

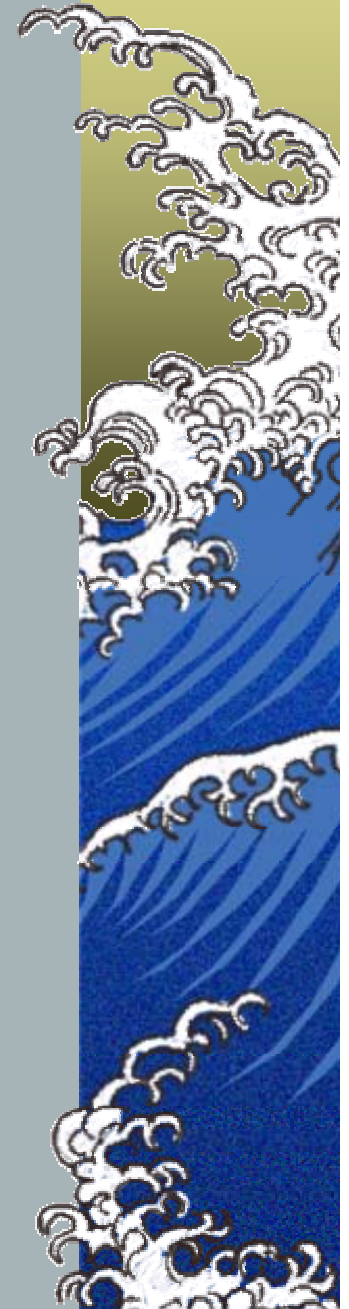
Is the Japanese Bureaucracy Hollowing Out?

The Impact of Structural Reforms
on the Allocation of Talent

Curtis J. Milhaupt

Visiting Fellow, RIETI

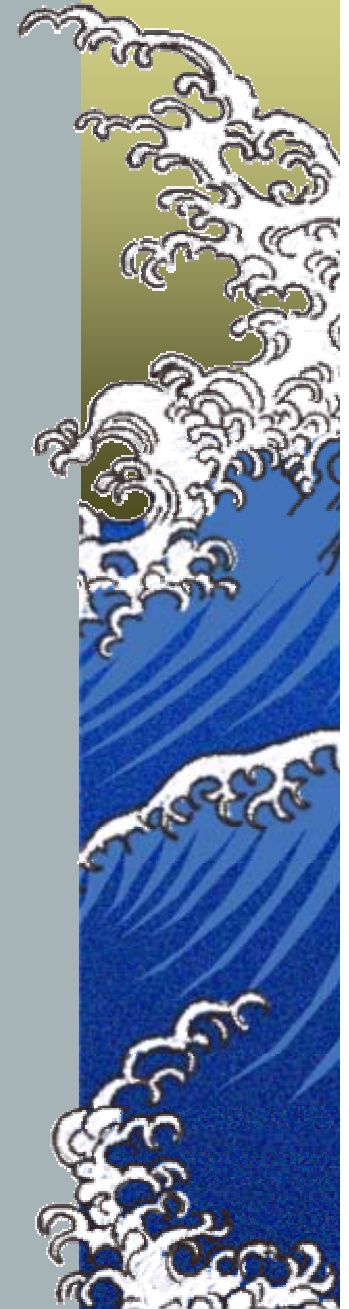
Professor of Law, Columbia University



Law and Private Ordering in the Japanese Economy

Institutional and empirical analysis:

