"In reducing a moving picture to a snapshot, we run the risk of missing crucial aspects of the process through which formal institutions take shape, as well as ways in which they either endure or change in constantly shifting environments."

(Paul Pierson, 2004)

INTRODUCTION

The national Japanese bureaucracy matters in political decision-making in Japan to the extend that “rather than a rule of law, a rule of bureaucrats prevails.” The dominant vision of governance states that elite bureaucrats have been the driving force behind the economic miracle, which has steered Japan to the second biggest economy of the world. The relatively concise but powerful bureaucracy in Japan consists in general out of three levels, matching the three levels of examination right after graduation. The first level which is very competitive and which successful candidates will be promoted much faster than the other two categories, are also called the ‘kasumigaseki-bureaucrats’. Kasumigaseki is the name of the ward in Tokyo where ministries are situated that harbors the top-level bureaucrats; it is the Tokyo equivalent of London’s Whitehall. This paper will focus on the kasumigaseki-bureaucrats and their role in policy-making and implementation of policy, resulting in their role in driving the Japanese economy to dynamism and innovation.

Two major problems with academic research on the bureaucracy in Japan can be pointed out. First, historical research in the Japanese bureaucracy is narrowly confined to the prewar period. No implications for the contemporary bureaucracy are pointed out and 1945 is seen as a radical rupture which the prewar situation.

4 Fuchler, 1988; Howland, 2001; Silberman, 1974.
Recent historical research has pleaded for paying more attention to continuity in and similarities between various historical periods. Second, since Chalmers Johnson’s brilliant book on MITI, few scholars have attempted to continue the efforts and bring the data in a more theoretical perspective. In sum, a “snapshot” of data is available but the mechanism of bureaucratic action is still blurred. We argue that historical research on the Japanese bureaucracy should aim at an in-depth, theory driven description of the main administrative procedures that would then be the dependent variables in a theory-based causal analysis that identifies the mechanisms through which the procedures come about. The advantage of such an approach is that it allows integrating different kinds of data into one analysis, thus providing a much more “thicker” empirical basis from which to understand the mechanisms that shape and change the procedures applied by the bureaucracy.

We argue that “administrative guidance and mediation” as applied by national bureaucracy in Japan can be considered an institution, in terms of neo-institutionalist theories. Peters defines an institution generically as “a formal or informal, structural, societal or political phenomenon that transcends the individual level, that is based on more or less common values, has a certain degree of stability and influences behavior.” We argue that administrative guidance and mediation satisfies all these definitional conditions. The definition that is associated with historical institutionalism, the explanatory theory we will draw from, is a bit more specific. Institutions are here defined “as the formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy.” Administrative guidance as well as mediation procedures by bureaucrats also fits in this more specific definition. These procedures are expressed through the hardware of institutions (formal or informal procedures, routines, practices, etc). Considering informalism as an institution allows us to consider it as a dependent variable in a new-institutionalist explanatory account. The author prefers the historical approach to simply referring

7 This claim is consistent with research into the British civil service ethos that also perceived the latter as an institution in the sense of neo-institutionalism (e.g. Pratchett and Wingfield (1996: 649-650) and Vandebeeke and Horton (2005)).
9 Hall and Taylor, 1996: 938.
to “Japanese culture” to explain bureaucracy, because of the risk of tautological reasoning in the latter.

