

The transforming Japanese state and governance in antimonopoly regulation

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Abstract

This paper explores the transformation of the Japanese state in response to a variety of challenges through an analysis of power relation between actors within antimonopoly regulation after the 1980s. Contra to the dominant position within the literature, this paper sets out the case that under the LDP (Liberal Democratic Party) regime, LDP politicians dominated the key decision making process of antimonopoly regulation rather than civil servants; civil servants formulated and implemented regulatory policy. The period after the 1990s has seen the gradual expansion of the antimonopoly regulator and the change of key groups of party politicians within antimonopoly regulation. The gradual change of power relations within the core executive rendered the governance of antimonopoly regulation transformed, in particular after the 2008 change in government, when the newly elected DPJ (Democratic Party of Japan) dismantled the previous governing machine of the LDP. This can be accounted for in terms of the nature of the evolving structure of Japan's antimonopoly regulation. As a collective group, the core executive has adapted and evolved its strategic capacity, becoming more flexible to cope with the emerging challenges. This can be understood as the evolution of the state to address changing societal needs. (198 words)

Key word

State transformation, core executive, antimonopoly regulation, Japan, elite interview.

1. Introduction: challenge to the dominance of pluralists and rational choice in Japanese politics

The challenges to the state after the 1970s have prompted the debate on governance and the state (Pierre 2000, Richards 2008). Although the response of the state after the 1980s has been a major topic of debate in European political science, the dominance of pluralist and rational choice schools in Japan has left the Japanese state's response to its challenges untouched. This is the core theme of this thesis: the transformation of the Japanese state between the 1980s and 2000s.

State transformation has become a significant phenomenon in recent decades. Japan is no exception to this trend. Indeed, the Japanese state today is significantly different from the Japanese state both in the late 19th century and more recently the 1960s, when it enjoyed a significant economic growth (Vogel 2006 p.224). Unlike countries such as the UK, where a perceived juncture appeared with, for example, the emergence of the Thatcher Government and its neo-liberal rhetoric that has created debate about the nature of the transformation of the British state, the transformation of the Japanese state witnessed after the 1990s has been relatively more gradual and evolutionary.

Three major schools have emerged to account for Japan and the Japanese state in the literature after the 1980s: the state centric, the pluralist, and rational choice. The state centric school sets out the influential 'developmental state' thesis proposed by Johnson (1982). It depicts the Japanese state as development oriented or strategic under the domination of economic bureaucrats; this approach describes a state primarily concentrating on the economic development of the country. The state retains a strong authority based on the Weberian model of bureaucracy, which is insulated from society and organised to maximise its efficiency. The developmental state thesis had a sustained and lasting impact shaping the successive literature on Japan (Schaede 2000 p.2). As an example, Vogel (1996) adapts Johnson (1982) to explore regulatory reforms in Japan and the UK, describing the Japanese approach as managerial oriented (p.59).

This dominant paradigm of the developmental state was, however, later challenged by the emergence of a pluralist literature (for example, see Muramatsu and Krauss 1987 and Calder 1993). The pluralist school points out the importance of other actors than just bureaucrats, such as party politicians (Muramatsu and Krauss 1987) and private sector actors including long term credit banks (Calder 1993). Schaede (2000) extended this trend to the extent that it argues that self-regulation by Japan's trade associations dominate its regulatory policy.

Elsewhere, another school challenging the notion of the developmental state is rational choice. The rational choice literature understands Japan's politics as a result of the rational choice by actors, particularly party politicians confronting elections. As an example of this school, Ramseyer and Rosenbluth (1993) analyse Japanese politics with the principal-agent theory and conclude that the ruling LDP at the time dominated Japan's policy making by mobilising bureaucrats (Wright 1999 p.949).

After the 1990s these schools of pluralist and rational choice started reporting that significant changes were emerging in Japan (e.g. Yamamura 1997, Pempel 1998, Schaede 2008, Vogel 2006, Pempel 2010, Rosenbluth/Thies 2010). This group of literature focused on the changes of actors and structures: bureaucracy was losing its traditional approach, developmentally oriented measures, and private firms were taking more responsibility and risks (Sahaede 2008, Vogel 2006). What is missing in these accounts of the

literature such as Schaede (2008) and Vogel (2006) is how the Japanese state at a macro level has evolved. This is the lacuna that this article intends to address.

Elsewhere, throughout his exploration of Japan's fiscal policy between the 1970s and 2000s, Wright (2002) illuminates the complicated decision making mechanism of Japan's fiscal policy, in which negotiation involving the community of the MOF (Ministry of Finance), Spending Ministries and Agencies such as the Ministry of Land, Infrastructure, Transport, and Tourism, 50-60 FILP (Fiscal Investment and Loan Programme) agencies, a host of statutory and ad hoc advisory councils, formal and informal LDP organisations, representative associations of producer groups, and prefectural and local governments. His account reveals the persistent dominance of the core executive¹ within this sector, which can be exemplified by the MOF. George Mulgan (2005, 2006) in a similar vein identifies the MAFF (Ministry of Agriculture, Forestry, and Fisheries) as a significant actor in shaping policies in Agriculture. By highlighting the civil servants responsible for the sector (MAFF), her analysis reveals the MAFF's skilful approach to retain its power and what she calls the 'interventionist state' (George Mulgan 2005 pp.9-44). Here, the MAFF acted to maximise its intervention power through coping with the challenges of the day (George Mulgan 2006 p.178-183). What is common between this set of literature is that the policies in the case studies above have been formulated through negotiation within each sectors' state actors.

Referring to the approaches of Wright (2002) and George Mulgan (2005, 2006) locating state actors in the centre of research, this article sets up its framework with its analytical focus on the core executive. It sets out to challenge pluralist and rational choice perspectives by offering an analysis of the Japanese state predominantly cast at a macro level.

This article adopts an elitist account, locating power within the centre of the state (Smith 2009). Its view is that the central state is the key locus that is afforded particular and asymmetric resources that allow it to act as the dominant actor influencing and steering society. Such an approach challenges the dominant views on Japan offered by pluralist and rational choice accounts. Their perspectives reveal the detail of how Japan has been transformed, but fail to explain how the Japanese state at a macro level has been transformed. This article then critiques the existing dominance of pluralism by offering an elitist account of state power and power relations in Japan. The research method of this article is a case study on Japan's antimonopoly regulation after the 1980s with an elitist approach, employing the data collected through elite interviewing² (Wright 1999, Schaede 2000 p.2).