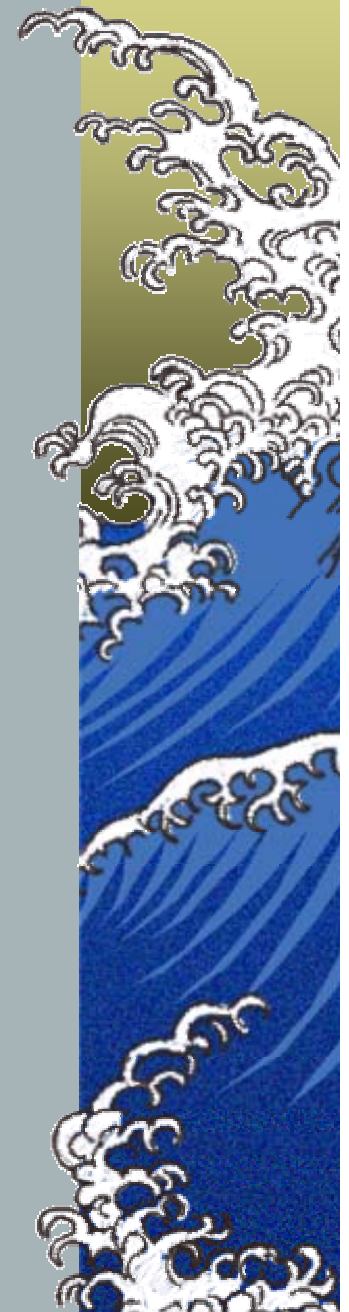
- ▶ Corporate governance
- ▶ Financial regulation
- ▶ VC
- ▶ M&A
- ▶ Organized crime
- ▶ Legal talent



Governance After High Growth: Law and the Transformation of East Asia

Institutional change : Japan, Korea, Taiwan

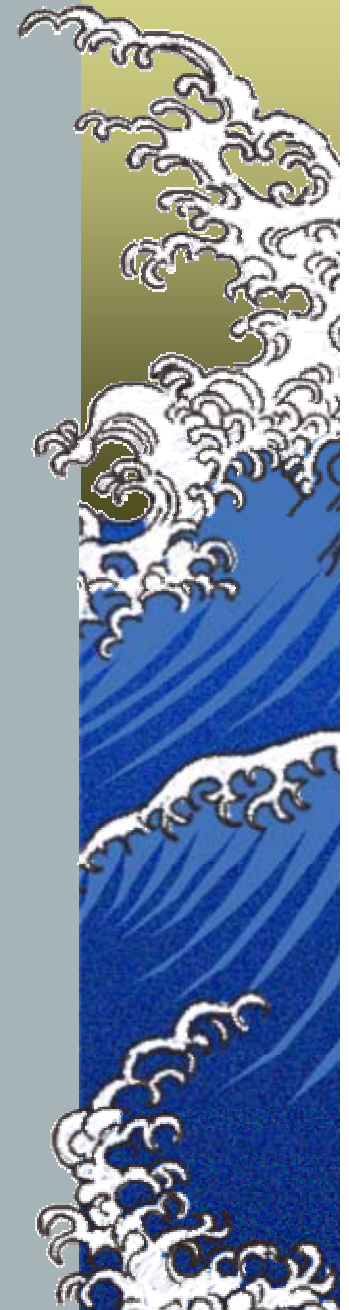
- ▶ Corporate Governance
- ▶ Public-private sector relations
- ▶ Nonprofit organizations
- ▶ Legal profession



Japan: Who Governs?

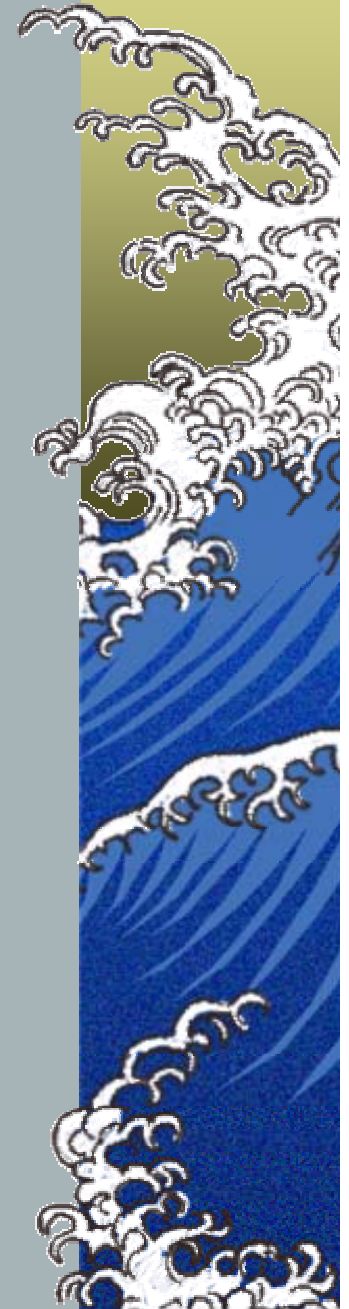
“[T]he elite bureaucracy of Japan makes most major decisions, drafts virtually all legislation, controls the national budget, and is the source of all major policy innovations in the system.

