

Tradition and Law in Conflict : Farm Tenancy Conciliation and Social Change in Interwar Japan

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Tradition and Law in Conflict — Farm Tenancy Conciliation and Social Change in Interwar Japan

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1. Introduction

To understand the significance of Japanese law, it is not enough to understand its role in social and political struggles: we must also understand the stories it tells, the symbols it deploys, the vision it projects, and how the Japanese use all of these to give meaning to their social life.

Frank Upham¹

The question is often asked: how does law function in Japanese society ? According to a number of important studies on law and society, law does not actually play a major role in Japan due to cultural factors.² These studies assert that the harmonious structure of Japanese society creates a social environ-

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¹ Frank Upham, *Law and Social Change in Postwar Japan* (1987), p.205.

² Chin Kim and Craig M. Lawson, 'The Law of the Subtle Mind: The Traditional Japanese Conception of Law' in: *International and Comparative Law Quarterly* (1979), pp.491-513. Kawashima Takeyoshi, 'Dispute Resolution in Contemporary Japan' in: Arthur T. von Mehren, *Law in Japan: The Legal Order in a Changing Society* (1963), pp.41-72.

ment without conflict in which a large number of lawyers and courts are not needed. “Les japonais n’aiment pas le droit,” a much-quoted phrase by Yoshiyuki Noda, is reflective of this view.³ The alternative to law in the event of a conflict arising in such a society is to resolve it informally, through traditional conciliation systems. In Japan, moreover, conciliation is said to be preferable because the Japanese have not developed a law consciousness to the same degree as citizens of Western nations. This preference, for conciliation procedures at least by the government, became clear after the introduction of the modern western legal system in Meiji Japan (1868–1911) when the Meiji government formally established conciliation systems to resolve disputes.⁴

As early as in 1959, Kawashima Takeyoshi pointed out that the lack of familiarity with formal law and litigation in modern Japan was not due to persisting cultural attitudes among citizens, but was rather the result of a conscious effort on the part of Japan’s ruling elite to maintain an underdeveloped legal consciousness among the common people.⁵ If the development of a legal consciousness were to parallel the development of society, so the argument goes, it could seriously endanger the status of the political elite. The fear that conflict resolution under formal law would undermine the Confucian relationship between the rulers and the common people, and as a result change the power equation in Japan, was the motivation behind the efforts of the elite to promote the use of conciliation over popular education in the appropriate use of law.⁶

³ Yoshiyuki Noda, *Introduction au droit Japonais* (1966).

⁴ On conciliation in Japanese history in English, see the following sources: Dan F. Henderson, *Conciliation and Japanese Law: Tokugawa and Modern* (2 volumes, 1965). Further the conciliation system in early Meiji Japan is explained by Tanaka Hideo. See: Tanaka Hideo, *The Japanese Legal System. Introductory Cases and Materials* (1976). For a general analysis of the formal conciliation procedures established between the two World Wars, see: John O. Haley, ‘The Politics of Informal Justice: The Japanese Experience 1922–1942’ in: R.L. Abel (ed.), *The Politics of Informal Justice. volume 2: Comparative Studies* (1982).

⁵ Kawashima Takeyoshi, ‘Junpo seishin’ [The Spirit of Law Observance] in: Kawashima Takeyoshi, *Kindai shakai to ho* (1959), pp.65–71. Kawashima Takeyoshi explains that, before the Second World War the government prevented the development of the legal consciousness by establishing conciliation systems. The idea that the Japanese are not truly “law-averse” is elaborated upon by John O. Haley. See: John O. Haley, ‘The Myth of the Reluctant Litigant and the Role of the Judiciary in Japan’ in: *Journal of Japanese Studies* (Volume 4, 1978), pp.359–390. Frank Upham, points out that, also in contemporary Japan, the interference of the state in the resolution of disputes remains very important. See: Frank Upham, *Law and Social Change in Postwar Japan* (1987). On the management by the government of dispute resolution concerning automobile accident compensation, see: Tanase Takao, ‘The Management of Disputes: Automobile Accident Compensation in Japan’ in: *Law and Society Review* (1990), pp.651–691.

⁶ Kawashima Takeyoshi, ‘Hokenteki keiyaku to sono kaitai’ [The Feodal Contract and its Disappearance] in: Kawashima Takeyoshi, *Hoshakaigaku ni okeru ho no sonzai kozo* (1950), pp.185–225.

Between 1920 and 1941, approximately 70,000 disputes were recorded as occurring between tenant farmers and their landowners. Sporadic disputes between tenants and landowners occurred quite regularly before the government started its statistical record of what was called “the farm tenancy disputes” (*kosaku sogi* 小作争議) in 1917.⁷ The farm tenancy disputes after 1917 were initiated by tenant farmers trying to achieve a more equitable distribution of wealth, and, as pointed out by Ann Waswo, improved social status.⁸ The farm tenancy conflicts, which increased rapidly in intensity from 1917 onwards, forced concessions from the elite and, if successful, could have undermined its paternalistic domination over Japanese society. As a measure to cope with the farm tenancy disputes, the political elite argued that establishing a conciliation procedure was preferable to amending the Civil Code because it was more in keeping with the national tradition than was litigation, and therefore they decided to establish an in-court conciliation system to resolve the farm tenancy disputes.

The purpose of this article is to examine whether or not the farm tenancy conciliation system provided a viable alternative to law for the resolution of farm tenancy disputes during the main period in which it was in operation (1924–1938). Using empirical materials, which consist, in part, of reports made by observers regularly dispatched by the Ministry of Agriculture from Tokyo to conduct assessments of disputes in progress, the facts of the disputes and the several steps from their emergence until their resolution will be examined. In addition, diaries and personal notes of these same government officials and of the farmers involved in the resolution of disputes will be examined in order to provide the perspective of those actually involved in the conciliation process.⁹

⁷ Sources: *Kosaku chotei nenpo* [Annual Report of Farm Tenancy Conciliation] (1925–1926); *Kosaku Nenpo* [Annual Report on Farm Tenancy] (1927–1939) and: *Nochi nenpo* [Annual Report on Farm Land] (1940–1941).

⁸ Ann Waswo, ‘In Search of Equity: Japanese Tenant Unions in the 1920s’ in: Tetsuo Najita and Victor Koschmann (ed.), *Conflict in Modern Japanese History: The Neglected Tradition* (1982).

⁹ Research on farm tenancy disputes in the 1920s and 1930s was undertaken by various scholars. In Japan, Nakamura Masanori and Nishida Yoshiaki provide an exhaustive account of the economic and social relationship between the landlord and tenant class in Japan before the Second World War as well as the troubles that occurred within the context of that relationship. Nakamura Masanori, *Kindai nihon jinushisei shi kenkyu* [Historical Study of the Modern Japanese Landowner System] (1979) and Nishida Yoshiaki, ‘Shono keiei no hatten to kosaku sogi’ [The Development of Petty Agricultural Management and Farm Tenancy Disputes] in: *Rekishigaku kenkyu* (1968), pp.1–16. See also: Nishida Yoshiaki, *Showa kyokoka no noson shakai undo* [The Rural Social Movement During the Showa Depression]

This examination of the farm tenancy conciliation system, will provide a view not only on how Japanese rulers cope with disputes in which the social order is questioned, but also on how the measures taken by these rulers actually function in a given environment. For this research, that environment is the Japanese farm village between 1924 and 1938, the period in which the farm tenancy conciliation system was used most frequently in the resolution of disputes. More generally, this article will evaluate whether or not conciliation helps disadvantaged groups to articulate social grievances and to achieve social justice, relative to the use of format lawsuits to resolve disputes.

