

Economic Decline and Legal Change: Considerations from Japan's Dying Shopping Streets

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I. INTRODUCTION

This article is about the decline of a form of economic organization and the relationship between that decline and changes in the legal framework in which it operates. This focus is inspired by academic interest in the relationship between economic and legal change which has emerged in recent years.¹ At the risk of oversimplification, the debate largely boils down to one in which law gravitates over time either towards or away from sets of efficient rules that produce beneficial economic outcomes. The forces of regulatory

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1 Mainly inspired by the development of the legal origins literature, which raises questions about how legal and economic systems develop. See R. LA PORTA/F. LOPEZ-DE-SILANES/A. SHLEIFER and R. W. VISHNY, Law and Finance, in: *Journal of Political Economy* 106 (1998) 1113; R. LA PORTA/F. LOPEZ-DE-SILANES/A. SHLEIFER, The Economic Consequences of Legal Origins, in: *Journal of Economic Literature* 46 (2008) 285.

competition and demand from various actors² are among those said to drive legal change towards economic efficiency, while path dependencies supplied by a variety of historical endowments³ may prevent such evolution.

The literature suffers from a certain myopia in the sense that it has been primarily focused on rules related to the particular organizational context of the business corporation, such as corporate law and securities regulation, to the extent that our understanding of this relationship could more accurately be described as an understanding of how rules in that specific context rather than law in general relates to economic change. This paper views this distinction as relevant due to the fact that the corporation is a remarkably, and perhaps even uniquely, successful form of economic organization. It fulfills its function – providing a vehicle in which various stakeholders can contribute to an enterprise while minimizing agency costs⁴ – in such a way that rival legal forms fail to pose a serious competitive threat to it. Moreover the nature of contemporary economies around the world is one in which demand for this function, and thus for the corporate form, remains high.

History, however, is replete with examples of forms of economic organization which have gone through periods of successful development only to one day be confronted with changes to which they could not adopt that precipitated their decline and ultimate extinction. An understanding of how economic change interacts with legal change which only focuses on a successful form of economic organization may, in other words, only be providing us with a partial picture. This paper attempts to shed some light on legal change in the context of an organizational form which has entered such a period of decline, which is provided by Japan's *shōten-kai*. *Shōten-kai* are collections of small merchants who have co-located in shopping streets within towns and cities across the country. For most of the twentieth century they served as both a key component of Japan's retail distribution system and as an integral part of its urban landscape. In addition to being a physical space the *shōten-kai* is, like the business corporation, an organizational form which provides rules that structure economic activity among various stakeholders. In recent decades a variety of exogenous shocks combined with a series of endogenous governance problems and changes to the legal environment in which they operate have contributed to a long term decline of *shōten-kai* throughout the country.

As an object of legal study, two distinct aspects of *shōten-kai* tie them to two different legal regimes. The first of these is their role as a form of business organization, bringing together the small merchants that operate on them into a collective entity that

2 H. HANSMANN/R. KRAAKMAN, The End of History for Corporate Law, in: Georgetown Law Journal 89 (2001) 439.

3 LA PORTA/LOPEZ-DE-SILANES/SHLIEFER, *supra* note 1; L. A. BEBCHUK/M. J. ROE, A Theory of Path Dependence in Corporate Ownership and Governance, in: Stanford Law Review 52 (1999) 127.

4 This may be an oversimplification, for a more detailed discussion see R. KRAAKMAN/P. DAVIES/H. HANSMANN/G. HERTIG/K. HOPT/H. KANDA/E. ROCK, The Anatomy of Corporate Law (Oxford 2009) at Chapter 1.

has a business purpose. The main pieces of relevant legislation are the *Shōten-kai* Promotion Association Act (SPA Act)⁵ and the Small and Medium Sized Enterprises Cooperatives Act (SMSEC Act)⁶, which provide the legal entities in which *shōten-kai* associations may incorporate. These forms, which are nearly identical to each other, are based on a cooperative model whose rules share much in common with those of the business corporation.⁷ These rules are intended to allow the main stakeholders to cooperatively pursue the common goal of promoting their *shōten-kai*. The second aspect is their role as physical spaces in the urban environment, where a number of urban planning laws have been used to define the relationship of *shōten-kai* within the urban areas in which they exist. Historically the most important of these were a series of Acts which gave *shōten-kai* a significant degree of control over planning decisions with regard to large scale retailers, their main competitors. A series of major legislative reforms beginning in 1990 however have largely blunted the privileged position of *shōten-kai* by removing an effective veto power they had been granted over such competition opening nearby. In more recent years, urban redevelopment law has come to play a larger role in regard to *shōten-kai*, as cities implement urban renewal schemes that often incorporate large scale physical reconstruction of *shōten-kai* and the re-arrangement of property rights on them.

This paper examines the history of legal development in these fields alongside the parallel history of the *shōten-kai* as economic organizations. The narrative leads to three major conclusions which this paper draws about the relationship between declining economic organizations and legal change.

The first is that economic decline may lead to what can be termed “zombie laws.” The term is here used to refer to laws in which the process of legal change largely becomes divorced from the reality of the subject which it is intended to regulate. The law may give the appearance of relevance and vitality owing to frequent amendments, but in fact has, like a zombie, ceased having a life of its own. A number of factors may contribute to this effect. The decline of a given organization may, perhaps unsurprisingly, mean that the incentives necessary for the type of experimentation and innovation said to drive legal change in more economically successful models like the corporation simply does not exist. Erstwhile agents of change may be unable or unwilling to undertake the necessary investments that drive the process. In the *shōten-kai* context this is exemplified by their organizational law. During earlier, more successful periods *shōten-kai* associations played

5 *Shōten-kai shinkō kumiai-hō*, Law No. 141/1962, as amended by Law No. 53/2011.

6 *Chūshō kigyō-tō kyōdō kumiai-hō*, Law No. 181/1949, as amended by Law No. 91/2014.

7 Cooperatives differ from corporations in a number of ways, notably their purpose (to help members achieve certain goals collectively rather than to earn a return on capital for investors) and differences between the respective relationship between members of a cooperative and shareholders in a corporation. Generally however they establish the same governance structure with a board of directors elected by a general meeting of members in charge of overseeing the organization, with many common rules governing the ability of the latter to monitor the former.

a key role in bringing these Acts into existence and initiating changes which accommodated their interests. They found a legislature and bureaucracy that was willing to accommodate them. As they have declined in recent years, however, the process of legal change has lost this innovative characteristic. Instead legal change in the area has come to be mechanically tied to broader changes to cooperative laws in general. These changes do nothing to address the actual organizational governance problems which *shōten-kai* face, making these laws largely irrelevant as a means of resolving them.

Secondly, the decline of an economic organization may result in important actors in those institutions being ousted from leading roles they play in determining legal agendas that affect not just themselves but also their competitors. In the case of *shōten-kai* this is illustrated in relation to the regulation of department stores and large scale retailers. During their successful phase *shōten-kai* were instrumental in establishing the legal framework that applied to these larger competitors and in ensuring they were strictly enforced. The onset of their decline has been followed by large scale liberalization of these rules and significantly curtailed the formal influence of *shōten-kai* in the process. This has benefitted large scale retailers, whose numbers have increased steadily in recent years.

Finally, the decline of an economic organization, combined with the inability of zombie laws to adequately react to it, may create externalities for other actors which force them to act. These actors may have different legal tools at their disposal and may use these in novel ways to resolve the problems that arise, in effect shifting the arena of legal change away from the zombie laws and allowing some form of experimentation and innovation to occur. This is visible in the reaction of some city governments to the decline of their central *shōten-kai*. Faced with the desire to revitalize their central *shōten-kai* while at the same time addressing important governance issues which the SPA and SMSEC Act are incapable of dealing with, the trend has been for these governments to utilize urban redevelopment legislation to drastically reform their *shōten-kai*, both in physical and organizational terms.

This paper proceeds as follows. The following section provides a review of the literature on the relationship between economic and legal change that has been developed in the corporate law literature. It then sets out the case for studying economic decline, referring to institutional economics, a field that has heavily influenced the legal literature but which, unlike the legal literature, has also focused on the role that declining economic organizations and institutions have on change. The following two sections then present the story of the *shōten-kai* and its legal framework.⁸ The first of these examines the

8 Thus far most English language works on law in the Japanese retail sector have focused on the regulation of large scale retailers, with *shōten-kai* and small retailers generally being mentioned in passing rather than as an object of study in themselves. See F. K. UPHAM, Privatized Regulation: Japanese Regulatory Style in Comparative and International Perspective, in: *Fordham International Law Journal* 20 (1996) 396; J. H. GRIER, Japan's Regulation of Large Retail Stores: Political Demands Versus Economic Interests, in: *Journal of International Law* 22 (2001) 1. In Japanese Mitsuhsa Hama has written extensively on *shōten-kai*

rise of the *shōten-kai* as business organizations in the early-mid twentieth century and the development of legal rules governing both their organizational form and the approval process for their main competitors, department stores, over which they had extensive influence. The second looks at the period from the 1980s to present in which *shōten-kai* have entered a prolonged period of economic decline as organizations. In tracing the changes to the legal system which have come in this period, the paper examines the three trends outlined above in relation to the effect of economic decline on legal change. Conclusions follow.

II. THE PROCESS OF LEGAL AND ECONOMIC CHANGE

1. *The View from Corporate Law*

The question of how, and in what direction, legal change occurs has in recent years been examined hand in hand with the question of what constitutes “good” laws when evaluated from an economic perspective. This literature has grown out of the suggestion⁹ that it is possible to identify sets of legal rules, and particularly corporate law rules, which produce economically efficient outcomes. This suggested that the existence of certain beneficial economic outcomes in a given jurisdiction could be explained by the existence of efficient corporate law rules combined with effective means of enforcing them.¹⁰ The question of why certain countries persisted in maintaining rules that seemed to produce sub-optimal results sparked interest in the relationship between economic and legal change. While certain economists¹¹ have explained it through the importance of path dependencies provided by the civil and common law traditions, most legal scholars¹² have rejected or downplayed the importance of this factor and instead looked towards the various actors and processes that drive change. While by no means purporting to be an exhaustive overview, we can here review some of the main views put forward by legal scholars on this question of how economic and legal change are related.

