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Issues of the Lawyer Population: Japan

*Shozo Ota**

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I. INTRODUCTION

The Japanese term for "legal profession" is *hosō*. It includes judges (*saibankan*), prosecutors (*kensatsukan*), and practicing attorneys (*bengoshi*), all fully qualified lawyers under Japanese law. In this paper "legal profession" will be employed as the equivalent to *hosō*. This distinguishes it from other law-related professions, which will be identified as "quasi-lawyers."

It is generally known that Japan has only a small number of lawyers. At present there are approximately 2,800 judges, 2,000 prosecutors, and 14,000 practicing attorneys; or 2.3, 1.7, and 11.4 per 100,000 persons in the population, respectively. These figures are very low compared to other industrialized western countries, and perhaps symbolize the relatively weak position of the legal sector vis-à-vis the executive, political, and economic sectors within the state structure.

Particularly, the number of practicing attorneys in Japan, relative to the size of the general population, has always been the smallest among the major industrialized nations, even though it has slowly increased since the end of the Second World War. This paucity of practicing attorneys has been pointed out repeatedly by Japanese academics as a major defect in the legal system, a system which purports to serve the ideal of "rule of law." On the other hand, more recently, since Japan emerged as a major economic power, it has become the object of amazement, or even envy, for some Western observers, due to the fact that Japan has been able to function with so few lawyers, while it maintains a highly industrialized market economy.

The first task of comparative analysis is to develop a cognitive view of the subject matter, placing it in the proper contexts of relevant factors. For instance, it is needless to say that behind all this lies the fundamental notion of law and social order prevalent among Japanese people, which in turn must reflect their deeply seated cultural tradition and historical experiences. Here, however, because of limited space, focus is centered on some of the more visible factors which explain why and how Japanese lawyers are kept small in number.

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First, a brief review of the historical background of the Japanese legal profession and its institutions will be presented; this may be regarded as the most important factor lying behind its present situation. Second, institutional mechanisms of recruitment will be depicted in order to illustrate the education and selection process. Third, since the private bar is the largest branch of the legal profession numerically, practicing attorneys' work will be examined to see if the market for legal services adequately explains the small size of the legal profession. Fourth, the major professions of the "quasi-lawyer" category will be surveyed to see if the existence of this group best explains the small size of the bar.

II. HISTORICAL LEGACY

The legal profession was created by the government after the Meiji Restoration (1867), when the legal system as a whole was transplanted from the West. This was part of the government's overall effort to transform the feudal political structure of the nation into a modern state. No differentiated legal system existed prior to this revolution, nor was there an established legal profession. Therefore, the Japanese legal profession is not a product of a long historical evolution, but an artificial creation that originated a little more than one hundred years ago.

When the Japanese government introduced the Western legal system, it chose a continental model in which the three branches of the legal profession were regarded as separate professions and careers. The main political goal in transplanting the Western legal system was to abolish the extra-territorial jurisdiction accorded to Western powers in the treaties that Japan was forced to enter. Law was generally regarded as a technique for state officials to control and guide the people, but not as a means for citizens to regulate their own affairs (sometimes against the will of the state). Therefore, the government did not intend to make the legal machinery available to the general public or to develop a strong private bar. It was more important to create reliable bodies of judges and prosecutors, and above all, upper-level state bureaucrats. The law faculties in the newly founded imperial universities were more of a training school for state officials than for private lawyers.

Relative to the other two branches, private lawyers had to endure a lower status for a long period. Initially, a private practitioner typically was regarded with suspicion, as someone living on someone else's plight; private practice was not recognized as a legitimate profession. A qualifying examination for private lawyers was lacking altogether. It was then introduced as a separate, less demanding examination as opposed to the exam for judges and prosecutors. Judicial procedures were of a predominantly inquisitorial nature, in which practicing attorneys played a rather peripheral role. Moreover, industrialization was achieved without

any direct contribution of private lawyers in alliance with autonomous business interests as in the West. It was only in the criminal law sphere that private lawyers could nourish their professional pride as defenders of the oppressed against the autocratic state. At the same time, these circumstances led to the formation of antagonistic attitudes between judges and prosecutors, regarded as lawyers of the "ruling camp," and practicing attorneys, regarded as lawyers of the "opposition camp." In any event, Japanese lawyers did not play an important role in this modernizing process, and the nation-building credit went to the omnipotent, paternalistic statesmen and state officials.

