



# Bottom-Feeding at the Bar: Usury Law and Value-Dissipating Attorneys in Japan

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BOTTOM-FEEDING AT THE BAR:  
USURY LAW AND VALUE-DISSIPATING  
ATTORNEYS IN JAPAN

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## **Bottom-feeding at the Bar**

### **Usury Law and Value-Dissipating Attorneys in Japan**

By J. Mark Ramseyer\*

*Abstract:* Critics have long complained that lawyers dissipate value. Some do, of course. Some legal work dissipates more value than others, and the lawyers who focus on the most notorious rent-seeking sectors extract a heavy toll in the U.S. Whether lawyers choose to focus on value-dissipating or value-enhancing work depends on the institutional structure in place, and the American legal system apparently generates high returns to value-dissipating work. The Japanese legal system traditionally holds down such returns, and Japanese attorneys have invested much less in those sectors.

In 2006, the Japanese Supreme Court unilaterally invented an entirely new field of rent-seeking: it construed usury law to let borrowers sue for refunds of "excessive" interest they had explicitly and knowingly -- and with statutory authorization -- agreed to pay. Although borrowers swamped the courts with refund claims, the field did not attract either experienced or talented attorneys. Instead, it attracted two groups: new lawyers who had entered the bar under the relaxed licensing standards, and the least talented lawyers. At least in this sector of the rent-seeking field, the returns to experience and talent in Japan apparently remain lower than in value-enhancing sectors of the bar.

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## **Bottom-feeding at the Bar**

### **Usury Law and Value-Dissipating Attorneys in Japan**

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We have a problem in the U.S., and it involves lawyers.

We have many, and all too many of them focus on value-dissipating work. Japan has few, and until recently most of them focused on work that added net value. Since 1990, however, the Japanese government has quadrupled the number of new lawyers it licenses each year. Has the increase changed the character of the work lawyers do? Have lawyers begun to turn to rent-seeking work? And if some of them have, are they the more or less able of the new lawyers?

Consider two facts: First, the Japanese government recently slashed its licensing requirements. In 1990, it licensed 500 new lawyers (less judges and prosecutors) every year, but by 2012 licensed 2000. Second, in 2006 the Supreme Court unilaterally created an entirely new field of rent-seeking: it construed usury law to let borrowers sue for refunds of any "excessive" interest they had knowingly and explicitly -- and with statutory authorization -- agreed to pay.

The two facts are tied, for the new Japanese lawyers have migrated in two very different directions. The most talented have entered the large Tokyo law firms where they serve as Ronald Gilson's "transaction cost engineers," helping firms negotiate transactions and bring products to the market.<sup>1</sup> The least talented have migrated to the value-dissipating interest-refund claims where they have almost single-handedly run the consumer finance industry out of business.

The partners at the large Tokyo firms had urged the government to increase the size of the bar, and they seem to have calculated correctly: the increased pool of talented young lawyers has let them build efficient and profitable firms. The lawyers in the under-lawyered provinces fought the increase, and may have calculated correctly as well: substantial numbers of young lawyers find themselves unemployed, and substantial numbers have migrated into new firms that specialize in value-dissipating rent-seeking claims.

Disproportionately, the lawyers migrating to the value-dissipating work are the lawyers with the least experience and least talent. Apparently, the returns to experience and cognitive ability remain higher in the value-creating sector in Japan than in the rent-seeking sectors. In the article that follows, I first survey the legal fields with the heaviest rent-seeking in the U.S., and compare the pattern of litigation to that in Japan (Sec. I.). I describe the increase in the Japanese bar and the employment options for new lawyers (Sec. II.). And I conclude by exploring the opportunity for rent-seeking created by the Supreme Court's re-interpretation of Japanese usury law (Sec. III.).

#### **I. Bottom-feeding at the Bar:**

##### **A. The United States**

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<sup>1</sup> Ronald J. Gilson, Value Creation by Business Lawyers: Legal Skills and Asset Pricing, 94 Yale L.J. 239 (1984).

Often, we capture facets of our over-lawyering with anecdotes.<sup>2</sup> The anecdotes are notorious, but most are also real. As Fred McChesney showed so nicely two decades ago,<sup>3</sup> they capture a serious problem: a trial bar that relentlessly files value-dissipating claims, and collects for itself a large toll on every amount transferred. There is lawyer (and convicted felon) Richard "Dickie" Scruggs who extracted \$246 billion over 25 years from tobacco companies for selling a dangerous but legal product to consumers who bought it knowing it was dangerous (with \$900 million to Scruggs' own law firm).<sup>4</sup> There is lawyer (also convicted felon) William Lerach who extracted settlements with large attorney fees for his shareholder class actions.<sup>5</sup> There is Leo Boyle who negotiated a \$4.75 million settlement from MIT when a student drank himself to death at a fraternity party.<sup>6</sup>

More generally, for several decades products liability claims have threatened to decimate one industry after another.<sup>7</sup> Even though nearly every small-plane accident involves human error, for example, nearly every accident also generated a suit against the manufacturer. Liability costs soared, and with them the price of the planes. As prices rose, the sales of new planes fell. Rather than buy new planes, pilots kept old planes or built their own. Unfortunately, new planes are safer than old, and professionally built planes are safer than the home-made. The number of accidents climbed. By 2005, the shift from new factory-built planes to older and home-made planes had killed nearly 8,000.<sup>8</sup>

In the early 1980s, Melvin Belli sued Merrell Dow over Bendectin. Pregnant women routinely suffer morning sickness, but for a small fraction of women the problems go far beyond discomfort. For some like Charlotte Bronte, they kill. To control the symptoms, Merrell Dow developed Bendectin. Belli claimed the drug caused birth defects. In fact, it did not. An Australian physician had published an article asserting that it did, but he had faked the data. Never mind the scientific fraud. The litigation cost Merrell Dow dearly, and it pulled the drug. Given the cost of even groundless litigation, virtually no pharmaceutical firm has introduced any pregnancy-related drug since.<sup>9</sup>

One could catalog a wide variety of other cases too, of course. Trial lawyers have sued makers of vaccines, and driven up the cost. In response, fewer children have been vaccinated.<sup>10</sup> They have marched hundreds (perhaps thousands) of plaintiffs in for asbestos-related claims (many for injuries suffered at jobs they took because of the wage premium attributable to the

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<sup>2</sup> We detail the problems more extensively in J. Mark Ramseyer & Eric B. Rasmusen, *Are Americans More Litigious? Some Quantitative Evidence*, in Frank Buckley, ed., *The American Illness* (New Haven: Yale University Press, 2013).

<sup>3</sup> See Fred S. McChesney, *Money for Nothing: Politicians, Rent Extraction, and Political Extortion* (Cambridge: Harvard University Press, 1997).

<sup>4</sup> Ramseyer & Rasmusen (Yale UP), *supra* note.

<sup>5</sup> See J. Mark Ramseyer, *Business Organizations* 81-83 (New York: Wolters Kluwer, 2012).

<sup>6</sup> See Ramseyer (B.O.), *supra* note, at 55.

<sup>7</sup> I detail the process in J. Mark Ramseyer, *Liability for Defective Products: Comparative Hypotheses and Evidence from Japan*, *— Am. J. Comp. L.* \_\_ (2013)..

<sup>8</sup> See Ramseyer, *supra* note (AJCL).

<sup>9</sup> See Ramseyer, *supra* note (AJCL).

<sup>10</sup> See Ramseyer, *supra* note (AJCL).

known health risk from asbestos). Some attorneys then marched in exactly the same plaintiffs (with the same x-rays) to file silicosis claims.<sup>11</sup>

For a sense of the magnitude of the unwarranted suits, consider some simple statistics. In a typical year, Americans file 80,000 products liability claims.<sup>12</sup> Yet in that same typical year, only 83,000 Americans die from non-traffic accidents.<sup>13</sup> Many of these are elderly. When a 75 year-old woman falls, breaks her hip, and dies, she does not fall because she sat in a defective chair. She falls because she lost her sense of balance. When an 80 year-old man drowns in his bathtub, he does not die because he bathed in a defective tub. He dies because he lost his sense of balance, slipped, and slid under the water.

