

Why Female Lawyers Get Less – Multiple Glass Ceilings for Japanese Female Lawyers

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Introduction: Why Do We Need to Discuss “Lawyers?”

In the Third Basic Plan for Gender Equality, the Gender Equality Bureau Cabinet Office of the Japanese Government set a goal to increase women participation in leadership positions in all fields of Japanese society to at least 30% by the year 2020.¹ This goal, however, seems practically impossible to achieve in the Japanese legal profession. As of 2014, only 24% of judges, 22.4% of prosecutors, and 18.2% of lawyers (*bengoshi*) were women in Japan.² Among these three groups, the gender gap among lawyers is not only serious in terms of demographic ratio, but equally troubling in terms of income and working environment.

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1. The Gender Equality Bureau Cabinet Office website provides updates on policies promoting gender equality in Japan and the latest data on female inclusion. GENDER EQUALITY BUREAU CABINET OFFICE, <http://www.gender.go.jp> (last visited Dec. 25, 2015). See also Gender Equality Bureau, *Summary of Third Basic Plan for Gender Equality* (2010), http://www.gender.go.jp/english_contents/about_danjo/whitepaper/pdf/3rd_bpg.pdf (last visited Feb. 15, 2015).

2. Japan Federation of Bar Associations (“JFBA”), 1-2-13 *Saibankan sū Kensatsukan sū Bengoshisū no Suii* [Changes in the Number of Judges, Prosecutors, and Lawyers], in *Bengoshi Hakusho 2015 Wenban* [White Paper on Attorneys 2015], 63, http://www.nichibenren.or.jp/library/ja/jfbainfo/statistics/data/whitepaper/2015/1-3-4_hososanshasuii2015.pdf (last visited Dec. 28, 2015).

This paper focuses on the gender gap among Japanese lawyers. Although Article 24 of the Japanese Constitution declares equality between the two sexes, it seems the Japanese bar community has not been able to achieve gender equality between its members. This is problematic, especially since all lawyers have taken an oath to uphold the Constitution and respect the rule of law. Indifference to this problem, especially by male bar leaders, has created invisible obstacles—i.e., Glass Ceilings—for female lawyers pursuing professional careers.

Definition of “Glass Ceiling”

Ann M. Morrison argues in her book that the Glass Ceiling is “a transparent barrier [t]hat kept women from rising above a certain level in corporations.”³ But, the glass ceiling “is not simply a barrier for an individual, based on the person’s inability to handle a higher-level job. Rather, the glass ceiling *applies to women as a group who are kept from advancing higher because they are women.*”⁴ While Morrison speaks about the glass ceiling in the context of female corporate employees, this description applies to female lawyers in Japan. This paper employs Morrison’s definition of the glass ceiling and explains why multilayered glass ceilings exist above the heads of Japanese female lawyers.

Why Do Female Lawyers Matter?

The gender gap among lawyers is not only a problem for the bar community but also for the general public. Historically, Japanese female lawyers have provided legal services to female victims suffering from domestic violence, poverty caused by single-motherhood, sex crimes, and other problems resulting from social or economic gender gaps.⁵ Yet, as of 2012, sixty-eight out of 253

3. ANN M. MORRISON ET AL., *BREAKING THE GLASS CEILING* 13 (Updated ed. 1992).

4. *Id.* (emphasis added).

5. In 1960s and 1970s, female lawyers represented female employees who were forced to leave their jobs at the ages of twenty-five or thirty simply because they were women. *See* NIHON BENGOSHI RENGOKAI RYŌSEI NO BYŌDŌ NI KANSURU IINKAI ED., JOSEI BENGOSHI NO AYUMI: 3-NIN KARA 3000-NIN E [The Journey of Female Attorneys: From 3 to 3000], 2007,

Japanese jurisdictions had no female lawyers.⁶ As of 2014, eighteen out of fifty-two bar associations had less than twenty female lawyers.⁷ Obviously, a lack of female lawyers can result in reduced access to justice in those areas, especially for female citizens who want to be assisted by female legal professionals.

Even if citizens have access to female lawyers, one must examine whether female lawyers' working environments are equivalent to that of male lawyers. Performance of female lawyers directly affects the content and design of women's rights. If a certain field of law does not accept female lawyers, male lawyers may naturally dominate that field. If female lawyers face obstacles to career development that male lawyers do not in a particular field, obstacles to achieving gender equality in that field may result.

Finally, though female lawyers have been major advocates for women's rights generally, they have suffered from a significant gender gap in the bar community since its birth in 1940. Their professional lives reflect the status of women in Japanese society. Analyzing the problem of gender inequality and testing solutions in the legal community may advance women's status in Japanese society.

Based on these perspectives, I first briefly review the history of Japanese female lawyers. I then analyze the realities faced by female lawyers in Japan based on two sets of empirical data. My findings show there are multiple glass ceilings for female lawyers in various stages of their professional careers, starting with admission to the bar. Finally, I present three factors preventing female lawyers from pursuing their careers in the same way as male lawyers: the sets of values of individual lawyers, the bar community, and society as a

23–26. Female lawyers also developed case law on sexual harassment in the early 1990s. Their effort resulted in 1997 revision of the Equal Employment Opportunity Act, which obligated all employers to prevent sexual harassment in the workplace. *Id.* at 95–120.

6. JFBA, *Dainiji Nihon Bengoshi Rengōkai Danjo Kyōdōsankaku Suishin Kihonkeikaku* [The Second Basic Plan Promoting Gender Equality in the JFBA], 2013, http://www.nichibenren.or.jp/library/ja/opinion/report/data/2013/opinion_130314.pdf (last visited Dec. 31, 2015).

7. JFBA, 1-1-7 *Bengoshikai Betsu Bengoshisū to Sono Uchiwake* [Number of Lawyers and its Breakdown by Bar Associations], in *Bengoshi Hakusho 2015 Nenban* [White Paper on Attorneys 2015], 2015 JFBA, http://www.nichibenren.or.jp/library/ja/jfba_info/statistics/data/white_paper/2015/1-1-2_uchiwake_2015.pdf (last visited Feb. 15, 2016). In Japan, all lawyers are required to register with a local bar association and the Japan Federation of Bar Associations (JFBA). There are three bar associations in Tokyo and four bar associations in Hokkaido. The rest of prefectures has one bar association each.

whole. In conclusion, I recommend the bar take concrete initiative to share among all community members an understanding of the problems that female lawyers encounter today. All bar members should recognize that having diverse lawyers contributes to performance of their mission to achieve social justice.

History of Female Lawyers in Japan

The Birth of Japanese Female Lawyers

The participation of Japanese women in the legal professional community started in 1940, when the first three women registered as lawyers.⁸ The old Attorney Act of 1889 barred women from becoming lawyers because it required that, to become a lawyer, one be a “Japanese adult with legal capacity and a man.”⁹ Although the revised Attorney Act of 1933 removed the requirement of “being a man,” it took seven years to have female lawyers practicing.

The old education system also barred women from becoming legal professionals. Graduation from a “high school” (*kōtō gakkō* before the 1947 Education Reform) or “college” (*senmon gakkō* before the 1947 Education Reform) specified by the Ministry of Education or enrollment in or graduation from a university was required in order to take the old National Bar Examination. However, high schools were exclusively for male students and no woman’s college was specified. Thus, the only way for women to obtain the qualification to take the National Bar Examination was to enter a university. Meiji University, a private institution in Tokyo, was the first university to establish a legal department for female students (*senmon joshibu*) in 1929. It endeavored to train female lawyers to practice in modernized Japanese society. As a result, all female lawyers registered to practice before WWII were Meiji University graduates.¹⁰

8. For the history of Japanese female legal professionals in general see YOSHIKO MIBUCHI ET AL., JOSEI HÔRITSUKA: KAKUDAIISURU SHINJIDAI NO KATSUDÔ BUN'YA [FEMALE LAWYERS: AN ERA OF EXPANDING OPPORTUNITIES] (1983).

