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The Political Economy of Legal Education and Legal Practice: Judicial Globalization and the Establishment of American Style Law Schools in Japan

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The Political Economy of Legal Education and Legal Practice: Judicial Globalization and the Establishment of American Style Law Schools in Japan

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Abstract:

This article analyzes recent legal reform in Japan, specifically focuses the establishment of American style law schools. The article examines current legal education, the National Bar Examination, rationale for legal reform, recommendations of the Judicial Reform Council, new law schools, law school admission, law school curriculum, the new bar examination, apprenticeship training and practicing law in Japan. The attempt of legal reform is in response to demand for greater citizen participation in judicial process in Japan but also to judicial globalization. The author stresses that the judicial reform must be made in such a way that it guarantees judicial independence.

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In recent years the Japanese government has set up American style graduate level law schools (Hoka Daigakuin) in Japan. The primary purpose of this initiative has been, in part, to increase the number of qualified lawyers, prosecutors and judges required to meet the demands of an increasingly litigious society. As of 2007, Japan had approximately 24,302 lawyers (Bengoshi) most of whom were practicing in urban areas, which translates to about one lawyer for 5,789 Japanese. This lawyer per population ration however compares dismally to the United States where there are approximately 941,000 or in other words one lawyer per 290 Americans. To increase the number of practicing lawyers, the Japanese government plans, in addition the establishing American style graduate level law schools, to reform legal education to increase the number of applicants passing of the annual National Bar Exam from the current 1,000 levels to the 3,000 levels by about 2010. This will involve, in part, revising the content of the Bar Exam in alignment with the curriculum of the new graduate law schools.

Secondly, the initiative will deal with how Japan’s legal education, training and practice can adapt to internationalization (kokusaika) of social and economic relationships, in particular, global economic interdependence that to some extent is laying demands for American judicial globalization. While other aspects of Japanese societies are adapting to globalization, Japan’s legal system has been slow. Moreover, the legal reforms are an attempt by the Japanese government to open up space for greater citizen participation and to strengthen the rule of law in Japan. The judicial process has been considered the last bastion of Okami (officialdom) based on the Japanese Confucian reverence for officialdom – “Respect official; and despise subject.” (Kanson Minpi). Critics argue that the decisions made by judges have been at times out of touch
because of lack of citizen participation in the judicial process and problem associated with subjugation of the judiciary to the executive body of the government. This paper examines recent legal and judicial reforms in Japan. The paper specifically focuses on the introduction of American style graduate level training in Japan, including law school admissions, law school curriculum, the National Bar Examinations, apprenticeship training, and legal practice. The paper also assesses what these changes may portend for the rule of law, as Japan endeavors to adapt to the global economy.

Part II. Japan’s Legal Education Before the Reform Era

Current Legal Education

Since the Meiji era the Japanese legal system has largely followed the German civil law tradition and legal education has been provided as a part of undergraduate program. There are currently 29 law departments at national, three prefectural and 85 private universities, and there are approximately 45,000 students enrolled. Public universities are annually funded by the central or local government and are expected to operate without any independent funds or outside funding. Private universities almost entirely depend on student tuition for their operation. The first two years are spent mainly in general education and humanities courses, with specialization in law occurring only during the last two years. The most important basic laws are called “Roppo,” which include Constitutional law, civil law, commercial law, civil procedure, criminal law and criminal procedure. In the undergraduate program the instruction focuses on a rather abstract body of legal principles and does not use case analysis. As a part of general education, law faculties teach large lecture classes and student participation is minimal. The practical
applications of law are given very little attention. Thus, the law programs are not designed to let students prepare for legal professions. After graduation, some graduates might serve the government, go into the business world or become journalists. No more than one out of 40 students choose legal professions (i.e. judges, prosecutors or lawyers).