One view is that legal change is highly influenced by competitive pressure across jurisdictions to produce more economically efficient rules. Hansmann and Kraakman¹³ in

from a legal perspective and this paper has benefitted greatly from his work. See M. HAMA, *Senzen-senchūki ni okeru shōten-kai no no soshiki katsudō* [Organizational Activities of *Shōten-kai* in the Pre-War and Wartime Eras], in: *Kei’ei Kenkyū* 56 (2005) 125; M. HAMA, *Shōten-kai shinkō kumiai hō no seiritsu katei to sono igi* [The Process of Establishing the *Shōten-kai* Promotion Association Act and its Significance], in: Nagoya Gakuin University Discussion Paper No. 78 (2008).

9 See references, *supra*, note 1.

10 See particularly LA PORTA/LOPEZ-DE-SILANES/SHLEIFER/VISHNY, *supra* note 1.

11 *Ibid.*

12 There is a relatively large legal literature reflecting this view. See for example the contributions in M. FAURE/J. SMITS (eds.), *Does Law Matter?* (Cambridge 2011).

13 HANSMANN/KRAAKMAN, *supra* note 2.

particular have argued that convergence of corporate laws in various jurisdictions on an efficient, shareholder centric model will be achieved owing to various competitive pressures placed on corporate law, combined with the existence of a powerful interest group – the shareholder class – that favors change in that direction. This view attaches little importance to the historical origin of the legal system itself and instead views it more as a competitive process in which the better laws will win out in the end based on the persuasiveness of their own merits. A contrasting view is provided by Roe and Bebchuck¹⁴, who argue that interest groups which benefit from a given arrangement of the law may be capable of using their influence to block such forces of legal change.

Another view suggests that legal change is more of an evolutionary process of trial and error in which the law responds to a changing economic environment. Pistor et al¹⁵ view the process as being driven by a variety of factors – the demand for corporate law, the institutional environment, the legal system’s ability to develop different mechanisms to control corporate agency problems and external competition. They suggest that the flexibility of corporate law in responding to a changing environment is one of its key functions. Schumpeter’s notion of creative destruction is cited as playing a role in this as corporate laws evolve in an experimental way, trying new rules and discarding ineffective ones. Legal change may thus vary according to the ability of a legal system to “innovate by allowing sufficient room for experimentation.”¹⁶

A third view, which builds upon the previous one, describes it as an iterative process in which markets and actors use legal change as a means of restoring equilibrium after scandals or shocks disrupt business as usual. Milhaupt and Pistor¹⁷ examine a number of corporate crises and suggest there exists a feedback loop between legal and economic change:

“Market change occurs, typically because of the introduction of new technology, the entrance of new players, a shift in consumer demand, or a scandal that reveals damaging new information about the operation of the market or its participants. Market change of any type raises new questions ... In order to mitigate uncertainty and restore equilibrium in the market, these questions must be answered by someone. In most developed economies, many of these questions are answered by legal actors ... Virtually every legal response, in turn, creates new incentives ... for market players, who adopt their conduct to the new rules and push at the margins of the new legal order. These market reactions raise new questions of their own, and the process repeats itself.”¹⁸

14 BEBCHUK/ROE, *supra* note 3.

15 K. PISTOR/Y. KEINAN/J. KLEINHEISTERKAMP/M. D. WEST, The Evolution of Corporate Law A Cross-Country Comparison, in: University of Pennsylvania Journal of International Law 23 (2003) 791.

16 *Ibid*, at 793.

17 C. J. MILHAUPT/K. PISTOR, *Law & Capitalism: What Corporate Crises Reveal About Legal Systems and Economic Development Around the World* (Chicago 2008).

18 *Ibid*, at 28.

While there is divergence among these views as to the details, one thing they have in common is the idea that legal change in this area is a process whose end goal is economic efficiency. In general it can be said that the interaction of various agents on the demand side of legal change – such as shareholders, executives, industry groups and academics – with factors provided by the supply side which control the mechanisms of change – the structure of the legal system, the courts, the legislature, administrative agencies and the availability of successful models for emulation – determines the outcome of the process, which may vary significantly across different jurisdictions based on the mix of these and their relative influence.

One point that arises is that these agents of change need incentives to animate them, otherwise the process thus described cannot begin. Likewise the legal system itself must be capable of accommodating these demands in a manner that produces changes to legal rules. In corporate law such incentives may often exist in the payoff to be had either from rules that produce net benefits to society (such as reducing transaction costs), or from rules that may not produce such benefits to society but which do accrue to certain constituents. When a form of organization enters economic decline, however, such incentives for investing in legal change may not exist. While this might suggest that legal change would therefore simply not take place, the experience of the *shōten-kai* which will be examined below suggests that this supposition is only partially correct. Before turning to that experience, however, it is necessary to set out in more detail the case for studying the relevance of economic decline, which we turn to in the following section.

2. *Why Study Economic Decline?*

The process of legal change described above largely assumes, not without reason, that the underlying function of corporate law is one there is a strong demand for. All the main actors in the field – shareholders, creditors, managers, labor and so on – continue to have confidence in the corporate form itself, even if corporate scandals do occasionally lay bare weaknesses in certain institutions governing it. By exposing weaknesses or rearranging power relations these incentivize actors to pursue change and may make the system itself more responsive to such demands. Such failures, however, do not alter the basic demand for the corporation as a means of organizing economic activity – the nature of our economies remains one in which it plays a dominant role.

Not all economic organizations share this record of expansion and success, however. Institutional economics provides us with a relatively rich literature on the decline of organizations and their relationship with institutional change. “Organizations” are defined by North as “groups of individuals bound by some common purpose to achieve objectives”,¹⁹ while institutions are defined as “humanly devised constraints that shape

19 D. C. NORTH, *Institutions, Institutional Change and Economic Performance* (Cambridge 1990) at 5.

human interaction”.²⁰ In more simple terms, organizations are teams in a game and institutions provide them with the rules by which they play.²¹ This framework does not draw a distinction between rules provided by law and those provided by social norms. Organizations are both determined by their institutional environment and act as agents of changes to that environment²² – the corporation for example being defined by law also plays a major role in prompting changes to that law. Though the concepts of “institutional change” and “legal change” are not synonymous, the similarities between this view and that developed in the debate on legal change are a result of the influence of institutional economics on that legal debate.²³ Unlike the literature on legal change, however, institutional economists have devoted a great deal of effort not only to the study of successful organizations – and the institutions which they evolve – but also to those which went into decline and ultimately extinction. Thus our understanding of the process of institutional change over time is influenced by the story of medieval merchant guilds just as it is by the rules governing modern business corporations. Accepting that “creative destruction” – which implies not only failure of individual corporations but also longer term decline of economic organizations and institutions which are “destroyed” – plays an important part in our understanding of the process of legal change, it is curious that legal scholarship has yet to study the issue in this regard.

The term “decline” in this paper draws its meaning from the observation that institutions can be either self-enforcing or self-undermining.²⁴ Self-enforcing institutions are those in which “all motivation is endogenously provided”.²⁵ In other words, individuals within the confines of such institutions will act in response to the incentives the rules create in the expectation that others will model their behavior likewise. Over time this leads to the institution becoming self-enforcing – individuals will voluntarily model their behavior on them, which in turn strengthens the institutions on which the behavior is based. The institutions themselves will impose costs on individual behavior that deviates from the rules while rewarding those that comply, thus ensuring its continued survival and reinforcement.²⁶

Grief, however, suggests that certain institutions reach a point in their development where they become self-undermining.²⁷ Where the payoffs to individuals for following the rules decrease the institution may become self-undermining in the sense that their rules becomes effective in smaller and smaller areas of activity as individuals have re-

20 Ibid at 1.

21 Ibid.

22 Ibid at 5.

23 See in particular the discussion in chapter 1 of MILHAUPT/PISTOR, *supra* note 17.

24 Made in A. GRIEF, *Institutions and the Path to the Modern Economy: Lessons from Medieval Trade* (Cambridge 2006).

25 Ibid, at 15-16.

26 Ibid.

27 Ibid, at 179-180.

duced incentives to comply with the rules. This can be triggered by exogenous changes resulting from technological progress or other means, and can result in a drawn out process of decline rather than immediate collapse of the institution. In general these institutions decline both because these external changes disrupt the incentives they provide for compliance and because they are incapable of adapting their rules to counter these developments, a pattern which as shall be discussed below largely conforms with the experience of *shōten-kai*.

The benefit of expanding our understanding of the role of decline with regard specifically to legal change – as opposed to the related but broader concept of institutional change – lies in the proposition which this paper tentatively makes that the intertwined processes of legal and economic change are just as influenced by gradual, long term declines of organisations which have entered a self-undermining spiral as they are by successful ones. One key difference between the two which this paper explores in the context of the *shōten-kai* is that viewing legal change as movement either towards or away from economic efficiency only really makes sense in the latter. One reason for this is that economic decline itself is often a sign that a given set of institutions are inefficient and structurally unable to remedy those inefficiencies. Their very decline suggests that the type of back and forth interplay between economic and legal change which produces rules that enable beneficial outcomes is not occurring. This downside of the story of economic decline is one which a full understanding of the relationship between legal and economic change also needs to be informed by.

III. THE RISE OF THE SHŌTEN-KAI

1. *The Shōten-kai Defined*

This section presents the narrative of the *shōten-kai* as it emerged and expanded as a form of business organization in the early-mid twentieth century. This includes the period in which the legal rules governing their organizational forms (as cooperatives) and those regulating their main competitors (department stores) were developed – a process over which *shōten-kai* had significant influence and received significant benefits. Before setting out that narrative, however, it is first necessary to set out some basic facts related to *shōten-kai*, both as businesses organizations and as physical spaces within the urban environment.

