

By comparison, undergraduate programs have remained relatively unaffected.[51] Japan traditionally has had a very narrow unauthorized

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45. Nobuyuki Sato, *The State of Legal Education in Japan: Problems and "Re"-Renovations in JD Law Schools*, 3 ASIAN J. LEG. STUD. 213, 220 (2016).

46. Masahiro Tanaka, *Japanese Law Schools in Crisis: A Study on the Employability of Law School Graduates*, 3 ASIAN J. LEG. ED. 38, 45 (2016).

47. WILSON, *supra* note 25, at 269.

48. Kent Anderson & Trevor Ryan, *Gatekeepers: A Comparative Critique of Admission to the Legal Profession and Japan's New Law Schools, in* LEGAL EDUCATION IN ASIA, *supra* note 41, at 59.

49. WILSON, *supra* note 25, at 271; Tanaka, *Japanese Law Schools in Crisis*, *supra* note 46, at 45; Nakamura, *supra* note 22, at 12.

50. Rosen, *Japan's Law School System*, *supra* note 44, at 283.

51. Kota Fukui & Stacey Steele, *Internationalising Legal Education in Japan as Discourse and Practice, in* INTERNATIONALISING JAPAN: DISCOURSE AND PRAC. 32, 40–41 (Jeremy Breaden et al. eds., 2014).

practice of law regime,[52] and many graduates of Japan's undergraduate law programs continue to staff a wide range of private and public positions, from notaries to judicial case screeners to other administrative agents.[53] Some have argued that undergraduate programs, with more graduates seeking employment outside of the profession, have actually been freer to pursue innovation than postgraduate programs.[54]

The effective work of the profession to limit the supply of new Japanese lawyers, however, cannot simply be dismissed as an exercise in monopolistic self-interest. While the number of newly admitted lawyers has not met initial reform expectations, there have been substantial increases. Since the JSRC reforms, the number of licensed attorneys has doubled to around thirty-five thousand Yet rather than significantly increasing citizen access to justice or leading to new innovative practices, unemployment became a serious concern among Japanese lawyers for the first time—resulting in a new bimodal distribution of salaries within the profession.

Average salaries have plummeted more than fifty percent compared to the pre-JSRC era. This rapid decline is one of the driving factors for the precipitous drop in law school enrollments. Post-2008, Japanese firms' were far less impacted by the Global Financial Crisis because of their continued domestic orientation,[55] but there has been a systemic decline in overall hiring.[56] While there was a wave of consolidations and mergers among Japanese firms in the 2000s, most

52. Kohei Nakabō & Yohei Suda, *Translation, Judicial Reform and the State of Japan's Attorney System: A Discussion of Attorney Reform Issues and the Future of the Judiciary*, 10 PAC. RIM L & POL'Y J. 623, 635 (2001).

53. Aronson, *supra* note 36, at 262.

54. Fukui & Steele, *supra* note 51, at 41; *see, e.g.*, Dai Yokomizo, *The Development of Legal Education in Japan* (TLI Think!, Working Paper No. 81, 2017).

55. Aronson, *supra* note 36.

56. Aronson, *supra* note 36, at 259 n.11.

lawyers still work as solo practitioners or in small firms, with half of all lawyers based in Tokyo.[57]

Some areas of practice have expanded. The number of in-house corporate counsel jumped from the low sixties at the outset of the reform era to nearly eight hundred in recent years.[58] There has also been growth in government lawyering enabled by the reforms, though the total is only 125 as of the most recent count.[59] But the reforms have primarily made private, rather than public, service more attractive, especially for graduates of the new postgraduate schools.[60] Much of the hope that new lawyers would "democratize" Japan by moving beyond urban, corporate, or domestic practice has not materialized.[61]

In summary, the JSRC's legal education reforms, however successful in other areas, did little to reform the function of lawyers in Japanese society. The reforms envisioned a new breed of lawyer without creating a new system of Japanese law for them to inhabit.[62] This issue extends beyond the basic civil/common law divide and acknowledges the now matured academic understanding that the relatively low number of Japanese lawyers has much less to do with a generalized Japanese cultural aversion to conflict and more to do with the broad distribution of dispute resolution capabilities among other social institutions.[63] As such, lawyers, let alone new law graduates, cannot simply generate new markets for their services given the larger political economy of Japanese dispute resolution. In fact, some have worried that the overall effect of the reforms has been to divert attention

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57. Nakamura, *supra* note 22, at 99, 100, 103 n.21.

58. WILSON, *supra* note 25, at 269.

59. Daniel H. Foote, *The Advent of Lawyers in Japanese Government*, 5 ASIAN J.L. & SOC'Y, 138, 140 (2018).

60. *See* Curtis Milhaupt & Mark West, *Law's Dominion and the Market for Legal Elites in Japan*, 34 L. & POL'Y INT'L BUS. 451 (2003).

61. Many Japanese rural towns still have resident lawyers, and private lawyers are still a minority presence in most forums of dispute resolution. Kay-Wah Chan, *The Reform of the Profession of Lawyers in Japan and Its Impact on the Role of Law*, *in* LAWYERS AND THE RULE OF LAW IN AN ERA OF GLOBALIZATION 185 (Yves Dezalay & Bryant Garth eds., 2011).

62. James Maxeiner & Keiichi Yamanaka, *The New Japanese Law Schools*, 13 WASH. J. INT'L L. 303, 313 (2004).

63. *See* Mark Ramseyer, *The Rational Litigant Revisited: Rationality and Disputes in Japan*, 14 J. JAPAN. STUD. 111, 114 (1988); Stephen Givens, *The Vagaries of Vagueness: An Essay on Cultural vs. Institutional Approaches to Japanese Law*, 22 MICH. STATE INT'L L. REV. 839 (2014).

away from Japan's already efficient modes of dispute resolution,[64] or that greater permeability between private and public practice has heightened the risk of corruption.[65] In sum, lawyers in Japan did not become the dynamic social engineers envisaged to exist in America simply by transitioning to a postgraduate model.[66]

C. Perpetual Reform Without a Transformative Vision

In the last decade, it has become apparent that walking back the introduction of postgraduate law schools in Japan is neither feasible nor necessarily a panacea for continuing social challenges. Critically, the political will behind the JSRC's initial recommendations has waned.[67] The outcome of the reforms reflects that they were the result of a particular political bargain that was imposed on the legal profession from the outside. Contentious issues, such as the relationship between the new postgraduate programs and existing undergraduate instruction,[68] were left underspecified. The problem the original political coalition sought to solve was either deemed satisfied by the increase in lawyers that did occur or revealed to be less pressing than originally imagined. Thus, a renewed round of more systemic reforms, even ones based on reevaluating regional or international developments, seems unlikely in the near future.

As a result, further lawyer reform is no longer on the agenda for the Liberal Democratic Party, as Japanese business interests appeared satisfied with the small increase in the number of lawyers whom they seem happy to train on the job.[69] Large Japanese firms have adapted their organizational structures and practices to compete internationally,

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64. Eric Feldman, *Legal Reform in Contemporary Japan*, *in* EMERGING RIGHTS IN JAPANESE LAW 1, 21 (Harry Scheiber & Laurent Mayali eds., 2007).

65. Colin Jones, *Amakudari and Japanese Law*, 22 MICH. ST. INT'L L. REV. 839 (2013).

66. Maxeiner & Yamanaka, *supra* note 62, at 313.

67. Rosen, *Japan's Law School System*, *supra* note 44, at 279.

68. *See* Robert Grondine, *An International Perspective on Japan's New Legal Education System*, 2 ASIAN PAC. L. & POL'Y J. 1, 3 (2001).

69. Saegusa, *supra* note 31, at 391.

and the relaxation of foreign practice and partnership restrictions has lessened the demand for what turned out to be a less robust market for international legal services than was imagined in the 1990s.[70] In tandem, many within the profession claim that pursuing overseas education for the small niche of truly internationalized lawyers is sufficient.[71] As a result, there is little interest in agitating the well-entrenched profession, even though economic and political dynamism remains an ongoing issue in Japanese society.[72]

It is quite common today for Japanese law schools to face aggressive claims that the reforms were a wholesale failure.[73] Enrollments continue to drop,[74] and debates persist regarding the appropriate bar passage rate and what incentives government oversight creates for innovation.[75] In retrospect, contentious issues such as the relationship between undergraduate and postgraduate law schools were left unresolved from the outset.[76] A monumental amount of energy was spent creating a raft of new law schools, over half of which have already closed.[77] The same small increase in the number of Japanese lawyers that seems to have satisfied corporate needs could have been achieved through a host of much simpler reforms—such as relaxing the

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70. *See, e.g.*, Matt Nichol, *Transnational Legal Education: A Comparative Study of Japan and Australia*, 60 OSAKA U. L. REV. 127, 144 (2013) ("Legal education in Japan and Australia is transnationalizing.").

71. Akira Kawamura, *Globalization of Japanese Lawyers: Achievements, Challenges, and Expectations of American Law Schools*, 41 HASTINGS INT'L & COMPAR. L. REV. 130 (2018).

72. Kay-Wah Chan, *Setting the Limits: Who Controls the Size of the Legal Profession in Japan?*, 19 INT'L J. LEGAL PROF. 321, 333 (2012).

73. Kawamura, *supra* note 71, at 134; Stephen Givens, *Japan is Producing More Lawyers Than It Knows What To Do With*, NIKKEIASIA (Mar. 4, 2023) https://asia.nikkei.com/Opinion/Japan-is-producing-more-lawyers-than-it-knows-what-to-do-with [https://perma.cc/G3FE-PNAS].

74. Ken'ichi Yoneda & Luke Nottage, *Introducing ICT to Japanese Legal Education: The Postgraduate Law School Movement and COVID-19 as Cornerstones*, *in* COMPARING ONLINE LEGAL EDUCATION: PAST, PRESENT AND FUTURE 183, 203 (Luke Nottage & Makoto Ibusuki eds., 2023).

75. Sato, *supra* note 45, at 218.

76. Robert Grondine, *An International Perspective on Japan's New Legal Education System*, 2 ASIAN PAC. L. & POL'Y J. 1, 2 (2001).

