
Problems with the Legal Professional Training Mechanism: From the Perspective of Economics

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Under the new national bar examination system, the pass rate dropped below 30% in 2010. With such a low pass rate, going to law school is now a very risky choice of investment in education. This phenomenon has been caused by (i) the contradictory recommendations made by the Justice System Reform Council, and (ii) the poor administrative coordination between the Ministry of Education, Culture, Sports, Science and Technology and the Ministry of Justice. Viewed from the supply side, the new system involves the following problems: (i) the law school industry as a whole is more than double the necessary size, holding a great deal of surplus capacity; (ii) half of the subsidies granted by the government to law schools are wasted; (iii) most law schools are small and therefore inefficient. The possible solutions may be to consolidate small law schools so that all law schools will have 200 or more enrollees, and to reduce the total enrollment at law schools to 3,500 or less, while raising the pass rate to 70% or more.

I. Introduction

In Japan, a new legal professional training system started in 2004 through the introduction of the law school system. The recent reform of the legal professional training system, which has been pushed forward by the globalization of the economy and the advancement of deregulation in Japan, has unavoidably led to a drastic increase in the number of practicing attorneys. This paper analyzes this new legal professional training system from the perspectives of labor economics and human capital theory.¹

The most serious problem found with the new legal professional training system is the low pass rate of the national bar examination, which stood at 27.6% in 2010 and 25.4% in 2011, respectively. In order to graduate law schools, students need two to three years of studying and approximately 100,000 dollars to cover school expenses. Such a low pass rate indicates that students are in a harsh environment, taking great investment risks in their education. On the other hand, viewed from a perspective of industrial structure, this situation suggests that the law school system is an industry that holds an enormous amount of surplus production capacity. Haley (2005, 12) expressed his concern that law schools could result in the huge waste of resources.

The basic design of the current legal professional training system was drawn by the Justice System Reform Council (JSRC). In its recommendations (June 12, 2001), the JSRC

¹ For the recent justice system reform, refer to Rokumoto (2006) and Miyazawa (2007). H. Tanaka (1976) explains the Japanese justice system more systematically. For human capital theory, refer to Becker (1975) and Rosen (1992).

put a particular emphasis on the importance of the cultivation of human resources, declaring that “It is people who manage a system.” It further stated, “the aim should be increase the number of successful applicants for a new national bar examination to 3,000 per year in about 2010,” and “productive educational programs should be provided so that a certain ratio of those who have completed the course at law schools (e.g., 70 to 80%) can pass the new national bar examination.”

The numerical goal of the pass rate targeted in the JSRC’s recommendations, 70 to 80%, was the essential prerequisite for the operation of the law school system. However, the JSRC was self-contradictory on this point. While billing the pass rate of 70 to 80%, it allowed free entry to the law school industry. As a result, as many as 74 schools were accredited as law schools, and the total enrollment ballooned nearly to 6,000. As if to put additional hardship on students, in these few years, the number of passing test takers of the national bar examination has been kept around the 2000 level, far below the target level of 3,000. The former situation has resulted from the administration by the Ministry of Education, Culture, Sports, Science and Technology (MEXT) and the latter from the administration by the Ministry of Justice (MOJ). To put it plainly, due to the self-contradictory recommendations by the JSRC, coupled with the poor administrative coordination between the MEXT and the MOJ, the pass rate of the national bar examination has fallen below the 30% level and the legal professional training system has run into an extremely difficult situation.

The recent reform of the legal professional training system involved interests of various groups, namely, the MOJ, the MEXT, the Supreme Court, the Public Prosecutors’ Office, the Japan Federation of Bar Association (JFBA), and universities with a faculty of law, and the opinions that these groups stated from their respective stances were incorporated into the current system. What should be stressed here is that little attention was paid to the situation of law school students (candidates for the national bar examination), who were to play the principal role in the legal professional training system.

The composition of this paper is as follows: Section II compares the old and new versions of the national bar examination, and gives a brief outline of the law school system and the preliminary examination. Section III analyzes the industrial structure of the law school system, which comprises 74 schools, and investigates the percentage of passing test takers of the national bar examination among all law school graduates. Section IV recommends that the selection process (national bar examination) be implemented for students at the youngest possible age, while comparing the timing of selection in various countries. Section V and Section VI give a critical review on the MOJ administration and the MEXT administration, respectively. At the end, Section VII sums up the discussion in the paper.

II. Comparison of the Old and New Versions of the National Bar Examination and the Outline of the Law School System

1. Old National Bar Examination (1949–2005)

In the age of the old national bar examination, the number of practicing attorneys was strictly limited. While the population of Japan was 130 million and the GDP was 4.6 trillion dollars, there were only 17,000 practicing attorneys in total (2000). This made the attorney's fee 1.3 to 2 times higher than that in a competitive environment.²

At that time, there was no limitation to the qualification for taking the examination; any person having completed the lower-division course at university (usually aged 20 or older) was eligible to be a candidate for the examination. Successful candidates who passed the examination were required to receive judicial training at the Legal Training and Research Institute (LTRI) for two years, and having completed the training course, they were granted qualifications as judges, public prosecutors, or practicing attorneys. Students who were particularly excellent would pass the examination while in the fourth grade at university (aged 21 at the youngest), and after the two-year period of judicial training, they would be appointed as judges or public prosecutors or would practice law as attorneys at the age of 24. Legal apprentices engaging in training at the LTRI were paid a salary basically on a par with the starting salary of national public employees. Since the 19th century, the customary policy that the State should take charge of training legal professionals as needed (particularly judges and public prosecutors) has remained until recently.

Every year the national bar examination attracted a number of candidates, amounting to between 20,000 and 25,000, but among them, only about 500 candidates, or 2 to 3 %, successfully passed the examination. On an average, those successful candidates were 28 to 30 years of age, and had taken the examination six to seven times before succeeding. Such a situation lasted more than half a century. The number of passing test takers started to increase in the 1990s, surpassing the 1,000 level in 1999, and reaching 1,500 in 2005.

2. New National Bar Examination (Since 2006)

As the qualification for taking the new national bar examination, candidates are required to graduate law schools or pass the preliminary examination. There is also a limitation on the allowable number of times one may sit the examination, three times within five years following the graduation from law school (or the passing of the preliminary examination). Those who have passed the examination are required to receive the judicial training at the LTRI for one year.

The new national bar examination sets no quota for the number of passing test takers. As it is officially said to be a qualifying examination, all those who possess the knowledge

² For the details of legal education and the national bar examination under the old system, refer to Rokumoto (2006). Kinoshita (2000) indicates empirical analysis of the monopolistic price level of attorneys' fees.

and capabilities beyond the level required of legal professionals are allowed to pass the examination. Yet, the number of candidates who actually pass the examination is 2,000 or so, which means that the new examination is in effect a competitive examination with a quota. The number of passing test takers is determined by the National Bar Examination Commission, which is subordinate to the MOJ.³

3. Law School System (Since 2004) and Preliminary Examination (Since 2011)

According to the standards for establishment, 74 law schools were accredited by the MEXT. The total enrollment in 2004 was about 5,800. Most law schools were established by universities with a faculty of law. Law schools provide two types of courses, the three-year course for students with no experience studying law and the two-year course for those with experience studying law. This arrangement was made based on the idea that those who have not majored in law as undergraduates would need three years of study to master law. However, in reality, most students enrolled in the three-year course are graduates in law. The annual amount of school expenses is about 10,000 to 20,000 dollars.