In market rational systems such as the United States, public service does not normally attract the most capable talent, and national decision-making is dominated by elected members of the professional class, who are usually lawyers, rather than by the bureaucracy” (Johnson 1995).

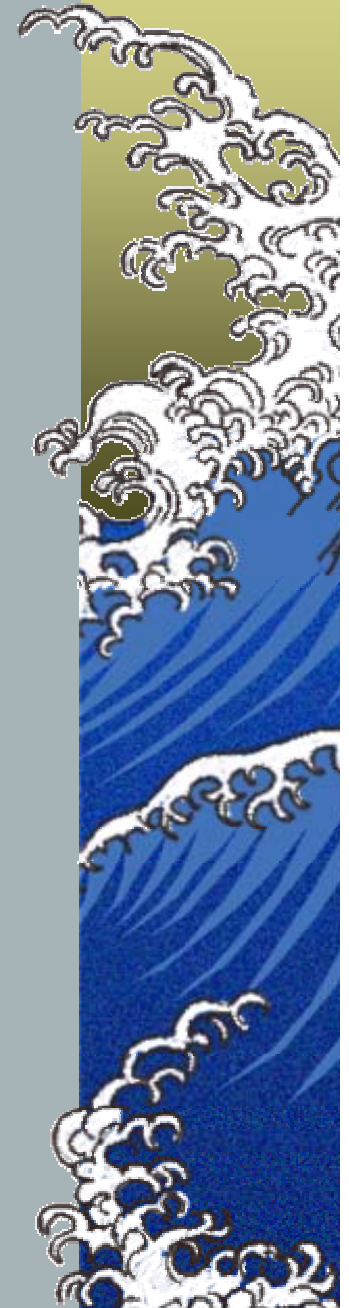
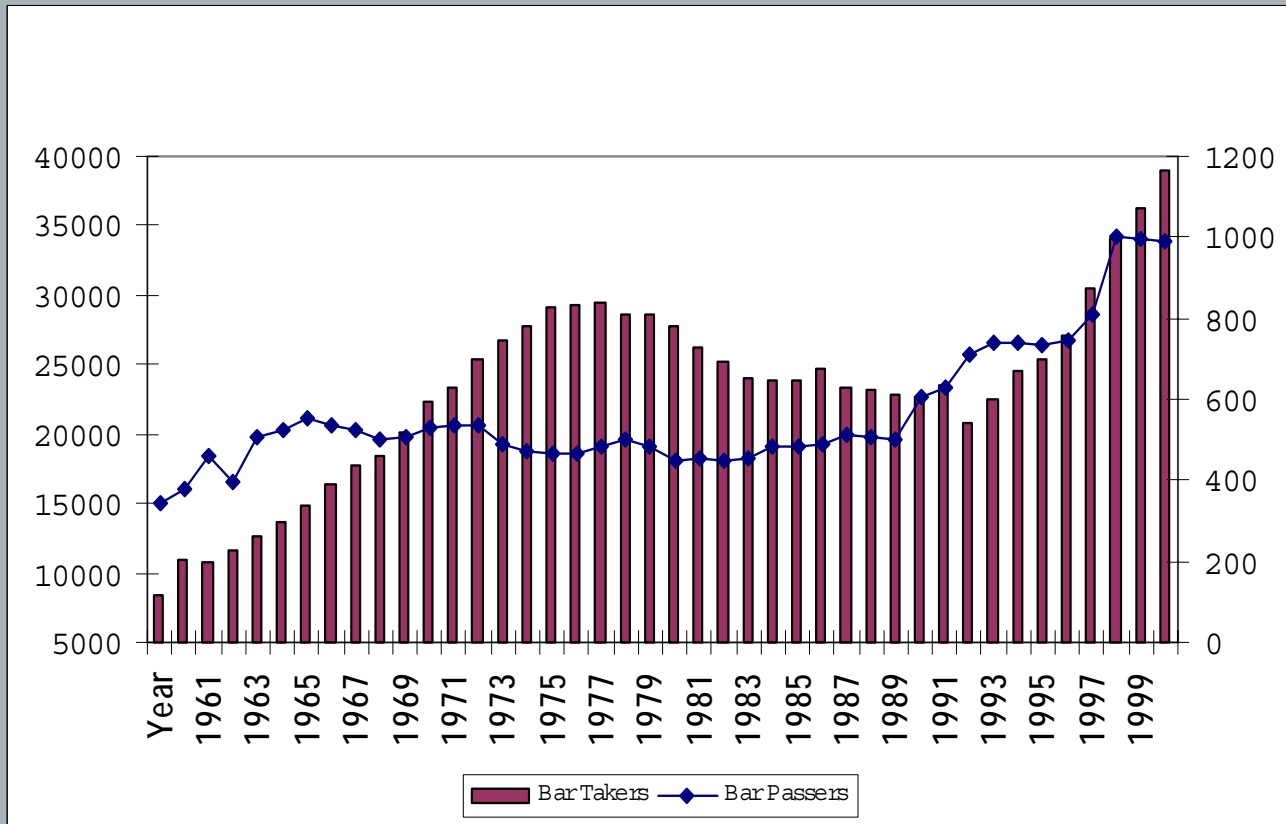


