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# Open Access in the Economic Sphere or the Political Sphere: Evidence from Japan

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**Abstract:** The article uses the case of Japan to argue that the theory of open access order advocated by North and his colleagues goes beyond what is necessary. Although their theory of open access order explains the West relatively well, it does not always apply to contemporary non-Western countries. Similar to the case of India examined elsewhere, the case of Japan reveals that what is more important to economic and human development is the open access in the economic sphere and the interconnected institutions in the areas of property rights protection and contract enforcement, financial market, rule of law, and human resource accumulation. In other words, countries without open access in the political sphere may also be able to achieve a great deal of success in terms of economic and human development if they ensure open access in the economic sphere and devote adequate resources to establishing the necessary interconnected institutions examined in this article. Further research elsewhere on Singapore and China will shed more light on this debate.

**Keywords:** open access order, interconnected institutions, competitive democracy, Japan

## 1 Introduction

Japan experienced very high rates of economic growth after the Meiji Restoration (1868–1911).<sup>1</sup> The country turned itself from a feudal and agricultural society under the rule of Tokugawa to a modern industrialized nation after World War II (WWII). The outcome of development is reflected in the following statistics. The real GDP growth rate was 2.65 per cent from 1890 to 1905, 3.18 to 3.49 per cent from 1905 to 1935, 9.38 per cent from 1946 to 1960, 8.26 per cent from 1960 to 1975.<sup>2</sup> While the economic growth rate was reduced after 1975, Japan still

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<sup>1</sup> William G. Beasley, *The Meiji Restoration* (Stanford: Stanford University Press, 1972).

<sup>2</sup> Takatoshi Ito, *Japan and the Asian Economies: A 'Miracle' in Transition*, 2 Brookings Paper on Economic Activity (1996), 205–272, at 209.

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maintained a GDP growth rate of 4.12 per cent from 1975 to 1990.<sup>3</sup> It was only after 1990 that economic growth started to stagnate.<sup>4</sup> The living standard of the Japanese people reached that of the Southern European nations following World War I (WWI).<sup>5</sup> While the per capita GDP growth rate of 3 per cent from 1890 to 1990 was 60 per cent higher than that of the United States, it was really from 1955 to 1975 that the per capita GDP increased about four times to that of the United States.<sup>6</sup> In 1988, the per capita GNP in Japan was 6.4 per cent higher than that of the United States.<sup>7</sup> In 1990, Japan ranked as being the world's most competitive economy.<sup>8</sup> The high rate of economic development in Japan has been closely related to human development indicators. The attendance rate of elementary school increased from 28 per cent in 1872 to 98 per cent in 1910.<sup>9</sup> The proportion of students completing high school increased from 51 per cent in 1955 to 91 per cent in 1975, 94 per cent in 1990, and 97 per cent in 2003.<sup>10</sup> The infant mortality rate declined from the very high rate of 76.7 per thousand immediately after WWII in 1947<sup>11</sup> to 40 in 1950 and 20 in 1965.<sup>12</sup> Since then, the rate steadily decreased to 7.5 per thousand in 1980, 4.6 in 1990 and 3.2 in 2000.<sup>13</sup> With respect to the life expectancy rate, it also increased from a relatively lower rate of 50.06 for males and 53.96 for females in 1947 to 67.74 for males and 72.92 for females in 1965, 74.78 for males and 80.48 for females in 1980 and 78.32 for males and 85.23 for females in 2002.<sup>14</sup>

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3 *Id.*, p. 209.

4 The real GDP growth rate was 1.28 per cent from 1990 to 1995, *ibid.* See also, Takeo Hoshi and Anil K. Kashyap, *Japan's Financial Crises and Economic Stagnation*, 18 *The Journal of Economic Perspective*, no. 1 (2004), 3–26, at 3–4.

5 Martin Bronfenbrenner, *Some Lessons of Japan's Economic Development, 1853–1938*, 34 *Pacific Affairs*, no. 1 (1961), 7–27, at 20.

6 Yoshihisa Godo and Yujiro Hayami, *Catching Up in Education in the Economic Catch-up of Japan with the United States, 1890–1990*, 50 *Economic Development and Cultural Change*, no. 4, (2002), 961–978, at 968.

7 William T. Ziemba and Sandra L. Schwartz, *The Growth in the Japanese Stock Market, 1949–90 and Prospects for the Future*, 12 *Managerial and Decision Economics*, no. 2 (1991), 183–195, at 191.

8 Ethan Scheiner, *Democracy Without Competition in Japan: Opposition Failure in a One Party Dominant State* (Cambridge: Cambridge University Press, 2006), pp. 32–33.

9 Harold W. Stevenson, *Japanese Elementary School Education*, 92 *The Elementary School Journal*, no. 1 (1991), 109–120, at 110.

10 Yasumasa Kuroda, *The Core of Japanese Democracy: Latent Interparty Politics* (New York: Palgrave Macmillan, 2005), p. 174.

11 *Ibid.*

12 See *Japan: Infant Mortality Rate*, available at: <<https://knoema.com/atlas/Japan/topics/Demographics/Mortality/Infant-mortality-rate>>, accessed 10 January 2017.

13 Kuroda (2005), *supra* note 10, p. 174.

14 *Id.*, p. 174.

People may argue that the case of Japan is consistent with the proposition by North and his colleagues<sup>15</sup> that Japan's development after the Meiji Restoration followed the Western model in the sense of achieving open access in the economic sphere followed by the political sphere starting from the Meiji period with limited suffrage and achieving universal suffrage after WWII.

North and his colleagues divide countries or regions into natural states and open access orders.<sup>16</sup> Natural states solve the problem of violence by limiting access to political organizations and activities and to economic organizations and activities, to elite coalition groups. In this way, natural states maintain stability and make wide social interaction possible. As natural states have to use greater rents or privileges to please the dominant coalition, it is less likely for these countries or regions to have a vibrant and dynamic economy, compared with countries or regions with open access orders.

The open access order advocated by North and his colleagues<sup>17</sup> requires that a country has open access to political organizations and activities, and, open access to economic organizations and activities. An open access in the political sphere makes it difficult for the government or any faction to manipulate the open access order in the economy. Similarly, open access to economic organizations and activities requires political organizations to consider the broad interest of society in order to gain political power to run a government. Historically, open access to political organizations and activities and open access to economic organizations and activities interacted to mutually reinforce each other in the West. United Kingdom and France are two examples that fit the model of North and his colleagues. The United States is a different case that still largely suits the model.

The purpose of this article is to show that the theory of North and his colleagues over-claims. Although the theory explains relatively well the development pattern of the West, the theory is not always able to explain the development of contemporary non-Western countries. For this purpose, the article uses the case of Japan to argue that the successful story of Japan shall be mainly explained by its open access to economic organizations and activities after the Meiji Restoration and the gradual institutional building related to the interconnected institutions. While Japan adopted party politics to a limited extent after the Meiji Restoration and competitive democracy with universal suffrage in 1946, Japan has been effectively under a one-part rule most of the time since 1946. After this brief

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15 Douglass C. North, John Joseph Wallis and Barry R. Weingast, *Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History* (Cambridge: Cambridge University Press, 2009).

16 *Id.*, pp. 18–25.

17 *Id.*, pp. 21–25.

introduction, Part II examines the efforts to remove the restrictions in the economic sphere to achieve open access to economic organizations and activities after the Meiji Restoration. This part further discusses the institutional development related to property rights protection and contract enforcement, financial market, rule of law, and accumulation of human resources. It also argues that Japan's high rate of economic development is mainly the result of open access in the economic sphere and the construction of interconnected institutions. Part III analyses Japan's adoption of competitive democracy after WWII. While Japan has open access in the political sphere as it has adopted competitive democracy with universal suffrage since WWII, its political economy conditions are conducive to a system functionally similar to a one-party system with some minor opposition parties. If Japan has achieved much in terms of economic and human development, we shall not dismiss too quickly a political regime under one-party rule.<sup>18</sup> Conclusions follow in Part IV.

## 2 Open access in the economic sphere and development of the interconnected institutions

Japan under the Tokugawa period (1603–1867) was preponderantly an agricultural and feudal society although the area around Tokyo and Osaka was commercially developed. Access to political and economic resources was largely determined by family status. The emperor and the imperial court nobility were at the top with symbolic power.<sup>19</sup> Ranked similarly but with real power were the shogun and daimyo. The status of a person of daimyo was determined by the relationship with the Tokugawa family.<sup>20</sup> Below the shogun and daimyo were samurai, farmers, artisans, and merchants who were further divided.<sup>21</sup> While Chinese society was also divided into different classes, mobility within classes was permitted, with talented people assuming official positions. In contrast, power in the Japanese society was usually related to the family status at birth.<sup>22</sup>

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<sup>18</sup> For the view that a one-party regime is unlikely to be a meaningful alternative to competitive democracy, see Robert A. Dahl, *Polyarchy: Participation and Opposition* (New Haven and London: Yale University Press, 1971), p. 32.

<sup>19</sup> Beasley (1972), *supra* note 1, p. 22.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Id.*, pp. 22–27.

<sup>22</sup> *Id.*, p. 39.

