

# **Legacies Remembered, Lessons Forgotten: Transplanting the Regulatory State to Asia? The Case of Japan**

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*Abstract:* Recent public sector reforms in Japan have been typified as responses to globalization and neo-liberalism, ushering in a new regulatory state in which many of the traditions of the developmental state are being overturned. Among the transformations being recorded are the adoption of NPM-type reforms such as privatization and autonomization and adoption of new administrative law provisions that stress transparency and eat away at traditional bureaucratic practices such as 'administrative guidance'. Many of these reforms appear to be transplants from the west in order to conform to a view of the public sector more typical of Anglo democracies, a view that is seemingly more consistent with neo-liberalism. The argument presented here suggests that recent public sector reforms in Japan are more informed by administrative traditions than this might suggest. The transplants are a mix of both 'best fits' and 'misfits', resulting in an amalgam of fixes and fads that, to this point, does not resemble a coherent image of the 'regulatory state'. While legacies matter, what seems to have been forgotten is the earlier lesson of successful borrowing and adaptation that so typified Japan's earlier periods of public sector transformation.

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## *Introduction*

Japan's success as a 'developmental state' was often attributed in part to the qualities of its bureaucracy (Pempel and Muramatsu 1995). Japan's public bureaucracy has often been held up as an example of efficiency and effectiveness. The qualities so admired stemmed from a number of sources: a recruitment system that attracted the best and the brightest into the civil service with promotion and advancement based on merit; a high degree of bureaucratic autonomy, legitimacy and insulation from 'politicization'; a bureaucratic tradition that encouraged loyalty to the state, frugality and a forward-looking, proactive view on policy; a set of administrative tools and instruments that provided the capacity to engage in fine-tuned and selective intervention in the economy through 'administrative guidance', with limited external scrutiny or legal challenge; and a high level of inter-connectedness between the bureaucracy, business and other key economic actors which, coupled insulation due to institutional autonomy, facilitated close guidance of economic activity in pursuit of the national interest (Ginsburg 2001: 585-6). The concept of 'embedded autonomy' nicely captures this combination of qualities (Evans 1995).

In recent times, many factors have combined to pose serious questions not only about the continuing relevance of the developmental state but also about the sustainability of these bureaucratic qualities. Japan since the 1980s has experienced wave after wave of bureaucratic and economic reform attempts – privatization, deregulation, administrative reorganization, administrative law reform, anti-corruption reform and so on. The models behind most of these measures have originated from overseas and, taken together, seem to comprise a typical neo-liberal agenda of downsizing, judicilization, transparency and other accountability reforms, heralding in a more hands-off 'regulatory state'. Thus, on the surface they represent a fundamental challenge both to the developmental state as a policy paradigm and also to Japan's bureaucratic model. Yet at the same time, in terms of outcomes, Japan has appeared to be more a 'reluctant reformer' in the international race to adopt OECD templates and to follow New Public Management (NPM) trends. Writers have noted how Japan's reforms have 'staggered' (Kawabata 2006: 4) or in some cases have faced 'gridlock' (Painter 2005: 243). Proposals for privatization reforms have been 'mutilated' (Toyama 1998: 392) and a new administrative procedure statute in Japan simply 're-equilibrates the status quo' (Ginsberg 2001: 603). In sum, there has often been a 'major disjuncture between rhetoric and reality' (Beeson 2003: 39).

Cheung and Scott (2003: 12) argue that ‘the fundamental inadequacies of a NPM paradigm of reform for Asian countries lie in the misfit between its logic and the socio-political reality of Asia...where state institutions have always dominated the scene’. That is, Asian state traditions are antithetical to NPM and continue to exert their influence even in the face of powerful external reform pressures. But in what ways do these legacies of the past constrain or shape contemporary reform? The conventional view of the origins of the bureaucratic qualities of Japan’s developmental state trace them back to the Meiji period.<sup>1</sup> Of course, disjuncture rather than continuity characterizes Japan’s 20<sup>th</sup> Century history. Yet post-war changes under American occupation are often argued to have reinforced rather than demolished bureaucratic traditions, despite their intimate association with the imperial regime. Legacy effects, it seems, can still be traced back to the Meiji period.

In this chapter, I argue that the key to understanding such legacy effects lies in specifying the ‘hybrid’ nature of Japanese administrative traditions. A hybrid system is one in which foreign imports or transplants have at key points in history created a new departure, the legacy of which persists in a distinctive ‘amalgam’ of the foreign and the local. Japan’s ‘Asian state’ is such a hybrid, which I typify as ‘Confucian and Continental’. The origin of this hybridized tradition was in late 19<sup>th</sup> Century Japan under the Meiji restoration regime, which embarked on a rapid modernization programme by borrowing from the west. Far-reaching and deep-seated institutional reforms were implemented in this period. The primary source of models for the Meiji reformers was Germany, for reasons discussed below. These borrowed models were influenced by a deeper set of cultural and institutional traditions and ‘transformed’ through being adapted to fit in a particular political and developmental context. Confucian ideas and institutions which were expressed in Japanese cultural norms and myths were appropriated and merged with imported modern elements as Meiji ruling ideology (Vlastos 1998, 8-12).

