

Formation and Development of Labour Relations and Labour Law pre-World War II Japanⁱ

Kenji Arita

I Introduction

1. Although the present structure of Japan's labour law was legislated under the occupation following the World War II, it has some significant links to the formation and development of pre-World War II labour relations and labour law¹⁾. So the objects of this paper are to sketch roughly the formation and development of labour relations and labour law in the pre-World War II Japan, and, through it, to explore the origins of the features of labour law and labour law theories of the post-World War II Japan.

2. In so doing, I especially focus on the following three matters. The first matter relates to labour contract; the second matter relates to work rules; and the third matter relates to trade union law which was not eventually enacted

i This paper was written for my presentation at “King's College London – Japanese Labour Law Study Group, Comparative Perspectives on Labour Law Seminar” held on 7th September 2013 at King's College London. I am grateful to Professor Keith Ewing for holding the seminar and for extremely helpful comments at the seminar. I gratefully acknowledge helpful discussions with other participants in the seminar (Professor Alan Bogg, Dr. Nicola Countouris et al.). I am also grateful to Professor Lucy Vickers for checking English in this paper. All errors remain my responsibility. This paper is one of the results of study which is given a grant from the Japan Society for the Promotion of Science (Basic Study (B) No.22330022).

1) See Kazuo Sugeno, *Japanese Employment and Labor Law* (translated by Leo Kanowitz) (2002, Carolina Academic Press, University of Tokyo Press), p.5.

pre-World War II. These three matters are the ones which have significant links to the features of labour law and labour law theories of post-World War II Japan.

II Formation and Development of Labour Relations pre-World War II

A. Formation of Labour Relations and its Development²⁾

3. Industrialisation, narrowly defined as a rapid spread of factory production, started in Japan in the latter half of the 1880s³⁾. Soon after the war against Russia (1904-1905), the Japanese industrial revolution was completed. In that period, the munitions industry, mining industry, transport industry and spinning industry developed by using workers like slaves⁴⁾. By “like slaves” we mean that all kinds of evils flourished in the workplace, such as extremely low wages, extremely long working hours, child labour, de facto confinement of young female workers in spinning mills, de facto forced labour within *takobeya* (concentration shack) and *naya* (labour-boss house) systems at mining or civil engineering and construction industry, and the frequent occurrence of industrial accidents⁵⁾.

4. One of the important features of labour relations in the pre-World War II Japan is the mobility of workers, especially among factory workers. Since mobility was a central part of the “proper” worker career, workers were not

2) See also Table II -1 at the end of this paper.

3) See Koji Taira, *Economic Development & the Labor Market in Japan* (1970, Columbia University Press), pp.107ff.

4) Tadashi Hanami and Funito Komiya, *Labour Law in Japan* (2011, Wolters Kluwer), p.39.

5) See Gennosuke Yokoyama, *Nihon no Kaso Shakai* (The Lower Rank of Japanese Society) (1897), Noshomusho shoko kyoku, ed., *Shokko Jijo* (The Condition of Workers) (1904) etc.

merely motivated to move from factory to factory by search for higher wages⁶⁾. In the 1920s, the depressed economy, company training programs, and regular promotions or raises seemed to contribute to reducing mobility. But dissatisfaction with unfair treatment by employers, the above-mentioned inherent attraction of moving, the inability of labour to defend jobs at the firms in the 1920s, and the return of opportunities to move in the 1930s, together ensured that short-term commitment (or insecurity) and traveling would persist as important elements in pre-World War II Japanese working-class life⁷⁾.

5. Although the government in the wartime (World War II) legally froze all workers in place and took control of all new hiring by regulations, to be concentrated in strategic industries, that wartime manpower policy did not have the long-term effect of promoting a pattern of school-graduate recruitment and career employment. Instead, this was due to a shortage of industrial labour, especially skilled male workers, which was caused by the war itself (demand for soldiers). But these regulations which made it legally impossible for workers to move from one employer to another, seemed to spread, to both workers and managers, the assumption that a worker would spend his career with one employer⁸⁾.

