The Japanese Lawyer

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I. INTRODUCTION

Japan's explosive emergence from centuries of self-imposed and incredibly complete isolation from the civilizations both of the West and the rest of the East began nearly ninety years ago. From the time of the Meiji Restoration the structure of Japanese society has been modernized with surprising speed and thoroughness. This transformation was initially the deliberate work of a relatively small band of able, imaginative, and enthusiastic Japanese leaders. Once the barriers were down, once normal intercourse with other nations began, ordinary cross-culturation began having substantial effects. Finally, and most recently, a seven year military and civil occupation both directly and indirectly imposed upon Japan still other important changes.¹

Today, as a result of these influences, alone in Asia Japan can accurately be described as an industrial nation. With a complex commercial base; with excellent communications and transportation networks; with a system of schools, colleges, and universities which produces one of the world's highest literacy rates despite the obstacle of the world's most difficult written language; with a newly broadened approach to the troublesome problem of land ownership; and with a democratic form of representative government, Japan today bears little surface resemblance to her formal medieval self.

Not even the most negative of Japan's critics will deny that real and remarkable progress has been made. Shadow, however, frequently fronts for substance. It soon becomes apparent to any Western resident that Japan is a unique and somewhat haphazard mixture of the old and the new and of the East and the West. Progress battles entrenched cultural patterns; liberalism is matched by resentful reaction; and rapidly changing institutions produce intermittent periods of uncertainty and con-

¹ For the best short English-language history of Japan, from her earliest beginnings through the 300-year Tokugawa regime which was ended in 1868 by the Meiji reformers, see Sansom, Japan, A Short Cultural History (rev.ed. 1953). For a more detailed picture by the same author primarily covering the effect of western culture on Japan from 1500 A.D. through the early Meiji era, see Sansom, The Western World and Japan (1951). For developments since Meiji, see Reischauer, the United States and Japan (1950), and especially Appendix IV., "Suggested Reading."
fusion. It was in this atmosphere that the Japanese law profession was born; it is in this atmosphere that the Japanese lawyer practices today.

Not that Japanese law itself is old. Japan’s first code, borrowed from China, replaced earlier clan law in 702 A.D.\(^2\) Throughout the next 1000 years, while Japan became a unified nation-state, entered feudalism, and finally lingered in feudalism, the development of native law was reflected by a succession of later codes and code revisions. Even before the Meiji Restoration, by the middle of the eighteenth century Japan’s criminal, civil, and even commercial laws had become detailed and elaborate.\(^3\) These laws, however, were in essence as medieval as were the weapons carried by the Tokugawa warriors. They dwelt at length on the obligations of the citizens, but there was not yet in existence a society which could afford to be concerned about the citizens’ rights. As a consequence, although “high priests” of the law, official interpreters, prosecutors in various guises, and judges abounded, the birth of the private legal profession awaited the birth of modern Japan.\(^4\)

One of the earliest and principal efforts made by the Meiji reformers was the wholesale importation and adaptation of European law. Legal scholars were interchanged: the Japanese to study in Europe, the Europeans to teach in Japan. Chairs in English, French, and German law were established in Japanese universities. Ultimately, after a great deal of work and even more debate, Japanese law was again re-written, primarily along German lines though with some English and French influence evident and with the Japanese laws pertaining to the family and the

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\(^4\)“After 1600 (law assumed both a local and national character and was enforced by representatives of the National Government as well as by feudal lords. A rudimentary national judicial system was developed which provided for both civil and criminal actions and appeals. Law, for the most part, consisted of esoteric instruments and regulations of officials which in the criminal field were rarely or only partially publicized. No distinct profession of legal advocates appeared.” Blakemore, Post-War Developments in Japanese Law, 1947 Wis. L. Rev. 632, 636.
rights of succession largely retained.® Japan's first modern code, promulgated around the turn of the century, did not obliterate all traces of feudalism, nor did the earlier Meiji Constitution® provide a truly democratic government. Both were liberal primarily by comparison with the past, and neither proved to be much of a stumbling block in Japan's return to outright authoritarianism in the decade preceding World War II. From the point of view of the Japanese legal profession, however, these efforts were epochal. For the first time Japan had need for lawyers in the Western sense, and for the first time Japan set out to produce them. The university chairs in foreign law grew into law schools,® bar associations began to be organized,® and the brief-case carrying bengoshi took his place among the professional men of Japan.

Since entering the modern world Japan's population has tripled,® and her rapid expansion has multiplied the complications of Japanese life a thousand-fold. Drawing on Western experience—for example, the profound impact of the American industrial revolution, which coincided with the Meiji Restoration, on our own legal profession®—one might expect to find in Japan today


® The Meiji Constitution was promulgated in 1889; the first modern Criminal Code in 1880; a new Civil Code in 1888; and a new Commercial Code a year later. Takayanagi, Legal Education in Japan, 6 Am. Law S. Rev. 161 (1927). Corresponding Codes of Criminal and Civil Procedure were published in this same era. See Appleton, Reforms in Japanese Criminal Procedure under Allied Occupation, 24 Wash. L. Rev. 401 (1949).

7 The University of Tokyo law school was organized in 1887. Previously, in 1872, the old Japanese "Department of Justice" organized a government law school in which French law was taught, and the Kaisei Gakko, from which the University of Tokyo emerged, offered French law from 1874. Takayanagi, Contact of the Common Law with the Civil Law in Japan, 4 Am. J. Comp. L. 60 (1955). Some private schools, now universities, were even originally organized in Tokyo specifically to teach law, e.g., Chuo (German law), Hosei (French law), and Nihon (Japanese law).

® The Tokyo Bar Association, organized in 1893, is apparently the oldest in Japan.

® The population of Japan's home islands in 1872, approximately 33 million, had grown to 64½ million by 1930. Moulton, Japan 22 (1931). Despite her heavy losses in World War II, the 1950 population exceeded 83 million. Japan, The Official Guide 92 (Japan Travel Bureau, 1953). Since Japan is growing at the rate of nearly a million a year, her population should reach 90 million by 1957.

10 See Hurst, The Growth of American Law (1950) (chapters 12 and 13, and especially pages 297 et seq.).
a large and vigorous bar. One would be wrong. For all her ninety millions, Japan has less than 6,000 practicing lawyers.\textsuperscript{11}

This figure, which is strictly limited (as is the word \textit{bengoshi} in the Japanese language) to those Japanese lawyers engaged in private practice, i.e., it does not include law school graduates in general, nor even judges, prosecutors, or law teachers, thus provides Japan with one practicing lawyer for more than 15,000 (outside of Tokyo, 24,000) citizens. Our own nation-wide ratio is approximately one practitioner for each 800 Americans.\textsuperscript{12} No one will attempt to equate Japan and the United States economically so even a considerable disparity is to be expected. It is submitted, however, that the size of the Japanese bar is the result not alone of the country's industrial level, nor of its political structure, but is the product also of the peculiarities of Japanese history and of the resultant Japanese character. Further, it is suggested that the number of \textit{bengoshi}, now practically static,\textsuperscript{13} may be, to a considerable extent, deliberately controlled; that the size of Japan's present bar does not necessarily reflect modern Japan's need for legal practitioners and will reflect it less and less as Japan's population, now growing at nearly a million a year, increases.

The factors upon which these conclusions are based will be touched upon in the following discussion.

\textsuperscript{11} There were 5,995 private practitioners registered in Japan as of December 31, 1955. 2,579 of whom were located in Tokyo. (Information received from the Tokyo Bar Association, January, 1956). An interesting, if not particularly germane, comparison of the medical professions of Japan and the United States reveals that Japan has almost half as many doctors as does the United States, a ratio in keeping with the respective over-all populations of the two countries. As of December 31 1955, there were 92,442 physicians registered in Japan. (Information obtained from the Census Bureau of Japan, February, 1956). As of April, 1950, there were 204,995 doctors listed in the United States, only 156,454 of whom were in private practice. American Bureau of Medical Economic Research, Distribution of Physicians by Medical Service Area (1954).