The term *shōten-kai* is not actually defined in legislation, but the government's Small and Medium Enterprises Agency (SMEA)²⁸ defines them as:

28 An agency under the Ministry of the Economy, Trade and Industry which, among other things, oversees *shōten-kai*. See http://www.chusho.meti.go.jp/sme_english/.

“(A)n area in a town that is formed mainly of retail shops and the shops of service providers, irrespective of the organizational form that it takes (... in other words without regard for whether or not it is organized as a legal person).”²⁹

In other words *shōten-kai* are simply a collection of shops in close proximity to one another. Within this broad definition there exist a wide range of types of *shōten-kai*, from small clusters of shops selling mostly daily goods to locals all the way to large scale shopping districts featuring hundreds of stores selling everything from groceries to luxury brand goods that draw people from around the country.³⁰ Approximately twenty percent of *shōten-kai* have fewer than twenty stores while 2.4 percent have more than two hundred and the average about fifty.³¹ The vast majority of these are independent, small scale stores that are usually family run – what are commonly termed “mom and pop” stores. Large scale retailers also operate on some *shōten-kai*, particularly those in close proximity to major train stations. Chain stores, particularly convenience stores, also operate in *shōten-kai*. Generally, however, these non “mom and pop” type stores form a very small minority of the overall number of shops located on *shōten-kai* – in more than eighty percent of Tōkyō’s *shōten-kai* there are fewer than ten such stores and in more than a quarter there are none at all.³²

The small scale stores that dominate most *shōten-kai* are generally family based businesses.³³ Studies of individual *shōten-kai* suggest that roughly half of businesses were acquired by their current owners through inheritance from earlier generations.³⁴ Most of them own their shops rather than rent and the building itself often doubles as the family home, with the first floor devoted to the business and a second floor devoted to

29 *Shōten-kai jittai chōsa hōkoku-sho* [Report on the Survey of the Condition of *Shōten-kai*] (Small and Medium Enterprises Agency, 2010) (Hereinafter “*Shōten-kai* Survey”) at 3. Author’s translation.

30 *Ibid.*, at 10. The SMEA provides a four-level categorization which roughly falls between these two extremes.

31 *Ibid.*

32 *Tōkyō-to shōten-kai jittai chōsa hōkoku-sho* [Report on the Survey of the Condition of *Shōten-kai* in Tōkyō] Tōkyō City Department of Industry and Labor (2010) at 65.

33 N. YOKOYAMA/D. RYŪ, *Henyō suru nihon no shōnin kazoku zō – higashi ajia ni okeru jigyō keishō no kokusai hikaku kara* [The Changing Image of Merchant Families in Japan – International Comparison with Business Succession in East Asia], in: *Nihon Seisaku Kinyū Kōko Chōsa Geppō* 4 (2009) 14; D. RYŪ, *Nikkan ko’uri-shōgyō ni okeru kōkei-sha umu no kitei yōin ni tsuite* [Concerning the Primary Norms Determining the Existence or Non-Existence of Successors in the Japanese and South Korean Retail Business], in: *Keizai Riron* 366 (2012) 89.

34 D. RYŪ, *supra* note 33, at 90; Y. FUJIOKA/K. ŌHARA/K. ŌTAKI, *Kinrin-kata shōten-kai ni okeru jū shō kankei-betsu ni mita shōnin kazoku no kyojū tokusei* [Habitation Characteristics of Merchant Families in Neighborhood Shopping Districts Analyzed from the Relation between Commercial Activity and Living], in: *Nippon Kenchiku Gakkai Keikaku-kei Ronbunshū* [Journal of Architectural Planning AIJ] 586 (2004) 89.

living space.³⁵ Their business models are highly conditioned by the closed and vertically integrated system of distribution that developed in the post-war period. This was primarily characterized by the existence of a large number of small sized wholesalers, and a relatively long chain between producers and retailers.³⁶ In the 1980s for every retail transaction that took place in Japan there were 4.2 wholesale transactions that had preceded it, compared to just 1.9 in the United States.³⁷ Manufacturers, wholesalers and retailers generally had close relationships with each other, supported by rebate systems which encouraged close linkages and made it difficult for new entrants. The lower level wholesalers who dealt directly with retailers tended to be quite small themselves and specialized in a relatively limited range of products.³⁸ This, along with the practices of certain manufacturers, particularly in the cosmetics and electronics fields, of creating exclusive relations with large numbers of small stores,³⁹ meant that a large number of these small stores themselves specialized in a relatively narrow range of products.

As an organization, *shōten-kai* bring these small merchants together under a set of both formal and informal rules which allowed them to organize collectively. From a business perspective the basic idea behind the *shōten-kai* is the need for small merchants to both co-locate and cooperate with each other so as to compete in the retail sector. Operating on their own small retailers face severe disadvantages – they cannot operate on the same scale as large ones, offer the same product range, convenience or prices. Co-location allows them to overcome some of these by having a variety of businesses cumulatively offering a wide variety of products and services in one location. Cooperation and organization is also required in order to coordinate the *shōten-kai* as a business entity. Among other things this is required to ensure its individual businesses don't duplicate too many product types. It also allows them to engage in advertising and other promotional activities, to plan and finance common facilities, to benefit from certain economies of scale (in delivery and other areas) and, perhaps most important, to enhance their political power at both the local and national levels.

The organization of such activities inevitably raises agency and free rider problems which, as with the business corporation, require rules to overcome. Legal rules are of obvious importance but owing to the close personal nature of these organizations, in which all members do business literally on the same street, informal norms and sanc-

35 One survey focusing on *shōten-kai* in two wards in Yokohama found that 63.1% and 54.8% of the respective shop-keepers owned their shops (though owing to Japan's property system not all owned the land their shops were built on). FUJIOKA et al., *supra* note 34, at 90.

36 See M. MARUYAMA, A Study of the Distribution System in Japan, OECD Economics Department Working Papers No. 136 (1993); M. ITOH, Competition in the Japanese Distribution Market and Market Access from Abroad, in: T. ITOH/A. O. KRUEGER (eds.), *Deregulation and Interdependence in the Asia-Pacific Region* (Chicago 2000).

37 ITOH, *ibid*, at 142.

38 *Ibid*, at 143.

39 *Ibid*, at 144.

tions also play a role. These generally must address the questions of how collective decisions are reached, and how the costs and benefits of the collective activity are distributed. For individual shopkeepers the upside of subjecting themselves to these rules are the benefits that flow to them from the greater numbers of customers coming to the *shōten-kai* the collective activities generate. The downside is the cost as measured by their contribution to the activities. Where the benefits exceed the costs we can expect the *shōten-kai* to be a self-enforcing institution – its members voluntarily subjecting themselves to its rules in order to obtain the benefits.

As outlined in the following sections, *shōten-kai* development from the 1920s until roughly the 1980s went through a period of expansion and dominance. This economic success went hand in hand with their influence on the process of legal change – the period seeing a great deal of legislative activity most of which was designed to benefit them. It also, however, contained the seeds of their own institutional demise, in which those who since the 1980s have asserted themselves as *shōten-kai* have entered a protracted period of decline.

2. *Shōten-kai Origins to the Eve of Decline*

While some shopping streets in Japan have a long history, the notion of *shōten-kai* as a business entity that was a subject of government policy and law only began to emerge in the late 1920s⁴⁰ shortly following what might be termed the first wave of *shōten-kai* foundation which occurred in the years immediately following the end of the First World War.⁴¹ Economic disruption caused by the collapse of industries which had expanded rapidly during the war led to large scale migration of workers to cities in search of employment. Having few marketable skills and entering a market that already had a surplus of labor, many of these new arrivals turned to the retail trade, which required no special skills and little start-up capital. In the decade between 1920 and 1930, while the population employed in industry declined the numbers employed in the retail trade increased by over forty percent nationwide, numbering nearly four and a half million by 1930.⁴²

A number of problems influenced this newly forming class of small retailers to creating *shōten-kai*. Their need to compete with department stores was a major one. Department stores, which were relatively new at the time, offered greater convenience to consumers and enjoyed advantages of scale, making them a significant competitive threat to small merchants. Cooperating and co-locating along the same street was seen as the most effective way of countering this threat. Doing so allowed them to offer consumers a range of products within a relatively small physical area, something which physically dispersed

40 HAMA, 2005, *supra* note 8, at 126–128.

41 M. ARATA, *Shōten-kai ha naze horobiru no ka? Shakai, seiji, keizai-shi kara saguru saisei no michi* [Why are *Shōten-kai* in Decline? Exploring Social, Political and Economic History for a Path to Regeneration] (Tōkyō 2012) at 24–26.

42 *Ibid.*, at 126.

shops could not achieve. In effect they were trying to create horizontally oriented department stores, a fact evidenced by the use of terms such as *yoko no hyakka-ten*⁴³ or *heimen no hyakka-ten*⁴⁴ (“sideways department store”) in the interwar period to refer to them.

This strategy required not only physical co-location, but also organization and cooperation among the individual businesses. Duplication of certain easy to enter business types such as confectionary stores seems to have been a particular problem that organization was needed to control,⁴⁵ as offering a mix of products and services to consumers on a given *shōten-kai* was key to their strategy of competing against department stores.

The merchants on *shōten-kai* thus began to organize their own associations, *shōten-kai*, separate from other existing organizations such as local chambers of commerce and neighborhood associations.⁴⁶ These associations served both as a way of organizing the *shōten-kai* internally and as a way of exerting political influence. These early *shōten-kai* were organized on a voluntary basis without legal foundation, and were modelled on earlier forms of neighborhood associations,⁴⁷ which themselves had a long history. They served a number of practical functions – planning and managing communal facilities such as lighting, drainage and arcade roofs – which required collective action. They were also a means of coordinating the activities of individual businesses in a more cohesive way for such things as advertising, the creation of voucher or coupon systems, or the maintenance of delivery vehicles for use by individual businesses.⁴⁸

These activities required financing which, in the absence of some formalized rules governing them, would entail both significant agency costs and free rider problems. With regard to the latter, many of the expenditures made for the benefit of the *shōten-kai*, such as on advertising, would produce non-excludable benefits for all individual businesses regardless of whether or not they had contributed to the cost, thus giving them an incentive to free ride on the expenditures of others. With regard to the former, any funds that the association did create would have to be placed in the hands of the association’s directors, who might have an incentive to spend them in ways that were either ineffective or in ways that benefitted themselves at the expense of other members. Given that the directors of these associations also ran their own businesses on the *shōten-kai*, the potential for such conflict of interest transactions was high.⁴⁹

43 Ibid, at 79.

44 A. ONJŌ, *1930 nendai no toshi chūshō ko’uri-shō: fukuoka-ken no ba’ai* [Small and Medium Urban Retailers in the 1930s: The Case of Fukuoka], in: *The Shien* 140 (2003) 237, at 240.