2. Models of Conflict Resolution in the Farm Village

Motivated by attractive financial prospects in industry after the First World War, younger tenant farmers threatened to leave the land if the rent was not reduced by their landowners. The Osaka edition of the Asahi Newspaper of February 10th, 1917, relates the story of young farmers in Yamaguchi Prefecture who caused severe problems to their landowners by returning their land collectively to “rush” to the factories where a better living could be made than in farming. Thus began a long period of violent conflicts between tenant farmers and landowners in Interwar Japan.

Rebelliousness by poor farmers was not a new phenomenon in Japan, as evidenced by the “world renewal uprisings” in the first half of the 19th century, and in the farmers’ protests after the land-tax reform following the Meiji Restoration.¹⁰ One important difference in the farm tenancy conflicts following the First World War, however, was the character of the tenant farmers’ move-

(1978). Recently: Nishida Yoshiaki, *Kindai nihon nomin undoshi* [The Farmer Movement in Modern Japan]. 1997. In Western languages, Ronald Dore initially pointed out the importance of the social and political impact of the tenancy disputes in pre-war Japanese society and how these disputes made the reform of the land system an urgent matter for the democratising process in Japan after 1945. Ronald Dore, *Land Reform in Japan* (1959). More recently, for example Ann Waswo did draw further upon Dore’s efforts and examined the causes of the farm tenancy disputes. Ann Waswo, *Japanese Landlords: The Decline of a Rural Elite* (1977). By the same author, see: ‘In Search of Equity: Japanese Tenant Unions in the 1920s’ in: Tetsuo Najita and Victor Koschmann (ed.), *Conflict in Modern Japanese History: The Neglected Tradition* (1982). Richard Smethurst reached controversial conclusions in his analysis of the prewar farm tenancy disputes. Richard J. Smethurst, *Agricultural Development and Tenancy Disputes in Japan 1870-1940* (1986).

¹⁰ See: Stephen Vlastos, *Peasant Protests and Uprisings in Tokugawa Japan* (1986); Herbert P. Bix, *Peasant Protest in Japan, 1590-1884* (1986); Ono Takeo, *Ishin nomin hoki dan* [Talking on the Uprisings by the Farmers at the Meiji Restoration] (1965); Fukushima Masao, *Chiso kaisei no kenkyu* [Study on the Land Tax Reform] (1962).

ment, which, thanks to the involvement of socialist activists, became well organized under the national farmer unions. An important reflection of the new pattern was that through these unions, tenant farmers asked not only for rent reduction, but also demanded an “upgrading of their status.”¹¹ Such demands appeared in the union’s proposals to reform the Meiji Civil Code.

A second difference between prior farmers’ movements and those following the First World War was that the farm tenancy disputes of the latter period were not restricted to one location, to a particular farm village, but like a chain of dominoes affected the whole country and developed into a struggle between two classes. The farm tenancy conflicts became a persistent problem for the Japanese government from 1917. In short, the farm tenancy problem appeared to have wider social resonance than the isolated opposition between farm tenant and landowner characteristic of previous disputes.

2.1. The Nature of the Farm Tenancy Disputes

One typical aspect of the 1920s’ farm tenancy conflicts was that they occurred as a result of the tenant farmers’ demands for rent reductions. In Japan’s developing industrial society, the fluctuations in market prices caused the burden of the rent, which was still paid in rice, to be variable. In 1929, an official observed that “*the economic problems of today’s farmers are, first, the low price for rice; secondly, the high cost of new machinery; and thirdly, the increased production costs and the cost of fertilizers.*”¹² Tenant unions were powerful and influential in the 1920s, and with their support, confident tenants actively demanded a reduction of the rent to be paid to landowners. If landowners refused to accept these claims, the tenant farmers often left the land and looked for other job opportunities. Jobs were abundant in large cities and, thus, tenants were less dependent upon their landowners.

Later, in the 1930s, due to the worldwide economic depression, those occupational alternatives disappeared. Farm tenancy conflicts of this period, show the shift in bargaining power towards the landlords, who demanded both increased

¹¹ Ann Waswo, ‘In Search of Equity: Japanese Tenant Unions in the 1920s’ in: Tetsuo Najita and J. Victor Koschmann, *Conflict in Modern Japanese History* (1982). p.369.

¹² The first three parts of the Meiji Civil Code were promulgated in April of the 29th year of Meiji (1896) as law no. 89. The exact day of promulgation is cited by Ogura Takekazu as the 28th, while Kato Ichiro cited the 27th as the day for promulgation. The fourth and fifth parts of the Civil Code were promulgated the 21st of July as law no 9. The 31st year of Meiji (1898), the Meiji Civil Code was enacted as the Imperial Ordinance no. 123.

rent and, on occasion, the return of the farmland. The tenancy disputes in the 1930s may be divided, as is pointed out by Sakane Yoshihiro, into three types.¹³ The first type involved the owner threatening to demand a return of the land if the tenants were unwilling to pay the rent in time.¹⁴ In such conflicts, the landowner did not really wish to evict the tenant, but used the threat of eviction to pressure him to pay. The owner actually wanted to continue the tenancy relationship. Scholars refer to this type of conflict as the “default recovery” type of conflict.

A second type of dispute involved landowners who wanted to cultivate their own land out of financial or other motives. During the depression at the start of the Showa Era (1925-1989) in the beginning of the 1930s, landowners suffered serious losses, often including a loss of confidence in the possibilities of urban industry, which caused them to return to their land. The government encouraged this practice in view of its policy of promoting independent farming. In this “independent cultivation by the landowner” type of dispute, the resolution of the dispute could be more difficult because the owner did not want to restore the relationship with tenant farmers.

A third conflict type, one that was radically disruptive for the traditional organization of the farm community, was the so-called “cultivation by the new landowner” type of dispute. In these disputes, the land was sold, after which the new landowner evicted the tenant farmer and either cultivated the land independently, or had it cultivated by his own protégé-tenants.¹⁵ Given the importance of trust in the traditional landowner-tenant relationship, this type of dispute originated in what was for the farmer the worst possible betrayal of the moral code in the traditional community.

¹³ Norinsho nomukyoku (ed.) *Kosaku sogi oyobi chotei jirei* [Examples of Farm Tenancy Disputes and Conciliation] (1929), p.341. The references to this primary source will be abbreviated in following notes as follows: *Jirei*. In 1929, the tenant farmers in Uchigo village in Kyoto Prefecture demanded a reduction of rent. During the preparations for the mediation by central authorities, one of the mediators blamed the landlords for not considering the tenants situation. *Jirei* (1929), pp.339-354.

¹⁴ Sakane Yoshihiro, *Senkanki nochi seisaku shi kenkyu* [Analysis of the Farmland Policy in the Interwar Period] (1990), p.153.

¹⁵ The first model was typical in central Japan, namely in the Kinki and Chubu region, the second was typical in northern Japan, namely the Tohoku region. This regional division is made by most scholars of farm tenancy disputes in prewar Japan. Furushima Toshio (ed.), *Nihon jinushisei shi kenkyu* [Research on the History of the Japanese Landowner System] (1958), p.332.

