

Japan's National Bar Examination: Results from 2015 and Impact of the Preliminary Qualifying Examination

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I. INTRODUCTION: RESULTS FROM THE 2015 JAPANESE NATIONAL BAR EXAMINATION AND IMPACT OF THE PRELIMINARY QUALIFYING EXAMINATION

This article analyses the results and data recently published by the Ministry of Justice in relation to the 2015 Japanese preliminary qualifying examination and national bar examination. It finds no surprises in relation to the national bar examination, but it questions the rationale for the preliminary qualifying examination based on the results from that examination. Like numbers from a lottery, the identification numbers of successful candidates who passed the Japanese preliminary qualifying and national bar examination are published every year on the Ministry of Justice's homepage.¹ These results reflect many years of intensive study and, to some extent, a degree of luck: how was the examinee feeling on the day; did they correctly predict the focus of the examination questions; and did their analysis correspond with the examiner's this year? The Ministry of Justice provides further extensive information about the examinations on its homepage, including a detailed fact sheet, but the data does not address philosophical or policy issues such as the adverse impact that the preliminary qualifying examination is having

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1 MINISTRY OF JUSTICE, *Heisei 27 nen shihō shiken, yobi shiken, ronbun-shiki shiken gōkaku-sha juken bangō* [Candidate numbers of passers of the 2015 national bar examination, preliminary qualifying examination, essay-style examination], http://www.moj.go.jp/jinji/shihoushiken/jinji07_00158.html and MINISTRY OF JUSTICE, *Heisei 27 nen shihō shiken gōkaku-sha juken bangō* [Candidate numbers of passers of the 2015 national bar examination], http://www.moj.go.jp/jinji/shihoushiken/jinji08_00119.html.

on Japanese legal education from the perspective of the goals of the reforms to legal education in 2004.² There is increasing pressure on law schools and applications have declined dramatically from a peak of 72,800 applicants in 2004 to 11,450 applicants in 2014.³ In 2015, the situation for law schools was even worse than in 2014, however, with only 54 law schools reportedly recruiting new students.⁴ This article concludes that there is an ever greater focus on rote-learning, time-keeping and credentialing in Japan as a result.⁵

This article begins by describing the structure of Japanese legal education and the examinations since 2004. Because much has already been written on the reform and design of the new law school system and accompanying national bar examination, this section is brief.⁶ Next, the article analyses the results from the 2015 national bar examination, which are published prior to the preliminary qualifying examination results. Third, the article analyses the new preliminary qualifying examination and argues that the data emerging from the Ministry of Justice eschews the political rationale for the examination and has the potential to set legal education in Japan back decades. Fourth, the article examines recent calls for further reform of the 2004-system. One idea is to cap the number of passers to 1,500 people.⁷ Finally, the article concludes with the obser-

2 A copy of the fact sheet is available at: MINISTRY OF JUSTICE, *Heisei 27 nen shihō shiken ni kansuru Q&A* [Q&A in relation to the 2015 national bar examination], http://www.moj.go.jp/jinji/shihoushiken/shiken_shinshihou_shikenqa.html.

3 H. ITŌ, “Falling Law School” in the US and Japan, in: ChuoOnline, The Japan News by the Yomiuri Shinbun, <http://www.yomiuri.co.jp/adv/chuo/dy/education/20140807.html>.

4 “Government moves to put floor under bar exam failures,” The Japan Times, 22 May 2015, <http://www.japantimes.co.jp/news/2015/05/22/national/crime-legal/government-moves-to-put-floor-under-bar-exam-failures/>.

5 On the role of meritocracy in Japanese legal education, see K. ANDERSON/T. RYAN, Gatekeepers: A Comparative Critique of Admission to the Legal Profession and Japan’s New Law Schools, in: Steele/Taylor (eds.) *Legal Education in Asia. Globalization, change and contexts* (London et al. 2010) 185.

6 On the background to the reforms generally see the articles in the *Journal of Japanese Law* 20 (2005) which included research presented at the Symposium “Build it and they will come: the First Anniversary of Law Schools in Japan” hosted by the Asian Law Centre at the Melbourne Law School on 21 February 2005. For information on the development of the revised national bar examination, see N. KASHIWAGI, Creation and development of Japanese law schools, in: Steele/Taylor (eds.), *supra* note 5, 185–187. For recent analysis, see S. MATSUI, Turbulence Ahead: The Future of Law Schools in Japan, in: *Journal of Legal Education* 62 (2012) 3; and S. STEELE/A. PETRIDIS, Japanese legal education reform: A lost opportunity to end the cult(ure) of the national bar examination and internationalise curricula?, in: van Caenegem/Hiscock (eds.), *The Internationalisation of Legal Education: The Future Practice of Law* (Cheltenham, UK et al. 2014).

7 Reports on proposals to lower the number of passers even further from approximately 1,800 to 1,500 led to increased speculation of law school consolidation and closure. See, for example, “Weaker case for the law schools,” The Japan Times, 2 October 2014, <http://www.japantimes.co.jp/opinion/2014/10/02/editorials/weaker-case-for-the-law-schools/#.Vh3iotd9Lc>. For the government’s rationale, see OFFICE FOR THE PROMOTION OF SYSTEMIC REFORMS

vation that further reforms to the law school system itself are futile unless reform of the national bar examination and the preliminary qualification examination is undertaken.

II. NATIONAL BAR EXAMINATION AND PRELIMINARY QUALIFYING EXAMINATION: BACKGROUND AND FRAMEWORK

Japan's legal education framework was substantially reformed in 2004 with the establishment of post-graduate law schools. The drivers and goals for the reforms were multifaceted and depended on each stakeholder's perspective, but they included: improving the quality of legal education in Japan and reducing reliance on preparatory or cram schools; creating more business-oriented lawyers who could operate in international contexts and new legal fields; and educating lawyers who would improve access to justice in Japan.⁸ Japanese universities operated post-graduate law courses prior to 2004, but the reforms saw the advent of a new US-style juris doctor degree at more than 70 universities. These universities maintained their undergraduate law faculties, but began offering two or three year courses aimed at providing professional legal education. Students who pass an entrance examination, usually based on previous undergraduate legal studies, are entitled to accelerate their law school studies within two years. The majority of students, however, opt for a degree over three years to give them more time to study for the national bar examination. Since 2006, a pre-requisite for sitting the new national bar examination is graduation from a post-graduate law school or, since 2011, passing the new preliminary qualifying examination.