45 ARATA, *supra* note 41, at 56 notes for example that in the 1930s there was one confectionary store per every 16 households in Tōkyō.

46 HAMA, 2005, *supra* note 8, at 131.

47 Ibid.

48 Ibid.

49 Illustrated in one reported case involving the director of the Tsurugaoka *shōten-kai*’s SPA in Ōsaka who was found to have tunnelled business opportunities from the SPA to his own private business. Osaka District Court, 29 January 1988, Hanji 1300-134.

Thus we have the two related problems which *shōten-kai* in this early period were faced with. First, how to compete with department stores and second how to organize themselves. By the end of the 1920s, *shōten-kai* were beginning to make their presence felt at both the local and national policy levels with regard to these issues, though the first major piece of legislation was one on which they had no influence. In 1932 the Diet enacted the Commercial Cooperatives Act, which enabled small businesses to form cooperatives to manage their collective affairs. The Act was not specifically designed for *shōten-kai* and in fact it had not been contemplated that *shōten-kai* would use it at the time it was promulgated.⁵⁰ The cooperatives created under the Act were intended to be used by traders within a single industry with the goal of allowing them to achieve efficiencies of scale.⁵¹ The diverse nature of the individual businesses in *shōten-kai*, however, precluded them from obtaining such benefits. In 1934, shortly after the Act came into effect, the government created a committee on reform in the retail sector,⁵² which, at its third meeting in 1935, identified commercial cooperatives as the most appropriate form by which small retailers could organize themselves and recommended that regional governments provide support to them in doing so.⁵³ Tōkyō's *Ningyō-chō Shōten-kai* had been the first to incorporate in 1932⁵⁴ and by 1938 111 had done so.⁵⁵ These cooperatives in turn began to form regional federations, with the Tōkyō federation of *shōten-kai* cooperatives forming in 1938 with sixteen member cooperatives.⁵⁶ In addition to providing legal rules which would allow them to organize the availability of public subsidies from local governments also encouraged incorporation. The Tōkyō government, for example, provided subsidies to the activities of commercial cooperatives which unincorporated *shōten-kai* were ineligible to apply for. Half the cost of advertising seasonal sales events, lotteries and other promotional activities undertaken by Tōkyō-based *shōten-kai* cooperatives in the 1930s was paid for by the Tōkyō government.⁵⁷

As to their other problem *shōten-kai* associations became quite active at the local and national political levels in the 1930s in lobbying against department stores. At the local level this initially played out in battles related to fundamental questions of the shape that cities would take as they experienced rapid population growth.⁵⁸ A prime question that arose in some cases was how valuable real estate in central locations would be devel-

50 HAMA, 2005, *supra* note 8, at 128.

51 *Ibid.*

52 *Ko'uri-gyō Kaizen Chōsa I'inkai.*

53 HAMA, 2005, *supra* note 8, at 128–130.

54 Tōkyō Metropolitan Archives, *Shōgyō kumiai hō to shōten-kai shōgyō kumiai* [The Commercial Cooperatives Act and *Shōten-kai* Cooperatives], available online at http://www.soumu.metro.tokyo.jp/01soumu/archives/0701syoko_kara10.htm.

55 HAMA, 2005, *supra* note 8, at 129.

56 Tōkyō Metropolitan Archives, *supra* note 54.

57 *Ibid.*

58 ONJŌ, *supra* note 44, details the process of one such battle in the city of Kitakyushu in the 1930s.

oped, with proponents of department stores and those of *shōten-kai* falling on opposing sides of the issue. Through their *shōten-kai* associations, and the influence of their members in chambers of commerce, small merchants could mobilize local political opposition to department stores, which in smaller cities were promoted by outsiders who lacked such tools. The convenience and perceived lower prices that department stores offered, coupled with the prestige they granted to a city, meant that they could however gain the support of certain key elements of the local political community and that *shōten-kai* mobilization was not always successful.⁵⁹

At the national level *shōten-kai* found greater success and, with the enactment of the Department Stores Act in 1937,⁶⁰ were able to establish a legal regime applied uniformly across the country which gave them an upper hand in their battles with department stores. The Act created an industry association, banned acts by department stores that were harmful to consumers or other retailers and regulated other aspects of their operations such as store hours.⁶¹ Most importantly the Act also established a system through which store operators had to apply to the central government for a permit to open a new store or expand an existing one. Small retailers would be given a prominent voice within the process established to issue such permits,⁶² making this a key protective component of their overall legal environment.

The Pacific War, which broke out not long after the establishment of this legal framework, caused immense disruption to Japan's distribution system. Rationing and price controls which became increasingly harsh as the war progressed were introduced and a large portion of retail activity was driven underground.⁶³ One major effect of this, along with the large scale revisions to Japanese law following the War, was that both the Commercial Cooperatives Act and the Department Store Act were abolished. The immediate post-war years, however, saw a boom in both *shōten-kai* formation⁶⁴ and in the opening of new department stores⁶⁵, and the same conflicts that existed before the war began to reassert themselves, which ultimately resulted in the recreation of the pre-war regime. With

59 Ibid.

60 *Hyakka-ten hō*, Law No. 76/1937.

61 ONJŌ, *supra* note 44, at 251–255.

62 The evolution of this process is discussed in Upham, *supra* note 8.

63 O. GRIFFITHS, Need, Greed and Protest in Japan's Black Market, 1938–1949, in: *Journal of Social History* 35 (2002) 825.

64 Most postwar *shōten-kai* grew out of the black markets that emerged in front of train stations immediately following Japan's surrender. See for example S. MURAKAMI/H. UMEMIYA, *Sengo kōbe ni okeru yami ichi no keisei to henyō: sannomiya jiyū shijō no jirei wo chūshin ni* [The Formation and Transformation of the Black Market in Kōbe after World War II: The Case Study of the Sannomiya Jiyū Ichiba], in: *Kōbe Daigaku Daigaku-in Ningen Hattatsu Kankyō Gaku-kenkyū Ka-kenkyū Ki'yō* [Bulletin of the Graduate School of Human Development and Environment Kōbe University] 4 (2011) 69.

65 The number of department stores increased from 116 in 1948 to 158 in 1953. Y. SHIROTA, *Hyakka-ten-hō-seitei ni kansuru kenkyū* [A Study on the Enactment of the Department Store Law], in: *Nagoya Bunri Daigaku Kiyō* 7 (2007) 71, at 74.

regard to organizational law the Small and Medium Sized Cooperatives (SMSEC) Act, still in effect today, came into force in 1949 as a replacement for the Commercial Cooperatives Act. As with its predecessor the Act was not specifically designed for *shōten-kai*, but was flexible enough that they could incorporate their associations under it.

The SMSEC Act provides business cooperatives with a governance structure that is generally similar to that of a business corporation, with rules designed to overcome agency and free rider problems. The former is dealt with through rules governing the cooperative's decision making process, what in corporate law is generally referred to as "voice" rights, while the latter is dealt with through rules on membership and on the financing of cooperative activities. The cooperatives are run by a board of at least three directors⁶⁶ who are elected by the membership and have an auditor tasked with an oversight function.⁶⁷ Membership is based on the principles of freedom of entry⁶⁸ and exit⁶⁹, with anyone who meets the qualifications of becoming a member being allowed to join, provided they comply with the formalities. The main default qualification to become a member is that a person be an entrepreneur⁷⁰, with individual cooperatives being free to stipulate further requirements.

By 1962 approximately fourteen hundred out of twenty thousand existing *shōten-kai* had incorporated their associations as business cooperatives,⁷¹ meaning that a large majority remained as informal associations. In 1959 this situation came to be viewed as a problem in the aftermath of the Ise typhoon, which devastated the Tōkai region.⁷² The central government recognized that rebuilding damaged *shōten-kai* needed to be part of the reconstruction. The fact that most *shōten-kai* had no legal entity capable of receiving and managing public money complicated such efforts.

This, along with extensive lobbying by *shōten-kai* in the Tōkai area, focused attention on the question of how to encourage more to formally incorporate as cooperatives.⁷³ In 1962 this led to the enactment of the *Shōten-kai* Promotion Association (SPA) Act as a separate piece of legislation that created a cooperative specifically tailored for *shōten-kai*. Like the SMSEC Act the SPA Act established a cooperative form, with most of its basic features borrowed directly from the former. In a number of areas, however, its provisions differed in ways that reflected the peculiarities of *shōten-kai*.

The purpose of the Act, set out in Article 1, makes clear that the organizational goals of the associations are to both encourage cooperative economic activity (similar to business cooperatives) while improving the environment of the area in which the *shōten-kai*

66 SMSEC Act Art. 35 (2).

67 Art. 36-3 (2).

68 Art. 14.

69 Art. 18.

70 Art. 8 (1).

71 ARATA, *supra* note 41, at 115.

72 HAMA, 2008, *supra* note 8.

73 *Ibid.*

is located (unique to the Act). In keeping with this additional purpose, another major difference is that the SPA Act ties the associations created under its provisions to a geographically defined district. Article 6 (1) defines the district of a *shōten-kai* as one in which at least thirty retail or service businesses operate within close proximity of each other.

Membership is also defined in a somewhat looser way than that for business cooperatives under the SMESC Act. Whereas members in business cooperatives must be entrepreneurs, Article 8 of the SPA Act, while by default defining all merchants within a *shōten-kai*'s district as meeting the membership qualification, also allows associations to designate in their articles of association other types of people as meeting the membership qualification. In order to be formed, an association requires two thirds of those who meet the membership requirements to agree to become members, a higher requirement than the half needed to form a business cooperative under the SMESC Act.