As a consequence, a built-in bias exists in the Japanese legal institution against relying on private lawyers. For example, divorce by consent, and the well-developed national system of real estate registration, eradicate the need for lawyers' services at the points which are crucial for the establishment of contacts between lawyers and ordinary citizens in most Western countries. Also, from the very beginning, practicing attorneys were not accorded a complete monopoly in the legal field. Instead, various other professions in neighboring fields, which fall within the category of "quasi-lawyers," were introduced alongside practicing attorneys. Each of those neighboring professions has its own sphere of practice secured by law, and its own system of recruitment. This situation has never been called into question and remains intact.

After the end of the Second World War, under the new Constitution which is based on the principle of "the rule of law" and provides for an overriding set of fundamental human rights, the court was granted the power of deciding the constitutionality of all laws and governmental acts. The Practicing Attorneys Act finally was revised in 1949 to equalize the status of practicing attorneys with that of judges and prosecutors. Qualifying examinations were unified into the present Legal Examination (*shiho-shiken*). The Institute for Legal Training and Research (LTRI)(*shiho-kenshu-sho*) was created for the two-year, state-supported practical training common to the three branches of lawyers. The judicial procedures were reformed to incorporate Anglo-American notions of due process and adversary adjudication. These reforms greatly enhanced the institutional position of the judiciary and, during the forty years that followed, the Japanese legal profession has improved its prestige and influence a great deal. Nevertheless, it is undeniable that the legacy of the past still remains, exerting a pervasive influence on the institutional structures and processes concerning the legal profession.

In recent years, however, the impact of rapid legalization of the social order has become evident in every sphere of social life, making both the government and the general public aware of the problems caused by the paucity of legal manpower. This is in part a natural con-

sequence of the fundamental transformation of the social structure that occurred for several decades following the Second World War, accompanying the migration of a large part of the population from rural villages to urban centers. In the 1970s, the process of coping with the problems of environmental destruction caused by unscrupulous industrial activities, accompanied by some atrocities, highlighted the decisive importance of the roles that law and lawyers must play in contemporary society. More recently, the deeper involvement of the Japanese economy in the world trade system has made the need to reshape the legal system and enhance vigor and universality in its operation clearer. This will entail a dramatic increase in the number of qualified lawyers. Under these conditions, some important changes have occurred in the legal profession which may mark the beginning of further changes. Some of these will be touched upon at the end of this essay.

III. INSTITUTIONAL MECHANISMS OF RECRUITING LAWYERS

A. *University Legal Education*

In Japan, as in most countries of the continental legal tradition, law is taught in universities at the undergraduate level. As noted above, the law faculties of the former imperial universities were founded by the government to primarily produce public officials including judges and prosecutors. Law faculties of other state, municipal, and private universities (which are numerous) follow that pattern. Accordingly, Japanese law faculties normally teach political science and economics as well as law. The four-year undergraduate course is usually divided into two stages: the first one-and-a-half years for liberal arts and sciences, and the last two-and-a-half years devoted to the specialized studies of law and political science. There is no assumption, subjectively or objectively, that law students will normally become lawyers. However, they are regarded as people who will assume some leadership position in Japanese society.

During the last few decades, the number of law students has been increasing. There were 21,000 law students in 1975, 27,000 in 1980, 30,000 in 1985, and 38,000 in 1990. In the same period, the number of graduates who passed the Legal Examination and actually entered the legal profession remained constant at five hundred. The rest of the law graduates entered civil service, business, journalism, or law-related professions referred to as "quasi-lawyers."

According to research conducted recently by the Ministry of Justice, successful candidates usually take the examination six times or more before they finally pass. The average age of those who pass the examination is about twenty-eight years. During all these years these would-be lawyers devote their whole life to preparing for the examination, and it is feared that little time remains to cultivate views on social matters or

to accumulate practical experience. On the other hand, many young and bright law students, initially aspiring to become lawyers, quit the competition at an early stage and take jobs in public service or business. Doubt has been openly expressed as to whether the extremely low pass rate accurately reflects the high quality of the students who are selected in this fashion.

B. *The Legal Examination*

The Legal Examination is administered under the control of the Legal Examination Control Commission (LECC). The Commission is composed of the Vice-Minister of Justice, the Secretary General of the Supreme Court, and a practicing attorney recommended by the Japan Federation of Lawyers' Associations (*Nichibenren*).¹ The examiners are appointed by the Justice Minister on the recommendation of the LECC. They are selected from among judges, prosecutors, practicing attorneys, and law professors. They write the questions, mark the exam, conduct the interviews at the last stage, and determine successful candidates.