In a typical year, only 49,000 Americans under the age of 65 die from non-traffic accidents.<sup>14</sup> Yet even most of those accidents do not involve defective products. After all, the accidental deaths include 33,000 poisonings -- rarely poisoning from a defective product. Another 3,800 Americans drown -- again, rarely from a defective pool or bath tub or lake. High school students die playing football. Skaters fall through the ice. Skiers run into trees. Babies fall off balconies. In a typical year, far fewer than 49,000 Americans die from anything defective. Yet 80,000 file products liability suits anyway.

Similar problems plague medical malpractice. Any physician can make a mistake, and any physician can be sued. To forestall the liability, American physicians buy insurance. Yet the premiums can cripple. The problem has been particularly acute among obstetricians and surgeons. For decades now, patients have bemoaned the resulting regional shortages. In 2009, surgeons in Massachusetts faced malpractice insurance premiums of \$42,000 per year, and obstetricians of \$101,000. Surgeons in Dade and Miami County, Florida, faced premiums of \$190,000 per year, and obstetricians of \$202,000.<sup>15</sup>

No one claims the suits hit the doctors they should. Some scholars argue that only a small minority of victims actually learn of any malpractice, much less file a claim. Yet despite the level of costs involved, American insurers steadfastly refuse to experience-rate their physician clients. Apparently, past liability does not predict future exposure. In medicine as in other fields, some people are smarter than others, and some are more careful than others. If the litigation identified genuine malpractice, insurers should find past liability a useful predictor of future exposure. Given the massive number of meritless claims, they do not.

## B. Japan:

The Japanese experience is very different. Each year, barely a few hundred Japanese file products liability suits.<sup>16</sup> With a statute modeled on European Community law, Japanese courts offer substantive product liability law every bit as strict as anything in the Europe or U.S. They

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<sup>11</sup> See Ramseyer & Rasmusen, *supra* note (YUP).

<sup>12</sup> See A. Mitchell Polinsky & Steven Shavell, *The Uneasy Case for Product Liability*, 123 *Harv. L. Rev.* 1438 (2010),

<sup>13</sup> See Center for Disease Control, 2010 Mortality Multiple Cause Micro-data Release, Tab. 10, available at: [http://www.cdc.gov/nchs/data/dvs/deaths\\_2010\\_release.pdf](http://www.cdc.gov/nchs/data/dvs/deaths_2010_release.pdf).

<sup>14</sup> See Center for Disease Control, *supra* note.

<sup>15</sup> See <http://www.mymedicalmalpracticeinsurance.com/massachusetts-medical-malpractice-insurance.php#historicdata>; <http://www.mymedicalmalpracticeinsurance.com/florida-medical-malpractice-insurance.php#2010>.

<sup>16</sup> See Ramseyer, *supra* note (AJCL).

award damages for personal injury at least as high as in the U.S. -- medians of about \$500,000 for wrongful death. They impose delays no worse than here -- about 2-3 years from filing to judgment. They do not offer discovery, to be sure -- but if a defendant controls a crucial piece of evidence that he does not disclose, judges routinely presume the contested facts against him.

And manufacturers sell their products into a similar economic environment. Japanese consumers buy nearly the same items as Americans. They bring similar educational levels. They earn similar incomes and wealth. With a population of 128 million, about 28,000 Japanese die of non-traffic accidents each year.<sup>17</sup> Yet only 100-300 Japanese file products liability suits a year. Not only do Japanese file few suits, they assert few claims. In a given year, Japanese assert about 1,000 file products liability claims against insured defendants. Probably another 1,000 file claims against the self-insured.

Reflecting the low levels of claiming, insurers charge low premiums on product liability insurance. Automobile repair shops face among the highest rates: 2,700 yen per 100 million yen coverage. Supermarkets can buy the insurance for 150 yen per 100 million coverage.<sup>18</sup>

Each year, only 1,100 Japanese file medical malpractice suits either.<sup>19</sup> Again, the substantive law is close to that in the U.S. Median damage awards are close. Litigation delays are close. And judges use presumptions to elicit evidence from stone-walling defendants. For the typical physician in a clinic (other physicians work on staff at hospitals, most of which self-insure), malpractice insurance costs only \$700 per year.<sup>20</sup>

This low level of claiming in Japan is peculiar to products liability and medical malpractice -- two of the fields most badly plagued by abusive litigation in the U.S. What the U.S. seems to have gotten so wrong, Japan seems to have gotten meticulously right. In less problematic fields like traffic accidents, Japanese routinely file claims. By coupling medical and police records of accidents with insurance records on payments, one can gauge the extent to which wronged Japanese claim. The result is simple: in nearly every wrongful death case, the decedent's heirs assert and collect compensation. Even when they settle out of court, they obtain amounts that closely track the amounts a court would award.<sup>21</sup>

Japanese do file claims. They just do not file many claims in those fields that American plaintiffs swamp with fraudulent litigation.

### C. Why the Contrast:

1. Juries. -- Two of the reasons for the divergent tort practice between U.S. and Japan are easy to identify: American lawyers try their cases before lay juries and state (often elected) judges. Japanese lawyers never face civil juries, and try their cases instead before an elite corps of career judges.

The civil jury captures the most basic of the American dysfunctions. As Scruggs (of cigarette litigation fame) explained, he and his fellow trial lawyers do not file major suits

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<sup>17</sup> See Ramseyer, *supra* note (AJCL).

<sup>18</sup> See Ramseyer, *supra* note (AJCL).

<sup>19</sup> J. Mark Ramseyer, The Effect of Universal Health Insurance on Malpractice Claims, 2 J. Legal Anal. 621, 626 tab. 1 (2010).

<sup>20</sup> Ramseyer, *supra* note (JLA), at 630.

<sup>21</sup> J> Mark Ramseyer & Minoru Nakazato, The Rational Litigant: Settlement Amounts and Verdict Rates in Japan, 18 J. Legal Stud. 263 (1989).

randomly. They file them in communities (critics call them "hell holes") where they know juries routinely award unjustified and inflated awards:<sup>22</sup>

The trial lawyers have established relationships with the judges that are elected; they're State Court judges; they're populists. They've got large populations of voters [who serve on the juries] who are in on the deal, they're getting their piece in many cases. And so, it's a political force in their jurisdiction, and it's almost impossible to get a fair trial if you're a defendant in some of these places. ... The cases are not won in the courtroom. They're won on the back roads long before the case goes to trial. Any lawyer fresh out of law school can walk in there and win the case, so it doesn't matter what the evidence or law is.

The juries that Scruggs and his colleagues cultivate disproportionately come from poorer communities. Yet they award unusually large amounts. Still, they do not award uniformly large amounts. Instead, they award large amounts against defendants from out of state. Compare traffic accidents with product liability claims. The former concern local defendants, while the latter often involve defendants from elsewhere. Eric Helland and Alexander Tabarrok compare jury verdicts in wealthy and poor communities. They find that plaintiffs in richer counties (a poverty rate below 5%) collect a mean \$244,000 in automobile accident cases and \$1.18 million in products liability. Those in poorer counties (poverty rates above 25%) recover \$760,000 (3.1 times as much as in the wealthier counties) in traffic accidents but \$6.74 million (5.7 times as much) in products liability. The juries that Scruggs and other trial lawyers cultivate do not just award generous amounts. They award generous amounts against defendants outside of the community.

2. Judges. -- For judges, Scruggs and his colleagues generally use state-court judges, often elected state-court judges. Tenure matters. More specifically, what a judge must do to keep his job affects how he performs it. If a jury chooses to redistribute wealth from out-of-state defendants to their neighbors, elected judges will often find it advantageous to let them do so. About one of his cases, a former Kentucky Supreme Court justice explained:<sup>23</sup>

From what I know about myself and my colleges, I have the distinct impression that in a product liability case the vote would have been 3 to 2 the other way, and the whole \$10 million judgment would have been sustained. Had a defective Ford automobile killed the little boy, even I would have had none of the enthusiasm for reducing the judgment that I had when the judgment against the defendants would affect business and consumer costs in West Virginia. What do I care about the Ford Motor Company? To my knowledge Ford employs no one in West Virginia in its manufacturing processes.... The best that I can do, and I do it all the time, is make sure that my own state's residents get more money out of Michigan than Michigan residents get out of us.