The new preliminary qualifying examination was introduced after the pre-reform national bar examination ceased to operate in 2010. The preliminary qualifying examination is supported by politicians who argue that it creates equity for those who cannot afford law school or cannot attend law school due to other commitments, including work. The preliminary qualifying examination consists of short answer-style and essay-style sections, but is focused only on the so-called fundamental topics: constitutional law, administrative law, the Civil Code, the Commercial Code, the Code of Civil Procedure, the Criminal Code, and the Code of Criminal Procedure (each 30 points), and general education questions (60 points). The preliminary qualifying examination mimics the national bar examination, which also consists of short answer-style and essay-style sections.⁹ Unlike the preliminary qualifying examination, however, students have a choice

IN THE FOSTERING OF LEGAL PROFESSIONALS, *Hōsō yōsei seido kaikaku no saranaru suishin ni tsuite* [About the further promotion of systemic reform in the fostering of legal professionals], 30 June 2015, http://www.kantei.go.jp/jp/singi/hoso_kaikaku/pdf/honbun.pdf.

8 On the rationales for the reforms see also, K. ROKUMOTO, Overhauling the Judicial System: Japan's Response to the Globalizing World, in: *Journal of Japanese Law* 20 (2005) 7–38, and for another version see S. MIYAZAWA, The politics of Judicial Reform in Japan: The Rule of Law at Last?, in: *Asian-Pacific Law & Policy Journal* 2 (2001) 89.

9 On the national bar examination and its contents, see STEELE/PETRIDIS, *supra* note 6.

of an elective subject in addition to compulsory subjects in the essay-style section of the examination. Students may choose from insolvency law, taxation law, economic law, intellectual property law, employment law, environment law, public international law, or private international law.

III. RESULTS FROM THE 2015 NATIONAL BAR EXAMINATION

There were no particular surprises from the 2015 national bar examination. The data confirms trends established over the last decade. In 2015, 8,016 candidates sat the bar examination, which is only one more person than in 2014.¹⁰ During the examination, 79 people left the examination room.¹¹ Accordingly, only 7,937 candidates completed the examination.¹² Employment law is consistently the most popular elective subject amongst candidates and this was also the case in 2015 (29.1 percent), followed by insolvency law (19.1 percent), intellectual property law (13.4 percent), private international law (12.4 percent) and economic law (11.2 percent).¹³ The less popular elective subjects don't reach double digits in terms of the percentage of candidates choosing to sit those subjects: taxation law (6.7 percent), environment law (6.6 percent) and public international law (1.6 percent).¹⁴ The reasons for the popularity of certain subjects are numerous and include the availability of study materials and effective teachers; advice and approaches from cram schools; and perceptions of success based on previous pass-rates.¹⁵ The majority of candidates sat the examination in Tōkyō (56.1 percent) and Ōsaka (20.2 percent), reflecting the concentration of universities and population in those key metropolitan cities.¹⁶

A key focus in Japan on the national bar examination data is the performance of students from each law school. Table 1 below provides a summary of the Law Schools with the top ten highest pass-rates. A translation of the Ministry of Justice's list of law schools, candidate numbers and numbers of passers per law school is set out in Table 2 at the end of this article. The law schools are listed in Table 1 according to the name of the university to which they attach, except Ōmiya Law School which is a stand-alone institution sponsored by the Daini Tōkyō Bar Association. I have added an additional

10 MINISTRY OF JUSTICE, *Heisei 27 nen shihō shiken juken jōkyō* [Circumstances of the candidates for the 2015 national bar examination], <http://www.moj.go.jp/content/001147386.pdf>.

11 *Ibid.*

12 *Ibid.*

13 *Ibid.*

14 *Ibid.*

15 On the reasons for student choices of elective subjects, see S. STEELE/A. HARUYAMA, Japanese Bar Examination Questions and Student Preferences: Why do more students choose insolvency law over public international law and why does it matter? (forthcoming in: *Journal of Japanese Law* 42 (2016)).

16 *Ibid.*

column which reflects the calculation of the pass-rates for each law school as well. The Ministry of Justice publishes its list every year after the national bar examination in a PDF format, which requires reformatting and reworking to calculate individual law school pass-rates. Whilst this conversion is an easy task, it is interesting that the Ministry of Justice does not include the pass-rate calculation in its table. The reasons for this omission are unclear given that the pass-rates are of key interest to all stakeholders. Interestingly, the publication of results for the New York bar examination only divides institutions into American Bar Association accredited law schools and non-accredited law schools, but the individual names of passers are published.¹⁷

As Table 1 and 2 show, the University of Tōkyō no longer has a monopoly or privileged position when it comes to the bar examination, but a high percentage of Tōkyō students still consistently pass the bar examination.¹⁸ A total of 149 out of 305 candidates from Tōkyō sat the exam and passed in 2015; that is, 49 percent. Other comparably successful universities in terms of pass-rates rounded up include: Hitotsubashi at 56 percent (79 passers out of 142 candidates), Kyōto at 53 percent (128/240), Kōbe at 48 percent (72 passers out of 149 candidates) and Keiō at 45.5 percent (158/347). The next tier in 2015 includes: Chūō at 36 percent (170/475), Waseda at 31 percent (145/471), and Ōsaka at 29 percent (48/165).¹⁹ These large public and private law schools stand out when the average overall pass-rate for the national bar examination is only approximately 25 percent and has been for the last six years.²⁰ For some top schools, a smaller number of candidates appears to improve their position in the pass-rate league tables (for example, Hitotsubashi and Kōbe), perhaps because they have the luxury of choosing only the best and brightest students. For other law schools, however, a small number of

17 NEW YORK STATE BOARD OF LAW EXAMINERS, Press Release, 27 October 2015, http://www.nybarexam.org/press/Press%20Release_July2015%20Results.pdf.