Limited mobility, however, did exist during the Tokugawa period. For example, commoners could obtain the status of samurai through education to become professional scholars, priests, and doctors.<sup>23</sup>

To serve the interest of such a hierarchical society, education was also to train people to function according to the hereditary status.<sup>24</sup> The samurai was educated in governmental han schools or in private schools called *shijuku*.<sup>25</sup> Education for the samurai was to prepare them with the quality essential for ruling society. Commoners were educated in *terakoya*, schools established by temples, Shinto shrines, or private houses.<sup>26</sup> Education for the commoners was to train people to behave as efficient and obedient followers.<sup>27</sup> The key difference is the component of Confucian education studies for the rulers. The commoners serving positions of town or village officers, however, were permitted to attend *shijuku* or even han schools for Confucian studies.<sup>28</sup>

As Japan during the Tokugawa period was a feudal society with classes, economic restrictions or privileges were used to exploit people's wealth. The central government, Bakufu, frequently used the method of re-coining to debase the currency to gain profits.<sup>29</sup> Local domains also issued paper money to exploit merchants.<sup>30</sup> Bakufu and domains also called for *goyōkin* or "forced loans" to exploit wealth from merchants in the eighteenth and nineteenth centuries. As tax in the Tokugawa period was based on land assessment, the forced loans collected by the feudal lords from the village farmers and headmen were much greater than the land tax of the village.<sup>31</sup> Still another method of controlling access to resources was the use of monopolies by the Bakufu and domains. The Bakufu monopolized silver, copper, and certain herbs while domains controlled monopolized groups of merchants in areas such as sugar, cotton, mulberry, shipping or marketing.<sup>32</sup> These inflationary measures, forced loans or monopolies weakened property rights protection, reduced incentives for long term investment, or prevented dynamic efficiency in the economy.

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23 Tetsuya Kobayashi, *Tokugawa Education as a Foundation of Modern Education in Japan*, 9 Comparative Education Review, no. 3 (1965), 288–302, at 289.

24 *Id.*, p. 289.

25 *Id.*, p. 291.

26 *Id.*, p. 292.

27 *Id.*, p. 289.

28 *Id.*, p. 294.

29 Beasley (1972), *supra* note 1, p. 52.

30 *Ibid.*

31 *Id.*, p. 53.

32 *Id.*, pp. 53–54.

In contrast to the privileges enjoyed by the ruling classes, the scope of freedom of peasants was very limited. They were “not allowed to move, to change professions, to sell arable land, to partition holdings into parcels smaller than a certain minimum, or to change their crops at will.”<sup>33</sup> Restrictions on farmers made innovation and investment on farming difficult and partly contributed to the internal crisis during the late Tokugawa period. Moreover, foreign trade was restricted to the port of Nagasaki and to traders from China and the Netherlands.<sup>34</sup> When outside pressure which resulted in the unequal treaties was coupled with the internal crisis, the rule of the Tokugawa was replaced by the Meiji Government. Meiji reform measures moved towards greater open access to economic organizations and activities. First of all, the new government decided to abolish the feudal class distinction.<sup>35</sup> The Meiji Constitution legally confirmed equal access to civil, military or other public offices based on legally specified qualifications or ability.<sup>36</sup> In addition, the Meiji government also adopted other measures including confiscating stipends to warriors (*bushi*), removing restrictions on peasants, recognizing private property rights, using land tax to replace feudal dues, disbanding guilds, liberalizing foreign trade, etc.<sup>37</sup> Both domestic and foreign trade were gradually liberalized and expanded.<sup>38</sup> As open access to economic organizations and activities from the Meiji Restoration was closely associated with the development of interconnected institutions related to property rights protection and contract enforcement, financial market, rule of law, and accumulation of human resources, the remainder of Part II will examine these interconnected institutions.

## 2.1 Property rights protection and contract enforcement

To achieve the goal of “enriching the country and strengthening the army”,<sup>39</sup> Japan was determined to adopt the western legal institutions.<sup>40</sup> The resulting

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<sup>33</sup> Mataji Miyamoto, Yōtarō Sakudō and Yasukichi Yasuba, *Economic Development in Preindustrial Japan, 1859–1894*, 25 *The Journal of Economic History*, no. 4 (1965), 541–564, at 542.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Id.*, p. 549.

<sup>36</sup> The Meiji Constitution, Article 19. A soft copy of the constitution is available at: <[http://afe.easia.columbia.edu/ps/japan/meiji\\_constitution.pdf](http://afe.easia.columbia.edu/ps/japan/meiji_constitution.pdf)>, accessed 15 January 2017.

<sup>37</sup> Miyamoto *et al.* (1965), *supra* note 33, p. 549.

<sup>38</sup> *Id.*

<sup>39</sup> Beasley (1972), *supra* note 1, p. 2.

<sup>40</sup> Takii Kazuhiro, translated by David Noble, *The Meiji Constitution: The Japanese Experience of the West and the Shaping of the Modern State* (Tokyo: International House of Japan, 2007).

Meiji Constitution consists of many provisions on property rights protection. The Preamble to the Meiji Constitution ensures the protection of the security of the rights and property of the people.<sup>41</sup> Article 27 of the Meiji Constitution further stipulates that the property rights of Japanese people shall be inviolate.<sup>42</sup> Shortly after the enactment of the Meiji Constitution in 1889, Japan adopted the Civil Code<sup>43</sup> in 1898 and implemented the Commercial Code<sup>44</sup> in the same year. The Peace Preservation Law enacted in 1925 criminalized the formation of an association with the objective of changing the system of private property or participation in such an association with full knowledge of the objective of the association.<sup>45</sup> The process of adopting these codes will be examined under the rule of law section; suffice it to say here that these two codes have played important roles in defining and protecting property rights. These laws limited state intervention in private affairs and better-defined property rights of people. The changes improved the definition of property rights on land compared with that of the Tokugawa period when property rights on land was feudally held by the lords and private ownership of land had not been clearly recognized.<sup>46</sup> The land tax reform, reducing the amount for the farmers and of promising not to increase the tax in the future, also clarified property rights definition and increased incentives for investment.<sup>47</sup> In addition, the land tax reform also replaced the community or multiple forms of tax by a modern property rights system.<sup>48</sup> The measures of enhancing property rights protection adopted during the Meiji Restoration were closely related to the relatively faster rate of economic development discussed in the Introduction.

After the defeat of Japan in WWII, the Supreme Commander for the Allied Powers (SCAP) made efforts to democratize Japan, empowering the Japanese people's participation in public governance. To achieve that goal, SCAP also tried to

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<sup>41</sup> The Meiji Constitution, *supra* note 36.

<sup>42</sup> *Ibid.*

<sup>43</sup> Charles P. Sherman, *The Debt of Modern Japanese Law to French Law*, 6 California Law Review, no. 3 (1918), 198–202.

<sup>44</sup> Edward Jenks, Esq., *The Japanese Commercial Code*, 14 Journal of Comparative Legislation and International Law, no. 1 (1932), 62–65.

<sup>45</sup> Kenneth J. Ruoff, *The People's Emperor: Democracy and the Japanese Monarch, 1945–1995* (Cambridge, MA: Harvard University Press, 2001), p. 33.

<sup>46</sup> Miyamoto *et al.* (1965), *supra* note 33, p. 544.

<sup>47</sup> *Id.*, p. 561.

<sup>48</sup> Curtis J. Milhaupt and Mark D. West, *The Dark Side of Private Ordering: An Institutional and Empirical Analysis of Organized Crime*, 67 The University of Chicago University Law Review, no. 1 (2000), 41–98, at 51–52.

reallocate certain power from the government to the judicial system. The 1946 Constitution<sup>49</sup> abolished the administrative courts under the jurisdictions of the executive government<sup>50</sup> and delegated to the Supreme Court and the lower courts all judicial power.<sup>51</sup> To strengthen the power of the judiciary, the 1946 Constitution further granted the power of judicial review of administrative and legislative actions to the Supreme Court and the lower courts.<sup>52</sup>

In terms of access to economic organizations and activities, SCAP also dismantled the family-owned *Zaibatsu* organizations, which played important roles in controlling economic resources and financing WWII.<sup>53</sup> In the areas of competition law, SCAP also demanded the enactment of antitrust law to constrain monopolization of economic resources. With respect to land law, SCAP reinvented the regime so that absentee landlords were eliminated in order to install ownership to operators or cultivators.<sup>54</sup> In the area of corporation law, the power of shareholders was enhanced.<sup>55</sup> The legal profession was also given greater independence to safeguard the rights of individuals.<sup>56</sup> Furthermore, foreign trade and direct investment liberalization took place during the 1960s and 1970s.<sup>57</sup>

Evidence of better protection of property rights can also be detected from the judicial review of constitutionality of legislation under the 1946 Constitution. While the judiciary uses the strict scrutiny test to review the constitutionality of legislation related to freedom of expression and freedom of speech but uses the rational relation test to review administrative and legislative actions related to economic activities,<sup>58</sup> the

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49 1946 Constitution, available at: <[https://www.constituteproject.org/constitution/Japan\\_1946.pdf](https://www.constituteproject.org/constitution/Japan_1946.pdf)>, accessed 15 January 2017.

50 Percy R. Luney, Jr, "The Judiciary: Its Organization and Status in the Parliamentary System", in Percy R. Luney, Jr and Kazuyuki Takahashi (eds.), *Japanese Constitutional Law* (Tokyo: University of Tokyo Press, 1993), pp. 123–149, at 126.

51 *Id.*, p. 128.

52 1946 Constitution, *supra* note 49, Article 81; also see Yasuhiro Okudaira, "Forty Years of the Constitution and Its Various Influences: Japanese American, and European", in Luney and Takashi (1993), *supra* note 50, p. 16.

53 Milhaupt and West (2000), *supra* note 48, p. 52.

54 *Ibid.*

55 *Ibid.*

56 *Ibid.*

57 Michael P. Porter and Mariko Sakakibara, *Competition in Japan*, 18 *Journal of Economic Perspective*, no. 1 (2004), 27–50, at 32.

58 Mutsuo Nakamura, "Freedom of Economic Activities and the Right to Property" in Luney and Takashi (1993), *supra* note 50, p. 256.



limited cases<sup>59</sup> where the Supreme Court declared a law unconstitutional were dominated by economic or property rights legislation.

Several case examples will do here. In the Customs Code case of 1962, the Supreme Court declared a law unconstitutional in that article 118 of the Code authorizing the confiscation of the property of a third person involved in smuggling violated the property rights of the third party in addition to due process problems.<sup>60</sup> In the Pharmaceutical Business Act case of 1975, the Supreme Court declared another law unconstitutional on the ground that regulating the distance of pharmaceutical stores to prevent the instability or competition is not reasonably related to the causation of supplying defective drugs.<sup>61</sup> In the Forest Act case of 1987, the Supreme Court declared still another law unconstitutional because of the fact that article 186 of the Forest Act prohibiting joint ownership, which is permitted by article 256 of the Civil Code, violated article 29 of the 1946 Constitution on the inviolable right to own or hold property.<sup>62</sup> Despite the purpose of serving the interest of public welfare, the means used in the Forest Act was not reasonable or necessary.<sup>63</sup> Better property rights definition and protection have contributed considerably to Japan's high rate of economic development until Japan reached its steady state<sup>64</sup> at the beginning of the 1990s.