The approach that will be used is that of ‘path dependency’ that implies that history matters and that chain of events related to one institution, the Japanese bureaucracy in this particular case, will guide the development of that institution. The events are not unrelated but at the contrary they are contingent. This historical institutionalist approach explains how the institutions survive and in our particular case we can go one step further\footnote{as done by Vandenabeele and Horton, 2005.} so to explain the evolution, i.e. reform of the institution. Mahoney (2000) suggests that this be done not only by the rational, utilitarian self-enforcing mechanism but also by positive feedback mechanisms that are functional, power and legitimation mechanisms.\footnote{Mahoney, 2000: 519-526.} Functional mechanism implies the benefit of a certain system for the survival of the whole system. That system will be selected with optimal guarantees for the survival of the system. The power mechanism implies that an actor or group has sufficient power and resources to maintain or change the system. The reproduction and evolution of the system therefore is bound to the power equation to which the system is subject. The legitimation mechanism is grounded in the belief of actors about what is morally appropriate. The justice system can for example play an important role when the judge renders a judgment and chooses a certain value over another.\footnote{Mahoney, 2000: 524.} Reproduction and survival but also institutional change can be explained by these mechanisms.\footnote{Vandenabeele and Horton, 2005, 4.} Change will occur for two fundamental reasons, the first being that critical junctures such as war, crisis, revolution, election and social movements, etc.\footnote{Vandenabeele and Horton, 2005: 4.} will endure an exogenous shock that will transform the system. But the institution can change less drastically. An institutional evolution within the framework of the institution can occur and add institutional arrangements on top of the existing ones. This institutional evolution is called ‘layering’.\footnote{Thelen, 2003.} Our analysis of the Japanese bureaucracy will make use of the above-mentioned positive feedback mechanisms to explain the development, survival and changes in the bureaucracy in the second largest economy of a nation which has been called by Chalmers Johnson a ‘developmental state’ due to the large extend of bureaucratic guidance in the
In a first paragraph we will introduce the main characteristics of the Japanese bureaucracy, as it exists in Japan today. The second paragraph will illustrate this in a general overview of the development of bureaucratic rule since early-modern history and then the third paragraph gives a specific example of the way the bureaucrats did elaborate their informal rule through creating a new mediation procedure that became the norm for dispute resolution in Japan.

1. Bureaucracy today: informalism as the main characteristic

The civil servants are considered the most powerful and stable decision making force in Japan. Politicians and business leaders as well as most other groups' power are much more temporarily defined. The bureaucrats at the contrary are unchallenged in their powerful position. This has various origins that are mainly historical, institutional and origins of political culture. First from a perspective of history the bureaucrats were considered the servants of the emperor (tenno no tsukai 天皇の使い) rather than civil servants. As such they were to strife independently from other powerful groups to protect the Emperor. Early after Japan entered the Modern Era in which the power of the Emperor was restored, conflict with parliament (established in 1890) was fierce and demonstrated that the parliament was not very powerful at the end of the 19th century. Also at the advent of Modernity in Japan, the need for well-educated bureaucrats was high but such resources were scarce. In order to secure the services of the capable people, the bureaucrats, aside from the prestige as the servants for the emperor –only accountable to him, were well paid and offered many benefits so to keep them within the nation's administration. This prestige for the bureaucrats which was closely related to the exceptional status of an absolutist emperor remained even after the second world war when the emperor lost his godlike status and according to the new 1947 constitution became a mere symbol of the state. The bureaucracy still attracted the most able graduates who rather joined the state than join the private companies.

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The stability of the political system in Japan, contributed to the power of the bureaucrats. Since 1955 one political party, the conservative Liberal Democratic Party was able to remain in government. An unwritten pact between the bureaucrats and the LDP leaders (who mainly had backgrounds in the bureaucracy) was concluded and implied that the bureaucrats could independently develop policy as long as they did support LDP rule. To maintain their prestige the bureaucrats were diligent servants of the Emperor before 1945 and of the LDP after the Second World War.

Efficiency of the Japanese bureaucracy today was the main concern of many administrative reform measures. The government streamlined the bureaucracy and reduced the number of personnel, commissions and agencies.\textsuperscript{18} Every reform of the Japanese administration includes a reduction of its members and is an equation with improved bureaucratic efficiency. The National Personnel Authority was charged with ensuring conformity with the purpose of the reform, i.e. efficiency, and was also the protector of the bureaucratic ethics as stipulated in the National Public Service Law. This resulted in a very small but efficient bureaucracy that was very strongly driven by ethical standards as controlled and confirmed by the NPA. The relatively small bureaucracy results in a limited amount of national income allocated to government expenditures that is said to be for Japan one of the lowest among OECD countries. Until the end of the 1970s the Netherlands, Denmark, Sweden and Norway allocated up to 60 percent of national income to government spending while Japan remained below 30 percent.\textsuperscript{19} This was crucial to Japan’s economic miracle as taxation rates could remain low and enhanced the stability of the political decision-making process due to a continuous support for the ruling LDP.

