On the Retrospect of six decades in Japan
- concerning mainly the labor laws

Saburo MATSUOKA*

I. Preface and Gist

Object

This report is a retrospect of six decades since the birth of the new constitution and the fundamental labor laws. This retrospect offers the facts of these changing laws and the facts give a hint to the method of the labor law science, I think.

Three periods

(First period) The first is the period from 1945-1950 in which the suppressive laws such as the law for the maintenance of public peace etc. before the world war II were abolished and the constitution of Japan and the three fundamental laws for the weak such as worker, female and tenant were enacted. In the period the constitution of Japan proclaims that the sovereign power resides with people (preamble, article 1). This is a remarkable evolution because hitherto the sovereign power resided with the Emperor. The first is General Macarthur's period.

(Second period) The Second is the period from 1960-1990 in which U.S. changed foreign policy and showed the critical attitude against the socialistic countries in north. The Korean War occurred. In the Japan's country the red purges of the socialistic persons were held. The National Public Service Law etc. were revised. General Macarthur was dismissed by President Truman. Macarthur's period ended.

Japan started newly in the background of the Peace Treaty and the U.S. Japan Mutual Security pact.

In the period Japan met a high economic growth. Employers adopted the factory and office automations. The workers worked without caring about discharge on account of the Lifetime Employment System and the so-called Seniority rule, the pay or promotion to the age and the length of service. The company unions stated their useful opinions to each companies and guided their union members though the upper structures of trade unions, Sohyo and Domei

* Professor Emeritus, Faculty of Law, Meiji University, Tokyo
MEIJI LAW JOURNAL, Volume 13 (March 2006)
fought each other.

Though afterwards the recession appeared, this is a prosperous period in Japan. Ezra Vogel's Japan as number one lauded Japanese management practices.

(Third Period) The third is the period from 1991-2005 in which the trade unions in Germany and other western countries that suffered from competition with Japan criticized Japan's long working hours etc. In answer to the criticism Japan made the laws concerning the reduction of working hours etc. But they are not satisfactorily from the point of view concerning the labor conditions of EU or ILO which are very high and Japan's employers don't necessarily abide by the revised laws.

In this period Japan's government introduced the deregulation and privatization. As the result the competition was encouraged by the government and the enterprise became to stress the profits by the government's policy.

(The consciousness of Japan's worker) Before Heisei Japan's workers owing to the lifetime employment system and the seniority rule had worked hard without fear and had depended on their company union or their employer.

But Japan's company union's rate has continued to fall for 11 years and has dipped to a low record of 18.7 percent (the Health, Labor and Welfare ministry Survey, December 14, 2005), and individual company unions lost generally their powers. The employers showed in such situation their severe attitudes to their workers.

(Japan's unemployment) Too many companies went bankrupt. The employers discharged the supervisors etc. The discharged workers were in Japan regarded as stragglers and the workers themselves felt so. And the discharged workers did not sue the companies with a few marked exceptions. The employers succeeded in decreasing the personnel though the re-employment is in Japan difficult and the unemployment benefits are never able to say excellent as compared with the industrial countries.

(Lower Wage) The employers have in Heisei recession continued to lower wage for years.

The employers decreased the regular and full-time workers and increased by the laws the various temp workers and employed them cheaply and did not pay the health insurance premium. Especially a subcontract worker is a cheap model. The temp or subcontract workers become the victims of death from the dangerous job in many cases.

(Unemployment and suicide) The number of suicides is over 30,000 in this year, 2005 for consecutive 7 years. The 30,000 suicides began in 1998 when unemployment rate rose to 4 percent suddenly. The number over 30,000 is about 4 times more than traffic death. The chief causes are not only the prolonged recession, but also corporate restructuring.

(Over work and Death) Generally recession brings the decrease of jobs and shortens the working hours, but in this serious recession because of the decrease
of personnel as a result of the restructure the employees work hard at overtime or night without the increased rate wages or often fail to exercise their rights to use their vacations in order to prevent collapse of their company and protect their living and practically they are in many cases compelled to work service overtime to fulfill the duty given by the remain official. (December 2, 2002 Asahi newspaper). If they work hard service overtime for long hours almost every day, they may die from overworks judging from precedents.

(Decrease of children and Increase of old age) Heisei recession decreases birth. The birth rate continues to decrease and in 2004 it has dipped to 1.29 percent. It is the lowest record in the world.

On the other hand the old age over 65 is about 20 percent of all population. It is also the most record in the world, I think.

These facts increase financial burden placed upon the people including workers.

(Burdens on employee and employer) Medical fee, various insurance premium and other burdens are placed on both employees and employers. It is no exaggeration to say that Koizumi prime minister has not given the workers any hope except the said burdens till now in this period.

(Politician or Financier Scandals) I estimate highly that Japan's progression and development depend upon the politicians and financiers, but I have no regard for their law-abiding spirits because their crimes or resignations stood out conspicuous in this period.

(Respect Employee as Individual) In the serious recession the employers take many severe personnel managements against employees. Japan's employees hitherto have cooperated with their employers, but they protest severely against the employer's inhuman personnel managements.

In order to tide over the critical situation, the employers shall change their attitudes and respect employees as individuals.

What shall we do?

As stated already the discharge of a great number of workers in the name of restructure, the decrease of regular workers and the increase of chiep temp or subcontract workers, and the continuation of wage lowering were held. Especially the suicides over 30,000 a year have continued for seven years. The workers died or committed suicide from overwork.

These situations shall be revised. In order to revise them the causes shall be pursued. First, I should like to take up the rule of competition without safety net. It assumes independence, but the weak especially the workers are not independent and have no competitive powers.

Therefore Japan needs a protective rule of German of French type in the case of inducement of the competition rule.

Second, I should like to take up the low consciousness of Japan's workers as stated already. Therefore they in many cases cannot decide working conditions
with the employer on equal basis, and need a protection in this competitive society.