77. Thisanka Siripala, *Japan's Big Law Firms Are Nurturing Female Talent. But What If the Talent Pool Dries Up?*, LAW.COM (May 14, 2024).

original bar exam quota or reforming the undergraduate system directly.[78]

A broader question remains: why didn't reformers look again to Germany, whose system was still highly analogous and had already produced lawyers in far greater numbers than pre-2001 Japan?[79] Moreover, why did reformers focus on the American model when other commonwealth law models, including those linked to internationally successful English firms, deviated in less significant ways?[80]

Much of this is tied to the very development exuberance and appeal of American institutions, which have rapidly faded in recent decades.[81] But this general observation, at its core, reflects very particular pathways by which the developmental "common sense" of the 1990s entered Japanese reform debates. The strong formal divergence of the Japanese tradition from the American model made it attractive for reformers who were seeking symbolic capital to leverage more ambitious reform agendas. In tandem, the simplistic correlation between American international success and its distinct system of lawyering was intuitively reasonable to less engaged political actors who were looking to overcome a deeply recalcitrant profession.

Critically, many highly successful members of the Japanese elite who possessed political influence at home had studied abroad in the United States and based their understanding of the American system on often short-lived and highly unrepresentative experiences at the wealthiest and most internationalized American law schools.[82] And these schools were often the most wedded to promoting the most

78. Saegusa, *supra* note 31, at 365.

79. James Maxeiner, *American Law Schools as a Model for Japanese Legal Education?*, 24 KANSAI UNIV. REV. L. & POL. 37 (2003). *See also* Maxeiner & Yamanaka, *supra* note 62, at 311 n.18.

80. Takahiro Saito, *The Tragedy of Japanese Legal Education*, 24 WIS. INT. L.J. 197, 203–04 (2006).

81. Eric Sibbitt, *Adjusting Course: Proposals to Recalibrate Japan's Law Schools and Bar Exam System*, 36 HASTINGS INT'L & COMPAR. L. REV. 443, 449 (2013).

82. *See, e.g.*, Yanagida, *supra* note 28.

deifying visions of American legal education and its connection to American social success. Reciprocally, some reform entrepreneurs in Japan, familiar with American law, were tempted to strategically over-promise the payoffs of emulation, or to overstate Japan's openness to foreign interlocutors.[83] Even after the initial fallout of the reforms became evident, many external commentators did little to provide a critical discourse on the American model, and it was left to those within Japanese law schools to emphasize that true internationalization meant teaching critical comparative perspectives rather than formalistically interpreting foreign models.[84]

In fairness, the actual reforms in Japan were as partial substantively as they were transformative structurally—ultimately emulating American legal education in form, if not in substance.[85] And the ever path-dependent nature of any legal reform means that future outcomes are always hard to predict. But the larger lesson seems quite clear. The market for legal services that all lawyers must enter is shaped by the political economy of lawyering, not by legal education itself. Even if every new graduate develops new skills and orientations from previous generations, tying such potential changes to larger social dynamism would, at best, be a long-term historical project contingent on reforming the whole of Japanese legal institutions. Even for quite evident changes in Japanese lawyering, such as expanded gender representation, it has been difficult to causally link these to specific transformative effects.[86]

The fallout from these reforms remains a concern for dedicated Japanese lawyers and educators who genuinely seek to improve their legal education system and are troubled that their focus on the role of Japanese lawyers in democracy was subrogated to satisfying the needs of a small number of corporate clients.[87] The impact of the reforms on

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83. *See*, *e.g.*, Daisuke Mori, *Law and Economics in Japan*, ASIAN J.L. & SOC'Y 287, 301 (2017).

84. Kichimoto Asaka, *Common Law Education in Japan*, 39 VUWLR 747 (2008).

85. Maxeiner & Yamanaka, *supra* note 62, at 313.

86. Mark Levin & Makoto Messersmith, *Presence and Voice: The History and Status Quo of Women Law Professors in Japan*, 31 ASIAN-PAC. L. & POL'Y J. 176, 176 (2022).

87. *See* Shigeo Miyagawa, *Strengthening Clinical Legal Education in Japan: What Should Be Done in the Second Stage of the Law School System?*, 20 J. KOREAN L. 159, 160, 162–63 (2021) (advocating for more practical legal training and for a range of continued institutional

young Japanese lawyers' career prospects has led many to persistently advocate for better preparing them for potentially precarious employment.[88]

The perceived failure of the JSRC's incomplete and unrealistic reforms shows that legal education reform can seriously impact many within and outside the legal profession. However, expecting too much from legal education reform—especially when it leans into superficial idealizations of foreign practices—only undermines constructive engagement with the issues it can realistically address. Although Japan's experience offers valuable comparative insights,[89] it remains unclear how and when Japanese legal education will escape its current malaise.

IV. POSTGRADUATE LEGAL EDUCATION IN KOREA: DREAMS OF DEMOCRATIZATION

A. Undermining the Pathways of the Ancien Regime

The modern histories of Korean and Japanese legal education are intertwined, much as their larger histories have been since the 19th century. Three decades after the initiation of Japan's Meiji reforms, the Chosun Dynasty of Korea similarly sought to emulate elements of Germany's legal system—an emulation strongly impacted by existing Japanese interpretations. These similarities acquired a more problematic context during the Japanese occupation of Korea from 1910 to 1945. During that time, Japan reworked major aspects of Korean law and governance, and in the process, Korea developed a system of legal education strongly mirroring Japan's.

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changes at the margins of the current system); Masahiro Tanaka, *Japanese Law Schools in Crisis: A Study on the Employability of Law School Graduates*, 3 ASIAN J. LEGAL EDUC. 38 (2016) (advocating for more robust career services); Asaka, *supra* note 84 (advocating for more quality internationalization).

88. Masahiko Omura, *The Trend of Japan's Legal Education System*, 1 YONSEI L.J. 398, 409 (2010); Mark Ramseyer & Eric Rasmusen, *Lowering the Bar to Raise the Bar*, 41 J. JAPAN. STUD. 113 (2015).

89. Paul Secunda, *Pedagogical Methods for Teaching Arbitration Law in American and Japanese Law Schools*, 21 OHIO STATE. J. ON DISP. RESOL. 687, 688 (2006).

Consequently, the path to becoming a Korean lawyer throughout much of the 20th century paralleled that of Japan. Law was offered as an undergraduate degree, complemented by doctoral programs primarily oriented towards producing future law professors. A law degree was not required to sit for the Korean bar exam, and the majority of law undergraduates moved into public and private sector law-adjacent positions. The bar exam's comparatively low passage rate of five percent incentivized years of study in "cram schools" where candidates prepared for three rounds of examination: a multiple-choice exam, a second round of essay exams, and a third round consisting of an oral interview. As in Japan, unlimited attempts on the exam led hopeful students to labor throughout their twenties towards this elusive goal, most subsidized by their families. The system operated under an annual cap of one thousand potential new lawyers, with the pre-reform total national population of lawyers close to twelve thousand—more than half practicing in urban Seoul.

Korean legal education exhibited some differences from the Japanese system, though these were more political than technical. Notably, the oral stage of the exam process had been implemented to weed out candidates targeted for participating in student protests during Korea's democratic transition. By contrast, an ethic of formal social equality emerged during Korea's democratization process up through 1987. This principle was invoked to justify the option of taking the Korean bar exam without formal academic credentials, and this meritocratic notion was more aggressively asserted than has ever been the case in Japan. Korea's first democratically elected president, Roh Moo-hyun, was one of the notable candidates who had been able to pass the bar exam without a university education. Much like Abraham Lincoln in the United States, this folkloric example often obscured the reality that the majority of successful exam candidates came from families capable of financially supporting them throughout their extended period as ostensibly unemployed cram-school students.

Successful passage of the bar then led to two years at the Judicial Research and Training Institute, run by the Korean Supreme Court. This phase reflected the inherited German emphasis on publicly oriented generalists. Based on their performance, graduates were sorted into judges, prosecutors, and private practitioners—in respective order of status. All legal positions were highly coveted and typically resulted in lifelong, remunerative employment. The small size of the Korean

legal profession also fostered close-knit relationships among members of the Korean Bar Association.

In the wake of Korea's democratization, a perception emerged that Korean lawyers were underperforming in the international arena. In fact, calls for legal education reform by President Kim Young-sam predated Japanese efforts but failed to gain traction as Korean economic performance remained strong throughout the 1990s. Following the Global Financial Crisis of 2007, the combination of economic deceleration and mounting competitive pressures from legal globalization provided sufficient impetus to move forward with reforms.[90] While economic conditions were catalyzing, many in Korea were also hopeful that reforms would rework the elitist nature of the legal profession and dismantle what many perceived as its guild-like corruption.[91] Consequently, as in Japan, non-lawyers were most enthusiastic about reform possibilities and furnished the external momentum required to render reform politically feasible.

The critiques of Korean lawyering circulated during the deliberations of government reform panels argued that there were too few lawyers to properly serve business interests, and that the existing lawyers lacked necessary international orientation and transactional expertise. The stated public goal was to double the number of Korean lawyers over time by increasing the number of new attorneys to eventually reach two thousand, while also relaxing certain stringent domestic restrictions on foreign legal practitioners.[92]

Echoing the global discourse of the period, this reform rhetoric adopted similar causal narratives of social rejuvenation through

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90. Kyong-Whan Ahn, *Law Reform in Korea and the Agenda of Graduate Law School*, 24 WIS. INT'L L.J. 223, 228 (2006).

91. Jae Won Kim, *The Ideal and the Reality of the Korean Legal Profession*, 2 ASIAN PAC. L. & POL'Y J. 45, 68 (2001); Kim Seong-Hyun, *The Democratization and Internationalization of the Korean Legal Field*, *in* LAWYERS AND THE RULE OF LAW IN AN ERA OF GLOBALIZATION 217 (Yves Dezalay & Bryant Garth eds., 2011).

