

Changes in Long-term Employment and Their Impact on the Japanese Economic Model: Challenges and Dilemmas

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I. INTRODUCTION

Long-term employment is considered to be one of the most distinctive features of the Japanese employment system, as well as one of the essential elements of the Japanese economic model.¹ Hence, it is not surprising that it has often been the subject of attention for scholars in human resource management, labor law, corporate governance, economics, and sociology.

During the period of economic expansion, long-term employment was praised as one of the key factors of Japan's success story. After the bubble burst in the early 1990s and

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1 John Haley, a leading Japanese law scholar, argues that Japan's lifetime employment system is the critical feature that defines Japanese corporate governance and makes it unique from other systems of corporate governance around the world, J. O. HALEY, *Career Employment, Corporate Governance and Japanese Exceptionalism*, Faculty Working Paper Series, Paper No. 04-04-01 (2004).

economic recession left many companies with a huge excess of employees, long-term employment came under criticism as one of the obstacles to economic recovery. Since then many scholars have argued for a revision of long-term employment and granting more flexibility to the employers.

The main objective of this paper is to examine changes that have been taking place in long-term employment and labor law and their impact on the Japanese economic model. Several questions may be raised in relation to the nature of long-term employment: Why does it exist in Japan? What is its origin? What is really unique about long-term employment in Japan? Another set of questions can be raised regarding the direction and scope of changes. It is clear that long-term employment, as it was practiced for decades, is outdated and has to be revised. But then, how drastic should the changes be? Is it realistic that long-term employment may be abandoned? How does long-term employment affect Japan's economic model? Will or should greater protection of shareholders be given at the expense of the interests of employees?

This paper will first address the concept and the nature of long-term employment in Japan, including the influences of various factors on long-term employment. This may be useful in highlighting a wider picture of the Japanese long-term employment system which can contribute to its better understanding and may also be important for assessing possible future trends.

The new trends and developments will be examined by analyzing the reactions of employers with regard to employment patterns, changes in the legal framework, and the impact those changes may have on corporate governance. Particular attention will be given to the analysis of the possible future developments of long-term employment by considering various factors, such as the need for a more flexible labor market, the social constraints that may present an obstacle to comprehensive changes in the existing system, and the actions undertaken by the government in the light of existing challenges and dilemmas.

II. CONCEPT OF LONG-TERM EMPLOYMENT

Long-term employment² is one of the essential features of the Japanese economic model. Under the long-term employment system, an employee is recruited directly from school or university and is expected to remain in the company's employ for the length of his or her career. In return, he or she can expect not to be fired or discharged, except

2 Long-term employment is often referred to as "lifetime employment." This term is misleading if understood in the literal sense that it guarantees employment continuing for a lifetime; it should be understood in a more limited way that guarantees long-term employment not for the employee's actual life but only for the length of the employee's career. The term "long-term employment" is more adequate because the employees are employed until their retirement age and not for their lifetime.

under some extraordinary circumstances.³ The basis of this agreement is the commitment of employers to provide secure employment to their employees in return for loyalty and “lifetime” service. The employer can rely on loyal employees and their dedication to work hard in exchange for the investment in their training.

Long-term employment does not mean a formal obligation of the company not to dismiss its employees, nor does it mean that the company does not dismiss employees, as this often happens in practice. Long-term employment should be understood in the sense that the company will not resort to layoffs unless it is in deep economic crisis and layoffs are the only possible way to keep the company afloat and prevent bankruptcy.⁴

The mandatory retirement (*teinen*) system is an essential element of long-term employment. Historically, in the postwar period the retirement age was 55 years old. However, recent amendments to Japan’s labor law mandate that it now must be 60 or higher.⁵ Presently most companies fix the age of retirement between 60 and 65.⁶

As a part of the long-term employment system, the promotion of employees within the hierarchy of the company and wages are based on the principles of seniority and merit (*nenkō*).⁷ These principles do not necessarily mean that the promotion and wages depend only on the age or length of employment, as will be shown below.

According to some scholars, long-term employment is not an institution at all, since it applies to only a small portion of the working population, mostly to male workers in large companies.⁸ The fact is that the average tenure is longer for men than women, and increases with the size of the company; the long-term employment system is far less present in small and medium-sized companies, where employees are more likely to change jobs during their career.⁹ This means that the opportunities for long-term employment in Japan are, in fact, quite limited, and many Japanese cannot get such a

3 J. C. ABEGGLEN / G. STALK JR., *Kaisha – the Japanese Corporation* (Tōkyō 1985) 183–188, 191–192, 194–206; see also T. ARAKI, *Changing Employment Practices, Corporate Governance, and the Role of Labor Law in Japan*, in: *Comparative Labor Law and Policy Journal* 28 (2007) 251, 252; R. GILSON / M. ROE, *Lifetime Employment: Labor Peace and the Evolution of Japanese Corporate Governance*, in: *Columbia Law Review* 99 (1999) 508.

4 L. WOLFF, *The Death of Lifelong Employment in Japan?*, in: Nottage / Wolff / Anderson (eds.), *Corporate Governance in the 21st Century: Japan’s Gradual Transformation* (Cheltenham / Northampton, MA 2008) 53, 77.

5 Art. 8 of the Act Concerning Stabilization of Employment of Older Persons, Law No. 103/2004. This Act entered into force on 1 April 2006.

6 G. P. MCALINN, *Employment and Labor*, in: McAllin (ed.), *Japanese Business Law* (Alphen aan den Rijn 2007) 403, 424.

7 *Nen* = year(s), i. e. seniority and *ko* = merit(s).

8 WOLFF, *supra* note 4, 53.

9 According to the Ministry of Health, Labor and Welfare’s Basic Survey on Wage Structure 2007, for male employees in companies which have less than one hundred employees the average tenure is 10.9 years, while in companies over one thousand employees it is 16.2 years. Average tenure of female employees is in the range of 8.2 years to 9.7 years.

chance. However, employees in the public sector should be covered by the long-term employment concept, since they make up a sizeable part of the labor force in Japan.¹⁰

From the aspect of the economic model, the fact that long-term employment is limited to a small portion of the labor force may imply that eventual changes toward a more liquid labor market are not so important because this would affect just a fraction of the Japanese labor force. However, the fact is that reforms of labor law are high on the agenda of the Japanese government's structural reforms that compose part of a policy called "Abenomics."¹¹ The government's interest in revising long-term employment in large corporations is understandable because large corporations are the engine of the Japanese economy. This also demonstrates that long-term employment still has great importance in Japan, despite its limited scope.

III. ORIGIN AND NATURE

Long-term employment was first institutionalized in its present form in the 1950s and became dominant in the 1970s. The Japanese employment system developed as a result of the deliberate policy of the interested parties to find a solution to the problems related to labor unrest that appeared in the aftermath of the Second World War and was a result of a compromise entered into between management and labor unions.

Long-term employment, in the sense of spending one's whole career in the same company, is not really unique to Japan, since such patterns exist in many other countries. However, relying merely on the numbers and statistics to prove that the Japanese model is not different from other long-term employment patterns misses the point. The essence of the Japanese model of long-term employment is not in the numbers, but in its character.