Lawyers and Economic Growth

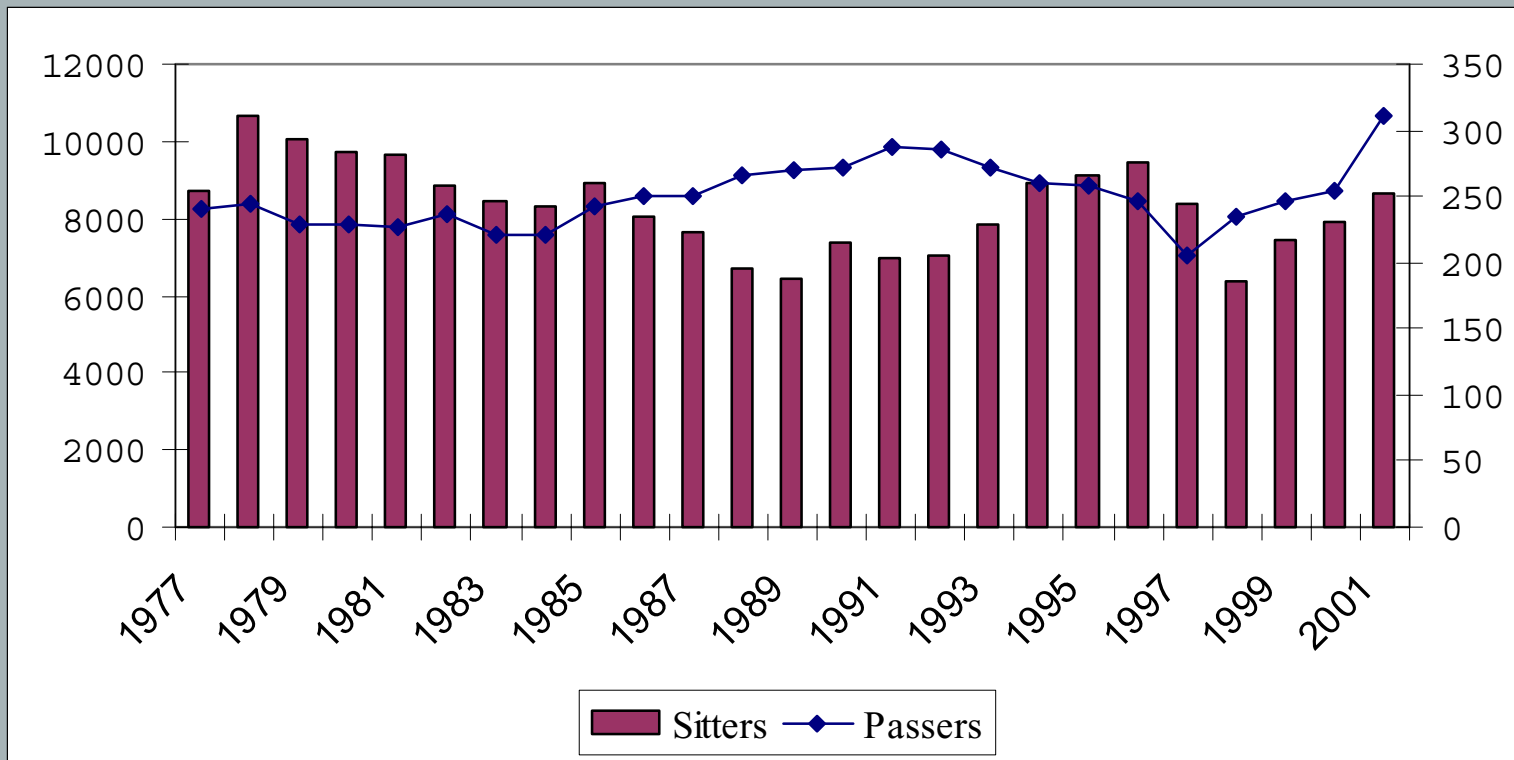
- ▶ Japan is “Exhibit A, displaying the inverse relation of lawyers and economic vigor.” (Galanter 1994).
- ▶ Negative correlation between ratio of lawyers/doctors and GNP growth for 35 countries. (Magee et al. 1989)
- ▶ Economic growth negatively correlated to ratio of law students/engineering students in large sample of countries. (Murphy et al. 1991).