The present target of the protection is the equal status between employer and employee and the life worthy of human being (article 1 II, 2 I of Labor Standards Law, article 13, 14, 25, 28 of constitution of Japan).

II Japan's Surrender to the Allied Powers and their occupation policies

Japan accepted the Potsdam Declaration and surrendered to the allied powers on August 18, 1945. This year, 2005 is sixtieth from the end of the Pacific War.

Macarthur Note

The Supreme Commander for Allied Powers was General Macarthur. When the Allied Powers occupied Japan, General Macarthur stated his impression for Japan as following just only in the point.

Japan was still in 20 century wandering about the feudal period in most points.

Japan's Emperor had the absolute power as a direct descendant of "Amaterasu Omikami" and ruled the state, and the dictatorial power was exercised by the minority which formed trinity of soldiery, bureaucracy and economic circle.

Farmers, workers and small shop managers and general people were not guaranteed about the fundamental rights and were sweated forcedly and mercilessly.

Even what was called a "dangerous idea" was regarded as a crime against the state and a secrete police entered every home and hunted out an owner of such an idea, and repressed severely.

During prewar and three years about 60,000 Japan people were arrested by a secrete police which was called gendarme on a charge of "dangerous idea". Japan was a state which appeared to steal out of a myth (Macarthur's note, January 22, 1946 Asahi Newspaper).

The Policies of the Occupation

According to Macarthur's Note which was described the policies of the occupation of the allied powers are as following.

(Peace-Renunciation of War) The occupation Forces intended to remove Japan's war powers and issued the necessary directives to Japan's government.

(Denouncement of Emperor's dictatorship) According to the Constitution of Great Imperial Japan, Japan's Emperor had a sovereign power (Article 1 and 4), was sacred and inviolate (Article 3) and proclaimed war (Article 13). These powers were denied by the occupation.

And Emperor was generally treated as living god and on January 1, 1946
Showa Emperor himself confessed that he was not a living god.

(Care for the weak) The occupation Forces especially Macarthur note cared for the weak: workers (1945 the trade union law), Farmers (1946 the law concerning the Special Measure for Establishment of Owner Farmers and Land adjustment Law), and Small shop managers (1947 Anti-monopolization Law).

An October 11, 1945 General Macarthur requested Prime Minister Kijuro Shidehara to understate "Promotion of Trade Union". Japan's government accepted this request and made the trade union law. Japan's trade unions surprisingly increased in the companies.

(Repeal of suppressive laws) The occupation Forces ordered the government to repeal restrictions of political, civic and religious freedoms on October 4, 1945. The Law for the maintenance of public peace and suppressive laws were abolished.

The Law for the maintenance of the Public Peace was enacted in order to suppress the socialism movement, but it was abused in order to suppress the labor union movement. The Yokohama District Court on October 17, 2005 opened a retrial for five people, now dead, who were convicted six decades ago under the Law for the Maintenance of Public Peace and dismissed the case on February 9, 2006 and avoided any judgment on whether the five were guilty of violating a notorious 1925 law (February 10, 2006 Japan Times)

Self-Reflection upon the wars with China and U.S.A

(Colonization and Aggression) Japan colonized Korea and went to war with China from July, 1937 to the end of World War II.

In China the Japan's army was reported to murder civilians or destroy private houses. Especially it is reported that the army used the poison gas and the army's unit 731 carried the living-body test etc: inhumane actions.

On the other hand Koreans and Chinese were during the wars forcibly brought to Japan and ordered to work at factories, coalmines and other Places under harsh conditions.

Many Koreans and Chinese raised suit against Japan's companies and government. Two Chinese cases, Kashima's case and Nippon Yakin's Oeyama case were settled amicably. Other decisions almost did not deny the hard conditions, but they dismissed the suits by the prescription of the civil code provision (article 724). Some plaintiffs plan to appeal to the Supreme Court.

It is noteworthy that Korea and china did not attack on Japan's land.

(Pacific War) The Pacific War began on December 8, 1941 and ended on August 15, 1945. Going to war with U.S.A Japan made a raid upon southeast Asia and attacked on Pearl Harbor, and after that U.S.A proclaimed war after obtaining diet's approval supposedly in revenge for Japan's attacks, and invaded Japan's land. Even at war U.S.A army should not attack on civilians of Japan's land. U.S.A made an air raid on Tokyo on March 10, 1945 and killed about 80,000 or 100,000 civilians and destroyed homes. As the matchless experience
in the world, U.S.A air attack of atomic bomb in Hiroshima on August 6, 1945 killed about 140,000 (after 60 years 242,439 died), in Nagasaki on August 9, 1945 alike killed about 70,000.

Though according to the supporter of the air attack of atomic bomb in Hiroshima and Nagasaki, the attack hastened the end of the war and afterwards no more death appeared, but one atomic bomb deprived too many Japan's citizens of their lives. How inhuman it is. Every country shall not have atomic bomb. It is unfair that a country which has atomic bomb criticizes a country which want atomic bomb in order to defend its own country.

Apology for colonization and aggression

Japan apologized to many countries and their people which were colonized and aggressed by Japan for heavy loss and suffering.

Emperor visited China in 1992 and Prime Minister Hosokawa made an address for apology in 1993. Prime Minister Murayama pronounced his talk of apology in 1995. This year was fifty after war.

Prime Minister Koizumi stated on August 15, 2005 the same talk with Murayama, but Japan's persuasive power was largely broke by his fifth Yasukuni visit (Asahi newspaper Edition, "From fifty year to sixty year" Asahi newspaper, August 15, 2005).

Koizumi visits Yasukuni Shrine

Prime Minister Koizumi went on October 17, 2005 to Yasukuni Shrine. It was Koizumi's fifth visit. Koizumi has kept his pledge to visit the Shrine at least once a year since taking office in April 2001 from his firm faith.