9. Bengoshihô [Attorney Act] of 1889, art. 2(1) (current version Bengoshihô [Attorney Act], Act No. 87 of 2005), (Japan).

10. While there was no written law prohibiting women from becoming judges or prosecutors even before WWII, women were not permitted to be admitted as judges or prosecutors because the Civil Code at that time provided that women became legally

Although the New Constitution of Japan (1947) declares equality between the two sexes,¹¹ and the new Attorney Act (*Bengoshihō*) of 1949 did not discriminate against women for admission purposes, female participation in the bar community was not promoted smoothly. As Table 1 below shows, the ratio of female lawyers grew very slowly, especially by the year 2000. It was only 2.1% in 1970, more than twenty years after the new Constitution's adoption. It was only 5.6% in 1990.

[Table 1] Ratio of Female to Male Lawyers, 1950-2010¹²

Year	1950	1960	1970	1980	1990	2000	2010
Number of male lawyers	5,821	6,279	8,298	11,021	13,034	15,596	24,129
Number of female lawyers	6	42	180	420	766	1,530	4,660
Ratio of female lawyers	0.1%	0.7%	2.1%	3.7%	5.6%	8.9%	16.2%

Education Reform in 2004 and Increase of Female Lawyers

A turning point for female lawyers was the reform of the training system for the legal profession. Based on recommendations by the Justice System Reform Council (*shihō seido kaikaku*) in 2001, Japan introduced the graduate-level professional law school system in 2004.¹³ Before that time, the only requirement to become a

incompetent after marriage. Thus, it was only after the end of WWII when Japanese female judges and prosecutors appeared in court. In 1949, one woman was appointed as a judge and another woman was appointed as a prosecutor. These two were the first female legal professionals to be appointed to the judiciary and the prosecutor's office respectively. Yoshiko Mibuchi, *Watashi no Eranda Saibankan no Michi* [My Career Path as a Judge], in MIBUCHI ET AL, *supra* note 8, at 12–13.

11. Nihonkoku Kenpō [KENPŌ] [CONSTITUTION], art. 14 (Japan).

12. JFBA, 1-1-5 *Danjo Betsu Bengoshisū no Suii* [Changes in Number of Lawyers by Gender], in *Bengoshi Hakusho 2015 Nenban* [White Paper on Attorneys 2015], 2015 JFBA, http://www.nichibenren.or.jp/library/ja/jfba_info/statistics/data/white_paper/2015/1-1-4_danjosuii2015.pdf (last visited Feb. 15, 2016).

13. Justice System Reform Council, *Recommendations of the Justice System Reform Council: For a Justice System to Support Japan in the 21st Century*, (June 2001), ch. 3 pt. 2 §3, http://japan.kantei.go.jp/policy/sihou/singikai/990612_e.html (last visited Dec. 28, 2015). See also Setsuo Miyazawa, *The Politics of Judicial Reform in Japan: The Rule of*

member of the legal profession, i.e., a judge, prosecutor, or lawyer, was to pass the National Bar Examination (*shihōshiken*). This examination was highly competitive, with a passage rate of less than 3%. All successful candidates had to complete training at the Legal Research and Training Institute under the Supreme Court for two years. The average candidate tried to pass the Bar Examination five or six times after graduating from a college with a law department. This path prevented most women from entering the bar community. The Justice System Reform Council, however, recommended:

[T]he basic viewpoint of the current reform of the legal training system is to train through a “process” human resources equipped with qualities and abilities suitable for supporting the justice system in the 21st century, and that efforts especially should be made to develop an environment where *diverse people can study at law schools* without any difficulty, in accordance with their individual circumstances.¹⁴

Upon this recommendation, the graduate-level law school was established as a prerequisite to take the National Bar Examination¹⁵ and the apprenticeship at the Legal Research and Training Institute was shortened to one year. This reform likely encouraged women to enter newly established law schools. Table 2 shows an increase in female participation in the three branches of the legal profession since 2007. Obviously, the percentage of women in each branch has been increasing since the establishment of law schools. The ratio is, however, still below 20% for female lawyers even as of 2015, showing a serious divergence from the government target of 30% by the year of 2020.¹⁶ Though 1850 individuals passed the latest

Law at Last? 2 ASIAN-PAC. L. & POL'Y J. 88 (2001).

14. *Id.* (emphasis added)

15. There is a bypass to the National Bar Examination. *Yobi Shiken* (preliminary examination) was introduced since 2011. When a candidate passes this examination, he or she can take the National Bar Examination without graduating from a law school. In 2011, the successful candidates of this preliminary examination was only 116, but the number of successful candidates increased every year: 233 in 2012, 351 in 2013, 356 in 2014, and 394 in 2015. See Ministry of Justice, *Shihoshiken Yobishiken no Kekkani Tsuite*, http://www.moj.go.jp/jinji/shihoshiken/jinji07_00027.html (last visited Feb. 22, 2016)

16. As mentioned in Introduction, The Third Basic Plan for Gender Equal Society which was approved by the Cabinet in 2010, states that, “It is essential for us to strengthen

National Bar Examination in 2015, only 399 (21.6%) were female candidates.¹⁷ If this tendency continues, participation of female lawyers will never reach 30%.

[Table 2] Percentage of Female Legal Professionals by three branches from 2006-2015

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
<i>Number of judges</i>	2,535	2,610	2,685	2,760	2,805	2,850	2,850	2,880	2,944	2,944
<i>Percentage of female judges</i>	N/A	N/A	N/A	19.6%	20.3%	20.9%	21.9%	22.5%	23.1%	24.0%
<i>Percentage of prosecutors</i>	1,648	1,667	1,739	1,779	1,806	1,816	1,839	1,847	1,877	1,896
<i>Percentage of female prosecutors</i>	14.8%	15.6%	17.2%	18.2%	19.0%	19.7%	19.8%	20.4%	21.4%	22.4%
<i>Number of lawyers</i>	22,021	23,119	25,041	26,930	28,789	30,485	32,088	33,624	35,045	36,415
<i>Percentage of female lawyers</i>	13.0%	13.6%	14.4%	13.5%	16.2%	16.8%	17.4%	17.7%	18.1%	18.2%

and accelerate our efforts to achieve the target of “increasing the share of women in leadership positions to at least 30% by 2020 in all fields in society.” Accordingly, the legal professional community is also expected to have 30% women by 2020, which seems to be difficult to achieve in practice. See Gender Equality Bureau, *Summary of Third Basic Plan for Gender Equality* (2010), http://www.gender.go.jp/english_contents/about_danjo/white_paper/pdf/3rd_bpg.pdf (last visited Feb. 15, 2015).

17. Among 9,072 applicants to the National Bar Examination, 25.9% are female. Ministry of Justice, *Shihoshiken no Shutsugan Jokyō ni Tsuite* (2015) (Japan), <http://www.moj.go.jp/content/001142811.pdf> (last visited Feb. 22, 2016). One potential reason for why there are not so many female successful candidates recently could be the failure of law schools to adequately prepare their graduates for the National Bar Examination. The passage rate of the National Bar Examination has continually decreased since the New National Examination was introduced in 2006 after establishment of the law school system. Even though Justice System Reform Council recommended that the passage rate of the National Bar Examination should be around 70% to 80%, the actual passage rate was only 23.1% in 2015. Justice System Reform Council, *supra* note 13 at ch. 2 pt. 2 §2(2)(d). It was 48.3% when the new National Bar Examination was started in 2006, and this was the highest passage ratio since that time. Ministry of Justice, *Shin Shihoshiken no Kekka ni Tsuite* (2006) (Japan), <http://www.moj.go.jp/content/000006357.pdf> (last visited Feb. 22, 2016). Due to this situation, law school applicants today are mainly those who graduated the faculty of law where the demographic proportion of female students is small.

