

## On Legal Education Reform

by

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### Introduction

Legal education in Japan has some features and problems contrasted with other countries. Recently, there have been three moves to improve these problems. First, the Ministry of Justice has increased the number of successful candidates in the National Bar Examination. This number had been fixed for 30 years. Secondly, the Ministry of Justice introduced a quota system for the National Bar Examination. Thirdly, the Council for Legal Education Reform which consists of the Supreme Court, the Ministry of Justice, the Federation of Bar Associations and professors of jurisprudence made public their Opinion Paper November 13th 1995. The Opinion Paper is the result of a comprehensive survey started in the year 1987 on legal education reform, and gives suggestions about the direction for the legal education system in the future. The Opinion Paper is epoch-making in the history of Japanese legal education after WWII. Concrete changes which have been caused by the Opinion Paper are very few. Radical reform remains to be the theme of the future.

Now, let's take a look at the background of legal education reform, that is to say, the legal profession in Japan.

#### 1. The Legal Profession in Japan -Problems-

The intention of the Opinion Paper is to increase the number of lawyers. When we contrast Japan with Western countries, we can simply notice the difference in the number of lawyers(SEE Table1 and 2). The number of lawyers is the following: in the year 1995 there were 2058 judges, 1173 public prosecutors, and 15,540 attorneys. In Japan there is one lawyer for every 6600 people. In contrast to this, in

the United States, the latter number is about 330, in the United Kingdom about 650, in Germany about 990, and in France 1730. In Japan the ratio of judges, public prosecutors and attorneys is 1 to 0.57 to 7.6; in the United States 1 to 0.84 to 27; in the United Kingdom 1 to 0.74 to 22; in Germany 1 to 0.18 to 3.4; and in France 1 to 0.30 to 6.

Judges, public prosecutors, and attorneys are under a system called "the unification of the legal professions". This unification of the legal professions in Japan does not mean that judges are nominated from among experienced attorneys, but means that judges, public prosecutors, and attorneys are all successful candidates of the National Bar Examination and are trained in the Legal Training Research and Institute. Although judges are guaranteed their independence by the Constitution (Constitution, Art. 78), they are under a promotion system controlled by the General Secretariat of the Supreme Court. Attorneys have traditionally assumed the posture of being in opposition to judges and public prosecutors. For references sake, jurisprudence professors have no professional legal title, with some exceptions.

Let us take a closer look at judges, public prosecutors, and attorneys. The number of judges in 1896 was 1531. The 1996 population of Japan is three times as much as it was that year. The number of judges has increased by only about 500. There are now about 61,126 people per judge. That is a very small number when contrasted with other countries. For example, in Germany the number is 4,448. High growth in the Japanese economy began in the 1960's. Accompanied with economic growth came legal disputes which we hadn't known until then. These were large scale actions such as environmental actions, flood actions and so on. Because of these actions the burden on the courts grew. In spite of this situation the budget for the courts was highest in the year 1955

at 0.93 percent of the overall budget, and lowest in the year 1990 at 0.39 percent(SEE Table3). District Court judges cope with 230 cases at the same time on average. Average trial time is 27.5 months for judge cases and 22.5 months for compromise cases. Witness trials meet, on average, 4 times and the time between hearings is 75 days. The total time for hearings is 4 hours.

The number of posts for public prosecutors has been fixed at 1173 since 1972, but there were 54 vacant posts between 1976 and 1989 on average (SEE Table4). In 1991 the number of vacant posts was as much as 103. The reason for this increase in vacant posts is that many public prosecutors become attorneys and that the profession of public prosecutor is not attractive to young lawyers. Today the number of vacant posts has decreased because public prosecutors are actively engaged in tax evasion cases, official corruption cases, and AUM-SHINRIKYO cases. Wages for them are the same as for judges. The number of cases handled by public prosecutors was 1.42 million in the year 1970 and 2.12 million in the year 1986. The number of officials in the Ministry of Justice who help public prosecutors has only slightly increased.