Two key dimensions of the Japanese bureaucratic tradition that was formed in this period – ‘bureaucratic transcendence’ and ‘sectionalism’ (Boyd 2006) – continue to be evident up to the present day. This was despite apparent upheaval and disjuncture, including defeat at war, regime change and the imposition of a new constitution by the American occupiers. At this time, Japan experienced a ‘second wave’ of transplantation which introduced a new set of institutions. While the newly transplanted post-war institutions posed challenges to bureaucratic transcendence and

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<sup>1</sup> Some also argue that the bureaucratic qualities underlying Korea’s developmental state owe much to the transplantation of these same institutions to Korea under Japanese colonization (Kohli 1994).

sectionalism, and subsequent reforms seemingly consistent with the newly transplanted model have been introduced, they have been partially resisted and have been in some cases symbolic – ‘rhetoric’ rather than ‘substance’. I suggest that this pattern of resistance and uneven adoption may in part be a result of the legacy effects of a multi-layered hybrid tradition. Paradoxically, Japan’s legacy of borrowing has not in recent times served it well: the models and measures now being imported are more often ‘misfits,’ ‘fads,’ and ‘fixes’ than ‘best fits’. Instead of drawing useful lessons from abroad, as was the key to innovation in the Meiji state, Japanese reformers seem to have forgotten the key to successful emulation.

### *Transplants, Hybrids and Administrative Traditions*

Comparative law scholars have commonly used the metaphor of the ‘transplant’ to discuss legal copying between jurisdictions. It is often argued that transplants from one ‘legal family’ (Husa 2001) to another are more likely to result in ‘rejection’ because the body of law in (for example) a Continental system is an ‘organic whole’. Thus, transplants will only flourish if they are chosen primarily with sensitivity to context and culture of the whole social or legal ‘organism’. But Alan Watson’s (2001) views on the nature of legal transplants stress the relative autonomy of legal reformers from their social and political contexts: local reformers pick and choose what seems like a ‘good idea’ from the contemporary global scene; and much of what is transplanted in the course of this ‘legal borrowing’ subsequently lies on the surface of a set of social processes from which it can remain disconnected (Watson 2001: 98-9; 116-8; 135). Gunther Teubner’s (1998) position on transplants is different again: when a foreign idea or legal institution is transplanted, it acts as an irritant. Its presence sets in train a dynamic of irritation, with the potential for change both to the introduced concept or rule and also to the domestic context with which it interacts:

‘Legal irritants cannot be domesticated; they are not transformed from something alien into something familiar, not adapted to the new cultural context, rather they will unleash an evolutionary dynamic in which the external rule’s meaning will be reconstructed and the internal context will undergo fundamental change’ (Teubner 1998: 12)

Teubner’s analysis draws attention to the ambiguous nature of the legacy of borrowing. A borrowed system of civil service training, for example, would continue to evolve on its own trajectory driven by its own internal logic, while interacting with and influencing its wider administrative environment. This process may result in ‘new

divergences' (Levi-Faur 2005, 460-1) rather than a pattern of assimilation and convergence.

A different view of borrowing emerges from Westney's (1987) study of late 19<sup>th</sup> Century Japan's emulation of European models. She depicts the Japanese Meiji reformer travelling Europe in search of legal, industrial, administrative and constitutional models for successful modernization as the 'rational shopper'. Preferences and tastes are socially conditioned, so shopping for models is not a matter of choosing a universally 'best' alternative. The choice is only a 'best fit' selection given the preconceptions of the shopper. An 'implicit model' in the borrower's mind influences his or her interpretation or 'editing' of it (Westney 1987: 24-5; Sahlin-Anderson 2001). Moreover, the borrower may pragmatically depart from the model because it doesn't really 'fit' when it comes to be implemented in the local context. Cultural as well as social and political considerations can result in such adaptations. This 'selective emulation', argues Westney (1987: 29-31), can be seen as a process in which copying shades rapidly into innovation.

Westney's account is more actor-centred than Teubner's but it also suggests the possibility of new divergences. In her view, the creation of a hybrid is a process of deliberate innovation by reformers and managers faced with the task of adapting the import to the local conditions. On the other hand, Teubner's analysis of the way imported institutions are 'adapted' to a local culture suggests a greater degree of indeterminacy. A transferred legal or administrative institution not only co-evolves in parallel with institutions, it will also evolve within or in relation to a social, economic and political context. Thus, the sources of 'irritation' are not just tensions within a legal community between foreign and local rules and norms but also tensions between the new legal import and norms and practices in these other social systems:

'Attempts at institutional transfer seem to produce a double irritation in the new context. They irritate law's binding arrangements to society. Foreign rules are irritants not only in relation to the domestic legal discourse itself, but also in relation to the social discourse to which law is, under certain circumstance, closely coupled' (Teubner 1998: 32)

The idea that a legal or administrative institution may be either tightly or loosely coupled to other social systems is particularly important for understanding hybridization. Rather than seeing 'culture' as an invariable background factor in legal (or administrative) institutions, it suggests that wider social norms and cultural traits

may permeate them in varying degrees in different contexts. Either a close fit or a 'misfit' would be equally feasible. Moreover, the closeness of 'binding' of the different institutional imports to the local social and cultural contexts might disturb the internal consistency of the imported institutional logics in varying degrees, creating tensions across the institutional arrangements themselves.

A somewhat different perspective on reform diffusion and organizational transplants arises from the 'garbage can' analogy of March and Olsen (1976). They view organizational reform as a 'decoupled' process where both problems and solutions have worlds of discourse and action of their own. 'Reform talk' is only loosely coupled with actual practice: much reform is essentially hypocritical (Brunsson 1989). 'Fads' and 'fixes' predominate in the reform process. As Brunsson describes it, the adoption of new organizational forms in a number of places as the result of copying or diffusion is as much in the realm of 'talk' as in the realm of instrumental problem-solving and action. 'Rationalization' through expounding a reform discourse is a very large part of reform activity and reform borrowing. How the adopted rhetoric actually affects local practices is another story, shaped almost entirely by context and politics: talk is cheap, but action can be costly (Brunsson 1998, 265-75). Whatever is borrowed is also 'transformed' as it is adapted to a local context (Christensen & Laegreid, 2001). In this view, there is a primary emphasis on context and on continuity, with a higher level of skepticism about the possibility of innovation: whatever is new will continue to be shaped primarily by the pre-existing context.