There are several elements of the long-term employment system that are typical for Japan, such as the way of recruiting graduates, seniority-based wages, and internal transfers based on a rotation system and on-the-job training that result in firm-specific skills, making it extremely difficult for employees to move to other firms. The practice of simultaneous recruitment of new graduates (*shinsotsu ikkatsu saiyō*) and the way that students apply for jobs (*shūshoku katsudō*) seem to be unique to Japan (and possibly South Korea). Japan has a well-developed entry system for new graduates with a lot of activities taking place well in advance of the graduation as part of the *shūshoku katsudō* process. Japanese companies are more interested in employing fresh graduates from good

10 HALEY, *supra* note 1.

11 The term "Abenomics" is a portmanteau of *Abe* and *economics* and it refers to the economic policies advocated by Shinzō Abe since the December 2012 general election, when he was elected to his second term as Prime Minister of Japan. The goal of this policy is to revive the economy with "three arrows": a massive fiscal stimulus, more aggressive monetary easing from the Bank of Japan, and structural reforms to boost Japan's competitiveness. The structural reforms that make a part of the "third arrow" include reforms of labor law.

universities than in the actual level of education of those graduates.¹² The idea behind this hiring policy was that the employees would be trained after they enter into the company and would acquire the necessary skills during that process. All these features make Japanese long-term employment qualitatively different from the corresponding patterns in other countries.

There are various views on whether long-term employment is really unique to Japan, or whether the differences are just a matter of degree. Similar to cases of some other issues related to Japanese law, there are views that emphasize the uniqueness of the Japanese culture and its impact on long-term employment, as well as contrasting views that pay more attention to the economic rationale and/or political factors. Some scholars question the role of culture in long-term employment by pointing out that long-term employment did not exist as a firmly established system in prewar Japan.¹³ Such an interpretation represents an oversimplification, as the features of a corporate model are too complex to be explained by a single factor, particularly if the relevance of such a factor is assessed selectively (e.g., within a limited time period). Probably unintentionally, such views may lead to the conclusion that culture matters in long-term employment and grant culture more relevance than it may really have.

The fact that similar patterns of long-term employment developed in Japan in different periods and under different circumstances indicates the existence of some integrating factor that played a role in the structuring of this system. The common explanation given is that the “unique Japanese culture” played this role. But, again, this would also represent an oversimplification.

In this context, views expressed by Takashi Araki provide a good basis for better understanding the nature of long-term employment. Araki argues that from the end of World War II through the 1960s, Japan experienced turbulent labor management confrontations which put in doubt the cultural explanation of long-term employment that emphasizes “harmony” and concludes that “the cultural explanation is not persuasive.”¹⁴ The fact is that long-term employment was not created on the basis of cultural considerations. However, this does not have to mean that culture did not play any role in the process of acceptance and shaping of long-term employment.

12 If students can't find employment during the last year of their studies, the students may prefer to extend their studies for another year by intentionally failing to get a sufficient number of credits (*ryūnen*) because the companies have a preference for fresh graduates rather than graduates who can't find a job immediately upon graduation. This practice is probably unique in the world.

13 T. OKAZAKI, *The Japanese Firm Under the Wartime Planned Economy*, in: Aoki / Dore (eds.) *The Japanese Firm: The Sources of Competitive Strength* (Oxford et al. 1996) 350, 357–359.

14 T. ARAKI, *A Comparative Analysis: Corporate Governance and Labor and Employment Relations in Japan*, in: *Comparative Labor Law and Policy Journal* 22 (2000) 67.

In the same text, Araki argues that “in contrast to the German stakeholder model and the American shareholder model, the Japanese model heavily relies on customary practices.”¹⁵ Is there a contradiction between Araki’s views that “the cultural explanation is not persuasive” and that “the Japanese model heavily relies on customary practices?” Do those “customary practices” include social norms, as informal understandings that govern society’s behaviors, which represent an important segment of culture? There is no contradiction. Araki was arguing the same thing I argued in my papers, just using different terms and approach:

“Arguments that social norms are behind the creation of some key features of Japanese corporate governance, such as long-term employment and cross-shareholding, are not sustainable. Business decisions are based on interests, attempts to balance such interests, on compromises, and not on cultural considerations or social norms.”¹⁶

My elaboration, however, proceeded further from just mentioning “customary practices” in an attempt to identify more clearly their role: “[E]ven though social norms did not play a direct role in the process of creation of the main features of Japanese corporate governance, they had an influence in the process of their acceptance and integration in the Japanese economic model.”¹⁷ From my perspective, the only differences with Araki relate to a different approach, focus, and objectives, while there is no disagreement on fundamental issues.

Long-term employment in Japan is a complex phenomenon influenced by a number of factors. Economic and political interests may have been the driving force behind the adoption of long-term employment, while social norms played an important role in the process of its smooth integration in the Japanese economic model. Long-term employment was well accepted by all relevant actors and became one of the key features of the Japanese economic model because the structure of corporate control and ubiquitous long-termism of the Japanese economic model were well suited for the lifetime employment concept. Government policy as expressed in the legal framework, as well as the courts’ attitudes in dismissal cases, provided additional and very important support to long-term employment. Therefore, the long-term employment system in Japan derived from a combination of different factors that all played a role in its establishment and the way it functioned afterward.

15 *Ibid.*, 88.

16 C. PEJOVIĆ, Reforms of Japanese Corporate Governance: Convergence in the Eye of the Beholder, in: *ZJapanR / J.Japan.L.* 35 (2013) 107, 124.

17 *Ibid.*, 125.

IV. LEGAL BASIS

Strictly speaking, the long-term employment system is not really a “system” but a practice, since it is not based on any particular law but on informal norms and practice. Long-term employment has no basis in Japanese labor law, but it represents an implicit commitment.

The legal framework that developed during the period of the creation of long-term employment and supported long-term employment was arguably based on a government policy that encouraged the long-term employment practice. Another important support came from the Japanese courts; despite statutory provisions that permit dismissal, the courts developed the doctrine of abusive dismissal in a number of cases starting in the 1950s, preventing the employers from “abusing the right to dismiss” that gave employees strong protection against dismissal.¹⁸ The courts have taken the stance that abusive exercise of the right of dismissal based on Art. 20 of the Labor Standards Law (LSA) is prohibited by Art. 1 (3) of the Civil Code, which provides: “No abuse of rights shall be permitted.” By relying on the civil law abuse of rights doctrine, the courts held that dismissals that are not “objectively reasonable and socially appropriate” constitute abuse of right and are therefore void.¹⁹ Courts have strictly construed this standard in favor of employees even in cases where layoffs are motivated by economic necessity.²⁰

Courts have defined criteria that serve as the basis for assessing whether layoffs are appropriate.²¹ For example, the Tokyo District Court stated: “An employer may only validly discharge an employee in circumstances where there is just cause for the dismissal, based on the common sense of society [...]”²² The key phrases in this sentence are “the common sense of society” and “just cause”; their meaning is ultimately determined by the courts. The requirement of “just cause” is defined at such a high standard as to be almost impossible to satisfy it “leading to a *de facto* system of permanent employment.”²³ In deciding what constitutes just cause, the courts have taken a restrictive view, particularly when the termination of employment is based on the economic convenience of the employer. Layoffs must be strictly necessary to keep the employer in operation from a business standpoint. The employer must already have made an effort to avoid

18 Nagoya District Court, 4 December 1951 (*Sube v. Kariya Seikatsu Kyōdō Kumiai (Kariya Cooperative)*), in: Rōmin-shū 2-5 (1951) 578, 579, quoted in: T. FUKUI, Labor Management Relations and the Law, in: Law in Japan 3-4 (1973); Tōkyō District Court, 8 May 1950 (*Iwata v. Tōkyō Seimei Hoken Sōgo Gaisha (Tōkyō Life Insurance Co.)*), in: Rōmin-shū 1-2 (1950) 230, 235–236.

