On the Changing Role of Lawyer in Japan:
In Relation to the Proper Population of Lawyer
—Analyzing the Results of Questionnaire Surveys—
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0. Introduction
0-0 Personal profile

- Current position.
- Research interest.
- Research activity in Melbourne.
0-1 Points of my presentation

• Introduce the results of three questionnaire survey conducted by the research group at Osaka University.

• Indicate the relationship between the role-image, legal works and population of lawyer.

• Show the possibility to increase the population of lawyer in Japan.
1. Setting the Problem
1-1 Definition of lawyer “Bengoshi”

- A person who is authorized to deal with a wide range of legal matters as an attorney.
- S/he is regarded as a barrister-like, specialized professional, who exclusively deals with court-related matters.
- Independent professional for legal practice.
1-2 Number of lawyers in Japan

- As of 1st July 2010, total number of lawyers in Japan is 28,791 (JFBA).
- Ca 56,000 lawyers are in Australia (LCA).
- 1,180,386 in USA (ABA, as of 31 Dec 2009), ca 150,000 in UK, ca 140,000 in Germany, ca 46,000 in France etc.
1-3 Factor to decide the enough population of lawyer in Japan (1): Law-Related Professionals

- The population of Japan’s “legal profession” include professionals such as judicial scriveners (しん抱行書士, shihō shoshi), administrative scriveners (公務書士, gyōsei shoshi), tax accountants (財務士, zeirishi), public consultants on social and labour insurance (社会保険署理士, shakai hoken rōmushī) and patent attorneys (專利代理人, benrishi) etc.

- Total population of “legal profession” including these professionals is ca 150,000.
1-4 Factor to decide the enough population of lawyer in Japan (2): Non-lawyer legal department in corporation

• It is accepted that employees in corporate legal departments may conduct legal matters concerning their employers’ business in the course of their employment.

• Their legal work does not generate any independent profit as it would if they were to establish their own firm.
1-5 Factor to decide the enough population of lawyer in Japan (3): Role-Image of lawyers

- Lawyer is strongly imagined as a barrister-like, specialized independent professional, who exclusively deals with court-related matters, so corporations don’t think that it can be utilized for daily business activities (I guess).
- If the role-image of lawyers is changed, the room to increase the number of lawyers will be enlarged.
2. Three questionnaire survey
2-1 Purpose to conduct 3 questionnaire surveys

- In order to discuss whether there is enough population of lawyer in Japan, we have to conduct empirical researches for Japanese people (especially Japanese corporations) to know the substantial needs for lawyer.
- For the purpose to define the needs for lawyer more clearly, it is also necessary to ask Japanese people about the substantial needs for other law-related professionals.
- User sided empirical researches are backed up by the empirical researches from supplier side, e.g., lawyer.
2-2 Questionnaire survey on the needs for lawyer in Japanese corporation

- This questionnaire survey was conducted in February 2007, which delivered 2000 questionnaires. Its samples were selected randomly using Teikoku Data Bank, which is the biggest corporate data bank in Japan. We selected 1000 samples from corporations which had over 100 employees and 1000 samples from those which had less than 100 employees.

- The Questionnaires are delivered by the post. We collected 320 filled questionnaires and its collect rate was 16.0%. In this presentation, we call this questionnaire survey “Survey (a)”.
2-3 Questionnaire survey on the legal works of private practice lawyer

- This questionnaire survey was conducted to the lawyers in the Osaka Bar Association (OBA), who aren’t corporate in-house lawyers.

- The reason why we conducted the questionnaire survey on private practice lawyers for the OBA member was that we regard the lawyers in Osaka as a representative group of Japanese lawyers.

- The questionnaires were delivered in August 2008. We selected 1500 samples randomly by using the lawyer search engine on the website of the OBA. The questionnaires are delivered by the post and we collected 194 of them. The collection rate was 12.9%. In this presentation, we call this questionnaire survey “Survey (b)”.

2-4 Questionnaire survey on the corporate in-house lawyers

- A possibly complete count survey on the corporate in-house lawyers in Japan.
- Samples of the corporate in-house lawyers were drawn by using the lawyer search engine on the website of the Japan Federation of Bar Associations (JFBA).
- Questionnaires were delivered in August 2008.
- We delivered 259 (at that time, this is possibly complete number of the corporate in-house lawyers in Japan) questionnaires and collected 68 of them and the collection rate was 26.3%. In this presentation, we call this questionnaire survey “Survey (c)”. 
3. Utilization of lawyer in Japanese corporation
-from Survey (a)-
3-1 Outsider consultant lawyer with fee (*komon bengoshi*)

A half of the respondent answered that they retain their own outsider consultant lawyer with fee.