Contrast with the organizational efficiency of the bureaucracy in Japan is the cultural influence that rules the human ‘friendship’ relationship within and outside the ministry. The public for reason of corruption blames the bureaucracy. Scandals have angered the public and made them realize that the bureaucracy still today is close to its 19th century slogan of \textit{kanson minpi} 尊民蔑 (respect the bureaucrat

\textsuperscript{18} Pempel: 255.

\textsuperscript{19} Pempel: 270-271.
and despise the people). Goroku Satake, a former Chief of the Ministry of Forest and Fishery comments about bureaucrats:

_Bureaucrats are inclined to see themselves as guardians of the ‘uneducated and unsophisticated public.’ They have a firm conviction that they best understand administration and policies. When they work for certain interest groups or protect their agency’s vested interest, it is very likely that corruption will follow, because the decision making process for policy in Japan is oftentimes a closed door meeting between politicians, bureaucrats, and the interest groups concerned._

The so-called ‘Iron Triangle’ consisting of bureaucrats, LDP politicians and business leaders, decide important state matters behind closed doors. They rely on each other and often show their mutual gratitude by meeting each other in expensive restaurants, contributing to the election campaign of a supportive politician or by offering lavish presents to each other at important occasions. This contact goes beyond mere professional relations. Showings of friendship open the door to professional trust. The border between the private and the public is often unclear in Japanese culture. The most ‘formalized’ of these informal cultural practices is _amakudari_ 天下り which means that upon retirement a high ranked bureaucrat will obtain a well paid job at a private company and will defend the interest of the company. These practices are common to show goodwill and recognition so that a long-term relationship of trust can be maintained. This informal relationship is said to be a special cultural feature even of contractual relationships in Japanese society.

Informal cultural practice within the bureaucracy is well described by Jun and Muto.

_A section chief (kakaricho) or division head (kacho) is viewed as a judge, harmonizer, organizer, planner, motivator, counselor, and coordinator and decision maker. He or she has to promote equity and fairness in the organization and is responsible for building group loyalty and harmony, which will aid the accomplishment of the section’s projects and activities._

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person's motivation and contribution depend, to a great extent, on an emotional attachment to his or her group and immediate boss.\textsuperscript{21}

Because there is usually no competition for promotion among members of the same working sections (\textit{ka} 課),\textsuperscript{22} there tends to be quite a strong team spirit within these units. Assignments in such teams are typically considered shared rather than individual responsibilities. Meanwhile, several other “social bonding” mechanisms ensure that the unit maintains sufficient contact with other units. We mention just two. Probably most famous is the \textit{ringi} (稟議) system, the system of ‘proposal submission and deliberation’ which is yet another aspect in which the organization of Japanese firms mirrors that of the Japanese civil service.\textsuperscript{23} Second, the \textit{doki} 同期, also works as a mechanism that fosters a team spirit across units. While the members of the \textit{doki} compete with each other for positions (see above), they also typically maintain close informal contacts, exchanging information and thus developing a sense of solidarity. Formally, the scope for a public servant to let his personal morality play a role in his ethical decision-making is very limited or non-existent in Japanese public administration. Yet, on the other hand, there is a longstanding practice that provides the Japanese public servants with a degree of discretion and impact upon policy implementation that goes significantly beyond the discretion of public servants in many Western countries. This is the notorious practice of administrative guidance (\textit{gyosei shido} 行政指導): “Administrative guidance is a common Japanese regulatory technique that, although generally non-binding, seeks to conform the behavior of regulated parties to broad administrative goals”\textsuperscript{24} and further explained as “the advice or assistance that the government (usually a ministry) provides to corporations, private persons and public organizations to realize what is thought to be in the national interest.”\textsuperscript{25}

Administrative guidance is law enforcement therefore only in the sense that law is