The analytical framework of this article is based on the view that the state has been reconstituted to respond to the recent challenges of an emergent era of governance; the 'reconstituted state' thesis suggests a process of adaptation has taken place on the part of the core executive in relation to both resources and strategic-leaning capabilities to reshape its existing capacities and develop new forms of intervention to sustain its position as the dominant actor in the policy-making arena (Richards 2008 pp.96-98).

The research outcome elaborated in the following sections reveals the changing power relations between core executive actors: Cabinet Ministers and their (political) staff, party politicians outside the Cabinet, and

1 On the concept of the core executive, see Section 2.

2 The elite interview took place in 2011 and 2012 in Tokyo targeting 3 politicians, 8 civil servants, 2 business persons, 4 professionals, and 2 consumer group members. All voice recorded.

the JFTC (Fair Trade Commission, Japan). The period of the 1980s-1989 saw the dominant power of party politicians outside the Cabinet including the LDP Antimonopoly Act (AMA) Examination Committee members with the weak power of formally responsible Chief Cabinet Secretaries. This was gradually been transformed with the change of the key figure and government. The emergence of the DPJ governments in particular drastically changed the situation by bringing previously powerful LDP politicians outside the Cabinet out of power. The JFTC has steadily enhanced its power after 1989, when the SII³ offered a significant disjuncture. This set of analyses is summarised in Table 1.

Table 1: Relative strength among actors in the antimonopoly field (created by the author)

	The 1980s-1989 <i>LDP governments Yamanaka Period</i>	The 1990s-2004 <i>LDP governments Yamanaka Period</i>	2004-2009 <i>LDP governments</i>	2009- <i>DPJ governments</i>
Cabinet Ministers and their staff	Negligible	Negligible	Negligible	Enhanced
Party politicians outside the Cabinet ⁴	Dominant	Dominant	Dominant (became unstable)	Significantly declined
The JFTC	Weak Stagnated	Enhanced	Enhanced	Enhanced

Based on the above, this article argues that the core executive in Japan’s antimonopoly regulation between the 1980s and 2000s successfully retained its dominance over the sector through its adaptation to the challenges. In its view the core executive mobilised the reconstitution of the Japanese state in the period with the change of power relations between the actors, having the Japanese state at a macro level retain its control over society. In so doing this article challenges the main thrust of the approach and arguments presented by both the pluralist and rational choice literature on Japanese politics.

The following sections aim to prove the above claim. First, the next section sets out the analytical framework followed by a review of the background of the case study. What comes next is an exploration of the relationship within the core executive, revealing how power relations have changed.

3 The SII (Structural Impediments Initiative) is a bilateral talk between the Governments of Japan and the United States from 1989 to 1990 which was launched as a joint initiative by President George H. W. Bush and Prime Minister Uno in June 1989 and whose final agreement was signed in June 1990, following a year of concentrated formal negotiations and informal meetings (Matsushita 1991 p.436, Mastanduno 1992 p.235). Its major focus was a trade imbalance between Japan and the US resulting from the non tariff barrier, mainly of the Japanese side (Matsushita 1991 p.436). Its follow up talks continued throughout 1991 (Morita 1991 p.778).

4 Including the LDP AMA Examination Committee.

2. The analytical framework and the background of the case study

The study of the core executive is at the heart of the analytical framework of this article. It draws on the principle of concept travelling (Sartori 1970), employing the core executive approach originating from British political science⁵. It offers a framework depicting the specific resources, alongside the fluid and changeable nature of power within the core executive based on the interdependent relationships between key central actors, that allows the core executive collectively to establish an asymmetric position of dominance over other actors in the policymaking arena (Smith 1999). Referring to Smith (1999), Itou (2006), and Kamikubo (2010), this article regards the following as the core executive in Japan's antimonopoly regulation: Prime Ministers, responsible Cabinet Ministers and other politically appointed officials, civil servants (JFTC), and key party politicians outside the Cabinet.

Regulation is a crucial field in which the governance of key sectors have significantly transformed from a regime focusing on direct service provision by the state or public organisations (e.g. a public corporation) to that focusing on principal-agent regulation. This transformation observed after the 1980s has prompted the emergence of the state focusing more on rule making, monitoring and enforcement either directly or indirectly (Levi-Faur 2012 pp.19-20). The state has increasingly used regulation as a new tool in addition to its traditional methods of authority, bureaucracy and force (Smith 2009 p.1). This article focuses on regulation because of its significance in relation to contemporary state transformation.

This article focuses on the Japanese case of this emergent regulatory field, exploring the response of the state to the specific challenges it presents. The transformation of Japan's antimonopoly regulation has had a gradual impact on the core executive in this field. With its independence of authority, the JFTC has not only fended off party politicians' interventions but also embraced a protection to its adversaries such as other government ministries. The influence of party politicians has concentrated on the policy making process, typically in the form of endorsing infrequent law amendment bills. More active policy making after the SII has increased its opportunities to be involved in political processes such as law amendments. The government change from the LDP (Liberal Democratic Party) to the DPJ (Democratic Party of Japan) in 2009 accelerated this tendency for the DPJ governments started assigning new Cabinet Ministers responsible for the JFTC.

A key actor to emerge in 1975 in Japan's antimonopoly regulation was the LDP's AMA (Antimonopoly Act: *Dokusen Kinshi Hou*) Examination Committee (Hayashi 2008 p.314). Located within the LDP's PARC (Policy Affairs Research Council), the impact of the LDP AMA Examination Committee can be compared to the PARC's other divisions (*Bukai*). The interests and arguments represented by LDP

⁵ Dunleavy and Rhodes (1990 p.4) propose the term 'the core executive' as a modernised conceptualisation of the central policy coordinating machinery in the British government, referring to it as: 'functionally to include all those organizations and structures which primarily serve to pull together and integrate central government policies, or act as final arbiters within the executive of conflicts between different elements of the government machine'. This functional definition is further developed by Rhodes (1995), who defines the core executive as: 'all those organisations and procedures which coordinate central government policies, and act as final arbiters of conflict between different parts of the government machine' (p.12).