6. Employers and managers sought to exact diligent work through incentive wages, strict rules, and unimpeded exercise of authority. This management attitude set the tone of the labour relationship of the interwar years — a system of authoritarian labour control⁹⁾. Employers and managers thought that lazy, irresponsible, undependable workers were to be controlled by a tight

6) Andrew Gordon, *The Evolution of Labor Relations in Japan Heavy Industry, 1853-1955* (1985, Council on East Asian Studies, Harvard University), p.36.

7) *Ibid.*, p.161.

8) See *ibid.*, pp.262-274.

9) *Ibid.*, p.423.

web of punishments and rewards, output pay for good work, and fines for bad work¹⁰⁾.

7. Although wage control by the government through fiat caused some contradictions during the wartime, government regulations imposed fundamental changes in the wage structure¹¹⁾. To put it concretely, military pressure in the closing days of war did bring an end to output wage payments and adoption of monthly wages. The principle of clearly defined raises for all workers at regular intervals became an established practice. And the Welfare Ministry used the Essential Industries Ordinance Art.13 which authorised the Ministry to issue orders to employers concerning allowance and wages, to promote allowances (overtime pay, night-work pay, perfect attendance allowance, difficult job allowance, family allowance etc.). In so doing, the Ministry used model work rules which set standard levels for each allowance. It should be pointed out that work rules had become those which set standards for terms and conditions of employment.

B. Formation of Industrial Relations and its Development

8. One of the important features of industrial relations in present-day Japan is the predominant form of trade unions, namely, enterprise unions. We can find their origin in pre-World War II Japan. What were the reasons for predominance of enterprise unions in pre-World War II Japan? One of the reasons argued is that criminal law (the Public Order and Police Law enacted in 1899) intervention in trade disputes was one of the major causes of the rapid destruction of young and weak craft unions which had just been organised at the time¹²⁾. Another reason argued is as follows¹³⁾. Meiji workers

10) Ibid., p.244.

11) See *ibid.*, pp.292-297.

12) Sugeno, *supra* note 1, p.6.

13) Gordon, *supra* note 6, pp.49, 251-253.

organised factory unions by default. Because artisan society of the Tokugawa era offered them a declining tradition of craft organisation limited to urban guilds, there was no other sensible place to begin. In addition, respect, treatment as an equal, and membership, remained fundamental values for Japanese workers. So, due to such working-class values and social structure, unions and workers channelled their energies into struggles that never went beyond company-specific issues. These seemed to make enterprise unions predominant.

9. From 1919 (8th Taisyo era), trade union activities made a sudden rise. At this time, some trade unions struggled for recognition of their rights to organise and rights to collective bargaining,—but most of these struggles eventually failed. A very few trade unions achieved their objects, but even then they gained no more than establishment of consultative factory councils¹⁴⁾. Union leaders in the 1920s did organise strong factory unions, but they were unable to create industrial unions to join these units together effectively. Active unions were more often concerned with gaining company-specific demands and better terms of membership. Employers took advantages of this and, aided by government repression of left-wing unions and a decade of bad times, succeeded in fragmenting the union movement, diverting the energy of some workers into company-controlled factory councils mentioned above, and eliminating union strength from almost all large factories by 1931. Small factories became the focus of organising efforts and union growth by the mid-1920s, and the organised proportion of the workforce declined after 1931¹⁵⁾.

14) Kyocho Kai Rodo Ka, Wagakuni niokeru Dantai Kosho oyobi Dantai Kyouyaku (Collective Bargaining and Collective Agreement in Japan) (1930, Kyocho Kai), pp.10-11.

15) Gordon, *supra* note 6, p.425.

10. The wartime state sought to bring stability to the labour relationship and, later, to raise productivity, through the national network of “*Sanpo (Sangyo Hokoku Kai)*” (Industrial Association to Serve the State) patriotic labour organisations¹⁶⁾. In 1940, the military government ordered the unions to join the *Sangyo Hikoku Kai*, which was the Japanese version of the “*Abeitsfront*” of Nazi Germany¹⁷⁾. After this, trade unions had disappeared in Japan.