As criticism against a supporter for Koizumi's visit, the following opinion of Mr. Sekizawa's contribution on October 27,2005 of Asahi newspaper is popular.

The supporter takes up Koizumi's proposal "The military men went to war battlefield reluctantly and lost lives", but a lot of civilians also died by air attack or atomic bomb.

Sekizawa says, who ordered to go to war battlefield with reluctant? It is for the government to take advantage of Yasukuni Shrine to evade its responsibility.

The supporter cites Koizumi's following opinion. The present prosperity and peace depends upon the war dead. Sekizawa denies it and says. It is the result of the meritorious deeds of the survivors and the later persons.

The Chinese and South Korean governments issued severe protests and fairly many newspapers in foreign countries stated opinions against Prime Minister's Yasukuni Shrine visit.

Why did they oppose the visit? It was because the Yushukan of the Yasukuni Shrine affirmed and justified the war as a measure of Japan's self-existence and self-defense as well as emancipation of Asia, and the shrine honored 14 class-A war criminals including wartime Prime Minister Gen. Hideki Tojo.
His fifth visit gave provocation and untrustworthiness to the Asian neighbors which were invaded and occupied by Japan's army before and during World War II and reminded especially China and Korea of Japan's militarism of the past wartime.

As Prime Minister Koizumi visited Yasukuni Shrine, China cancelled a planned visit by Japan's foreign minister and South Korean President Roh Moo Hyun is likely to cancel semiannual summit this year.

Foreign newspapers of Malaysia, Singapore, Vietnam and Los angels Times, especially New York Times, criticize over Koizumi's Yasukuni shrine visit. Koizumi may be isolated from the world, but Koizumi shall not be isolated from the world, especially from Asian countries.

Internal Responsibility

The allied powers brought Japanese war criminals on trial and Japan's prime ministers apologized to the countries and their people which were colonized and aggressed by Japan.

But the government has not until now placed internal responsibility on Japanese war criminals though Germany has pursued responsibility for Hitler and Nazis.

The German attitude was right, I think. Japan's government and people shall reconsider.

III Fifty years after the World War II

Revival as Democratic and peaceful state

Japan accepted the Potsdam Declaration and made a vow to revive as a peaceful, and democratic state, continued to persuade foreign countries and came back to ILO in 1951. (S. Matsuoka, "destruction of organization and protection" number 1 of volume 36, kaizo)

Aiming at International Labor Laws

In order to revive as a peaceful and democratic state Japan shall repeal suppressive laws and aim at the International labor laws. Bad labor laws cheapen worker's wages within a country and cause friction internationally by dumping. Macarthur during the occupation took a serious view of labor laws.

On October 11, 1945 Macarthur requested Prime minister Shidehara to undertake "Promotion of Trade Union" as one of five great reforms. Japan's government accepted this request and made the trade union Law in this December.

Macarthur invited the scholars of the new deal sect and exhibited their report on Japan's labor laws to Japan's government (S.Matsuoka 1949 "constitution
and labor legislation" P.1-67) S. Matsuoka "constitution of Japan and civil liberty and labor fundamental" august 10, 1957 (the collection of theses for the 75th anniversary of the foundation of meiji Law Faculty.)

In 1946 the Labor Relations adjustment Law and the Constitution of Japan, and in 1947 the Labor Standards Laws were successively enacted.

Constitution of Japan
Sovereign Power Resides with people

By the Meiji Constitution Emperor had a sovereign power as a direct descendant of "Amaterasu-Omikami" (Preamble, article 1). But the Constitution of Japan proclaims that sovereign power resides with the people. Therefore the Emperor shall be the symbol of the State and of the unity of the people, deriving his position from the will of the people with whom resides sovereign power (preamble, article I).

The Emperor shall not have powers related to government. He shall perform only such acts in matters of state as are provided for in this constitution (article 41, 5-7).

Therefore the people have the inalienable right to choose their public officials and to dismiss them. All public officials are servants of the whole community and not of any group thereof. (article 15  I II).

(Fundamental Rights and Duties of the People) Now that sovereign power resides with peoples, the fundamental rights and duties shall be deliberatively protected. The constitution of Japan determined as following: The fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights (article 11, 97). The freedoms and rights guaranteed to the people by this constitution shall be maintained by the constant endeavor of the people, who shall refrain from any abuse of these freedoms and rights and shall always be responsible for utilizing them for the public welfare (article 12).

Further the noteworthy right to maintain the minimum standards of wholesome and cultured living (articles 25 I) and the right and obligation to work (article 27 I) are provided in this Constitution.

All of the people shall be respected as individuals (article 13). In the case of workers the right of workers to organize and to bargain and act collectively is guaranteed (article 28).

Such freedoms and rights guaranteed to the people by this constitution show Japan's pride, but they remind the people of past suppression, and the people shall endeavor to prevent the past suppression by them.

Renunciation of War

In the preamble Japan's people resolved that never again shall we be visited with the horrors of war through the action of the government. And in the
constitution aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes. (clause 9 I ).

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not recognized (article 9 II).

Disregarding the conclusion of the preamble and article 9, Japan's government acted war. As the result Japan's people lost many lives and rights. Therefore Japan's people renounce war (clause 9 I) and war potential (article 9 II).

Japan's people shall strictly exercise surveillance over the government.

Three fundamental Labor Laws Background

They reached the international level at that time and they were influenced by the New Deal. Moreover they were in conformity with the constitution.

But just after the Japan's defeat in the Second World War, Japan's people was very poor and as hitherto Japans workers' consciousness was very low, their bad conditions of labor should be revised and the unfair competition by internationally dumping should be evaded.

Therefore the constitution and the three fundamental labor laws were under the supervision of the allied powers, practically the occupation characteristic of the following stipulations.

Better standards

They aimed at the international standard at that time, but among them the better standards than ones of the industrial countries were found.