2.2. Farm Tenancy According to the Meiji Civil Code¹⁶

The legal stipulations concerning farm tenancy can be found in the Meiji Civil Code. Hozumi Nobushige, Tomii Masaaki and Ume Kenjiro, who were familiar with the German, English and French legal systems, were entrusted with the task of drafting the Code, a task they completed in 1898.¹⁷ For the general structure of the Meiji Civil Code, they adopted the German Pandekten system rather than the institutional French system. This “New” Civil Code modified to a drastic degree the provisions of the Old Civil Code relating to the relationship between tenant farmers and landowners. The Old Civil Code, based on the French legal system was promulgated but never came into effect because it was said to be contrary to Japanese tradition. The most common type of farm tenancy, ordinary tenancy, had been construed in the Meiji Civil Code as an “obligation right” (*saiken* 債権) and not, as in the Old Civil Code, as a “property right” (*bukken* 物権).¹⁸

In the Meiji Civil Code, ordinary farm tenancy was integrated into the section covering “lease relationships” (*chinshaku kankei* 賃借関係). In Article 605, the Meiji Civil Code stipulated that rights concerning leased real estate were only valid when “official registration” (*toki* 登記) of the agreement was performed. In other words, according to this Civil Code, the ordinary tenant farmers could only exercise formal rights on the farmland they were cultivating when their tenancy agreement was registered. Otherwise, the law did not authorize the sublease, alienation or mortgaging of the land without explicit approval of the landowner. Further, under this provision, a landowner could evict tenants instantly if they acted in violation of the provisions of the Meiji Civil Code (Art.

¹⁶ Sakane Yoshihiro, *op. cit.* (1990), p.153. Collective actions for rent reduction were typical for farm tenant disputes in the 1920s in the Kinki and Chubu regions, while individual disputes for land return and tenancy continuation were typical of the Tohoku conflict of the 1930s. In the 1920s, the tenants were aware of their strength when acting against landowners in unity. The landowners needed the tenants as in the cities the increasing job opportunities caused the decrease of would be tenants.

¹⁷ Hozumi, Tomii and Ume, the legislators of the Civil Code, acquired their legal education overseas. All three legislators were said to possess complementary characters. Ono Takeo namely points out that the open mind of Hozumi, the willpower of Ume and the efforts of Tomii allowed them to complete their task. Ono Takeo, *op. cit.* (1948), p.381.

¹⁸ Ordinary farm tenancy constituted 99 per cent of the farm tenancy agreements in Meiji Japan. Ronald Dore, *Land Reform in Japan* (1959), p.64. Moreover the three legislators were in order to compose the Meiji Civil Code referring to foreign legal codes in addition of the Old Civil Code. Concretely the examples of France, Italy, Germany, Spain, Holland, Belgium, Montenegro, England, America, India, Austria and Switzerland were taken into account. Ono Takeo, *op. cit.* (1948), p.359. On the Meiji Civil Code, see: Kenzo Takayanagi, *op. cit.* (1963), pp.30-31; Ishii Ryosuke, *Japanese Legislation in the Meiji Era* (1958).

612). Registration could only be done, however, with the consent of the landowner and, as Ono Takeo argues, registration was extremely rare in Meiji Japan.¹⁹ Any tenant farmer asking his landlord for registration of the agreement would be criticized for not trusting the landlord. In that case, there would be a very real possibility that the tenancy agreement would be canceled on the spot. In the absence of a registration, a tenant might also be prevented from countering an order for eviction when the land was sold. A farmer's tenancy agreement remained valid only on condition that no change of ownership occurred.

Another difference between the Meiji Code and the Old Civil Code was that in the case of a poor harvest, the rent could only be reduced if the yield was less than the agreed-upon amount of rent. The reduction would then be assessed at the difference between the rent due and the actual yield (Art. 609). In other words, the tenant had to concede his entire yield. The harshness of this provision reflects the overall aim of the Meiji Civil Code to promote and preserve tradition in the farm village. The traditional farm tenancy relationship was explained in the Diet by Ume Kenjiro:

The relationship between a tenant farmer and landlord is similar to that between a father and a child and when the tenant implores the landowner to reduce rent, this is a claim which has nothing to do with a contract, it is even not a claim but an entreaty (. . .) It is certainly good to reduce rent because of ethical reasons but it is not good to get a rent reduction as a formal legal right. Therefore only when yield is less than the rent is a reduction formally accorded, namely the difference between both. Further reduction is left to moral considerations on the part of the landlord and extra-legal supplication by the tenant farmer.²⁰

As Ronald Dore argues, the only chance for the tenant farmers to obtain a rent reduction was to refer to custom.²¹ Article 277 of the Meiji Civil Code stipulated that "when there is a custom that is different from the previous articles, the custom shall have priority." In practice, the few tenant farmers who tried to use litigation to oppose landowners under Article 277 were denied any

¹⁹ Ono Takeo, *op. cit.* (1948), p.362. Official registration could be done at the Village Head's office. On the development and changes in the registration system in Meiji Japan, see: Kumagai Kaisaku, *Nihon tochi shiyusei no tenkai* [The Development of the Private Ownership System Related to the Land System in Japan] (1976), pp.15-36.

²⁰ Statement by Ume Kenjiro in the record of the research committee on the Civil Code (*Hoten chosakai minpo giji sokki roku*). volume 32, 95th session.

²¹ Ronald Dore, *op. cit.* (1959), p.65.

relief.²² Under the Meiji Code, the landowners could evict their tenant farmer when the revenues according to yield fell below rent for two consecutive years (Art. 610). The right to cancel the contract when the tenants failed to pay rent did not require prior notice. The tenancy relationship could be terminated at once, even in the middle of the harvest period (Art. 541).²³ The Meiji Civil Code provided, moreover, that the maximum period of an ordinary tenancy agreement would be reduced to 20 years (Art. 604), with no minimum duration being stipulated. According to Article 617, the most frequent type of farm tenancy, namely the “ordinary farm tenancy agreement without specific duration” (*futeiki kosaku* 不定期小作) allowed both parties to cancel the agreement at any time (Art. 617). This provision, needless to say, accorded power to the landowner to evict the tenant whenever he desired.²⁴ The amount of rent was not restricted in the Meiji Civil Code, which meant that in view of the provisions of the Code, the landlords could claim as much rent as they wished. They could terminate the agreement when tenant farmers refused to pay.

In sum, under the Meiji Civil Code the tenant farmers formally lost their independence. As a result, tenants were forced to rely on the personal relationship with their landlord to make farm tenancy livable and to rely on this relationship as a basis for all claims in court. Underlying the favorable character of the Meiji Civil Code for the landowners was the election system in Meiji Japan. Those deciding on the legal norms, the legislators, were elected by wealthy people mostly belonging to the landowner class. The courts which were confined to the norms stipulated by the legislators, were inevitably favorable to the landowners. As one observer notes:

The court in a modern nation cannot accomplish its mission without uniform criteria. In

²² Kato Ichiro, *Nogyo ho* [Agricultural Law] (1985), p.98. The first time that the court recognized the existence of custom was in 1926 when it did rule in favor of a tenant farmer claiming that “the custom of reducing rent in case of poor harvest, always existed in the farm village.” See: *Daikihan Taisho 15.10.5*. (Supreme Court Judgement for Penal Cases, October 5th 1926). in: *Hyoron 16. kei*, pp.112-113. See also the following judgement: *Daihan Showa 11. 4.9. Minroku 725* (Supreme Court Judgement for Civil Cases, April 9th 1936).

²³ The Court moreover ruled that even when the tenant farmers do deposit a part of the rent this could not be considered as sufficient to take away from the landowner the right to evict at any time the tenant, see Supreme Court verdict of December 16th 1911.

²⁴ Watanabe Yozo, *op. cit.* (1957), p.335. Article 401 stipulated the obligation of the tenant to pay rent with rice of excellent quality and article 484 stipulated that, in principal, the tenant should take care of the transportation of the rent to the landlord's residence. In the event that the landowner moved (for example to town) this could cause problems.

case of a transformation of the diversified norms of action into uniform court norms, the questions are, who decides which norms of action become the uniform norms, and for what reason they do so.²⁵

2.3. The Traditional Conflict Resolution Mechanisms

The impact on society of legal norms like those provided for in the Meiji Civil Code only became apparent when a dispute actually reached the courts.²⁶ In most farm villages, however, social organization informally prevented any disagreement from extending beyond the borders of the very closed community. In other words, legislation of the farm tenancy relationship in the Meiji period did not change anything in the actual, tradition-bound relationship between the tenant farmers and the landowners even if a conflict occurred.