\textsuperscript{12} In 1955 there were 189,423 American lawyers in private practice, according to information compiled by the American Bar Center Library. (Communication from the American Bar Center Library dated November 16, 1955).

\textsuperscript{13} Figures for the pre-war Japanese bar are not available because of the destruction of official records during the war. However, the writer has been informed by Japanese lawyers that the present bar is approximately the same size as the pre-war bar. 1950 figures showed 5,845 lawyers in Japan. 1,941 in Tokyo. (Information obtained from the Tokyo Bar Association in January, 1956). Thus, while over 600 new lawyers entered practice in Tokyo from 1950 through 1955, the gain for Japan as a whole was but 150 (see supra note 11).
II. LEGAL EDUCATION

Despite the scarcity of Japanese lawyers, there certainly is no shortage of law students. Rarely more than a third of any graduating class even attempts the National Judicial Examination (the first and the “fiercer” of two bar examinations facing the would-be bengoshi, judges, and prosecutors, which will be described more fully below) and yet the Examination is tackled by approximately 5,000 aspirants yearly. Law schools of six former Imperial Universities and numerous private institutions are usually filled to capacity, admitting students only on the basis of competitive examinations. This is no post-war phenomenon. Law schools have been popular in Japan for most of this century, but not primarily as a training ground for lawyers. Rather, a law degree has proved to be an excellent spring-board to desirable positions in Japanese bureaucracy (particularly for graduates of Tokyo University’s law school) and Japanese business and industry.

Nor is law, in Japan, a longer scholastic road. The student enters law school immediately on the completion of his secondary education and after four years receives the equivalent of an American A.B. degree. This program thus serves both as college and law school; the Japanese student only “majors” in law. Accordingly, in addition to his legal studies he is given courses in the humanities, the social and natural sciences, and in foreign languages, usually in his first year or two.

14 Of the 1955 graduating class of 150 at Tohoku University, in Sendai, only 30 took the National Judicial Examination. Of the normal graduating classes of about 500 each from Keio and 600 from Waseda Universities (both in Tokyo), usually no more than 70 from each school take the Examination. These figures are believed typical.
15 Information received from the Judicial Research and Training Institute, Supreme Court of Japan, Tokyo.
16 The Universities of Hokkaido Sapporo (1918), Tohoku (Sendai), Tokyo, Kyoto, and Kyushu (Fukuoka). Although no longer “Imperial Universities,” these five schools still retain a great deal of their old prestige as a result of their former official preeminence.
17 No survey was discovered either of the past or of the present total law school enrollments in Japan. However, there are now about 600 in each class at Waseda, 500 at Keio, 500 at Chuo (Tokyo), and 150 each at Tokyo and Tohoku Universities. Totalling only the enrollment of these three private and two national schools, then, we find 7,600 students, 1,600 more than the present membership of the Japanese bar.
18 Takayanagi, Legal Education in Japan, 6 Am. Law S. Rev. 161, 164 (1927).
19 The discussion of the Japanese law school curriculum is based upon a comparison of the curricula of Tokyo, Tohoku, Waseda, Keio, and Nihon Universities.
When the student reaches what might be called "law school proper," the curriculum has a strong foreign flavor, as should be expected in a country where the law was in large part borrowed from abroad. Courses are offered in Occidental Legal History; Anglo-American, French, German and occasionally Chinese and Russian law; Comparative Constitutional Law; International Law; Jurisprudence, and the like; and the foreign language study continues. Even essentially native legal subjects often inescapably involve reference to foreign authority for the obvious reason that what is now a part of domestic Japanese law had its origin in Germany, France, England or the United States; and it is to those countries that the student must frequently turn for interpretation. Further, Japan's geography is reflected in the availability of lectures on Maritime Law and Maritime Insurance Law.

The heart of the Japanese law curriculum, however, is the study of the Roppo, or the six basic volumes of Japanese law: the Civil, Criminal and Commercial Codes; the Codes of Civil and Criminal Procedure; and the Constitution. Partially because of their natural importance as almost all of the law of the land; partially because of Japan's adherence, for the most part, to the Continental system of jurisprudence with a consequent lack of emphasis on judicial precedent; and to no small extent as a practical matter because of the nature of the fearful National Judicial Examination, the Japanese law student spends the bulk of his last two years memorizing the Roppo. The case system, so far as the writer is aware, is nowhere in use in Japanese law schools. Further, lectures are precisely that. The give and take of an American classroom is unheard of in Japan. The dignified, if not, indeed, austere atmosphere of the typical Japanese law school is relaxed only slightly in occasional seminars.

Finally, legal curricula also are responsive to Japan's drastic economic and social changes. Lectures and seminars on such subjects as Labor Law, Taxation, Securities Exchanges, Money

20 A classic example is the Japanese corporation law (Book II of the Commercial Code) which, because the occupation legal officers concerned with its revision happened to be from Chicago, is largely a translation of the Illinois Corporation Code. See Oppler, The Reform of Japan's Legal and Judicial System Under the Allied Occupation, 24 Wash. L. Rev. 290 (1949).

21 Aside, that is, from administrative, regulations and laws promulgated by organs of local self-government, e.g., the prefectural assemblies.

22 See Takayanagi, Contact of the Common Law with the Civil Law in Japan, 4 Am. J. Comp. L. 60 (1955).
and Banking, Social Law, and Administrative Law are now common in Japanese law schools.

In his last year the law student must face his future squarely. For the most part, a student's first choice of career or even of a particular job is his last. The Japanese college graduate does not expect to be able to move from job to job, following the dictates of opportunity. Instead, once accepted by a large bank or trading company, or by the government, the die is all but cast. On the employer's part, the applicant is admitted almost for better or for worse into what is essentially a large family, and given, in addition to his salary, fringe benefits scarcely ever matched in kind or quantity in this country. In exchange for this paternal care, the new employee is expected, by his employer and by Japanese society generally, to be wholly loyal and obedient, and the arrangement is tacitly considered by all concerned to be permanent. In many of its details, this situation is strongly reminiscent of Japan's supposedly erstwhile feudalism, so it is not surprising to find it primarily limited to the government and to large companies which were until the war, and still are to some extent, controlled by rich and prominent mercantile and industrial families and their heirs and assigns: the old zaibatsu. For several reasons, not the least of them prestige, these jobs are by all odds the most desirable to senior law students, as well as to graduates of other colleges, particularly economics. As a result, each year there are again many times more applicants from all over Japan than openings, and again this calls for more competitive examinations. Once a student succeeds in gaining entrance to a law school his chances for survival are excellent. It is not, then, his law finals which concern him in his last year, but rather the large company examinations held throughout Japan in October or November and those of the smaller companies in November or later. Graduation is in March. By January, however, most seniors have already obtained jobs. Some of the rest

23 And to insure loyalty beforehand, the employer often conducts a "security investigation" similar to the F.B.I. check on government applicants in this country. The employer has been known to send its agents to the student's home to inspect his book-shelves for "subversive literature."