Closely related to property rights definition and protection is contract enforcement. Contract enforcement was carried out by courts during the Tokugawa period. Town agreements normally involved merchants or between merchants and warriors related to commercial or financial disputes.<sup>65</sup> Courts dealt with these types of disputes. Claims were categorized into "money suits" and "main suits." Money suits were concerned with claims of principal and interest or disputes with no use of security or collateral while main suits were concerned with disputes involving the use of security (without interest).<sup>66</sup> Despite the restriction on the sale of land by peasants during the Tokugawa period,

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59 There have only been five occasions where the Supreme Court of Japan declared legislative or governmental acts unconstitutional since the adoption of judicial review in the 1946 Constitution.

60 Hiroshi Itoh, *The Japanese Supreme Court: Constitutional Policies* (New York: Markus Wiener Publishing, 1989), p. 108.

61 Nakamura (2004), *supra* note 58, pp. 256–260.

62 *Id.*, pp. 261–262.

63 *Ibid.*

64 The ceiling of growth possibilities of sustainable per capita income. For more information, see Benigno Valdés, *An Application of Convergence Theory to Japan's Post-WWII Economic 'Miracle'*, 34 *The Journal of Economic Education*, no. 1 (2003), 61–81.

65 Dan Fenno Henderson, 'Contracts' in *Tokugawa Villages*, 1 *Journal of Japanese Studies*, no. 1 (1974), 51–90, at 60.

66 *Id.*, p. 72.

owner-cultivators could obtain loans by using their land as security.<sup>67</sup> When the borrowers failed to repay their loans, their land would be sold to others through foreclosure of their security.<sup>68</sup> Protection of creditors through contract enforcement was also carried out when land owners could not afford to pay land tax during the late Tokugawa period.<sup>69</sup> The farmer land owners lost their land largely because of the bad tax policy of not taxing other commercial or economic activities but concentrating land tax on farmers.<sup>70</sup>

Contract enforcement based on the Western style of formal law accelerated during the Meiji Restoration. Well before the adoption of the Civil Code and the Commercial Code in 1898, French jurists provided Japanese judges principles of law so that court decisions could be rested upon these principles before the formal law was enacted.<sup>71</sup> In difficult or complex cases when the Japanese consulted the French jurists, the opinions of the French jurists might become the judgments of the courts.<sup>72</sup> As will be explained later, the Civil Code of Japan was a product largely based on the French law and partly on the German law.<sup>73</sup> Similarly, the Commercial Code of Japan was also partly based on French law and partly based on German law.<sup>74</sup> The codification of civil and commercial law considerably facilitated the enforcement of contracts based on formal law.

Despite the adoption of the formal law, informal ways of enforcing contracts were still widely used during the Meiji Restoration. A noticeable example is the enforcement of rules on contracts adopted by the Tokyo Bankers Association.<sup>75</sup> Rules adopted in 1894 required the collecting bank to report the default of a promissory note to the Association in writing: the name, address, and amount of the issuer.<sup>76</sup> After receiving the report, the Association had to disclose the content of the report to its members.<sup>77</sup> Member banks must suspend business transactions with the defaulting bank when notified.<sup>78</sup> In 1900, the Tokyo Clearing House decided to impose a fine on those which continued to conduct

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67 Miyamoto *et al.* (1965), *supra* note 33, p. 546.

68 *Ibid.*

69 Beasley (1972), *supra* note 1, p. 55.

70 *Ibid.*

71 Sherman (1918), *supra* note 43, p. 199.

72 *Ibid.*

73 *Id.*, p. 201.

74 Edward Jenks, Esq. (1932), *supra* note 44.

75 Toshihiro Matsumura and Marc Ryser, *Revelation of Private Information About Unpaid Notes in the Trade Credit Bill System in Japan*, 24 *The Journal of Legal Studies*, no. 1 (1995), 165–187.

76 *Id.*, p. 172.

77 *Ibid.*

78 *Ibid.*

transactions with the issuing bank.<sup>79</sup> A year later, the Tokyo Clearing House further introduced rules to publish the names of the defaulting issuers in newspapers and magazines.<sup>80</sup> This mechanism used by the Tokyo Bankers Association played important roles in disciplining banks issuing promissory notes or other instruments such as bills of exchange. It not only made commercial frauds difficult but also developed market means of reputation, thereby creating the incentives and discipline of self-commitment of member banks.

Japan further refined its law on contract enforcement after WWII. Although Japan heavily controlled the entry of legal professionals, both formal law and informal rules worked together to facilitate contract enforcement. While some scholars pointed out the dark side of private ordering in commercial activities,<sup>81</sup> it is worth emphasizing that formal and informal rules have made things difficult for informal organizations to deviate too far from the rules. Japan's high rate of economic development reveals that better rules may guide informal organizations when the capacity of the formal judiciary system is limited. Without rules, it would be far more costly to deal with disputes concerning debt collection, landlord and tenant relations, or the resolution of other disputes.

## 2.2 Financial market development

Financial market institutions play important roles in economic development. King and Levine assess whether the value of financial depth<sup>82</sup> in 1960 predicts the rate of economic development, capital accumulation, and productivity growth over the next 30 years.<sup>83</sup> Their regression results provide a positive answer. Levine and Zervos analyze the relation between stock market liquidity<sup>84</sup> or the level of banking sector development and economic growth.<sup>85</sup> Their regression results show that stock market liquidity and banking sector development are both good predictors

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<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> Milhaupt and West (2000), *supra* note 48.

<sup>82</sup> Financial depth is defined as the liquid liability of the financial system divided by the gross domestic product.

<sup>83</sup> Robert G. King & Ross Levine, *Finance and Growth: Schumpeter Might be Right*, 108 *Quarterly Journal of Economics*, no. 3 (1993), 717–737.

<sup>84</sup> Stock market liquidity is defined by both the value of the stock trading relative to the size of the market and the size of the economy.

<sup>85</sup> Ross Levine and Sara Zervos, *Stock Markets, Banks, and Economic Growth*, 88 *The American Economic Review*, no. 3 (1998), 537–558.

of economic development, capital accumulation, and productivity improvements.<sup>86</sup> If financial institutions do contribute to economic development of a nation, evidence of the banking sector or the stock market development in Japan is helpful.

While secured or unsecured lending already occurred during the Tokugawa period, the formal nationwide banking sector was developed after the Meiji Restoration. In 1882, the Government established the Bank of Japan.<sup>87</sup> When the head office was opened in Tokyo in that year, the Osaka Branch was also established.<sup>88</sup> The Bank of Japan later further established satellite offices in other cities.<sup>89</sup> Initially, the Japanese banking system utilized the US banking system as its model.<sup>90</sup> When the policy makers realized the weakness of the US national banks, however, they decided to move away from the US model and adapted the national banks to commercial banks with the permission of setting up branches freely within the nation.<sup>91</sup>

Legal permission, together with government investment in transportation and telegraph, resulted in the considerable expansion of bank branch offices within the country. From 1884 to 1925, bank branch offices increased significantly. For example, bank branch offices increased from 16 to 487 in Tokyo, 5 to 398 in Hyogo, and 1 to 53 in Miyazaki respectively.<sup>92</sup> The establishment of satellite offices of the Bank of Japan and the branch offices of the commercial banks made it easier to obtain information of customers individually and regions which made utilization of loans more efficiently. By the end of 1936, the number of banks increased to 424 although six major banks accounted for more than 53 per cent of the total outstanding deposits of the banking sector.<sup>93</sup> Since then, the number of major banks increased to eleven at the beginning of 1990s and went down to seven again at the beginning this century.<sup>94</sup>

In addition to the construction of the banking sector, the government also helped the banking sector in other ways. In terms of taxation, the government before WWII favored the banking sector instead of the stock market through

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<sup>86</sup> *Ibid.*

<sup>87</sup> Kris James Mitchener and Mari Ohnuki, *Institutions, Competition, and Capital Market Integration in Japan*, 69 the Journal of Economic History, no. 1 (2009), 138–171, at 149.

<sup>88</sup> *Id.*, p. 151.

<sup>89</sup> *Id.*, pp. 167–68.

<sup>90</sup> *Id.*, p. 167.

<sup>91</sup> *Id.*, p. 167.

<sup>92</sup> *Id.*, p. 146.

<sup>93</sup> Saburo Okita, *Savings and Economic Growth in Japan*, 6 Economic Development and Cultural Change, no. 1 (1957), 32–41, at 34.

<sup>94</sup> Hoshi and Kashyap (2004), *supra* note 4, p. 10.

taxation. Income from deposit interest was taxed by a fixed rate while dividend was taxed by a progressive rate.<sup>95</sup> In 1937, the government further suppressed private stock and bond issues to facilitate the issuance of government war bonds.<sup>96</sup> These historical events partly explained why Japan has remained a bank-dominated financial system despite the prominence of the world ranking of the stock market.<sup>97</sup>

At the beginning of the banking sector's development, the government also established the system of postal savings to absorb voluntary savings.<sup>98</sup> In 1936, the balance of outstanding deposits of the postal savings system was around 25 per cent of that of all the banks.<sup>99</sup> To modernize Japan, the Meiji Government also heavily taxed land owners in order to favor industrial activities. For instance, the land tax accounted for 90 per cent of the revenue of the central government at the beginning of Meiji Restoration.<sup>100</sup> It took around forty years for this proportion to go down to the 10 per cent level.<sup>101</sup> During the process of industrial development, the government introduced personal income tax in 1887 and gradually increased the rate of personal income tax from two per cent in 1895 to 7.2 per cent in 1914 and further to 18.9 per cent in 1935.<sup>102</sup> To absorb western technologies to accelerate industrial development, the Bank of Japan provided loans extensively to commercial banks secured by government bonds, stocks and other securities as collateral.<sup>103</sup>

Governmental financial institutions and commercial banking institutions contributed a great deal to savings and therefore investment from the Meiji Restoration to the end of 1980s. The proportion of all deposits in the banking and postal savings system accounted for four per cent of the national income in 1893.<sup>104</sup> Thereafter, this ratio increased to 50 per cent in 1916 and 100 per cent in 1931.<sup>105</sup> The saving rate remained high both before and after WWII,

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<sup>95</sup> Okita (1957), *supra* note 93, p. 34.