From this discussion, I draw a number of conclusions for the analysis of hybrid administrative traditions: first, we need to specify the agents of diffusion and borrowing and what frames their choices; second, we need to look closely not only at what they choose to disseminate or copy and why, but also at the subsequent adoption and implementation processes to observe adaptations, innovations, continuing 'irritations' or the emergence of purely 'symbolic' reforms that are weak on action; third, we need to observe whether and how the introduced element continues to interact as a body of meaning and practice with the surrounding systems of government and society into which it is incorporated; and finally, we need to consider the possibility that a supposedly 'successful' absorption or transformation of a set of imported institutions will in fact have varying results across those institutions, creating inconsistencies and incompatibilities within and between them that are further sources of irritation.

In sum, we have arrived at a common set of analytical questions with which to address the case of Japan's hybrid administrative traditions. We next turn to the specificities of the 'Confucian / Continental' hybrid by analyzing the process of borrowing and transplantation in late 19<sup>th</sup> Century Japan.

*Confucian and Continental: Meiji Japan and the Modernization Project*

The formation of the institutions comprising the post-1868 Meiji imperial state is often cited as a prime example of emulation or copying as a modernization strategy. The 1868 Meiji restoration sought to supplant the weak feudal Tokugawa regime with a modern system of national government that would better equip Japan to resist European imperialism. However, the political situation in Meiji Japan and the deep-rooted social and political conservatism of many members of the new regime meant that the new oligarchs trod carefully. Their state-building efforts were built on a reinterpretation of Japanese tradition as well as on a careful study of foreign models. Leading figures in the new ruling elite were despatched to Europe to study the law, legislatures, civil service training, police systems and much else. Leading reformers such as Hirobumi Ito spent time with German intellectuals and statesmen and learnt about a wide range of fields – not only the law and government but also social and economic thought and policy (Lehmbruch 2001, 60). Once borrowing began and foreign experts visited Japan, there were further 'contagion' effects: the experts gave advice on other reforms, while innovations in one field were diffused to another.

The case of police reform provides an illustration of the highly deliberate nature of the selection process (Westney 1987). The French police system attracted the Meiji rulers because it was highly centralized and multi-functional in nature, concerning itself with areas of social control and local administration beyond the narrower concerns of the Anglo-Saxon police. Local-self government was not an institution with any appeal to the newly ensconced Meiji elite, faced as it was with pockets of local resistance and rebellion.<sup>2</sup> The adoption of the French police system entailed 'the construction of a highly centralized and standardized police system penetrating the entire country...' (Westney 1987, 45). The Tokyo police system established from 1874 drew on the Paris Prefecture of Police as a model, down to direct translation of police regulations and handbooks. Subsequent extension, refinement and elaboration of this system across the whole of Japan were clearly path-dependent and yet, in important respects, out-paced, extended and modified the original model. That is, local adaptation and

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<sup>2</sup> Later, in selectively emulating the German model of local government in the Municipal Code of 1888, Japan's ruling elite rejected German traditions of limited local autonomy and 'local citizenship' and adopted a highly centralised system of local administration (Totten 1977)

implementation led to some new departures. For example, the Japanese system was more clearly hierarchical and more rationally delineated into functional units. The Tokyo police school set up in 1880 pre-dated the first in the west (in Paris in 1883) and was modelled on the army training institute (the *Shikan Gakko*), which in turn had been modelled on the French military. There were innovations such as a system of neighbourhood police stations affording a much wider spatial dispersion. The result was a set of organizational features that were a mix of some originating in Paris, others emulated from other organizations in Japan and others still that were internal innovations within the local police administration (Westney 1987, 60-3).

Over the period 1870-1890, Meiji ideologues and reformers turned increasingly to Prussian models (Martin 1995). By the turn of the century, Japan had a constitution that was heavily influenced by German constitutional theory and practice; a meritocratic civil service modelled on the Prussian system of training and recruitment; a modern military machine moulded in the shape of the Prussian army (following a less than successful transplantation of the French model (Martin, 1995; 38-41)); and a ruling ideology that, while drawing on Japanese traditions, was influenced strongly by 'Bismarckian social policy and German economic thought' (Pyle 1998, 135). In each case, the pattern of borrowing and adaptation involved the kind of 'selective emulation' and local adaptation just described in the case of the police. Sometimes, there were 'false starts,' with a deliberate modification of the first importation in order to try another (this happened, for example, in the case of school education, which first emulated the French system but later was reorganized along Prussian lines (Martin 1995, 41-3)).