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\textsuperscript{21} Jun and Muto, 1995: 129
\textsuperscript{22} The competition is between members of the same \textit{doki} or cohort, and members of the same \textit{doki} are usually not within the same team.
\textsuperscript{23} Dore; 227
\textsuperscript{25} McVeigh, 1998: 90-91
\end{flushleft}
equated with whatever policies the officials choose to implement. A series of antitrust decisions from the 1950 Hokkaido Butter case through the 1980 Oil Cartel cases illustrate METI’s use of informal enforcement to encourage business enterprises to engage in prohibited anticompetitive conduct for which METI had little or no statutory authority.26 Another longstanding and maybe even more important practice that provides the bureaucrats with discretion is the widespread use of the mediation systems (chotei seido 調停制度). The bureaucrats establish those systems and run them so, they say, the parties involved can resolve their disputes more rapidly, cheaper and efficiently than when they go to court. This inform system totally controlled by the bureaucrats became mainly famous by the mediation procedures established to deal with pollution disputes like the Minamata Disease and with complaints according to the Equal Employment Opportunity Law.

The Japanese bureaucrats have a clear notion of the bureaucracy as defender of the public interest, in contrast to politicians, who are typically perceived as defenders of special interests. “They might have been haughty and arrogant (...), but the image of the Japanese bureaucrat was one of a man of ability and dedication who had forgone opportunities for material gain to serve the nation.”27 “The high civil servants (special career administration) believe that they are working for the state of Japan (kokka 国家) or Japan as a whole and that their loyalty to the government and hard work will make Japan survive in a competitive world environment. Without their dedication, Japan will lose its prosperity.” 28 They sacrifice their own personal benefits for the sake of the other, for the public interest. The Japanese bureaucrats are therefore very ‘responsible’ (sekininkan 責任感) people, which is a regularly used concept by the general public with regard to high ranked officials. These official and the public relate this concept of responsibility to the notion of ‘public justice’ (koseisa 公正さ) and all ethical judgments by the bureaucrats will be taken against that background. They will be loyal towards their colleagues, superiors, ministry and supporters outside of the ministry because the

27 Curtis, 1999: 55.
unconditionally ‘trust’ (shinrai 信願) that they form a responsible team working for ‘public justice.’

2. The Historical Evolution of Bureaucratic Informalism

The civil service as it exists today in Japan has to be considered against the background of the two main historical turning points the nation has experienced. The first one is the transition from feudalism to a Western-style modernity and capitalist state model, which occurred in 1868 and the second one is the defeat of Japan in the Second World War in 1945. These are two obvious critical junctures, which have shaped the institutions in Japan.

Japan had never experienced such a long period of peace than it did during the Tokugawa period (1600-1868). The country was ruled by the military ruler or the shogun who was assisted by a strong army of the upper class in the feudal society, i.e. the samurai; the Japanese ‘knights’. The shogun had two major concerns. First, he wanted to make sure that no opposition to his rule would occur and second, also related to the first reason was that he wanted to make sure that the farmers paid the high taxes diligently. In order to motivate the farmers to pay taxes and support the shogunate, the rulers issued a steady stream of ethical admonitions, practical advice and legal proclamations intended to be respected by the people. The leaders of the Tokugawa regime developed sophisticated bureaucracies to help them rule more efficiently. As the samurai were the highest class in society with access to education and a strong commitment to the state - and in time of peace they had not much to do - it was obvious that the samurai would be the main pool to recruit the bureaucracy. James McClain explains that

“at the beginning of the seventeenth century, the samurai transformed themselves from fierce warriors into learned and competent civilian administrators. More than that, however, the shogun and daimyo, who had risen to power through brute strength and conquest, came to base their mandate to rule on the attributes of law, regulation, precedent, rationality, and eventually even public interest.” 29

The samurai were to be the example for the nation and had to be in their function of bureaucrats as little concerned with their own materialistic benefits than they would be on the battlefield. They had to respect the rules and laws as much as they were inclined to make the people respect the laws. A critical junction for Japan in 1868 would change the bureaucracy drastically as an institution but the values of formal respect for rules would be carried on in modernity and remain the fundament for the modern civil administration in Meiji Japan.

After the power of Emperor Meiji was restored in 1868, a major restructuring of central government followed. Power was restricted to a very small number of people all being nobility or samurai from four if the 284 domains (Satsuma, Choshu, Tosa and Hizen). Those domains had actively waged the rebellion against the Tokugawa shogun and emerged victorious. They were in charge of deciding the future of Japan. The modern state’s institutions were established according the Western examples. The new state required the creation of a bureaucracy. The Meiji leaders who choose men on whose loyalty they could rely because of past political associations handpicked the early Meiji bureaucrats. Almost all bureaucrats were came from the four domains.