<sup>96</sup> Porter and Sakakibara (2004), *supra* note 57, p. 29.

<sup>97</sup> Hoshi and Kashyapm (2004), *supra* note 4, p. 10.

<sup>98</sup> Even at the beginning of this century, savings collected from the postal savings system have been used to finance many governmental corporations in housing, construction, municipal enterprises, and highways through the Fiscal Investment and Loan Programme.

<sup>99</sup> Okita (1957), *supra* note 93, p. 34.

<sup>100</sup> *Id.*, p. 35.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*

<sup>104</sup> *Id.*, p. 34.

<sup>105</sup> *Ibid.*

increasing from 19.8 per cent during the 1930–1948 period to 34 per cent during the 1949–1980 period.<sup>106</sup>

In addition to the significant proportion of the deposits in banks and the postal savings system, the percentage of net issues of governmental debts in comparison with the total net issues of primary securities is very high. From 1902 to 1946, this proportion fluctuated from 46 per cent to 63 per cent except for the period of 1909–31.<sup>107</sup> If the issues of primary securities of government-established corporations are included, the above proportion would be much higher.

While Japan has remained a bank-centered financial system, the equity market was and is still relatively strong. Corporate equity issues accounted for around 30 per cent of the total primary issues from 1878 to 1937 except for 51 per cent during 1886–92 and 10 per cent during 1902–08.<sup>108</sup> It was only after the governmental suppression of the stock market in 1937 as discussed previously that the proportion of corporate equity issues went down significantly to eight per cent from 1938 to 1946 although the proportion adjusted upward to around 15 per cent during the period from 1947 to 1958.<sup>109</sup>

The ratio of net issues of primary securities to national income also increased from around four per cent in the period of 1878–85 to 20 per cent in the period of 1947–58.<sup>110</sup> The average ratio for the period from 1878 to 1958 was around 16 per cent.<sup>111</sup> In contrast, this average ratio of net issues to national income was about 10 per cent in the United States from 1898 to 1958.<sup>112</sup> This comparative figure suggests that external finance played a more significant role in Japan than in the United States within this comparable period. Higher rate of saving and capital formation through the banking sector and the equity market partly explains the faster rate of economic development in Japan before 1990.<sup>113</sup> Evidence from 1878 to 1937 also indicated that the proportion of tertiary industry including “finance, transportation, public utilities, government, trade, and

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**106** Valdés (2003), *supra* note 64, p. 69.

**107** David J. Ott, *The Financial Development of Japan, 1878–1958*, 69 *Journal of Political Economy*, no. 2 (1961), 122–141, at 125.

**108** *Ibid.*

**109** *Ibid.*

**110** *Id.*, p. 126

**111** *Id.*, p. 131.

**112** *Ibid.*

**113** Also see Richard Grabowski, *Early Japanese Development: The Role of Trade, 1885–1940*, 27 *Quarterly Journal of Business and Economics*, no. 1 (1988), 104–129, at 118 (showing that capital and land played far more important roles in economic development than foreign trade despite the increasing proportion of foreign trade).

services” consistently outperformed that of the secondary industry which covered manufacturing and construction.<sup>114</sup> This provides collaborative evidence that finance did matter in Japan’s fast rate of economic development.

## 2.3 Rule of law

While the ultimate goal of rule of law is to respect human dignity and to enhance human equality and freedom, rule of law also provides the necessary social and economic conditions for economic development. From the perspective of open access to economic organizations and activities, rule of law provides the constitutional and institutional foundation of human equality, making access to economic organizations and activities available to all rather than to limited categories of people who possess monopolies or privileges. From the perspective of interconnected institutions, rule of law facilitates the development of institutions on property rights protection and contract enforcement, protection of capital suppliers, and capital market development.<sup>115</sup> Examination of the evolution of the legal system of Japan is therefore relevant to explain the successful modernization of Japan after the Meiji Restoration.

Faced with the internal economic crisis and the external pressure of unequal treaties in the later Tokugawa period, reformers raised the slogan of “enriching the nation and strengthening the army.”<sup>116</sup> It was after the Meiji Restoration that the leaders made serious efforts to build a systemic legal system. On December 23, 1871, the Japanese Government sent a delegation to tour the United States, Germany, France, and Austria.<sup>117</sup> While the wide political objectives of the tour, among other things, were to request the postponement of the renegotiation of the unequal treaties and to have a direct and first hand observation of the western civilization, the institutional goal was to search for a western-style constitution to redefine Japan.<sup>118</sup> The tour lasted nearly to two years until the delegation returned to Japan in September 1873.<sup>119</sup> During the lengthy period, key figures of the delegation including Kido, Okubo and Itô talked to many

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**114** Bronfenbrenner (1961), *supra* note 5, p. 10.

**115** Douglass C. North, *Institutions, Institutional Change and Economic Performance* (New York: Cambridge University Press, 1990); Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer and Robert W. Vishny, *Legal Determinants of External Finance*, 52 *Journal of Finance*, no. 3 (1997), 1131–1150.

**116** Beasley (1972), *supra* note 1, p. 178.

**117** Kazuhiro (2007), *supra* note 40, p. 1.

**118** *Id.*, pp. 1–3.

**119** *Id.*, p. 1.

governmental leaders in the West and received many private lessons from German, French, and Austrian jurists on the fundamental nature and principles of a constitution.<sup>120</sup>

Bismarck advised the Japanese to use the German constitution as the model<sup>121</sup> because of the similarity of self-government in the two countries and the logic that rights and laws were not meaningful without the support of national wealth and power.<sup>122</sup> Gneist, the most famous German historical jurist at that time, cautioned the Japanese of the unique nature of history in a nation's constitution and the potential danger of popular participation through the legislature.<sup>123</sup> Stein, an Austrian political scientist, taught the Japanese awareness of the sovereignty, will of the legislature, and action of the executive and coordination of the different branches under the constitution.<sup>124</sup> He further explained the symbolic role of the sovereign power, the potential tyranny of the majority under excessive participation, and the importance of the executive government in adaptation to changing circumstances.<sup>125</sup> Chlumecky, another Austrian jurist, taught the Japanese about the practical administration of government during the contemplation of the creation of the legislature, the Diet.<sup>126</sup>

The knowledge gained in the tour of the West was reflected not only in the Constitution of the Empire of Japan (Meiji Constitution), but also many other laws related to the symbolic monarchy, the election and composition of the Diet, and the functional executive branch. These laws and ordinances included the Imperial Household Law, the Imperial Ordinance Concerning the Power of the Peers, the Laws of the House, the Law of Election of Members to the House of Representatives, the Imperial University Order, the Regulations for Civil Service Examinations and Probationary Civil Officers and the Civil Service Code, etc.<sup>127</sup> These laws were essential for the functioning of the constitutional Meiji state.

In addition to the making of the constitution, Japan also devoted enormous effort to building the legal system. The codification of the civil law and commercial law are particularly relevant to support the open access order in the economic sphere in general and to facilitate the construction of interconnected institutions to provide the institutional foundation to the open access order in the economic sphere in particular.

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<sup>120</sup> *Id.*, pp. 38–123.

<sup>121</sup> *Id.*, p. 43.

<sup>122</sup> *Id.*, p. 47.

<sup>123</sup> *Id.*, pp. 63–118.

<sup>124</sup> *Id.*, p. 74.

<sup>125</sup> *Id.*, pp. 74–77.

<sup>126</sup> *Id.*, p. 123.

<sup>127</sup> *Id.*, pp. 92–96.



At the beginning of the Meiji era, Japanese law was virtually entirely customary and full of variability and unpredictability.<sup>128</sup> The system was not able to support a high rate of economic development and industrialization. Similar to the making of the constitution, Japan turned to the West for the establishment of a modern legal system. The codification of the civil law initially was under the French influence. This was so as the French government was already involved during the later Tokugawa period, helping to reorganize the Japanese Army.<sup>129</sup> French law was chosen for another reason.<sup>130</sup> English law was mainly judge-made law and difficult to ascertain under the information technology at that time. Germany had not codified its civil law yet and the country was not unified. Spain did not have a codified law. While Italy had a codified law, it was not well known internationally. Compared with the weak nation of Italy, France not only was stronger as a nation but also had an internationally known Civil Code, which was easy to ascertain and understand.<sup>131</sup>

The influence of French law on Japanese law was exerted through many different means. French jurists taught Japanese judges the principles upon which cases could be decided before there was any codified law.<sup>132</sup> They wrote for Japanese judges in difficult cases opinions which became decisions of Japanese courts.<sup>133</sup> In addition, French jurists taught French law to Japanese students and prospective judges in the first university law school, Tokyo University Law School, which was established in 1870, and another law school established by the Ministry of Justice in 1872.<sup>134</sup> As a result of the instruction of the French law, the Civil Code of France became the basis of judgments from 1870 to 1890.<sup>135</sup> Moreover, the French influence on Japanese law was through the involvement of French jurists in the codification of Japanese law. As the codification of Japanese civil law was significantly influenced by Boissonade, one of the most famous French legal scholars in Japan at the time, the draft civil law was called Boissonade's Code.<sup>136</sup> This Code, initiated in 1882 and completed around 1892, was planned to be enacted in 1893.<sup>137</sup> Because of the increasing influence of Germany, those who had the expertise of German civil law started to

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128 Sherman (1918), *supra* note 43, p. 198.

