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# The History of Modern Japanese Law

## 1. The Period of Modernisation

Foreign law was received into Japan in three different stages. The first stage was in the seventh and eighth centuries, when Japan imported the Chinese political and legal system.

The second stage occurred between the overthrow of the Tokugawa Shogunate in the mid-nineteenth century and the early twentieth century, when the industrialisation of the country was accomplished. In this period of modernisation, European law—namely the French and German codes—was imported into Japan and served as a model for the major Japanese codes. The third stage began after the Second World War and continued during the period of the Allied occupation. During this stage, some laws were amended or replaced on the basis of US law. Nevertheless, the strong influence of the Civil Law system remains today. The second and third stages are of particular significance, since these two stages have direct bearing on contemporary Japanese law.

The modernisation process in Japan started with the fall of the Tokugawa Shogunate, which ruled the country for two and a half centuries.<sup>1</sup> In 1867 the Emperor declared that imperial rule should be restored. A new government was first formed on the model of the archaic *dajōkan* system, which dates back to the eighth century.

When major reforms took place after the fall of the Shogunate, the existing social and economic system in Japan was fairly well developed and certainly ready for further development. For instance, a money-based economy had developed to such an extent that large mercantile and money-lending capital enjoyed dominant power in the economy. This enabled the introduction of the modern banking system under the new government. Another example is the ownership of land. Despite lacking the modern concept of land ownership, some rights of land-holding had developed before the modernisation, and land was traded

<sup>1</sup> For the history of Japanese law in English, see R. Ishii, *A History of Political Institutions in Japan* (Tokyo, 1980). For the history after 1868, see W. Röhl (ed.), *History of Law in Japan since 1868* (Leiden, 2005).

extensively under the Tokugawa Shōguns' rule. This made it possible to introduce a modern system of land ownership smoothly.<sup>2</sup>

Despite their initial chauvinism, the ruling elites quickly realised that a knowledge of foreign civilisations and use of the advanced technology that had developed in the West were indispensable to the modernisation of Japan. Modernisation was considered to be an urgent task if Japan was not to be colonised like many other Asian countries. Therefore, after a brief return to the ancient *dajōkan* system, the new government turned to European countries for a model.

While in the Charter of Oath of the new regime in 1868, the Emperor had proclaimed that public opinion should be consulted, this had merely meant that territorial lords should be consulted in decision-making. However, inspired by the parliamentary systems in Europe and strengthened by disillusionment and discontent with the autocratic system of the new government, a movement to establish a publicly elected parliament gained wide support in the 1870s. Different trends were discernible in this movement—the Popular Rights Movement (*jiyū-minken-undō*). Inspired by Locke, Mill, Rousseau, and Bentham, a charter of one of the earlier organisations declared that all Japanese were equally endowed with rights to life, liberty, property, livelihood, and the pursuit of happiness—rights that ‘no man can take away’.<sup>3</sup> The movement had wide support; at one stage, 303 societies emerged in the provinces around Tokyo, at least 120 in the north-eastern region, and approximately 200 in western and south-western Japan.<sup>4</sup> This eventually led to the Emperor's proclamation in 1881 that a national diet (parliament) would be established, and a constitutional monarchy created by 1890.

In the meantime, the government became more autocratic in the early 1880s. Already in the mid-1870s, the government had enacted the Libel Act and the Regulations on Newspapers in order to limit the freedom of speech, attempting to keep dissatisfied people under control. A major rebellion by former *samurais* in Satsuma in 1877 certainly influenced the course of events. It was, in a way, impossible to implement unpopular economic measures and at the same time to grant political freedom to the people.<sup>5</sup> The Ordinance on Public Meetings, which significantly restricted such meetings, was enacted in 1880. Further restrictions on public meetings were introduced in 1890, coinciding with the opening of the Imperial Diet.

<sup>2</sup> In general, see C. Nakane et al. (eds), *Tokugawa Japan: The Social and Economic Antecedents of Modern Japan* (Tokyo, 1990).

<sup>3</sup> M. B. Jansen (ed.), *The Emergence of Meiji Japan* (Cambridge, 1995), p. 241.

<sup>4</sup> Ibid. p. 243. See also D. Irokawa, *Kindai Kokka no Shuppatsu (The Emergence of the Modern State)*, Revised edition (Tokyo, 2006), pp. 126–159.