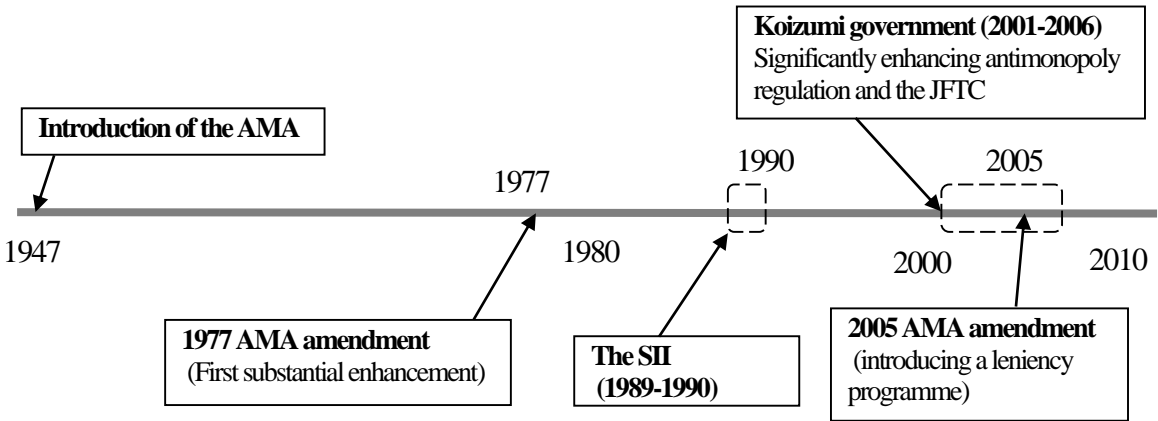
politicians became the LDP’s view through the process of debating policy issues in the AMA Examination Committee; the Committee’s function was similar to the PARC’s divisions (Inoguchi and Iwai 1987 p.99). The LDP AMA Examination Committee exercised its power through typically examining AMA amendment bills; its examination was vital for the bills to be put before the Diet between the 1980s and 2000s.

The LDP AMA Examination Committee was also the arena where Sadanori Yamanaka (1921-2004) emerged as a key figure in antimonopoly regulation. The relationship between the JFTC and the ruling parties in the 1980s and 1990s can be described as a support network that surrounded him.

Yamanaka’s dominance was not continuous. His appointment as the Minister of International Trade and Industry in 1982 led to his resignation as the Chairman of the LDP AMA Examination Committee and so sidelined his role in antimonopoly regulation. After his brief came back to the Committee in the late 1980s, Yamanaka’s failure in the general election in January 1990 kept him out of politics until 1993. Yamanaka’s return to politics following the 1993 general election revived his influence in antimonopoly regulation. He retained this influence until 2004 when he died in the middle of his tenure as the Chairman, as well as a Member of the Diet (Shiozaki 2013a, 2013b).

Significant turning points occurring in antimonopoly regulation after the 1980s can be seen in the SII (Figure 1 exhibits the timeline of the development of Japan’s antimonopoly regulation).

Figure 1: The timeline of the development of Japan’s antimonopoly regulation (created by the author)



Commentators agree that the impact of the SII created a significant disjuncture in Japan’s antimonopoly regulation (Freyer 2006 p.203, p.216, Uesugi 2007 p.146, Tsuruta 1997 pp.149-150). Morita (1991 pp.800-802) summarises the description of SII’s final report (June 1990)⁶ related to Japanese government’s commitment on antimonopoly policies in the following:

- Enhance and increase enforcement of the AMA by implementing mechanisms which will:

⁶ Trade Compliance Center (2012)

- require the JFTC to expand and enhance its investigatory function and increase its proof-collecting capacity against illegal activities. The JFTC will especially target price cartels, supply restraint cartels, market allocations, and group boycotts.
- increase budgetary allocation to expand the number of personnel involved in violation detection and investigative functions.
- raise surcharges against cartels in order to deter violations.
- increase the use of criminal penalties for vicious and serious cases that impact on people's livelihoods and for repeat offenders. In conjunction with this policy, the Minister of Justice publicly requested all the chief prosecutors to cooperate with the JFTC by making available any information they may have uncovered relating to violations of the AMA. The chief prosecutors must also make special efforts to 'vigorously pursue' cases of criminal violation of the AMA.
- increase the effectiveness of the damage remedy system for individuals provided in Article 25 of the AMA by reducing the plaintiffs' burden of proof for violation and damage. The JFTC, when submitting its opinion, will describe in detail its findings on the violation, the causal relationship between the violation and damages, the amount of damages, and the measure used for its calculation. It will also append any necessary data or materials to its opinion.
- ensure that its administrative guidance 'does not restrict market access or undermine fair competition.'
- Minimise the use of exemptions from the general rules of the AMA and review existing exemptions to ensure that they enhance competition and do not impede imports.
- Take steps to loosen *Keiretsu*.

These measures to enhance antimonopoly policies and the JFTC came with the change in structure. Freyer (2006 pp.203-212) reports the change of Japan's traditional antimonopoly approach as a result of the SII and the collapse of the 'bubble economy'⁷. He highlights the LDP's necessity to form a coalition with smaller political parties such as the Social Democratic Party of Japan (SDPJ) and New Party *Sakigake* between 1994 to 1998 as a major reason why the LDP embraced deregulation and antimonopoly measures, a different approach from the previous one in the early 1980s (p.203).

Strengthening the JFTC's enforcement structure became symbolically and practically important during the SII's implementation after 1989 (Freyer 2006 p.216). Three significant actors supported this theme: the US government (the Department of Justice Antitrust Division), *Keidanren*, and the ruling coalition of the day including the LDP (Freyer 2006 p.216). The expansion of the JFTC was evidenced in the form of its upgrading. Promoting the rank of the JFTC senior staff (e.g. the Secretary-General from the Bureau chief level to the Vice-Minister level) substantially enhanced the JFTC's negotiating power in bureaucracy, as well as its enforcement capacity (Freyer 2006 p.218, Tsuruta 1997 p.182).

