

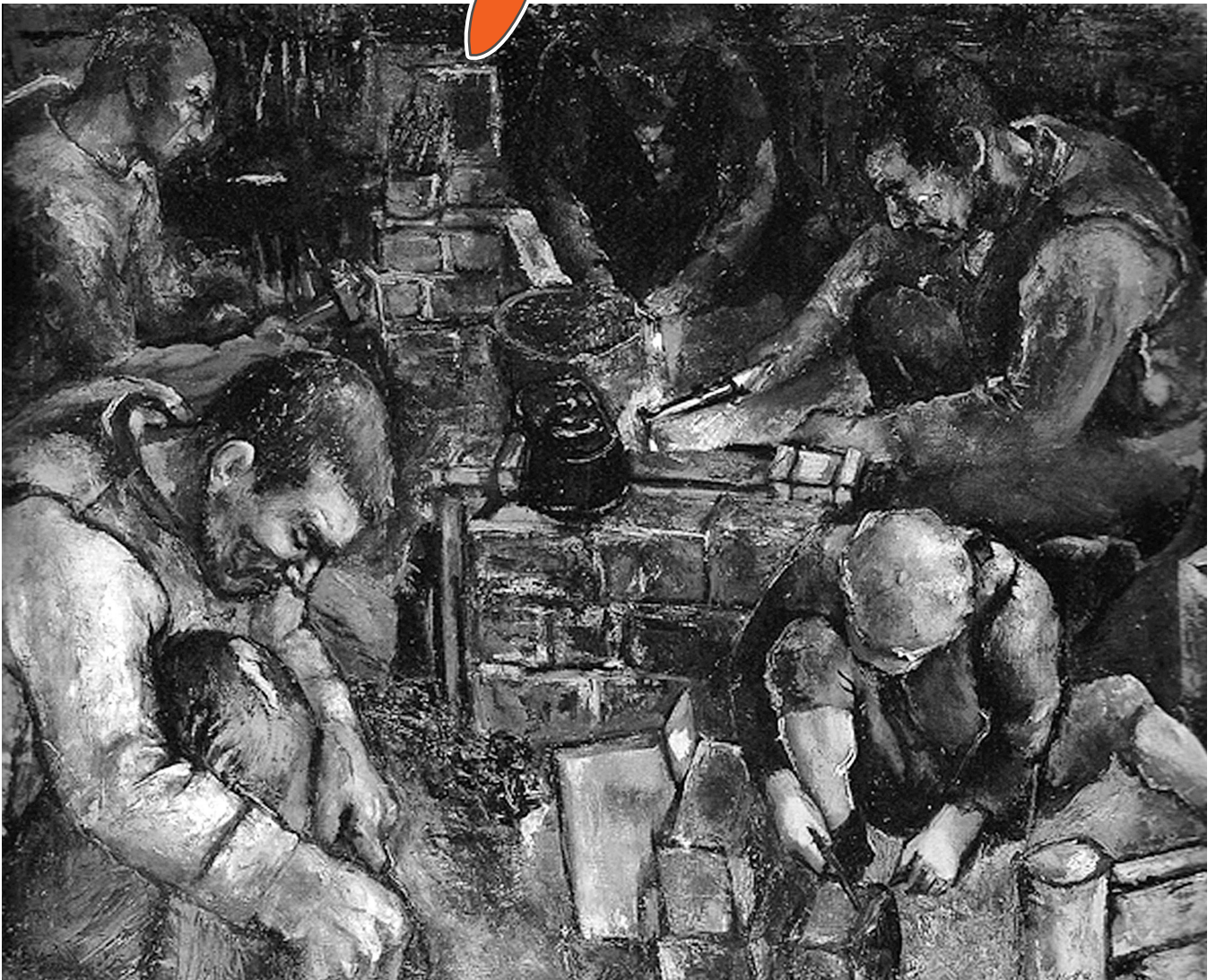
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Changing employment
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Cover

Hotta Seiji
"Blacksmith Shop"
1929
Courtesy of the Hotta family and the Fukui Fine Arts Museum

Editorial Notes

Personal Names

All personal names are given in the customary order in the native language of the person unless otherwise requested. Hence in Japanese names, the family name is given first, e.g. Toyotomi Hideyoshi, and in Western names the family name is given second, e.g. George Bush.

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Since last year's Lehman shock and its flurry of follow-on effects, people's concern over their economic security has mounted. Reports of rising unemployment—especially among temporary workers—and increasingly difficult job searches have been sweeping this country. Media interest was especially apparent in the extensive coverage of a tent village set up in Tokyo around New Year's Day for temporary workers who had lost both their jobs and residences (*toshikoshi haken mura*) and dark clouds of anxiety have continued to loom over society.

This issue of *Social Science Japan* focuses on the recent unemployment problem in Japan and explores its development from various fronts. Kishimoto Takeshi summarizes recent employment policies of the Japanese government and gives us a detailed account of what the government thinks are the major problems and how it has responded to them. Mizumachi Yuichiro explains why temporary workers in Japan have been placed in a weaker position from a legal viewpoint. He recommends reforms such as the reinforcement of safety nets for these workers, higher wages, improved benefits, and strengthening their collective voice. Kobayashi Yoshinobu's article tells us how hard it is to solve the temporary workers problem in Japan as a political matter. Since so many people are now working on a temporary basis, prohibiting the use of temporary workers would cause even higher unemployment. This reality divides labour unions across various industries and political parties find it difficult to formulate adequate policy responses. Nitta Michio gives us an overview of the unemployment problem and points out that government policies targeting only temporary workers would be ineffective. He calls for the creation of an environment favorable for the normal operation of temporary staffing agencies and for the implementation of reforms based on the notion of an "employment portfolio system."

* This issue of *SSJ* is greatly indebted to generous assistance from the contributors who participate in the *Shōgai Seichō-gata Koyō Shisutemu Purojekuto* (Life-long Developing Employment System Project) at *Shaken*. For more detailed information about this project, please see:
<http://das.iss.u-tokyo.ac.jp/future/index.htm> (currently in Japanese only).

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Japanese Employment Measures in the Face of a Global Recession

Kishimoto Takeshi

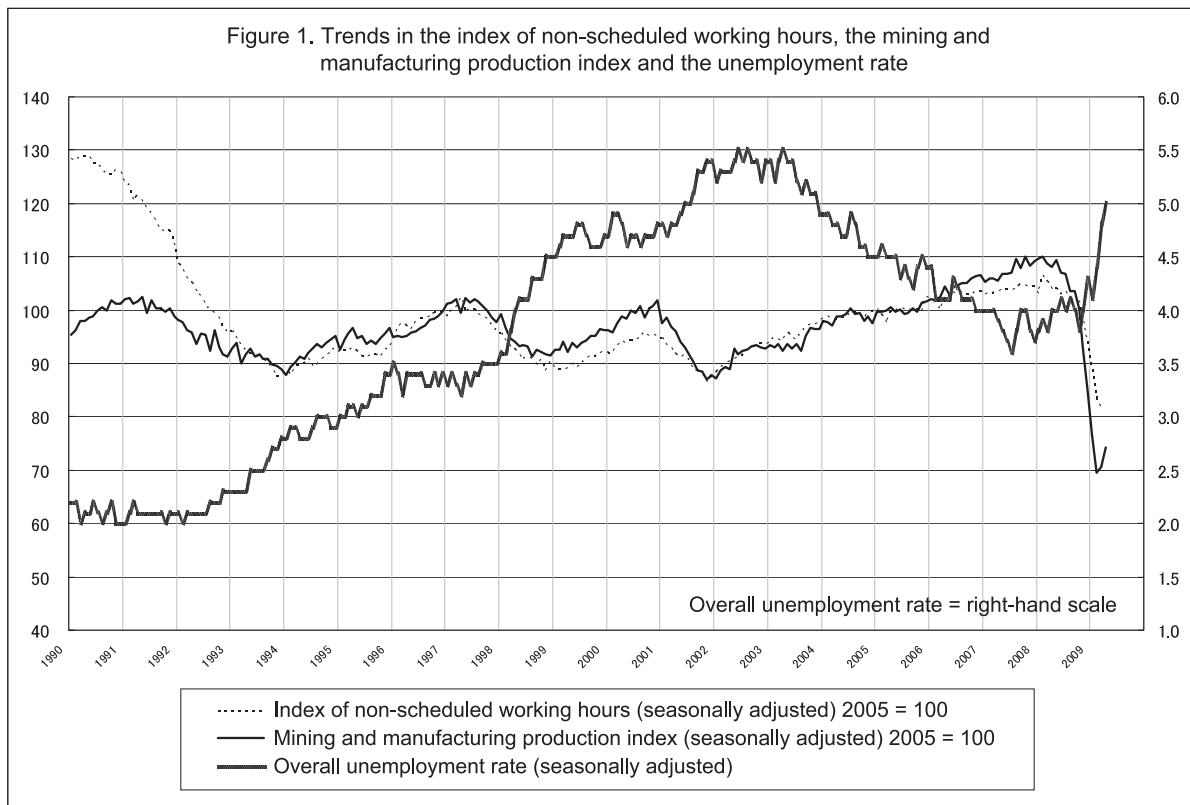


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Introduction: The 2002 Recession

In this article I will showcase the employment measures that the Japanese government is taking in the current global recession triggered by the US subprime loan debacle that came to light in 2008.¹ Let me begin by explaining how the employment situation in Japan has changed over the past seven years. After the experience of a decade-long recession in the wake of the bursting of the bubble economy in the early 1990s, Japan recorded an unemployment rate of 5.5% three times—in June 2002, August 2002 and April 2003. This was Japan's worst ever unemployment rate (Figure 1). Japan was working to sort out its bad bank debt amidst a deflationary atmosphere and in the process, many companies went bankrupt and many employees were laid off.