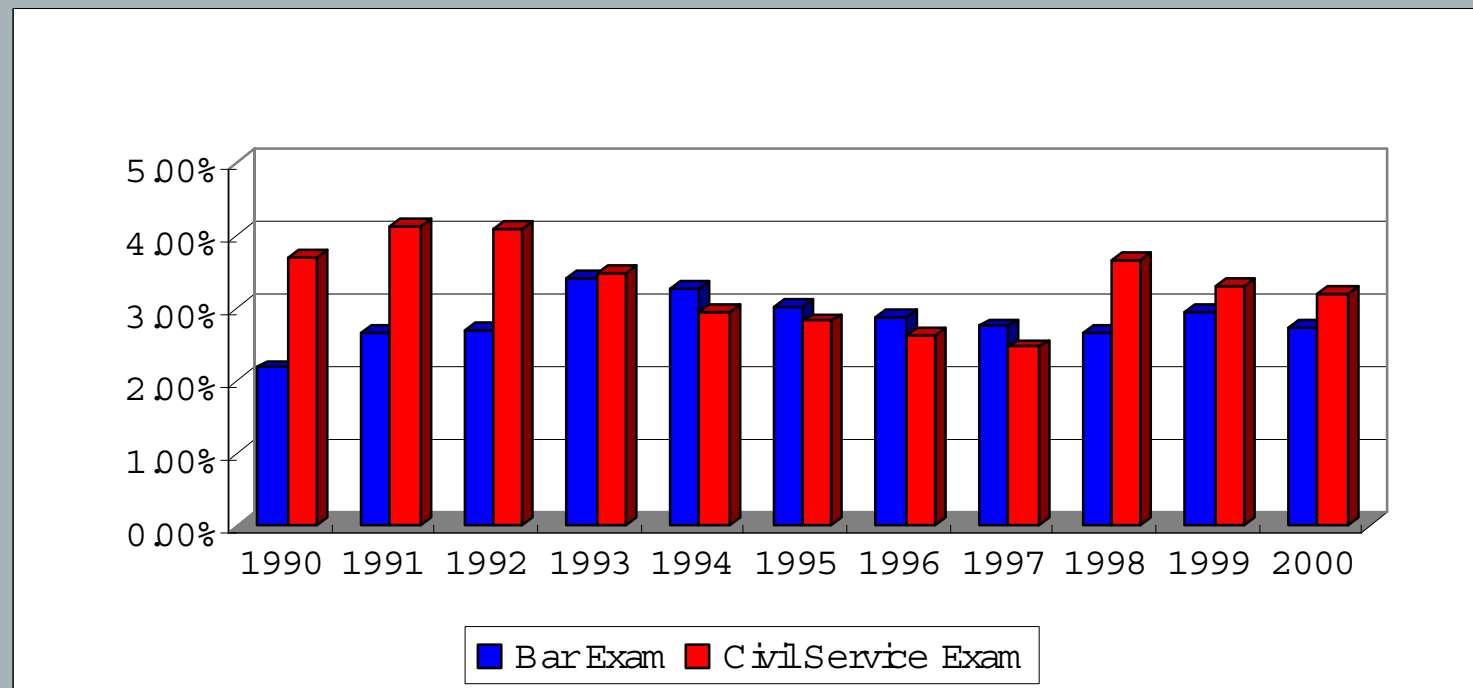
Bar Exam Takers and Passers 1960-2000



Civil Service Exam (Law) Takers and Passers 1977-2001



Comparative Exam Pass Rates 1990-2000



Career Choices of Todai Legal Elites 1991-2000

Year	Bar Examination Passers			Law Civil Service Examination Passers	
	(a) U of Tokyo	(b) Current U of Tokyo	(c) To LTRI	(d) Current U of Tokyo	(e) To Bureaucracy
2000	198	62	60	84	70
1999	229	61	46	97	80
1998	213	79	55	87	72
1997	188	77	62	71	74
1996	181	84	84	126	99
1995	166	52	48	109	99
1994	161	61	56	130	107
1993	137	54	48	149	120
1992	126	53	59	164	133
1991	133	57	50	178	133