As is explained, the preliminary examination has been created for the purpose of providing the opportunity to take the national bar examination for people who have economic difficulties in going to law school, and for those who have acquired various experiences through their occupations or other activities in society. However, this explanation is not convincing, because it would be far more economical to set up a scholarship for study at law school. Presumably, the substantial purpose of this system is to create a bypass for fostering judges and public prosecutors by allowing them to skip the stage of study at law schools. (Jones [2009] assumes that this might be a means for the Supreme Court or the MOJ to recruit excellent personnel of a younger age.)

III. Industrial Structure of the Law School System

The law school system started in 2004, and its overall picture has mostly come to light. This section looks into the industrial structure of this system.

1. Size of Law Schools

Table 1 is a list of law schools in the order of size (the number of enrollees in 2009). It shows that most law schools are in small size, more specifically, among the total 74 schools, 36 schools have no more than 50 enrollees, and only 6 schools have over 200 enrollees (Column [a]). Thus, there are a number of small schools, which suggests that the law school system is quite an inefficient industry.

³ The MOJ (the government) has the authority to determine the quantity of new entrants to the legal profession under both the new and old systems. Kent and Trevor (2010) compare the method of determining the supply of new legal professionals by country.

Table 1. Enrollment Quota of Law Schools and Number of Passing Test Takers of the National Bar Examination

| Law School | Number of enrollees | | Number of passing test takers | | | Enrollees/ passing test takers |
|-----------------------|---------------------|------|-------------------------------|------|------|--------------------------------------|
| | (a) | (b) | (c) | (d) | (e) | (f) |
| | 2009 | 2010 | 2008 | 2009 | 2010 | % |
| 1 Shinshu | 30 | 18 | 0 | 4 | 5 | 10.0 |
| 2 Himeji-dokkyo | 30 | 20 | 0 | 2 | 0 | 2.2 |
| 3 Kagoshima | 30 | 15 | 1 | 2 | 0 | 3.3 |
| 4 Shizuoka | 30 | 20 | 2 | 4 | 6 | 13.3 |
| 5 Hakuoh | 30 | 25 | 2 | 4 | 2 | 8.9 |
| 6 Hokkai-gakuen | 30 | 30 | 2 | 7 | 3 | 13.3 |
| 7 Kagawa-Ehime | 30 | 20 | 3 | 3 | 10 | 17.8 |
| 8 Ryukyu | 30 | 22 | 3 | 4 | 5 | 13.3 |
| 9 Shimane | 30 | 20 | 4 | 1 | 3 | 8.9 |
| 10 Kanto-gakuin | 30 | 30 | 4 | 7 | 3 | 15.6 |
| 11 Kumamoto | 30 | 22 | 7 | 5 | 7 | 21.1 |
| 12 Chukyo | 30 | 30 | 8 | 6 | 6 | 22.2 |
| 13 Fukuoka | 30 | 30 | 10 | 7 | 8 | 27.8 |
| 14 Aichi-gakuin | 35 | 30 | 0 | 4 | 3 | 6.7 |
| 15 Kanazawa | 40 | 25 | 4 | 11 | 17 | 26.7 |
| 16 Kurume | 40 | 30 | 5 | 5 | 6 | 13.3 |
| 17 Tsukuba | 40 | 36 | 5 | 3 | 11 | 15.8 |
| 18 Yamanashi-gakuin | 40 | 35 | 7 | 12 | 14 | 27.5 |
| 19 Aichi | 40 | 40 | 16 | 20 | 14 | 41.7 |
| 20 Ohsaka-gakuin | 50 | 45 | 1 | 2 | 3 | 4.0 |
| 21 Seinan-gakuin | 50 | 35 | 2 | 10 | 8 | 13.3 |
| 22 Tokai | 50 | 40 | 4 | 3 | 2 | 6.0 |
| 23 Kokugakuin | 50 | 40 | 4 | 6 | 5 | 10.0 |
| 24 Toyo | 50 | 40 | 4 | 5 | 7 | 10.7 |
| 25 Kanagawa | 50 | 35 | 5 | 4 | 8 | 11.3 |
| 26 Meijo | 50 | 40 | 5 | 7 | 10 | 14.7 |
| 27 Daito-bunka | 50 | 40 | 6 | 3 | 2 | 7.3 |
| 28 Tohoku-gakuin | 50 | 30 | 7 | 4 | 2 | 8.7 |
| 29 Hiroshima-shudo | 50 | 30 | 7 | 6 | 7 | 13.3 |
| 30 Dokkyo | 50 | 40 | 8 | 5 | 3 | 10.7 |
| 31 Komazawa | 50 | 50 | 11 | 5 | 9 | 16.7 |
| 32 Sohka | 50 | 35 | 13 | 12 | 18 | 28.7 |
| 33 Nanzan | 50 | 50 | 15 | 18 | 10 | 28.7 |
| 34 Seikei | 50 | 50 | 17 | 14 | 11 | 28.0 |
| 35 Yokohama-kokuritsu | 50 | 40 | 24 | 20 | 17 | 40.7 |
| 36 Chiba | 50 | 40 | 34 | 24 | 30 | 58.7 |
| 37 Ryukoku | 60 | 30 | 2 | 5 | 8 | 8.3 |
| 38 Kyoto-sangyo | 60 | 40 | 4 | 1 | 4 | 5.0 |
| 39 Kinki | 60 | 40 | 4 | 9 | 8 | 11.7 |
| 40 Kobe-gakuin | 60 | 35 | 6 | 3 | 4 | 7.2 |
| 41 Niigata | 60 | 35 | 9 | 14 | 9 | 17.8 |
| 42 Okayama | 60 | 45 | 11 | 13 | 8 | 17.8 |
| 43 Surugadai | 60 | 48 | 11 | 4 | 7 | 12.2 |
| 44 Konan | 60 | 50 | 12 | 17 | 11 | 22.2 |