Kip Viscusi quotes another state judge for the same point:<sup>24</sup>

I may not always congratulate myself at the end of the day on the brilliance of my legal reasoning, but when I do such things as allow a paraplegic to collect a few hundred thousand dollars from the Michelin Tire company -- thanks to a one-car

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<sup>22</sup> Peter J. Boyer, *The Bribe*, *New Yorker*, May 19, 2008.

<sup>23</sup> Richard Neely, *The Product Liability Mess* 4 (Free Press, 1988).

<sup>24</sup> W. Kip Viscusi, *Reforming Products Liability* 56 (Cambridge: Harvard University Press, 1991).

crash of unexplainable cause -- I at least sleep well at night. Michelin will somehow survive (and if they don't, only the French will care), but my disabled constituent won't make it the rest of her life without Michelin's money.

Elections affect recoveries. Helland and Tabarrok ask what happens when they shift a case from a court where judges are selected in a non-partisan fashion to one where they face partisan elections. The probable award climbs 23%.<sup>25</sup> They conclude:<sup>26</sup>

In cases involving out-of-state defendants and in-state plaintiffs, the average award (conditional upon winning) is \$362,988 higher in partisan states than in nonpartisan states; \$230,092 of the larger award is due to a bias against out-of-state defendants, and the remainder is due to generally higher awards against businesses in partisan states.

#### D. The Rent-Seeking Puzzle:

A large swath of talented American university students chooses careers at the bar; many fewer Japanese students do. A large swath of American lawyers focuses their careers on value-dissipating work; apparently, many fewer Japanese lawyers do. The contrast goes to the comparative returns to talent in rent-seeking relative to value-creating enterprise.

Talented young people choose among multiple attractive careers. Some have talent only for narrow lines of work, but many bring to the market cognitive skills that they could apply to a broad range of activities. These students do well in all (or most) of their classes. They score high on all three SAT sections. They bring social skills that make them prized team members. As Kevin Murphy, Andrei Shleifer and Robert Vishny famously noted, they could study engineering, or they could study law. If they turn to the former, they help create new products and services. If they turn to the latter, they could choose value-creating activities -- but they could also manipulate the threat of litigation to extort settlements from firms that did nothing wrong.<sup>27</sup>

The relative returns to talent in value-creating and rent-seeking activities turn crucially on the institutional structures in place. The consequences, argue Murphy-Shleifer-Vishny, are telling. Where talented young students choose engineering, the economy grows relatively rapidly. Where they choose law, it stagnates.<sup>28</sup>

Within law itself, talented young people can again choose between value-creating and rent-seeking sectors. Lawyers do not just transfer rents. Some do. Given that product safety in competitive markets will find itself impacted in market prices, for example, litigation over that safety in tort (rather than contract) almost inevitably constitutes simple rent-seeking. Given that taxes involve straightforward transfers to the government, most tax planning is simple rent-avoidance.

But lawyers also help engineers negotiate and enforce the contracts they need to bring their ideas to the market. They work, as Gilson put it, as "transaction cost engineers."<sup>29</sup> They

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<sup>25</sup> See Eric Helland & Alexander Tabarrok, *Judge and Jury: American Tort Law on Trial* 88-90 (Oakland: Independent Institute, 2006).

<sup>26</sup> Helland & Tabarrok, 2006, *supra* note, at 92.

<sup>27</sup> Kevin M. Murphy, Andrei Shleifer & Robert W. Vishny, *The Allocation of Talent: Implications for Growth*, 106 Q.J. Econ. 503 (1991).

<sup>28</sup> See Murphy, et al., *supra* note.

<sup>29</sup> See Gilson, *supra* note.

help define the terms of the teams and sub-teams of people who will collectively generate the value that Murphy-Shleifer-Vishny's engineers promise.

Consider, then, the relative returns to talent within law itself: Are the returns to high-levels of legal talent in Japan higher in rent-seeking or in value-creating activities? Elsewhere, Eric Rasmusen and I examine the Japanese business law sector in more detail.<sup>30</sup> Here, I consider one of the more egregious rent-seeking sectors (Sec. II.C., D.). Given that the licensing requirements determine who becomes a lawyer, however, turn preliminarily to recent changes in that licensing system (Sec. II.A., B).

## II. Bottom-feeding in Japan

### A. Recent Changes:

1. Pre-1990. -- The Japanese bar has long been a tiny affair. From 1950 to 1990, an ambitious law student could join it only by attending the one national Legal Research & Training Institute (LRTI). The government controlled the entry to this Institute, and it imposed a grueling examination. It passed about 500 per year, and chose the passers through a blindly graded test on legal (and other) topics. It offered the exam once per year. Given the number of people who wanted to become lawyers, by passing only 500 it effectively kept the pass rate between 2 and 3 percent.<sup>31</sup>

The structure kept the bar smaller than in any comparably rich modern democracy. Per capita, Japan has about 23 lawyers per 100,000 population. The United States has 391 lawyers per 100,000. The U.K. has 251, and France has 72.<sup>32</sup>

The brutal difficulty of the LRTI entrance exam had a curious effect. Obviously, it kept out the most egregiously incompetent. The duller the student, the less likely he would pass. Yet as Eric Rasmusen and I explain elsewhere, it also kept out the brightest.<sup>33</sup> The reason lay in the opportunity cost to studying for the exam. Because the exam was so hard, the mean successful taker passed it only on his 6th or 7th try. He passed it, in other words, only after studying for 6 or 7 years.

The brightest students enjoyed higher odds of passing, but even they failed it in large numbers. From 1999 to 2005, graduates of the respectable Meiji and Chuo universities compiled a 1 to 3 percent pass rate. Graduates of the top-10 Keio and Waseda universities passed at a 3-5 percent rate. But even those from the preeminent University of Tokyo passed it only 7.31 percent of the time (1,531 out of 20,937).<sup>34</sup>

The cost of studying for this exam fell hardest on the brightest. Meiji University graduates may have had only a 1.34 percent chance of passing the exam (198 out of 14,730), but they had relatively few attractive outside options. Given that Meiji was not a star school, high-paying employers did not queue at its placement office to offer lucrative jobs. If Meiji graduates chose to devote years to studying for the exam, many would not be jettisoning lucrative outside

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<sup>30</sup> See J. Mark Ramseyer & Eric B. Rasmusen, *Improving the Bar by Lowering the Bar* (forthcoming).

<sup>31</sup> See J. Mark Ramseyer & Minoru Nakazato, *Japanese Law: An Economic Approach* ch. x (Chicago: University of Chicago Press, 1999).

<sup>32</sup> See Ramseyer & Rasmusen, *supra* note (YUP). at tab. 1..

<sup>33</sup> See Ramseyer & Rasmusen, *supra* note (forthcoming).

<sup>34</sup> See Shiho shiken daigaku betsu goukakusha oyobi gokaku ritsu iran [Overview of the Number of Passers and the Passage Rate in the LRTI Entrance Exam, by University], available at: [www.geocities.jp/gakureking/shihou.html](http://www.geocities.jp/gakureking/shihou.html).

offers. By contrast, University of Tokyo graduates had the pick of the most prestigious and high-paying corporate employers. Were they to devote years to studying for the exam, they could do so only by abandoning offers from the best employers.

Disproportionately, the brightest students chose not to study for the LRTI exam. As Minoru Nakazato, Eric Rasmusen and I show elsewhere, University of Tokyo graduates were much less likely than their less-talented rivals to invest the years necessary to pass the test.<sup>35</sup> The typical aspiring lawyer from the University of Tokyo took the LRTI exam once or twice while still an undergraduate. If he passed, well and good. He went to the LRTI and became a lawyer. If he failed, he might deliberately delay graduation another year. He might enroll in a one- or two-year graduate program. But if he failed to pass during that time (and with a 7.31 percent mean pass rate, most failed), he abandoned the effort and took the prized corporate job.