In most other respects, however, the rules governing SPA do not differ significantly from those of business cooperatives. While the intention behind the SPA Act was to encourage *shōten-kai* to incorporate, only some have done so. As of 2009 about seventeen percent of *shōten-kai*, 2,378 in total, have incorporated under the SPA Act. A further eight percent, 1,147, continue to be organized as business cooperatives under the SMESC Act, while the vast majority (10,942, approximately seventy five percent) remain as unincorporated voluntary associations.⁷⁴ Nearly half of unincorporated *shōten-kai* in Tōkyō cite their small size and declining number of members as their reason for not incorporating.⁷⁵

With regard to the regulation of the main competitors of *shōten-kai* the Department Store Act was revived in 1956 and the new Act, as with its predecessor, set up a permit system for the opening or expansion of department stores. The application process was administered by the Ministry of International Trade and Industry (hereinafter "METI", its current acronym) and required the refusal of an application where granting it would have a harmful effect on small or medium sized merchants, thus continuing the strong position of *shōten-kai* in that regime. Changes in the retail environment, particularly the development of supermarkets in the 1960s which were not subject to the Act, led to its abolition in 1973 and the introduction of the Act on the Adjustment of the Business Activities of the Retail Industry in Large-Scale Retail Stores (hereinafter "LSRS Act").⁷⁶ The main change introduced by the new Act was the inclusion of these new entrants under its regulations. It did not change the central consideration given to protecting small retailers from harm, though it did change the system from a permit to a notification and adjustment one.⁷⁷ The process of notification and adjustment established

74 *Shōten-kai* Survey, *supra* note 29, at 9.

75 Tōkyō *Shōten-kai* Survey, *supra* note 32, at 33.

76 *Dai-kibo ko'uri-tenpo ni okeru ko-uri-gyō no jigyō katsudō no chōsei ni kansuru hōritsu*, Law No. 109/1973.

77 UPHAM, *supra* note 8 at 405.

by METI required promoters to gain consensus approval from local small businesses.⁷⁸ This process imposed severe costs on promoters, in some cases taking as long as ten years to gain approval.⁷⁹ Thus, the Act constituted a continuation of the policy of giving small retailers significant power over large ones.

This brief sketch of the historical development of *shōten-kai* and the legal rules provide some observations on the connection between legal change and an economically successful organization. The *shōten-kai* in this period were able to carve out a legal environment which greatly benefitted themselves. This involved a fair deal of innovation – such as the use of cooperatives in a context which they were not designed for – and responsiveness from the legal system to demands for change from these actors – as exemplified by the introduction of the Department Store and LSRS Act. Despite this, the narrative is also difficult to view in efficiency terms. The regulation of large scale stores was particularly geared towards protecting an inefficient model of retail distribution over its more efficient rivals. Despite the lack of a convincing efficiency based explanation, there is a clear connection between the development of *shōten-kai* as business organizations and the development of legal rules governing both those organizations and their main competitors, department stores.

IV. THE DECLINE OF THE SHŌTEN-KAI: 1980S TO PRESENT

1. Overview

In 1982 the number of small scale retail shops in Japan with 1-2 employees reached 1,135,903, with an additional 520,830 having only 3–4 employees.⁸⁰ By 2007 these numbers had fallen to 503,844 and 252,687⁸¹ respectively, more than a fifty percent decrease within a single generation. One effect of this has been the devastation of a large proportion of *shōten-kai*, reflected in overwhelming degrees of pessimism being expressed by *shōten-kai* associations as to their business prospects.⁸² The problem of shuttered *shōten-kai* – long lines of permanently shuttered stores dominating neighborhoods – has become a problem not just for small merchants but also for cities and other stakeholders.

There have been three trends in legal change that have gone hand in hand with the economic decline of *shōten-kai*. The first is related to their organizational law and is evident in relation to both the SPA and SMSEC Act, though owing to space concerns and its more direct connection to *shōten-kai*, the discussion here will focus on the former.

78 For a detailed discussion of this process see: Ibid at 404-416.

79 Ibid.

80 Statistics Bureau Ministry of Internal Affairs and Communications, Japan Statistical Yearbook 2014 Chapter 13, “Domestic Trade and Services” available online at <http://www.stat.go.jp/english/data/nenkan/index.htm>.

81 Ibid.

82 *Shōten-kai* Survey, *supra* note 29, at 42.

The decline of *shōten-kai* has created serious organizational governance problems which might be expected to have resulted in changes to the SPA Act, whose rules are specifically intended to address governance issues. In fact, since the 1980s there has been a rapid increase in amendments to the Act, but these have had very little connection to the actual governance problems their economic decline has raised. Instead, these reforms have largely been either technical in nature or have consisted of large scale reforms copied directly from corporate law in a more or less mechanical process while leaving these underlying problems unresolved. The second relates to the regulation of large scale retailers. The economic decline of *shōten-kai* has coincided with a significant erosion of their once-central position in this area. Reference to their interests has been formally removed from the legislation and the liberalization of the process for approving large stores has allowed them to continually increase in numbers as small retailers shrink. Finally, one externality caused by the decline of *shōten-kai* as business organizations has been the decaying of the central neighborhoods of many towns and cities. This has forced cities to take a much more active role in *shōten-kai*, in particular through the use of urban redevelopment legislation to implement large scale redevelopment plans. In addition to changing the physical architecture of *shōten-kai*, these also address many of the organizational problems which the SPA Act has been incapable of solving.

2. *Zombie Law: Organizational Decline and Change in the SPA Act*

A number of institutional failings within *shōten-kai* have contributed to their decline. Most *shōten-kai* are endowed with attributes that make it very difficult for their organizations to respond to the types of changes that they are confronted with. The first has to do with the nature of individual businesses within *shōten-kai* and their ownership of the main physical asset of *shōten-kai* – their stores. As noted earlier, many of these businesses are based on business models that no longer make economic sense. The beginning of the decline of *shōten-kai* in the 1980s matches closely with the generation of shop-owners who established themselves in the immediate post-war period reaching retirement age.⁸³ These people have a very family-centred notion of business⁸⁴, but lack successors to hand the business down to. In part this is likely a result of their children being unable or unwilling to bear the costs of taking over a failing business. This lack of successor problem is cited as by far the most pressing problem faced by *shōten-kai*.⁸⁵

The failure of these individual businesses and the lack of successors for them would not necessarily pose a problem to *shōten-kai* in circumstances where new businesses

83 T. MUSA, Local Governance and the Central City Redevelopment in a Provincial City: A Case Study of Matsumoto City, Nagano Prefecture, in: *Annals of the Japan Association of Economic Geographers* 53 (2007) 50 provides an example of the changing situation of these shop-owners during this period.

84 ARATA, *supra* note 41, at 27–30.

85 *Shōten-kai* Survey, *supra* note 29, at 49.

could move in to replace them, but a number of factors have contributed to preventing that from happening. One of these is the fact that most of the shops also double as the residences of the shopkeepers, who generally own the property rather than rent it.⁸⁶ When their business fails, instead of moving on they often continue occupying the property, incorporating the former store space into their living quarters. In addition to feelings of attachment to the neighborhood they may have, tax incentives also encourage such behavior.⁸⁷ As more and more of the physical stores within a *shōten-kai* get converted to this purpose, it becomes harder and harder for those remaining to attract customers, thus contributing to a downward spiral that is difficult to reverse. This vulnerability of *shōten-kai* to the unchecked use of property within them is one which the organizations running them – SPA, business cooperatives or informal associations – have no formal means of controlling.⁸⁸ In the past when these small businesses were successful, this lack of control was not a problem since individual shopkeepers had adequate incentives to maintain their property as a business. As these businesses have collapsed however, the lack of such control has emerged as one of the seeds of the decline of *shōten-kai*. The inability to replace failed individual businesses with new ones prevents many from stemming, let alone reversing, the downward spiral they are stuck in.

A second factor is the decline of participation in *shōten-kai* organizations by individual shopkeepers. These shopkeepers, being in close daily contact with each other, formed relatively strong community bonds which discouraged behavior that was detrimental to the group and encouraged contributions to collective activities.⁸⁹ Moreover, at a time when small businesses were flourishing, these shopkeepers had an incentive to maintain good relations with neighbors in the *shōten-kai* as their own business prospects in part depended on the collective success of the neighborhood.

As these small businesses slowly move towards closure, however, their owners have less and less incentive to adhere to the rules of the group or actively contribute to its activities. This is another area where the rules on their organization pose a problem – it is not possible for SPA to compel such contributions or even to require property or business owners within the *shōten-kai* to become members. This creates a free rider problem

86 FUJIOKA et al, *supra* note 34, at 90.

87 Some of the barriers to exit for retiring merchants are discussed in Chapter 4 of MCKINSEY GLOBAL INSTITUTE, *Why the Japanese Economy is not Growing: Micro Barriers to Productivity Growth* (2000) at 11–13.

88 One exception is underground *shōten-kai* (*chika-kai*) which, owing to their unique situation, developed in ways that necessitated central ownership of the physical property. The businesses in them are tenants who rent from a management company that generally has ties with the *shōten-kai* SPA. Since they are tenants, contractual obligations can be used to prevent the type of problem described above from developing. The problem of enforcing rules on given divisions of property rights in older neighborhoods is explored in R. C. ELLICKSON, *New Institutions for Old Neighborhoods*, in: *Duke Law Journal* 48 (1998) 75.

89 Community bonds within *shōten-kai* are discussed in MUSHA, *supra* note 83; ARATA, *supra* note 41.

that applies not just to retiring shopkeepers but also to active ones – they can easily benefit from SPA activities that attract customers but cannot be forced to contribute to the cost of those.