Efforts of the Japanese Federation of Bar Associations (JFBA) to Promote Gender Equality in the Bar Community

Until recently, the female lawyer's underrepresentation was not treated as an important problem in the legal community. While the JFBA established the "Special Committee Concerning Women's Rights" (currently called the Committee for Gender Equality) in 1976, this committee mainly focused on women's issues in society generally and how lawyers should commit to improve the situation. It was not until 2007 that the JFBA established the "Headquarter for Promoting Gender Equality," which focused on gender equality in the bar community. In the same year, the JFBA adopted its first resolution pursuing gender equality in the JFBA.¹⁸ These recent events illustrate that the JFBA and local bar associations have only started focusing on the bar's gender issue.

In 2008, the JFBA adopted the First Basic Plan to Promote Gender Equality for the bar community. This plan lists the following twelve issues with which the JFBA should deal to promote gender equality in the bar community: (1) Promoting participation of female lawyers in the decision-making process of the bar; (2) Conducting a survey and examination about the gender gaps in income and working environment; (3) Ensuring gender equality in recruitment processes and work-place treatment; (4) Resolving the problem of a lack of female lawyers in rural areas; (5) Supporting bar members in maintaining work-life balance; (6) Having a discussion about how official events and handouts should be from the viewpoint of gender equality; (7) Preventing members' discriminative statements and treatment by gender; (8) Establishing a system of processing complaints; (9) Participating in international activities promoting gender equality of the bar; (10) Conducting awareness campaigns and lectures about gender equality; (11) Establishing a scheme to promote gender equality of the bar; and (12) Making an effort to resolve

18. Needless to say, establishment of the JFBA Headquarter for Promoting Gender Equality and its initiative caused by the government policy promoting gender equality in Japanese society. The Second Basic Plan for Promoting Gender Equality in 2005 published by the Gender Equality Bureau Cabinet Office strongly encouraged voluntary effort of both public and private sectors to commit to promote gender equality so that society as a whole can achieve to have 30% participation of women in the leadership positions by 2020. Gender Equality Bureau Cabinet Office, *Dainiji Danjo Kyōdō Sankaku Kihon Keikaku* [*The Second Basic Plan for Promoting Gender Equality*], 2005, http://www.gender.go.jp/about/danjo/basic_plans/2nd/pdf/2-01.pdf (last visited Dec. 30, 2015).

gender-related problems in the judiciary.

After adopting this Basic Plan, there were several improvements in the bar community. The most notable result was that, as of November 2012, fifteen out of fifty-two bar associations had adopted a rule exempting lawyers who were taking childcare leave from paying the membership fee. In Japan, it is generally a prerequisite for practice to pay a membership fee to the local bar association in which the lawyer belongs and to the JFBA. This is a serious burden for female lawyers who have recently given birth and cannot practice due to the local bar membership's general annual cost, which ranges from about 500,000 yen (about 4,171 USD) to 1,150,000 yen (about 9,594 USD).¹⁹ The bar's membership fee system originally did not consider female lawyers who had to temporarily leave the practice for childcare but wished to continue their professional careers.

In 2013, the First Basic Plan was revised by the Second Basic Plan.²⁰ The Second Basic Plan of 2013 lists the following eleven issues to which the JFBA should proactively commit: (1) Establishing a scheme to promote gender equality of the bar; (2) Conducting awareness campaigns and lectures; (3) Promoting expansion of the ratio of female lawyers and removing unbalanced distribution of female lawyers; (4) Promoting participation of female lawyers in the decision-making process of the bar; (5) Conducting a survey and examination about the gender gaps in income and working environment; (6) Collecting and providing role models for young female lawyers; (7) Ensuring gender equality in recruitment process and treatment; (8) Preventing discriminative statements and treatment by gender; (9) Supporting bar members in maintaining work-life balance; (10) Participating in international activities promoting gender equality of the bar; and (11) Making an effort to resolve gender-related problems in the judiciary. We can see that many of action plans in the First Basic Plan are rewritten in the Second Basic Plan. This means that these action plans have not been successfully completed within the first five years and the JFBA recognizes the need for further effort regarding these matters. The Second Basic Plan is an ongoing event and will be reviewed in 2017. Therefore, one cannot evaluate the results of this effort yet.

19. Ministry of Justice, *Tōrokuji no Futan Gōkei Getsugaku Futan Gōkei Nenkan Futan Gōkei* [Monthly and Annual Registration Fees], 2011, <http://www.moj.go.jp/content/000077010.pdf> (last visited Jan. 4, 2016).

20. JFBA, *supra* note 6.

Current Gender Gap of Japanese Lawyers

Although the JFBA has started to implement policies promoting gender equality in the bar as described in above section, empirical data shows a serious gender gap in lawyers' professional lives. Recently, two important surveys were conducted concerning lawyers. One is the survey of the economic basis of lawyers ("Economic Basis Survey") in 2010 by the JFBA.²¹ The other is the survey of young lawyers' careers ("Young Lawyers' Survey") in 2011 and in 2014 by a group of legal sociologists.²² The former survey, the Economic Basis Survey, targets all lawyers, and its primary objective is to examine their professional working environment. The JFBA has conducted this survey every ten years since 1980 to examine lawyers' economic status and practice environment. Upon adoption of the First Basic Plan to Promote Gender Equality of 2008, the Economic Basis Survey in 2010 included questions regarding work-life balance and questions designed for gender analysis for the first time to meet the action plan of conducting a survey about gender gaps in income and working environment.

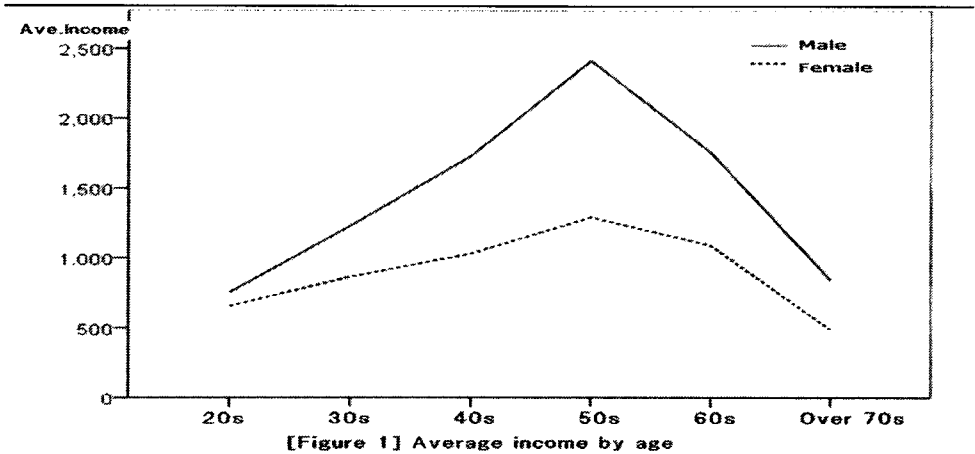
The latter survey, the Young Lawyers' Survey, targets a group of young lawyers who started their professional careers in the same year; the survey aims to explore the lawyers' professional career path by continuously documenting them. During the first Young Lawyers' Survey in 2011, the subject group had only one year of experience as lawyers. The second Young Lawyers' Survey was conducted in 2014, three years after the first survey. This paper analyzes the survey data statistically from the perspective of gender and examines whether any gender differences exist in the subjects' pursuit of their professional career; if any such differences exist, this paper explores the causes of those differences. It may be not surprising that, in many aspects, both surveys show statistically significant differences between male and female lawyers.

21. JFBA, *Bengoshi Gyōmu no Keizaiteki Kiban ni Kansuru Jittaiichōsa Hōkokusho 2010* [Report on Lawyers' Economic Situation in 2010], 62 JIYŪ TO SEIGI [LIBERTY AND JUSTICE] (2011).

22. Miyazawa et al., *Stratification or Diversification? 2011 Survey of Young Lawyers in Japan*, in EAST ASIA'S RENEWED RESPECT FOR THE RULE OF LAW IN THE 21ST CENTURY: THE FUTURE OF LEGAL AND JUDICIAL LANDSCAPES IN EAST ASIA 31, 33–34 (2015).