11. The antagonistic social and political climate, the legal setting and the weakness of the unions’ influence caused by their poor organisation and split between them derived from their political factions, hardly made for the development of sound trade unionism or indeed for the development of a modern labour law system based on such trade unionism¹⁸⁾.

III Development of Labour Law pre-World War II

A. Individual Labour Relations Law

12. In Japan, the Civil Code enacted in 1896 on the German model, has some provisions concerning a contract of employment which is one of the 13 typical contracts provided in the Code. So, individual labour relations have been understood as contractual relationships from the Meiji era. The rules provided in the Civil Code have been (i) definition of employment (Art.623), (ii) timing of payment of remuneration (Art.624), (iii) restrictions on assignment of employer’s rights (Art.625), (iv) cancellation of employment with indefinite

16) Ibid., p.429.

17) Hanami and Komiya, supra note 4, p.40.

18) Ibid., p.41.

term (Art.626), (v) offer to terminate employment with indefinite term (Art.627), (vi) cancellation of employment due to unavoidable reasons (Art.628), (vii) presumption of renewal of employment (Art.629), (viii) effect of cancellation of employment (Art.630), (ix) request to terminate due to commencement of bankruptcy procedures for employer (Art.631). The Civil Code provides only these 9 rules for contracts of employment. These rules are not enough to protect workers situated in the harsh employment conditions mentioned earlier (see *rara.3*).

13. The government had been concerned about the harsh employment conditions. Relying on the goals of “industrial development” and “national defence”, it had appealed to the mercy of the financial community since 1896¹⁹⁾. Finally, in 1911, the Factory Law was enacted. But this came into enforcement in 1916, because of the strong resistance by the capital. It concentrated on providing protection for female and child workers, and even this protection was very limited²⁰⁾. For instance, the maximum number of working hours per day for women and children was 12 (later to be made 11 by the Amendment of 1923) and enforcement of the prohibition of night work was postponed for 15 years after its introduction. The only protection provided for adult male workers was compensation for accidents at work.

14. The Enforcement Regulations of Factory Law of 1926 required that factory employers should compile work rules and report the rules to the Local Directors (Art.27-4). It provided the matters which factory employers should compile into the work rules. These matters were as follows, (i) the matter concerning the starting and closing time of work, rest, holiday, and a shift, (ii) the way to pay wages and its timing, (iii) the matter concerning a burden of

19) Sugeno, *supra* note 1, p.6.

20) Hanami and Komiya, *supra* note 4, p.40.

food expense where factory workers had to carry it, (iv) the matter concerning disciplinary punishment where there were disciplinary rules, and (v) the matter concerning dismissal. It also provided that the Local Directors had authority to amend work rules when they thought it necessary.

15. This legal system of work rules seemed to have the objective of making the terms and conditions of factory workers clear, and, through it, to protect the interests of workers, and to prevent disputes between worker and employer, even if work rules were compiled by employers²¹⁾. It should be pointed out that this legal system of work rules seemed to take for granted that work rules had binding effect on contracts of employment²²⁾. However, it was not realised at the time, that, in future, this legal system of work rules would cause the problem of substantial restrictions on the freedom of contract²³⁾. This where we find the origin of the difficult theoretical problem of binding effect of work rules in Japan.

B. Collective Labour Relations Law

16. Like the British organised labour movement, the Japanese organised labour movement had experienced repression under the criminal law. First, under Atc.17 and 30 of the Public Order and Police Law of 1899, a person who, with the aim of causing someone to join a group, commits violent acts, threats, or public defamation, or tempts or agitates someone to engage in a strike, was subject to criminal punishment. Given the lack of clarity of the last phrase, and its expansive interpretation by the regulatory authorities, conduct aimed at improving the treatment of workers could almost always be threatened or

21) Fujio Hamada, *Syugyo Kisoku no Kenkyu (Study of Work rules)* (1994, Yuhikaku), p.13.