The know-how needed to become a bureaucrat in a modern state was not easily acquired. The Meiji leadership desperately needed a school for the education and formation of the elite bureaucracy. It was with that purpose that the law faculty of Tokyo University was established in 1884. In 1886 the first national examination system for access to the civil service was established. This examination introduced open competition and merit-based system of entry to the bureaucracy. This open competition was in 1886 still very limited as it only aimed at filling up the remaining positions after automatic admission of Tokyo University graduates. A first rationalization of the civil service occurred in 1893 when the political leaders of one domain (Choshu) were afraid of the increasing power in the government of another domain (Satsuma). They proposed a rationalization for the ‘fairness and equitability’ (コエイザ 関手さ) of the civil service according to which automatic admission was abolished. Every candidate to the civil service was to take the examination. Still, Tokyo University graduates were privileged because they only

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had to take one of the two examinations and because the examinators were all selected from the instructors at that university. In the second half of the 1890s it became clear that the Japanese bureaucracy was composed mainly out of Tokyo University graduates who, mostly, belonged to the main domains. At the beginning of the 20th century, the overwhelming power of the Satsuma and Choshu domains decreased and Tokyo University became accessible through competitive entrance examinations to the elite from all regions in Japan. Parallel to a political power shift, the bureaucracy also changed. The domain samurai elite composing the Japanese bureaucracy until the end of the 19th century made place for an academic Tokyo University elite.

A major reform of the Civil Service Examination took place in 1899. A clear line was drawn between the three general classes of administrators: the highest class of Imperial administrators (*chokuninkan* 勍任官), an executive class of administrators (*honinkan* 奏任官) who could later be promoted to the highest class and a lower class (*hanninkan* 判任官). The recruitment, promotion and sanctioning of the national bureaucrats would be done by the Emperor’s cabinet (*Sumitsuin* 枨密院), which was not accountable to any other institution but the Emperor. Power of the ancient domains, emerging party politics, and decisions of the parliament would have no influence on the bureaucracy any longer. They really became the servants of the Emperor.\(^{31}\) This was as well a functionalist change than a power-based change as the country’s leaders still feared the threat of colonization by the Western Imperial power if domestic rifts would undermine the unity of the nation. The civil administration became really united.

Severe punishments were established in the 1899 Code of Conduct for the Civil Servants (*monkan chokairei* 文官懲戒令) for those bureaucrats damaging the authority and trust of the general public in the bureaucracy.\(^{32}\) The bureaucracy became the engine of Japan’s modernization and in the name of the emperor they


\(^{32}\) Kawaguchi: 276.
had to show to the people in and outside Japan that according to several ethical considerations, they could lead Japan to the status of a first class Imperial nation.

The influence of party politics declined rapidly after the assassination of Prime Minister Inukai in the incident of May 15th, 1932. This was a critical juncture as it meant the end of a period of relative liberalism (Taisho Democracy) where the bureaucrats had diligently performed their jobs and prepared the bills for general male suffrage in 1925, which, for example, made a considerable representation of socialists in the Parliament possible. Economic crisis and irritation with the lack of strong leadership to resolve the crisis gave rise to a rightist movement aiming at a stronger role for Japan. The military and the bureaucracy would become the political leaders of this movement. The political parties' power declined and McClain shows that in the eight cabinets, which were formed between 1932 and 1940, no politician served as prime minister. The average number of ministers recruited from the military and civilian bureaucracy was of 9.9 of 13. New supra-agencies were created to better coordinate the functioning of the various ministries. At that time a new class of bureaucrats educated abroad, emerged.

The so-called ‘new’ bureaucrats (shinkanryo 新官僚) wanted to defend the lower classes such as the tenant farmers. They were suspicious about capitalism and wanted to make

"bureaucracy the central element in the formation and execution of national policy. The renovationist bureaucrats took as their most immediate priority the need to build up Japan's economy and war-making capacity."