Employment measures at that time focused heavi-



¹ In the broader sense, monetary easing to increase demand and financial assistance to prevent companies from going bankrupt can be also considered "employment measures," but in this article I only focus on measures such as benefits for unemployed workers and job training.

ly on the involuntary unemployment of middle-aged workers who were shouldering the responsibility for family budgets.² Measures were enacted to: a) revise the Unemployment Insurance Act to avoid the financial collapse of the unemployment insurance system, lower insurance premiums while reducing benefits to voluntarily unemployed workers and maintain or extend benefits to involuntarily unemployed middle-aged workers; b) assign temporary counselors in public Employment Security Offices to consult one-on-one with unemployed middle-aged workers; and c) provide subsidies to companies that hired unemployed middle-aged workers.³

2003-2007: New Employment Problems Emerge

The economy grew between 2003 and 2007, maintaining growth rates of approximately 2%, and the unemployment rate gradually declined into the 3% range. As the number of involuntarily unemployed middle-aged workers tapered off, people started to recognize three major issues that had lain hidden in the shadows of the unemployment problem. First, Japan needed to boost the labor force participation rate, particularly among youth, women and the elderly in order to alleviate the impact of the increasing dependent population ratio brought on by the declining birthrate and the ageing of the population. Second, since companies held off from new hiring throughout the 1990s, most of the new, young workers that entered the labor market did so as non-regular workers.⁴ Poor working conditions, employment insecurity and scarce training opportunities prevented them from achieving economic independence.⁵ Third, regular workers also faced problems, such as health hazards caused by long

working hours and disruptions to their work-life balance, which needed to be improved.⁶

The following measures were taken to combat these problems:

1. In 2004 the Plan to Challenge Young People to Become Independent—the first-ever package of employment measures for young workers—was formulated and the Act on Employment Security of the Elderly was revised to ensure job security between the ages of 60 and 65.
2. In 2005 the Industrial Safety and Health Act was revised to prevent health hazards caused by long working hours.⁷
3. In 2006 the Human Resources Development Promotion Act was revised to encourage young people to acquire vocational skills, taking its cues from Germany's dual education system, and the Equal Employment Opportunity Act was revised to stiffen regulations on sexual harassment in the workplace.
4. In 2007 the Unemployment Insurance Law was revised to extend job placement services to young people with no history of unemployment insurance coverage; the Employment Measures Law was revised to prevent firms from limiting new hires to people below a certain age (often 25);⁸ the Minimum Wages Act was revised to increase minimum wages; the Labor Standards Act was revised to raise overtime pay rates (enacted in 2008); and the Part-Time Labor Act was revised to reduce disparities between full-time and part-time worker benefits.

² The majority were regular workers, i.e., full-time workers on non-term limited employment contracts.

³ There are 12,008 public Employment Security Office staff in Japan (as of the end of FY2009), and the ratio of office staff to the overall workforce is 1/20 of that in Great Britain, for example. Also, since national public servant capacities are strictly controlled, temporary staff are often hired in response to rapid increases in unemployment.

⁴ There is debate as to whether or not the major cause was companies' prioritizing retention of their middle-aged workers.

⁵ Some of the major temporary staffing agencies and contractors have been repeatedly found to be in grave violation of the labor laws, and this has become a cause of widespread public concern.

⁶ However, when viewed over the long term, since the late 1980s when legally-defined working hours were stepped down from 48 hours to 40 hours, both average working hours and the percentage of workers working long hours have declined considerably.

⁷ *Karōshi* (death from overwork) is a representative example.

⁸ This practice was not limited to Japan, but major Japanese companies have regularly hired young workers, primarily fresh graduates, as a major source of potential future management; however, since most companies limited the scope of regular hiring to young people under the age of 25, a large number of young people who failed to land a position in their company of choice immediately after graduation never got another chance to apply to that company.

In 2007 the Diet enacted a raft of labor legislation but this of course does not mean that legislators sought to revise the laws because they anticipated the current economic crisis.

Employment Measures and the 2008 Recession

Initially, some thought that since Japan's financial institutions had already gone a long way towards cleaning up their bad debt during the last recession, the impact of the latest global financial crisis would be minimal. However, since exports and investments in related infrastructure contributed greatly to the economic expansion between 2003 and 2007, the global economic slowdown thereafter triggered a rapid slump in production, most notably from the latter half of FY2008 onwards, as well as a steep rise in unemployment (Figure 1). Starting in August 2008, the government of Japan announced economic policy packages in four stages, each including an expanded package of employment measures.⁹ I do not have enough space to describe each measure in detail, but I will explain their main features.

Employment maintenance subsidies

Japan's government can offer employment adjustment subsidies, i.e., subsidies granted to companies to limit dismissals, which are based on Germany's short-term work allowances (*Kurzarbeitsergeld*). Since the 2002 recession came on the heels of the long recession of the 1990s, the government opted not to offer the subsidies as the climate was such that one could not expect existing employment levels to be maintained. However, because the current round of sharp employment contractions was due to an exogenous shock and recovery is possible within the next one to two years, these subsidies are being put to use as important

instruments of policy.

• Employment Adjustment Subsidies

A system to partially subsidize payments to workers on leave and wages for workers in training, when companies put said workers on leave or in training to avoid dismissal due to reduced production or sales. Rates of subsidy for small and medium-sized enterprises may be as high as 90%, while the maximum rate of subsidy for large corporations is 75%. There is 600 billion yen in the FY2009 supplemental budget earmarked for these subsidies.

Policies for groups with high risks of unemployment — non-regular workers, women, the elderly and the disabled

Since there was a time lag between the onset of this recession in the United States and the emergence of serious repercussions in Japan, the Japanese government was able to have employment measures ready for the initial phase of the recession, in other words the phase when the first groups of workers start to feel a serious impact.¹⁰ In particular, the following problems were recognized in relation to measures for non-regular workers: a) a considerable number of non-regular workers do not qualify for unemployment insurance because eligibility is limited to individuals with "anticipated employment of one year or longer"¹¹; b) young workers who graduated in the 1990s and have only experienced non-regular employment since then have not acquired sufficient technical skills and will find it difficult to secure stable employment opportunities even if the economy recovers; c) the number of non-regular workers without savings or their own homes who will become homeless as soon they lose their jobs is on the rise.¹²

⁹ English summaries of each policy package can be found on the Cabinet Office's homepage.

Stage 1: <http://www5.cao.go.jp/keizai1/2008/0918summary-english.pdf>

Stage 2: <http://www5.cao.go.jp/keizai1/2008/081201outline-english.pdf>

Stage 3: <http://www5.cao.go.jp/keizai1/2008/081224summary-english.pdf>

Stage 4: <http://www5.cao.go.jp/keizai1/2009/0420summary-english.pdf>

¹⁰ Stage 1 employment measures were formulated in August 2008. The plunge in the mining and manufacturing production index started at the end of 2008.

¹¹ Since Japan does not have an unemployment assistance program for unemployed workers who cannot receive unemployment benefits, the only protection for individuals ineligible for unemployment insurance coverage is from the Public Assistance Program. However, the after-mentioned Emergency Human Resource Development and Employment Support Fund, coupled with job training, now serves as a limited-term unemployment assistance program.

¹² Among others, this includes contracted workers who live in housing provided by employers and who forfeit this housing as soon as they

With these considerations in mind, in mid-2008 the government instituted a system that provided unemployed workers who were ineligible for unemployment insurance with loans, instead of payments from the unemployment insurance coffers, as a form of social security while they were in job training. These workers are exempted from repayment provided they meet certain conditions upon completing job training and reentering the workforce. In addition, the government of Japan teamed up with local governments to provide housing consultations as well as employment consultations at Employment Security Offices and established a new housing rent loan program for unemployed workers.

- **Employment Security Financing**

A program to provide low-interest loans from the Labor Bank to unemployed workers who have lost their homes concurrent with involuntary job loss. Applicants may receive a maximum of 500,000 yen for initial expenses, a maximum of 360,000 yen to partially cover six months of rent and a maximum of one million yen for living expenses. Applicants may be exempted from repaying part of the loan if they have reentered the workforce in a position with unemployment insurance coverage within six months of receiving the loan.

Furthermore, the Unemployment Insurance Act was revised this year, relaxing eligibility restrictions and expanding unemployment insurance coverage to non-regular workers who had reasonably expected to remain employed for six months rather than one year. A new fund was also established to provide social security benefits during the job training period to unemployed workers who cannot receive unemployment insurance

benefits or whose benefits have expired.

- **Emergency Human Resource Development and Employment Support Fund**

A fund that provides unemployed workers who do not receive unemployment insurance benefits with a maximum of 120,000 yen per month in benefits and a maximum of 80,000 yen per month in loans to help them make ends meet during their job training periods. The fund totals 700 billion yen and is limited to three years. Recipients are not required to make any contributions of their own, but eligibility is dependent on income level.

Finally, this round of employment measures includes subsidies for companies that hire unemployed workers designed primarily to support the hiring of young people and non-regular workers.

- **Special Subsidy to Promote Young Workers' Transition to Regular Employment**

A subsidy of one million yen for small and medium enterprises or 500,000 yen for large corporations that have established regular employee recruitment quotas for hiring non-regular workers between the ages of 25 and 40.

Conclusion: Outlook for the Future

In March 2009 the mining and manufacturing production index rebounded and ever-so-slight signs of recovery could be seen. On previous occasions, however, even after production has fully recovered, it has taken some time for any visible upturn in employment figures to become manifest. At this point in time, the Ministry of Health, Labour and Welfare has just commenced discussions on new employment measures for FY2010.

lose their jobs, as well as contracted workers who sleep in 24-hour internet cafes (stores in business districts that offer booths with internet-connected PCs and reclining chairs for around ¥1000 per night) and who can no longer pay booth rental fees when they lose their daily wages.

Why Are There Many Expendable Workers in Japan? Issues and Mechanisms Underlying the Non-Regular Worker Problem

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The global economic downturn that began in the fall of 2008 quickly brought to light concerns over layoffs of temporary workers (hired through contracts with temporary employment agencies) and fixed-term workers (contracted to work for a definite period) and the underlying issues involving the working poor and social disparity in Japan. The “employment crisis” is now perceived as a major social issue. Why have these problems arisen?

New Problem or Old? The Nature of the Issue

The employment issues that we are currently seeing are fundamentally the same as those observed in the past: *employment termination practices, wage disparity and access to unemployment insurance*. Legally, from the outset, temporary work has been defined as a relationship in which a worker’s employment contract terminates concurrently with the termination of the dispatching contract between a temporary employment agency and a client company. Through litigation, fixed-term contract workers have received some protection through court precedents in cases when there is reason to expect continuation of employment, but the courts have also been deemed it reasonable (i.e., legal) for personnel cutbacks to target fixed-term workers prior to regular workers. In addition, wage disparity between regular and non-regular workers has almost never been considered illegal,¹ and given the low minimum wage standards in Japan,² non-regular workers often find it difficult to live even at subsistence level on their wages. This situation is not new.³ Furthermore, since eligibility conditions for unemployment insurance have long required workers to prove anticipated employment of one year or longer, there have always been a large number of workers who would not be covered by unemployment insurance if they lost their jobs.

