

**The Transformation of the Japanese State**

**in an Era of Governance:**

**A Case Study of the Evolving Regulatory Framework**

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# Abstract

This thesis explores the transformation of the Japanese state in response to a variety of challenges by focusing on two case studies: ICT regulation and antimonopoly regulation between the 1980s and 2000s. It sets out to challenge the dominance of the pluralist and rational choice literature in Japan’s political science. The analytical framework of this thesis draws on key theories from both governance and state theory literature, in particular, the core executive and the regulatory state. The thesis explores the extent to which there is asymmetric dominance on the part of Japan’s core executive through an examination of recent developments in the Japanese regulatory tradition between the 1980s and 2000s. With its particular approach employing a government ministry as the regulator, the analysis of ICT regulation reveals how the Japanese state has been transformed in response to its specific challenges under its political tradition. Antimonopoly regulation offers another example of state transformation, with an independent administrative commission as the regulator in contrast to the ministerial ICT regulator. The exploration of this set of empirical cases is drawn mainly from elite interviewing. This thesis concludes that the transformation of the Japanese state in these two cases can be characterised as the development of the Japanese regulatory state, employing the state as the key locus of the political events. By proposing an account based on an elitist perspective this thesis sets out a challenge to the dominance of pluralist and rational choice positions in the literature on Japan.

# Abbreviation

AMA Antimonopoly Act, Japan (*Dokusen Kinshihou*)

BOJ Bank of Japan

BT British Telecommunications plc. (British Telecom)

CEO Chief Executive Officer

CTO Chief Technology Officer

DPJ Democratic Party of Japan

DTI Department of Trade and Industry, UK

FCC Federal Communications Commission, US

FIPL Fiscal Investment Loan Programme, Japan

HOC House of Councillors, Japan

HOR House of Representatives, Japan

IBJ Industrial Bank of Japan

ICT Information and Communication Technologies

JFTC Fair Trade Commission, Japan

*Keidanren* Japan Business Federation (*Nippon Keizai-dantai Rengōkai*)

LDP Liberal Democratic Party, Japan

METI Ministry of Economy, Trade and Industry, Japan (after 2001)

MIC Ministry of Internal Affairs and Communications, Japan (after 2001)

MITI Ministry of International Trade and Industry, Japan (before 2001)

MMC Monopolies and Mergers Commission, UK

MMM Mixed-Member Majoritarian

MOF Ministry of Finance, Japan

MPT Ministry of Posts and Telecommunications, Japan (before 2001)

NCC New Common Carrier

NHS National Health Service, UK

NPM New Public Management

NTT Nippon Telegraph and Telephone Public Co. (before privatisation in 1985)

/Nippon Telegraph and Telephone Co. (after privatisation in 1985)

OA Office Automation facilities

OECD Organisation for Economic Co-operation and Development

OFT Office of Fair Trading, UK

Oftel Office of Telecommunications, UK (before 2003)

PARC Policy Affairs Research Council, LDP, Japan (*Seicho*)

*Rincho* Second Provisional Commission on Administrative Reform (*Rinji Gyosei Chosakai*),

Japan

RPI Retail Prices Index

SCAP Supreme Commander for the Allied Power

SDPJ Social Democratic Party of Japan

SII Structural Impediments Initiative

SMD Single Member District

SNTV Single Non-Transferable Vote

TDSC Telecommunications Dispute Settlement Commission, Japan

Telecom Telecom Corporation of New Zealand

VAN Value-Added Network

VPN Virtual Private Network

# Chapter 1 Introduction

## 1.1 Interest in the developed state and regulation

Traditionally, the state has been commonly recognised as one of the core units of analysis within political science (Hay and Lister 2006). However, in the recent era, studies that locate the state at the centre of their analysis have become less frequent. Studies on Japan are no different, with approaches more commonly drawing on behaviouralist, pluralist or rational choice frameworks.

Nevertheless, within the political science literature focusing on Japan and the state after the 1980s, the developmental state thesis proposed by Johnson (1982) has had a notable impact. Its perspective is state centric, focusing on the developmentally oriented aspect of the Japanese state and its power, regarding state intervention to the economy as key (Schaede 2000 p.2, Johnson 1982 pp.17-9).

The dominance of the developmental state perspective was countered by the emergence of pluralist literature. This school highlighted the significance of party politicians, in particular Liberal Democrats (Muramatsu and Krauss 1987) and societal actors such as long term credit banks (Calder 1993) in the 1980s. This was followed by the emergence of the rational choice literature (e.g. Ramseyer and Rosenbluth 1993, Kato 1994) highlighting actors, in particular Liberal Democrats (Wright 1999 p.939). These groups of literature do not view the state as a significant concept; the former regards the state as a theatre of pluralist bargaining processes (Calder 1993, Smith 2006) and the latter illuminates actors rather than the state at a macro level.

The dominance of pluralist and rational choice perspectives can be regarded as a key characteristic of the literature about Japan and its state, leaving the exploration of the Japanese state at a macro level largely overlooked. This is the lacuna that this thesis intends to address. It sets out to challenge these dominant perspectives by offering an analysis of the Japanese state predominantly cast at the macro level. The next section elaborates the analytical framework of this thesis to achieve its goal.

## 1.2 The framework and the core theme

The approach of this thesis sets out to adopt 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 thesis then sets out to critique the existing dominance of pluralism by offering an elitist account of state power and power relations in Japan.

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.

The analytical framework of this thesis 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 (see 3.4.1) 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.96-8).

The study of the core executive and the way it has adapted is at the heart of the analytical framework of this thesis. The thesis draws on the principle of concept travelling (Sartori 1970), employing the core executive approach originating from British political science. 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).

Another key analytical framework this thesis employs is the concept of the regulatory state. 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). Referred to as ‘the regulatory state’ approach, this form of the state is employed for analysing the issues related to regulation and governance. The concept of the regulatory state offers this thesis a basis on which to analyse how the Japanese state in key regulatory sectors has been transformed.

How the state has been transformed is addressed by another set of theories employed by this thesis: the theories of path dependency and institutional change. The theory of path dependency explains the impact of a major disjuncture by highlighting change sequences starting from contingent initial events. This indicates that it addresses the impact of the exogenous change to the events. The theory of institutional change illuminates institutional evolution, conceptualising changes mobilised by endogenous factors. Employed by historical institutionalists, this set of theories offers a framework for how political transformation is shaped.

This thesis employs these frameworks to explore two particular case studies: the case of ICT (Information and Communication Technologies) regulation and that of antimonopoly regulation between the 1980s and 2000s. This set of two case studies is located within a broader theme of regulation. It is examined by this thesis because of its role as a key tool for the transformed state to impose its will on society.

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). The emergence of regulation as an administrative tool stemmed from perceived inadequacies within the existing bureaucratic tool kit such as (Smith 2009 p.115, p.156):

* the substantial distance between the top and the bottom within bureaucracy and considerable coordination required by the bureaucratic machine to have top’s decisions go through bureaucratic chains make it difficult for decision makers to control implementers; and
* implementers can subvert decisions.

The approaches of rationality and regulation: ‘...try to establish more effective indirect controls that operate through a market-like mechanism’ (Smith 2009 p.156). The increasing use of this set of approaches can be understood as an example of the transformation of state power (Smith 2009 p.171). According to Smith (2009 p.171):

The state retreats from an area either by delegation to an agency or privatization. Nevertheless, states are dependent both on ensuring that services are delivered, and on public support, and therefore state actors are rarely prepared to leave public services to actors they do not control. Consequently, the process of privatization and ‘agencification’ is followed by a process of regulation. The state relinquishes one mechanism of power – bureaucracy based on legitimacy – and replaces it with another – regulation based on principal-agent arrangements.

This thesis focuses on regulation because of its significance in relation to contemporary state transformation.

ICT saw a significant disjuncture through the regulatory reform[[1]](#footnote-1) in telecommunications in 1985, in which the state incumbent company (NTT: Nippon Telegraph and Telephone) was privatised and the market was liberalised. This disjuncture has dismantled the traditional regulatory approach to the sector and prompted the emergence of a new regulator (MPT: Ministry of Posts and Telecommunications). How a newly established regulatory regime in the ICT sector has been transformed offers an example of the Japanese state’s adaption process to its circumstantial changes in regulation.

Antimonopoly regulation is chosen as another case for research. This is a field where a significant policy development can be observed in the period between the 1980s and 2000s (Freyer 2006 p.243, Schaede 2008 pp.42-4). A turning point facilitating this development was the economic negotiation with the US called the SII (Structural Impediment Initiative) in 1989-90. The fact that antimonopoly regulation is also administered by a rare independent regulator (JFTC: Fair Trade Commission, Japan) offers a contrast to other regulated fields including ICT, where regulation has been implemented by government ministries. The relationship between the regulator and party politicians is also different. Traditionally, the JFTC has meant to fend off the influence from politics; the relationship between party politicians and civil servants has been an important factor in the ICT sector. Elsewhere, there are other similarities. Both cases involve competition as a key policy tool and had their respective key disjunctures (antimonopoly: the SII in 1989-90, ICT: the regulatory reform in 1985). It is also the period when the states in the developed world have adapted to their challenges (Pierre and Peters 2000 pp.2-3, pp.50-69).

A key piece of literature analysing Japan’s regulation after the 1980s is Vogel (1996), who explores Japan’s ICT regulation and financial regulation focusing on state actors (party politicians, civil servants), comparing to the cases of the UK and other developed countries. The result of his analysis reveals the strategically oriented nature of Japanese regulation in the ICT and financial services sectors. This offers two challenges to this thesis. First, there emerges a gap after Vogel (1996); what has happened in ICT regulation after the mid 1990s is left unexplored. Second, focusing on state actors in Vogel (1996) does not mean that he explicitly explores the transformation of the Japanese state. Although Vogel (1996) highlights the nature of Japanese regulation, his approach does not explicitly address the nature of the Japanese state or focus on power.

This thesis addresses these challenges. The focus is on the period between the 1980s and 2000s so post-dating the core period of Vogel’s own study (1996); a part of this thesis reveals what has happened in ICT regulation after Vogel (1996). This thesis also explicitly examines power and the state, employing the concept of the core executive as a key analytical framework. By analysing the evolving power relations between core executive actors, this thesis aims to explore the nature of the evolving regulatory state in ICT and antimonopoly regulation.

The core theme of this thesis is to suggest that in the last three decades a reconstitution of the Japanese state has taken place.

## 1.3 The proposition and research questions

If then this thesis is predominantly concerned with analysing the extent to which the Japanese state and in particular core executive power has been reconstituted over the last three decades – then its core theme can be specified as:

During the era of the Liberal Democratic Party (LDP) government, the core executive pursued discretional regulation within inner regulatory policy communities as a strategy to sustain its position of asymmetric dominance over actors within key policy sectors, with their actions shaped by a particular set of structures.

This proposition identifies a perpetuation of asymmetric dominance of the central state (see 3.3) through strategic adaptation on the part of the core executive. To explore this core theme, the research addresses a number of overarching questions:

* How has Japan’s regulatory framework evolved over the last three decades?

This research question gives an overview of the cases explored by this thesis. It explores how the two case studies (ICT regulation, antimonopoly regulation) have evolved between the 1980s and 2000s.

* How has the core executive been successful in imposing its will on regulation?

This question addresses the transformation of the power relations within the core executive, examining how the core executive has been successful in shaping the regulatory process as a key tool for sustaining its asymmetric position of dominance –the position of steer and control regulation with the ‘unique’ set of tools exclusively possessed by the government (Marsh et al 2001 p.248). It employs a conception of power that is fluid within the core executive (party politicians, civil servants), based on the notion of inter-dependence among different actors within the core executive. From this perspective, it assesses the complex set of transformative forces and the way in which collectively the core executive has responded.

* How have Japan’s ministries shaped the organisational design of regulatory functions?

This question focuses on an institutional characteristic of Japan’s regulatory regime. Japan is an unusual case, in that only a limited number of independent regulators exist. It reveals how agents within a particular structured context have shaped a particular response to change through an analysis of the case of a ministerial regulator (MPT/MIC (Ministry of Internal Affairs and Communications)) together with that of an independent administrative commission (JFTC).

* How has the state’s regulatory capacity changed?

This question explores the impact of the transformation of state capacity within ICT regulation and antimonopoly regulation by investigating how the regulator’s capacity has changed in the two case studies. The transformation of state capacity within a regulatory sector offers a clue of how the regulatory state has developed within the sector. Also, this question addresses the relationship between the core executive actors (party politicians, civil servants) and the state’s regulatory capacity in the sector.

* Why have the present power relations been constructed in the chosen regulatory fields?

This question pursues explaining the present power relations by employing ‘why’ rather than ‘how’, in contrast to the previous four questions (Grix 2004 p.85). It addresses the core theme of this research pulling the previous four research questions together, exploring power relations in ICT regulation and antimonopoly regulation.

Through the examination of this set of research questions this thesis seeks to reveal the extent to which asymmetric dominance of the Japanese state in the transformative process has been sustained.

## 1.4 The structure of the thesis

This thesis is composed of seven chapters employing two case studies of the Japanese state – ICT regulation and antimonopoly regulation. The contents of the structures are described in the following.

Chapter 2 sets out the existing literature on approaches to understanding the nature of the Japanese state. The review of this chapter starts from the emergence of the developmental state perspective by Johnson (1982). The concept of the developmental state is contrasted to that of the regulatory state as the American idea. The subsequent emergence of a more explicitly pluralist and rational choice literature offered contrasting accounts of state-group power relations in Japan. In so doing, these two schools rejected approaches that offered accounts of the nature of the Japanese state at the macro level. The review of this set of schools exposes a lacuna that an approach problematizing the state as the major locus of research has been missing. This lacuna is what this thesis intends to fill with its elitist approach focusing on the state at a macro level.

Chapter 3 sets out the key analytical framework underpinning this study. It invokes the concept of the core executive developed within UK studies on the core executive in the 1990s, in response to the change of governance in the political arena and applies it to the Japanese case. It then sets out the context of the transformation of the Japanese state through governance literature. The changed context of governance can be aligned with a concomitant emergence of a regulatory response, a dynamic that has been commonly identified in a number of industrialised economies over the last three decades (Majone 1991, 1994, 1997, Levi-Faur 2012 p.18). Here, the concept of the regulatory state offers a framework in which this thesis analyses how the state steers society by regulation. The chapter then outlines the approach adopted for understanding change - that of historical institutionalism. In so doing it presents a typology of change identifying how various exogenous and endogenous factors have shaped the process. By exploring the core executive’s regulatory response to governance forces of change through an institutionalist lens, this thesis offers a coherent framework in which the two case studies - that of ICT regulation and antimonopoly regulation in Japan - are analysed.

Chapter 4 sets out the methodology employed by this thesis. It establishes the ontological and epistemological positions of this thesis, that of critical realism. It then explains the rationale for employing a case study approach, before setting out how the research was operartionalised, predominantly by an elite interviewing approach.

The following chapters (5 and 6) are the case studies. Chapter 5 explores the case of ICT regulation starting from the 1985 regulatory reform. It analyses the power relations within the core executive followed by the examination of the ministerial approach of regulation and the capacity of the regulator. The chapter reveals the on-going dominance of the core executive in the sector while the changing power relations significantly prompted the shift of the dominant group among party politicians. Chapter 6 looks into the case of antimonopoly regulation. It examines the nature of the JFTC as a rare independent regulator in Japan. The examination of capacity of the regulator in the chapter reveals a different story from its counterpart in ICT regulation with the continuous growth of the antimonopoly regulator (JFTC). Yet both case studies reveal the on-going dominance of the core executive throughout the period studied.

The final chapter (Chapter 7) draws together the insights offered from the case studies. It argues for the emergence of the Japanese regulatory state based on the changing power relations within the core executive, responding to the change of governance, highlighting two key characteristics: the asymmetric dominance of the core executive within the Japanese state and the emergence of a variation of the regulatory state in Japan. In so doing it challenges the dominant position within existing accounts of Japanese state-society relations - that of pluralism.

# Chapter 2 The Development of the Japanese State

## 2.1 Introduction

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. How the literature addresses the nature of change in regard to the Japanese state forms a key element of this thesis. The difference between the Japanese case and the British one can imply that the Japanese case is mobilised by different approaches. An account of the difference can be offered by the approach of historical institutionalists as Lowndes’ (2002 p.96) typology indicates that: ‘Historical institutionalists look at how choices made about the institutional design of government systems influence the future decision-making of individuals’.

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) (see 2.2). 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) (see 2.4).

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) in 2.3). 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 (see 2.4). 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) (see 2.5).

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. See 2.6). 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.

The developmental state thesis by Johnson (1982) enjoys an influential position over the successive literature about Japan and its state. The thesis was a watershed in the study of Japanese politics and had a significant impact over the Japanese political science literature after the 1980s. When the core theme of this thesis – transformation of the Japanese state after the 1980s – is explored, the developmental state thesis offers a useful starting point in terms of its significance in literature and the timing of its emergence. The successive responses by pluralist literature (e.g. Muramatsu and Krauss 1987) and rational choice literature (e.g. Ramseyer and Rosenbluth 1993) have shaped the perspectives on Japan and its state in political science.

The following section highlights this developmental state thesis by reviewing its most influential contribution, that of Johnson (1982). This is followed by the assessments of the pluralist view, which has come to dominate Japan’s political science literature alongside the rational choice literature, which is: ‘(t)he most provocative and full-blooded attack on the dominant bureaucracy thesis’ (Wright 1999 p.949). The chapter then reflects on criticism of these two approaches provided by Vogel (1996). Following this, the last section reviews the recent literature assessing the transformation that has taken place in Japan after the late 1990s, when commentators started reporting changes in Japan’s politics and society.

## 2.2 The developmental state

The notion of the developmental state was the dominant approach to emerge among the literature on Japanese studies during the 1970s and the 1980s (Schaede 2000 p.2). Regarding state intervention to the economy as key, this notion places state power at the centre (Schaede 2000 p.2, Johnson 1982 pp.17-9). The work of Johnson (1982) has been at the forefront of developing this approach, around which numerous other studies have contributed, including Schaede (2000 p.2), Woo-Cumings (1999 p.1), Calder (1993 p.9), I’io (2007 p.73), Gao (1997 p.7), Weiss (1998 p.69, p.217), Wright (1999 p.941).

Johnson (1982) contrasts Japan as a developmental state with the US as a regulatory state (p.10). Japan was predominantly development-oriented and its government concerned itself with the structure of the domestic industry and with promoting the structure that enhances its international competitiveness (Johnson 1982 p.19). It focuses on what industries ought to exist and what industries were no longer needed (Johnson 1982 p.19)[[2]](#footnote-2). Prioritising key industries in the economic strategy of the country, this approach by the MITI (Ministry of International Trade and Industry) [[3]](#footnote-3) to industries can be understood as strategic, or goal-oriented to the economy (Johnson 1982 p.19). The importation of technology, one of the central components of post war Japanese industrial policy, was under the control of the MITI before the capital liberalisation of the late 1960s and the 1970s (Johnson 1982 pp.16-7). This leads Johnson (1982) to focus on the role of the Japanese developmental state, whose key characteristics are in Table 2.1 (Johnson 1982 pp.16-7).

#### Table 2.1: The key characteristics of the Japanese developmental state (Johnson 1982 pp.265-319)

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| --- |
| * **A small, inexpensive, and elite bureaucracy**   ‘staffed by the best managerial talent available in the system’, the majority of whom were generalists in the formulation and implementation of public policy (Johnson 1982 p.315). The bureaucrats were: ‘not professionals, civil servants, or experts, but managers’ rotated frequently (Johnson 1982 p.315). Many of them were educated in law or economics, but preferably not specialists because as a general rule professionals tend to become ‘poor organisation men’ (Johnson 1982 p.315). The role of bureaucrats was managing the state: prioritise the industries, formulate developmental policies based on the conditions of the respective industries, and supervise competition. The laws to implement the industrial policies were generalised and the details of industrial policies were not decided by lawyers but managed by bureaucrats by non-statutory tools such as administrative guidance[[4]](#footnote-4).   * **A political system which gives bureaucrats sufficient scope and operability**   The parliament (Diet) and courts stopped bureaucrats when their policy making activities strayed too far from what the public would tolerate and fended off interest groups in society, who may distort the priority of the developmental state.   * **The state capacity to intervene in industries through ‘market-conforming methods’**   The state must preserve competition to the extent that it could coexist with its priorities in implementing industrial policy. This prevented government failure such as the ‘deadening hand of state control’, resultant inefficiency, incentive loss, corruption and bureaucratism (Johnson 1982 p.318). Market-conforming methods were generated through the conflicts between the state and private firms. The co-operative relationship between the state and private firms was key for market-conforming methods, and such a relationship could be established when both parties recognised that they needed each other.   * **The ‘pilot organisation’, which formulates industrial policies and guides industries**   The MITI was an example of the pilot organisation. |

Japan’s economic bureaucrats, ‘the officials of the ministries of Finance, International Trade and Industry, Agriculture and Forestry, Construction, and Transportation, plus the Economic Planning Agency’, made most major decisions, drafted virtually all legislation, controlled the national budget, and were: ‘the source of all major policy innovations in the system’ (Johnson 1982 pp.20-1). Politicians occasionally imposed their will on bureaucracy, but bureaucrats managed to protect their independence (Johnson 1982 p.52-3). To explain the extent of politicians’ power to influence over policy making in government ministries, Johnson (1982) points out the number of politically appointed posts; Japan’s bureaucracy created no political appointment below the ministerial level. According to him, officials believed it helpful to ‘establish their claim to be above politics and to speak only for the national interest’, and try hard not to be subservient to politicians and the political party (pp.52-3). Johnson (1982) identifies four major characteristics of Japan’s developmental state (p.315).

Johnson (1982)’s model focuses on the bureaucracy, the MITI in particular (Wright 1999 p.941). It explains that the dominance of economic bureaucrats emerged when they filled the power vacuum created by the SCAP (Supreme Commander for the Allied Power) (Johnson 1982 p.41). This power vacuum was created when during the occupation period after World War II the SCAP abolished imperial military forces, broke up the traditionally all powerful Ministry of Home Affairs (*Naimusho*), and transformed and weakened *Zaibatsu*[[5]](#footnote-5) (Johnson 1982 p.41). Economic ministries also confronted challenges imposed by the SCAP in the form of purge[[6]](#footnote-6) and civil service reform (Johnson 1982 p.41). However, economic bureaucrats substantially avoided being purged – 70 percent of the 1,800 purged civil servants were in the Ministry of Home Affairs with only 42 persons from the former Ministry of Munitions, the predecessor of the MITI, and 9 from the Ministry of Finance (MOF) –, and emasculated the civil service reform by, for instance, completely rewriting the civil service reform bill in favour of bureaucrats and making it a law in the post World War period (Johnson 1982 pp.42-3). In this way, officials in economic ministries successfully avoided damages and retained their power. The requirements of economic recovery and politicians’ incompetence to properly administer[[7]](#footnote-7) enabled bureaucrats to enhance their influence over the economy (Johnson 1982 pp.44-5). The relationships between political parties and interest groups were dominated by particularistic and pork-barrel intentions rather than issues of social policy and: ‘there is no theory of pluralism that legitimates their (interest groups’) political activities’ (Johnson 1982 p.49).

In the post World War II period until 1975, Japan’s politics was dominated by ex-official conservative politicians (Johnson 1982 pp.45-6). The LDP was established in 1955 by the unification of two main conservative parties, successors of *Seiyukai* and *Minseito*[[8]](#footnote-8) of the pre-war period in order to confront the growing opposition of socialists (Johnson 1982 p.46). In the LDP the mainstream ex-bureaucrats faction and the party politicians’ faction competed with each other and the former was usually dominant (Johnson 1982 p.46). From 1957 to 1972 Japan’s politics was dominated by the major LDP politicians who were successful former bureaucrats (Johnson 1982 pp.45-6). The role of politicians was ‘“safety valve” functions’, meaning that politicians oversaw bureaucracy and acted to control it when necessary, such as when bureaucracy acted beyond the scope of popular expectation (Johnson 1982 p.315). At the same time, politicians played a role in fending off interest groups, who could ‘distort the priorities of the developmental state’ (Johnson 1982 p.315).

Johnson (1982) argues that bureaucrats are at the centre of the system as ‘managers’ while LDP politicians supervise bureaucrats and give them sufficient discretion by gatekeeping against the intervention of interest groups. This model of a dominant state has parallels with the classical Weberian state. Officials formulate policies, manage the policy makers’ arena, and are insulated from interest groups. They are the centre of state power. However, politicians supervise officials and protect them from the influence of society. The role of politicians is key for officials because politicians give them democratic legitimacy and the shelter under which officials formulated and implemented their policies. In Johnson’s (1982) model interest groups play no significant role. Power is concentrated at the core of the state machinery such as the MITI. Other state actors such as LDP politicians and courts share the goal of the developmental state and act to achieve this goal. State power as a whole can be regarded as unified.

This state centred paradigm was later challenged by an approach in the literature which questions the effects of industrial policy from the late 1970s (Schaede 2000 p.2). In the view of this approach, the state centred paradigm neglects the analyses of elected politicians’ roles in the processes of policy making and implementation and those of industries as independent actors, and emphasises the analyses of bureaucrats too much (Schaede 2000 p.2). This approach formed the basis for the emergence of a literature predicated on a pluralist view with its basis in the late 1980s and early 1990s.

## 2.3 The pluralist approach

### 2.3.1 The role of party politicians

In the 1960s and 1970s, the adaptation of pluralism, traditionally one of the most dominant frameworks in political science literature, offering a set of reformed perspectives in the form of ‘neo-pluralism’(see Lindblom 1977 and Dahl 1983), identified, in the case for example of the US, the dominant role of business interests within the political arena (Smith 1995 p.223). Lindblom (1977), for instance, stresses the importance of groups and the existence of competitive arenas while it recognises the structural power of business in relation to the government in the form of government’s automatic responses to business (Smith 1995 pp.223-4).

This new wave in the influential school of American political science could be seen to have an impact on the rise of pluralism elsewhere within the wider political science community (Smith 2006 pp.21-38). From the late 1970s the elements of the literature started defining Japan’s politics as the Japanese style pluralism based on the view that a single ruling group did not exist. Here the influence from US political science can be identified (I’io 2007 p.37). Among such pluralist literature, Muramatsu and Krauss (1987) argue that Johnson’s (1982) model offers ‘a limited view of political economy’ (p.516). The pluralist literature also argued that Japan formulated policy through a pluralistic bargaining process within the state apparatus because officials were preeminent but often disunified (Calder 1993 p.9).

The pluralist power centre model offered by Muramatsu and Krauss (1987) is referred to as ‘patterned pluralism[[9]](#footnote-9)’, whose key characteristic is in Table 2.2. Patterned pluralism ‘is characterized by a strong state with its own autonomous interests and an institutionalized accommodation among elites, interacting with pluralist elements’, a hybrid system found in Japan as well as several European democracies (Muramatsu and Krauss 1987 p.537). Muramatsu and Krauss (1987 p.537) point out the following as evidence of the pluralistic nature of patterned pluralism: that influence is not concentrated but widely distributed; that ‘interest groups have many points of access to the policymaking process’; and that interest groups are tied to the government but are autonomous and conflict with the government (Muramatsu and Krauss 1987 p.537). The characteristics of Muramatsu and Krauss’ (1987) patterned pluralism include (pp.537-8):

#### Table 2.2: The key characteristics of patterned pluralism (Muramatsu and Krauss 1987 p.532, pp.537-8)

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| * **Strong government and bureaucracy penetrated by interest groups and political parties**   The boundaries between the state and society are blurred because interest groups are integrated with the government and political parties intermediate between interest groups and the government;   * **Perpetual one party rule**   Japan’s LDP has almost continuously been in power from 1955. Muramatsu’s survey in 1980 shows that interest groups of various sectors supported the LDP. Based on this survey Muramatsu and Krauss (1987) conclude that the LDP became a party supported by interest groups in various sectors. They call such a characteristic ‘catchall party[[10]](#footnote-10)’   * **An ideological cleavage and an antagonistic relationship between the ruling party of the time (LDP) and its interest group supporters and their opposition party counterparts**   Muramatsu and Krauss (1987 p.538) highlight the existence of ideological confrontation between one group composed of the then ruling LDP and its supporter groups such as big business, and the other groups composed of opposition parties and their societal allies. This confrontation fixed the party-interest group alliance. |

A survey of bureaucrats in 1977-8 reveals that the power of bureaucrats was gradually waning and LDP politicians gained more power (Muramatsu and Krauss 1987 p.540). This can be viewed as a power shift within the state. Although bureaucrats were still major and powerful actors in policymaking, they had to ‘share the (policymaking) stage with other influential actors’, because bureaucrats (were) losing their control over interest groups by financial and international liberalisation and their ‘most influential methods of financial and administrative persuasion and control’ were declining (Muramatsu and Krauss 1987 p.540).

The LDP enhanced its ties with interest groups and its politicians developed their policy expertise (Muramatsu and Krauss 1987 p.540). Party politicians’ main role has changed from insulating bureaucracy from political pressure (Johnson 1982 pp.315-6) to mediating between interest groups and bureaucracy (Muramatsu and Krauss 1987 p.540). In patterned pluralism, party politicians (LDP politicians) play a key role in policymaking processes while bureaucrats are preeminent. It is a variation of the earlier pluralist model[[11]](#footnote-11) (I’io 2007 P.38).

This new pluralist literature identified an internal conflict within the ruling structure, which is composed of the LDP, bureaucracy, and business (e.g. Pempel 1982, Campbell 1984, Samuels 1994). Pempel (1998) also offers a similar account to Muramatsu and Krauss’ (1987) on the internal structure of the Japanese government, while also highlighting LDP’s gradual transformation. Here, he argued that to cope with the internal and external challenges emerging from the 1970s to early 1980s, such as the liberalisation of key domestic markets, increased politicisation of the regulatory process, and the mismanagement of the domestic economy, the LDP began to attract urban voters, private sector union members and white collar employees (pp.14-6).

The relationship between Japan’s party politicians and civil servants under LDP governments can also be explained from the perspective of the government’s institutional structure (I’io 2007). By employing the term ‘bureaucratic Cabinet system’ (*Kanryo Naikaku Sei*)[[12]](#footnote-12), which is seen as a metaphor for the parliamentary Cabinet system, I’io (2007) describes Japan’s Cabinet system under LDP governments as a rigid institution under which the posts of ministers were factional interests of the long ruling LDP rather than the instruments to administer the government machines (I’io 2007 pp.23-5).

Under the bureaucratic Cabinet system, Cabinet Ministers acted as representatives of their respective ministries and their officials (I’io 2007 pp.23-5). The posts of Cabinet Ministers were attractive for members of the Diet and were frequently replaced and reallocated by LDP factions as benefits (I’io 2007 pp.23-5). Cabinet Ministers’ authority is based on the appointment by the Prime Ministers (I’io 2007 p.21, p.23). However, as the LDP has been in power for a long time and its internal factions have allocated the posts of Cabinet Ministers through their negotiations behind closed doors, the Prime Minister’s authority as the appointer of Cabinet Ministers tended to be forgotten (I’io 2007 p.23). This is because too many Cabinet Ministers were frequently appointed and resigned quickly (I’io 2007 p.23). Appointing too many Cabinet Ministers undermined the impact of offering the post of Cabinet Minister.

The tenure of Cabinet Ministers became short because LDP factions created a custom that Cabinets were reshuffled once a year on average so that they could frequently allocate the posts of Cabinet Ministers to their respective faction members (I’io 2007 p.24). This short tenure deprived Cabinet Ministers of the time to obtain specialist knowledge about their respective ministries and experience (I’io 2007 p.24). These circumstances led Cabinet Ministers to act as representatives of their respective ministries with civil servants’ assistance rather than members of the Cabinet (I’io 2007 p.24). The short tenure prevented Cabinet Ministers from exercising their initiatives and left them no other option than following their civil servants’ advice (I’io 2007 p.24).

Societal groups in Japan often regard executive branches as the centre of the Japanese government and have direct access to officials in government ministries without intermediary of elected officials and political parties (I’io 2007 p.74). Divisions (units) of the government ministries represented the industries and corporations for which they were responsible. The bureaucratic Cabinet worked at the top of such a system composed by the government ministries (I’io 2007 pp.74-5).

Another characteristic of Japan’s politics is the relationship between the government and the ruling party. Calling themselves ‘*Yo Toh*’(the participating party), Japan’s ruling parties including the LDP described themselves as independent from the government headed by their own Prime Ministers (I’io 2007 pp.78-80). During its long reign as the ruling party, the LDP established a custom that all bills needed to pass the LDP’s internal examination before the parliamentary debates (I’io 2007 pp.83-88). This was seen as vital for government’s legislation and briefing party politicians including LDP members was crucial for officials to implement their policy planning; Japanese civil servants were permitted to brief party politicians unlike their British counterparts (I’io 2007 p.89-93). The LDP politicians obtained the leverage to control bureaucracy by utilising this relationship (I’io 2007 p.89-93).

This perspective illuminates the internal division within the core executive and the growing influence of societal actors. In this perspective, decision making processes are pluralistic and the focus of analysis is individual actors rather than the macro level state. One may regard this perspective as a substantial counterargument to the developmental state thesis, for its approach highlighting societal actors and politicians together with government officials offers a significant difference from the developmental thesis, which mainly focuses on the MITI. Elsewhere, a perspective focusing on societal actors offered a distinctive alternative in the literature, focusing on the role of business.

### 2.3.2 Strong business

The pluralist literature also argues that based on the negotiations and cooperation between the public and private actors, a ‘strong state’ coexists with a ‘strong business’ tradition (Schaede 2000 p.2). The developmental state thesis was adapted by the pluralist literature by viewing industry as an independent actor and questioning: ‘whether Japan’s industrial policy programs had any positive effects on economic growth’ (e.g. Weinstein 1995, Beason and Weinstein 1996, Noble 1988) (Schaede 2000 p.2). As an example, Calder (1993) proposes a pluralist model which recognises industry actors as key (p.16, p.246, p.249).

Calder’s (1993 p.251) core argument is that Japan’s capitalism is ‘corporate led strategic capitalism’ and ‘neither dominated nor laissez-faire’. From this perspective, the Japanese state, in the aggregate: ‘was more stability than strategy oriented, despite the more ambitious impulses of certain MITI bureaucrats’. It argues that because the Japanese state is stability oriented: ‘a symbiotic and lucrative relationship grew up between Japanese bankers and their state, as profitability figures for commercial banks during the 1950s and 1960s attest’ (Calder 1993 p.251).

Calder (1993) argues that ‘centrifugal pressures, especially a well developed private industrial group structure based on powerful banks and increasingly powerful transnational economic and political forces’ have limited Japan’s state power to manage its economy alone (pp.13-4). It offers a view of the state as a pluralist theatre where actors (industrial groups, bankers’ federation, party politicians, and bureaucrats) have been competing in policy formulation. Japan’s policymaking and policy implementation have been ‘pluralistic bargaining processes in which public and private sector(s) have alternated as catalysts for structural change’ (Calder 1993 p.14).

In Calder’s (1993) view, because credit allocation is crucial for Japan’s industrial transformation (p.7), industrial finance is key to understanding the structure of Japan’s capitalism (p.45). It argues that *Keiretsu*[[13]](#footnote-13) and long term credit banks such as the Industrial Bank of Japan (IBJ) have been crucial to Japan’s economic development because they have financed new sectors with strategic initiatives (e.g. petrochemicals and automobile by the IBJ) (Calder 1993 pp.134-73). State actors have been ‘remarkably cautious and reactive’ to support new industries, while they tended to continue investing a significant amount of money to declining sectors (Calder 1993 p.15, pp.110-1).

Calder (1993) offers three reasons for this. First, public organisations (the MOF and the Bank of Japan (BOJ)) responsible for such investments concerned with stability rather than transforming industries, undermined strategist viewpoints of other state actors such as the MITI (Calder 1993 p.76). Second, the institutional framework of government banks and semi-public financial institutions was so complex that government finance was too ‘blunt’ (ineffective) for achieving industrial transformation, ‘even when policymakers have unified behind strategic objectives’ (Calder 1993 p.76). Third, bureaucracy’s risk adversity[[14]](#footnote-14) contributed to state actors’ distaste for taking necessary risks for strategic decisions (Calder 1993 p.76). Calder (1993) looked into the cases of shipping, mining, agriculture and oil refining as instances of declining industries and pointed out the following characteristics (p.111):

* these sectors have been highly regulated and sector interest groups had incentives to utilise ‘regulatory capture’;
* the sectors had a strong local geographical base and could utilise their influence over local members of the Diet; and
* these sectors accepted many retired officials from government ministries and government banks and could utilise their personal connections.

These factors created ‘clientelism’ leading to the Japanese government facing difficulty in terminating the loan to such sectors (Calder 1993 p.111).

Unlike Johnson (1982), whose typology of Japan’s government organisations illuminates the role of economic ministries, Calder (1993 pp.45-133) offers a typology of Japan’s public organisations with two major categories: strategist organisations and regulatory organisations. The MITI is regarded as the ‘chief strategist’ in line with Johnson (1982 p.49). However, its political power was not particularly strong and its scope of responsibilities was limited to implement its strategies (pp.51-5). Calder (1993) identifies the following two reasons for the MITI’s insufficient power. First, the MITI lost much influence over financial-credit flows (Calder 1993 pp.51-5). Second, it had only minority ex-official politicians in the Diet (eight in the 1960s, only 8.6 percent of a total 116 ex-bureaucrat Diet members), and this limited the MITI’s political power (Calder 1993 pp.51-5).

Another category that Calder’s (1993 p.74) typology proposes is public organisations preoccupied with regulatory concerns. The primary actors of these regulatory public organisations were the MOF, the BOJ, the Ministry of Agriculture, and the four regulatory ministries: the Ministry of Health and Welfare[[15]](#footnote-15), the Ministry of Transport, the Ministry of Construction[[16]](#footnote-16), and the Ministry of Post and Telecommunications (MPT)[[17]](#footnote-17) (Calder 1993 p.74, p.101). Regulatory ministries had common characteristics: ‘relatively large, nationally dispersed ministerial staff and extensive regulatory controls over the sectors that they administer’ (Calder 1993 p.101). All of them were reorganised on a large scale after 1945 (Calder 1993 p.102).

These factors led the regulatory ministries to be deeply clientelised by politicians and the regulated industries (Calder 1993 p.102). None of these regulated industries were internationally competitive and they received substantial government assistance. Calder (1993) comments that these industries: ‘cannot be readily considered part of any “developmental state”’ (p.102). In these regulatory organisations, bureaucrats ‘have often held a perspective closer to the American regulatory orientation than to the MITI’s developmental stance’ and preferred stability to strategy (Calder 1993 pp.245-6). The JFTC’s (Fair Trade Commission, Japan) steadily increasing influence since the early 1970s was also noted, and Calder (1993) analyses that it was: ‘in a significant part due to the transnational political support it invariably gets (got) from U.S. trade negotiators’ (p.101).

Calder (1993)’s pluralist model was criticised by Johnson (1999 pp.59-60) who suggested that its account was based on ‘parochialism and ideology’ and tried ‘to force Japan to fit the paradigms of government’ located within American political science. Johnson (1999) also points out the significant state involvement in the field of long term credit banks, which Calder (1993) regards as key players of Japan’s capitalism, and were in fact created by bureaucracy and that the IBJ, the largest of the long term credit banks, was a government organisation and privatised by the order of the SCAP (Johnson 1999 pp.59-60). At the same time Johnson (1999) recognises that the developmental state model is based on the reciprocal partnership between the state and private firms, mentioning that: ‘each side uses the other in a mutually beneficial relationship to achieve developmental goals and enterprise viability’ (p.60).

### 2.3.3 The regulation dominated by the private sector: self-regulation

As Johnson’s (1999) remark shows, the debate between the developmental state school and the pluralist school shaped a consensus that Japan’s societal actors have played a significant role in the development of Japan’s economy. This perspective can be developed to the extent that the role of the state actor can be marginalised. For instance, McKean (1993) argues that the Japanese state is not strong and it: ‘follows when it can, co-ordinates when it must, and de-regulates when it cannot co-ordinate’ (pp.72-104). The view of Schaede (2000) is similar, arguing that self-regulation by trade associations has filled the regulatory void created by deregulation with Japan’s private sector playing a key role (Schaede 2000 pp.1-29, pp.258-75). Although trade associations have been researched in political science and sociology typically as a part of corporatism studies, their role in Japan’s regulation has not specifically been addressed by the previous literature (Schaede 2000 p.4, p.22).

Japan’s self-regulation is different from 1970s Germany’s ‘Private Interest Governments’ (PIG) (Schaede 2000 pp.22-3). The PIG concept is based on the view that the interest groups such as labour unions and trade associations are delegated by the state in order to take over the state’s tasks (Schaede 2000 pp.22-3). Self-regulation in Japan means that trade associations take over regulatory functions and powers beyond or regardless of the state’s delegation (Schaede 2000 pp.22-3). Schaede (2000)’s arguments are founded on the observation that Japan’s government ministries have lost the traditional control of the private sector. At the same time it argues that establishing competent independent regulators by state bureaucracy (which needs about twenty five years, since this is the period in which such organisations can acquire their competency by growing in house staff officials) is crucial to addressing self-regulation (p.267). This means that self-regulation can exist because state bureaucracy allows it. This tends to lead to the conclusion that the power of Schaede’s (2000) self-regulation is ironically based on the power of the state or the lack of it, in particular that of state bureaucracy.

Schaede’s (2000) account can be seen as a variation of the pluralist literature about Japan with a radical view of marginalised state actors. It describes regulation, in which the state can be regarded as an actor imposing its will on society through coercion (Smith 2009 p.163), as an arena dominated by societal actors such as trade associations. In other words, in Schaede (2000) strong business actors dominated Japan’s regulation while state actors are marginalised. What appears is the model of Schaede (2000), in which the regulation by the private actors dominates the economy.

The development of the pluralist view drew attention to the role of Japan’s actors other than bureaucrats, both state and societal. Inside the state, party politicians appeared to gain more power over bureaucrats than before; interest groups appear to infiltrate state organisations; and state organisations appeared to be divided. Overall, the pluralist literature on Japan analyses societal actors as significant issues of analysis together with state actors. This approach results in creating a problem; the pluralist literature does not analyse the state at a macro level, regarding the Japanese state as divided or weak. In the case of Schaede (2000), the Japanese state is marginalised while the private sector actor (trade associations) dominates regulation.

By contrast to this dominance of the pluralist literature, Vogel (1996) reinstated the perspective of the influential state actors. Regarded as ‘a compelling re-statement of the thesis of bureaucratic dominance’ by some (Wright 1999 p.947), the role of the state actors is refocused by this literature, which is reviewed in the next section.

## 2.4 The revisited strong state thesis

In response to the pluralist literature, a counter argument emerged in the work of Vogel (1996) who viewed the regulatory reforms in the 1980s by the Japanese and British governments as a centrepiece to examine the transforming relationship between governments and markets in advanced industrialised countries. Here, Vogel (1996) implicitly draws from Johnson’s (1982) earlier analytical framework. For instance, Vogel (1996) regards the Japanese state as managerial while the British state as regulatory, which is in parallel with Johnson’s (1982) comparison of Japan’s developmental state to the US regulatory state (p.45, p.51). Vogel (1996 pp.18-9) regards the state as the key actor and focuses on state institutions because this approach ‘explains national variations in regulatory reform better than any other’. With the advantage of a parsimonious research framework, state actors are typically closer to the final decision process, and their involvements in policy outcomes are easier to be identified (Vogel 1996 pp.18-9). Yet elsewhere, he argues that focusing on interest groups presents difficulties in obtaining explanatory power because a large number of interest groups compete and ‘it becomes very difficult to demonstrate which groups influenced the outcome’ (Vogel 1996 p.19).

Vogel’s (1996) main case studies are those of the telecommunications sector and the financial services sector of Japan and the UK, but examples drawn from other sectors (broadcasting, transport, and the public utilities) and countries (the US, France and Germany) are also examined briefly. While the literature on Japanese studies tends to compare Japan with the US, Vogel (1996) uses the cases of Japan and the UK for the following reasons (p.4, p.43):

* The UK and Japan began their regulatory reform programmes at the same time and under similar circumstances, and extended their programmes to a similar range of sectors.
* They were similarly influenced by the US deregulation movement and faced common international market pressures.
* The above two points provide a good comparative fit: any differences in reform outcomes are likely to reflect differences in domestic politics.

Vogel (1996) argues that the regulatory reforms are reregulation rather than deregulation in nature. Deregulation is a negative action and moves toward convergence (Vogel 1996 p.269). Reregulation is a creative process and displays national characteristics (Vogel 1996 p.269). Since this creative process directly relates to the core functions of the state, it is natural for state actors such as government officials to try to influence regulatory reforms (Vogel 1996 p.269).

A core argument of Vogel (1996) is that Japan’s regulatory reforms in telecommunications and financial services were strikingly different from their British equivalent (p.4). This is because Japanese bureaucrats had a strong preference for the interventionist approach:

Japanese officials viewed government intervention in industrial affairs as a natural component of economic policy. They believed that the government should actively shape and restructure markets as well as regulate industry. Although the government owned very little of Japanese industry, it used a wide range of policy tools to control the allocation of capital to industry, to manage the terms of competition within specific industries, and to facilitate cooperation between firms. Japanese ministries practiced “market-conforming intervention”. This meant that they supported industry without obliterating market signals, and they managed the economic adjustment process without halting it altogether (Vogel 1996 p.51).

Japan’s government ministries integrated the function of regulation into a policy of industrial sponsorship rather than separated the function by establishing independent regulatory agencies (Vogel 1996 p.52). ‘The same ministry typically undertook both tasks and often used the leverage inherent in this duality of function to pursue its goals’ (e.g. price regulation can be used to increase profitability) (Vogel 1996 p.52). This approach, which is called ‘strategic’, was possible because ‘Japanese policy networks were tightly integrated with a single ‘lead ministry’ at the center’ (Vogel 1996 pp.52-3). Government ministries enjoyed their respective jurisdiction with less interference from party politicians, regulatory agencies and the courts, and tend to protect or augment their power (Vogel 1996 pp.52-3). ‘Compared to British government departments, Japanese ministries had much stronger links with industry’ (Vogel 1996 pp.52-3). The communications between government ministries and private firms typically took place through ‘officially sanctioned industry associations’ (Vogel 1996 pp.52-3). Through such networks government ministries could guide industry and implement a state-led industrial strategy (Vogel 1996 pp.52-3).

These strong ties between government ministries and industry can be understood as channels through which the government ministries were influenced by industry. However, Vogel (1996) argues that Japan’s bureaucracy was relatively insulated from interest group demands and ruling party interference compared with their US and UK counterparts (p.53). While recognising that the literature often stresses ‘the bureaucracy’s ultimate accountability to the ruling Liberal Democratic Party’, Vogel (1996) argues that: ‘bureaucracy remained relatively autonomous in many areas of economic policy despite the potential for LDP intervention’ (p.54).

This bureaucratically dominant state can be observed throughout the post World War II period. Although the SCAP tried reforms to reorient government regulation and to restructure industry: ‘those reforms aimed at reorienting government regulation and restructuring industry failed to take hold in the absence of a complementary economic ideology’ (Vogel 1996 p.54). The SCAP established ‘five independent regulatory commissions on the model of U.S. agencies’ and all but the JFCT were absorbed by the government ministries after the SCAP departed (Vogel 1996 p.54). Japan’s neo-liberal reforms in the 1970s and the 1980s were also constrained by its rigid structure (Vogel 1996 p.54). This permanent structure has affected individual policies and contributed to shape the characteristics of Japan’s regulatory reform.

Vogel (1996) argues that the outcome of Japan’s regulatory reform was ‘strategic reinforcement’. ‘(A) managerial orientation’ and close relationships between the state (government ministries) and industry led the Japanese government: ‘toward *strategic reinforcement*: it managed the liberalization process, resisted any devolution of regulatory power, protected ministerial discretion, and enacted change in a smooth and coordinated fashion. The government reinforced critical mechanisms of control in order to maintain its ability to guide or promote industry’ (Vogel 1996 p.59: *Italic* in original).

This characteristic offers a useful contrast to, for example, the British case. Both Britain and Japan have combined liberalisation with reregulation (Vogel 1996 p.59). In Vogel’s (1996 pp.59-60) view:

Although both the United Kingdom and Japan have combined liberalization with reregulation, the British government has been inclined toward those types of reregulation (pro-competitive and juridical) which undermine its capacity to guide industry whereas the Japanese government has been biased toward those types of reregulation (strategic and expansionary) which reinforce this capacity.

This difference stems from ‘both ideological and institutional differences’ of these two countries (Vogel 1996 p.60).

Whether or not Britain has become a regulatory state remains a contested debate. For example, Moran (2003 p.120) reveals the complex nature of the UK’s regulatory mode during the privatisation period in the 1980s, highlighting the following two key characteristics: ‘a distinctly modernist attempt by Littlechild to create an open, transparent world of non-discretionary regulatory decision guided by fixed rules; and the very different attempt by the official creators in Whitehall to replicate as much as possible of the old discretionary and informal world that had privileged insiders in the club system’.

With respect to the Japanese state, both Vogel (1996) and Johnson (1982) identify a managerialist approach on the part of the state and a process of imbrication with the existing bureaucratic settlement, i.e. insulated bureaucracy from interest group pressures (p.266). Although Vogel (1996) rarely utilises the term ‘developmental’, his model of the Japanese state has a striking similarity to Johnson’s (1982). Vogel’s (1996 p.20) perspective on the state is clear; he sets out that one can view the state as a single coherent structure without insisting that it is a unitary actor. The approach shows the executive branch composed of party politicians and bureaucrats collectively exercising its power to realise regulatory reforms. While bureaucracy plays a significant role, the key decision making power is allocated to political elites (e.g. Yasuhiro Nakasone, Keith Joseph, Margaret Thatcher) rather than bureaucrats (e.g. Vogel 1996 pp.56-7, pp.72-7).

Elsewhere, some authors regard Vogel (1996) as an example of the ‘bureaucractic-dominance’ perspective (e.g. Wright 1999 p.947). Here, Vogel (1996)’s view can be understood as the co-existence of strong party politicians and strong bureaucrats. This understanding aligns Vogel (1996) with that of the pluralist literature such as Muramatsu and Krauss (1987). Vogel (1996 p.20) shows a collective Japanese state model as a structure, but relationships between the state actors are more complicated. Wright (1999 p.494) argues that the pluralist literature places less emphasis on the role of party politicians, although elsewhere Muramatsu and Krauss (1987) reveal that the influence of party politicians vis-à-vis bureaucrats has increased since the early 1970s. Elsewhere, arguments for the leading role of party politicians and critiques to the bureaucratic dominance perspective were provided by an emerging rational choice literature.

## 2.5 Rational choice

An approach within the literature drawn from a rational choice perspective offers an alternative analysis. The approach originated as a part of the behavioural revolution in American political science of the 1950s and 1960s which focuses on how individuals behave but draws on the methodology of economics in contrast to behaviouralists who drew on sociology or psychology; this body of literature (e.g. Niskanen 1971, Tullock 1989) emerged most notably in the 1980s onwards and became a dominant approach to political science in the US (Ward 2002 p.65, Hay 2002 p.38). In ‘American Political Science Review’, fewer than 10 percent of all articles were based on the rational choice approach in 1962, with 20 percent in 1982 and 37 percent in 1992 (Gownder and Pekkanen 1996 p.364). This growing dominance of the rational choice literature influenced political science debates about Japan. Authors such as Ramseyer and Rosenbluth (1993) and Kato (1994) drawing from a rational choice approach proposed a new interpretation about Japan (Gownder and Pekkanen 1996 p.369, p.373-4). This set of literature can be characterised by its critical attitude to the bureaucracy dominant perspective, often associated with Johnson (1982) (Gownder and Pekkanen 1996 p.373). ‘The most provocative and full-blooded attack on the dominant bureaucracy thesis has come from those schooled in rational choice approaches’ (Wright 1999 p.949).

Employing the principal-agent theory, Ramseyer and Rosenbluth (1993) place the electoral system and the bargaining there as the centrepiece of Japanese politics (the major principal-agent relationships in Ramseyer and Rosenbluth (1993) are shown in Table 2.3). Its core argument is that the ruling LDP has dominated Japan’s policy making by utilising bureaucrats based on principal-agent theory (Wright 1999 p.949). It argued that the LDP acted to maximise its electoral results based on the Single Non-Transferable Vote (SNTV) [[18]](#footnote-18) electoral system (Ramseyer and Rosenbluth 1993 pp.8-10). In the SNTV system, candidates needed to establish their respective personal networks so that they can be elected. The LDP has utilised its control over government to create such networks through supplying government dispensed ‘pork’ cash, in-kind gifts, and bureaucratic interventions (Ramseyer and Rosenbluth 1993 pp.8-10). It could also extract financial contributions from business and redistribute to other supporters (Ramseyer and Rosenbluth 1993 pp.8-10). Business could get useful regulatory protection from government in return as the LDP places pressure upon bureaucrats to formulate such a policy (Ramseyer and Rosenbluth 1993 pp.8-10). This system enabled the LDP to collect loyal supporters, including those in the rural areas.

#### Table 2.3: Major principal-agent relationships in Ramseyer and Rosenbluth (1993)

|  |  |
| --- | --- |
| Principal | Agent |
| LDP Backbenchers | LDP Party Leaders |
| LDP | Bureaucrats |
| LDP | Courts (judges) |

The LDP’s capacity to allocate the ‘pork’ through manoeuvring the government machine is key for Ramseyer and Rosenbluth (1993) to understand Japan’s political mechanism. Holding the position as the government party was crucial for this capacity, because it enabled the LDP to retain its majority position in the parliament by utilising government resources such as funds and new laws. LDP backbenchers entrusted a group of party leaders, who had the longest careers as legislators, to coordinate collective party interests and equip it with sufficient powers to enforce its decisions (Ramseyer and Rosenbluth 1993 p.94). LDP leaders utilised bureaucrats to conceive and draft programmes so that they could formulate policies without having their own staff (Ramseyer and Rosenbluth 1993 p.13). This system, under which LDP leaders could monopolise bureaucracy as the only policy making apparatus, significantly limited the policy making capacity of LDP backbenchers and opposition parties, because these two groups had neither access to an alternative policy making apparatus nor sufficient funds to hire their own political staff – they were given only a limited amount of funds from the government to employ such staff (Ramseyer and Rosenbluth 1993 p.13). The LDP leaders could control bureaucrats through retaining vetoes over important policy projects and the power to prevent the promotion of disloyal bureaucrats (Ramseyer and Rosenbluth 1993 p.13).

Ramseyer and Rosenbluth’s (1993) model draws heavily from the principal-agent theory. This method has parallels to the same approach in US Congressional politics, which argues for the existence of a ‘dominant legislature’ (Wright 1999 p.950). This particular literature is confronted by critiques such as Moe (1987), who highlights the shortcomings in the US Congress politics literature in Table 2.4 (Gownder and Pekkanen 1996 pp.372-3):

#### Table 2.4: The shortcomings of the US Congress politics literature highlighted by Moe (1987) (Gownder and Pekkanen 1996 pp.372-3):

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| --- |
| * neglecting to provide a theory of agency, which would identify and explain the preferences of the bureaucrats themselves. * overestimating the power of the mechanisms of control used by legislatures. * ignoring the problem of multiple principals (e.g. two houses of Congress, the president). * partly because of the above three points, seriously underestimating the amount of agency slack present for bureaucrats (e.g. in implementation of policies) |

These defects pointed out by Moe (1987) are shared by Ramseyer and Rosenbluth (1993), because they employ the same analytical method with the US Congressional politics literature (Wright 1999 p.950, Gownder and Pekkanen 1996 p.375). Wright (1999 pp.950-1) further highlights the oversimplification by Ramseyer and Rosenblith (1993). They collectively deal with policy making, although policy making actually involves various activities (e.g. initiation, legitimation, and implementation) with the interaction between different mixes of public and private organisations and players in different arenas. Also, it is argued, policy making is simplified as the relationship between the LDP and bureaucracy, although actual policy making involves wider actors, including private sector actors, intermediary structures, quasi-governmental bodies (Wright 1999 pp.950-1).

Another approach within the rational choice literature is offered by McCubbins and Noble (1995). By applying rational choice theory to budgeting in Japan and the US, it concludes that the MOF is a crucial player and that it self-evidently wins some battles with only delegated authority (Wright 1999 p.952). The shortcoming of McCubbins and Noble (1995) is that they only focus on part of Japan’s whole budget, the general accounts of the Government of Japan (GoJ), neglecting the supplementary budgets and the Fiscal Investment Loan Programme (FILP)[[19]](#footnote-19) (Wright 1999 p.952).

The rational choice theory literature has made a significant contribution to knowledge. It seeks to explain the relationship between internal actors. Ramseyer and Rosenbluth (1993) offer one of the fiercest challenges to Johnson (1982) because they contest the notion of the dominance of Japan’s bureaucracy with the argument which heavily relies on the theoretical tools of rational choice rather than the previous literature of this field, such as Johnson (1982) (Gownder and Pekkanen 1996 pp.373-4). The approach of Ramseyer and Rosenbluth (1993) fuelled counterarguments including Johnson and Keehn (1994), who argue that the legislative dominance in Japan is ‘an absurd notion’ based on an ahistorical understanding of Japan (Gownder and Pekkanen 1996 pp.373-4).