(Overtimes working and increased rate wages) The Labor Standards Law shall punish the employer who violates the stipulations of the law. According to article 36 overtime working and working rest days need not only an individual contract but also an agreement between an employer and a person representing majority of workers at the working place.

Further the employer who extends the working hours stipulated in article 32 or employ workers on rest days stipulated in article 35 and does not pay the increased rate wages by at least 25 percent of the normal wages (article 37) shall be punished with a penal servitude not exceeding 6 months or with a fine (article 119, article 32, article 35 proviso of article 36, article 37), though the punishment against an employer's full payment obligation (article 24 1 ) is only a fine (article 120).

Besides an employer is by the request of the worker ordered by the court to pay the same amount of additional payment in addition to the unpaid money (article 114).
Such individual punitive regulations point that a Japan's individual worker is very weak and can not even request increased rate wage. In regard to the crime of violation of the Law, the Law standards Inspector has authority to order to pay the increased rate wages (article 37, 102, 119). The individual weak worker's situation has continued till now after sixty years (Meiji Law Journal vol. 11 p. 108-113, vol. 12 p.50-52).

(Unfair Labor Practices) By Macarthur's advice Japan's Trade Union Law was enacted in 1945 just after the World War II. Afterward the law was revised by the scholars of the New Deal who were invited by the occupation. The system of the unfair labor Practices is similar to the American system.

At that time such unfair labor practices were not found and unnecessary in (British) England.

When the writer (S. Matsuoka) went to London in 1953, I inquired into the case.

Every trade union leader who I met answered that employers were gentlemen and did not unfair labor practices under the superintendence of the strong unions (S. Matsuoka, "On the institute of unfair labor practices" Chuo Koron. 89 number may, 1953).

The Labor Standards Law

The Labor Standards Law was established in 1947 with the Labor Relations Adjustment Law and the constitution in 1946.

At that time Japan's trade unions developed their strong movement in the background of the right to strike and the Labor Standards Law did not show its power. The law aimed at the international level and almost subject to approval of the occupation, but the law was practically below 15 of ILO's treaties.

(The government's answer in the labor committee of the House of Representatives on February 28).

It must be added that Japan rejoined ILO in 1951 (showa 26) year.

The Trade Union Law and unions

1945 just after Japan's defeated war the occupation repealed the suppressive laws and after the abolition of the association for Service to the State through Industry surprisingly many trade unions were born in companies. The unit of the association for Service to the state on through Industry is every factory or mine. The top managers who experienced the association desired to make unions in the companies and the trade unions which developed the strong tactics of production management by workers wanted company unions.

The only 6 months after the war passed ahead the period of twenty years from 1907 (Meiji 40) to 1927 Showa 2 and the number already outruned 1911 (Showa 10) which was the golden age of Japan's trade union.

But December 28, 1945 (Showa 20) Mainichi Newspaper, judged from the
point of the view of the leaders which formed trade unions.

The workers who organized trade union autonomously as the main constituents were very few. The cases in which some white colour of a company or factory took leadership were most. Next, fairly many employers took the initiative to form what were called "company dominated unions". Professor of Keio University, Fujibayashi pointed out "Trade union's chief itself was a head of a labor section" after the enforcement of the trade union law (Keizai Hyoron, May, 1946)

Therefore the trade union law does not apply to the trade union admitting the persons who represent the interest as members. The law prohibits the unfair labor practices which interfere with formation or management of trade union or give financial support in defraying trade union's expenditure.

In that time company unions developed the strong tactics of production management by workers, and on the other hand the law consciousness of the employees in company slept. The strong union movement and the low consciousness of workers necessitated the legal system which prohibited unfair labor practices.

The Labor Relations Adjustment Law

The law is conjunctive with the Trade Union Law and the parties concerned with the labor relations can receive the conciliation, mediation or arbitration of the Labor Relations Commission. Each and all have no forcible power.

Further the law has such minimum regulation to strike as its stoppage of maintenance or normal operating of safety accommodation (article 36). Ten days advance notification of acts of dispute in a case of public welfare work (article 8) to the Labor Relations commission and Welfare and Labor minister or Prefectural governor (article 37) and prohibit of strike for fifty days since the publication of the emergency adjustment decision of the Prime Minister (article 38 chapter IV-2) are requested.

The article 38 was added in 1952 because of being a large scale etc.

The parties concerned especially the workers in Japan were conspicuously strong outside, but originally weak and necessitated the official services.

But the Labor standards Law affixes the minimum of the standard of working condition and the parties of labor relation should endeavor to raise the working condition (article 1 II).

Working condition must be that which should meet the need of the worker who lives life worthy of human being (article 1 I).

This article 1 I II is the most important and fundamental stipulation of the Law, and every worker and employer shall remember this stipulation.

Today as the formative rate of the union decreases, this Law shows its power.
The change of U.S and the Revision of the Labor Law

In China and North Korea the revolutionary republic was born in 1948 and in Vietnam a revolutionary and political power was established in 1946.

In 1948 the National Civil Service Law was amended and national civil servants were deprived of the right to strike and to conduct collective bargaining. The employees of the National Railways and the Tobacco and Salt monopoly, were also prohibited from striking. They were allowed to bargain collectively, but their bargaining autonomy was in reality limited by the compulsory mediation and arbitration system under the Public Corporation Labor Relation Law. In 1945 also the Trade Union Law and the Labor Relations Adjustment Law were revised (K. Koshiro, Edited Charles Weathers “A Fifty year History of Industry and Labor in Postwar Japan” 20-21, 27)

The introduction of merits ratings among local public employees was stipulated in the Local Service Law of 1950. The Ehime prefecture government decided to enforce the merit rating system for teachers in 1957.

About just before the renewal of U.S. - Japan Mutual Security Treaty Kishi government decided to enforce it. If it is enforced one-sidedly the government may control education and make labor conditions for the change. Under the prohibition of strike Japan's teacher union at that time struggled against merits ratings.