Measures to sufficiently address this situation

¹ The Part-Time Worker Act, revised in 2007, includes a provision that prohibits the discriminatory treatment of part-time workers vis-à-vis regular workers (Article 8). However, the following three conditions that a part-time worker must meet to qualify for protection drastically limit the scope of the law: (1) actual duties and responsibilities are of equivalent levels, (2) employment under indefinite-term employment contracts (or terms which can be construed as such), (3) whose likelihood of being transferred or given different duties is the same as their regular worker counterparts throughout their period of employment.

² Minimum wages in Japan are set by each prefecture. As of June 2009, the minimum wages ranged from a high of 766 yen per hour in Tokyo and Kanagawa prefectures down to 627 yen per hour in Miyazaki, Kagoshima and Okinawa prefectures. An inverse relationship has been found to exist between a prefecture’s minimum wage and the amount of welfare benefits it disburses, especially in urban areas with high costs of living.

³ According to the Ministry of Health, Labour and Welfare’s Basic Survey on Wage Structures (2007), the average wages (i.e., official monthly salary) for a permanent employee were 313,200 yen (347,500 yen for men; 243,300 yen for women) compared to 192,900 yen (224,300 yen for men; 168,800 yen for women) for all other types of employees. On a scale of 1 to 100, if permanent employee wages were 100, non-permanent employee wages would be 61.

had not been taken by the time the economic crisis struck, which led to the current controversy over temporary and fixed-term worker layoffs. Now these individuals' struggles to stay afloat have finally sparked public debate over what should be done.

Why is the Non-regular Worker Issue Still Unresolved? The Problem in Context

The treatment of non-regular workers must be viewed in the context of the Japanese employment system and its historical focus on long-term employment of regular workers. This focus has been internalized in Japan's labor and employment law which fundamentally supports the employment system. The custom of "lifetime employment" in which companies are disinclined to dismiss employees was established around 1960, after which it is said to have spread among Japanese companies concurrent with the nation's high economic growth.⁴ Through the courts, this practice became law based on the doctrine of abusive dismissal. According to this doctrine, an objectively unreasonable or socially unacceptable dismissal constitutes an abuse of the right to dismiss. Such dismissals are declared null and void (Labor Contract Act, Article 16). Japan's courts interpret just cause (i.e., objective reason and social acceptance of dismissal) strictly, and tend to deny the validity of the dismissal unless there has been serious misconduct by the worker.

This doctrine is also applied either directly or analogously to non-regular workers; however, as I mentioned earlier, the courts have deemed it reasonable to distinguish between regular and non-regular workers' employment. With regard to dismissals and contract terminations, they have sanctioned personnel cutbacks that target non-regular workers before regular workers. In this way, non-regular workers have been treated as buffers to protect the jobs of regular workers, and this practice has been and still is legally accepted.

It was against this backdrop that the use of non-regular workers as a low-cost and flexible approach to employment became common in Japan, fueled by the growing intensity of global competition from the 1990s onwards.⁵ People are starting to recognize that not only is the increase of workers with unstable positions and poor pay and benefits socially inequitable, it also raises the risk of widespread economic and social instability. That is why efforts to put labor and employment law reforms—including a system-wide overhaul—are now getting underway.

What Should Be Done? Options for Reform

There are three primary issues regarding non-regular workers: employment insecurity, low wages and limited benefits, and the lack of opportunity to participate in collective labor-management talks. I address each of these below.

- 1) *Employment insecurity—should we regulate hiring? What about safety nets?*

Employment insecurity is a problem common to temporary and fixed-term workers alike. There are two main ways that policymakers can choose to handle this issue: (1) enact "intake regulations," that is, place legal limitations on fixed-term employment contracts and the placement of temporary workers, or (2) put a safety net in place to counter insecurity without regulating intake. The former approach is the method that has been adopted in Europe (for example, fixed-term employment contracts and temporary worker placements have been limited to those instances for which there is reasonable justification). However, an oft-cited adverse affect of this method is the rigidity of the overall employment system which, in turn, generates more unemployment. On the other hand, if Japan were to employ the safety net method, a plausible approach would entail making unemployment insurance coverage

⁴ For a recent excellent treatment of this discussion, see Nitta, Michio and Hisamoto, Norio, eds. *Nihonteki koyō shisutemu* [Japanese Employment Systems]. Nakanishiya Publishing, 2008.

⁵ According to the Ministry of Internal Affairs and Communication's Employment Status Survey, the share of non-regular workers in 2007 exceeded one-third of all employees (part-time and casual workers: 24.3%, temporary workers (employed via agencies): 3.0%, contract employees (*keiyaku-shain*): 4.2%, contract employees hired after mandatory retirement age (*shokutaku*): 2.0%, other: 2.0%, total: 35.6%). The percentage of non-regular workers has nearly doubled since 1987 when 19.7% reported being non-regular workers.

mandatory⁶ for all employed workers (including part-time and fixed-term contract workers) while defining some minimum conditions for voluntary resignee entitlements (such as having worked for at least three of the six months immediately preceding resignation) in order to prevent the moral hazard of workers repeatedly working for short periods and then leaving to receive insurance benefits. Additionally, when it comes time to build a safety net, one priority will be the provision of personalized, constructive support (i.e., employment activation) to ensure that unemployed individuals do not remain out of the work force for long periods of time.

2) *Low pay and benefits—should we adopt the European or the American style?*

The second issue is low pay and benefits—the disparity problem. The European Union has already issued directives (1997/81/EC; 1999/70/EC; 2008/104/EC) that essentially prohibit the discriminatory treatment of part-time, fixed-term contract, and temporary workers. Efforts have been made to reduce the disparity of pay and benefits compared with full-time direct-hire employees. In the United States, by contrast, employment conditions are treated as issues to be decided through the terms of individual contracts. The fundamental approach is to respect the freedom of contract; the law does not intervene.

One possible option for Japan is to take the American approach and let the market adjust for pay and benefit disparities that stem from different types of employment. However, given the fact that Japan has already followed this path, albeit passively, and that it has led to today's labor market instability and increased disparity—and given the growing consensus that this is a socially unacceptable outcome—Japan should actively consider the European option.

In this regard, the possibility of Japan adopting an “equal pay for equal work” rule has been strongly

advocated recently. Such a rule could function effectively for the adoption of the European approach of correlating wage rates and job classes, but in Japan many companies determine pay and benefits not by job class, in the narrow sense, but with an eye on an employee's mid-to-long term career path (i.e., performance-based pay). Companies may also adopt other benefit schemes, such as seniority-based pay and cost-of-living pay. What is important for improving pay and benefits for non-regular workers is not to force the adoption of wage rates correlated to job classes that make equal pay for equal work possible. Doing so would rigidify pay and benefit systems and make the situation worse for companies that require mid-to-long term worker training. Instead, what is needed is a sustained effort to prohibit discrimination and improve pay and benefits in a manner that suits the particular benefit system in question. Japan could prohibit “discrimination without reasonable justification” and use the scope provided for the definition of “reasonable justification” to address the particular needs of different benefit systems.

3) *Giving non-regular workers a voice—labor unions or worker representation systems?*

We need to take measures to get non-regular workers who have been left out of labor-management dialogue back into the loop. Be it the issue of employment termination or the issue of wages and benefits, sufficient communication with all involved parties is important for improving the level of satisfaction with decisions made. As society grows more complex and people become more intricately involved in profit-sharing, processes to coordinate different interests will become even more important. Listening to workers' opinions and building a platform for coordinating and representing those opinions will not only boost worker morale, it will contribute directly to company profits.

The question is, who should lead this communi-

⁶ The Employment Insurance Act originally excluded: (1) individuals who work less than 20 hours per week, and (2) individuals whose anticipated period of employment is less than one year from receiving unemployment insurance until a 2009 amendment relaxed the latter condition to “less than six months” effective from April of that same year. Individuals whose anticipated period of employment is less than six months are still not eligible for unemployment insurance.

cation effort? In recent years, labor unions have been working to organize non-regular workers.⁷ Ideally, a labor union voluntarily organized by workers would undertake such a role, and one would like to hope that labor and management would cooperate going forward in expanding the circle of communication. The reality, however, is that there is an incredibly large number of companies and workplaces in Japan that do not have labor unions, making it difficult to expand the circle of communication to include non-regular workers by means of self-motivated labor union initiatives.⁸

This leaves one more possible option: creating worker representation systems in which representatives are democratically elected by all workers, including non-regular workers, in a given company or workplace. Organizations which give voice to non-regular as well as regular workers can play a crucial role in the reform of Japan's labor and employment laws. In designing such organizations, it will be important to define rights and responsibilities such that labor unions and worker representatives function synergistically and in a

mutually complementary manner. At the same time, it will be important for the representation systems to provide incentives to companies for negotiating and formalizing agreements with worker representatives.

Comprehensively enacting the measures I discussed in this article would lead to a better balance between Japan's employment system and the overall labor market, and engaging in an extensive and level-headed series of debates to that end most likely constitutes the shortest path to solving today's problems.

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⁷ Efforts are underway to organize part-time workers in labor unions, mainly in supermarkets and other retailers. The estimated 3% rate of part-time worker unionization in 2003 rose to an estimated 5% in 2008 (Ministry of Health, Labour and Welfare's Basic Survey on Labor Unions). For details on these recent efforts, see Nakamura Keisuke, *Kabe wo Kowasu* [Break the Wall]. Daiichishorin Publishing, 2009.

⁸ Since peaking at 55.8% in 1949, Japan's rate of labor unionization has continually declined, falling to 18.1% in 2008. The rate of labor unionization at companies with 100 or fewer employees is a mere 1.1% (Ministry of Health, Labour and Welfare's Basic Survey on Labor Unions).