24 Not all of these examinations are "open." The government and most large companies limit their examinations to a few top students in each school recommended by the faculty. Family connections, as well as scholarship, are not infrequently taken into consideration, however. New employees can expect beginning salaries ranging from Yen (Y) 10,000 to over Y 20,000 a month and can look forward to ultimate monthly salaries, as executives of Y 75-150,000. (Y 360 = $1).
await the government civil service and diplomatic examinations, and the National Judicial Examination, which follow in July.\textsuperscript{25} Still others, few in number and usually prospective law teachers, remain at their universities for graduate work.\textsuperscript{26}

At most, only one law senior in five takes the National Judicial Examination, and of those who do, only five in a hundred pass. It is from this last small group, however, that all but an insignificant fraction of Japan's judges, public prosecutors, and lawyers are drawn. The National Judicial Examination is accordingly the most important single examination in the Japanese system of preparation for the bench and the bar. It is also one of the most difficult examinations of any kind in the world.

\textsuperscript{25}Approximately thirty law graduates a year enter the Court Clerk Training Institute in Tokyo. This Institute has three programs: (1) A one year program for law school or economics graduates; (2) a two year program for entrants with a secondary education; and (3) a one year "refresher" course for incumbent, i.e., pre-Institute, clerks. About 600 clerks have been graduated from the first two programs since the Institute's establishment in 1950, and about 140 are now being graduated each year. Under the old court system, the court clerk not only kept the official court records and served as a notary public, but also functioned as court reporter, making notes even of testimony in what amounted to long-hand. Since the war, however, a way has been found to utilize the Stenotype in Japanese court proceedings, and approximately one hundred true court reporters are now being graduated each year. Thus, the court clerks are being freed from a large part of their mechanical burden with a resultant increase in professional pride, and are attempting to have their salary schedule raised to reflect what they feel is their new status. Court clerks of the lowest grade now receive ¥10,800 per month and, in theory, can eventually reach ¥50,700, although there is presently no clerk in Japan drawing the maximum salary.

In the past, most of Japan's Summary Judges (who preside over Japan's lowest court, only slightly higher before the war than our J.P. courts) were appointed from the ranks of the court clerks, although the system is now being subjected to some criticism. Articles 44 and 45 of the Court Organization Law provide that in addition to judges of Japan's High Courts, persons who have had at least three years experience as Assistant Judge, public procurator, lawyer, a research official attached to a court, court clerks, Institute teachers, or law professors, or others especially qualified although not included in the above list are eligible for appointment as Summary Court judges.

\textsuperscript{26}The writer had hoped to include a section on law teachers, but decided it wiser to limit this paper to those members of the legal profession directly involved in court proceedings. In a word, law professors in Japan are highly respected and fearfully underpaid, even in comparison with the relative incomes of the law teachers in American vis-a-vis other components of the American bar.
III. THE NATIONAL JUDICIAL EXAMINATION

Article 1 of the Judicial Examination Law\(^{27}\) declares that the purpose of the National Judicial Examination (Shiho Shiken) is to "... measure accurately the essential erudition and ability of ... persons who want to become judges, public procurators [prosecutors], or lawyers." Any one at all may take the Examination, regardless of his educational background;\(^ {28}\) although unless the candidate has a post-war Bachelor's degree or its pre-war equivalent,\(^ {29}\) he must first undergo a cultural examination, called the First Examination, which is similar to an American "comprehensive."\(^ {30}\) This is conducted in April.

The legal, or Second Examination, held in July, is itself divided into two parts: written and oral.\(^ {31}\) The written section covers the six major bodies of Japanese law, the Roppo, together with one of the following subjects to be selected by the candidate: Administrative Law; Bankruptcy Law; Labor Law; Private International Law; or Criminal Policy.\(^ {32}\) Only those who pass the written examination may go on to the oral, which again covers the Roppo and is conducted by an imposing, and to the candidate undoubtedly frightening, battery of leading Japanese legal authorities.

There is apparently no limit on the number of times one may attempt the National Judicial Examination, although as a practical matter most of those who fail turn immediately to other careers, particularly to business. For the dogged, however, the Judicial Examination Law provides for piece-meal passing. Candidates who have gotten by either the First Examination, if that were required, or the written part of the Second, need not repeat those ordeals on subsequent tries.\(^ {33}\)

The Second Examination, held in six major cities,\(^ {34}\) takes

\(^{27}\) Judicial Examination Law, enacted May 31, 1949.

\(^{28}\) This is a fundamental change from the old laws, which set forth rigid minimum requirements for applicants.

\(^{29}\) Judicial Examination Law, art. 4.

\(^{30}\) Id. art. 3. The First Examination is based on the standard required for university graduates as provided for in Japan's School Education Law, and consequently embraces philosophy, ethics, religion, literature, music and fine arts, law, politics, economics, sociology, geography, pedagogy, mathematics, chemistry, astronomy, geophysics, biology, and foreign languages.

\(^{31}\) Judicial Examination Law, art. 5.

\(^{32}\) Id. art. 6.

\(^{33}\) Id. art. 4 and 6.

\(^{34}\) Sapporo, Sendai, Tokyo, Nagoya, Kyoto, and Fukuoka.
three days and, as earlier mentioned, is taken by approximately 5,000 candidates each year. The 1952 figure of 253 successful examinees is precisely the average for the years 1950-1954 inclusive. Since all but a tiny fraction of Japan's professional legal personnel are produced from this minute surviving band, it is not difficult to understand why Japan's bar is small. It is less easy to discover the reasons for this tight control.

The National Judicial Examination has been placed by the Diet in the hands of a Judicial Examination Commission, which, in turn, is under the administrative supervision of the Ministry of Justice. Three members make up the Commission: the Vice-Minister of Justice, the Secretary General, who is the chief administrative officer of the Supreme Court, and a bengoshi appointed by the Justice Minister on the recommendation of the Japan Federation of Bar Associations. Before the war this arrangement would have meant absolute control by the Justice Ministry which, as will be described more fully below, dominated both judges and lawyers as well as its own public procurators. Under the new Constitution, however, with that document's more effective separation of powers, this centralized authority is gone. The Commission represents each of the three fields into which successful Judicial Examination candidates will go: the judicial, public prosecution, and the private practice of law.

The numbers of judges and public procurators are, of course, fixed by law. Not so with the bengoshi, but the size of the bar is no less effectively stabilized. If there is a bottleneck in Japan which unnaturally limits the bar, it is this Commission and the Examiners which it appoints. That no serious study of the prac-

35 An analysis furnished the writer by the Judicial Research and Training Institute of Japan shows the following successful examinees for the year 1950-1954, inclusive:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Male</th>
<th>Female</th>
</tr>
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<tbody>
<tr>
<td>1950</td>
<td>269</td>
<td>266</td>
<td>3</td>
</tr>
<tr>
<td>1951</td>
<td>272</td>
<td>270</td>
<td>2</td>
</tr>
<tr>
<td>1952</td>
<td>253</td>
<td>246</td>
<td>7</td>
</tr>
<tr>
<td>1953</td>
<td>224</td>
<td>221</td>
<td>3</td>
</tr>
<tr>
<td>1954</td>
<td>250</td>
<td>240</td>
<td>10</td>
</tr>
</tbody>
</table>

Of the 1,268 successful candidates for these years, only 536 were listed as "students," while there were 307 "public servants;" 310 "unemployed," and 115 "teachers," "company clerks," and the like. What this actually means is that many law school graduates worked for a period after law school, or stayed home (the "unemployed") in order to study for the Examination. Only a bare handful of successful examinees have never attended law school.

36 Judicial Examination Law, art. 12.
37 Id. art. 13.
38 Court Organization Law, enacted April 15, 1947; Public Procurators Office Law, enacted April 16, 1947.
tical operation of this body has as yet been undertaken either in Japan or elsewhere; that the Commission has not yet been the target of outspoken criticism, especially from some of the hordes of seemingly well-qualified and otherwise determined candidates who are rejected annually; that the government, the bench, and the organized bar have operated in apparent harmony in so carefully preserving in a growing Japan what is either an arbitrary number of bengoshi or is at least a number arrived at by an unpublicized formula to which all governing participants silently agree, all seem incredible to an American observer.

