

# Trends in Economic and Social Regulation and Implications for Japan

Gregory W. Noble

## abstract

Slow growth and excessive pessimism about industry capture and bureaucratic imperialism have blinded observers in Japan to important recent reforms of economic regulation (particularly elimination of various forms of supply-demand balancing), and impeded analysis of emerging issues. Economic deregulation both abroad and in Japan and increasing demands for social and environmental regulation, as well as prudential regulation and oversight of corporate governance, have only increased the significance of political and managerial issues surrounding regulation: effects of changes in partisan control; regulation of partial monopolies; attempts to centralize oversight of regulation, including cost-benefit analysis, policy evaluation, and advisory commissions; establishment of independent regulatory commissions, and the operation of enforced self-regulation by business. Domestic regulation is also increasingly intertwined with regional and global regulatory arrangements.

## Key words

Regulation, deregulation, economic regulation, Japanese regulation, Japanese economic policy

Erratic economic performance since the bursting of the financial bubble at the beginning of the 1990s and the onset of deflation in 1998 have forced a major reconsideration of Japan's political economy. Critics from a variety of perspectives largely agree that Japan needs to undertake serious structural reforms to liberalize and deregulate the economy ; they also largely agree that distressingly little progress has

been made. These evaluations are not entirely without foundation : liberalization and deregulation are indeed worldwide trends and Japan has indeed lagged. It is easy to exaggerate and simplify international trends, however : “deregulation” has proceeded relatively rapidly in some areas, especially “economic regulation” of entry, exit and pricing, but progress has not been entirely smooth, and in the area of “social regulation,” such as pollution abatement or product safety, the trend is if anything toward more stringent regulation. Within Japan, more progress has been made in dismantling or loosening economic regulation, particularly since the late 1990s, than is generally recognized. While some deregulatory issues remain, understanding Japan’s current dilemmas and future prospects requires a fuller examination of the politics and management of regulation.

After a brief review of the diverse origins of regulation, I will examine in somewhat more detail the consensus that emerged in the 1970s and 1980s about the need for deregulation, the backlash against that consensus, and the new and more modest synthesis that focuses on the politics and management of a more liberal, but far from laissez-faire, approach to regulation.

In the early 1970s, the growing consensus within the American economics fraternity that regulation was rarely efficient and often counterproductive began to spread to policymakers, first in Washington and then in other capitals. Soon after, a rougher and less complete consensus emerged that those social and environmental regulations that were absolutely necessary should be implemented with market-conforming instruments rather than through “command and control” by government. After examining the changes to policy wrought by this economic consensus, a number of political scientists then proposed a counter-thesis : deregulation (removal of regulations and even dismantling of regulatory agencies) is far rarer than liberalization (lowering but not eliminating barriers to entry, exit, pricing and investment), which in turn is often far from complete and frequently leads to “reregulation.”

This cynical affirmation of the persistence of regulation, in turn, is gradually giving way to a more nuanced view. A significant amount of economic deregulation has occurred, and reregulation is rarely the same as restoring the status quo ante, not least because it generally leaves bureaucrats with less influence over entry, exit and pricing. At the same time, regulation in some form or other is hard to avoid in many markets, and is both more complex domestically and intertwined internationally than

it was when the deregulatory movement began. Thus, in North America, Australia and Europe, both the rare moment of clarity and consensus that crystallized in the 1970s about the undesirability of regulation and the succeeding emphasis on the durability of regulation have given way to a more mature complexity. The time is ripe for a reconsideration of deregulation in Japan as well.

## Diverse Origins of Regulation

The origins of regulation are surprisingly diverse. Political pressures and bureaucratic initiatives in different branches and at different levels of government have led to a variety of regulations on economic activity. Some can be seen as responses to market failures, including monopoly, oligopoly, and externalities such as congestion and pollution. At times, narrow interest groups have contrived or exaggerated market failures to justify regulations that create or sustain implicit cartels; such efforts are most common when benefits are narrowly concentrated on producers such as railways or coastal shippers while costs are broadly spread across a large group of consumers, such as the farmers or manufacturers that rely on shippers to get their goods to market (Wilson 1980).

Capture by the very interest groups agencies were established to regulate, however, tells only part of the story. Often regulation responds to the risks and inequalities facing both consumers and producers; this was especially true before the Second World War, when fluctuations in the business cycle were severe and few social welfare policies buffeted those wounded in downturns (Hofstadter 1960). Moreover, regulation often incorporated conceptions of justice alien to academic economics, such as a demand that producers charge all users equal prices even when the costs of providing goods or services varied, or the idea that regulation should seek to enhance the "public interest" and not just minimize economic inefficiency (McCraw 1986).

Nor does regulation emerge solely in response to market fluctuations or pressures from below, whether by interest group maneuvering, broad public concern or some combination of the two. Often politicians and high-level bureaucrats actively deploy regulation to extend their bases of power. In the Japanese case, economic regulation typically emerged as part of a larger package of protection and promotion that mixed

developmental and redistributive goals and allowed both politicians and bureaucrats to influence the distribution of goods to their own political and personal benefit (Johnson 1982; Calder 1988; Nakano 1998). Moreover, national legislation is often a response to regulatory initiatives at the local level, or to new or inconsistent rulings from the judicial branch, as in the case of pollution control ordinances and the four big pollution cases in Japan. Thus, while regulation is typically explained in terms of market failure, whether real or manufactured as pretext by central government agencies in collusion with regulated interest groups, its emergence and prolongation are often as much political as economic in origin.

## Consensus on Economic Deregulation

In the early 1970s a rare interval of clarity and consensus about regulation emerged among American academics and then spread to policymakers in America and abroad. Concern by economists that regulation rarely solved the problems it was intended to address and was often counterproductive converged with the work of political scientists increasingly skeptical that the "public interest" rationale invoked in American regulatory legislation actually provided any substantive guidance either to officials attempting to implement policy or to scholars seeking to understand and explain it (Levine and Forrence, with comments by Katzmann and McNollgast 1990). The increasing employment of economists and use of economic methodology that accompanied the expansion of White House and Congressional staffs made policy makers more open to the critiques of regulation emanating from academic economists. In the face of a concerted attack from both left (representatives of consumer groups) and right (businesses and economists concerned about costs imposed by regulation), regulations favoring narrow producer interests proved surprisingly vulnerable.