19 Supreme Court, 31 January 1977 (*Shioda v. Kochi Hosō K.K.*) Rōdō Hanrei 268 (1977) 17, quoted in: MCALINN, *supra* note 6, 433.

20 H. NAKAKUBO, The 2003 Revision of the Labor Standards Law: Fixed-term Contracts, Dismissal and Discretionary-work Schemes, in: Japan Labor Review 1-2 (2004) 4, 14.

21 K. SUGENO, Japanese Labor and Employment Law (Durham, NC 2002) 480.

22 Tōkyō District Court, *supra* note 18.

23 MCALINN, *supra* note 6, 432.

layoffs. This may include measures such as reducing executive compensation, cutting work hours, wages, or bonuses, establishing a voluntary early retirement program, and so on. The employees to be dismissed must be selected on an appropriate basis, with consideration of their salary, benefits, age, and other factors. In addition, the employees must have the situation sufficiently explained to them in advance.²⁴

A typical view of the Japanese courts which clearly emphasizes the need to protect job security is expressed in a judgment of the Nagoya District Court:

“In current circumstances, employment constitutes the sole source of a worker’s livelihood, so a worker’s livelihood may be easily jeopardized by dismissal in that it is difficult to find a new job. Employers, on the other hand, can recruit workers relatively easily. Moreover, Article 27 of the Constitution [which guarantees workers ‘the right to work’] exists. Taking the foregoing into consideration, dismissal without reasonable cause is usually considered an abuse of the right of dismissal.”²⁵

On the other hand, the courts have enabled employers to reduce the hardship that such rulings might cause them by recognizing the discretion of employers in decisions relating to job rotation and transfer of employees to other jobs within the company. The courts have also developed other sets of standards concerning employers’ management of the workforce through such measures as transfers, temporary external transfers to other companies (“farming out”), and overtime assignments.²⁶ The courts interpret such flexible deployment of employees to be legal under certain conditions. This provided the employers with flexibility in transferring redundant employees to other jobs where their services are more needed, in this way enhancing the efficient use of employees during their long-term employment.

V. MERITS

Long-term employment has been beneficial for both employers and employees. It provided a number of important advantages to employers. They could rely on the continued use of the company-trained, disciplined, and loyal employees, which was particularly important in periods of growth when the market conditions ensured that employees were fully occupied, working overtime when necessary. Stable employment develops a bond of loyalty and commitment between employer and employee, both sharing a common interest in prosperity of the company. Long-term employment is closely related to on-the-job training, which would not make much sense if employees did not stay with the company on a long-term basis. The company has an incentive to invest in the training of

24 NAKAKUBO *supra* note 20, 14; MCALINN *supra* note 6, 433.

25 Nagoya District Court, *supra* note 18.

26 See, D. H. FOOTE, *Judicial Creation of Norms in Japanese Labor Law: Activism in the Service of Stability?*, in: *UCLA Law Review* 43 (1996) 635, 638; MCALINN, *supra* note 6, 435.

employees from the long-term perspective, which enhances the accumulation of firm-specific knowledge. This also enhances teamwork and cooperation among the employees who know each other well. The principle of seniority also has advantages. It reduces the competition for promotions among employees, which may disrupt the atmosphere in the firm. In an atmosphere that is not burdened by rivalry, the older employees would be ready to transfer the skills to younger employees.²⁷

Long-term employment is beneficial for employees, too. They start with low wages that are to be raised according to the time the employees stay in the company. This represents an incentive for employees to stay in the company as their wages are expected to increase over time. In addition to having stable employment, the wage system based on seniority enables employees to make long-term plans for their savings and expenditures. Moreover, many companies provide employees with low-cost housing and medical insurance. Employees have also enjoyed other benefits, such as the social status they acquire by becoming employees of prestigious corporations.

VI. CHANGES IN PATTERNS AND ATTITUDES

Problems related to long-term employment came to the surface during the economic recession in Japan. Long-term employment made economic sense in the period of steady growth, but it cannot be sustained when companies enter recession and over-employment becomes a serious problem. This may create a problem of finding positions for older employees, which in turn creates another problem related to reduction in hiring of young employees. Under such circumstances, long-term employment may be transformed from an advantage into a burden that may contribute to the hardships and even the collapse of a firm.

After the collapse of the bubble economy, it became evident that Japanese corporations could no longer maintain both long-term employment and the seniority-based wage system.²⁸ The Japanese labor market has also been adversely affected by a number of demographic, macro-economic, and structural pressures, which are gradually changing traditional Japanese employment practices. These factors have forced many companies to revise both long-term employment practices and seniority-based wages.

There are several signs indicating the weakening of the long-term employment system in Japan, particularly after the collapse of the bubble economy in the 1990s. Three particularly important tendencies are a) changes in the structure of employees, b) changes in the system of wages and evaluation of employees, and c) changes in attitudes.

27 M. AOKI, Equilibrium Growth of the Hierarchical Firm: Shareholder-Employee Cooperative Game Approach, in: *The American Economic Review* 72 (1982) 1098.

28 ARAKI, *supra* note 14, 92.

1. *Changes in the Structure of Employees*

Many companies have decided to lay off a substantial number of employees in the process of restructuring. In the same period, to avoid the risk of litigation with employees, the company would offer a “voluntary” termination to the employees by promising generous retirement benefits and implying that working conditions may worsen for those remaining in the company. A large number of regular employees have been replaced by non-regular employees in the process of “restructuring” (*risutora*). In fact, in Japan this term has acquired a very different meaning from the original one and is widely understood as reduction of the number of employees rather than reorganization of a company.

Faced with the strong protection of employees in Japan in the case of dismissals, many companies resorted to a combination of various measures aimed at relieving companies from the pressures of economic hardship, including substantial changes in the structure of employees. The number of regular employees has been reduced even in large corporations since the 1990s. In fact, the largest difference in long-term employment in the last decade has been the increase in part-time employees.²⁹ Some Japanese employers faced with economic hardship have transferred redundant employees to other sections in the same company, or to other related companies. Other employers have adjusted the terms and conditions of employment and made them economically viable instead of resorting to economic-based dismissals.

Another widely used practice is hiring employees on fixed-term contracts. The employer can then choose not to renew the contract at its end, with relative freedom. Termination before the contract expires still requires just cause and 30 days’ notice. Actually, the system of fixed-term employees played a crucial role in preserving long-term employment because the long-term employment of regular employees is made possible by the existence of a non-regular workforce as a shock-absorber; the management needs freedom to adjust its work force and the employment of non-regular employees has allowed such flexibility. Hence, an employer may employ different types of employees, including regular employees, fixed-term employees, part-time employees, “dispatch” employees, and employees seconded from affiliated companies.³⁰

29 According to the Ministry of Health, Labor and Welfare figures, there were 34.18 million regular employees in Japan at the end of 2007 (average for October–December), while non-regular employees numbered 17.38 million, or 33.7% of the total. See <http://www.mhlw.go.jp>. The number of non-regular employees has continued to increase, and in 2011 it reached 35.1% (The White Paper on the Labour Economy, 2012).