IV. THE JUDICIAL RESEARCH AND TRAINING INSTITUTE

Post-graduate legal internship has long been debated in the United States. In Japan it is a reality. Would-be judges, procurators, and lawyers are all required to serve as salaried Judicial Apprentices for the two years following the National Judicial Examination.

The Judicial Research and Training Institute was created as a result of the Court Organization Law and was placed under the administrative control of the Supreme Court. The Institute, located in Tokyo, has in addition to its president and administrative personnel a staff of ten judges, five public procurators, and ten lawyers whose collective duty is to provide the Judicial Apprentices with practical legal instruction.

The Apprentices are first given four months of comparatively formal training at the Institute itself. In the words of the Institute,

During this period the students are given a general idea concerning the organization, function and duties of the court, public procurators office and the operation of the legal profession in general. They are also given necessary instruction in a court proceeding, from the commencement of a case until judgment.

40 Judicial Apprentice “base pay” is Y 15,000 per month.
41 Articles 66-68 of the Court Organization Law provide for the appointment, study, and dismissal of Judicial Apprentices, leaving the first to be detailed by Cabinet order and the last two by the Supreme Court.
42 On December 1, 1947, the Supreme Court issued its Rule No. 11 which assigned eight Court Secretaries (Clerks) to the Institute and provided for the commissioning of Councillors from among judges, procurators, lawyers, or others possessing skill and knowledge, to supplement the Institute's regular teaching staff.
43 This information, together with that which follows concerning the Institute, is largely drawn from a paper, “The Judicial Research and Training Institute,” received from the Institute in December, 1955.
They are trained for real practice, and are often required to de­bate among themselves on the judicial documents taken from actual cases. Everyone is taught to draw up a brief and write a judgment according to his own opinion . . . . Instruction in other courses, not directly connected with the legal study, such as accounting, criminal psychology, legal philosophy, etc., is also given . . . .

Since our jurisprudence has been influenced by American laws to a great extent, an elemental instruction in the legal system of America, especially in the field of evidence, is also given. Foreign languages, such as English, French, and German, are also made a part of the curriculum.

A tall order for four months, especially when combined with lectures on Buddhism, Christianity, art, music, and literature; dinner and luncheon parties; sight-seeing excursions, and group visits to the theater!

Once thus fortified with capsuled legal reality, legal theory, and culture in general, an Apprentice next is assigned to one of Japan's seventeen larger cities where he spends eight months attached to a court, four months in a public procurator's office, and four months in the office of a bengoshi. At each stage the Apprentice works under a judge, procurator, or lawyer assigned as his instructor, and at each stage the atmosphere is no longer that of the stiffly formal lecture hall but is purely and simply on-the-job training.

His field work completed, the Apprentice is returned to Tokyo where a brief effort is made to tie his experiences together by more Institute group study instruction. Finally, at the conclusion of his second year, the Apprentice faces his last formal barrier: the Judicial Apprentice Examination, given by a committee whose chairman is the Chief Justice of the Supreme Court. Few stumble at this point.

The principal purpose of the Judicial Apprentice Examination (Nikai Shiken) is not so much to weed out the unworthy as it is to assist the Institute in determining whether a particular

44 See supra note 43.
45 The Judicial Apprentice Examination, also called the Second Examination, is given in two parts, written and oral. The written section covers (1) Civil and (2) Criminal Trials; Defenses in (3) Civil and (4) Criminal Cases; and (5) Investigation and Prosecution. The oral examination re-covers the above ground plus "General Culture." Two of 246 Apprentices failed this examination in 1952. (A failing Apprentice receives an additional year's training and then is permitted to try again). In 1953, 1954, and 1955, there were no failures. Communication from the Institute dated March 1, 1955.
Apprentice is better suited for the career of judge, procurator, or bengoshi. According to the Institute, "... (w)hich of the three legal professions they should follow is left up to their own discretion within the limits of the fixed number of personnel." Since there is no legally fixed number of bengoshi, this necessarily means that the Apprentices unqualified for judge or procurator, according to standards not made public, and those left over after available official vacancies are filled, practice law—together with those who originally wanted to practice, of course. Statistically, each Institute graduating class splits, or is split, about evenly into each of the three fields.

The fledgling is now ready to fly, after six years of post-high school education, at least four years of which were devoted to legal training.

V. JUDICIARY

It has now probably become obvious that the Japanese approach to the judiciary is strikingly different from our own. In Japan a student can decide to become a judge, and with the ability, hard work and luck necessarily involved in escaping the multiple hazards of the elimination carnival sketched above, can be a judge, or at least an Assistant Judge, immediately out of school.

The Japanese court system, as now constituted, consists of the Supreme Court at Tokyo; eight appellate High Courts, five on Honshu and one on each of the other three main islands; forty-nine District Courts, which have 323 branches; a like number of Family Courts and branches; and 557 Summary Courts. There are fifteen Supreme Court Judges, with 25 judges assigned as their research staff; either three or five judges sit on each High Court; one or three in the District Courts depending on the particular case involved; and one judge presides at each session of the Family and Summary Courts. Altogether, the Court Organization Law provides for 1,732 judges.

As Assistant Judge, the new decision-maker (and he is al-

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46 See supra note 43.
47 From fifty to seventy-five members of an average graduating class will probably enter the judiciary and a like number the procuratorial service. The rest, with some attrition caused by graduates going into non-legal fields, become bengoshi.
48 By the Court Organization Law; see supra note 38.
ways that in Japan which has no jury system has only limited authority. He is not allowed to sit alone in any but minor cases. He is assigned to either a District or a Family Court where he must remain, unless transferred to a similar post elsewhere, for ten years. Only then (there are apparently no exceptions) is he eligible, together with procurators and lawyers of equal experience, for appointment as Senior Judge.

The new Japanese judge, however, can look forward to a far brighter future than he would have faced before the war. Under the old system a judge was little more than a somewhat glorified civil servant. Technically trained, with a positive, formalistic approach to the law befitting a state official, the pre-war judge trod a dangerous tight-rope between inward conscience and outward pressures. Although nominally independent, the judges were under the administrative supervision and effective control of the Ministry of Justice. A judge enjoyed life tenure; but his promotions could be blocked, his already meager budget trimmed, his administrative requirements ignored, and a "corrective" transfer to a less desirable post could be swiftly arranged. Public procurators, who commanded only slightly less prestige than the judges in authority-conscious pre-war Japan, sat with the judges on the bench in criminal cases, and as servants of the Justice Ministry kept the judiciary under thinly veiled official observation. Consequently, ambitious judges, who at every

50 Japan's Jury Law of 1923, enacted in a golden era of Japanese liberalism, provided for a jury in capital cases at the defendant's option. Juries were not popular, however, and were all but abandoned by 1940. Appleton, supra note 6, at 404.