The deregulatory movement in America not only proved the brittleness of special interests, but also reflected larger economic and political trends. Dissatisfaction with the costs and intrusiveness of new economic and safety regulation mobilized a wide range of businesses that had formerly passively accepted the inefficient regulation of individual industries such as trucking, broadcasting, or natural gas. The combination of inflation and stagnation in the 1970s and 1980s motivated a search for ways to

improve economic efficiency and flexibility. The accumulation of theoretical and empirical studies on the failings of regulation made deregulation an obvious candidate, even though the connection between regulation and the larger macroeconomic ills of the period was indirect at best. Finally, the resurgence of conservative parties and leaders such as Thatcher and Reagan and the rise of corporate political action groups in the United States brought reduction of alleged government excesses and liberation of business energies to the top of the political agenda (Derthick and Quirk 1985).

The deregulatory movement born in America spread first to the UK under Thatcher, and then to New Zealand, Australia, and other countries. At first it had relatively little influence in continental Europe, but it was later taken up by the European Community (and its successor, the European Union) and the OECD (OECD 2002). The apparent economic revivals in the US and UK, and pressures for regulatory convergence arising from the increasing international mobility of capital eventually exerted pressure for change in a liberalizing direction even in more corporatist countries such as Germany, Sweden and France, though the degree of convergence remained hotly contested, and varied significantly across issue areas, industries and countries (Wilensky 2002; Braithwaite and Drahos 2000; Hall and Soskice 2001; Iversen, Pontusson and Soskice 2000). In Japan, the deregulatory ideal became a central component of the broader neo-conservative movement for administrative reform, beginning with the Daini Rincho 第二臨調 of the early 1980s (大嶽 1997).

The deregulatory movement initiated in America proved highly influential. It overcame opposition from apparently firmly entrenched special interests, delivered major economic benefits without causing the significant disruptions in service that many had feared (Winston 1998) and spread to the rest of the world. It is important, however, to note the limits to the deregulatory movement. First, in the areas of health, safety, and pollution, regulation not only withstood political attack, it continued to grow vigorously. Social regulation is popular (Winston and Crandall 1994). Voters may be increasingly distrustful of government, but they are almost as distrustful of business and do not share the confidence of economists that market pressures alone will discipline and restrain big business; distrust of government reflects more unhappiness that governments regulate ineffectively and inefficiently than a libertarian desire to eliminate governments or regulation (Pharr and Putnam, eds. 2000; Gallup

International 2002).

In addition, unlike the case with economic regulation, no convergence emerged on the merits and demerits of social regulation. Critics on the left saw pollution and safety as clear cases of market failure, while economists lacked the kind of compelling evidence to show that the unfettered market could attain social goals more effectively than they had been able to muster in the case of economic regulation. Conservative politicians offered numerous critiques of inefficient social regulation, but even in America and Britain they did not try to overturn social regulation completely. The Reagan administration contented itself with depriving the Environmental Protection Agency of funding needed to enforce pollution laws, but succeeding administrations, Republican and Democratic alike, relaxed the pressure (Eisner, Worsham and Ringquist 1999).

## Antithesis : Deregulation as Reregulation

Many analysts went so far as to argue that even in areas of economic regulation the deregulatory movement often stalled or led to reregulation. Limited liberalization, they argued, was far from full-scale deregulation and “strategic reregulation” often—particularly in Japan—left regulators in an even stronger position than before (Majone 1990 ; Hall and Soskice 2001 : 58-59, fn. 40 approvingly cites Vogel 1996 as showing that “all deregulation is implicitly a form of reregulation.”) In practice, governments sometimes liberalized in one area, but without undertaking necessary complementary steps in corresponding areas, so that liberalization had little effect. Or they combined liberalization with new regulations. In Japan, for example, the Ministry of Posts and Telecommunications (MPT) used liberalization to gain regulatory authority over the formerly largely autonomous NTT. In developing and transitional economies, rapid moves to privatize former state enterprises without first ensuring the creation of genuinely competitive markets often led to monopolistic abuses and loss of public support for liberalization and deregulation.

In some ways, the limited results of early efforts at deregulation outside the US and UK should not have been too surprising. Although deregulation is often justified in terms of benefits to consumers, household consumers everywhere are hard to organize

and (especially in Japan) place greater priority on safety and protection against possible abuses than on cost efficiency and low prices (Vogel 1999a). In coordinated economies such as those of Japan and most of continental Europe, industries are economically and politically interrelated, so that even efficient industries that are victimized by restrictive regulations covering other industries may be reluctant to support aggressive deregulation for fear of undermining the fabric of cooperative relations (Vogel 1999b). Unlike the case in the United States, where specialized regulatory agencies were often staffed, particularly at the top, by mobile professionals who did not necessarily oppose limiting or even eliminating the regulatory authority of the agencies in which they currently worked, government officials elsewhere tended to view deregulation as a threat to their purpose, powers and career advancement. More generally, in economies with more rigid labor markets, the possible increases in unemployment stemming from deregulation were more frightening than in the liberal countries, where opportunities for future reemployment were more plentiful.

Nor was the broader economic environment as conducive to deregulation elsewhere. Until the mid-1990s, Britain and the United States seemed to trail Japan and Germany in economic performance; particularly in Japan, the severity of structural problems did not receive wide recognition until after the bankruptcies of Yamaichi Securities and Hokkaido Takushoku Bank in late 1997. Japan's problems were seen as centered in the public sector; early efforts thus concentrated more on cutting budget deficits and reforming quasi-public enterprises (特殊法人) than on a concerted attack on regulation.

## Synthesis : Coexistence of Deregulation with Enhanced Regulation

By end of the 1990s a new synthesis emerged, involving the coexistence of significant deregulation of many markets, including finance, retailing and transportation, with more complex and in some cases more extensive patterns of regulation in other markets. In Japan, pressures for liberalization and deregulation continued to mount. The weakening of the LDP and its equally conservative opponent, the Japan Socialist Party, created a political opening for serious consideration of deregulation. A consen-

sus emerged, albeit later and more weakly than in the US and UK, that deregulation was necessary and possible. As in the United States, politicians touted deregulation as a solution for larger and more intractable problems. Prime Ministers pledged to promote deregulation, and though with brief exceptions they did not commit large amounts of political capital to the task, neither did they oppose it, or try to weaken the deregulatory machinery. That machinery received strong backing from the business community. As the economic climate weakened over the mid-1990s, even domestically oriented businesses and small enterprises began to focus on the possible cost savings from deregulation. Keidanren and the Japan Chamber of Commerce and Industry, once seen as reluctant to challenge regulations protecting their constituent industries and firms, began to take a more aggressive stance, often in conjunction with the American Chamber of Commerce in Japan. The once pervasive balancing of supply and demand (需給調整) essentially disappeared and entry and exit became easier in a wide variety of industries (Noble 2002a; author interviews, Nippon Keidanren and Japan Chamber of Commerce and Industry, April 2002; cf. 秋月1998). In France, Germany and many other continental European countries, liberalization of finance, telecommunications, electricity and other markets made significant progress, though in most cases they lagged the Anglo-American countries (see e.g. OECD 2001).