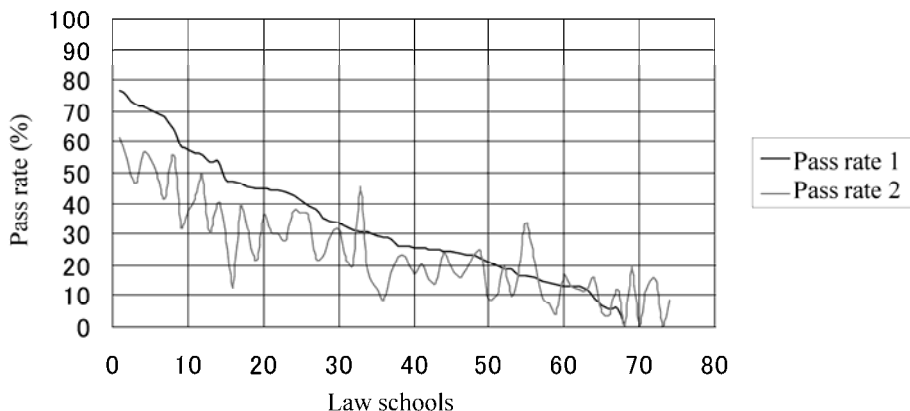
| Law School | Number of enrollees | | Number of passing test takers | | | Enrollees/ passing test takers |
|--------------------|---------------------|-------------|-------------------------------|-------------|-------------|--------------------------------------|
| | (a) 2009 | (b) 2010 | (c) 2008 | (d) 2009 | (e) 2010 | (f) % |
| 45 Aoyama-gakuin | 60 | 50 | 15 | 8 | 3 | 14.4 |
| 46 Hiroshima | 60 | 48 | 19 | 21 | 16 | 31.1 |
| 47 Senshu | 60 | 60 | 20 | 17 | 19 | 31.1 |
| 48 Gakushuin | 65 | 50 | 20 | 21 | 19 | 30.8 |
| 49 Shuto-Tokyo | 65 | 65 | 39 | 34 | 30 | 52.8 |
| 50 Toin-yokohama | 70 | 60 | 8 | 8 | 6 | 10.5 |
| 51 Rikkyo | 70 | 70 | 21 | 25 | 24 | 33.3 |
| 52 Ohsaka-shiritsu | 75 | 60 | 33 | 24 | 31 | 39.1 |
| 53 Meiji-gakuin | 80 | 60 | 16 | 9 | 9 | 14.2 |
| 54 Nagoya | 80 | 70 | 32 | 40 | 49 | 50.4 |
| 55 Ohmiya-houka | 100 | 70 | 16 | 12 | 12 | 13.3 |
| 56 Nihon | 100 | 100 | 26 | 20 | 21 | 22.3 |
| 57 Hosei | 100 | 100 | 32 | 25 | 24 | 27.0 |
| 58 Hokkaido | 100 | 80 | 33 | 63 | 62 | 52.7 |
| 59 Kyushu | 100 | 80 | 38 | 46 | 46 | 43.3 |
| 60 Ohsaka | 100 | 80 | 49 | 52 | 70 | 57.0 |
| 61 Johchi | 100 | 100 | 50 | 40 | 33 | 41.0 |
| 62 Tohoku | 100 | 80 | 59 | 30 | 58 | 49.0 |
| 63 Kobe | 100 | 80 | 70 | 73 | 49 | 64.0 |
| 64 Hitotsubashi | 100 | 85 | 78 | 83 | 69 | 76.7 |
| 65 Kansei-gakuin | 125 | 125 | 51 | 37 | 37 | 33.3 |
| 66 Kansai | 130 | 130 | 38 | 35 | 32 | 26.9 |
| 67 Dohshisha | 150 | 120 | 59 | 45 | 55 | 35.3 |
| 68 Ritsumeikan | 150 | 150 | 59 | 60 | 47 | 36.9 |
| 69 Meiji | 200 | 170 | 84 | 96 | 85 | 44.2 |
| 70 Kyoto | 200 | 160 | 100 | 145 | 135 | 63.3 |
| 71 Keio-gijuku | 260 | 260 | 165 | 147 | 179 | 62.9 |
| 72 Waseda | 300 | 300 | 130 | 124 | 130 | 42.7 |
| 73 Chuoh | 300 | 300 | 196 | 162 | 189 | 60.8 |
| 74 Tokyo | 300 | 240 | 200 | 216 | 201 | 68.6 |
| Total | 5,755 | 4,904 | 2,065 | 2,043 | 2,074 | |

Sources: Ministry of Justice, *Survey on the New National Bar Examination, by Law School*.

Ministry of Education, Culture, Sports, Science and Technology, *Selection of Enrollees at Law Schools*.

Note: (f) = (c + d + e)/(3a)

Another fact seen from this table is that passing test takers of the national bar examination are distributed widely among many law schools. In 2008, there were 34 schools producing less than 10 passing test takers, 27 schools producing 10 to 49 passing test takers, eight schools producing 50 to 99 passing test takers, and five schools producing 100 to 201 passing test takers (Column [c]). In terms of efficiency, the optimal size of a law school will be roughly 500 enrollees. Under the old system, the LTRI trained about 500 apprentices,



Note: Pass Rate 1 is the ratio of law school graduates in 2006 who passed the examination in 2007 or 2008. Pass Rate 2 is the ratio of candidates to passing test takers in 2008. Data are taken from *Diamond Weekly* (August 29, 2009) for Pass Rate 1, and *Nikkei Career* (“Complete Guide of Law Schools,” June 19, 2009) for Pass Rate 2, respectively.

Figure 1. Pass Rate, by Law School

and law schools in the United States mostly have 500 to 600 enrollees.

The third point indicated by this table is that there are only 11 schools where the ratio of passing test takers to enrollees (Column [f]) exceeds 50%. Among them, only five schools achieved a pass rate of over 60%. The pass rate is low among small schools, 20% or lower among 36 schools.

Figure 1 shows the distribution of law schools in the descending order of the pass rate of the national bar examination, with two pass rate indicators. Pass Rate 1 is the rate of law school graduates in 2006 who passed the examination in 2007 or 2008. Pass Rate 2 represents the ratio of passing test takers to candidates in the examination in 2008. This graph signifies that (i) among most law schools (40 schools), only one-third or less of the graduates successfully passed the examination, and (ii) there are only five schools where 50% or more of the graduates passed the examination on their first try.

Figure 2 is a graph of Pass Rate 1 in descending order, showing the cumulative percentage of the number of passing test takers. According to this graph, the top 10 schools produced 55% of all passing test takers, and the top 20 schools produced 75%. In other words, it is estimated that the total number of passing test takers could be produced by 20 schools which are as large as those in the top 10 rank.⁴

In consideration of the current low pass rate of the national bar examination, the

⁴ A number of small law schools obtained permission for establishment, probably in line with the government’s deregulation policy and the MEXT’s administration of professional graduate schools.

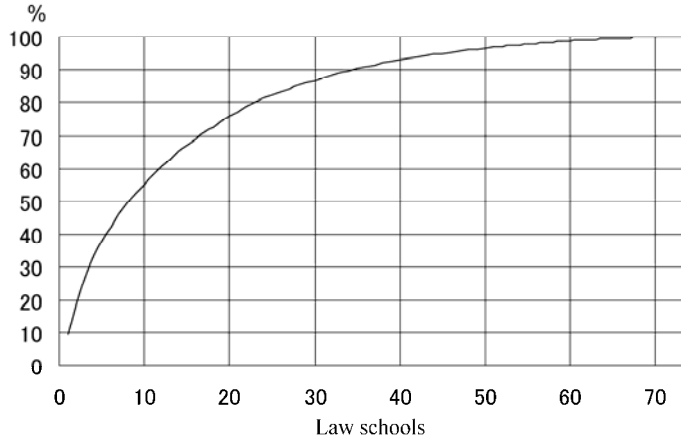


Figure 2. Cumulative Percentage of the Number of Passing Test Takers

MEXT came up with a cutback in the number of law school enrollees. Most law schools started to cut down on an enrollment quota in 2010, and the total enrollment dropped by about 15% (Table 1). However, this movement will not significantly affect the pass rate.⁵

2. Process from Enrollment to Graduation at Law Schools, and to Passing the National Bar Examination

How many persons are enrolled at law schools every year, and how many of them successfully graduate? Among law school graduates, how many of them pass the national bar examination, or fail to pass the examination and leave? Through the five times of implementation of the new national bar examination, from 2006 up to now, the overall picture of the examination has mostly been revealed.