51 Kawamura, supra note 49, at 255. Before the war Senior Judges were almost invariably appointed from the ranks of Assistant Judges. While a few bengoshi have received appointments under the new Court Organization Law, because of their training, experience, and availability, as well as for reasons of morale and tradition, the Assistant Judges will undoubtedly continue to receive most of the appointments. By "Senior Judge" here is meant all judges other than Assistant Judges throughout the Japanese court system, except the lowest court (the Summary Court) and the highest (the Supreme Court). For the qualifications required of a Summary Court judge, see supra note 25. With respect to the fifteen Supreme Court judges, "... at least ten of them must ... have shown good results for twenty years as general judges, public procurators, lawyers, etc. The other five are not necessarily required to be jurists, but only to be first class personages of broad vision in the country." Kawamura, supra note 49, at 254. The Chief Judge of the Supreme Court is appointed by the Emperor on advice of the Cabinet; the rest by the Cabinet and their appointments thereafter attested by the Emperor. Ibid.
level were woefully underpaid, looked all too often to the Ministry for decision.62

The new Constitution, however, contains several forceful provisions designed to emancipate the judges and, in the process, Justice. The judiciary was placed under the Supreme Court and the judges declared independent and bound “... only by this Constitution and the laws”;53 and the Constitution further directs that “(t)he judges shall receive adequate compensation which shall not be decreased during their terms of office.”54 True, Japanese Supreme Court judges may be removed from office by failure to survive the new popular elective review,65 and all judges are subject to public impeachment proceedings conducted by the Diet,66 or to removal as a result of a judicial declaration of mental or physical incompetency,57 but none of these possibilities is in any way likely to lead to the old evil: control by the executive.

The modern Japanese judge can therefore look forward to unfettered service at a reasonably adequate level of compensation68 until he reaches retirement.59 This new independence has produced a corresponding increase in prestige, which seems well

62 Oppler, supra note 20, at 305. Even as late as 1947, but before the judicial pay raise, a Supreme Court survey showed the average judge’s expenses to be 148% of his income, forcing him to resort to savings, the sale of furniture and personal effects, borrowing, etc., in order to live. S.C.A.P., infra note 64, at 237.
53 Constitution of Japan, art. 76.
54 Id. art. 79 (Supreme Court judges) and art. 80 (judges of inferior courts).
55 Id. art. 79, which in part provides, “The appointment of judges of the Supreme Court shall be reviewed by the people at the first general election of members of the House of Representatives following their appointment. and shall be reviewed again at the first general election ... after a lapse of 10 years, and in the same manner thereafter. ... (W)hen the majority of the voters favors the dismissal of a judge, he shall be dismissed.” The Constitution of Japan was adopted on March 6, 1946. On June 23, 1949, fourteen Supreme Court judges went before the voters. Only 4.4% of those who participated voted for dismissal. Oppler, supra note 20, at 310.
56 Constitution of Japan, art. 78.
57 Id. Inferior court judges, who are appointed by the Supreme Court for ten year periods, may also fail to be reappointed.
68 One of the many glaring deficiencies of this paper is its failure to include present judicial salaries. This information is a matter of public record in Japan and can be had on request (although not, in the writer’s case, in time for publication).
59 Retirement age is sixty-five for all judges of inferior courts and seventy for Supreme Court and Summary Court judges. Court Organization Law, art. 50. See Oppler, supra note 20. at 311.
deserved because of the broadened emphasis in the legal training process which now produces new judges, and which also includes a program at the Judicial Research and Training Institute designed to "... inspire (incumbent) judges so that they may develop a clear understanding of the new Constitution, become familiar with the various revised laws and ordinances, and to be better fitted for the proper execution of their duty."60

VI. THE PUBLIC PROCURATORS

The responsibilities of Japanese public procurators differ from those of American prosecuting attorneys in two significant regards. First, there is but one national criminal jurisdiction in Japan. All crimes are consequently prosecuted by the Public Procurator's Office (P.P.O.). Second, since there is no full-fledged grand jury system in Japan, all criminal actions must also have been initiated by the public procurators. The "Inquest of Prosecution," established as a result of occupation reforms, operates as an American grand jury in all but one respect: its findings are only advisory.61

The P.P.O. organization parallels Japan's court system. Hence, there is a Supreme P.P.O., headed by the Public Procurator General; eight High P.P.O.'s; and forty-nine District and 570 Summary P.P.O.'s.

Staffing these offices are 932 Public Procurators and 693 Assistant Public Procurators.62 From fifty to seventy-five new procurators are brought in each year,63 almost entirely from the Institute's graduating classes, although judges, lawyers, and law teachers are now qualified for appointments.64 The procurators are quite naturally distributed according to the location and work loads of the courts. For example, there are 118 Public Procurators in the Tokyo District P.P.O. and forty-eight Assistants in the Tokyo Summary P.P.O. These figures fall to fifty-seven and thirty-four respectively, in Osaka, and still further in less populous areas. There are, generally, fifteen to twenty Public Procurators and ten to fifteen Assistants in each of Japan's forty-two ken, or prefectures.65

60 See note 43 supra.
62 Communication received from the Ministry of Justice dated January 4, 1956.
63 Ibid.
65 See note 62 supra. In addition to the forty-two ken, there are one to (Tokyo), one do (Hokkaido), and two fu (Kyoto and Osaka).
Although before the war the procurators, like the judges, suffered severely from inadequate salaries, which have also now been substantially increased, the chief difficulty with the old procuratorial system, in sharp contrast with the pre-war judiciary, was that it had too much rather than too little autonomy. Under laws permitting arrests even for "dangerous thoughts," the procurators prepared, brought, and prosecuted all criminal actions in close cooperation with the notorious pre-war Japanese police forces. Further, in actual courtroom proceedings, as earlier mentioned, the procurator's formal role was imposing enough, but as a "security officer" for the Justice Ministry his character approached the sinister. As could be expected, moreover, under the old system the procurator was invulnerable from all save his own Justice Ministry superiors.

The new Constitution eliminated most of the old inherent evils, and, moreover, specifically provided that, "public procurators shall be subject to the rule-making power of the Supreme Court." The Diet went still further, however. In addition to the creation of the Inquest of Prosecution, a permanent watchdog committee was established composed of members of both legislative Houses; the Procurator General; and representatives of the Supreme Court, the bar associations, and the law schools. This committee reviews the performance of each procurator at least once every three years. Thus, machinery now exists to discover and discharge procurators who abuse their authority either through misfeasance or non-feasance in office; machinery which is no longer limited entirely to the procurator's own official family.

The career of public procurator is difficult to enter and in its performance is not without its problems. In addition to complaints common to all who work in bureaucracy in Japan or elsewhere, the procurators are particularly bedeviled by the peculiarities...
ties of Japanese criminal procedure which produce interminable delays between arraignment and judgment. The post-war procurator, however, has retained the public respect that in Japan still results, to a degree hard to imagine in the United States, from representing authority; his remuneration is now far more attractive; and his job-security and opportunity for advancement are both excellent.71

VII. BENGOSHI—THE PRACTICING LAWYER

The influence exercised by the pre-war Ministry of Justice over the judiciary, however effective, operated largely on a practical rather than a legal level. The bar, on the other hand, was directly controlled. The old “Law for Lawyers” placed the official bar associations, to which all bengoshi had to belong, under the continuing supervision of the Ministry of Justice. While control of the individual members was nominally in the hands of the bar associations, disciplinary action could be initiated by the Justice Ministry on its own initiative as well as upon the request of the association concerned.

The lawyer’s shackles, as well as the Judge’s, were broken by the new Constitution. The new “Law of Attorney at Law”72 which transfers complete control over bengoshi to the bar association is, by Western standards, a curious, comprehensive document combining qualifications for admission, a statutory code of ethics, the establishment of a new system of bar associations, laws protecting against infringement on legal practice by other professions, and both administrative and penal disciplinary provisions.

The Law declares that the mission of a lawyer “... is to protect the fundamental human rights and to realize social justice,73 ... to maintain social order and to improve legal systems74 ... to strive to enhance the level of his culture and to build his character, ... to be well acquainted with laws, ordinances and legal business”75 and to accept as a solemn duty the performance of legal business on the request of either private or public parties;76 and states that “(a) lawyer may, as a matter of course,

71 From the 18th Class to the 3d Class the procurator usually advances one Class each year; the next step, to the 2d Class, takes two years; thereafter promotions are made entirely on the basis of merit. (Information obtained from the Ministry of Justice, February, 1956).
73 Id. art. 1.
74 Id. art. 1(2).
75 Id. art. 2.
76 Id. art. 3.
perform the business of the patent attorney and the tax agent." 77 This last provision, coupled with a later prohibition against the unauthorized practice of law, 78 is more than faintly reminiscent of professional jurisdictional problems presently faced by the American bar and indicates how far, in some respects, Japan has progressed from the days of Meiji.