The bureaucrats shifted their idea of public interest to one opposed to the political parties. They had to stand above the volatile political game and draw policy, which were beneficial for the whole of society. Several accounts by prewar bureaucrats, for example, relate of the attempt of the bureaucrats to establish new legal systems to terminate the many conflicts between tenant farmers and landowners. The bureaucrats wanted to give more legal rights to the tenant farmers and restore harmony in society by doing so. The parliament and political parties, however,

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34 McClain: 424.
fervently protected the interest of the rich landowners and refused to approve any legal bill that was unfavorable to the landowners. This angered the bureaucrats as can be read in the ideas of Ishiguro Tadaatsu, an important bureaucrat at the ministry for agriculture before WWII. The bureaucrats considered themselves the defenders of the public interest but the definition of ‘public interest’ was steadily changing from a Marxist inclined approach to a conviction with a strong nationalist connotation. This would inevitably lead to the horrors of the Second World War with the bureaucrats playing an important role. They were sacrificing their individuality for the public interest which was then meaning the ‘sake of the nation’ (kuni no tame 国ノ為). Internal and classified reports in the Ministry of Agriculture for example, related of bureaucrats traveling around the countryside to promote that nationalist notion of ‘public interest’ and ‘good of the nation’ to the people.

3. Bureaucratic Mediation as the Origin of Informal State Control in Japan

Between 1920 and 1941, approximately 70,000 disputes were recorded as occurring between tenant farmers and their landowners. The farm tenancy disputes, which increased rapidly in intensity from 1917 onwards, forced concessions from the elite and, if successful, could have undermined its traditional paternalistic domination over Japanese society. The rulers were caught between conflicting interests. On the one hand they needed political support from the wealthy landowners with suffrage, on the other hand they needed to secure the flow of agricultural products to the growing urban centra as well as to the army. In the prewar social organization characterized by a dualism between landowning wealthy landowners and poor producing tenants, the matching of those priorities was not a sinecure. The leaders in Taisho Japan did search for a lasting answer to the conflicts and politicians and bureaucrats alike realized that motion could not be stopped. The leaders did turn to the legal procedures to match the interest of both social groups and did find a new legal institution, which would become known as the typical Japanese way of accommodating change.

Law in the Japanese farm village was associated with the state and was considered as a political instrument that did not necessarily affect everyday life in society. The

norms stipulated in the Meiji Civil Code were felt not to pertain to the farm village, where adherence to some customs, such as annual rent reduction and automatic continuation of the tenancy agreement, which were contrary to the formal provisions of the law, prevailed. In this way, during the Meiji period, Japan was characterized by the coexistence of two sets of norms: one legal and the other traditional. When the tenant farmers and landowners were involved in a dispute and tried to justify their position, it was done differently from the type of actions that might be taken according to a modern legal system. In Meiji Japan, the lack of affinity for legal norms and the concept of modern law was determined firstly by the organization of the Japanese farm village and the character of the interrelationship between the people in that society; secondly, by the structure and character of Japanese legislative power; and thirdly, by the character and function of law in the courts of Japan after 1868.

Eventually, the nature of the tenancy disputes, i.e. expressed as a struggle for rights but within the traditional context of community action, increased pressure upon the government to take measures in order to cope efficiently and quickly with the escalating farm tenancy disputes. The authorities had to find a way to accommodate both tradition and law while providing the tenants with more security. At the same time, lawmakers had to ensure that the landlords' status would not be threatened. Notwithstanding the above, any reform measure would have to pass the Diet, which consisted for the most part of those favorable to landlords.

The bureaucrats of the Ministry of Agriculture were entrusted with the actual drafting of the measures intended to cope with the farm tenancy disputes. In 1920, a proposal for the amendment of the Meiji Civil Code was submitted in the form of "investigation papers for a farm tenancy bill" (kosaku hōan kenkyū shiryo 小作法案研究資料), but this effort was shelved in 1922. Although the government realized