Traditionally landlords managed their land and tenant farmers in an authoritarian way.²⁷ The tenant farmers were not free to act independently on the land they were cultivating. The landowner, for example decided what could be cultivated on the land and what kind of fertilizers could be used, and acted as a manager of the land. Nevertheless, at the personal level, the landowner protected and helped tenants when necessary. Through the village meeting for example, the landowners mobilized assistance for their tenants at harvest time and for private matters, such as the ceremonies of marriage and death. Additional services provided by the landowner to the tenant included the lending of money and providing of assistance during times of food shortage.²⁸ Furthermore, rent reductions that were not planned in the tenancy agreement might be granted, and advice on farming techniques and even personal advice were common in the

²⁵ *Ibid.* (1957), p.339.

²⁶ Kawashima Takeyoshi, *op. cit.* (1950), p.187.

²⁷ Nakamura Masanori, *Kindai nihon jinushisei shi kenkyu* [Historical Study of the Modern Japanese Landowner System] (1979). Initially, the difference between the agricultural organization related to farm tenancy in the northern and central part of Japan was explained by Yamada Kotaro. Nakamura Masanori elaborated on the differences between the farm tenancy relationships in both regions. Fundamentally, the Tohoku region (north) was characterised as being traditional, conservative and slow to modernize. Kinki and Chubu areas (central), on the contrary, were progressive, quick to modernize and landlords there were often actively participating in that modernization process. The Tohoku region is situated at the northeastern side of Tokyo and includes the prefectures of Miyagi, Yamagata, Akita, Iwate, Aomori and Fukushima. The Kinki prefectures are Hyogo, Mie, Wakayama, Nara, Osaka, Kyoto and Shiga. Kagawa and Okayama also displayed similar characteristics to Kinki area farming. Further, the Chubu region includes the prefectures between Kinki and Tohoku and in their agricultural organization showed characteristics of both regions. Prefectures classified as matching the Chubu model, were Niigata, Ishikawa, Fukui, Nagano, Yamanashi, Shizuoka, Gifu and Aichi.

²⁸ Kawashima Takeyoshi, *op. cit.* (1959), pp.65-67. See also: Ushiomi Toshitaka, Watanabe Yozo, Ishimura Zensuke, Oshima Taro, Nakao Hideo, *op. cit.* (1957), p.99.

relationship between the tenant farmers and their landowners in the traditional farm village.²⁹

In exchange, the landowner expected total subordination from his tenants. The relationship between tenant and landowner was, as Kawashima Takeyoshi asserts, a paternalistic one. As Ronald Dore points out, a paternalism prevailed that was based on authority rather than on affection. It was:

paternalism within the context of traditional Japanese family institutions with the accent on authority rather than affection. Status distinctions were maintained with a rigidity all the more surprising when one recalls that the master and his tenants had for six years of their young lives sat side by side in the same primary school.³⁰

At least once a year, the paternalistic relationship was expressed in a ritual practice between the landowner and the tenant. In that ritual, during the annual negotiation for the reduction of the tenancy rent, the landowner usually reduced the amount of rice to be paid as tenancy rent by at least 10 per cent.³¹ As a result, when the tenancy relationship was initiated, the rent was set at a higher rate than the landowner actually expected to receive. By virtue of favors bestowed, the landlord would encourage the tenant's sense of responsibility towards the land.³² As a result of this practice, the tenants felt obliged not to betray their landlord and to remain obedient to his authority. A typical example of this paternalistic relationship is the case of the Otaki landowner who owned about five acres in Yamagata Prefecture.³³ Thanks to successful commercial activities, the landowner was able to increase his farmland. At the end of the Second World War, 170 tenant farmers were farming land owned by the Otaki family. The Otaki landlord was reported to hold in disdain the modern, more "commercial" landlords' attitudes. This motivated him to maintain "peasant values in their highest and ideal form."³⁴ The Otaki family, in fact, culti-

²⁹ Ann Waswo, *op. cit.* (1977), pp.29-30.

³⁰ Ronald Dore, *op. cit.* (1959), p.39.

³¹ The tenants wanted to pay the high amount of rent they were due to the owner because they knew that the rent would be adapted to the actual harvest in a certain year. In Meiji Japan especially farming was risky. See: Ann Waswo, *op. cit.* (1977), p.31; Ronald Dore, *op. cit.* (1959), p.36.

³² Ann Waswo, *op. cit.* (1977), p.36.

³³ Ronald Dore, *op. cit.* (1959), pp.30-41.

³⁴ Ronald Dore, *op. cit.* (1959), p.32.

vated a part of the land by themselves.

When calling on the Otaki landlord, the tenant farmers used the side entrance of the house, which was only used by servants and tenant farmers. The tenant farmers never went beyond the doorway. On the other hand, the absolute respect for the landlord and subordination to his authority was beneficial for the tenant farmers in the following ways. Aside from providing his tenants with knowledge on farming so that they could improve production, the Otaki family acted, for example, as a go-between in the weddings of their tenant farmers' children and they used their connections to provide those children with employment. In sum, many important decisions in the tenant farmers' life, whether in connection with their professional or personal life, were either made or suggested by the landowner and this provided the Otaki family with unchallenged authority in the traditional village.

The landowners could use their status in the farmer community as well as their personal authority to end disputes with the tenants. The landowner could, if that authority was not sufficient, request the aid of other landowners or important villagers to settle the dispute. In the Yumigahama dispute in Tottori Prefecture in 1917, where the landowners had the reputation of displaying the "attitudes of a feudal lord," for example, the tenants contested a demand by their landowner for higher rent. The landowners put pressure on the tenants through their personal authority but noticed that the tenants still resisted their demands. The landowners then called in the aid of the district head, another landowner. In view of his authority, the tenants agreed to "entrust the dispute resolution unconditionally to the district head."³⁵ The district head mediated in this dispute and encouraged the parties to restore their traditional cooperation, which meant that the tenant farmers should be obedient to the landowner. In yet another case in 1921 in the Shiso district in Hyogo Prefecture, the Chikusa dispute was settled according to traditional practices. In this case, the influential villager who was called upon to settle the dispute gave the impression that he understood the tenants' grievances. This was typical for the traditional

³⁵ Noshomusho nomukyoku, ed. *Kosaku sogi ni kansuru chosa* [Survey about Farm Tenancy Disputes]. Volume 2, (1923). p.334. Reference to this primary source will be abbreviated to: *Kosaku sogi ni kansuru chosa* Relationships between the tenants and the landowners had been harmonious until the beginning of the 1910s. The tenant farmers then decided to rebel against the "inappropriate" attitudes of the landowners. See also: *Kosakusogi ni kansuru chosa*. Volume 1, (1922), pp.270-271.

resolution of disputes in farm village. In Chikusa, after refusing to accede to the landowner, the tenant farmers explained their grievances to the village head and, after being convinced that he understood, they entrusted the dispute resolution unconditionally to him (*mujoken ichinin* 無条件一任). Actually, the mediator wanted, through the dispute resolution, to restore the obedience of the tenant farmers to their landowner. He therefore organized a conciliation session during which the landlords were sitting on chairs while the tenants were only allowed to sit on the floor.³⁶

The main problem for the traditional mediator in the farm village was how to express their authority and understanding towards both disputing parties. The traditional mediator in the farm village was not concerned with the parties' claims for justice, but with the preservation of the hierarchy in the village. Moreover, in this context, it was very hard for a tenant to oppose the landowner because he would often be considered as being selfish for not respecting the order in the village. Any opposition to the traditional mediator, an important villager, was even worse because that authority figure was acting as a volunteer and was considered to act in the interest of the farm village. Merely pointing this out to the disputing parties would in most cases be sufficient to end their opposition.³⁷

In order to ensure flexibility between the disputants, the mediator's principal concern was to affect the overall mood of the conciliation. Mediators often, for example, blamed the parties for being so selfish as to dare to disturb the harmony in the farm village. At other times they would offer sake to, as Kawashima Takeyoshi notes, "soften the parties."³⁸ The traditional mediation procedure, therefore was not intended to arrive at a just compromise between the parties, but rather to "wash the dispute away."³⁹

³⁶ *Kosaku sogi ni kan suru chosa*, (Volume 2, 1923), p.334.