(1) Number of Enrollees and Percentage of Graduates among Them

Table 2 indicates how many persons are enrolled in law schools, and how many of them successfully graduate. The number of enrollees in 2004 (the first enrollment class) was 2,350 in the two-year course and 3,416 in the three-year course. Among the students enrolled in the two-year course, 2,176 (92.6%) completed the course of study and graduated within the standard period ending in 2005, whereas 2,563 (75.0%) of those enrolled in the three-year course graduated within the standard period ending in 2006. The same trend was seen for the enrollment in 2005 and thereafter, that is, 90% of students enrolled in the two-year course graduated within the standard period, whereas the rate of the students

⁵ The Special Committee on Graduate Schools of the Central Council for Education recommended the review of the number of enrollees in its report entitled “Measures to Improve the Quality of Education at Law Schools” (April 17, 2009). Following this recommendation, law schools reduced the number of enrollees in 2010.

Table 2. Number of Enrollees and Number of Graduates

| | 2004 | | 2005 | | 2006 | | 2007 | | 2008 | |
|------------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------|
| | 2-year | 3-year | 2-year | 3-year | 2-year | 3-year | 2-year | 3-year | 2-year | 3-year |
| No. of enrollees | 2,350 | 3,416 | 2,063 | 3,481 | 2,179 | 3,605 | 2,169 | 3,544 | 2,066 | 3,331 |
| Graduation year | | | | | | | | | | |
| 2005 (%) | 2,176 (92.6) | | | | | | | | | |
| 2006 (%) | 33 (1.4) | 2,563 (75.0) | 1,819 (88.2) | | | | | | | |
| 2007 (%) | | NA | 362 (17.5) | 2,576 (74.0) | 1,972 (90.5) | | | | | |
| 2008 (%) | | | | NA | NA | 2,542 (70.5) | 1,996 (92.0) | | | |
| 2009 (%) | | | | | | NA | NA | 2,392 (67.5) | 1,871 (90.6) | |

Source: Ministry of Education, Culture, Sports, Science and Technology, *Overview of the Certification of Graduation from Law Schools*.

Notes: 1. The figures in parentheses are the ratio of the number of graduates to the number of enrollees.

2. Although law graduates account for about 70% of all enrollees, not all of them are enrolled in the two-year course; half of them are enrolled in the three-year course. Roughly divided, the ratio among “law graduates enrolled in the two-year course,” “law graduates enrolled in the three-year course” and “non-law graduates enrolled in the three-year course” is 1 : 1 : 0.5.

enrolled in the three-year course who graduated within the standard period was 70 to 75%. This gap may result from the tendency that students with higher academic abilities were enrolled in the two-year course.

(2) Number of Graduates and Percentage of Passing Test Takers among Them

Table 3 demonstrates the relation between the number of law school graduates and the number of passing test takers of the national bar examination. Among the students who graduated the two-year course in 2005 (2,176), a total of 1,518 passed the examination, 1,009 in the first year following the graduation (2006), 396 in the second year (2007), and 99 in the third year. Those passing test takers account for 69.8% of all graduates in 2005. As for those who graduated from law school in 2006, the sum total of passing test takers among the graduates of the two-year course was 1,167 (64.2%), and that of the three-year course was 1,000 (39.0%). The figures in the lowest row of the table represent the ratio of passing

Table 3. Number of Law School Graduates and Number of Passing Test Takers of the National Bar Examination

| | 2005 | | | 2006 | | | 2007 | | | 2008 | | | 2009 | | | No. of passing test takers (no. of candidates) and pass rate, by year |
|---|------------------|--------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|--------|--------|--------|--------|------------------------|---|
| | 2-year | 3-year | 2-year | 3-year | 2-year | 3-year | 2-year | 3-year | 2-year | 3-year | 2-year | 3-year | 2-year | 3-year | | |
| No. of graduates | 2,176 | | 1,819 | 2,563 | 1,972 | 2,576 | 1,996 | 2,542 | 1,871 | 2,392 | | | | | 1,009 (2,091) 48.3% | |
| (a) 2006 No. of passing test takers (No. of candidates) | 1,009 (2,091) | | | | | | | | | | | | | | 1,851 (4,607) 40.2% | |
| (b) 2007 No. of passing test takers (No. of candidates) | 396 (903) | | 819 (1,738) | 636 (1,966) | | | | | | | | | | | 2,065 (6,261) 33.0% | |
| (c) 2008 No. of passing test takers (No. of candidates) | 99 (324) | | 258 (780) | 242 (1,180) | 974 (1,898) | 492 (2,079) | | | | | | | | | 2,043 (7,392) 27.6% | |
| (d) 2009 No. of passing test takers (No. of candidates) | 8 (130) | | 78 (373) | 90 (716) | 232 (824) | 229 (1,337) | 948 (1,947) | 458 (2,065) | | | | | | | 2,074 (8,163) 25.4% | |
| (e) 2010 No. of passing test takers (No. of candidates) | 6 (149) | | 12 (155) | 32 (538) | 96 (412) | 138 (940) | 308 (870) | 249 (1,367) | 820 (1,769) | 413 (1,963) | | | | | | |
| (f) Sum total number of passing test takers in the graduation year | 1,518 | | 1,167 | 1,000 | 1,302 | 859 | 1,256 | 707 | 820 | 413 | | | | | | |
| (g) Ratio of the sum total number of passing test takers to the number of graduates | 69.8% | | 64.2% | 39.0% | 66.0% | 33.3% | 62.9% | 27.8% | 43.8% | 17.3% | | | | | | |
| (h) Number of enrollees in the corresponding year | 2,350 | | 2,063 | 3,146 | 2,179 | 3,481 | 2,169 | 3,605 | 2,066 | 3,544 | | | | | | |
| (i) Ratio of the total number of passing test takers to the number of enrollees | 64.6% | | 56.6% | 31.8% | 59.8% | 24.7% | 57.9% | 19.6% | 39.7% | 11.7% | | | | | | |

Source: Ministry of Justice, *Survey on the New National Bar Examination, by Law School*.

Notes: 1. If all goes as planned, students enrolled in the two-year course in 2004 are to graduate in 2005 and pass the examination in 2006. Similarly, those enrolled in the three-year course in 2004 are to graduate in 2006 and pass the examination in 2007.

2. (f) = (a) + (b) + (c) + (d) + (e)
3. (g) = (f)/(N number of graduates)
4. (i) = (f)/(h)

test takers to enrollees of the year of the passing test takers' enrollment year. For example, the sum total of passing test takers among graduates of the three-year course in 2007 is 859. Their enrollment year is 2005, in which 3,481 were enrolled (Table 2). Accordingly, the ratio of passing test takers to enrollees is 24.7% (= 859/3481).