The Legal Examination is divided into two parts: the first (preliminary) and the second examination. University graduates are exempted from taking the first examination.² The second examination is in turn divided into three stages:³ a multiple choice test covering three subjects, the essays, and the orals. The latter two cover seven subjects. The subjects for the first test are: constitutional law, civil code, and criminal law. The subjects for the essays and orals consist of four categories: (a) constitutional law, civil law, commercial law, and criminal law; (b) civil procedure or criminal procedure; (c) a subject chosen from administrative law, bankruptcy law, labor law, public international law, conflict of law, criminology, and civil procedure or criminal procedure; (d) a subject chosen from political science, economics, fiscal science, accounting, psychology, economic policy, and social policy.⁴

C. *The Legal Training and Research Institute*

In order to qualify as a lawyer, after passing the Legal Examination, one must enter the LTRI of the Supreme Court for a two-year practical training course. Trainees of the Institute enjoy the status of public officials, receiving regular salaries from the government. The practical training course at the Institute includes on-the-job training at

¹ The Legal Examination Act [hereinafter LEA], arts 12, 13.

² *Id.* art. 4.

³ *Id.* arts. 5, 6.

⁴ For more recent changes, see *infra* text accompanying footnote 26.

district courts, local prosecutor's offices, and practicing attorneys' offices as well as schooling at the Institute. After passing the final examination at the Institute, a trainee may decide whether he or she would like to become a judge, prosecutor, or a practicing attorney.

The Legal Examination Act states that the purpose of this examination is to select those who possess the knowledge and ability required to become a judge, a prosecutor, or a practicing attorney.⁵ In other words, the law stipulates that this is a qualifying test. Nevertheless, in reality, it functions as an "eliminative" examination, because a *de facto* ceiling is set as to the number of successful candidates. From a practical point of view, this examination is functioning as an entrance examination to the LTRI. This fact has tremendous importance, for the facilities of the LTRI are limited. To increase the number of lawyers would entail increasing the capacity of the LTRI, which in turn would mean a substantial increase in the state budget. This increase would include physical facilities as well as teaching staff, and trainees' salaries. After LTRI was founded in 1949, the number of successful candidates of the Legal Examination was 265, then grew to 300 around 1955, and kept growing until it reached 500 around 1965. This number, which is considered to correspond to the Institute's maximum capacity, has since been the ceiling.

IV. PRACTICING ATTORNEYS AND THEIR PRACTICE

A. *Number and Composition*

As mentioned earlier, the total number of practicing attorneys has been increasing, albeit only gradually. If 1960 is employed as the base year, the index of increase was 100 (6,458) in 1960, 137 (8,836) in 1970, 181 (11,680) in 1980, and 218 (14,104) in 1990. This rate of growth is far more modest than in the major industrial countries of the West for the same period, and it does not correspond to Japan's own economic growth rate. The number of practicing attorneys per 100,000 people in 1990 was 11.4. Compared with other countries of the West represented in this Colloquium: United States (227), France (99.2), Germany (199.4), United Kingdom (121.4), Australia (157.2), and Hungary (73.9), this number is extremely small, although it is similar to that of other Asian countries such as Korea (4.7), Vietnam (1.2), and China.

When the composition of practicing attorneys is examined according to age, another effect of the narrow entrance gate to the profession becomes evident. The proportion of practicing attorneys younger than forty years old is less than thirty percent, much lower than that of their

⁵ *Id.* art. 1.

colleagues in Western countries. This can be attributed to the high average age of the new entrants, but also it partly reflects the fact that Japanese lawyers tend to remain in practice until they are very old. This reduces the vigor of the Japanese Bar and limits its capacity to adapt effectively to today's changing and demanding environment.

As to gender composition, the number of female lawyers was only forty-six (0.17%) in 1960, which quadrupled to 200 (2.26%) by 1970, then doubled to 445 (3.81%) by 1980, and again doubled to 810 (5.74%) by 1990. The number and ratio of female law students and lawyers are expected to increase more in the future. But here again, the Japanese figures lag far behind the Western countries: United States (12.1%), United Kingdom (22.6%), Australia (17.2%), and Germany (15.1%).

B. Distribution

The offices of practicing attorneys are heavily concentrated in the metropolitan cities such as Tokyo, Osaka, and Nagoya, whereas "lawyer vacuums" exist in many local areas. According to a 1980 survey, a little less than half of all lawyers were practicing in Tokyo, and about two-thirds were practicing in the three largest cities: Tokyo, Osaka, and Nagoya. The numbers of lawyers per 100,000 people are large in these cities: Tokyo (45.8), Osaka (18.5), and Nagoya (9.7), and very small in local prefectures such as Iwate (2.1), Aomori (2.3), and Akita (2.5).

