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Making Lawyers (and Gangsters) in Japan

Mark D. West*

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INTRODUCTION

How insulting to have juxtaposed “lawyers” and “gangsters” in the title, to hint that lawyers are not engaged in a supremely noble profession, to insinuate a commonality between counselors-at-law and godfathers. There will be no explicit comparisons here, for this is an Essay about Japanese legal education, not *La Cosa Nostra*. Instead I offer a description of how Japan trains its lawyers and what lawyers in Japan do. I’ll also talk a bit about how gangsters in Japan are trained, and what they do. Perhaps a serendipitous connection will present itself.

I begin by briefly discussing the old system of training Japanese lawyers and some of the forces that led to the breakdown of that system. I then detail and analyze the new system, much of which was borrowed from the United States after careful investigation. Finally, I offer a few words about Japanese gangsters, the *yakuza*. It’s not impossible that the story suggests similarities between lawyers and their illegal counterparts.

I. OLD SCHOOL

Historically, all budding lawyers, judges, and prosecutors in Japan followed the same career path. Law was exclusively an

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undergraduate degree in Japan, and most students who wanted to enter the legal profession majored in law. Many students sat for the national bar examination in their third year of university, but only the best and brightest passed at that stage. Pass rates were kept extraordinarily low, averaging about two percent annually. Only about five hundred students per year passed as late as 1990, and in the 2000s, the number rose to only about one thousand.¹ Bar-passers were eligible to enter the Legal Training and Research Institute ("LTRI"), historically Japan's only school for producing lawyers.

For a country with half the population of the United States, a rate of one thousand new lawyers per year is quite low. Several factors explain why Japan historically has had few lawyers. Perhaps the simplest explanation is the physical structure of the LTRI: officials argued for years that no more than five hundred bodies could be squeezed into its halls. At the same time, it is clear that the bar had reason to limit its numbers: In addition to the fear that admitting more students would necessarily mean lower standards, lawyers feared competition from a growing pool. As Japanese litigation rates remained low and lawyer-substitutes (with undergraduate degrees in law but not licenses) did some of the work that traditionally had been the domain of lawyers in Japan, there was little public clamor for more attorneys.

The LTRI produced prosecutors, judges, and predominantly one kind of lawyer: general-practice litigators. Lawyers had a monopoly on courtroom practice—but their monopoly consisted of nothing more than control of the courtroom, enabling those lawyer-substitutes to elbow in on other potential action. Transactional lawyers of the sort seen in the United States were rare and the market for their services was small; the bureaucracy had little need for lawyers, and for better or worse, there was no market or role for a Japanese Ralph Nader, Greta von Susteren, or Ann Coulter.

The situation began to change in the 1980s and 1990s. Litigation rates rose. Contracts became ubiquitous. Business organizations pressed the organized bar to produce more lawyers, specifically more lawyers with transactional and negotiating skills.²

The universities, the places where lawyers received their initial training before entering the LTRI, had little to say in the process. University educators were law professors, scholars of the law; they were not practicing lawyers and never had been. Nor would their

1. See CURTIS J. MILHAUPT & MARK D. WEST, *ECONOMICS ORGANIZATIONS AND CORPORATE GOVERNANCE IN JAPAN: THE IMPACT OF FORMAL AND INFORMAL RULES* 212 (2004).

2. See *id.* at 207-40; CURTIS J. MILHAUPT & MARK D. WEST, *Law's Dominion and the Market for Legal Elites in Japan*, 34 *LAW & POL'Y INT'L BUS.* 451, 490 (2003).

students become lawyers: roughly three-quarters of bar-passers graduated from one of ten elite schools, and many undergraduate law departments never graduated a single lawyer. The less elite schools gave students a general education in the law and prodded many into teaching, but in many cases these schools did not provide the kind of education that students really sought: bar preparation.