What is inferred from Table 3 is as follows. (i) There is a large gap in terms of the pass rate between the graduates of the two-year course and those of the three-year course (about 30% against both the number of graduates and the number of enrollees). (ii) The pass rate has been declining every year respectively for the two-year course and the three-year course, and the combined pass rate concerning all graduates in these courses has also been on a declining trend. This may be because the total number of passing test takers has not increased despite the yearly increase in the number of repeat candidates who sit the examination a second or third time. (iii) Given these facts, it is presumed that the ratio of passing test takers to graduates will eventually come to 50% or so for the two-year course and slightly below 15% for the three-year course in the long run, and the combined ratio of passing test takers to graduates will be 20 to 25%.⁶

(3) Number of Repeat Candidates and Number of Persons Disqualified as Candidates

Table 4 indicates the number of repeat candidates and number of persons disqualified as candidates. For example, a total of 4,607 persons took the examination in 2007. Among them, 3,704 were fresh candidates (who sit the examination for the first time following graduation from law school in the previous year), and the remaining 903 persons were repeat candidates. The number of fresh candidates is smaller than the number of graduates from the previous year (4,382). This difference signifies that several hundreds of graduates withheld making the first try for the examination probably in consideration of the limited

⁶ Let us assume the following steady state and estimate the equilibrium value. The annual number of law school graduates is (y). All of them take the national bar examination in the first year following the graduation, and some of them (a) pass the examination. All of the unsuccessful candidates from the first examination ($y - a$) take the examination in the second year, and some of them (b) pass the examination. Then, all of those who failed to pass the previous two examinations ($y - a - b$) take the examination a third time, and some of them (c) pass the examination. At this point in time, three years following the graduation, the remaining unsuccessful candidates ($y - a - b - c$) have used up the three chances of taking the examination and become disqualified as candidates. Summing up this process, on the assumption that law school graduates in a given year take the examination in the year following the graduation, the number of candidates N_i who take the examination (i) time would be as follows:

$$N_1 = y, N_2 = y - a, N_3 = y - a - b, N_4 = 0, N_5 = 0.$$

In the steady state, the composition of candidates each year would be the same. The number of successful candidates who pass the examination each year is ($a + b + c$). Accordingly, the pass rate is calculated as follows:

$$r = (a + b + c) / (N_1 + N_2 + N_3 + N_4 + N_5) = (a + b + c) / (3y - 2a - b)$$

In this formula, assuming that $a = 1400$, $b = 400$, $c = 200$, and $y = 4000$ (the situation in 2007 is close to this), the pass rate (r) is $2000/8800=22.7\%$. The number of persons who have used up the three chances of taking the examination and become disqualified as candidates is $y - a - b - c = 2000$. The number of repeat candidates is $N_2 + N_3 = 2y - 2a - b = 4800$.

Table 4. Numbers of Fresh Candidates, Repeat Candidates, and Persons Disqualified as Candidates

| | 2007 | 2008 | 2009 | 2010 |
|---|-------|-------|-------|-------|
| (a) Number of law school graduates in the previous year | 4,382 | 4,548 | 4,538 | 4,263 |
| (b) Total number of candidates | 4,607 | 6,261 | 7,392 | 8,163 |
| (c) Number of fresh candidates | 3,704 | 3,977 | 4,012 | 3,732 |
| (d) Number of repeat candidates | 903 | 2,284 | 3,380 | 4,431 |
| (e) Number of passing test takers | 1,851 | 2,065 | 2,043 | 2,074 |
| (f) Pass rate (e)/(b) | 40.2% | 33.0% | 27.6% | 25.4% |
| (g) Number of fresh candidates who passed the examination | 1,455 | 1,216 | 1,406 | 1,233 |
| (h) Pass rate of fresh candidates (g)/(c) | 39.3% | 30.6% | 35.0% | 33.0% |
| (i) Number of persons disqualified as candidates | 47 | 240 | 571 | 872 |
| (j) Number of repeat candidates who are to sit the | 2,709 | 3,956 | 4,778 | 5,217 |

Sources: Ministry of Justice, *Survey on the New National Bar Examination*, by Law School, Ministry of Education, Culture, Sports, Science and Technology, *Overview of the Certification of Graduation from Law Schools*, and Ministry of Internal Affairs and Communications, *Report of the Study Group on Evaluation of Law Schools (Legal Professional Training System)*, December 2010.

Notes: 1. Fresh candidates in (c) are law school graduates (a) who take the examination in the year following the graduation year.

2. (d) = (b) – (c)

3. The number of persons disqualified as candidates in (i) is based on the MOJ data.

4. (j) = (b) – (e) – (i)

5. The number in (j) corresponds to the number in (d) of the following year, with a difference of 400 to 500 due to the tendency to avoid taking the examination.

number of chances allowed for them.

The number of candidates who passed the examination in 2007 was 1,851. By subtracting this from the total number of candidates, we gain the number of unsuccessful candidates ($2,756 = 4,607 - 1,851$), and further subtracting the number of persons disqualified as candidates (47), the result is the number of repeat candidates who are to sit the examination in the following year (2,709). The actual number of repeat candidates in 2008 was 2,284, smaller than the estimated number by about 400. This difference is probably also due to the tendency to avoid taking the examination in consideration of the limited number of chances.

To what extent will the number of repeat candidates increase in the long run? According to Table 4, the number of repeat candidates has increased every year and reached 4,431 in 2010. This is slightly smaller than the number estimated for the hypothetical steady state described in Note 6 (4,800). The number of persons disqualified as candidates in the

same year was 872, which is considerably smaller than the number estimated for the hypothetical steady state (about 2,000). From these points, it is conjectured that, in the long run, the annual number of repeat candidates will be around 5,500 to 6,000 and the annual number of persons disqualified as candidates will be around 2,000, respectively.

IV. When Is the Right Timing of Selection?—From the Perspective of Human Capital Theory

As a number of people aspire to enter the legal profession, there is a high degree of competition among them. In addition, it takes a great deal of cost and time to train professionals such as jurists and physicians. Given these conditions, when would be the best time to select the required number of persons from among a large number of candidates for the legal profession? The author argues the following two points:

- (i) Selection should be implemented for students at the youngest possible age.
- (ii) Selection should be implemented prior to the investment in human capital, that is, at the stage of entering law schools.

As for the first point, if the selection process is too delayed, the range of options of occupations available for students will be limited, and it will be more risky for them to choose the legal profession. It should be noted that in Japan, students would be placed in a more disadvantageous position in finding employment in private businesses as they go further away from the time of their fourth year of university (age 21). Under the new system, the selection process (national bar examination) is implemented at the age of 24, whereas it was at the age of 21 under the old system. In regard to this point, the old system is better than the new one. Saito (2006, 207), with a perspective that is somewhat different from this paper, compares legal education among Australia, the United States, and Japan, and finally argues that “the best way to reconstruct the legal education system [in Japan] would be to abolish all law schools immediately and return to the former system.”