Lowering of barriers to entry, exit, pricing and investment resulted in a number of broadly similar outcomes across industries and countries, including higher levels of industry output and greater variety in the features and quality of goods and services, but also greater variance and instability in prices (Emmons 2000). In Japan, lower prices for electricity, transportation and many other products were largely obscured by the simultaneous onset of deflation; only in the case of telecommunications were price declines stimulated by deregulation great enough to occasion wide-spread notice (Noble 2002a).

The market structures that followed deregulation were not, however, always fully competitive. The emergence of a competitive free-for-all depended upon the relative absence of barriers to entry, such as economies of scale and scope, switching costs and social regulations. Usually, fierce competition broke out only when industries were already characterized by excess capacity even before deregulation. Where direct and indirect barriers remained great, the typical outcome was “incumbent-on-top” as in British rail and power generation, as well as telecommunications in New Zealand. In



some cases, such as privatization in Malaysia, the deregulatory bargain was explicitly oriented toward fairness, resulting in pie-sharing, but when reform was ambiguous and property rights remained unclear, new entrants and incumbents ended up sharing a black hole of unprofitability ; Mexican toll roads and American school management contracts exemplified this predicament (Emmons 2000).

Less recognized in the literature is the importance of interaction effects in determining the impact of regulatory reform on competitive structures. In countries with flexible financial and labor markets, deregulation leads to much greater dynamism—and instability—than in countries where capital and labor are less free to move into newly liberalized markets. A prime example is the boom and bust following deregulation of the American telecommunications industry. Huge amounts of capital flowed into fiber optics and electronic commerce on the basis of faulty projections of dazzling growth in demand, and when growth proved to be only moderately rapid, most of the new firms collapsed. In Japan, on the other hand, new telecommunications firms trying to take advantage of the opportunities opened up by deregulation found it more difficult to raise capital and attract experienced employees. During the upswing phase, growth in telecommunications services was more restrained, but speculation was also limited. Japan did not suffer a telecommunications bust, and Japan now leads the US and UK in availability and price of many telecommunications services (albeit partly because of Japan's greater population density). On balance, then, deregulation has provided more freedom, flexibility and efficiency, but it has not been a panacea leading to perfectly competitive and well-behaved markets.

## NEW ISSUES

### *Attempts to reform social regulation*

Continuing efforts at regulatory reform have raised a number of new issues. Some countries, including Japan, have pushed to extend economic deregulation into new areas, including health care, education and safety. Based on initial outcomes in other countries, however, it will be difficult to make significant progress, and complete deregulation will prove utterly impossible. Social areas such as health and education are rife with market imperfections such as incomplete and asymmetric information

and gaps between the consumers and payers of services. More fundamentally, in social areas the desired goals are often numerous, complex and partially incommensurable, and measurement of outcomes and assignment of responsibility is difficult and imprecise, making it difficult to devise appropriate market-based incentive systems to replace command and control-style regulation (cf. Wilson 1989). A decrease in the death rate from cancer, for example, could as easily result from new technology or improved diet as from particularly effective treatment by doctors and hospitals. The consequences of bankruptcy for schools or hospitals are also far more severe for students and patients than the bankruptcy of a steel or rubber supplier would be for an auto firm, making it difficult to apply normal market principles to failing firms. As Emmons (2000) notes, citizens view health care and education (at least through high school) as basic goods, and they will not simply chalk up failures and disruptions as inevitable risks of participating in a market economy. Even in the United States, the only industrialized democracy without national health care, relentless increases in health care costs are leading to the expansion of managed health care and will likely end in the imposition of a national system, probably combining elements of competition in provision with government regulation of services (including pharmaceuticals) and costs. At any rate, the prospect is for more regulation rather than less. Similarly, efforts by Keidanren and other Japanese business groups to reduce government oversight of industrial safety standards contributed to the environment in which electricity utilities were able to file misleading reports of safety checks at nuclear power plants. The resulting public outrage not only threatens the future of nuclear power but also raises new pressures to reinvigorate government oversight and regulation.

### *Partial Monopolies*

A second issue raised by the extension of deregulatory initiatives is how to handle partial monopolies in utilities such as electricity, water, and telecommunications. In many utilities it has proven possible to introduce competition into the upstream generation or supply side even while the final distribution to users through cables, wires and pipes remains subject to strongly increasing returns to scale and thus partial or complete monopoly. Once utilities reached virtually the entire population,

they began to exhaust economies of scale and presented increasing problems of gigantism and inflexibility, and greater difficulty in acquiring new sites for gas and electric plants and the pipelines and port facilities to support them. Similarly, the reluctance of telephone monopolies to provide open access for computers and on-site telephone exchanges became a serious obstacle to business communications. At the same time, technological developments such as efficient, small-scale power generating facilities within the grounds of a single factory or microwave relays that bypassed the traditional telephone system made it possible for new suppliers to "cherry-pick" the best clients from the utility monopolies, thereby undermining traditional rate structures and political compromises across classes of users. In the face of these developments, right-wing advocates of marketization and left-wing supporters of consumer rights and economic decentralization converged on the desirability of deregulation (Anderson 1980). Attempts at deregulation of the potentially competitive sectors have been hampered by continuing monopolies in distribution, however, while attempts to introduce lighter or more flexible regulation of distribution have proven anything but easy, not least because of the continuing importance of various forms of network externalities, such as interoperability externalities and call termination externalities.

Since the breakup of the AT&T system in America, virtually all countries have moved to introduce elements of competition into the former telephone monopolies, but the exact pattern of competition and regulation varies significantly (Huntley, Carlyle, and Caldwell 2000 ; Long 2000). Notably, where the American courts separated AT&T's long-distance activities from local service, and broke the latter into several regional companies, Japanese authorities simply corporatized NTT. New competitors could enter, but they faced an intact incumbent giant (Vogel 1996 ; Kawabata 2001). In Europe and especially America, partial deregulation and continuing technological advances led to a burst of investment, entrepreneurship and growth. Prices for long-distance and mobile telephone services dropped and demand soared.