A graduate from a third-tier school faced a different choice. To be sure, he faced lower odds he would ever pass the LRTI exam. That he attended a third-tier university reflects the fact that he lacked the cognitive skills that his University of Tokyo rivals had. But he also faced much lower opportunity costs to studying for the LRTI: the prestigious corporate firms did not come to his university with well-paying offers. The Tokyo graduate could study for the LRTI exam only by jettisoning a well-paying career. The third-tier graduate had few if any careers to jettison.

2. Pressure for change. -- Pressure for change came from the large corporations and their law firms. As Japanese companies increasingly bought, sold and manufacture red in international markets, they needed sophisticated legal specialists to guide them through the maze. They needed lawyers who could answer the transnational legal, transactional, and regulatory questions they faced. They could hire American or British law firms, but those lawyers rarely spoke Japanese or understood their Japanese context. They wanted Japanese lawyers.

The companies found few lawyers in Japan who could offer the sophistication they needed. As of 1985, the Japanese bar included only 13,000 lawyers.<sup>36</sup> Of them, about 16 percent had attended the University of Tokyo (see Table 1). Perhaps 25 percent had attended the one of the top three schools -- the Universities of Tokyo of Kyoto, or Hitotsubashi University (Table 1). The Nishimura firm (discussed at Sec. II.B., below) was the largest law firm of all, but even it had only 26 lawyers.<sup>37</sup> To be sure, every year the LRTI graduated 500 more people. Yet the courts hired about 100 of them, and the Ministry of Justice took another 100 as prosecutors. This left 300 for the bar. Of the 300, in a typical year barely 45 had graduated from the University of Tokyo, and 75 from one of the top three schools. Very few -- to put it bluntly - - could supply the cognitive ability that the corporate community needed.

[Insert Table 1 about here.]

The partners in the major law firms wanted more lawyers too. In part they wanted them because their clients needed more lawyers. To service their clients effectively, they needed armies of young, talented, sophisticated professionals. Under the 500-student limit to the LRTI, that talent and sophistication they simply could not obtain. If an easier LRTI exam merely

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<sup>35</sup>See Minoru Nakazato, J. Mark Ramseyer & Eric B. Rasmusen, *The Industrial Organization of the Japanese Bar*, 7 *J. Empirical Legal Stud.* 460 (2010).

<sup>36</sup> *Nihon bengoshi rengo kai*, ed., *Bengoshi hakusho 3* (Tokyo: *Nihon bengoshi rengo kai*, 2006).

<sup>37</sup> Bruce E. Aronson, *The Brave New World of Lawyers in Japan*, 21 *Colum. J. Transnational L.* 45, 83 tab. 1 (2007).

brought even less talented students, then an expansion would not give these high-end partners the lawyers they needed. But suppose the easier exam induced additional talented students to apply for the exam -- students dissuaded under the old regime by the high opportunity costs of studying for it. If it did, then the easier exam would bring in the talented and sophisticated lawyers whom the partners wanted to hire.

And in part the partners in the major firms wanted more lawyers to build the pyramid structure so lucrative in New York. "No one ever got rich selling his own time," George Stigler is alleged (perhaps apocryphally) to have said. The lawyers who earn the highest incomes do not earn them just by charging high rates for their own time. They earn them by taking a cut of the revenues generated by their younger associates. To raise their own incomes, the partners needed new recruits. But they also needed to maintain quality. To do so, they needed large numbers of talented and sophisticated lawyers that the existing system could not offer.

3. The opposition. -- The bar association (the Japan Federation of Bar Associations; JFBA) fought any expansion. Outside of the Tokyo corporate sector, Japanese lawyers worked alone or in very small offices. They handled traffic accidents, wills, divorces, debt-collection disputes. Despite the routine character of what they did, however, outside of Tokyo and Osaka they were scarce. Precisely for that reason, they earned rents.<sup>38</sup> Enlarge the number of new lawyers that entered the bar, and they potentially faced rivals who would slash those rents to competitive levels.

Outside the Tokyo corporate sector, lawyers protested any planned increase to the bar. They protested in ways that reflected the geographical distribution of these scarcity rents. In late 1994, for example, 1,137 lawyers petitioned the JFBA to oppose any expansion. At a time when 46 percent of all lawyers practiced in Tokyo,<sup>39</sup> only 37.7 percent (311) of the petitioners came from Tokyo.<sup>40</sup>

When a regional bar association group polled lawyers in the mid-1994, the respondents showed a similar geographical bias. Of the 4,166 respondents, only 16.5 percent supported increasing the LRTI class from 700 to 1,000. Within Tokyo, however, 22.5 percent supported the increase.<sup>41</sup> The lawyers who fought the expansion were primarily those earning the scarcity rents in the provinces. By contrast, the successful Tokyo lawyers stood to earn higher incomes from an expansion by transforming their firm into a pyramid. The less successful Tokyo lawyers would not build a pyramid, but they worked in so competitive a market that they had no scarcity rents to lose anyway.

To a government long dominated by the conservative Liberal Democratic Party (LDP), the JFBA embodied the leftist opposition. Its leftist slant apparently dated from the 1960s. That decade, many university students joined the occasionally violent Marxist fringe groups. They rioted, fought the police, and beat and occasionally killed students in rival (but similarly fringe-left) groups. Many of these student radicals (it is said) joined the bar. They joined it simply

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<sup>38</sup> As we show in Nakazato, Ramseyer & Rasmusen, *supra* note.

<sup>39</sup> See Nihon bengoshi rengokai, ed., *Bengoshi hakusho* [Attorney White Paper] 4 (Tokyo: Nihon bengoshi rengo kai, 2006).

<sup>40</sup> Calculated from the roster of signers at Hideyuki Suzuki, Yukako Takemoto, Hiroyuki Suzuki, Masatoshi Uchida & Takeshi Matsuura, *Shiho kaikaku no shippai* [The Failure of Judicial Reform] 386-89 (Tokyo: Kadensha, 2012).

<sup>41</sup> Calculated from data found in Suzuki, et al., *supra* note at 383.

because no corporate employer would hire them. Shut out of the university placement machinery because of their violent pasts, they took the LRTI exam -- and some of them passed.

This leftish slant continued by sheer weight of selective hiring. The LRTI produced 500 graduates each year. Of that 500, the government hired about 200 to staff the courts and prosecutor's offices. When it did, it deliberately avoided graduates who identified themselves as fringe-left.<sup>42</sup> It hired instead from the middle or right-fringe. Necessarily, it left the 300 graduates most likely to push the bar leftward.<sup>43</sup>

4. The eventual change. -- Given this background, the expansion of the bar was overdetermined. The corporate community supported the LDP, and needed more lawyers. More specifically, it needed more lawyers with extraordinarily high levels of cognitive skills and sophistication. Because graduates with those qualities stood in such high demand on the corporate job market, they tended not to invest years in studying for the LRTI exam. Disproportionately, those willing to spend the time to become lawyers were instead the graduates without the talent necessary to attract the outside offers.

By contrast, the JFBA leadership opposed any expansion to the bar. Yet given the miniscule size of the bar, it controlled very few votes. Given the political complexion of the bar, those votes went to leftist parties anyway.

The LDP sided with the corporate community. Gradually but steadily, the government increased the size of the LRTI. In 1990, the Institute admitted 489 students. By 1995, it admitted 633. By 2000, it admitted 742, and by 2005 it admitted 1,187.<sup>44</sup> Students now usually attend a post-graduate "law school" for two years, and then study at the Institute for an additional one year.

#### B. Talented Lawyers:

Faced with a much larger cohort of graduates from first-tier universities, the major Tokyo corporate law firms expanded rapidly. Take the largest firm as of early 2013: Nishimura & Asahi. Founded in 1966, in 1978 the Nishimura firm still had only 8 lawyers. By 1985, it had grown to 26. Yet even as late as 1999, it still had only 74 lawyers, and in 2002 only 130.<sup>45</sup> Over the next decade it would grow exponentially, and by mid-2012, it had 94 partners and 321 associates.<sup>46</sup> Other firms followed close behind: Nagashima & Ohno, Mori Sogo and Anderson Mori & Tomotsune each counted more than 300 lawyers.