As for the second point, under the new system, the selection process is implemented following graduation from law school, which means that students would be subject to selection after spending a great deal of time and money for study at law school, and in this respect, their investment in education would be highly risky. If they are to go through the selection process at the time of entering law school, there will be no investment risk. Considering that the selection process was implemented at the age of 21 under the old system and this worked well, it would be sufficiently possible under the new system to implement the selection process at the time of entering law school.⁷

⁷ With regard to the timing of selection, S. Tanaka (1999, 66) states, “It is obvious that the education acquired up until upper secondary school is insufficient for studying law, which is referred to as the study of grown-ups. During the lower-division course at university, students should acquire a wide-ranging and in-depth education through learning.” From this viewpoint, it may not be appropriate to select students at the age of 18, as in the case of the faculty of medicine.

Table 5. International Comparison of the Age of Candidates for Legal Professionals Subject to the Selection Process

| Age | 21 or under | 22 | 23 | 24 | 25 | 26 | 27 |
|--------------------|--|--|-----------------------------------|------------------------------|---|----------------------------------|--|
| Japan (new system) | University | Entrance exam Law school | | | Bar exam (30%) Judicial training (LTTRI) Final exam | Open legal practice | |
| Japan (old system) | University | Bar exam (3%) Judicial training (LTTRI) | Judicial training (LTTRI) | Open legal practice | | | |
| US | University | Final exam (100%) Entrance exam | | | Bar exam (Approx. 70%) | Open legal practice | |
| UK (Solicitor) | University (Acquire a law degree in 3 years) (70%) | Law school of the Law Society | Practical training | | Obtain qualification (70%) | | |
| Germany | | Qualification for university graduate = | | Practical training (2 years) | | Final national exam (90%) | Open legal practice |
| France | | Preliminary national exam (50-60%) Undergraduate or master's course | Training at CRFPA (2 years) | | Two-year internship | | Open legal practice |
| Korea (new system) | University | CRFPA entrance exam (20-30%) Entrance exam | CAPA exam (100%) | | Open legal practice New bar exam (80%) | Open legal practice | |
| Australia | | Law school | | | Open legal practice | | Continuing legal education (CLE), etc. |
| | | Undergraduate course in law (4-5 years) (50% drop out in the first year. 95% of graduates become solicitors.) | Practical training (PLT, 2 years) | | | | |

Sources: Data are cited from the following sources: (1) Ono (2001), (2) the handout distributed at the 14th meeting of the Justice System Reform Council (March 2, 2000), and (3) Japan Federation of Bar Association (1994) for data on the U.K., concerning solicitors. As the legal professional training system in the U.K. is complicated, please refer to H. Tanaka (1973, 1980) for details.

Let us look at the situations in other countries from the points of view mentioned above. Table 5 shows comparison by country with regard to the timing of selection and the pass rate under the legal professional training process. Most countries select candidates for legal professionals at the beginning of the legal professional training process, whereas only Japan places the selection process at the end of the training process. For instance, in Germany, among students admitted to the faculty of law, only 50 to 60% can acquire the qualification of graduates (this also certifies that they have passed the preliminary national examination), at which point they reach the beginning of the training process. Meanwhile, the pass rate of the final national examination, which marks the end of the training process, is as high as 90%. In France, applicants for admission to the CRFPA are severely narrowed down by the examination to 20 to 30% at the beginning of the training process, and almost all of those who complete the training course are supposed to pass the CAPA examination at the end. In the case of the training process of solicitors in the United Kingdom, 70% of the students who have earned a law degree enter the legal profession (JFBA 1994, 21). If they wish to be solicitors, they join the solicitors' association called the Law Society (with limitation to the number of new members) and receive training at its law school for one to two years. About 70% of trainees pass the final qualification examination (*ibid.*, 36). In Australia, students who major in law are subject to selection before they earn a law degree (30% drop out in the first year), and 95% of graduates can become solicitors. The United States has a somewhat unique process—not all law school graduates practice law but many of them find employment at government agencies or private businesses—but the hurdle placed at the end of the training process (bar examination) is also rather easy to pass. Although the pass rate is 70% or so, all the states hold examinations independently, so the chance to be certified as a lawyer is close to 100%. In Korea, where the law school system has just started (law schools were opened in 2009, and the first national bar examination is to be held in 2011), as the number of accredited law schools and the number of enrollees are severely limited, the pass rate of the national bar examination is estimated as about 80%.⁸

V. Administration of the National Bar Examination by the MOJ

The MOJ takes charge of the administration of the new national bar examination and the preliminary examination. How to administer these examinations has a significant influence on the future legal professional training system.

1. Role of the Preliminary Examination—Expressway or Bypass?

Persons who have passed the preliminary examination shall be granted the qualifica-

⁸ Ono (2001) demonstrates a great deal of details of the legal professional training system in Germany. The law school system in the United States is discussed in detail in Yanagida (2001) and Murakami (2003). For the new law school system in Korea, refer to Han and Okubo (2008), Yoon (2004), Kim (2006, 2007), Ahn (2006), and Lee (2010).

tion for taking the national bar examination without going to law school. This arrangement serves as a great incentive for those with excellent abilities to take the preliminary examination. Thus, the preliminary examination is expected to be an expressway or elite track to the legal profession.

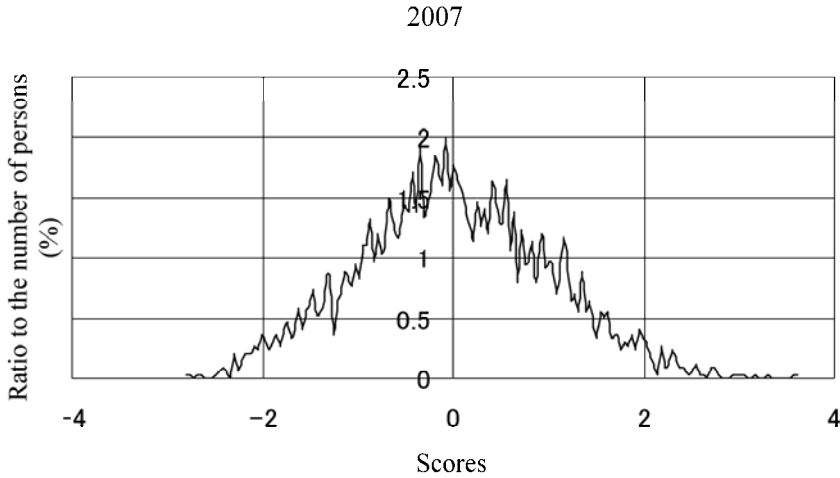
The preliminary examination will start in 2011 under the management of the MOJ. The criterion for passing the preliminary examination is to have an academic ability equal to law school graduates. It is worth noting that the composition of the preliminary examination is almost the same as that of the new and old national bar examinations. The preliminary examination is composed of three stages, (i) multiple choice test, (ii) essay examination, and (iii) oral examination, and the subjects are centered on the six main codes (the constitutional law, civil law, commercial law, civil procedure law, criminal law, and criminal procedure law). This may be the only feasible form of an examination for selecting qualified persons from among several thousands of candidates.