The number of people per public prosecutor is about 100,000 in Japan; in the United States 12,300; in the United Kingdom 21,700; in Germany 20,518; and in France 36,825. Obviously the number of public prosecutors is much smaller than that of Western countries.

Concerning attorneys, we have many problems. First, the number of them is, as we have mentioned, 15,440. However, the attorneys are unevenly distributed. More than 50 percent of Japan's attorneys are concentrated in the Tokyo and Osaka areas. So in some rural areas although a lawsuit may be needed, one cannot file. There are 201 District Court branches, but there are 51 branches which have no attorney office in that district (in the year 1990).

Formerly, a leading Japanese sociologist of law, Prof. Dr. TAKEYOSHI KAWASHIMA explained that Japanese choose conciliation and compromise rather than trials, and that this is based on cultural and traditional grounds such as Confucianism and Buddhism. But today this is better explained by the fact that the number of lawyers is much smaller than

in other countries and trial costs, such as attorney fees and trial time, are high. If this explanation is right, the fact that Japanese do not like trials is rational behavior. It is true that attorney office location is influenced by the economic situation and the traffic condition of an area because the attorney is not a government official. A solution for the problem of the uneven distribution of attorneys has not been found yet. And further more, because advertising by attorneys is forbidden, regular people cannot get any information about the legal system.

In civil cases a plaintiff can file suit without being an attorney. In these cases judicial scriveners make petitions and are consulted by plaintiffs. These activities are authorized only for attorneys. For judicial scriveners' such activities are illegal. Big enterprises have a section for judicial affairs. There are many specialists in that section, and they are specialists in law. Their tasks should, however, be done by attorneys. Because of the expensive nature of the Japanese legal system attorneys do not like to handle small affairs or "preventative" legal actions.

Furthermore, there are three professions bordering on that of the attorney. There are 16,956 judicial scriveners, 60,752 licensed tax accountants, and 35,345 administrative scriveners(SEE Table5). I believe their work is done by attorneys in the United States.

## **2. Legal Education -University and the National Bar Examination-**

In Japan young people who seek to be lawyers acquire university education in the faculty of law. Although the entrance age is 18, many young people are rejected and spend a year preparing for the entrance exam. University education is for 4 years. Freshmen and sophomores study the liberal arts, including foreign languages and physical education. Juniors and seniors study their major, jurisprudence. Lectures are the central tool of legal education. Sometimes more than 100 students hear lectures in a large classroom. Lecture content is the interpretation of law provisions and specific case studies are rarely carried out. Although there are seminar style classes which are based on question and answer sessions in response to student presentations, these classes are not required.

The faculty of law is popular for those who would like to be office workers. The main purpose of law education is not the training of lawyers, but the training of office workers. The majority of law students who graduate from the faculty of law get jobs which have no relation to law. The number of graduates of the faculty of law is about 40,000 every year and only 700 of them become lawyers. Almost all students who become lawyers attend examination prep school for the National Bar Examination. This is because university lectures do not have a direct connection with the content of the National Bar Examination. This trend has been on the increase in recent years. According to the curriculum of prep schools for the National Bar Examination, lectures on the Constitution and Criminal Code are held 14 times a year, lectures on the Code of Civil Procedure and the Code of Criminal Procedure 8 times a year, and Civil Code lectures 30 times a year, with lectures given 2 times a week from 6:30 pm to 9:30 pm. Tuition is about ¥450,000 and is about ¥600,000 when including a practice test lecture. Tuition at prep schools is fairly expensive, in light of tuition at university being about ¥800,000 for a year. Instructors at prep schools for the National Bar Examination are attorneys and university professors.