Despite new entry and vigorous investments, in the initial decade or so after liberalization virtually all of the old telephone monopolies proved surprisingly resilient. In part this reflected the immense economic and political influence stemming from their huge asset bases, large workforces and formidable cash flow, and the indispensability of telephone service to households and companies. It also reflected, though, important improvements in organizational efficiency, responsiveness and

flexibility following corporatization, the relaxation of price controls, and the stimulus of competition. The continuation of “incumbents on top,” then, did not necessarily signal a failure of (partial) deregulation (Emmons 2000). The continuing strength of incumbents and waves of mergers and acquisitions did, however, make it difficult to solve the continuing problems of monopoly and oligopoly. A comprehensive resolution probably will require extension to individual homes and offices of multiple, competing delivery modes, such as fiber-optic and coaxial television cables, wireless and satellite connections and dual use of existing electric wires to carry telecommunications services. Completion of alternative networks is likely to take at least a decade, and in the meantime, regulation of the declining but still powerful partial monopolies that control the final delivery of telecommunications services will remain a vexing issue.

Outcomes in Japan have been similar, despite a failure either to dismantle NTT (as happened in the US), or build up a single, powerful competitor (as authorities in the UK tried to do) (株式会社 情報通信総合研究所編2001 ; Huntley, Carlyle, and Caldwell 2000 ; Noble 2002a). Prices for local, long-distance, and mobile phones fell rapidly, and after a brief delay high-speed ADSL connections expanded more rapidly and fell to lower prices than in most other advanced countries. Subscriptions to the three or four competing wireless services surpassed the number of users of the fixed lines monopolized by NTT. After a slow start, the introduction of the “MyLine” system to choose providers and portable phone numbers for consumers abruptly slashed the market share of NTT even in fixed lines. New entrants became consolidated and focused on specific market niches rather than seeking to match NTT across the board. New entrants, some of them from other industries or foreign countries, pioneered in introducing disruptive technologies such as dramatically cheaper IP (Internet Protocol) telephone services. After 2000 NTT began responding more aggressively, cutting redundant staff and reluctantly competing in the new service areas, and it will be hard pressed to avoid even more drastic restructuring. Full competition in the final distribution of telecommunications has not yet been achieved, and in some areas, such as allocation of rights to use the radio-magnetic spectrum or occupy desirable satellite locations, a degree of regulation remains unavoidable. On balance, though, the degree of deregulation is impressive. Government authorities still exert considerable influence over the parameters of competition, including rates charged by NTT for access to its local lines, but they no longer control the contents, timing, and pricing of new products. As in many

other areas in Japan, regulation has increasingly moved from ex ante regulation (before the fact permission) to ex post regulation (after the fact notification; 事前規制から事後規制へ). Labeling this shift “reregulation” misleadingly understates the magnitude of the increase in flexibility and autonomy accorded would-be providers.

Regulatory change in electricity has also been significant, and highly influenced by the ongoing liberalization of telecommunications, but complete deregulation is not even a distant prospect (Anderson 1980; Midttun and Thomas 1998; McRobb and Prosser 2000). In a modern economy, electricity is a pervasive and indispensable product. Lowering of barriers to new entry and expansion of flexibility in pricing cannot proceed without simultaneous consideration of important externalities in energy policy, including the impact of new producers and heightened price competition on pollution abatement, energy security, universal access for poor or isolated users, and guarantees of adequate investment to avoid blackouts. Electricity is also a paradigmatic example of the need not just to unleash market forces but to create or “constitute” markets (Macgregor, Prosser and Villiers 2000).

Since electric power is difficult to store and expensive to transport, developing appropriate mechanisms to match suppliers and users and ensure adequate capacity would be a difficult task even in the absence of pervasive monopolies and oligopolies. Authorities in different countries and states have tried a number of approaches, including price caps, “wheeling” of power over lines owned by other utilities, and power pools (矢島1998; Joskow 1997; Joskow 2000). Early results include significantly lower prices from improved efficiency, but also unsettling instability, notably an energy crisis costing consumers in California tens of billions of dollars. In the context of the fluid, innovative, and aggressive American financial system, regulatory relaxation led to commodification of electricity, which came to be bought and sold on futures markets (along with telecommunications bandwidth). It also facilitated speculation and corruption, most famously involving the energy trader Enron, which in little more than a year went from one of the highest market capitalizations in the world to bankruptcy (Fox 2002; Navarro 2002; see also the June 2002 special issue of *Journal of Industry, Competition and Trade: From Theory to Policy* 2 (1-2)). The regulatory system in California that Enron and others so voraciously predated may indeed have been doomed by political compromises that resulted in a flawed regulatory apparatus, as critics have suggested, but the flaws and loopholes reflected in part strenuous lobby-

ing by energy companies like Enron, and it is clear from the experience of England and other countries and states that implementing “light” regulation and preventing predatory speculation will be particularly difficult in the case of electricity (McRobb and Prosser 2000).

Moreover, if transforming monopolies into competitive markets through the implementation of multiple delivery systems is a light at the end of the tunnel for telecommunications, the natural monopoly character of electricity delivery remains firmly in place. Technological breakthroughs make it increasingly inexpensive to deliver huge amounts of information over diverse telecommunications media, but the physics of electricity allow of no obvious alternative to thick cables and wires of finite capacity. Liberalization has led to improved efficiency and lower prices, but by greatly increasing the number of producers and transactions it also has made regulation more complex and difficult. Unlike the case in telecommunications, liberalization of markets for electricity really is less a case of deregulation than reregulation: the influence of regulators is less absolute but no less ubiquitous.

Reform of electricity regulation has proceeded more slowly in East Asia than most other parts of the world. Japan has moved steadily but slowly in the direction of liberalization as demands have grown to lower steep electricity tariffs. METI has adopted an evolutionary approach, gradually expanding the area of consumer choice to include medium-sized users. In the face of fierce resistance from the regional electricity monopolies and their protectors in the LDP, senior officials in METI have restrained younger bureaucrats from vertically disintegrating the industry into generation, transmission, and distribution segments (石黒 1999; エネルギーフォーラム 2003: 34). In the absence of radical structural reforms by regulators, incumbents and potential new entrants alike initially refrained from aggressive new investments. Trading in electricity increased but new entrants accounted for less than 1 percent of generation capacity. As a tacit agreement emerged that liberalization would expand in stages to include all customers in return for refraining from vertical dismemberment, new entrants gradually grew more aggressive, and the first tentative invasions across industrial and territorial boundaries appeared (electricity vs. gas; regional monopolies vs. each other; エコノミスト 2002年1月15日: 40–41). Safety scandals have combined with the new pricing pressures to raise questions about the future role of nuclear power and the allocation of costs resulting from the abandonment or

decommissioning of nuclear power plants.