The scale of the preliminary examination is also noteworthy. In 2011, 8,971 persons applied for the examination, and 6,477 persons took the examination. The final selection of successful candidates is to take place some time later. If the number of passing test takers is too large, the preliminary examination will be criticized as undermining the meaning of law schools. If the number is too small, a question will be raised if there is any meaning in holding this examination on such a large scale. Although the passing test takers of the first preliminary examination are scheduled to be decided in November, the MOJ has not yet announced how many candidates will be selected, by reason that the preliminary examination is a qualifying examination and all those who meet the criteria will be allowed to pass the examination.

The number of passing test takers of the preliminary examination may possibly increase in the future. The Three-Year Program for Promoting Deregulation (adopted by the Cabinet on March 25, 2009) states that “the quota of passing test takers of the preliminary examination should be increased to the extent that the pass rate of the national bar examination among those who have gone through the preliminary examination and the pass rate of the national bar examination among those who have graduated from law schools would be in equilibrium.” If the preliminary examination is implemented according to this program, the consequence will be far removed from the principal purpose of the preliminary examination (providing the opportunity to take the national bar examination for people who have economic difficulties in going to law school), and would also damage the educational philosophy of law schools.

2. It Is Highly Likely That the MOJ Has the Intention of Holding Down the Number of Passing Test Takers

The number of candidates for the new national bar examination has been increasing since 2007, while the number of passing test takers has been held down to around 2,000 (Table 4). This makes one presume that the MOJ is trying to raise the criteria for passing the



Note: The passing score is -0.1128 .

Figure 3. Distribution of Scores of the National Bar Examination (2007)

examination, while holding the number of passing test takers down to around 2,000. If this presumption is correct, the MOJ's policy would be in conflict with the target level recommended by the JSRC, i.e. 3,000 passing test takers per year.

With regard to the fact that the number of passing test takers has been kept around the 2000 level each year during the past three years, Makoto Hayashi, the Director of the Personnel Division of the MOJ, stated that, "This is the number of persons who have achieved the qualifying level of the examination results, and we do not hold down the number of passing test takers. The target level of 3,000 passing test takers per year could be realized only on the premise that law schools provided productive educational programs" (Tokyo Shinbun, September 1, 2009), explaining that the inadequate quality of students produced by law schools is the cause of the low number of passing test takers. Thus, the MOJ takes the stance that "the national bar examination is a qualifying examination, and all those who meet the criteria for passing the examination, no matter how many there are, will be allowed to pass the examination." However, these criteria are not clear, and the decision to pass or fail candidates is made exclusively by several bar examiners appointed by the Minister of Justice.

Let us discuss the hypothesis that the National Bar Examination Commission has been raising the criteria for passing the examination every year. Figure 3 is the distribution of the examination results in 2007.⁹ The horizontal axis shows the total score and the vertical axis shows the ratio to the number of persons (%). As this graph is converted into

⁹ Data source: Ministry of Justice, Minister's Secretariat, Personnel Division, "Results of the New National Bar Examination." According to the results (raw scores) of the examination in 2007, the highest score was 1398.83, the lowest score was 586.32, and the average score was 941.69.

Table 6. Passing Score among Candidates for the National Bar Examination

| | Total number of candidates | Passing test takers of the essay examination | Final passing test takers | Pass rate | Passing score (standard normal distribution) |
|------|----------------------------|--|---------------------------|-----------|--|
| 2006 | 2,091 | | 1,009 | 48.3% | |
| 2007 | 4,607 | 3,408 | 1,851 | 40.2% | -0.1128 |
| 2008 | 6,261 | 4,416 | 2,065 | 33.0% | 0.0940 |
| 2009 | 7,392 | 4,817 | 2,043 | 27.6% | 0.1809 |

Note: There were no graduates from the three-year course in 2006.

standard normal distribution, the average score is 0 and the standard deviation is 1. The distributions in 2008 and 2009 show almost the same normal distribution curves. Table 6 indicates the comparison in terms of the passing score and other factors. The passing score has been rising every year, from -0.1128 (2007), to 0.0940 (2008), and 0.1809 (2009). The passing score in 2007 was below the average score only by 0.1128 (against the standard deviation of 1). In 2008, the passing score rose by about 0.2 to 0.0940. In 2009, it further rose by 0.1 to 0.1809. Supposing that the average abilities of candidates remained the same level during these three years, it could be said that the criteria for passing the examination have been raised every year. If the passing score in 2009 had been on the same level as 2007, the number of passing test takers would have been 2,648. Thus, the number of passing test takers was reduced by about 600.

There can be the following criticism against the analysis indicated above. The candidates for the examinations in 2008 and 2009 included repeat candidates who took the examination a second or third time, and the scores achieved by these repeat candidates might have pushed down the total average score.¹⁰ Here, let us make a comparison focusing only on the candidates who took the examination for the first time following graduation from law school. As the number of law school graduates each year is 4,000 or so (Table 7 [a]), if the law of large numbers applies, the distribution and average of their abilities could be supposed to be almost the same each year. In Table 7, (d) is the ratio of passing test takers to graduates, and (e) is the ratio of passing test takers to candidates. The ratio (d) has been declining every year, down by 4.3% during the three years. The ratio (e) has also declined by 6.3% during the same period. If the ratio of passing test takers to candidates in 2009 had been 39% (on a par with the level in 2006), the number of passing test takers would have increased by about 200. This testifies to the fact that the criteria for passing the examination

¹⁰ Seeing the tendency that “in the new national bar examination, the pass rate is lower among those who have tried the examination more times,” Inoue (2010) presumes that the overall average rate will go down as the percentage of repeat candidates increases.

Table 7. Ratios of the Number of Candidates Who Passed the Examination on Their First Try Following Graduation from Law School, to the Number of Graduates (Total of Those in the Two-Year Course and the Three-Year Course)

| | 2006 | 2007 | 2008 | 2009 |
|--|-------|-------|-------|-------|
| (a) Number of graduates | 4,382 | 4,548 | 4,538 | 4,263 |
| (b) Number of candidates | 3,704 | 3,977 | 4,012 | 3,732 |
| (c) Number of candidates who passed the examination on their first try | 1,455 | 1,466 | 1,406 | 1,233 |
| (d) Ratio of passing test takers to graduates (c/a) | 33.2% | 32.2% | 31.0% | 28.9% |
| (e) Ratio of passing test takers to candidates (c/b) | 39.3% | 36.9% | 35.0% | 33.0% |

Note: Data of (a), (b) and (c), are taken from Table 3.

have been raised every year.¹¹

VI. Administration of the Law School System by the MEXT, and the Outcome Thereof

The new national bar examination is expected to produce some 5,000 repeat candidates regularly and some 2,000 persons disqualified as candidates every year. Did the MEXT and its law school designing team ever expect such phenomenon and what did they think of it?