After completing four years study at a university, students take the National Bar Exam. Most of the successful applicants spend time at one of Japan’s infamous cram schools, which focus on preparation for the National Bar Exam. Regular classrooms of law faculties at major universities have reportedly become deserted. The cram schools teach how to write model answers in the Bar Exam. The textbooks of the cram schools are easy to read with colors and charts. Most students simply go to private cram schools immediately after entering college in order to prepare for the National Bar Exam. Four major cram schools in Tokyo area are Tokyo Legal Mind, Waseda Seminar, Tatsumi Horitsu Research Institute, and Itoh Juku.¹

As a result, there is a phenomenon called “daigakubanare” - students neglect university classes and textbooks and tend to rely instead on the cram courses. As a consequence of neglecting university law education, it has been argued that most of those who pass the examination lack any significant intellectual background outside law or meaningful social experience.² University legal education has largely become irrelevant for those who want to become lawyers.

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The current graduate program consists of a Master Program and a Doctoral program. The Master program is divided into two parts – one for preparation for doctoral degree and another for further study for public employees and practitioners. The doctoral program is basically for researchers. According to the Reform Council Report, education in the undergraduate law program after the inauguration of new law schools is expected to be vitalized as a whole as universities compete with each other in developing their own characteristics and identities. Nonetheless, it may be a problem how to settle the relations between undergraduate law education and graduate law schools.

The National Bar Examination (Shiho Shiken)

Historically there has been no educational requirement (a law degree) to take the National Bar Examination administered by the Ministry of Justice. However, most of the applicants and most of the passers have been law graduates. The Bar Examination is given only once a year and consists of three parts:

I. The first part, held in May, tests Constitutional Law, Civil Law, and Criminal Law by multiple choice questions. This test takes three hours and half and consists of 60 questions. In order to pass, 46 questions must be answered correctly.

II. The second part, held in July, consists of an essay exam on six subjects, namely, Constitutional Law, Civil Law, Criminal Law, Commercial Law, Civil Procedure and Criminal Procedure. Each subject consists of two questions. The examinee must write a two to eight page answers to each question.
III. The third part is a short oral examination, held in October. The exam takes 20 minutes with two examiners dealing with three subjects including Constitutional law, combined civil law and civil procedure, and combined criminal law and criminal procedure.

The estimate of the Bar Exam takers were:

<table>
<thead>
<tr>
<th>Year</th>
<th>Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1978</td>
<td>30,000</td>
</tr>
<tr>
<td>1993</td>
<td>28,500</td>
</tr>
<tr>
<td>2000</td>
<td>33,000</td>
</tr>
<tr>
<td>2001</td>
<td>34,000</td>
</tr>
<tr>
<td>2002</td>
<td>42,459</td>
</tr>
<tr>
<td>2003</td>
<td>50,000</td>
</tr>
</tbody>
</table>

The number of successful candidates was limited to 500 for a long period out of the more than 20,000 applicants. The result of this system, artificial limits, makes the practice of law an elite (guild-like mentality) and protected club for a chosen few. This sense of elitism creates dysfunctional gap between lawyers and the people they are licensed to serve. The numbers of exam passers in recent years are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>740</td>
</tr>
<tr>
<td>2000</td>
<td>1,000</td>
</tr>
<tr>
<td>2001</td>
<td>990</td>
</tr>
<tr>
<td>2002</td>
<td>1,183</td>
</tr>
<tr>
<td>2003</td>
<td>1,173</td>
</tr>
<tr>
<td>2004</td>
<td>1,483</td>
</tr>
<tr>
<td>2006</td>
<td>1,851</td>
</tr>
<tr>
<td>2010</td>
<td>3,000</td>
</tr>
</tbody>
</table>

In 2001, the Bar passers were 990, which represent only a 2.5% passing rate. Average age of passers was 27.4, on average they spent 5.2 years for preparation of the Exam.