A large and profitable industry arose in Japan to fill the gap: cram schools. At these bar preparation schools, students learned exactly what they needed to know for the bar—nothing less, and certainly nothing more. Many students, and in many cases the best and the brightest students, skipped their university classes entirely to devote their studies to bar study at the cram schools. The universities complained little, as tuition dollars remained steady and professors, for the most part, understood why students concentrated on studying for the bar (also, five-hundred-person, lecture-based classes sometimes made it difficult to notice the absence of particular students). Professor Setsuo Miyazawa describes his encounter with recent Japanese bar exam passers:

I asked them which professors they liked most. They could not answer; they had spent most of their time in cram schools. Some of them asked me to recommend English-language books on Japanese law. I told them that their universities have excellent libraries, but they did not know how to find books. Such was the caliber of people, some of whom had been praised by the media as the brightest stars to lead Japan into the twenty-first century.³

A division of labor thus existed in which students gained a general education from the universities and a bar-specific knowledge of the law from the cram schools. The LTRI's job was to follow up by teaching practical skills. Practitioners with real-world lawyering experience taught classes, students were prodded to think and not merely memorize the law, and budding lawyers received more specialized training during the mandatory clerkships that followed their LTRI classroom education. But again, this education focused on one specific aspect of legal practice: litigation. The numbers of lawyers that were being produced simply were not sufficient to meet the growing societal demand, either in litigation or in the other areas in which American lawyers routinely practice.

In the late 1990s, interest group politics began to coalesce around a solution that would involve—somehow—increasing the size of the bar. Businesses were begging for more lawyers; the business roundtable Federation of Economic Organizations even proposed

3. Setsuo Miyazawa, *The Politics of Judicial Reform in Japan: The Rule of Law at Last?*, 2 ASIAN-PAC. L. & POLY J. (SPECIAL ISSUE) 89, 116 (2001), available at <http://www.hawaii.edu/aplj>.

graduate law schools.⁴ A political shift in the Japan Federation of Bar Associations occurred as younger activist lawyers successfully pushed an expansionist agenda past the old guard. Universities began to eye jealously the revenue that the cram schools were earning. Consumer groups complained of high legal fees and the scarcity of lawyers in the countryside. As the clamor rose, political institutions—among them the Ministry of Education, the Ministry of Justice, and the Cabinet—began to seek political gains from change.

II. NEW SCHOOL

In 1999, under the direction of Prime Minister Junichiro Koizumi, the Justice System Reform Council was created. The Council was charged with several mandates for improving the legal system; among them were imperatives for major changes in both the method of legal education and the number of lawyers produced. With respect to the number of lawyers produced, the Council set a goal of tripling the annual number of bar exam passers, reaching three thousand per year by 2010. The number was arbitrary, of course, but it was a target that would bring the country closer to what was seen as a “world standard” in per capita attorneys.

Others have written extensively about the political struggles and the details of the Council workings.⁵ Here, I am more interested in the result, for the result was at least potentially monumental. The Council was presented with many potential models, including small modifications of the current system to simply combine the fourth year of undergraduate studies with a two-year graduate program,⁶ wholesale changes based on legal education in other civil law systems, and relative inaction. Ultimately, the Council eschewed these options, and in its June 2001 Final Report, it chose a model that resembled American law schools.⁷ The Council quickly discouraged official use of the word “law school” (*ro-suku-ru*) and instead opted for the more

4. See *id.* at 111.

5. See, e.g., Daniel H. Foote, *Forces Driving and Shaping Legal Training Reform in Japan*, 7 AUSTRALIAN J. ASIAN L. 215, 215-28 (2005); Tom Ginsburg, *Transforming Legal Education in Japan and Korea*, 22 PENN. ST. INT'L L. REV. 433, 437-38 (2004); Yoshiharu Kawabata, *The Reform of Legal Education and Training in Japan: Problems and Prospects*, 43 S. TEX. L. REV. 419, 420-25 (2002); Setsuo Miyazawa, *Education and Training of Lawyers in Japan—A Critical Analysis*, 43 S. TEX. L. REV. 491, 494-95 (2002); Miyazawa, *supra* note 3, at 106-10.

6. See Shigeaki Tanaka, *Hōsō Yōsei Seido Kaikaku to Daigaku no Hōgaku Kyōiku* [Legal Education Reform and University Legal Education], 1 KYŌTO DAIGAKU HŌGAKUBU HYAKUSHŪNEN KINEN RONBUNSHŪ 53 (1999).