Major Findings of Economic Basis Survey of 2010 by the JFBA

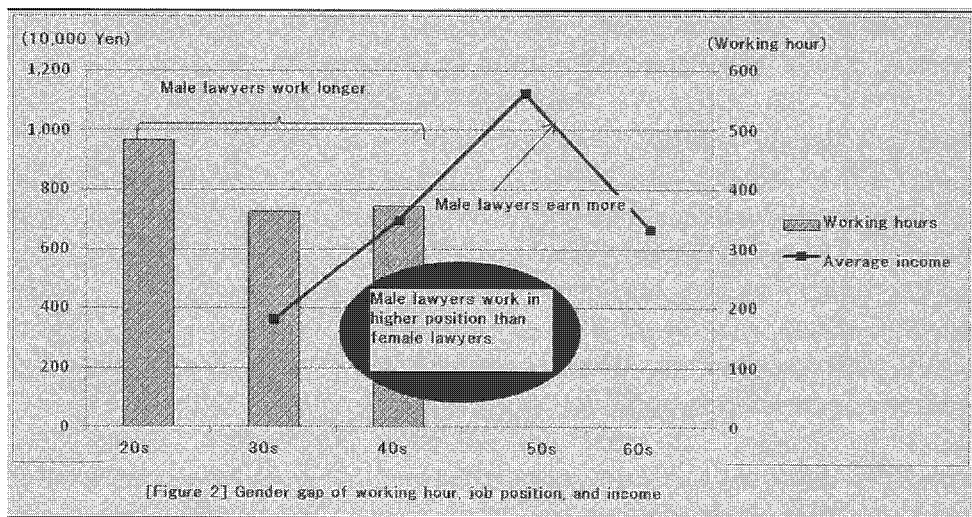
Figure 1 below shows the income gap between male and female lawyers based on the Economic Basis Survey by the JFBA. While average income for male lawyers was higher than that of female lawyers in all generations, the gap was statistically significant among lawyers in their 30s to 60s. The income gap expands as a generation ages. When lawyers are in their 50s, the gap reaches its peak at 11.25 million yen (about 93,890 USD); male lawyers earn 24.17 million yen (about 201,850 USD) annually, whereas female lawyers earn 12.9 million yen (about 107,730 USD) annually. This means that male lawyers earn almost twice as much as female lawyers on average after about twenty years of practice.



The Economic Basis Survey asked each participant what position he or she occupied in a law firm (such as partner or associate) and what his or her annual working hours were. Figure 2 combines this data with income and shows the mean difference between male and female respondents. It reveals an interesting trend. Although average male respondents' working hours are higher than that of female respondents in all generations, this gender gap is statistically significant for respondents in their 20s to 40s. The largest gap exists among male and female respondents in their 20s. The average amount of annual working hours for male respondents is

2,946 hours—245.5 hours a month—whereas that of female respondents is 2,463 hours—205.25 hours a month. This means that male lawyers in their 20s work an average of 483 hours longer than female lawyers in their 20s each year—about 10 hours longer a week.

The income gap is significant among lawyers in their 30s to 60s. As stated above, the largest income gap exists among lawyers in their 50s. Finally, their job positions are significantly different. There are more male than female partners among lawyers in their 40s and 50s. One can easily imagine that partners' working style is different from those just entering the legal profession; this is reflected by lawyers' incomes in their 30s and job positions in their 40s. When lawyers reach their 50s, the income gap between males and females becomes so huge that it is practically impossible for female lawyers to recover.



After reviewing the above data, this paper hypothesizes that the gender gap has developed to impose many layered glass ceilings for female lawyers. At the outset, female lawyers are treated differently by partner lawyers who supervise them. For example, partners may allocate more responsibility and time-consuming matters to male associates and relatively simple, less-burdensome matters to female associates. In addition, many female lawyers, often in their 30s, face heavy family obligations in their private lives. They struggle to simultaneously juggle their professional lives and family obligations.

How to continue one's professional career while becoming pregnant and having a baby is a thick ceiling that does not exist for male lawyers. Many female lawyers who have a baby cannot maintain the same working style as what they had before they became pregnant. Such difficulty continues into women's 40s, when children grow up enough to allow their mothers more time for work. However, by that time, it is difficult for female attorneys to recover from the huge gender gap that exists.

Data from the Young Lawyers Survey helps to verify this hypothesis. Many senior male lawyers do not take the gender gap of lawyers seriously, insisting that, because female lawyers are relatively young in the community, it is natural that female lawyers earn less and have lower positions than male practitioners. As of March 2015, there were 6,618 female lawyers, 59.7% of whom were under the age of 40.²³ If the male practitioners' argument was true, there would be no gender gap among the group of young lawyers with the same period of experience. However, the survey results show opposite results, as following discussion explains.

Major Findings of the Young Lawyers Survey

There are three major findings of the Young Lawyers Surveys concerning gender perspective. First, even in the first survey in 2011 (Survey I) that was conducted when respondents had only about one year of professional experience, there was a statistically significant gender gap in women's and men's income, despite there being no difference in their average weekly working hours. Second, the second survey conducted in 2014 (Survey II) showed the income gap increased after three years of practice. Third, even though about 30% of both male and female respondents had a child in the second survey, only females' professional lives seemed to be negatively impacted.

23. JFBA, 1-1-4 *Danjo Betsu Nenrei Kōsei* [Gender-Age Comparison], in *Bengoshi Hakusho 2015 Nenban* [White Paper on Attorneys 2015], 2015 JFBA, http://www.nichibenren.or.jp/library/ja/jfba_info/statistics/data/white_paper/2015/1-1-1_danjo_nenrei_sui_i_2015.pdf (last visited Feb. 15, 2016).

[Table 3] Cross Table of income and Gender²⁴

		Survey I (2011)			Survey II (2014)		
		Less than 5 million	5-10 million	Over 10 million	Less than 5 million	5-10 million	Over 10 million
Male	N	64	313	53	40	149	98
	%	14.9%	72.8%	12.3%	13.9%	51.9%	34.1%
Female	N	55	109	19	21	74	17
	%	30.1%	59.6%	10.4%	18.8%	66.1%	15.2%

Table 3 shows the income gap among male and female lawyers in two consecutive surveys. In both Survey I and Survey II, a statistically significant difference exists. In Survey I, this difference appeared in the categories of less than ten million yen (about 8,340 USD). Namely, there are more male lawyers in the category of “5-10 million yen,” whereas there are more female lawyers in the category of “less than 5 million.” According to this survey result, one can say male lawyers earn more than female lawyers, even after but one year of professional experience.

There is, however, no statistically significant difference in males’ and females’ average working hours at this stage. Also, there is no difference between them regarding the size of the law firm to which each respondent belongs and their job position in the law firm—i.e., whether the respondent is a partner or an associate. From where, then, does this income gap come, if it is not the result of working hours or position within a law firm? One possible factor may be that male lawyers are employed by better-paid law firms than female lawyers. It is well-known that, in Japan, female lawyers face more difficulty in finding a job than male lawyers in the beginning of their careers.²⁵ Another possibility is that male respondents undertake

24. Miyazawa et al., *Dai 62-ki Bengoshi Dai 2-kai Yūsō Chōsa Dai 2-po [The Second Report of the Second Mailed Questionnaire Survey of the 62nd Cohort Attorneys]*, 10 AOYAMA L.J. 39, 163 (2015).

25. It is reported that female applicant was refused only with the statement that “we will not employ female lawyers.” Akutagawa Hiroshi, *Nihon Bengoshi Rengokai Danjo Kyodo Sankaku Suishin Kihon Keikaku ni Tsuite [About the JFBA Basic Plan Promoting Gender Equality]*, 61 JIYŪ TO SEIGI [LIBERTY AND JUSTICE] 22, 24 (2010).

more profitable matters, which can be reflected in their salary.²⁶

In the questionnaire, we list 36 fields of practice that Japanese lawyers typically handle²⁷ and provide the following four options when asking how much time each respondent has spent in each field during the past year: “Not at all (1),” “Spent little time (2),” “Spent some time (3),” and “Spent substantial time (4).” There are four fields in which the average score of male respondents is statistically higher than that of female respondents, meaning male respondents spent significantly longer time than female respondents in these fields. These fields include: Real estate sales; Debt collection; Representing defendant and/or an insurance company in traffic accident cases; and Bankruptcy cases for individual clients. Lawyers themselves regard these fields as relatively profitable.²⁸ Even at the beginning of one’s career, a gender gap exists in practice fields. Male lawyers handle profitable cases more than female lawyers. This may be the reason of gender income gap at this stage.