In 1950 (Showa 25) the Korean War between the North Korea and the South Korea, U.S with Japan's help in the rear began and in the country the powerful red purges of socialistic persons were held.

In 1951 General Macarthur was dismissed by President Truman. The Peace Treaty and the U.S-Japan Mutual Security Pact were signed and were ratified at the Diet in 1952.

In 1952 the severe movement against the Security pact and labor law amendment after the Peace Treaty was developed and the law concerning the prevention of the Subversive Activities prohibited the acts of violence which aimed at political object. And the legal revision of emergency adjustment (chapter IV-1 of the labor Relation Adjustment Law) which prohibited and interfered with the strike of large scale etc. was enacted.

In 1953 (Showa 28) The Law concerning strike regulation in coal and electricity was enacted. The law prohibited drawing out security personnel in coal and interruption in electricity.

In 1954, The Law concerning the establishment of the Defense Agency and the Self Defense Power Law were enacted.

Self-defense and Labor

Since 1954 (Showa 29) to 1959 Japan took new policy of labor law for self-defense in the name of economic self-support.

Firstly, concerning labor union, the government took the following policy in
August 1954 (Showa 29). It placed its stress on individual worker's welfare and restored to moderation of trade union rearing.

And concerning two labor and welfare vice-minister's circular notices were issued.

One notice in November 1954 (Showa 29) prohibited to use unlawful force in labor relation.

Another notice in January 1957 (Showa 32) seemed that it set Japan's labor movement in a frame of trade unionism and turned its critical attention to the upper structure outside company union.

But the government ratified convention No.98 in October 1953. But it postponed ratified convention No.87. In 1954 The Japan National Railway management dis-charged the top officials of Kokuro, and refused to conduct collective bargaining with Kokuro. Article 4Ⅲ of the Public Corporation and National Enterprise Labor Relating Law prohibited persons who are not employees from becoming a member of a union. Soyo appealed to ILO. ILO recommended the government for seventeen times. In May 1965 (Showa 40) Japan's government ratified the convention No. 87. clause 4Ⅲ was repealed.

On the other hand in 1956 (Showa 31) the Labor standards Bureau began to supervise rather than to expose against the law and in 1958 (Showa 33) by change of the notice a large moderation of application of the Labor Standards Law was held. Further the Labor Standards Bureau showed the limit which did note expose ever if an employer violated the labor standards law.

Workers made desperate resistance against this policy and middle or small managers made head against them by employing second union or sometimes violence force. This dispute was ever the most serious. That minimum Wage Law in 1959 (Showa 34) was made in such circumstances.

The Period of High Economic Growth and Shortage of labor

A high economic growth began before 1960. The Economic white paper for fiscal 1956 posited, "It is no longer the "post war"...")" (Kazutoshi Koshiro, p. 55.

1960 was an era of rapid economic development. Internationally Japan was supervised and developed. In 1960 the U.S-Japan Mutual Security Treaty was revised and the government prepared for ratifying convention No. 87 at the Diet and the convention was ratified in 1965. In 1964 Japan joined the Organization for Economic Cooperation and Development (OECD). Japan had affiliated to the General Agreement on Tariffs and Trade (GATT) in 1955, just before and after the high economic growth I wish to note the following four points.

Firstly just before and after the revision of the U.S-Japan Mutual Security Treaty in 1960 (Showa 35) Japan's labor authorities changed the attitude that interfered in the labor movement.

But for instance as already stated government authorities requested holy consciousness for individual teachers.
Secondarily owing to the high economic growth the 1963 (Showa 38) a large and explosive accident of Mitsui including the death of 458 persons occurred and in the same year at the National Railway Tsurumi a collision of a train occurred. In that case the victims of the outside or temporary workers of a small enterprise specially a subcontract plant were outstanding.

Owing to the water or air which flowed out by the enterprises, not only the employees but also the inhabitants in the territory suffered from the menace to health and life.

In the same period Toyama Itai Itai Sickness (ouchi-ouchi) Niigata Minamata sickness, Yookaichi asthma and Kumamoto Minamata sickness etc., were the modes. Therefore the enterprises were responsible for preventing not only work sickness and accidents inside the plants but also external industrial pollution.

The government had to prevent the sickness and accidents and relieve them.

The government in 1964 (Showa 39) made a law concerning the employer's group for prevention of labor accidents, and prescribed the employer's autonomous action for prevention of labor accidents and special regulation for contract of building and shipbuilding. In the same year the mining Safety Law was revised and the labor safety and the revision of ordinance on Labor Safety of the crew followed. In 1966 (Showa 41) about the enterprise employing 100 workers Ordinance on Labor Safety and Sanitation was revised as following: the obligation to establish the safety and the sanitation committee consisting of each labor or management in the same number etc.

About the relief of the labor accidents the government revised the Workmen's Accident Compensation Insurance Law and granted an annuity as a specific compensation for accident for insurance compensation for bereaved family since 1960 (Showa 35). The scope was enlarged after that.

Furthermore in 1967 (Showa 42) the government received the request of the wives of the workers who suffered from the explosive accident of Mitsui on 1963 (Showa 38) and made the CO Special Law. The contents of the law were not perfect, but include restriction concerning dismissal, guaranty of former employment wage, and perfect treatment.

Thirdly such large labor accidents were occurred by the world's competition of enterprise under trade on capital liberalization. In preparation for technologic renovation and personnel shortage the employers requested the government to develop new personnel resource.

Working out an answer to this the government made in 1958 (Showa 33), the Vocational Training Law, in 1963 (Showa 38) revised the Employment Security Law which enlarged the vocational introduction to other territory, generalized the employment exchange and promoted the employment of old workers and made the Disabled Persons Employment Promotion Law.