92. Jasper Kim, *Barbarians at the Legal Gates*, 1 PEKING U. TRANSNAT'L L. REV. 258, 278 (2013).

American-influenced legal education reform which undergirded the Japanese agenda. A newly internationalized and transactionally oriented generation of lawyers was expected to generate economic stimulus comparable to that attributed to American lawyers.[93] Many of these assertions were made even more aggressively in the Korean context than in Japan. For the Korean legal profession had never gained the international stature that Japanese lawyers enjoyed during Japan's booming economic performance in the 1980s.

Moreover, Korea developed a much closer political and social relationship to American society during this era. Reform advocates asserted that the Korean legal profession was already substantially influenced by American legal practices, and that American law had already made inroads into the Korean legal system.[94] This sentiment eventually manifested in more aggressive targets for English-language proficiency for admission to Korean law schools, and self-critical cultural juxtapositions between Korean and American lawyering and legal pedagogy gaining far broader circulation in Korean society.[95]

The Korean legislature ultimately approved the Graduate Law School Act (GLSA) of 2007, which partially mirrored the Japanese trajectory by creating new three-year postgraduate law schools as the exclusive pathway for earning a right to sit for the bar. The primary institutional departures from the Japanese reform pattern were twofold. The most significant was that all undergraduate programs would be progressively closed, and the old exam would be available to those graduates only until currently enrolling students aged out of the system. The second, and structurally radical, departure was the decision to abolish, rather than reform, the Judicial Research and Training Institute. It was not uncommon at the time for observers to claim that Korea "learned" from Japan to abolish the old system to make way for the new.[96]

The GLSA initiated a competitive process among Korean universities, after which twenty-five of the forty-one university

93. Rosa Kim, *The "Americanization" of Legal Education in South Korea*, 38 BROOK. J. INT'L L. 49, 56 (2012).

94. Deukhoon P. Han, *Will the Korean Law School System Succeed?*, SSRN (Jun. 18, 2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1653610 [https://perma.cc/Y6N6-FUBM].

95. *See, e.g.*, Jasper Kim, *Socrates v. Confucius: An Analysis of South Korea's Implementation of the American Law School Model*, 10 ASIAN PAC. L. & POL'Y J. 322, 327 (2009).

96. Rosen, *Japan's Law School System*, *supra* note 44, at 274.

applications for new postgraduate law schools were approved. Anyone with an undergraduate degree could now apply to take the new Legal Education Eligibility Test which determined admission to a new postgraduate law school. Completion of law school would then qualify graduates to sit for the bar examination, which reformers hypothesized would enjoy a seventy five percent pass rate. Furthermore, the exam could only be taken a limited number of times. These new law schools were imagined having revamped curricula that would globalize the South Korean legal profession and transform legal pedagogy into one with more practical and interdisciplinary offerings—all openly invoking a stylized interpretation of the American experience. A comparable twenty percent quota was established for faculty members possessing a minimum of five years of practical legal experience. In contrast to Japan, the legislation explicitly mandated the inclusion of non-doctrinal courses in legal writing and research, as well as funding for the new indicia of internationalized legal education such as moot courts. Here "learning" from Japan meant more systematically embracing the American experience *in toto*.

B. Learning from the Japanese Example, or Not?

Claims that Korea learned from the Japanese model by more thoroughly embracing the postgraduate American example, however, did not initially yield starkly different outcomes for Korean law schools. As some commentators had predicted early on, almost every critique of the structural mismatch between the reforms and Korean law—and generational mismatches with Korean law professors—that arose in Japan also emerged in Korea after 2007. [97]

Crucially, the Korean legal profession was equally adamant in resisting these changes. Its consistent resistance and formidable public connections led to the same crucial outcome as in Japan: the profession retained control over the bar exam. This control led the Korean legal profession to successfully stymie efforts to reform the system from the outside, even with the more outwardly radical abolishment of the

97. *See* Hoyoon Nam, *U.S.-Style Law School ("Law School") System in Korea: Mistake or Accomplishment?*, 28 FORDHAM INT'L L.J. 879, 906, 908–09 (2005).

undergraduate programs. Furthermore, while many corporate employers were initially sympathetic to the Japanese reforms, in Korea, legal education reform also had less overt support from the corporate sector—a sector that was highly oligopolistic in structure and less interested in devoting resources to any systemic reform of incumbent practices.[98]

As a result, the bar passage rate on the new exam for postgraduate law students quickly came down to forty percent, again far short of the initially imagined announced reform target. The bar's maintenance of this strict passage quota, even one doubled from the previous era, resulted in the total annual number of newly licensed lawyers stabilizing below one thousand five hundred.[99]

Once more, the low overall bar passage rate compelled students and law schools to prioritize bar preparation courses to the near exclusion of most any other offerings, especially those with interdisciplinary, international, or skills-based content. Simultaneously, Korean law firms were initially highly skeptical of the first cohorts of new law school graduates from 2012 and 2013 when the bar passage rate was temporarily high, and a generational discourse emerged complaining of the low quality of recent graduates.[100] Lower-than-anticipated student interest in the new law schools led to the closure of many lower-ranked schools due to financial unsustainability.

As is common in the comparative study of legal education,[101] many subsequent external analyses of the Korean reforms were influenced by a highly stratified distribution of what were considered the "American" pedagogical components meant to accompany these structural reforms. As funding for Korean law schools remains comparatively low,[102] practical training programs have only consistently survived at the highest-ranked law faculties—and even

98. Kim, *Barbarians*, *supra* note 92, at 288 n.80.

99. Tom Ginsburg, *Transforming Legal Education in Japan and Korea*, 22 PA. STATE INT'L L. REV. 433, 437 (2004).

100. Jootaek Lee, *The Crisis and Future of Korean Legal Education: Compared with the American Legal Education System*, 41 S. KOR. UNIV. L. REV. 41, 50 (2017).

101. Jedidiah Kroncke, *Model, System, or Node? Understanding Legal Education Reform in Twentieth-century China and Beyond*, *in* AMERICAN LEGAL EDUCATION ABROAD: CRITICAL HISTORIES, *supra* note 13, at 162.

102. Ahn, *supra* note 90, at 233.

there, they have struggled from low administrative prioritization.[103] Conditions for instructors with practical experience, as opposed to those with elite academic credentials, have likewise been difficult to enhance.[104] Many clinical instructors have openly lamented that their students are unable to overcome competitive pressures to engage in the type of social lawyering for which clinics were originally advocated,[105] and now often rely on external grant funding for their operation.[106] Even services like those provided by law libraries are sidelined by the overarching drive for bar preparation.[107] Again, there is evidence that Korean students are fully capable of engaging with such opportunities when they arise—defying any crude culturalist explanation.[108] Yet, their primary incentives remain to prioritize doctrinal memorization in preparation for the still cutthroat bar exam.

Beyond curricular content, pedagogical methods such as the Socratic and case methods have met a similar fate. While a few new law schools developed programs directly focused on common law training, this has generally been the domain of lower-ranked law schools attempting to find a competitive niche for their students. Some Korean law professors have earned elite degrees from the United States, but this has generally only entailed a single LLM year—in contrast to the full doctoral education still common among those

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103. Troy Fuhriman, *The Future of Legal Education in Korea: Introducing American-style Externships*, 37 CHONNAM NAT'L U. L. REV. 247 (2017).

104. Soogeun Oh, *A Reflection on Practical Training in Legal Education in South Korea*, 3 ASIAN J. LEGAL STUD. 227 (2016).

105. Stephan Sonnenberg, *The Law Clinics at SNU School of Law: A Laboratory for Pedagogical Entrepreneurialism*, 20 J. KOREAN L. 89, 129 (2021).

106. Patricia Goedde, *Globalized Legal Education, Human Rights Lawyering, and Institutional Reform*, 20 CLINICAL L. REV. 355, 365 (2014).

107. Jootaek Lee, *True Values and Justification of Law Libraries: Application of U.S. Law Library Values to Law Libraries in Korea*, 48 INT'L J. LEGAL INFO. 72 (2020).

108. *See, e.g.*, Jo Ellen Lewis, *Developing and Implementing Effective Legal Writing Programs in Korean Law Schools*, 9 J. KOREAN L. 125 (2009).

studying in European civil law countries.[109] The presence of law and economics, the major new methodological movement in modern American legal education, has barely increased in prominence since the reforms were enacted.[110]

While not as startling as in Japan, the expectation that a larger number of graduates would be rapidly absorbed into an unmet market for legal services has not materialized. But enrollment declines have continued in the last ten years. Ironically, as in the United States, this decline has temporarily reversed as a weak general Korean employment market has led many university graduates to apply to law school in the hopes of waiting out the market or simply finding a different career path. Takers of the Legal Education Eligibility Test rose to an all-time high in 2022, resulting in a decrease in the overall admission rate from twenty-eight percent to seventeen percent by 2023.[111] Still, this current reversal has yet to lead to the re-opening of the many law school programs that have since been shuttered.

Beyond this absence of internal transformation, the aspirations that these changes would inherently democratize access to justice have also faced obstacles.[112] As for combating elitism, the loss of economies of scale with other university programs has caused law school tuitions to increased significantly, thereby raising the total social cost of admission to the bar. Moreover, now a total of seven years of formal education is required to complete legal education, and again still coupled with later "cram school" attendance.

Additionally, even if they ultimately graduate from other law schools, the majority of lawyers have undergraduate degrees from the

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109. This claim is based on a survey of the top three "SKY" Korean law faculties (SNU, Korea, and Yonsei). Several younger professors at SNU now have JSD degrees, the relative equivalent of a PhD in law from the US system. The vast majority of the three faculties have foreign training have LLMs or PhD equivalents from Europe and the United Kingdom. JSD degrees are difficult to find in other Korean law faculties.