Revising the Worker Dispatching Act: The Real Story Behind the Non-regular Employment Saga

Kobayashi Yoshinobu



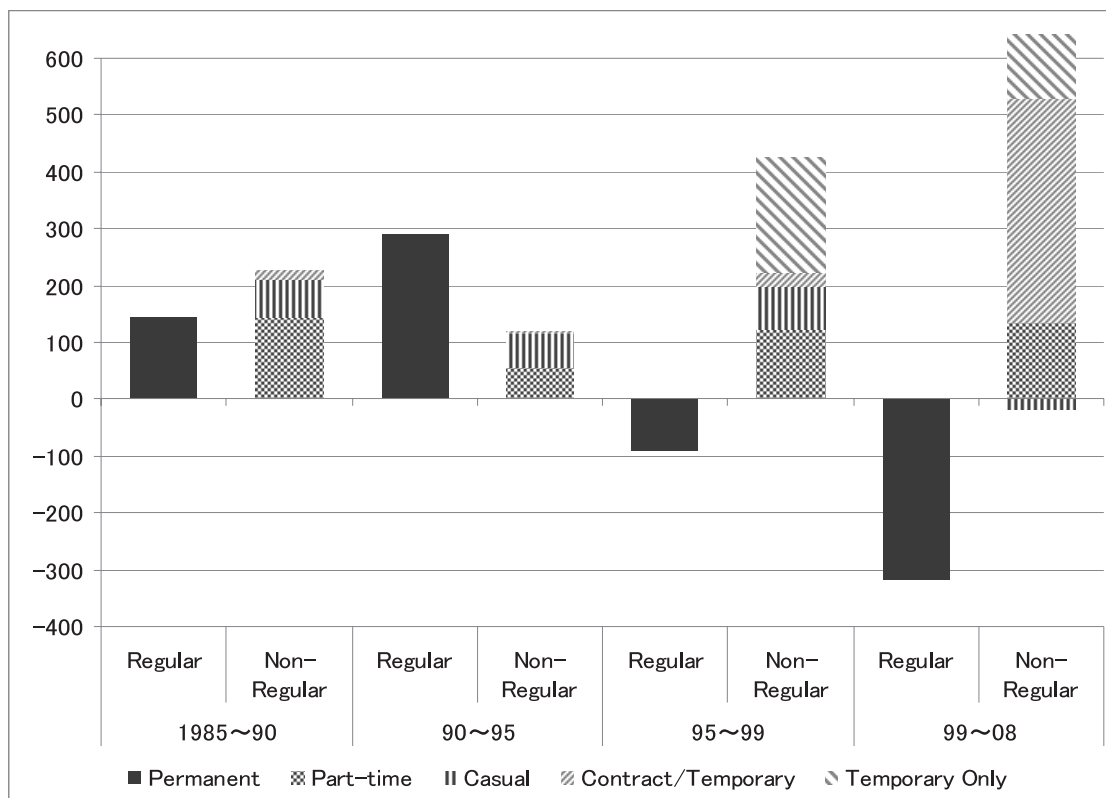
Kobayashi Yoshinobu is the Representative Director of the Global Research Institute for Industrial Relations

Japan is experiencing an unprecedented employment crisis amidst what is being called a once-in-a-century global economic predicament. Accord-

ing to the latest Ministry of Health, Labour and Welfare survey, the number of non-regular workers who were either terminated when their employment contracts expired or dismissed midway through their terms of employment reached 207,381 across all industries between October 2008 and June 2009. Of this number, 132,000 were temporary workers employed via agencies, 44,000 were contract laborers and employees, 16,000 were contractors and 14,000 were direct-hire temporary workers. Meanwhile, the same survey estimated that 18,315 regular employees lost their jobs. A quick calculation shows us that this is less than 1/11 of the number of non-regular workers who lost jobs. The real face of contemporary Japan's employment crisis is the unemployment problem caused by the termination of non-regular workers.

Why has this employment crisis centered on non-regular workers? Figure 1 shows the fluctuations

Figure 1. Fluctuation of Worker Numbers by Employment Type



Source: Ministry of Internal Affairs and Communications

in the number of workers by employment type from 1985 to 2008, divided into the following four eras: the bubble years from 1985, when the Temporary Worker Dispatching Act was promulgated, until 1990; the end of the bubble from 1990 until 1995; the structural adjustment phase from 1995 until 1999; and the structural reform phase from 1999 until 2008. During this time, regular employee numbers fell by 3.17 million while the number of non-regular workers—temporary workers, subcontractors, fixed-term contract employees and the like—soared by 6.24 million.

The employment crisis that Japan now faces resulted from the dismissals of excess non-regular workers amidst a major global recession. Additionally, the large factories of major exporters were responsible for the massive increase in non-regular workers between 1999 and 2008, and that is why this round of non-regular worker terminations occurred mainly in multinational manufacturers such as Toyota, Canon and Sony. This fact alone garnered much public attention and led to increased calls for better protection and expanded unemployment insurance benefits for temporary workers.

In December 2008, the government submitted its proposed revisions to the Temporary Worker Dispatching Act to the Diet in an attempt to provide protection for temporary workers; however, the proposal was relegated to the House of Representatives' Committee on Health, Welfare and Labor on January 5, 2009 and has yet to be debated. At this rate the revised act may never be passed.

As to why the revisions have stalled, the ruling Liberal Democratic Party (LDP) has argued that the opposing Democratic Party of Japan (DPJ) refuses to let the issue be debated, while the DPJ claims that the ruling party has not even approached them to begin the discussion. While each side tries to place blame with the other, the real reasons that the debate has stalled appear to lie with both parties. The LDP-led government fears that discussions will reveal that the legislation is defective because the proposed revisions were drawn up before the recent wave of non-regular worker terminations and will not serve to address the current temporary worker unemployment problem. On the other hand, the three oppo-

sition parties—the DPJ, the Social Democratic Party and the People's New Party—have been discussing how to shape a joint three-party plan since last year, but they have not been able to compromise on their approaches to several points concerning temporary agencies, so if the debate goes to the Diet it will further expose the discord within the opposition. Therefore, the ruling and opposition parties have come to a peculiar agreement that it is best to delay this legislation.

There are three points of contention concerning the Temporary Worker Dispatching Act. The first point is whether to prohibit day labor dispatching. Day labor dispatching refers to one-day only jobs that workers locate by accessing temporary agency job sites via cell phone mail. Such jobs include light work such as sorting and bagging products in warehouses, moving or relocation, preparing for events and the like. Many criticize day labor dispatching as piecemeal employment, and the ruling and opposition parties both agree on prohibiting this practice. The Ministry of Health, Labour and Welfare estimates that 40,000 people work as day laborers, but if you speak with industry insiders, they will tell you that the actual figure is between 100,000 and 150,000. A lot of people would lose their jobs if day labor dispatching was prohibited.

The second area of disagreement is over the general prohibition of short-term job placements via temporary staffing agencies. 93.6% of actual placement contract terms last for less than three months, and very few contracts last longer than six months. According to the three opposition parties, the instability of this kind of employment is the reason why working conditions for temporary workers have deteriorated, and the parties have agreed that staffing via temporary agency placements should be prohibited as a rule (with exceptions for specialized job types). However, the ruling LDP maintains its endorsement of current practices noting that a ban on temporary agency hires would limit employment opportunities for the estimated 2.8 million workers employed via temporary agencies (73% of all temporary workers).

The third contentious issue is whether to ban dispatching temporary workers to manufacturing

firms. It was illegal for manufacturers to utilize temporary workers until Temporary Worker Dispatching Act was revised in 2004. The Minister of Health, Labour and Welfare, Masuzoe Yoichi, noted that the subsequent surge in temporary worker numbers led to the recent round of terminations by major corporations when he boldly called for the “prohibition of dispatching temporary workers to the manufacturing industry” at the Japanese Trade Union Confederation’s (RENGO) 2009 New Year’s party. After this declaration, the opposition parties’ demands for this practice to be banned quickly gathered steam. Despite the fact that the government’s proposed revisions to the Temporary Worker Act would allow current practices to continue, it seems that the LDP and New Komeito are leaning toward prohibition. On the other hand, some say that the mood within the government, especially that of Prime Minister Aso, is cautious, and this is thought to be another reason why the ruling parties are disinclined to rush to debate the legislation. The Ministry of Health, Labour and Welfare estimates there are 400,000 temporary workers in the manufacturing industry, but industry insiders say that the figure at last year’s peak was one million. The situation will not be easily resolved.

There is one other reason why the revisions has reached this impasse in the Diet—the fact that the opposition parties and labor unions, which have been united in their vehement disagreement with the ruling party, have not yet resolved their own internal differences of opinion concerning banning or tightening temporary worker. For example, RENGO has agreed on a policy to prohibit both day labor dispatching and other temporary placements while the Jinzai Service General Union (JSGU)—a member of an influential RENGO-affiliated union federation, the Japanese Federation of Textile, Chemical, Food, Commercial, Service and General Workers’ Unions (UI ZENSEN)—has stated its “discomfort” with the RENGO policy and will not approve it. In addition, one “left-wing” RENGO member, the Japan Community Union Federation (JCUF) has stated its preference for banning temporary placement by and large (with room for exceptions on a provisional or ad hoc basis).

The prohibition of dispatching temporary work-

ers to manufacturing industries is one issue that has quickly gathered momentum since the beginning of 2009. The Japanese Electrical Electronic & Information Union (JEIU) and UI ZENSEN, both RENGO members, have opposed outright prohibition in this area. In particular, UI ZENSEN convened a “Non-Regular Worker Emergency Measures Task Force” in January 2009 and issued a statement declaring, “banning the dispatching of temporary workers to manufacturing industries is inappropriate.” Thirteen members from both Houses of Parliament, including a deputy leader of the DPJ, Kawabata Tatsuo, participated in this meeting. The reason that the DPJ is waffling on its stance toward prohibiting the use of temporary workers in manufacturing firms is because the strong convictions of JEIU and UI ZENSEN, members of major DPJ backer RENGO, have made it difficult for the party to maneuver.

On the surface, these schisms within the opposition and labor unions appear to be based on differences in opinion between the left and right wings. Politically speaking, the left wing consists of the old Socialist Party and Social Democratic Party factions within the DPJ, former members of the General Council of Trade Unions of Japan who are now part of RENGO, and left-wing labor unions (unaffiliated, small-scale unions that are not enterprise or company-based unions). The right-wing and the centrists are an amalgamation of members of the old Democratic Socialist Party faction within the DPJ, the old Japan Confederation of Labor, and the Federation of Independent Labor Unions.