Yet the rational choice literature has the same problem as the pluralist literature. Indeed, the rational choice theory literature does not supply a remedy for the weakness of the pluralist literature, because it focuses on the choices of actors ‘when they face with several courses of action’ and offers analysis based on the actors (Elster (1989 p.22) in Ward (2002 p.65)). It ‘help(s) illuminate how structures arise and are transformed’, but it ‘introduce(s) some premises about social structure from outside’ (Ward 2002 p.88). Its methodological individualism and fully deductive explanations can be seen as weaknesses, regarded as ‘impractical’ by Ward (2002 p.88). This approach suits the analysis of certain issues and does not offer frameworks applicable to all the topics emerging in the political sphere (Ward 2002 p.88). In addition to this, the rational choice literature indifferently deals with all actors, both state actors and societal actors. Although the literature of the rational choice theory with a robust research basis as social science research (e.g. the internal logic, whether contending hypotheses have been refuted, and the use of empirical evidence) has the potential to supply useful knowledge as Gownder and Pekkanen (1996 p.364) argue, such a characteristic struggles to account for state transformation at a macro level, because it offers the same approach as the pluralist literature: aggregating the micro level enquiries. This critique is applicable to the rational choice literature on Japan such as Ramseyer and Rosenbluth (1993); the problem of the pluralist literature such as Muramatsu and Krauss (1987) can also be observed in documents based on a rational choice perspective such as Ramseyer and Rosenbluth (1993).

## 2.6 Challenges to Japan and its transformation

The literature outlined above, each in different ways, offers only a limited understanding of the notion of state transformation. Indeed, the literature began to report the transformation of Japan in the late 1990s. The reported change took place about a decade after neo-liberal discourse became distinctive in the UK and the US, because the neo-liberal discourse had only a limited impact on Japan’s political arena.

In terms of neo-liberal reforms, the Yasuhiro Nakasone Government (1982-7) privatised the three major state corporations (Japan National Railways, Nippon Telegraph and Telephone Public Co. (NTT), and Japan Tobacco) in 1985. The Nakasone Government is sometimes compared to the Thatcher Government and the Reagan Administration, as it embarked on a reform programme during the 1980s using neo-liberal rhetoric. (Hiwatari 1998 p.603, Shibata 2008 p.99). Ozawa (1994: Original Japanese version was published in 1993), a key LDP politician of the day and a significant figure in Japanese politics so far, argued that ‘management-type regulation’ needed to be replaced by ‘rule-based policies’ (Ozawa 1994 pp.200-1)[[20]](#footnote-20).

However, Japan’s reform policies in this period were based on industry-centred co-ordination and the autonomy of the state bureaucrats in devising reform packages (Hiwatari 1998 pp.610-1, Shibata 2008 p.99). Hiwatari (1998) mentions the following examples of the policy coordination about the health care insurance reform, which arranged the cross-subsidisation between different health care insurance systems, by officials (pp.610-1):

it was the bureaucracy that packaged the reforms that bridged the conflicting interests of the oligopolistic and fragmented industries. Plans to combine welfare retrenchment with cross-subsidization or a new tax with income tax cuts were deliberated, concretized, and announced by government advisory committees prior to the involvement of political parties. Despite the fact that the political parties, including the LDP, defeated government bills to retrench welfare and install a sales tax in the late 1970s, the parties provided no viable plans of their own until those presented by the advisory committees. Furthermore, it was the bureaucracy that persuaded the oligopolistic industries and their unions, whose representatives sat on these advisory committees, to support government packages. In the committees, the large firms and their unions were reminded that failure to make significant changes would result in exorbitant welfare burdens and government deficits. As the oligopolistic firms and their unions changed their attitudes, the moderate opposition parties also modified their earlier absolute opposition to the reforms.

Deregulation and privatisation were employed in strategically selected sectors and neo-liberal policies were implemented through bureaucracy (Hiwatari 1998 pp.610-1). Policy processes were based on bureaucratic co-ordination and industry adjustment (Noguchi 1995 p.156). In addition, the high performance of Japanese firms in the 1980s contributed to sustain the traditional structure (Noguchi 1995 p.156). As a result, Japan’s neo-liberal reform in the 1970s and the 1980s seems to have been emasculated by its traditional structure (Vogel 1996 p.54). Japan has sometimes partially evoked policies based on a market oriented philosophy, but it has been reluctant to thoroughly embrace them (Pierre and Peters 2000 p.3) so that it could protect its embedded structure.

The challenges to Japan have been observed explicitly since the late 1990s (Yamamura 1997 pp.291-4, Pempel 1998,Weiss 1998 p.65, Schaede 2000 p.4, Amyx and Drysdale 2003 p.3), whose major characteristics can be summarised by Table 2.5

#### Table 2.5: The characterisation of the challenges to Japan observed after the late 1990s (Vogel 2006 pp.10-1, p.26, Schaede 2008 pp.21-33):

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| * **The economic slump in the 1990s**   After the burst of the bubble economy of 1987-91, Japan fell into a decade of stagnation and recession (Schaede 2008 p.21). This generated economic and political pressures for change and undermined the Japanese model.   * **Enormous bad loans in the private sector and banking sector crisis**   Because many firms used real estate as collateral for their loans, the burst of the bubble economy had a significant impact over their solvency. This resulted in a substantial growth in bad loans in the private sector. This exposure of the banks to real estate loans turned into a crisis in 1997. A subsequent banking sector crisis was so severe that the Japanese government infused 9.3 trillion yen (about $ 90 billion) into the largest banks inducing fierce controversy in the media.   * **The shift from a catching up (developing) economy to an advanced economy**   As the Japanese economy matured, its conditions and requirements changed from those of a developing economy to those of a developed economy. For instance, its technological challenge shifted from catching up other developed countries to leading development, and private firms moved: ‘from competing for scarce capital to leveraging the benefits of abundant capital, and from capitalizing on low-cost labor to investing in high-skill labor’ (Vogel 2006 p.10).   * **Globalisation**   As the capital and corporate activity grows, Japan became integrated into the global economy. The Japanese government lost the traditional control over its domestic economy and the private firms became exposed more to competition with foreign counterparts.   * **Japan’s social crisis (e.g. growing inequity and inequality, rising unemployment rate)**   By the late 1990s, indicators of social distress such as unemployment, bankruptcies by small firms, homelessness, crime, divorce rates, child abuse, and suicides were at a record high. Schaede (2008 p.22) argues that this highlights the failure of the postwar policy tools. |

The response to such challenges has been gradual and continuous rather than ad hoc (Vogel 2006 p.10-1). ‘(Japan’s) model in 2005 fundamentally differs from the model in 1960. But we cannot identify a breaking point at which one model transformed into the other’ (Vogel 2006 p.224). Schaede (2008) argues that Japan had the ‘strategic inflection point’ between 1998 and 2006 (p.1, p.21).

To explain this gradual transformation of Japan, Vogel (2006) proposes a model of policy and society change based on new institutional economics and studies on capitalism (pp.11-21). This model has two layers: micro level (firms) and macro level (the government) (p.15). These two levels interact with each other (Vogel 2006 p.18). Macro constraints (e.g. laws and regulations) affect micro constraints (e.g. long-term relationship between firms, between firms and banks and between firms and unions) (Vogel 2006 p.15; See Figure 2.1). For example, laws and regulations can shape private firms’ strategies and policies towards trade partners (Vogel 2006 p.16). Micro constraints also affect macro constraints and could change them by policy reforms (Vogel 2006 p.17; See Figure 2.2). Private firms’ adjustment strategies to their respective circumstances such as the strategies on hiring the staff can shape the policies of the government such as the policies on labour markets and induce policy reforms through private firms’ support to such policies/reforms (Vogel 2006 p.17). Such reforms can also affect firms and lead to corporate adjustments, which in turn can lead to further policy reforms (Vogel 2006 p.18). Vogel (2006 p.20) argues that this model can be further enhanced by employing sociological perspectives where: ‘actors facing new circumstances do not rationally calculate costs and benefits so much as fall back on existing norms, beliefs and routines’.

#### Figure 2.1: Micro level: factors shaping patterns of corporate adjustment (Vogel 2006 p.16)

**Micro Constraints**

Long-term relations with banks, unions, and other companies shape firms’ preferred adjustment strategies

**Macro Constraints**

Laws and regulations limit firms’ possible adjustment strategies

**Micro Constraints**

Patterns of corporate adjustment

#### Figure 2.2: Macro level: factors shaping patterns of policy reforms (Vogel 2006 p.17)

**Macro Constraints**

Patterns of policy reform

**Macro Constraints**

Societal policy preferences mediated through political institutions, such as industry associations and political parties

**Micro Constraints**

Long-term relations with banks, unions, and other companies shape firms’ preferred adjustment strategies

This model, which offers simple cost benefit cycles to actors, is Vogel’s (2006) explanatory vehicle to address Japan’s trajectory of institutional change (p.19). Vogel (2006) adds that other elements also affect the decision making processes of actors (p.19). For instance: ‘Efficiency concerns and normative commitments can complement each other, but they may also conflict. For example, firm managers sometimes have to make a stark choice among maximising profits, enhancing their comparative institutional advantage, and honouring social obligations’ (Vogel 2006 pp.19-20). These three elements sometimes conflict. Firm managers can hesitate to make a decision which increases profits but jeopardises beliefs and social ties with business partners – e.g. switching stable suppliers (Vogel 2006 p.20).

Based on this analytical framework, Vogel (2006 pp.219-20) concludes that the transformation in Japan is seen as incremental rather than sweeping, and within this context, state transformation likewise has been an incremental process:

government officials have lost legitimacy in the eyes of the Japanese people, they have lost confidence in their own ability to steer the economy, and they have become more ambivalent in their policy goals. In practice, they (government officials) have combined liberalization with efforts to reassert control over industry and markets in new ways. … they have enacted pro-competitive regulatory reforms yet still tried to manage the terms of competition after reform; they have abandoned old-style industrial policy yet experimented with new variations; and they have enhanced foreign firms’ ability to invest in Japan and yet backtracked in several instances. The government has not truly embraced the liberal model, but it has made substantial progress in areas critical for foreign corporations seeking access to the Japanese market. Although U.S. and Japanese capitalism will continue to differ, bilateral friction over differences in the two systems is not likely to return to 1985-95 levels.

The state has gradually stopped utilising industrial policy and embraced market oriented methods (Vogel 2006 pp.219-20). In his analysis of this gradual change, Vogel (1996) highlights the role of societal actors rather than that of state actors. Although the LDP under the leadership of Jun’ichiro Koizumi (2001-2006) enjoyed its popularity, its liberal economic reforms beyond post office privatisation were not substantially implemented because the public was ambivalent about such reforms and not all LDP members were true liberal reformers (Vogel 2006 pp.58-60). In contrast to the US, where consumer groups such as Nader’s Raiders were the significant promoter of deregulation in the 1970s, Japan’s consumers and consumer groups have been supportive to producers and small businesses, who are often inefficient because they were heavily protected and not exposed to competition (Vogel 2006 pp.53-6). The largest opposition party, the DPJ (Democratic Party of Japan), differentiated itself from the LDP: ‘not by pushing for bolder liberalization but by advocating government intervention to ease economic adjustment’ (Vogel 2006 pp.60-1).

Vogel (2006 p.211) analyses the change as not the response to clear evidence linked with reform proposals for better economic performance but the result of ideological shifts. His analysis is underpinned by a set of evidence.

First: ‘economic benefits from liberalization are greater and less ambiguous in some sectors, such as telecommunications, than in other sectors, such as energy’ (Vogel 2006 p.212). However, the government has not given priority to regulatory reforms in the sectors where benefits are clear (Vogel 2006 p.212).

Second, financial deregulation before prudential regulation is especially liable to financial crises (Posen 2002). In the US, savings and loan institutions (S&Ls) were required to invest only in long-term housing loans, and therefore were limited in their risk taking and profit making, but received the right to offer a little more to their depositor in recompense (Posen 2002 p.202). Deregulation in 1983, however, opened S&Ls’ mortgage market, while allowing S&Ls to engage in commercial and consumer lending (Posen 2002 p.202). This deregulation promoted the rapid development of the financial sector and resulted in the collapse of the real estate market in the mid 1980s (Posen 2002 p.202). According to Posen (2002 pp.202-3):

The affected banks and S&Ls behaved just as economic theory would predict. Until supervisors enforced matters, the banks and S&Ls invested in higher risk, high return projects in hopes of restoring their capital, they rolled over outstanding bad loans to avoid writing them down, and they stopped lending to high quality borrowers with safe low returns. These financial firms also rapidly escalated deposit interest rates, figuring that any losses would be covered by deposit insurance.

This is followed by the failure of the regulator:

U.S. supervisors unfortunately did some gambling of resurrection on their own, waiting to shut down banks and S&Ls with insufficient capital in hopes that better economic time would allow them to recoup their losses. This only allowed the problem to grow until it was necessary for large-scale government action to consolidate, recapitalize, and close failed institutions, and to begin selling off foreclosed real estate assets. (Posen 2002 pp.202-3)

Nevertheless, Japan also made a similar mistake when it deregulated its financial services in the 1990s (Posen 2002 pp.214-5). ‘Given that U.S. regulators already had been taken to task for the S&L crisis in a litany of congressional hearings, central bank sponsored conferences, and published policy analyses by 1992, it is impossible to claim that Japanese regulators and politicians were not warned against repeating American mistakes’ (Posen 2002 pp.214-5). Vogel (2006) argues that this is because Japan ignored these policy mistakes, the lessons, and the information of the US during its financial regulation reform in the 1990s (p.212). These two examples suggest Japanese authorities neglected useful information about their policy reforms, and that their policy reforms were motivated by the political or sociological reason rather than the economically rational contemplation (Vogel 2006 p.212).

The change of policies by the state mobilised corporate transformation. Schaede (2008) argues that Japan’s private firms are increasingly required to be responsible for their own business activities while it is getting more difficult to access the traditional government support, because the government’s approach to industry has become more market oriented (Schaede 2008 pp.30-1). Business decisions are now left to firms and they cannot expect the support from government ministries when their projects fail (Schaede 2008 pp.30-1). A firm’s traditional pre-consultation to the government ministries about their newly launching business projects has diminished (Schaede 2008 pp.30-1). At the same time, firms have come to act on a performance and profitability basis rather than a longevity and long term relationship basis (Schaede 2008 pp.107-8)[[21]](#footnote-21). Vogel (2006) describes this remodelling of private firms as:

the remodeled Japan differs from the earlier version in at least three important ways. It is more selective: … (companies) have reevaluated their long-term relationships with works, banks and other firms, and they have loosened some and tightened others… It is more differentiated: companies have become more variable in their practices. There never was a uniform Japanese model that applied equally to all sectors and all companies, but the model has fragmented further. And it is more open: Japanese corporations have more foreign owners, managers, and business partners than ever before, and these foreign actors bring with them different practices and norms. Each of these trends has been driven not simply by companies freely choosing from a blank slate but through the interactive process of government reform and corporate adjustment… (p.220).

This transformation has been mobilised by the change of Japan’s political structure, including the change of government policy under Jun’ichiro Koizumi to a more market oriented one, the change of the corporate laws, regulatory reforms such as those in financial services and antitrust enforcement (Vogel 2006 pp.30-46). For instance, financial regulation shifted its focus away from the actor (an industry or company) to transactions and markets (Vogel 2006 p.31). ‘The postwar-period informal regulatory processes, based on the fact that a ministry in charge of nurturing an industry was also tasked with its regulation, was undermined by a shift to legal processes and a turn to the courts’ (Vogel 2006 p.31).

This change in the 1990s is drawn from the perspective of ‘regime’ by Pempel (1998 p.14). For Pempel (1998), a regime is about a middle level of cohesion in the political economy of a nation state (p.20). According to him (Pempel 1998 p.20):

A regime is composed of three essential elements: socioeconomic alliances, political-economic institutions, and a public policy profile. These three overlap and reinforce one another; they resemble the three legs of a tripod that collapses when any one is removed. They interact in complex ways, developing and responding to a discret

e internal logic. In many countries the three elements are in unstable tension, coalitions and alliances come and go; institutions are born and swiftly die; policy directions shift like the wind. Regimes thus may have little or no enduring stability; they lack equilibrium.

Pempel (1998) argued that Japan’s new regime would be different, becoming increasingly influenced by external forces such as international finance and manufacturing, referring to significant challenges emerging in the political economic institutions and policy profiles by the end of the 1990s, whose major points are in Table 2.6 (pp.211-9).

#### Table 2.6: The changes in the political economic institutions and policy profiles by the end of the 1990s highlighted by Pempel (1998 pp.146-65, p.211-9):

|  |
| --- |
| * **The new electoral system**   New electoral system authorised by the legislature in 1994 is regarded by commentators as an important factor of change.   * **Weakening *Keiretsu* and increasingly powerful foreign owned firms**   ‘As larger numbers of Japanese firms, including many of their subcontractors, became more truly multinational, many also entered into strategic alliances with foreign owned firms’ and the traditional Japanese business relationships between firms have been undermined (Pempel 1998 p.161).   * **A substantial reduction in the number and power of the policy tools available to economic bureaucrats**   In the post war period, Japan has pursued developmentalist policies such as protection of domestic manufacturing, financial institutions and agriculture and limits on foreign penetration of Japanese markets. In doing so, it employed policy tools such as high tariffs and restrictive quotas on most manufactured imports, tight controls over domestic consumption, restrictions on capital and technology flows into and out of Japan, a very restricted corporate bond market, and a strong reliance on foreign technology purchases. However, by the 1990s, Japan became integrated into the world market, its financial market has been liberalised and formal trade barriers and limits on foreign direct investment have been eliminated.   * **Appeased and emasculated radical labour and leftist organisations**   By the 1990s organised labour abandoned its hostile attitudes toward the conservatives and stood uniformly and automatically outside the regime, while the radical left elements within it were marginalised.   * **The political marginalisation of organised agriculture**   Farmers and small businesses, which have been traditional LDP supporters, have shrunk in size, in economic significance and their electoral support.   * **An aging society.**   ‘Demographic data shows that Japan would undergo substantial demand for retirement and health benefits by the early decades of the twenty-first century’ (Pempel 1998 p.151). While Japan has had ‘a broad governmental bias against the creation of a European-style social welfare system’, it could not also simply rely on individual citizens or their families and companies (Pempel 1998 p.151). Japan needed to reconsider its traditional approach to cope with this emerging problem. |

Based on this set of observations, Pempel (2010) highlights the significance of the political change, such as the change of the electoral system and internal structural change of the LDP, as the force to change Japan’s structure. The government change in the 2009 Lower House general election can be an instance by which the LDP’s traditional internal structure could seem to have been exhausted (Pempel 2010 p.227-54). Pempel (2010) argued that the two LDP factions, ‘productivity’ faction emphasising the economic growth and productivity (e.g. Ikeda Hayato, Kishi Nobusuke, Fukuda Takeo, Sato Eisaku) and ‘pork’ faction focusing on classic pork barrel politics and Keynesian spending (e.g. Kono Ichiro, Ohno Banboku, Tanaka Kakuei), conflicted with each other and this division culminated in the LDP’s 2009 election defeat (Pempel 2010 p.252). Another perspective by Rosenbluth and Thies (2010) explains this election result as a conclusion of the Lower House electoral system change in 1994 from the SNTV electoral system to the Mixed-Member Majoritarian electoral system (MMM) [[22]](#footnote-22). Under the MMM many single member district (SMD) seats, those in urban districts in particular, are volatile and swing (Rosenbluth and Thies 2010 p.187). Of the 100 most urban districts, the LDP beat the DPJ 74 to 16 in 2005, but in 2009 the DPJ obtained 84 to 10 in return (Rosenbluth and Thies 2010 p.188). Because the voting results by the MMM are more volatile than by the previous SNTV electoral system, the majority party is more likely to significantly lose its seats in the next election (Rosenbluth and Thies 2010 p.187). These accounts try to address a significant political event (2009 Lower House general election and the resulting government change) by focusing on the structure of the political party system.

By pulling the above accounts together, it is possible to highlight the degree to which the structure and the power of key actors have been transformed in Japan. Vogel (1996) and Schaede (2000) highlight the decline of the bureaucracy as a traditional pilot actor with significant power. The change in the political arena, such as the electoral reform, has substantially affected the nature of the electoral contest. As Rosenbluth and Thies (2010) argued, the government change in 2009 can be interpreted as the result of this electoral reform. The private sector actors, such as private firms, have obtained more freedom in management and responsibility (Vogel 2006). These changes embraced by actors have come with the transformation of structure. The relationships between actors changed, as well as the norm shared by actors. For example, private firms can no longer expect the support from bureaucracy when their projects fail (Schaede 2008 p.30-1). This is a significant behavioural change of private firms, for they used to discuss their new projects with their relevant ministries with the expectation that those ministries would support the firms when the projects failed (Schaede 2008 pp.30-1). Now private firms must make a decision on their project at their own risk. Such a behavioural change leads to the change of the relationship between ministries and private firms.

What is missing here is the substantial exploration of state transformation at a macro level. The literature reviewed in this section focuses on micro events in the state and society; in so doing it has failed to capture the transforming state of Japan at a macro level. It is this lacuna in the literature that this thesis seeks to address.

## 2.7 Conclusion

What emerges from this review of the literature on the Japanese state is the extent to which Johnson’s (1982) model has shaped the account of all the different perspectives outlined above. The model of the developmental state has illuminated the strategic policy making of the Japanese state (see Table 2.7). One of the frequent criticisms (e.g. Calder 1993) is that Johnson (1982) overly focuses on the MITI. As Johnson (1982) along with others (e.g. Weiss 1998 pp.14-40) argues, the MITI has had a significant capacity and performed well in the field of industrial policy. However, the MITI is not part of the central apparatus of the Japanese state because its responsibilities (industrial policy making and implementation) do not contain the core function of state steering. Structurally powerful government ministries such as the MOF are not sufficiently addressed. In addition, Johnson’s (1982) original approach was outlined in 1982 and much has changed since then. Parallels to Johnson (1982) can be identified in Vogel (1996), who employs an approach focusing on the state actors and regulatory reforms showing how the Japanese state inserted its will on the targeted industries such as telecommunications and financial services.

Muramatsu and Krauss (1987) offer a detailed account of the relationship between party politicians and bureaucrats and regard the power of society (interest groups) more significantly. Their approach is located within a pluralist perspective and describes the increasing power of party (LDP) politicians. I’io (2007) offers a clearer explanation on the relationship between LDP politicians and bureaucrats.

If one accounts for the fact that all three long term credit banks have either been sold and/or transformed to standard commercial banks[[23]](#footnote-23), the main argument of Calder (1993) has had only a limited impact on mainstream accounts of the Japanese economy. Nevertheless, its pluralist model offers a wider explanation about Japan’s government ministries.

Vogel (2006) and Schaede (2008) reflect on the recent changes that have taken place in Japan, focusing on the changes within the industry and corporate sectors. The government and the public sector are not their major focus and state transformation is partially described.

#### Table 2.7: Summary of the state and state transformation literature

|  |  |  |  |
| --- | --- | --- | --- |
| Literature | Approach | Description of the state | State transformation |
| Johnson 1982 | State centric | The state led by the MITI with the ‘safety valve’ of politicians. Interest groups are insignificant | Transformed to the MITI led developmental state |
| Muramatsu/Krauss  1987 | Pluralist | The state is penetrated by interest groups. | Inside the state LDP’s power is growing. Bureaucrats are gradually losing influence. |
| Calder  1993 | Pluralist | The state is a pluralist theatre where actors struggle to formulate policies. LTCBs are key for the development. |  |
| Ramseyer /Rosenbluth 1993 | Rational Choice | LDP as the principal utilises bureaucrats as the agent. | The electoral system changed to cope with emerging urban voters. Traditional interest groups declined. |
| Pempel 1998 | Comparative Politics /Pluralist | A group of actors including the LDP and bureaucrats; it has a complicated relationship with societal actors such as interest groups. | Japan’s regime has shifted from one based on agriculture and small businesses to one reliant on urban voters. |
| Vogel 1996 | State centric | Party politicians and bureaucrats collectively worked to realise regulatory reforms. | The state has inserted its initiative through its regulatory policy instruments. |
| Schaede 2000 | Pluralist | The state has gradually lost its control over industries. | The state is losing it traditional grip. This power void is exploited by self-regulation. |
| Vogel 2006 | Institutional economics (private firms focused) | Partial. The state is described as an element of reform processes and is not addressed as a core theme. | The state is losing its authority in the economy. It has gradually abandoned industrial policy and embraced liberal reforms. |
| I’io 2007 | Leaning to pluralist | Politicians act as a representative of government ministries (bureaucrats) | The Prime Minister has strengthened their power and responsibility. |
| Schaede  2008 | Pluralist (Not clearly mentioned. private firms focused) | Partial. The state is described as an actor behind the transformation of private firms. | The state is losing its traditional authority over the industry. Drastic regulatory reforms are implemented. |
| Rosenbluth/Thies 2010 | Rational Choice | The LDP controls the state machinery. The state acted so that the LDP election machine could generate the maximum electoral results. | The 1994 electoral reforms changed the Diet and the state. The LDP has been switching its support basis to more productive industries and urban voters from obsolete industries and interest groups. |

Most of the literature about Japan reviewed here tends to focus on actors in the political arena, eschewing accounts that seek to analyse the relationship between the state and society. In Johnson’s (1982) developmental state model, the key actor is Japan’s economic bureaucrats, in particular the MITI. Although Muramatsu and Krauss (1987) recognise the increasing importance of party politicians (in particular those of the LDP), bureaucracy continues to be identified as the dominant actor. This literature seeks to highlight the transformation of the Japanese state in terms of a gradual shift in power from bureaucrats to party politicians. In so doing, it challenges the notion of bureaucratic domination (I’io 2007 p.37). The pluralist literature illuminates the role of other state actors such as party politicians (Muramatsu and Krauss 1987) and societal actors such as major financial institutions (long term credit banks: Calder 1993), interest groups (Pempel 1998), and trade associations (Schaede 2000).

The pluralist literature has dominated accounts from within Japanese political science since the late 1970s as the major approach to explain Japan’s democracy (I’io 2007 p.37-8). A pluralist approach to explore the political change is not free from the criticism of the pluralist literature in general (Smith 2006 pp.36-7); it fails to problematise and analyse the Japanese state at the macro level. Because the pluralist literature focuses on groups and implicitly assumes that ‘the state is a neutral arena for groups’, it struggles to address the state and state power at a macro level (Smith 2006 p. 37). The change is explained as the collection of the micro level events of both state and societal actors and structure. The description and analyses of the state and societal actors are conflated as Pempel’s (1998) regime model shows. The change of the state is not deliberately drawn. In other words, the pluralist literature does not regard the transformation of the state as key because transformation takes place in what Calder (1993 p.14) described as ‘a pluralist theatre’. As noted above, the rational choice theory literature does not offer a remedy for this shortcoming of the pluralist literature, because its analytical focus is on the actors (Elster (1989 p.22) in Ward (2002 p.65)). The rational choice literature requires exogenous premises to illuminate the change of structure (Ward 2002 p.88). Also, its methodological individualism and deductive explanations do not cope with accounts exploring state transformation at the macro level, because like the pluralist literature it does not explore macro level subjects such as the transformation of the state. What it generates is the aggregation drawn at micro level enquiries.

Given the explanation within the pluralist literature on group behaviour, it has struggled to capture the way the Japanese state has been developed after the end of the developmental state. Instead its focus has been predominantly on how actors’ power and relationships with other actors have changed.

The shortcoming of the pluralist perspective reveals that the mainstream pluralist literature on Japan has not offered an account effectively exploring the transformation of the Japanese state. The emergence of rational choice accounts has not filled this lacuna, because they also fail to analyse the state at the macro level. This thesis seeks to fill this lacuna by analysing the transformation of the Japanese state at a broader, aggregate level, drawing on the recent development of the theory of the state.

The approach adopted in this thesis seeks to challenge those dominant approaches, which primarily focus on the topics at a micro level, and offers a new perspective which sets out how a developed state of non-European tradition has been transformed through exploring the cases of regulation. In addition, the approach of this thesis seeks to go beyond accounts that offer little more than parsimonious description about a national pattern of policy (Vogel 1996 p.19). This thesis seeks to offer insights, which capture the dynamics of contemporary state – society relations.

The key focus then is the state at a macro level; the theory of the state has been central to political discourse and political analysis (Hay and Lister 2006 p.1). It is crucial to develop an insight of state transformation in Japan, because the debate on the state has shaped the foundation of the conceptualisation of state transformation (Sorensen 2004 pp.1-22). The next chapter starts by reviewing how the theory of the state has been developed in the literature, and in doing so offers a framework for exploring the Japanese cases.

# Chapter 3 The Change of Governance and Institutions

## 3.1 Introduction

In the past thirty years there has been a significant growth in the literature on governance within political science. It has emerged in part as a response to the decline of the state’s traditional role and capacity in the developed world. The governance literature seeks to offer new forms of analysing the governing system under emergent political conditions after the 1980s and 1990s. This new wave in political science literature has prompted the debate on the state.

The concept of the state is clearly not new to political science; as Hay and Lister (2006 p.1) argue, it has been a core topic. In spite of its importance, the state in contemporary political science has not always been a central topic of research (Smith 2009 p.1). According to Levi-Faur (2012 p.21): ‘(t)he state in general is somewhat, and unfortunately, marginalized as a social science concept’.

The debate on governance has helped bring the state back in to the political science literature. The state and governance have been a major topic of debate within political science literature in Europe; for example one school of literature has proposed a hollowing out of the state (e.g. Rhodes 1997), while others have argued for the transformation or reconstitution of the state (e.g. Marsh et al 2001, Sorensen 2004). Crucially though, the debate on the state and governance has not significantly been addressed in the literature on Japan, where the tradition of pluralist and rational choice literature has continued to dominate. A key theme of this thesis is to address the existing lacuna in the literature about Japan.

Placing the core theme – transformation of the Japanese state between the 1980s and 2000s – in a broader context of the change of governance, this thesis explores the utility of the reconstituted state thesis when applied to Japan; the approach adopted here is to explore the extent to which the Japanese state has reconstituted itself rather than been hollowed out, in response to transformational forces in the last three decades. This position is elaborated in the research through employing two key concepts as analytical tools: the concepts of the core executive and the regulatory state, together with an analytical framework on governance.

This thesis explores the transformation of the Japanese state in ICT and antimonopoly regulation by observing how the core executive has adapted to change and how the regulatory state has developed. The notion of the core executive, which emerged in the debate within the Anglo-Governance school[[24]](#footnote-24), captures the core mechanism of the state based on its ontological view of power that is fluid and relational within the core executive. The ontological view on power employed by this thesis refers to Smith’s (1999) framework rather than Rhodes’ (1995b); in other words this thesis takes seriously the structural context as a key factor in shaping the power of the core executive (Elgie 2011 p.68)[[25]](#footnote-25). The regulatory state is another analytical tool which examines the state-society relationship through analysing regulatory traditions. The concept of the regulatory state enables this thesis to observe how the Japanese state has changed its scope and power vis-à-vis society (regulated private firms).

This chapter then turns to explaining transformation at a micro level by discussing the theories of historical institutionalists. The theory of path dependency focuses on the contingent events and the sequences following them. This framework is employed to analyse the issues in which exogenous events played a significant role in shaping the cases (ICT regulation, antimonopoly regulation) such as the ministerial regulatory approach in ICT. Another analytical instrument is the theory of institutional change based on historical institutionalism, which conceptualises the evolution of structure such as institutions. The chapter seeks to set out the framework for analysing the subsequent cases of ICT regulation and antimonopoly regulation and in so doing address the key themes identified in Chapter 1.

This chapter first illuminates the development of the concept of the modern state and challenges for states emerging after the 1970s, which prompted the interest in governance instead of government among political scientists. It is followed by exploring the concept of the core executive as a key notion to explain the system of governance and analyse the transformation of the Japanese state. The chapter then focuses on the concept of the regulatory state and governance, offering a framework for analysing the relationship between the state and society (regulator-private firms). The following sections review the theories of historical institutionalists: path dependency and institutional change.

Throughout this chapter, this thesis reviews how the literature has offered analytical frameworks by which the change of governance and institutions is explained in relation to the transformation of the state. This set of analytical frameworks aims at the evolving nature of the state developing new approaches to adapt to its new environment after the 1970s, exploring the extent to which the state has been reconstituted through the core executive’s skilful governing in response to circumstantial changes. Indeed, a core theme of this thesis is the persistence of asymmetric dominance of the core executive in the state’s reconstituting process, in the context of an approach to power which is both fluid and relational. This thesis explores how the core executive has governed the two regulatory sectors based on fluid and relational power relations within it responding to challenges in the sectors; the process can be viewed as the reconstituting process of the Japanese state in the sectors. This thesis sets out a framework in which it conceptualises the transformation as the emergence of a variation of the regulatory state.

The next section starts from the review of the concept of the modern state and its challenges after the 1970s. The scope of the debates introduced here centres on states in the developed world, including Japan.

## 3.2 Challenges to the state

Much of the literature on the modern state is rooted in the contribution of Max Weber (1978 (1925)) (Hay and Lister 2006 p.8, Pierson 2004 pp.5-6). His (p.78) definition of the state focuses on the state’s organisation and the deployment of the means of coercion and physical force with the following two major characteristics: it is a set of institutions with dedicated personnel; and it monopolises authoritative rule-making within abounded territory (Hay and Lister 2006 p.8). In a similar vein, Skocpol (1979) concisely defines the state as an actual organisation: ‘controlling (or attempting to control) territories and people’ (p.31, also Smith 2009 p.61). Her perspective on the state counters the dominance of pluralist and structure-functionalist literature in the US in the previous period (pp.4-5). Skocpol (1985) explores the concept of the state highlighting state autonomy and state capacity. She described state autonomy as fluid and changing:

...‘state autonomy’ is not a fixed structural feature of any government system. It can come and go. ...the very structural potentials for autonomous state actions change over time, as the organizations of coercion and administration undergo transformations, both internally and in their relations to societal groups and to representative parts of government. …the full potential of this concept (state autonomy) can be realized only in truly historical studies that are sensitive to structural variations and conjunctural changes within given polities (Skocpol 1985 p.14).

In relation to state capacity Skocpol (1985) offers a perspective focusing on the strength of state bureaucracy in line with Weber (1978 (1925)). She argues that the key points of state capacity are:

* sovereign integrity and the stable administrative-military control of a given territory as preconditions for any state’s ability to implement policies; and
* loyal and skilled officials and plentiful financial resources as the basis for state effectiveness in attaining all sorts of goals. Some of them depend on institutional relationships that are slow to change and relatively impervious to short-term manipulations (p.16).

Elsewhere, Mann (1993 p.55) rather than offering a functional definition instead adopts an institutional approach:

The state is a differentiated set of institutions and personnel embodying centrality, in the sense that political relations radiate to and from a center, to cover a territorially demarcated area over which it exercises some degree of authoritative, binding rules making, backed up by some organized physical force.

Weber (1978 (1925)) highlights the function of the law and administrative staff of the developed state by proposing the notion of the modern state as the next stage in the evolution of the state. He suggests that the modern state:

…possess an administrative and legal order subject to change by legislation, to which the organized activities of the administrative staff, which are also controlled by regulations, are oriented. This system of orders claims binding authority, not only over the members of the state, the citizens, but also to a very large extent over all action taking place in the area of its jurisdiction. It is thus a compulsory organization with a territorial basis. (Weber 1978 (1925) in Mann 1993 p.56)

In this notion, he focuses on the routine, formalised, rationalised institution of wider scope over citizens and territories (Mann 1993 p.56).

This body of literature views the state as an entity insulated from private interests, composed of dedicated staff, and imposing its will through its monopolised coercive tools within its demarcated territory. This is also the definition of the state employed by this thesis. Within this thesis the state is regarded as an entity insulated from private interests, composed of established state organisations such as government ministries and other organisations similar to ministries, and monopolising coercive tools within its territorial boundaries. Over time, the state’s central organisation has been enhanced and its control on society has become more developed.

This tendency became evident after 1945. The post World War II period saw an unprecedented expansion by governments in terms of their size and scope with the emergence of the welfare state[[26]](#footnote-26) (Hay and Lister 2006 p.6). As the background of this growth of the state, Chang and Rowthorn (1995 p.3) argue that the left’s significant contribution to the war efforts against Fascism and the widespread belief that the Great Depression facilitated the rise of Fascism made full employment and social welfare the top priority of the political agenda. It can also be noted that key industrial countries in West Europe and East Asia were rebuilding their societies after World War II (Korean War in the case of Korea).

The key features of the governments in the developed world in this period were increasing government expenditure, expanding government projects, and growing political intervention in the market, the extent of which varied (Pierre and Peters 2000 p.2). The impact on the financial aspect of the state was particularly significant. The states in the developed world expanded both their expenditures and revenues in this period; for example expenditure in the 1990s was double that in the 1930s (Hay and Lister 2006 pp.2-3).

The political projects engaged in by the governments of this period include regulation, economic redistribution, and more generally, an expansion of the political sphere of society (Maier 1987 pp.1-24). According to Maier (1987 p.4) in the 1950s and early 1960s social scientists tended to predict that: ‘under conditions of long-term economic growth, political issues would be transformed into administrative and non-controversial routines’. Pierre and Peters (2000 p.2) describe the government of this period as: ‘the appropriate, legitimate and unchallenged vehicle for social change, equality and the economic development’. An example of the developed world governments in the 1950s and early 1960s can be the state model called the Keynesian Welfare State (KWS) drawn from the British state (e.g. Pierson 2004 p.99, Jessop 1993 p.1). Its core theme was the management of the economy and society by the state. Under this model the state was supposed to address market failure and be responsible for developing and managing welfare programmes (Sorensen 2004 p.32, Jessop 2002 pp.60-1).

As the state in the developed world expanded its scope and activities, it began facing significant challenges, the key points of which are described in Table 3.1 (Pierre and Peters 2000 pp.52-67). The impact of the challenges facilitated the rise of the school of the New Right arguing for solutions to the challenges (Pierson 2004 pp.63-7).

#### Table 3.1: Key challenges to the modern state (based on Pierre and Peters 2000 pp.52-67)

|  |  |
| --- | --- |
| Financial  Crisis | The state confronted its increasing expenditure and difficult prospect to increase tax revenue. |
| The rise of  the new right | The manifestation of neo-liberal ideology emerged in the governments in a number of developed countries. They employed monetarist economic policy together with deregulation, privatisation, drastic reductions in the civil service, the introduction of ‘managerialism’ in the public sector, and institutional restructuring of the state creating semi-autonomous public organisations to typically replace government organisations. |
| Globalisation | Globalisation has partially stripped the traditional authority of the state but offered new opportunities to exercise influence through regional and international organisations and through international institutional coordination such as transnational harmonisation of regulation. It has contributed to the transformation of the state’s traditional approach to private firms. The effectiveness of the state’s traditional approach to its economy and private firms has waned. |
| Failure of the state | The expectation for the governments to address societal problems in developed countries exceeded the actual capacity of the governments. |
| NPM (New Public Management) | The rise of NPM challenged the traditional approaches of the state in the developed world and brought a shift from government based on direct service provision with top-down bureaucracy to government with fragmented segmentation providing the services through private sector suppliers by contracting and privatisation. |
| Social change, increasing complexities, new source of governance, and legacy of traditional political accountability | The more complicated nature of society, such as blurring the public-private sector boundaries, rendered the policy making process to seek alternatives to the previous approach. The complexities are contributed by the emergence of new public actors such as enhanced local governments and regional organisations such as the European Union. The emergence of new societal actors such as the NGOs brought a challenge to the traditional chain of accountability through democratically elected officials; they struggle to be represented through the traditional chain of accountability designed for the traditional societal actors. |

This set of challenges to the state led the state to adapt to its new environment and change to the state’s internal and external power relations with key actors. The adaptation has undermined the previous mode under which the governing system was controlled by government and prompted the new governing system in which networks of relevant actors play a major role in policy making. The changes also prompted the political science literature to re-examine the governing system, employing the term ‘governance’ instead of the previous focus on ‘government’.

## 3.3 The evolution of the governance literature: debating governance

The dominance of the state in the period before the 1970s brought the government to the centre of the debate as a key concept; it was the government which was supposed to govern and solve societal issues with the government’s expanding projects and budget rather than the system of governance. The decline of the government’s traditional approach from the 1970s brought back ‘governance’, whose origin was an old French word ‘*gouvernance*’ in the fourteenth century, in the focus of interest to explain the state’s adaptation in response to the challenges outlined above (Pierre and Peters 2000 p.1, p.18).

The concept of governance emerged as a new vehicle to address the changing politics and society. It has been debated by a wide range of literature; for instance, Hirst (2000 pp.14-9) introduces five versions of governance literature: the group related to development economics (e.g. World Bank 1997), that related to international institutions and regimes such as those about governance through international organisations (e.g. Rosenau and Czempiel 1992, Krasner 1983, Strange 1996), the literature about corporate governance (e.g. Roe 1994, Archer 1995, Dahl 1985), that about NPM (e.g. Osborne and Gaebler 1992), and the literature related to the new practices of coordinating activities through networks, partnerships, and deliberative forums, which took over the role of the state until the 1970s (e.g. Rhodes 1997).

Elsewhere, another typology is proposed based on the focus of research frameworks: state centric (‘old’ governance) or society centric (‘new’ governance) (Peters 2000 p.36, Pierre 2000 p.3, Richards 2008 pp.96-8):

* what extent the state has the political and institutional capacity to steer and how the role of the state relates to the interests of other influential actors (state centric or ‘old’ governance) (e.g. Rose 1978, Boven 1990). This perspective focuses on the responses of the state to its challenges; and
* the coordination and various forms of formal or informal public-private interaction, such as policy networks (society centric or ‘new’ governance) (e.g. Kooiman 1993, Rhodes 1997). This perspective focuses on the network of actors to formulate policies responding to the challenges described by the above.

Among the literature based on this approach, Richards (2008 p.96) proposes a framework to analyse the British state’s reconstituting process under New Labour, the summary of which is in Table 3.2. Similar to Peters’ (2000) and Pierre’s (2000), he categorises two dominant approaches within the literature of the ‘hollowed-out state’ thesis and the ‘reconstituted-state’ thesis (pp.97-8):

* the ‘hollowed-out state’ thesis which avers that the nature of state transformation is best understood as a transition from a Weberian, hierarchical model to a complex mix of markets, networks, and hierarchies. Whitehall has seen its power eroded through a process of hollowing-out, so undermining its capacity to impose control on policy.
* the ‘reconstituted-state’ thesis also accepts that forces such as globalisation, marketisation, and NPM have transformed the nature of the state, but argues that the asymmetrical, structural position of the core executive, relative to other actors in the policy process, ensures it is strongly placed to respond to these forces. State transformation has not merely constrained the core executive, but has also presented opportunities. The relationship between state change and the response of the core executive is understood as contingent and interactive. The core executive possesses both the resources and strategic-learning 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.97-8, see also Marsh et al 2001, 2003). This school sets out the asymmetric power model, in which the core executive has asymmetric power in relation to other societal actors based on the fact that the government has a unique set of resources – force, legitimacy, state bureaucracy tax-raising powers and legislation – which are unavailable to other actors (Marsh et al 2003 p.248).

#### Table 3.2: Competing narratives of governance (based on Richards 2008 p.96)

|  |  |  |
| --- | --- | --- |
|  | Governance narrative 1  the ‘hollowed-out’ state thesis | Governance narrative 2  the reconstituted-state thesis |
| Literature | Hollowed Out State (Rhodes 1996, 1997; Rhodes et al 2003)  ‘Modern Governance’ Approach (see Peters 2000) | ‘Re-constituted State’ (Marsh et al 2001, 2003; Richards and Smith 2002)  ‘State-Centric’ Approach (see Peters 2000) |
| Forces of governance | Globalisation, internationalisation, NPM, Neo-liberal reforms, Devolution etc. | Globalisation, Internationalisation, NPM, Neo-liberal reforms, Devolution etc. |
| Nature of policy-making arena | Multiple actors across a variety of terrains | Multiple actors across a variety of terrains |
| Nature of policy implementation | Multiple service delivery | Multiple service delivery |
| Organising perspective of the political system | Differentiated polity (Rhodes 1997) | Asymmetric polity (Marsh et al 2003) |
| Impact on state power | Oligopoly of the political market place - neo-pluralist | Concentrated - elitist |
| Impact of change on the core executive | Core executive power eroded by state transformation | Core executive power sustained by strategic response to state transformation |
| Reform of Whitehall under New Labour | Elite failure to recognise extent of differentiation – reforms therefore premised on a misconceived diagnosis. | Attempts to reinvigorate the Westminster model (WM2) while enhancing autonomy for policy delivery agents (NPM2) |

The approach of the reconstituted state thesis offers a potentially insightful analytical framework for this thesis. Exploring the transformation of the Japanese state in regulation directly relates to the state’s political and institutional capacity to steer and the role of the state vis-à-vis the interests of other influential actors. This thesis has clear parallels with Vogel (1996) in which key state actors in the UK and Japan pursued a range of regulatory reforms. This position draws from the view that state actors are in an asymmetrically advantageous position through the fact that the state makes its decisions within the close circle of core state actors (the core executive) (Vogel 1996 pp.18-9). Together with a common political characteristic shared by Japan and the UK as parliamentary democracies, this asymmetric nature of the core executive in these two countries offers a justification for this thesis drawing its analytical framework from Richards (2008) and Marsh et al (2003). Therefore, referring to the specific political conditions of Japan and the UK presented above, this thesis transfers and employs the framework proposed by Richards (2008) and Marsh et al (2003) as the basis of its exploration.

Within this broad analytical framework emerge the following two concepts as key for the theme of this thesis: the core executive and the regulatory state. The concept of the core executive captures the central government and its broader policy making context by widening the focus of central government studies and applying a range of conceptual and theoretical approaches to the core executive (Smith 1999 p.4). As Table 3.2 reveals, the concept of the core executive is a vehicle to capture the fluid and relational nature of power through observing how the power of actors has changed in the transformative process of the state. Another analytical tool for this thesis is the concept of the regulatory state, which is key for exploring regulation and governance (Jordana and Levi-Faur 2004). Regulation has played a significant role in the transformative process of the state vis-à-vis market; the reconstituted state has employed it as a key tool to steer the market and society (Peters 1996 p.6, Sorensen 2004 pp.31-9, Richards 2008 pp.121-2, Vogel 1996). The increasing usage of regulation is a core characteristic of the reconstituted state in relation to society (Smith 2009 p.171); exploring the development of regulation in specific cases offers an approach that can explain the key characteristics of the reconstituted state. As such, the next section provides an overview of these two key concepts.

## 3.4 Approaches to governance: the core executive and the regulatory state

### 3.4.1 The core executive

The concept of the core executive emerged in the critiques of the Westminster model within the British political science literature (Smith 1999). An early conceptualisation aiming at the core of the state machinery includes Madgwick (1991), who employs ‘the Central Executive Territory’ as a term referring to ‘the complex of Prime Minister, Cabinet, committees, Cabinet Office, Prime Minister’s Office, with attendant ministers, advisers and officials’ in the UK (p.5). Similarly, 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 (1995b), 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). Rhodes’ (1995b) characterisation avers (p.12):

In brief, the ‘core executive’ is the heart of the machine, covering the complex web of institutions, networks and practices surrounding the prime minister, cabinet, cabinet committees and their official counterparts, less formalised ministerial ‘clubs’ or meetings, bilateral negotiations and interdepartmental committees. It also includes coordinating departments, chiefly the Cabinet Office, the Treasury, the Foreign Office, the law officers and the security and intelligence services.

The scope of the core executive is outlined by Smith (1999 p.5), who adds departments in the core executive for the following two reasons: ‘they are the core policy-making units within central government; and they are headed by ministers who are key actors within the institutions of the core executive’.

The analysis of the core executive started from the critique to the previous approach focusing on relative power of the key positions such as the Prime Ministers and Cabinet and their incumbents in the studies of the British executive (Rhodes 2007 p.1247). Smith (1999 p.11) argues that the characteristics of the previous model (Westminster model) is institutional, behavioural, and constitutional, which views power as observable. In the Westminster model power belongs to a particular actor or institution such as in the cabinet or the Prime Minister or the civil service (Smith 1999 p.13). This point is criticised by Smith (1999 p.13) in the following:

While providing important empirical material, their analysis remains within the framework of the constitution and they fail to explicate their definition of power. Consequently, the conception of power is both crude and static. Power is ascribed to an institution or person and fixed to that person regardless of the issue or the context. Power may move from the Prime Minister to the cabinet over time, but it is not seen as fluid within a particular situation. Moreover, there is almost no consideration of how actors relate to their structural situation or how relationships vary across time.

Smith (1999 p.13) also highlights as another problem the previous model’s primary emphasis on actors’ personality and individual volition. Because too much attention is placed on key figures and their dependency, other important issues such as institutions are left behind (Smith 1999 p.14).

The analysis of power based on the Westminster model in British political science literature has a parallel to that of the previous literature on Japan. For example, Johnson (1982) presumes that power is located within key state actors such as the MITI (Ministry of International Trade and Industry) and LDP (Liberal Democratic Party) politicians. The counter theses to Johnson (1982) such as the pluralist literature (e.g. Muramatsu and Krauss 1987) and the rational choice literature (e.g. Ramseyer and Rosenbluth 1993) do not challenge on this point. Their analysis focuses on bargaining processes (pluralist) or rational choices and preferences (rational choice). This group of literature highlights observable power with the evident foundation such as formal and informal institutions, political contexts, and personality. Their analysis of power is static rather than fluid; for example, I’io (2007) proposes his bureaucratic Cabinet system by analysing the power relations between civil servants and party politicians based on the LDP’s established internal rules under the LDP governments, leaving interdependent relationships between civil servants and party politicians untouched. Although this approach reveals the persistent strength of civil servants within the core executive, it fails to highlight the interdependent nature of the relationship between civil servants and party politicians within the core executive.

The concept of the core executive emerged as an alternative to the Westminster model and its criticisms (Smith 1999). Behind this concept are a different perspective to power and an intention of bringing institutions back in the debate (Rhodes 2007 p.1247).

The former is clearly set out by Smith (1999 p.14): ‘(p)ower has to be seen as fluid and relational, not static. In that sense, power does not lie anywhere within the system because it is everywhere – all actors have resources, and the outcomes need to be negotiated’. Power under this concept is based on resource dependency; any actor in the core executive needs others’ resources to achieve its goal because none of them monopolises resources (Smith 1999 p.35). This view on power implicates that power is relational between actors, fluid, and unpredictable; power is determined through negotiations within the complex nexus of the core executive, in which many causes and interactions will affect outcomes (Smith 1999 pp.35-6).

This view on power about the core executive actors contrasts with power between the core executive actors and societal actors. The key to understanding the difference is the concept of networks within the system of governance. The core executive after the 1980s has operated through networks within and between various elements of the state and civil society rather than formal institutions (Smith 1999 p.251). The nature of networks between the core executive and society is different from that within the core executive (Smith 1999 p.251):

When we are analysing a closed policy community between a department and a pressure group, we are often looking at a particular power relationship. This type of network is a mechanism for excluding certain groups and defining policy issues in a particular way. Therefore, the policy community is constituting a particular power relationship and the nature of the relationship can explain policy outcomes.

Elsewhere, because the core executive actors do not walk away from their own network, the nature of power and resource dependency within the core executive is different (Smith 1999 p.251):

They (networks within the core executive) describe the relationships of dependency that exist between various actors and institutions within the central state. Because the actors within the core are playing by certain rules of the game, they cannot, within this universe, be excluded from the network. Therefore, the networks are less often about power relationships. In these circumstances, the nature of power is analysed not through the network but through the degree of resource dependency between actors, because in most cases actors cannot be removed from networks.

Smith (1999 p.251) concludes that what is important is not being a member of networks within the core executive but what the nature of the dependency is between actors within the networks; this makes networks within the core executive fluid. This framework offers a view that the core executive has asymmetric relationships with society based on power relations, while the relationship within is fluid and resource dependent. It is dominant in relation to societal actors, and resource dependent within itself.

The latter is understood as analysing the core executive in terms of structure and agency. The flux nature of structure and agency enables researchers to capture the fluid nature of the state (Smith 1999 p.30). In Rhodes’ (2007 p.1247) words:

Instead of such a positional approach, the executive can be defined in functional terms. So, instead of asking which position is important, we can ask which functions define the innermost part or heart of British government? The core functions of the British executive are to pull together and integrate central government policies and to act as final arbiters of conflicts between different elements of the government machine. These functions can be carried out by institutions other than the prime minister and cabinet; for example, the Treasury and the Cabinet Office. By defining the core executive in functional terms, the key question becomes: ‘Who does what?’ (Rhodes 1995b).

The core executive model by Smith (1999) is based on the framework in which actors are analysed within their structural contexts exploring the terrain actors operate in and the choices they make (Smith 1999 p.244). To clarify his analytical framework, Smith (1999) highlights his key actors’ respective resources, terrains, and constraints, the points of which are summarised in Table 3.3. Within Smith’s (1999) analytical framework a dialectic relationship can be observed between structure and agency; actors reproduce structures, whereas the structures are created by agency. Actors in Smith (1999) are dependent on each other rather than compete. They aim at achieving their respective goals through the process of acquiring necessary resources from others. This process depends on the contest and the choices of strategies and tactics of the actors within the limitation of the external politico-economic context (Smith 1999 p.246).

#### Table 3.3: The structural terrains of the core executive actors (based on Smith 1999 p.32, pp.244-6)

|  |  |  |  |
| --- | --- | --- | --- |
|  | Prime Ministers (PMs) | Cabinet Ministers (CMs) | Civil servants |
| Resources | Patronage  Authority  Political support/party  Political support/electorate  PM’s Office  Bilateral policy-making | Political support  Authority  Department  Knowledge  Policy networks  Policy success | Permanence  Knowledge  Time  Whitehall network  Control over information  Keepers of the constitution |
| Terrain | the apex of government | Department | the confines of loyalty to CMs |
| Constraints | those of cabinet, party and the outside world | departmental rules/values/ institutions, cabinet colleagues, those imposed by the PMs and the outside world | the constitution and its enveloping myths |

It should be noted that the concept of the core executive is not a synonym for the state, although the specific nature of ICT regulation and antimonopoly regulation makes the scope of the core executive in this thesis similar to that of the state; in both sectors, policies formulation and implementation involve a single regulating organisation together with relevant party politicians, and no non-core state actor exists. The core executive is the heart of the machine, where typically, key decisions are formed. Exploring how the core executive has changed reveals how the state has been transformed. However, revealing the change of the core executive does not directly explain the transformation of the state. The core executive is a key analytical concept to explore the state; by exploring the actors and structure within the core executive and the networks involving the core executive actors and their societal counterparts, research can explore how the state has been transformed.

The concept of the core executive, while originally developed and applied to the British case, has subsequently been applied to the analyses of countries outside the UK (Peters et al 2000, Elgie 2011 p.64). An example of applying the core executive model to other countries is Itou (2006), who brings this concept in the Japanese case in the 1990s and 2000s. According to him (p.11), the core executive model suits the Japanese case because the Japanese government’s decision making system is composed of two closely connected arenas (the incumbent party arena and the executive arena), both of which are decentralised and interdependent from each other. Analysing LDP governments, what Itou (2006) highlights is the degree of power commanded by the LDP politicians outside the Cabinet together with their counterparts in the Cabinet, and the close interaction between these two groups within the LDP administration. Based on the definitions of Rhodes (1995b) and Smith (1999), Japan’s core executive in his analysis includes Prime Ministers, Cabinet (Cabinet Ministers), and senior civil servants in the government, together with factions, three key positions (Secretaries-General, Chairmen of the General Affairs Council, and Chairmen of the Policy Affairs Research Council (PARC)), and *Zoku Gi’in[[27]](#footnote-27)* of the LDP.

Elsewhere, Kamikubo (2010) explores the comparative politics of international monetary policy making in Japan and China, based on the analytical framework of Rhodes (1995b) and Smith (1999). His core executive in Japan is Prime Ministers, responsible Cabinet Ministers (the Finance Ministers and the Cabinet Ministers responsible for monetary issues), civil servants (the Ministry of Finance (MOF), the Financial Services Agency), the Bank of Japan (BOJ), and key LDP figures (pp.5-6). Kamikubo’s (2010) core executive in Japan can be viewed as a variation of Itou’s (2006) specialising in the international monetary sector.

The approach by Itou (2006) and Kamikubo (2010) employs the concept of the core executive based on their understanding that the Japanese state actors are decentralised and interdependent of one another. They do not simply apply the analytical framework in British political science to the Japanese cases without consideration of Japan’s specific political contexts – so avoiding accusations of ‘conceptual stretching’ (see Sartori 1970) [[28]](#footnote-28); rather, they transfer the concept of the core executive that originated in the UK to the Japanese case based on their analysis of Japan’s political tradition.

In pulling the above together, what emerges is the generalisability the concept of the core executive has. Drawing from the British politics studies in the 1980s and 1990s, the concept of the core executive is a useful vehicle to capture the fluid power relations between the actors and the interactions between structure and agency. At the same time, employing this concept needs a consideration on the specifically suitable scope of the core executive for the case of research. Rhodes (1995b p.12) defines the components of the core executive as the Prime Ministers, Cabinets, Cabinet Committees, and their official counterparts, and coordinating departments such as the Cabinet Office, the Treasury, the Foreign Office, the law officers, and the security and intelligence services. Taking account of the fact that some policies do not involve all the members of the government, this definition is rather crude and inflexible; for instance, the policies related to the NHS (National Health Service), one of the UK’s key domestic policy issues, will barely involve security and intelligence services. Instead, the UK Department of Health is heavily involved in policy making together with the Treasury. Elsewhere, Smith’s (1999) definition allows more flexibility to embrace relevant actors by embracing departments in the core executive.

To respond to this case specific characteristic of the core executive, this thesis argues for recognising the polymorphous nature of the core executive. Some important actors in one field (e.g. intelligence services in counterterrorism) have few roles in other fields (e.g. the UK’s NHS, domestic antimonopoly regulation). An example can be found in Kamikubo (2010), whose core executive includes specialised public organisations (MOF, BOJ) together with the core of the core such as the Prime Ministers.

Based on the above consideration, this thesis sets out its definition of the core executive referring to commentators such as Rhodes (1995b), Smith (1999), Itou (2006) and Kamikubo (2010), but adding the points they fail to offer; it is all those organisations and procedures which coordinate central government, and act as final arbiters of conflicts between different parts of the government machine, the exact scope of which is determined by the specific nature of the targeted sector. The scope of the core executive includes the core machine of the central government, with its polymorphous nature responding to the specific conditions of the focused sector; if it is explained with a concrete example, Japan’s National Police Agency is a member of the core executive in Japan’s anti-organised crime policy, but is not a core executive member in its consumption tax policy. This thesis explicitly sets out the polymorphous and flexible nature of the core executive within its case study chapters, which is not clearly presented by the previous literature such as Rhodes (1995b), Smith (1999), Itou (2006) and Kamikubo (2010). What is actually included by the core executive in the case study chapters of this thesis is revealed by Table 3.4.