110. Haksoo Ko & Jeonghyun Kim, *Teaching Law and Economics in Korea*, 2 ASIAN J.L. & ECON. 15 (2011).

111. Kim Che-Yeon, *Weak Job Market Leads Students to Law School Test Centers*, KOREA JOONGANG DAILY, June 2, 2023.

112. Yves Dezalay & Bryant Garth, *South Korea and Japan: Contrasting Attacks through Legal Education Reform on the Traditional Conservative and Insular Bar*, in LAW AS REPRODUCTION AND REVOLUTION: AN INTERCONNECTED HISTORY 154 (2021).

three SKY universities.[113] It has become a trope in the now highly visible Korean media industry to portray law schools as the province of the wealthy and well-connected.[114] This reality has been further compounded by the attitudes of law firms, which have reacted to historically higher bar passage rates by prioritizing the prestige of bar passers' undergraduate degrees over that of the law schools themselves—extending employment offers within the first year of law school enrollment before any grades are available.[115]

C. Imagining Legal Education as a Site of Democratic Social Resistance

Nevertheless, criticism of Korean legal education lacks much of the acerbic bite that characterizes the constant drumbeat of critiques in Japan. On one hand, successful exam takers have been spared the severity of the unemployment issues facing those in Japan. In this respect, "learning from Japan" did have an impact. The complete elimination of the old system has shifted demand for legal services, given that there are far fewer college-educated Korean citizens with any legal knowledge. Moreover, the structural completeness of the Korea reforms means that the new system will soon be naturalized as the system through which most practicing lawyers have now passed.

Similarly, the same passage of time has lessened the perceived need for or belief that further legal education reform, much less a reversal, would have the wide-ranging impact that enthusiasm for reforms was predicated on. Korean firms have followed those in Japan by successfully weathering international economic downturns and engaging in sufficient restructuring to cope with international

113. Che-Yeon, *supra* note 111.

114. K. Koo, *Becoming a Korean Lawyer–The Battle Between the Bar and Law School*, THE THREE WISE MONKEYS (July 15, 2024), thethreewisemonkeys.com/2016/03/06/19851 (last visited Nov. 3, 2024).

115. *See* Dezalay & Garth, *supra* note 112, at 153–54.

competitive pressures.[116] Many feel the changes have made Korean law graduates more open to private sector employment,[117] such as the noticeable, if still comparatively small, increased ranks of in-house counsel. Again, the successful resistance of the Korean legal profession to externally imposed reforms has resulted in a less-than-radical increase in the actual population of Korean lawyers. Additionally, the twists and turns of recent Korean political administration have meant the subject of further reform has completely dropped off any political agendas.

However, there remains a deep and ongoing dissatisfaction among many concerning lawyers' relationship to Korean democracy.[118] Many now view the legal profession as a symbol of the continued insularity of the traditional legal elite—an elite that survived significant structural reform imposed from the outside. Recent analyses suggest that very little has changed concerning the role of lawyers in Korean society, or even the practice of law within most Korean law firms.[119] Once seen as a site of potential democratic resistance, Korean law schools now seem quite limited in their revolutionary potential—if not marked by an inherent conservatism.

More broadly, the results of the Korean reform experience retell the fundamental lessons of the Japanese reforms: simply reforming the structure of legal education cannot reform an established legal system from the inside out. The market for legal services in any country is grounded in a larger political economy of dispute resolution and business practices, which powerfully shape the reality of even theoretically transformed graduates more than they reshape it.

Here again, the same basic question arises: why was the American postgraduate model chosen when other comparative examples were readily available? Reforms didn't simply target undergraduate legal education, increase the quota for the bar exam, or reduce the scope of unauthorized practice of law restrictions enforceable by the bar. No other area of the Korean legal system—though far from static during

116. Jeanne John, *The KORUS FTA on Foreign Law Firms and Attorneys in South Korea—a Contemporary Analysis on Expansion into East Asia*, 33 NW. J. INT'L L. & BUS. 237, 278 (2012).

117. *See* Neil Chisholm, *Legal Diffusion and the Legal Profession*, 26 COLUM. J. ASIAN L. 267, 296 (2013).

118. Patricia Goedde, *From Dissidents to Institution Builders: The Transformation of Public Interest Lawyers in South Korea*, 4 U. PA. E. ASIA L. REV. 63, 83 (2009).

119. Young-Cheol Jeong, *Legal Compliance and Korean Financial Services Market*, 20 WASH. J. INT'L L. 483, 485 (2011).

this era—was reformed to create the type of new employment opportunities where graduates could find sustainable careers.

Even more so than in the Japanese context, the relative closeness of Korea and the United States meant that many Koreans had direct experience with American society and higher education in general, and particularly with American law. The primary issue again appears to be that for the Korean elite driving reform outside of the profession, these experiences were often limited to the least representative elite law schools and their deep self-interest in promoting the most idealized versions of the American postgraduate model.[120] Claims, for example, that the Socratic method is a pro-democratic, non-hierarchical form of instruction that produces egalitarian norms within the American legal system may seem plausible when viewed through the stylized lens of a different system of social hierarchy.[121] Yet such a claim would be undermined by even a cursory familiarity with the largely critical discourse on the Socratic method—and its decline—within the American legal academy.[122]

In turn, those with more critical knowledge of American law faced similarly complex strategic decisions about whether to extol the virtues of reputational capital to which they had relatively exclusive access.[123] In a revealing parallel, many pro-democracy reformers targeted Korean prosecutors as part of an entrenched anti-democratic elite and actively lobbied for reforms based on the US prosecutorial model. These reformers did so with full awareness of the US prosecutorial model's many domestic controversies and problems, but these reformers

120. Matthew Wilson, *U.S. Legal Education Methods and Ideals: Application to the Japanese and Korean Systems*, 18 CARDOZO J. INT'L & COMP. L. 295, 310 (2010). Wilson asserts that "Experts and scholars tasked with designing the new system, many of whom had experienced American law schools first-hand, were impressed by the U.S. legal education system and its outcomes."

121. Kim, *Socrates v. Confucius*, *supra* note 98, at 347.

122. *See* Orin Kerr, *The Decline of the Socratic Methods at Harvard*, 78 NEB. L. REV. 114 (1999).

123. Chisholm, *supra* note 117, at 297.

viewed it as the most effective way to garner support for dismantling a powerfully entrenched domestic system.[124] Notably, this effort was unsuccessful, prosecutors' behaviors were driven by larger institutional forces within Korea's political economy.[125]

It remains challenging to evaluate earnest reformers who recognized the strategic potential in what was seen by many around the world as an attractive reform strategy—using a relatively unique institution in a global power as symbolic leverage for undermining an entrenched elite.[126] However, such strategic opportunism often yields poor results, as it hinders a critical understanding of institutions and practices already aggressively self-styled by foreign legal professions.[127] Consequently, foreign commentators who overstated the transformative potential of American-styled legal education bear some responsibility for promoting a more honest discourse moving forward. More optimistically, some scholars have begun to explore how the formal convergence of Korean and American legal education models can contribute to critical comparative understandings of legal education.[128]

As in Japan, Korean legal educators and concerned lawyers continue to seek to improve Korean legal education, even though transformative arguments are no longer considered.[129] Certainly, Korean lawyers still face genuine issues where legal education reform can play an important role.[130] But addressing deeper issues in Korean lawyering, let alone Korean society at large, will require more drastic changes than legal education reform can achieve.

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124. Neil Chisholm, *Prosecution Reform in South Korea: Mixing the Continental and Anglo-American Styles*, 2021 CARDOZO INT'L. & COMP. L. REV. (forthcoming 2024) (manuscript at 5–6), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3766683 [https://perma.cc/2ATX-ZNJM].

125. *Id*.

126. BRYANT G. GARTH & YVES DEZELAY, LAW AS REPRODUCTION AND REVOLUTION: AN INTERCONNECTED HISTORY (2021).

127. For a more nuanced take on importing American-styled practices, see Yon Mi Kim & Kyung Hyo Chun, *Do You Want an Efficient Negotiator or an Ethical One?*, 11 ASIAN BUS. L. 125 (2013).

128. Richard Wu & JaeWon Kim, *An Empirical Study of Values of Law Students in South Korea: Does 'Americanized' Legal Education Impact Their Confucian Ethics?*, 17 U. PA. ASIAN L. REV. 209 (2022).

129. *See, e.g.*, Lee, *The Crisis and Future of Korean Legal Education*, *supra* note 100 (describing ongoing efforts to improve Korean legal education after the postgraduate reforms have been standardized).

130. Wonji Kerper & Changmin Lee, *Korean Code of Ethics for Attorneys*, 29 WASH. INT'L L.J. 667, 669–70 (2020).

V.POSTGRADUATE LEGAL EDUCATION FOR AUTHORITARIAN DEVELOPMENT IN CHINA

A. (American) Lawyers as Contested Symbols of Chinese Modernity

From the mid-19th century onwards, legal reform in China has remained a constant subject of debate and contestation. China's response to the encroachment of Western countries after the Opium Wars triggered a lasting sense that some form of adaptation was needed to preserve Chinese sovereignty and enhance China's ability to compete economically on the global stage. The specific nature of this reform, both in its inspirations and aspirations, has been contentious from the outset and remains so today. It is no surprise, then, that during the rapid, sometimes revolutionary, changes in China's legal system over the past century, the reform of legal education has stimulated debates over the production of new lawyers, serving as one battleground on which the future of Chinese law has been contested in both concrete and symbolic terms.[131]

While few informed histories continue to assert the false image of traditional China as a society without law or lawyers,[132] it is widely accepted that the piecemeal reforms of the late Qing Dynasty, before its 1911 collapse, gave way to considerations of a wholesale re-engineering of Chinese governance.[133] In this turmoil, the questions of who modern Chinese lawyers would be and what role they would play in Chinese society became central.[134] New visions of lawyering became

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131. XIAOQUN XU, TRIAL OF MODERNITY: JUDICIAL REFORM IN EARLY TWENTIETH-CENTURY CHINA, 1901–1937, at 61–65, 73–74 (Stanford Univ. Press 2008); John Ohnesorge, *Regulation of the Legal Profession in China: A Historical Overview*, 8 CHINA L. & SOC'Y REV. 25 (2023).