In Survey II, the difference between male and female respondents’ income seems to expand: 34.1% of male respondents

26. It is also reported that some partner lawyers allocate cases differently by gender to associate lawyers in the same law firm. *Id.*

27. These are: Criminal advocacy, juvenile cases, victim support, wills and inheritance, neighbor issues, real estate sales, construction-related disputes, debt collection, work injury, human rights issues for foreigners, consumer advocacy, business defense, environmental issues, auto accident plaintiff representation, auto accident defendant or insurance representation, medical malpractice plaintiff representation, medical malpractice defense, domestic family law issues, international family law issues, landlord representation, tenant advocacy, employee representation, employer defense, representing individuals in administrative cases, business defense in administrative cases, administration defense in administrative cases, individual and small business tax issues, mid-to-large corporation tax issues, personal bankruptcy, corporate bankruptcy, trustee bankruptcy, corporate merger, anti-trust, intellectual property, international trade, and other kinds of corporate law business. JFBA, *supra* note 21.

27. In Economic Basis Survey of 2010, there was a question about how the respondent evaluate particular field of practice, listing the same thirty-six fields of practice. According to this survey, 27.4% of respondents answered that real estate sales is profitable, 17.4% responded debt collection is profitable, 13.2% responded traffic accident for the insurance company’s side is profitable, and 29.2% responded corporate bankruptcy case is profitable. JFBA, *supra* note 21.

28. In Economic Basis Survey of 2010, there was a question about how the respondent evaluate particular field of practice, listing the same thirty-six fields of practice. According to this survey, 27.4% of respondents answered that real estate sales is profitable, 17.4% responded debt collection is profitable, 13.2% responded traffic accident for the insurance company’s side is profitable, and 29.2% responded corporate bankruptcy case is profitable. JFBA, *supra* note 21.

earned over ten million yen, whereas only 15.2% of female respondents earned the same amount. In fact, when asked whether their income had increased since Survey I, 69% of male respondents answered that it had, while only 55.8% of female respondents answered that it had.

After four year[s] of professional experience, the majority of male respondents seem to be more successful in terms of expanding income. Where does this difference come from? While Survey II asks the times of moving the law firm and current job position, none of these answers show significant gender gap. It turns out, however, that their average working hours are different in this stage; male respondents work 59.33 hours a week, whereas female respondents work 54.39 hours a week on average. Like Survey I, we listed 36 practice fields in the questionnaire and asked, on a scale of one to four, how much time the respondent spent in each practice field. Male respondents handled a broader range of practice fields than female respondents. On average, male lawyers handled 9.7 out of 36 practice fields (i.e., they answered, "Spent some time (3)" or "Spent substantial time (4)" for those practice fields), whereas female lawyers practiced in only 8.3 fields. There are ten statistically significant practice fields in which more male than female respondents participated ($p < .05$). Such fields include criminal advocacy, real estate sales, traffic accidents for the defendant or the insurance company, leases on the landlord's side, lease's on the lessee's side, labor problems on the employer's side, representing corporations regarding tax problems, individual bankruptcy, corporate bankruptcy, and trustee bankruptcy. Many of these fields are relatively profitable.²⁹ After four years of practice, male lawyers seem to handle a broader range of profitable cases. Now, male lawyers work longer and handle more profitable cases than female lawyers. After four years of practice, the difference in males' and females' professional lives seems to expand.

Assuming these differences relate to the differences which typically occur in the private lives of men and women in their 30s, Table 4 shows the differences in respondents' private lives in Survey

29. In addition to lawyers' evaluation of profitability on real estate sales, debt collection, traffic accident for the insurance company's side, and corporate bankruptcy stated in above footnote 26, 14.8% answered lease for the landlord side is profitable, 12.9% answered trustee in bankruptcy is profitable, and 7.0% answered tax problems representing corporations is profitable. JFBA, *supra* note 21.

I and Survey II. Two thirds of respondents are married in Survey II, whereas only one third are married in Survey I. The ratio of respondents with children increased almost 20 points in Survey II. More than 30% of respondents in Survey II answered that they had children after being admitted to the bar. Accordingly, we can expect that there are many respondents whose private lives have significantly changed since the first survey, which may also impact their professional lives.

[Table 4] Comparison of Data in Survey I and Survey II

		Survey I (2011)						Survey II (2014)					
		Male		Female		All		Male		Female		All	
		N	%	N	%	N	%	N	%	N	%	N	%
Number of samples		433	69.7%	186	30.0%	621	100%	289	71.2%	113	27.8%	406	100%
Average age		33.3		33.48		33.3		36.0		36.8		36.2	
Spouse	Yes	161	37.4%	74	39.8%	235	38.1%	191	66.3%	74	65.5%	265	66.1%
	No	270	62.6%	112	60.2%	382	61.9%	97	33.7%	39	34.5%	136	33.9%
A child under 6 years	Yes	45	10.4%	14	7.5%	59	9.5%	96	33.2%	26	23.0%	122	30.3%
	No	388	89.6%	172	92.5%	560	90.5%	193	66.8%	87	77.0%	280	69.7%

* there are 2 cases in the first wave and 4 cases in the second wave that did not respond to the respondent's gender.

Table 5 extracts those respondents who had children after being admitted to the bar and summarizes their income, working hours, practice fields, and the number of practice fields they handled.³⁰ Table 5 lists practice fields that show significant gender differences regarding how much time is spent in them. It turns out that male lawyers handle relatively profitable fields, whereas female lawyers handle not-so-profitable fields. Their income, working hours, and number of practice fields show statistically significant gender differences. Even though male and female lawyers started their professional careers at the same time and had children thereafter,

30. Again, I counted as "handled" particular field when the respondent answered "Spent some time (3)" or "Spent substantial time (4)" for each practice field.

their professional lives seems to differ extremely at this stage. Among those samples of respondents who had children after being admitted to the bar, more than one fourth of male respondents earned over ten million yen, whereas more than one third of female respondents earned less than five million yen. Male respondents worked much longer (16 hours a week) and handled broader fields and more profitable cases than female respondents.

[Table 5] Gender comparison of income, working hours, practice fields, and number of practice fields among the respondents who had children after admitted to the bar

Respondents who had children after admitted to the bar			Income			Working hours (Ave.)
			Less than 5 million	5-10 million	Over 10 million	
Male	N	94	14	53	23	58.39
	%	100%	15.6%	58.9%	25.6%	N/A
Female	N	27	9	14	3	42.19
	%	100%	34.6%	53.8%	11.5%	N/A
	Field of practice that had gender gap in degree of spending time					Number of practice fields (Ave.)
Male	Criminal advocacy, Traffic accident for insurance companies, Individual bankruptcy, Corporate bankruptcy, Trustee in bankruptcy					10.65
						N/A
Female	Administrative litigation for individual clients, Antitrust					8.64
						N/A

Indeed, the impact of having children seems very different between male and female lawyers. Table 6 illustrates this point. Almost 80% of female respondents answered that their income decreased, whereas only 6.4% of male respondents answered the same. 18.5% of female respondents answered that their pay raise was delayed due to childbirth, whereas no male respondent answered the same. Overall, female lawyers were impacted more negatively than male lawyers when having a baby.