Another significant issue emerged in relation to the relaxing of the holding company prohibition. Japan was unusual for supporting an outright ban on the holding company by Article 9 of the AMA as a measure

⁷ 'Bubble economy' (the Japanese asset price bubble) was an economic bubble in Japan from 1986 to 1991, in which real estate and stock prices were greatly inflated.

to prevent the revival of the *Zaibatsu*⁸ despite the permission by other major industrial countries (Freyer 2006 p.217, Tsuruta 1997 p.180). However, this issue was domestically contentious. *Keidanren* and the MITI (Ministry of International Trade and Industry)⁹ supported the relaxation, while a group of party politicians including the SDPJ opposed it (Freyer 2006 pp.223-224, Uesugi 2007 p.200). The fact that this regulation prohibited all holding companies with no actual anticompetitive behaviour implies that its nature was ex ante. Therefore, relaxing the holding company prohibition can be interpreted as a retreat from ex ante regulation.

The adoption of these two measures by the Diet (JFTC upgrade in 1996, holding company regulation relaxation in 1997) is the evidence of how much Japan’s antimonopoly policies have developed. They shifted from ex ante oriented to ex post oriented, focusing on the AMA enforcement by the JFTC. The 2000s sustained this trend, as Prime Minister Jun’ichiro Koizumi (2001-2006) urged in his policy speech in May 2001: ‘to strengthen the organisation of the Fair Trade Commission and establish competition policies suitable for the twenty-first century’.

The impact of the Koizumi government (2001-2006) was evident in the 2000s. One of the most significant events in antimonopoly regulation during this period was the introduction of a leniency programme for surcharge in 2006¹⁰ by the AMA amendment in 2005, together with the rise of surcharge rates. Japan’s leniency programme is linked to the surcharge system, because: ‘Japan’s criminal law does not usually countenance the use of leniency in this fashion’ (OECD 2004 p.73). The introduction of a leniency system was expected to enhance the capacity of the JFTC through giving incentives to those involved in cartels to report to the JFTC. The actual number of applications in Table 2 suggests that this expectation was right. The staff and budget of the JFTC discernibly grew in this period, as Table 3 reveals. For example, the JFTC’s budget grew by more than 1 million yen from 6,035,756,000 yen in 2001 to 7,686,000,000 yen in 2002.

Table 2: The number of applications to the leniency programme (JFTC 2011)

Financial Year (1 April - 31 March)	2005	2006	2007	2008	2009	2010	Total
The number of applications	26	79	74	85	85	131	480

8 Privately owned industrial empires (Johnson 1982 p.23). Hadley (1970 p.20) explains that *Zaibatsu* was family oriented ‘combines’ (complexes ‘of corporations displaying unified business strategies arising primarily out of an ownership base’).

9 The MITI was reorganised as the Ministry of Economy, Trade and Industry (METI) in 2001. (website: <http://www.meti.go.jp/english/index.html>)

10 From January 2006 Japan introduced a leniency programme, under which the JFTC can treat cartel participants leniently in imposing surcharges despite the clear fact that the informant also obtained cartel profits (JFTC 2012, Uesugi 2005 p.362). The JFTC affords full immunity for the first informant, a 50 percent reduction in penalties to the second informant, and a 30 percent reduction for the third informant, so long as they provide necessary information before the start of the JFTC investigation (JFTC 2012, Uesugi 2005 p.362). A certain number of informants can also enjoy the benefit of this programme after the start of the JFTC investigation (JFTC 2012).

Table 3: The staff and the budget of the JFCT (based on the data offered by the JFTC during an interview session in 2011)

	1947	1980	1985	1990	1995	2000	2005	2010
Number of the Staff	284	422	432	474	520	564	706	791
Budget (million yen)	10	2,393	2,882	3,751	5,239	5,902	8,131	8,915

Until the government change in 2009, the key actor in shaping major decisions was the ruling party; the LDP’s AMA Examination Committee had a significant role within the PARC. The Committee offered an arena where a group of party politicians involved in issues related to antimonopoly regulation such as Yamanaka shaped key decisions. In the 1990s, the existence of coalition government between the LDP and its partners such as the SDPJ enabled the coalition partners and their politicians to significantly influence policy making processes, typically through negotiation with the LDP PARC (Oikawa 1999 pp.256-305). In the case of the relaxing of holding company regulation in 1997, the negotiation between the LDP PARC and its SDPJ counterpart was key in shaping both a consensus and the subsequent relaxation (Oikawa 1999 pp.256-305). Under the LDP/LDP lead coalition governments, policy issues in antimonopoly regulation such as AMA amendments were shaped in this set of frameworks characterised by a significant influence of ruling parties’ internal processes. Government change in 2009 dismantled this set of frameworks by replacing the LDP and its coalition partner with the DPJ and its partners.

Under such a decision making framework, between the 1980s and 2000s the AMA and the JFTC have significantly been enhanced in terms of their authority and organisational scale, although the process of enhancement has not been coherent. Observers highlight the significance of the SII to Japan’s antimonopoly field. The impact of the SII on Japan’s antimonopoly regime since the 1990s was regarded as significant by both US and Japanese antitrust authorities (Freyer 2006 p.243). In their assessment: ‘the (J)FTC’s enforcement record (since the 1990s) may be seen as relatively effective, though the paucity of private actions was a major problem in Japan’ (Freyer 2006 p.243). The major state actors in the field have been the JFTC, whose steady organisational development is revealed in Table 3, as well as party politicians.

The development of Japan’s antimonopoly regulation reviewed in this section reveals a piecemeal institutional growth of the sector and gradual organisational expansion of the JFTC, a rare independent regulator in Japan. The JFTC’s approach as an independent regulator is formally meant to be at arm’s length from political decision making by law. At the same time the constitution of Japan requires government organisations including the JFTC to be under the control of the Cabinet¹¹. Amendments to the AMA are put before the scrutiny of the Diet, as other law amendments.

Power relations within antimonopoly regulation have gradually changed. Before the SII the MITI and *Keidanren* opposed stronger antimonopoly regulation. The JFTC was the key regulator responsible for

11 Article 65 of the Constitution of Japan stipulates that: ‘Executive power shall be vested in the Cabinet’.

implementing antimonopoly regulation. Transformation emerged as some traditional actors (MITI, *Keidanren*) changed their view and other actors (e.g. JFTC) became stronger. This transformation resulted in the enhancing antimonopoly regulation during the early 1990, when debates on the SII (1989-1990) emerged. Party politicians retained their power and shaped key decisions in relation to the views of relevant parties such as the JFTC and *Keidanren*.