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37 Important sources on the legislative process in the 1920s are Ogura Takekazu, Tochi rippō no shiteki kōsatsu (Tokyo: Nogyō hyōronsha, 1951); Hironaka Toshio, Nōchi rippūshi kenkyū (Tokyo: Kōbunsha, 1977); Kagawa Toshihiko, op. cit. (1990); Hans-Peter Marutschke, Die Entwicklung des Grunheitsrechts im modernen Japan und die Landpachtgesetzgebung der zwanziger Jahre (Köln: Crl Heymanns Verlag, 1993).
that the Meiji Civil Code was deficient with regard to the problem of farm tenancy, it was unable to resolve this problem by formally restructuring the relationship between landlords and tenant farmers. In 1924, the bureaucrats' efforts finally resulted in the enactment of a procedural law (Farm Tenancy Mediation Law: *kosaku chōtei hō* 小作調停法) regulating the farm tenancy mediation system. It was an ambiguous law that created speculation on what the measure would signify for the tenant farmers and landlords.

Mediation, or *chōtei* (調停), was the most frequently used method for coping with farm tenancy disputes until the enactment of the Farm Land Adjustment Law (*nōchi chōsei hō* 農地調整法), enacted in 1938. In contrast to a lawsuit, where the parties’ consent is not required in order for a verdict to be binding, the parties involved in a mediation procedure settle their dispute by mutual consent with the help of mediators. In mediation, mediators supervise the negotiation process between the parties and ensure the balance of bargaining power between the parties. This, in principle, is intended to guarantee an equitable settlement of the parties’ dispute.

The Farm Tenancy Mediation Law did not affect the provisions regarding the relationship between tenant farmers and landlords in the Meiji Civil Code, but provided the disputing parties with a new procedure in which they could request the assistance of a state-appointed mediator to reach a final agreement in a given dispute. The precise content of the mediation agreement was left to the mediators and the parties. There is no doubt that the government of the 1920s realized that the relationship between tenant farmers and landowners was a threat to Japan’s social order, but it was unable to make any fundamental, formal change in the anachronistic provisions of the Meiji Civil Code because of the exclusive participation in the legislation process of people paying a high amount of taxes. These people appeared to be favorable to the landowners.

Farm tenancy mediation was, according to its architects, the union of tradition with law. It was to be the first step before a formal amendment to the Civil Code could be performed. Mediation was based on several foreign procedural systems and on the
existing Japanese Mediation System for House and Land Lease, which had been enacted in 1922. Nevertheless, the Farm Tenancy Mediation Law was not comparable to any of the existing mediation systems. It had to deal with parties bound by strong community-based ties in which the relationship between the parties was traditionally more intense than in the other disputes dealt with under the mediation system. The involvement of landowners as mediators in the mediation system was the major problem for the success of the system. Although the procedure was nominally a judicial procedure, as it was performed in court, a bureaucrat of the Ministry of Agriculture was dispatched to the village. He was charged with the task of overseeing the dispute, advising the laymen mediators and the parties involved in the dispute, and proposing candidates to become laymen mediators. This bureaucrat became the actual director of the mediation system.

This so-called “tenancy officer” (kosaku kan 小作官) became a specialist in the farm tenancy conflicts. He was trusted for his knowledge and feared for his status as a bureaucrat of the Ministry of Agriculture.38

In the 1930s, the role of the tenancy officer became increasingly important as the tenancy disputes changed in character. While in the 1920s mediation had involved aggressive claims for better conditions for farmers in the industrialized area, mediation in the 1930s became a defensive struggle by tenants in the less modernized regions to remain on their farmland in view of an eviction order of the landowners. In the 1930s, the tenant farmer relied heavily upon the help of the tenancy officer. The officer wrote application forms for the tenant farmers and represented them during the negotiations with their landowners in the mediation procedure. In the first years after the enforcement of the Farm Tenancy Mediation Law, the mediation system was primarily used on the initiative of the landowner, but after some years the tenant farmers submitted the bulk of the applications. This change resulted mainly from the interference by the tenancy officer in the resolution of farm tenancy disputes. He became the central person in the mediation procedure and acted as a protector of the tenant farmers. His influence on the function of the tenancy mediation system will be examined in order to see whether the mediation system actually was favorable for the tenant farmers and, if so,

38 The personal notes of the tenancy officers reveal that the tenants relied in many cases on the power of the tenancy officers in order to reach an agreement in their disputes with the landowners. Main sources are Kita Masaharu, Waga jinsei (Tanimotosō, 1993); Yōkōhama shishi, ed., Chihō kosakukan to nōson jōsei (Yokohama: Yōkōhamashi, 1990).
whether it succeeded in resolving the tenancy disputes.