There are about 100 faculties of law in Japan. Although there are universities which have established courses for the National Bar Examination, this course is not included in the regular curriculum and students must pay additional fees. Successful candidates in the National Bar Examination tend to be from the University of TOKYO, and the University of KYOTO, which are national universities, and WASEDA University, CHUO University and KEIO University, which are private universities. There are universities where no candidates succeed in the Exam. At present the strengthening of legal education is planned and curriculum reform is advancing. This curriculum reform is mainly the integration of liberal arts and legal studies and examines how to install education for the National Bar Examination into educational programs. Although adopting courses for the National Bar Examination in graduate school master's degree courses and arranging attorneys and judges as professors has been examined,

these have not yet been realized.

The course of concrete reform in the Opinion Paper, mentioned above, is reform of the National Bar Examination. The Japanese National Bar Examination has some special features. First is its openness. There are no qualification restrictions for examinees. So, examinees can take the examination without having been admitted to a university faculty of law. There is no age limit for examinees and no restriction as to the number of times one can take the examination. Secondly, it is a qualifying examination. This is only a formal principle today, because the number of successful candidates is in fact limited. One who passes the National Bar Examination is not given qualification as a lawyer right away. Successful candidates train for 2 years at the Legal Training and Research Institute that the Supreme Court has jurisdiction over. They gain qualification by passing a completion test.

The National Bar Examination is carried out once every year. The Exam is divided into a 1st and 2nd test. The 1st test is not required by one who has completed a liberal arts curriculum in the university. The 2nd test is composed of three tests. If an examinee does not pass a test he may not take the following test. The primary test is multiple choice, with 60 questions about the Constitution, Civil Code and the Criminal Code. Examinees have three and a half hours for this test. The second test is an essay test. This is about the Constitution, Civil Code, Criminal Code, Commercial Code, Code of Legal Procedure -- Code of Civil Procedure or Code of Criminal Procedure-- and elective subjects: non-selected code of legal procedure, Administration Law, Insolvency Law, Criminology. The last test is the oral test, which is on the same subjects as the essay test. Candidates for the National Bar Examination number about 20,000 every year and successful candidates are only 700. The pass rate is around 3 percent. The average successful candidate takes the Exam 6 times. The average age of successful candidates is around 29 years old(SEE Table6). It is the most difficult examination in comparison with other state qualification examinations in Japan. In many cases the examinee doesn't have a job until passing and is devoted to examination study. One who gives up on the exami-

nation on the way and chooses some other occupation receives disadvantageous handling after employment. For this reason normal students do not choose to sit the National Bar Examination and seek qualification as a lawyer. The trend is that competent students don't choose to be lawyers.

### **3. Reform of the National Bar Examination and the Opinion Paper -Reform-**

Recently there have been two changes to the legal education system. The goal is to increase the number of lawyers and to increase the number of successful candidates of younger age.

In the first place, the number of successful candidates, almost 500 until 1990, was increased to about 600 in 1991 and 700 after 1993. Second is the introduction of a quota system from 1996. According to this new system, 5/7 of the successful candidates will be taken from the overall pool of examinees and 2/7 from the group of examinees who have not passed within the first 3 times of taking the examination. This counting began in 1993. Based on the results of a sociological survey the introduction of the quota system was decided in accordance with a basic agreement made in 1991 between the Supreme Court, the Ministry of Justice and the Federation of Bar Associations.

There is strong opposition to the quota system from some attorneys and professors. One of the reasons is that successful candidates with poor exam results who took the examination less than 3 times will lower the quality of lawyers. According to statistical research by the Ministry of Justice about successful candidates, the differences in exam results between the 200 younger candidates who would pass under the quota system and those who might have passed in their stead that would not pass under the quota system is insignificant.