The preference for continental and specifically German models is significant. Debates in the new regime's intellectual circles over neo-Confucian versus western 'enlightenment' ethics had swiftly been resolved in favour of the former. In keeping, Meiji reformers found non-liberal, organicist conceptions of the state along Prussian lines more appealing than the individualist and pluralist basis of the British parliamentary system. In favouring German philosophies of law, social organization and government, Japan's reformers selected the more conservative strands, in particular those that supported the 'social monarchy' and emphasized patriotism. The 1890 'Imperial Rescript on Education', one of the Meiji rulers' most important ideological statements, expressed Confucian values but deliberately did not name them as such (Pyle 1998, 109). The main purpose was to preach loyalty to the Meiji Emperor rather than to affirm a doctrinal tradition. The Rescript sought to express a modernizing break that nevertheless was consistent with conservative images of

Japanese culture and ‘national spirit.’ This was a time when the conservative elite were under challenge from more liberal-minded activists who advocated a more democratic constitution. The ultimate appeal was to a duty to ‘guard and maintain the Imperial Throne’. This doctrine was also expressed through Article 1 of the 1889 constitution in the concept of the *kokutai*, roughly translated as the ‘family state’ in which authority, expressed in the imperial will, was indivisible. The Meiji constitution was drawn up as a ‘gift’ from the Emperor to his people and could only be amended on the initiative of the Emperor. At the same time, authority was to be exercised strictly through the rule of law in the form of imperial ordinances, a rule-governed bureaucracy and a professional judiciary (Haley 2001). In all of this, the parallels with the *Rechtsstaat* model are striking except in one regard: the Japanese deliberately did not take on board the idea of a horizontal separation between state and society, but stressed vertical integration under the emperor’s paternalistic guidance (Lehmbruch 2001, 64-5).

While sovereignty was embodied in the emperor, most of the effective means of exercising it devolved to the bureaucratic elite. The Parliament or Diet was deliberately not made sovereign and its effective powers were circumscribed. The process of recruitment and promotion of Meiji politicians and top officials was gradually institutionalized during the 1880s and 1890s in the form of a bureaucratic meritocracy embodying strict rules of training, recruitment, rotation, promotion and retirement, with direct borrowing from the Prussian model. In the 1880s teaching at Tokyo University was reorganized with a view to providing an ‘apprenticeship’ for civil service entrance (for some years, Tokyo graduates were exempted from the civil service entrance examination). However, as in the case of the postal reforms, direct transplantation was followed by adaptation and innovation, in this case following the near collapse of the original Prussian-based reforms of the examination system, due to purely local circumstances (Spaulding 1967, 88-99). But as in Germany, training in the law was seen as the ideal preparation for a bureaucratic career; technical officials were made subordinate in authority to the ‘administrative’ class; and all ranks were meticulously organized into rigid hierarchies, with little opportunity to cross from one to another to rise above one’s originally allotted class.

The development of this system of government followed an internal political logic as well as overseas models. In the first years of the Meiji restoration, clan cliques or *hanbatsu* groups provided the glue that held the system of government together and provided informal mechanisms for recruitment, implementation and maintenance of order. While law and procedure increasingly directed state administration,

coordination was informal and collegial, based on mechanisms for achieving consensus. The uncertainties and fundamental instability of this system led to a search for a more permanent system of succession, namely the institutionalization of meritocracy. The civil service in this context was set up as a key cog in a self-perpetuating and permanent system of authoritarian rule (Silberman 1976, 1993, 1995). In turn, this bureaucracy became the recruiting ground for public officials, including politicians. The guardians of the state were educated and trained in a system that embodied at its core the official ruling ideology. The principle of 'administrative transcendence' (the idea that the bureaucratic rule in the name of the emperor elevates the bureaucrat to occupy an 'autonomous space above the rest of society' (Garon 1997 quoted in Boyd 2006, 65)) was thus firmly entrenched. Attempts by elected Diet politicians to make senior civil service appointments were thwarted by the strict provisions of the 1898 Civilian Office Appointment Code (Muramatsu 1997, 25).

At roughly the same time, a system of functionally departmentalized administration was set up. In 1885, a structure of ministries was established, also along the lines of European models. But here as well, the model was transformed in the process of being adapted to Japanese conditions. In the 1889 constitution, the lines of authority and accountability were not constructed in such a way as to make cabinet as a collectivity the lynchpin of the political executive. Instead, each minister was individually accountable to the sovereign. Heads of government departments and the military chiefs were, in this respect, equivalent and co-equal in their authority and power. Even the Prime Minister had no clear and obvious primacy. His power and standing rested on his ability to achieve consensus by political means among his cabinet colleagues. The reality was a highly fragmented system in which ministers representing their departments enjoyed a virtual veto power over collective decisions (Boyd 2006, 59). The cliquism of the *hanbatsu* during earlier years of the Meiji period was in this respect mirrored in the rapid institutionalization of a high level of sectionalism in the departmental system (Koh 1989, 27-8; Muramatsu 1997, 20-2). Fragmentation and the building of separate ministerial and bureaucratic spheres of political jurisdiction were also encouraged by the heavy reliance on policy making through imperial decrees rather than by legislation. As a consequence, departmental officials owed their prime loyalty to their minister and their department, or even more narrowly to their division and section, not to the government as a whole.

The Meiji bureaucracy was interventionist and proactive in many aspects of its social and economic policies. For example, public enterprises dominated the Meiji state's industrialization drive in key sectors such as engineering and metalworking, which

were heavily directed towards the military effort (Weiss 1993, 333). Steps were taken to promote adoption of western technology, including government research institutes, exhibitions and subsidies or grants to specific industries (Yamamura 1995, 114-5). The ruling elite's eagerness to industrialize, however, was accompanied by a deep suspicion of its effects on social cohesion. Steps were taken to prevent some of the 'corrupting' effects of industrialization, such as the growth of class conflict under the influence of socialism. Japan's first important academic economist, Kanai Noburu, studied in Germany in the 1880s before taking up his post at Tokyo Imperial University. Kanai explicitly rejected Anglo-Saxon liberalism and a 'free market' approach and favoured state intervention in factory conditions and community life as 'preventative actions' (Pyle 1998, 131). Bureaucrats in the 1890s sought to get agreement from business on factory laws (a law was finally passed in 1911) and promoted agricultural cooperatives in the countryside. 'Grass roots' youth groups and military associations – 'half-bureaucratic/half-popular' – were instituted (Pyle 1998, 140). Actions were taken to suppress trade unions, with heavy reliance on the police to monitor and regulate their activities. Later, in the inter-war years, government ministries honed various instruments of government-business cooperation and promotion, including tax concessions and subsidies (Yamamura 1995, 121).