- Retaining outside consultant lawyer(s)
  - Retaining: 50.5%
  - Not retaining: 49.5%

$n=319$
3-1-1 Reason for not retaining outsider consultant lawyer

<table>
<thead>
<tr>
<th>Reason</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is no work which needs lawyer's help</td>
<td>46.9</td>
</tr>
<tr>
<td>Not having enough organized structure to use lawyer</td>
<td>28.7</td>
</tr>
<tr>
<td>Lawyer fee is high for works</td>
<td>24.5</td>
</tr>
<tr>
<td>Difficult to calculate costs and benefits of works</td>
<td>22.3</td>
</tr>
<tr>
<td>The standards of fee for works are unclear</td>
<td>21.0</td>
</tr>
<tr>
<td>Another reason (free answer)</td>
<td>17.2</td>
</tr>
<tr>
<td>Anxious about lawyer's integrity</td>
<td>5.7</td>
</tr>
<tr>
<td>Already utilizing non-lawyer staff worker(s)</td>
<td>3.6</td>
</tr>
<tr>
<td>Anxious about lawyer's ability</td>
<td>3.2</td>
</tr>
<tr>
<td>Lawyers lack in flexibility</td>
<td>0.6</td>
</tr>
</tbody>
</table>

n=157
Only 2.2% of the respondents answered that they hire (an) in-house lawyer(s).
Why don't you hire in-house lawyer(s)?
(M.A.)

<table>
<thead>
<tr>
<th>Reason</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>There is no work which needs lawyer's help</td>
<td>46.2</td>
</tr>
<tr>
<td>Not having enough organised structure to use lawyer</td>
<td>30.1</td>
</tr>
<tr>
<td>Difficulty to calculate costs and benefits of works</td>
<td>27.4</td>
</tr>
<tr>
<td>Lawyer feels high for works</td>
<td>25.1</td>
</tr>
<tr>
<td>The standards of fee for works are unclear</td>
<td>16.7</td>
</tr>
<tr>
<td>Another reason (free answer)</td>
<td>12.7</td>
</tr>
<tr>
<td>Already utilizing non-lawyer staff worker(s)</td>
<td>4.7</td>
</tr>
<tr>
<td>Anxious about lawyer's ability</td>
<td>4.0</td>
</tr>
<tr>
<td>Anxious about lawyer's integrity</td>
<td>3.3</td>
</tr>
<tr>
<td>Lawyers lack in flexibility</td>
<td>2.0</td>
</tr>
<tr>
<td>Afraid if not under control of the corporate command</td>
<td>0.7</td>
</tr>
</tbody>
</table>
Most of the Japanese corporations, who don’t utilize lawyers, still don’t find the ways to utilize lawyers profitably in daily business activities.

Japanese corporate managers have no fixed role-image of lawyers in daily business activities.

Because they don’t know the way to utilize and have no fixed role-image in daily business activities, they answered “There is no work which needs lawyer’s help” and “they have no preparedness to utilize lawyers”.

3-3 Interpretation of the result
4. Relationship between the need for lawyer and other law-related professionals -from Survey (a)-
4-1 Utilization of law-related professionals other than lawyer (M.A.)

Utilization of law-related professionals other than lawyer

- Tax accountant: 76.3%
- Judicial scrivener: 57.2%
- Public consultant on social and labour insurance: 42.8%
- Certified public accountant: 42.2%
- Administrative scrivener: 26.6%
- Patent attorney: 18.1%
- Financial planner: 6.8%
- SME management consultant: 4.1%
- Not utilizing any one in this list: 2.2%

n=320
4-2-1 Preferred professionals for business consulting

Preferred professionals for business consulting (M.A.)