Next, the Council of Legal Education Reform has submitted an Opinion Paper. The Opinion Paper separates majority opinion (The Supreme Court and The Ministry of Justice) and minority opinion (The Federation of Bar Associations) except in some cases of agreement. The Opinion Paper illustrates the compromise between the Supreme Court, the Ministry of Justice, and Federation of Bar Associations. The

agreement is that the number of successful candidates of the National Bar Examination shall increase in the mid-term to around 1500. The Federation of Bar Associations is concerned that the reforms will only result in an increase in the number of attorneys because a concrete figure for an increase in judges and public prosecutors is not shown. According to the minority opinion, "the development of the judicial foundation", such as improvements in the legal aid system and an increase in the justice budget must be suggested in parallel to an increase in lawyers in order to improve the overall performance of the judicial sphere, and address the lack of familiarity that citizens have with law. For indeed, regular citizens do not know how to consult attorneys nor what the service will cost.

For references sake the national budget for the legal aid system is 140 million yen (1991). This figure is 190 billion yen in the United Kingdom and 90 billion yen in the United States. Even if the number of attorneys increases, the uneven distribution problem will not be solved and problems such as unnecessary suits and delays will happen, the minority opinion pointed out. The Opinion Paper proposed that the education in the Legal Training and Research Institute should be reduced to 1 year from 2 years as of 1999. There are two reasons for this, both related to capacity, one is that the man-to-man method will become difficult when successful candidates increase, and two, the OJT method would be more effective than a situation where apprentices have no responsibilities. On the contrary, minority opinion suggests that it would be troublesome for citizens to have untrained lawyers on the job.

The next point is that the Code of Civil Procedure and the Code of Criminal Procedure, which are electives at present, should be necessary subjects in the National Bar Examination. There doesn't seem to be any objection to this.

Some professors and members of the Federation of Bar Associations strongly oppose the Opinion Paper. To begin with, they say that the essence of the Opinion Paper is the maintenance and the strengthening of the bureaucratic seniority system of judges and prosecutors. And they say that the purpose of the reform is to resolve the problem of the shortage of

prosecutors. They say it will also lead to a strengthening of criminal investigation. The strengthening of judges and prosecutors means an increase in state power for them, and they oppose it. The base of this opinion is left-wing ideology. Secondly, they oppose the idea that the increase in attorneys will bring competition to the market for attorneys. They say that the increase in attorneys will cause a reduction in quality. And also it will increase the number of profit-seeking attorneys who work for big business and decrease the number of attorneys who protect citizens rights.

### Conclusions

It can not be denied that the shortage of lawyers is most responsible for the alienation of citizens from law in Japan. The direction of Reform contained within the Opinion Paper seems to be generally acceptable to the citizenry. It is regretful that the reform of legal education in universities was not men-

tioned in the Opinion Paper. Another point is reform has not originated from the citizen, but from the Ministry of Justice. So, as reform develops, the opinion of the citizens needs to be investigated and incorporated into the reform.

It appears that fear that the existing market for lawyers will be threatened by an increase in the number of attorneys is the basis for the opposition opinion in the Opinion Paper. In Japan the wave of deregulation advances in the areas of the economy, education, and information. How can law, and in particular attorneys, expect to continue on without being influenced? Lawyers must respond to the citizen's needs and make efforts to expand their sphere of activities. If successful exam candidates increase, not all of them would become lawyers. Some of them would become office workers. The moves by some attorneys to close the door to young people who seek to follow in their footsteps should be checked.