Historically five universities – two public (Tokyo and Kyoto) and three private (Waseda, Chuo and Keio) have accounted for about two-thirds of the Bar passers. The break down of passers is 206 from the University of Tokyo, 187 from Waseda University, 100 from Keio, 90 from Kyoto

3 After passing the Bar Exam the successful candidate must undergo apprenticeship training at the Legal Research Training Institute (LRTI) and the physical capacity of the LRTI has been used as the reason to limit the number of people who pass the national bar exam.
University, 76 from Chuo University respectively. The overwhelming passers were in Tokyo primarily because of concentration of cram schools in that city. As the table above indicates that in 2010 the number of exam passers will be 3,000. As a result, in 2018, it is projected that there will be approximately 50,000 legal professionals in Japan. The troubling fact is that the applicants study only subjects of law that have been asked in the Bar Exam. They do not pay attention to the areas of law not related to the Bar Exam even though they may be helpful to the practice of law. As a result, it has been argued that passers tend to have a limited intellectual horizon.

**Part III. The Legal Reforms**

**Why Is Reform Necessary?**

The judicial reform outlined above is an attempt to transform Japanese society from a custom and tradition bound society governed by giri (obligation)\(^4\) and ninjo (human relations) to more of the rule of law based society where the principle of “fairness and equity” are emphasized – legalization of Japanese society.\(^5\) Second, increasingly the international orientation of the cooperation of legal profession has become imperative.\(^6\) For example, in order to deal with global issues such as human rights, international crimes and environmental protection, mutual judicial assistance systems have become necessity. Globalization of the Japanese economy has

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\(^4\) Giri is a duty or the state of a person who is bound to behave in a prescribed way toward a certain other person. The content of this duty or obligation varies greatly according to the situation in which the subject of the duty is placed and of the person toward whom the duty is owed.

\(^5\) Sato Koji, Shiho Seido Kaikaku no Haikei to Rinen, 3 Horitsu no Hiroba 42, 45 (2005)
made the existing system untenable. Japanese lawyers increasingly need to deal with such issues as cross border financial restructurings, securities, insolvency, intellectual property and corporate finance matters. There is an acute realization in the government that it is necessary to have judges and lawyers who have more of an international outlook, language skills and highly specialized knowledge in such areas as intellectual property, medical malpractice, privacy, etc \(^7\). Third, it is necessary to have enhancement of both the quantity and quality of the legal profession in order to make them more accessible to the public. \(^8\)

**Comparison of Number of Lawyers in Six Countries**

<table>
<thead>
<tr>
<th></th>
<th>Japan</th>
<th>the US</th>
<th>Great Britain</th>
<th>Germany</th>
<th>France</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population (million)</td>
<td>127</td>
<td>300</td>
<td>59</td>
<td>82</td>
<td>60</td>
</tr>
<tr>
<td>Number of lawyers</td>
<td>20,000</td>
<td>941,000</td>
<td>83,000</td>
<td>111,000</td>
<td>36,000</td>
</tr>
<tr>
<td>Lawyers per capita</td>
<td>5,789</td>
<td>289</td>
<td>510</td>
<td>597</td>
<td>1,402</td>
</tr>
<tr>
<td>Number of yearly Bar passers</td>
<td>1,000</td>
<td>57,000</td>
<td>4,900</td>
<td>9,800</td>
<td>2,400</td>
</tr>
</tbody>
</table>

(The Reform Council Report, 2001)


\(^8\) As of 2005 there are 26,067 legal professional (22,059 lawyers). It is projected that the number of legal professionals will reach 50,000 by 2018, 100,000 in 2036 and 135,465 in 2056.
Recommendations of the Judicial Reform Council (JRC)

The Judicial Reform Council (Shiho Seido Kaikaku Shingikai) created in July 1999 under the Cabinet, presented its final recommendation to Prime Minister Junichiro Koizumi on June 1, 2001. The Council believes that the rule of law has not taken root in Japan’s 130 year history of modernization. Government agencies have ruled the country without being subject to meaningful legal regulations. In addition, in spite of the fact that the government structure in Japan is based on the ideas of separation of powers and checks and balances, the judiciary, one of the three branches of government, has not used the power of judicial review effectively (Article 81 of 1947 Constitution).

The Council recommended major changes in the civil justice, criminal justice, legal education, and lawyer training systems in Japan to meet public expectations.