#### Table 3.4: Member of the core executive in this thesis

|  |  |
| --- | --- |
| ICT regulation | Antimonopoly regulation |
| * Prime Ministers * responsible Cabinet Ministers and other politically appointed officials * civil servants (MPT/MIC[[29]](#footnote-29)) * key party politicians (e.g. LDP’s *Zoku Gi’in*) | * Prime Ministers * responsible Cabinet Ministers and other politically appointed officials * Chairmen and Commissioners (JFTC[[30]](#footnote-30)) * civil servants (JFTC) * key party politicians |

Politically appointed officials (Prime Ministers, Cabinet Ministers, Parliamentary Vice-Ministers[[31]](#footnote-31), Senior Vice-Ministers, Parliamentary Secretaries) are in the position to be involved with policy making, although to what extent is dependent upon the context, resources and personality. Chairmen and Commissioners of the JFCT are in a similar position to politically appointed officials. Civil servants responsible for the fields (ICT regulation, antimonopoly regulation) are key actors involved in policy making and implementation. Other important actors are key party politicians outside the Cabinet. Because the LDP’s internal examination to important policy issues such as government’s bills was a norm under Japan’s LDP regime, key party politicians, those in the LDP in particular, obtained a significant influence over policy making. The detail of this mechanism is elaborated in the case study chapters (Chapters 5 and 6).

The next section turns to another key concept for the case studies which focuses on governance and regulation: the concept of the regulatory state.

### 3.4.2 The regulatory state

The ‘regulatory state’ is strongly embedded within the American literature (e.g. Seidman and Gilmour 1986, Sunstein 1990, Rose-Ackerman 1992), as Johnson (1982) demonstrates in Chapter 2. This reflects the fact that the regulatory function has been a more important key function for the US state than other elements such as the redistribution function and stabilisation function (Majone 1996 p.55[[32]](#footnote-32)).

According to Levi-Faur (2012 p.17), the notion of the regulatory state emerged most visibly in James Anderson’s ‘*The Emergence of the Modern Regulatory State*’ (1962), although he failed to define or conceptualise the term. By the end of the 1970s the regulatory state was portrayed as a command and control or a hierarchical and progressive state that emerged at the federal level towards the end of the nineteenth century (Levi-Faur 2012 p.17).

This trend was adapted by Seidman and Gilmour (1986), who describe the regulatory state not as a notion related to the expansion of the federal administration in the progressive period nor the result of the social movement against big business but as that closely connected to outsourcing and privatisation (Levi-Faur 2012 pp.17-8). Seidman and Gilmour (1986) utilise the regulatory state as a concept explaining the change brought by the Reagan Administration (Levi-Faur 2012 p.18).

Their conceptualisation of the regulatory state as an explanation of a paradigm change (from a positive state to a regulatory state) was followed by Majone (1991, 1994, 1997). His conceptualisation is similar to Seidman and Gilmour (1986): a regulatory state prioritising administrative and economic efficiency. Majone argues for the emergence of the European regulatory state responding to the limitation of taxing and spending in the European Union (Levi-Faur 2012 p.18). According to Levi-Faur (2012 p.18), Majone’s regulatory state is a neo-liberal state concentrating on correcting market failures.

Indeed, associating the concept of the regulatory state with neo-liberal ideology and policies has become common (Jordana and Levi-Faur 2004 pp.9-10). Jordana and Levi-Faur (2004 p.1) highlight the fact that from the 1980s, when the governments influenced by neo-liberalism were emerging in the developed world, the literature identified the emergence of the regulatory state outside the US. The regulatory state in this perspective is a mode of the modern state which stresses the use of authority rules and standard-setting and partially displacing its previous focus on public ownership, public subsidies, and direct service supply (Jordana and Levi-Faur 2004 pp.8-10). What can be recognised in the emerging regulatory state is the intimate relationships between new (or previously not widely used) and refined regulatory instruments and the development of regulatory institutions that operate them (Jordana and Levi-Faur 2004 pp.8-9). Scott (2004 p.148) argues that the concept of the regulatory state, whose key trends are summarised in Table 3.5, has been developed to distinguish an emerging mode of governance from the practices and institutions of the welfare state.

#### Table 3.5: The key trends of the regulatory state and the welfare state by Scott (2004 p.148)

|  |  |
| --- | --- |
| Welfare State | * The instruments of public ownership, direct state provision of benefits and services. * The integration of policy-making and operational functions. |
| Regulatory State | * The separation of operational from regulatory activities in some policy areas (sometimes linked to privatisation). * Separating purchasers and providers of public services (through policies of contracting out and market-testing). * The separation of operational from policy tasks within government departments * The creation of executive agencies. |

The regulatory state remains a contentious notion. It can be referred to at the national level (e.g. Moran 2003 about the British state), and also at the supranational level (e.g. Majone 1996 about the European Commission). It is significantly affected by the structure (e.g. the characteristics of the focused sector, the context of the cases (i.e. multiple mode of regulation can co-exist), existing institutions, and national contexts.) (Jordana and Levi-Farr 2004 p.9). One element of the literature (Scott 2004) regards the regulatory state as the next mode of the state to the welfare state (see Table 3.5), and in so doing proposes regime change models. Others offer more complex accounts; for example, Moran (2003) describes the emergence of the British regulatory state as an incomplete reconciling project of modernising the old British state with confrontations to traditional elites (pp.179-80). Braithwaite (2000) tries to solve this complexity by employing the term ‘new regulatory state’. Based on the assumption that the regulatory state already existed before the 1970s, he proposes the notion of a new regulatory state, which focuses on steering based on rules at distance (Levi-Faur 2012 p.19). This new regulatory state is characterised by the decentring of the state, relying on self-regulatory organisation, enforced self-regulation, compliance systems, codes of practice and other responsive techniques that substitute for direct command and control (Levi-Faur 2012 p.19).

The contention about the exact nature of the regulatory state may be sustained because many countries in the world have been in the process of shaping their respective regulatory states after the 1980s. What the majority of the literature recognises is the emergence of new state forms which sometimes extend their sphere of influence beyond those which operated in an area of the modern state. In this way Levi-Faur’s (2012 pp.19-20) simple definition of the regulatory state is useful; he defines the regulatory state as: ‘a state that applies and extends rule making, monitoring and enforcement either directly or indirectly’. This thesis employs the definition of Levi-Faur (2012) because of its generalisability and flexibility for analysing the state’s relationship with society (private firms). At the same time, the group of literature focusing on the regulatory state has failed to offer an account of how the differences of each regulatory state can be explained. This is what this thesis tries to offer with its analysis of the case studies.

Taking account of the discussion above, the next two sections sketch the nature of regulation and the regulatory traditions of the UK and New Zealand. In so doing, in comparative terms, this offers potential insights in studying the Japanese case, particularly in regards to the perceived exceptionalism associated with the Japanese regulatory tradition. Here, the United Kingdom offers a comparative fit with Japan; both countries have significant but not dominant sized economies and started privatising the ICT sector in the 1980s. Their antimonopoly regulation emerged after 1945. These similarities contribute to revealing potential generalisable features alongside the different political traditions of these two countries, although importing the British framework to the Japanese case without consideration such as directly applying a particularistic British approach to the Japanese case is problematic; for instance, trying to appraise the nature of the Japanese regulator with a perspective based on the concept of the British style independent regulator can fall into the trap of concept stretching (Sartori 1970), because the creation of British style independent regulator resulted from the UK’s unusual political conditions in the 1980s (e,g. the existence of the previous organisational example of the Office of Fair Trading (OFT), the fact that no government organisations including the OFT agreed to accept the role of the Telecommunications regulator during the privatisation of BT (Vogel 1996 p.82, Moran 2003 p.106)) and importing the model of the British style independent regulator has not universally been accepted – for example, transferring the model of British style independent regulator encountered institutional problems such as the difference in legal tradition in the German telecommunication sector (Döhler 2003 p.110) and major German independent agencies such as the Federal Cartel Office and RegTP (Regulatory Agency of Telecommunications and Postal Services) were legally subject to supervision and instruction from ministries unlike their British counterparts (Thatcher 2003 p.127). The example of New Zealand offers another reference with its radical approach of deregulation in the 1980s called the ‘New Zealand experiment’ (Kelsey 1995 p.1).

### 3.4.3 An example of the regulatory state 1: the United Kingdom

In the UK the regime of antimonopoly regulation offered a prototype of the regulatory framework in other sectors including ICT. The fact that the Office of Fair Trading (OFT) became a model for the regulatory organisations in other regulatory sectors (Moran 2003 p.106, Vogel 1996 p.82) makes the UK’s antimonopoly regulation a key element of the British regulatory system today. The UK’s approach to antimonopoly regulation was restrained by its tradition on business regulation; what emerges in Britain’s antimonopoly regulation is an outcome of the compromise between the UK’s political tradition and gradually increasing demand for antimonopoly regulation (Moran 2003 p.95-123).

The OFT offered a blueprint to the development of other regulatory organisations. The Office of Telecommunications (Oftel) was established in 1984 as the telecommunications regulator based on the institutional framework of the OFT (Moran 2003 p.106, Vogel 1996 p.82).

Britain’s approach to regulation was significantly affected by the regulatory reforms initiated by the Conservative government (1979-90), although it was more piecemeal than coherent (Moran 2003 pp.100-1). According to Moran (2003 p.101): ‘the early critical privatization – notably British Telecom (BT), which was to establish a widely copied regulatory template – happened in an ad hoc fashion under intense pressure of time’. The regulatory reform was mobilised for two reasons; the significantly unresponsive public ownership prompted the proponents of the regulatory reform to choose a radical choice and the fiscal crisis of the state in the early 1980s made the government utilise the revenue by privatisation to conceal: ‘the fact that an administration committed to rolling back state spending was actually presiding over rising spending’ (Moran 2003 p.101). The nature of the resulting regulatory regime was complicated. According to Moran (2003 p.120) the adopted mode of regulation had two characteristics: ‘a distinctly modernist attempt by Littlechild to create an open, transparent world of non-discretionary regulatory decisions guided by fixed rules; and the very different attempt by the official creators in Whitehall to replicate as much as possible of the old discretionary and informal world that had privileged insiders in the club system’.

This contradictory set of characteristics created the following challenges (Moran 2003 p.108). First, Littlechild’s price formula (RPI (Retail Prices Index) - X[[33]](#footnote-33)) created a new problem of how X should be set, and whether and how additional ‘+Y’ should be set (Moran 2003 p.108). This provoked a political dispute, which Littlechild’s price formula intended to avoid (Moran 2003 p.108). The result of this trend was the shift to a more open, formal system of politics, as described by Thatcher (1997 p.139 in Moran 2003 p.109):

The closed regulatory game of the pre-privatization era has given way to a more open and public one, with more participants, a higher degree of formalization of decision-making processes, greater public availability of information, more open conflict and complex manoeuvres involving ministers, the DGs, former monopolists, new entrants, consumer bodies and the MMC[[34]](#footnote-34).

The impact of emerging regulators has been significant. With a wide range of regulatory institutions emerging from privatisation, the growth of the regulators has also created a new community of regulators (Moran 2003 p.110). Moran (2003 pp.109-113) argues that regulators tended to share bureaucratic concerns together and the development of regulatory institutions rendered regulators to prioritise social obligations such as universal service, marginalising the initial object of economic efficiency. Elsewhere, the case of the water industry reveals the dominance of Ministers; it was the Secretary of State who actually decides whether or not the MMC’s recommendations about the regulated firms’ complaint to the regulator’s (OFWAT: Office of Water Services) decisions on price setting would be accepted (Maloney 2001 p.631).

Overall, Britain’s regulatory state since the 1980s can be characterised by the growth in regulatory bodies mobilised by privatisation. ‘The privatisation movement in Britain … provided the main impetus for the growth of economic regulation in the last two decades of the 20th century and the early years of the twenty first century’ (House of Lords 2007 p.16). At the point of 2010-11, fifty six national regulators were on duty in the UK (Department for Business, Innovation & Skills 2013). Based on the institutional framework in antimonopoly regulation (OFT) and ICT regulation (Oftel), the British regulatory state has deployed a sphere of its independent regulators as the key tool for regulation. Britain’s independent regulators have also adapted to the challenges; they have become transparent and open and developed a significant scale of outreach. Their relationship with politics has been awkward; critics highlight their nature as cosseted bureaucracy which lacks democratic accountability (e.g. Norton 2004, The Register 2009). Also, the nature of independence seems under Ministers’ implicit discretion; for example, two British railway regulators (the Strategic Rail Authority and the Office of the Rail Regulator) were marginalised in the decision making process in the financial crisis of Railtrack in 2001 (Moran 2003 p.117):

Perhaps the most remarkable feature of the way the crisis was tackled in the autumn of 2001 was the extent to which both were left on the sidelines. Although the dispute surrounds the actual terms of a critical meeting between the Secretary of State and the Rail Regulator when the Secretary had decided to put Railtrack into receivership, what is undisputed is that the Rail Regulator had simply no control over this decision: he was just told of it after the event. The same was true of the Strategic Rail Authority. Indeed, the Head of the Authority believed that the notion of an independent regulator had become fiction: ‘almost every breath we draw has to be cleared by Ministers’.

This exemplifies the dominant position of party politicians (Ministers) in the key decision making process of the crisis.

The case of Britain’s regulatory state reveals an adaptation by the core executive through establishing the independent regulators. They have enabled Britain’s core executive to retain its dominance in the sphere of regulation.

### 3.4.4 An example of the regulatory state 2: New Zealand

New Zealand offers an example of a significant scale of deregulation in the 1980s. Its reforms reflect one of the most comprehensive programs of economic retrenchment in OECD (Organisation for Economic Co-operation and Development) countries of the period (Evans et al 1996 p.1860).

The impact of New Zealand’s reform significantly changed its ICT regulation and antimonopoly regulation by merging the two together with privatising the Telecom Corporation of New Zealand (Telecom), which was formed as a State Owned Enterprise (SOE) through the separation of the former telecommunications department of New Zealand Post Office in 1987. New Zealand adopted a reliance on the general competition law to regulate the telecommunications industry, including resolving the disputes on telecommunications network interconnection charge, which were dealt with by sector specific regulators in many other developed countries (Patterson 1998 p.134). Because of New Zealand’s atypical regulatory approach called ‘light-handed regulation[[35]](#footnote-35)’ (e.g. Evans et al 1996, Patterson 1998, Howell 2008, 2010) analysing New Zealand’s case offers an unusual example shared by few developed economies. The key tool here is the Commerce Act, which oversees both antimonopoly regulation and ICT regulation. What is exposed is the New Zealand government’s distrust of regulation as a tool to control industry and the reliance of Telecom’s good will with few preconditions.

The reform transformed the Commerce Act. The 1975 Commerce Act retained the provision prioritising a group of aims such as consumer welfare and public interest (Kelsey 1995 p.91). This provision was simplified as ‘an Act to promote competition in markets’ by the replacement in 1986 (Kelsey 1995 p.91). The implementation of antimonopoly regulation was lenient to business. The key ideology for New Zealand’s antimonopoly regulation in the reform period (the 1990s) was the ‘contestability approach’ which is described by the then Commerce Commission member and Fletcher Challenge director Kerrin Vautiers: ‘(v)arious collusive or contractual arrangements may be necessary to compete efficiently in a market, especially in view of information and transaction costs under conditions of uncertainty. The risk that such arrangements may diminish consumer welfare is minimised in reasonably accessible markets’ (Kelsey 1995 p.90).

The approach of light-handed regulation reliant on the trust in big business’ good faith confronted a significant challenge in the 1990s. Patterson (1998 p.150) argues that what emerged in New Zealand’s telecommunications market was not the introduction of competition but integrated dominance. He describes New Zealand’s approach as ‘hands off’ rather than light-handed, highlighting its nature that regulation about network interconnection relies on the incumbent operator’s good will with no mechanism to resolve the disputes. Under this framework: ‘the network owner becomes the de facto regulator, and the policy can rightly be described as a monopolist’s charter’ (Patterson 1998 p.150).

The 2000s saw the change of New Zealand’s regulatory policy trend. The 2001 amendments to the 1986 Commerce Act by the Labour-led government challenged the previous efficiency oriented approach by reintroducing a consumer welfare approach to competition law (Carter 2008 p.25). The enactment of the Telecommunications Act 2001 and subsequent establishment of the Telecommunications Commissioner within the Commerce Commission exemplifies New Zealand’s policy change from the framework based on the 1986 Commerce Act to re-regulation (Carter 2008 p.46). The 2001 Telecommunications Act introduced a new regulatory framework, in which the new regulator administers the interconnection disputes, which was a major topic of telecommunications regulation debates in the 1990s (Carter 2008 p.48).

The major vehicle mobilising New Zealand to economic reform can be explained by three points: the emergence of elites influenced by the US Chicago school of economics, the electoral system in which a single majority party could easily dominate political processes, and the economic crisis before 1984 (Kelsey 1995 pp.29-55).

Key government organisations in New Zealand such as the Treasury and the Reserve Bank were significantly influenced by the Chicago School from the 1970s (Kelsey 1995 pp.54-5). A key characteristic of the US influence in New Zealand was that theories and applied economic research of a particular school of economics tended to be directly introduced with little filtering by New Zealand’s own economic researchers (Easton 1989 p.88, Kelsey 1995 pp.53-4). Achieving the dominance of the Chicago school of economics within a key government organisation was the major driver of mobilising economic reform (Kelsey 1995 pp.50-1). By government change from National to Labour in 1984, key government organisations achieved a consensus on the needs of economic reforms (Kelsey 1995 p.53).

The perspectives of the elites in government organisations were put into practice through New Zealand’s political system in the 1980s: the single-house, first-past-the-post, two party system, under which the election winner controls policy. The cabinet could dominate decision making in the caucus by having a strategic ratio of Cabinet Ministers to MPs together with a party whips system, which moves the MPs in line with the party executive’s line (Kelsey 1995 p.42). ‘A small number of ministers dominated the Cabinet, the Cabinet dominated the caucus, and the caucus dominated the Parliament’ (Kelsey 1995 p.42). Under this framework key proponents of economic reforms such as Roger Douglas[[36]](#footnote-36) and Ruth Richardson pushed their reform policy (Kelsey 1995 pp.42-3).

Another factor prompting New Zealand to employ the economic reforms was the economic crisis before the government changed in 1984[[37]](#footnote-37). This crisis prompted elites in New Zealand to think that radical reform was necessary to revitalise their country (Kelsey 1995 p.29).

In pulling the above together, what emerges is the atypical nature of New Zealand’s regulatory state. After 1984 it prioritised economic efficiency, regarding regulation as a problematic tool of control distorting the economy and market rather than a new approach to the economy. New Zealand’s elites employed a strategy of stripping the state’s regulatory instruments, letting private firms operate, and reducing state power. The state was perceived to be hollowed out in regulation. The result was the emergence of a private monopoly in privatised sectors such as ICT, in which a failure of this light-handed regulation emerged through network interconnection disputes.

The power of the core executive has been dominant. Key government organisation officials have led the economic reform initiatives (Kelsey 1995 pp.46-68). Party politicians steered the processes of implementing reform programmes, which were not always popular (Kelsey 1995 pp.28-45). Under the asymmetric dominance of the core executive New Zealand has realised the true retreat of the state from its regulatory front in antimonopoly regulation and ICT regulation. The approach typically observed in ICT regulation was different from any other countries: ‘… to be a leader others must follow… no other country has adopted New Zealand’s “hands-off” model’ (Patterson 1998 p.151).

### 3.4.5 The summary of the two key concepts

The concepts of the core executive and the regulatory state offer a framework in which this thesis explores the transformation in ICT regulation and antimonopoly regulation. The concept of the core executive grounds the analyses of power within which power relations between actors and the specific political contexts within the state are explored. The notion of the regulatory state offers a platform on which the state and society interacts in regulation. Within the framework of the regulatory state this thesis can focus its analyses on the regulatory aspects of the Japanese state.

The examples of the other regulatory state reveal different variations of the regulatory state. What is common in the cases of the UK and New Zealand is the dominance of the core executive in shaping their regulatory states. The rise of the UK’s regulators and deregulation led by elites in government organisations in New Zealand offer examples of the core executive’s dominance. Another key characteristic is the extent to which respective political traditions have worked in shaping regulatory policies. The UK’s key characteristic is the rise of the regulators such as Oftel. The examination by Moran (2003) exposes the influence of a traditional approach in which a closed community (the club world) controls with opaque processes and the politicised nature of Britain’s regulation, which typically appears in the debate about Littelchild’s (RPI-X ) price formula. He highlights the regulatory regime which can be characterised by the regulators with a fragmented background; more politicised, open, but undemocratic in the way that it is at arm’s length from elected officials’ control. The case of New Zealand offers an unusual example of a regulatory state. What can be understood as New Zealand’s political tradition is its unstable political machine. The significant influence of the Chicago school of economics to its elites and its single-house, first-past-the-post, two party system in the 1980s facilitated comprehensive policy reforms through occupying the key political posts of the government with the proponents of economic reforms.

Elsewhere, these cases also reveal differences. The British regulatory state reveals the rise of a new form of institution (regulators) (formally not either in the executive branch or the private sector) under the informal dominance of Ministers. It is efficient in the way that British regulators are required to be less accountable to party politicians and have more authority to implement policy programmes without legislation than government ministries. Elsewhere, the fragmented nature of the British regulatory system renders the criticism about the democratic control of the regulator. New Zealand’s case could be the most atypical among others with its radical retreat of the state in regulation. New Zealand’s economic reforms and its reactions offer an example incomparable to any other countries’ in the developed world.

Turning to the core theme of this thesis, the transformation of the Japanese state, with the analytical framework of the core executive and the regulatory state employed, a challenge is to address change emerging in the transformative processes of the cases: power and contexts changing in the transformative process of the state. Conceptualising it is another analytical challenge for this thesis. This thesis’s approach to this question is discussed in the next section.

## 3.5 Explaining change: institutional changes and path dependency

Explaining change is a core issue for exploring the transformation of the state. As an example of theorising change, Hay (2002 pp.135-67) offers a typology of change analysis composed of a synchronic (or ‘snapshot’) approach, comparative statics, and diachronic analysis (see Table 3.6).

#### Table 3.6: Hay’s (2002 pp.144-67) typology of change analysis

|  |  |
| --- | --- |
| Synchronic  (or ‘snapshot’)  approach | An approach which effectively freezes the object of analysis in time, thereby focusing attention on the structure of social or political relations at a specific instant. It removes the object from the temporal domain altogether. |
| Comparative  statics | An approach in which the analyst compares and contrasts synchronic analyses conducted at different moments in time, thereby comparing the form and structure of the system in question at various points in its development. It is a variant of synchronic analysis. |
| Diachronic  analysis | An approach which emphasises the process of change over time. It has been advocated most consistently in recent years by historical institutionalists who see their task as one of ‘process tracing’. |

The approach of this thesis is not a pure static analysis; focusing on how the Japanese state has been transformed in ICT regulation and antimonopoly regulation during the period between the 1980s and 2000s, it addresses how power has been transformed in two specific sectors. This thesis does not focus on a particular point in time like a snap shot. The data (e.g. interview results) and the analyses of this thesis aim at the transformation of power and power relations among key actors of the sectors (ICT regulation, antimonopoly regulation) between the 1980s and 2000s. An approach focusing on the transformation itself in terms of power during a particular period rather than particular points gives this thesis a characteristic of dynamic analysis. Elsewhere, because this thesis’ prime analytical focus is not on the change process in particular, it is not regarded as diachronic, either.

The above consideration implies that this thesis is a comparative analysis of dynamic transformation referring to the diachronic approach by using a framework of historical institutionalism. The focus of this thesis is not on the change process over time primarily but transformation itself. Employing an approach of historical institutionalism gives this thesis a perspective to explain change.

The following sections discuss the analytical framework of this thesis aiming at change based on the perspective of historical institutionalism.

### 3.5.1 Path dependency

Path dependency is an approach originating from economics, such as the study of technology (Pierson 2000 pp.253-4). Among early literature analyses of this concept is David (1985), who argues that the typewriter with the keyboard ordered as QWERTY dominated the typewriter market overwhelming more efficient versions of typewriters by August Dvorak and W. L. Dealey because QWERTYs contingently emerged in the market earlier than other versions. According to him: ‘(a) path-dependent sequence of economic changes is one of which important influences upon the eventual outcome can be exerted by temporally remote events, including happenings dominated by chance elements rather than systematic forces’ (p.332).

The notion of path dependency was elaborated by Mahoney (2000), who characterises path dependency as: ‘specifically those historical sequences in which contingent events set into motion institutional patterns or event chains that have deterministic properties’ (p.507). Highlighting the following three major features of path dependent analyses, he argues that path dependency is composed of two sets of sequences: self-reinforcing sequences and reactive sequences (pp.508-11):

* the analysis involves the study of causal processes that are highly sensitive to events in the early stages of an overall historical sequence;
* in a path-dependent sequence, early historical events are contingent occurrences that cannot be explained on the basis of prior events or ‘initial conditions’; and
* once contingent historical events take place, path-dependent sequences are marked by relatively deterministic causal patterns or what can be thought of as ‘inertia’; i.e. once processes are set into motion and begin tracking a particular outcome, these processes tend to stay in motion and continue to track this outcome.

Self-reinforcing sequences are those where certain institutional patterns are formed and reproduced in the long term (Mahoney 2000 p.508). They often exhibit what economists call ‘increasing returns’, which means that after an institutional pattern is adopted, it delivers increasing benefits with its continued adoption, and thus over time it becomes more difficult to transform the pattern or select previously available options, even if these alternative options would have been more ‘efficient’ (Mahoney 2000 p.508).

Reactive sequences are chains of temporally ordered and causally connected events (Mahoney 2000 p.509). They need to fulfil the two requirements: their historical events starting the motion need to be contingent; and the overall event chain itself must be marked by processes of ‘inherent sequentiality’ (Mahoney 2000 p.509). According to him (p.509):

Reactive sequences are ‘reactive’ in the meaning that each event within the sequence is in part a reaction to temporally antecedent events. … With reactive sequences, the final event in the sequence is typically the outcome under investigation, and the overall chain of events can be seen as a path leading up to this outcome.

These types of sequences are explained with a set of approaches offered by Mahoney (2000). First, he argues that self-reinforcing sequences can have utilitarian, functional, power, and legitimation explanations, the key points of which are described in Table 3.7 (p.517).

#### Table 3.7: Typology of path-dependent explanations of institutional reproduction with self-reinforcing sequences (Mahoney 2000 p.517)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Explanation | Utilitarian | Functional | Power | Legitimation |
| Mechanism of reproduction | Institution is reproduced through the rational cost-benefit assessment of actors. | Institution is reproduced because it serves as a function for an overall system. | Institution is reproduced because it is supported by an elite group of actors. | Institution is reproduced because actors believe it is morally just or appropriate. |
| Potential characteristic of institution | Institution may be less efficient than previously available alternatives. | Institution may be less functional than previously available alternatives. | Institution may empower an elite group that is previously subordinate. | Institution may be less consistent with the value of actors than previously available alternatives |
| Mechanism of change | Increased competitive pressures; learning processes. | Exogenous shock that transforms system needs. | Weakening of elites and strengthening of subordinate groups. | Change in the values or subjective belief of actors. |

Under the utilitarian explanation, actors rationally choose to reproduce institutions, including perhaps sub-optimal institutions, because any potential benefits of transformation are outweighed by the costs (p.517). The functional explanation offers two versions: a strong version and a weak version.

The weak version simply explains the reproduction of an institution in terms of its consequences; the strong version explains institutional reproduction as its functional consequences (e.g. integration, adaptation, survival) for a larger system within which the institution is embedded (Mahoney 2000 p. 519). In the latter a contingent event starts a sequence, in which the function of the institution contributes to its expansion; such an expansion also enhances the institution’s ability to perform the function preferred by the institution and this interaction between the functional enhancement and institutional expansion eventually consolidates the institution (Mahoney 2000 p.519).

Under the power explanation, an institution can persist when an advantaged group has sufficient strength to sustain the reproduction. This view is based on the idea that although the origin of the sequence is contingent, in the following sequence the institution is reinforced through predictable power dynamics: ‘the institution initially empowers a certain group at the expense of other groups; the advantaged group uses its additional power to expand the institution further; the expansion of the institution increases the power of the advantaged group; and the advantaged group encourages additional institutional expansion (Mahoney 2000 p.521).

The legitimation framework avers that institutional reproduction is grounded in actors’ subjective orientations and beliefs about what is appropriate or morally correct and occurs because actors view an institution as legitimate and thus voluntarily opt for its reproduction (Mahoney 2000 p.523). Under this framework once a given institution is contingently selected, the institution will be reinforced through processes of increasing legitimation, even if other previously available institutions would have been more legitimate (Mahoney 2000 p.523).

Reactive sequences are explained in a different way. According to Mahoney (2000 pp.526-7):

In a reactive sequence, each event in the sequence is both a reaction to antecedent events and a cause of subsequent events…Whereas self-reinforcing sequences are characterized by processes of reproduction that reinforce early events, reactive sequences are marked by backlash processes that transform and perhaps reverse early events. In a reactive sequence, early events trigger subsequent development not by reproducing a given pattern, but by setting in motion a chain of tightly linked reactions and counter-reactions.

Mahoney’s (2000) broader analytical framework with a new concept of reactive sequences in addition to self-reinforcing sequences is a contentious approach. For example, Pierson (2000 p.252) argues that limiting the scope of path dependency to a self-reinforcing process offers the benefit of greater clarity, employing the definition of path dependency as: ‘social processes that exhibit increasing returns’. Elsewhere, the path dependent approach encountered criticism, based on the view that it primarily focuses on persistent institutions and contingent events sometimes called ‘critical junctures’, so ignoring elements of continual or on-going transformation (Mahoney and Thelen 2010 pp.6-7). In Steinmo’s (2010 p.15) words: ‘the path itself becomes a new kind of equilibrium – rather like riding a bicycle’. This is the gap that the model proposed by Mahoney and Thelen (2010) intends to fill.

### 3.5.2 The change of institutions: endogenous adaptation

Mahoney and Thelen’s (2010) core theme is explaining endogenous change. In their framework the characteristics of both the political context and institution in question drive the type of institutional change through shaping the type of dominant change agent and its strategy (Mahoney and Thelen 2010 p.15). Mahoney and Thelen (2010) adopt two sets of key questions to develop their framework. The first set of questions is (p.18):

* does the political context afford defenders of the status quo strong or weak veto possibilities?; and
* does the targeted institution afford actors opportunities for exercising discretion in interpretation or enforcement?

Based on the responses to these two questions, they propose the following four modes: ‘displacement’, ‘layering’, ‘drift’, and ‘conversion’ (p.15).

‘Displacement’ is the mode under which existing rules are removed and new ones are introduced. This is the mode when defenders of the status quo have weak veto possibilities and actors exercise a low level of discretion in interpretation or enforcement. The change in this mode may be abrupt or gradual with the confrontation between the previous institution and the newly introduced one (Mahoney and Thelen 2010 p.16).

‘Layering’ is the second mode, which sees the introduction of new rules on top of or alongside existing ones. Under this mode, defenders of the status quo have strong veto possibilities and actors exercise low level discretion in interpretation or enforcement.

The third mode is ‘drift’. It is the mode under which the impact of existing rules changes as a result of shifts in external conditions. Defenders of the status quo have strong veto possibilities and actors enjoy a high level of discretion in interpretation or enforcement.

The last is ‘conversion, under which rules remain formally the same but are interpreted and enacted in new ways (Mahoney and Thelen 2010 p.17). This mode changes the enactment of existing rules because they obtain new strategic requirements. Defenders of the status quo have weak veto possibilities and actors have a high level of discretion in interpretation or enforcement. According to Mahoney and Thelen (2010 p.18): ‘(l)acking the capacity to destroy an institution, institutional challenges may be able to exploit its inherent ambiguities in ways that allow them to redirect it toward more favourable functions and effects’.

Another set of questions relates to the types of change agents:

* does the actor seek to preserve the existing institutional rules?; and
* does the actor abide by the institutional rules?

The answers to these questions provide four types of change agents: ‘insurrectionaries’, ‘symboints’ ‘subversives’, and ‘opportunists’.

‘Insurrectionaries’ are the agents who consciously seek to eliminate existing institutions or rules by actively and visibly mobilising against them.

‘Symboints’ rely on institutions not of their own making. They have two variations: parasitic and mutualistic. The former exploits an institution for private gain even as it depends on the existence and broad efficacy of the institution to achieve this gain against the spirit or purpose of the institution. The latter does not compromise the efficiency of the rules or the survival of the institution but violates the stipulation of the rules to support and sustain institutional spirit.

The third type of agents is ‘subversives’. This type of actor seeks to displace an institution in a way that they themselves do not break the rules of the institution. They instead effectively disguise the extent of their preference for institutional change by following institutional expectations and working within the system.

‘Opportunists’ have ambiguous preferences about institutional continuity. They do not actively seek to preserve institutions but do not try to change the rules because opposing them is costly. Instead, they exploit the possibilities within the prevailing system to achieve their ends.

The resulting framework by Mahoney and Thelen (2010) is illuminated in Table 3.8. Insurrectionaries can emerge anywhere, but they most suit the actors’ low discretion and the defenders’ weak veto possibilities. The parasitic variation of symbionts is suitable for strong veto of the actors because they prefer to retain the formal institutional status quo. At the same time high discretion in enforcement enables parasitic symbionts to change the value and meaning of institutionalised rules. Subversives can benefit from strong veto possibilities and a low level of discretion in interpretation or enforcement, because this framework changes agents who pursue their goals within the existing institution. Opportunists are best served by the mode of weak veto possibilities and high level of discretion in interpretation or enforcement, because under this mode the circumstances give them less resistance to their changes of institutions for their own purposes as long as they do not oppose outright the institutional rules, and more room to utilise the gaps between rules and enactment.

#### Table 3.8: Contextual and Institutional sources of Change Agents (Mahoney and Thelen 2010 p.28)

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Characteristic of the Targeted Institution | |
|  |  | Low Level of Discretion in interpretation/enforcement | High Level of Discretion in interpretation/enforcement |
| Characteristic of the | Strong Veto Possibilities | Subversives  (Layering) | Parasitic Symbionts  (Drift) |
| Political Context | Weak Veto Possibilities | Insurrectionaries (Displacement) | Opportunists  (Conversion) |

Together with the theory of path dependency in the previous section, the theory of institutional evolution offers the framework in which this thesis explains how institutions have changed in response to forces such as the political context and circumstantial changes. The theory of path dependency highlights the importance of exogenous events; contingent initial events direct the sequences of events and can capture how the sequences of events are developed.

The theory of institutional change proposed by Mahoney and Thelen (2010) focuses on the mechanism of endogenous changes. Their model proposes an explanation about how institutions have evolved through analysing in terms of the responses to the veto possibilities of the defenders of the status quo and the actors’ discretions of enforcement or implementation. If this analytical framework accounts for the power, actors and structure of the focused institution, it can offer explanations about the evolution of the institution in the case of ICT regulation and antimonopoly regulation mobilised by the power relations between actors and the structure such as political contexts. The theory of institutional change and evolution offers a new analytical approach in political science literature (Steinmo 2010 pp.14-9). Elsewhere, the approach of Mahoney and Thelen (2010) encountered criticism. Here, Steinmo’s criticism made in 2008 to Streek and Thelen’s (2005) model is still worth noting although his point was made a few years before (2008) Mahoney and Thelen (2010). Steinmo (2008) argues that frameworks such as Streek and Thelen’s (2005) do not: ‘really offer an explanation for, or theory of, institutional change. Instead, they explore various patterns of institutional change’ (p.168). In his view the analysis of the institution needs to take account of ideas and the nature of actors (p.169, p.173). ‘One could argue that a key weakness of institutionalism in the past has been that actors could be simple hostages of the institutions that they inhabit. Integrating ideas into the analysis addresses this problem by making institutions both a constraining/incentivising force and the object of political contestation’ (Steinmo 2008 p.173). Although formulated two years earlier, Steinmo’s (2008) criticism is still applicable to the model of Mahoney and Thelen (2010).

The benefit of the framework proposed by Mahoney and Thelen (2010) is the parsimonious nature of its typology of change patterns taking account of endogenous factors. This thesis recognises the benefit of the modes of change; they can offer a basis on which the analysis of state transformation is constructed utilising the macro level theories of this thesis. Together with the theory of path dependency, the framework proposed by Mahoney and Thelen (2010) offers a vehicle with which the change processes can concisely be drawn.

Because of the benefits of the theories of path dependency and institutional change discussed above this thesis employs this set of theories in its analysis of the cases; its analytical framework allows this thesis to examine how the exogenous events shape the sequences of events and how the institutions evolve in Japan’s ICT and antimonopoly regulation.

## 3.6 Conclusion

This chapter aimed to establish the analytical framework of this thesis based on the key literature of the change of governance and institutions. The analytical tools discussed can be categorised into two groups. The change of governance offers a macro level account explaining both internal and external contexts of state transformation, employing the concepts of the core executive and the regulatory state as vehicles. Explaining how institutions are shaped is the issue at a micro level, addressed by the theory of path dependency (those caused by exogenous factors) and of institutional change (those caused by endogenous factors).

The core theme is how the state has been transformed with the emergence of the new form of governance. The change of governance draws the broader framework of the transformation of the Japanese state at a macro level. Although the debate of governance contains a variety of issues (e.g. Hirst 2000, Rhodes 2000), the focus of this thesis lies on the state and its transformation.

The concept of the core executive offers a key analytical framework by which researchers can explore how the state has been governed through focusing on the interactions within the core executive actors and between the core executive actors and their societal counterparts together with the structural factors such as political contexts. By focusing on the core executive and the fluid nature of power within the community of the core executive actors, this thesis reveals how the state at a macro level has responded to its challenges and transformed itself. This thesis also set out to explicitly consider the specific political conditions of the case studies. This gives the analytical concept of the core executive more flexibility and potential for responding to the specific conditions of the explored cases. By adding the explicit flexibility to the concept of the core executive, this thesis develops the potential of the concept. With the developed concept of the core executive, the analytical framework of this thesis addresses how the state has been transformed through capturing the fluid power relationship between key state actors within the state structure.

The approach focusing on the core executive has the possibility of creating an analogy with the framework of Johnson (1982) focusing on the officials of the MITI. A significant difference between the approach of this thesis and Johnson’s (1982) is that this thesis highlights the state as a whole through focusing on the core executive with the view that the power of the state is based on the fluid power relations within the core executive, while Johnson (1982) solely illuminates the detail of a particular actor (the officials of the MITI). The approach of this thesis better captures how the Japanese state has been transformed, compared to, for instance, that of Muramatsu and Krauss (1987), who view civil servants and party politicians as separate actors with no explicit regard to the concepts of the state and the core executive.

The analytical tool to capture the state vis-à-vis society (regulated private firms) in this thesis is the concept of the regulatory state. It has become a frequently debated issue with the proliferation of principal-agent regulation as a major policy tool to control industries, replacing the previous mode of control by direct management through state/public corporations. The concept of the regulatory state offers a basis on which this thesis can shape its analysis of the state and direct its interpretations. Employing the definition proposed by Levi-Faur (2012 pp.19-20) ‘a state that applies and extends rule making, monitoring and enforcement either directly or indirectly’, this thesis examines the cases (ICT regulation and antimonopoly regulation between the 1980s and 2000s) as the development of a regulatory state. It analyses the development of the Japanese regulatory state in these two cases through exploring the actors and structure within the core executive based on the ontological view that power within the core executive is resource dependent and fluid, in line with Smith (1999). Throughout the analysis this thesis seeks to develop the concept of the regulatory state by trying to formulate an account explaining the specific characteristics of each regulatory state.

The analytical frameworks explaining the specific changes in the two case studies are the theories of path dependency and institutional change. This set of theories offers the analytical framework at a micro level.

The theory of path dependency explains the impact of a major disjuncture. This indicates that this theory addresses the impact of the exogenous change to the events. A number of specific institutional characteristics such as ministerial ICT regulation have been shaped by the impact of a significant event in the past. In the case of a ministerial ICT regulator, the choice that the regulatory function be located within the MPT (Ministry of Posts and Telecommunications) at the time of NTT (Nippon Telegraph and Telephone: the Japanese Telecommunications Incumbent) privatisation in 1985 was the key to develop the regulatory approach. The path dependent process here is an example of Mahoney’s (2000) self-reinforcing sequences: the initial decision by the Japanese government. The theory of path dependency offers an analytical tool with which the characteristics originated from the impact of initial decisions.

Another analytical framework at a micro level is the theory of institutional change, which explains the institutional evolution mobilised by endogenous factors. The change of the endogenous factors leads to a shift of modes. The fluid nature of power within the core executive has the potential of realising such a shift of modes.

An example can be found in the case of antimonopoly regulation. The Antimonopoly Act (AMA) amendment in 1977 confronted significant opponents from the industrial policy supporters (a group of LDP politicians, the MITI, the business groups). The result of this amendment had a limited impact to antimonopoly enforcement (Sanekata 1986 pp.3888-91 etc.). This can be understood as antimonopoly regulation in the late 1970s Japan was in the mode of drift, with strong veto power of the opponents (LDP, business) and a significant discretion exercised by the JFTC. Elsewhere, the reaction to the Structural Impediments Initiative (SII) in 1989 and 1990 changed the course of antimonopoly law enforcement through enhancing the AMA and the Fair Trade Commission (JFTC) (Frayer 2006 p.203-12). During the debate about the SII the former opponents to the AMA amendment in 1977 changed their views and accepted enhancing the AMA and the JFTC. The sequence of events can indicate that the mode of antimonopoly regulation changed from drift to conversion, together with the change of perspectives expressed by the opponents to the AMA and the JFTC. In the period of the SII, the opponents to the AMA in the 1970s (LDP, business) changed their view and the veto power to the AMA amendments waned. Together with the significant discretion by the JFTC, this change of circumstances came with the transformation of the mode from drift to conversion.

The theories of path dependency and institutional change offer this thesis a tool to explore the change caused by both exogenous and endogenous factors. This set of frameworks offers an analysis of how the core executive in ICT regulation and antimonopoly regulation has been transformed in response to its exogenous and endogenous challenges and is employed by the two subsequent case study chapters (Chapters 5 and 6).

With the theoretical frameworks presented in this chapter, this thesis employs an approach based on a reconstituted state position, locating power within the state (Smith 2009 p.63); the core executive strategically adapted to sustain a position of asymmetry in its state-society relations. As Chapter 2 reveals, the perspective on Japan and its state in political science literature has been dominated by the pluralist and rational choice schools. The approach adopted in this thesis challenges these accounts. The approach to power employed by those accounts focuses on observable resources such as financial resources and administrative authority. Analyses on state power are ignored; rather, the state is regarded as a place of bargaining between key actors, as Calder (1993 p.14) describes the Japanese state as a ‘pluralist theatre’. The analytical framework of this thesis places the state at the centre of the research, with an ontological view that power is located within the state and that the state has influenced and steered society.

Based on the theoretical basis set out by this chapter, this thesis establishes its methodological approach, set out in the next chapter.

# Chapter 4 Methodology

## 4.1 Introduction

A rigorous research design is important for PhD theses to generate meaningful contributions to knowledge (Burnham et al. 2008 p.1). Unlike the natural sciences , which have standardised and accepted measures, social sciences can choose preferred research methods from a range of research techniques (Burnham et al. 2008 p.2). This thesis has adopted a particular methodology based on its research foundation, theme, and framework. This chapter sets out the methodology adopted in this thesis through descriptions about its specified ontological and epistemological positions, the choice of the research strategies and methods, the operationalisation, and the potential limitations stemming from the chosen research methods.

The composition of this chapter is as follows. First, the next section discusses the ontological and epistemological positions underpinning the research framed by a particular view of power as elitist, drawn from a critical realist epistemological position. What comes after is the description about the choice of qualitative research methods as the research methods of this thesis. The fourth section is about the choice of the research strategy and the quality of the research based on the chosen strategy. Then this chapter turns to the selection of its case studies, together with the guidelines for selection. This is followed by the description of the operationalisation of this research, focusing on elite interviewing and the document analysis. The next section addresses the limitation to this thesis’ research methods.

## 4.2 A critical realist position

The research methodology for a political science inquiry is constructed on the following three key elements: ontology, epistemology, and methodology (Grix 2010 p.59, Hay 2002 p.61). The linkage between these three elements starts from ontology, with epistemology and methodology logically following (Grix 2004 p.60, Hay 2002 p.63). Methodology is thus developed from one’s ontological position.

The ontological position of this thesis relates to its research focus: the change of the social relationships in the political arena, to elaborate:

* how actors (e.g. LDP (Liberal Democratic Party) politicians, civil servants, private firms) have responded and changed their roles throughout the transformative process of the Japanese state; and
* how the structures of the focused sectors (e.g. the LDP’s decision making system) have shaped key decisions of the actors.

The research focus stems from the research interest of the author of this thesis, which aims to explore unobservable phenomena together with observable ones. In other words the ontological view comes from the approach of the author. Based on this ontological view, this thesis employs an idea that the views and ideas of actors such as civil servants offer a significant explanatory power to elucidate social issues in addition to distinctively observable data such as government organisations’ statistics. For example, the historical statistics of cartel cases processed by an antimonopoly authority tells how much these cases have actually been addressed by the authority. However, such data struggles to explain how much antimonopoly policies have been effective and achieved their goals of making the targeted market competitive, because the number of actually processed cartel cases does not offer the information on how many cartels the market has actually had. Also, the data does not explain the perception of private firms about cartels; how much they have been tolerant to cartels, for instance. Obtaining such data through observation is difficult, because the illegal nature of cartels in most cases gives perpetrators an incentive to hide the existence of and the tolerance to cartels. Elsewhere, the analytical results based on multiple accounts by those involved in cartels such as officials of the antimonopoly regulator and researchers observing the situation can reveal unobservable phenomena, such as how much cartels have actually emerged in the market, what kind of ideas private firms have had in the market, and how competitive the market has actually been. Such results are not directly observable but can offer an account which captures how the focused marked has actually been in terms of cartels and competition and how state power has been there. This indicates that analytical results based on the accounts on unobservable facts and situations can have a significant explanatory power.

The key notion to be explored is power and the state. This thesis employs Smith’s (2009 p.80) approach on power; to understand the impact of the state one needs to examine the mechanisms of power. According to him (pp.80-1):

power is multidimensional; it operates both directly and indirectly; observably and through mechanisms that are difficult to observe directly. It can exist in direct forms of observable power such as force, but also through processes of social organization…How state actors exercise power does not have to be philosophically consistent and hence they can use a range of tools to achieve their goals…the state as a set of institutions has resources which actors can draw upon in order to exercise power.

In line with the above perspective, this thesis views that state power is exercised in both observable forms such as force and unobservable forms such as informal processes of social organisations. This thesis aims to illuminate state power by addressing this set of state power.

Another key tool of this thesis drawn from Smith (2009) is an elitist approach to the state. This thesis’ approach to power starts from a state reconstitutive position with asymmetric power relations focusing on the state at a macro level. This position employs the view that the state is a collective organisation with the ability to largely control what occurs within its territory. This perspective is explained by Smith (2009 p.61) in the following: ‘Having control of financial, military and bureaucratic resources, states are able to exercise power in ways that are unavailable to other groups in society…Elitist theories therefore locate power within the state in terms of the resources that are available to transform societies’. Concurring with Smith’s (2009) perspective with the advantages of an elitist position summarised in Table 4.1, the approach of this thesis views the state as the locus of power, with its asymmetric dominance based on the government’s unique resources (e.g. force, legitimacy, state bureaucracy tax-raising powers and legislation) in relation to society.

#### Table 4.1: The merits of an elitist position in analysing the state and power (Smith 2009 p.63)

|  |
| --- |
| * it concerns the role of the state in organising and controlling modern societies, taking the state seriously as a site of power; * it regards the state as a distinctive set of organisations, focusing on the resources available to the state at achieving goals; and * it sees the state or state actors as having distinct interests that may be independent from the interests of other societal actors. |

An elitist research approach focusing on the state at a macro level in this thesis is underpinned by a foundationalist view[[38]](#footnote-38) akin to that adopted by critical realism. An anti-foundationalist position sees power socially constructed, dispersed and existing in all types of relationships, not solely possessed by containers such as the state (Smith 2009 p.68); such a position prevents treating the state as a site of power. Together with its ontological perspective, the foundationalist position of this research shapes the basis of its epistemological position.

An epistemological position, which is defined by Blaikie (2007 p.4) as ‘ways of answering the question: “(h)ow can social reality be known?”’, is vital for a thesis to design its research. According to Hay (2002 p.63):

Epistemology concerns itself with such issues as the degree of certainty we might legitimately claim for the conclusions we are tempted to draw from our analyses, the extent to which specific knowledge claims might be generalised beyond the immediate context in which our observations were made, and in general terms, how we might adjudicate and defend a preference between contending political explanation.

Among the typology proposed by the research method literature, Grix (2010 pp.77-100) highlights three key ‘research paradigms’ (epistemological positions) in social sciences disciplines: positivism, interpretivism, and post-positivism (critical realism). Although these paradigms are not exhaustive and often overlap each other, this set of ‘metatheory’ helps a thesis to establish a clear connection between the ontological and epistemological starting points (Grix 2010 p.79).

* Positivism, which has been dominant in social sciences since the 1930s, assumes that: ‘there is no dichotomy between what we see (appearance) and how things really are (‘reality’) and that the world is real and neither mediated by our senses nor socially constructed’ (Grix 2004 p.81). In its view researchers are value neutral based on empirical theory in the production of knowledge (Grix 2004 p.81).
* Interpretivism is the paradigm which recognises a clear distinction between the natural and the social world based on anti-foundationalist epistemology (Grix 2004 pp.82-4). In its view an objective or value free analysis is impossible because researchers are inextricably part of the social reality being researched (Grix 2010 p.84). Rather, interpretivism regards grasping the relevant meanings as vital for understanding human affairs properly (Bevir and Rhodes 2002 p.131). Such a perspective leads interpretivist researchers to employ a methodology and methods of gathering data that are more in tune with the studied subjects. It is in many ways the antithesis of positivism; researchers cannot combine an approach drawn from both positivist and interpretivist paradigms, because the fundamental assumptions underlying these two paradigms are logically incompatible (Grix 2004 p.83).
* Critical realism attempts to ‘combine the “how” (understanding – which is linked to interpretivism) and the “why” (explanation – which is linked to positivism) approaches by bridging the gap between the two extremes: positivism and interpretivism (Grix 2004 p.85). Drawn from a critique of positivism, it is based on foundationalism with the premise that the interpretation and understanding of social phenomena affect research outcomes while social phenomena exist independently of the interpretation (Danermark et al. 2002 (1997) p.4, p.20, p.39, Marsh and Furlong 2002 p.31). In its view identifying and understanding both the external ‘reality’ and the social construction of that ‘reality’ are necessary to explain the relationships between social phenomena (Marsh and Furlong 2002 p.31). The key characteristics of critical realism are outlined in Table 4.2.

#### Table 4.2: The key characteristics of critical realism (Grix 2004 p.86)

|  |
| --- |
| 1. Critical realism straddles both the positivist and interpretivist paradigms, sharing a foundationalist ontology with positivism and allowing for interpretation in research. 2. In the critical realism paradigm, while social science can use the same methods as natural science regarding causal explanation (in line with positivism), it also needs to move away from them by adopting an interpretive understanding. 3. Critical realists, unlike interpretivists, generally seek not only to understand but also to explain the social world. 4. Critical realism conceives of social change and conflict in society as not always apparent or observable. 5. Critical realism is based on the ‘structured’ or ‘stratified’ reality which requires a ‘depth ontology’ and the interpretation of causal links not always observable in order to offer a fuller explanation of an event, object, social relations, etc. 6. Critical realism is based on the idea that pre-existing structures affect and are affected by actors. 7. Critical realism acknowledges that interpretive understanding is an important feature of social sciences. At the same time, it understands that the objects and structures in society have causal powers, and can make causal statements and identify causal mechanisms, in contrast to interpretivists. However, its ‘realist’ idea of causation is different from positivists’. 8. It understands that structure and agency are looked upon as mutually constitutive but they can be treated as separate for analytical purposes, thereby facilitating research. 9. Critical realism is compatible with a wide range of research methods and employs the ideal that the choice of which method to employ should depend on the nature of the object of study and what we want to learn about it. 10. Many critical realists unlike positivists, acknowledge ‘the double hermeneutic[[39]](#footnote-39)’. |

Based on a foundationalist position, this thesis employs a critical realist position with a view that the analysis based on stressing the importance of unobservable forces has a significant role in shaping social reality. The ontological view of this thesis renders it to regard analyses based on unobservable data significant as well as observable data; this thesis regards the social reality as different from the reality in natural sciences. In particular, its core theme, power, is captured through analysing the material world as well as the ideational world.

Elsewhere, the foundationalist position of this thesis conflicts with an interpretivist approach. An interpretivist perspective does not recognise the possibility of offering an objective explanation on social changes such as state transformation, because researchers are regarded as subjective. Because an interpretivist perspective concerns subjectivity, understanding, and agency and the way people construct their social world (Grix 2010 p.83), it tends to pay little attention to structure while emphasising agency. An example of such a tendency can be found in Rhodes’ perspective on structure, who regards it as ‘unhelpfully vague’ (Bevir and Rhodes 2008 p.730 in Elgie 2011 p.68). Also, as Smith (2009 p.68) revealed in his analysis on poststructuralist and state power, capturing state power under an interpretivist view is difficult, because its view to power as dispersed and existing anywhere makes it difficult to analyse state power collectively.

A critical realist perspective offers an approach for exploring the transformation of the state by explaining the interaction between pre-existing structures and actors, recognising and bridging the gap between the observable appearance of the events and unobservable reality. It aims at seizing the fluid nature of power existing in the ideational world as well as the material world. Under the critical realist research paradigm, this thesis looks upon structure and agency as mutually constitutive but treats differently for the analytical purpose and embraces the idea that actors (efficient causes) initiate action and structure constrains and facilitates such action (Grix 2010 p.87).

## 4.3 Qualitative research methods

A critical realist perspective offers researchers the flexibility to employ both qualitative and quantitative methods; under this research paradigm one can identify how much, for example, financial markets are globalised with quantitative methods and how globalisation is perceived with qualitative methods (Marsh and Furlong 2002 p.31). The choice of the methods depends upon the object of the research and the nature of the task. As Sayer (2000 p.19) observes:

…critical realism endorses or is compatible with a relatively wide range of research methods, but it implies that the particular choices should depend on the nature of the object of study and what one wants to learn about it.

Commentators such as Bryman (1988) argue that how the research methods of a thesis serve to achieve the specific strategies and goals of the research determine its choice of methods.

The characteristics of qualitative research methods, whose key tools are interviews, document analyses and observation, can be summarised by the following description by Bryman (1988 pp.61-9):

* utilising ‘the perspective of the people who are being studied’;
* description in detail;
* ‘preference for contextualism in its commitment to understanding events’;
* focusing on the processes of change in the observed events;
* flexible and unstructured research strategies; and
* formulation of theories and concepts in tandem with data collection so that research can be free from unfit frameworks on their subjects imposed at the beginning of the research.

In contrast, quantitative research methods’ major tools are surveys, experiments, the analysis of previously collected data such as official statistics on crimes, structured observation by which ‘the researcher records observations in accordance with a pre-determined schedule and quantifies the resulting data’, and content analysis such as ‘the quantitative analysis of the communication content of media such as newspapers (Bryman 1988 p.12).

As Table 4.3 highlights, these two research methods are different from one another. The characteristics of qualitative research methods could be viewed as leaning towards being idiographic; elsewhere, quantitative research methods could be understood as leaning towards nomothetic. The cleavage between these two has provoked a debate about determining whether to employ either qualitative or quantitative methods (Bryman 1988 pp.104-26). Some commentators (e.g. Filstead 1979 p.45, Rist 1977 p.62) argue that a qualitative approach represents a different epistemological framework from a quantitative approach (Bryman 1988 pp.104-26). Others, such as Bryman (1988 p.118, p.125), argue that the differences between the qualitative approach and the quantitative approach are not so clear cut, and that research methods are: ‘probably much more autonomous than many commentators acknowledge’. According to him (p.125):

The tendency to associate particular methods with particular epistemological positions is little more than a convention (which took root in the 1960s), but which has little to recommend it, either as a description of the research process or as a prescriptive view of how research ought to be done.

#### Table 4.3: Major differences between quantitative and qualitative research methods (based on Bryman 1988 p.94 and Bulmer 1986 p.183)

|  |  |  |
| --- | --- | --- |
|  | Quantitative | Qualitative |
| Orientation | Positivist: seeks objective facts about and causes of social phenomena with little/no reference to subjective states of individuals | Phenomenological: seeking to understand human behaviour from the social actor’s own frame of reference |
| Approach | Obstructive and controlled measure- ment. Verification-oriented, inferential, confirmatory and hypothesis-testing. | Naturalistic and uncontrolled observation. Discovery -oriented, descriptive, explanatory and inductive. |
| Relationship between researchers and subjects | Distant | Close |
| Researchers’ stance in relation to subject | Outsider | Insider |
| Relationship between theory/concepts and research | Confirmation | Emergent |
| Research strategy | Structured | Unstructured |
| Scope of findings | Nomothetic | Idiographic |
| Image of social reality | Static and external to actor | Processual and socially constructed by actor. Dynamic |
| Nature of data | Hard, reliable | Rich, deep |

If the cleavage between qualitative research methods and quantitative research methods is regarded as flexible, a researcher can seek the possibility of combining both qualitative and quantitative research methods in a single research strategy (Bryman 1988 pp.127-56). For instance, Bryman (1988 p.127) reports the researchers: ‘who locate their work largely within the tradition of qualitative research, but who have used survey procedures in tandem with participant observation’.