On the other hand in 1961 (Showa 36) the Agriculture Fundamental Law and a series of agricultural legislations were made and they issued agricultural population to the enterprises in the cities.
In 1966 (Showa 41) the Employment Policy Law was made. The law systematized the said laws. It prescribed the guidance of the employers seeking workers or the job applicants, the training and ensuring of the engineer workers, the benefit for changing the employment and the promotion of the help for the employment change by the employer etc.

**Low Economic Growth**

Japan's Economy fell into recession through the end of 1971. In 1972 Okinawa was returned to Japan, Kakuei Tanaka succeeded Eisaku Sato as a premier. In 1973 the United States agreed to a peace treaty with Vietnam.

After such political experiences Japan met the first oil shock in 1974 and also met the second oil shock from 1980-83. After the Plaza Accords of 1985, En high recession followed for a while.

In the end of the high economic growth 1972-73, the hoard of land etc. by large firms is reported and the law concerning the emergent measure about hoarding and restricting sales of life materials was made.

From autumn in 1973 the Alab Countries decreased the supply of oil to Japan. The shortage of goods was outstanding. Two laws, the law concerning of the nationalization of the demand and supply of oil and the law concerning the prevention of speculation, were made.

Owing to the hoarding and restricting sales on the account of the shortage of goods, the living necessaries of the toilet papers, cleaning materials and sugars disappeared. They were concealed in a warehouse by the employers. The officials in charge are difficult to find them. Workers knew the place. But they cooperated with their employers. Japan's workers were employees of companies and did not have regard to the suffering of the residents.

In 1974 (Showa 49) the unemployment Insurance Law was abolished and the Employment Insurance Law was made. The new law described not only enlarged unemployment benefits but also employment stability, faculty development also employment welfare. These contents were frequently after that revised. Especially employment adjustment system was in 1975 established and it was especially improved in Heisei recession.

In 1974 (Showa 49) the law concerning the development and promotion of faculty was revised. The revision described the help concerning the development and promotion of employment faculty by the worker self's spontaneousness etc. At that time nearly the most countries in the world adopted the robots in the factory automation and the VDT in the office automation and they were introduced also in Japan. There were a large number of robots, but only one person in a room. He lost the character of human nature. Therefore sticking a photograph of a beautiful girl on the breast of a robot or running around a wide ground in the rest time was guided.
International Lapse of time and international request

According to article 14 of the constitution of Japan all the people are equal under the law and there shall be no dis-crimination in political, economic or social relations because of sex, race, creed, social status or family origin.

Female

Before the Second World War the status of Japan's females was too low, and they were protected by the equal idea of the Labor Standard Law (article 3, 4, 119).

Afterwards the international resolutions of the United Nations (UN) were issued and the Treaty concerning of abolition of the discrimination against female was concluded.

The Equal Employment Opportunity Law was made in 1985. This law stipulated that an employer should not dis-criminate against female in terms of recruitment, hire, placement, training, promotion, dismissal, retirement age. But the law only required employers to make efforts. Japan's employers have not abided by the law without punitive penalty. The revision of the law were enacted in 1997. The revision abolished the effort obligation and gave the Labor Minister the power to make public the name of the company as a punitive measure in case of an offence of discrimination. And the law took the necessary meadsre such as lightning work for pregnant woman and nurshing mother. The law also included the positive action and the prevention of sexual harassment.

Foreign Migrant workers

In response to growing demand for admitting foreign migrant workers among business circles, the government had revised the Immigration Law in 1981 and again 1989 in order to allow foreign skilled workers and professionals to work in Japan. Furthermore, the 1989 revision enabled South Americans of Japanese descent to work in Japan (K. Kosiro p.151).

Afterwards the government's policy was variously changed and the dispute respecting the treatment of foreign migrant workers has continued. The manual workers are till now working even dirty jobs which are disliked by Japanese owing to labor shortages and the professionals are enlarging customers to their countries.

Working Hours system

The minimum of working hours, 8 hours a day excluding recess and forty eight hours a week was enacted in 1947, the Labor Standards Law (article 32) and forty hours a week and eight hours a day was declared in 1988 and enforced
in 1997. The reduction of Japanese working hours was requested by the western countries. Japan accepted the request and made the forty hours system, but Japan’s companies did not abide by the law and the other laws or administrative measures which evade the forty hours system are already made.

III The period of the Deregulation and Privatization

As a result of the collapse of the bubble in 1991, The Japan’s companies suffered from a serious setback. The word of the Lost 10 years is famous, but 5 years after 10 years also do not so change though Prime Minister Koizumi declares results of his structural reform, till now, except the heavy burdens on the people excluding specific persons. The fifteen years are the period of deregulation and privatization.

(Origin and principle) after the recommendation of OECD in 1979 and the plaza accord in 1985, Hosokawa Ministry announced in Japan for the first time 94 times of deregulation in 1994, Murayama, Hashimoto and Koizumi Ministries continued to announce the papers every year.

The deregulation and Privatization retreated the government from business. The spirit of the self-reliance shall be the fundamental principle in business. (Benefit and Victim) In Japan too many regulations gave the people especially business-men much troubles. So some deregulations let them lead a comfortable life.

But the weak may become the victim of the strong as a result of free competition. The small business shops have no freedom, and intensification of competition by deregulation may bring bankruptcy and unemployment. The right of workers to bargain is guaranteed (article 28 of the Constitution of Japan and article 7 (2) of the Trade Union’s Law), but the individual workers practically are not able to bargain on equal basis without their trade union. Now Japan’s company union’s rate is a low record of 18.7% as stated already. The individual workers worked hard overtime or midnight and died or suicided.

The business-men who were opened by the deregulation and privatization are apt to pursue profits too much. In order to raise profits, the Kimura Building company requested a structural engineer, H. Haneha’s cooperation for low cost and Haneha made the fabricated earthquake-resistance date. The consulting firms and also the confirmors overlooked the fabrication. They all placed priority on lowering construction costs rather than on ensuring safety. The residents will be the victims. The deregulation and privatization should not sacrifice the interests of residents.