In Tōkyō roughly one third of shopkeepers in *shōten-kai* are not members of their respective *shōten-kai* association, a proportion that has risen steadily in recent years.⁹⁰ A perceived lack of merit to the association's activities, a desire to avoid the cost and corporate policies for chain stores against joining are among the main reasons given for refusal to join.⁹¹ These can pose serious problems to the types of collective activities that may be necessary to promote the *shōten-kai* as a business entity. This difficulty was illustrated in the *Happy Road Ōyama* case⁹² in which an SPA had approved a major renovation for the *shōten-kai*'s common facilities with the costs to be partially covered by a levy placed on members. The defendant, a business operator in the *shōten-kai*, refused to pay, arguing that he was not a member. The Tōkyō district court held that, having not completed the formalities for membership in the SPA Act the Defendant in fact was not a member. Crucially, however, the Court also noted the extreme weakness of the SPA with regard to its ability to elicit contributions from recalcitrant members:

“[...] the *Shōten-kai* Promotion Association Act contains the principles of freedom of entry and exit in regards to membership of a *Shōten-kai* Promotion Association... and it cannot be denied that within the *shōten-kai* managed by the Plaintiff there exist both members and non-members. It is naturally possible for there to be non-members who receive benefits from an association's activities, but these cannot be forced to become members simply by virtue of having received such benefits. *Furthermore, once a person has joined an association they can simply avoid having to pay the levy by exiting the association.*”⁹³

As the italicized portion of the judgment highlights, even when a business is a member of an SPA it can easily avoid bearing the costs of such projects by simply leaving the SPA altogether – an act which the SPA has no formal means of preventing. The increasing incidence of free riding among shopkeepers is evidence of the eroding power of social bonds and other incentives to induce cooperative behavior and the failure of the legal rules to provide any way of overcoming this.

Considering these facts, it is easy to see the seed of the *shōten-kai*'s demise that was planted relatively early in their development. Social norms and economic incentives for cooperation were initially sufficient to overcome any problems the absence of rules controlling the use of property or compelling contributions may have caused. As these norms and incentives have changed, however, the weak power of the organization has

90 In 2010, *shōten-kai* in Tōkyō had on average 48.7 shop-keepers who were members of the *shōten-kai* association, 11.4 applying to become members, and 29.7 non-members. Tōkyō *Shōten-kai* Survey, *supra* note 32, at 37.

91 *Ibid* at 58.

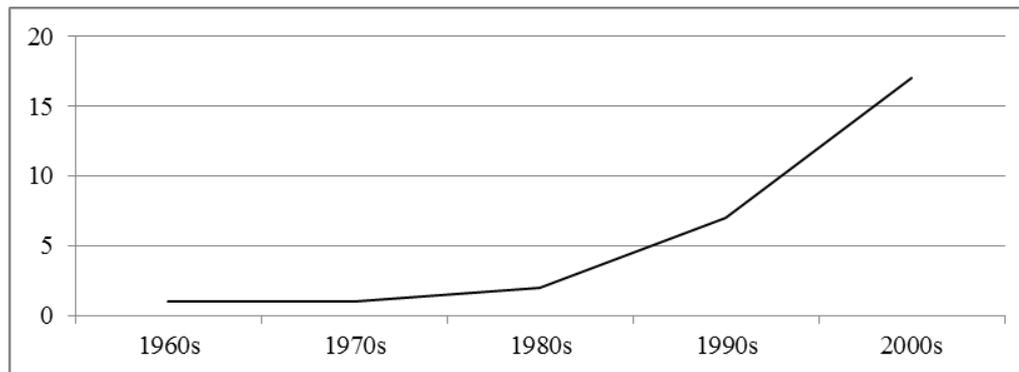
92 Tōkyō District Court, 26 July 2007.

93 Author's translation, emphasis added.

come to the fore. In order to survive as a viable business, *shōten-kai* need to be able to replace failing businesses with successful ones and to enlist the cooperation of those new businesses with collective goals. The current set of institutions governing them does not allow most of them to do so.

Reforming the legislation governing their organizations, principally the SPA Act⁹⁴, is an obvious place to look for a legal response to these organizational problems. Case law involving *shōten-kai* is relatively scarce and what exists is mainly at the district court level, where judgments are of little precedential value.⁹⁵ As indicated in figure 1, the SPA Act has however been amended a number of times since it was enacted in 1962.⁹⁶ During the 1960s and 1970s amendments to the Act came at a snail's pace of one per decade. When the *shōten-kai* enter their decline in the 1980s, however, legislative activity begins to rise, with two amendments in the 1980s, seven in the 1990s and seventeen in the decade from 2000–2009. While the overall data set is extremely small, there has been a definite trend towards an increasing frequency of amendments to the Act.

Table 1: Legislative Amendments to SPA Act by Decade⁹⁷



When examined from a qualitative view, however, the significance of this trend becomes less pronounced. Virtually all of the legislation amending the Act prior to 2005 was technical in nature, consisting mainly of updates made to harmonize the Act with

94 While the remainder of the section focuses on the SPA Act, the SMSEC Act has gone through an almost identical series of changes.

95 A search of Westlaw found only five judgments involving SPA as litigants, only one of which was at the appellate level.

96 Law No. 53/2011; Law No. 74/2008; Law No. 74/2007; Law No. 75/2006; Law No. 50/2006; Law No. 87/2005; Law No. 154/2004; Law No. 147/2004; Law No. 150/2004; Law No. 76/2004; Law No. 79/2002; Law No. 45/2002; Law No. 150/2001; Law No. 129/2001; Law No. 80/2001; Law No. 42/2001; Law No. 126/2000; Law No. 76/2000; Law No. 160/1999; Law No. 146/1999; Law No. 87/1999; Law No. 96/1997; Law No. 72/1997; Law No. 97/1994; Law No. 89/1993; Law No. 75/1981; Law No. 79/1980; Law No. 23/1974; Law No. 36/1965.

97 Ibid.

amendments carried out to other legislation. These did not affect the substance of the Act in any meaningful way.

In the period from 2005 to 2006, however, there were a series of amendments that did introduce a fairly wide range of substantive changes to the Act. These amendments were carried out in a series of three acts⁹⁸ promulgated over a one year period, which updated a large portion of the Act and introduced a significant number of governance related reforms. In the first round among the reforms was the introduction of the position of representative director, a requirement that directors abstain from voting on matters in which they have a personal interest, more detailed rules on the rights of creditors and members to inspect SPA documents and the accounting books and a requirement that minutes of the general meeting be taken. The penalties for violating various provisions of the Act were also substantially increased. The second, more minor, revision specified the rules on agency and delegation authority of the representative director.

In 2006 a third piece of legislation introduced significant reforms to the auditor and officer systems. The new provisions created governance rules applicable to those SPA with membership above a certain threshold, defined by ordinance as 1,000 members.⁹⁹ For large SPA it became necessary to appoint at least one outside auditor. The function of auditors were also expanded, having until that point been limited to the auditing of financial documents it was enlarged to include the auditing of the director's performance of their duties.¹⁰⁰ This new function was mandatory for large SPA, but could be opted out of by small SPA through provision in their articles limiting the auditor to reviewing financial records.¹⁰¹ The new provisions also placed limits on the investment of surplus funds by large SPA to government bonds and accounts at designated financial institutions. Other reforms applied to all SPA regardless of membership. These included enhanced disclosure requirements with regard to financial reports, introduction of a duty to maintain copies of the accounting books for a ten year period, stricter liability rules for directors, application of the Companies Act provisions with regard to members' actions against directors, and reducing the term of directors from three years to two.

The overall package of reforms provided by this legislation is clearly aimed at increasing the accountability of directors to the membership, particularly with respect to large SPA. They were also not specifically tailored to the problems of SPA or *shōten-kai* in general. Rather they were subsidiary elements of much larger reforms to cooperative laws being carried out at the same time that similar major reforms were being carried

98 Law No. 87/2005; Law No. 50/2006; Law No. 75/2006.

99 It is worth noting that less than three percent of *shōten-kai* have as many as 200 businesses (the highest number on the scale by which the SMEA measures *shōten-kai* size), let alone one thousand. The number set for these provisions is so high that it is doubtful that even a single SPA exists to which they would apply.

100 SPA Act Art. 46-3 (2).

101 SPA Act Art. 46-3 (4).

out in corporate law.¹⁰² Reforms in that area, which began in the 1990s, have generally sought to strengthen the influence of shareholders in corporate governance¹⁰³, and in 2005 the sections of the Commercial Code dealing with corporations were replaced by a separate Companies Act. This change necessitated the harmonization of provisions in other Acts to reflect the update, including in the SPA Act which made numerous references to the former Commercial Code. In addition to these harmonizing provisions, the above noted substantive reforms to the SPA Act, particularly the increased disclosure requirements, stricter rules for directors and increased oversight mechanisms are quite similar to central corporate law reforms.

While extensive, these reforms largely fail to address the organizational problems that exist with SPA. One reason for this may simply be the inappropriateness of the SPA Act as a venue for meaningful reform. The types of changes that might resolve these problems – such as rules compelling membership by business owners in an SPA's district or placing restrictions on the use of property within them – are not ones which the cooperative model based on voluntary membership used by the Act is suited to providing. The fact that it is a national piece of legislation uniformly applicable also makes it somewhat inflexible to local circumstances. In other countries facing similar problems of shopping street decline, legal responses incorporating these types of solutions have been carried out at the municipal level for that reason.¹⁰⁴ Moreover, the declining economic significance of *shōten-kai*, coupled with the rapid decline in the numbers of small merchants, has significantly reduced the political influence they can bring to the legislative process.

Regardless of the reason, the point to be drawn here is that legal change in this area has not been a reaction to, or in fact at all related to, the economic decline of the *shōten-kai*. The reforms do nothing to address, or even attempt to address, the governance problems of *shōten-kai* and instead largely mimic the substance of reforms in corporate law. They can thus be described as “zombie laws” in so far as the relevance of the direction of change within them to economic change.

3. *Ousting: Legal Change in the Regulation of Large Scale Retailers*

With regard to the regulation of large scale retailers an obvious preliminary question that arises is if changes to that regime, which was largely designed to protect inefficient

102 An overview of the 2005 corporate law reform can be found in N. NAKAMURA, The Revision of Japanese Company Law and its Modernisation, in: 24 Waseda Bulletin of Comparative Law 1 (2006).