7. JUSTICE SYSTEM REFORM COUNCIL, RECOMMENDATIONS OF THE JUSTICE SYSTEM REFORM COUNCIL: FOR A JUSTICE SYSTEM TO SUPPORT JAPAN IN THE 21ST CENTURY, available at <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html>.

native-sounding Japanese version: *hōka daigakuin*, which translates to “graduate law schools.”⁸ But the American flavor was unmistakable.

In April 2004, sixty-eight new law schools opened their doors to 5770 newly admitted graduate students. The preexisting undergraduate system was left intact. The new law school system offers two basic options to a person who wants to become a lawyer. Under the first option, she can major in law as an undergraduate. She then passes a test for law school admission (aided, perhaps, by the cram schools), goes to law school for three years, and takes a newly created bar exam. If she passes, she enters the LTRI training program for eighteen months: six months in LTRI classrooms (three months at the beginning and three months at the end), and twelve months in the field. She then becomes a lawyer, judge, or prosecutor.

Under the second option, she can major as an undergraduate in a subject other than law, such as economics, literature, or music. She can even embark on a separate career before law school, which would have been virtually unthinkable in the past. She then takes a test—the same test taken by the law undergraduates—for law school admissions. A stated governmental goal is to conduct the admissions such that approximately thirty percent of each class is made up of people who are not undergraduate students at the time they apply, creating an affirmative action program for working people.⁹ If accepted, a candidate enters the graduate law school, and unlike her law school undergraduate compatriots, she stays there for three years, rather than two.

In both the two- and three-year models, the remainder of the path after law school is identical to that of pre-reform system. But in a paternalistic move toward quality control, the new system limits the number of times that a graduate can take the bar examination, allowing only three attempts within five years of graduation (the exam is offered annually).

By expanding their reach into two to three more years of legal education, some universities and other educational institutions saw potential financial gains. As Japan’s population slumped, so too had university enrollment, and law schools were just one more creative way for universities to continue to generate revenue. When it came time for the Ministry of Education (which knew little about educating lawyers) to accredit law schools, the Ministry looked to see if the bare minimum of numerical requirements was met (such as a set

8. See Dan Rosen, *Schooling Lawyers*, 2 ASIAN-PAC. L. & POL’Y J. (SPECIAL ISSUE) 66, 70 (2001).

9. Kawabata, *supra* note 5, at 434.

percentage of practitioners on the faculty) and accredited virtually all applying schools, creating in an instant roughly the same law-school-per-capita relation as that which exists in the United States.

Was this the right answer? That's hard to say. From the American perspective, a few criticisms can easily be raised:

1. *Length of education.* We like to think that we have got it right in America: Legal education takes three years, no less, no more. Of course, most of us know that it really doesn't take three years. Just as a property course can be taught in the first-year curriculum in three hours or five, so too could law school end in two years or drag on for four. But a potential six years of legal education under the Japanese model, even if the goals of undergraduate education (to give students general legal knowledge) and graduate education (to make lawyers) differ substantially, seems like a long time to tie up a productive member of society.¹⁰ One of the goals of the reform was to eliminate the dead-weight of the serial bar-takers who worked at convenience stores for years while they repeatedly failed the bar; however, keeping the best and brightest in school for six years creates a similar conundrum.

The mixing of students who require only two years of post-graduate legal education and those who require three presents a more difficult pedagogical problem. Professors in Japan are struggling with the task of teaching both students who have four years of legal education as an undergraduate and those who have none in the same classroom. Further complicating the picture is student strategy: Many law undergraduates, who should only require two years of study, are opting for the three-year course because they are not confident that they can pass the bar in three tries otherwise. The classroom, then, is often a mix of relative experts and complete beginners.

2. *Undergraduate law schools.* In Japan, the ninety undergraduate law departments collectively enroll over 45,000 new students per year (180,000 in a four-year program),¹¹ a number roughly equal to the number of students taught in U.S. law schools. In other words, Japan has twice the number of law students per capita as does the United States.¹² Undergraduate law programs would clash with graduate legal education in America. But of course, we in America didn't face the decision explicitly as Japan did; our institutions simply evolved into what they are now. Perhaps there will

10. Because many undergraduate law programs require one and one-half years of liberal arts classes, the six-year period is likely to be closer to four and one-half years for many law undergraduates.