The actors and frameworks highlighted above did not change until the government change in 2009. As such, the nature of state power in antimonopoly regulation similarly remained unchanged. However, the growth of the JFTC as an antimonopoly regulator led to the gradual enhancement of state power in antimonopoly regulation within the traditional framework. This transformation of antimonopoly regulation was significantly inspired by the SII (1989-1990) (e.g. Freyer 2006 p.203, p.216, Uesugi 2007 p.146, Tsuruta 1997 pp.149-150). The disjuncture resulting from the SII launched the transformative process that continues to the present day. Taking account of the significant impact of this event, the next section focuses on the transformative relationships between the core executive actors in antimonopoly regulation by analysing how relationships within the core executive and power have changed through their adaptation to challenges after the SII.

3. Independence and political control: the relationship within the core executive

Japan's antimonopoly regulation can be characterised by its relationship with politics. The JFTC is formally independent from politics, as the AMA (Article 28) stipulates that: 'the chairman and commissioners of the Fair Trade Commission shall perform their authority independently.' Often called as 'the independence of authority', this provision is considered as ensuring the independent investigation of each antimonopoly case from interventions including those from party politicians. A retired JFTC senior official explained: 'in principle there is an understanding that the Fair Trade Commission is an independent administrative organisation unintervenable even by elected politicians' (Interview with a retired JFTC senior civil servant). In return, what the interviews reveal is an indifference to antimonopoly policies and the JFTC among party politicians. At the same time the JFTC is under the supervision of the Cabinet as an executive organisation pursuant to the Constitution of Japan (Article 65). In practice, the JFTC has informally been shaped by political pressures as the evidence from the interviews reveals.

The relationship between party politicians and the JFTC under LDP governments was summarised by a JFTC civil servant in the following:

before DPJ governments, since the AMA is under independent implementation, the JFTC is an independent administrative commission, and the independence of its authority is ensured, basically; I don't know the backdoor, such a top business, but formally, politicians intervened in only law amendments, when the JFTC contacted politicians. Of course the Chief Cabinet Secretaries were responsible for the JFTC, but they weren't regularly briefed on what's going on in the JFTC. (Interview with a JFTC civil servant)

Therefore, the JFTC did not contact party politicians when they had no law amendment. In the *Showa* period (1926-1989) when comparatively few substantial AMA amendments emerged (see the previous section): ‘the Fair Trade Commission wasn’t close to the ruling parties’ (Interview with a JFTC senior civil servant). The relationship between the JFTC and ruling parties in the 1980s and 1990s can be described as a network surrounding Sadanori Yamanaka. Almost all the interviewees, both within and outside the core executive, referred to him as crucial in terms of the relationship between the JFTC and party politicians in the 1980s and 1990s. Antimonopoly policies in the 1980s and 1990s were formulated in the circle surrounding Yamanaka. The situation in this period was described by a retired senior civil servant: ‘for example, when we amended law, or raised surcharges through the amendment, or likewise, things were debated in the Examination Committee. Beforehand we frequently briefed Chairman Yamanaka to obtain his full understanding’ (Interview with a retired senior civil servant). This account describes how crucial Yamanaka was in the policy making process. This view is endorsed by almost all the interview accounts including the following:

in the past the LDP had the AMA Examination Committee, where Sadanori Yamanaka worked. The JFTC regarded him as key and his endorsement made things worked very smoothly. But, it is said no equivalent emerged after his death.’ (Interview with a law professor (AMA))

before that (the emergence of the Koizumi Government in 2001), about ten specialised politicians in the AMA surrounding Mr Yamanaka controlled how far the JFTC could go if it was allowed to move in one way, but it seemed that not the general public but only that group was interested in the JFTC’s policy. (Interview with a retired JFTC senior civil servant)

The nature of Yamanaka’s role is described as a mentor rather than a key man by a retired JFTC senior civil servant:

other executive organisations have to continuously generate policies, in whose processes key men probably exist. The JFTC generates new issues not frequently but only at key turning points. Enforcing the AMA requires no key man with the independence of authority. When it sometimes launched new issues, the JFTC needed a mentor, who was honourable Mr Yamanaka. (Interview with a retired JFTC senior civil servant)

The description ‘mentor’ can implicate that Yamanaka did not closely cooperate with the JFTC but supported it at arm’s length. According to this retired official: ‘when the AMA Examination Committee Chairman endorsed in preliminary briefings, everything would work. In this way, the JFTC doesn’t probably need a key man equivalent to other government organisations’’. (Interview with a retired JFTC senior civil servant)

These accounts highlight the nature of the relationship between the JFTC and party politicians. Focusing on AMA enforcement, the JFTC has not had a strong relationship with party politicians. It has mainly contacted party politicians in the process of AMA amendments. Such circumstances have created a weak relationship with politicians, which have been compensated by the relationship with Yamanaka. This

observation is backed by a comment by a retired JFTC senior civil servant: ‘without Mr Yamanaka, the JFTC may have needed a key man, as disturbing interventions from politicians would probably try to stop things sooner or later’ (Interview with a retired JFTC senior civil servant). His dominant power was also witnessed by an outside observer: ‘the LDP AMA Examination Committee was very mysterious; it’s only an organisation under the PARC, but under Mr Yamanaka’s dictatorial influence. . . . Chairman Yamanaka dictatorially decided AMA (related affairs) during his tenure.’ (Interview with a *Keidanren* official)

If Yamanaka played such a significant role in the antimonopoly policy making process, the nature of his role should be a topic of further exploration. The civil servants of the time (the period until 2004) expressed a discernibly positive view to Yamanaka, which can be exemplified by the comment by a retired JFTC senior civil servant:

with his confident idea on how the AMA should be, Yamanaka rejected things against it, even if from the Prime Minister. He had such a very strong will and was very important for the JFTC. An extreme expression could be that he made it possible to enhance antimonopoly regulation when the SII urged. (Interview with a retired JFTC senior civil servant)

A similar view was witnessed by another retired JFTC senior civil servant:

when Yamanaka’s Examination Committee worked well, it gave civil servants a sense of trust. Probably to civil servants in other government ministries too, for he wasn’t a mere JFTC sponsor. In short he happened to be the AMA Examination Committee Chairman, but wasn’t a JFTC supporter. He thought of Japan’s economy and people’s lives, and happened to address the tax system or antimonopoly as actual cases. He thought in such a way, at least said so. (Interview with a retired JFTC senior civil servant)

These accounts suggest that Yamanaka made decisions based on not the demands of interest groups behind him but his own judgement.