The uneven distribution is hardly explainable in terms of the population, the level of economic activity, or social needs of the prefectures. In other words, the demand side has little influence on the supply of legal services. Apparently, under the conditions of excessive underproduction of lawyers, and under the law which allows lawyers to practice in any location in the country, lawyers possess location options. They prefer to practice in large urban centers such as Tokyo and Osaka, where economic, political, and cultural activities, as well as clients, are heavily concentrated. Lawyers in Tokyo and Osaka often travel to handle a case in another prefecture at the expense of their clients.

The scarcity of rural lawyers leaves many legal needs unmet; these needs are often partially covered by judicial scriveners (see below). On the other hand, it is a recent phenomenon that the competition among lawyers is becoming severe, and this pressure is beginning to push some lawyers into "new" fields of work, such as preventive law and corporate counseling. Lawyers in big cities, some of whom are directly affected by the activities of foreign lawyers, are generally more liberal and adaptive to the changing and exciting modern conditions, while lawyers in local areas tend to be more conservative and stick to traditional litigation-centered roles. It is in fact the latter who adamantly opposed expansion.

sion, and the local bar associations form an overwhelming majority in the decision-making bodies of the Japan Federation of Lawyers' Association.

C. *Work of Practicing Attorneys*

National surveys conducted in 1980 and 1990 show that a vast majority of practicing attorneys are solo practitioners with only one or two clerks. No system of training and certifying law office support personnel exists. Only a minority (10 percent) of the lawyers belong to a partnership. These partnerships perform services mostly in the fields of international trade, labor law (union side), or domestic business law. Large law firms (with forty or so lawyers), specializing in international trade matters and adopting the work style and office organization of American law firms, began to appear in the 1970s and are growing in number and size, but on the whole, their importance remains limited.

Many new lawyers follow the traditional pattern of finding employment with a senior lawyer's office for the first few years after entering practice. The employing lawyer is called *Oyaben* (master lawyer), and the employed lawyer is called *Isoben* (hanger-on lawyer). These lawyers strive to become independent when they have acquired the necessary skill and capital. The motive for becoming a private lawyer most frequently chosen in opinion surveys is "freedom and independence," which means, in this specific context, free from control, interference, and stress to which they would be exposed as a salaried man or a civil servant.

The bulk of lawyers' work consists of civil litigation, especially related to debt collection and real estate. Correspondingly, for the general public, lawyers are "litigation specialists." People come to a lawyer only when their disputes become so serious that they believe litigation is the only practical option. Accordingly, a large part of the clientele of lawyers is accounted for by individuals and small-to-medium-sized enterprises. Most lawyers are generalists. Only a small minority of lawyers are specialized, and their fields of specialization are limited: international trade, patent and copyright law, and criminal defense, among others.

The practice of private lawyers in Japan is still at a rather primitive stage of development. Practicing attorneys' field of work is still largely confined to the narrow area of court work, civil or criminal. Practice on the civil side leans heavily on real estate and debt collection litigation, both of which hardly require advanced legal expertise. Civil practice is only beginning to cover corporate counseling and other out-of-court work, often requiring complicated research and a developed work organization. The short supply of lawyers allows them to sit on a legally protected monopoly of court work. Small claims are left outside the

coverage of practicing attorneys. Legal aid for civil litigation exists, but it operates on a loan basis. Its budget is severely limited, and it covers only a few thousand cases a year.

V. "QUASI-LAWYERS"

As mentioned earlier, in addition to practicing attorneys, some other kinds of professionals perform legal or law-related tasks within the boundaries set by law. It is sometimes argued that the small size of the Japanese Bar is compensated for, and therefore explained away, by the existence of these "quasi-lawyers." However, once the nature of these professions and the work they perform is more closely examined, it becomes clear that this argument is both superficial and misleading. These practitioners are accorded only a small sphere of competence, and accordingly, their knowledge and capabilities are severely limited, and by no means qualifies them for equal status with regular lawyers. Outside their own fields, they can only be regarded as inexpensive substitutes for regular lawyers. These professions will be more closely examined.

A. *Tax Attorneys*

Tax attorneys draft documents, give advice concerning tax matters, and represent clients in administrative complaint procedures against tax authorities.⁶ Some of them become business (management) consultants for small-to-middle-sized business firms.