30 The key characteristic of part-time employment in Japan is the fact that the employee is not a regular employee, regardless of the number of working hours. Part-time employees are often hired by a fixed-term contract, and they are disposable according to the fluctuation of business. The same is true of other fixed-term employees (often called “*kikan jūgyō-in*” or “*keiyaku-shain*”) who may work full time but are definitely non-regular workers.

The practices of reducing the number of regular employees without explicit layoffs allowed companies to argue that they are preserving the long-term employment system. Despite such claims, most employees in Japan now feel less secure in their status than before.

2. *Changes in the Wage and Evaluation Systems*

Japanese firms have gradually revised the traditional practice of seniority-based promotion and remuneration with increasing importance given to individual performance and ability. Japan's seniority system is not sustainable with its aging society, regardless of economic or other incentives that may reinforce it.

The seniority-based system has been changing since the 1970s in the direction of a merit-based system. In fact, the criteria were vague and the seniority-based system continued to prevail. Since the 1990s a new system called "*seika shugi*" and based on performance standards became very popular. Initially, regular employees are promoted on the basis of seniority, and in this initial stage employees are promoted at an equal pace. After that initial stage, after 10 or 15 years of employment, individual abilities become more important because by that time employers are able to identify more capable employees who are then given priority in promotions.

Many companies have established a system of grade classification (*shokunō shikaku seido*), under which the employees are classified based on their ability and performance. This system means that the evaluation of employees is made on the basis of individual business results and performance, which affects both the wages and promotion of employees. Presently most firms have introduced merit-based pay in the context of long-term employment.³¹ However, despite these recent trends, the seniority-based system will probably continue to play a role as long as the company continues to be seen as community.

3. *Changes in Attitudes*

In recent years, there has been a gradual change of Japanese society from being group-oriented toward an individual-oriented society that gradually adopts Western standards.³² Younger Japanese are less committed to the long-term employment system and are more likely to change companies if others offer better conditions. According to a survey conducted by the Ministry of Health, Labor and Welfare, new generations of Japanese may be less committed to working in the same firm for life and may prefer enjoyment over challenges.³³

31 G. JACKSON, Employment Adjustment and Distributional Conflict, in: Aoki / Jackson / Miyajima (eds.) *Corporate Governance in Japan: Institutional Change and Organizational Diversity* (Oxford et al. 2007) 282, 298.

32 See M. ISHII-KUNTZ, Collectivism or Individualism? Changing Patterns of Japanese Attitudes, in: *Sociology and Social Research* 73 (1989) 174–179.

33 In surveys conducted by the Ministry of Health, Labor and Welfare, the percentage of young people responding that the reason for working is "To have an enjoyable life" has been in-

The changing business and social environment in Japan may eventually lead to changes in attitudes toward long-term employment. The replies to a Ministry of Health, Labor and Welfare questionnaire are indicative. According to the results of the questionnaire, the reasons employees most often give for choosing temporary work were as follows: 1) they can choose the type of work they have an interest in; and 2) they would like to be hired as a regular employee but have not been able to find such a job.³⁴ The answers indicate that, while the desire to get permanent employment is still strong among Japanese, there is also a rising interest in choosing the type of work they would like to do.

While many young Japanese say that they would be ready to change companies if they get a better offer, very few of them really do so, either because no better offer comes, or because they get used to the system once they become a part of it. Long-term employment in a large company is still an attractive option for many young Japanese, while working in the public sector is the top priority of a large number of new graduates. This means that, despite some changes in attitudes, long-term employment still enjoys strong support in Japan.

VII. NEW DEVELOPMENTS IN THE LEGAL FRAMEWORK

1. *Developments in Case Law*

Terminating regular employees in Japan is always a difficult issue due to the restrictive regulatory environment and the attitude of the courts. Despite new trends and the reduced certainty of long-term employment, the courts have maintained their restrictive attitude in interpreting “just cause” for the termination of employment. Although employment practices are said to be changing, there is still a widespread belief in Japan that it is only morally acceptable to resort to layoffs when the company faces bankruptcy.

This informal understanding has been supported in a number of court cases.³⁵ According to the case law, a dismissal that lacks objectively rational grounds and is considered socially inappropriate shall be regarded as an abusive exercise of the right and thus null and void. Therefore, Japanese employers are required to demonstrate just cause for dismissals. This case law was incorporated into the LSA in 2003 (Art. 18-2 LSA).

From the aspect of legal protection, the distinction between regular and non-regular employees is not as great as it may appear since the courts have given non-regular employees basically the same kind of protection that is given to regular employees. Courts

creasing in recent years, while the percentage responding “To test one’s ability” or “To be economically comfortable” has been decreasing: <http://www.mhlw.go.jp/english/wp/l-economy/2005/dl/02-02-01.pdf>, last retrieved on 13 May 2014.

34 Available at: http://www.mhlw.go.jp/bunya/kodomo/boshi-hoken07/h7_04a.html, last retrieved on 13 May 2014.

35 See, C. PEJOVIĆ, Japanese long-term employment: between cultural background and economic rationale, in: McAlinn / Pejovic (eds.), *Law and Development in Asia*, (Abingdon / New York 2011).

still take a restrictive attitude, so that employers cannot take for granted that they can lay off contract employees at their free will. In some cases, if a contract has been renewed repeatedly, the employee may rely on an expectation of employment as an argument against layoff. In such cases, “just cause” may be required in order to not renew their contract.³⁶ The legal theory on refusal to renew the fixed-time contracts is ambivalent. It extends the protection of the abusive dismissal theory to these workers by analogy in some cases, but it admits their secondary status by saying that the employer may (and probably should) discontinue their contract before resorting to layoffs of regular employees.

Possibly influenced by a tendency of increased dismissals of employees in the post-bubble period, some Japanese courts rendered decisions that deviated from well-established practice and interpretation of the rules governing economic dismissals. The Tōkyō District Court has rendered a number of decisions that allowed dismissals for economic reasons.³⁷ In one such case, the Tōkyō District Court held that the evaluation of whether a dismissal is abusive must be based on all circumstances in each case. According to the Court, the requirements that were previously adopted as the basis for this evaluation do not represent *requirements* in the strict sense but merely *factors* that should be considered. The Court held that layoffs based on the employer’s business judgment rule should be upheld, regardless of the existence of a financial crisis.³⁸ Hence, even if one of the “four factors” is not met, the economic dismissal can still be held legally valid by taking other relevant factors into consideration, so that essentially “four requirements” is transformed into “four factors.”³⁹

The Tōkyō District Court’s decisions failed to reverse the dominant attitude of the Japanese courts. Nevertheless, they may serve as an indication that the stance of the Japanese courts is not as firm as before and may eventually change in the future. The abusive dismissal theory or just cause standard is flexible enough to allow interpretations that may fit needs for greater liquidity of the labor market, if necessary. The main issue for employers is not necessarily that regulations regarding employee dismissal are too rigid. The probably more serious issue is that legal outcomes from dismissal cases are hard to predict. As layoffs and unemployment are not so exceptional anymore, courts might be less sympathetic to dismissed employees than before.⁴⁰

36 Supreme Court, 4 December 1986 (*The Hitachi Medico* case), in: Rōdō Hanrei 486 (1986) 6, quoted in: NAKAKUBO, *supra* note 20, 11.

37 See S. OUCHI, Change in Japanese Economic Security: Reflecting on the Legal Points, in: Japan Labor Bulletin 41-11 (2002).