132. *See* Chenjun You, *How a "New Legal History" Might Be Possible*, 39 MODERN CHINA 165 (2013); *cf.* TEEMU RUSKOLA, LEGAL ORIENTALISM: CHINA, THE UNITED STATES, AND MODERN LAW 14 (Harvard Univ. Press 2013).

133. STEPHEN MACKINNON, POWER AND POLITICS IN LATE IMPERIAL CHINA: YUAN SHI-KAI IN BEIJING AND TIAHUN, 1901–1908 4 (Univ. of Cal. Press 1980).

134. *See, generally*, XU, TRIAL OF MODERNITY, *supra* note 131.

a competitive terrain on which emerging political factions differentiated themselves until the resolution of the Chinese Civil War.[135]

From 1911 to 1949, Chinese legal reform was predominantly influenced by German and continental European models, similar to those that shaped Korea and Japan.[136] After rising to power in 1949, the Chinese Communist Party established a more Soviet-influenced undergraduate education system. However, law was relegated to a subject with little prestige, intended solely to train government officials, not to enable a private legal profession.[137]

This basic arrangement would be upended following the market liberalization initiatives led by Deng Xiaoping after 1978. The resulting reform process dramatically reshaped China's domestic economy and progressively integrated its economy with global markets. Such transformation compelled the largest modern national investment in legal infrastructure development.[138] While the CCP committed to a primarily civil-Soviet hybrid path of legal reform, it had no clear conception of what role private lawyers would play under this new system. It thus also had no consensus mechanism for producing professional lawyers. This uncertainty fostered a sense of excited possibility, particularly among legal professionals and scholars who had been persecuted during the Maoist era.[139]

The first two decades of legal education reform after 1978 saw the opening of new law departments in nearly every Chinese university. Legal education became a constant iterative process during this time: the number of private lawyers educated by Chinese universities skyrocketed, the formal legal training of Chinese judges slowly began

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135. For an ideological overview of the Chinese Civil War, see LUCIEN BIANCO, ORIGINS OF THE CHINESE REVOLUTION, 1915–1949 (Muriel Bell trans., Stanford Univ. Press 1971) (1967).

136. *See generally* JEDIDIAH J. KRONCKE, THE FUTILITY OF LAW AND DEVELOPMENT: CHINA AND THE DANGERS OF EXPORTING AMERICAN LAW 69 (2016).

137. Harold J. Berman, *Soviet Perspectives on Chinese Law*, *in* CONTEMPORARY CHINESE LAW 318 (Jerome A. Cohen ed., 1970); Han Depei & Stephen Kanter, *Legal Education in China*, 32 AM. J. COMPAR. L. 543 (1984).

138. *See, generally*, RANDALL PEERENBOOM, CHINA'S LONG MARCH TOWARDS RULE OF LAW 291 (Cambridge Univ. Press 2002).

139. ESSAYS IN HONOUR OF WANG TIEYA (Ronald St. John Macdonald ed., 1994).

to standardize, and the leadership of the CCP increasingly became staffed by those with both domestic and foreign legal training.[140] Over time, Chinese judges, government officials, and eventually private lawyers began circulating internationally. For many of the same reasons as in Japan and Korea, American legal education began to be cited both inside and outside China as an ideal model for promoting economic and political development.[141]

Increasingly formalized through a series of mid-1990s legislative enactment, hundreds of law departments were established across China. These departments followed a model of legal education heavily influenced by China's hybridized civil and Soviet legal traditions, sharing many characteristics with other East Asian systems. Legal education was originally centered on a five-year undergraduate degree, with most graduates expecting employment as public servants rather than lawyers. In line with civil law influences, future professors received their predominantly academic training in doctoral programs—or, if studying abroad, largely in European setting. Instruction was lecture-based and doctrinally oriented.

Law school enrollment expanded in the initial decades after 1978.[142] The number of legal practitioners quickly rose to nearly three-quarters of a million as they found employment in the rapidly expanding public and private sectors. One key difference from other East Asian settings was that nascent private bar associations had little influence over the lawyer certification process, which remained fully under the discretion of the CCP. The closest analog to a national bar association is the All China Lawyers Association, which is overseen by the Ministry of Justice and local judiciaries. Legal education and practice were further separated by the fact that a law degree was not required to sit for the Chinese bar exam. Additionally, there were

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140. Cheng Li, *The Rise of the Legal Profession in the Chinese Leadership*, 42 CHINA LEADERSHIP MONITOR 1, 3 (2013).

141. Matthew Stephenson, *A Trojan Horse Behind Chinese Walls?: Problems and Prospects of US-Sponsored "Rule of Law" Reform Projects in the People's Republic of China*, 18 UCLA PAC. BASIN L.J. 64, 70–71 (2000).

142. STANLEY LUBMAN, BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO 383–84 (Stanford Univ. Press 2000).

initially different exams for the various public and private legal careers that emerged during this period of rapid economic growth.

It was not until 2002 that a universal exam for legal practice was established that required an undergraduate degree to sit for—though not necessarily a law degree. As with other East Asian systems, the exam had an low passage rate, which incentivized a parallel system of "cram schools" as nearly essential for exam preparation. The initial public orientation of the education system was clear, with the 2002 unified licensing exam even titled the "National Judicial Exam." Another major reform took place in 2018, introducing the more neutral label "Unified National Qualification Examination for the Legal Profession." The most significant reform enacted that year mandated a law degree, with some exceptions, for all future lawyers. Although various training programs were developed for public lawyers during this period, post-bar practical training for private practice was never institutionalized. As the system evolved, one year of experience under a practicing attorney became required, though the content of this training still varies significantly.

The initial decades of the post-1978 reform era produced diverse views on what these changes in legal education meant for Chinese society writ large. In contrast to the economic malaise that afflicted Japan and Korea in the 1990s, Chinese economic confidence remained incredibly high until the COVID-19 pandemic. Any reforms to legal education and lawyering were directly tied to sustaining or furthering this economic success. By contrast, throughout this same period, potential political changes remained highly disputed, especially abroad.[143] Some viewed these developments as harbingers of a more liberal Chinese future in which lawyers would take on a central role—even inspiring political democratization[144]—while others emphasized the Party's success in embedding lawyers within the orbit of state power.[145]

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143. Compare Jerome Cohen, *Was Helping China Build Its Post-1978 A Mistake?*, 61 VA. J. INT'L L. ONLINE 1 (2020), *with* Jedidiah Kroncke, *Moving Beyond the Future Now Past of US-China Legal Studies: Re-Opening the American Legal Mind?*, 61 VA. J. INT'L L. ONLINE 1 (2020).

144. *See, e.g.*, SIDA LIU & TERENCE HALLIDAY, CRIMINAL DEFENSE IN CHINA: THE POLITICS OF LAWYERS AT WORK (2016).

145. *See, e.g.*, Ethan Michelson, *Lawyers, Political Embeddedness, and Institutional Continuity in China's Transition from Socialism*, 113 AM. J. SOC. 352 (2007).

B. Experimentalist Reform: The Contingent Explosion of the Juris Master Degree

Although China's legal education system shared many structural and pedagogical similarities with those in Korea and Japan, its social context was starkly different. Without the involvement of independent legal professions, any impetus for legal education reform had to be state-led and implemented, even as private legal practice enjoyed a rapid rise in social status during the 1990s.

As confident as the CCP had grown since 1978, China's rapid economic growth and sustained pace of institutional reforms remained intimately intertwined with the global economic system. The CCP traditionally had been deeply critical of American law.[146] However, the reform era witnessed both the collapse of the Soviet Union and the rise of an international system suffused with discourses that posited a range of development logics predicated on the transplantation of foreign, largely American, legal institutions.[147] Driven by the need to interface with the international legal system—and its largest trading partner, the United States—the CCP pursued a pattern of strategic experimentation and emulation of American legal practices, especially in areas related to market governance.[148] In concert, after 1978, no other country captured the attention of the American legal profession as a potential site for promoting the energizing effects emulation of its system of legal education could provide.[149]

As a result, the CCP initially allowed a wide range of experiments in legal education that were not necessarily permitted in other sectors. Foreign agencies and foundations were allowed to promote piecemeal

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146. YU-MING SHAW, AN AMERICAN MISSIONARY IN CHINA 34 (1992).

147. Matthew Stephenson, *A Trojan Horse in China?*, *in* PROMOTING THE RULE OF LAW ABROAD (Thomas Carothers ed., 2006).

148. Shiping Hua, *The U.S. Impact on China's Legal System during the Reform Era*, 5 INT'L J. CHINA STUD. 681, 688, 692, 696 (2014).

149. Xiangshun Ding, *From Reception to Collaboration*, 1 CHINA LEGAL SCI. 52 (2013); *see, e.g.*, Ruth Ginsburg, *ABA Delegation Visits the PRC*, 64 A.B.A. J. 1516 (1978).

aspects of American legal education within Chinese law schools,[150] and Chinese students and academics began to develop firsthand experience with US law schools.[151] Academic conferences at certain Chinese law schools became relatively open and welcoming spaces for American legal ideas,[152] and opportunities were established by Chinese and American law schools alike for American law professors and students to engage with their Chinese counterparts.[153] Perhaps the most visible example of this participation was the promotion of various American-inspired legal clinics at Chinese law schools by the Ford Foundation and USAID.[154] This space for experimentation—coupled with an intentional strategy to allow for circumscribed bubbles of freer discourse involving foreigners—raised hopes for some in both the United States and China that legal education would become a fulcrum for liberalization.[155]

Compared to Japan and Korea, the American postgraduate model initially held primarily symbolic importance in Chinese debates—more often evoked for its associated image of lawyering than as the basis for any concrete reform agenda.[156] An emphasis on internationalization led some Chinese law schools to become important sites for growing comparative legal expertise, and investments were made in a wide range of programs to ostensibly internationalize the Chinese legal

150. Cecily Baskir, *Legal Education in China*, 2 ASIAN J. LEGAL EDUC. 143 (2015); Ron Lev et al., *Strategic Philanthropy and International Strategies*, *in* THE GLOBALIZATION OF LEGAL EDUCATION: A CRITICAL PERSPECTIVE, *supra* note 13, at 79.