Table 1 legal population vs. total population in Japan

fiscal year	classification					
	total population	public prosecutors	judges	attorneys	legal population	legal population per head
1946	75,800,000	668	1,232	5,737	7,637	9,925
1948	80,100,000	857	1,197	5,992	8,046	9,955
1950	83,200,000	930	1,533	5,862	8,352	9,994
1952	85,810,000	930	1,595	5,872	8,397	10,219
1954	88,240,000	980	1,597	5,942	8,519	10,358
1956	90,170,000	1,000	1,597	6,040	8,637	10,440
1958	91,760,000	1,000	1,617	6,235	8,852	10,366
1960	93,410,000	1,044	1,687	6,439	9,170	10,186
1962	95,180,000	1,059	1,730	6,740	9,529	9,988
1964	96,160,000	1,067	1,760	7,108	9,935	9,679
1966	98,280,000	1,082	1,787	7,687	10,556	9,310
1968	100,500,000	1,097	1,803	8,293	11,193	8,979
1970	102,900,000	1,132	1,838	8,888	11,858	8,678
1972	105,420,000	1,173	1,900	9,483	12,556	8,396
1974	109,150,000	1,173	1,905	10,197	13,275	8,222
1976	112,310,000	1,173	1,912	10,792	13,877	8,093
1978	114,260,000	1,173	1,935	11,308	14,416	7,926
1980	116,130,000	1,173	1,956	11,759	14,888	7,800
1981	117,060,000	1,173	1,970	12,002	15,145	7,729
1982	117,880,000	1,173	1,976	12,251	15,400	7,655
1983	118,690,000	1,173	1,083	12,486	15,642	7,588
1984	119,480,000	1,173	1,992	12,701	15,866	7,531
1985	120,240,000	1,173	2,001	12,937	16,111	7,463
1986	121,050,000	1,173	2,009	13,159	16,341	7,408
1987	121,670,000	1,173	2,017	13,412	16,602	7,329
1988	122,260,000	1,173	2,017	13,674	16,864	7,250
1989	122,780,000	1,173	2,017	13,900	17,090	7,184
1990	123,260,000	1,173	2,017	14,173	17,363	7,099
1991	123,610,000	1,173	2,022	14,433	17,628	7,012
1992	124,040,000	1,173	2,029	14,706	17,908	6,927

Table 2 Overall population vs. lawyer population

	population	attorneys	population per attorney	GDP (in US \$) per capita	judges	population per judge
England	57,800,000	83,300	694	17,716	31,205	1,852
Germany	80,200,000	67,112	1,195	24,533	17,932	4,472
France	56,600,000	23,000	2,461	20,961	4,633	12,217
America	255,600,000	799,960	320	22,468	29,846	8,564
Japan	124,760,000	15,223	8,195	27,005	2,852 *	43,745
Korea	44,300,000	2,813	15,748	6,561	1,238	35,784

\*included judges of summary court

Table 3 Court Budgets

fiscal year	budget (1,000 yen)	ratio against GNP (%)	ratio against national budget (%)
1947	533,007		0.25
1948	2,001,189		0.42
1949	4,212,688		0.57
1950	4,834,316		0.73
1951	5,874,139	0.107	0.74
1952	7,062,681	0.110	0.76
1953	8,268,128	0.110	0.80
1954	8,697,255	0.111	0.87
1955	9,176,320	0.104	0.93
1956	9,503,619	0.096	0.87
1957	10,670,796	0.095	0.90
1958	11,129,033	0.099	0.83
1959	12,433,933	0.091	0.82
1960	13,833,933	0.085	0.78
1961	16,958,927	0.087	0.80
1962	18,636,205	0.086	0.73
1963	21,196,372	0.083	0.69
1964	23,959,742	0.081	0.71
1965	27,827,303	0.083	0.74
1966	31,557,261	0.080	0.70
1967	34,345,463	0.074	0.66
1968	37,781,954	0.069	0.64
1969	42,358,868	0.065	0.61
1970	48,894,810	0.065	0.60
1971	58,997,770	0.071	0.61
1972	70,457,925	0.073	0.58
1973	84,833,891	0.073	0.56
1974	91,440,440	0.066	0.48
1975	123,644,701	0.081	0.59
1976	137,159,931	0.080	0.56
1977	147,806,170	0.078	0.50
1978	162,246,822	0.080	0.47
1979	173,764,198	0.077	0.44
1980	180,102,206	0.073	0.41
1981	188,054,299	0.072	0.40
1982	198,193,026	0.073	0.42
1983	199,650,892	0.070	0.39
1984	209,544,522	0.069	0.41
1985	218,392,283	0.068	0.42
1986	229,790,264	0.069	0.42
1987	235,547,066	0.067	0.42
1988	240,847,030	0.065	0.42
1989	248,341,000	0.062	0.41
1990	257,404,000		0.39
1991	261,268,000		