11. See Foote, *supra* note 5, at 216; Kawabata, *supra* note 5, at 431.

12. AMERICAN BAR ASSOCIATION, 2004 ENROLLMENT STATISTICS, available at <http://www.abanet.org/legaled/statistics/fall2004enrollment.pdf>.

remain a market in Japan for general legal education at the undergraduate level—and in any event keeping it helped create the political consensus necessary to change the system.

3. *Faculty*. Who should teach? Ideally, we would like scholar-practitioners to teach lawyers, but such persons are few and far between. Given the salaries that universities in Japan are paying, the trend seems likely to continue. So for now, many Japanese law schools employ many adjuncts and other pseudo-faculty positions to attempt to take advantage of practitioners' expertise.

4. *Failures*. What's going to happen under the new system to students who fail the bar? Under the old system, those who failed had lost opportunity costs and lost cram school dollars, but not tuition to government-accredited universities. Despite handing out thousands of degrees in law, many undergraduate institutions in Japan never graduated a student who passed the bar. Under the new system, graduate law schools will have no such luxury. The plan to allow three thousand students per year to be admitted to the newly reconstituted LTRI by 2010 leaves over half of law school graduates without an immediate career. That number is far less than the seventy to eighty percent pass rates that reformers suggested as a goal for the schools.

We currently have only one year of new bar exam data. In 2006, 2087 students took the first bar exam administered under the new system. These test-takers were graduates of the two-year course who had majored in law as undergraduates. Of this group, 1009 were allowed to pass, leaving over one thousand students without jobs.¹³ Presumably they will retake the exam in 2007, when they will face the daunting task of competing not only with each other, but also with the two-year and three-year graduates of the class of 2007. If they fail a second time, they will be allowed to take the test only once more.

5. *Pedagogy*. How should law students be taught? The new Japanese law schools, in part as a result of countless fact-finding missions to U.S. law schools, are experimenting with several other novelties borrowed from across the Pacific, including the Socratic Method, clinical education, and transactional courses. Among these methods, perhaps the most worrisome in Japan has been the Socratic Method, for although many professors have experienced it in the United States, they have little or no experience using it and are afraid that their culturally inhibited students will not respond. I can put this one to rest, I hope: Japanese students can and have learned

13. See MINISTRY OF JUSTICE, HEISEI 18NEN SHINSHIHŌ SHIKEN NO KEKKA [RESULTS OF THE 2006 NEW BAR EXAM], available at <http://www.moj.go.jp/SHIKEN/SHINSHIHOU/h18-02kekka.pdf>.

Socratically.¹⁴ I've used the method in classrooms in Japan with mixed success, but it certainly can be done, and the LTRI, for all the complaints about its strict orthodoxy, has been using it for years. Still, it remains to be seen if these new schools will actually teach in the "American" manner, or if, as John Haley puts it, they are "far more apt to become examination preparatory schools—new, expensive, university-run *juku*."¹⁵ The low pass rates suggest that pressure on universities to "teach the bar exam" will persist.

* * *

In the midst of these questions and criticisms, one issue has remained largely unaddressed: will the new law schools meet the demands of students? The discussion has been focused largely on meeting the needs of society, not those of the learners. But what is it that students want? Recent comparative survey data offer some preliminary answers.¹⁶ In 2003 and 2004, Akira Fujimoto surveyed 436 law students in Japan and 243 in America. The cases aren't exactly comparable—in Japan, respondents were first-year students only, in America, respondents represented all years; in Japan, six schools were surveyed, in America, only one (George Washington), and so on. However, data are sparse, and this at least is a helpful comparative start.

American and Japanese students were asked what job they hoped to secure immediately after they finished their studies, and what job they wished to hold ten years after that. The results, which due to institutional differences don't pair up exactly, are shown in Table 1.¹⁷ I have omitted responses in categories that have a response rate of less than five percent.