The normal prerequisite for admission to practice is stated quite simply to be the completion of the course of Judicial Apprentice, 79 but former Supreme Court judges, 80 law teachers with five years' experience, 81 and persons who pass the National Judicial Examination but rather than entering the Institute serve for five years in other specified capacities (Summary Court judge, public procurator, Institute instructor, etc.) 82 are also qualified. Grandfather clauses are attached as supplementary provisions making the Law's operation entirely prospective. 83

The Law declares persons who have been imprisoned; impeached; disbarred as an attorney, C.P.A., patent agent, tax agent 84 or "public servant"; or declared bankrupt; or who are incompetent or "quasi-incompetent"; to be disqualified from admission, although disbarment operates as a disqualification for only three years. 85

Provision is made for very limited practice in Japan by foreign lawyers, with the approval of the Supreme Court. 86

The Law establishes bar associations in each district under

77 Id. art. 3(2).
78 Id. art. 72.
79 Id. art. 4.
80 Id. art. 5(1).
81 Id. art. 5(3).
82 Id. art. 5(2).
83 Id. art. 81-89, inclusive.
84 Patent and tax agents are peculiarities of modern Japan. They are not lawyers, and are strictly circumscribed in their activities.
85 Law of Attorney at Law, art. 6.
86 Id. art. 7. This article provides that foreign lawyers may become fully admitted to practice in Japan on displaying "a proper knowledge about laws of Japan," or may be conditionally admitted, i.e., admitted to deal only with other foreigners or to perform business relating only to foreign laws, both upon approval by the Supreme Court. There are approximately fifty foreign lawyers practicing in Japan, all but two or three conditionally admitted. However, Japanese tax laws and a bill passed by the 1955 Diet requiring that foreign attorneys admitted in the future be qualified not only in the law but also in the Japanese language and even limiting this category to six, seem to indicate a shrinking foreign lawyer population in Japan.
the jurisdiction of a District Court, as well as a central governing association: the Japan Federation of Bar Associations (J.F.B.A.). The J.F.B.A. controls the bengoshi's initial registration and any subsequent transfers of registration between bar associations; the articles and rules of member associations, and disciplinary action; and operates as a liaison link between the bar and the government in matters affecting the bar as a whole or the public's interest. Japan's modern bar associations are creatures of the Diet, of course, but are free of any legal influence from the executive or even the judiciary.

Qualifications Screening Committees are set up in each association including the J.F.B.A. to examine original applications, transfers and recissions. In order to be admitted to registration in a bar association, and hence to full status, an Institute graduate must have two years post-Institute experience. Similarly, disciplinary committees are established in each association. A bengoshi is subject to disciplinary punishment for "...a violation of this Law, or the articles of the bar association to which he belongs, or of the Japan Federation of Bar Associations, or for any act which is prejudicial to the good order or prestige of his association, or otherwise disgraceful in any way whether performed on or off duties." Complaints are investigated by a Disciplinary Maintenance Committee which, if it deems it appropriate to impose punishment, requests a Disciplinary Punishment Committee to examine the case. A miscreant may be reprimanded; suspended for two years; ordered to withdraw from his association, which amounts to effectual disbarment unless he can persuade the J.F.B.A. to transfer his registration; or disbarred. Procedure for appeal to the J.F.B.A. and, that rejected, to the courts is provided. On the other hand, the complaining party may file objections with the J.F.B.A. if the local association fails to act, or even if the complainant feels the punishment assigned is too light. The J.F.B.A., when it considers the objection well founded, then investigates through its own Disciplinary Committee. Moreover, the J.F.B.A. may impose disciplinary punishment on its own initiative. The Law contains a three year statute of limitations beyond which disciplinary proceedings are barred.

Of particular interest to the American lawyer are the three

87 Id. art. 32 et seq.
88 Id. art. 45 et seq.
89 Information received from the Tokyo Bar Association in December, 1955.
90 Law of Attorney at Law, art. 56 et seq.
91 Id. art. 56.
sections of article 30 which prohibit bengoshi from concurrently assuming a public post for which compensation is paid (but which contains a long string of exceptions ranging from the office of Prime Minister to any elected post, part-time services, and special tasks), which require him to refrain from practice if he does enter full-time public service, and which bar him from operating or becoming an employee, officer or director of a profit-making organization without his bar association's permission.

Japan's bar is fully integrated. All lawyers are registered by the J.F.B.A. with their associations. Of Japan's 5,995 bengoshi, 2,579 are registered in Tokyo's three associations, the Tokyo (1,510 members), First Tokyo (608) and Second Tokyo (461) Bar Associations, founded, if intervening reorganizations are ignored, in 1893, 1923, and 1926 respectively.92 Each member pays dues both to the J.F.B.A. and to his local association.93 In exchange, besides status, he receives legal publications, attends occasional meetings, and has a lobbyist champion. More important, the bengoshi may utilize the association's headquarter's building (library, office space, telephone, etc.) free of charge. Since the initial lump-sum cost of opening an office in downtown Tokyo is approximately equal to a mature lawyer's peak annual income, association facilities are heavily employed by the Tokyo bar.

Considering the Japanese penchant for scholarship, and the multitude of private and governmental foreign researchers who have investigated Japan throughout this century, it is surprising that no studies of the structure, activities, and the economic and social position of the Japanese bar have ever been undertaken. At least one American scholar has recently begun systematic work in this area, but his efforts, so far unpublished and deliberately limited in scope, to date stand alone.94 Without adequate field research, generalizations based on scattered statistics and private beliefs are dangerous, and doubly so for an American writing

92 Information obtained from the Tokyo Bar Association in December, 1955.
93 Current dues of the J.F.B.A. are Y 300 each month; of the Tokyo Bar Association, Y 500 each month; and of the First Tokyo Bar Association, Y 700 each month.
94 Richard W. Rabinowitz, supra note 3, who has recently examined the role of the lawyer in two non-urban Japanese prefectures. Rabinowitz, The Japanese Lawyer—A study in the Sociology of Law, Doctoral dissertation on file in the Harvard Law Library. An extended note by Dr. Rabinowitz on the historical development of the profession will appear later this year in the Harvard Law Review. Dr. Rabinowitz has recently returned to Japan to undertake a nation-wide sample survey of the Japanese legal profession.
about Japan where illusion is commonplace and reality often buried several cultural layers deep. It is, however, possible to make a few cautious statements concerning the Japanese bar.

In the first place, there is a great gulf between the conditions of practice in Tokyo and other major cities, and in rural areas. On the one hand, the village or small town Japanese bengoshi usually practices alone, uses his home as his office, employs no full-time clerical help, and his income, by city standards, is modest indeed. On the other hand, even if it were desirable, this simplified approach to practice obviously is not feasible in a city of eight millions. The new bengoshi who remains in Tokyo after graduation from the Institute (and half of the new bengoshi do) usually joins a firm as a "junior associate" on individually negotiated terms but generally with an income at least as great as his Institute salary and often somewhat higher. Experience is his chief reward, however, although during this practicing apprenticeship (which averages about three years), so long as it does not interfere with the firm's affairs, the new bengoshi is allowed to have his own clients, either keeping the entire fee or sharing it with the firm depending on his arrangement. As noted before, not until the end of his second year of practice is the new lawyer eligible for bar association registration. At the end of this initial period, the young Tokyo lawyer enters into a permanent association either with his original firm or with another, or in some few instances strikes out on his own. This freedom of mobility, all but unknown in Japanese big business or industry, is probably due to the small size of the legal profession, its youth, the individualism of its members, and the possibly inherent nature of the law business anywhere.