129 *Ibid.*

130 *Id.*, p. 199.

131 *Ibid.*

132 *Ibid.*

133 *Ibid.*

134 *Ibid.*

135 *Ibid.*

136 *Ibid.*

137 *Id.*, pp. 200–201.

oppose the Boissonade's Code. To respond to the opposition, the Government decided that implementation of the Civil Code should be postponed to 1896.<sup>138</sup> A commission established to review the Civil Code later decided to incorporate part of the newly enacted German Civil Code of 1896. As a result, the Japanese Civil Code, effective from 1898, adopted philosophical principles, structure of organization, and part of the provisions of the German Civil Code but retained about one-half of the provisions from the French Civil Code.<sup>139</sup>

Similar to the Civil Code, the Japanese Commercial Code had also been based on French and German law. Different from the civil code, which was under the influence of Boissonade, the French jurist, the drafting of the commercial code was assisted by Hermann Roesler, a German jurist.<sup>140</sup> Before the enactment of the Commercial Code, both the French *Code de Commerce* of 1807 and the German *Handelsgesetzbuch* of 1861 had been available for reference and utilization.<sup>141</sup> The draft code, initially ready in 1890, was delayed for many years because of the controversy of the Civil Code and the Commercial Code became effective in 1898.<sup>142</sup> Due to the changing circumstances between 1890 and 1898, the 1898 Commercial Code was used for only a year and was replaced by the 1899 Commercial Code. The Commercial Code of 1899 was French in form and German in substance.<sup>143</sup>

The judicial system of Japan was initially based on the French and German system. It was under the jurisdiction of the Ministry of Justice.<sup>144</sup> The organization of courts was based on the Court Organization Law of 1890.<sup>145</sup> The Grand Court of Judicature followed the name of the Cour de Cassation in France.<sup>146</sup> Below this highest court, there were the court of appeals, the district courts, and the ward courts.<sup>147</sup> The judiciary system dealt with civil and criminal cases. Administrative courts were under the executive branch of government and could hear limited categories of appeals from government decisions when specified by law.<sup>148</sup>

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<sup>138</sup> *Id.*, p. 201.

<sup>139</sup> *Id.*, p. 201.

<sup>140</sup> Tomotaka Fujita, *De-codification of the Commercial Code in Japan*, available at: < <http://www.gcoe.j.u-tokyo.ac.jp/pdf/GCOESOFTLAW-2012-5.pdf> >, accessed 25 January 2017, p. 3.

<sup>141</sup> Jenks, Esq. (1932), *supra* note 44, p. 63.

<sup>142</sup> *Ibid.*

<sup>143</sup> *Ibid.*

<sup>144</sup> Luney, Jr (1993), *supra* note 50, pp. 124–125.

<sup>145</sup> *Id.*, pp. 124–125.

<sup>146</sup> *Id.*, p. 124.

<sup>147</sup> *Id.*, pp. 124–125.

<sup>148</sup> *Id.*; also see Meiji Constitution, Article 61.

The judicial system was strengthened after WWII. Article 76 of the 1946 Constitution abolished extraordinary tribunals such as the administrative courts and deprived the executive branch of its final judicial power.<sup>149</sup> The 1946 Constitution reallocated all the judicial power to the Supreme Court and the lower courts. The enhanced level and power of the Supreme Court can also be seen by raising the level of the Chief Justice of the Court to that of the Prime Minister, the Speaker of the House of Representatives, and the President of the House of Councillors.<sup>150</sup> Furthermore, the article strengthened the concept of judicial independence.<sup>151</sup> The Supreme Court is also provided with the power to make rules for the judicial system, the procurators, and attorneys.<sup>152</sup> Under the new judicial system, the Supreme Court is followed by the High Courts, the District and Family Courts, and the Summary Courts.

The Meiji Restoration developed the first constitution in Asia and constructed a very comprehensive rule of law system. In addition to the Civil Code and the Commercial Code, Japan also enacted the Civil Procedural Code, the Criminal Code, and the Criminal Procedure Code.<sup>153</sup> These laws worked together to provide the security and protection of individual rights related to equality, property, mobility, etc. The legal system of the Meiji era was essential for the open access order in the economic sphere. With respect to open access to political organizations and activities, the Meiji Constitution did not establish a universal suffrage system with competitive democracy. As Japan experienced a high rate of economic development and modernization by the end of the nineteenth century, the Japanese legal system during the Meiji period also became one of the learning models in China and Korea.

The already strong rule of law system established during the Meiji Restoration had been further strengthened by the 1946 Constitution. Article 98 of the Constitution made the Constitution the supreme law of the country and made all inconsistent laws, ordinances, imperial rescripts, or governmental acts null and void. To help enforce the above provision, the Constitution empowered the courts with judicial review of the constitutionality of laws and administrative acts.<sup>154</sup> Articles 11 and 97 reemphasized the importance of the fundamental human rights of citizens. Other rights emphasized in the 1946 Constitution

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**149** 1946 Constitution, *supra* note 49.

**150** Luney, Jr (1993), *supra* note 50, p. 129.

**151** *Ibid.*

**152** 1946 Constitution, *supra* note 49, Article 77.

**153** Fujita (2017), *supra* note 140, p. 2.

**154** 1946 Constitution, *supra* note 49, Article 81.

included equality and no-privilege provision under Article 14, mobility under Article 22, inviolable property rights under Article 29, etc.

After WWII, the United States became a major player through its defeat of Japan and its occupation. The influence of US law of Japanese constitutional law concerning judicial review and empowering the judicial system has already been discussed. Other than the influence on constitutional law, the United States has also dictated or influenced Japanese law in the area of corporate law, antitrust law, land law, and labor law. While people criticized the limited capacity of the Japanese judiciary and the dark side of the informal enforcement of the law by criminal organizations,<sup>155</sup> clear legal provisions under Japanese law obviously constrained the impact or limited the extent of illegal enforcement of the law.

## 2.4 Education

Education plays a very important role in economic development. Romer shows that, in a fully specified competitive equilibrium, per capita output can grow at an increasing rate.<sup>156</sup> Lucas' research further supports the position that the rate of human capital growth can be an increasing function.<sup>157</sup> While Romer and Lucas mainly focus on human capital in firms, human capital accumulation is also closely related to education if we take Lucas' point that human capital is a social activity, involving people as groups.<sup>158</sup> Quantitative research confirms the role of education in economic development. Leblang's research reveals that there is a "positive and significant coefficient on proxy for primary educational attainment" to economic development.<sup>159</sup> Baum and Lack's research indicates the role of secondary education to economic development.<sup>160</sup> In a globalized world, it is education at the secondary and higher levels that positively affects economic development.<sup>161</sup> As education plays a very important role in economic

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<sup>155</sup> Milhaupt and West (2000), *supra* note 48.

<sup>156</sup> Paul M. Romer, *Increasing Returns and Long-run Growth*, 94 *Journal of Political Economy*, no. 5 (1986), 1002–1037.

<sup>157</sup> Robert E. Lucas, Jr, *On the Mechanisms of Economic Development*, 22 *Journal of Monetary Economics*, no. 1 (1988), 3–42.

<sup>158</sup> *Id.*, p. 19.

<sup>159</sup> David A. Leblang, *Property Rights, Democracy, and Economic Growth*, 49 *Political Research Quarterly*, no. 1 (1996), 5–26, at 15.

<sup>160</sup> Matthew A. Baum and David A. Lake, *The Political Economy of Growth: Democracy and Human Capital*, 47 *American Journal of Political Science*, no. 2 (2003), 333–347, at 344.

<sup>161</sup> Robert J. Barro, *Determinants of Economic Growth: A Cross-country Empirical Study* (Cambridge, MA: MIT Press, 1997).

development, examining the evolution and development of education at different levels will explain a significant part of the economic development story of Japan after the Meiji Restoration.

Under the Confucian influence, Japan emphasized the importance of education long before the Meiji Restoration. Despite the fact of linking education to the status of people largely determined by birth, education was already very developed during the Tokugawa period. While it is difficult to assess the level of education of the samurai due to the lack of adequate statistical materials, it is generally concluded that they were highly literate.<sup>162</sup> With respect to the commoners, about 40 to 50 per cent of the male and 15 per cent of the female were literate.<sup>163</sup>

Most of the territory under the control of the central government, Bakufu, was divided into around three hundred hans or domains, with each han having at least one han school.<sup>164</sup> Samurai were educated either at han schools established by local governments or at shijuku, privately established schools.<sup>165</sup> As for the commoners, they sent their children for education at Terakoya, schools initially established by temples and later also by Shinto shrines and private houses.<sup>166</sup> To a limited extent, however, some upper commoners attended han schools or shijuku as examined previously.<sup>167</sup>

In addition to the general schools, a school of Rangaku (Dutch studies) was developed in the early seventeenth century.<sup>168</sup> Two hundred years later, Dutch scholars were found all over Japan, involved in the teaching of military technology, medical science, mathematics, political history, etc.<sup>169</sup> Emphasis on education was also reflected in the schools established to study French and Western law. During the later Tokugawa period, the Bakufu School of Occidental Studies already offered subjects including astronomy, mathematics, chemistry, physics, geography, philosophy, mechanics, foreign languages, etc.

Built upon the educational system from the Tokugawa period, the Meiji government abolished the han system and han schools to further improve the educational system in 1871.<sup>170</sup> Unlike the Tokugawa government when there was no centralized office on education, the Meiji government established the

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<sup>162</sup> Kobayashi (1965), *supra* note 23, p. 290.

<sup>163</sup> *Ibid.*

<sup>164</sup> *Id.*, p. 291.

<sup>165</sup> *Ibid.*

<sup>166</sup> *Id.*, pp. 292–293.

<sup>167</sup> *Id.*, p. 294.

<sup>168</sup> Bronfenbrenner (1961), *supra* note 5, p. 15.

<sup>169</sup> *Ibid.*

<sup>170</sup> Kobayashi (1965), *supra* note 23, pp. 296–297.