In sum, partly through emulation and adaptation of continental European state institutions, but also through pragmatic innovation to deal with purely local circumstances, Meiji rulers created the basis for a distinctively Japanese system of government. In the process, a self-conscious reconstruction and interpretation of tradition was deployed. In their selective emulation and local innovation, the Japanese reformers created a new hybrid. Within it, we can see points of potential tension and misfit, for example in the contradiction between some of the elements of responsible cabinet government on the one hand and, on the other, the transcendence of the imperial bureaucracy. The very success of the transformation and innovation processes in the Meiji era created some tensions within the institutional arrangements themselves, potentially disrupting and challenging their internal logics. This tension surfaced in the relatively brief interlude of the 'Taisho Democracy' (1912-25), when elected politicians gained more power over the bureaucracy, but this interlude was followed by military rule in 1930 and even stronger assertion of bureaucratic power. Sectionalism as a local adaptation was also an uneasy and perhaps dysfunctional product of the 'irritant combination' of a strict Prussian-style hierarchical division of functions through bureaucratic role and rank with the Meiji insistence that the fount of all authority and legitimacy was the Emperor. As a result, the head of the 'section' (and all his subordinates) held authority by virtue of direct personal appointment, but

experienced minimal ‘horizontal’ restraint or coordination and little if any external accountability.

Bureaucratic transcendence and sectionalism have been identified as two of the core features of the bureaucratic tradition originating in the Meiji period. They are illustrations of outcomes which are accommodations between local circumstance, norms and practices and an externally derived model. Other illustrations could also be elaborated on, such as the class system of the civil service or its modes of recruitment and promotion. Just as in the case of transcendence and sectionalism, we could identify features of these aspects of Japan’s bureaucratic inheritance that continue to carry traces of an adapted import alongside a set of socially embedded ideas, norms and practices. Jun and Muto (1995), for example, stress the importance of Japanese social and cultural traditions in producing key aspects of organizational behaviour in the Japanese civil service, such as ‘groupism’, the importance of ritual and symbolism in producing harmony and the reciprocity that is expected and fostered in superior-subordinate relations. These behavioural norms and practices operate in some cases to reinforce and in others to distort the transplanted western bureaucratic structures, producing a distinctively Japanese hybrid. In what follows most attention will be focused on the two aforementioned features of Japanese bureaucratic traditions – sectionalism and transcendence – as a way of illustrating the general argument about the legacy effects of Japans’ hybrid administrative tradition.

### *Sectionalism, Transcendence and the ‘Democratic Irritant’*

Perceived tensions between bureaucratic-imperial legitimacy and power on the one hand and parliamentary responsible government on the other were at the root of the arguments between Japanese politicians and American constitutional reformers during the post-World War II occupation. These debates were not so much about public administration as about the nature of the state and its constitution. In imposing a parliamentary cabinet system at that time, the reformers hoped that there would be a new departure. The American drafters wrote a liberal democratic constitution which asserted that the people, not the emperor, were sovereign (Moore and Robinson 2002). Meanwhile the Japanese participants in the process revisited and debated their traditions, attempting to reconcile them with the new order.

On the face of it, the 1947 constitution subordinated the bureaucracy to the elected political executive by placing full executive power in the hands of a cabinet which was made collectively responsible to the Diet. The Prime Minister was designated as

head of cabinet with powers to appoint and dismiss ministers. These arrangements consciously followed the Westminster model. Several other steps were taken to signal a break with the past, including abolition of the Ministry of Domestic Affairs (which had exercised tight political control over local government, public works and other public services) and the establishment of new ministries and departments. Several of these followed the US model of the independent regulatory agency (somewhat in contradiction to the adoption of Westminster cabinet and ministerial government), although most were subsequently integrated into the departmental system (Haley 1995, 83-6). One important exception was the National Personnel Agency, which retained autonomy over civil service personnel administration, thereby preventing politicization of personnel administration with the institutionalization of party government in the 1950s. In other respects, basic features of the pre-war civil service system were retained, including inherited personnel practices not to mention the great majority of its incumbents (including repatriated colonial civil servants who were absorbed into newly created agencies (Jun and Muto 1998, 195-7)).

The 1947 constitution transformed the Japanese political system through instituting an era of party government characterized by one-party dominance. But despite the apparent Liberal Democrat Party (LDP) hegemony, most scholars have typified the result as 'weak government' and have continued to depict Japan as a 'bureaucracy dominant' system (Mulgan 2000: 183-4). For most post-war Japanese, '...it was the bureaucracy, the provider of gifts, unelected, non-political, unaccountable to the public that constituted the state in their eyes' (Tamamoto 1995: 18). Many institutions, both formal and informal, signalled the persistence of the norms and practices of bureaucratic transcendence and sectionalism (albeit stripped of imperial connotations). An uneasy tension between an administrative tradition inherited from an authoritarian era and a new democratic constitution was set in place. For example, high-ranking Japanese bureaucrats continued to answer questions in place of cabinet ministers in debates in the Diet, a practice that dates back to the Meiji period. Ministers in post-war Japan have not exercised the kind of direct political control of their departments and agencies that is more familiar in Westminster style systems elsewhere. Middle-level section bureaucrats play a key role in framing policy proposals (*ringi sho*), which are passed up the line and to officials in other agencies in the search for a consensus, following which ministers and cabinet put their seal of approval (Jun and Muto 1995: 130-1). On the way, other stakeholders (including key politicians) are also consulted, but the bureaucracy remains the guiding hand.