However, these forces are divided not only along political and ideological lines. Observing the actual differences in the policy preferences of each faction towards temporary workers makes the situation easier to grasp. The reason that JEIU and JSGU oppose the ban the use of temporary workers in manufacturing is because they have worked to organize these same workers who are present in large numbers in factories and shops whose regular employees are JEIU or JSGU members. This is the same reason why the left-wing JCUF is cautious about the prohibition of temporary placements. Labor unions that count temporary workers among their ranks cannot easily voice support for outright prohibition because

prohibition or stiffer regulation would limit employment opportunities for union members whose interests the unions are meant to serve.

In the meantime, forces backing prohibition or stiffer regulation of temporary worker dispatching in Japan are now in the majority. From their point of view, the best option is to drastically limit the scope of worker dispatching by treating it as a temporary or ad hoc practice, to return to the pre-2004 prohibition of temporary workers in manufacturing industries, and limiting the use of temporary labor to specialized duties. In other words, the majority opinion is to drastically reduce firms' access to temporary workers.

Conversely, in light of the fact that employing temporary workers in offices, factories and shops has become a firmly entrenched practice since the Temporary Worker Dispatching Act was promul-

gated nearly a quarter century ago, there are factions—albeit in the minority—that stress that temporary work should be recognized as a well-established type of employment and that efforts should be focused on employment protection and equal benefits for temporary workers.

It is fascinating to compare these differences in opinion on employment policy in Japan to the evolving policies on temporary workers around the world. In other words, global trends, especially recent trends in the European Union, have set a course toward equal benefits, expanded social security and other measures that increase temporary workers' employment rights, rather than focusing on limiting firms' reliance on these workers. The time has come for Japan to change tack to benefit temporary workers and to bring its policies in line with non-regular employment trends around the globe.

Temporary Worker Termination and the Employment Portfolio Systems

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Mass Layoffs of Temporary Workers

When I was a faculty member at a private university, I once asked students in my human resource management class, “What would you do if you lost your job, couldn’t find gainful employment and found yourself in situation where you couldn’t rely on your parents?” When a student stood up and replied, “I’d go to the West Exit of Shinjuku Station and join the ranks of the homeless,” I was disappointed. The answer that I was expecting was, “I would go to the Public Employment Security Office and apply for unemployment benefits.” If someone had replied correctly, I was going to ask, “What would you do when your unemployment benefits expired?” to instruct them that they should go to the Welfare Office and apply for public assistance, but the answer to the first question had already derailed my lesson plan.

Unfortunately, when the media picked up on the

recent spate of temporary worker firings and started reporting on the difficult situations that these workers faced, unemployment insurance was not even on their radar. News coverage focused almost entirely on housing, shelters and other measures to counter poverty. Unemployment insurance is the primary safety net to guarantee income after job loss—or is it? Have we become a society that no longer employs this assumption?

Did unemployment insurance not get much press when temporary workers were laid off en masse because most workers were able to receive unemployment benefits and weather the crisis? Or, did most of these workers fall through the gaps in the unemployment insurance safety net because it could not be counted on in the first place?

By law, many of those temporary workers should have access to unemployment insurance. It is not uncommon for fixed-term contracts to last only two months, so it is no wonder that we end up with some workers who are ineligible for coverage if their contracts are not renewed. However, the majority of temporary workers—whether hired directly or through temporary agencies—who lost their jobs and are now hard-pressed for work expected to be re-contracted and in actuality had been working continuously for more than one year. These workers were therefore eligible for unemployment insurance coverage.

The media and the government should assume responsibility for carefully assessing if eligible workers either did not seek or were denied benefits and inform the public of the results; only then would an appropriate policy response be formulated. If people who should be covered by unemployment insurance are not receiving it, then we have to declare that temporary staffing agencies that deliberately let workers slip through the cracks or client companies that hired large numbers of temporary workers deprived of a safety net bear a grave responsibility for the situation.

Issues with Temporary Agency Contracts

One issue with temporary worker firings that raised everyone's ire was the termination of placement contracts before the end of their terms. The legality of the premature dismissals of direct-hire temporary workers (i.e., workers on fixed-term contracts not hired through an agency) was called into question and some companies were forced to retract their decisions, but the courts did not extend similar protection to temporary agency workers. This disparate treatment raises doubts about the agency system itself. I do not know the details of the contracts between temporary staffing agencies and their client companies, but I find it hard to believe that they allowed client companies to prematurely terminate contracts without the consent of the agencies. Premature termination would constitute a breach of contract and temporary staffing agencies could sue for damages, but I have yet to hear of any such lawsuits filed. Temporary agencies are in a weak position compared to their client companies, so this could mean they have chosen to suffer in silence rather than put future contracts at risk.

In Japan, the Act against Delay in Payment of Subcontract Proceeds, etc. to Subcontractors (or simply, the Subcontractor Act) addresses inequalities in commercial relationships stemming from unequal bargaining power and unfair trade practices hinging thereon. If you read the Subcontractor Act, you will find a section that clearly makes it illegal for a client firm to return ordered products or refuse to accept shipments. It is in no way strange to apply this provision to a case involving premature termination of a contract to hire an agency's workers. If you view the Japan Fair Trade Commission's website you will see that it issued thirteen warnings in FY2008 alone, proving that the Subcontractor Act is being actively enforced and is not merely window dressing. However, according to the website's FAQs, temporary placement differs from a service transaction as defined in the law, so unfortunately for temporary staffing agencies, they are not covered under the Subcontractor Act. It is conceivable that lawmakers in the Diet will revise the law so as to cover temporary staffing transactions under the Subcontractor Act if there is the political will to

do so.

In general, there is a strong tendency not to view temporary staffing agencies as typical businesses. Evidence of this lies in the discussion of profit margin regulations unthinkable in any other kind of private business. In order to provide temporary workers with more stable employment and avoid worsening working conditions, we will most likely need to create an environment in which temporary staffing agencies can operate as normal businesses.

The Need to Reform the Employment Portfolio System

Temporary agency workers are only a fraction of all non-regular employees; there are many other types of non-regular workers. Attempting to solve the agency worker problem on its own will most likely result in failure. When compared to the nations of Europe, Japan's regulations on fixed-term employment contracts are lax, so trying to control temporary placements might only lead to an increase in other types of fixed-term contract workers. I believe that we need to take a holistic view of these different categories of non-regular workers and approach the task of improving working conditions through the notion of employment portfolio systems.

The phrase "employment portfolio systems" has not been used thus far in either academic or general terms. I use it as a conceptual tool to address what has been termed the "diversification of employment types" from the perspective of corporate macro-management of employment. Originally, the Japan Federation of Employers Associations (*Nikkeiren*) used the phrase employment portfolio in its 1995 report titled, "Japanese Management for a New Era," after which it gained wide popularity. In this report, employment portfolio is specifically defined to refer to the optimum combination of three kinds of personnel—long-term, highly specialized and flexibly-employed workers—but when you think about it, Japanese companies had been combining a variety of personnel types in myriad ways long before that. In this sense, the Federation's "employment portfolio" was nothing more than a typical example of 1990s hype, a mere re-labeling

of the employment practices that already existed.

One way of quantifying shifts in Japan's employment portfolio system is to refer to the Employment Status Survey that the Statistics Bureau in the Ministry of Internal Affairs and Communications conducts every five years. Figure 1 is based on those survey results. As seen from the figure, the number of temporary agency workers is increasing but the ratio to total non-regular employees remains limited.¹ Government measures that only focus on temporary workers will

most likely be ineffective.

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Figure 1: Workforce Composition by Employment Type, 1982-2007 Unit: 1000 people

	1982	1987	1992	1997	2002	2007
Total	57,888	60,502	65,756	67,003	65,009	65,978
%	100	100	100	100	100	100
Self-employed	9,536	9,071	8,442	7,931	7,041	6,675
%	16.5	15	12.8	11.8	10.8	10.1
Family workers	5,869	5,255	4,712	4,052	3,114	1,876
%	10.1	8.7	7.2	6.0	4.8	2.8
Private sector executive	2,751	3,089	3,970	3,850	3,895	4,012
%	4.8	5.1	0.6	5.7	6.0	6.1
Regular employee/staff	33,009	34,565	38,062	38,542	34,557	34,324
%	57	57.1	57.9	57.5	53.2	52
Total part-timer/ arbeiter	4,675	6,563	8,481	10,342	12,061	12,935
%	8.1	10.8	12.9	15.4	18.6	19.6
Part-timer	-	4,677	5,967	6,998	7,824	8,855
		7.7	9.1	10.4	12	13.4
Arbeiter	-	1,886	2,514	3,344	4,237	4,080
		3.1	3.8	5	6.5	6.2
Shokutaku worker*	695	730	880	966	2,477	3,313
%	1.2	1.2	1.3	1.4	3.8	5
Temporary agency workers**	-	87	163	257	721	1,608
%		0.1	0.2	0.4	1.1	2.4
Other	1,325	1,118	1,008	1,025	946	965
%	2.3	1.8	1.5	1.5	1.5	1.5

Source: Employment Status Survey

* Figures for 2002 include contract employees and direct-hire temporary workers

** Figures for 2002 represent workers dispatched from temporary staffing agencies

¹ Figures start from 1982 because that is the year that the Employment Status Survey first included questions on those types of employment status. Surveys prior to that only classified workers into two groups, regular and temporary/day laborers. 1982 was the first year that part-timers and "arbeiters" (originally meaning student workers but later expanded to other kinds of temporary hires) statistics were tabulated. In this survey, "part-timer" does not necessarily refer to workers who work shorter hours, but rather to the job title used in the workplace. By using this definition of part-time worker, the survey method takes into account the large number of workers who are "part-time" in name only and work as many hours as regular employees.

The Subject Matter of Law— Science, Fiction, and Programs

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I. Introduction

I have been engaged in the study of law now for a total of forty-one years, since my graduation from university in March 1968 until my retirement in March of this year, 2009. Yet when presented with the opportunity upon my retirement to reflect on my research thus far and my feelings about the future progress of the field, what came to mind was an extraordinarily rudimentary question, namely, “what subject matter should the study of law address?”