Liberalization of industries retaining elements of natural monopoly thus has turned out to be complex and difficult. Significant competition is slow to emerge and hard to maintain. In cases such as electricity, liberalization entails as much the creation and legal constitution of new markets as the freeing of existing markets (contrast, for example Macgregor, Prosser and Villiers 2000 with Viscusi, Vernon and Harrington 2000). The Anglo-American countries have adopted a particularly aggressive approach, while East Asia has lagged, particularly in electricity. Net benefits have been significant, particularly in telecommunications, but the markets shaped by liberalization have proven more unstable than expected and regulatory reform remains a work in progress.

### *Antitrust Policy* (独禁政策)

A third evolving area is antitrust policy. Antitrust itself, of course, is a hardy area predating most economic regulation and almost all social regulation. Important changes have occurred recently, however. For a number of years, the appeal of antitrust declined, as economists and lawyers lost confidence in the traditional structure-conduct-performance model, with its assumption that high levels of industrial concentration would inevitably lead to abuse of market power (Weiss 1979). As deregulation gained momentum in the late 1970s, reconsideration of traditional approaches to antitrust gained ground. As long as markets were contestable, analysts asserted, monopoly power could not endure (Bork 1978; Baumol, Panzar, and Willig 1982). The shift in thinking was abetted by the Reagan administration in the United States, which cut staff in antitrust agencies and replaced lawyers in key positions with Chicago-school economists (Eisner, Worsham, and Ringquist 2000: 79-83).

In the 1990s, however, a wave of giant mergers, often motivated by a desire to consolidate research and development efforts, or even eliminate competing approaches, elicited greater scrutiny from government, as did a major increase in international mergers. The increasing importance of interconnections and network externalities also raised important antitrust issues (Shapiro 2002; Shapiro and Varian 1998). The most famous case was the antitrust suit filed against software leader Microsoft. The case demonstrated that Microsoft had abused its monopoly over

operating systems for personal computers, but generated little conviction that the government was capable of crafting effective oversight measures in rapidly changing high-technology markets (Viscusi, Vernon, and Harrington 2000:274-277; see also the inaugural issue (1:1) of *Journal of Industry, Competition and Trade: From Theory to Policy*, March 2001).

Less noticed has been an emerging debate over the proper scope of antitrust. As the criterion for evaluating economic regulation increasingly shifted from enhancement of the public interest to maintenance of healthy market competition, some analysts suggested that general competition authorities should replace regulatory bodies focused on specific industries. Others countered that specialized agencies focusing on the problems of individual industries will generally be in a better position to oversee competition; for example, assessing when to force firms to provide access to “essential facilities” under their control to would-be competitors requires detailed understanding of the specific market in which the putatively “essential” facility operates (Downie and Macgregor 2000b).

Antitrust law and the authorities in charge of enforcing it have traditionally been weak in Japan, as in most countries. Under pressure both from the American government and from critics of the oligopolistic tendencies of Japanese business, staffing and funding for antitrust increased rapidly in the 1990s while most other government programs suffered restrictions or outright cutbacks. The JFTC also significantly increased some penalties, and the JFTC initiated joint investigations with some ministries, such as Posts and Telecommunications. JFTC officials have hinted that they should take broad policy responsibility in new areas such as telecommunications. The exact degree of the JFTC's strengthening remains unclear, however.

### *Demands for Regulation*

A fourth major area of scholarly interest is the emergence of new demands for regulation (Emmons 2000). Even when market failures are not severe, consumers or producers may demand stiffened enforcement. One major cause is the persistence of some degree of monopoly or oligopoly, as in the case of electricity discussed above, but often the question is the degree of choice available to consuming households and firms, not just the competitiveness or contestability of markets. For example, in the



case of “essential facilities” or “gateway assets”—usually expensive, specialized assets with long-payback periods, including ports and harbors or even some raw materials and data banks—competitors may seek access, or even demand that regulators force operators to expand capacity to accommodate them, even though economists might suggest that newcomers should build their own facilities or look to alternatives to the incumbent (Downie and Macgregor 2000). Considerations of national sovereignty and safety may prompt demands, particularly in developing countries, for regulation of foreign multinationals, regardless of their market power.

Health and safety issues are particularly likely to attract calls for regulation—and not just from consumer groups. Producers often angle for regulation by the central government so as to preempt onerous and uneven local regulation. Sometimes they seek to use regulation to reassure consumers of the safety and reliability of their products, recognizing (unlike many libertarian theorists) that even if the government resisted pressures to impose regulations, consumer groups could vote in the marketplace by boycotting new products that they did not trust. Genetically modified organisms provide a fascinating example. In the 1980s, Monsanto, a pioneer producer, actively sought regulation so as to assuage consumers and activist groups and ensure a stable market for its new products. As a former Monsanto executive explained to an investigative reporter from the *New York Times* (25 January 2001), “There were no products at the time [late 1986]—but we bugged [then Vice-President George Bush] for regulation. We told him that we have to be regulated.” In the early 1990s a new team of executives grew impatient with regulatory compromises and sought to use Monsanto’s enormous clout with government agencies to avoid labeling and other forms of regulation. This aggressive campaign enraged and energized activist groups, which succeeded in organizing boycotts against Monsanto and GMO products, particularly in Europe. Eventually, the company was taken over and reorganized; the new management team pledged to cooperate with critics and regulators (*Business Week* 24 December 2001). Once again, regulation appears not simply as hindrance or political ploy, but as a necessary element in constituting new markets.

### *Prudential Regulation and Corporate Governance*

A major boom area, particularly after the Asian financial crisis and the American

corporate scandals touched off by Enron and Worldcom, is corporate governance and prudential regulation of financial institutions (Litan, Pomerleano, and Sundararajan eds., 2002; Monks and Minow 2001). Regulations on disclosure, auditing and oversight seek to protect stockholders, particularly minority investors and employee-owners, from possible deception or bias by managers or controlling stockholders. They also aim at protecting transaction partners, suppliers, and the health of the financial system as a whole. Prudential regulation and regulatory support for corporate governance are not just examples of reregulation by power-hungry bureaucrats or vested interests, since firms remain free to enter and exit markets, and to determine their own investments and prices. Still, prudential regulation and strengthening of corporate governance often entail extensive reporting requirements and large increases in regulatory staff. Despite talk of reforming corporate governance in Japan, change in behavior, such as the composition and operation of corporate boards of directors, has been minimal and the government's capacity to review the veracity of corporate information remains limited (小佐野 2001). The deregulation movement's insistence on cutting the number of government employees makes it difficult if not impossible to oversee corporate behavior.