Those who pass the Tax Attorney's Examination and have at least two years practical experience are qualified as tax attorneys.⁷ The Examination requires knowledge of only the subjects directly connected with tax matters. An applicant may choose to take five subjects out of the following: bookkeeping, financial statements, income tax, corporation tax law, accessions tax law, liquor tax law, or consumption tax law, national tax collection law (a part of local tax law), and real estate tax. An applicant does not have to take all five subjects at once. When an applicant has passed five subjects in total, he or she is qualified. In 1988, the total number of applicants was 61,589, out of which 848 qualified; 5,334 passed only one subject. The final pass rate was about ten percent, while the pass rate for each subject ranged from nine percent to sixteen percent in 1989.

Practicing attorneys and public accountants are also qualified to

⁶ Tax Attorneys Law, art. 2.

⁷ *Id.* art. 3.

practice tax.⁸ However, ordinary lawyers usually need the assistance of a tax attorney to handle tax cases because tax matters require specialized expertise.

B. Patent Attorneys

Patent attorneys may give legal advice about patents. In addition, they may represent a client before a regular court in certain matters concerning patent law.⁹

Those who have passed the Patent Attorney Examination are qualified as patent attorneys.¹⁰ The examination is divided into two parts: the preliminary examination (liberal arts subjects) and the primary examination (written and oral). The only required subject is industrial property law. In addition, an applicant must choose three out of forty-one subjects ranging from constitutional law to biochemistry. University graduates are not required to take the preliminary examination.

Referees or examiners of the Patent Office are also qualified as patent attorneys if they have seven years or more experience. All practicing attorneys are also qualified as patent attorneys.¹¹ However, again, ordinary lawyers usually need the assistance of a patent attorney to handle patent cases. The number of patent attorneys was 3,339 as of March 31, 1991.

C. Judicial Scriveners

The main work of judicial scriveners is to represent a client in the real estate registration procedure, corporation registration, or sequestration. They also draw up documents to be submitted to a court, a prosecutor's office, or a bureau of judicial affairs.¹² Real estate registration matters concern the registering of newly acquired property rights in land or buildings, transfer, and other related procedures. Because of the highly developed system of land registration, partners to a real estate transaction need not (and do not) seek lawyer assistance for making a contract, except for the services of a judicial scrivener to register the transaction.

Judicial scriveners are prohibited from representing a client in court proceedings or in settlement negotiations, nor are they allowed to give general legal advice for fees, even though drawing up a brief often

⁸ *Id.*

⁹ Patent Attorneys Law, art. 1.

¹⁰ *Id.* art. 2.

¹¹ *Id.* art. 3.

¹² Judicial Scriveners Law, art. 2.

involves giving legal advice. However, in their competence in drawing up the document to be submitted to the court, judicial scriveners may act as professional helpers for a litigant who represents himself in court. This occurs frequently in local areas where only a small number of lawyers practice. However, this kind of work accounts for less than ten percent of the total income of judicial scriveners. In addition, judicial scriveners in such areas are often asked by persons living nearby to give advice on legal problems. From time to time, they are prosecuted based on complaints from local practicing attorneys, for a violation of the Practicing Attorneys Act that prohibits handling a legal matter for fees.¹³

Those who have passed the Judicial Scrivener's Examination are qualified as judicial scriveners.¹⁴ The examination is divided into three parts: Preliminary (multiple choice tests on the civil code, commercial law, and criminal law); Primary (multiple choice and written tests on law concerning registration of immovables, laws concerning commercial registration and deposit, civil procedure, and laws concerning the judicial scrivener), and Orals. In 1988, 404 out of 18,014 applicants passed and were qualified.

Court secretaries, court clerks, officials of the Ministry of Justice, and officials of the Prosecutor's office also qualify as judicial scriveners if they have experience of ten years or more and their expertise is authorized by the Minister of Justice.¹⁵ The number of judicial scriveners was 16,359 as of December 31, 1990. According to a survey based on a national representative sample conducted in 1987-88, only one-third of the total judicial scriveners were graduates of a university law faculty.

D. *Public Accountants*

Public accountants audit or certify financial documents. They may draw financial documents, investigate financial matters, and provide financial advice.¹⁶ No serious competition between public accountants and practicing attorneys has yet occurred, but some form of mutual adjustment between the two professions would be required in the future when practicing attorneys begin to work in the field of corporate business and strategy advising.