³⁷ *Kosaku sogi ni kan suru chosa*, (Volume 2, 1923), p.299. The parties would often end their disagreement when "the landlords saw the efforts made by the mediator and the tenants realized that opposition to the landlords was only to their disadvantage. This was the case for example in Akita Prefecture where the Mie dispute was settled after intervention by a local official.

³⁸ Kawashima Takeyoshi, 'Kenri no taikai' [The Structure of Legal Rights] in: Kawashima Takeyoshi, *Kindaishakai to ho* (1959), pp.152-153; See also: Dan F. Henderson, *Conciliation and Japanese Law: Tokugawa and Modern* (1965).

³⁹ Kawashima Takeyoshi, *op. cit.* (1959), pp.150-153.

3. Internal Mechanisms to Restore Consensus in the Farm Community

The primary aim of dispute resolution was to restore cooperation and traditional order in the village through the use of existing internal mechanisms. One means of resolving disputes therefore involved the landowners establishing a “cooperative structure” (*kyocho taisei* 協調体制) in the form of “cooperative associations” (*kyocho kumiai* 協調組合) and similar organizations composed of tenant farmers and landowners. The landowners who remained in the village were very active in creating cooperative associations, in which tenants and owners, through constructive dialogue, addressed mutually important matters in the village.⁴⁰ In general, however, these *kyocho kumiai* were established as a strategy by owners to prevent tenants from becoming members of tenant unions. By 1938, no less than 3,158 such associations had been created.⁴¹

A second way for the villagers to deal with tenancy disputes was to rely on confrontation and to consider the social rift between themselves and the landowners as final. Indeed, if the above mentioned cooperation proved unsuccessful, or if the creation of a mutual association was not possible, aggressive unions of tenants and landowners each promoted the interest of the separate social class. In 1938, 3,643 tenant unions existed as opposed to 473 landowner unions.⁴² Violence, coercion, police involvement, and lawsuits were usually the strategies used in disputes involving the unions.

4. The Limits of Traditional Conflict Resolution

4.1. The Cooperative Associations

Successful cooperative associations were rare. Cooperative associations in which class opposition was apparent were common. In these associations,

⁴⁰ Ann Waswo, *op. cit.* (1982), p.113.

⁴¹ Norinsho nomukyoku, ed. *Kosaku nenpo* [Annual Report on Farm Tenancy] (1938), pp.124–125. Reference to this primary source will be abbreviated to: *Kosaku nenpo*. The number of cooperative associations in 1930 was 1,980 and it increased to 3,158 in 1938. The number of tenants and owners recorded as member of those cooperative associations increased from 247,880 in 1930 to 263,071 in 1938. Thus, the membership did not increase in equal proportion to the number of unions, which suggests a decreasing scope of each association's activities.

⁴² *Kosaku nenpo* (1939). In 1938, 217,883 tenant farmers were member of a union while 31,902 landowners were involved in union activities.

tenants and owners were equally represented and each tried to reach a compromise based upon their own economic interests.⁴³ The members of these associations rejected the traditional tenancy relationship and, rather than seeking cooperation for improving productivity, the aim of this kind of association was specifically to promote the interest of each group when a dispute occurred. However, in a village where landowners were used to controlling all decisions, compromise was not easy. Many associations, therefore, became the stage for disputes between tenants and landowners. This inevitably led to the dissolution of many associations.

One illustration of the failure of this form of conflict control may be found in conflicts in Umaji village, situated in the Kuwata district of Kyoto Prefecture.⁴⁴ In Umaji village, most landowners were absentee and about 80 percent of the farmland was tenanted. The landowners were not involved in local decision making and only dealt with the tenants through representatives. Dissatisfaction due to excessive rent was the primary cause of tenancy disputes in Umaji village, which occurred regularly throughout the period between the two World Wars. The intensity of the disputes peaked in 1926. In 1927, after the most violent conflicts of 1926 were settled, a cooperative association, the Showa Cooperative Association for Landowners and Tenants, was established. Through this association, owners sought to prevent tenants "from turning to radical ideas and methods." Specifically, this meant any ideas that might lead tenants to challenge the landowner's authority, such as membership in a confrontational union.⁴⁵ In his account of the role of tenant unions, Sakane Yoshihiro points out that in order for the cooperative associations to restore harmony in the village, the tenant farmers would have to disassociate themselves from the national tenant unions, such as the Japan Farmers' Union.⁴⁶ Landowners in Umaji village were conscious of this and tried to convince their

⁴³ Nishida Yoshiaki, *op. cit.* (1978), p.477.

⁴⁴ Sakane Yoshihiro used this case in his historical study of the political and economical function of the cooperative structure between tenants and landowners. In his view, the *kyocho taisei* was successful in this village. Nevertheless, the success was in Sakane's view, determined by the economic progress and political independence of the tenant farmers and, thus, not by their emancipation from the landlords on the farm village level. See: Sakane Yoshihiro, *op. cit.* (1981).

⁴⁵ Sakane Yoshihiro, *op. cit.* (1981), p.11. See also: Shoji Shunsaku, 'Senzen tochi seisaku no rekishitekiseikaku: kosaku chotei seido o chushin toshite' [The Historical Character of the Prewar Land Strategy: Emphasizing the Farm Tenancy Conciliation System] in: *Nihonshi kenkyu* (1981), p.11.

⁴⁶ Sakane Yoshihiro, *op. cit.* (1981), pp.34-37.

tenants to renounce their memberships in the national tenant union. After the purge of March 15th, 1928, in which the massive arrest of socialist leaders marked a new period of government action against socialist unions, the landowners were strengthened in their position by the government.

Despite this repressive social atmosphere, the landowners were not successful in controlling their tenant farmers. The Showa Association, similar to many cooperative associations in other villages in interwar Japan, was never able to control the tenancy disputes:

The Showa Association could decide exclusively on the conditions for farm tenancy. The organization for rent reduction and conflict prevention functioned normally but as long as this cooperative structure did not resolve fundamentally the contradictions and opposition between tenants and landowners, one could not escape this instability. That contradiction and opposition was realized in times of poor harvest.⁴⁷

Obtaining stable cultivation rights was the main concern of the tenant farmers, who often saw the unions and cooperative associations as useful places to stage their claims and used this as a strategy toward realization of their demands.