18 On the special position of the University of Tōkyō in the Japanese education system, see R. DORE, *The Diploma Disease: Education, Qualification and Development* (Berkeley/Los Angeles 1976) and I. AMANO, *The Origins of Japanese Credentialism* (engl. transl.) (Balwyn North, Vic. 2011). Amano describes Japan as a “credential society,” which means “a society where people’s education or academic qualifications are more important than any other factor in determining their social position.” On the privileged position of the University of Tōkyō in relation to legal education, qualifications and graduate employment historically, see *et seq.* 106–108 and 173. See also S. MIYAZAWA/H. OTSUKA, *Legal Education and the Reproduction of the Elite in Japan*, in: *Asia-Pacific Law & Policy Journal* 1 (2000) 1.

19 MINISTRY OF JUSTICE, *Heisei 27 nen shihō shiken hōka daigaku-in nado betsu gōkaku-sha sū nado* [Number of passers etc according to law school etc of the 2015 national bar examination], <http://www.moj.go.jp/content/001158039.pdf>.

20 For the 2015 pass-rate see MINISTRY OF JUSTICE, *ibid*; Japan Federation of Bar Associations’ 2014 White Paper presents the decline in pass-rates from an initial high of 48.3 percent in 2006 to 22.6 percent in 2014 in a graph. See JAPAN FEDERATION OF BAR ASSOCIATIONS, *White Paper on Attorneys 2014*, <http://www.nichibenren.or.jp/library/en/about/data/WhitePaper2014.pdf>.

candidates does not automatically lead to league table success. Himeji Dokkyō was the only institution with less than ten candidates and not one candidate passed in 2015.

Table 1: Top ten origin of passers by 2015 pass-rate²¹

Origin of passers of 2015 national bar examination by University or preliminary qualifying examination	Pass-rate
Preliminary qualifying examination	61.8%
Hitotsubashi	55.6%
Kyōto	53.3%
Tōkyō	48.9%
Kōbe	48.3%
Keiō	45.5%
Aichi	36.4%
Chūō	35.8%
Waseda	30.8%
Ōsaka	29.1%

Bar examination pass-rates from New York provide a simple yet powerful comparison, especially because of the strong influence that America's legal education, or at least perceptions thereof, had on Japanese legal education reforms in 2004.²² Reformers of Japanese legal education initially expected pass-rates amongst law school graduates to be in the vicinity of 70 or 80 percent based in part on traditional pass-rates from America. The average pass-rate for the New York bar examination, considered one of the most difficult America, was 61 percent for 'all candidates, including U.S. domestic-educated candidates and foreign-educated candidates, first time and repeat takers' and 70 percent for all first-time takers for the examination held on 28–29 July 2015.²³ The pass-rate was substantially higher for graduates of New York law schools accredited by the American Bar Association ('ABA') who took the bar examination in July 2015 for the first time at 79 percent.²⁴ The pass-rates for the top few Japanese law schools are less than the overall pass-rate from the New York bar examination, and the overall pass-rate of approximately 25 percent in Japan is substantially lower than the pass-rate from New York. Further, the gap between New York and Japan is even greater historically and comparatively. The pass-rates for July 2015 cited here were lower than those for the July New

21 This summary is based on the list from the MINISTRY OF JUSTICE, *ibid.*

22 M. WILSON, U.S. Legal Education Methods and Ideals: Application to the Japanese and Korean Systems, in: *Cardozo Journal of International and Comparative Law* 18 (2010) 295.

23 NEW YORK STATE BOARD OF LAW EXAMINERS, *supra* note 17.

24 NEW YORK STATE BOARD OF LAW EXAMINERS, *ibid.*

York bar examination over the last decade,²⁵ and commentators suggest that the top law schools achieve pass-rates of over 90 percent.²⁶

The pass-rates from New York are used by way of simple comparison only: of course, each jurisdiction needs to be considered in its different context, including the cost of education, history and culture surrounding the legal profession, institutional design, political background and perceptions about the role of lawyers in society.²⁷ Even in America, there have been moves to increase the passing score and thus lower the pass-rate of examinations in certain States. Depending on the critic's normative stance, the trend is based on suggestions that examinations are a consumer protection mechanism, or negative perceptions about increasing lawyer numbers.²⁸ Other jurisdictions in Asia experience pass-rates for national bar examinations which are much lower than Japan's or New York's, whilst others are more comparable.²⁹ In South Korea, for example, pass-rates for the national bar examination are more akin to those found in New York at approximately 75 percent and over 90 percent for top law schools.³⁰ The high pass-rates in South Korea compared to Japan are particularly interesting given that the Japanese re-

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- 25 NEW YORK STATE BOARD OF LAW EXAMINERS, *ibid.* July 2015 saw a decrease in overall candidates, but an increase in overseas' candidates taking the examination. One explanation for the low overall pass-rate is the extremely low pass-rate amongst candidates from overseas (33 percent). *Ibid.* Others explain the declining pass-rates for the New York examination as being the result of declining admission standards at U.S. law schools. See S. ZARETSKY, New York Bar Exam Results Reveal Worst Pass Rates in More Than A Decade, 27 October 2015, <http://abovethelaw.com/2015/10/new-york-bar-exam-results-reveal-worst-pass-rates-in-almost-a-decade/>.
- 26 STARTCLASS, Compare Law Schools, undated, <http://law-schools.startclass.com/>.
- 27 On the different roles and expectations for lawyers in different societies, see A. GODWIN, Barriers to practice by foreign lawyers in Asia – exploring the role of lawyers in society, in: International Journal of the Legal Profession 2015 (online). C. SILVER/J. LEE/J. PARK, What Firms Want: Investigating Globalization's Influence on the Market for Lawyers in Korea, in: Columbia Journal of Asian Law 27 (2015) 15.
- 28 A. CURIO, A Better Bar: Why and How the Existing Bar Exam Should Change, in: Nebraska Law Review 81 (2002); for a comparison of the United States and Japan, see M. WILSON, *supra* note 22, 314.
- 29 See J. YEH/W. CHANG, Introduction – Asian Courts in Context: tradition, transition and globalization, in: Yeh/Chang (eds.), Asian Courts in Context (Cambridge 2015) 23–25. Taiwan's pass-rates are much lower, for example. See also Chen in relation to the disincentives for Taiwanese students to take clinical legal education courses because of the competitiveness of the bar examination which has a pass-rate of approximately 10%, T. CHIH-HSIUNG CHEN, Clinical Education in Taiwanese Law Schools, in: Sarker (ed.), Clinical Legal Education in Asia: Accessing Justice for the Underprivileged (New York 2015).
- 30 See YEH/CHANG, *ibid.*, 25 in relation to overall pass-rates and in relation to pass-rates for individual schools, see “*Heisei Chuc Byenhosa ShiHeum Rosukol Hakkyukryl Boni* [The pass rate of the national bar examination],” HanKyung [The Korea Finance News], <http://www.hankyung.com/news/app/newsview.php?aid=2012032556351&sid=01062004&nid=000<ype=1>. These results are based on 2012 figures. More recent figures are difficult to obtain due to the sensitivity in South Korea about establishment schools being preferred, for example, in the job market.

forms in 2004 were part of the impetus for legal education reform in South Korea and were watched closely. The abolition of undergraduate bachelor of laws (LL.B.) courses in South Korea, however, is a key difference between the reform outcomes in South Korea and Japan.