151. Jun Zhao & Ming Hu, *A Comparative Study of the Legal Education System in the United States and China and the Reform of Legal Education in China*, 35 SUFFOLK TRANSNAT'L L. REV. 329 (2012).

152. *See, e.g.*, Henry King, *Mission to China of the Section of International Law of the American Bar Association*, 11 CASE W. INT'L L.J. 237 (1979); Ruth Bader Ginsburg, *ABA Delegation visits the PRC*, 64 A.B.A. J. 151 (1978).

153. Robin Nilon, *A Better Way to Fail: Teaching Critical Thinking to Chinese Lawyers*, 33 J. JURIS 195 (2017).

154. Baskir, *supra* note 150.

155. *Compare* Cai Yanmin & Jay Pottenger, *The "Chinese Characteristics" of Clinical Legal Education*, 6 INT'L J. CLINICAL LEGAL EDUC. 65, 102 (2004), *with* Carl Minzner, *The Rise and Fall of Chinese Legal Education*, 36 FORDHAM INT'L L.J. 334 (2013).

156. Matthew Erie, *Legal Education Reform in China Through U.S.-Inspired Transplants*, 59 J. LEGAL EDUC. 60 (2009).

profession.[157] The state-driven nature of legal reform allowed for strategic investments in adapting American pedagogical methods to state-perceived needs, including the use of the case method and Socratic instruction, most effectively to rapidly improve Chinese performance at the WTO.[158] The primary educational avenue for China's internationalized legal elite, however, remained, largely outsourced to foreign law schools—both in the United States and Europe, and numerically more concentrated in regional hubs such as Japan and Hong Kong.

The high point of Chinese openness to the American example came, not coincidentally, at the relative peak of American legal prestige in the mid-1990s, which also inspired the Japanese and Korean reform efforts. The idea that more "modern" forms of lawyering would eventually become necessary to sustain Chinese economic development was openly advanced. While never as pronounced as in Korea and Japan, even the political effects of emulating American lawyering were promoted by some within China, and certainly with enthusiasm outside of it. Despite often asserted cultural and ideological barriers, the CCP even permitted a major legal educational reform, openly inspired in part by the American example: the new postgraduate Juris Master (JM) degree.[159] And although its context may have initially appeared different, the fate of the JM degree would ultimately reflect many of the same lessons as the Japanese and Korean postgraduate reform experience.

Following a report concluded by the State Council Committee in 1995, eight postgraduate JM programs were established in 1996. In contrast to new programs in either of its East Asian neighbors, the JM was not meant to radically reshape the entire process of legal education.

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157. Wenhua Shan, *Legal Education in China: The New 'Outstanding Legal Personnel Education Scheme' and Its Implications*, 13 LEGAL INFO. MGMT. 10 (2013); Wang Zhizhou et al., *Internationalizing Chinese Legal Education in the Early Twenty-First Century*, 66 J. LEGAL EDUC. 237 (2017).

158. Gregory Shaffer & Henry Gao, *China's Rise: How It Took on the U.S. at the WTO*, 2018 U. ILL. L. REV. 115, 134–37 (2018).

159. *See* Hou Xiandan, *Legal Education and the Transformation of the Legal Profession*, *in* CHINA'S JOURNEY TOWARD THE RULE OF LAW 251, 252, 261 (Cai Dingjian & Wang Chenguang eds., 2010).

Structurally, JM programs was placed alongside the existing undergraduate model, rather than serve as a wholesale replacement. It was intended to provide another pathway that could draw non-law degree holders into a curriculum more concerned with producing practicing lawyers, rather than the largely academic orientation of undergraduate instruction. Over the first ten years, the number of law schools allowed to have JM programs steadily increased to over a hundred by enrolled over 2009, and student enrollment increased to forty-thousand students.

While the political context of the JM reform was quite different, its initial prospects demonstrated the same sensitivity to the shifting demands of the Chinese market for legal services as those of the new Korean and Japanese law schools. The first JM cohorts faced various forms of discriminations in the job market, where they were commonly perceived as inferior to undergraduate exam passers.[160] More significantly, by the late 2000s, Chinese lawyers increasingly faced a tight and stagnating private job market. Private lawyering became an precarious and often subcontracted form of employment. From 2007 onward, an established third-party analysis of employment prospects, the China Graduate Employment Report, gave law a "red card" rating. This designation indicated a declining career field. In time, only a small percentage of high-performing Chinese law graduates would enter stable private practice. Many graduates now prefer the security of public employment, even as public sector jobs, especially becoming judges, have become less attractive.[161]

The impact of the market for legal services on Chinese legal education has had much the same general effect of dulling more optimistic expectations for change driven by the JM reform. While not part of a powerful private alliance of resistance, Chinese law professors have continued to follow the civil-law influenced focus on legal formalism in their careers as academics,[162] and many remain overtly

160. Alison W. Conner, *China's Lawyers and their Training*, *in* LEGAL REFORMS IN CHINA AND VIETNAM 278, 283 (John Gillespie & Albert Chen eds., 2010).

161. *See generally* KWAI HANG NG & XIN HE, EMBEDDED COURTS 68, 83 (Cambridge Univ. Press, 2017).

162. Samuli Seppänen, *Anti-formalism and the Preordained Birth of Chinese Jurisprudence*, CHINA PERSPECTIVES, 31, 36–37 (2018).

hostile to the idea of emulating American models.[163] Thus, there has been little internal enthusiasm for major curricular reforms, let alone for reforms with the comparatively high costs of practical clinical training.[164] Similarly, high unemployment and a still relatively low bar passage rate have contributed to a lack of positive inertia around interdisciplinary or internationally-oriented curricular offerings. Again, exceptions exist at the most elite and well-funded schools, but even here there is nothing close to wide-spread adoption.[165] Although the 2012 Outstanding Legal Personnel Education Scheme was intended to increase practitioner participation in existing curricula, practitioners still face many of the same unattractive tradeoffs-, given the lack of salary or status attached to law teaching. Moreover, Chinese law firms have not pushed for deeper reforms, instead following other East Asian cohorts by adapting to international conditions through internal firm reorganization, in-house training, and strategic engagement with foreign partners.[166]

At first blush, such developments may appear to have boded poorly for the future of the JM degree. From the outset, JM programs were criticized for merely replicating the general pedagogical contours of undergraduate legal education without much internal innovation, prompting repeated efforts to develop resources that focused JM instruction on more practical training.[167] Between 2007 and 2017, the Ministry of Education revamped the formal guidelines for JM educational strategy three times.

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163. SAMULI SEPPÄNEN, IDEOLOGICAL CONFLICT AND THE RULE OF LAW IN CONTEMPORARY CHINA (2016).

164. Baskir, *supra* note 150, at 148.

165. Yilin Wang, *The Dissociation of Chinese International Law Scholars from TWAIL*, 3 TWAIL REV. 1, 18 (2022).

166. *See generally* Xu Ke, *The Rise of Business Lawyers in China*, 4 CHINA LEGAL SCI. 98 (2016).

167. Xin Yuan, *The New Juris Master Degree: China's Tightrope between Theory-Oriented and Practice-Oriented Legal Education*, 29 INT'L J. LEG. PROF. 209, 209 (2022).

Yet, in the last half-decade, JM programs have rapidly expanded in scope and profitability for universities.[168] Despite the broader challenges in the legal market and the absence of any particular curricular change, the 2018 requirement mandating a law degree to sit for the licensing exam has transformed the value of a JM degree. But this shift occurred exactly because the JM appeared to many students as the cheapest and easiest pathway to a qualifying credential. In turn, the newfound popularity of the JM has led many to draw even more pessimistic conclusions,[169] with concerns that the quality of JM instruction has declined to accommodate more students at the lowest per capita cost.[170] Clinical offerings remain very limited, [171] and, as in Korea and Japan, a lack of interdisciplinary or international content on the licensing exam means such courses are now more likely to be found in undergraduate rather than JM programs.[172] Thus, while the JM may hold an newly entrenched place in Chinese legal education, it has done so by moving further from whatever formal inspiration it originally drew from the American postgraduate model,[173] and far from any vision of social transformative impact.

Perhaps the most remarkable example of the JM degree's rise was the 2007 founding of the School of Transnational Law (STL) in Shenzhen, established under the administrative aegis of Beijing University but drive by direct American entrepreneurial energy.[174] The founding of the school represented perhaps a high point in post-1978 optimism about the future impact of American legal education in China, if not legal globalization as a whole. Remarkably, the school

168. Xiangshun Ding, *The Status Quo and Institutional Challenges Faced by China's Clinical Legal Education*, 20 J. KOREAN L. 131, 135 (2021).

169. Xu Bingxuan & Zhuang Zhiguo, *Problems and Suggestions for Improvement on Juris Master*, 7 US-CHINA EDUC. REV. 200 (2017).

170. Weidong Ji, *Legal Education in China: Reforms and Requirements*, 3 ASIAN J.L. & SOC'Y 237, 242 (2016).

171. Xiangshun, *The Status Quo and Institutional Challenges*, *supra* note 168, at 143–44.

172. Ji, *supra* note 170, at 243, 245.

173. Zhang Fan & Lu Yi, *The Revival of Pragmatism of Legal Undergraduate Education in Chinese Professional Universities*, SSRN (Feb. 20, 2017), https://ssrn.com/abstract=2920358 [https://perma.cc/54WS-ZCVL].

174. Philip McConnaughay & Colleen Toomey, *China and the Globalization of Legal Education: A Look into the Future*, *in* THE GLOBALIZATION OF LEGAL EDUCATION: A CRITICAL PERSPECTIVE, *supra* note 13, at 308–09 (Bryant Garth & Gregory Shaffer eds., 2022).

was initially staffed by American lawyers teaching solely American law, as it was founded with the explicit goal of enabling graduates to sit for the American bar. However, the ABA denied accreditation to STL in 2012.[175] Yet, rather than dooming the enterprise, this denial spurred the faculty and administration at STL to successfully rework their curriculum, largely by indigenizing half its content and faculty to provide a four year joint-JD/JM program.[176] While no longer the excited site of Americanizing influence that buoyed its early years, the rise of the JM degree made possible a STL's unique re-invention that could survive in China's highly competitive market for young lawyers.