Qualitative research methods employ unstructured or more flexible strategies and focus more on the processes than the outcomes of the events (Bulmer 1986 p.183). Some literature utilises qualitative research methods to explore the questions of public policy, and its choice of research methods serves its research goals. For example, Vogel (1996) utilises interviews mainly involving party politicians, government officials, and other relevant elites to draw out the contrast between Japan’s regulatory reform in the 1980s and the UK’s equivalent. He explores how a public policy theme (the regulatory reform) created ‘strikingly different results’ (p.4) in different countries. Although it has no explanation about its choice of methodology, Vogel’s (1996) research methods appear to sufficiently serve his research goals. Elsewhere, Richards (2008) analyses how New Labour has reconstituted Britain’s Westminster system through elite interviewing. His methodological approach is drawn from: ‘the new institutionalist tradition, in particular historical institutionalism aimed at understanding and interpreting the formal and informal rules of the game that shape the behaviour of agents, rather than an anti-foundationalist approach concerned with interpreting their (agents’) “web of beliefs”’ (Richards 2008 p.8). In other words, Richards (2008) employs an approach bridging the reality in the material world and the ideational world.

The exploratory nature of this thesis renders it to focus on how the state has been transformed; it highlights the process as well as the result of state transformation. Such goals of investigation can be achieved by qualitative research methods, which focus on the processes of change in the observed events. This thesis regards as important the benefits of the rich and deep data obtained from close contact to the data source for the following reasons:

* qualitative analyses drawn from multiple accounts and sources can reveal an extensive view with rich and deep nature of the data. Its approach employing naturalistic and uncontrolled observation also has more flexibility to create claims than an approach of quantitative research methods is associated with obstructive and controlled measurement (Bryman 1988 p.94, Bulmer 1986 p.183). These advantages offer a significant benefit for exploratory research such as this thesis; with qualitative research methods this thesis can have greater flexibility to establish its claim on a still unexplained theme than a research thesis based on quantitative research methods, which are based on testing hypotheses within an established framework.
* designing a rigorous quantitative survey is problematic, for the size of the original population (the core executive members and those relevant to it) is limited. Taking account of the fact that the access to the core executive members and those relevant to it is limited, collecting a sufficient number of survey results from the population is very challenging. Obtaining rich and deep data from those accessible is more practicable.

The data analysis of the interview as a qualitative research method is an example of revealing rich and deep data. It allows a researcher to expose how the actors thought and reacted to the focused events, what political contexts existed behind the event, what norms and cultures contributed to shape decisions and responses on the event, and how power relations changed. An interview without a strong control, which is typical in qualitative research, has the potential for accessing such data (Bryman 1987 pp.46-7), on which a thesis employing a critical realist epistemological position can be based.

Deriving from the points discussed above, this thesis employs qualitative research methods as its research approach. This forms a crucial element of the research framework of this thesis, together with the research strategies discussed in the following section.

## 4.4 The strategy and the quality of the research

Another important component to establish the research framework of the thesis is its research strategy. Although Robert Yin himself has developed his career as a positivist (PhD in experimental psychology with a dozen publications in that field), his book (‘Case Study Research’ 1st ed. (1984), 2nd ed. (1994), 3rd ed. (2003)) offers broader research strategy guidelines for researchers regardless of their epistemological background employed by a wide range of researchers (e.g. Rhodes 1995a p.5, 1995b p.31). According to Yin (2003 p.1) research strategies employed within social science include case studies, experiments, surveys, histories and the analysis of archival information. What strategy a research thesis employs is determined by the following conditions (Yin 2003 p.1):

* the type of research questions posed,
* the extent of control an investigator has over actual events,
* the degree of focus on contemporary as opposed to historical events.

His examination identifies five research strategies and reveals which research strategy is the most applicable to the above mentioned conditions (see Table 4.4). The strategies of research can be determined referring to this set of guidelines (Yin 2003 p.5).

#### Table 4.4: Different research strategies and criteria (Yin 2003 p.5)

|  |  |  |  |
| --- | --- | --- | --- |
| Strategies | Form of Research Question | Requires Control of Behavioural Events? | Focuses on Contemporary Events? |
| Experiment | how, why? | Yes | Yes |
| Survey | who, what, where, how many, how much? | No | Yes |
| Archival analysis | how, what, where, how many, how much? | No | Yes/No |
| History | how, why? | No | No |
| Case study | how, why? | No | Yes |

Turning to the specific research strategy of this thesis, what is established first is the proposition reflecting this thesis’s core theme. Referring to Smith’s (1999) analytical framework the proposition of this thesis addresses both actors and structure. As a result this thesis sets the following proposition: ‘During the era of the Liberal Democratic Party (LDP) government, the core executive pursued discretional regulation within inner regulatory policy communities as a strategy to sustain its position of asymmetric dominance over actors within key policy sectors, with their actions shaped by a particular set of structures’ (Table 4.5). It highlights the political relationship between the core executive (the state actor) and societal actors in the process of state transformation.

This thesis’ research questions elaborating this proposition are shaped by the critical realist epistemological position. A critical realist position aims to combine the ‘how’ (understanding – which is linked to interpretivism) and the ‘why’ (explanation – which is linked to positivism) approaches by bridging the gap between positivism and interpretivism (Grix 2004 p.85). In its view identifying and understanding both the external ‘reality’ and the social construction of that ‘reality’ are necessary to explain the relationships between social phenomena (Marsh and Furlong 2002 p.31). The research questions of this thesis focus on three key characteristics of the core theme through ‘how’: power relations within the core executive, an example of the development of specific characteristics, and state power in relation to society. The first research question gives an overview of the research target. The second research question explores the power relations between state actors (party politicians and civil servants). The third research question illuminates an institutional example to consider the structure, actors and outcomes. The fourth research question investigates the state power of the research target. This set of issues is addressed with ‘how’; it is explored to form understanding on the core theme. Elsewhere, the last research question aims at the core of this research pulling the previous four research questions together, exploring power and power relations in ICT and antimonopoly regulation. It employs ‘why’; it is explored to explain the core theme.

This thesis’s core theme aims at the accounts of how the actors and structures of the Japanese state actually shaped decisions and were evolved. Together with the proposition, the research questions of this thesis exposed in Table 4.5 target the accounts on the core theme of this thesis: the transformation of the Japanese state between the 1980s and 2000s.

#### Table 4.5: The propositions and research questions of this thesis

|  |
| --- |
| **Proposition:**  During the era of Liberal Democratic Party (LDP) government, the core executive pursued discretional regulation within inner regulatory policy communities as a strategy to sustain its position of asymmetric dominance over actors within key policy sectors, with their actions shaped by a particular set of structures.  **Research questions:**   * How has Japan’s regulatory framework evolved over the last three decades? * How has the core executive been successful in imposing its will on regulation? * How have Japan’s ministries shaped the organisational design of regulatory functions? * How has the state’s regulatory capacity changed? * Why have the present power relations been constructed in the chosen regulatory fields? |

Overall, the proposition and research questions explore how the Japanese state has been transformed based on a critical realist position.

This thesis is exploratory, focusing on the changes of institutions and policies, with research questions of ‘how’s, not descriptive ‘what’s. The researcher of this thesis is not in a position to control the condition and subjects of the research, or to manipulate the general and specific condition of state transformation. The transformation of the Japanese state after the 1980s, the core theme of this thesis, is a recent event whose witnesses are still accessible rather than a historical one. Most of those involved during this period are still accessible. It suits to look into contextual conditions, which are believed to be highly pertinent to the appearance of the research target (Yin 2003 p.13). It allows for the holistic analysis of sequences in historical cases, suits the study of rare events, facilitates the search for omitted reality that might lie behind contingent events, and allows for the study of interaction effects within one or a few cases (Bennett and Elman 2006 p.259). These points indicate that the case study method offers significant merits to this thesis. Other research strategies are not suited to the conditions of this thesis; for instance, experiment is not suitable for research projects with no control of behavioural events. The above consideration leads this thesis to employ the case study method as its research strategy.

## 4.5 Case study selection

The actual cases explored by this thesis are the cases of ICT regulation and antimonopoly regulation.

ICT saw a significant disjuncture through the regulatory reform in telecommunications in 1985, in which the state incumbent company (NTT: Nippon Telegraph and Telephone) was privatised and the market was liberalised. Telecommunications is the only network industry sector in Japan that experienced a significant change of state actors through privatisation. It is also one of the infrastructure sectors across the globe: ‘that experienced the most significant transformation processes from monopoly to competition’ (Tenbücken and Schneider 2004 pp.246-7). This disjuncture has dismantled traditional regulatory approaches to the sector, together with the change of state actors. The timing of the disjuncture in Japan was also set in the mid 1980s, when neo-liberal discourse attracted public attention. How a newly established regulatory regime in the ICT sector has been transformed offers an example of the Japanese state’s adaption process to its circumstances in regulation. These points render this thesis to employ the case of ICT regulation as a case study for the transformation of the Japanese state in regulation.

Antimonopoly regulation is chosen as another case for research. This is a field where a significant policy development can be observed in the period between the 1980s and 2000s (Freyer 2006 p.243, Schaede 2008 pp.42-4). A turning point facilitating this development was the economic negotiation with the US called the SII (Structural Impediment Initiative) in 1989-90. Japan’s antimonopoly regulation is also the field administered by a rare independent regulator (JFTC: Fair Trade Commission, Japan). This offers a contrast to other regulated fields including ICT, where regulation has been implemented by government ministries. The relationship between the regulator and party politicians is also different. Traditionally, the JFTC has meant to fend off the influence from politics; the relationship between party politicians and civil servants has been an important factor in the ICT sector. Elsewhere, there are other similarities. Both cases involve competition as a key policy tool and had their respective key disjunctures (antimonopoly regulation: the SII in 1989-90, ICT regulation: the regulatory reform in 1985).

These similarities and differences enable this thesis to employ a method of comparative research through focusing on key issues and keeping others the same (Lijhart 1971 p.690); the two key issues (ICT regulation, antimonopoly regulation) are studied within the same country across time. It is a comparative case study within a single country. This approach renders this thesis to analyse specific cases in depth. It also brings generalisability in this thesis, which is described afterwards.

Along with the selection of the case, designing a rigorous case study is vital. Yin (2003 p.33) proposes the guidelines for assessing the quality of a case study. His guidelines have the following four criteria: construct validity, internal validity, external validity, and reliability (see Table 4.6). Although parts of Yin’s (2003) approach draw from a positivist orientation, the four tests proposed are common to all social science methods (Yin 2003 p.34).

#### Table 4.6: Case study tactics for four design tests (Yin 2003 p.34)

|  |  |  |
| --- | --- | --- |
| Tests | Case Study Tactic | Phase of research in which tactic occurs |
| Construct validity | Use multiple sources of evidence  Establish chain of evidence  Have key informants review draft case study report | Data collection  Data collection  Composition |
| Internal validity | Do pattern-matching  Do explanation-building  Address rival explanations  Use logic models | Data analysis  Data analysis  Data analysis  Data analysis |
| External validity | Use theory in single-case studies  Use replication logic in multiple-case studies | Research design  Research design |
| Reliability | Use case study protocol  Develop case study database | Data collection  Data collection |

* Construct validity is whether or not a thesis establishes the robust linkages of inference between the observed phenomena and the theoretical analyses (Yin 2003 p.34). It is challenging for the case study method because there is a risk that subjective judgement can affect the data collection process of a case study (Yin 2003 p.34). This is addressed by triangulation[[40]](#footnote-40) to the interview by employing other sources such as published documents and double-checking interview scripts.
* Internal validity is whether or not a thesis exhaustively shows causal relationships in which core linkages between certain conditions and other conditions are clearly identified (Yin 2003 p.34). Because this validity relates to explanatory studies more than exploratory or descriptive ones (Yin 2003 p.36), exploratory studies such as this thesis are less relevant. Triangulation to the data and double-checking interview scripts also reduce the risk of overlooking the significant causal relationship between the actors.
* External validity is whether or not a thesis is generalisable ‘beyond the immediate case study’ (Yin 2003 p.37). Generalisability is a major challenge to the case study method (Yin 2003 p.37). A remedy can be the fact that this research pays attention to the technique of the comparative research method, focusing on key variables and keeps other variables the same (Lijhart 1971 p.690).
* Reliability is whether or not other researchers can follow the same procedures described by the earlier research and arrive at the same findings and conclusions, aimed at minimising the errors and biases in a study (Yin 2003 p.37). Clearly documented procedures are key to ensure reliability (Yin 2003 p.38). The operationalisation of the research described in the following section responds to this challenge by clearing the process of this research and providing a traceability of the research process.

## 4.6 Operationalisation

The operationalisation of this thesis focuses on two tasks: elite interviewing and documentary analysis. The primary data was collected through elite interviewing. The resulting transcripts, the secondary data, and the tertiary data are processed by document analysis (for the typology of the data, see Table 4.7). In the analytical process, triangulation (see 4.6.2) plays an important role based on multiple sources and methods.

Since a major challenge in the research process emerged in elite interviewing, this section starts by discussing elite interviewing, followed by the approach to the document analysis.

#### Table 4.7: Typology of the documents by Burnham et al. (2008 pp.187-8)

|  |  |
| --- | --- |
| The type of sources | Definition |
| Primary sources | ‘Evidence that was actually part of or produced by the event in question and that was intended for internal or restricted circulation only’. |
| Secondary sources | Evidence ‘circulated at the time or soon after and that was available to the public at the time of the event in question’. |
| Tertiary sources | ‘All later work in the public domain offering a reconstruction’. |

### 4.6.1 Elite interviewing

Elite interviewing is one of the key methods for political science research. In this research method the target is ‘elites’, who are defined by Richards (1996 p.199) as: ‘a group of individuals, who hold , or have held, a privileged position in society and …are likely to have had more influence on political outcomes than general members of the public’. He also highlights its key function as assisting with researchers in understanding interviewees’ theoretical positions, perceptions, beliefs and ideologies, which are rarely gleaned from documents (Richards 1996 pp.199-200).

Selecting interviewees is a major challenge of elite interviewing; whether interviewees are relevant to the topic, and if they are, how much they actually know and can talk about the topic (the interviewees list of this thesis is in Appendix 1).

Because the case studies of this thesis analyse regulation in the fields of ICT and antimonopoly, the targeted interviewees are the members of the core executive, those in the business community, consumer groups and relevant professionals such as professors and lawyers. Within core executive members, party politician interviewees are both current and retired Diet (parliament) members of the two parties (the LDP and the DPJ (Democratic Party of Japan)), who have been in key positions of the policy making process such as former Parliamentary Vice-Ministers from the LDP, taking account of the fact that Japan experienced government change in 2009, which replaced a long reign by the LDP with that of the DPJ. The interviewees from political parties include ex-Cabinet Ministers, members and ex-members of Standing Committees, and their policy staff (policy secretaries (*Seisaku Hisho*)). Interviewees related to the civil service also need to have experience of being in key positions in bureaucracy in the past or at the moment. They do not always have to be in the service now: some of them can be those retired. How senior they are is not always important, either. Some senior civil servants can have limited knowledge about the events, unlike their junior counterparts. Or, even about current senior civil servants, their story in the past (when they were in junior ranks) could be more beneficial than their current experience as senior officials. The actual interviewees are Chiefs of Bureau (*Kyokucho*), Division Directors (*Kacho*), and their predecessors. In Japanese bureaucracy these two ranks, the latter in particular, are key decision makers (I’io 2007 pp.45-8). Interviewees from the business community, consumer groups, and professional occupations need to have experience in the policy making process. Typically, they are members of policy deliberation councils such as the Information and Communications Council and members of major business organisations such as *Keidanren* and the NTT. Adequately selecting interviewees in terms of their number and the balance across different groups is important for interviewing. The interviewee selection of this thesis aims to ensure two points: a balance across groups and a sufficient number to generate generalisable analyses avoiding too much emphasis on a particular person’s view. The resulting composition of the interviewees is in Table 4.8.

#### Table 4.8: The composition of the interviewees

|  |  |  |
| --- | --- | --- |
| Groups | ICT | Antimonopoly |
| Party politicians | 7 | 3 |
| Civil servants | 7 | 8 |
| Business community | 3 | 2 |
| Consumer groups | 1 | 2 |
| Professionals (lawyers, researchers) | 3 | 4 |
| Total | 21 | 19 |

The standardised interview schedule or questionnaire is regarded as useful in the actual interview (Burnham et al. 2004 p.212). This thesis also employed interview schedules to guide the interview session; this approach was useful to guide interviewees and give them an idea about what was actually explored in the interview session. The schedule was not strictly structured but drafted as a version of a semi-structured interview schedule. The actual interview session implemented as a semi-structured interview offered a flexibility in terms of exploring the theme, collecting information, and completing interviews within a limited time (to party politicians in particular). The questionnaire is constructed to address the key themes underpinning the research:

* how the regulatory framework (ICT/antimonopoly regulation) has been developed over the last three decades,
* how the relationship between party politicians and civil servants has been transformed,
* how the regulator has shaped the organisational design of regulatory functions, and
* how the state’s regulatory capacity has changed.

Appendix 2 offers a sample questionnaire employed in the interview sessions of this thesis.

Accessing interviewees is widely regarded as a challenge for researchers (e.g. Burnham et al 2004 p.208-9). As Campbell (2003 p.231) reveals, having introductions are very important to get access to Japanese interviewees. This thesis obtained introductions from a few figures from academia, the civil service and politics to potential interviewees. In the process of the approach the interviewees received a brief description (half of an A4 page) on this research. The resulting list of actual interviewees responding to the proposal of this thesis is in Appendix 1.

All of the interviews were recorded except in two cases, where notes were instead made. The results of the interviews with data record were fully transcribed. Also, all interview sessions were fully noted. Based on this set of data, all interviews were reconstituted by fully transcribed interview records. There is no formal procedure in any Japanese organisation on interviewing equivalent to the Chatham House Rule in the British civil service. Interviewees controlled their sessions based on their own consideration; they tended to avoid the topics in which the persons involved and alive could be identifiable in general.

With the resulting transcripts, this thesis undertook the next task: the document analysis.

### 4.6.2 Document Analysis

The transcripts from elite interviewing supply the primary source of this thesis. The interview data of this thesis focuses on contemporary issues; the interviews aim at the period between the 1980s and the 2000s. This characteristic is shared by other secondary and tertiary sources utilised in this thesis, including the contemporary documents of the government, private firms, and academic journals (Burnham et al. 2008 pp.187-8).

The transcripts were categorised through placing labels on paragraphs and consolidating those relevant together. Called ‘coding’, this approach is useful when triangulating the arguments of the interview (Coffey and Atkinson 1996 pp.26-7).

A key analytical approach here is triangulation. Triangulation is an analytical approach in which multiple approaches are used to double-check the analytical result, whose frequently used typology is in Table 4.9.

#### Table 4.9: The typology of triangulation (Denzin 1970, Patton 1987)

|  |  |
| --- | --- |
| * **Data triangulation** * **Investigator triangulation** * **Theory triangulation** * **Methodological triangulation** | more than two data sources are utilised.  more than two researchers are involved in an investigation.  more than two theoretical positions were employed to the same data set.  more than one method is used to gather data, such as interviews, observations, questionnaires, and documents. |

What this thesis involves is data triangulation and methodological triangulation. The analysis of this thesis is based on multiple sources. When possible, an analysis is based on multiple sources from different origins, such as interview transcripts, an academic document, and government documents when they are available (methodological triangulation). When obtaining the sources from multiple origins is difficult, an analysis is based on more than two accounts (transcripts) (data triangulation). This method avoids a common pitfall that an analysis relies on the particular sources favourable for the proposition of the thesis and generates objective analyses (Burnham et al 2008 p.246).

The secondary and tertiary documents are employed not only as a source of information but also of triangulating the interview transcripts. For instance, the accounts such as Vogel’s (1996), Tsuchiya’s (2003), and Kushida’s (2006) are contrasted with interview accounts describing the liberalisation processes of Japan’s ICT sector. The data by government organisations is also employed to examine the reality (e.g. how much a leniency system in Japan’s antimonopoly field has become active). A risk using this kind of data is pointed out by Yin (2003 p.87); it should be noted that some of it can be observed as a reflection of the views of issuers because it can be deliberately edited.

## 4.7 The limitation of this thesis’ methodology

Hitherto, this chapter has discussed how this thesis has constructed and operationalised its research methods: the case study method and qualitative research method. As with other research methods, they inevitably have a set of limitations. The following sections elaborate the methodological challenges to this thesis from the theoretical and practical viewpoints.

### 4.7.1 The theoretical challenges

A significant theoretical challenge to the case study method is the problem of generalisation, because the case study method often relies on a single case (Bryman 1988 pp.87-8). Researchers have tried to cope with this challenge by employing more than one case study. For example, Skolnick (1966) adopted this approach in the participant observation of police officers in two US cities and Lupton (1963) did in the research of output regulation among manual workers in two factories (Bryman 1988 p.88). This thesis employs two case studies in a single country: the case studies of ICT regulation and antimonopoly regulation in Japan. The key to give this thesis generalisability is employing an approach of comparative case study methods; this thesis has generalised outcomes emerging from the comparison between the two case studies within the same country across time. Also, it draws on examples from Britain and New Zealand in order to highlight specific themes within the Japanese case. By referring to this set of examples, this thesis avoids falling into cultural exceptionalism of a particular country (Lees 2006 pp.1098-9). As Lees (2006 p.1105-6) argues, carefully designed case studies not only allow themselves to be more relevant to the generalised idea of knowledge but also provide comparative scholars with insights and thick description that the comparative studies would otherwise not provide.

### 4.7.2 The practical challenges

Together with the theoretical challenge described in the previous section, a researcher also needs to overcome practical challenges.

A major practical challenge is access to the interviewees. Having elites accept interview appointments is not easy. As Campbell (2003 p.231) highlights, having a mentor who advises a researcher about their interview is very important. Potential interviewees were selected referring to the advice of a few mentors, who had a specialised knowledge about the fields (ICT regulation, antimonopoly regulation). The interviewees were contacted with an introduction from key figures. In many cases introductions came from the mentors.

Another challenge is how much a researcher interprets interviewees’ interpretation of the political world they operate in. Seldon (1996) argues that it is difficult to obtain accounts reflecting the reality from British party politicians because of their spontaneous partisan perspective, while their civil servant counterparts tend to offer informative and excellent interviews (p.360, also Richards 1996 pp.194-204). The interview data was carefully analysed to avoid problems resulting from the interviewees’ bias highlighted by Seldon (1996). For example, apparently partisan oriented arguments (e.g. overtly hostile remarks to the political adversaries by a politician or to competitors by a business person) were taken out. Also, this thesis focuses on the information on what interviewees experienced and what they thought as those directly involved or an eye witness of the events. In addition to the above, this thesis establishes its arguments based on more than two accounts in order that they can avoid the bias of one particular person.

Another challenge appearing in the interview sessions was the significantly generalist nature of many party politicians; because they have had many and various responsibilities and their responsibilities have often changed, they had difficulty to remember the detail of the issues highlighted in the interview sessions. On the other hand, civil servants have more detailed and precise knowledge about the interview questions. At the same time, their knowledge was significantly limited by their ranks, positions, and responsibilities. Utilising their accounts needs attention like that required in a patchwork. Interviewees from the business community had a similar characteristic.

A balanced composition of interviewees across the groups is vital to avoid leaning to a perspective of a particular group. Because the major focus of this thesis is the Japanese state and the core executive, the largest interviewee group was drawn from the core executive: party politicians and civil servants. Their perspective was compared to the perspectives of interviewees in other groups who have involved with the policy issues and contacts to the core executive; those groups include major private firms in the field, consumer groups, and a set of professionals such as researchers and lawyers specialised in the ICT and antimonopoly fields.

A challenge to analysing the interview result emerges in triangulation; few official documents witness the unobservable power relations within the core executive in Japan. For example, how key party politicians such as Sadanori Yamanaka (see Chapter 6) exercised their informal influence over policy making processes is difficult to identify in the JFTC’s official documents in the public domain and debate in the Diet. This thesis employs the session records of the Diet and official papers in the public domain when it offers evidence relating to interviewees’ accounts. When it is difficult to methodologically triangulate interview accounts with such official documents because no such documents exist in the public domain, this thesis employs multiple interview accounts (more than two accounts) to establish an argument. For example, the power of Yamanaka in the antimonopoly regulation policy making process was witnessed by not only former civil servants who worked with Yamanaka but also a number of outsiders such as an official of a business organisation (*Keidanren*), a lawyer, and a law academic. Employing their accounts together with those of current and/or former members of the core executive contributes to establishing an argument seeking to avoid interviewee bias.

## 4.8 Conclusion

This chapter has outlined the methodology employed within this thesis. The construction of the research methodology starts from the ontological position. This thesis employs a view that an elitist approach best captures the complicated reality of the state, based on the perspective that the nature of power is fluid existing in the ideational world as well as the material world. This ontological position renders this thesis to employ a critical realist approach as its epistemological position. Although the qualitative methods offer a framework frequently used and compatible with this epistemological position, the selection of the research methods is based on its merits: the flexibility and practicability.

Based on an epistemological position of a critical realist and the qualitative methods, this thesis’ methodology offers a research framework with an established approach of research. This thesis generates a contribution to knowledge by utilising established methods, with the recognition of the various limitations associated with this particular methodological approach. In this thesis, the qualitative data drawn from elite interviewing offers rich insights into the political process of state transformation. For instance, an account from retired Japanese civil servants can contribute to interpreting the changing relationship between civil servants and politicians. Like Richards and Smith (2004 p.780, p.798) who set out to explore the relationship between ministers and officials in the British government, their accounts can highlight how meanings, beliefs, and decisions of the relevant actors are key to explaining actions, practices and institutions. The same technique is employed here, but in this case looking at Japan. The next two chapters are the case studies themselves, which draw upon the methodology outlined above.

# Chapter 5 The Evolving ICT Sector and the Transformed State

## 5.1 Introduction

The move to more liberalisation within markets after the 1980s offers a significant disjuncture in many economic sectors. In the case of the ICT sector, where market liberalisation has had a significant impact in many countries, liberalisation means a distinctive change from monopoly (often by the state/state corporation) to market driven competition.

The case of Japan’s ICT sector offers a potentially useful example because of its history of competition in the market dating back to 1985, when the privatisation of a state corporation monopoly had a significant impact over the telecommunications market. The former monopoly company (NTT[[41]](#footnote-41)) has remained dominant in the market, yet this position was challenged by emergent new entrants (NCCs: New Common Carriers). The regulatory functions were not assigned to a newly created independent regulator but to a government ministry, the MPT (Ministry of Posts and Telecommunications), which lacked experience and expertise in implementing this new task at the early stage (Tsuchiya 2003 p. 77). This chapter analyses the impact of this liberalisation, which is a complicated process of transformation in Japan’s ICT sector, referring to the power and role of party politicians including those in the LDP (Liberal Democratic Party) outside the Cabinet and Cabinet Ministers, civil servants in the MPT/MIC[[42]](#footnote-42) responsible for regulation in the ICT sector, and the NTT as the strong former monopoly incumbent carrier.

After the 1980s Japan’s ICT sector saw significant disjunctures including liberalisation and government change, which resulted in challenges to the core executive of the sector. Exploring this sector offers a case study in which the core executive has pursued its regulatory policies to respond to such challenges. The evolutionary process of the core executive in the ICT sector is the issue this chapter explores with the following proposition set out in Chapter 4: ‘During the era of Liberal Democratic Party (LDP) government, the core executive pursued discretional regulation within inner regulatory policy communities as a strategy to sustain its position of asymmetric dominance over actors within key policy sectors, with their actions shaped by a particular set of structures’. This proposition is explored through the following four research questions.

* The first research question is: ‘How has Japan’s regulatory framework evolved over the last three decades?’ It aims to reveal the development process of the regulatory framework. Understanding how the regulatory framework has been developed shapes the basis on which the following research questions establish their analysis on specific issues.
* The second research question is: ‘How has the core executive been successful in imposing their will on regulation?’ This focuses on power relations within the core executive. Party politicians have been key in the decision making process within the core executive. How the role and power have changed within the group of party politicians and vis-à-vis civil servants within the core executive is analysed by this chapter. Two core issues emerge in the analysis: firstly, the relationship between Cabinet Ministers and party politicians outside the Cabinet including those in the ruling party. The significance of this issue stems from the understanding that the latter (sometimes referred to as ‘*Zoku Gi’in[[43]](#footnote-43)*’) had widely recognised power over the policy making process (e.g. Inoguchi and Iwai 1987, I’io 2007 pp.94-7, Tsuchiya 2003 p.73-4); and secondly, the partisan confrontation between the LDP and the DPJ (Democratic Party of Japan). With the change in government at the 2009 general election, this confrontation could render a significant impact on the relationship between party politicians including Cabinet Ministers and civil servants. The second research question in this chapter explores how the core executive in the ICT sector has transformed its internal relationships by exploring these core relationships between key core executive actors (i.e. Cabinet Ministers, party politicians outside the Cabinet, and civil servants) after telecommunications liberalisation in 1985.
* The impact of the relationships between state actors on issues such as regulatory institutions and policies exemplifies the outcomes of state transformation. The third research question ‘how have Japan’s ministries shaped the organisational design of regulatory functions?’ highlights this impact by focusing on an example: the ICT regulator. Japan offers an unusual example in which only a limited number of independent regulators have been established. This reflects the tradition of Japanese politics as well as a path dependent history. The analysis of this characteristic reveals how the core executive has shaped its perspectives on the independence of the ICT regulator with their political tradition.
* Whether or not state transformation affects the regulatory capacity of the state (state actors) is examined by the fourth research question: ‘how has the state’s regulatory capacity changed?’ This question examines the impact of state transformation and changing power relations within the core executive on state power in ICT regulation.

This chapter is comprised of the following sections. The next section reviews the development of Japan’s ICT sector between the 1980s and 2000s, starting from telecommunications liberalisation in 1985, which was an early example of a telecommunications reform, alongside the US and the UK[[44]](#footnote-44). This review is followed by an exploration of the relationship between party politicians and civil servants. This reveals how power relations have changed among core executive actors. In the fourth section the impact of state transformation is considered through the institutional characteristic of the ICT regulator: a lack of an independent regulator. This section reveals how this characteristic has been shaped. The fifth section looks into the capacity of the state in the ICT sector and depicts how the transformation has changed state capacity.

Throughout the chapter, this thesis analyses how ICT regulation has responded to the transformation of the Japanese state.

## 5.2 The development of Japan’s ICT sector and the involvement of the core executive

Japan’s ICT sector can be categorised as having undergone three key phases between the 1980s and 2000s: privatising the state corporation, NTT, in 1985, reorganising the NTT in 1999, and the transformation of the regulatory approach from those of ex ante to ex post[[45]](#footnote-45) that gradually emerged in the 1990s and 2000s. These junctures have dismantled the previous regime of state corporation monopoly (Figure 5.1 reveals the timeline of Japan’s ICT regulation after the 1980s).

#### Figure 5.1: The timeline of the development of Japan’s ICT regulation after the 1980s

**The transformation of the regulatory approach from those of ex ante to ex post**

that gradually emerged in the 1990s and 2000s.

**The regulatory reform in 1985**

(NTT privatisation and liberalisation in telecommunications)

1997

1985

1990

2010

2000

**Reorganisation of the NTT**

in 1997 (implemented in 1999)

The 1980s was a striking period for Japan’s ICT sector commencing with the telecommunications regulatory reform in 1985. This regulatory reform was underpinned by two key events: the privatisation of the NTT and the liberalisation of the VANs (Value-Added Networks)[[46]](#footnote-46) (Vogel 1996 p.145). The former offered a significant opportunity for the analysis of the Japanese state (e.g. Vogel 1996, I’io 1993, Kalba 1988).

The telecommunications regulatory reform in 1985 was implemented as a part of a wider administrative reform under the initiative of the Second Provisional Commission on Administrative Reform (*Rinji Gyosei Chosakai*: *‘Rincho’*), an independent council supported by Prime Minister Nakasone (1982-87) (Vogel 1996 p.54). The administrative reform was one of Nakasone’s prioritised projects (Vogel 1996 p.57); he was the Director-General of the Administrative Management Agency, who was responsible for this reform, before being promoted to the Prime Minister. This administrative reform was a response to various challenges Japan confronted in that period. Vogel (1996 pp.54-6) summarises these as:

* devolution: the effectiveness of the highly centralised system, which has characterised Japan’s governing system until this period, began to be questioned by party politicians and business elites (Vogel 1996 pp.54-5). They, unlike their counterparts in bureaucracy, saw the *Rincho* and its administrative reform as a vehicle to decentralise political authority away from the traditional system, in which ‘lead’ government ministries principally managed their responsible sectors (Vogel 1996 p.55);
* spending cuts: as economic growth became sluggish by the first Oil Shock, Prime Minister Kakuei Tanaka’s (1972-74) public spending boost in the early 1970s created fiscal problems (Vogel 1996 p.55). This problem motivated the Ministry of Finance (MOF) and the business community to pursue government spending cuts (Vogel 1996 p.55). In particular, the latter resented corporate tax increases and felt the government’s attitude irresponsible, while private firms were struggling to cut their costs (Vogel 1996 p.55); and
* the LDP’s electoral strategy: the rising electoral power of the urban middle class and the declining rural population became a significant challenge to the LDP, as the party traditionally depended on its dominance in rural areas (Vogel 1996 p.55). To cope with this challenge, the LDP sought to liberalise the economy to appease the emerging urban middle class (Vogel 1996 pp.55-6). The LDP also avoided accepting the blame as the principal planner of the change by employing an outside actor, the *Rincho*, as the initiator of the administrative reform (Vogel 1996 p.56). At the same time the LPD permitted its members of the Diet (parliament) to work to protect their traditional interests in order that the LDP could retain its vote by taking the credit as a protector of the interests of their traditional rural supporters such as farmers and small business owners (Vogel 1996 p.56).

The cooperation of civil servants, the MOF’s in particular, was vital for the *Rincho* to achieve the administrative reform. The *Rincho* negotiated with civil servants (Vogel 1996 p.57). This negotiation shaped the administrative reform into: ‘an exercise in limiting government spending and privatizing public corporations’ (Vogel 1996 p.58).

One of the targets in this reform was the telecommunications sector, which was monopolised by two state sponsored corporations, the NTT (the state corporation for domestic telecommunications) and the KDD (the state sponsored private corporation established by law for international telecommunications). Under the previous system before the regulatory reform in 1985, it was the NTT which attained the dual goals of nationwide direct dialling in 1977 and universal service in 1978 (Vogel 1996 p.141, Kojima 2004 pp.302-19, Takahashi 2009 p.p.142-3). The supervisory section of the MPT, the regulator to the NTT since 1952, was marginalised by the NTT, because the MPT had concentrated on running the postal services, leaving its telecommunications regulation section, the Telecommunications Inspectorate, unable to fulfil its responsibility of regulating the NTT (Vogel 1996 pp.139-42, Takahashi 2009 p.107). The Telecommunications Inspectorate was staffed with only a small group of thirty or forty officials headed by two Telecommunications Inspectors (*Denkitsu’ushin Kanrikan*), one of whom was seconded from the NTT with a two-year tenure (Vogel 1996 p.142, Takahashi 2009 p.107). The status of the NTT as a public corporation gave party politicians significant leverage over the NTT. The Diet approved the NTT’s annual budgets and major amendments of its service provision, and reviewed its corporate investment plans (Vogel 1996 p.139, Takahashi 2009 pp.105-8). Such a wide range of the Diet’s authority over the NTT prompted party politicians to intervene in the NTT’s activities. According to Vogel (1996 p.142), ruling LDP members: ‘intervened in telecommunications policy selectively, when they saw political advantage in getting involved.’ He observes that they were more interested in bringing services into their constituencies than in debating telecommunications policy (Vogel 1996 p.142). Although the LDP’s long rule (1955-93) marginalised its opposition including the Social Democratic Party of Japan (SDPJ), the NTT Union, the Japan Telecommunication Workers Union (*Zenkoku Denkitsu’ushin Rodo Kumi’ai: Zendentsu*), a strong ally of the SDPJ, had a significant influence over Japan’s politics (Vogel 1996 p.142).

The creation of the privatised NTT alongside the institutional changes transformed the structure and major actors of the ICT sector. While the privatised NTT began concentrating on its business operation, major regulatory functions were transferred to the MPT (See Table 5.1).

#### Table 5.1: Primary authority before and after 1985 Telecommunications Regulatory Reform (Vogel 1996 p.157)

|  |  |  |
| --- | --- | --- |
| Item | Primary Authority before 1985 | Primary authority after 1985 |
| **Telecoms**  **Business Law** |  |  |
| Entry | Diet (NTT is designated as the monopoly service provider.) | MPT |
| Prices | Diet (Basic services prices set by law; NTT free to set prices on certain items.) | MPT |
| Services | Diet (Basic guidelines set in law; items not covered subject to MPT approval.) | MPT |
| Technical  Standards | NTT (Set by NTT for network; set by the MPT for customer equipment.) | MPT (Set by the MPT’s Telecoms Deliberation Council.) |
| **NTT Law** |  |  |
| Budget | Diet (Requires Diet approval.) | NTT (Business plan requires MPT approvals; budget must be attached.) |
| Personnel | Diet (Subject to Diet approval through budget process; certain guidelines written into law.) | NTT |

The MPT emerged as the dominant regulator after the regulatory reform in 1985. According to Vogel (1996 p.161): ‘the dominance of NTT within the old regime has been replaced by the dominance of the MPT within the new regime’. The role of the MPT in the policy making sphere was significantly increased.

Elsewhere, a key issue characterising ICT regulation was a group of party politicians with specialism in the sector including the group called *Yusei- Zoku*[[47]](#footnote-47) (Post Tribe) in the LDP. In the light of the fact that the LDP dominated government in most of the post-war era up until 2009, the significance of *Yusei-Zoku* was evident (Muramatsu 1991 p.289, Tsuchiya 2003). *Yusei-Zoku* played a key role in regulatory policy making in ICT by preliminarily examining bills in the LDP PARC Communications Division (Internal Affairs and Communications Division after 2001); as memberof the Division *Yusei-Zoku* could examine key policy issues such as draft bills with discretion and stop endorsement if necessary (Inoguchi and Iwai 1987, Muramatsu 1991, Vogel 1996, Tsuchiya 2003). *Yusei-Zoku* used the PARC and its Communisations Division as their key tool to influence over policies by controlling debates in the Division and stop policy making processes if necessary. Subsequently, under the LDP/LDP led coalition governments, the LDP established a custom of preliminary examination within the LDP on government’s bills before their formal submission to the Diet (I’io 2007 pp.83-8. Also see Chapter 2). Since laws are significant governing tools for Japan’s government ministries and the LDP administration created a custom that bills without ruling parties’ internal authorisation would not be adopted as government bills, ruling parties’ preliminary examination had a significant impact on policy making processes (George Mulgan 2005 pp.14-8, I’io 2007 pp.123-6).In the case of ICT regulation, the LDP’s preliminary examination was handled by *Yusei-Zoku* in the PARC and its Communications Division. In the light of the fact that *Yusei-Zoku* had leverage in the preliminary examination within the LDP, its influence was significant. In addition to *Yusei-Zoku*, elder and senior LDP politicians exercised significant influence over important policy decisions (Inoguchi and Iwai 1987). This is a dynamic flagged by Vogel (1996 pp.154-5) in his description of the key moment of NTT privatisation:

(The LDP’s) Tanaka faction, the largest and most powerful, played the pivotal role in formulating the LDP’s approach to the reform. Kakuei Tanaka himself, like the other top LDP leaders, had committed his support to the *Rincho*, although he reserved the right to differ on specific issues. In July 1983, Tanaka faction elder Shin Kanemaru devised a shrew way to coerce the more conservative LDP Communications *zoku*. He announced a proposal that they could readily accept, a minor revision of NTT’s status to that of ‘public organisation.’ Kanemaru designed the proposal to fail, as it did when the MOF and the LDP leadership overwhelmingly condemned it. This way, Kanemaru was able to tell the *zoku* that he had tried and convince them to accept a bolder proposal. … On September 6, 1983, Ryutaro Hashimoto, chairman of the LDP’s Committee on Administrative Reform, abruptly announced an eleven-point proposal. The proposal favoured the privatization of NTT but not its breakup.

The power of the ruling parties’ politicians had a significant effect in shaping key decisions within ICT regulation. A further example can be identified in the debate over the breakup of the NTT which emerged as a key issue after the 1985 NTT privatisation.

The debate on the NTT breakup dominated the period between 1985 and 1999. This idea was first proposed by the *Rincho* in the debate of privatisation but postponed in the regulatory reform in 1985 because the NTT and its Union lobbied interested parties to block this idea (Vogel 1996 p.155). This question, also called ‘the reorganisation of the NTT’, involved party politicians including LDP members, the MPT, the NTT itself, and its Unions.

The NTT Law, which was formulated in the regulatory reform in 1985, stipulated that the government examine the status of the NTT five years after privatisation and take appropriate action. Following this provision, the MPT started its policy deliberation by consulting on this issue with the Telecommunications Council[[48]](#footnote-48) in October 1989. The Council’s report recommended the breakup of the NTT, but this was not accepted by the government, because significant opponents such as the MOF and *Keidanren* emerged both in and outside the government (Vogel 1996 pp.158-9, Tsuchiya 2003 p.82). The government decided to only separate the mobile division from the NTT, and postpone the breakup of its long distance communications division.

The second round of this debate was launched in April 1995, when the MPT again consulted with the Council about the status of the NTT. In February 1996 the resulting report[[49]](#footnote-49) recommended dividing the NTT into three parts: the long distance communications division, the east regional communications division, and the west regional communications division. This recommendation was again not implemented, because significant opponents emerged in the ruling coalition of the day[[50]](#footnote-50), including the SDPJ backed by the *Zendentsu* (Takahashi 2009 p.213, Tsuchiya 2003 pp.83-4). The MPT announced in December of the same year that the NTT would be transformed into a holding company group which would control a long distance communications company and two local communications companies.

The nature of this debate on the NTT breakup was characterised by a fierce confrontation between two groups. The MPT and new entrants to the ICT sector strongly supported the breakup of the NTT, with the NTT and its union in opposition (Tsuchiya 2003 p.77). The contention between these two groups divided party politician’s influential over ICT regulation (Tsuchiya 2003 p.77, pp.83-4).

The central issue of the NTT breakup was its bottleneck monopoly of the regional communications networks. This led to: ‘a situation whereby almost all of the telecommunications services cannot be provided without the monopolistic regional communications network’ (Telecommunications Council 1996a Chapter 3 2. (8)). The Telecommunications Council (1996a) recognised that the NTT had a 99 per cent market share in regional communications markets. The negative impact stemming from the NTT’s monopoly of regional communications networks included: the monopolist’s potential to emasculate competition by exercising its completely dominant market power; the lack of any competitive incentive to pursue efficient management and a more competitive price structure; and the power commanded by a monopoly supplier to cross-subsidise their equivalents in competitive markets and the resulting emasculation of competition in the telecommunications markets (Telecommunications Council 1996a; see also Table 5.2).

The NTT breakup plan drew on the experience of the breakup of the AT&T in the US in 1984. Focusing on competition within domestic telephone networks, local telephone networks in particular, the proponents of the NTT breakup (e.g. MPT, NCCs) argued that the plan would stimulate competition within the ICT sector (Tsuchiya p.77, pp.83-4). The NTT and its union strongly opposed the breakup plan, highlighting its potential negative impact on the NTT’s business. The NTT argued that the negative impact of the breakup could result in the decline of its universal service within Japan and research and development (NTT 2013). The confrontation between the two sides was settled through arbitration by a group of party politicians.

After the Telecommunications Council issued a report in favour of the NTT breakup in March 1990, the first round of the breakup debate was resolved by the five year postponement decision by Tsutomu Hata, the chairman of relevant LDP committee of the day, with the delegation of senior LDP politicians in the same month (Vogel 1996 p.159). The second round of the debate was arbitrated by LDP Secretary General Hiromu Nonaka in December 1996, following ruling parties’ (LDP, SDPJ, *Sakigake*) decision of a one year postponement in March 1996.

What is revealed here is the dominant power of the ruling party politicians outside the Cabinet in decision making. Both cases highlight the MPT’s failure to achieve its original goal of completely breaking up the NTT because a group of ruling party politicians opposed the MPT’s plan and supported the NTT’s view (Tsuchiya 2003 pp.82-4). The key decision makers here were the group of ruling party politicians. Being divided between the MPT/NCC’s supporters and the NTT’s supporters, the LDP’s *Yusei-Zoku* was unable to control the debate of the NTT breakup alone; rather, a broader group of ruling party politicians outside the Cabinet (e.g. Tsutomu Hata, Taku Yamazaki, Hiromu Nonaka) including some members of *Yusei-Zoku* collectively arbitrated the debate (Tsuchiya pp.82-4). The arbitration in 1996 did not aim to resolve the policy challenges identified in Table 5.2 but to seek compromise and conciliation between the two sides. The arbitration divided the NTT into three; so it was in line with the Telecommunications Council’s recommendation in 1996 that the NTT be divided into three bodies: the long distance communications company, the east regional communications company, and the west regional communications company. At the same time, these three companies were established under a holding company; this meant that the NTT’s unity was retained in line with the NTT’s view. The nature of the arbitration can be regarded as highly political rather than policy oriented, because the arbitration aimed not to pursue a policy oriented goal such as developing a new competition framework but to appease the both sides by trying to adopt some of their proposals (Tsuchiya 2003 p.84). The debate of the NTT breakup offers an example of the weakness of the power of civil servants through their failure to obtain the ruling party politicians’ collective support.

#### Table 5.2: Problems resulted from the NTT’s dominance in local landline telecommunications networks (Telecommunications Council 1996a Chapter 4 2-1)

|  |
| --- |
| 1. The continued existence of a bottleneck monopoly will cause the following problems: 2. There will be no extra incentive for NTT to improve management efficiency. 3. The development of fair and effective competition will remain limited. 4. As a result, there will be no increase in incentive to provide consumers with better services and reduce rates. 5. Policies for promoting competition which rely solely on such non-structural measures as issuing administrative orders are limited in terms of effectiveness, and the time and costs required for regulation may become extensive. 6. More specifically, while NTT faces a reasonable degree of competition in the long-distance communications markets in regions like Tokyo, Nagoya and Osaka, it still retains a more than 90% share of the overall communications market in Japan. This is an impediment to the business dynamism associated with competition. 7. Restriction on the business of the NTT is inevitable if it is to enter such competitive markets as international communications while maintaining its existing company structure, because the issues relating to fair and effective competition that we currently see in the long- distance communications market will appear in other markets as well. 8. Change in the corporate management environment is likely to be even more rapid in the future. However, if NTT remains in its present form as a giant management organization, this will run counter to its own objectives, namely to take full advantage of its management resources, establish more mobile management and enjoy the ‘economies of speed’.   (Reference) Number of employees of major companies in the private sector (Fiscal 1994)  NTT 194,721  JR East Japan 79,709  Hitachi, Ltd. 76,679  Toshiba 73,463  Toyota Motor 69,748 |

The transformation of the regulatory approach from those of ex ante to ex post was characterised more by a piecemeal evolution than a sudden disjuncture (Kushida 2006 p.133). The key events of this transformation include the deregulatory measures summarised by Kushida (2006 pp.136-7):

* Japan’s signature of the WTO Telecoms Agreement in 1997. This removed most restrictions on foreign ownership of carriers and infrastructure;
* the abolition of most licensing requirements for market entry and price changes in 1998 while relaxing restrictions over the scope of the carrier’s business activities. In particular, the MPT changed most regulatory requirements on Type I[[51]](#footnote-51) carriers to notifications from permissions; and
* the abolition of most of the classification, registration, and notification requirements. The MIC removed the Type I and Type II carrier classifications altogether in 2003.

While these deregulatory measures were intended to relax ex ante regulation, newly introduced regulatory measures can be understood as ex post oriented. The key components of this new regulatory measure contain the development of the rule for interconnection between telecommunications operator networks and the establishment of the Telecommunications Dispute Settlement Commission (TDSC).

The initial telecommunications regulatory framework introduced in the 1985 Telecommunications Regulatory Reform made only a simple provision about the dispute settlement of telecommunications network interconnection between telecommunications operators (Kushida 2006 p.135). The terms and conditions of interconnection were determined between interested parties, and the MPT intervened when no agreement was reached between the parties. The MPT’s intervention included issuing orders by the Minister and arbitration (Telecommunications Council 1996b p.1). This system prompted significant problems and resulting disputes between the NTT and new entrants, which can be summarised as (Telecommunications Council 1996b pp.2-3):

* prolonged interconnection negotiations: some interconnection negotiations between new entrants and the NTT, in particular those related to NTT’s local networks, became significantly prolonged. Since long distance NCCs requested interconnection with the NTT concerning the VPN (Virtual Private Network) service in September 1989, it took more than five years before reaching an agreement. ‘During that period, the long-distance NCCs requested the Minister of Posts and Telecommunications to issue an order to connect in November 1994, which the Minister issued to (the) NTT in December of the same year. An agreement was finally concluded in April, 1995’;
* the costs base for calculating interconnection charges: a dispute arose over the appropriate base for calculating interconnection charges. The NCCs negotiated with the NTT for the scope of costs for NTT local network interconnection charges for four years from 1993. In November 1995 the NCCs and the NTT agreed to exclude the NTT’s sales activities expenses, but still continued to negotiate other items including research and development expenses;
* network modifications for interconnection: the NTT’s network needs to be modified to connect with other telecommunications networks, because: ‘it was not necessarily designed for interconnection.’ This modification needed two years on average. Also, the NTT requested NCCs to bear the costs for modification, which was a significant burden for small NCCs; and
* interconnection with Type II carriers: There were also disputes between the NTT and Type II carriers about technical issues, such as network-network interface and unbundling the NTT’s network components for lease.

These problems prompted the MPT to revise the Telecommunications Business Law to establish clear rules for interconnection in 1997 (Kushida 2006 p.135, Takahashi 2009 p.239). This amendment obliged the NTT to lease its local network, calculate its interconnection charge in line with the MPT’s formula dictating the prices the NTT was allowed to charge, and establish the interconnection accounting system (Kushida 2006 pp.135-6, Takahashi 2009 p.239).

Another regulatory measure which can be regarded as ex post is the establishment of the TDSC in 2001. The MIC transferred its responsibilities as the coordinator and mediator of the dispute between telecommunications operators to the TDSC, which is located within the ministry but is in principle an independent third-party deliberative organisation. The members of this commission are appointed by the Minister of Internal Affairs and Communications after the endorsement of the Diet (TDSC 2011a). Although the actual impact of the TDSC does not appear significant – it issued zero recommendations in 2008 and 2010, and three recommendations in 2009 (TDSC 2011b) – the creation of this commission can be understood as an event showing the government’s intention to change its mode of ICT regulation.

The traditional decision making framework within the core executive did not, however, change in ICT regulation under LDP/LDP led coalition governments. Key decision making processes were dominated by party politicians outside the Cabinet after the debate of the NTT. A typical example of the dominant party politician groups under this framework was the LDP’s *Yusei-Zoku*, who exercised their power in their political arena, the LPD PARC Internal and Communications Affairs Division. Tsuchiya (2003 pp.86-7) reports a case in which the MIC’s trial to introduce asymmetric regulation, in which the NTT’s regional communications divisions (NTT East and NTT West) and mobile division (NTT Docomo) be designated as the carriers with significant market power, was opposed by *Yusei-Zoku* in the LDP PARC Internal Affairs and Communications Division in March 2001. The MIC was then left with no other option but to weaken their original regulatory proposal.

Elsewhere, challenges to this traditional framework also emerged in the 2000s under LDP governments. First, this can be seen in the impact of the administrative reform implemented in January 2001 which enhanced the Cabinet by explicitly recognising the Prime Minister’s leadership in law and strengthened the Prime Minister’s staff (e.g. giving stronger power to the Cabinet Secretariat and establishing the Cabinet Office) (I’io 2007 p.195). Second, in replacing the previous parliamentary team within a ministry (a Cabinet Minister and one or two Parliamentary Vice-Ministers) with *Seimu Sanyaku[[52]](#footnote-52)* in January 2001 strengthened the power of individual Cabinet Minister within their respective ministries (I’io 2007 p.196). In addition to these institutional changes, Jun’ichiro Koizumi’s approach summarised in Table 5.3 also contributed to further enhancing the power of the Cabinet and Cabinet Ministers in the 2000s.

#### Table 5.3: The major points of Jun’ichiro Koizumi’s approach to strengthen the Cabinet (based on I’io 2007 pp.195-201)

|  |
| --- |
| * Appointed his Cabinet Ministers without any references from other key LDP politicians; this significantly strengthened Koizumi’s political authority. * Gave his Cabinet Ministers explicit instructions in writing; this contributed to forming the policy unity in the Cabinet. * Refrained from frequent Cabinet reshuffle and instead moved a Cabinet Minister from one post to aonother; this contributed to Cabinet Ministers’ longer tenure and the continuity and unity of the Cabinet. * Formulated an appointment system for Senior Vice-Ministers and Parliamentary Secretaries and obtained the confirmation of respective Cabinet Ministers who would supervise the appointees; this enhanced the unity of *Seimu Sanyaku*. * Employed the Council for Economic and Fiscal Policy as an arena of key policy debates and made decisions himself after debate between Cabinet Ministers. * Scapegoating the LDP’s *Zoku Gi’in*, *Yusei-Zoku* in particular, as the enemy of his reform policies and expelled LDP politicians opposing his post office reform (post office privatisation), many of whom belonged to *Yusei-Zoku*, from the LDP in 2005. Koizumi’s landslide victory in the immediately following general election gave him unchallengeable authority within the LDP and *Zoku Gi’in*’s, *Yusei-Zoku*’s in particular, power significantly declined. |

Power relations within the core executive, which can be characterised by the rise of Cabinet and Cabinet Ministers under LDP governments in the 2000s, encountered another significant disjuncture in 2009. The change in government from the LDP to the DPJ following the 2009 general election led to the dismantling of the power of LDP *Zoku Gi’in* as key ruling party politicians. Here, power relations within the core executive in Japan’s ICT regulation can be seen to enter a new phase in which the DPJ’s new framework now shaped the decision making framework.

Elsewhere, the evidence suggests that competition in Japan’s ICT sector significantly increased. For example, the number of telecommunications operators in the sector rose to 15,569 in March 2010 from 1 until 1985: a significant growth from state corporation monopoly by one state corporation in 1985 (MIC 2013a). Elsewhere, in terms of pricing, a call by the NTT from Tokyo to Osaka cost 400 yen/3 minutes in April 1985; the NTT East now charges 8.4 yen/3 minutes not only for a call from Tokyo to Osaka but any call to anywhere in Japan (MIC 2013b, NTT East 2013).

Throughout this process, it is evident that a significant change of power took place between actors in the sector. The direct management through a state corporation changed to principal-agent regulation through the executive branch. The regulatory approach was changing from interventionist or ex ante oriented to ex post oriented. Party politicians changed their approach from a direct commitment by approving the NTT’s management issues to more subtle influence through the MPT/MIC. The MPT emerged as an influential regulator after privatisation, although its regulatory approach has also evolved in response to the development of competition and ICT. Elsewhere, the relative strength among private sector actors has been volatile; although the NTT has retained its dominant position, the evolution of the market has enabled new entrants such as NCCs to challenge the NTT. The state has withdrawn from the direct management of telecommunications service provision, and instead introduced new regulatory measures such as rules for telecommunications network interconnection.

If these changes are drawn together, what emerges is the extent to which the ICT sector has seen a significant change in both its actors and structure. The impact of this evolution on the core executive is one of the crucial topics explored in this thesis, in order to consider the evolution and adaptation of the core executive in relation to the transformation of the state. The following section focuses on these transformative processes by analysing how the core executive has changed through its adaptation to its external challenges.