As it grew, Nishimura created a more-than-3-to-1 associate-to-partner pyramid. Steadily during the first decade of the century, it had hired. As of early 2013, it still retained about 20 associates from the class 2002. It had over 30 associates from the classes of 2006 and 2010, 40 associates from the class of 2009, and over 50 from the class of 2007. By 2004 (the last year of public tax records), its partners earned very high incomes. The top partner at Nishimura paid

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<sup>42</sup> See J. Mark Ramseyer & Eric B. Rasmusen, *Measuring Judicial Independence: The Political Economy of Judging in Japan* (Chicago: University of Chicago Press, 2003).

<sup>43</sup> <http://okwave.jp/qa/q3096727.html>

<sup>44</sup> Suzuki, et al., *supra* note, at 22.

<sup>45</sup> Bruce E. Aronson, *Elite Law Firm Mergers and Reputational Competition*, \_\_ *Vanderbilt J. Transnational L.* \_\_ tab. 7 (2007).

<sup>46</sup> From firm website.

taxes of 79 million yen (at 103 yen/\$, about \$767,000). Given the highest marginal bracket in 2004 of 37 percent, he probably earned about \$2 million.

As it grew, Nishimura kept the quality of its associates high. Of all Nishimura associates in 2013, 48.6 percent had attended college at the University of Tokyo, and 91.0 percent had attended one of the top 10 universities (see Table 1). Of those with a degree from one of the new post-graduate law schools, 52.3 percent had attended the University of Tokyo and 94.6 percent one of the top 10 universities (see Table 2).

[Insert Table 2 about here.]

Nishimura could do this only because of the larger LRTI class. When the LRTI graduated 500 students per year, about 15 percent came from the University of Tokyo. Since approximately 200 became judges and prosecutors, in any given year law firms would have competed for only 45 Tokyo graduates. Some of the 45 would not have wanted a large business firm practice, and some would not have wanted to settle in Tokyo at all. Yet all of the premier firms would have competed fiercely for them.

Under the new regime, most University of Tokyo graduates who want to become lawyers can do so. To be sure, not all who graduate from the undergraduate law department can be admitted to the university's new post-graduate law school. Yet about 10 percent of the students who pass the LRTI exam in any given year do come from the University of Tokyo law school -- of the 2,000 graduates, about 200. Given that the law school barely produces 200, in effect its graduates all pass. They do not all pass on their first try. Some take a second or third attempt. But in time virtually all University of Tokyo law school graduates pass the exam.

#### C. Unemployable Lawyers:

If some new attorneys take lucrative jobs at firms like Nishimura, others take no jobs at all. In the U.S., the phenomenon is well-known and brutal: according to one account, "[n]ine months after graduation, the average law school class of 2011 had only 55 percent full-time long-term jobs requiring a law degree."<sup>47</sup> But American law schools graduate 38,000 people each year, while the LRTI graduates only 2,000. Even some LRTI graduates, however, have found it hard to locate a job. To practice law, an LRTI graduate must register with the local bar association. In the past, virtually all LRTI students who did not intend to become judges or prosecutors registered immediately upon graduating.

Increasingly, LRTI graduates have deferred registration (see Table 3). Bar membership costs money, and graduates without a job hesitate to pay the fee. In 2008, 5.68 percent of the new graduates did not register immediately. By 2010 that number climbed to 13.08 percent, and by 2012 to 28.50 percent. In 2008, 1.68 percent of the new graduates still had not registered four months later. By 2010, 3.90 percent had not registered in the same amount of time.

[Insert Table 3 about here.]

#### D. Bottom-feeding:

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<sup>47</sup> See Gus Lubin, The Law School Crisis Doesn't Exist at Places Like Yale, Business Insider, Jan. 30, 2013, available at <http://www.businessinsider.com/law-school-crisis-doesnt-exist-at-yale-2013-1>; see Job-hunting Law School Grads Will Face a 'Perfect Storm,' Fortune, Aug. 30, 2012, available at <http://management.fortune.cnn.com/2012/08/30/job-hunting-law-school-grads-will-face-a-perfect-storm/>; Jordan Weissman, Law School Applications Are Collapsing (as They Should Be), Atlantic, Jan. 31, 2013, available at <http://finance.yahoo.com/news/law-school-applications-collapsing-181900956.html>.

1. Introduction. -- Consider the sectors in which new lawyers might choose to focus. Where the government had long licensed 500 (less judges and prosecutors) lawyers a year, it now licensed 2,000. New entrants could migrate to the value-creating sector, or specialize in rent-seeking claims. Older and more experienced lawyers could stay in the value-creating sector, or shift toward the latter.

Talented and experienced people need not work in the areas that generate the most social good. They can choose engineering (with high net value) or law (with some sectors devoted nearly entirely to rent-seeking). Within law, they can work as Gilson's fabled "transaction cost engineers"<sup>48</sup> to help the (real) engineers bring their creations to the market; they can work in sectors generating more modest social returns; or they can help non-victims extract settlements from non-malfeasants. The choices they make turn on the returns they earn from their talent and expertise, and -- in turn -- those returns depend on the institutional structures in place. They vary widely across societies and -- as Murphy, *et al.*, show -- help determine the rate of economic growth.<sup>49</sup>

In Japan, the most experienced and talented lawyers do not focus on rent-extraction. Instead, the most experienced largely avoid the rent-seeking work. The most talented seem disproportionately (indeed, overwhelmingly) to choose firms like Nishimura where they mostly negotiate value-enhancing agreements. But among the less talented new lawyers, some have come to focus on straightforward rent extraction in the consumer finance industry.

2. The consumer finance industry. -- At the close of the 20th century, the Japanese consumer finance industry had been big business. Several large companies dominated the field. As of March 2000, the Aifuru firm earned 87.4 billion yen in profits (*eigyo rieki*) on revenues (*eigyo shueki*) of 239 billion (at 105 yen/\$, \$832 million on revenues of \$2.3 billion). Promise had profits of 106 billion yen on revenues of 301 billion. Acom had profits of 144 billion on revenues of 342 billion. And Takefuji earned 193 billion yen in profits on revenues of 371 billion.<sup>50</sup>

During the first years of the new century, the firms continued to grow. By early 2006, Aifuru earned 153 billion yen in profits on revenues of 553 billion (at 118 yen/\$, profits of \$1.3 billion on revenues of \$4.7 billion). Promise had profits of 96 billion yen on revenues of 381 billion, Acom had profits of 145 billion on 442 billion, and Takefuji had profits of 123 billion on 350 billion revenues. The earnings gave Aifuru a market capitalization of 1.31 trillion yen (\$11.1 billion), Promise of 985 billion, Acom of 1.15 trillion, and Takefuji of 1.18 trillion.<sup>51</sup>

3. The interest-refund claims. -- In 2006, all this changed. Effectively, the Supreme Court gave attorneys license to liquidate the industry. For some time, the government had regulated interest rates through several only haphazardly consistent statutes. One statute imposed criminal penalties on lenders who (as of the mid-2000s) charged more than 29.2 percent

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<sup>48</sup> See Gilson, *supra* note.

<sup>49</sup> See Kevin M. Murphy, Andrei Shleifer & Robert W. Vishny, *The Allocation of Talent: Implications for Growth*, 106 Q.J. Econ. 503 (1991).

<sup>50</sup> See *Nihon keizai shimbunsha, Nikkei kaisha joho [Nikkei Company Information]* (Tokyo: Nikkei, Summer 2001).