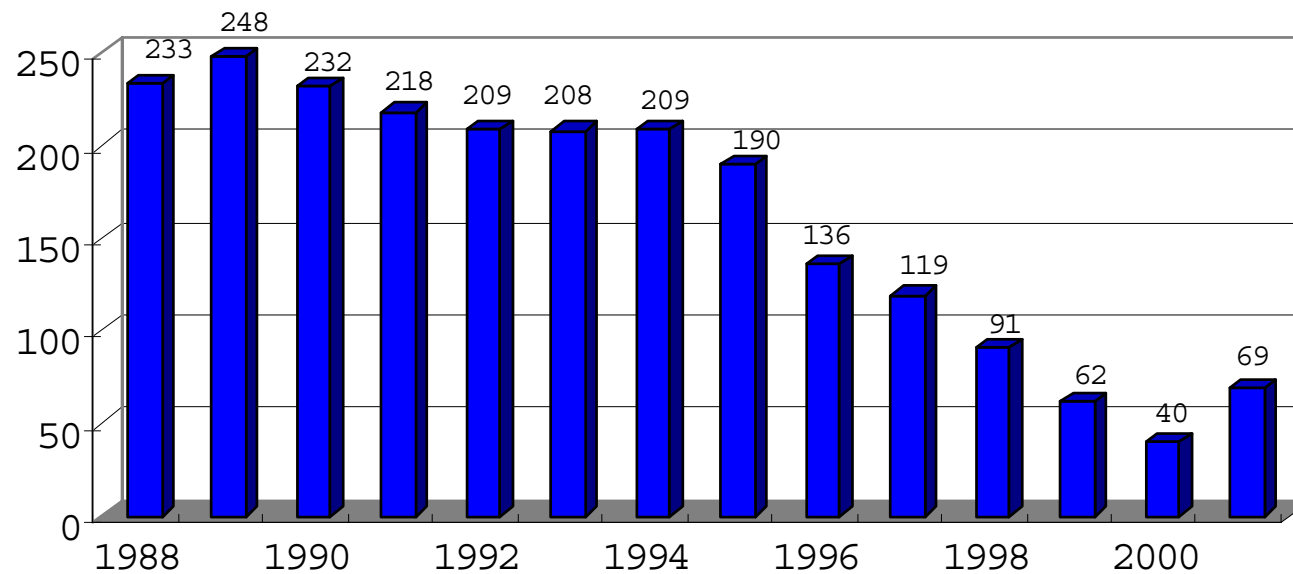


Career Choices of Kyodai Legal Elites 1992-2001

Year	Total Graduating	(a) To LTRI	(b) Bar Exam Study	(a) + (b) (% of total)	To Elite Bureaucracy
2001	435	64	92	156 (36%)	9
2000	418	59	96	155 (37%)	21
1999	385	46	73	117 (28%)	16
1998	384	35	56	91 (26%)	25
1997	428	48	65	113 (24%)	23
1996	424	42	55	97 (23%)	23
1995	417	37	51	88 (21%)	27
1994	392	25	46	71 (18%)	22
1993	421	26	24	50 (12%)	27
1992	408	31	21	62 (13%)	24