Many cooperative associations were dissolved to form new, separate unions of tenant farmers and landowners and the national union of tenant farmers was organized. The Japan Farmer Union was officially established on April 9th, 1922, by Sugiyama Motojiro and Kagawa Toyohiko, but had already started its activities in 1921. Their motivations for establishing this first national organization for tenant farmers were: first, the precarious living conditions of the tenants; second, the latent rebelliousness of the tenants; thirdly, the changing social atmosphere; and finally, the results of the 3rd conference of the International Labor Organization (ILO). It should be pointed out, however, that the leaders, in the first issue of their Bulletin (published on January 22nd 1922) were not preaching revolt, but cooperation. The leaders argued that "tenant farming exists because landowners are there."⁴⁸ In the mid-1920s, however, tenant unions had changed from using non-confrontational to confrontational methods.⁴⁹ In 1926, for example, 92 per cent of all unions mentioned con-

⁴⁷ *Ibid.* (1981), p.17.

⁴⁸ Aoki Keiichiro, *Nihon nomin undo shi* [History of the Farmer Movement in Japan] (1947), p.49.

⁴⁹ This appeared several times in the articles written in the bulletin of the Japan Farmer
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frontational objectives in their bylaws.⁵⁰ Lawyers connected with the unions were sent to conflict-intensive villages to advise the tenants in their struggle against the landowners, and they motivated the tenants to stand up against their landowners.

The farm unions, and the socialist activists involved in the tenant movement, struggled against the “parasitic” landowners who ruled the villages. When tenants became member of such a national union, they did something that was contrary to the traditional order in the village. The unions were, as in the case of the courts, foreign to the farm village and therefore traditionally they could not penetrate directly into the very core of that “natural community.”⁵¹ The violence of disputes in which farmer unions took part were amplified now that both parties had lost the constraints of the community’s moral code.⁵² Landowners initiated lawsuits against tenant farmers and called on the police to assist them —something they would never have done in the traditional farm village. The tenants’ reactions were also unprecedented, in that they avoided all contact with the landowners and, by becoming union members, went outside the borders of the village.

4.2. The Police Officer as Middleman in the Farm Village

The police have played an important role as mediators both before and after the Second World War. Until the First World War, the police officer thanks to his residence inside the village had the character of an “insider” in the farm village, but did not thereby lose his “outside” authority as a representative of the central government. Moreover, as a policeman, he belonged to neither the tenants’ nor to the owners’ groups, which enabled him to mediate in disputes in the village. In this role, a local policeman was a respected mediator, feared by the villagers as a symbol of the power of the central government. The tenant farmers were told to believe “that the police were powerful enough to teach the

Union, namely *Tochi to Jiyu* (Land and Liberty). See: Aoki Keiichiro, *op. cit.* (1947), pp.48-49.

⁵⁰ Ann Waswo, *op. cit.* (1982), pp.366-411.

⁵¹ Ann Waswo, *op. cit.* (1982), p.375. The relationship between tenant and landlord in that “natural community” was seen by the landlord as “one based on the goodwill of the landlord and not on the unreasonable claim by farmer unions” as was recorded in the dispute that occurred in Gifu Prefecture in Wago village in 1929 in which 66 tenant farmers demanded a reduction of their rent. See: *Jirei* (1930), pp.425-427.

⁵² As for example in 1922, namely in the Fuseishi dispute in Kagawa Prefecture and in the Kisaki uprising in Niigata Prefecture.

owners a lesson.”⁵³ For example, in a survey carried out by the Ministry of Agriculture in 1921, it was concluded that the “landowners thought of the police as protectors of the tenants.”⁵⁴ The farmers came to expect much of the police officer in their role as middlemen in disputes. But, as Hironaka Toshio points out in his study on the measures taken by the government to resolve unrest in the farm village, the attitude of the tenants towards the police and, in general towards the “authorities,” changed radically over the span of only a few years.⁵⁵ In the first part of the 20th century, the police officer’s presence in the village was appreciated by tenants. Even at the inaugural meeting of the Japan Farmers’ Union in April, 1922, a statement was issued that supported the police officers’ presence in the villages. In this statement, the union stated that “no kind of hatred” was felt towards the police.⁵⁶ Only one year later, that positive attitude had changed radically and, during the second general meeting of the Japan Farmers’ Union, in February, police officers were referred to as being the landowners’ “dogs.”⁵⁷

The police in the village came to suffer a reputation as repressive toward the tenant farmers.⁵⁸ The main reason for the tenant farmers’ change in attitudes toward police officers was the increasing penetration of socialist activists in the village, but it was also due to a change in the organization and objectives of the police force. The tone at the start of the farm disputes between 1917 and 1920, when local policemen were defending tenants against landowners, had changed when members the new national police force, the Special Higher Police, were sent to conflict-intensive villages in order to prevent communist ideology from taking hold amongst the tenants.⁵⁹ During 16 years of

⁵³ Hironaka Toshio, *Nochi rippo shi kenkyu* [Research on Farm Land Legislation History] (1977), pp.93-94. In the surveys published by the Ministry for Agriculture in 1922, the tenant farmers were said in general to “obey the police officer’s orders very well and they considered the police officer as showing compassion for the tenant farmers.”

⁵⁴ *Kosaku sogi ni kansuru chosa* (Volume 1, 1922), pp. 175-176.

⁵⁵ Hironaka Toshio, *op. cit.* (1977), p.93-107. Several measures were taken by the central authorities which resulted in the interference of a central police force that was more repressive against the tenant movement than the local police officer that obeyed by the farmers.

⁵⁶ Aoki Keiichiro, *op. cit.* (1947), pp.64-65; Hironaka Toshio, *op. cit.* (1977) p.94.

⁵⁷ Hironaka Toshio, *op. cit.* (1977), p.94.

⁵⁸ Shibuya Teisuke, *Nomin aishi kara rokujunen* [Sixty Years after Peasants’ Activity History] (1986), p.65. Shibuya Teisuke provides a lively account of the police officers intervention in the tenancy disputes. The tenant farmers called the police officers the “dogs of the landlords”. In the mind of the tenants the police did everything for the landlords and were obedient to the owners as a dog is to his master.

⁵⁹ See: Elise K. Tipton, *The Japanese Police State: The Tokko in Interwar Japan* (1990).

tenancy disputes (1925-1940), between 3500 and 8538 people involved in the tenant farmer movement were indicted and charged with offenses.⁶⁰ Perhaps even more than the number of people indicted, the violent methods used by the police to divert tenant farmers from actions against landowners reveal the increasingly repressive character of the Showa-era police.

To make matters worse, the police often volunteered to act as mediators in disputes. This type of mediation sometimes resulted in a settlement, but, in most cases, the tenants were dissatisfied with the method and results of police mediation. They severely criticized what they referred to as “*mediation-with-the-gun*.”⁶¹

In 1921, Home Minister Tokonami Takejiro exhorted the police to take firm action against “extremists.”⁶² The next year, he again warned against these extremists, but this time specified that the police should be aware of their influence among tenant farmers. Action by the government against extremists was not limited to leftist activists, such as union leaders, but extended to Catholic leaders and university professors. All “agitators” were prevented from entering the villages.

October, 1921, marked a turning point in the role of the police in the tenancy relationships of some villages in Gifu Prefecture. The police stopped to protect the tenants and started to prevent them from opposing their landlords. This shift occurred following the passage of Prefectural Ordinance No. 40, which amended the Police Ordinance for Criminal Offenses, by enlarging the rural police’s power to intervene in farm tenancy disputes. A similar ordinance was enacted in December, 1921, in Saitama Prefecture, and most other prefectures followed the next year.⁶³

⁶⁰ Tenants farmers could be charged with several offenses in one arrest. Therefore, the number of arrested tenants is lower than the number of charges. Richard Smethurst, *op. cit.* (1986), p.37, note 88 and p.351, note 51.