In Japan, the low pass-rate of the national bar examination has discouraged applications to law school. The situation has been exacerbated by a shortage of jobs for even those who pass the bar examination since the so-called ‘Lehman Shock’ in 2008 has discouraged applicants. Japanese institutions are consolidating and closing their law schools a decade after the 2004-reforms to Japanese legal education. Japan is not the only jurisdiction struggling to find jobs for all of its law graduates as reports from Australia suggest,³¹ but the Japan Federation of Bar Associations’ latest White Paper graphically documents the dramatic decline in Japanese law school applicants since 2008.³² The Ministry of Education, Culture, Sports and Technology (MEXT) initially authorised 74 law schools in a bid to encourage diversity and competition amongst education providers, but the Ministry of Justice steadfastly stuck to an annual cap on the number of bar examination passers. Ten years later, a newspaper report noted that 20 law schools did not accept new students and 61 schools originally accredited did not fill their quotas for new students in 2014.³³ Only 11,450 candidates applied in 2014.³⁴ Regardless of the quality of education provided by the various institutions, only those institutions that are perceived to offer students the best chance of passing the examination and future employment will survive in the current system.

IV. RESULTS FROM THE NEW PRELIMINARY QUALIFYING EXAMINATION

A further key concern for the future of Japan’s law schools is the new preliminary qualifying examination (*yobi shiken*). In 2015, 62 percent of preliminary qualifying examination passers also passed the national bar examination. In other words, 186 people out of 301 candidates who sat the national bar examination after passing the preliminary qualifying examination – rather than attending law school – also passed the further examination.³⁵ We need to be careful about equating bar examination pass rates with quality education, but this percentage is significantly higher than the university law school with the best pass-rate, Hitotsubashi, at 56 percent. Candidates are flocking to take the preliminary

31 On the situation in Australia, see E. TADROS/K. WALSH, Too many law graduates and not enough jobs, in: Australian Financial Review 2015, <http://www.afr.com/business/legal/too-many-law-graduates-and-not-enough-jobs-20151020-gkdbyx>.

32 JAPAN FEDERATION OF BAR ASSOCIATIONS, *supra* note 20, 14.

33 “Weaker case for the law schools,” *supra* note 7.

34 ITŌ, *supra* note 3.

35 MINISTRY OF JUSTICE, *supra* note 10. Of the 301 candidates, 34 were women, and of the 186 passers of both examinations, 20 were women. Not all candidates who pass the preliminary qualifying examination go on to actually sit the national bar examination.

qualifying examination which is held between May and October and thus it requires serious consideration. More people applied to sit the preliminary qualifying examination (12,622 candidates) than sat the national bar examination and, for the first time, the number of candidates exceeded the number of people who applied for law school in 2014.³⁶ Of the 10,347 applicants who subsequently sat the preliminary qualifying examination in 2015, 392 candidates passed both the short answer-style and essay-style sections and thus the overall examination.³⁷ This pass-rate of 3.8 percent is only slightly higher than the pass-rates for the old national bar examination immediately before the 2004 reforms. Notably, the presentation of the Ministry of Justice's statistics for the preliminary qualifying examination are not reported on an individual law school basis.

In 2015, 12,543 people applied to sit the preliminary qualifying examination,³⁸ 10,334 candidates actually sat the examination, and 10,246 candidates handed in examination responses to the short answer-style section of the examination.³⁹ Just over 20 percent of candidates passed the short answer-style examination (2,294 people).⁴⁰ Of these, 2,199 people went on to sit and hand in examination responses to the essay-style examination. Accordingly, the overall pass-rate for the preliminary qualification examination in 2015 was 4 percent (428 people out of 10,246 candidates).⁴¹ Some applicants do not turn up for the national bar examination, drop out between examination stages or leave the examination room without handing in an examination response. The Ministry of Justice's data on the examinations does not explain why, but the reasons probably include candidates feeling that they weren't ready after all or that they weren't going to pass.

According to the Ministry of Justice's statistics, the vast majority of candidates who passed both the preliminary qualifying examination and the national bar examination were in their early twenties (93 out of 186 people) or their late twenties (29 out of 186

36 MINISTRY OF JUSTICE, *Heisei 26 nen shihō shiken, yobi shiken* [2014 national bar examination, preliminary qualifying examination], 2014, <http://www.moj.go.jp/content/001128459.pdf>.

37 MINISTRY OF JUSTICE, *Heisei 26 nen shihō shiken, yobi shiken tantō-shiki shiken no kekka* [Results of the short answer-style examination on the 2014 national bar examination, preliminary qualifying examination], 12 June 2014, <http://www.moj.go.jp/content/000123593.pdf>, and MINISTRY OF JUSTICE, *Heisei 26 nen shihō shiken, yobi shiken ronbun-shiki shiken no kekka* [Results of the essay-style examination on the 2014 national bar examination, preliminary qualifying examination], 9 October 2014, <http://www.moj.go.jp/content/001127750.pdf>.

38 MINISTRY OF JUSTICE, *Heisei 27 nen shihō shiken, yobi shiken no shutsugan jōkyō* [About the circumstances of applications for the 2015 national bar examination, preliminary qualifying examination], <http://www.moj.go.jp/content/001142885.pdf>.

39 MINISTRY OF JUSTICE, *Heisei 27 nen shihō shiken, yobi shiken tantō-shiki shiken no kekka* [Results of the short answer-style examination on the 2015 national bar examination, preliminary qualifying examination], 11 June 2015, <http://www.moj.go.jp/content/001148412.pdf>.