As for civil justice the JRC recommends the followings:

1. Reducing the average length of litigation by half.

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9 The Chair of the Judicial Reform Council (JRC) was Koji Sato, professor at Kyoto University, and consists of thirteen members that include former Supreme Court justice, president of the Japanese Federation of Bar Associations (Nichibenren), three academics, two businessmen, leaders of labor union, and author, a private attorney, a consumer group spokesperson and a former prosecutor. The JRC met 63 times for two years to reach its final deliberation. The JRC considered fundamental measures necessary for judicial reform and judicial infrastructure arrangements by defining the role of the Japanese administration of justice in the 21st century. The agenda of the Council may include the realization of a more accessible and user-friendly judicial system, public participation in the judicial system, redefinition of the legal profession and reinforcement of its function.

10 Article 81 of the Japanese Constitution provides a system of judicial review. The article stipulates that “The Supreme Court is the last resort with power to determine the constitutionality of any law, order, regulation or official act.”
2. Allowing the winning party to recover part of attorney’s fees from the losing party under certain conditions


As for criminal justice, the JRC recommends the followings:

1. Speeding up of criminal cases
2. Establishing a system of public defenders
3. Defining the role of the public prosecutor
4. Revising the investigation and trial proceedings, including issues related to the custody of suspects and defendants
5. Rehabilitating offenders and protecting victims.

In order to fulfill overall goals of legal reforms, the Council wrote the followings in its report, among others.

(1) Judges should be appointed from among attorneys (Hoso Ichigenka - a unified source for the legal profession) in order to re-establish the judicial independence prescribed by the Constitution.

(2) Three year graduate professional law schools should be established to provide professional legal education as a prerequisite to the National Bar Examination.

(3) In order to strengthen the democratic basis of administration of justice, lay assessors (Saiban in) will be randomly selected on a case-by-case basis to decide both facts and law in support of the activities of professional judges.

A system for legal training shall be established that consists of a “process” that connects legal education, the National Bar Examination and apprenticeship training. It should be noted that the
Reform Council Report for the most part follows an American model of legal education and lawyer training based on the common law adversarial system. Kelemen and Sibbitt point out that this is the globalization of American legal style.\textsuperscript{11} I would like to argue that whether American style adversarial legal system can work in extremely homogeneous and historically ‘group harmony’ emphasized Japanese society remains to be seen.

**New Law Schools**

In 2004, 20 national, two prefectural and 46 private law schools (68 in total) started. The number of applicants of law schools were 72,800 (16,691 for national, 2,425 for prefectural, 53,684 for private). These figures represent 13 times more than the numbers of the admitted. The breakup of applicants indicates that the national universities had 10.1 times more applicants than the admitted, 17.3 times more for prefectural universities, 14.1 times more for private universities. The numbers of persons who were admitted were 1,701 for national universities, 133 for prefectural universities and 3,933 for private universities respectively. Thus, the total figure of the admitted is 5,767. The number of working adults who were admitted was 2,792, which represents 48.4 percent of the total admitted. The number of persons who did not major law in undergraduate program who were admitted were 1,988, which represents 34.5 percent of total of the admitted.

In 2005 three national law schools (Tsukuba University, Shinshu University, Shizuoka

University) and three private law schools (Hokkai Gakuen University, Aichi Gakuin University, Ryukoku University) also started. As a result, the total number of law schools in Japan is 74. The law schools are not necessarily located in existing universities. There are private educational institutions incorporated by appropriate entities. It has been argued that having both law schools located in existing universities and the new type of independent law schools fosters healthy competition.

Many universities established law schools in order to survive as a competitive institution. According to the survey, the primary purpose of setting up a law school is that providing professional education of highly specialized knowledge can contribute positively to university’s general reputation. These law schools must undergo a third party accreditation process and if the structure of organization (e.g. objectivity, fairness and transparency, etc) does not satisfy the established standard, the accreditation will be denied. Nakabo Kohei, former President of the Japanese Federation of Bar Association (Nichibenren), is concerned that the government is trying to retain control over legal education and hereby stall professionalization of legal training based in universities. The duration of education at law school is three years but a school may shorten this period to two years for those who already have a legal background. Under the two year program each law school administers legal subject examinations to determine whether the applicants possess knowledge sufficient to skip the basic legal subject courses at law schools.