⁶¹ The “mediation-with-the-gun” by the Special Higher Police became famous in 1932 as a result of the tenancy dispute in Miyagi Prefecture (Mono district). A very aggressive police officer made the parties compromise while wagging his gun at the parties. See also: Okado Masakatsu, *op. cit.* (1983), p.14. Adachi Mikio also states that “conciliation-with-the-sable” (*saberu chotei*) occurred. See: Adachi Mikio, ‘kosaku chotei ho (ho taisei saihenki)’ [The Farm Tenancy Conciliation Law (Restoring the Legal Order)] in: *Nihon kindai ho hattatsushi*, Volume 7, 1959.

⁶² Tokonami Takejiro (1866-1935) belonged to the Seiyukai and held the position of Minister of Home Affairs in the government of Hara Takashi and Takahashi Korekiyo. He was known for his severe opposition to socialist actions and his policy of repressiveness against groups and people involved in these actions.

⁶³ Saitama Prefecture is situated in the Northeast of Tokyo and was therefore subject to an

Moreover, in December, 1921, the Ministry of Home Affairs decided to establish a "mobile police force," designed to monitor leftist "subversives" in order to ensure that they did not propagate their ideas in the villages. In effect, the mobile police was authorized to limit the mobility of the national leaders of the tenant farmer movement.⁶⁴ Officially they "protected passengers and their possessions on trains," but actually they were trained to prevent the spread of the farm tenant movement by restricting the mobility of its leaders.⁶⁵ The mobile police sought to prevent the socialist activists from reaching the villages and spreading their ideas in places where tenants and landowners were still living "harmoniously" together. The government feared the growing popularity of the national farmers' union, which had been caused, in part, by extensive coverage of actions by socialist activists in major newspapers, such as the Mainichi Newspaper and the Asahi Newspaper.

Another reform of the police force took place in 1920 on the local level, where police officers were sent to reside permanently in those districts coping with tenancy disputes. In those districts, the existing Farm Police Department was reinforced by a "Police Sergeant Specialist in the Control of the Farm Tenancy Problem." This officer was under the direct control of the Ministry of Home Affairs.⁶⁶ His function was similar to that of the national mobile police force, namely to prevent tenant unions from spreading their influence in the village. Hironaka Toshio reports of cases where union leaders were forced to cease operations due to pressure from police officers. Aside from their direct actions against tenant unions, the police indirectly countered the unions by arbitrating in farm tenancy disputes.⁶⁷

intense metropolitan influence. A very realistic picture of the role of the police in the tenant movement in this prefecture, is provided by Yasuda Tsuneo. Yasuda Tsuneo, *Deai no shisoshi: Shibuya Teisuke ron* [Ideological History Concerning Encounters = Discourse on Shibuya Teisuke] (1981), p.315. The scope of the involvement of "proletarian parties" to which the tenant movement was assimilated, differed from prefecture to prefecture. For example in Osaka in 1925, disputes showed little connection with ideology as only 15.5 percent of the disputes was connected with socialist parties compared to Fukuoka (68 percent), Niigata (66 percent), Tochigi (49 percent) and Okayama (20 percent). See: Osaka shakai rodo undo shi iinkai (ed.), *Osaka shakai rodo undo shi* [History of Social and Labor Movement in Osaka] (Volume 2, 1989), p.1936.

⁶⁴ Administrative Ordinance. Issued by the Ministry of Home Affairs, No. 110.

⁶⁵ Hironaka Toshio, *op. cit.* (1977), pp.112-116.

⁶⁶ This post was first created in October, 1920, in Gifu Prefecture where, as we have pointed out, many conflicts were recorded in the initial period of the tenancy problem (1917-1924). See: Hironaka Toshio, *op. cit.* (1977), p.102.

⁶⁷ The decision by the Supreme Court on January 29th 1924 stated that arbitration "belonged to the authority of the police." Cited in: *Daishinin Keiji hanreishu* (Collection of cases of the Penal Section of the Supreme Court) (Volume 3, 1924), p.37.

Many illustrations of the repressive character of police arbitration were recorded in official surveys. In Shimane Prefecture, for example, the tenants' "*collective action was crushed by one blow from the police.*"⁶⁸ Another typical example of the methods used by the police in "reconciling" conflicting parties in farm villages, was recorded in Yamaguchi Prefecture at the beginning of 1922. In this incident, approximately 30 tenants were negotiating with the owners for a reduction of tenancy rent for that year. At a point where it appeared that the dispute was about to become more intense, a local police officer summoned the tenants to a room in the local elementary school. His address to the tenant farmers was short but clear:

Collective action is not allowed according to the law, and, traditionally, the relationship between tenant and owner is similar to that of parent and child. So it should be. You should therefore ask your landowner individually, in a gentle way, to grant you a rent reduction. If you do not act as I say then the police shall be obliged to punish you severely. But you don't have to worry, this year everyone knows that the harvest was poor and, thus, if you, in a gentle way, implore individually, the owners should accept a correct amount of rent reduction. If the owners persist in their refusal, then I shall take measures against them.⁶⁹

In general, police officers did not intervene directly in helping the parties to find a compromise in their opposition, but rather pointed out to them that, by virtue of their "authority," they could end the conflict at any time.⁷⁰

The farmer unions played an important role in neutralizing the tenants' fear of the police by sending lawyers to the village to counter the landowners's legal measures and to oppose the police officers' actions. In the Minamikata dispute, for example, coercive mediation by the police failed to end the conflict. This dispute occurred in Miyagi Prefecture in 1929. Two landowners —Mori and Asano— were opposed to one tenant farmer. Without informing his tenant farmer, Mori sold his farmland to Asano, who wanted to evict the farmer after buying the land. The tenant, who had already cultivated the land for more than 20 years, was convinced after consultation with the union that because of the period he had been cultivating the land, he had "cultivation rights," and could

⁶⁸ *Kosaku sogi ni kan suru chosa* (Volume 1, 1922), p.340.

⁶⁹ This case is cited in: Hironaka Toshio, *op. cit.* (1977), p.106.

⁷⁰ Kawashima Takeyoshi, 'Junpo seishin' in: Kawashima Takeyoshi, *Kindai shakai to ho* (1959), p.108.

oppose the eviction on that basis.⁷¹ First, the tenant tried to assert this in the traditional manner, which was to implore his landowner to accept a continuation of the tenancy agreement, but the new owner refused. Consequently, the tenant requested further assistance from the farmers union. The union, in turn, sent a lawyer of the Japan People's Party to the farmers' aid. The lawyer initiated a formal court case to confirm the tenant's cultivation rights. When Asano attempted to begin cultivation before the court decision was issued, the tenant farmer, together with 15 others, violently prevented him from doing so. The tenant was arrested by the police officer who had previously attempted to mediate in the dispute. Nevertheless, the tenant persisted in asserting that, according to the law, he had a permanent cultivation right. The tenant stressed to the police officer that he refused to recognize any interference by the police because, according to the tenant, only a court decision could be the ultimate solution.⁷²

Police intervention also proved unsuccessful in a dispute in Uenomachi. According to a survey carried out by the Ministry of Agriculture in 1927 in the Uenomachi village in Kagawa Prefecture, a dispute between three owners and 18 tenants occurred because of the tenants' dissatisfaction with the high rent. The dispute occurred in stages: first, a non-payment association was established; and secondly, the tenants sought and received support from Hirano Rikizo, a representative of the Japan Farmer Union. The landowners reacted by suing the tenants for non-payment of rent and demanding return of the land, a measure that angered the tenant farmers.⁷³ The court ordered a "provisional injunction against harvesting" (*ineritsumo no karisashiosae* 稲立毛の仮差押).⁷⁴ Before the owners could have that provisional injunction executed, however, a police officer was appointed to mediate in the dispute. The landowners were satisfied with this turn of events and "entrusted the issue of the tenancy rent and the remaining issues of the compromise to the chief of police."⁷⁵ The tenant farmers, however,

⁷¹ Jirei (1929), p.246.