38 Tōkyō District Court, 21 January 2000 (*Yasuda v. National Westminster Bank, Ltd.*), in: Rōdō Hanrei 782 (2000) 23; Tōkyō District Court, 29 November (*Kadokawa Bunka Shinkō Zaidan*), in: Rōdō Hanrei 780 (1999) 67.

39 Tōkyō District Court, 21 January 2000, *supra* note 38 (*The National Westminster Bank* case).

40 K. SUGENO / K. YAMAKOSHI, Dismissals in Japan: How Strict Is Japanese Law on Employers?, in: Japan Labor Review 11-2 (2014) 83. The authors of this paper argue that Japanese law is not as strict regarding dismissals as it used to be.

2. *Legal Reforms*

The government has taken several actions to dispel doubts about its attitude toward long-term employment. The LSA was revised in 2003, and the new revised law came into effect in 2004. This revision mainly affects fixed-term contracts, dismissals, and discretionary work schemes.⁴¹ In Japan, law reforms often follow case law. This is confirmed by this revision of the LSA, which incorporated the case law on abusive dismissals. One of the key provisions of this revision is Art. 18-2, which reads: “A dismissal is invalid and the right to dismiss has been abused when it lacks objective, rational grounds and cannot be considered to be appropriate in general societal terms.” This provision is clearly based on the “abuse of right” doctrine. In fact, it just recognized the existing precedents based on this doctrine.⁴² While certain protection is given to all employees, with regular employees being given the highest degree of protection, the outcome will depend on the circumstances of each particular case.

The tendency to reinforce the protection of employees has continued in the following years. In 2007, a number of other labor statutes were adopted to further protect employee rights. The Part-Time Work Law, 1993, was revised in 2008 in an effort to improve the working conditions of part-time workers. This revision substantially increased protection of part-time employees, particularly the provisions that for the first time in Japan introduced the prohibition of discrimination against part-time employees. This law aimed at reducing the gap between regular and part-time employees requires employers to improve the status of part-time employees and creates mandatory arrangements to enable part-time employees to become regular employees under certain conditions. However, since this applies only to part-time employees who work under the same conditions as regular employees, the impact of this reform is rather limited. In addition, a revision of the Employment Measures Act, 2007, prohibited age discrimination in the hiring process. This law was the first law that addressed the age discrimination in Japan by prohibiting employers from setting a maximum age for job applicants.

In 2007 another important statute was enacted, the Labor Contract Act (LCA).⁴³ The main reason for enacting this statute was the rise in importance of individual labor contracts, as well as the increase in labor disputes between employees and employers. This statute fills a gap by specifically defining the principles governing labor relations that were previously based on judicial precedents only, including the prohibition of the abusive exercise of the employers’ rights. Art. 18-2 of the revised LSA, 2007 was incorporated into Art. 16 of the new LCA, 2007: “A dismissal is invalid and the right to dismiss has been abused when it lacks objective, rational grounds and cannot be considered to

41 See, NAKAKUBO, *supra* note 20, 4.

42 *Ibid.*, 14.

43 Available at: <http://www.japaneselawtranslation.go.jp/law/detail/?id=1992&vm=04&re=01>, last retrieved on 13 May 2014.

be appropriate in general societal terms.”⁴⁴ The law does not specify the meaning of the word “appropriate,” which can be interpreted in different ways, leaving the interpretation in the hands of the judge. Currently, employers must overcome several high hurdles before they can dismiss an employee.

The most recent amendment of the LCA came into effect on 1 April 2013. One of the most important changes relates to fixed-term contracts that are renewed for successive periods to avoid a contract relationship for an indefinite period. Under the revised law, a fixed-term employment contract can be transformed into a contract with an indefinite term at the request of the employee provided that the contract has been renewed without interruption for a period longer than five years. Japanese companies could increase flexibility by initially hiring employees on the basis of fixed contracts of up to three years (in some cases five years).⁴⁵ Amendments to the LCA offer all fixed-term employees who have been employed for the period of at least five years the opportunity to apply for an indefinite employment contract. In that case, the employer can terminate such an employment contract only under the criteria for termination of a permanent employment contract. Another important addition in the latest revision of the LCA is Art. 19, which incorporated the case law on refusal to renew a fixed-term contract. Another provision aimed at protection of the fixed-term contract employees is found in Art. 20, which prohibits unreasonably unfavorable working conditions imposed on such employees.

3. *Special Economic Zones Project*

The Japanese government is trying to revitalize its economy, and legal reforms of corporate governance and employment law are among the top priorities. Regarding reform of employment law, the goal is to enable a transition from the system of protection of employment toward a more liquid labor market with a greater mobility of the workforce. One segment of this reform is revision of the rules on dismissal.

Being constrained by the existing labor law, the government is considering as alternative solution the creation of so-called Special Employment Zones (SEZ) where the labor law would not apply. As part of the implementation of this project, legislation was passed in December 2013, and six areas for special zones were selected on 28 March 2014.⁴⁶ There are several measures concerning labor law that will be implemented in the special zones. The original idea was to substantially relax dismissal law inside the special zones. The idea was that if the employee and employer agree ahead of time on what behavior warrants dismissal, then such a dismissal under those circumstances will al-

44 The text of Art. 16 LCA is exactly identical to the former Art. 18-2 LSA. There are various translations of this text in English, but the Japanese text is the same and no change was intended.

45 Art. 14 LSA prohibits fixed-term contracts for periods longer than three years, or longer than five years for persons over 60 and for highly specialized types of jobs.

46 Designated cities include the Tōkyō and Ōsaka metropolitan areas, Okinawa prefecture, Fukuoka, Yabu, and Niigata cities.

ways be permitted. This is why this project has been dubbed the “Special Dismissal Zone,” or *kaiko tokku*, by the media.⁴⁷ However, due to strong opposition, the plans have been redesigned and only informational and advisory services will be offered by the government to the employers in special zones. The government will make special guidelines to clarify the legal rules of employment contracts, but they are not supposed to change the existing rules.

The SEZs may be considered a testing ground to experiment with reforms in specific geographical areas. If successful, the Japanese SEZs may gradually expand nationwide and foster development in other parts of Japan.

VIII. LONG-TERM EMPLOYMENT AND CORPORATE GOVERNANCE

Long-term employment is considered one of the main features of the Japanese corporate governance model, and since these two issues are closely related, the future of the long-term employment system has wider implications for the Japanese economic model. Both labor law and corporate governance became the subject of extensive reforms and discussions following the bubble burst. Reforms of corporate governance are moving in the direction of the US model paying more attention to the interests of shareholders. An issue that attracts attention is whether the reforms of labor law are moving in the same direction, i.e., toward a more liquid labor market, which would contribute to the success of reforms of corporate governance, or whether there is a mismatch between these two reforms, meaning that instead of synergy, labor law reforms may inhibit reforms of corporate governance.

Discussions on corporate governance most often focus on the “agency costs” issue and the relationship between shareholders and managers. The issue of agency costs in the Japanese context has a different meaning. In Japan, there is another relationship that matters: the relationship between the employer and the employees. This is because in Japan, the employees are considered the main stakeholders, and corporate governance should pay particular attention to their interests.