## 5.3 Inside the core executive: the relationship between party politicians and civil servants

The privatisation of the NTT proved a contentious issue for the core executive. Despite its significant impact on the telecommunications sector this policy project did not have a clearly elaborated goal. The interviews reveal that there was no clear vision among both party politicians and civil servants of how the newly liberalised market would be developed. For example, one retired senior civil servant argued that:

First of all, nobody had an image of how the competitive environment would be developed and what kind of competitive conditions would be realised. Logically, ‘no monopoly after privatisation’, ‘must engage in competition’, but, under the condition that no facility (other than the NTT’s), nothing, no (alternative) operators existed, everybody was concerned if competition was possible. (Interview with a retired MIC senior civil servant)

This view was not uncommon among former civil servants: ‘It started from zero. Civil servants and politicians had zero. And, it was a very new growing industrial field so we could say various things’ (Interview with a retired MIC senior civil servant). A retired senior party politician who witnessed the 1985 Telecommunications Reform as a Liberal Democrat also noted: ‘not many people (party politicians) have deeply involved with and studied telecommunications policy’ (Interview with a retired senior party politician (ex-Secretary General)). This account is in line with Inoguchi and Iwai’s (1987 p.204) description in 1987: ‘…policy contents are highly specialised whether postal saving or information and communications. Policies were completely decided by MPT officials and *Yusei-Zoku*  rarely intervened in the MPT’s policy decisions’. The accounts from those in key positions in the core executive in the mid 1980s indicate that policy makers did not have a clear long term future plan about how competition should be introduced in telecommunications after completing privatisation. This is also concurred by a government official’s (MPT) explanation in the Diet in 1984: ‘...in reality, the immediate emergence of such carriers (NCCs) after the enactment of this law is not likely because the telecommunications market requires a significant extent of investment and technological expertise; but we expect this framework (a liberalised telecommunications market) will enable NCCs to emerge, so we are drafting the bills of this framework’ (The House of Representatives 1984a). Elsewhere, liberalisation created a significant and immediate impact. Vogel (1996 p.161) highlights a transfer of a significant portion of responsibilities from the NTT to the MPT. This inexperienced ministry did not have any expertise at the beginning of the post privatisation period, while the NTT had both knowledge and experience as a state corporation. As a member of the Information and Communications Council[[53]](#footnote-53) revealed:

Initially, the MPT’s communications policy was completely controlled by the NTT. …Before privatisation, in the 1970s. The MPT wasn’t capable of making arguments. I suggest they didn’t know what to do… it was common in the 1970s that the NTT quickly smashed whatever the MIC (MPT) did. (Interview with a former member of the Information and Communications Council)

This account is similar to Vogel’s (1996 p.141): ‘NTT officials handled most of the “politics” of telecommunications policy – meaning relations with the Diet’. Such a situation was evidenced in the continuing supremacy of the NTT despite the significant disjuncture caused by its privatisation. The initial phase of NTT privatisation, therefore, saw the coming together of a powerful and experienced ex-state actor (NTT) and an emerging but embryonic state actor (MPT). The latter was not powerful in the policy making arena; key decisions were made by party politicians, Liberal Democrats in particular, and the MPT was subject to the decisions by party politicians. The relationship between party politicians and civil servants was:

…the first half of the 80s saw privatisation; the precondition of liberalisation was protecting the NTT or NTT’s functions. In simple terms, it (party politicians’ role) was like the PTA (Parent-Teacher Association). However, since many (party politicians) thought the ICT industry needed something, their approach gradually changed from the PTA to reform oriented. Elsewhere, they thought the overexpansion of the MPT’s authority problematic and began checking (the MPT). …leaving aside whether it was good, politicians’ role could be called not a ‘leadership’ but checks to (the undesirable activities of) civil servants. (Interview with a retired MIC senior civil servant)

This account parallels Johnson’s (1982 p.315) analogy about the relationship between Japanese politicians and their bureaucratic counterparts: the ‘safety valve functions’ of party politicians, meaning that politicians oversaw bureaucracy and acted to control it when necessary, such as when bureaucrats tried to draft a law to which the majority of the nation opposed. The key points here are:

* party politicians’ stronger power in the decision making process than civil servants’,
* significant institutional power of the regulator (MPT), and
* the regulator’s (MPT) lack of expertise resulted from the fact that the operational functions of the state (state corporation) were privatised and moved to the private sector.

Unusual factors such as the regulator’s lack of expertise resulted in the emergence of a dominant private sector actor (NTT) in the market and the temporary retreat of state control in the initial phase of the post privatisation period. However, the MPT’s increased institutional authority stipulated by law and its response to the new environment changed the nature of the relation between actors including the MPT and the NTT. This is noted by Vogel (1996 pp.161-66), who points out that the emergence of the MPT as a strategic regulator was a distinctive characteristic of the post privatisation period. This enhancement of the MPT is concurred by a retired senior civil servant:

…the MPT’s power was strengthened by various factors emerging together, which worked together and transformed the MPT from a mere operational ministry to a so-called policy ministry. …liberalising the market and separating the operator from the regulator prompted the MPT to consolidate its position through coping with its challenges in the 1990s, with the dominant tide initiated by the *Rincho* (meaning market oriented policies), the breakup of the US incumbent operator called by us ‘Communications Big Ban’, and the confrontation to rival ministries including the MITI (Ministry of International Trade and Industry). (Interview with a retired MIC senior civil servant)

The MPT’s power was described as the establishment of the regulatory institutional framework in his view: ‘between the end of the 1990s and the beginning of the 2000s most of the competition policy framework was accomplished … communications liberalisation through the transformation from the NTT’s monopoly to its reorganisation has enhanced the MPT’s regulatory role’ (Interview with a retired MIC senior civil servant).

The enhanced MPT exercised detailed regulatory measures, which Vogel (1996 pp.161-66) describes as ‘micro management’. Civil servants described this approach (the interventionist regulation by the MPT in the early post liberalisation period) as a response to the uncertainty of the newly liberalised ICT market. A civil servant commented:

… what is well done in ICT is very specific regulations, which should be left to operators, have been eliminated, while those such as ensuring safety, ensuring quality, and securing connections have been retained. In this way, I suggest, regulation hasn’t been completely dismantled. Simply unnecessary regulation has been eliminated and truly necessary regulation has been retained. At the beginning of liberalisation, because nobody knew what would happen, everything must have been covered, or, anything dropped could result in trouble; such an idea existed. I suggest the ministry gradually got to understand what measures could be left to operators and eliminating what measures could cause trouble if something happened. (Interview with an MIC civil servant)

One senior civil servant offered an interpretation that micro manage regulation could be understood as a relaxed mode of regulation compared to the previous mode of regulation, under which many operational decisions needed Diet approvals because operation was managed by a state corporation:

Some parts of the framework were strict. To elaborate in the simplest terms, fares and services could be offered through application and admission. And, facility based careers (Type I) needed permission for market entry. …after twenty years now, I guess this system had both a flexible part and a difficult part. What I thought at that time was, things started from the world of monopoly, in which minor fare changes needed more than admission, (because they were) legally determined fares. Therefore, about legally determined fares, whether fares drop or rise, such fundamental things were decided by law. And such things became more flexibly determined without debate in the Diet. Opportunities to change law are limited: once in a year or so. We thought at that time no system was more relaxed than this one, and what is called fundamental services such as telephony, in our understanding, could be freely determined, was unimaginable. (Interview with an MIC senior civil servant)

His account is in line with a government official’s (Moriya Koyama, the Chief of Telecommunications Policy Bureau of the MPT) explanation on the regulatory framework after NTT privatisation:

...so far the legal framework hasn’t permitted public telecommunications business except for the NTT’s and the KDD’s. In terms of regulatory permissions and approvals, everything has been prohibited so far. The present bill can be understood not as the introduction of new regulatory permissions and approvals but liberalisation within the framework of the regulatory permissions and approvals. In short, we’d like you to understand that this set of permissions and approvals opens the previously prohibited business activities and the permissions and approvals are the leverage of this process. ... (telecommunications) regulation should be minimum, in our view. (The House of Representatives 1984a)

Another account explained this as the result of a deliberate trial to create competition in the telecommunications market:

The government tried to deliberately create competition in the market, which isn’t an idea based on legally justifiable approaches. Therefore, it was unavoidable that such approaches (micro management of the market based on not law but political power) inflicted ‘conflicts’. (Interview with a retired MIC senior civil servant)

These accounts highlighted how the MPT evolved from an inexperienced and powerless regulator to an established one.

The MPT’s expansion of its regulatory power did not have a significant impact on its power relations vis-à-vis party politicians. According to an MIC senior civil servant: ‘it (politicians’ power after telecommunications liberalisation) hasn’t changed so much’. Another civil servant also revealed his view: ‘the final decision’s been made by politicians. Because politicians pass bills, they’ve actually dominated a significant portion of decision making processes’. This view is shared by I’io’s (2007 p.91) analysis on civil servants and party politicians. Japan’s civil servants need party politicians’ cooperation to pass bills in the Diet (I’io 2007 p.91). What has changed between party politicians and civil servants is the approach of the former to the latter. In the early phase of the post telecommunications liberalisation process, party politicians intervened in the regulatory matters administered by civil servants, as the following account witnessed: ‘… suddenly in response to the claims from politicians (the MPT) instructed “call rates are expensive so drop them”. Such things happened several times, and this wasn’t based on law’ (Interview with a retired MIC senior civil servant). As regulatory approaches to operators changed, party politicians’ interventions also changed. One senior civil servant argued that the change of the regulatory approaches from ex ante oriented ones such as market entry permissions and tariff change approvals to ex post oriented ones such as network interconnection regulation made it difficult for party politicians to intervene:

In the first five years (from NTT privatisation), during the debate of NTT breakup, issues such as call rate drops and fare competition between the NTT and the NCCs needed official approvals, and politicians frequently intervened in them, even about fares. For example, let the NCCs drop their charges more, or, on the contrary, from politicians supporting the NTT, let the NTT drop its charges more. Such interventions were so frequent that I didn’t feel party politicians retreated from involvement. And, as competition in the telecommunications market wasn’t effective enough, probably politicians contacted industry in various ways and required the government to develop something like competition policies. (Interview with an MIC senior civil servant)

This overt intervention from party politicians was based on strict regulation (what Vogel (1996) calls ‘micro management’). The call for deregulation, therefore, undermined the basis on which party politicians intervened, so changing their role in the regulatory arena:

…politicians inserted their influence through government permissions and approvals. As deregulation stripped the government of the authority of permissions and approvals, such politicians’ role was forced to change. Therefore, leaving aside whether this was good, if specially commented, I can say they undermined their own power base. …But I guess formulating a regulatory framework in response to how effective competition is in the market is very rational, and through such a process politicians’ role has changed. And, this happened under the LDP administration, so this had nothing to do with administration’s ideology. (Interview with an MIC senior civil servant)

This interviewee elaborated further the relationship between the change of regulatory approaches and party politicians’ approach to ICT regulation:

It is very hard for politicians to intervene in and be involved with those such as network interconnection regulation and ex post regulation for consumer protection. Therefore, in such a meaning, politicians’ approaches which I described as ‘politicians didn’t retreat’ became very difficult to be sustained because regulatory approaches changed (from ex ante regulation such as market entry permissions) to new ones (such as network interconnection regulation and other ex post regulation)[[54]](#footnote-54). (Interview with an MIC senior civil servant)

This account is supported by a LDP politician, who argued that deregulation and the change of regulatory approaches significantly transformed the role of politicians. This transformation came with a change of the relative strength within the community of party politicians:

Traditionally, *Yusei-Zoku*, which was a part of the Tanaka-Takeshita faction[[55]](#footnote-55), had power and it is true that those people had a significant influence over the decision making of ICT policies. This situation continued until the juncture period from telephony to the Internet, but gradually, this policy making mechanism, in which *Zoku Gi’in* decided policies, changed to another one in which operators negotiate with each other and the ministry plays a role as a referee, as networks have become more open. And, naturally regulation has been relaxed, and politicians and laws have fewer places to be involved. (Interview with a member of the House of Councillors (LDP))

If one reviews the above accounts, what emerges is how the state’s regulatory mode changed. The initial approach of the state was an ex ante regulator whose major tools included market entry permissions and tariff approvals. This approach was mobilised with the idea that competition needed to be introduced in the market. Politicians significantly intervened in the process of ex ante regulation. The interviews also highlighted a change to this ex post oriented regulatory mode. This change was explicitly recognised by a senior MIC official in the Diet: ‘...the newly introduced framework will facilitate competition and allow new competitive entrants to enter the market; and it is basically ex post oriented’ (The House of Councillors 2003). An emerging new mode based on ex post regulation rendered the MPT to act as a referee to disputes between operators rather than an ICT sector strategist. Another factor emerging from the interviews is the decline of the power of party politicians outside the Cabinet and the rise of the power of Cabinet Ministers including the Prime Minister. This changed the relative strength between Cabinet Ministers and those outside the Cabinet in favour of the former:

The post office privatisation wiped out *Yusei-Zoku* in the LDP, or diminished their power within the LDP through its process. In concrete terms, Mr Nonaka (a significant *Yusei-Zoku* member in the 1990s and early 2000s) retired, most of the people (LDP politicians) who co-ordinated regulatory policies with the MPT lost the election, or left the LDP even if they carried it. In such a situation politicians’ power in ICT regulation significantly declined. (Interview with a member of the House of Councillors (LDP))

The impact of this turmoil within the LDP was also witnessed by another LDP politician, who was close to the MPT and left the LDP in the process of post office privatisation:

About *Kantei* (Prime Minister and his staff), it wasn’t Mr Koizumi but Mr Takenaka[[56]](#footnote-56) (Minister of State for Economic and Fiscal Policy of the day). His open policy or liberalisation policy confronted us…after his lead in the Council of Economic and Fiscal Policy[[57]](#footnote-57), the government and the party (LDP members outside the Cabinet) frequently conflicted…at that time, Mr Nonaka resigned after a big fight with Mr Koizumi. After that, there was the turmoil of the post office (the post office privatisation in 2005). And, those specialised in ICT like me, Mr Furuya, and Ms Seiko Noda were kicked out. After that, the remaining Mr Kawasaki and Mr Ben Satoh needed huge efforts (to cope with the situation)…So the party’s (LDP politicians outside the Cabinet) power quickly waned and regulatory issues were dealt with under Mr Takenaka’s leadership. (Interview with a member of the House of Representative (LDP))

The change of the power relationship between the Cabinet Ministers including Prime Ministers and politicians outside the Cabinet is also noted by a retired MIC senior civil servant in the following: ‘(the LDP’s policy councils such as the PARC) became weaker after Koizumi. Became weak and, that’s it (Nobody has taken over.).’

The government change from the LDP to the DPJ in 2009 also had an impact on the relationship between party politicians and civil servants, although its significance is contested. The highlighted points on the DPJ were:

* the lack of key party politicians: the DPJ did not have key figures that have significant expertise and influence over the sector. Many of its powerful politicians were in the Cabinet. Because of this Cabinet Ministers under the DPJ government were increasingly empowered.
* Cabinet Minister’s short tenure: like their LDP counterparts, the DPJ Cabinet Ministers had a short tenure[[58]](#footnote-58), rendering the power of DPJ Cabinet Ministers weaker, as it was not certain if their initiatives would last long.

In terms of the first point, the lack of key DPJ politicians outside the Cabinet was witnessed by a number of interviewees. For example, an MIC senior civil servant proposed the following interpretation about the current situation of the government:

If asked whether the power relation between politicians and civil servants has changed and whether the power relation between one particular group and other groups has changed, the answer could be yes. And if asked whether the political factors of the policy making process has become stronger, the answer will be ‘it hasn’t changed so much’. (Interview with an MIC senior civil servant)

He argued that what changed is the power relation within the core executive, such as between party politicians, civil servant and between political groups. Elsewhere, he denied that the policy making process has been more influenced by political factors, arguing that:

What has been changed by the DPJ is, in simple terms, the party (DPJ) itself hasn’t involved in policy decisions. That is to say, major politicians, for instance, have joined the Cabinet, and if asked whether the DPJ party machine has developed the alternatives to the ideas of the Cabinet, the answer will be no. Regardless of the sectors such as Land and Infrastructure, Welfare and Labour, etc., there are few things like that. This is because it’s the DPJ’s policy, and it also doesn’t have those called *Zoku Gi’in* in it. (Interview with an MIC senior civil servant)

The reason why the DPJ did not have *Zoku Gi’in* is, in short, it was not in the government.

In other words, the LDP’s long tenure created a large group of ex-Cabinet Ministers and ex-Parliamentary Vice-Ministers in it. They weren’t in the Cabinet but influential in their sector. If the DPJ stays in power for twenty years and creates their equivalent, the party’s (DPJ politicians outside the Cabinet) influence may become stronger. We don’t know it now. No such group is in the DPJ at this point. (Interview with an MIC senior civil servant)

This interpretation was shared by one DPJ politician who was previously in the civil service:

Under the LDP governments, the NTT and civil servants lobbied key people in the ICT sector for twenty years, such as ex-Cabinet Ministers, Chairpersons and Principal Directors of the Internal Affairs and Communications Standing Committee (of the Diet) and their OBs. Such key persons were identified, and things were decided around them. Since the DPJ government started, no such key person has been there… (Interview with a member of the House of Representatives)

This was described by an ex-Cabinet Minister (DPJ) in the following:

Almost all of it (the influence of party politicians outside the Cabinet) has disappeared, because the DPJ has unified the government with the party. And lobbying the party needs the Secretary-General’s authorisation. This stops lobbying politics and leads to the destruction of the guild. But two years after government changes, some may try to do a similar thing again. We need to make (policy making) processes more transparent and ensure the freedom of information so that we can watch and stop such a trial. (Interview with an ex-Cabinet Minister (DPJ))

These accounts indicate that the 2000s saw the rise of Cabinet Ministers’ power. The ICT sector experienced a significant change: Koizumi’s post office privatisation debate in 2005 brought most of the LDP politicians previously influential over the sector out of the LDP. The DPJ government from 2009 adopted a policy of unifying the government with the party. Few DPJ politicians outside the Cabinet were powerful enough to exercise their influence over the MIC and the ICT sector. These factors have undermined the power of party politicians outside the Cabinet. This observation coincides with the data collected by Michio Muramatsu and his associates (Krauss and Pekkanen 2011 p.242):

longitudinal data from Michio Muramatsu and his associates indicate that between 1987 (under the ’55 system) and 2002 bureaucrats themselves clearly saw a major increase in the prime minister’s influence over their own ministries and decline in the influence of *Zoku giin* and PARC (Policy Affairs Research Council, LDP) and of the ministries and their advisory councils.

Data from this same survey also indicate that, within a ministry itself, between 1987 and 2002 the perceived relative influence on the bureaucracy of the upper levels of the bureaucracy (the bureau chief) and the cabinet ministers changed greatly; whereas in 1987 the bureau chief was perceived to have two to three times the influence of the minister, by 2002 the minister was perceived to have almost double the influence of the bureau chief[[59]](#footnote-59).

The same survey highlights the decline of party politicians outside the Cabinet. In 1987 their influence was considered to be most important by almost forty percent of civil servants, but this number significantly declined to a little more than twenty percent in 2002 (Krauss and Pekkanen 2011 p.243). This set of findings seems to support the analysis revealing the decline of party politicians outside the Cabinet and the rise of Cabinet Ministers.

Whether or not DPJ Cabinet Ministers actually obtained a dominant role in the policy making process is a different question. Indeed, the short tenure of Cabinet Ministers, which characterised the LDP governments (I’io 2007 p.24), was also a feature of the DPJ government (see Appendix 3). The impact of this short tenure of Cabinet Ministers was described by a senior lobbyist of a telecommunications operator (a former DPJ member of the House of Representatives) in the following:

I suggest what Internal Affairs and Communications Minister Haraguchi did after government change (September 2009) is typical of a politician’s leadership. … And, replacing the Ministers in September (2010) changed everything. And, I wonder if not only civil servants but also politicians need continuity and if the change of a Minister is adequate (in a short period). …if such things happen, it will be difficult (to accomplish policies), because without a Minister’s long tenure, things won’t be done to the end. Under such circumstances, officials won’t react so much if a Minister says something ambitious, because that Minister may be replaced anytime. (Interview with the General Manager of the President’s Office of a telecommunications operator (a former member of the House of Representatives (DPJ)))

This concern was shared by a consumer group leader who has participated in the policy making process of the ICT sector:

It’s very problematic that, in a way, themes (given by Ministers) have popped out (emerged) frequently like thoughtless ideas but haven’t implemented to the end partly because initiating Ministers were replaced. About Internal Affairs and Communications Ministers, probably Minister Haraguchi and present Minister Katayama have very different kinds of interest, so in spite of the strong slogan of ‘*Hikari no Michi[[60]](#footnote-60)*’, its goal has gradually changed to around 2025 from the previously said 2015. The goal is getting much farther. In such a way, it (the short tenure of Ministers) is very influential (over policy making and implementation). (Interview with a consumer group leader)

Similarly, a civil servant shared these concerns:

in the case of the DPJ, who determined fundamental principles such as (equivalents to post office) privatisation is unclear. Just decided like those based on the previous cases, or, simply, in the case of Mr Haraguchi, launching something somewhere with no substantial coordination, but because ministers’ tenure isn’t very long, whether such policies will be accomplished is doubtful. Based on such things, *Seimu Sanyaku* tends to proceed on their own hardly trying to form a consensus through bureaucracy. But, such an approach doesn’t mobilise things. (Interview with an MIC civil servant)

These accounts highlight the problem stemming from Cabinet Ministers’ short tenure: it significantly reduces the incentive to accomplish the policies initiated by Cabinet Ministers because the initiating Cabinet Minister is likely to leave soon. Also, the interviewees reveal an awkward relationship between DPJ Cabinet Ministers and civil servants. The emergent challenge for DPJ Cabinet Ministers has been mobilising the bureaucratic machine, which needs a stable relationship between Cabinet Ministers and civil servants. Cabinet Ministers’ short tenure destabilises such a relationship. All accounts pointed out that Cabinet Ministers’ short tenure contributed to discouraging civil servants from engaging in policy implementation. It can be regarded as a significant reason explaining why Cabinet Ministers did not emerge as a new dominant actor in decision making.

In drawing the analyses together, between the 1985 NTT privatisation and around 2000, the core executive sufficiently retained control over the ICT sector with the supremacy of party politicians including those in the LDP, having the fluid change of power within its actors.

The change of resources within the core executive between the 1980s and 2000s depicts the fluid nature of the core executive. The emergence of the enhanced state actor (MPT) came with the move of the NTT from the state sector to the private sector together with its resources. The NTT’s resources of service provision moved to the private sector; instead, the resources of regulatory function securing the service provision emerged as the MPT’s regulatory function. The key decisions were made by party politicians. Their dominance in the policy making process has been based on their authority to approve bills in the Diet. The power of the MPT depended upon party politicians’ support to the bill drafted by the MPT. The one party rule by the LDP gave power to the informal process by the LDP. This situation gave party politicians (typically Liberal Democrats) outside the Cabinet power to control the policy making process. The MPT has replaced the position held by the NTT and party politicians supervised such processes. With significant expertise and the capacity of lobbying to party politicians the NTT retained significant power after privatisation in 1985. However, the NTT’s power also depended upon party politicians; persuading them was the NTT’s method to influence the policy making. This means the core executive enjoyed a dominant position within the policy making process. The internal change of the LDP had a significant impact on the decision making mechanism within party politicians, but this does not change the relative strength of party politicians as a whole to their bureaucratic and private sector counterparts; party politicians as a whole retained their power to other actors with their power moved from one group of politicians to another. The government change has exacerbated this internal change of party politicians by eradicating *Zoku Gi’in*, who are outside the Cabinet but within the ruling party in Japanese politics. Yet this gap has not been filled by other actors such as Cabinet Ministers. What has emerged is a power vacuum; while party politicians are reorganising their internal structure, civil servants and private sector actors have not filled the gap created by this change among party politicians (see Table 5.4).

#### Table 5.4: Relative Strength between Actors in the ICT Sector (The shaded are state actors)

|  |  |  |  |
| --- | --- | --- | --- |
|  | Before 1985 | NTT privatisation -2000 | 2000- |
| Cabinet Ministers and their staff | Large | Large | Enhanced further |
| Party politicians outside the Cabinet (*Zoku Gi’in*) | Large | Large | Declined |
| The MPT | Small | Enhanced | Large |
| The NTT | Large | Large | Large |

This set of processes between the 1980s and 2000s prompted by the fluid change of resources and power within the core executive offers a different story to the British core executive’s depicted by Smith (1999 p.115-30). The key difference is the impact of the ruling parties’ internal rules resulting from the long dominance of the LDP within the administration. The ruling parties’ internal rules are not formal; it has been established within the political parties outside the formal institution of the state. The impact of the informal rule by the ruling parties, in particular the LDP, can be exemplified by the existence and power of party politicians outside the Cabinet (*Zoku Gi’in*). The power of this group of party politicians gradually waned as Cabinet Ministers and their teams gained more power. This trend was intensified by government change in 2009. This change of power within party politicians offers an example of fluid change of power within the core executive. The evidence of this thesis can be understood as an indication that the strength of party politicians is significant within the core executive.

The rise of the new regulatory ministry (MPT/MIC) reveals another case of the change of power. The analysis of this thesis concurs with the argument of Vogel (1996) highlighting the rise of the MPT after 1985. This rise of the MPT’s power resulted from another example of fluid change of power: the privatisation of the NTT offered the MPT an opportunity to enhance its power and authority. This can be understood as transformation of state power from the service provider (NTT) to the regulator (MPT/MIC).

A key characteristic of ICT regulation between the 1980s and 2000s is a significant degree of discretion by ruling party politicians. They have been lobbied by both civil servants (MPT/MIC) and industry and steered the sector. Together with the emerging regulatory function of the MPT’s regulation, the core executive has exercised the discretional approach to regulation. The tool of its discretion includes rule making capacity such as law amendments. The transformative mode of change has been conversion; few players expressed a strong veto in Japan’s ICT regulation, except for the case of the NTT breakup, which has been debated for a decade with a strong veto by the NTT. The case of the NTT breakup therefore can be categorised as an example of drift, although key decisions in this example were also made by ruling party politicians. This set of changes contrast with those that occurred in the 1985 NTT privatisation, when NTT privatisation as a clear short term policy goal did not allow a significant extent of discretional interpretation or create a significant opponent among key actors. The change mode here can be understood as displacement.

The above analysis reveals the dominance of the core executive with its discretion. The changes have taken place under the supervision of party politicians. The discretion of the core executive, party politicians’ in particular, has worked to retain their dominance in policy making. Policy making has involved the inner community of the core executive: ruling party politicians and the relevant government ministry (MPT/MIC). This set of analytical results offers an example of the core executive’s dominance through its discretional approach to regulation.

One of the important questions to explore this transformation is how this evolving core executive has affected the institution of Japan’s ICT sector. The next section addresses this by examining the lack of an independent regulator in Japan’s ICT sector. It is a distinctively unusual institutional characteristic; Japan is atypical in terms of having only a few independent regulators who supervise regulatory implementation except for the JFTC (Fair Trade Commission, Japan) (OECD 2004 p.46). Examining how a government ministry has retained its regulatory function offers an example of the process in which an actor's initial decision has shaped a particular structure. The following section analyses how the regulatory organisation has been shaped and what views actors have.

## 5.4 The embeddedness of the independent regulator and the evolution of regulation

Many of the interviews reflect disapproval at the notion of an independent regulator. Few interviewees in the ICT sector expressed a positive view about establishing an independent regulator. As an example, an LDP member of the House of Councillors cast doubt over the establishment of an independent regulator, pointing out the complex nature of the US FCC (Federal Communications Commission), where the regulatory functions are together with the implementation functions, in the following:

I don’t think creating independent regulators will offer a significant benefit. Everyone often refers to an FCC type organisation, but the FCC also has a political characteristic. Its commissioners are selected by the President. Its regulatory functions tend to work with its implementation functions, so regulatory functions are integrated into implementation functions. So I wonder with concern if separating the regulatory functions from implementation functions will work only in Japan. (Interview with a member of the House of Councillors (LDP))

This concern over the creation of an independent ICT regulator is shared by another LDP politician, who drew attention to the state tradition of Japan’s policy making: ‘since Japan’s policy making model is co-ordination based and consensus based. So, directly introducing models like the FCC’s will probably prompt resistance and opponents, in my view’ (Interview with a member of the House of Councillors (LDP)). Elsewhere, there was a concern that an independent regulator similar to the JFTC may fail to retain the MIC’s current regulatory capacity and could become an incompetent regulator to the NTT. Such a concern over the competence of an independent regulator was disclosed by a retired senior businessman, who was strongly committed to the idea of a powerful ICT regulator, having been an NCC executive officer for years: ‘…whether the independent supervisory commission, the Japanese FCC, can take decisive measures, do various things, and properly supervise is not clear, I suggest. So, I hesitate whether creating the Japanese FCC is good’ (Interview with a retired executive officer of a telecoms operator). A similar concern was expressed by a senior civil servant, referring to the case of independent commissions introduced by the SCAP (Supreme Power for the Allied Powers) just after World War II:

In my honest opinion, independent administrative organisations were introduced under the administration of the SCAP, but it’s doubtful if they strongly worked. So, I suggest, the regulatory authority’s power will decline when it’s transformed to a commission. If it needs to implement the determined things in determined ways, it may work, but governing needs something creative in Japan, so it’s not clear whether such creative activities can be done by a commission. The JFTC has a clear mission, which is supervising competition in the markets, so if the mission is clear, a commission can work. But I wonder if a commission can create its own mission. (Interview with a senior civil servant)

This interviewee also cast doubt about the benefit of creating an independent regulator:

it is debatable whether regulation and policy can be separated from each other. But it will create both benefits and problems. It is theoretically possible that creating policy will be done by a different organisation and only implementation will be done by the commission. …but we haven’t done it in such a way so far and I doubt we will get benefits by employing such an approach (creating an independent regulator). (Interview with a senior civil servant)

His view concurred with the MPT’s official paper in 1997: ‘...the information and communications sector requires comprehensive, strategic and timely responses. This kind of sector does not suit an administrative commission based on collective decision making with the independent authority of the Cabinet’ (MPT 1997).

The doubts cast over the creation of an independent regulator in the ICT sector can be summarised as:

* the uncertainty of how effective an independent regulator can be;
* the concern about the democratic governance of the independent regulator; and
* the possibility of addressing the conflicts of interests between the regulator and developmental policy through a different way other than creating an independent regulator.

The first point is implicit rather than explicit, as expressed in the above accounts. A group of interviewees from the core executive pointed out the political nature of the American FCC, and argued that changing an organisation to an independent regulator has a limited or even negative impact on the regulatory capacity. Interviewees from business were particularly clear on this point. They expressed concerns over whether or not an independent regulator can confront and substantially regulate incumbent operators such as the NTT. Elsewhere, an interviewee from a consumer organisation argued for the creation of an independent regulator because independence may offer coherent regulation, although she showed no analysis on how workable such an organisation can be.

The second point can be understood as a type of state tradition. Independent agencies in the form of independent commissions mushroomed in Japan after 1945 were in most cases abolished after the Allies’ occupation ended (Harada 2011 p.15). The report to the Shigeru Yoshida[[61]](#footnote-61) Government (1948-54) by the Government Orders Amendment Consultation Committee (*Seirei Kaisei Simon I’inkai*), which examined what adaptation was necessary after the peace treaty with Japan of 1951 and the following independence of Japan, set out the following reasons for abolishing most independent administrative commissions (Harada 2011 p.15):

Because our social and economic conditions do not originally require them (independent administrative commissions), their organisations expand without aim, where the responsibility lies is unclear in their administrative tasks in which aims should be actively pursued, and therefore they are not adequate for efficiently achieving their tasks, they shall be abolished in principle. However, they shall be simplified and retained when they mainly deal with passive tasks which require careful decisions.

Harada (2011 p.15) also points out that the Committee’s view was drawn in the period when a significant reduction of the civil service was required to cope with the aftermath of the Second World War . A civil servant highlighted this point by disclosing his understanding that the government’s perspective originating in this period has been sustained and affected the government’s response to creating independent regulators:

historically, in simple terms, it’s Shigeru Yoshida. In other words, when Japan became independent, they said ‘No independent commission’, to say, well, the executive is the Cabinet. ‘It’s wrong that the organisations for which the Cabinet is not responsible have remits in particular fields’; this describes everything. This leads to an idea that politicians should be responsible, like the politicians’ leadership (*Seiji Shudou*) by the DPJ today. Therefore, things were decided at that moment, 1952, and after that things have just followed those decisions. (Interview with a civil servant)

This account reveals an element of path dependent, institutional decision making (Thelen 2009 pp.474-5). Drawing on Thelen’s (2009 p.474), it can be argued that ‘the historical trajectories’ have flowed from the legacies a ‘critical juncture’ in 1952 produced. This path dependent preference can be identified as significantly contributing to the emergence of a negative view towards ICT as an independent regulator.

Elsewhere, another civil servant illuminated the technical difficulty of creating an independent organisation in Japan:

Independent regulators are required because regulators need to be fair, neutral, and free from political interventions. When we refer to the US, the Congress makes the law, which is enforced by the independent regulator, the FCC. In Japan, a significant difference is that most bills are put by the Cabinet. And, what is the nature of the independent organisation if it’s independent from government? For instance, the JFTC is usually regarded as a highly independent organisation called an Article 3 organisation, but it still belongs to the Prime Minister under the Parliamentary System. Therefore, from what the independent organisation is independent is important. (Interview with a civil servant)

He argued that this different institutional background gives the JFTC a different type of independence from what US independent commissions have:

The model of an independent regulator is the JFTC, in my view. It’s generally understood in such a way, and I also think so. But in the viewpoint of (Japan’s) National Administration Organisation Law it is within the Cabinet, so it’s not independent. Because it is a player in the government, it’s not independent from the government. Because it’s a player of the government, its status is different from independent commissions of other countries like the US. (Interview with a civil servant)

Third, interviewees from the core executive rejected the view that establishing an independent regulator is key to addressing the conflicts of interests between industry development and regulation. This understanding led them to argue that the issue is not organisational independence but ensuring the neutrality of regulation. As the above civil servant observed:

Another issue to emerge is over the independence of competition policy from industrial/promotional policy prompted by the conflicts of interests. Large private corporations like the NTT play a significant role, for example, in the deployment of broadband communications networks. This leads the government to employ promotional policies favourable to the NTT. Yet government’s regulation tends to be unfavourable to the NTT for it tends to focus on dominant operators. (Interview with a civil servant)

With his experience in the US, he also highlighted the political nature of the US independent commissions, referring to the case of the FCC:

I think the government have to avoid mutual influence between these two policies. In the US, the FCC is under the auspices of the Congress. In other words, it’s independent of the federal government and belongs to the Congress. Its major financial source is the licence fee. Expending this money needs the Congress’ approval. Can we call this system independent of politics? I don’t think it’s truly independent of politics; the current majority of commissioners are three democrats, together with two republicans. (Interview with a civil servant)

He concluded that the key is not the organisational framework but the neutrality of policies:

Taking account of such facts, I think, what the government needs isn’t organisational independence but the neutrality of policies such as competition policy. The points are, establishing the legal framework of independent regulators is very difficult, and if the point isn’t independence from politics, the regulator’s institutional framework doesn’t have to be scrutinised, provided that the fairness and the neutrality of competition policy are ensured. (Interview with a civil servant)

The above accounts reveal that the challenges to the Japanese state outlined in Chapter 2 have not had a significant impact on the institutional framework of Japan’s ICT regulator.

Elsewhere, interviewees outside the core executive offered different views. An official of a major business organisation recognised that the ICT sector needs intimate cooperation between promotional (developmental) policy and regulatory policy, although establishing an independent regulator is an option:

ICT (sector) needs both regulation and industry promotion, so (whether it needs an independent regulator is) not clear, but I suggest it’s a possible option that the MIC intervenes in the sector (employs promotional policy) while an independent regulator supervises it. (Interview with a *Keidanren* official)

This specific nature of the ICT sector, the necessity of close cooperation between industry promotion and regulation, is recognised by a retired academic involved in policy making for many years:

…the ICT sector changes so quickly and this rapid change is the basis of international competitiveness. And if a commission concentrating on regulation is established, the result will be a disaster. For example, the FCC doesn’t only regulate the sector. It not only regulates the sector but also, in my view about radio regulation, formulates new rules to promote technological development. Therefore, an organisation which doesn’t promote but only regulates industry will create no benefit. (Interview with a former member of the Information and Communications Council)

This argument was supported by a retired senior civil servant: ‘You’ve said ‘regulation’, ‘regulation’ so far, but what I’ve experienced is promotion and regulation. …If regulation and promotion fail to (co-work and) generate synergy, things won’t work in ICT industry and policies, I thought…’ (Interview with a retired senior civil servant).

Creating an independent ICT regulator was more openly supported by an interviewee from the consumer group. She hoped that an independent regulator could fend off the influence from politicians and realise more coherent regulation:

we said that a third party organisation (independent organisation) was necessary, an independent organisation with a substantial capacity of data collection and authority was necessary, as an opinion of a consumer organisation. The MIC’s current approach conflates industry promotion and regulation including competition policy and consumer protection. For example, users can’t use the equipment of a previously used version. This (version-up) comes too quickly, but when I say this, others say things like ‘don’t stop development’ and ‘international competitiveness is necessary’. To think about the balance between these conflicting aspects and make decisions, a substantially independent organisation is necessary, in our view. (Interview with a senior official of a consumer organisation)

Although this account shows a preference for the independent regulation at arm’s length from industry promotion, it does not suggest how such an organisation can be established.

In pulling these arguments together, the following can be offered as the reasons why an independent ICT regulator has not been created:

* an embedded perspective among the core executive that resists the notion of the independent organisation introduced by the SCAP after World War II: an independent regulator is regarded as an American product and has been thought of as an organisation suitable for passive policy implementation. Interviewees from the core executive argue that an independent regulator is not suitable for creating policy. This view may stem from the fact that Japanese law allows legal provisions to have narrower scopes and interpretations with limited flexibility compared with those in English law. As a senior civil servant observed:

and I thought that Japanese law was inconvenient and that the system like English communications law, in which nothing is written, in other words, a significant discretion was given to the administrative organisations, the organisations narrow their discretion down, and it can realise the conditions like no regulation, was very convenient. The reason why it’s convenient is policy can be flexibly changed by the executive branch. When we write in law, we can’t go back. Therefore, I thought such a system was very rational. It’s probably based on the court system, in particular in the US. The abuse of discretion by the executive branch is expected to be stopped in court. (Interview with a senior civil servant)

This comparison of the technical aspect between Japanese law and the UK’s was further elaborated in the following:

when I read English laws, I found surprising provisions such as that ‘all telecommunications facilities in the UK need licences’, and the government’s authority to operate the licensing system has little limitation. In such a case, for example, policy goals, which greatly change as society changes, can easily shape rational regulation like ‘such a thing is necessary so such a regulation will be implemented’, in line with the principles, such as the legal provisions. But Japan’s Cabinet Legislation Bureau is extremely strict about this point, so they say like ‘you want to operate the system in such a way, but the law doesn’t say such things, so you can’t do that’, so I envied the English system. It is very inconvenient. But legal infrastructure including the legal system and the judicial system is different, so it’s not easy to do that in Japan. I envied that, but it (the flexible operation of law) has not been realised so far. (Interview with a senior civil servant)

The rapid changes of the rules frequently require law amendments in Japan. This means that regulators in Japan frequently need to consult with party politicians. In the UK, laws such as the 1984 Telecommunications Act provide regulators like Oftel (Office of Telecommunications) with a broader degree of discretion (Spiller and Vogelsang 1996 p.82). This can stem from the UK’s legal tradition that regulators have not traditionally been required to explain their decisions in detail or confront judicial reviews until the mid 1990s (Spiller and Vogelsang 1996 p.82). Instead, the UK judiciary has restrained government discretion in the form of contracts (Spiller and Vogelsang 1996 p.82).

The contracts between the regulator and operators in the form of licences is based on the robust tradition of upholding among private parties: ‘so it is not surprising that utility regulation has been implemented through licences, which can specify both substantive restraints on regulatory discretion and restraints on changing the regulatory system as well as the regulatory incentives structure’ (Spiller and Vogelsang 1996 p.82). In the case of Japan, the law played an important role in relation to making Japanese regulators more dependent on the political process and party politicians. This in turn makes it difficult for them to be separated from the Cabinet. Also, the nature of Japanese law allows the executive ministries to have limited discretion and requires frequent law amendments in the policy making process. This necessitates the greater involvement of politicians than other legal systems such as the English. There is a possibility that independent organisations outside government encounter a problem in the policy making process because their limited accesses to politics can prevent them from formulating necessary policies through legislation and the Diet’s approvals;

* technical difficulties such as that of constitution: the Constitution of Japan stipulates: ‘Executive power shall be vested in the Cabinet’ (Article 65). This provision expects all administrative organisations including regulators be under the jurisdiction of the Cabinet. Such an institutional framework limits the independence of regulators, because all of them are subject to the control of the Cabinet;
* the lack of benefits: an interesting characteristic to emerge from the core executive interviewees was that there was no mention of any benefits for creating an independent ICT regulator. Instead, their focus was on the relationship between the existing institutional framework and an independent regulator, which they regarded as a US style commission, and the view that creating an independent ICT regulator was unsuitable for Japan’s political tradition. Also, the core executive interviewees concentrated on arguing that they could avoid problems such as the conflict of interests between industry promotion policies and regulatory policies within the current institutional framework. What emerges then is that: party politicians did not think taking responsibility for highly technical issues such as ICT regulation was a risk; and the core executive interviewees thought that current ministerial regulation implemented by generalist civil servants could develop sufficient expertise about the ICT sector. These views are indifferent to the possible benefits of an independent regulator. For example, OECD (2002 p.95) highlights the benefits of an independent regulator : ‘...to shield market interventions from interference from captured politicians and bureaucrats’, improved transparency, more stable regulation, improved condition for business, and the possibility of improved accountability if an independent regulator has explicit objectives and a specific report system to the government or parliament. None of the core executive interviewees expressed an interest in such benefits; some of them rather argued that these benefits could be obtained even if a government ministry has regulatory functions;
* developmental approaches using regulation as a tool for industry promotion: a group of interviewees (civil servants and an academic) argued that regulatory independence could undermine the close cooperation between regulation and industry promotion. A similar idea was revealed by the MPT’s official document: ‘...specifically separating “information and communications industry development activities” is not in line with an international trend of retreat from promotional and protective approaches to specific industries. ...it is the approach pursuing ‘promotion’ and ‘regulation’ together which achieves policy goals efficiently and effectively. An example can be found in the spread and development of the mobile communications services’ (MPT 1997). This idea is based on two premises: that outdated ICT regulation could jeopardise the development of ICT such as the monopolistic regulation before privatisation, which significantly disturbed the development of telecommunications networks; and also that regulatory independence could undermine a necessary interaction between industry promotion and regulation.

If the above points are contrasted to the risks of independent regulators in Table 5.5 by the OECD (2002 pp.95-6), the first point (the risk of slowing structural changes) and the third point (the risk of inadequate democratic accountability) are the characteristics which can be observed in Japan’s ICT regulation. The first point responds to the concerns that an independent regulator could jeopardise the close cooperation between industry promotion and regulation. Some interviewees emphasised the nature of the ICT sector, which has confronted rapid technological developments throughout the years. They argued that such a challenge requires the ICT sector to frequently change their regulatory measures. In relation to the third point (the risk of inadequate democratic accountability), the executive oversight and regulatory independence conflict with one another. All executive organisations are under the Cabinet in the Japanese system. This inevitably offers party politicians to intervene in a regulator’s activities. In addition to them, the nature of the Japanese law, which allows narrow interpretation, requires frequent law amendments. This offers party politicians opportunities to intervene in regulation.

#### Table 5.5: Risks associated with independent regulators (OECD 2002 pp.95-6. Highlights in original)

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| --- |
| **Independent regulators may slow structural changes,** losing potential gains to consumers. Regulators are often established on sectoral lines and may tend to obstruct convergence between sectors and the emergence of new business models. Similarly, as regulators proliferate, institutional rigidities may increase.  **The risk of capture is reduced but not eliminated if the regulator faces structural weaknesses,** particularly with sectorally defined regulators lacking resources. Similarly, over-regulation may result where static institutions wish to guard their raison d’être.  **Democratic accountability may be inadequate.** Independence needs to be balanced with accountability mechanisms to avoid creating ‘governments in miniature’. Accountability must be maintained through well-designed statutes, including executive oversight and powers of direction, strict procedural requirements, reporting mechanisms, public consultation and substantive judicial review.  **Independent regulators may contribute to the fragmentation of governmental policies and actions,** in particular in the case of competition policy. As sectors restructure and become more competitive, sector-specific issues become less important vis-à-vis general competition issues. But inertia and resistance from the regulator is likely to impede transfers of power to the overarching competition regulator. Weaknesses in the judiciary and/or legislative branch also have an impact on the overall performance of the independent regulators. |

The case of creating an independent ICT regulator is an example that a traditional structure significantly contributed to an unusual outcome. The abolition of US style independent commissions has significantly impacted on the core executive’s perspective on an independent regulator. The institutional characteristics such as the constitutional framework and the inflexible nature of Japanese law also resulted in a significant obstacle to an independent ICT regulator. The constitution requires all executive organisations to be under the supervision of the Cabinet. The inflexible interpretation of existing laws limits the possibility of the executive branch making policies within their own jurisdiction. It requires frequent consultations with the Diet through law amendments, which offers opportunities to party politicians to intervene in policies. Legislation as a key element of the state’s resources contributing to the asymmetric dominance of the core executive plays a significant role here (Marsh et al 2001 p.248). The lack of a clear benefit of creating an independent regulator to the core executive, however, could be one of the most significant reasons why Japan has not established an ICT independent regulator. No actor will be motivated to contemplate a project if its benefits are unclear. In addition, some interviewees revealed their concern that regulatory independence can jeopardise a close interaction between regulation and industry promotion, including the information sharing on technological development. This concern among elites including the business community as well as the core executive could further have contributed to a negative view towards an independent ICT regulator.

What has influenced the choice of a ministerial regulator is Japan’s political tradition rather than power relations within the core executive. The core executive actors have collectively chosen to retain their regulatory functions within the government ministry. It can be an example that no endogenous incentive to change has emerged within the core executive. The disjuncture following privatisation in 1985 did not offer an opportunity to debate about the independent implementation of regulation and the establishment of an independent ICT regulator, unlike a number of European countries. The lack of effective endogenous incentives and exogenous pressures contributed to retain the regulatory approach by a government ministry, together with Japan’s political tradition.

Whether or not this negative view to an independent ICT regulator has affected the capacity of regulation in the ICT sector is a different question. The next section explores the capacity of the ICT regulator and how it has been transformed.

## 5.5 Hollowing out or reconstituted? The capacity of the core executive

Capacity is a significant element through which how a state has been transformed can be observed. The transformation of regulatory capacity offers a clue on how a regulatory state has been shaped can be examined. In relation to the capacity of the ICT regulator, most interviews focused on the bureaucratic machine as key. Those interviewees expected another core executive actor, party politicians, to steer the machine. Only a few referred to the external factors such as the relationship with the ICT sector. The issue of the extent to which regulatory capacity has been transformed is contested. Although Vogel (1996 p.161-63) describes the privatisation of the NTT and the emergence of the MPT as a significant impact, it can also be understood as a decline in the capacity of the Japanese state: the whole telecommunication management function of the state was transferred to the private sector. Taking account of the significant power of the NTT as a public corporation before privatisation, the growing power of the MPT can be depicted as a form of resurgence of the state through filling the gap created by privatisation. What followed was the reduction of the MPT’s statutory authority as deregulation stripped ex ante regulation.

In interview the regulator’s capacity was regarded as the responsible government ministry’s (MPT/MIC). A number of interviewees emphasised the development of the MPT/MIC’s capacity after NTT privatisation:

The regulator has a sufficient number and quality of staff. In the past, they had to ask the NTT, and before that, the NTT sent their officials when it was a public corporation, but it’s not the case now. The MIC has obtained clear responsibilities including dispute settlement through law amendments and developed its own staff, so it’s competent enough to satisfy its responsibilities. (Interview with a member of the House of Councillors (LDP))

What emerges here is the depiction of how the responsible government ministry (MPT/MIC) has been developed based on the understanding that it represented the regulatory state capacity. This view was shared by a retired senior civil servant highlighting the organisational growth of the ministry:

communications liberalisation, through NTT breakup (reorganisation), has significantly enhanced the MPT’s role as a regulator from 1985 to 2000, for fifteen years, if compared with the Telecommunications Inspectorate. Such a rapid enhancement enabled three bureaus to be left in the ministry (MIC) after post office privatisation, which stripped postal services from the ministry. The ministry’s regulatory power has been strengthened by such a meaning. (Interview with a retired senior civil servant)

Elsewhere, a senior businessman of an incumbent telecommunications operator also concurred with this view: ‘…in my impression, the regulator has significantly become competent such as various (relevant) knowledge, not compelling power… (the capacity of the knowledge) is certainly enhanced.’ (Interview with the CEO of a telecommunications operator).

An ex civil servant politician elaborated the detail of the bureaucratic capacity, admitting the piecemeal growth of the ministerial capacity: ‘more people (officials) are needed…I guess the ministry has been short of staff….as an organisation it needs to establish the framework in which it collects information from private firms’ (Interview with a member of the House of Representatives (DPJ)). Staff shortage was endorsed by a civil servant: ‘the number of staff isn’t enough’ (Interview with a civil servant). It was also pointed out by a consumer group leader, together with the impact of the short tenure of civil servants:

I suggest the MIC wants more staff. And, in government offices outcomes heavily depend upon assigned officials’ ability. They leave their position after a two year tenure even when things worked very well. Establishing consistency under such a system is a significant challenge; most good jobs by officials aren’t continued and accomplished by their successors, I guess. …Sometimes I think it’s wasted. Despite their efforts, they leave when their project actually starts moving. Two years is such a (short) period (to accomplish a project). (Interview with a consumer group leader)

A senior civil servant offered a different view. He argued that Japan’s MIC was not so understaffed compared with its English counterpart:

I don’t know now, but Oftel’s personnel resource was limited when I was there (in 1993). A significant number of people were there, but most of them were in the consumers’ call centre. Those assigned to regulation were very limited, and the number of fast streamers was very different from that of the MPT’s Telecoms Business Department…I don’t know how Ofcom (Office of Communications) is now, but I suggest Japan’s MIC has assigned a significant number of people with a certain quality level. (Interview with a senior civil servant)

The official suggested that the capability of the staff in the ministry has been key: ‘in the past a significant number of such people (able officials) were in the civil service, I guess’ (Interview with a senior civil servant).

Elsewhere, a retired civil servant highlighted the decline of the power of civil servants:

(the state’s capacity to mobilise the ICT sector) has significantly declined. …because it’s getting more difficult to use policy tools with no legal authority like administrative guidance, and more preferred to restrain officials from exercising their legal authority. …and there is no guiding administration, what the MITI (METI[[62]](#footnote-62)) calls guideline administration, in which the ministry proposes a vision and gets responses (from private firms). The MIC can’t create such a vision. (Interview with a retired senior civil servant)

This decline of the MIC’s regulatory function was described as a type of transformation by a civil servant: ‘…the necessary part (of regulation) has remained and the unnecessary part has disappeared, so I suggest whether regulation to the NTT has enhanced or reduced is not the case’ (Interview with a civil servant). A senior lobbyist of a telecommunications operator (a former DPJ member of the House of Representatives) highlighted the importance of the political will to take strict actions. This view highlights the extent to which Cabinet Ministers have had their power curtailed:

If we create a regulatory organisation in Japan, we need to empower it as much as it can do its duty. But even when the regulator gets such authority, it won’t exercise it in the end, will it? Including the MIC. In such cases, politicians have the regulator exercise its power, in theory. It’s difficult for civil servants to exercise such power. So, politicians sometimes need to show the power is exercisable… politicians aren’t also familiar with governing and control yet. …Just exercise legal authorities once or twice. Without this, nobody will get shocked. (Interview with the General Manager of the President’s Office of a telecommunications operator (a former member of the House of Representatives (DPJ)))

Two views emerge in identifying the reasons behind the decrease in the government ministry’s power. The first view focuses on the emergence of the ‘smart regulator’, arguing that the state has eliminated unnecessary regulation and adapted its regulatory framework. The second view is that the decline of the state’s regulatory authority has created a power vacuum, which has not been filled by other actors including party politicians. When this decline of civil servants (government ministry) became distinctive remains contested. One account argued that it started during the Koizumi Government (2001-06), while another highlighted the disjuncture by government change in 2009. These two views suggest that since the 2000s the decline of civil servants’ (government ministry) power has occurred.

The transformation of the regulatory capacity can be understood as the rise and decline or the adaptation of responsible civil servants (MPT/MIC) through shaping a variation of the Japanese regulatory state in ICT regulation between the 1980s and 2000s. It has been a kind of conversion with few significant opponents to the change and a significant discretion of civil servants in the detail of the regulatory function. The MPT’s approaches just after liberalisation can be characterised as strategic/discretional with a wide range of legal responsibility to exercise draconian regulation, such as strict market entry examination. It was a response to the transformation of state power in the sector from the service provider to the regulator. The approaches were transformed to more specific ones with a more detailed and limited legal basis, such as dominant carrier regulation and ex post regulation, while deregulation stripped the previous wide range of legal responsibilities such as those about market entry. At the same time, civil servants enhanced their knowledge and expertise. The 2000s saw the decline of strategic management by civil servants, while no new actor has taken over this role. This loss of civil servants’ function came with the decline of party (in most cases LDP) politicians outside the Cabinet. Cabinet Ministers obtained opportunities to control the policy making process, but their short tenure and lack of experience have been significant obstacles to exploiting them. This can be understood as the result of the change of power within the core executive; party politicians outside the cabinet have seen their power eroded, while the converse has occurred in relation to Cabinet Ministers. What party politicians have done so far is to undermine the strategic function of civil servants with no substitute. The attempts to create a strategist role have resulted in instability rather than a settled order replacing the previous function played by civil servants. The change of state power in ICT regulation can be understood as the process of shaping the Japanese regulatory state in ICT regulation under the dominance of the core executive, within which the fluid and complicated change of power took place.

## 5.6 Conclusion

The ICT sector has experienced an array of regulatory reforms including liberalisation mobilised by the technological development. Since Japan liberalised the telecommunications sector and introduced competition in 1985, its experience of liberalisation has been significantly long. Examining this process reveals a gradual transformation of the Japanese state in the ICT sector.

Telecommunications liberalisation is often framed in the context of deregulation and a neo-liberal approach to the economy (e.g. Collins and Murroni 1996 pp.5-6, Jordana and Levi-Faur 2004 p.1, Vogel 1996 p.77, p.151). It is sometimes regarded as the start of the shrinkage of the state within that sector. Elsewhere, others interpret telecommunications liberalisation as a process of reconstituting the state. Sorensen (2004), for example, argues for the transformation of the modern state in which state power has adapted to cope with the changing circumstances. In this view the state has retreated in some areas (e.g. direct service provision in areas such as telecommunications) and enhanced its power elsewhere (e.g. telecommunications regulation). In Japan’s ICT sector explored by this chapter, the service provision implemented by the state corporation (NTT) before 1985 moved to the private sector. The government organisation (MPT/MIC) strengthened its regulatory capacity after 1985. The MPT/MIC’s approach to regulation has also changed; the focus of regulation shifted from ex ante oriented to ex post oriented. Between the 1980s and 2000s, the state in the sector retreated in service provision and enhanced state power in principal-agent regulation. State power in regulation also changed from ex ante oriented to ex post oriented. This set of changes can be understood as the reconstitution of the state.

What emerges in the analysis on Japan’s ICT regulation within this thesis is a variation of this state transformation. A new type of state power (the power of the regulatory government ministry) emerged to fill the vacuum created by privatisation. This emergent power, the MPT/MIC, has retreated from strategic decision making in the 2000s. The emerging power of Cabinet Ministers has not still filled this gap. This can be understood as a dynamic reconstitution process of the state with the fluid change of power between the core executive actors. The incumbent telephone operator was transformed from a state actor to a private one. The regulatory government ministry, the MPT, then emerged as a new state actor with significant regulatory authority. Another state actor, party politicians including those in the LDP, has dominated the key decision making process, although their role in the detail of regulatory policies has been limited in line with Smith’s (1999 p.125) analysis. The rise of party politicians in the Cabinet, Cabinet Ministers in particular, has resulted in an unstable situation rather than the emergence of a new order.

The key to analysing the transformative process is power relations within the core executive. The fluid change of power within the core executive has led to the adaptation of the state to the change of circumstances. Prioritising the principal-agent regulation as the key tool to control the ICT came with the rise of the regulatory ministry (MPT) and its power. Another example is the change of power within the group of party politicians (the decline of ruling party politicians outside the Cabinet and the rise of Cabinet Ministers). Together with government change in 2009, the change of power within the group of party politicians resulted in an unstable situation with no strategist actor. However, as the key decision maker, party politicians have successfully retained their control of the ICT sector. The relationship between party politicians and civil servants in Japan’s ICT sector is analogous to Smith’s (1999 p.125-8) analysis of the interdependence of the civil service-minister relationship. He argues (p.125):

Ministers and officials need each other because of their different resources and different structural positions. Ministers need officials to reproduce the Whitehall game and its constitutional foundations. Officials need ministers to act and to provide legitimacy, political support and finance for the work of the department. The different structural positions produce different advantages. Officials do have control over the bureaucratic machinery and have the time to control most of what goes on in a department. Ministers can only pay attention to a limited number of issues. Therefore, officials have the discretion to act where the ministerial light does not shine. However, once a minister pays attention to an issue it is extremely difficult for the civil service to thwart him or her, and indeed there is more prestige in achieving the minister’s goal.

A similar relationship can be observed in the relationship between party politicians (both outside and inside the Cabinet) and civil servants in the MPT/MIC. The significant regulatory authority obtained by the MPT after 1985 needed legitimacy and political support by ruling party politicians. In line with Smith’s (1999) analysis, MPT/MIC officials could exercise significant discretion (Vogel 1996) as long as ruling party politicians did not pay attention. However, once ruling party politicians heeded an issue, preventing them from intervening was difficult. The power change within party politicians (from those outside the Cabinet to Cabinet Ministers) did not have a significant impact on this interdependence between party politicians and civil servants. Rather, it can be understood as party politicians’ flexible response to the circumstantial change; they have retained their dominance by changing their key actors within their group.

The change in Japan’s ICT sector between the 1980s and 2000s has been evolutionary rather than revolutionary. If Mahoney and Thelen’s (2010) typology is employed, what has emerged was a shift from displacement to conversion, except for the case of NTT breakup in the 1990s, in which the change mode can be understood as drift with the NTT’s strong resistance. The regulatory reform in 1985 was under the mode of displacement; few strong opponents existed in the political arena and the clear policy goal (privatisation) allowed the targeted institution (the NTT and the MPT) to have a limited scope of discretion in interpretation and enforcement. The continuous dominance of ruling party politicians (typically Liberal Democrats) and the emergence of the MPT/MIC changed this mode; the veto power of the opponents has been weak, but the discretion in interpretation and enforcement given to the targeted institution (ICT regulation) has become significant. This set of circumstantial changes shifted the mode of change from displacement to conversion. A key to understanding this shift of modes is the continuous politicisation of Japan’s ICT sector; the on-going dominance of party politicians in the sector has determined the change in the ICT sector.