40 *Ibid.*

41 See *ibid* and MINISTRY OF JUSTICE, *Heisei 27 nen shihō shiken, yobi shiken ronbun-shiki shiken no kekka* [Results of the essay answer-style examination on the 2015 national bar examination, preliminary qualifying examination], 11 June 2015, <http://www.moj.go.jp/content/001160630.pdf>.

people).⁴² Further, 55 percent of candidates who passed the preliminary qualifying examination and then the national bar examination in 2015 were law school students or graduates.⁴³ The fact that the majority of preliminary qualifying examination passers are also law school students or graduates suggests two conclusions. First, it does not support the populist rationale for the preliminary qualifying examination: that is, candidates for the national bar examination should have a mechanism for by-passing the cost of law school. Most candidates who pass the preliminary qualifying examination are already studying at or have graduated from a law school anyway. Supporting students in relation to the costs of law school could be achieved in many other ways, including access to scholarship schemes and part-time study options. The national bar examination could also be opened up to non-law school candidates as was the case before the reforms, but this would cut across the pedagogical and other rationales for law schools as discussed below. Second, a candidate's chances of passing the bar examination after passing the preliminary examination are greater if they are also studying or studied at law school, such that there is an advantage to studying at law school if a candidate wants to pass the preliminary qualifying examination and national bar examination.

An alternative explanation to the idea that attending law school helps students pass the bar examination is that there is a self-selection process operating, whereby those wishing to take the preliminary qualifying examination or national bar examination are also choosing to study at law school whilst they try to pass either examination. Japanese employment practises discourage students from having gaps in their educational careers when they present their curriculum vitae (*gakureki*), even if those gaps may be explained. This analysis is also supported by the fact that the majority of law school students come from undergraduate law faculty graduates, giving them even more time to prepare for the national bar examination.⁴⁴ Further, undergraduate law students or graduates who passed the preliminary qualifying examination and went on to pass the national bar examination made up 40 percent of the candidates who passed both examinations (76 candidates out of 186). Accordingly, it is highly possible to pass the preliminary qualifying examination without attending law school. Of the 186 candidates who passed both examinations, only 14 candidates were public servants and 12 candidates were company employees.⁴⁵

There are numerous motivations for taking the preliminary qualifying examination. Whether they are undergraduate or postgraduate law students or from another background, candidates for the preliminary qualifying examination are at a minimum trying

42 MINISTRY OF JUSTICE, *Heisei 27 nen shihō shiken hōka daigaku-in nado betsu gōkaku-sha sū nado* [Number of passers etc according to law school etc of the 2015 national bar examination], <http://www.moj.go.jp/content/001158039.pdf>.

43 *Ibid.*

44 JAPAN FEDERATION OF BAR ASSOCIATIONS, *supra* note 20.

45 *Ibid.*

to save money and time by accelerating their career. Japanese law degrees are comparatively cheap by global standards, but even those costs may be avoided if a candidate can pass the preliminary qualifying examination. Sitting the preliminary qualifying examination is also perceived to increase a candidate's passing opportunities, because candidates may only take each exam so many times in so many years and some students use the preliminary examination as a warm up for the real examination.⁴⁶ Further, passing the new preliminary qualifying examination before passing the national bar examination has become the ultimate credential for any legal professional today. Anecdotally, lawyers say that those job seekers who passed both the preliminary qualifying examination and the national bar examination are highly sought after in the legal services employment market in Japan.

V. PROPOSALS TO REFORM JAPANESE LEGAL EDUCATION AND THE PRELIMINARY QUALIFYING EXAMINATION

The popularity of the preliminary qualifying examination has the potential to further drive law schools into becoming cram schools or waiting rooms. Law schools are lobbying to reform the preliminary qualifying examination.⁴⁷ The situation for Japanese legal education became so untenable that the government appointed a review committee in 2013.⁴⁸ A decade after the 2004 reforms, it was also a timely review of the system. The Office for the Promotion of Systemic Reform in the Fostering of Legal Professionals included lawyers who were previously in senior positions in the Ministry of Justice (prosecutor), Japan Federation of Bar Associations and courts. It released its preliminary report in May 2015⁴⁹ and final recommendations on 30 June 2015.⁵⁰ The final report indicates that the number of passers of the national bar examination will be further re-

46 Initially, students were entitled to take the national bar examination three times in the five years after they graduated from law school, but reforms to the system in 2014 now give students five chances in those five years. *Shihō shiken-hō* [Bar Examination Act], Law No. 140/1949 and No. 52/2014.

47 ITŌ, *supra* note 3.

48 Minutes of the committee's meetings are available at: CABINET SECRETARIAT, *Hōsō yōsei seido kaikaku komon kaigi* [About the Office for the Promotion of Systemic Reform in the Fostering of Legal Professionals], undated, http://www.cas.go.jp/jp/seisaku/hoso_kaikaku/.

49 OFFICE FOR THE PROMOTION OF SYSTEMIC REFORMS IN THE FOSTERING OF LEGAL PROFESSIONALS, *Hōsō yōsei seido kaikaku suishin kaigi kettei (an)* [Office for the Promotion of Systemic Reform in the Fostering of Legal Professionals Committee Proposal (Draft)], http://www.cas.go.jp/jp/seisaku/hoso_kaikaku/dai22/siryou4.pdf.

50 OFFICE FOR THE PROMOTION OF SYSTEMIC REFORMS IN THE FOSTERING OF LEGAL PROFESSIONALS, *Hōsō yōsei seido kaikaku komon kaigi ni tsuite* [About the Office for the Promotion of Systemic Reform in the Fostering of Legal Professionals], http://www.cas.go.jp/jp/seisaku/hoso_kaikaku/pdf/siryou1.pdf.

duced from approximately 1,800 to 1,500 passers.⁵¹ The President of the Japan Federation of Bar Associations is supportive of the reduction of the cap to 1,500 successful candidates per year.⁵² Critics suggest that the Association's support is self-serving and may even be to its own eventual detriment.⁵³ With the number of applicants for law schools declining, however, it may be that the pass-rate will naturally rise even if the cap on successful passers is set at 1,500.