<sup>5</sup> J. Banno, *Taikei Nihon no Rekishi (Compendium of the Japanese History)*, vol. 13 (Tokyo, 1996), pp. 78–79.



After the Emperor's proclamation of the intention to introduce constitutional democracy in 1881, the popular rights movement more or less lost its momentum. Moderate factions developed into political parties, while some factions ended up in outright rebellion caused by the serious economic difficulties experienced by people in rural areas. Such rebellions were quickly suppressed by the government.<sup>6</sup>

In 1889, preceding the opening of the Imperial Diet, the first Constitution of Japan was 'granted' to the subjects by the Emperor. The enactment of a Constitution was a development related to the establishment of the Imperial Diet. Already in the 1840s the Dutch Constitution had been translated into Japanese, followed by a translation of the French Constitution in 1873. Some Japanese therefore had a vague idea about the role of a constitution. The Senate had drafted a constitution commissioned by the Emperor in 1876, but this was considered to be unsuitable for Japan and was abandoned. It was the intention of the government to proclaim the divine origin of the Imperial Family and the sovereignty of the Emperor, but the draft had been unsatisfactory from this point of view.

When the Popular Rights Movement was at its height, various private drafts of the constitution, primarily of a British parliamentary type, appeared. However, Tomomi Iwakura, who was a councillor at that time, considered it more appropriate to enact the constitution on the initiative of the Emperor. In 1882, Hirobumi Itoh, later to become the first Prime Minister, was sent to Europe to study the constitutions of European countries. Germany was chosen as the primary place of research. Itoh consulted F. J. Stahl in Berlin and Rudolf von Gneist in Vienna, both of whom represented the conservatives among German and Austrian scholars. Germany was intentionally selected as a model, because it was a relatively backward country at that time in Europe, but had just been unified and its situation was considered to resemble Japan's. In Germany, the Kaiser of the German Empire apparently had strong power and authority, while the British and French constitutions were regarded as being too liberal and democratic.

In contrast to the private drafts, which were proposed by the supporters of the Popular Rights Movement, there was a view which supported an Emperor-centred, semi-religious political system. Thus, Eifu Motoda's draft constitution provided for the divine character of the Imperial Family, as well as its perpetuity as the sovereign of Japan. It was a clear proclamation of Emperor-centred absolutism.

Itoh prepared a draft constitution with the assistance of a German adviser, Hermann Roesler, after his return from Europe. Roesler defended a constitutional system that was more conservative than the Prussian Constitution of 1850, by eliminating even the limited democratic institutions that had been imported into Germany from England via France and Belgium. The Japanese members

<sup>6</sup> K. Nakamura, *The Formation of Modern Japan: As Viewed from Legal History* (Tokyo, 1962), pp. 48–56.

who participated in the drafting process went even further. One point of disagreement was the status of the Emperor. Roesler refused to give the Emperor a religious status, at least in the Constitution, while the Japanese side intended to provide for the eternity of the Emperor's rule. On the other hand, Roesler defended universal suffrage for the Lower House.<sup>7</sup>

There was a firm belief on the part of the Japanese participants that the power of the Emperor should be left as free as possible from any control exercisable by the Diet. The Imperial Family was to be left outside the realm of the Constitution. To this end, rules concerning the succession of the Emperor and other matters regarding the Imperial household were left outside the Constitution, and a separate Act on the Imperial household (*kōshitu tenpan*) was adopted. This Act was not even promulgated, ostensibly because it was a private Act of the Imperial household.

The draft constitution was discussed in the Privy Council, rather than in the Senate. People were not informed of its contents until the day of promulgation. The Constitution began by proclaiming the sanctity and inviolability of the Emperor and the perpetuity of his rule. Accordingly, the legend that an ancestor of the Emperor had founded the nation around 2600 BC, which was never been substantiated historically, gained official endorsement. The Emperor was the sovereign who ruled the country in accordance with the provisions of the Constitution. However, a wide range of matters was left to the prerogative of the Emperor. The Imperial Diet was there merely to assist and support the Emperor. Laws were enacted by the Diet but needed imperial approval. The Emperor also had broad power to issue imperial edicts. It should be added that only 1.1 per cent of the populace even had a vote in this Diet, and with limited power.