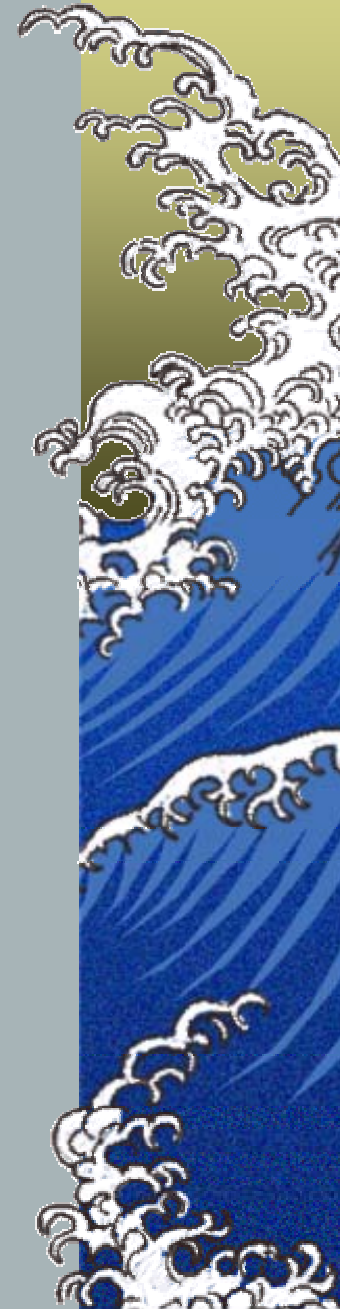


Amakudari Waivers by National Personnel Authority 1988-2001



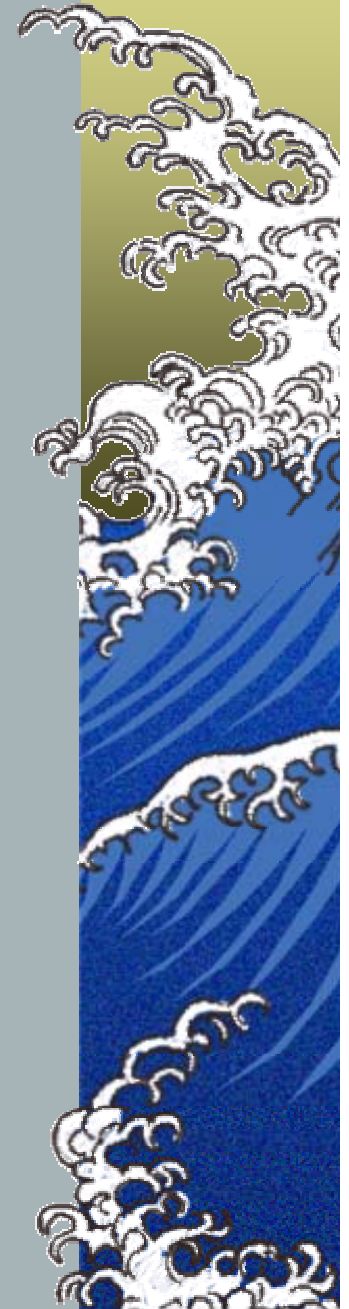
Summary of Trends

- ▶ Number taking and passing bar is increasing; number taking civil service exam is flat or falling in spite of more favorable pass rates and relatively constant hire rates.
- ▶ Trends are more pronounced at top universities.
- ▶ Lawyer compensation has increased; lifetime bureaucratic income is declining.
- ▶ Mean quality of entry-level candidates to the bureaucracy (bar) appears to be declining (improving).



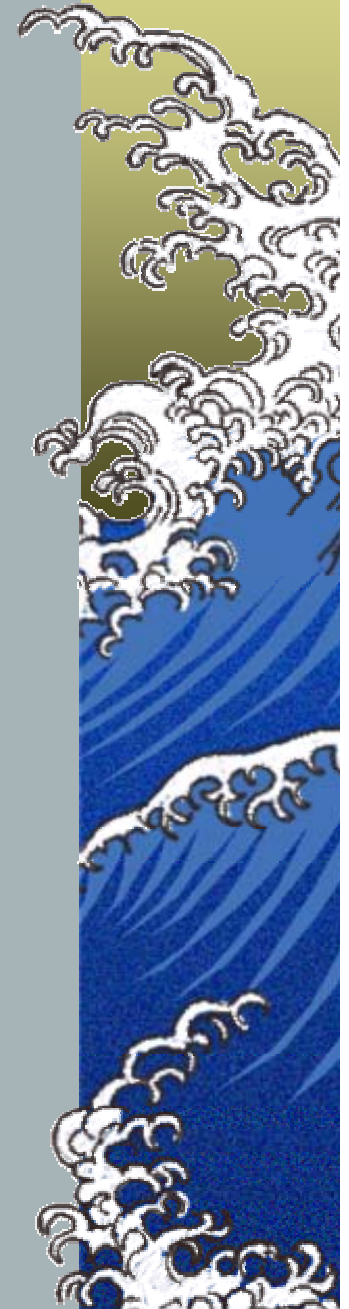
Explaining the Trends

- ▶ Deregulation
- ▶ Structural constraints on bureaucracy: FOIA, APA, National Civil Servant Ethics Law
- ▶ Scandals and public criticism
- ▶ Business groups have lobbied for more lawyers, less opaque regulation by the ministries
- ▶ “Globalization” (domestic institutions as interface between foreign and local)



Shift in Shared Beliefs?

Judicial Reform Council: Goal is to “transform both the spirit of the law and the rule of law into the flesh and blood of this country.”



Conclusions

- ▶ Japan is changing; reforms are having an impact on career decisions.
- ▶ High quality legal institutions need to be built, not assumed or legislated into existence. Enhancing the size and stature of the legal profession is an integral part of this process.
- ▶ Lawyers' value added is heavily dependent upon the structure of a country's economy and politics.
- ▶ Long-range implications unclear, but potentially seismic.