The above accounts reveal the impact of Yamanaka’s influence. His power drew in part from his seniority in the LDP and his long experience and expertise in antimonopoly regulation. Much of his power stemmed from his personal position. However, what made him exercise his power was his internal position in the LDP and the LDP’s status as the ruling party. The nature of Yamanaka’s power was oriented from his personal assets (experience, expertise, character, relationships with other politicians) as well as structural elements (his position as the Chairman of the LDP AMA Examination Committee, the LDP’s position as the ruling party). It was a product of conflation between agency and structure.

In contrast to Yamanaka’s strong power and influence, party politicians formally responsible for the JFTC did not exercise a significant influence over the JFTC and antimonopoly policies under the LDP administration. It is the Prime Minister who is formally responsible for the JFTC according to the provision of the AMA¹². The actual responsibilities of the PM were assigned to the Chief Cabinet Secretary (Cabinet

12 Article 27 (2) of the AMA stipulates: ‘The Fair Trade Commission shall be administratively attached to the office of the Prime Minister’.

Minister) pursuant to the provision of the Act for Establishment of the Cabinet Office¹³. The impact of the Chief Cabinet Secretaries, who were formally responsible for antimonopoly policies under the LDP governments, on policy was limited according to the account offered by interviews. A retired JFTC senior civil servant elaborated on the relationship between the JFTC and the Chief Cabinet Secretary:

the relationship between the JFTC and the Chief Cabinet Secretary wasn't substantial at all. . . . law gives the JFTC independence of authority untouchable to even Cabinet Ministers; under such circumstances what remained to the Prime Minister and the delegated Chief Cabinet Secretary were only a few things. First, when the AMA amendment is put before the Diet, the Chief Cabinet Secretary explained the bill in the Diet as a Cabinet Minister. (Interview with a retired JFTC senior civil servant)

The rest of the tasks borne by the Chief Cabinet Secretary were also ceremonial:

after the bill is adopted in the Standing Committee, the responsible Cabinet Minister stands up and greets 'Thank you very much' there. And sometimes the adopted bill gets an attached resolution. And usually the Cabinet Minister greets by saying things like 'taking account of the resolution's intention the government will do its best'. These greetings were made by the Chief Cabinet Secretary as only a Cabinet Minister can do such ceremonial, truly ministerial tasks. The Chief Cabinet Secretary said nothing like how some particular cases are or likewise. The Chief Cabinet Secretary didn't usually politically intervene in the JFTC's job at all. (Interview with a retired JFTC senior civil servant)

The nature of the relationship between the JFTC and the responsible Cabinet Minister (the Chief Cabinet Secretary) was described as ceremonial, offering a possible interpretation that the political control by the Chief Cabinet Secretary was negligible under LDP governments.

In drawing the above accounts together, what emerges is the degree of control by a party politician outside the Cabinet (Yamanaka) and a weak control by the formally responsible Cabinet Minister (Chief Cabinet Secretary). Yamanaka's role was decision making based on the JFTC's proposals rather than active management as a retired JFTC senior civil servant described: 'Mr Yamanaka didn't actively give concrete instructions. Rather, we said 'we want this', 'we want that', and he sometimes rejected saying "you can't do that", or sometimes said "that's good. Interesting, do it". It's up to the cases' (Interview with a retired JFTC senior civil servant). This was endorsed by another account by an official of a business organisation: 'at that time it was called Yamanaka-Hayashi regime; Chairman Yamanaka and the Head of the Secretariat Hayashi. . .but in reality what Mr Yamanaka decided was materialised by Mr Hayashi. Debates were impossible mysteriously, when Mr Yamanaka said "this"' (Interview with a *Keidanren* official). These accounts imply that the nature of Yamanaka's role was not managing but decision making. What also

13 Article 8 empowers the Chief Cabinet Secretary to organise the Cabinet Office's official duties in assistance with the Prime Minister and supervise them under the instruction of the Prime Minister, except for those assigned to other Ministers of State.

appears here is the fact that the power was not vested in the formally responsible Cabinet Ministers but a key LDP politician whose formal authority depended upon the LDP as well as his personality.

Under the strong authority of Yamanaka, the JFTC had more freedom from party politicians' intervention. This was possible because the AMA gives the JFTC the independence of authority. This legal framework gave the JFTC civil servants more freedom from formal control by the responsible Cabinet Minister (the Chief Cabinet Secretary), who did not supervise antimonopoly policy implementation.

This offers a striking contrast to other government ministries, where responsible Cabinet Ministers have the authority to supervise policy implementation. The implications of this system are a lack of democratic control and a poor political coordination when the JFTC drafts law amendment bills. Because many policy making issues emerge in the form of law amendments, active policy making activities in the antimonopoly field offer to the JFTC challenges of democratic accountability and political coordination. A significant portion of policy making involves law amendments, through which the Diet and party politicians exercise their power. The role the JFTC played in law amendment processes offers a clue to figure out the relationship between the JFTC and law amendments. A lawyer specialised in the AMA offered the following observation from his experience in the LDP AMA Examination Committee and other relevant places:

I guess ideas for AMA amendments originated from various places. It's, for instance, from foreign developed countries in the antimonopoly field which offered their opinions in places like the SII. . . Another one comes from private firms and other government ministries. And the third one is the points the JFTC think inconvenient. Or, the final output is made by the JFTC. On the process of making outputs the JFTC often insert their own view. (Interview with an AMA lawyer)

He argued that the JFTC has not frequently offered the future vision of the antimonopoly field but skilfully managed the antimonopoly policy process:

when we think about where the ideas of AMA amendments originated, I don't think the JFTC has created so much but it has adopted various outside opinions. I also think that the JFTC is good at adapting the law amendments so that they can conveniently be implemented. (Interview with an AMA lawyer)

His view reveals that the JFTC's approach to law amendments has been based on process management and coordination. Another interviewee went to the extent that the JFTC was 'powerless' and it wasn't the major reform promoter (Interview with a retired economics (industrial organisation) professor).