Cabinet ministers were appointed by the Emperor, while the Diet had no say in the selection. Ministers were responsible to the Emperor, not to the Diet. Later it became constitutional practice that the power of the Emperor as the supreme commander of the armed forces remained outside the control of the Diet and the Cabinet.

The Constitution had a limited list of the 'rights and duties of subjects'. These included freedom of residence, rights not to be arrested and detained without a legal basis, freedom of correspondence, freedom of religion, and freedom of association and expression. However, these rights and freedoms were guaranteed only within the framework of statutory laws, i.e. the legislature was free to enact laws that restricted those rights and freedoms. Indeed, the Publication Ordinance, which was enacted in 1893, accommodated a system of strict censorship. Freedom of association was also severely restricted by later legislation. Freedom of religion presupposed the supremacy of Shintoism.

<sup>7</sup> The history of this constitution is given in T. Fukase, 'Meiji kenpō Seitei o meguru Hō-shisō (Legal Thoughts concerning the enactment of the Meiji Constitution)', in Y. Noda and J. Aomi (eds), *Gendai Nihon Hō-shisōshi (History of Modern Japanese Legal Thoughts)* (Tokyo, 1979), pp. 164–214.

Supporters of Emperor-centred nationalism were not fully satisfied with the relatively secular nature of the Constitution. They favoured an even more religious and ethical constitution. In order to appease them, the Imperial Rescript of Education was promulgated by the Emperor before the enactment of the Constitution. The Rescript was a mixture of revived Confucianism and Shintoism targeted against westernisation. It proclaimed that loyalty to the Emperor, the Confucian obligation of filial piety, and obedience were the essence and virtue of the nation. Subjects were to offer themselves courageously to the State—which was identified with the Emperor—should any emergency arise.<sup>8</sup> This was intended to be the fundamental ethical code of the nation, and indeed served as such until the end of the Second World War.

It should be noted that the combination of Shintoism and the Emperor's rule with elements of Confucianism had not always been the norm before the restoration of the Emperor's rule in 1867. There were instances where former emperors retired to a Buddhist temple, and some emperors were enthroned in a Buddhist manner. In fact, Shintoism and Buddhism were not necessarily strictly demarcated. There was a school of thought maintaining that the supreme goddess of Shintoism was a reborn Buddha, and another school of thought reversing this order—Buddha was the reborn goddess. The government formed after the fall of the Tokugawa Shogunate adopted a policy of favouring Shintoism in order to strengthen the authority of the Emperor. Shintoism, which had largely been a spontaneous religion of the people, emanating from ancestor worship, was thus transformed into a State religion.<sup>9</sup>

The enactment of the Constitution, together with the introduction of the cabinet system and the opening of the Imperial Diet, marked the consolidation of the new regime. With the establishment of the new regime, the government was in urgent need of a systematised legal system to replace the obsolete feudal law. Laws of the previous period were unsystematic and mostly differed from one domain to another. In order to consolidate the rule of the Emperor, a powerful and highly centralised political system was required. Codified law was to play a significant role to support such a system.

There was another reason to develop a modern system of law. The Shogunate had no choice but to sign unequal treaties with foreign countries at the end of its reign. These treaties had imposed unfavourable terms on Japan, such as judicial immunity for foreigners, primarily because the Japanese legal system was thought to be insufficiently developed to be applied to them. Japanese rulers considered it necessary to modernise the legal system in order to convince foreign countries that there was no problem in acknowledging Japanese jurisdiction over foreigners in Japan.

<sup>8</sup> R. Storry, *A History of Modern Japan*, revised edition (Harmondsworth, 1982), p. 119.

<sup>9</sup> A. Yoshie, *Shinbatsu-Shūgō (Syncretism of Shintoism and Buddhism)* (Tokyo, 1996), p. 192.

The Emperor's government initially looked towards Chinese law for a model. The first criminal code—*shinritsu-kōryō*—of 1870 was primarily based upon the *ritsuryō* codes of the seventh century, as well as the laws of Ming and Ching China. However, the *ritsuryō* and Chinese codes proved to be obsolete and unsuitable for a nation aspiring to achieve equal status with European countries in its economic and military strength. It was only natural that political leaders turned to Europe for a better model.