C. Legal Education as Downstream of Growing Authoritarianism

While Japan and Korea have faced their own recent challenges with democratic accountability and transparency, these issues are difficult to compare to the massive growth in authoritarian repression initiated by the CCP in the late 2010s. Any hopes that the general bend of Chinese reform was one of greater political liberalization, much less democratization, have been roundly rebutted.[177] One casualty of this crackdown has been the near-universal suppression of human rights lawyers and any overseas program associated with their operation, including law school clinics. This rapid shift has made only clearer that new generations of Chinese lawyers will be thoroughly state-dominated.[178]

Even in this different terrain, the concurrent success of the JM degree points to the same fundamental lessons as the Korean and Japanese experiences. The political economy of Chinese law outside of law schools plays a far more significant role in shaping the reality for Chinese lawyers than what happens inside legal education. At the same time, the CCP retains a comparatively free hand to reshape all elements

175. Stephan Yandle, *An Old Model Adapted for a New Era*, 3 CHINA-EU L.J. 65, 76 (2014).

176. *Id.*; McConnaughay & Toomey, *supra* note 174.

177. CARL MINZNER, THE END OF AN ERA: HOW CHINA'S AUTHORITARIAN REVIVAL IS UNDERMINING ITS RISE 20–21, 24, 26, 28 (Oxford Univ. Press 2018).

178. Ethan Michelson, *Lawyers, Political Embeddedness and Institutional Continuity*, 113 AMER. J. SOCIO. 352 (2007).

of this political economy, while in Japan and Korea, reformers faced relatively independent and empowered legal professions. However, the extent to which some of the discourse around the JM embraced the confident developmental logic of the 1990s is perhaps more confusing. As experimental as the CCP attitude towards legal education ever was, it never seriously considered the possibility that any aspects of the American model of legal education could have meaningful democratizing effects. By contrast, there was clear preoccupation with the potential economic impacts of American-style lawyering—if not observable clarity about American law firms' predominant focus on profitability[179]—and more durable confidence that more targeted and delimited programs could sufficiently serve the market for internationalized legal practice.[180]

While operating in a much more restrictive context, it is again telling to consider how and why this developmental discourse on the potential impact of the American postgraduate model found any resonance in China—especially given that it was grounded in terms unlikely to appeal to an authoritarian regime. Perhaps the self-selecting biases of English language ability and American legal training among some Chinese actors led outsiders to underestimate the degree of hostility toward American legal ideas within Chinese legal academia.[181]

By the 1990s, many lawyers, both within and outside the CCP regime, had direct experience with American legal education, and in much greater numbers and variety than their counterparts from Japan or Korea. Similarly, those empowered to impact national-level reforms were most often exposed to the least representative American law schools,[182] and with less time to critically interrogate the place of American law schools within the larger institutional structures of

179. Eva Pils, *The Transnational Legal Profession's Interaction with China and the Threat to Lawyers' Autonomy and Professional Integrity*, 58 FORDHAM INT'L L.J. 1263, 1266–68, 1276–80 (2018).

180. Wang, *Internationalizing Chinese Legal*, *supra* note 157, at 246, 259.

181. SEPPÄNEN, IDEOLOGICAL CONFLICT, *supra* note 163, at 124.

182. "Although the designers of the new legal education system claimed they modeled or took as reference the American-style legal education, the characteristics actually implemented are quite different from American law schools." Xiangshun, *From Reception to Collaboration*, *supra* note 149, at 67.

American society.[183] As in Korean and Japan, this suggests that many of the same strategic symbolic concerns were at play, making invocation of the American model appear as the best tool at hand to promote their individual reform agendas.

As a result, excited extrapolations of what Chinese legal education was, or was becoming, from these smaller pockets of state-sanctioned experiments became popular among some foreign observers who were equally prone to exaggerate certain stylized aspects of American legal education.[184] This reinforces the foundational conclusion that critical and open engagement with foreign legal systems is not only functionally necessary, but a responsibility, most directly borne by actors from asymmetrically powerful countries who face far less consequential fallout from their optimistic flourishes. Ultimately, the JM experiment makes clear that whatever some in the CCP believed about American lawyering and economic growth, it was accompanied by an equally firm belief that it would not lead to liberalizing political change; otherwise, the experiment would never have been allowed to proceed in the first place.

Even under the repressive conditions in which Chinese legal education currently operates, debates persist among dedicated academics and lawyers in China about how to further improve legal education for future generations. It remains true that Chinese law schools are relatively insulated from the larger legal profession,[185] and that the finances of undergraduate law programs are relatively insulated

183. Zhao & Hu, *supra* note 151.

184. "Transnational law subjects have become an integral part of U.S. law school curricula." Michael Simons & Margaret McGuinness, *American Legal Education, Skills Training, and Transnational Legal Practice*, 8 TSINGHUA CHINA L. REV. 125 (2015). *See also* Peter Joy et al., *Building Clinical Legal Education Programs in A Country Without a Tradition of Graduate Professional Legal Education*, 13 CLINICAL L. REV. 417 (2006).

185. *See* Rachel Stern & Lawrence Liu, *The Good Lawyer: State-Led Professional Socialization in Contemporary China*, 45 LAW & SOC. INQUIRY 226–248 (2020).

from the dynamics.[186] of the employment marketIt now seems that many who engage with Chinese law schools from the outside world have tempered their expectations,[187] though current geopolitical conditions make future engagements ever more unlikely. Nevertheless, as the JM example demonstrates, Chinese legal developments can still critically inform comparative debates on legal education. The end of the transformative era of legal education now offers a clearer vantage post for comparative analysis of developments in China, even if those analyses lead to more modest or even unsettling conclusions.

VI. CONCLUSION

Wholesale reform of systems of legal education is rare, often requiring either major political transformations or the constellation of powerful social coalitions. The reforms pursued in Japan, Korea, and China in the 1990s are thus relatively unique in their scope of reform. Collectively, their experiences are also relevant context for evaluating the larger social impacts of often dramatic promises that underpinned the late 20th century's era of transformative legal education.

It was an era informed by a developmental ethos that was confident about the power of legal reform to wholly reshape social reality, especially those reforms patterned on American legal institutions and practices. In this era, lawyers and non-lawyers alike actively contemplated legal education reform as a means to achieve transformative economic and political outcomes. Yet, all three experiences appear consonant with critical histories of most legal professions, where reforms were driven—and their ultimate outcomes dictated—more by the broader political economy of lawyering than battles over the specific content of legal education itself.

In a regional frame, other East Asian jurisdictions have also reformed their systems of legal education in recent decades. In doing

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186. *See* Zhou Ling & Michael Palmer, *Changing Legal Education in China*, *in* KEY DIRECTIONS IN LEGAL EDUCATION ch. 2 (Emma Jones & Fiona Cownie eds., 2020).

187. *See, e.g.*, Shahla Ali et al., *Innovations and Pitfalls in Chinese ADR Pedagogy*, *in* EDUCATING NEGOTIATORS FOR A CONNECTED WORLD 145 (Christopher Honeyman et al. eds., 2013); Evan Hamman, *Establishing an Environmental Law Clinic in China*, 25 INT'L J. CLINICAL LEGAL EDUC. 122 (2018).

so, they confronted varied colonial inheritances and influences from common law, civil law, and other systems, including their own indigenous traditions. Taiwan, despite its deep political connections to the United States, pursued less radical reform of its similarly German-influenced law schools as it grappled with the impacts of legal globalization.[188] Singapore has embraced its common-law legal legacy while embarking on its own, often highly successful, path of legal education and development.[189]

For most jurisdictions, the common outcome of legal education reforms overtly linked to the American experience was the founding of individual law schools serving market niches, particularly related to elite international corporate legal practice.[190] Today, these schools stand out as episodic nodes in the global legal market rather than as catalysts for broader changes in their domestic systems of legal education.[191]

What is perhaps most telling is that recent decades have seen a relative explosion of postgraduate law programs in jurisdictions across the world—often explicitly called "JD" programs after the US example. Taking root even in established common-law jurisdictions like Australia, Canada, and Hong Kong, these new programs were inaugurated without any of the rhetoric of transformative legal education.[192] Instead, they were promoted meeting the demands of

188. *See* Thomas Chih-hsiung Chen, *Legal Education Reform in Taiwan: Are Japan and Korea the Models?*, 62 J. LEGAL EDUC. 32 (2012).

189. *See* Chesterman, *supra* note 9.

190. José Garcez Ghirardi, *Legal Teaching and the Reconceptualizing of the State*, *in* AMERICAN LEGAL EDUCATION ABROAD: CRITICAL HISTORIES, *supra* note 13, at 310.

191. Yves Dezalay & Bryant Garth, *Battles around Legal Education Reform: From Entrenched Local Legal Oligarchies to Oligopolistic Universals*, 3 U.C. IRVINE J. INT'L TRANSNAT'L & COMPAR. L. 143 (2018); *see, e.g.*, Chih-Chieh Lin et al., *Legal Education in Taiwan: Evolution and Innovation*, 3 ASIAN J.L. & SOC'Y 247 (2016).

192. Vesna Jaksic, *Canadian Law Schools Begin Switching to JDs: Changing from LL.B. in a Bid to Become More Globally Marketable*, LAW.COM (Mar. 31, 2008), https://www.law.com/almID/900005561115/ https://perma.cc/3CKE-XUY3**]**; Donna Cooper et

local legal markets and, if less openly, advancing the financial interests of universities. This phenomenon most closely resembles the introduction and recent flourishing of the JM program in China, which ultimately lost any novel pedagogical qualities even as it effectively carved out a niche in China's larger system of lawyer credentialing.

Many recent retrospectives on the outcomes of other American-inspired reforms during the transformative era have become quite critical, in some ways reflecting the same concerns with local mismatches evident in the Korean and Japanese experiences.[193] Nevertheless, debate about legal education reform remains nearly universal today. This makes constructive comparative dialogue all the more important—even if no easy global exemplar exists.