These accounts from antimonopoly specialists outside the JFTC reveal that the nature of the JFTC's role has been a coordinator. It has not been strategic but has informally been able to insert its will into the details of the issues. Such an approach is different from other examples of Japanese government ministries offered by Johnson (1982) (MITI) and Vogel (1996) (MPT: the Ministry of Posts and Telecommunications). A role such as the JFTC's can be called bureaucratic management rather than strategic. The power of the JFTC stemmed from its institutional authority as an antimonopoly regulator. In political activities such as setting new regulatory framework through legislation, the JFTC was subject to the LDP. What they did was

manoeuvre the legislation process as well as monopolise the implementation. In summary, the nature of JFTC's power was policy implementation and a limited range of policy steering within the LDP's decisions.

A policy disjuncture resulting from the SII did not change power relations and roles among the core executive actors. Although enhancing the JFTC and the AMA became a priority, the concrete measures to materialise such a goal were deliberated and implemented under the supervision of the LDP AMA Examination Committee. Those civil servants interviewed did not witness a significant disjuncture under the LDP administration between the 1980s and 2000s. Rather, a civil servant witnessed that her experience on the 2009 amendment under the LDP required the same process as before (Interview with a JFTC senior civil servant). This implies that the LDP governments retained their internal process with no explicit change of power relations until the 2000s. Such an observation was verified by another JFTC senior civil servant, emphasising the role of the LDP AMA Examination Committee as 'the most influential over law amendments' (Interview with a JFTC senior civil servant). These accounts by civil servants describe that the institutional framework under the LDP administration underwent few changes in terms of the process and power relations among actors until its departure in 2009.

Elsewhere, some interviewees highlighted the overt change of circumstances that emerged in the 2000s. In their view such changes were prompted firstly by Yamanaka's departure in 2004 and also the government change in 2009. Yamanaka's departure was described as the most significant key disjuncture by a senior official of a business organisation as after his death 'things smoothly working so far got unworkable' (Interview with a *Keidanren* official).

A retired senior civil servant offered a different view. He argued that the LDP's approach did not change with Yamanaka's departure, suggesting that the influence by government change in 2009 may have created more of an impact on the JFTC: 'under the LDP governments a good relationship has been established (between the JFTC and the LDP) and the ruling parties have treated the Fair Trade Commission properly. But, I am concerned how the DPJ actually treats the JFTC' (Interview with a retired senior civil servant). The impact of government change in 2009 was described in a rather different way by a current JFTC civil servant, describing the influence by government change as a common experience among government ministries and organisations:

after the DPJ governments came, all government ministries have had challenges to materialise their policies. It probably resulted from issues related to something like governance, but the challenges are shared by other government ministries, I guess. This isn't like 'the AMA policies were good or bad', nor 'the amendment was good or bad'; rather it resulted from things like the complexity or ambiguity of the power balance between political parties. (Interview with a JFTC civil servant)

What then was the impact of the change in government? 'After DPJ governments started, ... the relationship with *Seimu Sanyaku*¹⁴ became intensified under the umbrella of the Policy Coordination Meeting. And, we

14 *Seimu Sanyaku* (Three Political Officers) is a team of parliamentary senior officials in a ministry composed of a Cabinet Minister, Senior Vice-Ministers, and Parliamentary Secretaries in a government ministry in Japan (Neary 2002 pp.126-127).

have policy issues and implementation issues, and policy issues have frequently been reported, I heard' (Interview with a JFTC civil servant). The increased involvement of DPJ politicians on policy issues were also witnessed by other interviewees:

the current AMA amendment bill was drafted under the leadership of the Parliamentary Secretary. It was written in the excited period just after government change. . . .2009 saw government change, so from that autumn; on 9 December 2009 the direction was issued in the form of the *Seimu Sanyaku* paper, and between these points the direction was contemplated under the leadership of the Parliamentary Secretary. This was distinctively led by the Parliamentary Secretary. (Interview with a JFTC senior civil servant)

This changing relationship between party politicians and civil servants was also witnessed by a DPJ politician who was in *Seimu Sanyaku* in charge of the JFTC:

the DPJ government decided to create responsible *Seimu Sanyaku* and appointed those responsible for the JFTC. With the JFTC's independent authority, basically the job was the law by the Diet: the *Seimu Sanyaku* is involved in what should be done about the law, but each member of *Seimu Sanyaku* had their respective idea on to what extent he should be involved in the daily business, and my approach was a restrained one. (Interview with a member of the House of Representatives (DPJ))

Together with the previous account by a senior JFTC civil servant, this account implies that the elected officials (*Seimu Sanyaku*) of the DPJ played a significant role in policy making of the antimonopoly field. This reveals a difference from the previous LDP governments, where the LDP Chief Cabinet Secretaries, who were formally responsible Cabinet Ministers, played only a ceremonial role. The DPJ's different approach was explained by Yukio Edano, the first DPJ Cabinet Minister assigned to the JFTC: 'after the recent government change the *Seimu Sanyaku* of the Cabinet Office to which the JFTC is administratively attached ... has been assigned to the JFTC. ...I'll do my best to realise fair markets by strengthening the function and organisation of the JFTC. In particular, I'll make efforts to have Japanese industries develop under fair market competition in a significant change of global environment and markets' (The House of Representatives 2010a). He also referred to the limitation of his remit: 'because the JFTC is an independent administrative commission as the law enforcement organisation, I can't directly command and control it' (The House of Representatives 2010b).

Also, the above account indicates that DPJ politicians' approaches were not unified; some of them argued for a more proactive approach to antimonopoly policies, while others preferred a more reserved one. The politician further elaborated:

there is a debate whether Senior Vice-Ministers and Parliamentary Secretaries are really necessary. A JFTC Chairman endorsed by the administration will solve the problem. And the Chairman sufficiently communicates with the administration. But the Chairman is from bureaucracy, from the finance ministry. . . . basically Mr Takeshima wasn't appointed because of the DPJ's wish. So as an interim

approach, it is acceptable *Seimu Sanyaku* get involved so that the JFTC work in line with the policies of the DPJ (Interview with a member of the House of Representatives (DPJ))

His account reveals that the DPJ's approach was a set of trials based on each politician's method rather than a coordinated approach. Also, he highlighted the problem of accountability; because the current JFTC Chairman was selected by the LDP, the DPJ governments were distrustful of the Chairman as their agent. At the same time the DPJ was unable to sack the Chairman because the AMA protects the Chairman's tenure to safeguard the JFTC's independence. This suggests that the independence of authority created a new governance problem which the LDP never had during its long tenure.