In fact, despite its long isolationist policy, some European political and legal ideas were already known to the Japanese under the Tokugawa Shogunate through the Dutch. For instance, the idea of natural law was imported into Japan from Holland in the early nineteenth century. However, it was French rather than Dutch law which first influenced Japanese law. France was considered to have the most developed codified legal system at the time when the Emperor's government started looking for a model in the 1870s. The first Minister of Justice, Shinpei Etoh, was particularly in favour of French law, and had French codes translated into Japanese. Two advisers from France, George Boussquet and Gustave Boissonnade, helped the Japanese to understand the French system. The first Criminal Code, enacted in 1880, was primarily based upon the French Code, though with some influence from the Belgian and Italian codes. The earlier judicial system, including the system of practising attorneys, closely reflected the French system. The first Code of Criminal Instruction, enacted in 1880, was also a replica of the French Code.

This period of French influence did not last long. There was a gradual shift towards German law in the 1880s. The fall of Etoh was not the only cause of this shift: it was the difference between the political systems of these countries that really mattered. In light of the Popular Rights Movement, which demanded the introduction of a democratic parliamentary system, the government presumably developed some reservations about the French system. The German constitutional monarchy suited Japanese requirements, since the Kaiser was relatively free from parliamentary control. Moreover, Germany was in the process of enacting its own codes and therefore had the most recent codified laws. The adoption of the Constitution based on the German system was the final move away from French and towards German law.

First came the Code of Civil Procedure of 1890, which followed the German and Austrian model. The Commercial Code was drafted with the assistance of a German adviser and was promulgated in the same year. However, together with the Civil Code, which was based upon the *Code Civil*, the Commercial Code was caught in a fierce controversy and it took another decade for the Code to take effect. The German influence was not limited to newly enacted laws. Some earlier laws of French origin were replaced by new laws of German origin. Thus, the Law on Court Organisation of 1890 partly replaced the Code of Criminal Instruction. The Criminal Code was replaced by a new Code in 1907.

The history of the Civil Code is much more complicated and is dealt with in a separate chapter below. It is sufficient to mention here that the original Code was prepared by a French adviser, Gustave Boissonade, and was promulgated in 1890, but was abandoned in the face of strong opposition. A new Code, based primarily on the Pandekten system, was finally enacted in 1896–1898.

The enactment of the major codes was completed in the 1890s. In the meantime, legal education had developed rapidly. The Ministry of Justice founded a school of law in 1871. French law was primarily taught there, while in Kaisei School, which dated back to the Tokugawa period, lectures on English law were given. These schools merged and became the Law Faculty of the University of Tokyo. Private schools of law were founded in the same period. Lectures were initially given in foreign languages, since it had been difficult to translate legal concepts of European origin into Japanese. It was only in the 1890s that it became possible to give lectures in Japanese.<sup>10</sup>

In the late nineteenth century Japan embarked on a rapid industrialisation process under the slogan ‘enrich the country and strengthen the army’. The development of the economy created a considerable gap between the wealthy industrialists on one hand and deprived peasants and urban workers on the other. Instances of social unrest amongst poor peasants and the urbanised poor began to increase in the late nineteenth century. The government took legislative measures to control such unrest and also to put workers’ and peasants’ movements under control.

First, in order to protect the rights of those in weaker social positions, laws such as the Law on the Lease of Land and the Law on the Lease of Houses were enacted in 1922. Secondly, a conciliation procedure was introduced for settling disputes concerning arable land tenancy and labour. It was hoped that the introduction of conciliation would mitigate social friction. At the same time, laws aimed at controlling political and labour movements were enacted. The Public Security and Police Law of 1900 proved to be effective in controlling labour movements. This was replaced by the Law on the Maintenance of Public Security in 1925. Those who organised or knowingly participated in an organisation that purported to change the State constitution or to deny private property were to be penalised by a maximum of ten years’ imprisonment. The Law was amended in 1928: those who created organisations which purported to change the fundamental structure of the nation, and leaders of such organisations, could now be sentenced to death.

In terms of internal politics, there were some developments in favour of strengthening democracy in the 1910s. Some political parties developed and there was a spell of party cabinets—a cabinet supported by a political party within the Diet. Voting rights for men were introduced (women had to wait until the end of

<sup>10</sup> University of Tokyo, *Tokyo-Daigaku Hyakunen-shi (Centenary of the University of Tokyo)* (Tokyo, 1984).

the Second World War). However, party cabinets proved to be powerless in the face of growing interference by the military. The Diet gradually turned itself into a ceremonial body supporting the invasion of China, and eventually the Second World War.