The final report also acknowledges the detrimental effect that the preliminary qualifying examination may have on Japanese legal education, but it stops short of calling for the examination to be abolished.⁵⁴ The Office requires the Ministry of Justice and MEXT to work together and asked the Ministry of Justice, which has responsibility for the examinations, to reconsider the examination's design such that it will be compatible with MEXT's new institutional design for legal education in Japan. The Ministry of Justice and MEXT are to work on their proposals over the next three years. This division of labour is familiar and caused some of the problems in the current institutional design. It would be unfortunate if territorial disputes between these two departments led to unsustainable compromises as was the case in 2004. The differences in opinion, however, reflect on-going debates about legal education in Japan and continuing disagreement and incompatible ideologies about the role of lawyers in society and the purpose of examinations for qualifications to practice law globally.

The Japan Association of Law Schools responded to the June 2015 Report, noting the Office's reservations about the preliminary qualifying examination.⁵⁵ The Association seems resigned, however, to the continuation of the examination in some format and discusses options such as reforming the examination to better reflect what a student would typically learn at law school given that the examination is in lieu of attending law school. The preliminary qualifying examination does not reflect the skills required for

51 OFFICE FOR THE PROMOTION OF SYSTEMIC REFORMS IN THE FOSTERING OF LEGAL PROFESSIONALS, *supra* note 7.

52 S. MURAKOSHI, Statement concerning the Ideal Number of Legal Professionals drafted by the Office for the Promotion of Systemic Reform in the Fostering of Legal Professionals (Summary), 21 May 2015, <http://www.nichibenren.or.jp/en/document/statements/year/2015/150521.html>. For the full version of the press release in Japanese see, S. MURAKOSHI, *Hōsō yōsei seido kaikaku suishin shitsu sakusei no hōsō jinkō no arikata ni tsuite (kentō kekka torimatome an) ni kan suru kaichō kōmei* [Statement concerning the Ideal Number of Legal Professionals drafted by the Office for the Promotion of Systemic Reform in the Fostering of Legal Professionals], 21 May 2015, <http://www.nichibenren.or.jp/activity/document/state-ment/year/2015/150521.html>.

53 "Government moves to put floor under bar exam failures," *supra* note 4.

54 OFFICE FOR THE PROMOTION OF SYSTEMIC REFORMS IN THE FOSTERING OF LEGAL PROFESSIONALS, *supra* note 7, 5.

55 JAPAN ASSOCIATION OF LAW SCHOOLS, *Hōsō yōsei seido kaikaku no saranaru suishin ni tsuite ni taisuru iken* [Opinion in relation to "About the further promotion of systemic reform in the fostering of legal professionals"], 1 September 2015, <http://lskyokai.jp/press/press15.pdf?>>.

contemporary legal practise, but neither does the national bar examination in its current format. What consideration should be given to areas such as the impact of on-line technology and ethics considerations especially as more lawyers are taking up positions in-house? Other jurisdictions are also considering ways to best address consumer protection issues as clients are increasingly perceived as consumers of legal services. How these issues are taught and assessed is an on-going concern for legal education globally. The current reform process offers an interesting further opportunity for Japan to consider these issues. The Association also suggests placing limits on who may sit the examination and the number of candidates allowed to pass the examination, noting the slight upward trajectory of the number of successful candidates between 2013 and 2014 (the response was published prior to the release of the results for the 2015 preliminary qualifying examination).⁵⁶ The danger in the Association's overall acquiescence to the concept of a preliminary qualifying examination is that any future reforms will still not be significant enough to change the status quo. The dual track path to qualification has the hallmarks of arrangements in the Meiji period (1868–1912) when Imperial University law graduates had the privilege of qualifying to become bureaucrats, judges, lawyers and prosecutors without passing the relevant examination.⁵⁷ We may see a bifurcation of career paths over the longer term.

Controversy also exists in South Korea over whether to abolish its pre-reform national bar examination.⁵⁸ Similarly to Japan, South Korea provided for a transition period where the old and new national bar examinations co-existed. The old examination is open to anyone, unlike the new examination which is limited to law school graduates. There is public support in South Korea for retaining the old examination.⁵⁹ Similar arguments to those presented in Japan at the time of the abolition of Japan's old national bar examination and adoption of the preliminary qualifying examination are being made in South Korea.⁶⁰ The old examination was to be abolished by the end of 2017 in South Korea, but the Ministry of Justice recently extended the transition period to 2021. Korean law school professors are reportedly refusing to provide questions for the examination in protest.⁶¹ Law school students are also concerned about the impact on their own

56 *Ibid.*

57 AMANO, *supra* note 18.

58 "Heisei Chuc Byenhosa ShiHeum Rosukol Hakkyukryl Boni," *supra* note 30.

59 "Hensei Kukmin, Rosukolboda Sabupshihyum Sunhodo Noppa [The public prefers old national bar examination more than law schools]," EnergyKyungje [The Energy Finance News], <http://www.ekn.kr/news/article.html?no=110791>.

60 J. YEO, Debate grows over fate of Korea's traditional bar exam, in: The Korea Herald, 8 September 2015, <http://www.koreaherald.com/view.php?ud=20150908001142>.

61 "Hensei Sabupshihyum Paeji 4Neon Yuye Rosukol Kyusudeul Shihumjulje Kubu [The extension of Old National Examination for four more years]," BridgeKyungje, [The Bridge Finance News], <http://www.viva100.co/m/main/view.php?key=20151206010001237>.

job prospects and financial situation in light of the fees they have to pay to law schools, which passers of the old examination do not.⁶²

VI. CONCLUSION: WHAT DOES THE FUTURE LOOK LIKE?

The evolving examination regime for becoming a judge, prosecutor or lawyer (*bengo-shi*) is part of a larger education and employment story in Japan. Graduates from prestigious universities such as Tōkyō are changing their career preferences, for example, with more students choosing law school or the private sector over the bureaucracy.⁶³ Amano, a leading expert in Japanese education generally, noted the growing need for increased graduate education in Japan at the end of the 1990s,⁶⁴ and business leaders' calling for 'no less than a fundamental revolution in the relationship between the economy and the educational system, between the corporation and the school'.⁶⁵ Certainly, the law school reforms in 2004 were part of a broader community focus on improving education and were considered potentially revolutionary at the time.