12The curricula of law schools are supervised by the Ministry of Education, Science, Sport and Culture. The Ministry governs accreditation very closely and even screen and approve each textbook that is adopted for use in the law schools. Accreditation of four universities such as Aomori University, Aichi Gakuin University, Hokuriku University and Ryukoku University has been denied, See Sakakibara 2004.

Legal subject examinations are uniform exams commonly administered throughout the country and consist of constitutional law, civil law and criminal law and a relative essay on other subject. It has been estimated that the two year program may be used by up to 70% of student body in law school. The followings are the examples of major universities that have announced their emphasis on either the two or three year programs.

A. Three year program requires completion of 93 units – Waseda University and Omiya Law School

B. Two year program requires completion of 63 units – Tokyo University, Kyoto University, Hitotsubashi University, Keio University and Chuo University

Law School Admission

According to the Judicial Reform Council, law school admission should be based on the principle of “fairness, openness and diversity” and should be left to the independent judgment of each law school according to its own educational philosophy. The Judicial Reform Council suggested in its report that the educational philosophy of law school should be as follows, among others;

1. Enable law students to acquire the specialized qualities and capacity required for legal professionals who take responsibility for the ‘rule of law’ and are expected to play a role as the “doctors for the people’s social lives,” and foster and improve their human nature as persons with kind hearts who can deeply sympathize with the happiness and sorrows of people who are going through their one and only life.
2. Enable law students to acquire specialized legal knowledge as well as foster their creative thinking ability and develop such knowledge and the capacity for legal analysis necessary for solving actual legal problems according to the facts.

In order for the applicant to be accepted by law schools, they must have a BA/BS degree. The additional requirements of admission are as follows:

1. Aptitude Test – this is a nationwide uniform test held in June administered by the University Admission Center. The aptitude test is not only for those who have completed an undergraduate law program but also for those who have studied other subjects. The test evaluates reading comprehension, analytical skill and logical thinking. The test does not include law subjects. Therefore there is no handicap for those who have not studied or experienced legal subjects. The aptitude test models after the Law School Admission Test (LSAT) in the United States.

2. Undergraduate academic performance.

3. Self recommendation essay explaining why the applicant wishes to pursue the legal profession.

4. Language aptitude – scores of the TOEFL or TOEIC tests.

5. Each law school administers a brief essay exam and interview.

6. Documents indicating special qualification (e.g. patent agents).

The recommendations of the Judicial Reform Council states that the legal profession in the 21st century should include a wide variety of people who have learned such disciplines as economics,
science, mathematics and medicine. In order to diversify the student body and to meet divergent needs of contemporary society, law schools are encouraged to admit 30% of students who have not studied law or are working adults. The new law schools control their own admissions and grant their own degree - a Juris Doctor (Homu Hakase), but do not control their own budgets.\textsuperscript{14}

**Admission Criteria – Examples**

An example of admission criteria for the three year program:

<table>
<thead>
<tr>
<th>LSAT</th>
<th>GPA</th>
<th>Language Test</th>
<th>Interview</th>
<th>Brief Essay</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>300</td>
<td>50</td>
<td>100</td>
<td>100</td>
<td>50</td>
<td>600</td>
</tr>
</tbody>
</table>

An example of admission criteria for the two year program:

<table>
<thead>
<tr>
<th>LSAT</th>
<th>Legal Subject Exam</th>
<th>Multiple Choice Test</th>
<th>Interview</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>200</td>
<td>100</td>
<td>200</td>
<td>100</td>
<td>600</td>
</tr>
</tbody>
</table>

**Law School Curriculum**

The new law schools follow an American model of legal education and lawyering based on common law adversarial system. They are considered postgraduate schools under the School Education Law. The law schools provide professional legal education as a prerequisite to the National Bar Examination. The small group education approach (50 to 60 students in a class for the first year) provides interactive - bi-directional communication between the instructors and

\textsuperscript{14} The Ministry of Education monitors the spending of public money by law schools as well as their educational performance.
students, and multidirectional interaction between instructor and students and among students themselves. In order to facilitate interaction, the Ministry of Education requires that law schools keep the student-faculty ratio to a low 15:1. Both the case method and Socratic method are used to teach the courses. Law students not only acquire legal knowledge but also creative thinking ability, develop legal analysis capacity, and solve actual legal problems based on the facts. Strictness in grade evaluation and certification of completion of the coursework are expected. Law schools provide thorough education so that a significant ratio of the students can pass the new National Bar Examination.