After the start of the war between China and Japan in 1932, the remains of embryonic democracy in Japan were removed. Japan withdrew from the League of Nations in 1933. Two successive rebellions by army officials, the second of which involved battalions of the army, finally led to the demise of civilian rule in 1936. An official creed of the Emperor as a sacred entity—a descendant of the sun goddess demanding selfless devotion of people—was promoted. Deviance from the official ideology was not tolerated. Freedom of thought and expression were severely restricted by the Law on the Maintenance of Public Security, which was amended to make the punishment even more severe. This imperial totalitarian regime lasted until the eventual defeat of the country in 1945.

## 2. Post-War Reforms

The third stage of the reception of foreign law took place after the Second World War. The War ended with the acceptance of the Potsdam Declaration in 1945. Japan was placed under the control of the Supreme Commander of the Allied Powers (SCAP). The occupation took the form of indirect military rule, i.e. the Japanese government was allowed to function under supervision by the SCAP. The Occupational Forces were overwhelmingly American, and reforms were therefore carried out under a strong American influence. Demilitarisation and democratisation were the first steps taken by the Allied Forces. The armed forces were dismantled, and suspected war criminals prosecuted. Those responsible for promoting the War were expelled from their positions. The Law on the Maintenance of Public Security was abolished and political prisoners were released. It was proclaimed that Shintoism was to be separated from the State.

The Allied Forces recommended five major reforms in 1945: equality of men and women, encouragement of trade unions, liberalisation and democratisation of education, liberation from autocratic rule, and democratisation of the economy. This was followed by a directive on agrarian reform. As for gender equality, part of the Civil Code that dealt with family law and succession underwent a total revision. Women were given the vote for the first time in the election of 1946. Concerning labour law, three major labour laws, which enhanced the rights of the workers, were promulgated. The educational system also underwent a significant change. Education in Shintoism and Confucian ethics was abolished. The Fundamental Law on Education was enacted in 1947 and emphasised peace, justice, and respect for individuals. Democratisation of the economy was realised by the dissolution of business conglomerates (*zaibatsu*), which had dominated

the economy. The Anti-Monopoly Law (competition law) was enacted in 1947 in order to prevent monopolisation and to maintain fair competition.

These measures signified a radical change of the then existing political, economic, and social system and almost amounted to a revolution. Civilian experts and advisers who accompanied the military from the United States played a significant role in shaping these reform policies.

These reform measures were embodied in the Constitution enacted in 1946. This Constitution, which remains in effect today, has introduced significant changes in the political and social system of Japan. First, it was proclaimed that sovereignty rested with the people and not the Emperor. The Diet elected by universal election became the supreme body of State power instead of the advisory body it had been. The Emperor became a 'symbol of the state and the unity of people' and was deprived of any political power. Secondly, the Constitution provided for the renunciation of war as a sovereign right of a nation and the use of force or threat as means of settling international disputes. After the dissolution of its armed forces in 1945, Japan did not maintain any military force for some years. Thirdly, the new Constitution incorporated a Bill of Rights, which was far more extensive than that of the previous constitution, and safeguarded in a more secure way; judicial review was introduced in order to guarantee these rights.

The Constitution and most of the other laws enacted during the occupation had been strongly influenced by US law. For instance, the three major labour laws, the Code of Criminal Procedure, the Securities and Exchange Law, and the Anti-Monopoly Law were all strongly inspired by US law. This was only natural, since legal advisers to the SCAP were primarily Americans; some of them were keen 'New Dealers'. On the other hand, most of the major codes dating back to the pre-war period remained intact. The Criminal Code, the Code of Civil Procedure, and the Commercial Code were left without any significant amendment. The Civil Code also remained in force, except Parts four and five on family law and succession respectively.