### *The Politics and Management of Regulatory Change*

If regulation is here to stay, analysis of the politics and management of regulatory becomes crucial. The exact composition of coalitions for reform varies from country to country. In the United States, economists, presidents and party leaders, and even the top executives of independent regulatory agencies, advanced the cause of deregulation while opponents in regulated industries and the back seats of Congress proved surprisingly weak in the face of frontal attacks. In Britain, the Tories pushed deregulation, albeit after a half-decade in which they focused on privatization, monetary policy, and other areas. Their efforts took time, but when Labour finally came to power it mostly accepted the changes (Macgregor, Prosser, and Villiers 2000). Regulatory change in Australia began a few years later under Labor, but accelerated once the conservatives took power in 1996. Patterns of regulatory reform varied across continental Europe, but often parties in power began to change under the influence of, and occasionally pressure from, the US and the UK, as well as the OECD,

which took on deregulation as one of its major missions. In Japan, regulatory reform stemmed from the efforts of academics, business groups such as Keidanren and Keizai Doyukai, and the US. Serious reform began under the non-LDP coalition government of Prime Minister Hosokawa and accelerated during the first Hashimoto Cabinet, in which minor coalition partners pushed for more aggressive action on regulation. Some LDP politicians attempted to push back the tide, and other cabinets refrained from investing significant amounts of political capital in regulatory reform, but when push came to shove they allowed the already-institutionalized deregulation movement to continue its course (Noble 2002a).

The relatively high degree of policy consensus and partisan convergence on reform of economic regulation contrasted with continuing ideological debate and partisan conflict on social and environmental regulation. In both cases, active reform slowed by the early 1990s in most countries (though Japan lagged somewhat), but widespread support from business and the public prevented backtracking: few countries reimposed barriers on entry, exit or pricing, while efforts to cut back social regulation largely stalled.

Parties and politicians are indispensable elements of any coalition to reform regulation, but scholars remain divided about when and how greatly they are able to change the specific regulatory actions of government agencies. Rational choice theorists tend to emphasize the ability of politicians to monitor and guide bureaucrats through legislation, procedure, and empowerment of constituents to pull “fire alarms” when dissatisfied with the actions of agencies (McCubbins and Schwartz 1984). The modeling of political oversight as a principal-agent relationship also has been applied to Japan (Ramseyer and Rosenbluth 1993). While few deny that politicians in a democracy sometimes exert decisive influence over the making of regulatory (and other) policies, skeptics counter that clearly demarcated principal-agent relations are more often the exception than the rule. Many policy areas lack the salience to attract political interest, while the complexity of others demands more time and expertise than most politicians can muster. Even when politicians are interested and undeterred, bureaucrats may be able to play off multiple political principals against one another. (Gormley 1989; Eisner, Worsham, and Ringquist 2000: 24-31). Most students of Japanese politics are impressed by the corporate coherence of bureaucratic agencies and the relative division and lack of policy expertise (or interest) by politicians, though in the

crucial case of budgetary expenditures, which are highly salient and only modestly complex, top LDP leaders meet annually as a group to vet each and every new item (McCubbins and Noble 1995). As the strength of the LDP weakened and grew more erratic over the 1990s and coalition cabinets became the norm, scholarly interest grew in the influence of partisan balances and political uncertainty on policymaking (Hiwatari and Miura eds. 2002 樋渡展洋, 三浦まり編), precisely the focus of new research on the dynamics of principal-agency relationships and variations in bureaucratic insulation (de Figueiredo 2002).

In division-of-power regimes such as that of the United States, or even parliamentary regimes in which the ruling party is divided by faction, such as the case in Japan, a crucial managerial issue is the degree to which party leaders can centralize oversight over the regulatory activities of the myriad of agencies and their supporters from industry and the backbenches of the legislature. When the Reagan administration found itself politically incapable of mounting a full-scale rollback of expensive but popular environmental programs in the United States, it changed its focus from politics to management. It weakened enforcement by cutting the budget of the Environmental Protection Agency and loosening implementation guidelines. It also moved to replace command and control measures such as specification of particular types of emissions-control equipment with performance targets and market-based instruments such as effluent taxes and marketable emissions permits. The Reagan administration strengthened procedures first developed under Ford and Carter to use the White House's Office of Management and Budget (OMB) to centralize oversight of regulatory agencies. The OMB insisted that agencies justify proposed regulations with a formal Regulatory Impact Analysis, including cost-benefit analysis demonstrating net social benefits and consideration of possible alternatives. To thwart book-cooking by recalcitrant agencies, the OMB issued specific guidelines for calculating crucial parameters such as discount rates. The OMB rarely flatly vetoed proposed regulations, but its oversight undoubtedly tempered the actions of agencies, especially when the potential costs of complying with regulations were high (Viscusi, Vernon, and Harrington 2000: 18-28; Evans, Worsham and Ringquist 2000: 44-57).

One important element of the American regulatory approach that has yet to exert significant influence elsewhere is oversight by courts. American courts are much more willing than are most other judicial systems to question the criteria by which

regulatory agencies implement the intent of the legislature. For example, courts have thrown out every proposal by the Federal Communications Commission (FCC) to implement the provisions of the 1996 Telecommunications Act on cross-entry by local phone monopolies, long-distance companies and cable television companies (North 2002 ; Wigfield 2003). When the executive and legislative branches of the American political system are held by different parties, or when the presidential party has only a slim majority, courts often thwart the attempts of administrations to run around Congress or evade legislation passed in earlier Congresses. Courts in other countries have been less willing challenge executive agencies (on Japan, see Upham 1987), though there are limited signs that the American adversarial approach has begun to infect Europe (Kagan 2001 ; Kagan and Axelrad, eds. 2000).

Another American export that has begun to make more frequent appearances in other advanced democracies is the so-called independent regulatory agency. Such agencies may be independent of the line ministries of the executive branch, but when it comes to the president, congress, and courts they are more “multiply dependent” than independent. The OECD has extolled the independent regulatory agency as state of the regulatory art, and such “non-ministerial government departments” have proliferated in Europe (Gilardi 2002 ; OECD 2002 ; Macgregor, Prosser, and Villiers 2000 : 10).