The history and the drivers surrounding Japanese legal education reform, and the general mood and thought-process around education in the late 1990s in Japan, help contextualise the post-graduate law school phenomenon, which sometimes appears to have mushroomed up by itself, and in spite of itself. It will be important to remember the pedagogical, political, economic and social context in which the new law schools were created after the Justice System Reform Council's influential report, *For a Justice System to Support Japan in the 21st Century*, was released in 2001 as new calls for reform of the dysfunctional 2004 institutional design and new preliminary qualifying examination are made and operationalised. Some argue that Japan should look to South Korea's reforms, rather than countries such as the United States of America, including abolishing undergraduate law degrees (LL.Bs).⁶⁶ Melbourne Law School also abolished its undergraduate law degree programme over the last decade as it moved to a post-graduate model offering *juris doctor* degrees for qualification to practice. As the analysis in this article suggests, however, Australia and South Korea are also facing contemporary concerns about their own systems of legal education.

62 "Hensei Su Manen Chunjerul Samkin Gakmum, Buphak [Discussion on the current reforms in Korea]," BBS News, 22 December 2015, <http://news.bbsi.co.kr/news/articleView.html?idxno=713984>.

63 M. WEST/C. MILHAUPT, Is the Japanese Bureaucracy Hollowing Out? Evidence from the Market for Legal Talent, in: *Journal of Japanese Law* 15 (2003) 5–40. For a more recent report, see "Top grads shun Kasumigaseki," *The Japan Times*, 23 March 2015, <http://www.japantimes.co.jp/opinion/2015/03/23/commentary/japan-commentary/top-grads-shun-kasumigaseki/>.

64 AMANO, *supra* note 18, 214 and 228.

65 *Ibid.*, 227.

66 ITŌ, *supra* note 3.

In Japan, legal education continues to be a contested site reflecting the divergent goals for the future of Japanese society as a whole. On the one hand, MEXT continues to pour money into the law schools for projects such as internationalisation and authorise their operation based on a variety of criteria; but on the other hand, the Ministry of Justice continues to support restrictions on the number of lawyers arguing that this is the best way to ensure the quality of the legal profession in Japan. Without major reforms to the national bar examination and new preliminary qualifying examination, it is difficult to see Japanese legal education changing dramatically in the near future⁶⁷ as students and other stakeholders are fixated on examinations as a first step to job security and prestige.⁶⁸

Table 2: Japanese national bar exam results (by university) 2015, see following pages

67 STEELE/PETRIDIS, *supra* note 6.

68 S. STEELE/K. FUKUI, Internationalising legal education in Japan as discourse and practice, in: Stevens/Breaden/Steele (eds.), *Internationalising Japan. Discourse and Practice* (Abingdon, Oxon/New York 2014) 32.

#	法科大学院名	Law School [listed by university name (except Omiya) per institution's website spelling]	出願者数 Number of applicants	受験予定者数 Number expected to take exam	受験者数 Number of examinees [⊗]	短答式試験の合格に必 要な成績を得た者数 Number who passed the short answer exam	最終合格者 Number of passers	Pass Rate (passers/ examinees) [⊗]
1	愛知学院法科大学院	Aichi Gakuin University	34	34	31	16	2	6,5%
2	愛知法科大学院	Aichi University	26	23	22	17	8	36,4%
3	青山学院法科大学院	Aoyama Gakuin University	54	53	41	24	3	7,3%
4	大阪学院法科大学院	Ōsaka Gakuin University	52	52	39	17	2	5,1%
5	大阪市立法科大学院	Ōsaka City University	125	123	118	86	22	18,6%
6	大阪法科大学院	Ōsaka University	180	180	165	125	48	29,1%
7	大宮法科大学院大学	Ōmiya Law School	127	125	98	48	4	4,1%
8	岡山法科大学院	Okayama University	76	76	65	39	12	18,5%
9	香川法科大学院	Kagawa University	37	37	31	14	0	0,0%
10	学習院法科大学院	Gakushūin University	124	124	111	74	13	11,7%

⊗ Includes candidates who left partway through.

⊘ Additional column added by author.

11	鹿児島大法学院	Kagoshima University	31	31	28	13	2	7,1%
12	神奈川大法学院	Kanagawa University	40	39	35	25	8	22,9%
13	金沢大法学院	Kanazawa University	60	60	54	36	6	11,1%
14	関西大法学院	Kansai University	183	179	159	107	22	13,8%
15	関西学院大法学院	Kwansei Gakuin University	171	170	150	89	16	10,7%
16	関東学院大法学院	Kantō Gakuin University	33	33	28	18	1	3,6%
17	九州大法学院	Kyūshū University	178	172	153	111	40	26,1%
18	京都産業大法学院	Kyōto Sangyō University	44	44	37	22	2	5,4%
19	京大法学院	Kyōto University	262	259	240	198	128	53,3%
20	近畿大法学院	Kinki University	47	47	40	23	3	7,5%
21	熊本大法学院	Kumamoto University	40	40	38	28	7	18,4%
22	久留米大法学院	Kurume University	31	31	25	8	0	0,0%
23	慶應義塾大法学院	Keiō University	373	373	347	274	158	45,5%
24	甲南大法学院	Kōnan University	85	81	66	41	11	16,7%
25	神戸学院大法学院	Kōbe Gakuin University	27	27	23	16	1	4,3%
26	神戸大法学院	Kōbe University	161	161	149	121	72	48,3%
27	國學院大法学院	Kokugakuin University	65	65	59	26	4	6,8%

28	駒澤大学法科大学院	Komazawa University	58	58	50	20	4	8,0%
29	静岡大学法科大学院	Shizuoka University	26	25	20	13	1	5,0%
30	島根大学法科大学院	Shimane University	28	27	23	12	3	13,0%
31	首都大学東京法科大学院	Tōkyō Metropolitan University	127	121	113	83	26	23,0%
32	上智大学法科大学院	Sophia (Jōchi) University	211	211	192	124	29	15,1%
33	信州大学法科大学院	Shinshū University	55	54	45	25	7	15,6%
34	駿河台大学法科大学院	Surugadai University	98	98	79	30	3	3,8%
35	成蹊大学法科大学院	Seikei University	121	120	100	63	7	7,0%
36	西南学院大学法科大学院	Seinan Gakuin University	52	51	48	28	5	10,4%
37	専修大学法科大学院	Senshū University	140	133	117	70	13	11,1%
38	創価大学法科大学院	Sōka University	86	86	78	44	14	17,9%
39	大東文化大学法科大学院	Daitobunka University	98	98	83	34	2	2,4%
40	千葉大学法科大学院	Chiba University	92	89	83	53	14	16,9%
41	中央大学法科大学院	Chūō University	517	515	475	372	170	35,8%
42	中京大学法科大学院	Chūkyō University	26	26	25	16	3	12,0%
43	筑波大学法科大学院	University of Tsukuba	87	86	72	44	9	12,5%
44	桐蔭横浜大学法科大学院	Tōin University of Yokohama	117	116	92	41	8	8,7%