14. My colleague Carl Schneider agrees. See Carl E. Schneider, *On American Legal Education*, 2 *ASIAN-PAC. L. & POL'Y J. (SPECIAL ISSUE)* 76, 83-87 (2001).

15. John O. Haley, *Heisei Renewal or Heisei Transformation: Are Legal Reforms Really Changing Japan?*, 10 *ZEITSCHRIFT FÜR JAPANISCHES RECHT* 5, 12 (2005).

16. Akira Fujimoto, *Nichibei Ro-Suku-ru Gakusei no Hōishiki to Shokugyō Ishiki* [The Legal Consciousness and Employment Consciousness of American and Japanese Law School Students], 1297 *JURISUTO* 85 (2005).

17. *Id.* at 94.

Career Objective	After Graduation (%)		10 Years After Graduation (%)	
	Japan	America	Japan	America
Judicial clerk	N/A	21.3	N/A	.8
Work in office that serves businesses (small and large)	26.8	13.3	23.7	6.3
Work in office that serves individual clients (Japan)/Individual private practice (U.S.)	18.5	1.3	20.4	5.9
Intellectual property or other specialized practice	8.9	4.6	7.9	6.3
Public interest work	N/A	10	N/A	12.1
Government work	N/A	7.1	N/A	16.7
International Organization	N/A	11.7	N/A	8.4
International transactional practice	8.6	N/A	6.7	N/A
Prosecutor	7.7	7.1	5.0	2.1
Judge	7.4	N/A	7.2	N/A
In-house lawyer	5.0	6.3	3.4	13
Academic	3.6	N/A	5.0	N/A
Further graduate study	N/A	5.0	N/A	1.7
Unknown	4.3	1.3	7.4	4.2
Other	2.2	10.8	3.1	22.2

The table reveals important differences between the two systems concerning institutions, opportunities, and student preferences. Consider first some responses that, while available in America, were not tested in Japan because of institutional differences that render the vocabulary meaningless. About a fifth of the U.S. students surveyed sought clerkships after graduation, an opportunity not available in Japan. American students similarly wanted to work for (a) public interest firms, (b) the government, and (c) international organizations. But in Japan, those options are, respectively, (a) virtually non-existent, (b) performed predominantly by bureaucrats with undergraduate legal training, not lawyers, and (c) far more difficult to obtain because of language, locale, and other issues.

Now examine the opportunities that are available in Japan but not in America. Japanese students were interested in "international transactional practice," a category that really no longer exists in America (all large firms have become international, and "international" boutiques like Coudert Brothers are a thing of the past). About one in twelve students in Japan wanted to be a judge

immediately after graduation: an option not open to American students immediately after graduation as it is in Japan.

Two other differences stand out. First, note the difference in the percentage of students who want to become in-house lawyers after ten years of practice (13.0% in the United States, 3.4% in Japan). This difference surely is due in part to the demand from companies, as many in Japan prefer to pay lower wages to non-lawyer workers with undergraduate law degrees, and the practice of mid-career shifts to firms is more difficult in Japan. But it might also suggest a reason why students in Japan seek to become lawyers in the first place: to achieve a level of autonomy that they think is otherwise unavailable in Japan's relatively rigid corporate structure.

The other interesting difference is one that normally we might gloss over as a catch-all category: "other." Japanese students seek jobs that may be categorized as "other" at a much lower rate than in the United States, especially after ten years (3.1% compared to 22.2%). These preferences reflect a fundamental difference in legal education in the two systems, and suggest an area for growth in Japan. In Japan, options for lawyers remain limited. Options are so limited, in fact, that most surveyed students simply could not think outside the box to imagine them. In America, nearly a quarter of surveyed students had some job in mind—politician? record producer? sports agent? corporate management?—that did not fit the traditional categories. Such jobs simply are not on the list of options for lawyers in Japan.

In some sense, Japanese universities might simply be responding to demand from students who don't want "other." Students have fixed plans, and law schools cater to them and to the post-graduation market in which they seek employment. In the abstract, this seems like a good idea, but in Japan, a potential problem arises from the *yokonarabi* style of competition. *Yokonarabi* literally means "to line up side by side," and although I'm wary of using Japanese terms that tend to give the place an unnecessary mystique, there is no good equivalent in English. In essence, the word refers to the practice of copying one's rivals in an effort to hold on to one's market share, with the goal of avoiding failure rather than a goal of achieving success.