The question of the independent regulator offers an insight into the Japanese state’s development. There are two major reasons why the notion of establishing an ICT regulator has been strongly rejected by Japan’s core executive. The first is the significant resentment towards the independent commissions formed in the late 1940s in Japan. Introduced by the SCAP, the independent commissions had difficulty in integrating into Japan’s institutional structure; they were regarded as inadequate for policy making and so they became a target of the administrative reform and subsequent cuts. This process created a significantly negative outlook towards independent regulators, among civil servants in particular. This can be understood as an example of a negative view created by a path dependent sequence; the negative outcome of the initial event in the 1950s has shaped the successive sequence of events. The second is the importance of party politicians’ role in the policy making process. Because a significant portion of regulatory policies need to be written in law, mobilising the Diet is vital in Japan’s regulatory policy process. This mechanism makes the role of party politicians important, and a strong connection with party politicians is generally regarded as crucial for civil servants. Party politicians also have imposed their will on specific issues, some of which contribute to their own self interests rather than the public. The internal change of power relations between party politicians – the rise of Cabinet Ministers and the decline of party politicians outside the Cabinet – has not eroded the power of party politicians as a whole. Instead, this change of power relations has created a different impact in the regulatory policy arena. The emerging power of Cabinet Ministers has rendered the situation unstable rather than resettled in a new order, because Cabinet Ministers have not taken over the previous role played by civil servants including strategic decision making. Choosing a ministerial regulator can be considered as a result of Japan’s political tradition based on the core executive’s preference. Most independent administrative commissions established in the late 1940s under the SCAP’s initiative failed to embed themselves in Japan’s political tradition and were abolished in the 1950s. This experience shaped a negative perspective towards independent administrative commissions within the core executive. The impact of Japan’s independent administrative commissions’ failure in the 1940s and 1950s formed a path dependent sequence in Japan’s approach to form an ICT regulator. Other factors such as Japan’s legal tradition and the lack of a clear benefit to establish an independent ICT regulator also contributed to retaining a ministerial ICT regulator. Given that a significant extent of veto has existed among the core executive actors (all of the core executive interviewees showed negative views towards the idea of establishing an independent ICT regulator in Japan), the responsible government ministry (MPT/MIC) has retained its regulatory function within its organisation.

This has affected the capacity of the regulator. The views of many interviewees focused on the capacity of the government ministry (MPT/MIC) and its civil servants. This understanding creates a strong association of civil servants with regulatory capacity. The decline of the capacity of civil servants can directly be regarded as the decline of regulatory capacity. The rise of Cabinet Ministers as party politicians in bureaucracy, has not replaced the vacuum created by the retreat of civil servants. Rather, what has emerged is an unstable situation, because Cabinet Ministers have failed to consolidate their resources and exploit this opportunity of taking over the role of civil servants. This failure of Cabinet Ministers can be explained by two features: their short tenure in office and their lack of experience. These obstacles have prevented Cabinet Ministers from managing regulatory policy making.

It is within this complex environment that a significant contention emerges on evaluating how the capacity of the state has been developed in ICT regulation. A group of interviewees composed of party politicians, a senior official of an incumbent operator, and some civil servants argued that a significant regulatory capacity has been developed mainly in the government ministry and based on a newly established bureaucratic power base. Another group of interviewees, including senior officials of the NCCs, a consumer group leader, and a number of civil servants, highlighted different aspects of regulatory capacity, including the inconsistent approach of civil servants stemming from their short tenure, and the retreat of government ministry’s legal authority, and the lack of political will to impose strict measures. If the process of regulatory capacity building within ICT regulation is analysed with the framework of Mahoney and Thelen (2010), what emerges is that the process has been under the mode of conversion, with weak veto power to the opponents to the transformation of regulatory capacity. It can be viewed as the adaption of the core executive to the regulatory challenges of the period. The fact that the issue of the regulatory capacity has been determined within the core executive (planned by civil servants and authorised by party politicians) can imply that the core executive has retained a significant extent of discretion on this issue.

What emerges is a transformative process from a well co-ordinated state corporation monopoly to competitive market managed by a regulator with a principal-agent relationship with party politicians. Although party politicians have had significant power to control the sector, they did not try to exercise their influences (those in the LDP), or they did not have sufficient capacity to realise their intention (those in the DPJ). The distance between party politicians and civil servants adds a characteristic to this situation in Japan. Throughout the interviews, all party politicians and civil servant interviewees regarded political parties and bureaucracy as independent of one another. None of them had a strong sense of the state. Party politicians viewed their own role as key decision makers. The internal transformation among party politicians (the decline of those outside the Cabinet and the rise of Cabinet Ministers) has a possibility of influencing this situation, although no change has been observed yet. The overall flow of how these actors within the core executive have transformed their respective power is summarised in Table 5.6:

#### Table 5.6: The change of the core executive actors’ power

|  |  |  |
| --- | --- | --- |
| State actors | 1980s-1990s | 2000s |
| **Party politicians**  Cabinet Ministers  Decision making  Strategic management  Non Cabinet Members  Decision making  Strategic management | Weak  Weak  Strong  Weak | Enhanced but unstable  Enhanced but unstable  Decline  Weak |
| **Civil servants**  Strategic management  Legal capacity to regulate  Knowledge and expertise | Strong  Strong  Weak | Decline  Decline  Enhanced |

The analysis of this chapter reveals that Japan’s ICT regulation between the 1980s and 2000s has similar governance characteristics to the governing structure of the UK analysed by Smith (1999), in spite of the different political tradition. To explain the Japanese case, ‘Ministers’ as actors in Smith (1999 p.118) can be rephrased as ‘key party politicians’ (Cabinet Ministers and key party politicians outside the Cabinet). Power relations within the group of key party politicians and civil servants have been fluid. The dominance of ruling party politicians was replaced by that of Cabinet Ministers in the 2000s. Civil servants enhanced their influence in the 1980s and saw further transformations in the 2000s. The nature of the relationship between the core executive actors has been interdependent. Both party politicians and civil servants needed other core executive actors’ resources. Elsewhere, the core executive has retained its dominance in the ICT sector. Key decisions have been made by ruling party politicians throughout the period between the 1980s and 2000s. Different from civil servants, societal actors such as telecommunications carriers have not had the resources that the core executive crucially needed. This point differentiates the MPT/MIC from societal actors. Even the strongest telecommunications carrier (NTT) has had a limitation. Although the NTT has had significant funds and information about the industry, its power has depended upon the decisions by party politicians. Party politicians have primarily depended upon not the NTT but the MPT/MIC as the government machine on governing the ICT sector. Although the NTT demonstrated significant power to stop its breakup in 1990 and 1996, it did not have the resources which party politicians vitally needed. This means that the NTT could successfully fend off its breakup but it was dominated by the core executive actors such as party politicians. Other telecommunications firms and societal groups have been in weaker positions than the NTT in terms of resources such as funds and lobbying power.

A group of party politicians has retained the key decision making position of Japan’s ICT sector. In the 1980s and 1990s key decisions were taken by party politicians outside the Cabinet and therefore did not govern. Those party politicians were discretional, and some of them sought the possibility of getting benefit through regulation and their respective influence to civil servants and the former state corporation. When this structure was undermined, the policy making process became unstable.

Party politicians outside the Cabinet, who were dominant from the 1980s to the 1990s, exercised their power through the party machine, typically committees within the LDP. Their source of power is based on the examination process of these bodies, their legitimacy as members of the Diet (i.e. representatives elected by their constituencies), internal seniorities (many of them have experience in the government ministry as Cabinet Ministers and/or Parliamentary Vice-Ministers), and the LDP’s internal custom (the internal examination was regarded as a precondition for the governmental legislation) (I’io 2007 pp.87-8, p.99-102). The fact that their legitimacy was not based on the formal institution including law but their informal custom indicates that the foundation of their legitimacy was not established but unstable. Also, the informal nature of their legitimacy makes their approach to regulatory policies discretional rather than rule based.

The efforts of enhancing Cabinet Ministers by both LDP and DPJ governments have significantly changed this landscape. The replacement of Parliamentary Vice-Ministers with the new *Seimu Sanyaku* system by the Keizo Obuchi Government (1998-2000) can be regarded as a significant effort to enhance the power of Cabinet Ministers (I’io 2007 p.196, Neary 2002 pp.126-7). The Jun’ichiro Koizumi Government further enhanced the power of Cabinet Ministers by a number of measures including: making their tenure longer together with stopping frequent cabinet reshuffles; establishing a system of selecting *Seimu Sanyaku*; and obtaining Cabinet Ministers’ endorsement before selecting Senior Vice-Ministers and Parliamentary Secretaries (I’io 2007 p.196). The stronger influence of Cabinet Ministers became intensified by the government change in 2009 by the DPJ, which declared that the parliamentary officials including Cabinet Ministers and other *Seimu Sanyaku* substantially plan and decide policies in government (DPJ 2009 p.5). The resulting rise of Cabinet Ministers, whose legitimacy to govern is based on law, undermined the capricious legitimacy and the power of party politicians outside the Cabinet. This is a process in which the power of the core executive actors has fluidly changed.

The power and weakness of civil servants in the ICT sector is described by Vogel (1996 p.161-6). The MPT’s ‘heavy handed’ approach to regulation based on political discretion rather than law can be understood as a weakness of the MPT rather than strength, because it would not have to employ coercive approaches if it had a co-operative relationship with operators. The decline of the MPT’s role as a strategic manager and its legal responsibilities transformed the nature of its power together with its increasing expertise. Its approach to the ICT sector has become more rule based and ex post oriented.

What emerges from the above is that the fluid change of power within the core executive has shaped the power of the state. In the ICT sector, the embedded structure in the 1980s and 1990s was a coalition of party politicians (typically the LDP) and civil servants in the government ministry (MPT/MIC); the former reigned, and the latter materialised regulatory policies in detail. The power of the state is based on the fact that party politicians were elected by their constituencies and bestowed their support on civil servants. The new political mode dominated by Cabinet Ministers has the potential of changing the previous mode’s logic of power base. Cabinet Ministers are appointed by Prime Ministers and have legal authority to govern their responsible government ministries. This new structure, however, has yet to be firmly embedded. Whether this situation is an intermediate between one set of equilibrium to another or more permanent condition is the question of the future research. Throughout the process the core executive has successfully been dominant to society by retaining its role as key decision maker. State power in the sector has changed in response to the fluid change of power within the core executive.

The case of ICT regulation does not reveal an intimate relationship between the state and private sector actors described by Weiss (1998 p.38) in her Governed Interdependence mode as a type of close relationship between strong public actors and their strong private counterparts, referring to the case of Japan’s MITI. Instead, what emerges from this study is a more universal form of state power, which is based on legitimacy through the formal institution, electoral processes, and popular support. The power of the actors has emerged and waned within the group of the core executive. State power revealed in this chapter has asymmetrical dominance to society based on the fluid change of power within the core executive.

In returning then to the main theme, which argues for the core executive’s dominance in regulatory policies, and the research questions of this thesis, what can be observed throughout the chapter is that the core executive in Japan’s ICT sector has evolved through its internal change with the decline of *Zoku Gi’in* and the rise of Cabinet Ministers. This explains the first research question ‘How has Japan’s regulatory framework evolved over the last three decades?’

Tuning to the second research question ‘how has the core executive been successful in imposing their will on regulation?’ party politicians have imposed their will through retaining the role of the key decision maker in regulation. The dominant actor has been party politicians, whether those outside the Cabinet or Cabinet Ministers, rather than civil servants. The dominance of the core executive in the ICT sector has therefore been unchanged because the group of party politicians has retained their role as the key decision maker.

In relation to the third research question ‘how have Japan’s ministries shaped the organisational design of regulatory functions?’, the core executive’s perspective has shaped the concrete approaches to regulation, an example of which can be observed in the case of the organisational design of Japan’s regulator. The state tradition based on the core executive’s perspective shaped by a path dependent sequence significantly contributed to choosing the regulator in the form of a government ministry rather than an independent regulator.

Lastly the fourth research question concerning ‘how has the state’s regulatory capacity changed?’ reveals that the capacity of the Japanese state in the ICT sector has been transformed, although it certainly became unstable.

Throughout this whole process, Japan’s core executive in the ICT sector has successfully retained its steering capacity, setting the mode of the sector, even under more unstable conditions after the 2000s. The set of findings in this chapter endorses the proposition of this thesis. In the 1980s and 1990s regulatory policies were steered by party politicians outside the Cabinet and their strategies were managed by civil servants. The situation there has a similarity with what Johnson (1982) described about the MITI. Regulatory policies were formulated within the group of the core executive through the discretion of party politicians outside the Cabinet. The 2000s saw a change in this policy making system. Party politicians outside the Cabinet lost their influence and civil servants retreated from their role of strategic decision making. What has emerged is the power of Cabinet Ministers. This change, however, occurred within the inner policy community of the core executive. The core executive itself has retained its power to steer and implement regulatory policies. Throughout the process between the 1980s and 2000s, the core executive has retained its discretional position to formulate and implement regulatory policies. This position enabled the core executive to dominate the ICT sector.

The approach of this thesis focusing on the state at a macro level reveals the core executive’s asymmetric dominance based on what Marsh et al (2001 p.248) describe as the government’s ‘unique set of resources – force, legitimacy, state bureaucracy, tax-raising powers and legislation – which are unavailable to other actors’. The complex power change within the core executive in ICT regulation after the 1980s can be understood as a process of reconstituting the state within ICT regulation, which has resulted in shaping a variation of the regulatory state in Japan. The reconstitution process of the state in ICT regulation exposes an example of how the Japanese state has been transformed after the 1980s, in a field where the role of the state has distinctively been transformed (Smith 2009, Sorensen 2004). As previous chapters reveal, this is what the literature about Japan with pluralist and rational choice tradition has failed to present.

With the reconstitution of the state within the sector, the regulatory framework of Japan’s ICT sector has significantly changed. Another field where significant regulatory transformation has taken place is the field of antimonopoly regulation, where regulatory tools have been enhanced as ex ante regulation has been relaxed in the economy. This is also the field where the independence of regulatory implementation has distinctively been retained in the form of a rare independent administrative commission. Examining how the Japanese state has been transformed in this field offers contrasting evidence to the case of ICT regulation. The next chapter therefore examines the case of Japan’s antimonopoly regulation.

# Chapter 6 The Development of Antimonopoly Regulation and State Transformation

## 6.1 Introduction

Antimonopoly regulation, which is sometimes referred to as ‘antitrust’ regulation initially emerged in the US, but grew elsewhere internationally after 1945. This process provoked a contention between the indigenous states traditions and an American approach; the spread occurred: ‘within a contested cross-cultural public discourse that recognized Americanization as an active element primarily in relation to indigenous factors already constituting capitalist systems’ (Freyer 2006 p.1). The development of antimonopoly policies has caused a significant transformation in countries outside the US, which assumed before World War II that: ‘anticompetitive collaboration through cartels among business, government, and producer was necessary to preserve social order at home and competitive advantage abroad’ (Freyer 2006 p.3). This transformation prompts the emergence of antimonopoly regulators as a state actor in the countries outside the US. At the same time, because the traditional sentiment in favour of state-business collaboration existed in those countries, the introduction of an approach in favour of competition and antimonopoly regulation in those countries was contested with such a sentiment.

This thesis focuses on the Japanese case of this emergent regulatory field, exploring the response of the state to the specific challenges it presents. A characteristic of the Japanese case includes a significant influence from the US; Japan’s antimonopoly institution was designed under the initiative of the SCAP (Supreme Commander for the Allied Powers) in its establishment in 1947. This origin of direct import from the US provoked a contest with the traditional approach. The following revision of Japan’s antimonopoly regulation in 1953 significantly weakened its system, leaving the responsible JFTC (Fair Trade Commission, Japan) as one of the weaker government organisations until the 1970s.

The second turning point emerged in the form of a law amendment in 1977, enhancing the JFTC. The following Structural Impediments Initiative (SII) between the Governments of Japan and the United States[[63]](#footnote-63)offered a significant turning point for Japan’s antimonopoly policies. The impact of the SII has led to the Japanese government subsequently prioritising the enhancing of the JFTC and Japan’s antimonopoly regulation (Figure 6.1 exhibits the timeline of the development of Japan’s antimonopoly regulation).

#### Figure 6.1: The timeline of the development of Japan’s antimonopoly regulation

**Koizumi government (2001-06)**

Significantly enhancing antimonopoly regulation and the JFTC

2005

**Introduction of the AMA**

1990

1977

2010

1980

2000

1947

**2005 AMA amendment**

(introducing a leniency programme)

**1977 AMA amendment**

(First substantial enhancement)

**The SII (1989-90)**

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.

Such a transformation has affected the JFTC’s status as an independent regulator. As the JFTC strengthened its power and organisation as a responsible agency for antimonopoly policies after 1990s, its independent statues has confronted challenges such as a demand for more democratic accountability and the decreasing necessity for protection from its adversaries such as other government ministries.

Such circumstantial changes have affected the capacity of the state in this field. The JFTC has been significantly enhanced in terms of its organisational size and budget since its establishment in 1947 (in particular after 2001 under the LDP’s Koizumi government). However, the number of professionally trained staff is still small. This point is highlighted in the interview as evidence that the professional expertise of the JFTC staff is insufficient.

This chapter explores how the core executive exercised a discretional regulatory approach in antimonopoly regulation. The analyses are constructed based on the four research questions.

* ‘How has Japan’s regulatory framework evolved over the last three decades?’ This is explored by reviewing how antimonopoly regulation has been developed in Japan.
* ‘How has the core executive been successful in imposing their will on regulation?’ Focusing on party politicians and civil servants, this research question explores how their role and power have changed. The core issue here is the role of influential party politicians and civil servants under the system in which the JFTC’s independence of authority is assured.
* The JFTC’s independence of authority is further examined by the third research question: ‘how have Japan’s ministries shaped the organisational design of regulatory functions?’ The nature of the JFTC’s independence as Japan’s rare independent regulator reveals how this institutional framework has worked within a national context.
* The change of regulatory capacity vis-à-vis these circumstances will be delivered by the fourth research question: ‘how has the state’s regulatory capacity changed?’ This research question reveals how the capacity of the state in antimonopoly regulation has been transformed.

At a broader level, the chapter considers how dominant the core executive has been in antimonopoly regulation.

The composition of this chapter is the following. The next section describes how antimonopoly policies emerged and developed in Japan. The review starts with the JFTC’s establishment in 1947, yet pays attention to the period after the SII between 1989 and 1990. How the core executive actors transformed their power and roles is explored in the following section. Then the focus of this thesis pinpoints the independent characteristic of the JFTC. What follows next is the assessment of the impact of transformation through analysing the capacity of the state in antimonopoly regulation. What is explored throughout this chapter is how the Japanese state has responded to challenges in antimonopoly regulation.

## 6.2 The emergence and development of Japan’s antimonopoly regulation

The introduction of the Antimonopoly Act (*Dokusen Kinshi Hou*: AMA) in 1947, officially the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade, which was originally drafted by the SCAP as an improved version of the US antitrust laws, launched Japan’s antitrust policies (Schaede 2000 p.14, Yamamura 1967 p.9)[[64]](#footnote-64). This new competition framework was not regarded as embedded by commentators such as Hadley (1970 pp.107-8)[[65]](#footnote-65), who describes that: ‘(v)irtually all Japanese government officials, with the exception of officials in the Fair Trade Commission’ appeared to consider that the economies of scale continue indefinitely, partly because they did not have the empirical economics studies to deny this idea and partly because they did not have ‘an antitrust tradition’. Yamamura (1967 p.173) also argues that the SCAP’s economic policies including the formulation of the AMA ignored their possible impact on economic recovery and growth. It was therefore unsurprising that the AMA confronted amendment pressures after its enactment in 1947 (Hadley 1970 p.197, Schaede 2000 p.78). The Treaty of Peace with Japan (the Treaty of San Francisco) in 1951 and following abolishment of the SCAP were significant turning points for the AMA. The amendment to the AMA in 1953 substantially changed the nature of the 1947 AMA, the key points of which are summarised by Yamamura (1967 p.57) in Table 6.1.[[66]](#footnote-66)

#### Table 6.1: The key points of the AMA amendment in 1953 (Yamamura 1967 p.57)

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| --- |
| 1. **Admission of recession and rationalisation cartels**   Cartels and other collusive activities became legal in those cases where the competent minister deemed it necessary on the grounds of averting a recession or for the purpose of rationalisation. Any competent ministry, as well as any industry group, might initiate the action, though when it was initiated by an industrial group, concurrence of the competent ministry was required. In either case the consent of the JFTC was also required.   1. **Relaxation of stockholding regulation**   According to the amended Articles 10 through 16, interlocking directorship, mergers, and mutual stockholding became legal, except when they conflicted with Article 9 (prohibition of holding companies) or Article 2 (limitation of stockholding by a financial institution), and when the result of these activities did not limit competition in a market substantially.   1. **Redefinition of unfair competition**   Unfair competition and the catch-all clause of the original Article 2-7, which read in part lessening of ‘competition which is contrary to the public interest’, were amended to apply only in six specified cases of ‘unfair business practices,’ as indicated in the amended Article 2-7.   1. **Admission of retail price maintenance**   Article 24-2 permitted an entrepreneur ‘who produces or sells a commodity which is designated by the JFTC and the identical quality of which can be easily recognised’ to maintain retail prices provided that these commodities were ‘not used daily by the general consumer.’   1. **Modification of the definition of unreasonable restraint of trade**   The original Article 4, which forbade entrepreneurs from entering into agreements with other entrepreneurs on prices and output, restraint of technology, and investment, was eliminated. The reason was that Article 3, which states, ‘no entrepreneur shall effect private monopolisation or shall undertake any unreasonable restraint of trade,’ covered the areas that came under Article 4 previously.   1. **Total elimination of two articles**   Article 5 (prohibiting the establishment of or becoming a party to a monopolistic organisation) and Article 8 (prevention of substantial disparities in bargaining power) were completely deleted from the Act.   1. **Abolition of the Trade Association Act**   The Trade Association Act, which significantly restricted the activities of trade associations, was abolished. Its three clauses, which specified illegal activities on the party of trade associations in the amended Trade Association Act of 1952, were incorporated into the AMA. |

Yoshikawa (1983 p.496) draws attention to the fact that until 1974, the JFTC’s major weakness was its lack of support from party politicians including the LDP’s; the LDP supported the MITI (Ministry of International Trade and Industry) during its major disputes with the JFTC:

For example, when the FTC persistently refused to approve the merger plan of Yawata Steel and Fuji Steel in 1968, the LDP attacked the FTC. It even threatened to ‘reorganize’ the Commission. Unlike most of the other administrative agencies, the FTC, taking as a model the independent administrative agencies in the United States, is granted status and authority independent of the Cabinet, and the Commissioners enjoy guarantees against discharge and reduction of salary. In advocating the reorganization of the FTC, influential members of the LDP declared that such provisions were unconstitutional since they violated Article 65 of the Constitution which provides that the executive power rests with the Cabinet. It was under such political pressure that the merger was eventually approved by the FTC with certain changes in the original plan. (Yoshikawa 1983 pp.496-7)

This trend to suppress the impact of antitrust policies was substantially counted by the enactment of the amendment to the AMA in 1977, which was the first amendment to strengthen the statute since its enactment in 1947 (Schaede 2000 pp.78-97, Sanekata 1986 p.393).

The AMA amendment in 1977 originated from the economic turmoil by the Oil Shock in 1973, which prompted significant inflation in Japan; it raised wholesale prices by 40 percent and consumer prices by more than 30 percent (Schaede 2000 p.97). Private firms exploited this opportunity by increasing their profit through restricting production and holding back their products until they could be sold at higher prices through collusion (Schaede 2000 p.98). This situation was exploited by the JFTC: it proceeded against 66 cases in 1973 and 58 cases in 1974[[67]](#footnote-67) as AMA breaches, the highest records since its establishment in 1947. This period also saw the first criminal cartel case since the end of the administration of the SCAP in 1952: the oil cartel case (Schaede 2000 p.99)[[68]](#footnote-68). The oil cartel case, the chronological detail of which is drawn in Table 6.2, was an incident in which the collusion among 12 petroleum companies was prosecuted as an AMA breach by the JFTC in 1974 and found guilty by the Supreme Court in 1984. The corporate behaviours in this period, including this cartel case which was in court and therefore in the media for years and generated an immediate impact on the revision of the AMA, galvanised public demand for enhancing the AMA (Schaede 2000 p.100, Sanekata 1986 p.393).

#### Table 6.2: The chronological details of the oil cartel case (based on Schaede 2000 pp.99-100, Yoshikawa 1983 p.499)

|  |  |
| --- | --- |
| 1960s-1971  1972 Nov.  1973 May-Nov.  1973 May  1974 Feb.  1974 May  1980  1984 | The Petroleum Federation[[69]](#footnote-69) (PF) repeatedly received cease-and-desist orders from the JFTC.  The PF’s ‘Demand and Supply Committee’ (*Jukyu I’inkai*) established crude oil processing quotas for all members.  12 companies met five times in a conference room of the PF and agreed on price increases in all of the various categories of oil (light, heavy etc.).  Most of the 12 arranged for a ‘gasoline *Kacho* *Kai*’ (gasoline division chiefs meeting) and agreed on monthly sales restrictions (i.e. volume quotas) for each cartel member in each region of Japan to support the price agreement.  The JFTC filed a criminal charge against the PF, 12 companies, and their 17 top representatives.  The Tokyo Police Department began collecting evidence from the companies and the trade association.  The Tokyo High Court acquitted the PF but held that the 12 oil companies and their executives were guilty of price fixing[[70]](#footnote-70). The Court sentenced the executives to from four to ten months imprisonment (although the sentences were suspended) and imposed fines ranging from ‘1,500,000 to 2,500,000 yen.’  The Supreme Court supported most of the verdicts of the Tokyo High Court. |

The JFTC revealed its proposal for a possible AMA amendment in early 1974. The major points of this proposal were (Schaede 2000 p.101, Yoshikawa 1983 p.499):

* to empower the JFTC to order the breakup of dominant firms, oligopolies or conglomerates;
* to abolish price cartels;
* to increase penalty provisions such that a criminal fine was a meaningful threat, and to introduce a new administrative surcharge (*Kachokin*) to cream off the profits made by companies over the duration of a cartel;
* to lower the requirements of what constitutes ‘sufficient evidence’ for a cartel to be prosecuted;
* to strengthen disclosure and accounting rules for large firms, including cost date;
* to strengthen the rules on unfair trade restrictions; and
* to limit stockholdings in one corporation by banks and trading companies.

Although this proposal was not immediately taken seriously by the ruling LDP, it was picked up by Prime Minister Takeo Miki (1974-76) as a tool to regain the popular support (Sanetaka 1986 p394). When Miki took over the premiership, the LDP’s reputation was significantly damaged by the scandals of his predecessor, Kakuei Tanaka (Schaede 2000 p.101, Sanetaka 1986 p394). As the new Prime Minister Miki promised a revision of the AMA as well as swift clean-up action in his inauguration speech (Schaede 2000 p.101). According to Schaede (2000 p.102), the debate about this AMA amendment can be characterised by the confrontation from 1975 to 1977 between LDP politicians lobbied by the MITI and its business ally trying to dilute the JFTC’s proposal and the opposition group composed of opposition parties, consumer groups, and economics and law academics. In 1977, the amendment bill was finally adopted under the strong initiative of the then Prime Minister Takeo Fukuda in the Diet. This amendment significantly enhanced the AMA.

A key actor to emerge in 1975 within the process of the 1977 AMA amendment was the LDP’s AMA 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 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. Having first been elected to the membership of the Diet in 1953, he had a long career in politics, affording him the opportunity to exert a significant influence over the LDP. In the field of antimonopoly policies, he has been the Chairman of the LDP’s AMA Examination Committee for a long time between the 1980s and 2000s (The House of Representatives 2004, Interview with an LDP member of the House of Representatives). The informal nature of Yamanaka’s influence makes it a feature that is difficult to identify in the official documents. Even his memorial address offered a brief reference to his contribution in the antimonopoly field:

since the period of the Miki Cabinet in 1974 as the Chairman of the Antimonopoly Act Examination Committee he was involved with the Antimonopoly Act amendment whose enhancement was urgent for establishing the fundamental rule of the liberal economic society, tirelessly addressed the opposing views in and outside the LDP, continued pursuing an agreement, finally led the amendment bill to be unanimously adopted, and opened a new era in Japan’s antimonopoly policy (The House of Representatives 2004).

In the process of the 1977 AMA amendment, Yamanaka chaired the Committee and led the debate within it; he worked hard on the amendment bills, addressing most of the major issues raised by the bill, and personally lobbied major politicians opposing it (Hayashi 2008 pp.335-6). On the day before the session of the Committee, he often studied the issues on the bill all night with a JFTC official as part of his commitment to seeking a consensus (Hayashi 2008 p.335-6). It was claimed that the result of debates within his AMA Examination became the basis on which the government’s bill on the AMA amendment was shaped (Hayashi 2008 p.318).

Yamanaka’s dominance was not continuous. His appointment as the Minister of International Trade and Industry led to his resignation as the Chairman of the LDP AMA Examination Committee and so sidelined his role in antimonopoly regulation. His revival as the AMA Examination Committee did not last long, as 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).

Yamanaka‘s approach was a variation of *Zoku Gi’in*’s (Inoguchi and Iwai 1987); his key tools of power were specialist knowledge obtained through experience and the PARC. Hayashi (2008) reports Yamanaka’s efforts to learn issues related to antimonopoly regulation and the AMA. This shaped a foundation on which Yamanaka persuaded opposing LDP politicians during the process of the 1977 AMA amendment. Another key tool is his position as the Chairman of the AMA Examination Committee within the LDP PARC. He presided over the meetings of the AMA Examination Committee. This position gave him power to select and shape the policy agenda, lead debates, persuade opponents, and seek out consensus. The importance of the post of the Chairman is by the fact that the influence of Yamanaka significantly decreased in the mid 1980s when he was out of the AMA Examination Committee and not politically active (drawn from an interview with a former Secretary General, JFTC). As the interviews below reveal, Yamanaka usually exercised his power through choosing policy agendas; he was informally briefed by the JFTC officials on possible policy issues in antimonopoly regulation. His endorsement in the informal briefing was crucial; without it, the issue could be rejected in the Committee. Elsewhere, official sessions of the AMA Examination Committee also became the arena of choosing a policy agenda when Yamanaka wanted debates in the Committee.

Yamanaka and the LDP AMA Examination Committee within the PARC retained their positions as key consensus makers on major issues in antimonopoly regulation, such as important law amendments. Until his death in 2004, the LDP AMA Examination Committee, which was called ‘Yamanaka Committee’, acted as the central arena for political coordination on antimonopoly regulation. This framework was retained after Yamanaka’s death. The LDP AMA Examination Committee continued working as a central arena of policy making within antimonopoly regulation until the 2009 change in government.

As the first substantial measure to enhance the AMA, the 1977 amendment (whose major points are summarised in Table 6.3) was a significant event in the history of Japan’s competition policies and regulation, together with the turmoil in the 1970s. Whether or not this had a direct impact on the course of competition policies and regulation is a different question. The antimonopoly policies encountered a rigid resistance and did not significantly develop in the 1980s (Sanekata 1986 pp.388-91, Schaede 2000 pp103-6, Tsuruta 1997 pp.139-41, Uesugi 2007 p.122-38, Yoshikawa 1983 pp.503-4). The JFTC utilised the authority conferred on it by the 1977 AMA amendment ‘to pursue administrative compliance rather than the more activist enforcement’ epitomised by the Oil cartel case (Freyer 2006 p.203). According to Professor Hidekatsu Hirabayashi, a former JFTC Commissioner: ‘It turned out to be ineffective, except (the) surcharge system, because the amendment became too much a political issue’ (and its detail was not elaborated) (Freyer 2006 p.203). Tsuruta (1997 p.154) points out that the JFTC’s approach before the 1980s tended to be administrative guidance oriented and lacked transparency. This approach created no judicial precedent and had difficulty to show the actual examples of AMA breaches (Tsuruta 1997 p.154). Uesugi (2007 pp.122-3) also describes the enforcement by the JFTC in the 1980s as law enforcement without impact.

#### Table 6.3: The major points of the 1977 AMA amendment (based on Yoshikawa 1983 pp.500-2)

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| 1. **Eliminating ‘Monopolistic Conditions’**[[71]](#footnote-71) **(Article 8-4)**   Newly introduced Article 8-4 empowers the JFTC to order the firm(s) in ‘monopolistic conditions’ to ‘effect partial transfer of business or take other measures necessary for recovering competition in respect of the commodity or service’ concerned.   1. **Imposing surcharge on illegal cartels (Article 7-2 and 8-3)**   The JFTC is empowered to levy a surcharge upon the firms or the trade associations that engaged in unreasonable restraint of trade or concluded an international agreement or contract constituting unreasonable restraint of trade, which pertains to the price of a particular commodity or service, or affects the price by limiting the supply of the commodity or services in question. The amount of the surcharge is prescribed to be one half of the sum equivalent to 3% of the amount of sales realized by the firms concerned during the period that the activity continued (4% in the case of a manufacturing business, 2% in the case of a retail business, and 1% in the case of a wholesale business).   1. **Requiring reports about parallel price increases**   The JFTC is authorised to ask a report concerning ‘alignmental price increases’, which have the potential of cartels, from the firms concerned, under certain conditions meticulously defined:   * 1. if such a price increase has occurred in an industrial sector where the total value of the commodity or service supplied during a defined one-year period exceeds 30 billion yen;   2. if the total volume of the commodity or services supplied by the three largest suppliers occupies more than 70% of the total volume of the commodity or service supplied by the entire industrial sector; and   3. if two or more of the five largest entrepreneurs in that industrial sector (including the largest) have increased the price at the same or a similar rate during a three-month period.  1. **Restriction on shareholding by large corporations (Article 9-2)**   Any large corporation, having capital of 10 billion yen or more or net assets of 30 billion yen or more, shall not acquire or hold shares in any domestic corporation if the aggregated acquisition price of all the shares in domestic corporations held by it exceeds the amount of its paid-in capital or the amount of its net asset, whichever is greater. |

Significant turning points occurring in antimonopoly regulation can be seen firstly in the telecommunications liberalisation in 1985 and secondly, the SII.

Telecommunications liberalisation in 1985 is identified by a retired senior civil servant of the JFTC as a significant event. He mentioned that the JFTC, which had concentrated on the enforcement of the AMA, was inspired by this liberalisation to get involved in policy issues:

The Fair Trade Commission didn’t deal with policy issues so much; (about policy issues) it got rather compelled by other government organisations, like ‘please make an AMA exemption law’; the policy issues relevant to the JFTC tended to weaken the AMA and competition policies before that (telecommunications liberalisation in 1985). Things emerged after Mr Nakasone’s telecommunications liberalisation in the 1980s was opposite (to such previous trends) and the policy debate was launched to strengthen the AMA; (it was in) such a period. An example of such things was the issue of the NTT and telecommunications, I guess. … As far as I remember telecommunication liberalisation in the 1980s was the first for the JFTC to pick up or get interested in policy issues. (Interview with a retired JFTC senior civil servant)

The JFTC’s interest in the telecommunications regulatory reform in 1985 can also be found in its senior official’s comment in the Diet: ‘...we recognise the introduction of competition in telecommunications and expect the efficient and rational development there...we consider these three bills (the bills for the 1985 telecommunications regulatory reform) significant in the viewpoint of competition policy’ (The House of Representatives 1984b). This disjuncture between the JFTC’s previous approach focusing on law enforcement and more latterly focusing on competition policy development became evident when the JFTC was involved with the second event: the SII.

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.p.146, Tsuruta 1997 pp.149-50). Morita (1991 pp.800-2) summarises the description of SII’s final report (June 1990) [[72]](#footnote-72) related to Japanese government’s commitment on antimonopoly policies in the following:

* Enhance and increase enforcement of the AMA by implementing mechanisms which will:
* 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*, including making a commitment to:
* strengthen the JFTC’s ‘monitoring of transactions among members of the same *Keiretsu* groups with cross-shareholding ties to determine whether these relationships impede competition.’ The JFTC shall also establish and publish guidelines for the enforcement of the AMA against *Keiretsu* type group actions. Violations resulting from cross-shareholding will result in the restriction or divestiture of shares.
* make the *Keiretsu* more open and transparent;
* issue a government policy statement affirming that the Japanese government will take steps to ensure that *Keiretsu* relationships do not impede fair competition and at the same time request the cooperation of the *Keiretsu* firms in achieving this policy.

These measures to enhance antimonopoly policies and the JFTC came with the change in structure. Freyer (2006 p.203-12) reports the change of Japan’s traditional antimonopoly approach as a result of the SII and the collapse of the ‘bubble economy’[[73]](#footnote-73). 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).

The major opponents to antimonopoly policies also changed their views in this period. By the mid 1990s one of the largest business groups, *Keidanren*, stopped its opposition to the SII and publicised a deregulation programme that envisioned a capitalist market order (Freyer 2006 pp.203-4). This programme, set out in *Keidanren*’s ‘Deregulation Promotion Plan’, proposed the rigorous enforcement of the AMA, together with substantial deregulation in industrial sectors (Freyers 2006 pp.204-5). Two major factors prompted this change of opinion. First, *Keidanren* acknowledged through their market data that a significant portion of consumers were dissatisfied with the higher domestic prices resulting from protectionist policies in the prolonged recession of the 1990s (Freyer 2006 p.206). Second, many larger multinational firms competing in the global markets perceived that their profitability was constrained by subsidising their uncompetitive counterparts in protected sectors (Freyer 2006 p.206). Indeed, ‘*Keidanren*’s deregulation reforms potentially benefited large firms competing in a global market the most’ (Freyer 2006 p.205).

The MITI, who had also been an active advocate of business, also changed its standpoint. Its official pronouncements urged ‘the FCT’s vigorous enforcement of competition law’ (Freyer 2006 p.204). Accoording to Freyer (2006 pp.206-7), a significant portion of MITI officials argued for the MITI’s shift from industrial policy to those focusing on deregulation, the reform of existing systems and the promotion of competition, although their internal critics retained their nostalgic sentiment to the old protectionist regime. Such a change of *Keidanren* and the MITI coincided with the emergent role of lawyers (Freyer 2006 p.207). Previously, Japan’s private firms had little reason to seek advice from lawyers because they generally turned for guidance first to government officials (see Johnson 1982) (Freyer 2006 p.207). This traditional approach changed by the late 1980s; many large firms began consulting lawyers about industrial policy and the AMA, even before approaching the civil servants (Freyer 2006 p.208). Freyer (2006 p.208) analyses that this was because: ‘large multinational corporations wanted greater independence from industrial policy in order to operate efficiently in the competitive global market’. These corporate changes rendered the following events to emerge in the 1990s: the expansion of the JFTC by its organisational upgrade and the relaxation of the holding company prohibition.

Strengthening the JFTC’s enforcement structure became symbolically and practically important during the SII’s implementation after 1989 (Frayer 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 to prevent the revival of the *Zaibatsu* 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 supported the relaxation, while a group of party politicians including the SDPJ opposed it (Freyer 2006 pp.223-4, 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: 1996, holding company regulation relaxation: 1997) is 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 (2001-06) 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 (2001-06) 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 2006[[74]](#footnote-74) by the AMA amendment in 2005 (Table 6.4), 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 6.5 suggests that this expectation was right. The staff and budget of the JFTC discernibly grew in this period, as Appendix 4 reveals. For example, the JFTC’s budget grew by more than1 million yen from 6,035,756 thousand yen in 2001 to 7,686,000 thousand yen in 2002.

#### Table 6.4: The major points of the amendment to the AMA in 2005 (based on Takeshima[[75]](#footnote-75) 2007)

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| 1. **Surcharge rates increase**   Surcharge rates imposed on AMA violators were increased from 6 percent to 10 percent of the related turnover for the large-sized enterprises and application of 50 percent higher rates to repeat offenders.   1. **The introduction of criminal investigation authority to the JFTC**   The JFTC was authorised to conduct criminal investigation in order for the JFTC to treat serious violation in a more strict and effective manner, which is expected to enable the JFTC to file criminal accusations much more aggressively.   1. **The introduction of a leniency programme for surcharge (see footnote 74)** 2. **The transformation of the complaint system (*Shinpan Seido*)**   The JFTC’s complaint system changed from a place in which alleged firms had opportunities to submit their claims in writing before the JFTC’s decision to one in which the firms can file complaints about the JFTC’s actions (typically issuing cease-and-desist orders) afterwards. |

#### Table 6.5: 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 |

The governing framework within Japan’s antimonopoly regulation has a similar set of characteristics to that of ICT regulation. Until the government change in 2009, the key actor in shaping major decisions was the ruling party; the LDP’s AMA Examination Committee, which was an equivalent to divisions, 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 framework 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. The AMA was first strengthened in its 1977 amendment. However, 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 as well as party politicians. The JFTC’s steady organisational development in Table 6.6 indicates a significant quantitative expansion of the competent government organisation.

#### Table 6.6: The staff and the budget of the JFCT (based on the data by the JFTC)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | 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 |

The development of Japan’s antimonopoly regulation reviewed in this section reveals a piecemeal institutional growth of the field 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 Cabinet[[76]](#footnote-76). Amendments to the AMA are put before the scrutiny of the Diet, as other law amendments. These complicated circumstances surrounding the JFTC and antimonopoly policies offer a contrast to the case of ICT, where a government ministry led by a Cabinet Minister administers and regulates the sector.

Power relations within antimonopoly regulation have gradually changed. Antimonopoly regulation has seen no significant change of actors until 2009. The MITI and *Keidanren* opposed stronger antimonopoly regulation. The JFTC has been the key regulator responsible for 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 (1989-90) 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 (1989-90) (e.g. Freyer 2006 p.203, p.216, Uesugi 2007 p.146, Tsuruta 1997 pp.149-50). 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 the core executive actors have changed their relationships and power through their adaptation to challenges after the SII.

## 6.3 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 and even politicians or Cabinet Ministers cannot make a request to its job’ (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: see Footnote 76). 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 (1926-89) 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. Of course beforehand we frequently briefed Chairman Yamanaka and let him understand the issue well’ (Interview with a retired senior civil servant). This account describes how crucial Yamanaka was in the policy making process. Almost all the accounts obtained by interviews endorsed this view. For example, a law professor specialising in the AMA who had a long relationship with the JFTC also witnessed:

In the past the LDP had the committee named the AMA Examination Committee and the guy named Sadanori Yamanaka was there. The JFTC said he was the ‘don’ for good or bad, and if he said ‘yes’, things worked very smoothly. But, it is said after his death no similar guy has emerged. (Interview with a law professor (AMA))

This view is confirmed by another account by a retired senior civil servant:

before that (the emergence of the Koizumi Government in 2001), a group of specialised politicians in the AMA surrounding Mr Yamanaka, about ten people, led and decided, like, 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 generate policies from time to time and in these processes somebody like a key man probably exists. In the case of the JFTC, it generates new issues not frequently but only at key turning points. Enforcing the AMA requires no key man, in particular if the independence of authority is considered. So, when the JFTC sometimes launches something, it needs to find 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. This retired official further elaborated his account by employing a comparison between the JFTC and other government ministries:

So, in an extreme description, the JFTC needs only such a man. Well, the Chairman of the AMA Examination Committee was there, and the Chairman said ‘OK, I’ll do that’ in preliminary briefings, then everything was all right. 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: ‘…if the JFTC didn’t have the people like Mr Yamanaka, it may have had to think about establishing a relationship with somebody like 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).

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:

he (Yamanaka) really thought himself with confidence how the AMA should be, and rejected things against his idea, even if they were from the Prime Minister. He had a very strong will like that, and his presence was very important for the JFTC. If described in an extreme way, when the SII urged to enhance law enforcement and antimonopoly policy making, things worked well because of him. (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 Chairman of the AMA Examination Committee, but wasn’t ‘the supporter of the JFTC: Sadanori Yamanaka’. He thought of Japan’s economy and its 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 senior civil servant)

The perspective of civil servants suggests that Yamanaka made decisions based not on the demands of interest groups behind him but his own judgement. Indeed, Yamanaka was powerful enough to realise his own idea in the political arena in the 1980s; Inoguchi and Iwai (1987 pp.242-6) depict Yamanaka’s significant power through observing the MOF’s (Ministry of Finance) failed process to abolish tax exemption to Office Automation facilities (OA). In 1984 the MOF tried to abolish tax exemption for OA products to generate the compensatory income for income tax cuts in the financial year 1984 (Inoguchi and Iwai 1987 p.243). In its efforts, the MOF created a significant row with Yamanaka, who was also a key member of the LDP Taxation Committee: it tried to push this policy when diabetes prevented Yamanaka from attending relevant policy meetings (Inoguchi and Iwai 1987 p. 245). The sessions of the LDP Taxation Committee starting in December 1985 saw a strong opposition to this new tax on OA products from LDP Diet members, who were lobbied by the OA industry (Inoguchi and Iwai 1987 pp. 245-6). Backed by such an opposition group, Yamanaka strongly opposed the new tax; in the end, the meeting between the MOF and the core members of the LDP Taxation Committee including Yamanaka stopped introducing this new tax (Inoguchi and Iwai 1987 p. 246). Inoguchi and Iwai (1987 p.246) conclude that in the 1980s, a planned policy making did not work if a very strong *Zoku Gi’in* such as Yamanaka in the Taxation field opposed, even if he was alone. His dominant power was also evident in the field of antimonopoly policies, as described by an outside observer:

The LDP’s AMA Examination Committee was a very mysterious organisation; it’s only an organisation under the PARC, but under Mr Yamanaka’s dictatorial influence. …Mr Yamanaka dictatorially decided AMA (related affairs) during the period of the Yamanaka Examination Committee. (Interview with a *Keidanren* official)

This set of accounts reveals the impact of Yamanaka’s influence. His power drew in part from his seniority in the LDP and his long experience and expertise in the antimonopoly field. 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 AMA[[77]](#footnote-77). The actual responsibilities of the PM were assigned to the Chief Cabinet Secretary (Cabinet Minister) pursuant to the provision of the Act for Establishment of the Cabinet Office[[78]](#footnote-78). 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 government have to explain the bill in the Diet. The Chief Cabinet Secretary did that 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:

…and 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 done by the Chief Cabinet Secretary. Only a Cabinet Minister can do these; the JFTC Chairman can’t, so the Chief Cabinet Secretary did such ceremonial, truly ministerial jobs, and 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. This was how things worked under LDP governments. (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 description 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 in the field of antimonopoly policies. What also 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 offered a more critical view on the JFTC, referring to his experience in antimonopoly policy making until 2004:

it (JFTC) is powerless. New reforms can’t be done only by the Fair Trade Commission. Therefore, various domestic conditions surrounding antimonopoly policies mobilise antimonopoly policies, but it’s doubtful if the main engine of such movements has been the Fair Trade Commission. (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 as 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. Their power in legislation was not dominant and their scope was within the decisions made by the LDP; they had no capacity to counter the LDP’s decisions. 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 policy priority, the concrete measures to materialise such a policy 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 commented that business was as usual:

I was just involved in the last part of the AMA amendment in 2009; we abolished the bill in 2008 and remade it as the bill of 2009, and at that time (the bill was examined by) probably the joint LDP committee of the AMA Exam Committee and the Economy and Industry Division; the AMA Exam Committee was held, and I had a little odd feeling…the policy authorisation process such as consulting to the LDP’s PARC, and then the General Council was the same, I thought. (Interview with a JFTC senior civil servant)

Her account 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:

the AMA Examination Committee was the most significant. In that way, the JFTC was an independent administrative organisation and implemented ordinary law enforcement alone, but things like law amendments are naturally proceeded by the government, so explanations and answers in the Diet were undertaken by the Chief Cabinet Secretaries; but rather than instructions from such people, the debate in the AMA Examination Committee was 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 a kind of disjuncture by a senior official of a business organisation:

…so there were cases that ‘because Mr Yamanaka was there it could be done’ or ‘…it was done in such a way’. I don’t say it’s right, but things smoothly working so far got unworkable (by Yamanaka’s death). As often said, Mr Yamanaka’s departure created a larger impact than the government change from the LDP to the DPJ, I guess. (Interview with a *Keidanren* official)

A retired senior civil servant offered a different view. He argued that the LPD’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 have been 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* became intensified under the umbrella of the Policy Coordination Meeting. And, we 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, as a senior civil servant commented:

…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*[[79]](#footnote-79) 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 explained by a DPJ politician who was in *Seimu Sanyaku* in charge of the JFTC:

…the LDP governments didn’t assign the responsible Senior Vice-Ministers and Parliamentary Secretaries. They assigned only the Chief Cabinet Secretaries as the responsible Cabinet Ministers. The DPJ government decided to create responsible *Seimu Sanyaku* and appointed those responsible for the JFTC. But it naturally has the independent authority, so 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 offered an explanation:

…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 approach by the DPJ encountered criticism from observers outside the core executive. For example, a business organisation official describes: ‘…surprisingly, I think nothing has emerged after government change. Nothing has changed in competition policies and antimonopoly’ (Interview with a *Keidanren* official). This critical view was shared by an academic specialising in AMA:

…in most cases they stopped listening to specialists’ opinions. And all consulting committees, including those related law amendments and policy or law drafting, were stopped. …but debates have taken place nowhere. In such a way, policies have stopped in the antimonopoly field in the 2000s. (Interview with an AMA academic)

A consumer group leader commented a similar thing as the event emerged throughout government ministries:

…after the DPJ took power the executive branch haven’t worked. In short *Seimu Sanyaku* decides things, and councils and committees in each government ministry almost stopped and became their own committees and examination meetings, and they have been working instead. …civil servants had difficulty to move and work and they have been waiting, I heard. I suggested such a situation undermined their morale. (Interview with a consumer group leader)

This set of accounts from outside observers indicates that the DPJ dismantled the LDP’s governing system and failed to establish their own. 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 has employed an approach different from that of other government ministries such as the MITI and the MPT/MIC (Ministry of Internal Affairs and Communications). Its 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 (see Table 6.7).

#### Table 6.7: Relative strength among actors in the antimonopoly field

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | The 1980s-1989  *LDP governments*  *Yamanaka Period* | The 1990s-2004  *LDP governments*  *Yamanaka Period* | 2004-2009  *LDP governments* | 2009-  *DPJ governments* |
| Cabinet Ministers and their staff | Negligible | Negligible | Negligible | Enhanced |
| Party politicians outside the Cabinet[[80]](#footnote-80) | Dominant | Dominant | Dominant  (became unstable) | Significantly  declined |
| The JFTC | Weak  Stagnated | Enhanced | Enhanced | Enhanced |

Unlike the case of the ICT sector, the antimonopoly field has not seen the emergence of a new actor. Instead, a traditional core executive actor (JFTC) gradually enhanced its organisation and policy tools within the community of the core executive actors. Elsewhere, government change and the emergence of Cabinet Ministers have provoked a challenge to the independence of the JFTC. The independent authority of the JFTC fends off the intervention of politics concerning policy implementation, the major elements of which are law enforcement issues (AMA breaches investigation and following administrative proceedings on the breaches). The JFTC Chairman selected by the Cabinet can be regarded as an agent assigned its tasks by the Cabinet as a principal. Under an LDP government this caused few problems because the Chairmen were selected by the LDP’s Cabinets. Government change in 2009 dismantled this precondition and transformed the JFTC’s independence of authority to a challenge to democratic accountability.

What can be observed in the case of antimonopoly regulation in Japan 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 in antimonopoly regulation 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 that had taken place 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 of the major ways 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. The group of party politicians including Liberal Democrats and Democrats has decided key policy issues such as the final contents of bills. Other actors including civil servants have lobbied party politicians to realise their goals. This implies that the relationship between the group of party politicians and other actors has been asymmetric; the former has had the discretion to make final decisions.

A key characteristic of the core executive in Japan’s antimonopoly regulation can be understood as its asymmetric dominance mobilised by ruling party politicians. The strategic management in antimonopoly regulation by officials has been limited; the major decisions shaping the regulatory framework have been decided by the 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.

Here the nature of the JFTC’s independence becomes a topic of scrutiny. How the JFTC has retained its independent status as a rare independent regulator in Japan is key for exploring its transformation. The next section examines the independent status of the JFTC and its impact on antimonopoly policies.

## 6.4 The embeddedness of the independent antimonopoly regulator

When the focus of the interview moved to the JFTC’s independence, the majority of interviewees offered cautious and reserved views, if not critical. With respect to the reason why the JFTC has retained its independent status, a retired JFTC civil servant offered an explanation based on its historical background; the JFTC has retained its independent commission status because it had no predecessor before World War II:

…the meaning of the independence and independent organisation wasn’t understood at that time (in the 1940s-50s). The JFTC happened to survive in this period, for no government ministry accepted its tasks. The MITI said it wanted that in the 1950s and 1960s, but it took time (since the JFTC’s establishment) and transferring the JFTC to the MITI would probably have provoked a significant resistance in society, so it didn’t materialise… (Interview with a retired JFTC senior civil servant)

Another retired senior civil servant also offered a similar view:

…the reason why only the JFTC remained (as an independent commission in the 1950s) is, competition and antimonopoly policies undertaken by the JFTC emerged after World War II and didn’t exist before that. Therefore, nobody did the job before the war. The JFTC administered antimonopoly policies, so nobody would accept the JFTC’s tasks if it were abolished. Such a background may have led to a conclusion that some kind of organisation was necessary, and the JFTC may have survived. (Interview with a retired JFTC senior civil servant)

He argued that the benefit of independence was to counter the pressure from the opponents including other government ministries and party politicians captured by vested interests: ‘…because the AMA covers all sectors and corporations, each investigative raid involves some members of the Diet; accepting such politicians’ claim every time would significantly undermine the JFTC’s job’ (Interview with a retired JFTC senior civil servant). The independence of authority could fend off such external interventions. Referring to the fact that the JFTC was politically weak compared with its opponents in the past, he argued: ‘the JFTC has become very large and powerful. In the past it was the government office which could be crushed or transferred at any time. Comparing with that, now nobody will agree if someone argues for abolishing the JFTC. Such a guy himself could be kicked out’ (Interview with a retired JFTC senior civil servant). In his view, the new challenge for the enhanced JFTC is policy making as well as implementing AMA. Transforming to a policy making organisation needs the re-evaluation of the JFTC’s status as an independent commission, because: ‘law enforcement is based on the independent authority, but policy (making) can’t be independent. Independent policy making is a kind of dictatorship’ (Interview with a retired JFTC senior civil servant).

Another retired JFTC civil servant offered a view that the JFTC’s independent status made it apolitical and saved it as a government organisation, taking the past pressure to the JFTC seriously: ‘…the 1950s was the JFTC’s most severe “winter”. So it (the independent status) protected the JFTC from being crushed. If the JFTC were noisier, like a noisy puppy, or if it had a more substantial presence to the extent that it couldn’t be left, it could have been crushed’ (Interview with a retired JFTC senior civil servant).

A similar view was offered by a major business organisation official who argued that the distance from party politicians and the basis to confront other government ministries are the major benefits of the JFTC’s independence: ‘the most important thing is that the JFTC’s status as an Article 3 organisation independent from the Cabinet prevents the JFTC from being influenced by an idiot when he becomes the Prime Minister…and it enables the JFTC to confront the METI (Ministry of Economy, Trade, and Industry)’ (Interview with a *Keidanren* official). This perspective was concurred by an AMA lawyer: ‘…I suggest independence enabled the JFTC to resist pressures from various interest groups and other government organisations’ (Interview with an AMA lawyer). The relationship between the Cabinet and the JFTC was elaborated on by a DPJ politician previously responsible for the JFTC:

… a commission can have the merit of having a more transparent process of selecting a chairman than an agency; the nature of the difference is such an appointment issue, I guess. But in my view a commission will have less inadequate political interventions. In an agency a crap Cabinet Minister can make a crap instruction, and everyone has to obey that; such a thing can happen…but if a respectable private sector person is appointed as the head of an agency things should be the same (with a commission style organisation). I think so, but we haven’t yet done it to that extent in Japan; even employing external resources in government offices hasn’t been done yet… (Interview with a member of the House of Representatives (DPJ))

To pull these accounts together, a significant benefit of the JFTC’s independence was the distance it creates from the Cabinet. This distance has contributed to enhancing the JFTC’s power in its confrontations to adversaries such as other government ministries.

A group of interviewees including a law professor (AMA), an AMA lawyer, and a former civil servant argued that another benefit of an independent commission was that it suits a complaint system (*Shinpan Seido*) – the JFTC’s quasi-judicial system. Until 2005, the majority of cases that the JFTC found substantial violations with evidence were referred to as complaints, where identified private firms could submit their arguments in writing. If the private firms alleged by the JFTC as AMA violators accepted the allegation, the following complaint process would be short; it would be terminated by recommendation decisions typically with the JFTC’s cease-and-desist orders (Schaede 2000 p.116). If the alleged firms did not accept the allegation, the complaint process would be substantial with hearings from the alleged private firms and concluded consent decisions (*Doi shinketsu*: if the JFTC and the firm agreed the terms) or complaint decisions (*Shinpan shinketsu*) (if no agreement was reached) (Schaede 2000 p.114, p.116). The nature of this complaint system was quasi judicial. An AMA lawyer described the complaint system as: ‘a quasi judicial system under which the cases of AMA violation were judged by the authority with expertise’ (Interview with an AMA lawyer). This ex ante based complaint system was transformed into an ex post based complaint system by the AMA amendment in 2005 (see Table 6.4 and Appendix 5). After the 2005 AMA amendment, the alleged private firms receive the JFTC’s cease-and-desist orders first, and then file complaints if they disagree with the orders.

The quasi judicial nature of the complaint system has been regarded as a reason why the JFTC has to be independent. For instance, the above AMA lawyer commented that: ‘…the JFTC has been independent to have a quasi judicial function, for the judicial function can be compromised if it were in the executive branch; it’s like a kind of separation of powers’ (Interview with an AMA lawyer). This view is concurred by a law professor specialising in the AMA: ‘…it is called the complaint system; it’s a framework in which things like the court system are done within the administrative system. It’s done because the JFTC is an independent administrative commission.’ (Interview with a law professor (AMA)). These accounts regard the quasi-judicial function of the JFTC as a significant reason for its independence.