45	東海法科大学院	Tōkai University	59	58	51	20	3	5,9%
46	東京法科大学院	Tōkyō University	342	337	305	233	149	48,9%
47	同志社法科大学院	Dōshisha University	218	216	189	105	33	17,5%
48	東北学院法科大学院	Tōhoku Gakuin University	30	30	25	16	1	4,0%
49	東北法科大学院	Tōhoku University	153	153	136	102	35	25,7%
50	東洋法科大学院	Tōyō University	59	59	53	27	4	7,5%
51	獨協法科大学院	Dokkyō University	73	73	61	31	0	0,0%
52	名古屋法科大学院	Nagoya University	165	165	148	101	37	25,0%
53	南山法科大学院	Nanzan University	76	76	65	28	4	6,2%
54	新潟法科大学院	Niigata University	53	53	49	22	5	10,2%
55	日本法科大学院	Nihon University	207	207	186	90	13	7,0%
56	白鷗法科大学院	Hakuō University	33	33	28	18	4	14,3%
57	一橋法科大学院	Hitotsubashi University	151	151	142	114	79	55,6%
58	姫路獨協法科大学院	Himeji Dokkyō University	8	8	6	1	0	0,0%
59	広島修道法科大学院	Hiroshima Shūdō University	56	55	49	28	8	16,3%
60	広島法科大学院	Hiroshima University	108	101	88	59	15	17,0%
61	福岡法科大学院	Fukuoka University	53	51	48	27	7	14,6%
62	法政法科大学院	Hōsei University	203	192	173	113	29	16,8%

63	北海学園大法科大学院	Hokkai-Gakuen University	50	50	44	24	1	2,3%
64	北海道大法科大学院	Hokkaidō University	169	167	147	110	42	28,6%
65	明治学院大法科大学院	Meiji Gakuin University	111	109	94	36	4	4,3%
66	明治大法科大学院	Meiji University	407	403	363	217	53	14,6%
67	名城大法科大学院	Meijō University	84	80	70	39	6	8,6%
68	山梨学院大法科大学院	Yamanashi Gakuin University	52	50	45	28	3	6,7%
69	横浜国立大法科大学院	Yokohama National University	112	111	100	57	14	14,0%
70	立教大法科大学院	Rikkyō University	165	162	149	93	16	10,7%
71	立命館大法科大学院	Ritsumeikan University	293	284	258	154	27	10,5%
72	琉球大法科大学院	Ryūkyū University	42	39	35	23	6	17,1%
73	龍谷大法科大学院	Ryūkyō University	104	104	90	47	8	8,9%
74	早稲田大法科大学院	Waseda University	524	520	471	363	145	30,8%
75	予備試験合格者	Preliminary qualifying examination passers	307	307	301	294	186	61,8%
	総計	TOTAL	9,072	8,957	8,016	5,308	1,850	23%

SUMMARY

Japanese law schools are under increasing pressure despite significant reforms to legal education in 2004. Applications to law schools declined dramatically from a peak of 72,800 applicants in 2004 to 11,450 applicants in 2014. In 2015, less than three-quarters of the new law schools reportedly recruited new students. In light of this drastic situation, this article analyses the results and data recently published by the Ministry of Justice in relation to the 2015 Japanese preliminary qualifying examination and national bar examination. It questions the rationale for the preliminary qualifying examination based on the results. The Ministry of Justice provides extensive information about the examinations on its homepage, but the data does not address philosophical or policy issues such as the adverse impact that the preliminary qualifying examination is having on Japanese legal education from the perspective of the goals of the reforms to legal education in 2004. This article concludes that there is an ever greater focus on rote-learning, time-keeping and credentialing in Japan and the current new review process must undertake a complete review of the examination system if substantive change is to be achieved in Japanese legal education.

ZUSAMMENFASSUNG

Die japanischen Law Schools sind ungeachtet der grundlegenden Reform der juristischen Ausbildung in Japan im Jahre 2004 seit einiger Zeit unter wachsenden Druck geraten. Die Zahl der Bewerbungen an den Law Schools hat sich drastisch von 78.000, dem Höhepunkt im Jahre 2004, auf lediglich noch 11.450 im Jahre 2014 verringert. Nach Berichten haben nur noch weniger als drei Viertel der Law Schools im Jahre 2015 neue Studenten angenommen. Vor diesem alarmierenden Hintergrund analysiert der Beitrag die Ergebnisse und Daten, die das japanische Justizministerium jüngst für das „preliminary qualifying examination“ und das „national bar examination“ veröffentlicht hat. Angesichts dieser Ergebnisse hinterfragt die Verfasserin die Rechtfertigung der Existenz des „preliminary qualifying examination“. Das japanische Justizministerium stelle zwar umfassende faktische Informationen zur Verfügung, aber die veröffentlichten Daten setzten sich überhaupt nicht mit den philosophischen oder gesellschaftspolitischen Fragen auseinander, die sich mit Blick auf die konterkarierende Auswirkung des „preliminary qualifying examination“ auf die Ziele der Reform von 2004 stellten. Der Beitrag schließt mit der Beobachtung, dass in der derzeitigen japanischen Juristenausbildung eine immer größere Bedeutung auf Auswendiglernen, Einhaltung zeitlicher Vorgaben und Benotungen gelegt würden, und dass die aktuellen Reformüberlegungen deshalb eine vollständige Evaluierung des jetzigen Examenssystems umfassen müssten, um einen grundlegenden Wandel der juristischen Ausbildung in Japan zu erreichen.

(Die Redaktion)