I'm not sure that the failure and closing of a law school is such a bad thing, at least if the American experience can serve as a guide. In the middle of the nineteenth century, when there were only nine university-affiliated law schools in the country, law schools rose and fell like the tides. The first law school at New York University opened in 1838, only to close in 1839. Princeton failed to establish a law school in 1825 and 1835, but succeeded in 1846. It lasted six years and

produced six graduates. (It considered creating a law school once again in 1891, but the school never reopened.) The University of Alabama likewise authorized the formation of a law school in 1845. No students enrolled, and the school closed in 1846.¹⁸

Perhaps the Japanese system as a whole might benefit from market-induced failures like these. In fact, such failures might be just around the corner. In part because of the projected low bar exam pass rates due to high initial enrollment, law school applications in 2005 fell by approximately fifty percent.¹⁹ The 2006 bar exam results suggest further cause for worry. Graduates of fifty-eight law schools took the exam. Three of those schools produced no passers. Only seventeen schools had a passage rate of better than fifty percent. Roughly one-third of graduates of even such prestigious schools as The University of Tokyo and Kyoto University failed.²⁰ The future seems shaky for many schools.

The relative prevalence of *yokonarabi* can be exaggerated; the phenomenon of course exists in the United States as well, and Japan has a few outliers, such as the Omiya Law School, which focuses on training older students, often at night. But in Japan, where the concept of copying one's rivals to avoid failure can be succinctly stated with that one word, the practice is pervasive. The result in Japan is a relatively uniform curriculum that shuns diversity and may tend to discourage students from thinking in terms of "other." Without a menu of choices—without a George Mason for the study of Law and Economics, a Yale for academic wannabes, a Michigan for the interdisciplinary study of the law, and other schools for a host of other job opportunities—students are more likely to wind up in the same boxes. Again, that's not so awful in the abstract, as someone will always do the "other" jobs in any society. But it does mean that the Japanese system of legal education might cause students to miss out on some of the most interesting choices, opportunities, and different ways of thinking about legal problems that flourish in the United States.

On the other hand, students in Japan might more easily accomplish their goals. The same survey asked students whether their ideal jobs would match up with their predicted jobs. In every category, a higher percentage of students in Japan predicted that such a match

18. ROBERT STEVENS, *LAW SCHOOL* 8, 73 (1983).

19. See Alan Brender, *Enrollment Plunges at Japan's American-Style Law Schools*, *CHRON. HIGHER ED.*, Dec. 3, 2004, at 38.

20. See MINISTRY OF JUSTICE, HEISEI 18NEN SHINSHIHO SHIKEN HOKA DAIGAKUIN BETSU GOKAKUSHA KAZU NADO [2006 NEW BAR EXAMINATION RESULTS, CATEGORIZED BY LAW SCHOOL], available at <http://www.moj.go.jp/SHIKEN/SHINSHIHOU/h18-04kekka.pdf>.

would occur than did American students.²¹ While we might all benefit from lowered expectations, these numbers may also suggest that Japanese lawyers are defining their mission a bit too narrowly.

III. GANGSTERS

In prior work with Curtis Milhaupt, I have examined some of the many varied activities in which the Japanese mafia engages, in addition to petty crime and extortion.²² We highlighted and discussed six specific service area categories, reproduced here in Table 2.