The key feature of this hybrid system of bureaucrat-politician relations is the partnership between bureaucrats and the political factions (*hanbatsu*) and policy cliques (*zoku*) of the ruling LDP.<sup>3</sup> Party factions, party elders and policy cliques comprise a complex system of intra-party power sharing. Party factions and elders determine the election of party presidents and hence the prime minister, who in turn is constrained in the selection of ministers by the need to reward factional supporters. The *zoku* weaken unified political executive or prime ministerial control over policy and administration. They are sectorally organized groups of MPs who form close links with producers and the relevant parts of the bureaucracy (Mulgan 2000; Nakano 1998). They are important instruments for distributing the spoils of office through the party and for cementing links between factions and political donors. *Zoku* bosses, aided by the bureaucracy, develop standing as the experts in particular policy sectors, and in many instances are more important for shaping policy than the minister. Underlying these networks of influence are the money politics and corruption that regularly rock Japanese politics with scandals. While Prime Minister Koizumi in his attempts to bring about reform challenged the power of the *zoku* and exposed vulnerabilities in their power base, they remain an institutionalized part of elite policy making in Japan (Kawabata 2006, 182-3).

Thus, the bureaucracy shares power with the dominant ruling party and, in this sense, is highly politicized; at the same time, the bureaucracy itself shapes and influences ruling party predispositions and policies. Many top LDP politicians come from the senior ranks of the civil service. Government departments and agencies – and sections within them – are an indispensable part of a stable set of networks of power overlaying and supplanting the formal hierarchy of control and accountability. Among these networks of influence are those linking government with business. Legal and political norms and conventions of policy making in post-war Japan have predominantly called for negotiated rather than by-the-book forms of administration (Haley 1995, 94-6), although recent administrative law reforms have increased the degrees of transparency and formalism. Close ties between the bureaucracy and business are reinforced by the system of *amakaduri*, under which members of the administrative elite upon retirement (which comes at a relatively early age) find rewarding positions in the private sector or in public corporations (Koh 1989; Inoki 1995; Usui and Colignon 1995).<sup>4</sup>

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<sup>3</sup> While I use the present tense, under Prime Minister Koizumi (2001-6) the *zoku* and factions were challenged and other channels of policy making were opened up.

<sup>4</sup> Koizumi announced his intention to stamp out the corrupting effects of *amakaduri* in 2002 and began reforms to regulate the system of post-retirement employment more closely. A familiar pattern of halting reform was set in train: a new set of rules introduced in 2007 by Prime Minister Shinzo Abe were widely criticized as ‘toothless’ (*Japan Times*, April 14 2007, retrieved 19 November 2007)

In sum:

‘...politicians are not clearly dominant vis-a-vis bureaucrats; the loci of decision-making are sectionalized and compartmentalized; and the relationships between the interest groups, bureaucrats and the LDP within each of these loci of power are highly stable.’ (Nakano 1998: 292)

On the one hand, it would seem that the transplantation of institutions of a strong Westminster political executive and responsible party government did not disturb core features of the dominant bureaucratic tradition. The transition from an imperial bureaucratic state to a modern democratic regime seemed to combine the inherited strengths of the Japanese system of bureaucratic government with the legitimizing institutions of a modern democracy. A tradition of bureaucratic activism in domestic affairs was supplemented with newly refined instruments of administrative guidance (Haley 1995, 95; Yamamura 1995, 118-22) and by the incorporation of ruling party factions into the distributive arena of government-business relations. A new array of pro-development industry policies and sophisticated instruments of economic planning, protection and promotion were devised and implemented. Thus, the elements were put in place for the success of the post World War II ‘developmental state’ (Ginsburg 2001: 585-7).

Yet this depiction of smooth continuity and the emergence of a new amalgam would be misleading. Rather, a new hybrid emerged in which the transplanted institutions of responsible party government have acted as irritants alongside inherited traditions of bureaucratic transcendence and sectionalism. While administrative traditions originating in the Meiji period persisted, a partially incompatible liberal-democratic state tradition was imposed. The new hybrid is a mixed legacy defined by tensions and accommodations, many of which are contradictory or express inherent dilemmas. By way of illustration, there have been repeated attempts by administrative and political reformers in Japan to give muscle to the constitutional prescriptions of the policy coordination role of the prime minister and cabinet (for example, a strong prime minister’s bureaucracy), each of which has fallen short in the face of the forces of the system’s deep-seated bureaucratic sectionalism. In other reform sectors as well, each reform ‘stagger’ and each ‘mutilation’ of a reform proposal has in some degree been a symptom of internal structural dilemmas in Japan’s hybrid system of public administration.