Japan, like many European countries, long resisted separating promotion and regulation, but after the financial scandals and failings of the late 1990s, the government reluctantly vested authority for financial regulation in a Financial Supervisory Agency (FSA) nominally independent of the discredited Ministry of Finance. The FSA, in turn, has resisted calls for creation of a separate agency to regulate securities markets, but pressures continue and similar calls for independent regulators have begun to appear in other industries. Of course, creation of separate, independent regulatory agencies for specific industries may conflict with another idea dear to the heart of the OECD—reorienting regulation away from a broad, politically determined definition of the public interest and toward promotion of competition, which presumably would largely be overseen by an antitrust agency. In Japan, as elsewhere, the degree of independence of “independent regulatory agencies,” including many anti-trust authorities, may be questionable. Critics of Japan’s administrative reorganization complained, for example, that putting both the old Ministry of Posts and

Telecommunications and the Japan Fair Trade Commission within the new Somusho might well compromise antitrust enforcement, particularly in telecommunications (Lincoln 2001).

Not all regulation is accomplished through government agencies. Many countries have delegated responsibility for regulation to private bodies. Britain has been especially active in pushing for “light” modes of regulation sensitive to the needs of the business sector. New Labour pulled back slightly from the “business-friendly” approach of the Conservatives but issued an Enforcement Concordat in 1998 that attempted to maintain a congenial dialogue with regulated businesses. One favored technique is to urge business associations to develop non-binding codes of best practice to guide their members. The contention is that such codes are better able to incorporate information about the specific needs and problems of different industries than are regulations promulgated by lawmakers and enforced by bureaucrats. In principle, the presence of commercial and even criminal law in the background should prevent “co-regulation” or “enforced self-regulation” from degenerating into regulatory capture. Critics in Britain, however, fear that such intimate relations are unlikely to produce the effectiveness, consistency, transparency and accountability that the New Labour government trumpets as its goals (Burrows and Woolfson 2000; Macgregor, Prosser, and Villiers 2000). There is a long tradition of skepticism about such approaches elsewhere, including critiques of “interest group liberalism” in the United States and *yuchaku* 癒着 and *amakudari* 天下り in Japan (Schaefer 2001).

Ayres and Braithwaite (1992) are broadly sympathetic to the idea of incorporating corporations in the business of devising and implementing context-specific regulation, but they argue that institutionalized participation by third parties such as public interest groups is crucial to preventing concentrated producer interests from capturing the policy process. Their concept of “responsive regulation” has excited considerable interest, but the practical difficulties of selecting and empowering representative and effective third parties remain daunting.

Many of these managerial issues have appeared in Japan as well. With the reorganization of central ministries and agencies in 2000, some modest progress has been made strengthening oversight in the Cabinet and increasing participation by experts from outside the ministries (田中, 岡田2000; 川北, 尾上2001). Ministries increasingly use cost-benefit analysis and policy evaluation (政策評価), but without much tighter

oversight by some centralized agency to ensure consistency and neutrality, their calculations and evaluations are likely to meet with considerable skepticism.

One area in which considerable reform has occurred without widespread recognition is in the shingikai 審議会 system of policy deliberation councils that plays such a central role in Japanese policymaking. Shingikai have become much more open and pluralistic. Meeting times are officially advertised and minutes or transcripts are posted on the Internet in a timely fashion. Former ministry “old boys” almost never chair councils anymore and industry representation has declined, while the proportion of outsiders, especially women, has increased dramatically. Council members, particularly academics, have begun drafting the text of many reports, formerly a task left almost exclusively to bureaucrats. Complaints that ministries manipulate councils to reach predetermined conclusions—usually conclusions favorable to important clients—are still common (醍醐 2003), but there is no question that the advisory council system has moved considerably closer to Ayers and Braithwaite’s (1992) concept of responsive, tripartite regulation (Noble 2002b). Overall, both in Japan and other advanced democracies there has been some decrease in the insulation surrounding most regulatory agencies and their clients, and greater openness to political parties and the public, though the changes are still partial and further research is needed.

### *Regional and Global Regulation*

Finally, the politics and management of regulation increasingly involve regional (especially European) and global institutions and practices. Braithwaite and Drahos (2000) demonstrate over a vast sweep of policy areas from contract law and intellectual property rights to telecommunications, labor standards, and food and drugs, that cross-national and even global efforts at regulation have a long history. Moreover, since about 1970 there has been a major acceleration of action, reflecting but in some ways surpassing the increase in regulatory activity at the national level. Global regulation often follows codification and modeling of established business practices, and even formal regulation often is not centralized and coercive. Regulations are sometimes codified in formal international agreements entered into by states, but often they reflect delegation to quasi-private bodies, sometimes competing with each other, by states that would rather delegate and steer than row. Global arrangements

in areas such as maritime shipping safety often long-predicate the “new regulatory state” (Braithwaite and Drahos 2000:422; Oswald and Gaebler 1992). At times, global regulations may tie the hands of national authorities, but often they provide opportunities for local regulators, especially from large countries, to extend their reach, sometimes as much to handicap rivals as to shore up international order (Oatley and Nabors 1998; Kapstein 1989). Braithwaite and Drahos (2000:27) report that the United States is far and away the most important actor in the “webs of influence” that spin global regulations, with the European Union an increasingly important alternative; the influence of Japan, in contrast, is “remarkably weak.” While critics fear that globalization of business activities will lead to a “race to the bottom” as countries and regions seek to compete with less-tightly regulated competitors, a “race to the top” is at least as likely, as states converge on the strongest regulations (Vogel 1995; Robyn Eckersley, cited in Braithwaite and Drahos 2000:285-86). In many cases, such as the capital adequacy requirements of the Bank for International Settlements, broad international agreements still leave considerable room for interpretation and implementation at the national level. Global regulation, then, is emerging as a complex and diverse complement to national regulation.

In the layered set of regulatory regimes from the local to global level, a particularly important emerging element is the influence of regulatory action by the European Union. Regulation at the European level is beginning to supplement and in some cases supplant national regulation. Tate’s (2000) study of industrial standardization in Europe suggests that integration leads to layering and increased complexity rather than simple integration or harmonization: most large European countries continue their own efforts at standardization at the same time that they jockey to influence European (and thus often world) standards.

Many liberals in Britain fear that European integration will lead to a nightmarish proliferation of unnecessary and niggling rules cranked out by unaccountable, collectivist Euro-crats, but deregulatory voices are also powerful. On balance, European integration represents a victory for multinational firms, with their European and global interests, over labor, which remains enmeshed in national political economies and is less well represented in the formal institutions of the European Union (Iversen and Pontusson 2000:23). It seems likely that European integration will weaken economic regulation and strengthen environmental and social regulation, in line with



recent trends in individual countries, but no doubt with a distinctly corporatist, continental twist (cf. Lijphart 1999). It is likely to lead to stronger and more elaborate patterns of regulation in less developed countries in southern and eastern Europe. Whatever the exact character of European regulation, it is set to exert increasing influence on the rest of the world. Already Europe is capable of blocking most American proposals, and in the future it may increasingly take the initiative.