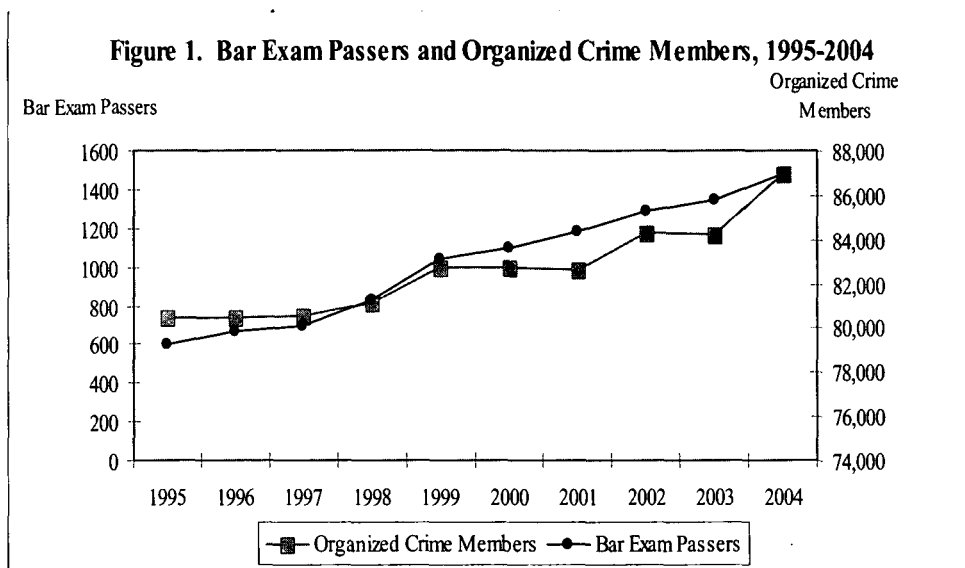
Service Area	Organized Crime Service Provider	Translation
Bankruptcy	<i>Seiriya</i>	Fixer
Debt Collection	<i>Toritatelya / Yonigeya</i>	Debt collector/"One who helps another flee in the night"
Landlord-Tenant Issues	<i>Jiageya / Apaatoya</i>	Land fixer/Apartment fixer
Dispute Settlement	<i>Jidanya</i>	Settlement specialist
Shareholders' Rights	<i>Sōkaiya</i>	General meeting operator
Financial Services	<i>Sarakin</i>	Loan shark

Surely it is only coincidental that at the same time the Japanese bar concentrates predominantly on courtroom matters, avoiding the "other," the Japanese mafia offers such basic services as dispute settlement, especially in the area of out-of-court settlements of automobile accidents. Surely it is mere happenstance that the Japanese bar is relatively small, while the Japanese mafia is engaged in landlord-tenant issues and financial services. Surely Figure 1, which shows a correlation between an increase in the number of bar exam passers (under the old system) and the number of organized crime members, is coincidental as well:²³

21. Fujimoto, *supra* note 16, at 94.

22. MILHAUPT & WEST, *supra* note 1, at 145-78; see also Curtis J. Milhaupt & Mark D. West, *The Dark Side of Private Ordering: An Institutional and Empirical Analysis of Organized Crime*, 67 U. CHI. L. REV. 41, 41-42 (2000).

23. Data on members from MINISTRY OF JUSTICE, HANZAI HAKUSHO [WHITE PAPER ON CRIME], 1996-2005; data on bar passers from MINISTRY OF JUSTICE, SHIHŌ SHIKEN DAINIJI SHIKEN SHUTSUGANSHASU/GŌKAKU SHASŪ NADO NO SUII [CHANGES IN BAR EXAM APPLICATION AND PASS RATES], available at <http://www.moj.go.jp/>.



As Figure 1 shows, the number of persons admitted to the bar has grown simultaneously with the number of persons admitted to the ranks of organized crime (the gross size of the bar tracks similarly, increasing from about 15,000 to 22,000). Of course, correlation does not mean causation; many other factors could account for the simultaneous increase. One possible explanation is that lawyers and gangsters in Japan, because of the institutional difficulties of using the Japanese legal system and the historical dearth of lawyers, serve a similar clientele with similar problems.

Lawyers and organized crime members aren't perfect substitutes. Rather, the market is divided into litigation services and non-litigation services. When a societal need arises for these service activities, a rising tide lifts all, or at least both, boats. In Japan, the small number of service providers ensures a constant societal need.