A person who has passed the second examination of the three-tier Public Accountant Examination is qualified as an assistant public ac-

¹³ *Id.* art. 3.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Certified Public Accountants Law, art. 2.

countant.¹⁷ An assistant public accountant who has completed two years or more of on-the-job training may take the third examination.¹⁸ When he or she passes the third examination, he or she is qualified as a full-fledged public accountant. The subjects for the first examination are Japanese (grammar, old Japanese, contemporary Japanese), math, and an essay. The subjects for the second examination are accounting, business administration, economics, and commercial law. The third examination is a written and oral examination on the practice of financial audits, financial analysis, and accounting (including tax). Pass rates for the examinations in 1990 were 27% for the first, 7.2% for the second, and 52% for the final examination. Public accountants totaled 8,926 in 1990: 8,799 Japanese public accountants, eighteen foreign public accountants, and 109 institutional public accountants.

E. Administrative Scriveners

Administrative scriveners draw up documents to be submitted to an administrative office.¹⁹ Their activities seldom concern legal matters and are only remotely related to a practicing attorney's work.

Those who pass the Administrative Scrivener Examination are qualified as administrative scriveners.²⁰ While the Minister of Home Affairs supervises the examination, local governments (prefectures) administer the examination. At the written examination, applicants are asked to answer legal questions concerning administrative scriveners work (e.g., administrative scrivener law, constitution, civil code, administrative law, local autonomy law, census registration law, commercial law, labor law, etc.), general knowledge (e.g., Japanese, social matters, politics, economics, etc.), and an essay. One-thousand-six-hundred-seventy-two out of 21,167 passed in 1989.

Practicing attorneys, patent attorneys, tax attorneys, and public accountants are qualified as administrative scriveners. Those who have twenty years or more experience in a national or local government as public officials are also qualified as administrative scriveners.²¹ An administrative scrivener must register with the administrative scrivener association of the prefecture in which he or she wants to practice.²² The number of administrative scriveners was 34,848 in 1991.

¹⁷ *Id.* art. 5.

¹⁸ *Id.* art. 11, 12.

¹⁹ Administrative Scriveners Law, arts. 1, 1-1.

²⁰ *Id.* art. 2.

²¹ Administrative Scriveners Law, art. 2.

²² *Id.* art. 6.

F. Notaries

While notaries are public officials appointed by the Minister of Justice, they earn a living from client fees. Their principal work is to certify and authenticate legal documents.²³ Strictly speaking, the activities of notaries are distinct from those of practicing attorneys, but notaries sometimes give counsel (and usually are well-qualified). For example, they might advise as to the content of a loan agreement which requires notarization.

Those who pass the Notary Examination and have six months or more of on-the-job training qualify as a notary.²⁴ Those qualified as a judge, a prosecutor, or a practicing attorney are also qualified as a notary,²⁵ and most of the present notaries are retired judges (approximately 30 percent), prosecutors (approximately 45 percent), or high officials of the Justice Ministry (approximately 25 percent). Therefore, they should not be included in the "quasi-lawyer" category, but ought to be regarded as a fourth branch of fully qualified lawyers, as some maintain. The present number of notaries is 534.

G. *Kigyo-homuin* (Staff Members of Corporate Legal Section)

It may be convenient to mention *kigyo-homuin* at this juncture, although these persons cannot be considered "quasi-lawyers" as defined above. These are employees of a business firm with a university law degree who are assigned to its legal section and accumulate knowledge and experience in corporate legal matters. A small number have passed the Legal Examination but have not gone to LRTI and, therefore, are not fully qualified lawyers. Also, a small number are actually practicing attorneys. A considerable number, on the other hand, have studied law abroad, and often have acquired a degree or even a lawyer certificate. Although these staff members of the legal section usually do not receive special treatment as professionals and are transferred to other sections at certain intervals, some of them remain in the section for a longer period and become lawyers in all but name. These people have no official title, but have gradually acquired the label "*kigyo-homuin*."

As noted earlier, of the huge group of law graduates each year, a small minority becomes professional lawyers, a somewhat larger minority becomes civil servants, and a vast majority becomes employees of business corporations. On the other hand, business firms seldom employ

²³ Notary Law, art. 1.

²⁴ *Id.* art. 12.

²⁵ *Id.* art. 13.

practicing attorneys on a permanent basis. Moreover, they tend to limit the use of lawyers to cases which involve serious disputes or litigation. Day-to-day legal matters, ranging from business negotiations to drawing up and making contracts, are handled by legal section staff. In recent years, as more Japanese companies conduct business relations with foreign firms and the domestic environment of corporate life becomes more legalized, more companies are establishing a legal section.