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Table 4 The maximum number of posts and their vacancies for public prosecutors (from 1976 till 1989)

fiscal year	classification			
	number of posts	number of appointments	prosecutors lost through resignation	vacancies
1976	1,173	74	45	61
1977	1,173	50	38	51
1978	1,173	58	50	41
1979	1,173	50	49	43
1980	1,173	50	36	30
1981	1,173	39	55	39
1982	1,173	53	55	41
1983	1,173	53	54	34
1984	1,173	50	55	36
1985	1,173	49	46	33
1986	1,173	34	58	57
1987	1,173	37	45	62
1988	1,173	41	56	76
1989	1,173	51	51	76

Table 5 Neighboring professions in Japan

	1970	1975	1980	1985	1990	1994	
patent attorney	1,736	2,200	2,536	2,900	3,342	3,464	207 (%)
judicial scrivener	13,047	14,762	15,035	15,898	16,488	16,956	130 (%)
tax consultant	21,105	28,800	36,338	46,765	56,624	60,752	288 (%)
attorney	8,888	10,115	11,759	12,937	14,173	14,809	167 (%)

Table 6 applicants for the second judicial examination and successful candidates

year	applicants	successful candidates (women)	classification		average number of attempts to pass
			average age of successful candidates	pass rate (%)	
1960	8,363	345 (15)	26.99	4.13	3.60
1961	10,909	380 (17)	27.80	3.48	3.78
1962	10,762	459 (26)	28.06	4.27	4.05
1963	11,686	496 (28)	28.39	4.24	4.19
1964	12,698	508 (25)	28.24	4.00	4.12
1965	13,644	526 (25)	27.69	3.86	3.84
1966	14,867	544 (18)	27.25	3.73	3.81
1967	16,460	537 (24)	26.92	3.26	3.89
1968	17,727	525 (35)	26.91	2.96	3.88
1969	18,453	501 (37)	27.15	2.72	4.21
1970	20,160	507 (34)	26.60	2.51	3.98
1971	22,336	533 (28)	26.35	2.39	3.68
1972	23,425	537 (26)	26.76	2.29	4.04
1973	25,339	537 (24)	26.11	2.12	3.93
1974	26,708	491 (23)	26.71	1.84	4.16
1975	27,791	472 (36)	26.75	1.70	4.48
1976	29,088	465 (39)	26.81	1.60	5.20
1977	29,214	465 (33)	27.74	1.59	4.70
1978	29,390	485 (32)	27.76	1.65	-
1979	28,622	503 (40)	27.98	1.76	-
1980	28,656	486 (49)	28.07	1.70	5.62
1981	27,816	446 (33)	27.94	1.60	5.80
1982	26,317	457 (48)	28.05	1.74	5.90
1983	25,138	448 (44)	27.89	1.78	5.83
1984	23,956	453 (52)	27.72	1.89	5.82
1985	23,855	486 (45)	28.39	2.04	6.32
1986	23,904	486 (59)	27.79	2.03	5.88
1987	24,690	489 (60)	28.30	1.98	6.61
1988	23,352	512 (61)	28.44	2.19	6.52
1989	23,202	506 (71)	28.91	2.18	6.66
1990	22,900	499 (74)	28.65	2.18	6.47
1991	22,596	605 (83)	28.63	2.68	6.43
1992	23,435	630 (125)	28.22	2.69	6.17
1993	20,848	712 (144)	28.29	3.42	6.46
1994	22,554	740 (157)	27.95	3.28	6.08
1995	24,488	738 (146)	27.74	3.01	

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