The public sector institutions set in place by the post-war occupation, and which survive in large part to the current time, have proved remarkably resilient (Koh 1989, 59-60). From the 1960s a series of administrative reform councils have initiated reform proposals. The First Provisional Administrative Reform Council set up in 1961 recommended reducing the number of bureaus, staff reductions and measures to improve coordinating capacity. Some of these proposals bore fruit in the late 1960s, the most significant being a decision to scrap one bureau in each ministry and to reduce staff by five per cent. Bureaucratic resistance was overcome through equal sharing of the burden and the delegation to the bureaucracy of the decisions as to which bureaus were to be disbanded. The Law on the Total Number of Public Personnel of 1969 institutionalized a system under which the number of bureaus and the size of the civil service were effectively frozen (Pempel and Miramatsu 1995). It also shared the burden equally across all ministries, at the same time setting up a process by which surplus staff could be generated for transfers to new bureaus (Ito 1995, 242). Later Administrative Reform Councils in 1981, 1983, 1987 and 1990 also achieved significant results, but again through a process that was clearly negotiated, not imposed. Reform proposals were shaped not to arouse unnecessary opposition, and the process was deliberately step-by-step (Ito 1995, 245-7). The outcomes included were a set of measures to institutionalize expenditure restraint, a process of deregulation and a series of privatizations, including Japanese National Railways and Nippon Telegraphic and Telephone Public Corporation. Among the proposed measures not implemented against bureaucratic resistance was one to reorganize the central planning machinery.

So far so good; however, a growing trend was apparent. Whereas the downsizing reforms of the 1960s were a smooth process of transition deeply influenced by traditional norms of bureaucratic cooperation and control, increasingly the reforms being demanded were driven by external pressures and deployed NPM slogans and templates. Privatization, deregulation, accountability and transparency reforms were being pressed on Japan by its trading partners, particularly the US. By the 1990s the agenda of reform issues had expanded in response to economic stagnation and political upheaval. The LDP's temporary loss of hegemony in 1993 following a series of corruption scandals sparked concerns about democratic accountability and bureaucratic power. The New Party Sakigake played a major role in bringing these issues to the fore and also sought to limit the influence of bureaucrats over the reform process, but without success (Nakano 1998, 304). Freedom of information measures stalled and proposals to reduce the power of the Ministry of Finance over financial regulation through setting up an entirely independent agency were watered down

(Nakano 1998, 307). Similarly, in the case of the administrative procedure law, which required the bureaucracy to formalize its practices of informal administrative guidance in its relation with business in pursuit of greater transparency and accountability, '(w)hile the symbolic value... may have been high, it did little to change existing law' (Ginsburg 2002: 6).<sup>5</sup>

The reform process continued when the LDP returned to office in its own right. External pressures generated by economic recession and international criticism broke the gridlock over reform of the Ministry of Finance, with the establishment of the Financial Services Agency in July 2000, completing a partial separation begun in 1998 and removing the control of financial institutions regulation from the Ministry of Finance. Reforms implemented in January 2001 include a restructuring of ministries and departments, the strengthening of the Cabinet Office and the appointment of State Secretaries and Parliamentary Secretaries to assist ministers in running their departments. Now, OECD models of regulatory reform, agencification and civil service recruitment by 'open competition' rather than the conventions of a closed career service were being promulgated.

This 'Heisei era' reform wave (named after Emperor Heisei) draws comparisons with the Meiji period and the U.S. Occupation era (Ginsburg 2002: 2) with the claim that is 'epoch-making because it grapples with none other than the fundamental structure of the legal order itself' (Rokumoto 2001: 545). However, it is too soon to draw this conclusion and signs suggest that the extent and depth of reform may not be as great as might appear. Many of the reforms were resisted by the bureaucracy or, if adopted, were transformed and even emasculated. The political forces that buttress sectionalism and bureaucratic control of reform continue to be powerful. Kawabata (2006) argues that a key element in bringing reforms such as privatization and regulatory reform to fruition was whether or not the departments, agencies and enterprises targeted and threatened were key players in the 'distributive' as distinct from the 'developmental' sector of the political economy. In the former, the *zoku* continued to wield power. Thus, privatization of telecommunications proceeded more smoothly than privatization of the postal business because in the first case fewer distributive interests were threatened. In either case, the process of reform was controlled and negotiated by bureaucrats in key departments. Where reform did occur, it was often at very high cost through side-payments (for example, the expansion of the bullet train networks as a price for privatizing JNR). Kawabata, echoing the

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<sup>5</sup> In the longer run, the independent evolution of administrative law procedures through appeals and adjudication is potentially a major new irritant in the system of government.

argument presented here, calls Japan a 'dual state' in which the political dynamics operate very differently in the two sectors:

In a reform that touched upon the distributive networks, reformers faced fierce opposition from old guard politicians..., took a long timer to go through the process, and made a great deal of concessions. In a reform that was less essential to the distributive networks but closely related to the developmental networks, reformers were more successful...' (Kawabata 2006: 183).

Cerese (2002) focuses specifically on the continuing power of the bureaucracy to control reform. He analyzes 'deregulation' in Japan as a process of bureaucratic remodelling in which government officials, having recognized the pressure for reform coming from politicians, from society and from developments in the global economy, took charge of the process and channelled it along traditional lines of bureaucratic policy making. The 'Three-year Programme for Promoting Regulatory reform' beginning in 2001 was taken up with enthusiasm by government agencies as an exercise in re-regulation. Thus, promulgation of standards and mechanisms for notification would replace *ex ante* licensing as the dominant mode of regulation and the mechanisms of bureaucratic guidance would shift to education, monitoring and inspection. Above all, by controlling the process of reform, the bureaucracy reinforced its role and status as the dominant, guiding force – the existing agencies remained 'at the centre of the scene' (Cerese 2002: 642). In sum, the bureaucracy sought to 'control its own demise' in such a way that it 'may well simply become its own successor' (Cerese 2002: 629).