In a similar line, a current JFTC senior civil servant revealed a view highlighting the nature of the AMA and the JFTC’s independence:

The independence of the JFTC is not only because of the provision of Article 28 that it shall perform its authority independently; this provision emphasises the framer’s intention, but it is rather explained that the independence stems from the nature of the assignment, and ensured by a number of ways…discussed by five commissioners, who are specialists in their respective fields. And the discussion reaches adequate settlements. This is how things work. I think there is an understanding that AMA violation cases should be sorted out in such a way. Analyses from various angles and the resulting debates should be the basis of a conclusion. (Interview with a senior civil servant)

Her viewpoints focusing on the nature of the AMA were shared by another JFTC official: ‘…the AMA, which is called the constitution of economy, is a basic legal document for maintaining the liberalist, or capitalist economy. Such a characteristic requires neutral law enforcement based on economic theories…I suggest there is a consensus on this in Japan…’ (Interview with a JFTC civil servant). He also differentiated the AMA from other regulatory laws: ‘…the JFTC has got various criticisms such as “it doesn’t know the industry”, but because what is a law violation is evident, it can apply the law to whatever the product and whatever the boundaries (between the product’s market)’ (Interview with a JFTC civil servant). In a similar vein, a senior JFTC civil servant highlighted a characteristic of the JFTC as concentrating on regulation:

…if the JFTC were such a government organisation as overseeing and developing responsible industries it would have two kinds of responsibilities and have conflicts (of interests), but the JFTC doesn’t have responsible industries, and just implements so-called regulation; in that way, it just regulates and can decide and implement according to the provisions of the AMA. (Interview with a senior JFTC civil servant)

According to these accounts, the AMA was a basic law which could be applied in a generalised manner and concentrating on the AMA the JFTC was free from a conflict of interest between a developmental orientation described by Johnson (1982) and a regulatory orientation.

The above accounts reveal the points related to the JFTC’s independence: the JFTC’s unique responsibilities which cannot be assumed by others, an institutional necessity as a quasi judicial organisation, and a shield that the distance from the Cabinet offered by the JFTC’s independent status against its adversaries contributed to enhancing the JFTC’s power in its confrontations to adversaries such as other government ministries.

When Japan’s independent administrative commissions were reorganised in the 1950s, no government ministry emerged as a suitable successor to the JFTC with appropriate expertise, because the AMA regime was newly established in 1947. This historical background can be understood as a reason why no other government organisation absorbed the JFTC and the AMA.

The second reason is that the JFTC has a quasi judicial complaint system, equipping it with a quasi judicial characteristic. There has been an understanding that a quasi judicial task such as the complaint system is better to be handled by an independent commission rather than an ordinary government ministry supervised by elected officials.

The abolition of the complaint system, which was the major content of the AMA amendment bill put before the Diet on 12 March 2010, undermines the second reason. The abolition stems from the conflict of interest and the growth of the JFTC’s power, as Okiharu Yasuoka (2008 p.120), who was the Chairman of the LDP AMA Examination Committee in 2006 and led the debate about the abolition of the complaint system, comments:

…the JFTC has the investigation and complaint functions which resembles ‘a merger between the public prosecutor and the judge’ but no other similar example exists in the world as well as other institutions in Japan…As corporate activities are globalised and trade becomes complicated, the JFTC, which has obtained great power including the surcharge system, needs a comprehensive review of its institutional framework and adequate enhancement and division of power. Therefore, abolishing the complaint system and leaving its function to the revocatory lawsuits in court is an idea.

A view presented in the interviews was that the abolition of the complaint system would undermine the meaning of the JFTC as an independent commission, because other government organisations such as the National Tax Agency, the Financial Services Agency, and the Public Prosecutor’s Office also have an investigative function based on the principle of neutral and independent law enforcement. For example, a law professor who specialised in the AMA and had a long relationship with the JFTC commented: ‘…if the complaint system is abolished, the JFTC’s independence will disappear in the future, I think. In my view it has independence because its task contains something similar to a court’ (Interview with a law professor (AMA)). A similar comment was offered by an AMA lawyer: ‘…when the current AMA amendment bill abolishes the complaint system and the private firms directly complain to the court, then the argument that the quasi judicial function should be independent will disappear’. Another view highlighted mainly by JFTC officials offers a defence of independence referring to the nature of the AMA which enables a general application to various cases and requires a neutral approach to implementation, and the fact that the JFTC has no conflict of interests between regulation and industry promotion until now. Taking account of the fact that other government organisations also require neutral law enforcement, it does not seem to construct a robust argument to defend the independence of the JFTC.

Instead, this thesis highlights as the third reason emerging in the interview that the independence has offered a kind of shield with which the JFTC confronts its adversaries such as the METI. This was commented on by a number of interviewees. This benefit looks important when the JFTC was a low profile government organisation. At the same time, the more powerful the JFTC becomes in bureaucracy, the less important this benefit will be.

Interviews also revealed a problem caused by the JFTC’s independent status. The JFTC lacks democratic control in its policy making process, for its senior officials are democratically unaccountable. This problem is evident when a new policy is introduced. Many of these new policies are introduced in the form of law amendments. Because the Commission members are not elected, there is a possibility that an AMA amendment bill is drafted without substantial supervision by democratically elected officials. The JFTC’s official paper justifies this system by arguing that a close relationship between planning/formulating and law enforcement is important:

in the administration of competition policy … planning and formulating can effectively achieve the goal of competition policy, retaining and promoting fair and free competition, only when it is based on and closely related to the practical usage of law. Therefore, in competition policy, the most effective and efficient approach is assigning the JFTC planning and formulating and law enforcement together. (JFTC 1997)

It further refers to the relationship between the JFTC’s independence of authority and the Cabinet’s administrative responsibility:

despite the JFTC’s independence of authority, policy formulation such as AMA amendments by such an organisation does not create a problem vis-à-vis the Cabinet’s administrative responsibility and the unity of the government’s economic policy … the JFTC formulates the draft and sufficiently coordinates with related parties such as other government organisations and the ruling parties; the bill then is put before the Diet pursuant to the formal procedures. (JFTC 1997)

This argument does not fully address the question of democratic accountability: the lack of elected officials’ substantial supervision in the policy making process. This caused few problems when AMA amendments were infrequent such as the period between the 1950s and the 1980s. As antimonopoly policies attracted more public attention after the SII (1989-90), more demands for AMA amendments emerged.

If the case of the JFTC is compared with the guidelines of the OECD (2002 pp.95-6: see Table 6.8), which are widely disseminated as a consensus formulated by an international organisation, one can recognise that: ‘to shield interventions from captured politicians and bureaucrats’ was highlighted by the interviewees, while democratic accountability emerged as a major shortcoming. The fact that the DPJ appointed a Cabinet Minister responsible for the JFTC can be understood as a trial to cope with this challenge. Its real impact is a topic of future research.

#### Table 6.8: The merits and demerits of an independent regulator (based on OECD (2002 pp.95-6). Also see Table 5.5)

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| --- |
| **Merits:**   * To shield interventions from captured politicians and bureaucrats * Improved transparency * More stable regulation * A better condition for having expertise * A possibility of improved accountability if an independent regulator has explicit objectives and a specific report system to the government or parliament.   **Demerits:**   * A possibility of slowing structural changes, losing potential gains to consumers. * The remaining risk of capture if the regulator faces structural weaknesses. * A possibility of having inadequate democratic accountability * A possibility of fragmenting governmental policies and actions. |

The independence of the JFTC was shaped by an external factor (the SCAP’s policy). The following path to retain this organisational characteristic was shaped by the JFTC’s preference to retain the status quo and other core executive actors’ indifferences. This sequence can be regarded as an example of self-reinforcing path dependency formed by the consensus among the core executive. The JFTC has been in favour of retaining antimonopoly regulation by an independent administrative commission, because independence gives it a shield from the JFTC to its adversaries and suits the JFTC’s quasi-judicial function (the complaint system). After the 1980s, the core executive actors such as party politicians have been indifferent to the JFTC’s independence of authority. No government organisation was interested in absorbing the JFTC’s function. This set of factors has shaped the path of retaining the JFTC’s independent status. The response of the core executive on this issue is retaining the status quo with the key actor’s (JFTC) strong will and the indifference of others.

In analysing the independence of the JFTC, there emerges a possibility that the expansion of the role of antimonopoly regulation has significantly changed the traditional framework. A significant cause of such transformation pointed out by interviewees and the literature is the growth of the enhanced JFTC after the SII (1989-90). The capacity of the state in antimonopoly regulation including the JFTC is therefore key to explore how the field has been transformed. The next section examines this change of state capacity in antimonopoly regulation.

## 6.5 A growing antimonopoly watchdog? The capacity of the core executive

As in the case identified in Chapter 5, interviewees focused on the JFTC in their description on the capacity of the Japanese state in the antimonopoly field. Appendix 4 shows the number of JFTC staff has continuously grown during the period between the 1980s and the 2000s. The majority of interviewees view this growth as a significant enhancement of the state in antimonopoly regulation.

Enhancing the JFTC has been viewed as having limited salience for party politicians in general because enhancing a government organisation does not have a significant impact on their respective constituencies. A former Cabinet Minister witnessed this point, referring to a case of another government organisation (Ministry of Justice): ‘…we tried hard to increase the staff of the Ministry of Justice, judges, and the sum of the justice related budget. Not many politicians do such a thing, because it doesn’t attract votes…’ (Interview with a former Cabinet Minister (LDP)). Rather, some of them opposed strengthening the JFTC, as a retired JFTC senior civil servant commented: ‘…around the 1980s and before some politicians opposed enhancing the JFTC …when we explained the draft of the next financial year budget, they said that’s too much; some politicians opposed like that’ (Interview with a retired senior JFTC civil servant). As Table 6.6 and Appendix 4 indicate the JFTC has steadily increased its staff between the 1980s and 2000s. A retired JFTC senior civil servant highlighted as the most significant event during this period the emergence of the Koizumi Government (2001-06):

He (Koizumi) increased 30 officials a year, 150 in 5 years, and he, or his staff, or the Koizumi Government had a significant impact (on the AMA). Enforcement by a very small number of staff has a limitation. In addition, it said ‘unacceptable is unacceptable’ to something about the regulatory methods, like the case of the post office. These two were a significant assistance (to the JFTC). (Interview with a retired JFTC senior civil servant)

Another party politician argued that appointing an appropriate JFTC Chairman was vital for establishing a capacity:

We need to properly appoint such key persons in, not only the JFTC’s but also other government organisations’. In the case of the JFTC, we appoint as the Chairman somebody from the private sector who has such an intention; so replacing with some private sector guy and let him do his appointments: an indirect political intervention. Or, it may be no political intervention; under a Chairman who will do that (gathering competent staff including private sector specialists) things will be easier than other government offices. That can be done in other government offices if Ministers want… (Interview with a member of the House of Representatives (DPJ))

These accounts argue that party politicians’ influence in enhancing the JFTC has been insignificant in general. However, the accounts also reveal that party politicians’ impact was significant when they expressed a clear will of strengthening the JFTC, as the case of the Koizumi Government (2001-06) shows.

Elsewhere, a group of interviewees recognised the intention of the state as a whole to enhance the JFTC:

… the fact that we have got significant manpower under the severe budget condition of the state means we have got sufficient attention. When I entered the Commission we had 506; now we have 799 officials; I suggest the increase is significant. 60 percent, so it’s significant … (Interview with a JFTC civil servant)

This observation was shared by an outside observer: ‘…manpower has increased as the statistical data indicates, even under tax revenue shortage resulting from the recession. This means the JFTC’s capacity is needed so much and politicians have understood that, I guess’ (Interview with an AMA lawyer). This set of accounts indicates that the JFTC’s organisational expansion is interpreted as the government’s intention to strengthen its antimonopoly regulation capacity by a group of people in the field.

As Appendix 4 reveals, the JFTC increased its budget and number of staff between the 1980s and 2000s. The impact of staff increase was witnessed by a retired JFTC senior civil servant:

…although we needed more people to fully function antimonopoly regulation we had about 400 or 450; therefore, we couldn’t actively undertake various things…enhancing the authority is important, but for instance, we significantly enhanced authority in 1977, but with the staff increase of several officials a year, we couldn’t do so many things…about authority and manpower, we’ve enhanced authority through a series of debates, but without manpower we couldn’t do so much, in my impression. (Interview with a retired JFTC senior civil servant)

He also compared the current situation with that in the early 1990s: ‘…probably they don’t stop proceeding cases because of manpower or money shortage today. I did such kind of things in the early 1990s. At that time the situation was like that, and it was the largest obstacle for actual enforcement’ (Interview with a retired JFTC senior civil servant). This witnesses the actual impact of staff increase to the JFTC’s capacity and backs a view that the JFTC’s organisational expansion can be understood as effective to enhance Japan’s antimonopoly regulation capacity.

The steady staff and budget increase of the JFTC’s manpower offers a contrast to the professional expertise of the JFTC’s staff. A number of interviewees offered negative views on the professional expertise of the JFTC’s staff from a couple of viewpoints. The above retired JFTC senior civil servant, for instance, highlighted the lack of employees with professional training:

…the JFTC officials are a kind of generalists, and their posts frequently change. So, it is hard to grow people like those specialised in and very good at mergers and acquisitions. But other countries have already employed such professionals, including those with a ten year history or so, with which it’s difficult for Japan to cope. We need to offer better treatments and invite competent, qualified, and able people; they may go to somewhere like universities, but we need to increase such people; within Japan the JFTC staff is not so inferior; because other government offices employ the same approach. We do business in international conferences, or investigate and cope with the same case together; in such cases counterparts are those like PhDs. Our people are university graduates, some of whom don’t have even Masters; is this really all right? (Interview with a retired JFTC senior civil servant)

He also highlighted the difference between the JFTC and its American counterpart:

Antimonopoly policies include mergers and acquisition regulation; the US counterpart employs more than 100 PhD holders engaging in such tasks. In Japan, commissioners may have a PhD but they don’t directly engage in mergers and acquisitions regulation cases, so one PhD holder, a post Doctor or PhD holder; the reality is something like that. (Interview with a JFTC senior civil servant)

Such a lack of trained specialists was pointed out by another JFTC civil servant:

Focusing staff’s professional expertise is very important when compared with the US and the EU, I think. Because for instance public prosecutors implement antimonopoly law and economists analyse the economy; the EU is also an international organisation so holding a PhD or a Master in law is common among its staff. Such people are examining. …I worry if our professional expertise (of the staff) is inferior to the US’ and the EU’s. (Interview with a JFTC civil servant)

This observation was shared by an AMA lawyer:

the JFTC should be a specialist organisation, but it doesn’t employ sufficient professionals. For example I don’t think 16 lawyers are enough, and about economists, one piece of evidence that the JFTC doesn’t take economic analysis seriously is it employs only a few economists. It doesn’t think about identifying AMA breaches by economic analysis. In other countries, half of the US FTC’s staff are economists. This is a problem. (Interview with an AMA lawyer)

Such a situation can be summarised in the following comment: ‘…the organisational size can quickly be strengthened but professional expertise can’t’ (Interview with a *Keidanren* official). All these views highlight the insufficient professional expertise of the JFTC’s staff, in contrast to enhancing the JFTC’s staff number and budget.

In pulling the above interview comments together, what emerges is the lack of party politicians’ explicit presence, the organisational expansion in terms of the number of staff and the size of the budget, and their insufficient professional expertise. At the beginning of the 1980s, party politicians were not actively involved themselves in the antimonopoly policies and their support to strengthen the JFTC was small. State capacity (power) in antimonopoly regulation was limited because of the staff shortage. The change of state power emerged in the form of organisational expansion of the JFTC in terms of its staff number and budget size as Appendix 4 indicates. This trend continues throughout the period between the 1980s and 2000s. Although the influence of the majority has been small, some party politicians such as Koizumi made a significant impact. The state in antimonopoly regulation has therefore grown in the form of the JFTC’s bureaucratic expansion. Similar to the case of ICT regulation the transformation of it can be understood as the expansion or the adaptation of responsible civil servants (JFTC) between the 1980s and 2000s with a kind of gradual shift from drift to conversion; the resistance to strengthen antimonopoly regulation has gradually waned and the JFTC has retained a significant discretion in the detail of the regulatory function.

Within the community of the core executive, the JFTC’s power has gradually grown in relation to other actors. With supervision by party politicians to the JFTC, the expansion of the JFTC’s power can be understood as a policy endorsed by party politicians, although all but a few exceptions such as Koizumi have showed no explicit interest. This process of change can be viewed as the gradual growth of state power initiated by the core executive in antimonopoly regulation. With the rise of the JFTC’s power, state power in antimonopoly regulation has also become stronger.

The nature of state power in antimonopoly regulation has not changed. It is not easy to identify who has steered controlling state power in antimonopoly regulation. The approach of the emerging Cabinet Minister after the government change in 2009 was an indirect control through the JFTC Chairman. Although Cabinet Ministers have played a more active role in the policy making process than their LDP counterparts (Chief Cabinet Secretaries), their impact does not seem significant on the state power in antimonopoly regulation so far.

## 6.6 Conclusion

Antimonopoly regulation in Japan has not experienced a significant disjuncture such as the 1985 regulatory reform in ICT. Instead, the relative strength of the state has grown between the 1980s and 2000s by enhancing the JFTC and the AMA. This has led to a gradual change in the framework of antimonopoly regulation.

The role of party politicians in antimonopoly regulation has been remarkable. A limited number of LDP politicians surrounding LDP Member of the House of Representatives Sadanori Yamanaka dominated the decision making process of antimonopoly policies. Their influence aimed at key decision making such as endorsing AMA amendment bills and left the detail of the policies untouched. In addition, antimonopoly regulation in Japan until the late 1980s was not in the mode of change, as the fact that the impact of the significant AMA amendment in 1977 was compromised reveals. This can be interpreted as the significant power of opponents deterred the development of antimonopoly policy. If Mahoney and Thelen’s (2010) typology is applied here, the mode of change can be understood as ‘drift’. This mode can be based on the fact that the core executive did not form a uniform will to impose enhanced antimonopoly regulation; a significant portion of the core executive actors (e.g. some LDP politicians, the MITI) was rather opposed to the strict enforcement of antimonopoly regulation.

Important turning points were brought by the SII (1989-90) and the emergence of the Koizumi Cabinet (2001-06). This set of events contributed to the development of state capacity in antimonopoly regulation. The bureaucratic machine of the JFTC was significantly enhanced in terms of its budget and staff. Government change from the LDP to the DPJ in 2009 transformed the party politicians’ approach to antimonopoly policies. However, its impact on the relationship between party politicians and civil servants has not been very distinctive. Throughout the period after the SII, Japan’s antimonopoly regulation has emerged as a changing sector; in Mahoney and Thelen’s (2010) mode of change, it emerged in the mode of conversion, with the fact that most of the actors (both inside and outside the core executive) were not strongly opposed to enhancing the AMA and the JFTC.

The exploration of the internal relationship within the core executive in antimonopoly regulation reveals a remarkable feature. Party politicians outside the Cabinet had dominant power until 2004, when Yamanaka passed away. The Chief Cabinet Secretaries, who were delegated by the Prime Minister to be in charge of the antimonopoly field and the JFTC, engaged in ceremonial tasks rather than substantial supervision. This policy making framework was retained after the departure of Yamanaka. It was the emergence of DPJ governments which changed the framework under the LDP. DPJ governments dismantled the LDP’s internal examination system and assigned separately competent Cabinet Ministers responsible for the JFTC. The team of elected officials headed by Cabinet Ministers, *Seimu Sanyaku*, became involved in drafting AMA amendment bills. This suggests that the dominance of party politicians in antimonopoly regulation has become stronger.

The relationship between party politicians and civil servants is significantly influenced by the JFTC’s status as an independent regulator. Different from other government ministries, Article 28 of the AMA requires the JFTC to independently perform its authority. This fends off party politician’s intervention in the AMA enforcement by the JFTC.

The analyses revealed that the initial decisions that the JFTC be left independent have shaped the JFTC’s path as an independent administrative commission. This can be understood as an example of self-reinforcing path dependent cases. The political circumstances surrounding the JFTC until the 1980s suited the JFTC as an independent administrative commission. The independent status offered the JFTC a shield in its confrontation to opponents such as the MITI and its concentration on enforcing the AMA, fending off the interventions from party politicians. With few law amendments, the JFTC did not need frequent access to ruling party politicians in the 1980s; this means party politicians did not exercise significant power over the JFTC with a limited exchange of resources (opportunities to consult with party politicians on AMA amendment bills) if Smith’s (1999 p.31) concept of power is employed (power emerges from the exchange of resources within the core executive).

Additionally, the quasi-judicial nature of the complaint system, through which AMA breach cases were processed, was regarded as requiring the JFTC to be at arm’s length with the executive branch. After the SII in 1989 and 1990, these circumstances significantly changed. As the JFTC gained more power, the benefit of the independent status as a tool to confront adversaries waned. More active policy making inspired by the SII has developed a potential of creating a problem of democratic accountability because draft bills have no supervision from elected supervisors such as Cabinet Ministers. A more robust system of democratic accountability could better contribute to the democratic governance of antimonopoly policy making.

The gradual expansion of the JFTC indicates the steady growth of state power in the antimonopoly field. Elsewhere, the lack of adequate professional expertise among the JFTC’s staff emerged as a significant challenge.

The case of Japan’s antimonopoly regulation reveals a different type of state transformation. The growing state is now confronting a challenge resulting from its own growth. The JFTC until the 1980s concentrated on the AMA enforcement with relatively fewer law amendments, although the AMA had a first substantial enhancement including the introduction of the surcharge system through its amendment in 1977. These circumstances suited the JFTC’s institutional framework as an independent administrative commission. The response of the core executive to the JFTC’s status as an independent administrative commission is retaining the status quo with the key actor’s (JFTC) strong will and the indifference of others.

The circumstances changed with the increasing demand on antimonopoly policies. The end of the 1980s was the period when enhancing the AMA became a prioritised policy issue by the SII between 1989 and 1990. Such a change required the JFTC to access party politicians more frequently than before, because a substantial portion of policy making needed law amendments. Also, the JFTC has significantly enhanced its organisational capacity including its staff and budget. These external and internal changes of circumstances have gradually affected the institutional framework of antimonopoly policies. The change and abolition of the complaint system is an example.

What emerges here is the transformation of the state through the change of circumstances surrounding the regulator. The independent status has fended off party politicians’ intervention to the JFTC, whose primary focus was implementing the AMA. The JFTC’s increasing involvement in the policy making process as an independent administrative commission has provoked a potential challenge: establishing a clear democratic accountability for policy making. The growing power of the JFTC has also gradually undermined the need for the independent status as a shield to its adversaries. These changes can lead to a review on the JFTC’s nature of independence. By enhancing its power and obtaining opportunities to more frequent policy making through law amendments, the JFTC has obtained the potential for developing its activities beyond its traditional institutional framework.

In spite of the fact that the independence of authority has fended off the interventions of party politicians, key decisions needed the endorsement of party politicians including key figures such as Yamanaka. The change of the institutional framework was steered by party politicians such as those in the LDP AMA Examination Committee. Government change in 2009 enhanced party politicians’ involvement in antimonopoly policies through assigning *Seimu Sanyaku* responsible for the JFTC. What is emerging here is a different version of dominance of the core executive. Party politicians have dominated policy making decisions, leaving investigative cases to civil servants in the JFTC. Increasingly prioritised antimonopoly regulation needs intensified policy making; this leads to the increasing involvement of party politicians.

Overall, in the field of antimonopoly policies, the core executive has successfully dominated policy making and implementation. The decision making process has been discretional negotiations within the core executive: party (typically the LDP) politicians and JFTC civil servants. Government change in 2009 created a change inside the core executive, whose impact is not yet clear.

The fluid change of power within the core executive has shaped the power of the state in antimonopoly regulation. Growing state power in antimonopoly regulation reflects the enhanced relative strength of the JFTC within the core executive resulting from the prioritisation of antimonopoly regulation. In spite of its internal shift of power and legitimacy from those outside the Cabinet to Cabinet Ministers and elected officials, the group of party politicians has retained its role of steering as the key decision maker.

The governing of the core executive in Japan’s antimonopoly regulation in which party politicians and civil servants exchange their resources reveals a variation of the model proposed by Smith (1999). The impact of prioritising antimonopoly regulation was a significant factor to transform the field. This leads to the expansion of state power in antimonopoly regulation through enhancing the JFTC. Elsewhere, more frequent involvement of party politicians in policy making has the potential of reshaping the previous institutional framework based on the JFTC’s independence of authority as an independent administrative commission. This observation reveals an asymmetric dominance of the core executive to society in antimonopoly regulation. The key of the dominance is the core executive’s role as the decision maker. State power in the sector has also changed in response to the change of power within the core executive.

Turning to the core theme and the research questions, this thesis depicts that the evolution of Japan’s antimonopoly regulatory framework as a gradual enhancement of state power started from a significant turning point. With respect to the first research question ‘How has Japan’s regulatory framework evolved over the last three decades?’ the process can be evaluated as the expansion of the state, which can be characterised as a process in which the government machine (JFCT) and demand for accountability have grown. The development of state capacity in the antimonopoly field has forced the institutional framework of antimonopoly regulation to face a challenge of democratic control. The change has been gradual rather than strikingly rapid after a significant disjuncture (SII).

The change of the regulatory framework relates to the second research question ‘how has the core executive been successful in imposing their will on regulation?’ The change of the regulatory framework was realised with the consensus among the core executive actors. It was the core executive who steered and implemented enhancing antimonopoly regulation. Throughout the period between the 1980s and 2000s the core executive has held a dominant position of steering regulation. It can be understood as an example of the asymmetric dominance of the core executive.

The third question ‘how have Japan’s ministries shaped the organisational design of regulatory functions?’ offers an example of the core executive’s response to the transformation of antimonopoly regulation. The case of the JFTC as an independent regulator reveals a self-reinforcing path dependent story. The initial decisions that antimonopoly regulation be administered by an independent administrative commission played a significant role to shape the following sequence characterised by antimonopoly regulation administered by the JFTC. This result offers a contrast with the case of ICT regulation, where the initial decision that the regulatory function inside the MPT be retained after the NTT privatisation in 1985 has shaped the organisational framework of Japan’s ICT regulator.

Finally, the fourth research question ‘how has the state’s regulatory capacity changed?’ offers a perspective that explains a characteristic of state transformation in Japan’s antimonopoly regulation. The Japanese state has expanded its state power to respond to the circumstantial changes by strengthening its antimonopoly bureaucratic machine (i.e. new law provisions, staff increase, and budget increase). The transformation can be described as the enhancement of law enforcement capacity through enlarging the JFTC’s organisation and responsibilities. Since relying on law enforcement is a characteristic of the regulatory state, the nature of the transformation of Japan’s antimonopoly regulation can be viewed as an example of the emergent Japanese regulatory state.

The evidence drawn from this chapter can be seen to corroborate the key proposition of this thesis: ‘During the era of Liberal Democratic Party (LDP) government, the core executive pursued discretional regulation within inner regulatory policy communities as a strategy to sustain its position of asymmetric dominance over actors within key policy sectors, with their actions shaped by a particular set of structures’. The policy making system under the LDP administration was controlled by the AMA Examination Committee, where limited members exercised significant influence over decision making. Civil servants (JFTC) were subject to the LDP’s decision; they can rather be understood as a facilitator and the implementer of the LDP’s decisions. The interdependent relationship between party politicians and JFTC civil servants can be understood as a variation of the model proposed by Smith (1999). The core executive can be recognised as the asymmetrically dominant actor in this field retaining the role of the key decision maker.

By focusing on the core executive in antimonopoly regulation, this chapter reveals the asymmetric dominance of the core executive based on the state’s unique set of resources (e.g. legitimacy, state bureaucracy, legislation) in the state at a macro level (Marsh et al 2001 p.248). What is emerging is an example of a state reconstituting itself through establishing a variation of the regulatory state. The transformative process in antimonopoly regulation after the 1980s offered challenges and opportunities to the existing antimonopoly regulatory framework. An outcome of the reconstituting process is the enhanced JFTC; it can be regarded as a key event of constructing a form of the antimonopoly regulatory state in Japan in response to the changes after the 1980s highlighted by the SII between 1989 and 1990. The approach of this thesis employing an elitist position has successfully exposed how the Japanese state has been reconstituted in a sector where a crucial and salient issue of state transformation (regulation) is administered by illuminating the dominance of the core executive.

As was the case in Chapter 5, this chapter reveals how dominant the core executive has been in another key regulatory field: antimonopoly regulation. The final chapter draws together and analyses the implications of these findings in relation to both the literature on and current approaches to understanding the nature of the Japanese state and the impact of transformation over the last thirty years.

# Chapter 7 Conclusion

## 7.1 Introduction

This thesis set out to address the transformation of the Japanese state after the 1980s, exploring as the key theme the core executive’s asymmetric dominance over key policy sectors by pursuing discretional regulation within an inner regulatory policy community. In doing so, it set up a series of research questions focusing on fluid change of power within the core executive, the independence of the regulator as a specific characteristic of the field, and state capacity.

This set of research questions examined two specific key regulatory fields as case studies: ICT regulation and antimonopoly regulation between the 1980s and 2000s. The result of these case studies has corroborated the reconstitution of the Japanese state in two chosen sectors (ICT regulation, antimonopoly regulation).

The thesis sets out to address an existing lacuna in the literature on the Japanese state. With the dominance of pluralist and rational choice perspectives, the previous literature focuses on the specific issues in Japan, leaving the Japanese state at a macro level untouched. As such, this thesis adopted as its theoretical framework the theories of the core executive, regulatory state, and historical institutionalists, based on the premise that the state has been reconstituted rather than hollowed out in responding to the changing nature of governance. In so doing, the thesis argues the core executive has sustained a position of asymmetric dominance in relation to state-society relations. This final chapter draws together the findings from the two empirical chapters in relation to the research questions posited. This is followed by setting out the implications of this thesis: the reconstituted Japanese state after the 1980s and the nature of the Japanese regulatory state. Lastly, this thesis suggests the potential future research themes that emerge from the contribution made here.

## 7.2 The regulatory transformation and the core executive

The evolution of Japan’s regulatory framework in ICT regulation and antimonopoly regulation reveals an example of state transformation dominated by a loose network of the Japanese core executive.

Turning to the core theme and research questions, what was revealed is that in both regulatory fields the regulatory framework has evolved in response to the change of circumstances such as the 1985 telecommunications privatisation, the SII (Structural Impediments Initiative), and concomitant changes of power relations within the core executive. The following part of this section discusses the results of research questions based on the exploration in Chapters 5 and 6.

### 7.2.1 How has Japan’s regulatory framework evolved over the last three decades?

The case of ICT regulation can be characterised by a significant disjuncture by the 1985 regulatory reform and the emergence of a new regulator (MPT/MIC[[81]](#footnote-81)). The direct management through a state corporation before 1985 changed to principal-agent regulation through the executive branch. The regulatory approach changed from interventionist or ex ante oriented to ex post oriented. Party politicians also shifted their approach from direct commitment by intervening the NTT’s[[82]](#footnote-82) management issues to more indirect control through the MPT/MIC’s principal-agent regulation. The emergence of the MPT as a key regulator after privatisation was followed by the evolution of its regulatory approach in response to the development of competition and ICT.

Elsewhere, the relative strength among private sector actors has reflected the fluid change of power; although the NTT has retained its dominant position in markets, its evolution has enabled new entrants such as NCCs (New Common Carriers) to challenge the NTT’s position. The focus of the state shifted from the direct management of telecommunications service provision to market entry and price control regulation, then to new regulatory measures such as rules for telecommunications network interconnection. This set of changes can be understood as the state’s adaptation processes to the evolving circumstances with the shift of the change mode proposed by Mahoney and Thelen (2010).

In the period around the 1985 Regulatory Reform the major protector of the previous system (NTT) did not have or exercise a strong veto power to the decisions by the dominant actor (LDP: Liberal Democratic Party). The NTT also did not have discretion to flexibly interpret or enforce existing rules; most of the existing rules were under the supervision of the Diet (party politicians). The mode of change here can be understood as Mahoney and Thelen’s (2010 p.15) ‘displacement’: replacing the existing rules with new ones. In the post 1985 Regulatory Reform period the emergent MPT/MIC gained significant discretion in interpreting and enforcing the rules as the responsible executive ministry (See Table 5.1 in Chapter 5). However, the unchanged dominance of party politicians has made the veto power of the possible defenders of the institution (MPT, NTT) weak. This situation shifted the mode of institutional change to ‘conversion’, under which changing enactment of existing rules alter due to their strategic redeployment (Mahoney and Thelen 2010 p.16). Under this mode ICT regulation has retained its approach of employing a government ministry as the regulator.

Antimonopoly regulation has seen a gradual expansion of its independent regulator and the AMA (Antimonopoly Act). The process of the institutional expansion has been piecemeal rather than striking. The 1977 AMA amendment, the first move of substantially enhancing the AMA, did not have a significant impact on the actual law enforcement of the field. Rather, commentators highlight the significance of the SII to Japan’s antimonopoly regulation. 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). Both Japanese and American specialists appraise that since the 1990s Japan’s antimonopoly enforcement has been effective (Freyer 2006 p.243). In summary, Japan has gradually strengthened antimonopoly regulation since the 1990s. If Mahoney and Thelen’s (2010) model is referred to here, with weak veto power and significant discretion of interpretation and enforcement of the JFTC (Fair Trade Commission, Japan), antimonopoly regulation between the 1990s and 2000s can be categorised as in the mode of conversion, while the period around the 1977 AMA amendment exemplifies the change mode of drift, in which the JFTC had significant discretion of enforcing and interpreting the AMA but significantly powerful actors (e.g. some LDP politicians, the MITI (Ministry of International Trade and Industry), business) compromised enhancing antimonopoly regulation. This set of change sequences in both cases reflects the fluid change of power within the core executive. It is the key core executive actors (defenders of the status quo, those in charge of rules) who determine the mode of change. The transformative processes have been decided by the relative strength of key core executive actors.

### 7.2.2 How has the core executive been successful in imposing its will on regulation?

In both ICT regulation and antimonopoly regulation, the group of party politicians (either those outside the Cabinet or Cabinet Ministers) has retained their position as the key decision maker. This has resulted in their dominance to civil servants as well as the core executive’s dominance in the context of state-society relations.

The decision making process under the LDP government was dominated by party politicians outside the Cabinet in the 1980s and 1990s. Their dominant position lasted until the end of the LDP government, although this traditional system was gradually undermined by a set of administrative reforms including the introduction of the *Seimu Sanyaku* system. Government change in 2009 ended the dominance of party politicians outside the Cabinet and intensified the influence of Cabinet Ministers. This can be understood in terms of the fluid change of power within the group of party politicians. Regulatory approaches have also changed. ICT regulation has shifted its approach from direct service provision to ex ante regulation to ex post regulation. Antimonopoly regulation has significantly expanded after the SII. The change of approaches identified above is a response to the challenges of the fields as well as the cause of change of power. ICT regulation saw the rapidly growing power of the new regulator (MPT). The emergence of this new regulatory ministry (MPT/MIC) took place under the supervision and steering of party politicians. The same can be said about the gradual expansion of the JFTC in terms of its staff and budget. The rise of the bureaucratic machine has happened under the control of party politicians. This can be understood in terms of the core executive expanding its capacity and power in ICT regulation and antimonopoly regulation.

The change within the core executive described above indicates not only the dominance of party politicians but also the fact that the MPT has been transformed under the steering of party politicians. What it reveals is the emergence (MPT, Cabinet Ministers) and decline (party politicians outside the Cabinet) of the major actors within the core executive based on fluid and relational nature of power, depicting the transformation of the state at a macro level. A similar situation emerged in antimonopoly regulation through the change of relative strength between party politicians and the rise of the regulator. A limited number of LDP politicians surrounding LDP Member of the House of Representatives Sadanori Yamanaka dominated the decision making process of antimonopoly regulation in the 1980s and 1990s. Under this regime, significant turning points were brought by the SII (1989-90) along with the emergence of the Koizumi Cabinet (2001-06). This set of events contributed to the development of the state capacity in antimonopoly regulation. The bureaucratic machine of the JFTC has been significantly enhanced in terms of its budget and staff.

Government change from the LDP to the DPJ (Democratic Party of Japan) in 2009 transformed party politicians’ approach and highlighted the power of the Cabinet Minister. It exacerbated the internal change of party politicians by eradicating those outside the Cabinet but within the ruling party in Japanese politics. Yet this gap was not filled by other actors such as Cabinet Ministers. What emerged is a power vacuum; while party politicians reorganised their internal structure, civil servants and private sector actors did not fill the gap created by this change among party politicians. The internal change of the LDP had a significant impact on the decision making mechanism within party politicians, but this did not change the relative strength of party politicians as a whole to their bureaucratic and private sector counterparts. The change caused by the introduction of a new government in 2009 on the relationship between party politicians and civil servants was ongoing during the interviews of this thesis in 2011, and needs further research and debate. Recent government change in 2012 from the DPJ to the LDP offers an opportunity to collectively examine the impact of the DPJ government to Japan’s governing system.

In drawing the analyses together, in both ICT regulation and antimonopoly regulation between the 1980s and 2000s, the fluid and relational change of power took place between the core executive actors. With the change, the core executive has retained control over ICT regulation and antimonopoly regulation. The control was asymmetrical because the core executive actors have held power and dominated the sectors, while other actors have not had power to counter the core executive’s dominance.

### 7.2.3 How have Japan’s ministries shaped the organisational design of regulatory functions?

The difference between ICT regulation and antimonopoly regulation is highlighted by the third research question through exploring the issue of an independent regulator. There is a striking contrast between ICT regulation (a ministerial regulator) and antimonopoly regulation (an independent administrative commission) on this topic. In ICT regulation, the abolition of a US style independent administrative commission in radio regulation in 1952 significantly impacted on the core executive’s perspective on having an independent ICT regulator, shaping a self-reinforcing path dependent sequence of retaining the ministerial regulation. The institutional characteristics such as the constitutional framework and the inflexible nature of Japanese law also contributed to this process; the constitution requires all executive organisations to be under the supervision of the Cabinet; the inflexible interpretation of existing laws limits the possibility of the executive branch making policies within its own jurisdiction and requires frequent consultations to the Diet through law amendments. Establishing an independent ICT regulator also does not offer a clear benefit to the core executive. A number of interviewees revealed their concern that independent regulation could jeopardise a close interaction between regulation and industry promotion, including the information sharing on technological development. What emerges from the views of those opposed to the creation of an independent ICT regulator is an established political context, which started from an initial decision that the regulatory functions be retained within the MPT.

A similar pattern can be found in the case of antimonopoly regulation. Antimonopoly regulation was newly introduced in 1947. This contingent factor ensured that the JFTC remained independent; no government organisation had an experience on antimonopoly regulation and was willing to take over the JFTC’s responsibility. What has appeared in these cases is a set of self-reinforcing path dependent dynamics. The sequence of events was determined by the initial contingent events. The chosen paths have been persistent; in both cases, no substantial institutional change occurred after the initial contingent events (ICT regulation: 1985 regulatory reform, Antimonopoly regulation: establishment of the JFTC in 1947). The circumstantial change in antimonopoly regulation may be creating the potential for future change; the frequent law amendments do not suit the institutional framework of an independent administrative commission, because being independent of politics can be an obstacle for policymaking issues such as legislation, whose process requires a significant extent of political coordination. Strengthening the AMA and the JFTC could undermine the previous system by increasing contact to politics through more frequent law amendments.

What has contributed to shaping the path is the initial events and the political tradition rather than power relations within the core executive. In both cases the initial decisions (retaining the regulatory function within the MPT, establishing and retaining the JFTC as an independent administrative commission) had a significant impact on the following sequences. The political tradition such as the narrow interpretation of law and the frequency of law amendments formed self-reinforcing path dependent sequences. The core executive’s decision of retaining its regulatory functions within the government ministry in ICT regulation reveals an example that no endogenous incentive to change has emerged within the core executive. The disjuncture such as the 1985 telecommunications regulatory reform did not offer an opportunity to debate the independent implementation of regulation and the establishment of the independent ICT regulator, in contrast to the cases in Europe. The lack of endogenous incentives and exogenous pressures contributed to retaining the regulatory approach.

### 7.2.4 How has the state’s regulatory capacity changed?

The capacity of the state in both ICT regulation and antimonopoly regulation was regarded as that of the bureaucratic machine: the manpower, financial resources and statutory authority of the MPC/MIC and the JFTC.

In the case of ICT regulation, the decline of the capacity of civil servants can directly be regarded as the decline of regulatory capacity. The rise of Cabinet Ministers as party politicians in bureaucracy, has not filled the vacuum created by the retreat of civil servants but brought an unstable situation, because Cabinet Ministers have failed to consolidate their resources and take over the role of civil servants. This failure of Cabinet Ministers can be explained by two features: their short tenure in office and their lack of experience. These obstacles have prevented Cabinet Ministers from managing regulatory policy making.

It is within this complex environment that a significant contention emerges on evaluating how the capacity of the state has been developed in ICT regulation. A group of interviewees composed of party politicians, a senior official of an incumbent operator, and some former and current civil servants argued that a significant regulatory capacity has been developed mainly in the government ministry and based on a newly established bureaucratic power base. Another group of interviewees, including senior officials of the NCCs, a consumer group leader, and a number of former and current civil servants, highlighted different aspects of regulatory capacity, including the inconsistent approach of civil servants stemming from their short tenure, and the retreat of government ministry’s legal authority, and the lack of political will to impose strict measures.

In antimonopoly regulation, the Japanese state has expanded its state power to respond to the circumstantial changes by strengthening the bureaucratic machine (i.e. new law provisions, staff increase, and budget increase). It has been the enhancement of law enforcement capacity through enlarging the JFTC’s organisation and responsibilities. Since relying on law enforcement is a characteristic of the regulatory state (e.g. Levi-Faur 2012), the nature of the transformation of Japan’s antimonopoly regulation can be viewed as the emergent Japanese regulatory state.

If the process of regulatory capacity building within ICT regulation after 1985 and antimonopoly regulation after the SII is analysed with the framework of Mahoney and Thelen (2010), what emerges is that the process has been under the mode of conversion, with weak veto power to the opponents to the transformation of regulatory capacity. The bureaucratic machine has been transformed under the supervision of the group of party politicians; it is a policy endorsed by party politicians. The fact that the issue of the regulatory capacity has been determined within the core executive (planned by civil servants and authorised by party politicians) can imply that the core executive has retained a significant extent of discretion on this issue. The transformation of state capacity in ICT regulation and antimonopoly regulation can be viewed as an adaption of the core executive to the regulatory challenges of the period, reflecting a fluid change of power within the core executive as observed in the case of ICT regulation.

What emerges in the above analysis is the enhanced regulatory capacity and regulatory organisations in both sectors. Referring to Levi-Faur’s (2012) definition of the regulatory state ‘a state that applies and extends rule making, monitoring and enforcement either directly or indirectly’, the development in ICT regulation and antimonopoly regulation between the 1980s and 2000s in Japan can be described as the emergence of a variation of the regulatory state under the initiative of the core executive to respond to the challenges in the fields.

### 7.2.5 Why have the present power relations been constructed in the chosen regulatory fields?

Exploring power relations behind the rise of the Japanese regulatory state is crucial to address the last research question. The key points of power relations behind the Japanese regulatory state are asymmetric dominance of the core executive in the Japanese state characterised by the role of party politicians as the key decision maker, the change of dominant actors within the group of party politicians (from party politicians outside the Cabinet to Cabinet Ministers), and the transformation of the bureaucratic machine in response to the change of circumstances under the supervision of the group of party politicians.

ICT regulation and antimonopoly regulation have continuously been subject to steering by party politicians. Under the supervision of party politicians the regulatory capacity has been strengthened through the adaptation process of the bureaucratic machine. In antimonopoly regulation the bureaucratic machine has continuously expanded; the regulatory function in ICT has been transformed to cope with the changing regulatory environment. Within the group of party politicians power has shifted from those outside the Cabinet to Cabinet Ministers. The rise of the Cabinet (Cabinet Ministers) characterises the recent power relations within the core executive. The move to enhance the Cabinet could be observed under the LDP government; an example of such a move can be the introduction of the *Seimu Sanyaku* system under the Obuchi Government (1998-2000) (Neary 2002 p.127). This move was intensified by government change in 2009 together with dismantling the previously powerful LDP politicians outside the cabinet.

In sum, the present power relations are the result of the fluid change of power within the core executive and the core executive’s response to the challenges in the fields (ICT regulation, antimonopoly regulation).

## 7.3 Corroborating the proposition: asymmetric dominance of Japan’s core executive in two regulatory cases

The above analysis reveals the dominance of the core executive underpinned by a number of factors.

An important factor is party politicians’ dominant position as the key decision maker in both ICT regulation and antimonopoly regulation. The relationships between party politicians and other actors are asymmetric; party politicians determine, and other actors have no other option than to follow the decision. Party politicians have had an interdependent relationship with civil servants and been lobbied by societal groups such as the NTT and *Keidanren.* In both cases, things work within the scope of decisions made by party politicians. Party politicians need civil servants to mobilise bureaucratic machines.

A difference emerging from two Japanese cases between the 1980s and 2000s from the British one analysed by Smith (1999pp.115-30) is the impact of the ruling parties’ internal rules resulting from the long dominance of the LDP within the administration. Shaped by political parties outside the formal institution of the state, the ruling parties’ internal rules are informal. The impact of the informal rules, in particular the LDP’s, can be observed in the power of party politicians outside the Cabinet (*Zoku Gi’in*) as an example. This example demonstrates the impact of informal rules at the core of the political arena, where the key decisions of the field are shaped. The gradual decline of their power together with the emergence of Cabinet Ministers and their teams was intensified by government change in 2009. This change of power within the group of party politicians offers an example of the fluid change of power within the core executive in Japan.

The nature of civil servants is different. Representing state power in particular in relation to societal actors such as private firms, the impact of civil servants has been significant (e.g. Johnson 1982, Vogel 1996). However, the nature of civil servants’ power in both case studies is in line with the analysis of Smith (1999). Their power has been under the supervision of party politicians. Party politicians’ authorisation was vital for civil servants to exercise their power.

Societal groups have the potential of mobilising the core executive, as demonstrated in the cases of the 1977 AMA amendment and the 1997 NTT break-up. This can be understood as analogous to the British case introduced by Smith (1999 pp.226-7), which reveals the impact of pressure groups to the core executive and policy making. The actors such as the NTT, *Keidanren*, and consumer groups can be understood as members of the policy networks. Actors such as the NTT and *Keidanren* directly lobby party politicians. Others such as consumer groups and academics tend to access bureaucracy rather than party politicians. Their approach includes joining the government’s policy deliberation councils such as the Information and Communications Council. The fact that key decisions such as the contents of the government bills are finalised by party politicians indicates that bureaucracy works as a mediator. In line with Smith’s (1999) analysis on the British core executive, party politicians and civil servants in Japan need each other within the community of the core executive. Elsewhere, other actors do not have the resources indispensable for the core executive actors. The relationship between the core executive actors and other societal actors is asymmetric. The core executive has the discretion to control other actors’ access to policymaking and implementation.

The change that emerged within the two case studies varies. In ICT regulation, the 1985 regulatory reform can be understood under the mode of displacement, with few strong veto actors and the narrow extent of interpretation on privatisation and liberalisation. With the emergence of the regulatory ministry (MPT/MIC), the change mode shifted to conversion with a few exceptions such as NTT break-up, whose change mode was drift with the strong opposition of the NTT. In antimonopoly regulation, the period before the SII saw a significant number of opponents (e.g. a part of Liberal Democrats, the MITI, *Keidanren*) enhancing antimonopoly regulation. The change mode in this period can be understood as drift. After the SII the mode shifted to conversion, with the former opponents gradually changing their views. With a significant extent of discretion of the core executive actors, the mode of change in these two regulatory cases reflects conversion with a few exceptional examples. In the issues where endogenous changes have not emerged, the self-reinforcing path dependency has shaped the following sequences. An example is the issue of the independent regulator. In ICT regulation the initial selection of having a ministerial regulator has shaped the following path. A contrasting case can be found in antimonopoly regulation, where the establishment of the JFTC in 1947 has shaped the path of regulating antimonopoly cases by a rare independent administrative commission in Japan. In both cases the initial selections have been reinforced by the following political contexts such as the established views of the core executive actors (e.g. civil servants in the MPT/MIC and the JFTC).

In turning to the core theme of this thesis, the evidence drawn from the case study chapters supports the proposition outlined in the introduction:

During the era of the Liberal Democratic Party (LDP) government, the core executive pursued discretional regulation within inner regulatory policy communities as a strategy to sustain its position of asymmetric dominance over actors within key policy sectors, with their actions shaped by a particular set of structures.

The core executive under the LDP government sustained its asymmetric dominance in ICT regulation and antimonopoly regulation through its decision making process, in which key decisions were shaped within a closed community composed of key party politicians. Operating in an interdependent relationship with civil servants in line with Smith’s (1999) analysis, party politicians under the LDP government exercised their discretional policy making in the political parties’ internal organisations such as the LDP PARC (Policy Affairs Research Council). Ruling parties’ internal organisations functioned as a key governing tool for the core executive within the sectors such as ICT regulation and antimonopoly regulation in an early part of the period between the 1980s and 2000s. As time passed, actors with a formal institutional basis such as Prime Ministers and Cabinet Ministers became more significant and previous key governing tools such as the PARC lost their influence (Krauss and Pekkanen 2002 p.242). This set of change was highlighted by longitudinal data obtained by Muramatsu and his associate, which reveal that civil servants recognised the decline of *Zoku Gi’in* and the PARC between 1987 and 2002 (Krauss and Pekkanen 2011 p.242). However, despite its internal change, the group of ruling party politicians as a whole has sustained its position of asymmetric dominance in ICT regulation and antimonopoly regulation, in conjunction with their civil servant counterparts. This can be understood as a version of asymmetric dominance of Japan’s core executive between the 1980s and 2000s. The nature of the Japanese regulatory state is the asymmetric dominance of the core executive.

## 7.4 The implication of this research

The exploration of this thesis has revealed the asymmetric dominance of the core executive in both ICT regulation and antimonopoly regulation between the 1980s and 2000s in Japan. The key decision making process was occupied by the community of the core executive. The group of ruling party politicians outside the Cabinet and civil servants responsible for the fields (MPT/MIC, JFTC) formed the community which other societal actors had difficulty joining (although lobbying to them was possible). The outcome of this thesis therefore endorses its proposition.

By focusing on the transformation of the Japanese state in two regulatory fields (ICT regulation, antimonopoly regulation), this thesis has revealed how the Japanese state has been transformed in order to respond to the challenges. In these sectors, the change of governance in Japan prompted the Japanese state to reconstitute itself through the adaptation process of the core executive to the emerging challenges. Exploring the two case studies in ICT regulation and antimonopoly regulation between the 1980s and 2000s has revealed that the Japanese state at a macro level has been transformed through the core executive’s response to the challenges in the sectors based on the fluid change of power within the core executive. This finding drawn from the two case studies can be highlighted with reference to the literature on Japan and its state system in the 2000s. If one draws on both the analyses presented in Chapter 5 and 6 alongside other literature on the Japanese state (e.g. Wright 2002, George Mulgan 2005, 2006), what emerges is the dominant power of the core executive. For example, 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 executive within this sector, which can be exemplified by the MOF. Elsewhere, 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.178-83). What is common between this set of literature and the research findings presented in this thesis is that the policies in the case studies above have been formulated through negotiation within each sectors’ core executive. Drawing on both the literature highlighted above and the findings in Chapters 5 and 6, this thesis argues that the Japanese state at a macro level has retained its control over society by its reconstitution; the empirical evidence to emerge from both the case studies – ICT regulation and antimonopoly regulation between the 1980s and 2000s – supports this claim. In so doing it challenges the main thrust of the approach and arguments presented by both the pluralist and rational choice literature on Japan discussed in Chapter 2.

The following elaborates the implications that emerged in this thesis: the reconstituted Japanese state after the 1980s (after Johnson 1982) and the nature of the Japanese regulatory state.

### 7.4.1 The reconstituted Japanese state after the 1980s

The exploration of this thesis has revealed the reconstitution of the Japanese state responding to its challenges after the 1980s. This thesis sets out a perspective that the reconstituted state is the key characteristic of the Japanese state after the 1980s, namely, after the developmental state thesis introduced by Johnson (1982), through the exploration of two case studies on regulation in Japan.

Regulation is a key issue for the transformed modern state; increasing employment of principal-agent regulation by the modern state is one of the major characteristics after the 1980s (Sorensen 2004, Smith 2009). Exploring the case of regulation therefore has the potential of addressing how the state has been transformed in response to its challenges by focusing on a salient characteristic of the transformed state. In particular, regulatory sectors experiencing a significant disjuncture concomitant with challenges to the state such as privatisation can offer a distinctive example of the transformation of the state to cope with its challenges. As explained in Chapter 3, by exploring ICT regulation and antimonopoly regulation, this thesis gains the potential of exposing a key nature of the transformation of the Japanese state.

Johnson’s (1982) developmental state concentrates on the developmentally oriented goal. The Japanese state’s developmentally oriented approach was also identified by Vogel’s (1996) study on Japan’s ICT (telecommunications) regulation and financial regulation. In line with this set of previous literature, the evidence of this thesis identifies this traditional tendency through the accounts of current and former civil servants revealing an orientation to industrial development in the ICT sector in the 1980s and 1990s.

The reconstitution of the Japanese state has come with the change of power within the core executive actors. The 1980s and 1990s saw the core executive dominated by party politicians outside the Cabinet administered the key sectors such as ICT regulation and antimonopoly regulation (see Chapters 5 and 6, also Muramatsu and Krauss 1987). In the 2000s this set of actors has lost its previous power, and the Cabinet (Cabinet Ministers) has emerged as a dominant actor. Their failure to take over the ‘strategist’ role of civil servants created an unstable situation. This set of transformation has changed the traditional mode of Johnson’s (1982) developmental state. The reconstitution of the Japanese state has transformed a key characteristic of the Japanese state: a type of the developmental state described by Johnson (1982). Mobilised by the change of power within the core executive actors (Cabinet Ministers, party politicians outside the Cabinet, and civil servants), the reconstitution of the Japanese state has transformed the developmentally oriented characteristic of the Japanese state led by civil servants.

The detail of the change taking place in Japan at a micro level was partially reported by Vogel (2006) and Schaede (2008), although their major concerns were elsewhere. The retreat of civil servants from their role as an economic strategist was a piece of the puzzle forming the transformation of the Japanese state. In line with Vogel (2006) and Schaede (2008), the evidence of this thesis reveals that the mode of the Japanese state led by developmentally oriented civil servants became history.

The transformation of the Japanese state, however, has not changed the core nature of the Japanese state: the asymmetric dominance of the core executive. Rather, it is the core executive that has mobilised the reconstitution of the Japanese state. By identifying the significance of the core executive in the Japanese state, the exploration of this thesis reveals a different perspective from Vogel’s (1996). Vogel (1996) sets out the strategic nature of Japan’s telecommunications regulation and financial regulation in the 1980s and 1990s, focusing on state actors (party politicians, civil servants). His analysis highlights Japan’s political tradition in telecommunications and financial regulation, which he calls ‘strategic’. Vogel (1996) argues that the strategic nature of Japan’s telecommunications and financial regulation offers a striking contrast with that of the UK, where competition promotion was focused. By focusing on the state at a macro level and power relations within the core executive, this thesis highlights the asymmetric dominance of the core executive within the Japanese state in ICT regulation and antimonopoly regulation.

Although Vogel (1996) highlights an important characteristic of the Japanese state (strategically oriented approaches) analogous to Johnson’s (1982) model of the developmental state, it fails to illuminate the core nature of the Japanese state. What the literature such as Johnson (1982) and Vogel (1996) illuminates is not the nature of the Japanese state but the approach of the period employed by Japan’s core executive. The Japanese state employed a developmentally oriented approach because the core executive of the time chose that option. If the core executive chose an alternative, the Japanese state would employ a different method. Therefore, the nature of the Japanese state can be explained not with concrete approaches such as a developmental orientation but what the Japanese state was made to employ, a developmentally oriented approach: the dominance of the core executive in Japanese politics.

The Japanese state gradually changed its approach and sought alternatives when the traditional approach of developmentally oriented policy encountered challenges in the 1990s (Yamamura 1997, Vogel 2006, Schaede 2008). This thesis reveals what has happened in the middle of the transformation. The situation at the point of 2011, when the evidence of this thesis was collected, was unstable rather than under equilibrium, and there is a potential that further change will take place in the future. The core characteristic observed in the Japanese state between the 1980s and 2000s is asymmetric dominance of the core executive. It is the core executive who has led choosing the path of a developmental state. The Japanese state has been reconstituted as a response of the core executive to cope with the challenges after the 1980s. What has taken place in Japan is the reconstitution of the Japanese state led by the core executive; some measures in the reconstitution could be market oriented, and others could be reserved or protectionist. However, the nature of what has happened in Japan is a dynamic process of state reconstitution led by the core executive. This is the perspective addressing the nature of what has happened in Japan’s political arena after the 1980s.

Previous literature on Japan including both pluralist and rational choice literature has failed to reveal this core nature of the Japanese state, which is under reconstitution mobilised by the core executive. The account revealing the core of the reconstitution of the Japanese state can be generated by not a pluralist or rational choice framework but an analytical framework addressing the state at a macro level. This thesis argues that its elitist approach offers an account explaining the core nature of Japanese politics after the 1980s, which the previous literature based on a pluralist or rational choice framework has failed to present. A perspective arguing for the reconstitution of the Japanese state mobilised by the core executive drawn on the evidence is a key contribution by this thesis to knowledge and literature on Japan and its politics.

### 7.4.2 The nature of the Japanese regulatory state

If Levi-Faur’s (2012 pp.19-20) definition of the regulatory state is turned: ‘...a state that applies and extends rule making, monitoring and enforcement either directly or indirectly’, the Japanese regulatory state is a concept describing an aspect of the Japanese state that administers regulation. If his definition is employed, it can be understood even before the 1980s when Johnson (1982) illuminates the impact of the Japanese developmental state, the regulatory state existed in Japan. After the 1980s, because of key events such as the 1985 telecommunications regulatory reform and the SII, the regulatory function of the Japanese state has attracted the interest of researchers (e.g. I’io 1993, Vogel 1996). What emerged in ICT regulation after the 1985 and in antimonopoly regulation after the SII ,was a new form of regulatory state replacing the previous one.