Ministry of Education to govern education.<sup>171</sup> The next year, the government quickly adopted a comprehensive education reform plan, the Gakusei (Fundamental Code of Education).<sup>172</sup> Influenced by the French school system, the plan divided the country into eight academic districts, 32 secondary school districts, and 210 elementary school districts.<sup>173</sup> Each academic district would contain a university, each secondary school district would have a secondary school and each elementary school district would provide an elementary school.<sup>174</sup> Furthermore, normal schools would also be established to train teachers.<sup>175</sup>

The efforts of the Meiji government in abolishing the distinction of education based on social status or class and in emphasizing elementary school education led to significant progress. Ten years after the operation of the Fundamental Code of Education, Japan had already established 29,081 elementary schools, built 194 secondary schools and 71 higher schools, and developed one university.<sup>176</sup> In 1885, Japan established three-year vocational schools in areas of technology, commerce, and agriculture.<sup>177</sup> The quality of students in these vocational schools was very high.<sup>178</sup> The school attendance rate also increased considerably. More than 98 per cent of the children attended elementary school by 1910.<sup>179</sup> Despite this very high school attendance rate at that time, further improvement has been made since 1925 when the enrolment rate of children in elementary school exceeded 99 per cent.<sup>180</sup>

Although Meiji education already introduced the policy of universal education,<sup>181</sup> Japan continued to improve the compulsory education system after WWII. While compulsory education only covered four years of ordinary primary schools in 1886 under the Primary School Order,<sup>182</sup> this was extended to six years for primary school education in 1907.<sup>183</sup> In 1947, Japan promulgated the Fundamental Law of Education and the School Education Law to extend the

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171 *Id.*, p. 289, and pp. 296–297.

172 *Id.*, p. 297.

173 *Id.*, p. 297.

174 *Ibid.*

175 *Ibid.*

176 *Id.*, p. 298.

177 Shigeo Masui, *The Problem of the Comprehensive Secondary School in Japan*, 17 *International Review of Education*, no. 1 (1971), 27–39, at 28.

178 *Ibid.*

179 Harold W. Stevenson, *Japanese Elementary School Education*, 92 *The Elementary School Journal*, no. 1 (1991), 109–120, at 110.

180 *Ibid.*

181 Kobayashi (1965), *supra* note 23, p. 300.

182 Godo and Hayami (2002), *supra* note 6, p. 963.

183 *Ibid.*

compulsory education from six years of elementary school to nine years to cover another three years of lower secondary school.<sup>184</sup> Compared with most other Asian countries, the proportion of students enrolled in secondary schools in Japan was already very high in 1915 when the enrolment rate reached 19.9 per cent.<sup>185</sup> Nevertheless, the enrolment rate of secondary schools increased to 39.7 per cent in 1935.<sup>186</sup> The extension of compulsory education in 1947 further contributed to the enrolment rate of students to higher schools. This enrolment rate to higher secondary schools increased from 47.4 per cent in 1955 to 79.4 per cent in 1970 and further to 91.9 per cent in 1975.<sup>187</sup> At the beginning of the 1980s when the Japanese economy was strong, around 95 per cent of the graduates of lower secondary schools entered high secondary schools.<sup>188</sup>

A brief comparison between the average schooling of the total population in Japan and the United State is helpful. While the average schooling in Japan was around 20 per cent of that in the United States in 1890, that level in Japan was increased to 85 per cent of that in the United States in 1990.<sup>189</sup> The evidence shows that the annual growth rate of the average schooling of the total population in Japan reached 2.2 per cent during the period of 1890–1990 whereas the same annual growth rate in the United States in the this period was only 0.7 per cent, revealing a 200 per cent higher growth of the average schooling of the population in the period.<sup>190</sup>

A breakdown comparison of the relative change of speed on average schooling, capital-labor ratio, and per capita GDP growth during 1890–1910 and 1910–1970 is even more revealing on the role of education in Japan's economic development. Hayami has provided the evidence. During the first period, "the growth rate of average schooling in Japan was five times higher than in the United States."<sup>191</sup> Similarly, the growth rate of capital-labor ratio was around 50 per cent higher in Japan than in the United States.<sup>192</sup> Compared with the much higher speed of average growth rate of schooling and the high but less significant speed of capital-labor ratio change, the per capita GDP growth rate was 40 per cent slower in Japan than that in

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**184** Shinja Okuda and Yukihiro Hishimura, *The Development of Secondary Education in Japan After World War II*, 12 Higher Education, no. 5 (1983), 567–578, at 568.

**185** Shigeo Masui, *The Problem of the Comprehensive Secondary School in Japan*, 17 International Review of Education, no. 1 (1971), 27–38, at 29.

**186** *Ibid.*

**187** Valdés (2003), *supra* note 64, p. 75.

**188** Okuda and Hishimura (1983), *supra* note 184, p. 573.

**189** Godo and Hayami (2002), *supra* note 6, p. 964.

**190** *Ibid.*

**191** *Id.*, p. 968.

**192** *Ibid.*

the United States.<sup>193</sup> During the second period, however, things are different. The growth rate of both the per capita GDP and the capital-labor ratio was four times faster in Japan than in the United States,<sup>194</sup> but the growth rate of the average schooling in Japan was only two times faster.<sup>195</sup> The comparison means that accumulation of human capital and physical capital firstly has to catch-up before the per capita GDP if a later comer wants to surpass an early leader. One shortcoming of Hayami's research is the lack of attention to higher education in Japan.

Higher education has also experienced significant development since the Meiji Restoration. The University of Tokyo, the first university in the history of Japan was established in 1877.<sup>196</sup> Faster rate of development of the higher education sector mainly occurred, however, after WWII. In 1915, only one per cent of the age group of students entered university to receive higher education.<sup>197</sup> This rate was increased slowly to three per cent in 1935 despite an interval of 20 years.<sup>198</sup> In 1955, however, 17.2 per cent of the students from higher secondary schools went to universities.<sup>199</sup> The most significant change happened during the next 20 years when 38.4 per cent of the higher secondary school students became enrolled in universities in 1975.<sup>200</sup> Compared with the 20 years from 1915 to 1935 when the rate of increase was only two per cent, the 20 years from 1955 to 1975 witnessed the significant change of the enrolment rate of higher secondary school students into universities by 21.2 per cent. It is also worth pointing out that Japan also experienced the fastest rate of economic growth during the 20 years from 1955 to 1975. It appears that it is the relative rate of change rather than the absolute level of higher education that is closely associated with the higher rate of economic development during this period.

### 3 Open access in the political sphere and its effect on economic development

Japan started to have the first election of the members of the Imperial Parliament, the Diet, in 1890 after it enacted the Meiji Constitution<sup>201</sup> and the Law of Election of

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<sup>193</sup> *Ibid.*

<sup>194</sup> *Ibid.*

<sup>195</sup> *Ibid.*

<sup>196</sup> Hiroshi Kida, *Higher Education in Japan*, 4 Higher Education, no. 3 (1975), 261–272, at 261.

<sup>197</sup> Masui (1971), *supra* note 177, p. 29.

<sup>198</sup> *Ibid.*

<sup>199</sup> Valdés (2003), *supra* note 64, p. 75.

<sup>200</sup> *Ibid.*

<sup>201</sup> Kuroda (2005), *supra* note 10, p. 30.



Members of the House of Representatives in 1889.<sup>202</sup> Due to restrictions on gender and tax, however, only one per cent of the population had the right to vote at that time.<sup>203</sup> With the gradual reduction of tax payment requirement, the eligible voters slowly increased to two per cent in 1902 despite a decade's practice.<sup>204</sup> The increase of the voting population remained low when five per cent of the people became eligible in 1920.<sup>205</sup> In 1928, the suffrage was extended to all male reaching the age of 25, resulting in the expansion of the voting population to 20 per cent.<sup>206</sup> Universal franchise to both male and female was adopted under the US occupation in 1946 when Japan passed the second Constitution.<sup>207</sup>

The history of political parties in Japan is relative short. Parties started to develop mainly after the Meiji Constitution. The first time when a political party leader became Prime Minister was 1918.<sup>208</sup> Since then, the Prime Minister has normally come from the majority party in the Diet.<sup>209</sup> Unlike other countries, Japan is more likely to be dominated by a major political party with the opposition of some smaller parties. From 1910–1940, Rikken Seiyūkai was the dominant political force and the “permanent alliance between parts of the Meiji oligarchy, the bureaucracy and members of the liberal party.”<sup>210</sup> After WWII, the Liberal Democratic Party (LDP) has become the dominant party since 1955 except for two short periods. The first of these periods of 10 months was in June 1993 when a large number of young members of the LDP quit the party.<sup>211</sup> This event resulted in a loss of no confidence vote of the LDP-led government in the House of Representatives.<sup>212</sup> As the LDP failed to obtain a majority in the following general election, the coalition government was established by eight parties without the LDP.<sup>213</sup> The second period when the LDP was not in power was during 2009–2012 when the Democratic Party of Japan (DPJ) ruled Japan.<sup>214</sup>

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**202** Kazuhiro (2007), *supra* note 40, p. 96.

**203** Kuroda (2005), *supra* note 10, pp. 147–148.

**204** *Id.*, pp. 152–153.

**205** *Ibid.*

**206** *Ibid.*

**207** *Id.*, p. 153.

**208** Ruoff (2001), *supra* note 45, p. 30.

**209** *Ibid.*

**210** For more information, see *List of Political Parties*, available at: <<https://www.britannica.com/topic/list-of-political-parties-2028711>>, accessed 20 March 2017.