103 For an overview of corporate law reform prior to 2005 see R. J. GILSON/C. J. MILHAUPT, Choice as Regulatory Reform: the Case of Japanese Corporate Governance, in: American Journal of Comparative Law 53 (2005) 343.

104 Particularly through the use of Business Improvement Districts. See generally R. BRIFFAULT, A Government for Our Time? Business Improvement Districts and Urban Governance, in: Columbia Law Review 99 (1999) 365.

small retailers, may have caused the decline of *shōten-kai*. The beginning of the decline in small retailers, however began in the early 1980s when the enforcement of these rules was actually at its height.¹⁰⁵ It thus cannot be said that weakening of these regulations in and of itself has caused the decline of *shōten-kai*.

Over the course of the 1980s, political pressure from the United States in the context of its Structural Impediments Initiative (SII), as well as domestic pressure from industry groups like *Keidanren*¹⁰⁶ began to be placed directly on the central government for changes to the regulation of large scale retailers. In 1990 METI began to relax the approval process, with amendments that set an upper limit of eighteen months on the length of time an application for approval could take, removing the requirement for consensus from local merchants (though still requiring consultation) and a lengthening of their permitted operating hours.¹⁰⁷ The following year the Diet amended the LSRS Act, further liberalizing the process. Immediately following these changes the number of applications from large scale retailers increased¹⁰⁸ and the decade of the 1990s saw a steady rise in the number of such stores.¹⁰⁹

The largest reform, however, came at the end of the decade when the Act was abolished and replaced with the Act on the Measures by Large-Scale Retail Stores for the Preservation of the Living Environment (“MLSRSPLE Act”).¹¹⁰ This new law had a significantly different focus than previous ones dating back to the first Department Stores Act of 1937. Whereas the previous Acts had explicitly existed for the purpose of ensuring that small scale retailers were not harmed by the opening of large scale ones, the new Act completely dropped language to that effect. These changes formally meant that regulation in this area was no longer conceived as a means of protecting small scale retailers and instead is focused on the need to incorporate large scale retailers into their environmental context. It is, in other words, less a law concerned with the regulation of business and more a law concerned with urban planning and development.

This new positioning is reflected in the content of the MLSRSPLE Act. As with previous Acts, it establishes a process by which plans for the opening or expansion of a large scale retail shop can be approved. A significant change is that the application process is handled at the prefectural level rather than by METI, with the promoter being

105 UPHAM, *supra* note 8, at 409-410.

106 *Ibid* at 420.

107 *Ibid* at 422.

108 M. MINEO, *Dai-kibo ko'uri tenpo ni kansuru shuten kisei no hensen to hyōka wakugumi* [On the Changes and the Evaluative Frameworks of Government Regulations concerning the Large Scale Retail Stores], in: *Keiei Ronshū* 71 (2008) 106, at 108.

109 Between 1984 and 2004 the number of retail stores with 50–99 employees went from 11,562 to 16,896 and for those with over 100 employees from 4,697 to 7,343. The largest jumps in both came following the 1990 reform. See Statistics Bureau, *supra* note 86.

110 *Dai-kibo ko'uri tenpo ritchi-hō*, Law No. 91/1998, as amended by Law No. 91/2000.

required to notify the prefecture of various aspects of the plan¹¹¹ and to hold a public briefing session to detail the plan¹¹². Local residents and business owners are entitled to submit opinions to the prefecture on such plans “on matters to be considered for preserving the living environment of the surrounding area.”¹¹³

Initial skepticism¹¹⁴ that the new Act, by placing administration of the approval process in the hands of local governments which were more likely to be beholden to local merchants, would merely continue the previous protective function have proven unfounded. In reality the period has seen a significantly different trend which has made such concerns obsolete. The number of large scale retailers has continued to grow, but this growth has largely taken place in suburban areas far removed from *shōten-kai*.¹¹⁵ Moreover many of the department stores and other large retailers which established branches in central locations in previous periods have begun to close them. This has in part been driven by changes in the large scale retailing business, which experienced a number of major bankruptcies in the early 2000s, and also by changes to zoning rules by smaller municipalities in the suburbs seeking to attract such stores.¹¹⁶ Since these large stores often acted as anchors which attracted customers to neighboring businesses, their flight to the suburbs has ironically caused further problems for *shōten-kai*. The main point to be noted here, however, is that the economic decline of the *shōten-kai* has gone hand in hand with a decline in their relevance both within the system of regulating large scale retailers itself and to the process of changing that system.

4. *Externalities, New Actors and Transformation: City Governments and Urban Redevelopment Law*

The decline of *shōten-kai* as business organizations stuck in a downward spiral has had the side effect of seriously damaging the neighborhoods in which they exist. Many of them, particularly in small and mid-sized towns and cities, have been given an almost ghost-town like appearance. This has created serious concerns not just for the shopkeepers themselves but also for city governments, since for many the central neighborhoods that form their most public face are *shōten-kai* mired in urban decay.

One response taken by cities has been to use urban redevelopment legislation to undertake large scale redevelopment of *shōten-kai* in their downtown cores. From the perspective of the theme of this paper the interesting point of these plans is that, through a variety of measures, they provide functional solutions to the governance problems that

111 Art. 5.

112 Art. 7.

113 Art. 8 (2).

114 See MCKINSEY GLOBAL INSTITUTE, *supra* note 87.

115 N. KOMAKI, *Locational Changes in Large-scale Retail Stores in the Tokushima Urban Region: Locational Regulations Perspective*, Doctoral Thesis, available online at <http://giswin.geo.tsukuba.ac.jp/sis/thesis/nobuhikokomaki.pdf>, at 56-58.

116 *Ibid.*, at 70-75.

the SPA Act fails to resolve. In essence cities have stepped in and, using legislation from a completely different area, been able to address shortcomings in the “zombie law” that has failed to keep pace.

The Takamatsu Marugame *shōten-kai* in Takamatsu, a mid-sized city which is the capital of Kagawa prefecture, provides an illustrative example.¹¹⁷ The *shōten-kai* lies in the city centre and stretches along several blocks of a pedestrian only street covered by an arcade roof. Since the late 1980s it has suffered from many of the problems outlined above, and has seen yearly decreases in the number of visitors.¹¹⁸ The plan being implemented in Takamatsu, which is part of a larger city revitalization plan, has made use of the Urban Redevelopment Act.¹¹⁹ This law, promulgated in 1969, provides the legal basis for urban redevelopment projects throughout Japan through re-alignments of property rights. Article 110 of the Act allows for a rights conversion (*kenri henkan*) in furtherance of such projects. In effect this allows, where the unanimous consent of the affected property holders has been obtained, for the collective pooling of property rights to land in order to build a structure across multiple lots as part of urban redevelopment plans.

The redevelopment, which is still ongoing, has fundamentally changed the physical nature of the *shōten-kai*. Using the rights conversion mechanism older, small shops have been demolished and replaced with much larger structures. These structures contain residential units on upper floors and retail space on lower ones, with separate leases for each in order to avoid the problem of retiring shopkeepers continuing to use their stores as residences. The new buildings are managed by a special purpose corporation, with capital provided by the city government and the *Shōten-kai*'s SPA.¹²⁰ The land is rented from its original owners, who have a term contract with a management company which handles the rent payments between the special purpose corporation and the landowners.

The alteration of the physical nature of the *shōten-kai* and the structure of property rights distribution has significant governance effects. To begin with they bring new entities into the governance framework which have more power than SPA over businesses within the *shōten-kai*. In particular the fact that a management company has tenancy agreements with the businesses in the new buildings gives them bargaining power which can mitigate the free rider problem by incorporating the *shōten-kai* costs into the rent and making membership in the SPA a contractual obligation. The creation of residential spaces physically separated from retail spaces also effectively eliminates the problem of retiring shopkeepers continuing to occupy store space.

117 See K. KIKUCHI/S. BENIYA, *Shōten-kai he no tenanto mikkusu shuhō dōnyū ni kansuru chōsa kenkyū* [A Research Study on Introducing Tenant Mix Methods to *Shōten-kai*], in: Matsuyama Daigaku Ronshū [Matsuyama University Review] 18 (2006) 111, at 121-124.

118 Ibid, at 121.

119 *Toshi saikaihatsu-hō*, Law No. 38/1969, as amended by Law No. 89/2014.

120 KIKUCHI/BENIYA, *supra* note 117, at 124.

Similar redevelopment projects have been pursued in other cities going back to the 1980s when the problem became an issue for city governments.¹²¹ Their interest here lies not so much in their effects on the physical environment of the city, but in the fact that they provide a functional solution to the governance problems that the SPA Act is incapable of addressing. The issue has, owing to the self-undermining nature of the *shōten-kai* as an organization, been transformed as a legal problem from one centred on the laws of cooperatives to one more firmly rooted in urban redevelopment law, which offers a much different tool kit for solving the problems that have arisen.

It should be noted, however, that it is not a comprehensive solution to the *shōten-kai* problem at large for a variety of reasons. To begin with, the large scale investments that go into such projects mean that they can only be used in a very small number of *shōten-kai* – limited to those located in the downtowns of mid- to large sized cities. Secondly, these plans by their nature engender a number of reactions by the small merchants whose property will be used – many of whom opt to retire and do not re-open once the redevelopment is completed.¹²² This changes the character of the “new” *shōten-kai*, which has a completely different character as an organization and operates under a completely different set of institutions than the old one. In effect the law, in responding to the economic changes, is used to create new institutions and organizations which will replace the old. Thus the transformation of these governance issues from the realm of organizational law to urban redevelopment law is not a mere formality but represents the creation of a fundamentally different type of organization governed by a different set of institutions.