Suppose, just suppose, that organized crime performs some of the same roles that lawyers perform. Why is this a problem? As Milhaupt and I pointed out, organized crime often backs up its activities with violence, uses its civil activities to launder income derived from more objectionable pursuits, and is antithetical to the rule of law.²⁴ If policymakers in Japan agree with the above supposition and analysis, perhaps it is time to direct efforts at bar reform that not only increases the raw size of the bar, but also develops a more diverse body of practitioners. The number of organized crime members suggest that such activities as automobile accident settlement and landlord-tenant negotiation are profitable and

24. MILHAUPT & WEST, *supra* note 1, at 149.

are able to sustain to some degree a body of workers roughly four times the size of the organized bar (although the exact wages are unclear for both camps). As the number of licensed practitioners with the skills to perform such tasks increases, perhaps organized crime will begin to dissipate.

What lessons can be learned from the *yakuzas'* success? Perhaps none. Perhaps they are not so successful, and perhaps their success is owed to threats of violence. But given that roughly one out of seven Japanese view the *yakuza* as a "necessary evil,"²⁵ perhaps it is worth taking a look at four factors that may suggest how they came into their prominent role despite their obvious illegality.

First, *yakuza* are not subject to governmental regulation. This statement is a bit hyperbolic; they are of course subject to criminal regulation, and since 1991 have been subject to a legal regime in which rights can be constricted for "designated firms."²⁶ But there are no specifically applicable rules with a certainty of punishment to determine how many *yakuza* can be admitted each year, how they may advertise their services, or the kinds of businesses with which they may partner. Unfettered by extensive regulation, curriculum requirements, and detailed licensing rules, they prosper.

Second, *yakuza* have never defined their mission narrowly. Instead of constricting their trade to one segment of the market, they routinely change their services depending on demand, servicing clients across a broad spectrum. If money gained by the extortion of management secrets at shareholder meetings is down, *yakuza* can always attempt to make further inroads in the market for bankruptcy assistance. They think outside the box, they have diverse skills and a diverse client base, and they adapt to changing times. In short, they train for the "other."

Third, *yakuza* apparently aren't afraid of failure. Members quit. Branches fold. They attempt risky projects that sometimes don't pan out. And yet their numbers continue to grow.

Finally, *yakuza* offer their new recruits a variety of hands-on training experiences. Young *yakuza* enter the fold because they show potential in many areas—loyalty, a quick tongue, perhaps capacity for violence and brutality or even the ability to wear a purple double-breasted suit with style—yet they possess not a single test score. There are no *yakuza* classrooms; rather, they learn day-in and day-out from watching and mimicking their superiors, who constantly

25. *Twelve Percent of Japanese Consider Mobsters a "Necessary Evil"*, AGENCY FRANCE-PRESSE, Apr. 19, 1993.

26. See *Bōryokudan'in ni yoru futōna kōi no bōshi nado ni kansuru hōritsu* [Anti-Organized Crime Act], Law No. 77 of 1991.

challenge them. Training builds on prior training. Young recruits rotate through various activities in the firm, getting a taste of a wide variety of activities.

In short, gangsters in Japan are innovative, diverse, entrepreneurial, and proactive. Their training enables and encourages them toward these qualities. They survive, and even flourish, *despite* the illegality of their actions. Of course, there should be no connections made between brutal gangsters and lawyers. But if one were to make such a connection, perhaps the gangster training system might offer a few hidden lessons for Japanese legal education.

CONCLUSION

Japan investigated a host of models from which to borrow when it considered revamping its legal education system. Its apparent borrowing from the United States is interesting in at least two primary ways. First, the highlights of the new Japanese system, including graduate legal education, Socratic teaching, and practical training, are those characteristics of legal education that make legal education in the United States the envy of the world. It remains to be seen whether the selective mix chosen by Japan, which seems to leave out such critical factors as diversity among institutions, will succeed. Second, there is no guarantee that any part of the U.S. model is transferable. When the U.S. model works, it seems to do so because it matches the needs both of the market and of the students. Again, it remains unclear whether such is the case in Japan, where the demands of the market and of students appear to differ from those in the United States.

In this Essay, I've suggested that there might be *another* model with which the Japanese bar—and by extension, perhaps, the American—has commonality, and from which it might learn as well. But what an unsavory model those gangsters present. Surely organized crime holds no lessons for the noble profession of law.