Professor Oho Fujio, my mentor and former teacher during my university days, spoke the following words at his retirement lecture in 1971, “Law aspires towards no law.” Unfortunately, I did not have the chance to ask Professor Oho whether his statement was connected to the Marxist maxim of the “withering away of the state and law” but I realized that he was essentially asking himself the very same question of what subjects should legal scholars address. In this arti-

cle I have taken the opportunity to record my thoughts and feelings about this omnipresent question.

II. Science and Ideology

Academic research is governed by the paradigms of the times through which it develops. The environment in which I began my research was what I call the “postwar legal studies paradigm” which, roughly speaking, can be characterized in terms of political values by support for democracy (to wit, modernization and the development of civil society); the increasing use of Marxist methodology; and in terms of subject matter, a view of the sociology of law as a positive science as opposed to normative legal interpretivism. In brief, the field regarded the study of law as science and jurisprudence as a social science.

Professor Kawashima Takeyoshi, who played a key role in forming this paradigm, drew a sharp distinction between the understanding of law as a science versus law as something upon which to apply value judgments. He declared that the hitherto dominant form of jurisprudence was not a science. He proposed that law belonged to the discipline of the sociology of law as a cognitive science. The Japanese Association of the Sociology of Law was established in 1947, and the Institute of Social Science at the University of Tokyo in the same year. The young legal researchers at the Institute at the time were heavily influenced by Professor Kawashima.

This paradigm, law as a science, had a prescriptive and sustained impact on postwar Japanese legal studies (the effect of which has declined somewhat due to the proliferation of ideas as to what comprises “science”). At the root of this paradigm is the notion that research on legal the-

ory, which involves the interpretation of law, should not be a contest between the truths posed by the various different theories, but should instead analyze the theories as *ideology*. In other words, the content of the theory, from the point of view of the political, economic, and societal interests it serves, ought to be critically exposed. Ideology is essentially a set of ideas regulated by such interests.

My own work as a scholar developed under the influence of this paradigm. My first monograph, *Freedom and Escape from Law – Private Law under the Weimar Republic* (Nihon Hyoronsha, 1986) is based on ideology-based analysis of legal theory, and my second, *Legal Changes in Unified Germany – One Settlement of Unification* (Yushindo, 1996), applied an empirical, sociological analysis of the fit between law and social problems in Germany before and after unification.

III. Thinking about “Fiction”

If we take the study of law to be part of the social sciences, I contend that we can classify it into two major types: research that is empirical and based on cognitive science and critiques of legal theory based on ideology. In this vein, a posthumous work of a scholar of civic law, Kurusu Saburo (1912-1998), was published in 1999 entitled, *Fiction and the Law*, (University of Tokyo Press). This book taught me the significance of fiction as an alternative to ideology. Professor Kurusu locates the idea of the social contract in fiction: “In reality, nothing like the social contract existed historically. Proceeding as if it did exist and championing principles of popular sovereignty and justice to bring about change in our normative reality is indeed presuming that it existed when it did not. It is an ideal that is grounded in reality, however, and we should therefore not think of it as completely fanciful. Applying this logic, we should think of the social contract as fiction.”

By locating modern legal theory in fiction rather than ideology, Professor Kurusu’s argument enables us to protect “modernity” from its primary challengers, i.e., it makes it epistemologically and theoretically possible to protect modern legal theory (namely, the legal justification for the social contract and an understanding of free will

as the departure point for the legal order) from both Nazi and postmodern legal theories which seek to undermine “modernity.” The Nazis argued that a system in which citizens could act in accordance with their own free will would in fact be a distortion of liberalism. They attempted to establish a system in which citizens had obligations as constituent members of their race. From the point of view of scientific ideological criticism, treating the theory of citizens acting according to their own free will as ideology almost requires us to criticize the Nazi experiment as being the product of double-ideologization. However, treating the theory as a fiction, or not exactly fiction but as an ideal grounded in reality enables it to be protected from the Nazis. Of course, what one understands the roots of reality to be is integral to this theory of fiction. While keeping in mind the concepts of science and ideology, however, I believe the idea that laws are based on fiction presents an exceptionally rich argument that deserves more research and debate (Hirowatari, *Research into the Comparative Sociology of Law*, Nihon Hyoronsha, 2009).

IV. The Science of Law as “Programmed Instruction”

It was during the process of forming my thoughts about the theory of fiction that I came to be familiar with the theory of science proposed by theoretical sociologist, Yoshida Tamito. I was already familiar with his theory of the composition of science, namely his tripartite classification of “cognitive science, structuring science, and scientific skills” (*A New Scientific System – How to Combine Technology and the Humanities in Society*, Science Council of Japan, 2003). However, I came across a more structured version, with scientific and neo-ontological underpinnings (Yoshida Tamio “A Sociological Perspective on ‘Ownership’: The Historical Development of ‘Social Control’ and Conceptual and Real Choices,” in Kaino Michiatsu and Kurumisawa Yoshiki (eds.) *An Inquiry into the Legal Roots of the Enterprise, the Market, and Civil Society*, Nihon Hyoronsha, 2008). According to Yoshida, existence has three layers—the material, the biological, and the human. While the material layer is produced by natural laws operating in given circumstances, the biological and human layer cannot arise in such a natural way, and instead must be constructed according to a given

blueprint or set of assumptions. The blueprint for the construction of the biological layer is the genome. How science ought to proceed is largely defined by grasping this very fact. Social sciences which aim to understand the human layer cannot be rule-based sciences. Human society is not something that is created by natural rules. It is something that is designed, constructed, and *understood*. Social sciences are therefore program-based sciences that try to understand the dynamics inherent in such a process. According to Professor Yoshida, economics and law are also program-based sciences. As he aspired towards a new theory of science, he made the following observations:

The philosophy of the social contract understands society as an idea or as a series of fabricated facts. In other words, it constructs social reality cognitively by providing a dominant master plan, a design under which social structure can be created. In traditional terminology, there is both a *descriptive* and a *normative* approach to the con-

struction of social reality. Philosophy functions mainly as an epistemological 'guise' under which one can hide aspects of one's reality, and also as a legal fiction, enabling cognitive consistency in the interpretation of one's social and normative reality.

My interest was piqued by the realization that Yoshida's argument makes the construction of fiction discussed by Kurusu — "not fact, but not entirely fanciful; an ideal grounded in reality" — into a scientific theory.

V. Conclusion

Whether or not it is appropriate to even debate the question of what is the study of law in the context of what I have presented above is itself a question. While it may appear that legal research is proceeding apace in spite of this methodological skepticism, this problem is still a large obstacle. I am currently examining ways in which we can expand on these postwar legal paradigms in more productive ways.

From Area Studies to Comparative Sociology

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Research on South Korean Society as Area Studies

I pursued sociology as an undergraduate and area studies, particularly Korean studies, in graduate school. My research thus far on South Korean society has been conducted from the perspective of sociology. I have focused primarily on the relationship between education and social stratification because the South Korean people's desire to achieve in education is extremely high compared to other societies and has produced a number of interesting social phenomena. I felt that focusing on the role of education in society would help us to better comprehend the structure of South Korean society.

My first realization after embarking on empirical, sociological research in South Korea was the

extraordinary improvement of research standards in South Korea itself. Rapid economic growth and democratization provided opportunities for a previously unimaginable level of empirical sociological research, which left research conducted in post-1990s South Korea looking nothing like studies in the 1980s. For my cohort of non-native Korea scholars, just beginning our research in the 1990s, where our "comparative advantage" lay became a question of key concern. My search for an answer led me, an area studies researcher examining South Korean society from the outside, to attempt to carve out significance for my own research by taking the following two approaches.

The first stemmed from my strong desire to avoid the tendency of much of today's research to subdivide research areas according to the different domains of society. Instead I sought to emphasize the mutual connections that exist between the domains. In other words, I felt that analyzing South Korean society from a more comprehensive perspective would make it possible to provide some kind of answer to the larger question, "what kind of society is South Korean society?" The second approach is to illuminate aspects of South Korean society that might be self-evident to South Korean researchers via empirical analyses that take adequate account of conditions unique to the country. In other words, I tried to conduct research that made the most of the "outsider's perspective."

At the time, imposing these two conditions on my research was overly ambitious, and I suffered rather a lot. Looking back, however, embracing the challenge of these research goals at that time appears to have been beneficial for the subsequent progress of my work, which I describe below. I believe that I was extremely fortunate to be able to begin my own research right at the time

when standards of empirical research in South Korea itself were rapidly improving.

Education and Social Stratification in South Korea

Arita (2006) is my doctoral dissertation, revised with several additions and improvements. This book stemmed from an interest in understanding the factors that produce the conspicuously strong desire among South Koreans to succeed in education. I conducted empirical research into the impact an individual's education has in determining his or her social and economic status, and how this impact has evolved over time. Close analysis of survey data yielded the following observations. First, even though the impact of higher education on income has decreased quite dramatically with the rapid expansion of access to education throughout South Korea, there has been much less change in the influence of education on occupational status. In other words, there is as much merit in attending university now as there has ever been.

One reason for this is that companies do not require an individual's educational record to indicate any specific skills or job-related training, and instead treat this record as an index of overall, potential ability. For this reason, in the hiring process employers do not apply absolute standards of education but instead focus on relative levels. In addition, because occupations differ widely in terms of prestige, the desire to obtain white-collar work further increases; this is another factor fueling the strong desire for educational achievement in South Korea.

A second observation is in spite of the government's extensive efforts to create equality in educational opportunities and to rapidly expand higher education, the inequality of opportunity has in fact not improved, and as a result, the opportunity for social mobility via education has not become any greater. At the same time, the government's education policies have created a widely held perception that abundant opportunities exist to raise one's status via the attainment of education. The flip side of this view is a strong belief that the factors causing social inequality

currently are to be found at the level of the individual. This situation has arguably been created by the South Koreans' emphasis on egalitarianism in education and the resulting government policies which regard the standardization of pre-university educational opportunities as equivalent to egalitarianism in education.

Area Studies and the Comparative Perspective

I think one could say that my research on South Korean society has always had a strong, though latent, comparative angle. The initial reason I became interested in South Korean society was because I found it fascinating that while South Korea was similar in terms of social structure and pattern of industrialization to Japan in a number of ways, when one looked closely, there were actually many differences. Indeed, my previous research, including Arita (2006), was derived from the questions, "how is South Korean society different from Japanese society, and if so, why?"