Masahiko Aoki rejects the classic model of corporate governance, which posits that the shareholders should have full control over managers, whose main task is to maximize shareholder wealth. Instead, Aoki points to the existence of a multi-constituent corporate governance structure, arguing that firms do not have a single objective to protect interests of shareholders, managers, or employees. Rather, Aoki describes the firms as a “bargaining game” aimed at harmonizing relationships among the shareholders, manag-

47 H. OKUNIKI, The Special Dismissal Zone: where legal protections no longer apply, in: Japan Times, 7 October 2013.

ers, and employees.⁴⁸ The decisions of the management are subject to the dual control of shareholders' and employees' interests rather than to unilateral control of the shareholders, and the role of managers is to balance the interests of shareholders and employees.⁴⁹ Under this model, labor efficiency is enhanced by the monitoring role of the main bank that serves to uphold implicit employment agreements.⁵⁰

The idea that companies should be managed dominantly in the interest of shareholders is in contradiction with the prevailing understanding of corporate governance in Japan. While capital is certainly important, the Japanese system gives greater importance to the labor and efforts of employees since they play a crucial role in the development of a company. In fact, the company and its well-being is the central focus of the Japanese system, and the company comes before both shareholders and employees. So, maybe it is more accurate to say that the Japanese system is focused on the well-being of the company itself, rather than on that of the employees.⁵¹

Long-term employment is a natural consequence of long-term relationships that are ubiquitous in Japan. The company in Japan is considered a kind of community consisting of regular employees, including managers. The position of managers is based on their status as regular employees rather than being agents appointed by shareholders. As a result, managers feel more closely associated with their fellow employees than with shareholders. In addition, management and labor share some common interests, including long-term policies based on stable development, which also contributes to stable employment and stable management. In such a system, where shareholders' control is restricted, managers normally tend to avoid dismissals of employees, and in the process of doing so, support long-term employment. The wide autonomy enjoyed by the management allows directors to pay greater attention to the interests of the employees, since most of the directors are promoted to their positions from the ranks of employees.⁵²

One factor that contributed to preserving long-term employment is that the structure of control of Japanese corporations, including the position of shareholders, has not been changed substantially. But there is a tendency toward greater protection of shareholders' interests. This includes greater sensitivity for their interests in various areas, including employment practices such as reducing excess employment. As a result of this tendency, instead of long-term profit-oriented governance, the short-term governance aimed at improving the value of shares may become more important. Naturally, this may also affect employment policy, both with respect to the type of employment as well as the

48 M. AOKI, Non-Hierarchical Aspects of the Internal Organization of the Enterprise: A Partial Survey in Comparative Perspective, in: Atkinson (ed.), *Economics in a Changing World* (New York 1996) 269.

49 M. AOKI, Toward an Economic Model of the Japanese Firm, in: *Journal of Economic Literature* 28 (1990) 20–21.

50 *Ibid.*, 14.

51 PEJOVIĆ, *supra* note 16, 119–120.

52 ARAKI, *supra* note 14, 88.

wages and promotion system. Foreign shareholders are likely to demand a reduction of the labor force since they are investing in Japan to make a profit through returns on investment. They are more interested in creating short-term effects through labor cost reduction rather than long-term benefits that regular employees may create.

The key factor determining the relationship between Japanese corporate governance and labor relations is job security. Employees in Japanese companies are not merely considered a factor of production that can be adjusted in accordance with fluctuating economic needs. Instead, corporations treat employees as important constituents. This is achieved by the employment security provided by labor law.

The Japanese corporate governance system will be influenced by labor law legislation and factors related to the level of protection of employees. Legal reforms of corporate law that move in the direction of the US model may have raised expectations that labor law may also be revised in the direction of relaxing rules on dismissal. Instead, the revisions of labor law moved in the opposite direction by providing a formal statutory protection of employee rights, including the rights of part-time employees. The labor law related to employment protection became more regulated, which contravened movement toward deregulation of the Japanese economy. At first sight, the revisions of labor law can be considered a countermeasure to the new tendency of giving increased importance to the rights of shareholders. Labor law that reinforces protection of employees can be considered a hindrance to adopting “global standards” in corporate governance because it can limit the power of the shareholders’ model. So, based on the contents of recent labor legislation, it can be argued that there is a contradiction between legal reforms in the area of corporate governance and labor law. Actually, this mismatch may not exist. Japanese labor law is flexible enough to allow courts to take a less protective attitude toward employees and, as argued by some leading authorities of labor law, the Japanese courts have taken a more liberal stance toward the dismissal of regular employees.⁵³

The security of employment for the regular employees and the readiness of managers to link their careers to the same company are of essential importance for preserving the traditional model. If these two can be ensured, giving greater protection to the shareholders’ interests would not endanger the preservation of the traditional model. Even though employment security regulations in Japan have been gradually relaxed, employment security remains strong. The end of long-term employment and the emergence of a market for managers would undermine the traditional model, but that has not yet happened and is unlikely to happen anytime soon.

53 SUGENO / YAMAKOSHI, *supra* note 40.

IX. CHALLENGES AND DILEMMAS

“‘Taking back Japan’ is one of the Abe government’s favorite catchphrases. Around town, you see this phrase in bold letters splashed across huge posters depicting the prime minister gazing into the distance, the Hinomaru flag fluttering in the background. But I cannot see where Abe’s eyes are looking. From and to where does he want to ‘take Japan back?’”⁵⁴

The above quote from a text by Hifumi Okunuki illustrates the present uncertainty and dilemmas many Japanese feel with regard to possible changes in the employment system.⁵⁵ Prime Minister Abe himself seems to have some dilemmas regarding employment policy. In an interview with the Financial Times published in October 2013, he conceded that a relaxation of Japan’s stringent job protections – a step that he has described as necessary to make Japanese companies more competitive and to attract foreign investment – “would not be part of any forthcoming policy package.”⁵⁶

Reform of the employment system as one of the structural reforms designed by Abenomics may not be easy.⁵⁷ Why is it so difficult to make this change? If the law and economics principles based on economic efficiency are applied, the issues related to revision of labor law and job protection should not be so complicated. Japan should consider merits and demerits of the long-term employment system before making legal reforms. If long-term employment contributes to economic performance, then it should be retained. If the economic efficiency would be improved by relaxing job protection that would undermine long-term employment, then this should be done. Long-term employment should not be preserved if the price is poor economic performance, which would eventually also lead to layoffs of employees.

Reluctance of the government to take bolder steps in relaxing rules on dismissal indicates that something more important is at stake. The law and economics approach has some limitations in this case. The issue here is not just a matter of which way would be more economically efficient.

Several decades after being adopted, long-term employment has become an integral part of Japanese society and its economic model. Its existence is not tied merely to economic factors. That is why the eventual dissolution or possible changes to this system are not dependent only on economic considerations. Long-term employment was cher-

54 H. OKUNUKI, *supra* note 47.

55 Hifumi Okunuki is a lecturer at Sagami Women’s University and serves as executive president of Tōzen Union (Zenkoku Ippan Tōkyō General Union). She has written a series of interesting labor law-related texts in the Japan Times.

56 Interview available at: <http://www.ft.com/intl/cms/s/0/155852e6-2cf7-11e3-8281-00144feab7de.html#axzz2vTioBoYX>, last retrieved on 13 May 2014.

57 “The thicket of reform”, The Economist, 16 November 2013, available at: <http://www.economist.com/news/asia/21589876-though-appearing-committed-big-structural-change-prime-minister-moving-too-slowly>, last retrieved on 13 May 2014.

ished as one of the key factors of Japan's success and was deeply entrenched in society, enjoying also the support of the state. Such widespread positive views on the long-term employment system have made changes in the system difficult. One of the key issues in possible reforms of long-term employment is that any of the future solutions will have to consider both economic and social implications.