<sup>51</sup> See *Toyo keizai shimpo sha, Kaisha shikiho [Japan Company Handbook]* (Tokyo: Toyo keizai shimpo sha, spring 2006).

per year.<sup>52</sup> A second simultaneously capped the maximum enforceable interest at rates ranging from 15 to 20 percent (the "civil cap"), depending on the amount of the loan.<sup>53</sup> If a firm lent at rates above that civil cap but below 29.2, it did not incur criminal penalties but could not enforce the excess. Given that the market-clearing rate on unsecured loans to many borrowers lay above the civil cap, the statute provided that lenders and borrowers could waive it, provided they waived it knowingly and deliberately.<sup>54</sup>

Abruptly, the Supreme Court ended these voluntary over-civil-cap loans in 2006. In several cases during the preceding years, it had shown increasing skepticism toward the civil cap waivers.<sup>55</sup> In early 2006, it stopped the practice cold. It faced two cases where the borrowers had explicitly waived the civil cap. Because the lenders would not have lent them the money for less, the Court dismissed their waivers as involuntary. The higher interest rate was void, and the borrowers could apply the "excess" interest (the amount over the civil cap) toward their outstanding principal balance and claim any remainder in cash.<sup>56</sup>

4. The result. -- Debtors swamped the courts. In 2007, borrowers filed 9,257 interest refund suits, and their claims reached 27 percent of the new docket in the Tokyo District Court.<sup>57</sup> In 2008, they filed 12,900 suits, and in 2009 22,200 -- an astonishing 56 percent of all new suits.<sup>58</sup> Lawyers could not expect to file the claims indefinitely, of course. The stock of loans at the old rates limited the amount of interest-refund litigation they could bring -- but so did the

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<sup>52</sup> The maximum rate that triggered the penalties changed over the years, but in the early 1980s had been 109.5 percent; as of 2011, it had fallen to 20 percent. See Shusshi no ukeire, azukarikin oyobi kinri to no torishimari ni kansuru horitsu [Law Regarding the Receipt of Capital and the Control of Deposits and Interest, Etc.], Law No. 195 of 1954, Sec. 5; Kenji Utsunomiya, Shohisha kin'yu [Consumer Finance] 58-59 & Fig. 2-1 (Tokyo: Iwanami shoten, 2002); Jisuke Nagao, Kunihiko Nakata & Naoko Kano, eds., Rekuchaa Shohisha ho [Lectures on the Consumers Act] 164-66 (Kyoto: Horitsu bunka sha, 2011, 5th ed.).

<sup>53</sup> See Risoku seigen ho [Interest Limitation Act], Law No. 100 of 1954, Sec. 1; Utsunomiya, supra note, at 58-59 & Fig. 2-1; Nakata, et al., supra note, at 164; Shigeru Toriyabe & Nobuhiro Yamada, eds., Shohisha ho [Consumers Act] 15-16, 194-95 (Okayama: K.K. Daigaku kyoiku, 2010, 2d ed.)

<sup>54</sup> See Utsunomiya, supra note, at 59-60; Nakata, et al., supra note, at 165-66. Yet another statute specified the formalities that the parties would need to meet to assure this result.

<sup>55</sup> Nose v. K.K. Shii aaru hoomu, 1667 Hanrei jiho 68 (Sup. Ct. Jan. 21, 1999); Nakashima v. K.K. Nichiei, 1834 Hanrei jiho 3 (Sup. Ct. July 18, 2003); Koyama v. K.K. Nichiei, 1841 Hanrei jiho 95 (Sup. Ct. Sept. 11, 2003); Shigetani v. K.K. Nichiei, 1841 Hanrei jiho 100 (Sup. Ct. Sept. 16, 2003)

<sup>56</sup> [No names given], 1926 Hanrei jiho 36 (Sup. Ct. Jan. 24, 2006); [No names given], 1926 Hanrei jiho 17 (Sup. Ct. Jan. 13, 2006); see generally, e.g., Andrew M. Pardieck, Japan and the Moneylenders -- Activist Courts and Substantive Justice, 17 Pacific Rim L. Pol'y J. 529 (2008); Souichiro Kozuka & Luke Nottage, The Myth of the Cautious Consumer: Law, Culture, Economics and Politics in the Rise and Partial Fall of Unsecured Lending in Japan, in Johanna Niemi, et al., eds., Consumer Credit, Debt and Bankruptcy: Comparative and International Perspectives ch. 10 (Oxford: Hart Pub., 2009); Shusei Ono, Kashikin gyo ni matsuwaru saikin no Saikosai hanrei no hori [The Legal Principles in Recent Supreme Court Opinions Regarding the Credit Industry], 1319 Jurisuto 26 (2006).

<sup>57</sup> See Saiko saibansho, Kashikingyosha ni taisuru kabaraikin henkan seikyu soshu ni yoru tokei deeta jo no eikyo wo torinozoku hoho [Methods to Remove the Effect of the Interest-Refund Claims Against the Lending Industry from Statistical Data] (Powerpoint presentation, no date), available at: [www.courts.go.jp/saikosai/vcms\\_lf/80903002.pdf](http://www.courts.go.jp/saikosai/vcms_lf/80903002.pdf)

<sup>58</sup> Kabaraikin henkan soshu ga kyuzo, Tokyo chisai, 09nen 2manken [Interest-Refund Suits grow Rapidly, Hit 20,000 cases in 2009], available at: [http://blogs.yahoo.co.jp/nb\\_ichii/30835724.html](http://blogs.yahoo.co.jp/nb_ichii/30835724.html)

solvency of the finance firms. In time, the number of viable claims would start to fall -- but so would the number of consumer finance firms still in business.

The claims exemplified rent-seeking. The plaintiffs had borrowed money at market rates. They had agreed to over-civil-cap rates because they presented lenders with a substantial risk of default. Had they demanded rates below 15 percent, the lenders simply would have refused. So long as they expressly waived the statutory cap, the statute provided that their lenders could enforce the market rates. And waive them the plaintiffs did. They promised to pay rates above the civil cap, and the lenders lent. Now, the plaintiffs sued to enforce a rate to which the lender never would have agreed. The Supreme Court in 2006 blessed their suits, and the litigation began.

The claims all-but-destroyed the consumer finance industry (see Figure 1). By 2010, Takefuji -- once the largest consumer finance firm in the country -- was paying 100 billion yen a year in refunds, and filing for bankruptcy.<sup>59</sup> From 2006 to 2012, Aifuru's stock price dropped 97 percent.<sup>60</sup> Promise was closing offices. Acom was asking staff to retire. In March of 2004, 24,000 firms made consumer loans. By October 2010, that number had plummeted to 2,740 -- over 20,000 firms had gone out of business.<sup>61</sup> The volume of unsecured personal loans from the finance firms fell apace: from 9.9 trillion yen in 2007 to 4 trillion in March 2011.<sup>62</sup>

[Insert Figure 1 about here.]

5. The lawyers involved. -- (a) The man in charge. Godfather to the relentless rent-seeking was the colorful populist Kenji Utsunomiya. As the 21st century opened, he was writing articles and a book excoriating the consumer finance industry.<sup>63</sup> It was Merchant of Venice all over again. The lenders duped unsuspecting borrowers, he argued. They harassed, cajoled, threatened, intimidated. They destroyed families. They ruined careers. They drove debtors to suicides.

Utsunomiya claimed to have devoted his career to protecting consumers from these Japanese Shylocks, and he used the theme to good effect. By 2010, his colleagues voted him chairman of the JFBA. With the support of both the Communist and Socialist parties, he ran (unsuccessfully) for governor of Tokyo in 2012.

(b) The associates. Although Utsunomiya himself was born in 1946, most of the lawyers in the interest-refund sector were young. By early 2013, over 200 firms advertised interest-

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<sup>59</sup> See Shohisha kinyu gyokai kaimetsu [Destruction of Consumer Finance Industry], *Nikkei bijinesu*, Dec. 14, 2010. Available at: <http://business.nikkeibp.co.jp/article/manage/20101213/217521/?rt=nocnt>; The Collapse of Japan's Consumer Finance Fortune, *Forbes* (Sept. 29, 2010), available at: <http://www.forbes.com/sites/luisakroll/2010/09/29/the-collapse-of-japans-consumer-finance-fortunes/2/>

<sup>60</sup> See Loan-Shark Lending Surge Feared in Japan, *Bloomberg* (Aug. 8, 2012), available at: <http://www.bloomberg.com/news/2012-08-07/loan-shark-lending-surge-feared-in-japan.html>

<sup>61</sup> See Shohisha kinyu gyokai kaimetsu [Destruction of Consumer Finance Industry], *Nikkei bijinesu*, Dec. 14, 2010, available at: <http://business.nikkeibp.co.jp/article/manage/20101213/217521/?rt=nocnt>

<sup>62</sup> See An Electronic Age for Japanese Consumer Finance?, *Partners in Prepaid* (Aug. 26, 2011), available at: <https://www.partnersinprepaid.com/topics/articles/an-electronic-age-for-japanese-consumer-finance.html?maincategory=TOPICS&subcategory=TRENDS%20+%20INSIGHTS>

<sup>63</sup> E.g., Utsunomiya, *supra* note.

refund related services on the internet. Either as owners or employees, they involved over 800 lawyers.