## CONCLUSION

Slow and erratic economic growth and excessive pessimism about bureaucratic and protectionist obstacles to regulatory reform in Japan have blinded analysts to important recent reforms to economic regulation, particularly elimination of various forms of supply-demand balancing 需給調整 and movement toward ex post regulation, and obscured economic and political demands for revised styles of regulatory management and other types of regulation. Theories of regulation emphasizing bureaucratic imperialism, industry capture and even the stronger versions of path dependence must be reconsidered. Liberalization and even deregulation are indeed here to stay in many areas, even in Japan, and market-conforming mechanisms are slowly being incorporated into the regulatory toolbox.

At the same time, as this review has shown, the libertarian vision that society can and should rely solely on unregulated market forces is little closer to actualization than when Margaret Thatcher and Ronald Reagan first took office. In many important areas, such as telecommunications, markets remain highly imperfect. In other cases, such as electricity or pollution, markets need to be created and institutionalized rather than simply unleashed. At most, some market-conforming tools will be incorporated within a larger political-legal structure of regulation. Recent corporate scandals over financial manipulation (Enron and Worldcom in the United States) and health and safety (Yuki Jirushi 雪印 and nuclear safety inspection in Japan) suggest that prudential and corporate governance regulation will remain active topics for the foreseeable future. More generally, while policy elites share a strong consensus, at least in principle, on the virtues and robustness of unregulated markets, they tend to overestimate how much that consensus is shared by citizens and the politicians they elect.

Citizens are skeptical about the government, but they trust big businesses, and by implication even well-functioning markets, even less—especially during recessions, which includes most of the last decade or more in Japan. Moreover, in democracies, citizens do not always agree that market competition and cost-benefit analysis should determine all social issues, especially in areas like health care that affect the life chances of all.

Thus, while regulation continues, we need to move beyond extreme formulations such as comprehensive deregulation or bureaucratic imperialism to develop a more complex and sophisticated understanding of regulation. Five trends highlighted in the literature bear particular attention. One is the tendency toward increased scrutiny by higher-level organs and the mass public. Japan has followed the example of the US and UK in making the regulatory process more transparent, and in establishing centralized oversight mechanisms. Complexity and specialization ensure that regulation by individual agencies and subsystems remains central, but the regulatory process is less completely and opaquely monopolized by line agencies and their clients than in the past, even in Japan. The type and degree of centralized oversight is an important topic for future research. A related issue is use by both line agencies and their overseers of cost-benefit analysis and other techniques aiming to impose a degree of uniformity over the policy process. Will the Cabinet or the Somushou actively oversee and manage the techniques by which agencies define, measure and project costs, and benefits, for example?

A third important area is the struggle over the shape and control of anti-trust policy. In the Japanese case, the government has steadily increased the staffing, budget and powers of the Fair Trade Commission even as it has frozen staffing and discretionary budgets for most other ministries and agencies, but the principles that should animate antitrust policy remain ambiguous, as do the actual influence of the JFTC and its relationship to the various promotional agencies. A related, and possibly contending, question is the degree to which Japan will follow American precedent and OECD proposals by establishing more independent regulatory agencies along the lines of the FSA. So far Japan has remained cautious, but pressures for change may mount, and determining the patterns of political influence over the FSA and other “independent” regulatory agencies will be an important research topic. A fifth area worthy of detailed investigation will be the particular way in which regulators vest authority in

quasi-private groupings. Japan, the liberal Anglo-American democracies and corporatist countries in continental Europe have all delegated a great deal of regulation to regulated firms and industries themselves, but they have nested that delegation in distinctly different institutional settings and legal frameworks (Hollingsworth and Boyer, eds. 1997 ; Hall and Soskice 2001).

Finally, the politics and management of regulation in Japan will be affected by developments elsewhere. In addition to the much-heralded increase in capital mobility, which has led to a sharp increase in foreign investment in Japan (albeit from a low base), Japan is affected by many of the same trends occurring in other advanced industrial economies, including aging and higher educational attainment of women (Wilensky 2002 : 3-82). If Japan is unlikely to converge substantially with other democracies, particularly the liberal Anglo-American countries (Hall and Soskice 2001 ; Lijphart 1999), a degree of compression in the range of variation seems to be underway (Noble 1999 ; Tate 2001). Particularly in the case of Japan, we need new conceptualizations to capture liberalizing but far from uniform or convergent patterns of regulation.

Telecommunications provides a good example of the need to move beyond contentions about complete convergence and strict path dependence. For many decades, telephone networks were the responsibility of monopolies, either public agencies or highly regulated private firms. Technological and economic changes made it possible and attractive to open up the networks to increasing competition. After the breakup of America's AT&T in the early 1980s, virtual all countries followed suit, apparently vindicating the argument for Anglo-American led convergence. A closer look at the regulatory structure and internal management of the telecommunications industry in various countries after the break-up of monopolies, however, reveals, much greater divergence, at least through the first decade or so. For example, while the American courts ordered the disintegration of AT&T, the Japanese government left NTT largely intact. Often the technological and global forces labeled "globalization" act more as forces for "uniform disturbance" than convergence. That is, they knock countries off old paths and render unviable certain institutional arrangements, particularly old-style statism, as Hall and Soskice (2001 : 60, fn. 42) note, without, at least in the short-to-medium run, imposing strict convergence on anyone ideal form of organization. Both convergence and path dependence capture part of the story, yet neither

is literally accurate.

Japan may be an especially interesting case. Historically and structurally, it has been far from liberal, but there are some signs that it may be more vulnerable to change than many of the large European countries in legal framework, parties, social consensus and above all economic viability. At the least, Japan is not as stagnant or linked to one trajectory as many observers propose. Ongoing changes, in regulation as in other policy areas, will stimulate important reconceptualizations. If we cannot expect the clarity and consensus of the early 1970s, when universal rethinking of economic regulation and uniform expansion of social regulation occurred simultaneously, some of the new trends in the literature supply important insights into the public opinion, partisan dynamics and managerial issues in regulation. In particular, we need to take a new look at attempts at centralized management of regulation: who seeks to provide oversight, with what standards, with what degree of independence, subject to what standards of transparency and accountability.

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