95 Although common in Japanese business, female secretaries are found in only a few urban legal offices, especially those of foreign lawyers. The typical male clerk has had no legal training. His principal job is the laborious copying of legal documents by hand. A Japanese-language typewriter, operating somewhat on the linotype principle, has been developed, but it is expensive, slow, and the operator needs special training. The clerk also acts as receptionist, errand-boy, tea server, and janitor.

96 Bengoshi contacted by the writer in December, 1955, agreed that the new lawyer beginning practice with a firm in Tokyo can expect an income of from Y 15,000 to 20,000 per month, plus all or at least most of any fees earned on his own.

97 A fee schedule has been established by the Tokyo bar associations, allowing 10-30% of the amount in controversy as an initial fee; 10-30% as a termination fee; limiting the total fee to 50% and allowing Y 3000 for a verbal inquiry and Y 5000 for a "documentary inquiry." Information obtained from the Tokyo Bar Association, December, 1955.
Nor is this the only feature of the Japanese bar at apparent odds with Traditional Japan. Women *bengoshi* were first admitted to practice even before the war, when women as a class had few if any political rights, including the right to the vote.\(^98\) In addition to seventeen women serving as judges and two as public procurators, there are fourteen female *bengoshi* now registered in Japan.\(^99\) More important than their numbers, however, is the fact that the woman lawyer in Japan today does not complain of professional discrimination or mistreatment, nor is she even relegated to the realm of domestic controversy as had been privately anticipated by some.\(^100\)

The Tokyo *bengoshi* who practices alone usually depends heavily on his bar association's physical plant for a number of years. Tokyo office space commands a premium price.\(^101\) Even after the initial "key money" is paid\(^102\) and the office outfitted, the lawyer's operating expenses (a clerk's salary, utilities, library,\(^103\) stationery, and the like) approximate his rent\(^104\) each month and the two together will absorb from one-third to one-half of his income even when he is at the height of his career.\(^105\) Some young

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\(^98\) The first three women lawyers were admitted to practice in 1938 and registered in 1940. Universal adult suffrage came into being in Japan as a result of article 15 of the new Constitution in 1946.

\(^99\) Information obtained from the Tokyo Bar Association in January, 1956.

\(^100\) The writer has been told that women lawyers do specialize in civil cases generally, but recalls a murder trial he attended in 1954 in Tokyo where the defense counsel was most decidedly female.

\(^101\) The lump-sum cash outlay (key money and/or advance rent) for a small downtown Tokyo office (about 400 square feet) is ordinarily about one million yen ($2,780).

\(^102\) There are several types of key-money, ranging from outright bribery of the rental agent to a reasonable commission, usually one month's rent, plus advance rent, usually for six months to a year.

\(^103\) The quantity of legal material coming over a Japanese lawyer's desk compares in volume with that of his American counterpart, but there are at least two important differences: (1) there are fewer case reports, since none of Japan's lower courts publish opinions; and (2) books and publications of all kinds, with the obvious exception of books published abroad are far cheaper than in the United States. The most expensive law books cost no more than Y 1,800, and a loose-leaf twenty-two volume set of Japanese laws and regulations cost Y 10,000 initially and a like amount for the insert service annually, and it is a "service" in Japan where the publisher's representative actually comes to the lawyer's office to make the necessary changes.

\(^104\) Rents of Y 20,000 to Y 30,000 per month are common for small offices in downtown Tokyo.

\(^105\) Most *bengoshi* contacted by the writer agreed that a lawyer who could show a gross income of Y 100,000 to 150,000 per month after fifteen years of Tokyo practice could be called successful.
attorneys take a different tack by exchanging legal services for desk space in a commercial office.\textsuperscript{106}

Because of the traditional Japanese approach to the settlement of disputes through compromise, whether rural or urban the Japanese \textit{bengoshi} spends a substantial part of his time in arbitration, mediation, and conciliation, operating in the place of the time-honored friend of the family as a professional go-between. When he does go to court (and the city lawyer spends far more time in actual litigation than does his rural counterpart not only for the more obvious reasons, e.g. the city lawyer's larger number of commercial clients, but also because the old social patterns have changed more rapidly in urban areas)\textsuperscript{107} the \textit{bengoshi}, like the public procurator, is perpetually harassed in the conduct of his cases by the frequent and extended delays inevitable under the present Japanese codes of both civil and criminal procedure.\textsuperscript{108} The difficulty in obtaining a judgment while witnesses and parties are still be be found and still remember the operative facts even faintly seems to be the lawyer's principal professional problem, followed closely by his mountainous paperwork burden, while his income, not surprisingly, is his chief personal concern.

The Diet imposed limitations contained in the Law of Attorney at Law have already been noted. Whether because of these restrictions, which are only conditional, or for other reasons, the traditional American overlap between business management and the legal profession is not duplicated in Japan. The bar does participate in politics, however, actively and on all levels from the local prefectural assembly to the national Diet. Fifty-eight members of the last Diet's 467 member House of Representatives and

\textsuperscript{106} Still others utilize their homes, although usually in conjunction with their bar association building.

\textsuperscript{107} One Tokyo \textit{bengoshi} estimated that he spent two-thirds of his normal week in court.

\textsuperscript{108} E.V.A. de Becker, who has practiced in Japan for over twenty-six years, considers the four principal defects of present Japanese procedural laws to be (1) the "piece-meal" method of court hearings, each hearing sometimes separated by weeks and months and frequently presided over, on each occasion, by a different judge; (2) an unfair incidence of costs as between the parties; (3) the laws of evidence, which allow floods of hearsay, third party, and irrelevant documentary evidence to the confusion and delay of all concerned; and (4) the present system of automatic, and frequently pointless, appeals. De Becker cites one case which commenced in 1918 and was finally concluded in 1944. E.V.A. de Becker, Pointed Reflections on Japanese Law, The Japan News, July 2, 1954.
12 of 250 members of the House of Councillors were lawyers.\textsuperscript{100} Although this proportion is considerably lower than that found in the United States Congress,\textsuperscript{110} when it is remembered that there are only 6,000 lawyers in Japan, the participation of the bar as a class in Japanese national politics becomes impressive.

Many factors undoubtedly operate to restrict, or to permit restrictions on, the size of the Japanese bar.\textsuperscript{111} Thomas L. Blakemore, Jr., perhaps the leading American authority on the current Japanese legal scene and the first foreigner ever to become a fully accredited member of the Japanese bar, suggested in 1947 that:

\ldots (t)his phenomenon \{the scarcity of courts and lawyers in Japan\} can be explained as a combination of the lack of a contentious spirit, of the presence of informal pressures for settlements, of popular discouragement at the sluggishness of the judicial process, of the strong tendency to compromise all disputes, and of Japanese practices of maintaining official records which state authoritatively many family records and property rights which in other countries frequently require judicial determinations. Another feature of Japanese law is the extensive recourse to conciliation procedures after actions have been instituted.\textsuperscript{112}

Some of these factors are still to be reckoned with, particularly the Japanese inclination toward compromise and settlement and the sluggishness of the courts, but in other respects Japan has changed considerably since 1947. The country has been rebuilt

\textsuperscript{100} Information obtained from the Secretariats of the House of Representatives and the House of Councillors in December 1955 and February 1956, respectively.