The basic concept and system of the new national bar examination were discussed and designed by the three deliberation bodies including the JSRC. As revealed by the minutes of meetings of these bodies, the opinion that the new examination should be designed under the principle of providing students with the “opportunity for investment in their education” was minor. Rather, concept discussion and system design focused exclusively on universities’ business strategies.¹²

In each of these deliberation bodies, the universities’ delegation had an influential voice. The delegation was in an official position and was responsible for representing the interests of all universities at the same time. 94 universities with faculty of law considered it

¹¹ The three parties in the legal profession, i.e. the Supreme Court, the Public Prosecutors’ Office, and the Japan Federation of Bar Association (JFBA), seem to disagree with the rapid increase in the number of practicing attorneys. It is natural that the JFBA is opposed to the increase in the number of practicing attorneys. The Supreme Court may be concerned that the increase in the number of practicing attorneys might lead to the increase in the number of legal actions, causing a delay in court proceedings. The Public Prosecutors’ Office may be worried that the increase in the number of practicing attorneys might make criminal proceedings more complicated.

¹² The three deliberation bodies are the JSRC (chaired by Koji Sato), the Study Group on Legal Professional Training (chaired by Shigeaki Tanaka) affiliated with the JSRC, and the Law School Committee of the Central Council for Education (chaired by Koji Sato) established within the MEXT.

important to have law schools in order to maintain their status, and many of them wished to have law schools. As a result, the number of law schools finally established swelled to 74.

At the 14th JSRC meeting (March 2, 2000), council member Masahito Inoue explained the basic policy as follows: "It seems to be an extremely difficult task to limit the number of law schools to 20 or 30 by calculating backward from the possible number of passing test takers of the bar examination, and selecting universities to which these law schools are to be assigned. All universities wishing to have law schools should be permitted to set up one only if they meet the minimum required standards." Also, "Free entry should be allowed for universities that are motivated and capable as is required for setting up a law school. Otherwise, the new system would not work well." Following Inoue's comments, another council member, Morio Takeshita, stated, "We should consider, beforehand, the possibility that legal professionals would be produced only from the strata of people who can afford to spend a certain amount of time and costs...Therefore, it may be necessary to arrange a system, similar to the university entrance qualification examination, wherein persons who have not graduated from law schools would be qualified for sitting the national bar examination by taking a certain examination." This statement implies that there was an idea of "preliminary examination" from the early stage of discussions.¹³

It might have been difficult for the universities' delegation for the JSRC to agree to limit the total number of law schools to a certain number, for example, 20 or so. There were 94 universities with a faculty of law in total, of which 30 were national or public universities, and the rest were private universities. Most professors who retire from national universities find reemployment at private universities. In a sense, these two categories of universities share a common interest.

If any limit were to be put on the total number of law schools, only the MEXT could have done this. However, the MEXT did not have any such idea of limiting the number to 20. Rather, the MEXT appears to have desired that law schools would grow in number, in an attempt to use law schools as a means to fulfill the advancement of the system of professional graduate schools, which had made poor progress in the scope of the MEXT administration.

Before the introduction of law schools, the MEXT had launched the system of graduate schools for teaching professionals (graduate schools for the teaching staff at lower and upper secondary schools), which had not been very successful because those having completed graduate schools for teaching professionals were unable to find employment or enjoy treatment in society suitable to their qualifications, so these graduate schools were considerably unpopular. In such a situation, a far larger project of establishing law schools was brought up. Taking this opportunity, the MEXT reorganized graduate schools for teaching professionals and incorporated them with law schools into "professional graduate schools."

¹³ Sato, Takeshita, and Inoue (2002) provide a review of the JSRC's recommendations, showing that the universities' delegation had a considerable influence on the recommendations.

However, this action taken by the MEXT resulted in enhancing and reproducing the contradiction. In reality, more than half of law school graduates fail to obtain qualification as legal professionals and they eventually have to seek employment all over again. The MEXT, in general, did not take note of the need to establish an environment where those who have completed professional law schools would be accepted by society and the labor market under conditions suitable for their qualifications. In short, the MEXT did not have the basic philosophy that graduate schools are the “place where students make an investment in their education.”¹⁴

VII. Conclusion

Under the new national bar examination system, the pass rate has been declining every year, down to 25.4% in 2010. The pass rate of law school graduates in their first examination following the graduation is 30 to 35%, and the pass rate of those who have used up the three chances of taking the examination is 40 to 50%. If this situation continues, there will be some 5,000 repeat candidates regularly, and some 2,000 persons will be disqualified as candidates every year (the situation is expected to become worse depending on the implementation of the preliminary examination that is to be introduced in 2011).

The problem with the new system is that it requires candidates to assume both cost and risk in human capital investment to a greater extent. The cost means that they need to invest about 100,000 dollars for law school expenses in advance, and the risk means that they would lose the investment at more than 50% probability.

The law school system also has problems in terms of efficiency on the supply side. First, the law school industry is more than double the necessary size, holding a great deal of surplus capacity. Consequently, half the subsidies granted by the government to law schools are wasted, and more than half the scholarship money granted to law school students becomes loans owed by those who have failed in investing in their education. Secondly, the creation of small law schools has caused inefficiency. All law schools, even small ones, must have at least one set of teaching staff and facilities. Although half the existing law schools (36 out of 74) have 50 or less enrollees, the appropriate size is to have 500 to 600 enrollees.

The system design of law schools involved the following problems. First, the JSRC made contradictory recommendations, that is, the JSRC set the target pass rate as 70 to 80% of law school graduates, while allowing free entry to the law school industry. Secondly, the

¹⁴ Steele (2005), while comparing with the situation in Australia, argues why students (in Japan) are not allowed to take more part in the reform process of the law school system, thus raising a question against the system reform that has proceeded in Japan without paying attention to students. West (2007) criticizes the new Japanese system for lacking a perspective of what the market and students demand from law schools, and suggests that matching the needs of the market and of students is the key for the success of law schools.

policies taken by the MOJ and the MEXT were inconsistent.

The following would be the possible measures to improve the existing system. (i) The total enrollment at law schools should be limited to 3,500 (the total number of graduates to 3,000) or lower, so that at least 80% of all graduates will be able to pass the national bar examination. (ii) Small law schools should be consolidated into larger schools with 200 enrollees or more. (iii) The MOJ should clearly indicate the number of passing test takers of the national bar examination (for example, 2,500) and maintain it on a medium to long term (for at least five years or so). These measures will mitigate the uncertainty in passing the national bar examination and reduce law school students' risk in investing in their education.

A question that remains here is whether or not the number of passing test takers of the national bar examination should be raised to 3,000 per year, as recommended by the JSRC. There may be two approaches. One is to increase the number gradually, while taking into account the supply and demand balance of practicing attorney services. The other is to increase the number to 3,000 first, and then leave it to the supply and demand mechanism in the market. Which of these approaches to take should be determined after progress is made in supply and demand analysis of the practicing attorneys' market.

Each law school is also required to make its own efforts so that its graduates will be able to find employment in various fields including private businesses and public services in the long run, as seen in the case of the United States. To this end, as Lubbers (2010) suggests, law schools should set up divisions for finding jobs for graduates or organize graduate associations for supporting job seeking activities. In order to carry out these measures, it is essentially necessary for law schools to become larger through mergers or for them to rationalize their management, thereby reinforcing their financial bases.

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