[Table 6] Impact of having children after admitted to the bar

		Income decreased*		Had to leave the law firm		Pay raise delayed*		Client increased		Move into new fields of practice	
		Yes	No/Don't know	Yes	No/Don't know	Yes	No/Don't know	Yes	No/Don't know	Yes	No/Don't know
Male	N	6	88	1	93	0	94	5	89	2	90
	%	6.4%	93.6%	1.1%	98.9%	0.0%	100.0%	5.3%	94.7%	2.2%	97.8%
Female	N	21	6	2	25	5	22	1	26	2	23
	%	77.8%	22.2%	7.4%	92.6%	18.5%	81.5%	3.7%	96.3%	8.0%	92.0%

(*:p<0.05)

Lawyers develop their professional skills and network in their early 30s, which significantly impacts their professional life. This period is also an important time for many married couples to have and raise children. According to the Current Population Survey of 2014 by the Ministry of Health, Labor and Welfare, the average marriage age for men is 31.1 and the average marriage age for women is 29.4. The average age of mothers at the time of their first child birth is 30.6.³¹ For lawyers, the average age for marriage and for their first childbirth may be higher than the national average because many first try to attend law school and pass the National Bar Examination before marriage. Needless to say, it is women who bear the baby and thus the physical burden. The negative impacts of childbirth on female lawyers may be natural in one sense because it is physically almost impossible to continue their professional lives as they had before, at least for a certain period of time. At the same time, however, if these female lawyers were employees of a general corporation as an in-house counsel, female employees are guaranteed eight weeks of maternity leave after childbirth under the Labor Standard Act³² and retain two thirds of their salary for that time

31. Ministry of Health, Labour and Welfare, *Population Survey* (2014), <http://www.e-stat.go.jp/SG1/estat/NewList.do?tid=000001028897> (last visited Jan. 4, 2016).

32. Rōdo Kijinhō [Labor Standard Act], Act No.49 of 1947, art. 65, para. 2 (Japan), *translated in* Ministry of Justice, JAPANESE LAW TRANSLATION, <http://www.japanese-lawtranslation.go.jp/> (last visited Feb. 15, 2016) (“Employers shall not have a woman work within 8 weeks after childbirth . . .”).

under the Health Insurance Act.³³ After maternity leave, either a male or female employee can take childcare leave until the child becomes one year old.³⁴ Employers are prohibited from dismissing or otherwise treating a worker disadvantageously due to the employee's application for childcare leave.³⁵ This is the rule for general private employers and employees in Japan. In practice, however, lawyers in a law firm are not regarded as "employees" under the Labor Standard Act. There is a discussion regarding whether associate lawyers should be regarded as protected "employees" under this Act. While there is no Supreme Court decision addressing this issue, some lawyers argue that associate lawyers are not employees because they are independent professionals and are not obliged to obey partners' instructions and supervision.³⁶ Simply because female lawyers are members of the legal profession, they are regarded as individual business operators under a joint office and cannot enjoy the legal framework prepared to protect working mothers. This lack of legal protection for female lawyers with children results in completely different working styles between male and female lawyers and, ultimately, creates a significant gender gap in the bar community.

Some lawyers say, "It is a female lawyer's choice. She wants to prioritize childcare over her professional work." Is it true? Survey II asked what the respondents' ideal work-life balance would be among three categories: "Prioritize work"; "Prioritize family/private life"; and "Value both." Table 7 shows the respondents' answers to this question by gender.

33. Kenkō Hokenhō [Health Insurance Act], Act No. 70 of 1922, art. 102 (Japan).

34. Ikuji Kyūgyō, Kaigo Kyūgyō tō Ikuji Matawa Kazoku Kaigo o Okonau Rōdōsha no Fukushi ni Kansuru Hōritsu [Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members], Act No. 76 of 1991, art. 5 (Japan) *translated in* Ministry of Justice, JAPANESE LAW TRANSLATION, <http://www.japaneselawtranslation.go.jp/> (last visited Feb. 15, 2016) ("A worker may take Childcare Leave upon applying to their employer if the child he or she takes care of is less than one year of age . . .").

35. Ikuji Kyūgyō, Kaigo Kyūgyō tō Ikuji Matawa Kazoku Kaigo o Okonau Rōdōsha no Fukushi ni Kansuru Hōritsu [Act on Childcare Leave, Caregiver Leave, and Other Measures for the Welfare of Workers Caring for Children or Other Family Members], Act No. 76 of 1991, art. 10 (Japan).

36. Bengoshi Gyōmu Kaikaku Iinkai, *Watashi tte Rōdōsha? Kinmu Bengoshi no Roudousyasei Nitsuite* [Am I an Employee? About the Associate Lawyer's Legal Nature], 5 LIBRA 4, 34 (2005) (Japan).

[Table 7] Cross table for ideal work-life balance and gender

		Prioritize work	Prioritize family/private life	Value both	Total
Male	N	19	38	213	270
	%	7.0%	14.1%	78.9%	100.0%
Female	N	3	25	81	109
	%	2.8%	22.9%	74.3%	100.0%
Total	N	22	63	294	379
	%	5.8%	16.6%	77.6%	100.0%

The respondents’ answers show the gender difference: female respondents answer “Prioritize family/private life” nine points more than male respondents, which was statistically significant. However, roughly three fourths of both male and female respondents answered, “Value both.” Thus, the majority of both male and female respondents prefer to value both professional and private life. In addition, after isolating the respondents who had children after being admitted to the bar, it turned out that there was no significant gender difference in their answers regarding ideal work-life balance. Table 8 shows this result. This means that female lawyers with children do not wish to prioritize private life any more than male lawyers with children do. Accordingly, we cannot say that the desperate gap between young female lawyers with children and young male lawyers with children results from females’ choices.

[Table 8] Cross table for ideal work-life balance and gender for those respondents who had children after admitted to the bar

		Prioritize work	Prioritize family/private life	Value both	Total
Male	N	6	15	67	88
	%	6.8%	17.0%	76.1%	100.0%
Female	N	0	8	19	27
	%	0.0%	29.6%	70.4%	100.0%
Total	N	6	23	86	115
	%	5.2%	20.0%	74.8%	100.0%

On the other hand, the above analysis does not mean that young male lawyers do not owe any burden. Indeed, they shoulder different burdens in pursuing their professional careers. Table 9 illustrates this point. Survey II asked whether earning life expenses, housework, and childcare were their burden in pursuing their professional career. Their answers revealed an interesting finding. While more female than male lawyers felt housework and childcare were burdens, more male lawyers with children than female lawyers with children felt obtaining life expenses were a burden. It is noteworthy that, among the respondents with children, 65.4% of female lawyers felt housework was a burden, and 88.5% of them felt childcare was a burden, while pursuing their careers, while 53.3% of male lawyers felt obtaining life expenses was a burden while pursuing their careers. Thus, nine out of ten female lawyers with children feel that childcare is a burden on their professional careers, even though only 39.6% of male respondents felt the same way.

[Table 9] Cross table of burden in pursuing professional career and gender

			Obtaining life expenses			Housework*			Childcare*		
			Yes	No	Total	Yes	No	Total	Yes	No	Total
All respondents	Male	N	109	166	275	43	197	240	42	127	169
		%	39.6%	60.4%	100.0%	17.9%	82.1%	100.0%	24.9%	75.1%	100.0%
	Female	N	39	71	110	41	59	100	25	23	48
		%	35.5%	64.5%	100.0%	41.0%	59.0%	100.0%	52.1%	47.9%	100.0%
	Total	N	148	237	385	84	256	340	67	150	217
		%	38.4%	61.6%	100.0%	24.7%	75.3%	100.0%	30.9%	69.1%	100.0%
Those who have children after admitted to the bar			Obtaining life expenses*			Housework**			Childcare**		
			Yes	No	Total	Yes	No	Total	Yes	No	Total
	Male	N	48	42	90	24	63	87	36	55	91
		%	53.3%	46.7%	100.0%	27.6%	72.4%	100.0%	39.6%	60.4%	100.0%
	Female	N	8	19	27	17	9	26	23	3	26
		%	29.6%	70.4%	100.0%	65.4%	34.6%	100.0%	88.5%	11.5%	100.0%
	Total	N	56	61	117	41	72	113	59	58	117
		%	47.9%	52.1%	100.0%	36.3%	63.7%	100.0%	50.4%	49.6%	100.0%

(*: p<.05 , **: p<.01)

Needless to say, this reflects the gender differences in male and female lawyers' private lives. Table 10 shows spouses' occupations, and, for those who had children post-bar, annual income. Although

36.6% of male lawyers' spouses were housewives, only one female lawyer had a house-husband. Naturally, the annual income of respondents' spouses shows a clear gender difference: 56.3% of male respondents had a wife whose annual income was less than two million yen, whereas almost 70% of female respondents had a spouse whose annual income was more than five million yen. Even though the respondents were young lawyers with small children and same amount of experience, male respondents tended to feel pressured to earn money to feed their families, whereas female respondents tended to owe family obligations. Interestingly, once female lawyers had a baby, they seemed to be more bound to their traditional gender role.