\textsuperscript{110} There were fifty-three lawyers in the Senate and 242 in the House in the 83d Congress; there are 55 and 240, respectively, in the 84th. Communication from the Library of Congress dated March 6, 1956. Hurst found that throughout our history the lawyer's percentage of total Congressional membership has been high, on occasion reaching 75 per cent of the Senate and 65 per cent of the House. Hurst, op. cite supra note 10, at 47. However, the American figure contains many persons who, although holders of law degrees, would not be classified as bengoshi in Japan.

\textsuperscript{111} Some, for example, point to the existence of "fringe professionals" in Japan who perform legal functions but are not nominally lawyers. For example, tax agents, patent agents, C.P.A.'s, and scriveners. Others disagree, arguing that every modern country has many of these non-legal specialists as well as a large bar. For example, there are only 5,000 C.P.A.'s in Japan, but over 50,000 in the United States according to the American Institute of Accountants. The extent, if any, to which the existence of these quasi-lawyers keeps Japan's lawyer-proper population small cannot be resolved by simple statistical comparisons. The writer is inclined to discount their importance, however, primarily because he feels there is an evident, though still unanswered demand for a larger Japanese bar, "fringe professionals" or no "fringe professionals."

\textsuperscript{112} Blakemore, supra note 4, at 649.
both physically and to a great extent psychologically. Occupation-inspired amendments to the Civil Code have removed many family matters from the province of the official records and the family conference to the courts.\textsuperscript{113} Further, there are now nearly ten million more Japanese than there were in 1947. The change, the growth, and the emergence from war-time destruction and despair into an era of renewed national vigor should have created record business for Japan's courts; and such is, in fact, the case. By 1951 Japanese courts were handling fifty per cent more litigation than before the war.\textsuperscript{114} Other straws in the wind indicate a new-found need on the part of the Japanese for legal assistance, particularly the enthusiastic public reaction to various new legal aid activities sponsored by major newspapers, law schools, and by official and unofficial lawyers' organizations.\textsuperscript{115}

\textsuperscript{113}See Wayatsuma, Democratization of the Family Relation in Japan, 25 Wash. L. Rev. 405 (1950).

\textsuperscript{114}Kawamura, supra note 49, at 254 n. 8.

\textsuperscript{115}The present legal aid activity in Japan could itself very well be the subject of an extended paper. In Tokyo alone, in addition to the bar association-sponsored "consulting rooms" which are in every ward office and many police stations, there are "legal service centers" sponsored by the Asahi Press Law Service which is open daily; the Tokyo and the First Tokyo Bar Associations which are open one day a week; the Tokyo Citizens' Room (Tokyo Tonin Hitsu) which is open daily; the N.H.K. Law Service which is open by appointment; Tokyo University which is open three days a week; and Nihon University which is open one day a week. Except for Tokyo University, which charges ¥20 (about 5¢) a client, all these advisory services are offered free of charge. Some go further than advice, however. The eight-man staff of the Asahi ("Morning Sun") Press Law Service, a section of one of Tokyo's largest daily newspapers, takes whatever legal steps seem necessary in their clients' behalf, including litigation. They charge their clients only the actual costs involved, and not even then if the client is unable to pay, in which case, under certain circumstances the government will foot the bill under the provisions of Japan's Social Protection Law. From 1949 through 1955 the Asahi service staff handled 23,380 walk-in cases, civil, criminal and office and court. In addition to these cases, which originated in the Tokyo office, the Asahi, as do other Tokyo papers and lawyers groups, send lawyers out into the Tokyo suburbs and into rural areas within 100 kilometers of Tokyo, particularly on national holidays. From 1949 through 1955, 3,125 "field cases" were disposed of by the Asahi's lawyers. Of the 14,451 cases accepted, both at the office and in the field, from 1949 through November, 1952, 448 involved litigation and 144 were handled on behalf of indigent clients. (Information obtained from the Asahi Press Legal Service in February, 1956).

This activity is by no means limited to Tokyo. Similar services exist within the writer's knowledge in Osaka, Nagoya, and on Hokkaido, and in Gunma, Chiba, Gifu, Saitama, and Okayama Prefectures and presumably in many other localities as well. Everywhere, as in Tokyo the principal sponsors are the press and the bar associations.
Throughout it all, however, the number of Japanese lawyers remains constant despite the annual onslaught by hordes of eager law graduates. Whether this is the result of "fixing" by the Judicial Examination Commission under pressure from the members of the bar, jealous of their present near-monopoly or perhaps fearful of economic ruin if the gates were opened, or whether there are good and honest reasons for the restrictions not apparent to the outsider, will not be determined without considerable on-the-scene probing. What does seem certain, however, is that there is little justification on purely professional grounds for turning away hundreds, if not thousands of well-trained and capable applicants. Neither the stupidity of the applicants nor the brilliance of the Japanese bar can explain this high mortality rate.

The Japanese bar is not only small, however, but it is also a new institution in a land which in many important ways still reveres the ancient. The lawyer in Japan, because of Confucian regard for scholarship if nothing else, has always received formal public respect. Privately, however, he has all too frequently been distrusted and even despised for his abuses of his special knowledge and position. While the stature of the lawyer, like that of the judge, has been enhanced since the war because of the constitutional reforms in the system which both serve; to an extent the old attitude still lingers, and to an extent deservedly so. There is in many instances a substantial gap between the ethical standards and the actual behavior of the bar in Japan. This is a situation not unknown in this country, of course, but it is less critical to the bar as a class in the United States where the legal profession has been accepted since the founding of the nation. Moreover, in Japan the bar is subject to direct supervision by the government which is now, so long as the bar through the J.F.B.A. polices itself adequately, largely withheld. Should the bengoshi overstep himself, however, resumption of direct executive control is not impossible.

116 Publicly, his name is given the honorific ending sensei, meaning roughly, "teacher," or "scholar." Privately he is not infrequently referred to as sambyaku daiguen, meaning "person who changes his word three hundred times." The lawyer's prestige in Japan today does not seem to have improved substantially since the turn of the century. See Masujima, The Present Position of Japanese Law and Jurisprudence, 37 Am. L. Rev. 161 (1903).

117 There is a three-cornered struggle currently being waged, if quietly, concerning control over admission to the bar. There is some pressure to return control to the Ministry of Justice; the Supreme Court is said to consider the question of admissions within its "inherent powers" under
CONCLUSION

The Japanese legal profession stands at the threshold of a promising future. The autocratic impediments imposed by Japan's former totalitarian government have been removed, and a system substituted which is designed to produce capable members of the bench and bar, and within which no legal barriers prohibit the achievement of substantial justice. Certain factors seem to indicate, however, that what has been officially remodeled is now being unofficially retarded.

In a country where a governmental philosophy based on individual rights is for the second time on trial, it would seem essential that the Japanese have access to a legal profession in which they have confidence and which is adequate in size and free from obstructive controls operating either within the bar or from without. Japan's lawyers have it within their power to create the substance, not the shadow, of a modern bar. If they do not, it will be a serious setback not alone for themselves, but for Japan herself.¹¹⁸

¹¹⁸ The writer wishes to express his gratitude to his friends in Japan whose efforts in his behalf have been prodigious, and particularly to thank Miss Haruko Yamamoto of the Consulate, American Embassy, Tokyo; Judge Shigeru Yamasaki of the Tokyo District Court; Dr. Shoji Seto of the Judicial Research and Training Institute; Prof. Shigeru Oda of Tohoku University Law School; Mr. Hideo Suetsugu of Yokohama National University; Miss Michiko Watanabe, Tokyo attorney-at-law; Mr. Zen Tokoi of the Ministry of Justice; and to his friends Yukiji and Susumu Miyazaki of Zushi, all of whom (as well as others not listed) have generously contributed time, effort, and valuable factual data. The writer's conclusions, however, are entirely his own.
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