V. CONCLUSION

The story of the *shōten-kai* and their relationship with the legal rules affecting them outlined herein provide us with some insights on the relevance of economic decline to legal change. As *shōten-kai* emerged as a form of economic organization in the early twentieth century, they provoked changes in the legal system which provided their associations with a series of legal forms and gave them a key position within the regulation of their main source of competition. Despite the massive disruption caused by the Second World War, this basic framework of rules established in the 1930s remained largely unchanged through to the 1980s. *Shōten-kai* throughout the period were an effective agent of legal change, pushing their interests and finding a legislature and bureaucracy that was willing to accommodate them. Group interest, rather than economic efficiency, was the main goal of this process and the rules generally reflect that – promoting a form of retail trade that was generally inefficient but which benefitted small retailers greatly.

121 For a detailed case study see MUSA, *supra* note 83.

122 *Ibid.*

In the 1980s the fortunes of the *shōten-kai* abruptly shifted and they entered a period of economic decline which continues to this day. The path of legal change amidst this decline is difficult to characterize in terms of a trial and error search for economically efficient rules. The process more resembles a broad transformative shift as the decline of actors who dominate one legal field – small merchants in SPA – result in that body of law becoming less relevant while new actors who dominate different legal fields – city governments and urban redevelopment law – come to the fore. The degree to which this process is applicable in other contexts where different forms of economic organization have entered decline is not an issue which this paper has directly considered, but is one that remains a subject for further research.

SUMMARY

This paper is about the economic decline of shōten-kai, a form of business organization created among small merchants on the shopping streets of Japan's cities, and the relationship of that decline to legal change. The main focus is placed on a consideration of how the decline of a business organization may affect the legal framework that has developed around it. The purpose in doing so is to fill a lacunae in the literature on the relationship between economic and legal change which thus far has largely focused on the business corporation. The perhaps unique degree of success that the business corporation has achieved as a means of organizing economic activity means that this focus has left our understanding of how law responds to the decline of such forms unexplored.

Shōten-kai provide us with a somewhat peculiar context in which to explore this issue. While small merchant organizations and shopping streets have a long history in Japan, modern shōten-kai have their roots in the early twentieth century when large numbers of new arrivals to the country's growing cities entered the retail trade. Faced with the need to compete with another relatively new market entrant – department stores – these small shop owners began co-locating and organizing with each other as a means of surviving. By the 1930s two areas of law had come to be of particular relevance to them. First, the Commercial Cooperatives Act, enacted in 1932, came to be used by shōten-kai as a means of formally incorporating their associations as cooperatives and by 1938 more than one hundred had done so. Secondly, the Department Stores Act, established in 1937, placed strict regulations on the operation of department stores and gave small merchants a crucial voice in the system for granting permits for the opening or expansion of new ones, thus providing shōten-kai with a great deal of protection from their main rivals.

This legal framework, which served both organizational and protective functions for shōten-kai would be temporarily interrupted by the Pacific War but was re-established in the post-war years. With regard to their organization, in 1949 the Small and Medium Enterprise Cooperatives Act was enacted, followed in 1962 with the Shōten-kai Promo-

tion Association (SPA) Act which created a cooperative specifically designed for *shōten-kai*. Today more than three thousand *shōten-kai* are organized under these Acts. The Department Stores Act was likewise revised in 1956 and its system expanded in 1973 under new legislation which regulated all forms of large scale retailer.

The development of the law thus described occurred in a context in which small merchants, mainly organized in *shōten-kai*, dominated Japan's retail system. In the early 1980s, however, the fortunes of *shōten-kai* took a turn for the worse, with the number of small retailers entering a sharp decline that continues to this day. Once bustling shopping streets in many cities now look more like ghost towns as long rows of permanently shuttered shops have become a common sight. The decline can be attributed to a number of economic and social changes which, in combination with a rigidity in the governance structure of *shōten-kai*, have placed many in a self-undermining spiral which they cannot reverse.

This paper identifies three trends in the above noted legal framework which have come about in conjunction with this economic decline of *shōten-kai*. The first relates to their organizational law. *Shōten-kai* face significant governance problems yet these have not spurred changes to the SPA Act, the main piece of legislation that provides their associations with a governance framework, to address them. This may be the result of the limits of the cooperative form upon which it is based to address the unique problems they face, and also the result of the weakened role of small merchants within the law making process. A second trend has been an overhaul of the regulation of large scale retailers beginning in the early 1990s which has formally removed reference to small retailers. The third trend has been the use of urban redevelopment law by city governments in ways that overcome some of the governance problems that *shōten-kai* themselves are unable to deal with.

ZUSAMMENFASSUNG

Der Beitrag setzt sich mit dem wirtschaftlichen Rückgang der *shōten-kai*, einer Form der Geschäftsorganisation von Kleinunternehmern in Japans städtischen Einkaufsstrassen, und dem Verhältnis dieses Rückgangs zu Rechtsänderungen auseinander. Der Schwerpunkt liegt dabei auf der Frage, welche Auswirkungen der Bedeutungsverlust einer Unternehmensform auf den rechtlichen Rahmen hat, der um diese Organisationsform herum entstanden ist. Das Ziel ist, dadurch eine Lücke in der Literatur zum Verhältnis zwischen ökonomischem und rechtlichem Wandel zu schließen, die sich bisher überwiegend auf die Kapitalgesellschaften konzentriert hat. Der herausragende Erfolg der Kapitalgesellschaften als Vehikel zur Strukturierung wirtschaftlicher Aktivitäten hat zur Folge gehabt, dass die Frage, wie das Recht auf einen Bedeutungsverlust bestimmter Organisationsformen reagiert, weitgehend unerforscht geblieben ist.

Shōten-kai bieten uns einen etwas ungewöhnlichen Kontext, um dieser Frage nachzugehen. Während die Organisation von Kleinunternehmen und Einkaufsstrassen eine

lange Geschichte in Japan haben, finden sich die Wurzeln der modernen shōten-kai am Anfang des Zwanzigsten Jahrhunderts, als eine große Anzahl von Neuankömmlingen in das Handelsgewerbe in Japans Großstädten eintrat. Durch die Konfrontation, plötzlich mit diesen relativ neuen Marktteilnehmern – Kaufhäusern – konkurrieren zu müssen, begannen sich die Besitzer kleinerer Läden zu sammeln und sich zusammenzuschließen, um so überleben zu können. In den 1930ern wurden zwei Gesetze besonders wichtig für sie: Erstens das Gesetz über Handelsgenossenschaften, erlassen im Jahr 1932, welches von den shōten-kai als Vehikel zur formalen Eingliederung ihrer Vereinigungen als Kooperativen eingesetzt wurde. Im Jahr 1938 hatten sich bereits über 100 Vereinigungen genossenschaftlich organisiert. Das zweite war das 1937 erlassene Gesetz über Kaufhäuser, das den Geschäftsbetrieb von Kaufhäusern streng regulierte und Kleinunternehmen eine entscheidende Stimme im Vergabesystem von Lizenzen zur Eröffnung oder Erweiterung von Kaufhäusern gab, wodurch den shōten-kai ein starker Schutz gegen ihre Rivalen geboten wurde.

Dieser Gesetzesrahmen, der sowohl organisatorische als auch Schutzfunktionen für die shōten-kai erfüllte, wurde zwar durch den Pazifischen Krieg vorübergehend ausgesetzt, jedoch in den Nachkriegsjahren wieder hergestellt. In Bezug auf ihre Organisation wurde 1949 das Gesetz über den Genossenschaftsverband mittelständischer Unternehmen erlassen, gefolgt vom Gesetz zur Förderung von Shōten-kai-Vereinigungen im Jahr 1962, welches eine Form der Genossenschaft schuf, die speziell auf die shōten-kai zugeschnitten war. Heute sind mehr als 3.000 shōten-kai nach den Vorgaben dieses Gesetzes organisiert. Das Kaufhausgesetz wurde 1956 überarbeitet, und sein Regelungskonzept im Rahmen einer neuen Gesetzgebung von 1973 auf alle Formen von großen Einzelhandelsgeschäften ausgeweitet.

Die eben beschriebene Entwicklung des Rechts entstand in einem Kontext, in dem Kleinunternehmen, überwiegend als shōten-kai organisiert, das Einzelhandelsgewerbe in Japan dominierten. Anfang der 1980er wandelte sich das Schicksal der shōten-kai allerdings zum Schlechteren; die Zahl der Kleinunternehmen begann stark abzunehmen. Dieser Abwärtstrend dauert bis heute an. Einst belebte Einkaufsstraßen gleichen heutzutage in vielen Orten Geisterstädten, in denen langen Reihen von auf Dauer geschlossenen Läden inzwischen zu einem normalen Anblick geworden sind. Der Bedeutungsverlust kann auf eine Vielzahl von ökonomischen und gesellschaftlichen Veränderungen zurückgeführt werden, welche viele der shōten-kai, in Kombination mit der Starrheit ihrer Governance-Struktur, in eine unumkehrbare Spirale der Selbstschwächung getrieben hat.

In diesem Beitrag werden drei Trends im Kontext des oben genannten Gesetzesrahmens identifiziert, die aus dem wirtschaftlichen Rückgang der shōten-kai resultieren. Der erste betrifft die organisationsrechtliche Gesetzgebung. Obwohl die shōten-kai mit erheblichen Governance-Problemen konfrontiert sind, haben diese Probleme sich nicht in einer Reform des Gesetzes zur Förderung von Shōten-kai-Vereinigungen niederschlagen, das den Governance-Rahmen für diese Vereinigungen bildet. Dies könnte eine

Folge der begrenzten Möglichkeiten genossenschaftlicher Strukturen sein, auf die spezifischen Probleme der shōten-kai reagieren zu können. Es könnte zudem auch eine Folge der verringerten Rolle der Kleinunternehmen im Gesetzgebungsprozess sein. Ein zweiter Trend liegt in der in den 1990ern beginnenden Reform der Regulierung von großen Einzelhändlern, in deren Zuge die offizielle Bezugnahme auf Kleinunternehmen entfallen ist. Der dritte Trend besteht in dem Einsatz von Maßnahmen der Stadtplanung zur Überwindung einiger der Governance-Probleme, welche die shōten-kai selbst nicht überwinden können.

(Die Redaktion)