The law school calendar year consists of two semesters. Students take 90 minutes classes, which last 15 weeks and can earn two units from the course work. The first year of the three year program consists of required courses on the fundamentals of Japanese law.

The second and third year of the three year programs consist of the following three principal types of courses:

a. seminars in the basic areas of law (e.g. civil law, criminal law, Constitutional law, commercial law, criminal law procedure and civil procedure);

b. instruction by experienced practitioners in civil, criminal and administrative procedure, civil litigation, and commercial counseling; and

c. electives (e.g. international law, intellectual property, tax law, etc).

The third year may be spent for the preparation for the Bar Exam. It is estimated that major law schools may make cooperative efforts with major cram schools to boost the number of Bar passers. Yuki argues that it is crucial that law schools should not fall into a trap of being preparatory schools for the National Bar Examination.\textsuperscript{15} It is unclear whether all the approved
Japanese law schools will be able to survive as viable institutions. The measurement of success is without doubt the passing rate of the Bar Exam.

**Instructors**

Each law school must have at least 12 full time instructors. Each law school recruits its instructors on its own. An instructor in the law schools must be at least 40 year old with five year teaching experience. The 20% of instructors must be practitioners with five year experience. The Public Employee Dispatch Law was enacted in April 20, 2003. According to this statute, the Ministry of Education in cooperation with the Supreme Court established a system to send prosecutors and judges to the new law schools for three-year terms. These measures are intended to improve the quality of education in law schools. Since law schools should provide highly advanced legal education especially for training legal professionals, hiring practitioner-instructors is considered essential.

**The New Bar Exam**

The new Bar Exams started in 2006. The new Bar Exams is administered by the Bar Exam Administration Committee (Shiho Shiken Kanri Iinkai) in the Ministry of Justice. It is held in May every year and the result is announced in early September. The exam must be taken not more than three times within five years since graduating from law school. If not passed, the candidate must repeat law school or take preparatory exams in order to re-take the Bar Exams. Japanese citizenship is not required to sit for the bar examination or to qualify as an attorney, but

\[\text{\footnotesize Yuki Kazuhiro (2004) Hoso Yosei no Shindankai 76 Horitsu Jiho 65, 68}\]
citizenship is required to serve as a judge or prosecutor.

The new exam procedure consists of three parts:

A. A multiple choice exam in May on Constitutional law, civil law and criminal law.  
This part of the exam lasts four to five hours. It has 140 to 200 questions.
B. The essay exam held in July consists of two questions on the Constitution, civil law, criminal law, criminal procedure and civil procedure. The point of the essay exam is to find issues using case analysis, logical thinking and practical applications of the law.
C. Oral exam held in October on Constitution, civil law, criminal law, civil procedure, and criminal procedure.

According to the National Bar Examination Administration Committee, as a transitional step the current National Bar Examination will continue to be administered in parallel to the new examination for five years after the introduction of the new National Bar Examination. After 2012, only the new exam will be administered. The New Bar Exam will be primarily for law school graduates. The content of the exam will be based on the curriculum of the new law schools. The recommendations of the Judicial Reform Council states that in order to secure the relations between the New Bar Exam and the curriculum of the law schools, the opinions of the law school faculty need to be reflected on the Committee of Bar Exam. This system may give advantage to the law school graduates.