There is an organization called *keiei-hoyu-kai* (Friends of Corporate Law) which was founded in 1971. As of 1991, approximately 560 were members of *keiei-hoyu-kai*. Corporations send representatives of their legal sections to the organization's meetings. The organization has been conducting surveys every five years on corporate legal sections. Recent results reveal that more companies have begun establishing legal sections (about thirty companies newly established their legal sections every five years between 1965 and 1985, whereas eighty-two companies established legal sections during the period of 1985-90). Sixty-eight percent of the total personnel, or 1658 persons, in these corporate legal sections are graduates of a law faculty. The average number of employees in a legal section is about 9.4 (male 6.5, female 2.9). The average number in charge of legal matters in a legal section is about 5.2 persons (male 4.4, female 0.8). The total number of employees in charge of legal matters is 2,439. Therefore, the total number of employees in corporate legal sections in Japan is estimated to be somewhat larger than that number, probably 2,500 to 3,000, out of which 1,700 to 2,100 possess a law diploma.

H. Can "Quasi-lawyers" be Counted as Lawyers?

Does the existence of "quasi-lawyers" explain the small number of practicing attorneys? Or does it compensate for, and therefore justify, the latter? In other words, can "quasi-lawyers" be regarded as private lawyer substitutes?

At the outset it must be noted that of the six occupations of "quasi-lawyers," some counterparts exist in the Western legal system side-by-side with fully qualified lawyers, (e.g. notaries and public accountants). Moreover, the tax attorney has its counterpart in Germany. Secondly, it will be seen from the above description of this occupation, that the administrative scrivener may be eliminated as a potential lawyer substitute.

If tax attorneys, patent attorneys, judicial scriveners, and *kigyohomuin* with a law degree (est. 1900) are included together, their present numbers add up to approximately 78,000. This represents about sixty-three percent for 100,000 persons in the population, and is over 5.5 times the number of practicing attorneys.

It may be correct to say that these "quasi-lawyers" perform certain kinds of work performed by fully qualified lawyers in private practice in other countries, especially Common Law countries. In this sense, "quasi-lawyers" pre-empt some of the fields of work which might be done by lawyers. This has been an important factor hindering the development of the lawyer's profession in Japan. However, the need for fully qualified lawyers is not reduced to the extent that a certain number of "quasi-lawyers" exist. A "quasi-lawyer" has competence, recognized by law, which is very narrowly defined in a specific field. He is not qualified to respond to client demands which fall outside this area. (He would have to call in another professional, most likely a practicing attorney, if his client should show such a need.) If he sometimes performs the job himself, it is because no lawyer is available. In sum, a "quasi-lawyer" cannot be considered as an equal to a fully qualified lawyer in the calculation of lawyer supply.

VI. SOME RECENT CHANGES

In recent years, the government has begun to recognize the need to reform the legal profession to some extent. This was partly a product of pressures from abroad, but it also reflects a genuinely felt crisis within the judicial system. Issues of foreign lawyers and Legal Examination reform illustrate the manner in which this crisis is being managed.

A. *The Foreign Lawyers*

In 1986, the Foreign Lawyers Act was enacted to allow foreign lawyers to practice in Japan under the title of "foreign lawyers" (*gaikokuho-jimubengoshi*). This constitutes a new category of lawyers under Japanese law.

The presence of foreign lawyers is not new. Article 6 of the old Practicing Attorneys Act of 1933 permitted foreign lawyers to deal with legal matters concerning a foreigner or a foreign law, if Japanese lawyers were permitted to practice law in the foreigner's original country. After the Second World War, Article 7 of the 1949 Practicing Attorneys Act permitted foreign lawyers to practice in Japan, if they received the approval from the Supreme Court. Under this provision, a total of seventy-five foreign lawyers were approved over the years. In 1955, this gate was closed. Article 7 was abolished on the ground that the provision was not proper for an independent nation. Presumably, this was not very problematic at the time because Japan was playing a limited role in the world economy. However, in the 1970s, when American-Japanese trade frictions became acute, this restriction was attacked as infringing upon the principle of an open market of the commodity called "legal services."

Despite political pressures both from abroad and from the government, the Japan Federation of Lawyers' Associations was initially strongly opposed to the enactment of the law. After a long process of deliberations and negotiations, it finally came to an agreement with the Ministry of Justice and the Supreme Court to accept foreign lawyers in 1985. Japanese lawyers specializing in international trade matters had increased in the meantime, and were prosperous, though almost exclusively in Tokyo. These firms were attracting the young and bright new entrants. These and other metropolitan lawyers favored admitting more Japanese lawyers as well as opening the gate to foreign lawyers, while many local bars were against such innovations.