However, while pursuing research into Korean society in this vein, one thought continually floated to the surface and was difficult to dispel. Upon finding areas in which South Korea differs from Japan, my research almost always aims to answer the question, "why is South Korea different from Japan?" But I have recently come to realize that the target of my comparison, Japanese society, is often the more idiosyncratic and that asking the question "why is Japan different from South Korea?" may bring me closer to the truth in many cases.

From these thoughts, I have gradually developed my research from that which engages in an implicit comparison of Japanese and South Korean societies to a more explicit comparison. Of course, in the past I have participated in collaborative research comparing Japan and South Korea's education systems (Nakamura, Fujita, Arita 2002), and at a more informal level, I am often placed in the position of "Japanese ambassador" when answering the various questions my Korean friends and acquaintances have about Japanese society. I believe that my progress towards explicit comparison was probably an inevitable step for me as a researcher.

Japan's Stratified Society Viewed Comparatively

In Arita (2009), I use data obtained from the 2005 Social Stratification and Social Mobility Survey to compare the structure of social stratification in Japan, South Korea, and Taiwan. In this article, I tried to paint a picture of the characteristics of the social stratification system and social inequalities in each of these societies by examining how individual-level occupational conditions—such as occupational category, employment status, firm size and type of employment contract (“standard” versus “non-standard” employment)—affected people’s income levels and “status identification.”

The results of my analysis were that while the influence of individual occupational conditions had similar effects on individual income and status identification across the three societies, the relative importance of each condition differed. In Taiwan, the influence of occupational category was by far the most important, while in Japan (and also partially in South Korea) firm size and type of employment contract also mattered. Furthermore, in the case of Japanese men, firm size and type of employment contract have significant effects on status identification even when controlling for individual income. I interpret this result as stemming from the sheer number of benefits enjoyed by “regular” employees of large firms in Japan, benefits that far surpass the individual’s current wage level, including opportunities for

long-term, stable employment, seniority-based wages, and promotion. The very nature of the Japanese labor market distributes these benefits very selectively, which itself gives rise to a whole new dimension of social inequality.

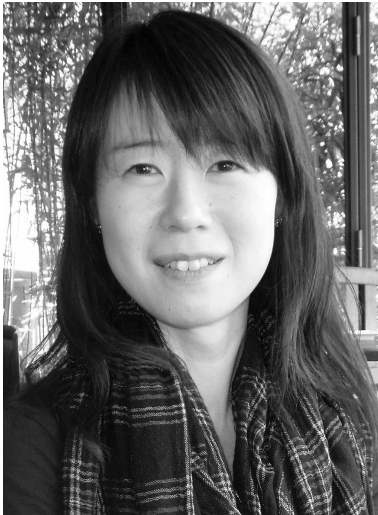
I have just joined the Institute of Social Science’s Division of Comparative Contemporary Societies and feel that this move is in line with the current movement of my interests, from area studies to comparative sociology. I intend to continue my research on South Korean society and to use the results gleaned from that research as a launching point to try my hand at comparative sociology. I hope to build bridges between area studies and social science through my work at the ISS.

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Wage Adjustments During Recessions: An Introduction to Japan's Experiences

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Today we live in an increasingly globalized world, where economies and financial markets are becoming ever more interconnected by way of debt securitization. With this growing interconnectedness comes greater risk that the impact of a negative shock in one country will have a knock-on effect in others. The impact of the US financial crisis that began with the subprime loan defaults in the summer of 2007 spread throughout the world, and at the time of the writing of this article (July 2009), many countries still find themselves unable to emerge from recession. A housing bubble collapse followed by a financial crisis, bad debt issues, deflation and soaring unemployment—this pattern now common in many countries closely mirrors the “Lost Decade” that Japan experienced in the 1990s. Given that it underwent this painful situation prior to most other nations,

Japan should offer many lessons about monetary, credit, fiscal and labor market policies. During the past several years, I have focused on the transitions that the Japanese labor market underwent during the long recession of the 1990s. In this article, I will introduce the body of my research to provide a framework for what happened to the Japanese labor market during that decade.

Deflation put Japan in a most agonizing position in the 1990s. During the recession, the Bank of Japan lowered money market rates to almost 0%, but the consumer price index did not respond. Inflation rates remained close to 0% through 1998, followed by a period of approximately 1% deflation. As prices fell year-on-year, it was clear that the economy would spiral into stagnation even if the Bank of Japan lowered its nominal interest rate to zero percent to spur investment and consumption. One of the major reasons why central banks fear deflation is this non-negativity constraint on nominal interest rates. Another adverse effect of deflation is known as downward nominal wage rigidity. In general, this phenomenon can be summarized as follows: Since people generally use nominal values as yardsticks, they tend to be highly averse to nominal wage cuts so that even during recessions when wage reductions are necessary, downward wage adjustments are difficult to implement.

For example, if there is a certain level of inflation in a recession, a firm can lower personnel expenditures in real terms by keeping the rate of wage increases below the inflation rate. In fact, during the two oil crises in the 1970s, trade unions and employers in Japan collaborated to keep the rate of wage increases below the rate of inflation, and thus were able to avoid massive unemployment (the unemployment rate in Japan during the 1970s peaked at 2.4% in September 1978). Howev-

er, when inflation is zero or negative, firms cannot lower personnel expenditures without cutting nominal wages. When people have a strong aversion to lower nominal wages, companies tend to be reluctant to impose them for fear of harming workforce morale. Given this aversion, it has been argued, the difficulty of adjusting nominal wages downward in deflationary periods leads to massive unemployment. This is the story that many economists have believed since the Great Depression of the 1930s.

After the Great Depression, however, inflation became the norm in almost every industrialized nation, and thus most countries did not experience deflation. As a result, until recently there was no opportunity to examine whether or not wages could be effectively adjusted in a deflationary atmosphere, making it almost impossible to quantify the extent to which deflation would affect any given country's economy. From economists' perspective, Japan's experience with a deflationary economy in the 1990s was a unique opportunity to test if what economists have believed for nearly seventy years was correct or not.

How difficult was it to actually lower wages in Japan during the 1990s? I would now like to introduce the findings of a series of my research coauthored with Yamamoto Isamu (Kuroda and Yamamoto 2003a, 2003b, 2003c, 2005, 2007). First, we found that during the years 1993 (immediately after the bubble burst) to 1998, it was certainly difficult to lower wages and that unemployment rates rose during that time. In particular, we showed that downward rigidity was greater for regular monthly wages than for annual incomes including bonuses. This finding suggests that downward rigidity exists in nominal wages, as has been suspected since the 1930s. However, our second finding revealed that as the economy worsened from 1998 onwards, wage levels became relatively flexible, mainly through bonus reductions. This suggests that downward nominal wage rigidity is not a permanent phenomenon and that in extremely serious economic situations, people can accept wage cuts. Despite the fact that the recession lasted more than ten years, Japan's unemployment rate was at most 5.5% in 2002, which is extremely low compared to unemploy-

ment rates in many European countries. One possible interpretation is that the progressive wage adjustments achieved primarily by cutting bonuses were able to stave off massive unemployment. It can be supposed that the "work sharing" generated by flexible bonus adjustments allowed Japan to keep employment insecurity to a minimum. One plausible reason why consumption did not lag too much after the recession deepened at the end of the 1990s is the fact that, if nothing else, massive unemployment was avoided by cutting wages.

In January 2002, Japan finally entered a period of economic recovery. According to statistics, the sixty-nine months from this point until the economy slowed in October 2007 was the longest period of economic prosperity in Japan, surpassing even the boom years of 1966-1970. However, most Japanese did not share in this prosperity, and the economic recovery was seen as weak. One distinct feature of this period was that consumption stalled because scheduled monthly wage increases were meager when compared to past periods of economic recovery. The reason behind this economic recovery without wage increases may have been the impact of the downward nominal wage rigidity that Japan experienced in the 1990s. With the economy liable to lose its footing at any moment, firms may have chosen not to increase regular monthly wages but instead to supplement wages with bonuses which can be lowered at any time. This amounts to a change in companies' wage adjustment mechanisms. In fact, after Japan's economy went into recession again in September 2007 due to the US financial crisis, macro-level average annual incomes fell quickly into negative territory by the end of 2007. One can infer that the speed at which wage cuts occur after entering a recession is now much quicker than it was in the 1990s.

One more feature of the economic recovery that began in 2002 was that the number of fixed-term contract workers increased while the number of regular employees changed relatively little. Since, in practice, it is difficult to dismiss regular employees as soon as the economy sours in Japan, it may be that companies were preparing for the possibility of another recession by hiring fixed-term workers. It is said that the expansion of

fixed-term employment has quickened the pace of employment adjustments since 2000. In light of the developments observed in this decade and the hard lessons learned from Japan's long recession of the 1990s, it seems that firms' adjustment systems may be changing so that both workers and wages can be speedily adjusted. A project for me in the near future will be to assess these conjectures in quantitative terms.

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Hope in Legal Method: A New Approach to Regulatory Reform

Annelise Riles



**Jack G. Clarke Chair in Far East Legal Studies
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A global search is now on for new regulatory paradigms and approaches for global financial markets, both public and private. As a visiting professor at the Institute for Social Science, I have been completing a book entitled *Collateral Knowledge: Public and Private Governance in the Global Financial Markets*, that examines this question through a cultural lens: what kinds of social and political institutions give markets legitimacy and encourage market participants, professionals and regulators to be hopeful—proactive, risk-taking, and embracing of change? Part of my answer is that lawyers and financial experts already have at their disposal the tools and methods they need to create a healthy global market, if only they could recognize them, and more systematically replicate them in public and private regulatory practice.

What my research shows is that legitimacy and hopefulness in the markets are quotidian things—the stuff of ordinary decisions and routine day to day work that collectively add up to large scale consequences. In particular, I have found that cer-

tain legal and financial techniques and heuristics, which are so fundamental to what lawyers and traders do that they usually go entirely unnoticed, nevertheless have very profound but largely undervalued implications quite apart from the content of legal norms, agreements or rules that we normally imagine as the outputs of legal work.

In the regulation of global derivatives markets, legal expertise turns out to be surprisingly resilient in times of crisis. Legal expertise has not suffered the crisis of legitimacy that now engulfs, for example, quantitative modeling of financial risk on the one hand or government fiscal policy on the other. If we wish to construct better market governance regimes, we might look to what holds together when all else collapses, and ask why.