- Certified public accountant: 36.6%
- Tax accountant: 32.2%
- Lawyer: 30.9%
- SME management consultant: 28.4%
- Financial planner: 18.1%
- Not wanting to utilize anyone in this list: 17.2%
- Public consultant on social and labour insurance: 15.3%
- Judicial scrivener: 10.6%
- Other preferences (free answer): 7.5%
- Patent attorney: 5.3%
- Administrative scrivener: 4.1%
4-2-2 Preferred professionals for human resource management

Preferred professionals for human resource management (M.A.)

- Public consultant on social and labour insurance: 72.2%
- Lawyer: 34.4%
- Tax accountant: 11.8%
- SME management consultant: 10.9%
- Not wanting to utilize any one in this list: 9.4%
- Certified public accountant: 8.1%
- Judicial scrivener: 5.9%
- Administrative scrivener: 4.7%
- Financial planner: 2.8%
- Other preferences (free answer): 1.6%
- Patent attorney: 0.3%

n=320
4-2-3 Preferred professionals for financial management

Preferred professionals for financial management (M.A.)

- Tax accountant: 63.4%
- Certified public accountant: 52.2%
- Financial planner: 24.1%
- Lawyer: 11.6%
- SME management consultant: 9.7%
- Not wanting to utilize any one in this list: 6.9%
- Judicial scrutineer: 4.1%
- Public consultant on social and labour insurance: 2.5%
- Other preferences (free answer): 1.9%
- Administrative scrutineer: 1.6%
- Patent attorney: 0.3%

n=320
4-2-4 Preferred professionals for brand value management

Preferred professionals for brand value management (M.A.)

- Not wanting to utilize any one in this list: 30.3%
- Lawyer: 29.1%
- Certified public accountant: 18.8%
- SME management consultant: 17.5%
- Tax accountant: 15.3%
- Financial planner: 14.7%
- Patent attorney: 8.8%
- Other preferences (free answer): 8.4%
- Public consultant on social and labour insurance: 7.5%
- Judicial scrivener: 5.6%
- Administrative scrivener: 2.5%

n=320
### Preferred professionals for general assistance for corporate management (M.A.)

<table>
<thead>
<tr>
<th>Professional</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax accountant</td>
<td>49.1%</td>
</tr>
<tr>
<td>Lawyer</td>
<td>47.8%</td>
</tr>
<tr>
<td>Certified public accountant</td>
<td>44.1%</td>
</tr>
<tr>
<td>Public consultants on social and labour insurance</td>
<td>26.6%</td>
</tr>
<tr>
<td>SME management consultant</td>
<td>22.2%</td>
</tr>
<tr>
<td>Financial planner</td>
<td>18.1%</td>
</tr>
<tr>
<td>Judicial scrivener</td>
<td>16.6%</td>
</tr>
<tr>
<td>Not wanting to utilize any one in this list</td>
<td>9.4%</td>
</tr>
<tr>
<td>Patent attorney</td>
<td>7.2%</td>
</tr>
<tr>
<td>Administrative scrivener</td>
<td>8.6%</td>
</tr>
<tr>
<td>Other preferences (free answer)</td>
<td>4.1%</td>
</tr>
</tbody>
</table>

Total respondents: 320
4-3 Interpretation of the result

- The needs for lawyer in Japanese corporations are relatively high among the law-related professionals.
- The needs for the other law-related professionals are higher than those of the lawyer, owing to the specialized professional field.
- There seems a tendency of separate utilization of the law-related professionals in corporations, according to the special character of these professionals.
5. Need for lawyer in Japanese corporation under the “ideal condition”
-from Survey (a)-
The reason why we asked this question is that, by asking the Japanese corporation about the needs for lawyer under the “ideal condition”, we can know the substantial needs of Japanese corporations for lawyer in daily business activities.

We asked the levels of willingness to utilize lawyers regarding 30 typical legal works in corporations, from 1. “not willing to utilize”, through 2. “rather not willing to utilize”, 3. “neutral”, and 4. “rather willing to utilize”, to 5. “willing to utilize”.
5-2 Result of the answer

- The highest items are ex-post reactive legal practices relating to litigation or dispute.
- The second highest items are mainly preventive legal works in corporations.
- It is worth noting that “special technical suit” and “litigation for the purpose of competitive strategy” are ranked at fourth and fifth.
5-3 Interpretation of the result

● Japanese corporations mainly expect lawyers to deal with ex-post reactive legal works concerning dispute, which are related to the traditional barrister-like role-image of lawyers in Japan.

● But their needs for preventive legal works and management support works are also rather high.