22) *Ibid.*, p.16.

23) *Ibid.*, p.14.

restrained by the police²⁴⁾.

17. In the 1920s, the state came to quietly tolerate moderate labour movement, in an application of the candy-and-whip theory of social control²⁵⁾. This shifting government policy gave workers the de facto freedom of strike for economic ends by the mid-1920s. This was done by repeal of Atc.17 and 30 of the Public Order and Police Law of 1899 in 1926. At this stage, Japan seemed to slough off the criminal conspiracy. But other pressure of the Administrative Enforcement Law of 1900, the Penal Regulations for Criminal Offenses of 1908, the Law Concerning the Punishment of Violent Conduct of 1926, and the like, could be used against active union organisers and the union leadership of political movements²⁶⁾.

18. In 1926, when Atc.17 and 30 of the Public Order and Police Law of 1899 were repealed, the Labour Dispute Conciliation Law was enacted. However, most of the conciliations under this law were informal mediation by the Police Bureau of Home Ministry which was generally unfavourable to workers in the 1920s. This was because of the form of trade disputes. Since most of the trade disputes at the time were not the type of peaceful walk out but the type of sit in, they conflicted with property rights. So, even if authorities did not arrest strikers, employers were likely to dismiss them, and workers had no legal resources. Union activists and strikers remained extremely vulnerable²⁷⁾.

19. In this situation, from 1919 to 1931, the government made a persistent effort to enact a trade union law. The government at the time came to think that it would be better to encourage the growth of moderate trade unions and to enact a trade union law than to suppress trade unions. In the course of the

24) Sugeno, *supra* note 1, p.6.

25) Gordon, *supra* note 6, p.208.

26) Sugeno, *supra* note 1, p.6.

27) Gordon, *supra* note 6, p.210.

discussion concerning the appropriate form of a trade union law at the time, the principal issues for the enactment of the law were almost entirely defined²⁸⁾. These issues were as follows, (i) whether government recognition of trade unions would automatically occur merely on the basis of reporting by the unions, (ii) whether the legality of trade unions should be conditioned on government licencing, (iii) whether unions should be granted recognition without any reporting requirement, (iv) whether such matters as the scope of the unions' business and the number of its members should be incorporated into the requirements for qualified trade unions, (v) whether to recognise alliances between trade unions, (vi) whether to grant union status as juridical persons or entities (and if not how they could conduct their business), (vii) whether to prohibit the employers' dismissing of workers for joining unions, (viii) whether to clarify strikers' exempting from liability, (ix) what effect to accord collective agreements, (x) whether and to what extent administrative agencies should have supervisory authority, such as the right to dissolve trade unions or to order cancellation or amendment of their constitutions and resolutions.

20. Despite the persistent efforts to enact trade union law, those efforts collapsed in the House of Peers in 1931. However, those accumulations mentioned above formed the basis for the birth of the former Trade Union Law of 1945 which was enacted only four months after the end of World War II.

IV Theories of Labour Law in the pre-World War II

21. Here, I take up the Izutaro Suehiro's and Isao Kikuchi's theories of labour law among the theories of labour law in the pre-World War II. Suehiro was the

28) Sugeno, *supra* note 1, p.8.

first and the most influential academic labour lawyer in Japan, who committed the post-World War II legislative process of labour laws in Japan. Kikuchi was the leader of theorists of social law, which he thought to include labour law, social security and welfare law, and economic law. The theory of social law has been one of the influential legal theories since the post-World War II in Japan. I summarise the essence of their theories of labour law and, though roughly, consider them.