As early as 1948 there was a shift in occupation policy, caused by the increasing tension between the United States and the Eastern Bloc. Policies such as disarmament, encouragement of the trade union movement, and dissolution of business conglomerates were thought to have gone too far. With the outbreak of the Korean War and the development of the Cold War, government policy shifted from disarmament to rearmament. The Police Auxiliary Force was founded, and later developed into the Self Defence Force. Today the Japanese Self Defence Force is reputed to be one of the most powerful armed forces in Asia. In 1951 Japan signed the Peace Treaty with the Allied Nations which took effect the following year, and marked the end of the occupation. At the same time the US–Japan Security Treaty with its bilateral duty of defence was signed. The first US–Japanese Security Treaty was signed in 1951; it has been renewed up to the present day.



The policy of 'rectifying the excess' of the initial reforms continued to a certain extent after the end of the occupation. For instance, the Anti-Monopoly Law of 1947 was substantially amended in 1953, 'in order to adapt it to the situation in Japan'.

This is not to say that the 'pre-war system' was restored after the end of the occupation. After all, most Japanese were not reluctant to accept measures adopted on the initiative of the Allied Forces. On the contrary, people who had suffered under the police State before 1945 actually welcomed these measures. Radical changes introduced by the Allied Forces were successfully put into practice without overt resistance from the general public. Political and social values promoted by the SCAP were embedded firmly in the minds of most Japanese and are considered to be almost unchangeable. This has probably worked against various attempts to bring substantial changes to the achievements of the post-war reforms. Proposals to amend the Constitution (which was ostensibly imposed by the Americans) have never really gained popular support. There has been not a single amendment to the Constitution so far. However, since the mid-1990s, there are views that the Constitution, after four decades, should be amended, particularly in order to let Japan play a larger role in international peace-keeping operations.

### 3. Contemporary Reforms

Almost half a century after the post-war law reform, which was the last major reform since the nineteenth century, significant changes started to take place in the 1990s.

In the 1960s, Japan experienced high economic growth largely supported by the government industrial policies. The total amendment of the Foreign Exchange and Foreign Trade Control Law, which took effect in 1980 (renamed the Foreign Exchange and Foreign Trade Law in 1997) liberalised foreign exchange control and laid the basis for the internationalisation of the economy. In the second half of the 1980s, as the internationalisation of Japanese economy progressed, the economy entered the 'bubble period' when the prices of shares and real property tripled. However, the 'bubble' burst in 1990, and the economy has been slow to recover since then.

The increasing internationalisation of the economy made it impossible for Japan to continue its rather insulated system. Japan came under pressure to change its long-standing system and approximate it to international standards. A good example was competition law. As the Japanese economy enjoyed high growth, companies gained significant positions in the world economy, and trade friction with other countries intensified. Already in the 1970s, there were disputes over the export of textiles, cars, and steel, which resulted in voluntary export restraints on the part of Japan. The export of semi-conductors also became an



issue, and successive agreements were signed with the United States under the leverage of unilateral sanctions provided by the US Trade Act.

As those sector by sector approaches turned out to be unsuccessful from the viewpoint of the United States, the adequacy of the entire economic system in Japan came to be targeted. The criticism was that Japan was gaining competitive edge by resorting to unfair trade practices and cartels. The view of the United States was that the structure of the Japanese system as a whole should be addressed and changed if necessary.

Based upon such ideas, the Structural Impediments Initiatives Talks (hereafter SII Talks) between the United States and Japan started in 1989. The final report of the Talks covered a wide range of topics which encompassed competition, shareholders' rights, public procurement, deregulation, and patent procedure. The Talks resulted in amendments to various laws.<sup>11</sup>

The reforms that took place as a result of the SII Talks were extensive. The Anti-Monopoly Law, which had not been particularly actively applied, was amended and its implementation was substantially reinforced. The company law, at that time accommodated in the Commercial Code, was amended in order to strengthen the rights of minority shareholders. The patent procedure was streamlined and made speedier. The Securities and Exchange Law has been amended, not only as a result of the SII Talks, but due to the necessity of approximating it more closely to the international standard in areas such as the regulation of insider trading and disclosure.

One of the issues covered by the SII Talks was deregulation. The Japanese economy was a highly regulated economy with the government keeping firm control over the companies via its power of granting licences and permissions. It was not at all a fair or transparent system. This was criticised by the United States and the European Union for effectively inhibiting new entry into the market and reducing competition, thus enabling Japanese companies to defend their market from foreign competitors.<sup>12</sup>

It was not only foreign criticism that led the government to initiate a further reform. In the aftermath of the collapse of the 'bubble' economy, companies were struggling to survive by going into new areas of business, but were facing serious hurdles because of excessive regulation. In many areas, entry was simply impossible. Regulations, that once protected them from new entrants in the market, were now working against them. Therefore, the move for deregulation gained support within Japan.