The exploration of this thesis on the cases in ICT regulation and antimonopoly regulation reveals the transformation of the Japanese regulatory state. The new form of regulatory state emerged after key events such as the telecommunications regulatory reform in 1985 and the SII employs principal-agent regulation and competition in markets as key tools. In ICT regulation the intensified usage of principal-agent regulation has emerged in the rise of the MPT/MIC as a key regulatory ministry. In antimonopoly regulation it has come to light with the enhancement of the JFTC. The previous form of regulatory state was based on service provision based on state corporation monopoly (e.g. the NTT’s in the ICT sector) and cooperation between private firms (e.g. AMA exemptions in specific sectors) with ex ante approaches by the state (e.g. entry prohibition in domestic telecommunications markets, holding company prohibition in antimonopoly regulation) rather than competition in markets.

Elsewhere, the analysis of the case studies has revealed the core executive’s path dependent view on regulatory independence, in which a significant reluctance to establish flexible independent regulators within the traditional political tradition was evident in ICT regulation. The JFTC’s independence of authority has been retained because of the self-reinforcing path dependency starting from the JFTC’s establishment in 1947. This set of path dependent history gives the Japanese regulatory state an unusual outlook; many of its regulators (e.g. ICT, transport, utility) are still located within government ministries.

Another characteristic is the tendency that prioritising a regulatory sector requires more relevant law amendments, which increase the involvement of the Diet and party politicians. Because of this, party politicians in Japan have had the potential for having a significant role in the Japanese regulatory state. The regulatory process and the decision making process within the regulatory state tend to be politicised because of the significant role of party politicians within the core executive.

The process of shaping the Japanese regulatory state after the 1980s has been mobilised by the core executive. Indeed, a key characteristic of the Japanese regulatory state is the dominance of the core executive. The core executive has been in a discretional position to administer regulation and its tools (rule making, monitoring, and enforcement).

The significance of the core executive in shaping a new regulatory state is highlighted by Moran (2003) in his analysis of the British regulatory state. Commentators such as Kelsey (1995) also illuminate the role of elites in the core executive as key for New Zealand’s regulatory reform. The Japanese regulatory state has also been dominated by the core executive in shaping its framework after the 1980s. The transformation of the Japanese regulatory state, which Vogel (1996) highlights as the emergence of reregulation as an explicit response of the state actors, can be understood as a response of the core executive reconstituting the new form of the regulatory state with its asymmetric dominance.

If the dominance of the core executive is a key nature of the Japanese regulatory state, then what makes the Japanese regulatory state shape its specific approach to regulation? This thesis concludes that the Japanese regulatory state can be explained as the equilibrium between the following elements:

* democratic accountability

A key factor to control the relationship within the core executive is democratic accountability. This typically means oversights by elected officials such as Cabinet Ministers and legislature. Democratic accountability is an important instrument for party politicians to control the government. It offers the basis of political legitimacy on which both party politicians outside the Cabinet and Cabinet Ministers exercise their control over civil servants. If a regulator is independent of politics, the regulator is not under the direct control of the elected government. In the case of the JFCT, a Japanese independent regulator, it is democratically controlled through appointing its commission members including the chairman and endorsing key policy issues, typically AMA amendment bills. Government change in 2009 from the LDP to the DPJ brought a problem on this chain of democratic control. The JFTC Chairman Takeshima (2002-12) was appointed by the Koizumi Government (LDP). So, the DPJ government (2009-12) had a problem on the democratic control on the JFTC; they had to embrace a chairman who was not selected by them. Democratic accountability also has the potential of restricting flexible rule changes; democratic accountability may require rules to be adopted within the democratic process. Democratically adopted rules such as laws need a long process involving a significant number of interested parties. Because the political cost needed by rule change processes such as coordination among interested parties is significant, frequently changing democratically adopted rules is more difficult than changing less formal rules such as decrees and government orders. Without politicians’ assistance, regulators will confront a difficulty when they need to frequently change democratically adopted rules.

* independent implementation

The neutral implementation of regulation fending off interested parties such as regulated private firms is vital for effective competition in the market. In Japan’s antimonopoly regulation, independent implementation of regulation is ensured by the JFTC’s independence of authority. Elsewhere, it was not a prioritised idea in ICT regulation, where elected officials directly supervise regulation.

Independent implementation of regulation has the potential of conflicting with democratic accountability, because with independence a regulator distances itself from the direct supervision by elected officials. It also has the potential for conflicting with rule changes. Rule changes involve various interested parties, meaning that the nature of the process in rule changes is political. The more frequent rule changes there are, the more the regulator is involved with political processes.

* frequent rule changes in response to circumstantial changes

Flexible rule changes in regulation are key to coping with changing circumstances in undated regulatory rules. In rapidly developing sectors such as ICT technological and social development can make established regulatory rules quickly obsolete. Timely and flexible rulemaking and rule changes are vital for such sectors to keep themselves updated in response to their challenges. If such rule changes involve formal processes such as law amendments, they will need a significant extent of political coordination. This is a challenge emerging in front of the AMA; increasingly prioritised antimonopoly regulation requires more frequent law amendments.

The present situations in ICT regulation and antimonopoly regulation can be explained as the equilibrium of these three factors.

In the case of ICT regulation, political accountability and frequent rule changes have been prioritised. Regulation has been under the influence of dominant party politicians, typically key Liberal Democrats. Emerging Cabinet Ministers have taken over the role played by party politicians outside the Cabinet, but this change within the group of party politicians left the dominance of party politicians as a whole untouched. Elsewhere, the rise and transformation of civil servants in the ICT sector reflect the sector’s rapidly changing circumstances. The MPT as an emergent regulator filled the gap created by the privatisation of the public corporation (NTT). The change of regulatory approaches by the MPT/MIC was a response to the requirements of the developing ICT sector. The dominance of party politicians and the nature of the quickly changing ICT sector in Japan have prioritised democratic accountability and frequent rule changes. The state tradition that requires the detailed provisions in regulatory laws also contributed to involving party politicians. This set of factors has resulted in a regulatory approach in which a government ministry regulates with close consultation to party politicians.

In antimonopoly regulation, the regulator’s independent status and the lack of interest among party politicians made the influence of party politicians small, with less demands for democratic accountability than that of ICT regulation. Only a limited number of party politicians surrounding Sadanori Yamanaka steered key issues in antimonopoly regulation such as AMA amendments. As antimonopoly regulation and the AMA became prioritised in Japan after the 1990s, this set of circumstances gradually changed. The involvement of party politicians have become intensified as the AMA became frequently changed; antimonopoly regulation and the AMA have attracted more attention than before from party politicians. Abolishing the complaint system (*Shinpan Seido*), which has been under consideration for a few years, has a possibility of undermining the JFTC’s quasi-judicial nature, which has been an important reason why the JFTC needs a status as an independent administrative commission. Such changes have the potential for reframing Japan’s antimonopoly regulation.

In pulling the above consideration together, this thesis offers the following Figure 7.1 depicting Japan’s ICT regulation and antimonopoly regulation vis-à-vis the three elements. In Figure 7.1, Japan’s ICT regulation is placed on a border of the triangle; it is located in the most distant place from ‘Independent implementation’, meaning that Japan’s ICT regulation does not prioritise independent implementation at all. Elsewhere, Japan’s ICT regulation is just in the middle between ‘Democratic accountability’ and ‘Frequent rule changes’, meaning that it prioritises this set of notions to the same extent. Elsewhere, Japan’s antimonopoly regulation is located in a place remote from ‘Frequent rule changes’, meaning that it has not had frequent rule changes and it is not prepared to cope with them, but has managed its challenges so far. It is located between ‘Democratic accountability’ and ‘Independent implementation’, but is in a place closer to the latter than the former. This means that Japan’s antimonopoly regulation has prioritised more on its independence of authority, and their concern for democratic accountability has been to a lesser extent than that of independent implementation. This reflects the fact that the JFTC does not have an established tie with politics, unlike other government ministries.

#### Figure 7.1: the mode of regulation in the Japanese regulatory state

* Japan (ICT )

Democratic accountability

Independent implementation

Frequent rule changes

* Japan (a/m)

Antimonopoly: a/m

If this depiction of Figure 7.1 is compared to the cases of other countries, the characteristics of the Japanese cases can be illuminated. The following seeks to illuminate the Japanese regulatory state with generalisable terms by referring to the cases of the UK and New Zealand.

In the British case, a new form of institution (regulators) (formally not either in the executive branch or the private sector) has emerged under the informal dominance of Ministers. British regulators are required to be less accountable to party politicians and have more authority to implement policy programmes without legislation. A group of literature calls this characteristic ‘depoliticisation’, meaning the activities removing certain subjects from the scope of everyday politics (Roberts 2010 p.5). A key characteristic of depoliticisation is its foundational legal instruments (e.g. laws, treaties, contracts) that purport to transfer authority to technocrats specialised in the sector or thoroughly proscribe certain policy choice (Roberts 2010 p.5). New Zealand promoted economic reforms based on the pure deregulation without reregulation. The trial to reverse this reform through reprioritising policy goals from efficiency oriented to those also taking account of welfare in the 2000s has been successful in part, but has confronted the reluctance of the established structure (e.g. reluctant responses of the Commerce Commission officials in the 2000s) (Carter 2008).

Analysing the cases of the UK and New Zealand in terms of democratic accountability, independent implementation, and frequent rule changes can reveal different characteristics to the Japanese cases. The UK (ICT regulation, antimonopoly regulation) offers examples in which independent implementation and frequent rule changes are prioritised more than the Japanese cases. As the result of its depoliticisation, British regulators have significant authority to set rules without consulting to legislature. In New Zealand’s light-handed regulation the lack of regulatory procedures enables the formation of a wide range of rules without consulting the government and regulators. The independent nature of the regulator (Commerce Commission) and its limited scope of administrative intervention prevent party politicians from intervening. In short, the impact of democratic accountability in New Zealand’s regulation has been small with its framework of light-handed regulation. The equilibrium of these cases is drawn in Figure 7.2.

#### Figure 7.2: the mode of regulation in the Japanese regulatory state

antimonopoly: a/m

* Japan (ICT)

Democratic accountability

Independent implementation

Frequent rule changes

* Japan (a/m)
* UK (ICT, a/m)
* NZ (ICT, a/m)

The above equilibrium of the regulatory states highlights the characteristic of the Japanese regulatory state in ICT regulation leaning to democratic accountability comparing the cases of the UK and New Zealand. Based on the analytical framework focusing on the Japanese state at a macro level with the concept of the core executive, the analysis of the Japanese regulatory state above offers an account explaining the Japanese regulatory state with generalisable terms (democratic accountability, independent implementation, and frequent rule changes), not with contrasting and particularistic terms such as ‘strategic’, ‘regulatory’, and ‘developmental’. It is a contribution of this thesis, which has not been offered by the previous literature and knowledge on Japan and the regulatory state, although it needs further development.

### 7.4.3 Summary

The implications set out by this section are based on an approach focusing on the Japanese state at a macro level employing the concept of the core executive as a key analytical tool. The approach of this thesis offers a broad perspective explaining the core of the Japanese politics after the 1980s by focusing on how the Japanese state has been reconstituted. This perspective has not been offered by the previous literature based on a pluralist or rational choice perspective. Employing an approach drawn on an elitist position, this thesis has filled this lacuna that the previous literature of a pluralist or rational choice position has failed to cover.

Also, referring to the concept of the core executive, this thesis offers a model of the regulatory state explaining the key features of the Japanese state with generalisable terms. The further examination of this model may have the potential of offering an account addressing a broad concept of the emerging regulatory state after the 1980s applicable to the cases of other regulatory states.

The contribution of this thesis offers a basis on which the further research and debate can take place on the state, the core executive, and regulation in Japan, as well as the regulatory states. The next and last section suggests what future research is possible based on the results of this thesis.

## 7.5 The future research agenda

This thesis proposes four major issues for future research.

The first and broad issue to address is the impact of the core executive’s dominance on the change of Japanese politics. This thesis has demonstrated how the dominance of the core executive has been key to shape approaches in two regulatory sectors: ICT regulation and antimonopoly regulation. A challenge for future research can be developing the research framework further by, for example, exploring how an elitist position can offer accounts explaining the change of Japanese politics from a broader perspective by focusing on the state at a macro level. This can be a significant trial to counter pluralist and rational choice approaches, which have dominated the mainstream of the Japanese studies and Japan’s political science.

Government change in 2009, the impact of which is significant and timely, can offer an opportunity of pursuing this challenge. The case studies of this thesis have revealed that government change in 2009 created an unstable situation rather than new equilibrium in both ICT regulation and antimonopoly regulation. Recent government change in December 2012 from the DPJ to the LDP offers an opportunity of collectively analysing the impact of the DPJ government (2009-12) on Japan’s political arena. A key question emerging from the result can be whether the strategic function within the core executive, which is regarded as a key characteristic of Japan’s ICT regulation and financial regulation by Vogel (1996), was reproduced in Japan’s core executive. The impact of government change on the strategic nature of the Japanese state, which is a core theme of key literature such as Johnson (1982) and Vogel (1996), can be a topic of examination. How the Japanese state addressed its traditional role of the economic strategist is a crucial issue to understand the nature of the Japanese state in the 2000s. Another example can be the rise of Cabinet Ministers responsible for regulation. By focusing on an important actor in the core executive it has the potential for addressing governing in Japan after the 2000s; the transformation of the core executive and its dominant actors is key for explaining the nature of change in the Japanese state provoked by government change.

The second issue for future research is the elaboration of interdependence between Japan’s civil servants and party politicians. This thesis has exposed the dominance of party politicians within Japan’s core executive in two regulatory sectors. How influential the power of civil servants has been on party politicians can be explored more. More elaboration of the nature of the interdependent relationship between civil servants and party politicians in Japan has the potential for offering an insight on the nature of the reconstituted Japanese state. The rise and fall of the DPJ government (2009-12) has the potential for offering a good opportunity to observe the changing interdependence between civil servants and party politicians.

The third issue for future research is the transformation of Japan’s antimonopoly regulation and the JFTC’s independence status. The circumstances surrounding the JFTC have significantly changed. Prioritising antimonopoly regulation has the potential for reshaping the previous approach to antimonopoly regulation based on the JFTC’s independence of authority and its law enforcement oriented approach. This change of circumstances has come with a change of power; the JFTC’s power has significantly become stronger. The prioritisation of antimonopoly regulation and the resulting change in a number of aspects including power offer a case for how independent regulation and implementation can be accommodated in Japan’s political tradition.

The further development of the models of the regulatory state is also an important topic for future research. Having revealed an asymmetric dominance of the core executive in Japan, this thesis has proposed a model of the regulatory state focusing on democratic accountability, independent implementation, and frequent rule changes. Further research based on this model could contribute to the exploration of the transformation of the state and the regulatory state. A brief comparison between the Japanese cases, Britain’s, and New Zealand’s exposes each case’s characteristics. For example, the Japanese regulatory state can be understood as an example in which democratic accountability is prioritised in shaping regulatory institutions. Considering the applicability of this model to other examples can reveal its benefits and problems and improve the analysis on the regulatory state in an era of governance. The further development of the research focusing on the nature of the contemporary regulatory state has the potential for offering a new insight by which understanding regulation and governance can further be elaborated.

# Appendix 1 The interviewees list

|  |  |  |
| --- | --- | --- |
| No. | Position at the point of the interview | Previous relevant positions |
| 1 | Member, Information and Communications Council  Chairman, Antimonopoly Gathering  Attorney at Law  Professor (Law) |  |
| 2 | Senior Consultant (foreign sponsored law firm) | Secretary-General (JFTC)  Chief of Bureau (JFTC)  Deputy Chief of Bureau (JFTC)  Division Director (JFTC)  Deputy Division Director (JFTC)  Embassy of Japan in the US |
| 3 |  | Vice-Minister (MPT)  Chief of Bureau (MPT)  Chief of Department (MPT)  Division Director (MPT)  Deputy Division Director (MPT) |
| 4 | Member, HOR (DPJ)  Member, Internal Affairs and Communications Standing Committee |  |
| 5 |  | Secretary-General (JFTC)  Chief of Bureau (JFTC)  Deputy Chief of Bureau (JFTC)  Division Director (JFTC)  Deputy Division Director (JFTC) |
| 6 | Division Director (MIC) | Embassy of Japan in the US  Deputy Division Director (MPT) |
| 7 | Senior civil servant (MIC) | Chief of Bureau (MIC)  Deputy Chief of Bureau (MIC)  Division Director (MPT/MIC)  Deputy Division Director (MPT) |
| 8 | Member, HOC (LDP)  Member, Internal Affairs and Communications Standing Committee | Chairman, Internal Affairs and Communications Standing Committee (HOC)  Parliamentary Secretary (MIC)  Manager, NTT |
| 9 | Member, HOR (DPJ) | Deputy Division Director (MIC) |
| 10 | Head of the Secretariat  (a consumer organisation) |  |
| 11 | Member, HOR (DPJ) | Parliamentary Secretary (responsible for the JFTC) |
| 12 | Division Director class (JFTC) | Deputy Division Director (JFTC) |
| 13 | Member, HOR (LDP) | Chief Cabinet Secretary  Head of Secretariat, AMA Examination Committee (LDP) |
| 14 | 1. General Manager, President’s Office   (a telecoms operator) | Member, HOR (DPJ) |
| 14 | 1. Advisor (a telecoms operator) | CTO (a telecom operator) |

|  |  |  |
| --- | --- | --- |
| 15 | Vice Chairman, Member of the Board  (a telecoms operator) | Vice-Minister for Policy Coordination (MIC)  Chief of Bureau (MIC)  Chief of Department (MPT)  Division Director (MPT)  Embassy of Japan in the US |
| 16 | Attorney at Law | Minister of Justice  Member, HOR |
| 17 | Chairman (NPO) | Secretary-General (People’s New Party)  Chairman, Communications Standing Committee (HOR)  Parliamentary Vice-Minister (MPT) |
| 18 | Vice Chairman (NPO) | Commissioner (JFTC)  Secretary-General (JFTC)  Chief of Bureau (JFTC)  Deputy Chief of Bureau (JFTC)  Division Director (JFTC)  Deputy Division Director (JFTC) |
| 19 | Attorney at Law,  Professor | Lawyer, Japan and New York State, US |
| 20 | Member, HOC (LDP) | Senior Vice-Minister (MIC)  Parliamentary Vice-Minister (MPT) |
| 21 | Director of Bureau, *Keidanren* |  |
| 22 | Professor Emeritus (Engineering)  Professor Emeritus, National Institute of Informatics | Chairman, Radio Regulatory Council  Professor (Engineering), University of Tokyo |
| 23 | Professor (AMA) | Chief of Department (JFTC)  Division Director (JFTC)  MITI |
| 24 | CTO Chief Scientist, (a research institute)  Professor Emeritus (Engineering) | Member, Information and Communications Council  Member, Telecommunications Council  Professor (Engineering), University of Tokyo |
| 25 | Cabinet Legislation Bureau | Deputy Division Director (MPT)  Assistant Professor (ICT Policy), University of Tokyo |
| 26 | Associate Professor (AMA) |  |
| 27 | Chairman and CEO, a private firm | Member, Regulatory Reform Committee (Cabinet) |
| 28 | Professor (AMA) | Deputy Chief of Bureau (JFTC)  Division Director (JFTC)  Deputy Division Director (JFTC) |
| 29 | Chief of Bureau (MIC) | Chief of Department (MIC)  Division Director (MPT/MIC)  Deputy Division Director (MPT) |
| 30 | Member, HOR (LDP)  Principal Director, Internal Affairs and Communications Standing Committee | Senior Vice-Minister (MIC)  Parliamentary Vice-Minister (MPT) |
| 31 | Member, HOR (DJP)  Chairman, Internal Affairs and Communications Standing Committee | Cabinet Minister (MIC)  Principal Directors, Internal Affairs and Communications Standing Committee |

|  |  |  |
| --- | --- | --- |
| 32 | Chief Executive Researcher  (a research institute) | Chief of Bureau (MIC)  Chief of Department (MPT)  Division Director (MPT)  Deputy Division Director (MPT) |
| 33 | President and CEO (a telecoms operator) |  |
| 34 | 1. Vice Chairwoman (consumer organisation) |  |
| 35 | 1. Head of Secretariat (consumer organisation) |  |
| 36 | Professor Emeritus (Economics) |  |
| 37 | Senior civil servant (JFTC) | Chief of Bureau (JFTC)  Deputy Chief of Bureau (JFTC)  Division Director (JFTC)  Deputy Division Director (JFTC)  Embassy of Japan in the US |
| 38 | Chief of Bureau (JFTC) | Chief of Bureau (JFTC)  Division Director (JFTC)  Deputy Division Director (JFTC) |
| 39 | Chief of Bureau class (Cabinet Secretariat) | Deputy Chief of Bureau (METI)  Division Director (METI)  Deputy Division Director (MITI) |

# Appendix 2 The sample interview schedule

Interview Questionnaire Abstract (ICT regulation)

Focused period: the 1980s – 2000s

1. The development of ICT

(1) Around the time of NTT privatisation, what communications regulatory institution did you think necessary?

(2) How has the institution of ICT regulation developed?

* 1980s – 1990s
* 1990s – 2000s

(3) What factor has contributed to the development of regulatory institutions in ICT? And, what actors (political parties, officials, business etc.) have contributed to it?

* 1980s – 1990s
* 1990s – 2000s

(4) Competition introduction and the role of the executive branch: when competition was introduced to the communications sector, what role was expected for the state? Were the interventionist approaches such as the MITI’s (of those days) expected?

(5) From NTT privatisation to the 2000s, have power relations between actors in ICT regulation (politicians, relevant administrative organisations, users) changed? If changed, what makes them changed?

(6) From NTT privatisation to the 2000s, how has the environment of ICT regulation (the relationships between government and private firms, regulatory approaches etc.) changed?

2. The relationship between politicians and officials

(1) Generally speaking on governing ICT, what is politicians’ role? How have officials and politicians divided and allocated responsibilities?

(2) In ICT regulation, what is generally the role of politicians?

(3) In ICT regulation, what role have politicians played in concrete terms so far, and how? What key events can be highlighted?

(4) What relationship has existed between the LDP and ICT regulation, in your view?

(5) After government change to the DPJ, when and how has the relationship between ICT regulation and politicians changed? Or, has not?

(6) Does the relationship between ICT regulation and politicians have any unique points (for example, comparing to the relationship between other regulatory sectors and politicians (e.g. electricity, gas, transport, financial services, antimonopoly))? If any, what are they?

(7) In ICT regulation, what roles have elected officials such as Ministers (Ministers of Posts and Telecommunications, Ministers of Internal Affairs and Communications) and Senior Vice-Ministers (Parliamentary Vice-Ministers) played? Have you substantially been affected by them, such as regulatory policy changes by the change of Ministers?

(8) Have Prime Ministers made any impact?

(9) In ICT regulation, when and how have politicians outside the ministry played the role?

3. Regulatory functions and organisational characteristics

(1) Is there any relation between political changes (the change of LDP supporters, the change of so-called *Yusei-Zoku* and *Shoukou-Zoku[[83]](#footnote-83)*, government change, etc.) and the organisational characteristics of the regulator, in your view?

(2) Most foreign countries have their ICT regulators independent; what makes Japan choose a different path, in your view?

(3) Does having the regulator independent change the capacity of the regulator (enhanced, weakened)? If it does, how? And do you highlight the example of such changes (domestic and international: past examples)

(4) What kind of entity do you expect as a typical independent regulator?

* The Financial Services Agency Type: an executive organisation
* The Public Safety Commission Type: an independent administrative commission (chaired by a Cabinet Minister)
* The Fair Trade Commission Type: an independent administrative commission
* The Bank of Japan Type: a public organisation outside the government
* Independent Administrative Organisation Type: a public organisation outside the government

(5) When was the independent ICT regulator debated first? At that time, who led the debate, and why, in your view?

(6) What impact will an independent ICT regulator have on the relationship between ICT regulatory functions and politicians?

(7) Other than the above, what points do you highlight as the key characteristics of the ICT regulator? (Comparing to the examples of other domestic (e.g. electricity, gas, transport, financial services, antimonopoly) and foreign counterparts)

4. The change of the capacity of the regulator (staff, expertise, financial resources, etc.)

(1) What are the necessary authority and resources (capacity) of the regulator?

(2) Has the regulator have enough authority and resources (capacity) so far?

* 1980s
* 1990s
* 2000s

(3) Do you recognise any relationship between the regulator’s authority and resources (capacity) and politicians? If any, what?

(4) do you recognise any relationship between the regulator’s authority and resources (capacity) and its transparency? If any, what?

(5) What is necessary for a regulator to retain its authority and resources (capacity)?

(6) What has been done to ensure the above?

(7) How do you describe the relationship between the benefits to operators and consumers in the ICT sector and the regulator’s authority and recouses (capacity)?

5. Last section

Do you have any issue untouched so far and important? If any, please discuss.

# Appendix 3 The List of the Ministers of Posts and Telecommunications (before January 2001) and the Ministers of Internal Affairs and Communications (after January 2001)

## 1. Minister of Posts and Telecommunications (before January 2001)[[84]](#footnote-84)

### 1.1 LDP (Liberal Democratic Party) governments

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name of the Minister | Prime Minister | From | To | Memo |
| Mr Masao Oo’nishi | Mr Masayoshi O’hira | 11/1979 | 07/1980 |  |
| Mr Ichiro Yamanouchi | Mr Zenko Suzuki | 07/1980 | 11/1981 |  |
| Mr Noboru Minowa |  | 11/1981 | 11/1982 |  |
| Mr Tokutarou Higaki |  | 11/1982 | 12/1983 |  |
| Mr Keiwa Okuda |  | 12/1983 | 11/1984 |  |
| Mr Megumu Satoh | Mr Yasuhiro Nakasone | 11/1984 | 12/1985 |  |
| Mr Bunsei Satoh |  | 12/1985 | 07/1986 |  |
| Mr Shunjiroh Karasawa |  | 07/1986 | 11/1987 |  |
| Mr Masateru Nakayama | Mr Noboru Takeshita | 11/1987 | 12/1988 |  |
| Mr Sei’ichi Kataoka |  | 12/1988 | 06/1989 |  |
| Mr Kenzou Muraoka | Mr Sousuke Uno | 06/1989 | 08/1989 |  |
| Mr Senpachi Oo’ishi |  | 08/1989 | 02/1990 |  |
| Mr Takashi Fukaya | Mr Toshiki Kaifu | 02/1990 | 12/1990 |  |
| Mr Masatsugu Sekiya |  | 12/1990 | 11/1991 |  |
| Mr Hideo Watanabe |  | 11/1991 | 12/1992 |  |
| Mr Juni’chiro Koizumi | Mr Ki’ichi Miyazawa | 12/1992 | 07/1993 |  |
| Mr Ki’ichi Miyazawa |  | 07/1993 | 08/1993 | Prime Minister |

### 1.2 Non-LDP coalition governments

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Mr Noritake Kanzaki[[85]](#footnote-85) | Mr Morihiro Hosokawa | 08/1993 | 04/1994 |  |
| Mr Tsutomu Hata[[86]](#footnote-86) | Mr Tsutomu Hata | 04/1994 |  | Prime Minister[[87]](#footnote-87) |
| Mr Katsuyuki Higasa[[88]](#footnote-88) |  | 04/1994 | 06/1994 |  |

### 1.3 LDP/LDP led coalition governments

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Mr Shun O’oide[[89]](#footnote-89) | Mr Tomi’ichi Murayama | 06/1994 | 08/1995 |  |
| Mr Issei Inoue[[90]](#footnote-90) |  | 08/1995 | 01/1996 |  |
| Mr Ichiro Hino[[91]](#footnote-91) |  | 01/1996 | 11/1996 |  |
| Mr Hisao Horinouchi | Mr Ryutaroh Hashimoto | 11/1996 | 09/1997 |  |
| Mr Shozaburo Jimi |  | 09/1997 | 07/1998 |  |
| Ms Seiko Noda | Mr Keizo Obuchi | 07/1998 | 10/1999 |  |
| Mr Eizaburo Maejima |  | 10/1999 | 04/2000 |  |
|  |  | 04/2000 | 07/2000 |  |
| Mr Kouzou Hirabayashi | Mr Yoshiro Mori | 07/2000 | 12/2000 |  |
| Mr Toranosuke Katayama |  | 12/2000 | 01/2001 | Held other offices[[92]](#footnote-92) |

## 2. Minister of Internal Affairs and Communications (after January 2001)[[93]](#footnote-93)

### 2.1 LDP led coalition governments

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Name of the Minister | Prime Minister | From | To | Memo |
| Mr Toranosuke Katayama | Mr Yoshiro Mori | 01/2001 | 04/2001 |  |
|  |  | 04/2001 | 09/2003 |  |
| Mr Taro Aso | Mr Jun’ichiro Koizumi | 09/2003 | 10/2005 | Held other office[[94]](#footnote-94) |
| Mr Heizo Takenaka |  | 10/2005 | 09/2006 | Held other office[[95]](#footnote-95) |
| Mr Yoshihide Suga | Mr Shinzo Abe | 09/2006 | 08/2007 | Held other offices[[96]](#footnote-96) |
| Mr Hiroya Masuda |  | 08/2007 | 09/2007 | Held other offices[[97]](#footnote-97) |
|  | Mr Yasuo Fukuda | 09/2007 | 09/2008 |  |
| Mr Kunio Hatoyama | Mr Taro Aso | 09/2008 | 06/2009 | Held other office[[98]](#footnote-98) |
| Mr Tsutomu Satoh |  | 06/2009 | 09/2009 | Held other offices[[99]](#footnote-99) |

### 2.2 DPJ (Democratic Party of Japan) governments

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Mr Kazuhiro Haraguchi | Mr Yukio Hatoyama | 09/2009 | 06/2010 | Held other office[[100]](#footnote-100) |
|  | Mr Naoto Kan | 06/2010 | 09/2010 | Held other office[[101]](#footnote-101) |
| Mr Yoshihiro Katayama |  | 09/2010 | 09/2011 | Held other office[[102]](#footnote-102) |
| Mr Tatsuo Kawabata | Mr Yoshihiko Noda | 09/2011 | 09/2012 | Held other offices[[103]](#footnote-103) |
| Mr Shinji Tarutoko |  | 10/2012 | 12/2012 | Held other offices[[104]](#footnote-104) |

# Appendix 4 The staff and budget of the Fair Trade Commission, Japan (JFTC)

(based on the data from the JFTC)



# Appendix 5 The flow of the antimonopoly case proceeding

## 1. Before January 2006 (based on Schaede 2000 p.114)

Complaint

(*Shinpan*)

Tokyo High Court

Report to Prime Minister

No prosecution

Appeal

Report from the public

Investigation (*Shinsa*)

Detection by the JFTC

Supreme Court

Appeal

Decision

Judgement

Injunction

Initiation of prosecution

Hearing to quash the JFTC decision

Final (cease and desist order, surcharges imposition etc.)

Consent decision

(*Doi shinketsu*)

Complaint decision

(*Shinpan shinketsu*)

Hearing

Designation of

trial examiners

Non acceptance

Recommendation decision (*Kankoku shinketsu*)

Submission of answers by respondents

Acceptance (*Odaku*)

Criminal accusation (*Kokuhatsu*)

Issue of complaint

(*Shinpan tetsuzuki no kaishi*)

Recommendation

(*Kankoku*)

Warning/ Caution

(*Keikoku/Chui*)

No action

## 2. After January 2006 (when the 2005 AMA amendment was enacted)

(based on the JFTC 2012b)

Appeal

End

Consent decision

(*Doi shinketsu*)

Tokyo High Court

Tokyo

District

Court

Complaint

(*Shinpan*)

Cease and desist order/ surcharge payment order

(*Haijosochi Meirei/Kachokinn Nouhu Meirei*)

Opportunity for respondents to state opinions and submit evidence

Investigation

(*Shinsa*)

Criminal investigation (*Hansoku Chosa*)

Request by the Small & Medium Enterprise Agency

Report based on the leniency system

Report to Prime Minister

No prosecution

Appeal

Report from the public (*Shinkoku*)

Administrative investigation (*Gyosei Chosa*)

Detection by the JFTC

Supreme Court

Appeal

Decision

Judgement

Injunction

Initiation of prosecution

Hearing to quash the JFTC decision

Complaint decision (*Shinpan shinketsu*)

Hearing

Designation of trial examiners

Submission of answers by respondents

Criminal accusation (*Kokuhatsu*)

Issue of complaint (*Shinpan tetsuzuki no kaishi*)

Preliminary notice

(cease and desist & surcharges)

(*Kankoku*)

Warning/ Caution

(*Keikoku/Chui*)

No action

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1. Vogel (1996 pp.1-5, 16-7) employs the term ‘regulatory reform’ as a concept in which deregulation, liberalisation and reregulation are combined. Taking account of the benefit of embracing deregulation, liberalisation, and reregulation, which are often related to each other, this thesis also employs ‘regulatory reform’ as a term meaning the transformation of the regulatory regime including deregulation, liberalisation, and reregulation. [↑](#footnote-ref-1)
2. Evans (1995) also explains the developmental state as the state not only has: ‘presided over industrial transformation but can be plausibly argued to have played a role in making it happen’ (p.12). [↑](#footnote-ref-2)
3. The MITI was reorganised as the Ministry of Economy, Trade and Industry (METI) in 2001. (website: <http://www.meti.go.jp/english/index.html>) [↑](#footnote-ref-3)
4. Administrative guidance is not based on an explicit law but cannot violate law and is based on the notion that those guided are under the jurisdiction of issuers (government ministries) (Johnson 1982 p.265). The power of administrative guidance comes from the government-business relationship, i.e. respect for the bureaucracy, the belief that the authority represents national interests, and the possibility that the issuing authority may take revenge through various available channels to opponents (Johnson 1982 p.266). Administrative guidance came through various kinds of forms, such as oral guidance and policy statements (Johnson 1982 p.266-7). ‘(M)any of the functions performed by lawyers in other societies (were) performed in Japan by bureaucrats using administrative guidance.’ (Johnson 1982 p.319) [↑](#footnote-ref-4)
5. Privately owned industrial empires (Johnson 1982 p.23). Hadley (1970) explains that *Zaibatsu* was family oriented ‘combines’ (complexes ‘of corporations displaying unified business strategies arising primarily out of an ownership base’). (p.20) [↑](#footnote-ref-5)
6. The SCAP issued purge directives, whose scope included those related to the civil service as well as armed forces, and excluded from various public and private positions of responsibility those designated by category as having been partly responsible for the war (Johnson 1982 p.41). [↑](#footnote-ref-6)
7. Different from American counterparts, Japanese politicians did not have experience of being deeply involved in administrative affairs and legislation. Under the Katayama Government (May 1947- January 1949): ‘the Cabinet Ministers were so lacking in expertise and so unfamiliar with legislation that everyone had his vice-minister sitting next to him in the Cabinet room in order to advise him on what to do’ (Johnson 1982 p.45). [↑](#footnote-ref-7)
8. *Seiyukai* and *Minseito* were the major political parties in Japan before World War II. [↑](#footnote-ref-8)
9. According to Muramatsu and Krauss (1987), ‘pluralism’ means the system with various competing actors with influence on policy and with the state responsive to social interest. ‘Patterned’ is associated with relatively fixed and institutionalised political parties, bureaucracy and ideological ties. (p.538) [↑](#footnote-ref-9)
10. Kirchheimer (1966) employs this ‘catch-all party’ to describe post World War II parties trying to reach a wider audience and to obtain immediate electoral success (pp.184-92). [↑](#footnote-ref-10)
11. Because the basis of American pluralism is different to Japan’s political tradition, Japan’s political analysts proposed their own versions of pluralism with adjectives, such as ‘patterned pluralism’ and ‘divided pluralism’, reflecting the fact that Japan’s interest groups did not play a major role, although they were freely organised and actively working like their US counterparts (I’io 2007 p.38). [↑](#footnote-ref-11)
12. This phrase is often employed by journalistic articles in Japan. [↑](#footnote-ref-12)
13. Japan’s segmented industrial groups aligned with distributers and financial institutions (Calder 1993 p.142). Hadley (1970) presents detailed typology and analysis about *Keiretsu* (pp.205-90). [↑](#footnote-ref-13)
14. Because bureaucrats are exposed to uncertain pressures from legislature, they tend to be more risk-averse than their private sector counterparts (Leydan and Link 1991 pp.199-200). [↑](#footnote-ref-14)
15. The Ministry of Health and Welfare was reorganised into the Ministry of Health, Labour, and Welfare in 2001. [↑](#footnote-ref-15)
16. The Ministry of Transport and the Ministry of Construction merged into the newly created Ministry of Land, Infrastructure, Transport and Tourism in 2001. [↑](#footnote-ref-16)
17. The MPT was reorganised into the Ministry of Internal Affairs and Communications (MIC) in 2001. See also Chapter 5 footnote 42. [↑](#footnote-ref-17)
18. The SNTV system is the system under which multiple national legislators are elected from a constituency while each voter casts just one vote (Rosenbluth and Thies 2010 p.55). [↑](#footnote-ref-18)
19. The FILP was the financial institution managed by the MOF (Wright 1999 p.952). Generating funds from public financial institutions such as postal savings, its fund was used for capital investment programmes such as public construction programmes and used by the MOF: ‘as an alternative source of funding for some programmes in the main budget’ (W**ri**ght 1999 p.952). [↑](#footnote-ref-19)
20. For instance, Ozawa (1993) argues that liberal society should be under laissez-faire, that Japan is under outdated over-regulation, that Japan should shift its regulation from a managed one to a rule based one, and that enhanced anti-trust policies are necessary (pp.243-50). Ichiro Ozawa was Secretary General of the then ruling LDP. He became Secretary General of the ruling Democratic Party of Japan (DJP) in 2009, after leaving the LDP and successive political activities as an opposition party member. [↑](#footnote-ref-20)
21. Schaede (2008 pp.87-252) illuminates the following as evidence:

    banks have become interested in lenders’ performance and profitability rather than longevity;

    traditional horizontal business groups (*Keiretsu*) are losing their meaning because firms are getting more interested in profits rather than supporting their fellow firms in their respective groups;

    cross-shareholdings have declined;

    foreign ownership has increased, while banks’ share of stocks has declined;

    2006 Corporate Law has empowered stockholders more than before and the oversight of stockholders becomes significant in corporate governance instead of the oversight of banks;

    long-term relationships with subcontractors become history and diverse procurements, including those from international subcontractors, are now common;

    price competition between firms and between firms and consumers are more transparent and profit oriented; and

    lifetime employment becomes long term employment. [↑](#footnote-ref-21)
22. The MMM counts SMD seats and proportional representation seats independently; ‘There is a fixed number of seats assigned to each tier, and each party “earns” its proportional share of the PR seats, plus as many SMD as its candidates win’ (Rosenbluth and Thies 2010 p.105). [↑](#footnote-ref-22)
23. In 1993 there were three long term credit banks: the IBJ, the Long Term Credit Bank of Japan (LTCB), and the Nippon Credit Bank (NCB). The IBJ merged in 2002 with two other commercial banks to form Mizuho Bank, a large commercial bank group. The LTCB was nationalised in 1998 and sold to an international group led by US based Ripplewood Holdings in 2000 and restarted as ‘Shinsei Bank’. The NCB was also nationalised in 1998 and sold to a group of investors in 2000. [↑](#footnote-ref-23)
24. Anglo-Governance school is a group of scholars whose position is affected by R. A. W. Rhodes’ idea that the concept of governance be integrated ‘into a conceptual model of contemporary government, its evolution and its relationship to political and wider social processes’ (Marinetto 2003 p.594). [↑](#footnote-ref-24)
25. In Rhodes’ view, power is essentially relational and does not inhere in any institution, position or structure; the concept of structure is eschewed for it is unhelpfully vague (Elgie 2011 p.68). [↑](#footnote-ref-25)
26. The welfare state in this period accounts for in excess of 50 percent of GDP and 15 percent of the total workforce (Hay and Lister 2006 p.6). [↑](#footnote-ref-26)
27. For *Zoku Gi’in*, see Chapter 5 footnote 43. [↑](#footnote-ref-27)
28. Sartori (1970 pp.1034-5) offers the following description on the conceptual stretching:

    By and large, so far we have followed … the line of least resistance: broaden the meaning - and thereby the range of application - of the conceptualizations at hand. … the larger the world, the more we have resorted to conceptual stretching, or conceptual straining, i.e., to vague, amorphous conceptualizations. … conceptual stretching also represents a deliberate attempt to make our conceptualizations value free. Another concurrent explication is that conceptual straining is largely a “boomerang effect” of the developing areas, i.e., a feedback on the Western categories of the diffuse polities of the Third World. [↑](#footnote-ref-28)
29. Japan’s Ministry of Posts and Telecommunications (MPT) was responsible for ICT issues until 2001 when it was taken over by the Ministry of Internal Affairs and Communications (MIC) (Neary 2002 pp.126-7). See also Chapter 5 footnote 42. [↑](#footnote-ref-29)
30. The Fair Trade Commission, Japan [↑](#footnote-ref-30)
31. Parliamentary Vice-Ministers in Japan’s government ministries were abolished in January 2001 and replaced with upgraded Senior Vice-Ministers, together with the newly established junior rank Parliamentary Secretaries. [↑](#footnote-ref-31)
32. Majone (1996 p.54) points out redistribution function, stabilisation function and regulatory function as the main functions of government in the socio-economic sphere. [↑](#footnote-ref-32)
33. RPI-X is the function employed by the price cap system, whereby telecommunications rates could not rise by more than RPI minus a certain percentage (X) (Vogel 1996 p.82). Under this system prices on a defined basket of regulated services would be allowed to grow at the rate of inflation (expressed by RPI) minus X percentage points (Spillar and Vogelsang 1996 p.108). [↑](#footnote-ref-33)
34. Monopolies and Mergers Commission, UK [↑](#footnote-ref-34)
35. As a description of light-handed regulation Patterson (1998 p.135) introduces the following Government Policy Statement on Telecommunications (December 1991), in relation to the telecommunications industry:

    The Government sees competition as the best regulator of telecommunications markets. Accordingly there will continue to be no statutory or regulatory barriers to competitive entry into telecommunications markets in New Zealand. To maintain conditions of effective competition, the Government places primary reliance on the operations of the Commerce Act 1986. In particular, it relies on the enforcement of the statutory prohibitions against anticompetitive practices, including misuse by any person of a dominant position in a market and the prohibition against business acquisitions which create or strengthen dominance.

    The following supplementary measures will continue to apply:

    (a) Telecommunications (Disclosure) Regulations 1990; and

    (b) Telecommunications (International Services) Regulations 1989.

    If it proves to be necessary, the Government will consider the introduction of other statutory measures or regulations. It will take particular care to ensure that it is not seen to be acting merely to enhance the commercial position of one firm or group within society at the expense of another. [↑](#footnote-ref-35)
36. Roger Douglas was the Minister of Finance (1984-88) under the David Lange Government (Labour: 1984-89). He was the most prominent promoter of New Zealand’s economic reforms in the cabinet, whose policy was called ‘Rogernomics’. Ruth Richardson was the Minister of Finance (1990-97) under the Jim Bolger Government (National: 1990-93), who played a similar role to Douglas’ in the National government, with her economic policy called ‘Ruthanasia’. [↑](#footnote-ref-36)
37. New Zealand’s gross national product (GNP) per capita became about half of that of the US in the mid 1970s, although it was 92 percent in 1938 (Evans et al 1996 p.1860). Private and public sector debt rose from 11 percent to 95 percent between March 1974 and June 1985 (Evans et al 1996 p.1860). Annual inflation remained in double digits for the entire December 1973 to March 1983 period (and was subsequently controlled only through an extensive wage-price freeze) (Evans et al 1996 p.1860). The current account deficit in the balance of payments climbed to 8.7 percent of GDP in 1984, while the government's financial deficit amounted to 6.5 percent of GDP in 1983/84 (Evans et al 1996 p.1860). Unemployment stood at 4.9 percent in June 1984, up from 1.7 percent in March 1980 and 0.2 percent in March 1974 (Evans et al 1996 p.1860). In addition, in June 1984 the prospect of government change prompted a rapid outflow of foreign exchange and made the Reserve Bank of New Zealand announce on the day after the general election that it was ceasing to convert New Zealand dollars into foreign currencies (Evans et al 1996 p.1860). [↑](#footnote-ref-37)
38. A foundationalist view is that: ‘reality is thought to exist independently of our knowledge of it’ (Grix 2010 p.64). On the other hand, an anti-foundationalist view employs the position that: ‘reality is socially and discursively constructed by human actors’ and ‘there are no central values that can be rationally and universally grounded (Grix 2010 p.64). [↑](#footnote-ref-38)
39. ‘The double hermeneutic’, originally termed by Anthony Giddens, means: ‘the act of interpreting an actor’s perception or interpretation (Interpretation 1) of his or her situation in a particular context (Interpretation 2)’ (Grix 2010 p.82). [↑](#footnote-ref-39)
40. Triangulation is the method in which multiple sources/methods of evidence are used in data collection processes aiming at ‘corroborating the same fact or phenomenon’ (Yin 2003 pp.97-9, Burnham et.al 2004 p.206). See 4.6.2. [↑](#footnote-ref-40)
41. The NTT uses the same acronym before and after privatisation. It only slightly changed its name (in English as well as in Japanese) with privatisation. (Before privatisation: Nippon Telegraph and Telephone Public Co.; after privatisation: Nippon Telegraph and Telephone Co.) [↑](#footnote-ref-41)
42. MIC: Ministry of Internal Affairs and Communications, which took over the responsibilities of the MPT in 2001. Its Japanese name is ‘*Soumusho*’. This Ministry used ‘Ministry of Public Management, Home Affairs, Posts and Telecommunications (MPHPT)’ as its English name between 2001 and 2004. This thesis employs the current English name ‘Ministry of Internal Affairs and Communications (MIC)’ from 2001 to avoid the confusion caused by utilising two English names for the same organisation. [↑](#footnote-ref-42)
43. *Zoku Gi’in* (Tribe members of the Diet) are members of the Diet who specialised in a particular field such as posts and telecommunications affairs in the LDP. They have not only a specialised knowledge of the particular field but also often special interest with other interest groups such as private firms of the field (I’io 2007 p.95). About *Zoku Gi’in*, Inoguchi and Iwai (1987) offer a detailed study. [↑](#footnote-ref-43)
44. The breakup of the AT&T was decided in 1984, which resulted in the end of AT&T’s regional monopoly. In the UK BT lost its monopoly in 1984. After the duopoly by BT and Mercury, a new entrant, between 1984 and 1990, the UK’s telecommunications market became open to other new entrants in 1991. [↑](#footnote-ref-44)
45. This typology is based on the proposal by a civil servant at the MIC during the interview. [↑](#footnote-ref-45)
46. VAN is a type of public network that leases basic transmission facilities from incumbent telecommunications operators, adds features that enhance the service, and provides the improved communications capability to end users (Graham 1991 p.170). [↑](#footnote-ref-46)
47. *Yusei-Zoku* (Post tribe) is a group of *Zoku Gi’in* who specialised in posts and telecommunications affairs in the LDP. [↑](#footnote-ref-47)
48. The Telecommunications Council was a Policy Deliberation Council where key policy issues were consulted by the Posts and Telecommunications Ministers. The resulting reports could become the basis for government’s bills in the respective field. This council transformed into the Information and Communications Council in 2001. See also footnote 53. [↑](#footnote-ref-48)
49. Telecommunications Council (1996a) [↑](#footnote-ref-49)
50. The LDP formed a coalition government with the SDPJ and the New Party *Sakigake* from 1994 to 1998. [↑](#footnote-ref-50)
51. Telecommunications operators who had their own facilities were classified as Type I telecommunications carriers by Japan’s Telecommunications Business Law, while those without their own facilities were categorised as Type II telecommunications carriers by the same law (MPT 1998 pp.5-6). [↑](#footnote-ref-51)
52. *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.126-7). [↑](#footnote-ref-52)
53. The Information and Communications Council is a Policy Deliberation Council where key policy issues are consulted by the Internal Affairs and Communications Ministers (MIC 2012). The resulting reports can become the basis for government’s bills in the respective field. [↑](#footnote-ref-53)
54. In this context, ‘ex ante regulation’ means regulation focusing on issues emerging before firms act, i.e. what firms will do. An example is market entry regulation, which aims at firms’ access to markets rather than their actual business activities in existing markets. In a similar way, ‘ex post regulation’ means regulation focusing on issues emerging after firms acted, i.e. what firms do in existing markets. An example is regulating dispute settlements between firms and between firms and consumers in markets. [↑](#footnote-ref-54)
55. The Tanaka faction is an internal faction of the LDP headed by Kakuei Tanaka (Prime Minister: 1972-74). In 1987 the majority of its members left this Tanaka faction and formed the Takeshita faction, which was headed by Noboru Takeshita (Prime Minister: 1987-88). [↑](#footnote-ref-55)
56. Heizo Takenaka was a Cabinet Minister of the Jun’ichiro Koizumi Government (LDP: 04.2001-09.2006). The detail of his tenure is the following:

    04.2001-10.2005 Minister of State for Economic and Fiscal Policy

    (concurrently served as the Minister of State for Financial Services (09.2002-09.2004))

    10.2005-09.2006 Minister of Internal Affairs and Communications

    (concurrently served as the Minister for Postal Services Privatisation (10.2005-09.2006)) [↑](#footnote-ref-56)
57. The Council of Economic and Fiscal Policy is the council at the Cabinet Office deliberating the important issues of economic and fiscal policies as an instrument of establishing the Prime Minister’s substantial supervision on these issues (Cabinet Office of Japan 2012). Established in 2001 as a part of the administrative reform, it has been chaired by the Prime Minister and composed of his core Cabinet members and key private sector figures (business leaders and academics) (Cabinet Office of Japan 2012). [↑](#footnote-ref-57)
58. For example, none of the Ministers of Internal Affairs and Communications from the DJP had a tenure longer than a year, as the following shows (also see the Appendix 3.):

    Minister Kazuhiro Haraguchi: 09.2009 - 09.2010

    Minister Yoshihiro Katayama: 09.2010 - 09.2011

    Minister Tatsuo Kawabata: 09.2011 - 09.2012

    Minister Shinji Tarutoko: 10.2012 - 12.2012 [↑](#footnote-ref-58)
59. The analysis of the survey result is based on only the first choice of answering options in the questionnaire. [↑](#footnote-ref-59)
60. *Hikari no Michi* (The Optic Way) is a policy project initiated by Interior Affairs and Communications Minister Haraguchi (09.2009 -09.2010), in which the broad band services will be enhanced through competition and service promotion measures including the opening ICT networks, supporting broad band services in various sectors including medical care, and restructuring the NTT group (ICT Policy Taskforce in the Globalised Era 2010). The scope of debate to formulate concrete policy measures includes the reorganisation of the NTT group, which could lead to an NTT breakup. [↑](#footnote-ref-60)
61. Shigeru Yoshida was the Prime Minister (1946.7, 1948-54) who signed the peace treaty with Japan in 1951. [↑](#footnote-ref-61)
62. METI: the Ministry of Economy, Trade and Industry, which took over the responsibilities of the MITI in 2001. [↑](#footnote-ref-62)
63. The SII 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). [↑](#footnote-ref-63)
64. Yamamura (1967 p.9) explains that the first version of Japan’s AMA was based on the draft presented by the Anti-Trust Division of the US Justice Department. [↑](#footnote-ref-64)
65. Eleanor Hadley was a member of the SCAP cartel division in Tokyo (Schaede 2000 p.72). [↑](#footnote-ref-65)
66. Yamamura (1967 pp.196-216) has the full text of the AMA as enacted in 1947 and that as amended in 1953. [↑](#footnote-ref-66)
67. The JFTC proceeded against 66 cartels (66 cases in total) in 1973, and 44 cartels, 4 unfair trades, and 13 other cases (58 cases in total) in 1974. The JFTC formally recognised these cases as AMA breaches, and placed them on its administrative processes pursuant to the provisions of the AMA, the results of which include issuing a recommendation (*Kankoku*). [↑](#footnote-ref-67)
68. Since the enactment of the AMA in 1947, there were only four precedent criminal cases before the oil cartel cases (Miwa and Ramseyer 2004). Three of them were in 1949 under the administration of SCAP, and one is an unfair promotion by an estate agency prosecuted in 1970 (Miwa and Ramseyer 2004). [↑](#footnote-ref-68)
69. The Petroleum Federation (*Sekiyu Renmei*) is the leading trade association of Japan’s petroleum industry. [↑](#footnote-ref-69)
70. According to Yoshikawa (1983 p.499): ‘The High Court, noting the existence of potentially conflicting policies between the Antimonopoly Law and the Oil Business Law, held that, as a general rule, while administrative guidance directed independently to each company was legal, guidance which invited concerted actions among the companies could not be considered permissible. Based on this principle, the Court concluded that both the acts of the Association and the twelve companies were illegal, but, in the case involving the Association, circumstances existed which caused the defendants to legitimately believe that its conduct was not illegal. Thus, under such circumstances, the Association could not be held criminally responsible.’ Sanekata (1986 p.382) describes this verdict that ‘The JFTC won on theory but lost on enforcement’. [↑](#footnote-ref-70)
71. The definitions of the ‘monopolistic conditions’ are the following three in summary, according to paragraph 7 of Article 2:

    (1) in the industrial sector, when the total value of a particular commodity or other commodities having a similar function or a particular service supplied in Japan during the last one year period exceeds 50 billion yen, when the market share of an entrepreneur exceeds 50 percent or when the total of the market shares of two entrepreneurs exceeds 75 percent;

    (2) the circumstances exist under which other entrepreneurs have an extreme difficulty to enter the market; and

    (3) when, during a considerable period of time, there has been remarkable increase in prices, or little reduction thereof, in light of the fluctuation of supply and demand and the costs for supplying the particular commodity or service, and the entrepreneurs have acquired profits greatly exceeding ‘average’ rates of profit or expended sales and general administration expenses much greater than ‘average’ sales and general administration expenses. [↑](#footnote-ref-71)
72. Trade Compliance Center (2012) [↑](#footnote-ref-72)
73. ‘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. [↑](#footnote-ref-73)
74. 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 2012a, 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 2012a, 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 2012a). [↑](#footnote-ref-74)
75. Kazuhiko Takeshima was the JFTC’s Chairman between July 2002 and September 2012. He spent most of his career in the Ministry of Finance after joining the Ministry in 1965. [↑](#footnote-ref-75)
76. Article 65 of the Constitution of Japan stipulates that: ‘Executive power shall be vested in the Cabinet’. [↑](#footnote-ref-76)
77. Article 27 (2) of the AMA stipulates: ‘The Fair Trade Commission shall be administratively attached to the office of the Prime Minister’. [↑](#footnote-ref-77)
78. 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. [↑](#footnote-ref-78)
79. For *Seimu Sanyaku*, see Chapter 5 footnote 52. [↑](#footnote-ref-79)
80. Including the LDP AMA Examination Committee. [↑](#footnote-ref-80)
81. MPT: Ministry of Posts and Telecommunications, MIC: Ministry of Internal Affairs and Communications [↑](#footnote-ref-81)
82. NTT: Nippon Telegraph and Telephone [↑](#footnote-ref-82)
83. *Shoukou-Zoku* (Commerce and Industry tribe): *Shoukou Zoku* is a group of *Zoku Gi’in* who specialised in commerce and industry affairs in the LDP [↑](#footnote-ref-83)
84. Ministers with no reference were the members of the LDP. [↑](#footnote-ref-84)
85. A Japan Renewal Party member (originally from Komeito Party) [↑](#footnote-ref-85)
86. A Japan Renewal Party member (originally from the LDP) [↑](#footnote-ref-86)
87. Interim Ministership by Prime Minister (only one day: 28 April 1994) [↑](#footnote-ref-87)
88. A Japan Renewal Party member (originally from Komeito Party) [↑](#footnote-ref-88)
89. A member of the SDPJ (Social Democratic Party of Japan) [↑](#footnote-ref-89)
90. A member of the SDPJ [↑](#footnote-ref-90)
91. A member of the SDPJ [↑](#footnote-ref-91)
92. Mr Katayama was concurrently assigned to the posts of the Minister of Home Affairs and the Director-General of the Management and Co-ordination Agency. The MPT, the Ministry of Home Affairs, and the Management and Co-ordination Agency were merged into the Ministry of Internal Affairs and Communications (MIC) on 6 January 2001. He became the first Minister of the new Ministry of Internal Affairs and Communications. [↑](#footnote-ref-92)
93. See Chapter 5 footnote 42. [↑](#footnote-ref-93)
94. Also concurrently served as the Minister for National Sports (09/2004-10/2005) [↑](#footnote-ref-94)
95. Also concurrently served as the Minister for Postal Services Privatisation (10/2005-09/2006) [↑](#footnote-ref-95)
96. Also concurrently served as the Minister for Postal Services Privatisation (09/2006-08/2007) and the Minister for Devolution (12/2006-08/2007) [↑](#footnote-ref-96)
97. Also concurrently served as the Minister for Postal Services Privatisation, the County System and Regional Gap and the Minister for Devolution [↑](#footnote-ref-97)
98. Also concurrently served as the Minister for Devolution [↑](#footnote-ref-98)
99. Also concurrently served as the Minister for Devolution and the Chairman of the National Public Safety Commission (06-07/2009) [↑](#footnote-ref-99)
100. Also concurrently served as the Minister for Promotion of Local Sovereignty [↑](#footnote-ref-100)
101. Also concurrently served as the Minister for Promotion of Local Sovereignty [↑](#footnote-ref-101)
102. Also concurrently served as the Minister for Promotion of Local Sovereignty [↑](#footnote-ref-102)
103. Also concurrently served as the Minister for Promotion of Local Sovereignty, Okinawa and Northern Territories Affairs [↑](#footnote-ref-103)
104. Also concurrently served as the Minister for Promotion of Local Sovereignty, Okinawa and Northern Territories Affairs, and Regional Revitalisation [↑](#footnote-ref-104)