More provocatively, the broader lessons derived from these modern East Asian experiences, in fact, map quite closely onto the actual history of postgraduate education in the United States. This American history has remained absent from many debates about international legal education reform—often even more obscured abroad than at home. While still a contentious topic, it is not coincidental that the American legal profession's retellings about the origins of postgraduate legal education in the United States also focuses on pedagogical elements and the internal operation of law schools as the driving forces of its adoption.[194] These narratives are equally suffused with ambitious claims about the larger social meaning of its adoption for American democracy and capitalism[195]—well before the

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al., *The Emergence of the JD in the Australian Legal Education Marketplace and Its Impact on Academic Standards*, 21 LEGAL EDUC. REV. 23 (2011).

193. Jean-Louis Halperin, *Legal Education in France Turns to the Harvard Model*, *in* AMERICAN LEGAL EDUCATION ABROAD: CRITICAL HISTORIES, *supra* note 13, at 243; Susan Bartie, *"Look Over There"–US Distractions in Australian Legal Education*, *in* AMERICAN LEGAL EDUCATION ABROAD: CRITICAL HISTORIES, *supra* note 13, at 92; Emily Salcedo, *Socratic Method Philippine Style*, *in* AMERICAN LEGAL EDUCATION ABROAD: CRITICAL HISTORIES, *supra* note 13, at 327.

194. Alfred Konefsky & John Schlegel, *Mirror, Mirror on the Wall: Histories of American Law Schools*, 95 HARV. L. REV. 833, 836–37 (1982); *see also* Anthony Chase, *American Legal Education Since 1885*, 30 N.Y.L. SCH. L. REV. 519, 540 (1985).

195. Anders Walker, *Bramble Bush Revisited*, 64 J. LEGAL EDUC. 145 (2014); Robert Gordon, *Critical Legal Histories*, 36 STAN. L. REV. 57 (1984).

often American-dominated global developmental ethos of the late 20th century.[196]

However, many critical histories have already revealed how American legal education reform neither created a new type of lawyer for a nonexistent new legal system nor reshaped labor markets largely generated by regulatory choices outside of law schools.[197] As such, the adoption of postgraduate legal education in the United States was, instead, a process of contest and resistance that spanned more than half a century.[198] Even without an institutionalized system to overturn,[199] this standardization of postgraduate law schools ultimately required state sanction to effectively impose[200] on often resistant local professions. Moreover, elements portrayed as defining features of the American experience—such as clinical training[201] or internationalized curricula[202]—are historically novel and subjects of ongoing controversy. The US system today faces recurrent criticism on grounds quite consonant with pragmatic concerns about lawyer employment and doubts concerning the legal profession's democratic

196. Robert Gordon, *The Independence of Lawyers*, 68 B.U. L. Rev. 1, 14, 43 (1988); *see, e.g.*, TERENCE HALLIDAY & LUCIEN KARPIK, LAWYERS AND THE RISE OF WESTERN POLITICAL LIBERALISM (Clarendon Press 1998).

197. *See, e.g.*, DANIEL COQUILLETTE & BRUCE KIMBALL, ON THE BATTLEFIELD OF MERIT (Harvard Univ. Press 2015).

198. RICHARD ABEL, AMERICAN LAWYERS 42 (Oxford Univ. Press 1991).

199. *See* Bruce Kimball, *Warn Students That I Entertain Heretical Opinions, Which They Are Not to Take as Law*, 17 LAW & HIST. REV. 57 (1999); Joseph Beale, *Langdell, Gray, Thayer and Ames*, 8 N.Y.U. L.Q. REV. 385, 386 (1930).

200. BRUCE KIMBALL, THE INCEPTION OF MODERN PROFESSIONAL LEGAL EDUCATION 205 (Univ. of North Carolina Press 2009).

201. Jason Yackee, *Does Experiential Learning Improve JD Employment Outcomes?*, WIS. L. REV. 601, 608 (2015); Frank K. Upham, *The Internationalization of Legal Education*, 62 AM. J. COMPAR. L. 97, 111 (2014); Rachel Ann Dunn, *The Taxonomy of Clinics: The Realities and Risks of All Forms of Clinical Legal Education*, 3 ASIAN J. LEGAL EDUC. 174, 174 (2016).

202. David Law, *Judicial Comparativism and Judicial Diplomacy*, 163 U. PA. L. REV. 927 (2015).

contribution.[203] Yet even now, the crises American law schools face inspire too many assertions that pedagogical revision can help fix social problems whose root causes lie far beyond the scope of change within law schools.

Moreover, consider how the regulation of the legal profession in the United Kingdom was recently reshaped. This reform was likewise imposed on a highly independent common-law legal profession by non-lawyers. Yet, it was not imposed based on faith in UK lawyers' significant economic and democratic contributions but by popular cynicism regarding their social contribution.[204] Such skepticism about the virtues of legal professionalism has been part of a pervasive global decline in lawyer independence in recent decades,[205] often leading to muddied social outcomes.[206]

Uncovering this history renders the experiences of Japan, Korea, and China as even less exotic as experiments with a foreign legal transplant. Instead, their outcomes are part of a shared global history. In this history, legal education reform consistently navigates a difficult thicket of professional representations, charged social politics, and the political economy of lawyering beyond law schools. Ultimately, these commonalities reveal the limitations of approaches that focus solely on criticizing or deconstructing American legal influences abroad, as they miss the core commonalities that emerge. At the same time, they serve as major elements of a growing body of comparative experiences with legal education that any domestic assertions about the potential outcomes of legal education reform must confront.

Even shorn of overly optimistic visions of globalization, the international and domestic challenges of orienting legal professions to best serve the needs of individual countries remain a pressing

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203. *See, e.g.*, BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS (Univ. of Chicago Press 2012); Sam Moyn, *Law Schools Are Bad for Democracy*, CHRON. HIGHER EDUC. 1, 3 (2018).

204. Andrew Boon, *Professionalism Under the Legal Services Act 2007*, 17 INT'L J. OF THE LEGAL PROF. 195, 195 (2010); Gemma Davies & Margaret Woo, *Navigating Troubled Seas: The Future of the Law School in the United Kingdom and the United States*, 5 J. INT'L & COMPAR. L. 43, 45 (2018).

205. Leslie C. Levin & Lynn Mather, *Beyond the Guild: Lawyer Organizations and Law Making*, 18 WASH. U. GLOBAL STUD. L. REV. 589 (2019).

206. Nuno Garoupa & Milan Markovic, *Deregulation and the Lawyers' Cartel*, 43 U. PA. J. INT'L L. 935, 936 (2022).

concern.[207] There seems to be little doubt that debates over global reform of legal professions will continue—albeit more circumscribed about their larger implications.[208] Yet, the extent to which legal professions contribute to actual reforms, rather than having those reforms imposed upon them, will heavily depend on their ability to reflect critically on their histories or practices, rather than reverting to self-aggrandizing idealization.

Such critical self-reflection is ever more pressing as the world now faces a near-global shift from democratic certainty, and in a globalized world. The continued persistence of authoritarian politics inform a near universal conundrum regardless of the formal political commitments of particular nations. In turn, many traditional assumptions about the relationship between models of lawyering and democracy have come under intense scrutiny.[209] In one of the most incisive, yet least cited, studies on Japanese legal education reform, Riles and Uchida note that such reforms implicated the democratic distribution of legal knowledge across the entire populace. However, such concerns were often entirely marginalized amidst technical curricular debates and sweeping developmental claims.[210] The legacies and continued persistence of authoritarian politics inform a near universal conundrum, regardless of the formal political commitments of particular nations.[211] Legal academics and lawyers can provide critical insights to avoid the often-unsubtle views of reforms imposed

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207. Laurel Terry, *Trends and Challenges in Lawyer Regulation*, 80 FORDHAM L. REV. 2661 (2012).

208. Trevor Farrow, *Ethical Lawyering in a Global Community*, 36 MANITOBA L.J. 141, 144 (2013).

209. *See* Jedediah Britton-Purdy et al., *Building a Law-and-Political-Economy Framework: Beyond the Twentieth Century Synthesis*, 129 YALE L.J. 1784 (2020); Angela Harris & Jay Varellas, *Law and Political Economy in a Time of Accelerating Crisis*, 1. U.C. DAVIS J.L. & POL. ECON. 1 (2020).

210. Annelise Riles & Takashi Uchida, *Reforming Knowledge—A Socio-Legal Critique of the Legal Education Reforms in Japan*, 1 DREXEL L. REV. 3, 5 (2009).

211. Han Zhu, *Law-Oriented Lawyering vs. Political Lawyering: A Comparative Study of China, Taiwan and South Korea*, 48 HONG KONG L.J. 1 (2018).

from outside the profession, but this requires setting aside self-soothing platitudes.

In this context, the search for external exemplars or deified pasts is best set aside for cosmopolitan humility and introspection—even for those with the most pragmatically nationalistic interests. Consider the esteemed American law professor Walter Gellhorn. Gellhorn visited Japan in the late 1950s to present a series of lectures at the University of Tokyo. He was a committed civil rights activist and scholar, and had been involved in the American project to rewrite Japan's Constitution after World War II. There could hardly be anyone who believed more in the ideals of democratic lawyering and the public virtues of the American profession. However, in his writings on Japan, Gellhorn openly acknowledged that American legal education was failing to produce the "critical minds" needed to defend its ideals.[212] After China's opening in 1978, Gellhorn also wrote of the new Chinese legal system. Again, he married critique of Chinese law with open reference to the limits of the American constitutional rights he himself had fought so hard for throughout his life.[213] Gellhorn's principled and self-critical cosmopolitanism points the way forward for future debates on legal education reform, if not law reform as whole.

212. Walter Gellhorn, *Impressions of Japanese Legal Training*, 58 COLUM. L. REV. 1239, 1241 (1958).

213. Walter Gellhorn, *China's Quest for Legal Modernity*, 1 J. CHINESE L. 1, 14 n.37, 20 (1987).