A. The Theories on Labour Contract

21. Suehiro argued that labour contract is also based on the doctrine of freedom of contracts. However, he continued to argue as below²⁹⁾. It is the precondition for the doctrine of freedom of contracts to work effectively that the parties can negotiate on equal footing, but in terms of the parties of labour contract, that is to say worker and employer, there is no such a situation. Then, it is needed to create such a situation that the parties of labour contract, worker and employer, can negotiate on equal footing. To realise such a situation, it is indispensable that workers monopolise labour in the labour market. And it can be realised by workers joining trade unions and then bargaining collectively through trade unions to set the terms of trades in the labour markets. Suehiro's above mentioned argument seems to be the theory to justify the existence and activities of trade unions, on the basis of the doctrine of freedom of contracts: and this was justification for labour law regulation through the autonomous regulatory way.

22. Kikuchi's argument about labour contract was as below³⁰⁾. The labour contract is defined as a contract which one of the parties agrees to work for, in

29) See Izutaro Suehiro, *Rodo Ho no Kenkyu (Study of Labour Law)* (1926, Kaizou Sya), pp.25-50.

30) See Isao Kikuchi, *Rodo Ho (Labour Law)* (1938, Nihon Hyoron Sya), pp.142-146.

subordination to, the enterprise, and the other agrees to pay for work at the level of living, and which social legislation regulate its conclusion and performance. It is not left laissez-faire. Regarding the reasonable regulation on subordinate labour and guarantee of living wage, employers as managers of enterprises, have responsibilities, and then these responsibilities may be supervised or regulated by the state. In this sense, labour contract must be called as “social legislative contract”. Kikuchi’s argument the above mentioned seems to be the theory to make a sharp distinction between contract of employment in the civil law and labour contract in labour law. This was another justification for labour law regulation by use of the concept of social law.

23. These two theories on labour contract provided the justification for labour law regulation based on the understanding of the features of labour contract. They are very interesting to the present-day Japanese academic labour lawyers who have the base of constitutional fundamental rights concerning labour (the right to existence, the right to work, the right to organise, the right to bargain collectively, and the right to strike).

B. The Theories on Work Rules

24. Suehiro argued, on his understanding of social autonomous law, that work rules have a binding effect on labour contracts, because it is made to bind workers in a factory as a social autonomous law (customary law), regardless of the process by which it is made, which is unilaterally by the employer³¹⁾. Kikuchi agreed this argument³²⁾. This understanding of the nature and ground for binding effect of work rules has link to post-World War II theories on work

31) See Suehiro, *supra* note 29, pp.394ff.

32) Kikuchi, *supra* note 30, p.260.

rules.

C. The Theories on Trade Union Law

25. Suehiro actively commented on a series of bills of trade union law, and pointed out many problems which they included. Considering those comments, he seemed to think that a trade union law should be to regulate collective labour relations for the sake of promoting the making of social autonomous law (i.e. collective agreements). Understanding Suehiro's theory on trade union law in this way, he seemed to set the base of social autonomous law in the core of labour law.

V Concluding Remarks

26. Although this paper is only rough sketch of the formation and development of labour relations and labour law pre-World War II Japan, we find some points which are the origins of the present-day Japanese labour law, and which have links to the present-day Japanese labour law and labour law theories. It should be pointed out that we can find the fact that the power and the form of trade unions had a very strong influence on the formation and development of labour law and labour law theories.

Table II-1

The Japanese Factory in Historical Perspective: Stages of Development

1850	1) Indirect Control –oyakata prominence –high mobility	1a) Indirect Control	1850
1900	2) Direct Control –paternal ideology –authoritarian, capricious management practices	2a) Direct control asserted; Paternal ideology articulated, 2b) “Softer” paternal system reshaped to meet labor challenge – Japanese labor management practices emerging in customary form.	1900 1917
1939	3) Systematic, regulated labor relationship	3a) Attempt at Bureaucratic Revision –attempt to impose more regular wage, job practices –Sanpō labor organization 3b) Labor Version –livelihood wage (age/seniority/family) –contractually guaranteed job –equal union participation 3c) Management Revision –seniority wage with important discretion –implicit job guarantee, for some –weak second unions	1939 1945 1947/1948

(Source: Andrew Gordon, supra note 6, p.414.)