The DPJ failed to realise significant reforms in antimonopoly regulation (Interview with a *Keidanren* official). Some highlighted that the DPJ stopped policy related activities by dismantling the system under the LDP, indicating the DPJ's failure to establish their own (Interview with an AMA academic, interview with a consumer group leader). The result suggests an unstable situation where no established rules controlled the governing machine such as bureaucracy.

In drawing these arguments together, what emerges is the sustained dominance of the core executive. Party politicians have retained their decision making role. During LDP governments, this role was played by key party politicians including Yamanaka. Government change in 2009 dismantled the LDP's traditional governing machine, during its tenure at least. What emerged instead is an uncoordinated intervention from party politicians in the Cabinet. The principal-agent relationship between party politicians and civil servants in the JFTC encountered a challenge as the JFTC Chairman selected by the LDP had an awkward relationship with the new DPJ governments; he did not have their trust. The JFTC's policy making activities were not particularly strategic; ideas for AMA amendments have not always come from the JFTC. The skilful management of the JFTC, however, enabled itself to control the antimonopoly policies in detail.

What can be observed in Japan's antimonopoly regulation is a version of the fluid change of power within the core executive. The dominance of party politicians is distinctive. Under the LDP, the government's key decision makers such as Yamanaka demonstrated their dominant power in the policy making process. This framework was retained after Yamanaka's departure in 2004. The DPJ established a new framework of governing after the 2009 government change by designating responsible Cabinet Ministers and their team (*Seimu Sanyaku*). The change of the dominant actor occurred within the group of party politicians. The continuous characteristic of this set of frameworks is the dominant nature of party politicians as the key decision maker. The power and role of the JFTC policy making processes is subject to the dominance of party politicians. The nature of the JFTC's power has been policy implementation and a limited range of policy steering within the LDP's decisions. In contrast to the change within the group of party politicians, no significant change can be observed in the relative strength of the JFTC vis-à-vis party politicians. Its bureaucratic management and independent implementation of the AMA have shaped the detail of antimonopoly regulation under the supervision and dominance of party politicians. Party politicians have had access to not only the JFTC but also its adversaries such as the MITI and *Keidanren*. For the actors such as the MITI and *Keidanren*, one major way of opposing the JFTC was lobbying party politicians. Key party politicians such as Yamanaka have been in a position to make decisions taking account of the views of the related actors such as the JFTC, the MITI, and *Keidanren*. This system reveals a similarity to the British

core executive analysed by Smith (1999 p.251). Party politicians' role as the key decision maker renders them to be the centre of the policy community on antimonopoly regulation. It is party politicians such as Yamanaka who decide which direction and views the government will employ. *Seimu Sanyaku* in the DPJ government played a similar role to Yamanaka because it made key decisions on antimonopoly regulation such as formulating bills.

A key characteristic of the core executive in Japan's antimonopoly regulation can be understood as the dominance of the core executive. The strategic management in antimonopoly regulation by officials has been limited; the major decisions shaping the regulatory framework have been decided by key party politicians. The power of the JFTC stemmed from its institutional authority as an independent antimonopoly regulator. Their power in legislation was not dominant and its scope was within the decisions made by the LDP; it had no capacity to counter the LDP's decisions. What it did was to manoeuvre the legislative process as well as monopolise the implementation.

4. Conclusion

The exploration of this article has revealed the reconstitution of the Japanese state responding to its challenges after the 1980s, setting out a perspective that the reconstituted state is the key characteristic of the Japanese state after the 1980s, although the further research on different cases is necessary to firmly establish this argument.

The reconstitution of the Japanese state has come with the change of power within the core executive. The 1980s and 1990s saw the core executive dominated by party politicians outside the Cabinet administered sectors such as antimonopoly regulation (Muramatsu and Krauss 1987). In the 2000s this set of actors lost its previous power, and Cabinet Ministers and their team emerged as a key actor. The situation was unstable rather than under equilibrium, and there is a potential that further change will take place in the future.

The changes of powerful actors and the structure surrounding such actors played a significant role in the transformation between the 1980s and 2000s; they reconstituted the Japanese state. As the changes were mobilised by the transforming power relations within the core executive, the reconstitution of the Japanese state can be understood as an event prompted by the core executive.

Elsewhere, the transformation has not changed the Japanese state's core nature: the asymmetric dominance of the core executive. Focusing on the state at a macro level the evidence of this article reveals that the core executive retained its asymmetric dominance by changing power relations within its community; it is asymmetric for societal actors could not join the decision making process with the same term as the core executive actors (Smith 1999).

The Japanese state has been reconstituted as a response of the core executive to cope with the challenges after the 1980s. The SII (1989-1990) prompted a significant change within the sector by enhancing the JFCT. Government change in 2009 changed the power relations within the core executive by bringing the previously powerful LDP politicians outside the Cabinet (e.g. LDP AMA Examination Committee members) out of power and appointing *Seimu Sanyaku* specifically responsible for antimonopoly regulation.

In addition to the external changes such as the above, internal changes such as the departure of influential figures (e.g. Yamanaka) also offered a significant impact over the sector. This set of events has caused dynamic state reconstitution processes led by the core executive. A possible expression is that the core executive has employed state reconstitution as their tool to retain their asymmetric dominance within the sector.

The approach of this perspective recognising the role of the core executive as key is a variation of those focusing on elites with a similarity to Wright (2002) and George Mulgan (2005, 2006), who focus on the state machine of the sector. By explicitly employing the concept of the core executive this article offers an advantage of a wider explanatory scope identifying not only bureaucrats but also party politicians in the sector as key.

Previous literature on Japanese politics including both pluralist and rational choice literature has failed to reveal the dominance of the core executive in the transformation of the Japanese state, despite its accounts addressing the detail of Japan's political arena and its transformation. This article explains the changing governance of Japanese politics between the 1980s and 2000s through exploring the case of antimonopoly regulation, highlighting the transformation of the Japanese state as the core issue. It is not a pluralist or rational choice framework but an analytical framework addressing the state at a macro level which reveals the core nature of the Japanese state. This perspective challenging the previous dominant schools is the key contribution by this article to knowledge and literature on Japan and its politics.

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