The most obvious fact about these 800+ lawyers was their age: they were young. Of the bar as a whole in 2006, 33 percent (10,605 of the 32,088 lawyers) had joined the bar in 2006 or later.<sup>64</sup> Of the lawyers in firms advertising interest-refund work, 62 percent had joined the bar since 2006 (523 of the 844). Apparently, the work pays low returns to experience.

Utsunomiya himself attended the University of Tokyo, but most of the lawyers in this sector were decidedly mediocre. Among lawyers generally in 2005, 15.6 percent had attended college at the University of Tokyo, and among Nishimura associates 48.6 percent. Among the lawyers in the interest-refund sector, 11.2 percent had (Table 1). Among lawyers generally in 2005, 44.8 percent had attended one of the top 10 schools, and among Nishimura associates over 90 percent. Among the lawyers at the interest-refund firms 57.7 percent of those advertising their undergraduate background on the web reported a top-10 school, but only 78.1 percent advertised the school they attended. The decision about what to post on the web is obviously not random.

The interest-refund lawyers did not do well on the more recently instituted post-graduate law-school sweepstakes either. Among all lawyers who attended a law school, 10.0 percent attended the University of Tokyo, and 52.3 percent of the Nishimura associates did. Of the lawyers in the interest-refund firms, only 3.6 percent attended the University of Tokyo (Table 2). Among all lawyers who attended a law school, 47.2 percent attended a top-10-ranked law school, and 94.6 percent of the Nishimura associates did. Of the lawyers in the interest-refund firms, only 31.3 percent attended a top-10 law school.

Populist in Richard Nixon's Harold Carswell vein, a few of the interest-refund lawyers seemed even to celebrate their mediocrity. Nothing had come easily to him, Niigata lawyer Makoto Imai proudly proclaimed on his firm website. He had found it hard to pass the LRTI exam. He had found it hard to hold a job. But all that just made him an approachable lawyer for the people:<sup>65</sup>

Until I became a lawyer I commuted to night school for eight years (high school and university), and then passed the LRTI exam on the 7th try. During this time, I worked at ten different jobs, including one as a gasoline station attendant. I worked at small firms and I worked at big firms.

The junior lawyers at these interest-refund firms obviously received little training of any value. At Imai's firm (a chain with several offices), two senior partners supervised 13 very junior associates. The partners may have taught the associates how to file the interest-refund claims, but the claims were not going to last forever: the stock of pre-2006 loans was finite, and so were the assets of the consumer finance firms. Soon, these junior lawyers would need another way to earn their living. Yet in many cases, they worked in firms like Imai's with one or two senior lawyers coordinating an army of new lawyers.

The Yamamoto Yasushi Law Office in Yokohama was typical.<sup>66</sup> Name proprietor Yamamoto was born in 1950, attended the second-tier Meiji University, joined the bar in 1975, and founded his law firm in 1978. On the firm's web page, he advertized services related to "divorce, inheritance, traffic accidents, and debt restructuring." Eight other lawyers worked at

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<sup>64</sup> Overall total as reported at [http://2chreport.net/hen\\_13.htm](http://2chreport.net/hen_13.htm).

<sup>65</sup> <http://www.n-daiichi-law.gr.jp/index.php/profile/imaimakoto>

<sup>66</sup> See <http://www.bengoshi-yamamoto.gr.jp/top.html>

the firm: two from the class of 2006, one from 2008, two from 2009, one from 2010, and two from 2011. Apparently, associates cycled through the office on five-year stints.

Other firms followed a similar pattern. At Aichi sogo, four senior lawyers supervised 19 lawyers with 6 years' experience or less. At Haruka, two senior lawyers supervised seven lawyers with four years' experience or less. At Tokyo's "Home One" firm, two senior lawyers supervised ten lawyers with seven years' experience or less (six with two years' experience or less). And at a few of the firms, virtually no one brought any experience at all: at Minato kokusai, one of the 23 lawyers joined the bar in 2005, two in 2007, three in 2008, and 12 in 2010 or 2011.

(c) Adire. Yet of all the firms in the interest-refund market, one dominated completely: Adire. Founded and apparently owned by one Yukito Ishimaru, by early 2013 the firm counted 87 lawyers in 40 offices. Ishimaru himself had been born in 1972, and joined the bar in 2003 -- after 3 DUI arrests and a suspended prison term. Two of its 87 lawyers joined the bar before 2000, and a third joined in 2002. All others joined the bar in 2006 or later. Four lawyers with 10 to 16 years' experience, in other words, purported to supervise 83 others with 6 years' experience or less (66 with 3 years' experience or less) -- dispersed over 40 offices. Not for nothing did former clients complain on the web about Adire lawyers' inexperience.<sup>67</sup>

Adire's lawyers had not likely turned down offers from firms like Nishimura. Of the 52 lawyers with post-graduate law-school degrees, two had attended the University of Tokyo. Five others had attended the University of Kyoto or Hitotsubashi. And another eight had attended one of the other top-10 schools.

According to the internet, Adire focused almost entirely on interest-refund and other consumer debt claims. It offered prospective clients a toll-free number (though former clients complained that it staffed the number with call-center operators who knew nothing).<sup>68</sup> It distributed pamphlets about bankruptcy -- one in comic-book form. It ran television commercials advertising its services -- some of them cleverly playing to Japanese mythology, some as anime, one that managed to make divorce seem humorous.<sup>69</sup>

Notwithstanding all this, the firm was not cheap. It offered highly routinized services. For that work it used unsupervised lawyers with virtually no experience and very little talent, and ten non-lawyer "judicial scriveners." Yet the firm still charged substantial rates.<sup>70</sup> For interest-refund claims, it demanded a retainer of 42,000 yen (40,000 yen plus 5 percent consumption tax; at the 92 yen/\$ rate in early 2013, \$457) per lender, and a contingent fee of 21 percent of any amount collected through settlement (20 percent for the firm, plus 5 percent consumption tax), or 26.25 percent (25 percent for the firm, 5 percent consumption tax) of any amount collected through litigation. For personal bankruptcy filings, it charged 500,000-700,000 yen.<sup>71</sup>

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<sup>67</sup> See <http://www.syakkin-daio.com/archives/68>.

<sup>68</sup> See <http://www.syakkin-daio.com/archives/68>.

<sup>69</sup> See <https://www.youtube.com/watch?v=2t89QbQBCC4;https://www.youtube.com/watch?v=JSSMK0ZGrXM&playnext=1&list=PL726AC353885CB6A0>.

<sup>70</sup> See <http://www.adire.jp/account/kojin.html>.

<sup>71</sup> See <http://www.ko2jiko.com/soudan/hiyou.html>. For certain other cases (some traffic accidents), it promises a fully contingent compensation scheme.

There is a perverse circularity to all this, of course. Those with poor enough judgment to find themselves swamped by unsecured loans from consumer finance firms are exactly the class of clients likely to retain firms like Adire. Most consumers with the judgment to avoid Adire will also have the judgment to skirt unsecured consumer finance loans.

By early 2013, Ishimaru himself was already planning the firm's next move. The problem with the firm's business model, he explained in a magazine interview, lay in the fixed stock of pre-2006 loans. Inevitably, the interest-refund claims would disappear. Toward that day, he hoped to diversify into traffic accident and divorce litigation. The firm could move into those sectors as is, he claimed. He was nothing if not forthright:<sup>72</sup>

A few special fields are different -- fields like medical malpractice and intellectual property. Other fields, though, are ones that a LRTI graduate can easily handle without much expertise. Mind you, I probably wouldn't say this to another lawyer. But you don't need much legal expertise or experience to handle traffic accident or divorce litigation.