[Table 10] Occupation of spouse and their annual income for the respondents who had children after admitted to the bar

		Occupation of his/her spouse			Total	Annual income of his/her spouse				Total
		Legal profession	Corp./gov. employee	Housewife /husband		Less than 2 million	2-5 million	5-10 million	Over 10 million	
Male	N	11	48	34	93	49	22	14	2	87
	%	11.8%	51.6%	36.6%	100.0%	56.3%	25.3%	16.1%	2.3%	100.0%
Female	N	10	16	1	27	1	7	14	4	26
	%	37.0%	59.3%	3.7%	100.0%	3.8%	26.9%	53.8%	15.4%	100.0%
Total	N	21	64	35	120	50	29	28	6	113
	%	17.5%	53.3%	29.2%	100.0%	44.2%	25.7%	24.8%	5.3%	100.0%
(p<.01)						(p<.01)				

Finally, when the respondents' burden of pursuing professional careers in light of their spouses' occupations was examined, female lawyers with spouses in the legal profession felt housework and childcare were most burdensome. Table 11 illustrates this result. Namely, all female respondents (100%) whose spouses were members of the legal profession felt that childcare burdened the pursuit of their professional careers, and 90% of them felt similarly about housework. This survey result may imply that male lawyers are not supportive husbands or fathers.

[Table 11] Burden in pursuing professional career by the occupation of his/her spouse for those respondents who had children after admitted to the bar

Occupation of spouse			Obtaining life expenses			Housework**			Childcare**		
			Yes	No	Total	Yes	No	Total	Yes	No	Total
Legal profession	Male	N	3	7	10	3	8	11	3	8	11
		%	30.0%	70.0%	100.0%	27.3%	72.7%	100.0%	27.3%	72.7%	100.0%
	Female	N	3	7	10	9	1	10	10	0	10
		%	30.0%	70.0%	100.0%	90.0%	10.0%	100.0%	100.0%	0.0%	100.0%
	Total	N	6	14	20	12	9	21	13	8	21
		%	30.0%	70.0%	100.0%	57.1%	42.9%	100.0%	61.9%	38.1%	100.0%
Corp./gov. employee			Obtaining life expenses			Housework			Childcare**		
			Yes	No	Total	Yes	No	Total	Yes	No	Total
	Male	N	23	22	45	15	29	44	19	26	45
		%	51.1%	48.9%	100.0%	34.1%	65.9%	100.0%	42.2%	57.8%	100.0%
	Female	N	4	12	16	8	7	15	12	3	15
		%	25.0%	75.0%	100.0%	53.3%	46.7%	100.0%	80.0%	20.0%	100.0%
	Total	N	27	34	61	23	36	59	31	29	60
		%	44.3%	55.7%	100.0%	39.0%	61.0%	100.0%	51.7%	48.3%	100.0%
Total			Obtaining life expense*			Housework**			Childcare**		
			Yes	No	Total	Yes	No	Total	Yes	No	Total
	Male	N	47	42	89	24	63	87	35	55	90
		%	52.8%	47.2%	100.0%	27.6%	72.4%	100.0%	38.9%	61.1%	100.0%
	Female	N	8	19	27	17	9	26	23	3	26
		%	29.6%	70.4%	100.0%	65.4%	34.6%	100.0%	88.5%	11.5%	100.0%
	Total	N	55	61	116	41	72	113	58	58	116
		%	47.4%	52.6%	100.0%	36.3%	63.7%	100.0%	50.0%	50.0%	100.0%

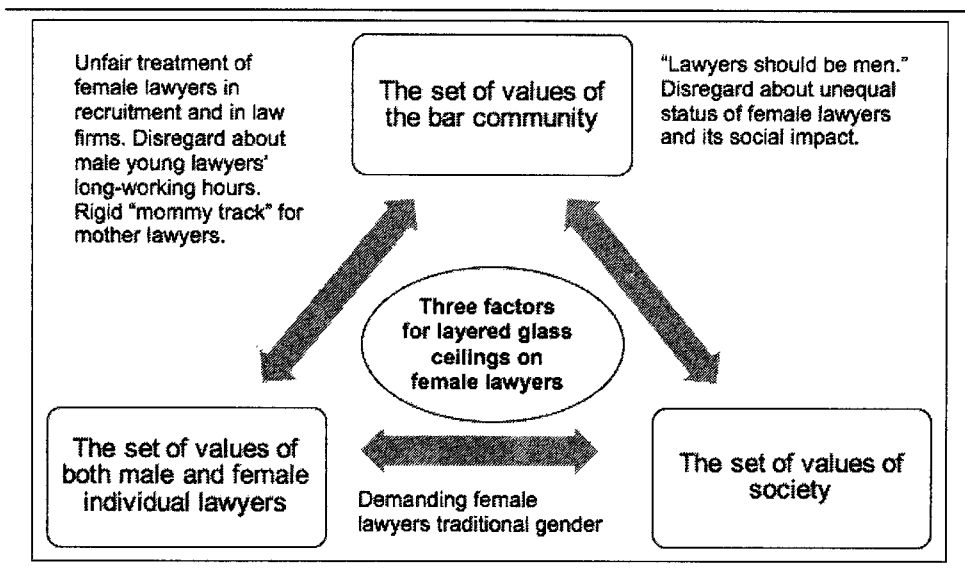
(*: p<.05, **: p<.01)

Analysis: The Three Factors that Constitute “Glass Ceilings” for Japanese Female Lawyers

These empirical findings show that “glass ceilings” limiting female lawyers in Japan exist at various stages of their professional careers. At the outset, their income is different from their male counterparts, which implies they are treated differently by partners or supervising attorneys. They may be treated differently even by clients, considering female lawyers’ practice fields are different from that of male lawyers. Some clients prefer male lawyers or avoid young female lawyers. Finally, childbirth has a negative impact on female attorneys in their 30s. The burdens of childcare and housework become serious obstacles to the pursuit of a professional career. Figure 3 shows three factors that constitute layered glass ceilings limiting female lawyers. The sets of values of both male and female lawyers,

the bar community, and society in general organically contribute to the current significant gender gap among Japanese lawyers.

[Figure 3] Three factors which constitute grass ceilings limiting female lawyers



The Set of Values of Individual Lawyers

The set of values of individual lawyers includes female lawyers' value as a mother and a wife and male lawyers' value as a partner, supervisor, colleague, husband, and father. Surely, these values impact female lawyers' professional performance. There is empirical data on this point. When a male lawyer has a traditional value set about a gender role such as "men should work outside the home and women should stay at home," he works longer hours and does little housework. On the other hand, when a female lawyer has the same value set, she works shorter hours and does more housework, including childcare.³⁷ If a male lawyer who is a husband works longer and does not care about female housework or childcare at all,

37. Mayumi Nakamura, *Bengoshi no Seiyakuwari Kan Kaji Jikan Rōdō Jikan* [Lawyers' Views on Gender Roles and Their Relationship with the Household and Working Hours] in BENGOSHI NO WĀKU RAIFU BARANSU: JENDĀ-SA KARA MITA KYARIA KEISEI TO KAJI IKUJI BUNTAN [Lawyers' Work-Life Balance] (2015), 126–145 (Japan).

it becomes extremely difficult for his partner, who is also a lawyer, to pursue her professional career as he does. It is easily predictable that a partner lawyer's value set impacts the performance of a young female lawyer. In addition, the Young Lawyer's Survey shows a gender difference in practice areas with attorneys with only one year of experience. This difference is not attributable to the female attorney. Rather, it is attributable to her partner or supervisor, who allocate cases to young lawyers in the law firm. A female lawyer with children may be assigned less time-consuming cases or recommended to go back to home earlier when her supervising lawyer has a traditional view on gender roles and wants her to be a good wife and mother rather than a good lawyer. In ways like this, the female lawyer's working environment is strongly influenced by the value set of individuals around her.