Administrative Service and Coexistence with Private Enterprise

In the process of dereggregation the union rate continues to fall and the life-time-employment and seniority-based system are crumbling and furthermore the consciousness of the workers is very low.
Therefore the prefectural Labor Office offers the information and accepts a worker's or an employer's counsel about the dispute of individual labor relation and also makes a dispute adjustment commission consisting of the persons of knowledge and experience which performs conciliation. The number of the persons for advice in surprising.

These administrative service was held by the revision of the number 3 of the article 105 of the Labor Standards law and now the law concerning solution and promotion of the individual labor relation provides almost the same content.

On the other hand since the enactment of the Employment Stabilization Law of 1947, the ministry of Labor maintained a monopoly on employment services until the second half the 1990 S. But afterwards also the private firms were permitted to operate employment services. The field which leaves the services to private hands was gradually enlarged and the Worker Dispatch law is today made.

The nursing and care Leave Law

In 1992 (Heisei 4) the Nursing Leave was enforced and in 1995 (Heisei 7) the care leave was made as effort legislation. In 1991 (Heisei 11) the nursing and Care Leave Law was enacted as an obligatory legislation and it was revised in 2001 and 2002.

(Discriminatory Treatment) The law prohibited dismissal and other discriminatory treatment to a worker by reason of an offer or a taking of nursing and care leave.

(The Object of the Law and the period) The object of the law is in the declining birthrate and rising number of seniors the continuation of employment and compatibility with home life.

The period is in the case of nursing leave not exceeding one year and is a short space of time as compared with Sweden etc. industrial countries. Meanwhile benefit is given to a person in the case of affiliating the person with employment insurance.

An employer shall let not only the workers who take the leave, but also the workers who don't the leave and the workers who nurse a child under three years old or before entering an elementary school know the measures concerning the reduction etc. as well as the general working conditions.

(Care Leave) A worker shall be given a care leave not exceeding three continuous months in order to care the family who needs care all the time for over two weeks in the case of injury, sickness or physical either mental handicap.

Also about care of the family an employer shall let the workers know the working conditions and especially the reduction of the working hours.

The following three articles shall be added to the nursing and care.

(Overtime and midnight work) (1) An employer is prohibited to let a worker who nurses a child before entering an elementary school or a worker who cares
his or her family work over 24 hours a month and 150 hours a year.

(2) An employer is also prohibited to let a worker who is stated above work midnight. However when it prevents the normal operation of the enterprise the employer is not prohibited to let the worker work midnight.

(3) An employer shall consider the state of things in the case of difficulty for nursing a child or caring the family about the worker's transference.

(Re-employment and compatibility) The legislations concerning re-employment of the female who retired by reason of pregnancy, delivery, nursing and care and concerning the promoter of compatibility between employment life and home life are provided.

(Closing Remarks) Japan's workers do not take the leave and especially the male workers almost don't take the leave till now.

Why don't they take the leave? It is because they lose the wage and the promotion or because the government doesn't perform the financial help.

In the present situation they don't take the leave and don't have another baby, I think.

In case that a female is not in the service of a company and her husband's wage continues to decline, she will not have babies.

Abandonment of female's overtime and midnight work

Except the nursing and care as stated already the prohibition of the general female's overtime and midnight work was removed.

By the revision of the Equal Employment Opportunity Law the Labor Standards Law revised frame 6 weeks before childbirth to 14 weeks in the case of polycyesis and at that time removed the prohibition of the general female's overtime and midnight work.

It may establish the equal basis between female and male workers. It may increase the working chance of female and may give the specific females an unalloyed delight. But Japan's females responsible for home affairs work hard overtime at office or factory and after returning take care of household. They may be sick, or may resign.

The results and the victims of deregulation and Privatization were more clean since the Koizumi ministry.

Koizumi Ministry Period

The Koizumi Cabinet after lost decade since the collapse of the economic bubble started on April of 2001 putting up the flag of structural reform and cleared the rules of freedom, fairness, globalization and especially competition as the fundamental principles of economy.

Though freedom, fairness, globalization and competition are guaranteed by law, the weak person or country is not really able to exercise the rights. The weak becomes the victim of the strong as the result of free competition.
Unemployment and the Law

It for the first time reached 5 percent in an official report for July (July 25, 2001). 5 percent unemployment rate is the highest level since the government began reporting monthly jobless figures in 1953. Japan enjoyed low unemployment for the most years of the post war. Japan's unemployment rate was 1 percent level in the high degree growth, and stayed on 2 percent level still after the first oil shock, but it exceeded 3 percent in 1994 and stood on 4 percent in 1998. It reached 5 percent in July 2001 as stated and it continues till now to 4 percent.

(The Revision of the Employment Insurance Law) The term of benefit in Japan was poor because Japan's employment was very few. But owing to the sudden increase of jobless rate, the Revision of the Employment Insurance law was enforced from April 1, 2001.

According to the content the term of the benefit was increased in case of separation because of bankruptcy and discharge though it was decreased in case of retirement because of age limit and private affairs.

Further the law was revised and enforced in 2003. According to the revision the part-time workers and the regular workers were integrated into one pattern. The term of benefit for persons over 35 years and under 45 years old also was changed and raised. The law also provides the wage concerning the promotion of employment.

Japan's unemployment benefits are never able to say excellent as compared with France or Germany.

(Premium Rate) The premium rate was already raised from 0.8 percent to 1.2 percent in April 1, 2001. The premiums are paid by employers and employees at the rate of 0.6 percent each.

Further from October 1, 2002 the premium was to 1.4 percent under an emergency clause of the law that permits a premium to raise without legal revision.

The government furthermore tried to raise the rate to 1.6 percent, but it abandoned the plan as it was strongly criticized by the rides of employees, employers and public.

If the rising unemployment is the result of the government's structural reform policy, the government shall discharge its responsibility and manage the high unemployment rate at an increase of national expence, I think.