The average passing rate of major law schools (e.g. University of Tokyo, Kyoto University) under the new Exam is estimated at 33 %. The passing rate of lower ranked law schools will be


\[\text{16 According to the Ministry of Justice, the number of persons who took the multiple choice part of the New Bar Exam in 2006 were 2,087. Average score was 232.9 out of 350. The persons who were able to score at least 210 passed the exam. The number of persons who passed the exam was 1,684. The average age of the persons who passed the exam was 29.92.} \]
20 to 30%. According to the latest report, the overall passing rate of the first National Bar Exam held in 2006 was 48 percent. In 2006 the number of persons who took the National Bar Exam was 4,607 and who passed the Exam was 1,851. This represents 48% of passing rates.

<table>
<thead>
<tr>
<th>Year</th>
<th>Current Exam</th>
<th>New Exam</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>500 - 600</td>
<td>900-1100</td>
<td>2,000</td>
</tr>
<tr>
<td>2007</td>
<td>300</td>
<td>1,700</td>
<td>2,000</td>
</tr>
<tr>
<td>2008</td>
<td>250</td>
<td>2,150</td>
<td>2,400</td>
</tr>
<tr>
<td>2009</td>
<td>200</td>
<td>2,500</td>
<td>2,700</td>
</tr>
<tr>
<td>2010</td>
<td>100</td>
<td>2,900</td>
<td>3,000</td>
</tr>
<tr>
<td>2011 -</td>
<td>0</td>
<td>3,000</td>
<td>3,000</td>
</tr>
</tbody>
</table>

### Apprenticeship Training

In 1949 the Ministry of Justice created the Legal Research and Training Institute (LRTI - Shiho Kenshujo), an agency of the Supreme Court, located in Wako City in Saitama Prefecture. The Institute helped to standardize legal education for judges, prosecutors and lawyers and hence to create a more cohesive legal profession. The successful applicants spend in the LRTI as state employees. The length of practical training at the Training Institute was reduced to one and a

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half years in 1999. The training period at the LRTI is to be reduced to a one-year period by eliminating classroom instruction and only apprenticeship retained. The faculty of the LRTI are judges, prosecutors, and practicing attorneys who are temporarily assigned to the Institute. They do not enjoy academic freedom, however.

Trainees receive training in legal practice, especially legal writing. The program includes one year apprenticeship at courts, offices of public prosecutors and offices of private practitioners. The training is divided into three terms. The first term consists of three months of classroom work, during which the apprentices receive instruction in the conduct of civil and criminal trials, public prosecutions, and civil and criminal trial practice. The Institute teaches trainees how to draft court judgments, indictments, pleadings, prosecutor’s final argument, or a summary brief for a plaintiff or defendant. During the second term of 12 months, apprentices engage in actual field training in each of the three branches of the profession. This apprenticeship period are also spent in the district prosecutor’s office, where the apprentices engage in investigative activities, such as examining physical evidence and interviewing witnesses and suspects. They also attend the trials. Apprentices also spend in prefectural barristers associations, where they work in the office of practicing barristers. Apprentices return to the Institute for the final term, where they spend three months taking additional classroom instruction.

Upon completion of the training, candidates are admitted to the Bar with full license and can choose to become a judge, prosecutor or lawyer. In 2007, the number of persons who completed apprenticeship Training program at the LRTI were 1,397. Approximately 60 to 100 trainees are recruited by the Supreme Court as assistant judges (Hanjiho) and 50 for prosecutors. The assistant judges are promoted to full judgeship after working for ten years and can be reappointed every ten years until the mandatory retirement age of sixty five. While the law
permits the Supreme Court to appoint full judges from among private attorneys, prosecutors and
law professors, rather than from Institute trainees, such appointments have been rare.

I agree with McKenna’s contention that Japanese judges are biased in favor of the executive
branch and administrative agencies. Administrative control over judges throughout their
careers are the main institutional reason for the lack of independence of most judges in Japan.
The Training Institute should be replaced with a decentralized method of professional legal
education in universities, where faculty members enjoy academic freedom and independence,
and can be recruited from many different sources.