In 1994, the Administrative Reform Committee was founded by the government. There was a sub-committee on deregulation within this organisation. The

<sup>11</sup> *Nichibei-Kōzō-Kyōgi Saishū-Hōkoku (Final Report of the US-Japan Structural Impediments Initiatives Talk)* (Tokyo, 1990).

<sup>12</sup> See, for instance, *Proceedings of the Second Seminar of European Union/Japan Competition Policy* (Brussels, 1995), p. 37. A dialogue between Japan and EU on the regulatory reform has been continuing since 1994: <[http://www.mofa.go.jp/Mofaj/area/eu/index\\_c.html](http://www.mofa.go.jp/Mofaj/area/eu/index_c.html)>.

next year, the first Deregulation Promotion Programme was endorsed by the government.<sup>13</sup>

One of the most highly regulated areas was the financial industry. The necessity of deregulating the financial sector had been felt for some years. The segregation and compartmentalisation of the industry, including the segregation of the banking and securities businesses, had once served to protect the industry from competition, but later became a 'yoke' restricting the development of business. A minor reform was implemented in 1993, but it was only in 1997 that a fully-fledged reform programme, which was dubbed as the 'Financial Big Bang', following the Big Bang in the UK, was launched. The idea was to make the Japanese financial market fair, transparent, and global. The measures have continued to be implemented since then, although the timing was not the best in light of the serious financial crisis beginning in 1998. The paternalistic and detailed prior regulations were to be replaced by post-de facto regulation based upon self-accountability. As a result of the reform, the hitherto highly segmented and regulated banking system has been dismantled.

Deregulation, or regulatory reform, is not only about removing regulations. It is also aimed at increased fairness and transparency, as well as the building of infrastructure that ensures fairness and transparency. In 2001, the government launched a Three Year Programme of Regulatory Reform. In the area of law, the Programme listed the realisation of a justice system which would be more accessible to the general public. The review of the Civil and Commercial Codes was also on the list. This was followed by the creation of the Office for the Promotion of the Justice System Reform in the same year (for detail, see Chapter 3). This Justice System Reform was a far-reaching reform, extending beyond the judiciary. New procedures, such as the Labour Dispute Adjudication Procedure, were introduced. Procedures involving intellectual property rights were streamlined and the Intellectual Property High Court was founded in order to speed up the process and to get more experts involved.

Since then, a significant number of Codes and Laws have been newly enacted or substantially amended. Just to mention a few, the Civil Code was amended several times to accommodate new categories of juridical persons. Company law, which was previously accommodated in the Commercial Code, was made into a new separate law—the Companies Law of 2005. The Anti-Monopoly Law was again amended, and the holding company system, which was totally prohibited by the post-War reform, was liberalised. The Code of Civil Procedure, which was totally amended in 1996 nearly a century after its enactment, was further amended. The Arbitration Law was newly enacted. Labour legislation has undergone significant changes, and a new law—the Labour Contract Law—was

<sup>13</sup> See J. Nakagawa et al. (eds), *Kiseikanwa no Seiji-Keizaigaku (Political Economy of Deregulation)* (Tokyo, 2000). For the history of the regulatory reform <<http://www.kantei.go.jp/jp/gyokaku-suishin/>>.

enacted in 2007. Intellectual property legislation has also been amended, particularly by increasing the penalties and making the remedies effective. The Securities and Exchange Law was replaced by a new law—Financial Instruments and Exchange Law—in 2006.

Not all of the law amendments in the 2000s can be directly associated with the regulatory reform. The insolvency system was substantially reformed from the late 1990s. The Anti-Monopoly Law was amended again in 2007, not necessarily as part of the regulatory reform, but in order to align it with other countries in combating cartels and other breaches. Japan has also ratified treaties such as the Treaty for the Abolition of Gender Discrimination and the Treaty on the Status of Refugees, which duly resulted in the amendment of relevant laws in recent years.

With the sheer scale of the changes which took place, the past two decades may be characterised as another period of major law reform, after the period of modernisation and the post-war reform.