Reducing the number of employees is a very sensitive issue and it cannot be treated in the same way as simply a reduction of costs. It is a very difficult process for both the employee who is losing a job and for the employer who has to make such a decision. This is particularly true in Japan due to the humiliation it inflicts on employees. George Wehrfritz, in a paper published in *Newsweek*, gives a gloomy picture of the hardship of Japanese salarymen who have been "restructured":

"Job cuts are painful anywhere – but especially in Japan, where employers have long offered an almost family-like sense of security. Workers tossed out from these families can take it very hard. Japan's suicide rate is soaring. So is alcoholism, domestic violence and crime. Every labor activist knows a fired salaryman who still puts on his suit each morning and leaves home for the office. These corporate casualties kill time wandering in parks or daydreaming in coffee shops – unable to tell their spouses they've been 'restructured.' Too often, the deception ends tragically when a salaryman disappears into the ranks of the homeless or jumps in front of the commuter train that once carried him to work."⁵⁸

A company that lays off its regular employees would be perceived as a company which neglects its social responsibilities. This may undermine the company's status in society and its capacity to hire talented graduates. It may also affect the reputation of the company in the market, which is an extremely important factor in Japan.

There are also economic considerations behind this cautious approach. One of the reasons for reluctance to make more radical steps toward the dissolution of long-term employment is the fact that the system has proved to be successful in the past. Termination of long-term employment bears certain risks. Many managers fear that, if long-term employment declines, so will the commitment of the workers. This would also create difficulty in attracting new recruits and affect the highly effective internal training system that constitutes an integral part of the long-term employment system.

Despite new trends of change toward greater mobility in the labor market, the fact is that mobility rates are very low. This is partly a result of the attitudes of most Japanese companies, which instead of encouraging mobility for regular employees have preferred to increase the number of non-regular employees in order to achieve greater flexibility. The distinction between regular and non-regular employees is also becoming blurred as many firms try to train non-regular employees and offer them a chance to become regular employees. On the other hand, many Japanese companies have made changes in pay

58 G. WEHRFRITZ, *The Death of Civility*, in: *Newsweek*, 13 March 2010, available at: <http://www.newsweek.com/death-civility-168810>, last retrieved on 13 May 2014.

and promotion systems favoring performance criteria over seniority, which corresponds with trends in corporate governance to put more emphasis on profitability. By keeping the number of regular employees at a low level and hiring non-regular employees in accordance with actual needs, the companies were able to maintain flexibility and avoid burdens of over-employment. This practice contributed to the competitiveness of companies, and the practice became widespread in some sectors, such as the manufacturing and retailing industry. Some of the works previously assigned to regular employees were shifted to non-regular employees. This means that Japanese companies have already achieved a substantial level of flexibility by increasing the number of non-regular employees. The Japanese case law has been supportive of this flexibility, while also taking a less protective stance toward dismissals of regular employees.⁵⁹ It may be assumed that most Japanese companies do not even consider abolishing long-term employment and are more likely to focus on alternative solutions.

Is the present level of flexibility not sufficient? How far would Abe's government like to go? To quote Mrs. Okunuki again, "Where are Abe's eyes looking?" Maybe a kind of Japanese version of neoliberalism?⁶⁰ While neoliberal policies may contribute to faster economic growth, at least on a short-term basis, they also lead to higher inequality, job insecurity, rising unemployment, and social costs. This may also lead to the end of Japan's social model. The price of these policies can be very high, while benefits for Japanese firms are far from certain.

Is it really necessary to pursue reforms that contravene the fundamental principles on which the economic success of Japan was based? The whole idea that Japan should adopt "global standards" is based on the assumption that this would lead to better performance. Would it really? As an illustration, one of the companies whose performance has drastically improved recently is Toyota, which is considered one of the leading supporters of the traditional Japanese model.⁶¹ On the other hand, Sony, which was a pioneer of corporate reforms in Japan moving in the direction of "global standards," is facing hard times.⁶² Of course, this does not represent conclusive evidence on the superiority of the traditional

59 *Supra* note 38.

60 In January 2013, after the LDP won elections, Prime Minister Abe published an article outlining his political visions in *Bungei Shunjū* magazine (91-1 (2013) 124–133). In this article he wrote: "We shall continue to put emphasis on an economy open to free competition; but rather than the type of capitalism motivated by greed, like that by which Wall Street swept over the world, there is a firm market-based formula, that places importance on reason and knows the way to true prosperity, which is most suitable for our 'land of ripe rice ears' (*i.e.*, *Japan [The Author]*)."

61 See, "Profit Is Up 70% at Toyota, Close to Its Old Milestone," *New York Times*, 6 November 2013, available at: <http://www.nytimes.com/2013/11/07/business/international/toyota-projects-near-record-yearly-profit.html>, last retrieved on 13 May 2014.

62 See "Sony warns of \$1bn annual net loss," *Financial Times*, 6 February 2014, available at: <http://www.ft.com/intl/cms/s/0/549b076c-8efb-11e3-9cb0-00144feab7de.html#axzz2snhki8UI>, last retrieved on 14 May 2014.

model, but it still demonstrates that companies that retained the traditional model can be very successful, while companies which decided to move toward “global standards” are not necessarily successful. Isn’t it better to make adjustments in the existing model, as many Japanese companies are already doing, including the most successful ones such as Toyota, instead of taking more drastic changes in order to follow “global standards”?

Changes in the employment system might have a strong impact on various aspects of the Japanese societal model. Eventual dissolution of long-term employment would have a strong impact on the recruitment system under which companies employ fresh graduates, because this system is an essential part of long-term employment. In a kind of chain reaction, the on-the-job training would also be undermined because it is closely related to the present recruitment system; the companies would not have an incentive to invest in training employees who are not committed to stay with them. Furthermore, this would also affect the education system because entrance exams to enter good universities are closely related to the present recruiting system. With the dissolution of the long-term employment and recruiting systems, the entrance exams would lose the importance they presently have.⁶³ Such changes would also require changes in the education system itself. The present education system served well to prepare graduates for long-term employment by emphasizing cooperation and providing them with a broad general knowledge. “Children are taught the virtue of cooperation for everyone’s benefit, and, however annoying they may find group pressures, adults remain responsive to group attitudes for they are convinced that everyone gains from restraining egoism.”⁶⁴ Japanese education so far has promoted the ideal of cooperation and working together, which corresponds with the long-term employment concept. Changes in the employment model that would move toward a more liquid labor market may require a different type of education model that emphasizes individualism and entrepreneurship. Is this what most Japanese really want? Can a consensus be reached on that?

Permanent relationships and group-oriented systems are the very foundations of the Japanese model. Abolishing long-term employment, which is one of the key parts of this system, could undermine the Japanese corporate system as a whole, unless there is certainty that this system can be safely replaced by another system. For a nation that has long prided itself on stability and relatively equitable incomes, such a change would certainly be difficult and most likely unacceptable. Even if there were a consensus on the need for change, it is obvious that there are disagreements on the scope, pace, and goals of the changes. Retreating from the original ambitious plans to relax dismissal rules in special zones is just an illustration of the lack of consensus, even within the government.