Practicing Law in Japan

A new Practicing Attorney Law was enacted in 1949. The Law abolished the supervision of
attorneys by the Ministry of Justice. Attorneys are registered with local Bars which form the
Japan Federation of Bar Associations (JFBA - Nichibenren). Approximately 80 percent of
attorneys work in one-man offices. The small size of the profession has produced a highly
skewed geographical distribution of attorneys. In Tokyo alone there are 9,000 lawyers (about
half of the lawyers in the nation) and 75% of lawyers in Tokyo and Osaka area alone. Unlike the

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20 The Japanese Federation of Bar Associations (Nichibenren) was created in 1949 as the
   institution with regulatory power over the bar. The JFBA is the single organization directly
   controlling the legal profession in Japan. It has considerable autonomy from the Ministry of
   Justice.

21 In 2000, the JFBA (Nichibenren) reported of the 253 judicial districts in Japan, 39 districts did
   not have a single attorney living in that jurisdiction.
United States, it is rare for attorneys to work as staff members of a corporation, government agency, or local government. Attorneys’ fees are not regulated by law. The JFBA has a standard scale for attorneys’ fees but it is not binding.

Under the Foreign Lawyers Law of 1986, a foreign attorney who is admitted to practice in Japan (the Lawyer-for –Foreign Legal–Services) may conduct legal business involving laws of the country in which he obtained his license to practice law (Special Measures Law Concerning the Handling of Legal Business by Foreign Lawyers). In order to qualify as foreign law solicitors (Gaikoku Ho Jimu Bengoshi), it is necessary to have more than three years of practical experience in their home countries and apply to the Minister of Justice for a license. After obtaining a license from the Ministry of Justice, foreign attorneys must register with the JFBA.23 Japanese lawyers are allowed to employ foreign lawyers. However, foreign attorneys are not allowed to represent a client in court nor to prepare documentation for such proceedings. They may not act as defense counsel in criminal proceedings. As of April 1, 2005, Amendment to Foreign Lawyers Act allows foreign lawyers to form partnerships with Japanese lawyers and to employ Japanese lawyers24

23 As of April 1, 2005 there are 236 registered foreign lawyers in Japan, which include 217 in Tokyo alone and 8 in Osaka. The main jurisdictions admission for foreign lawyers are New York (27%), California (18%), England and Wales (14%) and Hawaii (7%).

24 As of March 30, 2005, foreign law firms operating in Japan include White & Case, Baker & McKenzie, Paul, Hastings, Janofsky & Walker LLP, Linklaters, Clifford Chance, Latham & Watkins, Morgan Lewis & Bockius LLP, Morrison & Foester, and Bingham McCutchen LLP. For example, the number of Japanese lawyers working for Bingham McCutchen LLP is more than 50.
Conclusion

A new system of legal education and licensing of lawyers is beginning to take shape of in Japan, pursuant to the Judicial Reform Council’s 1999 recommendations. The new system will lessen the importance of the Bar Exam and emphasize education at law schools. The new Bar Exam will ensure that those who pass the Exam have the requisite knowledge and skills to practice as lawyers. The goal is to produce many more lawyers, independently educated and socially diverse, including a higher proportion of women and more graduates from outside the elite universities, who can contribute to the creation of a society based on the rule of law. The rule of law lessens the regulatory environment and the opportunities for corruption and increases transparency and accountability. Citizens and Nonprofit Organizations (NPO) will benefit from an expanded judiciary where practitioners are more available and diverse. Enhanced citizen participation will bring the legal system closer to community norms and expectations.

I would like to point out, however, the recent legal reform has not made any attempt to lessen the Secretariat of the Supreme Court’s administrative power on judges. Unless judges throughout the country are appointed life time like the federal judges in the United States, they will continue to be under the power of the executive body and will keep upholding a government policy and the judiciary would not exercise fully their constitutional power such as judicial review.

In order to cope with globalization, the Japanese society must change and transform, and these types of reform are expected to contribute to internationalize the Japanese society, and to making the legal profession in Japan more effective at dealing with emerging international needs and issues. The judicial reform in Japan is emulation of American legal education and is one more step of Americanization of Japan.