According to the Foreign Lawyers Act, foreign lawyers are allowed to practice law in Japan with the following restriction: they must receive the approval of the Minister of Justice if the country in which they have their original qualification allows Japanese lawyers to practice law, and if they have practical experience of five years or more in their original (or mother) jurisdiction. Foreign lawyers may handle only those matters concerning the law of their mother jurisdiction. They may also handle matters concerning the law of other jurisdictions with special authorization from the Minister of Justice. They are not allowed to represent a client in the court of Japan, nor to deal with matters concerning real estate located in Japan or domestic relations. They are further prohibited from organizing a partnership with, or hiring, Japanese practicing attorneys. The United States and European countries continue to protest against these restrictions.

At present under this regime, about seventy-five foreign lawyers practice in Japan, mostly in Tokyo. Of those, about fifty (66 percent) are from the United States, and seventeen (23 percent) are from Great Britain. (There are some Japanese nationals who are not qualified as Japanese practicing attorneys, but are qualified as lawyers in the United States and have become foreign lawyers in Japan.) The main fields of work for foreign lawyers are international corporate matters, banking, mergers and acquisitions, and taxation, among others. Most are sent from large law firms in their mother countries to form a branch office in Japan. In view of the tremendous cost of maintaining offices in Tokyo, only large multinational firms with a large capital base can venture into this frontier.

The effects of this new regime are not yet certain. Are foreign lawyers threatening the Japanese international Bar with severe competition? Are they introducing into the Japanese legal market better methods, skills, quality, and cheaper services? Are they forcing their impact on the domestic market as well, by changing the mutual expectations of Japanese lawyers and clients in general? And if so, to what extent?

These interesting questions must still be answered in empirical terms. However, there is no doubt that the introduction of foreign lawyers into the Japanese legal profession reflects important changes taking place therein and represents a potential source of further stimuli for continued vigorous development.

B. Reform of the Legal Examination

Another change that has recently taken place is the reform of the Legal Examination resulting in a significant increase in the number of successful candidates taking the exam.

As noted at the beginning of this paper, academics have been almost unanimous in criticizing the dearth of lawyers, and in urging a radical increase. In recent years, this view has been shared by a larger circle of people. As mentioned above, law firms specializing in international matters began to absorb a large number of young lawyers newly admitted to the bar each year. Partly corresponding to this, new graduates from the LTRI who aspire to be prosecutors have shown a conspicuous decrease (fifty-four yearly from 1975 to 1979, forty-nine from 1980 to 1984, and forty from 1985 to 1990). Those desiring judgeships have also been decreasing with seventy-five yearly from 1975 to 1979, sixty-one from 1980 to 1984, and sixty-six from 1985 to 1990. Against this background, the Supreme Court, the Ministry of Justice, and the Japan Federation of Lawyers' Associations began to discuss this problem in December 1988, and agreed on a reform program in October 1990, which includes an increase in the number who pass the Legal Examination. On the basis of this informal agreement of the three parties directly involved, the Justice Ministry drafted an amendment to the Legal Examination Act, which passed the Diet in March 1991, taking effect in January 1992.

The reform aims at having more students who are qualified pass the examination at a younger age. By an amendment to the Legal Examination Act, the number of subjects that applicants must take in the second stage of the second examination was reduced from seven to six,²⁶ and examinations in some non-legal subjects such as psychology and political science were abolished. The Legal Examination Administration Commission was given the power to adopt, if deemed necessary, the method of determining successful candidates. A certain proportion are selected exclusively from among those who ultimately sat for the Examination a number of years prior which the Commission determines. (A proposal to limit the age to sit for the examination or the number of

²⁶ Legal Examination Act, art. 6(2).

times to do so was rejected on the ground that it violated the Constitutional right of equal opportunity in the choice of occupation.) Above all, in accordance with the three-part agreement, the number of successful applicants will be increased from 500 to about 600 in 1991, and further increased to 700 in 1993.

The reform is a modest one in terms of the increased number of new entrants to the legal profession. Assuming that the bar will absorb most of the increased number, the total number of private lawyers is expected to increase by 2,000 in ten years, or less than fifteen percent of today's total. This seems inadequate to cure all the problems arising out of the short supply of legal services mentioned earlier. Nevertheless, this reform marks the first conscious effort in the postwar history of the Japanese legal profession to address the problem of lawyer population within existing structures. The three-party agreement also contemplates creating a standing council for further reforms; furthermore, the Supreme Court is planning to move the Legal Training and Research Institute to a larger location. It is hoped that these reforms mark the beginning of a new era for the legal profession in Japan.