The tendency toward less stable employment has not been accompanied by more flexible legal standards on termination itself. While some erosion in long-term employ-

63 The cram schools would be collateral damage, because with entrance exams losing importance, the cram schools would remain without students.

64 E. F. VOGEL, *Japan as Number One: Lessons for America* (Cambridge, MA 1979) 98.

ment is likely, that erosion will probably be the result of economic pressures rather than a change in the applicable legal standards. As a matter of principle, once firmly established, the legal standards are not easy to revise despite changes in the economic sphere. A change in the legal standards is even more difficult when those standards are strongly entrenched in the existing public policy considerations. The fact that long-term employment became deeply embedded in Japanese society increases its persistence and impedes reform. Even though a more flexible labor market might contribute to better economic performance of firms, the social constraints present a serious hindrance. At this stage, the government may not be ready to take the risk of undertaking radical reforms that could undermine the long-term employment system.

Looking from the opposite perspective, it is clear that Japan needs changes in the employment system. Firms need substantial flexibility when the firm performs poorly and sales of its products decline. In such cases, reducing the number of employees becomes a necessity. This seems cruel to the employees, but it usually leads to improved performance. In fact, this helps the employees who are able to keep their jobs. In a way, laying off some employees enhances the job security of the remaining employees. Failure to adopt bolder reforms may lead to a further economic decline of Japan.

Obviously, Japan faces a tough choice. The crucial question that Japan faces is how to establish a proper balance between the need to preserve social stability that long-term employment provided and yet ensure flexibility of the labor market that can contribute to a more efficient economic model.

X. CONCLUSION

The Japanese economy faces serious challenges. Economic recession, rising unemployment, and an aging population are only some of the problems that may affect the future of long-term employment. The challenges Japan is facing are universal: how to strike a proper balance between flexibility and security and reconcile the interests of shareholders and employees. The manner in which these challenges are dealt with differs from nation to nation.

In Japan, many companies resorted to reduction of their core workforce and are relying more heavily on non-regular employees. This was partly done to meet legal challenges posed by dismissed employees who are often supported by the Japanese courts. Despite these trends, core employees continue to enjoy the status of long-term employment and all typical patterns of long-term employment have been preserved, with some adjustments. Long-term employment persists, and has only been revised by increasing the number of part-time employees. Since Japan has always had part-time employees in large companies, this is a change in scale and not in substance.

The Japanese people are getting accustomed to living with the new reality where there is no strong guarantee of long-term employment and there is an increasingly large force of part-time workers working on a contractual basis. The old model of "lifetime

employment” continues to erode, causing concerns for their jobs among many Japanese, especially workers lacking the skills and education that are in high demand. Despite the changes in the economic and social environment, the core features of the Japanese model, including long-term employment, will most likely not disappear in the foreseeable future. Instead, some reforms of limited scope and modifications can be expected. While long-term employment is not going to disappear anytime soon, it will be adjusting to the new changes in economy and demography.⁶⁵

There have been some legal reforms related to labor law, and their main feature can be described as a tendency to maintain long-term employment for regular employees. Several decisions of the Tōkyō District Court may serve as an indication that changes of long-term employment might occur. But for a more drastic change, a number of other factors will have to be present in addition to the support by jurisprudence. At the moment, the social constraints pose a serious obstacle to eventual changes in the existing system. In order for a real change to occur, there has to be a consensus in society that those traditional ways associated with long-term employment, such as the patterns of recruiting young graduates and career employment, should be discontinued as outdated or unsuitable, and there has to be an agreement on the need to start a new way of doing things. These kinds of changes will probably be accompanied by some cultural adjustments.

Whatever course is taken in the future, those reform policies will have to consider various factors. Japan needs a solution that preserves the social stability which long-term employment and the protection of employees provided, and which achieves a flexibility of the labor market that can contribute to a more efficient economic model. These two goals are based, in fact, on the very same considerations that represent the basis of the bipolar approach to the explanation of the nature of long-term employment: cultural and economic. These goals are not necessarily incompatible; the key point will be how to strike a proper balance between them. Economies are ultimately about the society.

SUMMARY

Long-term employment is considered one of the most distinctive features of the Japanese employment system, as well as one of the essential elements of the Japanese economic model. During the period of economic expansion, long-term employment was praised as one of the key factors of Japan's success story. After the bubble burst in the early 1990s and economic recession left many companies with a huge excess of employees, long-

65 Japan has been reluctant to import guest-workers. There was an experiment with encouraging the Japanese diaspora (*nikkei-jin*) from Latin America, mainly Brazil and Peru, to come and work in Japan in the time of the bubble. After the bubble burst, the Japanese government offered financial incentives to those people to return to their countries. After this failed experiment, it will only make it more difficult to allow foreign workers to enter the Japanese labor market.

term employment came under criticism as one of the obstacles to economic recovery. Since then many scholars have argued for a revision of long-term employment and for granting more flexibility to the employers. The main objective of this paper is to examine changes that have been taking place in long-term employment and labor law and their impact on the Japanese economic model. After introducing the concept and the nature of long-term employment in Japan, the paper examines new trends and developments by analyzing the reactions of employers with regard to employment patterns, changes in the legal framework, and the impact those changes may have on corporate governance. Particular attention is given to the analysis of the possible future developments of long-term employment by considering various factors, such as the need for a more flexible labor market, the social constraints that may present an obstacle to comprehensive changes in the existing system, and the actions undertaken by the government in the light of existing challenges and dilemmas.

ZUSAMMENFASSUNG

Die langfristige Beschäftigung wird als eine der charakteristischsten Eigenheiten des japanischen Beschäftigungssystems sowie eines der wesentlichen Elemente des japanischen Wirtschaftsmodells angesehen. Während der Zeit wirtschaftlichen Aufschwungs wurde sie als ein Schlüsselfaktor des japanischen Erfolgs gepriesen. Nachdem die Blase in den frühen 90ern geplatzt war und die wirtschaftliche Rezession bei vielen Unternehmen zu einem großen Überschuss an Arbeitskräften geführt hat, gelangte die langfristige Beschäftigung als eines der Hindernisse auf dem Weg zur Belebung der Konjunktur in die Kritik. Seitdem haben sich viele Wissenschaftler für eine Reform des Konzepts der langfristigen Beschäftigung und eine Flexibilisierung zugunsten der Arbeitgeber stark gemacht. Ziel dieses Beitrags ist es, die Veränderungen in der langfristigen Beschäftigung und dem Arbeitsrecht sowie deren Einfluss auf das japanische Wirtschaftsmodell zu untersuchen. Nach Vorstellung des Konzepts sowie der Natur der langfristigen Beschäftigung in Japan werden neue Tendenzen und Entwicklungen untersucht. Dabei werden die Reaktionen der Arbeitgeber im Hinblick auf Beschäftigungsstrukturen und die Änderungen der rechtlichen Rahmenbedingungen sowie der Einfluss dieser Änderungen auf die Corporate Governance analysiert. Besondere Beachtung wird der Analyse möglicher zukünftiger Entwicklungen der langfristigen Beschäftigung geschenkt. Dabei werden verschiedene Faktoren wie der Bedarf für eine Flexibilisierung des Arbeitsmarktes, die sozialen Rahmenbedingungen, welche ein Hindernis für umfassende Veränderungen im bestehenden System darstellen könnten, sowie Maßnahmen der Regierung im Lichte bestehender Herausforderungen und Zwänge berücksichtigt.

(Die Redaktion)