**211** Roger W. Bowen, *Japan's Dysfunctional Democracy* (Armonk, New York: M. E. Sharpe, 2003), p. 37.

**212** *Id.*, p. 45.

**213** *Ibid.*

**214** “List of Political Parties”, *supra* note 210.

The party system before 1994 is very different from the one thereafter. Likewise is the election system of the House of Representatives (HR) whose members serve a term of four years.<sup>215</sup> During the period of 1955–1993, the Japanese political party system was described as a one-and-a-half party system.<sup>216</sup> The dominant party was the LDP. During its peak in 1958, the LDP received 45 per cent of the support of the electorate.<sup>217</sup> Because the Japanese Socialist Party (JSP) was never able to obtain a majority in the elections, it was considered as a permanent opposition. Even at its most successful time, the JSP obtained the support of around 25 per cent of the electorate.<sup>218</sup> Established in 1925, the Japanese Communist Party (JCP) reached its peak in the 1970s. Even during that period, however, the JCP never won more than 11 per cent of the vote.<sup>219</sup> Other minor parties during the period of 1955–1993 included the Democratic Socialist Party, the New Liberal Club, and the Japan New Party.<sup>220</sup> These parties were even not always able to keep alive.

The election system of the HR before 1994 was described as single non-transferable vote in multimember districts (SNTV/MMD).<sup>221</sup> Under such a system, each district had on average three to five seats.<sup>222</sup> Each voter chose his or her favored candidate. Votes could not be transferred to the party if the running candidate failed to receive the necessary winning votes.<sup>223</sup> Since there were 519 seats in the HR, each competing party had to put forward more than one candidate in order to succeed in the 129 electoral districts to gain a majority.<sup>224</sup> The LDP normally placed more than two candidates in each district. Given that success of the election was to a large extent based on the ability of the candidates or faction leaders within the party, party factions played important roles in politics.

Unhappy with the political system dominated by one political party, Japan reformed its election system for the HR. Under the 1994 system, each voter has two votes.<sup>225</sup> One is for the candidate of his or her choice in the single-member district. The other is for the political party of his or her choice in one of the eleven regional districts according to the proportional representation (PR) ballot.

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<sup>215</sup> Kuroda (2005), *supra* note 10, p. 58.

<sup>216</sup> *Id.*, p. 59.

<sup>217</sup> Scheiner (2006), *supra* note 8, p. 35.

<sup>218</sup> *Ibid.*

<sup>219</sup> *Id.*, p. 38.

<sup>220</sup> *Id.*, pp. 38–41.

<sup>221</sup> *Id.*, p. 75.

<sup>222</sup> *Ibid.*

<sup>223</sup> *Ibid.*

<sup>224</sup> *Ibid.*

<sup>225</sup> Bowen (2003), *supra* note 211, p. 110.

Three hundred seats are allocated to the single-member districts and 180 seats to the PR regional districts.<sup>226</sup> Under this unlinked system, the winning seats of a party from the single-member districts and the winning seats from the PR regional districts are separated.<sup>227</sup> The 1994 electoral system, however, permits those candidates who are running in the single-member districts to place their names under the closed party-list in the PR districts. This provides an opportunity for those who lose in the single-member districts to survive in the PR districts.<sup>228</sup> While the purpose of the reform was to achieve a potential two major-party political system through the use or expansion of single-member districts, path dependence of considering the interest of smaller parties resulted in the partial use of the proportional representation model. As a result, the reformed system created a dominant party with many smaller opposition parties. The LDP has kept its domination with or without the coalition of the Komeito, but the opposition has changed a lot. The former left Japanese Socialist Party (JSP) has been considerably marginalized under the new system. There are other small opposition parties, but they come and go. As a result, the only change from the electoral reform is the major opposition party.<sup>229</sup>

The election system for the House of Councillors (HC) is a mixed system. The HC consisted of 252 members who serve for a term of six years.<sup>230</sup> Half of the members are replaced through elections every three years. To address the fairness issue of voter disparity in urban and rural areas, the total number of seats was adjusted a few times and has been reduced to the current level of 242. Among the 242 seats, 146 are elected from 47 multi-member metropolitan or prefectural districts and the remaining 96 are elected from one at-large national constituency based on PR open party-lists.<sup>231</sup> Unlike the HR, the House of Councillors is not subject to dissolution to maintain stability.<sup>232</sup> Under the bicameral system, the House of Representative is the more powerful division within the Diet as it chooses the Prime Minister and initiates most of the legislation.<sup>233</sup>

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**226** *Ibid.* The original number for the PR districts was 200.

**227** Scheiner (2006), *supra* note 8, p. 80.

**228** Ellis S. Krauss and Robert Pekkanen, "Reforming the Liberal Democratic Party", in Sherry L. Martin and Gill Steel, (eds.), *Democratic Reform in Japan: Assessing the Impact* (Boulder, Colorado: Lynne Rienner Publishers, Inc., 2008), 11–37, p. 18.

**229** Bowen (2003), *supra* note 211, p. 111.

**230** Frances McCall Rosenbluth, *Japan in 2011: Cataclysmic Crisis and Chronic Deflation*, 52 *Asian Survey*, no. 1 (2012), 15–27, at 17.

**231** For more information, see *Electoral System: Japan*, available at: <<https://www.asiapacificgreens.org/content/electoral-system-japan>>, accessed 22 March 2017.

**232** Kuroda (2005), *supra* 10, p. 58.

**233** *Ibid.*; also Bowen (2003), *supra* note 211, p. 9.

Why multi-party elections in Japan after 1955 have persistently kept the LDP dominant in Japanese politics remains a puzzle. Good leadership during recovery from WWII might be a possible explanation as the rate of economic growth was enormously high from 1950 to 1990. This explanation, however, is not able to explain the economy after 1990 when the economic growth rate had been very low and unemployment increased. Opinion surveys from 1996 to 1998 repeatedly indicated that citizens did not trust politics or politicians.<sup>234</sup> The survey results obtained by the Asahi Shimbun newspaper in 1996 revealed that 76 per cent of respondents said that they did not trust politics.<sup>235</sup> In a 1998 survey on whether certain political organizations or politicians are trustworthy, only two per cent of the respondents replied that the Prime Minister was trustworthy and only three per cent of the respondents indicated that the Diet was trustworthy.<sup>236</sup> Better explanations are needed.

Scheiner has, so far, offered the best explanation of the reason the LDP has been able to dominate the Japanese political landscape. According to Scheiner, there are three major reasons.<sup>237</sup> Firstly, the clientelist structure in Japan weakens opposition parties.<sup>238</sup> In such a system, party-controlled governments reward supporters in elections with patronage. Vote-rich electoral districts provide votes to the party which offers public sector projects through the government it controls to firms which supply jobs to the voters in these districts. The resource-rich firms give party politicians money or other benefits in exchange for public sector projects.<sup>239</sup> For instance, the Japanese Government devoted proportionally far more resources (8.7 % of GDP) to construction firms in 1996 than governments in the West, e.g., the French Government (3.2 %), the German Government (2.2 %), the US government (1.7 %), and the UK government (1.4 %).<sup>240</sup> Japanese construction firms are not only the biggest supporters of the LDP with donations but also the strongest mobilizing forces favoring the LDP in elections.<sup>241</sup> Construction firms employ close to 10 per cent of the workforce, most of the employment are in LDP controlled election districts or rural areas.<sup>242</sup>

In addition to jobs provided by construction firms in rural areas, the Japanese government devotes much higher spending to the agricultural sector

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<sup>234</sup> Bowen (2003), *supra* note 211, p. 114.

<sup>235</sup> *Ibid.*

<sup>236</sup> *Ibid.*

<sup>237</sup> Scheiner (2006), *supra* note 8, pp. 2–4.

<sup>238</sup> *Ibid.*

<sup>239</sup> *Id.*, p. 14.

<sup>240</sup> *Id.*, p. 70.

<sup>241</sup> *Id.*, p. 72.

<sup>242</sup> *Ibid.*

(8–12% of the national budget) in the form of subsidies as compared with France, Germany, the United States, and the United Kingdom (between 2–4%).<sup>243</sup> In turn, most farmers are the loyal supporters of the LDP. One survey shows that roughly 71 per cent of the farmers who supported any political party voted for the LDP.<sup>244</sup> Other evidence revealed that the LDP was able to utilize around 50 per cent of the total rural votes to obtain more than 75 per cent of the seats in single-member rural districts.<sup>245</sup>

Secondly, funding of public projects centralized by the national government with a clientelist structure further weakens opposition parties.<sup>246</sup> Local politicians with the control of the governments have to align with the national government in order to gain more resources for their local districts. According to Scheiner, weak national parties are less likely to successfully extend the party network to local areas.<sup>247</sup>

Thirdly, institutionalized protection of political supporters' benefits offered by the dominant party exacerbates the difficulty of opposition parties.<sup>248</sup> As has been examined, the Japanese Government heavily subsidizes the construction firms and farmers. With the support of these groups which receive systematic political benefits, the LDP is in a more advantageous position in comparison with the opposition parties in elections. Institutionalized protection and clientelism, however, do not always explain well the performance of the dominant party. For instance, the elders in Japan receive very good treatment as the Japanese Government devoted around 50 per cent of the welfare expenditures to the pension for the retired.<sup>249</sup> Despite the fact that the elderly are more likely to vote,<sup>250</sup> they did not always vote for the LDP.<sup>251</sup> People may say that the group of retired persons is not a good example to argue against Scheiner's clientelism and institutionalized protection of supporters as the policy for the retired was established well before the creation of the LDP.<sup>252</sup> The difficulty with this

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**243** Ikuo Kabashima, *Supportive Participation with Economic Growth: The Case of Japan*, 36 *World Politics*, no. 3 (1984), 309–338, at 327–329.

**244** *Id.*, 332.

**245** Scheiner (2006), *supra* note 8, p. 5.

**246** *Id.*, p. 4.

**247** *Ibid.*

**248** *Ibid.*

**249** Gregory J. Kasza and Takashi Horie, "Welfare Policy", in Takashi Inoguchi and Purnendra Jain (eds.), *Japanese Politics Today: From Karaoky to Kabuki Democracy* (New York: Palgrave Macmillan, 2011), p. 144.

**250** *Id.*, p. 154.

**251** See *Half of New Teen Voters Choose Ruling Parties*, available at: <<http://www.asahi.com/ajw/articles/AJ201607110058.html>>, accessed 23 March 2017.