● Corporate concern about the new type litigation is also high.

● We can read a fact that corporate managers are influenced by the traditional barrister-like role-image of lawyers but their potential needs for lawyer in daily business activities are noticeably high.
6. Legal works of private practice lawyers
-from Survey (b)-
6-1-1 Purpose of the question: Frequent legal works in general

- We asked the lawyers of OBA in private practice about their frequent legal works in general, using a list of 58 legal works, which permits marking all that apply.
- The purpose of this questionnaire survey is to know the private practice lawyer’s substantial works, to back up the discussion on expansion of lawyer population.
Most of highest ranking works are regarded as typical personal legal issues, relating more or less to the court procedure.

Concerning the corporate related legal works, only “drafting and reviewing contract” is ranked in top ten.
We asked the lawyers of OBA frequent legal works for corporation using a list of 33 legal works and asked them about the frequency of the work experiences.

The top five frequent legal works are mostly ex-post reactive legal works concerning disputes, except for "contract examination", but next five frequent legal works are mostly preventive and relate to daily business activities in corporation.
6-3 Interpretation of the result

- From those results of answer, we got a clear understanding that private practice lawyers are mainly doing ex-post reactive legal practices concerning disputes even in the field of corporate practice.
- Preventive legal works are also important work for private practice lawyers within the range of their corporate practice.
7. Legal works of corporate in-house lawyers
-from Survey (c)-
The purpose of this questionnaire survey is to know the in-house lawyer’s substantial works, to back up the discussion on expansion of lawyer population.

For this, we asked the corporate in-house lawyers about their frequency of various work experiences, using the list of 37 typical corporate legal works.

7-1-2 Results of the answer

- The most frequent five in-house lawyers’ works are mainly general preventive legal works.

- The items ranked from fifth to tenth are mainly management works of legal section or whole organization.
The major legal works of in-house lawyers are mostly preventive legal works or management works of organization.

Their works are sometimes reactive but mainly proactive.

The expected role of corporate in-house lawyers contains not only professional aspects but also aspects of organization person.

It is a quite different role-image of lawyers from the traditional one.
8. Some suggestions for proper population of lawyer in Japan
8-1-1 Discussion: Is it enough number of lawyers in Japan?

- According to Survey (a) and (b), under the traditional barrister-like role-image of lawyers held by corporations and lawyers, there isn’t much room for expanding the population of lawyer in Japan.

- So long as they are under the traditional role-image, lawyers share their legal market with other law-related professionals with no competition.

- In order to expand the room for more lawyer population, it is needed to change the traditional role-image of lawyers in corporate society in Japan.
8-1-2 (1) Can we change the situation?

- For this, we think, it is significant to support to accelerate increasing the number of in-house lawyers and generate a lot of attractive in-house positions for lawyers in corporations, because, indicated in Survey (c), in-house lawyers play a quite different role from the traditional type in Japanese corporations and they have potential to change the role-image of lawyers in corporate society in Japan.

- According to the result of Survey (a), potential corporate needs for preventive legal works and supporting management by lawyers are considerably high.
8-1-2 (2) Can we change the situation?

• Therefore, provided some triggers for that, we can expect that the number of in-house lawyers will increase rapidly.

• We suppose, JFBA can give triggers for growth of the number of in-house lawyers by encouraging the corporations to hire young lawyers as in-house. Also law schools can support it to give specialized programs for in-house practice.

• And if the number of in-house lawyers in Japan grows considerably, affected by this, the role-image of lawyers in corporate society in Japan will be greatly changed, and thereby, much room for expanding the population of lawyer will be generated.
8-3-1 Possibility of increasing the number of lawyers in Japan

- The number of Japanese corporate in-house lawyer has been increasing rapidly since 2000.
- Currently, more than 400 lawyers are working as corporate in-house lawyers.
- Much more lawyers who belong to a private law firm are working at corporations temporarily on the project basis.
Growing number of corporate in-house lawyers and lawyers in Japan
9. Conclusion
Conclusion

• The rate of utilization of lawyers in Japanese corporation is so far very low.
• We can rely on the possibility that more and more Japanese corporations will hire in-house lawyers.
• Affected by the improved presence of in-house lawyer, corporations will utilize more private practice lawyers in daily business activities.
• There will be much more room for increasing the number of lawyers in Japan