Re-employment and the law

In order to promote re-employment many laws and notifications are established and among them the revision of the Employment Policy Law is outstanding. It is enforced from October 1, 2001.

(Prohibition of Age Discrimination) The Revision of the Policy Law prohibited
age discrimination regarding recruitment or employment. But this article only requires the employers to make efforts regarding the age discrimination because the drafter considered the Japan's employer's feelings and customs of a long times. If the employers have a regard for rich faculty or experience of the older worker, they will succeed in business. The government must if possible abolish the effort provision and take an obligatory regulation.

(Diminution of personnel under administrative supervision) When an employer diminishes personnel over 30 employees who are employed regularly, he shall draw up the re-employment plan after asking the trade union or a representative of employees and submit it to the chief of Public Employment Security Office. The chief may change the employer's plan.

After the recognition the new employer who employs the dismissed personnel can get various public aids.

(Closing Remarks) The present provision is only an effort article and the public aids are limited in the period or the condition. Therefore the persons concerned shall understand thoroughly their purpose and content and utilize them to the fullest.

Service Overtimes and Failing to Use Vacations

Japan's service overtime or abandon of vacation has continued almost since the birth of the Labor Standards Law.

Generally recession decreases job and working hours or increases vacations. But in reality Japan's employees in recession work hard for many hours and work sometimes or frequently unpaid overtimes, so-called service overtimes, and Japan's employees often fail to exercise their rights to use their paid vacations.

(Why is the Koizumi period conspicuous about this case) In this period the company union's rate has dipped to a low record and individual company unions lost generally their powers. Too many companies went bankrupt. The number of unemployment is the most in the Koizumi period after the Second World War as stated before. The employers showed in such situation their severe attitudes to their workers. The consciousness of the worker is very low.

In the midst of the lowest economy the freedom, especially competition rule was stressed as Prime Minister Koizumi's structural reform.

In order to win the way to the finals the employers with fresh courage diminish the personnel. When Japan's employers requested the employees to cooperate for steering through the difficult period, many employees and among them some employees each other in competition for maintenance of company or for promotion rather than for company, worked frequently overtime and midnight without overtime and midnight increased wage. In many cases because the number of personnel decreases and the quantity of work does not decrease, the employees are compelled to work hard service overtime for long hours almost every day. Some of them fell ill or went to death or suicide owing
to overwork.


The ministry issued another notification concerning Brain Hemorrhage and Heart Disease (December 12, 2001). According to the new recognition the overwork over about forty five hours overtime a month before the disease shall be gradually estimated as because of duty. Especially in case of over hundred hours overtime a month before the disease, and over eighty hours overtime a month extending from two months to six months before the disease, the strong connection between the work and the disease shall be estimated as because of duty.

After the new recognition the deaths or suicides from overwork which was regarded as because of duty by the court and the labor standards offices increased.

(Increase of Overtime Pay) In order to evade the dangerous conditions of the workers which were invited by the deregulation of Koizumi period, the labor standards office recommended the companies to abide by the labor standards law.

For instance a large number of the cases concerning pay of the overtime wages including ¥3.5 billion in Takefuji and ¥6.52 billion in Chubu Denryoku were reported. (Meiji Law Journal vol.11 p.110-p.114, vol 12 p.50-52). In the cases a worker does not complain directly to their employers because their consciousness is weak. The labor standards office recommend the company to pay the overtime wages.

Japanese Exercise of Annual Vacations

According to Welfare and Labor Ministry's synthetic research of overworking conditions in 2001, the average annual vacation days (except the brought forward days) which the employers granted to the employees were average eighteen days to employee but the days which employees exercised were 8, 9 days and the half were not used. Afterwards Japanese shall raise the annual paid vacations and exercise the rights to use them after the example of France or Germany etc.

In Japan decreasing overtime work and exercising the paid vacations completely avoid unemployment and also may be the prevention of death from overwork. Further it may open a window for home life

Decrease of children

Now in Japan male and female don't marry and even if they marry they don't give birth to children. In 2004 Japan birth rate (1.29) is the lowest record. In
comparison with industrial countries Japan's rate is low.

In 2004 the female who took paternity leave was 70.6 percent, but the male paternity leave was only 0.56 percent. The government is considering about the various helps concerning childbirth and rearing.

**Increase of old age**

The population of old age (over 65 age) continues to increase and now 18, 5 percent of all population and higher than industrial countries.

The revision of the law concerning Employment Security of the old age etc. raises the age limit to 65 years and prescribes the help of the Employment Security Office about the Re-employment of the persons over 45 years old under 65 years old.

The age of an assured of the Welfare Pension Insurance Law is raised from 65 years old to 70 years old.

**Temp Workers and the law**

A large increase of temp workers is one of the characters of Koizumi ministry's deregulation. The temp workers are divided in two kinds. One is a part-time worker including contract worker. The other is a dispatch worker.

(Working conditions) Their wages are very low about from 50 percent to 70 percent of full-time workers and have in many cases no bonus or no chances of promotion.

The working hours are commonly short in comparison with full-time workers.

But in some cases some part-time workers engage in almost same works for the same hours with the full-time workers.

They are temporary employees for a definite period not exceeding three years. In case of part-time the renewal of the contract is valid, but in case of dispatch the renewal of the contract is not permitted because in order to complement the regular staff the employers are permitted to use part-time workers, but the employers must not use dispatch workers.

(ILO, EU and England, Netherland) ILO, EU and England, Netherland etc. on the standard treat part-time and full-time workers equally in wage and other working conditions.

ILO states clearly the freedom of the transfer from the regular worker to part-time worker or from part-time worker to regular worker and gives various influences to EU.

Now big and legal secondals concerning shares (Livedoor) and buildings (Haneha, Toyoko Inn) etc. occur and give large menace to people's life. Deregulation and privatization should not sacrifice the welfare and the lives of the residents.