**252** Kasza and Horie (2011), *supra* note 249, p. 144.

argument is the reason the LDP has not tried to carry out reform of the retirement pension system when the economy started to slow down from the 1990s and when Japan is facing increasing competition from South Korea and China.

Although Scheiner explains relatively well the reason the LDP has dominated the political system, the author does not have much to say about the cooperation between the LDP and its opposition, including the JSP before 1994 and other opposition parties thereafter. If competitive democracy matters significantly in the Japanese society, the LDP does not have to cooperate with the opposition in the making of laws and public policies, at least most of the time. The reality shows, however, that the LDP has been actively cooperating with its opposition despite its majority position either under the 1955 election system or under the 1994 system.<sup>253</sup>

Kuroda developed the bilayer theory to explain the surface and latent aspects of Japanese politics.<sup>254</sup> According to Kuroda, the bilayer theory has become the Japanese method of coping with the changing nature of the political system in Japan at least from the seventh century.<sup>255</sup> There has been some evidence supporting this theory. For instance, the Japanese have placed significant emphasis on dynastic legitimacy and continuity of the throne within one family. The monarchy's major function, however, has been symbolic during most of the time in history.<sup>256</sup> Direct rule by the imperial family appeared to be short-lived and exceptional during the lengthy history of 1600 years.<sup>257</sup> During the more recent Tokugawa period before the Meiji Restoration, the Emperor played the symbolic role of the nation's ruler while the Shogun acted as *de facto* ruler.<sup>258</sup> The Meiji Restoration established the system of constitutional monarchy. Despite what was stipulated in the Meiji Constitution that "the Emperor of Japan shall be reigned over and governed by a line of Emperors unbroken for ages external"<sup>259</sup> and "the Emperor is the head of the Empire, combining in Himself the rights of sovereignty and exercises them, according to the provisions of the present Constitution",<sup>260</sup> the real power, however, was rested with the *genrō*s or elder statesmen who "played a decisive role in managing the government."<sup>261</sup>

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<sup>253</sup> Kuroda (2005), *supra* note 10, p. 10.

<sup>254</sup> *Ibid.*

<sup>255</sup> *Id.*, p. 10.

<sup>256</sup> Ruoff (2001), *supra* note 45, p. 17.

<sup>257</sup> *Id.*, p. 18.

<sup>258</sup> Beasley (1972), *supra* note 1, pp. 13–15.

<sup>259</sup> Meiji Constitution, *supra* note 36, Article 1.

<sup>260</sup> *Ibid.*, Article 4.

<sup>261</sup> Kuroda (2005), *supra* note 10, pp. 53–54.

The bilayer theory is also able to explain the reason the Interparty Relations Committee (IPRC), which is not a formal organization of the Diet, plays important roles in Japan. Under the 1946 Constitution, the Emperor becomes the symbol of the state, playing some ceremonial roles.<sup>262</sup> The real power shall be with the Diet as the “Diet shall be the highest organ of state power, and shall be the sole law-making organ of the State”.<sup>263</sup> In reality, the IPRC plays decisive roles in the choice of the Prime Minister and the making of law. Kuroda vividly describes in the following paragraph<sup>264</sup>:

External forces created the Diet, including the HMC and plenary sessions where Diet members act in accordance with Western standards in appearance, debating pros and cons of issues, and deciding them by majority rule with due respect paid to opposition parties. This is called *tatemaie*-level performance or ritual. The substance, however, was to be processed by the IPRC, where members of the Diet can informally negotiate (through *hon'ne*-level communication) and arrive at a consensus behind closed doors in advance of formal proceedings. The IPRC involves itself at all levels of the legislative process from a section in bureaucracy to the ruling party's Policy Affairs Research Council, the cabinet, and all through the plenary session.

Under the 1955 system, the IPRC of the LDP worked closely with those of the opposition, especially the JSP.<sup>265</sup> Despite efforts to eliminate IPRC politics, IPRC norms continue and are well alive.<sup>266</sup> Under the 1994 electoral system, the IPRCs of the ruling coalition have to reach consensus before they are able to negotiate with the IPRCs of the opposition parties informally and behind closed doors.<sup>267</sup>

As the Japanese elites reject the majority rule in favor of consensus building, the effect of the competitive democracy in terms of multiparty election achieves something very similar to that under a one-party-rule system in China. Kuroda is in favor of such practice as the latent part reflects the representation of a greater segment of the people in society than what can be achieved by the strict observation of the majority rule.<sup>268</sup> He also pointed out other benefits such as the elimination of poverty, the achievement of equality, and the maintenance of political stability for sustainable economic development<sup>269</sup> despite criticisms of dysfunctional democracy in Japan.<sup>270</sup>

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<sup>262</sup> See Articles 1 to 8.

<sup>263</sup> 1946 Constitution, *supra* note 49, Article 41.

<sup>264</sup> Kuroda (2005), *supra* note 10, pp. 54–55.

<sup>265</sup> *Id.*, p. 23 and p. 49.

<sup>266</sup> *Id.*, p. 65.

<sup>267</sup> *Ibid.*

<sup>268</sup> *Id.*, p. 55.

<sup>269</sup> *Id.*, p. 10 and p. 12.

<sup>270</sup> Bowen (2003), *supra* note 211.

If election is one thing and politics under the surface is quite a different thing, the case of Japan can hardly be used to support the open access theory or requirements advocated by North and his colleagues. A country is an open access order, according to North *et al.*, only when there is open access in the political sphere and open access in the economic sphere. While Japan meets both criteria, it is the open access in the economic sphere and the interconnected institutions examined in the previous sections that drive Japan's economic and human development since the Meiji Restoration. This implies that economic or human development does not have to occur in an open access order.

A major difficulty of using the case of Japan to argue against the open access theory is the coincidence of the very high rate of economic development and the adoption of competitive democracy with universal suffrage after 1946. Correlation, however, does not mean causation: that it is the adoption of competitive democracy which results in the extraordinary economic and human development after WWII. First of all, statistical regression is not able to establish the correlation between popular competitive democracy and economic development in the contemporary world.<sup>271</sup> Secondly, the bilayer theory suggests that it is not popular election under competitive democracy that works but the cooperation of elites under the surface that achieves policy objectives in Japan. Thirdly, it is the interconnected institutions related to contract enforcement and property rights protection, financial market, rule of law, and accumulation of human resources that have contributed significantly to the economic and human development since the Meiji Restoration. Evidence in this article shows that most of the institutional building had been completed before WWII. The remaining improvement of the interconnected institutions after WWII was already inevitable.

While it is true that the fastest rates of economic development in Japan occurred during the period of 1946–1975, it is the significant improvement of the institutions of higher learning that matters much more. Japan had already achieved considerable results in terms of universal education for the primary schools after the Meiji Restoration. At the beginning of this century, Japan surpassed virtually all the other Asian countries in terms of the enrolment rate of children in primary schools. Secondary education had also achieved great progress well before WWII although compulsory universal education was extended to junior secondary schools after 1946. The higher education sector, however, was the only remaining area that needed the most significant

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<sup>271</sup> For a literature review, see Guanghua Yu, *The Roles of Law and Politics in China's Economic Development* (Singapore: Springer, 2014), chapter 7.



development to place Japan well ahead of most other countries after WWII. In the section on the accumulation of human resources, it has already been shown that the enrolment rate into universities was improved by two per cent only from 1915–1935 but by 21.2 per cent from 1955 to 1975. This was exactly the period that Japan experienced the most significant economic growth.

Furthermore, well before Japan started to have party politics, it had already become very strong both in terms of military power and in terms of economic strength. The economic development after the Meiji Restoration could only be attributed to Japan's adoption of the open access in the economic sphere and institutional building amongst the interconnected institutions. These interconnected institutions include policy and rule changes related to contract enforcement and property rights protection, development of the market and finance, establishment of the rule of law system, and emphasis on the development of institutions of accumulation of human resources. The development of these interconnected institutions occurred long before party politics in Japan. The examination of this section so far indicates that the case of Japan also suggests that it is the open access in the economic sphere and the interconnected institutions that are responsible for Japan's fast rate of economic and human development. When the economy is good under open access in the economic sphere and the interconnected institutions have also been well developed, competitive democracy can be adopted whether it is chosen voluntarily by the domestic government of a country or by imposition of external forces. Although Japan would have decided to adopt competitive democracy with universal suffrage after WWII had things happened differently, this does not mean that Japan would not have achieved significant economic development in the absence of the current multiparty-party political system.

The discussion in this part does not try to claim that the Japanese system is not democratic after WWII, it shows instead that the high rate of economic development is more closely related to open access in the economic sphere. In addition, this part tries to suggest that Japan has been effectively under one-party rule since 1955 despite the adoption of competition democracy.

## 4 Conclusion

The article uses the case of Japan to argue that the theory of open access order which is advocated by North and his colleagues goes beyond what is necessary. Although their theory of open access order explains the West relatively well, it does not always apply to contemporary non-Western countries. Similar to the

case of India examined elsewhere,<sup>272</sup> the case of Japan reveals that what is more important to economic and human development is the open access in the economic sphere and the interconnected institutions in the areas of property rights protection and contract enforcement, financial market, rule of law, and human resource accumulation. In other words, countries without open access in the political sphere may also be able to achieve great success in terms of economic and human development if they ensure open access in the economic sphere and devote adequate resources to establishing the necessary interconnected institutions examined in this article. If contemporary non-western countries are able to move in this direction, relatively good economic and human development will occur. While elite democracy under limited open access in the political sphere used to play important roles in improving human freedom, equality, and dignity in the West, these valuable concepts can now be borrowed to differing degrees by most of the contemporary non-western countries with or without adopting competitive democracy. Further research elsewhere on Singapore and China will shed more light on this debate.

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<sup>272</sup> Guanghai Yu, *Open access Order and Interconnected Institutions: The Case of India*, 17 *Australian Journal of Asian Law*, no. 2 (2017), 1–19, Article 11.

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