The farm tenancy mediation system and the tenancy officer's involvement in this system was the answer of the Japanese prewar legislators to conflicts that threatened the status quo. The tenancy officer's taking care of the tenant farmers' grievances permitted this bureaucrat of the Ministry of Agriculture to influence the social impact of the dispute resolution. The mediation systems concerned with land and house lease (1922), with farm tenancy (1924), with labor (1926) and with monetary claims (1928), were answer to the question that had haunted the social and political elite of the country since the decision was taken to introduce a modern legal system in Meiji Japan.

Formal benefits had priority for the motivation to choose for mediation rather than litigation as a means to address disputes that could threaten the social order. This choice also fitted a developing new relationship between the political and social elite such as the bureaucrats and the politicians on the one side and the groups with a strongly developed consciousness of rights such as labor and tenant on the other side. This was the beginning of a system (unconsciously) designed for containing social grievances and the alteration of status quo that Frank Upham labeled "Bureaucratic Informalism." It has to be said that this concept was mainly concerned with postwar means to contain social change that could be caused by disputes between the government of Japan and organized grievant connected by a common cause.

**CONCLUSION**

Before 1945, the bureaucrats were not an as monolithic powerhouse as after 1945 but nevertheless they were the most important architects of social change. For tenancy disputes indeed they first attempted to find a solution within the existing possibilities such as relying on traditional authority of the head of the villages or of the police officer of by establishing cooperative associations but these bureaucrats had to realize that all these means were a failure and that social peace further deteriorated. More disputes were brought before the judges in litigation, more unions inspired by socialism became involved and indeed, the bureaucrats as the servants of the Emperor and thus mainly concerned with the benefit of the nation-state, realized that society was changing fundamentally. The bureaucrats
did need to design a method that did balance the needs of the both parties involved in the dispute and that left possibilities for a later adjustment of the formal farm tenancy relationship. The system that developed from this concern was the mediation system. It did indeed offer the parties the possibility to find an equitable solution to their dispute in accordance with tradition.39

Aside from this function of mediation as a means to respect tradition and to keep the people away from the court, the data that could be found on the actual operation of the mediation system suggested other important functions too. Indeed, the mediation system was providing to the authorities in charge with dealing with problem, with an invaluable amount of information on the farm tenancy disputes, the changes in the arguments of the parties and through the involvement of a wide area of mediators such as the judge as the chief mediator, the members of the farm village as mediators and the tenancy officer as an advisor, information was really coming from various sides and interests. This suggests that farm tenancy mediation was not only important for the solution of the farm tenancy problem. Actually it failed with respect to this ambition. The number of disputes continued to increase.

The main element of success of the mediation system was that it provided the main people in charge of finding a solution, i.e. the bureaucrats of the ministry of agriculture with information on how consensus on farming was developing within the farmer community in specific and within society in general. They could balance the information with various aspects of policy and reflect this information in the formal adjustment of policy. In this sense, the various laws on the promotion of independent farming and the drafts for the formal tenancy laws reflect a process of formal adjustment of the farm tenancy law so that the content of the Civil Code even if this was often considered in as being opposite to Japanese tradition could be adjusted efficiently. The Farm Tenancy Mediation system was simplifying this legislative process on a highly sensitive problem in a rapidly changing society. It indeed was an intermediary solution that was aimed at helping engineering the law. The consensus that this new law reflected, which finally was included in the Land Reform, was additionally preventing a too drastic and rapid change that could have undermined social order further. The mediation procedure concerned with farm tenancy was fitting Japanese tradition in which social structure and the collectivity

39 Haley, p. 92.
has priority on the individual and drastic social change. It is indeed in line with what Dan F. Henderson has found to be the main characteristic of mediation in Tokugawa and in Modern Japan in his pioneering study on law in Japan, namely the “didactic” quality of mediation that has been explained by John O. Haley as “mediation provided an effective opportunity for officials to instruct the parties with respect to their moral and social obligations, not merely their legal duties.”

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40 Haley, p. 93.