All he needed to do was open an office, he continued. Capital did not present a problem. He just needed a few staff, a telephone, a photocopy machine, and a fax machine.

Just to be safe, however, Ishimaru also diversified his Adire law firm into a conveyor-belt sushi franchise.<sup>73</sup>

#### IV. Conclusions

Legal work does not all involve rent-seeking, but much of it does. In the U.S., a large segment does. Product liability claims present a serious threat to many firms non-negligently selling non-defective products. Malpractice suits threaten doctors who offer the most sophisticated services. Class action suits let attorneys extort massive payments from firms for virtually no misdeed.

The law need not be this way. Largely, in Japan it is not. Whether lawyers earn high returns from rent-seeking depends crucially on the institutional structures in place. In the U.S., the civil jury and elected state judges, together with aspects of the substantive and procedural rules, encourage lawyers to turn to value-dissipating rather than value-enhancing sectors.

In Japan, the institutional structures do not do this. Plaintiffs do file claims when they suffer legal wrongs, and traffic accidents present the obvious example. But they rarely file products liability claims, rarely bring malpractice suits, and the procedural rules do not allow class actions.

Recently, the Japanese Supreme Court unilaterally invented an entire field of rent-seeking litigation in the consumer finance industry. Those who had borrowed at rates above the civil interest-rate cap could sue for a refund. They could sue even though the statute had allowed them to waive the cap and they had expressly and knowingly done so.

Still, the more talented lawyers did not shift into this new sector. Borrowers swamped the courts, to be sure, and virtually destroyed the consumer finance industry. Yet experienced and talented lawyers largely shied away from this rent-seeking opportunity. Instead, primarily only the lawyers with the least experience and least talent cultivated the sector.

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<sup>72</sup> See Kaitenzushi jigyo no saishu mokuhyo wa kaigai tenkai [The final Goal of the Conveyor-Belt Sushi Business is International Expansion], Diamond Online, Mar. 14, 2012, available at: <http://diamond.jp/articles/-/16572?page=3>

<sup>73</sup> This is a popular form of low-end, fast-food sushi restaurant in Japan. See <http://kabumatome.doorblog.jp/archives/65634371.html>.

**Table 1: Undergraduate College**A. University of Tokyo

Pre 2006 Random sample:	15.9%	(n=1120)
Nishimura associates:	48.6	(n=321)
Pre 2006 Bottom-feeders:	12.5	(n=264)
2006~ Bottom-feeders:	10.5	(n=392)

B. Top 3

Pre 2006 (random sample):	25.1
Nishimura associates:	49.2
Pre 2006 Bottom-feeders	26.5
2006~ Bottom-feeders:	21.4

C. Top 10

Pre 2006 (random sample):	44.8
Nishimura associates:	91.0
Pre 2006 Bottomfeeders	60.2
2006~ Bottom-feeders:	56.1

Notes: "Bottom-feeding" firms are those advertising interest-refund services on the internet.

School rankings are from exam-preparation schools, by difficulty of undergraduate admission. The top school is the University of Tokyo; the top 3 include Kyoto and Hitotsubashi; the top 10 include Waseda, Keio, Osaka, Kobe, Jochi, Tohoku, and Nagoya.

The random sample includes 1120 attorneys, selected from from the 2005 JFBA directory.

Sources: Firm websites; Horitsu shimbunsha, ed., Zenkoku bengoshi taikan [National Lawyer Directory], 10th ed. (Tokyo: Horitsu shimbun sha, 2005).

Table 2: Post-Graduate Law School

A. University of Tokyo

Overall total	10.0%	(n=13,207)
Nishimura associates	52.3	(n=149)
Bottom-feeders	3.6	(n=275)

B. Top 3

Overall total	20.7
Nishimura associates	67.8
Bottom-feeders	11.2

C. Top 10

Overall total	47.2
Nishimura associates	94.6
Bottom-feeders	31.3

Note: "Overall total" gives the fraction for the 2006-2012 classes, by the Ministry of Justice. "Bottom-feeding" firms are those advertising interest-refund services on the internet.

School rankings are from exam-preparation schools, by difficulty of undergraduate admission. The top school is the University of Tokyo; the top 3 include Kyoto and Hitotsubashi; the top 10 include Waseda, Keio, Osaka, Kobe, Jochi, Tohoku, and Nagoya.

Sources: Firm websites; overall total as reported at [http://2chreport.net/hen\\_13.htm](http://2chreport.net/hen_13.htm).

**Table 3: Unemployed New Lawyers**

	Total New Lawyers	Unemployed at				
		Outset	1 month	2 month	3 month	4 month
2008	2148	5.68%	4.19%	2.51%	1.96%	1.68
2009	2162	8.51	5.83	4.21	3.56	2.73
2010	1972	13.08	8.67	6.24	4.67	3.90
2011	1979	23.45	16.47			
2012	1916	28.50				

**Notes:** A lawyer is treated as "unemployed" if he has not registered with the bar association. An attorney cannot practice law without registering, but he can register even if he has no legal practice. The true unemployment figures will thus be higher than given here.

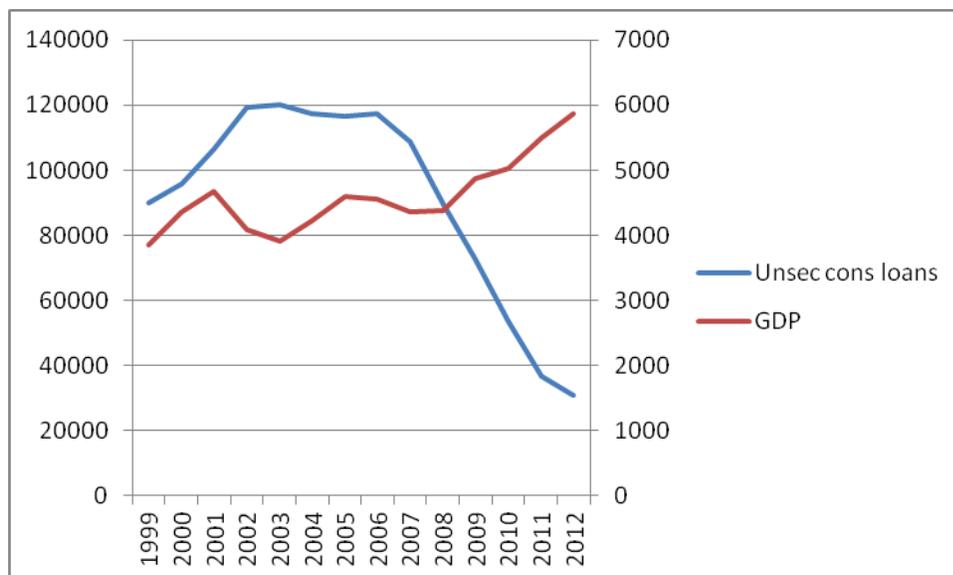
"4 month" figures for 2008 and 2009 are 5 months.

**Sources:** Nihon bengoshi rengo kai, ed., Hoso no yosei ni kansuru fooramu [Forum on the Development of the Bar] (Jan. 27, 2012), available at:

<http://www.moj.go.jp/content/000084023.pdf>;

<http://blog.livedoor.jp/schulze/archives/52001273.html>

Figure 1: Unsecured Consumer Loans



Note: The left axis gives the amount of unsecured consumer loans, in 100 million yen. The right axis gives the size of the Japanese GDP, in billion USD.

Sources: Kinyu cho, ed., Gyotai betsu no kashitsuke zandaka [Loan Amounts Outstanding, by Sector] (Tokyo: Kinyu cho, 2012), available at: <http://www.fsa.go.jp/status/kasikin/20120928/index.html>; Japanese GDP, (Trading Economies), available at: <http://www.tradingeconomics.com/japan/gdp>.