The Set of Values of the Bar Community

The bar community's value set is an important factor as well. The most critical concern is whether the bar community, which is composed of 81.8% male lawyers and 18.2% female lawyers, is aware of this gender gap and recognizes it as an important issue to be tackled by the bar. As mentioned, all lawyers are required to register with their local bar association as well as the JFBA under the Attorney Act.³⁸ Lawyers enjoy self-regulation and local bar associations have authority to regulate member lawyers as well as they can exercise disciplinary power.³⁹ If bar associations took the current gender gap of lawyers as a serious problem, they could take the initiative to improve the situation. Up until very recently, however, the situation of female lawyers was not treated as an important community problem, nor even well researched and understood. The lack of interest has left the problem unresolved.

38. Bengoshihō [Attorney Act], Act No. 205 of 1949, art. 1 (Japan).

39. "The purpose of a bar association, in view of the mission and duties of attorneys and Legal Professional Corporations, is to manage matters relating to the guidance, liaison, and supervision of its members in order to maintain their integrity and improve and advance their work." Bengoshihō [Attorney Act], Act No. 205 of 1949, art. 31 (Japan). The disciplinary authority is vested to both local bar associations and the JFBA. Bengoshihō [Attorney Act], Act No. 205 of 1949, art. 56, art. 61 (Japan). As to the disciplinary mechanism of Japanese lawyers, see Kyoko Ishida, *A Comparative Study of the Attorney Discipline System in Japan and Washington State*, 65 HOSHAKAIGAKU 95, 95-115 (2006).

Although the JFBA Second Basic Plan for Gender Equality is currently in effect, it is doubtful as to whether many bar leaders recognize female lawyers' current state as a critical problem in bar community. From the beginning of their professional career, female attorneys are treated differently by partners and clients. Once a female attorney has a child, it becomes difficult to pursue her career in the same way that a male lawyer does. Finally, in her fifties, her income is almost half of that of a male lawyer's in the same generation. This is simply not attractive for smart female law students who are interested in becoming members of the legal profession. They would prefer to become judges or prosecutors rather than lawyers if they knew of their expected career path as a lawyer. Why is it that only fifteen out of fifty-two bar associations as of 2012 have adopted the exemption rule of membership fee for childcare leave? Why do local bar associations not exercise a strong measure against gender discrimination in recruitment? Why do bar leaders not recognize the long hours of young male lawyers as a problem? These facts show the value set of today's bar community—namely, indifference to gender equality. The mission of lawyers under the Attorney Act is to protect fundamental human rights and to achieve social justice.⁴⁰ Considering how female lawyers have protected women's rights to date, the mission of lawyers can never be performed if the bar community is dominated by only male lawyers and the current gender gap in the bar community is neglected. In order to provide diverse legal services to society, the bar community needs female lawyers. The bar leaders should be aware of this fact and tackle this problem seriously.

The Set of Values of Society in General

Finally, a society's values also contribute to the creation of glass ceilings. Needless to say, the legal practice needs clients. When a client prefers male lawyers to female lawyers, this preference may be realized by sacrificing female lawyers' interests and gender equality. Some clients may avoid young female lawyers due to prejudice that women are inferior to men in general. Such social biases against women inevitably reflect female lawyers' status in the bar community.

In addition, a society's values in general can directly affect the

40. Bengoshihō [Attorney Act], Act No. 205 of 1949, art. 1 (Japan).

value set of individual lawyers who have grown up in that society. Those lawyers who strongly support traditional gender roles have such a value set not after being admitted to the bar, but far before that time. If society is gender biased, individual lawyers who are in that community will inevitably be influenced by such a value set. The bar community's set of values is also influenced by the values of society in general. Indeed, due to social trends in gender equality and government initiatives such as the Basic Plan for Promoting Gender Equality, the JFBA finally established the Headquarter for Gender Equality in 2007 and adopted the JFBA Basic Plan for Promotion of Gender Equality in 2007. Furthermore, when victims of domestic violence need a voice in rural areas, bar associations have moved to run campaigns calling female young lawyers to practice in those areas.⁴¹ In ways like this, a society's value set organically connects to the set of values of both individual lawyers and the bar community.

Prescription: The Bar Should Take Strong Leadership to Change the Value Set of Individual Lawyers as well as Society

As Figure 3 shows, the three factors are all interrelated. One body's values can influence that of the other two bodies. While individual lawyers' value set is influenced by societies' set of values, individual lawyers can influence societies' values through their practice. This is, indeed, what female lawyers have done. For example, through litigation challenging the institutionality of imposing the same family name for married couples, female lawyers illustrated to society how that rule disadvantaged women.⁴² Although the Supreme Court ruled that this rule was constitutional, this campaign gave society an opportunity to think about this well-accepted rule from the aspect of gender.

Among these three bodies contributing to layered glass ceilings,

41. Today, the JFBA targets young female lawyers with a brochure encouraging them to practice in rural areas. JFBA, *Josei no Minasan Chihōde Kaigyō Shimasenka?*, <http://www.nichibenren.or.jp/library/ja/committee/depopulation/data/tihoudekatuyaku.pdf> (last visited Jan. 7, 2016).

42. The Supreme Court, however, ruled that this rule under the Civil Code is constitutional on December 16, 2015. Saikō Saibansho [Sup. Ct.] Dec. 16, 2015, Hei 25 (o) no. 1079, SAIKŌ SAIBANSHO SAIBANREI JŌHŌ [SAIBANREI JŌHŌ] 1, <http://www.courts.go.jp> (Japan). See also, Editorial, *Supreme Court's Surname Ruling*, JAPAN TIMES, Dec. 21, 2015, <http://www.japantimes.co.jp/opinion/2015/12/21/editorials/supreme-courts-surname-ruling/>.

the bar community is most responsible. It is the organization of the legal profession that is responsible for promoting social justice and equality, under the law, as it is self-regulated. It should exercise strong initiative to change the value system of individual lawyers and society. As a first step, it is essential that the bar community share the understanding that the promotion of gender equality among legal professionals serves not only female lawyers, but also the legal community and society as a whole. As listed in the JFBA Basic Plan, an awareness campaign, especially one that targets senior male lawyers, is an urgent task because senior male lawyers are responsible for the management of bar organizations and law firms. If they could be aware of the seriousness of the problem and move to improve the situation, they can could effectively impact both individual lawyers and the bar community. At the same time, the JFBA strongly encourages local bar associations to implement the membership fee exemption for those on childcare leave. Measures that could decrease female lawyers' economic burden should also be implemented urgently.

Conclusion

This article discussed the history and current challenges of female lawyers in Japan. Empirical data shows that Japanese female lawyers suffer from layered glass ceilings. These ceilings are created from the very beginning of their professional lives, and they accumulate at various steps of their private and professional lives. Finally, these ceilings cause female lawyers to experience completely different career paths from male lawyers. Female lawyers do not necessarily wish to go through such an experience, but many of them are forced into this result due to insufficient support from their spouses, an insufficient understanding by the bar community, and society's gender-biased values. The bar must urgently exercise strong initiatives to tackle this problem. To promote social justice in society as a whole, the professional community should promote gender equality throughout the legal profession.