Take, for example, how collateral is used to handle market risk. Collateral is a legal tool and doctrine for managing future uncertainty, but for the lawyers who manage collateral on a daily basis, it is a set of legal problems that demand solutions. For example, what rights does a collateral holder have in the interim between the time the collateral is posted and the time when the parties close out their positions? And what obligations does the collateral holder have, i.e., how must the collateral be maintained and accounted for?

The legal details are too complex to summarize here. But what they add up to is that through a standardized contract, the parties simply agree to act as if the holder of the collateral already has clear and complete rights. Now this fiction of course raises all kinds of secondary problems and questions—will this agreement actually be enforceable? What law applies? And so on. And at each stage, the trick is the same: more fictions. The parties simply assert, and expect, that the

experts' legal opinion that the agreement is enforceable controls, or that the law of X jurisdiction applies and that this law will uphold their obligations.

Outsiders to financial law often ask, why would market participants believe in something so blatantly fictional? The answer is that they don't, at least in the traditional sense of "belief." For them, these fictions are just techniques, tools, means to an end. They are part of the craft of lawyering, what we mean by "thinking like a lawyer." But to members of the legal guild, these fictions come to take on a reality of their own over the course of their deployment. They become practical, technical scripts for the management of the parties' relationship. And they come to be predictors, and indeed creators of market realities. The moves, ways of thinking, or working practices of the legal craft have a quotidian legitimacy from the point of view of actors in the market and that legitimacy is enduring, even in times of crisis.

Legitimacy—both among market participants and in the wider political arena—is the hallmark of a stable market. Legitimacy is generated on a grand scale by transparency and political accountability. But on a day-to-day, mundane scale, legitimacy may also be generated by the availability of techniques that inspire confidence.

Generated legitimacy has implications for a new regulatory architecture, as a craft or set of techniques of its own: a regulatory practice that builds upon and redeploys the aspects of legal practice that already have legitimacy in the market is more likely to be effective and credible in the long term. One reason for this is that regulators who see themselves as acting as professionals—that is as deploying a set of viable, recognized professional techniques in their day to day work—have far more confidence, enthusiasm and hope about their task than those who feel that they lack such tools or techniques. Unfortunately, most market regulation since Bretton Woods has

been decidedly and purposely out of step with such ways of thinking—it has been assumed that the style or modes of thinking about problems that characterize private legal or financial techniques are somehow inappropriate to financial regulation.

My research catalogs a range of such techniques across the fields of law and finance and explores what uses they might have beyond the specific doctrinal or investment contexts with which they are habitually associated. What is interesting about these methods is that they are relatively immune to cultural difference—a lawyer in Japan or Singapore can appreciate and redeploy a legal fiction in much the same way as a lawyer in London. This is important because one of the problems for any new market architecture is that it must be transnationally viable.

My research has been profoundly influenced by the work of the Hope Studies group at the ISS, and one of the larger goals of my visit has been to deepen the ongoing ties between ISS and the Cornell Law School. Our ongoing partnership with the University of Tokyo is an example of a new kind of project in the field of East Asian legal studies. We are going beyond studying the content of Asian law: we are developing new ways of thinking about cross-cutting and transnational problems that can be usefully illuminated by comparative research and cross-cultural dialogue. In November, we look forward to welcoming Professor Yuji Genda, the director of the Hope Studies project, who will deliver the Clarke Lecture in East Asian Law and Culture at the Cornell Law School. This semester, Professor Genda, Professor Miyazaki Hirokazu, and I have also begun collaborating on another book aimed at lawyers and financial professionals who find themselves caught in the cross-currents of changing markets. This book is due for publication in April 2010 and we will convene a Global Forum on this subject in the spring of 2010.

ISS Contemporary Japan Group at the Institute of Social Science, University of Tokyo

The ISS Contemporary Japan Group serves as a forum for researchers on Japan to receive critical feedback on their work. Researchers visiting Tokyo are invited to contact Professor Ishida Hiroshi (ishida@iss.u-tokyo.ac.jp) for more information if they would like to make a presentation. Meetings are open to everyone.

Photos by Takahashi Satsuki (ISS)



Professor Cornelia Storz

Chair for Japanese Economy at the Goethe University,

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How do New Industries Emerge? The Case of Japan's Game Software and Biotech Industries

March 16, 2009

Abstract:

The institutional framework of the US economy has proven to be favorable to new industries. Since the end of the 1980s, the US has had a dramatic expansion of new industries such as software and biotechnology. In contrast, the Japanese framework seemed less able to foster innovation. Until recently, Japan's performance has been disappointing. The most prominent argument for Japan's weakness has been that its national framework is less suited to the emergence of new and innovative industries. This belief led to vigorous efforts to reform the nation's innovation system. A reasonable explanation for why some new industries gained ground is that Japan had reformed its national framework so drastically that a new set of institutional arrangements had emerged. However, what we observe is quite different: We do not find Silicon Valley 2.0. in Japan. This paper explains what is—at first glance—contradictory evidence. The paper begins by outlining the "related variety" theory of business development which links a region's economic specialization to its economic and political institutional frameworks. Next, empirical evidence on Japan is presented and compared to the theory's predictions. Finally, the paper proposes expanding the related variety approach in order to gain a more dynamic understanding of the emergence of new industries based on the role of dominant and peripheral elements of Japan's innovation system and their adaption to new ends and uses.

PD Dr. habil. Carmen Schmidt

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The DPJ and Their Factions: Ideological Diversification and the Struggle for Posts

April 10, 2009



Abstract:

Currently there is a debate whether Japan's largest opposition party, the Democratic Party of Japan (DPJ) can come into power after the next Lower House election. However, we lack a comprehensive study of the DPJ and its internal structure. The DPJ is divided into eight factions that are based on former party affiliations and headed by party heavyweights. By using surveys on the policy positions of party members that were jointly conducted by the University of Tokyo and the *Asahi Shinbun* newspaper, I examine the ideological divides within the party and the factions. Further, I investigate the connection between factionalism and the allocation of posts. I find evidence that the DPJ is more ideologically diverse than other parties and that the factions arrange for key members to get party and other posts. With regard to controlling policy as well as major cabinet posts, we can expect factionalism to intensify if the DPJ becomes the governing party. In the same manner as the LDP factions, the factions of the DPJ may become "parties within the party," posing a major threat to the unity of the party over time.

**Tom Blackwood**

Associate Professor in the Institute of Social Science, the University of Tokyo

High School Baseball and the Socialization of Japanese Boys

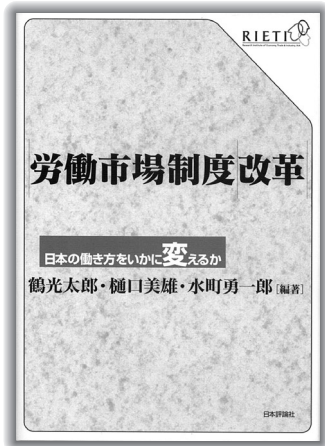
June 2, 2009

Abstract:

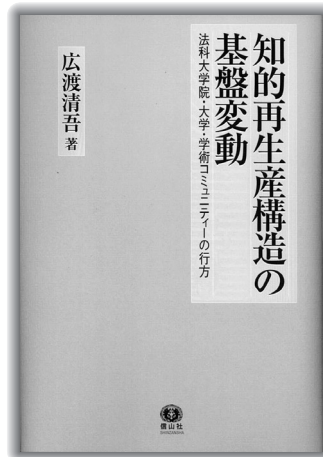
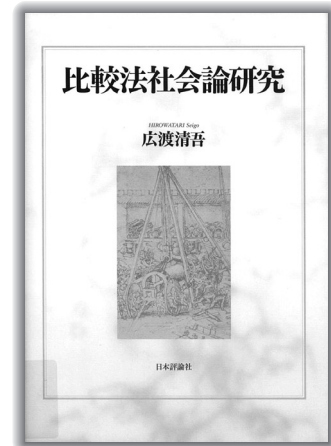
Extracurricular clubs are an important activity for the majority of Japanese high school students, and are considered an important part of education by teachers, parents, students, and Japanese society in general. Through studying high school baseball, my research enhances our understanding of what is taught and learned in Japanese school clubs, and the meanings that participation in such clubs holds for the participants. My research thus far has been largely qualitative in nature: through in-depth interviews, participant observation, and surveys, I have explored the subjective meanings that participation in high school baseball holds for Japanese high school students (and graduates) in forming their identities and worldviews, in addition to helping them develop interpersonal skills and certain qualities of character. My next goal is to try to assess how players and former players are evaluated by greater society, to see whether the participants' subjective beliefs regarding what they learn are matched by the impressions of others. In particular, I am interested in discovering what positive or negative ramifications their experiences hold for their lives after high school, especially regarding their careers or social mobility. In the first part of my talk I will present some of my findings from my previous research, and in the second part I would like to discuss my current research and future plans, as well as potential problems.

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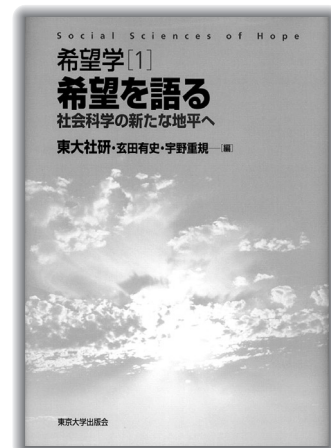
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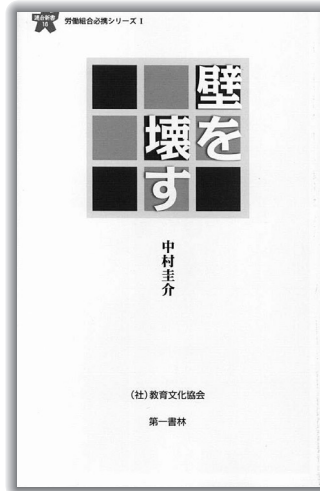
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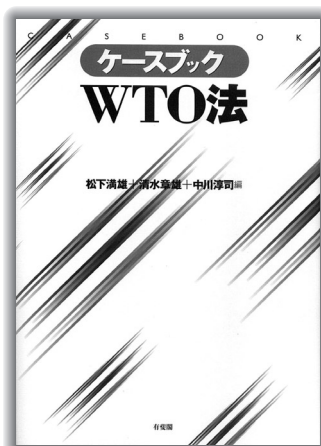
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