The capacity of the Japanese bureaucracy to capture and absorb contemporary reform models, leading to ambiguous outcomes, is seen the case of 'agencification' (Nakano 2004; Goldfinch 2006). As Nakano documents, ambitious agencification proposals were stillborn in the face of resistance from existing departments and civil servants. Reforms supposedly modelled on the UK 'next steps' agencies became simply a device to take civil servants off the central departmental payroll to meet downsizing targets (Nakano 2004: 182-3). The actual form and functions of the new agencies was clearly a distinctive local product, not a direct transfer. Agency rhetoric was also adopted to promote reform to mechanisms of control and regulation over Japan's university system. Goldfinch (2006: 594-5) notes that these reforms were directly modelled on those already advocated in other OECD countries and describes the various channels by which experience was transmitted and evaluated. The move from a 'state-controlled' system, where the universities were ostensibly simply arms of the

Ministry, to a system of 'autonomous' universities each enjoying separate legal status, in reality involved only a modification of the 'form and structures and mechanisms by which control is exercised' (Goldfinch 2006: 599). Goldfinch refers to this as 'symbolic' policy transfer.

In each of these cases, we see reform efforts following parallel tracks and creating uneven and ambiguous outcomes. In contrast to the Meiji era, the borrowing and transplantation process creates new ambiguities or 'misfits' rather than setting in train a process of innovation. On the one hand, reform pressures from politicians and society create a search for new foreign models, the supply of which is driven by global reform processes. On the other hand, Japan's dominant administrative tradition creates a legacy of incompatibility and hence a tendency to see these models as inappropriate, with the result that there is a disjuncture between the rhetoric of reform and the reality of the captured, domesticated outcome. Alliances with distributive coalitions reinforce the bureaucracy's power to resist reform or to channel it safely when it challenges these traditions.

### *Conclusion*

In sum, the reform record shows a mixed picture of uneven and ambiguous outcomes that may be partly explained by the legacy effects of Japan's administrative hybrid. Bureaucratic transcendence and sectionalism were two of the core characteristics of this hybrid. They embodied accommodations between 'foreign' and 'local' norms and practices that originated in the first wave of Japanese reform in the Meiji period. In a later wave of imported reform after the Second World War, some aspects of transcendence and sectionalism were challenged by the imposition of a Westminster model of accountability and political control. These new transplants and the existing traditions entered into an uneasy relationship which, in turn, created a new set of divergences. New players entered the policy making and administrative processes not through the formal channels of cabinet or ministerial control but through the informal networks and alliances that grew between the dominant party factions and the bureaucratic agencies. The *zoku* became a means by which the bureaucracy continued to assert its dominant role, albeit in ways that distorted some of its traditional mode of 'transcendence'. While the bureaucracy continued to legitimize itself through its sense of public role and mission, its partnership with the factions in distributive politics in reality resulted in scandal and corruption (Tamamoto 1995: 19-20).

In this context, administrative reform agendas, with increasing insistence and frequency, addressed a number of core issues that arose from the tensions and contradictions embodied in the new hybrid. Foreign models of NPM, transparency and accountability were drawn on in order to overcome perceived problems of bureaucratic inertia and inefficiency. However, the bureaucracy in large part retained the capacity to control the reform agenda, particularly its implementation. In this setting, reform motives and outcomes were often ambiguous. Tokenism and ‘rhetorical reform’ were common across several sectors. Reform, while not insignificant, was piecemeal and halting.

In sum, Japan’s recent reform experience strongly suggests that the legacy effects of its administrative traditions are a significant factor in both style and substance. I have argued that Japan’s administrative traditions are characterized by a significant degree of hybridity. First, the Meiji period saw a significant degree of borrowing, particularly from European continental models of the state and of public administration, resulting in a ‘Confucian and Continental’ hybrid, the main features of which remained in place at the time of the re-writing of the Meiji constitution in 1947. Two key features of this hybrid – bureaucratic transcendence and sectionalism – were not eliminated by the post-war reforms, rather the borrowed constitutional and administrative measures taken with that end in view sat uneasily on top of (or perhaps more accurately, alongside) a set of norms and practices that was hardly disrupted. Teubner’s metaphor of ‘irritation’ aptly describes the resulting dynamics. Accommodation took place through the absorption by the bureaucracy of the *zoku* into its inner circles, while tensions were evident whenever other political actors sought to challenge or disrupt transcendence or sectionalism. While LDP pork-barrelling may have ‘corrupted’ the traditional aura of transcendence, creating a new dynamic for reform, transcendence as a set of norms concerning the legitimacy of bureaucratic power, along with sectionalism as a fundamental organizing principle, continued to be constant factors in reform politics.

Finally, this analysis suggests a more general point about the effects of administrative legacies. There is a special category of administrative traditions that are clearly hybrid at their core because, at some point in time, borrowing or imitation played a central role in a set of major institutional departures. In these cases, hybridity itself has a strong set of legacy effects, including the habit of borrowing. In Japan, those parts of Meiji administrative traditions that were intimately connected to the imperial ideology were sharply repudiated following defeat in the Second World War, yet the norms and practices through which they were expressed continued to influence bureaucratic

organization and behaviour. The new layering resulting from the post-war episode of borrowing has buried only some parts of the legacy. Unlike the Meiji hybrid innovation, the post-war hybrid is defined by a much sharper degree of tension and by uneasy accommodations between the inheritance and the new irritants. The result is neither fish nor fowl; in some ways a combination of the strengths of both, in others a system continually at battle with itself where symbolic reform, false starts and non-authentic borrowing of 'fads' and 'fixes' (such as 'agencies') feature as often as 'best fit' emulation. Paradoxically, among the legacy effects of hybridity are a selective memory of how to emulate. Tragically, successful borrowing and the resulting hybrid creates the conditions under which future borrowing must sometimes fail.

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