⁷² Jirei (1929), pp.246-248. Later, the dispute was settled by the tenancy officer.

⁷³ The tenants were helped by Hirano Rikizo (1898-1981) a socialist activist for the tenant farmers and co-founder of the Japan People's Party.

⁷⁴ The result of the Provisional Injunction (*kari sashiosae* 仮差押) and the Provisional Disposition (*kari shobun* 仮処分) requested by the owners was that the tenants were prevented from cultivating the land any longer. One of the tenant leaders in Saitama Prefecture points out that, for the tenants, this was the worst sanction they could receive. Consequently, many tenants left the tenant union and wrote a letter of apology to the owner. See: Shibuya Teisuke, *op. cit.* (1986), p.78.

⁷⁵ Jirei (1929), p.457.

refused to compromise. Finally, the owners realized that the police were incapable of resolving the dispute and withdrew their support for the procedure, and the judge decided to take the mediation out of the hands of the police chief.⁷⁶

In conclusion, landowners consistently failed to control tenancy disputes in a manner that would have avoided the involvement of the unions. By their direct paternalistic authority, expressed through the cooperative associations, and their indirect control of their tenant farmers by the coercive mediation of the police, failed to stem the tide of frustration among their tenants. The best tool for the police had been the fear on the part of the villagers of their power — a fear that forced many tenants to compromise. After 1922, however, due to the increasing influence of nationally organized unions and their information dissemination activities, that fear diminished. The tenants were made aware of their collective strength and came to understand the class implications of their struggle. Under the influence of the unions, the tenants realized that they could challenge the landowners' authority in court, usually with the aid of a pro-tenant lawyer connected with the unions. By fighting the owners in court, tenants could avoid coercive mediation by the police. This was probably the first time that the tenant farmers had seen a distinction between the courts and the police as instrumentalities of state power.

4.3. The Failure of Adjudication

In Western modern legal systems, the courts are “the ultimate authority” in conflict resolution when other means of informal conflict resolution fail. Such a system is, according to Max Weber, characterized by formality and rationality, which imply stability of norms and predictability of the outcome of a court verdict according to those norms.⁷⁷

After the Meiji Restoration, a modern Western legal system was implemented by the political elite in Japan. In the closed Japanese farm village, however, people had no ties to the new system of legal norms that had suddenly been adopted by Meiji authorities in a remote capital. The courts, where judges implemented the new legal norms, were considered “the judgement seat of the

⁷⁶ *Jirei* (1929), p.458.

⁷⁷ Max Weber, *Wirtschaft und Gesellschaft: Grundriss der verstehenden Soziologie* (1922), translated by Guenther Roth and Claus Wittich (1978).

⁷⁸ Cited in Kawashima Takeyoshi, *op. cit.* (1959), p.108. Also cited by Adachi Mikio, *op. cit.* (1959). That expression is originally from a discussion criticizing the establishing of the

mighty” by most people.⁷⁸ Courts were to be avoided at all cost because of its repressive and coercive character, and its lack of understanding of “real” society. As Kawashima Takeyoshi points out:

To the people, the government was a superior master that rendered a modern normative consciousness impossible. The government was the prosecutor (all government employees wearing a uniform assumed *prosecutorial authority*) which only from time to time displayed a paternal concern for the people.⁷⁹

The government made no effort to lessen people’s fear of the courts, but rather, advised people to use informal traditional procedures to settle their disputes. The use of litigation, a legislator said, “will make people bad.” As a result, tenant farmers became averse to formal litigation. Nevertheless, it should be noticed that for landowners living outside the village, the court was a useful means to intimidate their tenants. Landowners often sued their tenants for overdue rent and to secure the return of their farmland. In 1935, for example, 2940 civil lawsuits were filed by landowners against their tenants, while only 17 cases were initiated by tenant farmers against owners.⁸⁰ In particular, landowners who lived in town were unconcerned with the reaction of the villagers when they sued. Moreover, landowners were often assured of victory as the courts had to render judgements according to the norms of the Meiji Civil Code.

Under the influence of the socialist movement after the First World War, tenants became less afraid of the courts. The unions were devoted to developing an appreciation for legal rights among the tenant farmers, while at the same time pointing out that the courts were promoting the government’s policy of repression of the tenants. The time was ripe for the tenant farmers to demand an amendment of the legal norms so that they might be assured of a fair trial.

Under the growing influence of the unions, tenants who had previously feared the involvement of the courts in their disputes began to aggressively defend their cases in court from the end of the First World War.⁸¹ The tenant’s

obligation to register real property in court. See: Kawashima Takeyoshi, *op. cit.* (1959), p. 109.

⁷⁹ Kawashima Takeyoshi, *op. cit.* (1959), p.108.

⁸⁰ *Kosaku nenpo* (1935).

⁸¹ The bulletin issued by the Japan Farmer Union included slogans such as “Tenancy disputes are the right and the duty of the tenants !” See: *Tochi to Jiyu* 78 (August 11th 1928).

most valuable tools in this respect were the provisions in the Meiji Civil Code that incorporated customary rights like those stipulated by Article 277. This Article could be invoked when the tenants claimed to have a “*customary rent reduction right*.” Furthermore the additional protection from eviction by the landowner, in cases involving a permanent tenancy agreement, often resulted in the tenants claiming a “*customary right for perpetual tenancy*.”⁸² Those tenant farmers whose families were often connected with the same land for generations, argued in court that the provisions in the Meiji Code for ordinary tenancy were not applicable to their situation.⁸³

However, the unions' involvement in promoting knowledge of the law among the farmers did not result in more respect for the courts' Judgements. If the judgement was favorable for the landowners, the tenants would resist the execution of that judgement. The tension between tenants and landowners arose in the farm village and the relationship became similar to what Kawashima Takeyoshi referred to as a “*social vacuum*.”⁸⁴ For the farm village, this meant that the two groups became confrontational and abandoned any hope of cooperation. The landowners ceased to manage and care for the tenants, while the tenants refused to obey and submit to the landowners. As Kawashima notes, only when the ties between landowner and tenant were severed could parties resort to adjudication without facing social sanctions. The parties involved in a given case used the court as one weapon in a “conflict of no return.”⁸⁵

Often, although the tenants were aware that adjudication resulted in unfavorable judgements for them, they nevertheless felt that by litigating, they made the owners aware that “the landowners' courts” no longer intimidated them. The Japan Farmers' Union, for example, reported that it realized that “the tenants are doomed to lose in court cases, this fact is clearer than fire”⁸⁶ because of the “secret pact between the owners and the court.”⁸⁷ But the tenants made the owners lose time and money and, through media coverage, they received publicity for their struggle. Even when a judgement in favor of the

⁸² Adachi Mikio, *op. cit.* (1959), p.50.

⁸³ *Ibid.* (1959), pp.50–51.

⁸⁴ Kawashima Takeyoshi, ‘Kenri no taikai’ in: Kawashima Takeyoshi, *Kindai shakai to ho* (1959), p.152.

⁸⁵ Kawashima Takeyoshi uses the expression “an irreconcilable war-like situation.” (*fugu taiten no senso jotai*). Kawashima Takeyoshi, *op. cit.* (1959), p.152.

⁸⁶ See: *Tochi to Jiyu* 31 (July 5th 1924).

⁸⁷ See: *Tochi to Jiyu* 53 (June 8th 1926).

owner was rendered, its enforcement was not easily achieved. Often, bailiffs seeking to execute judgements would face violent obstruction by the tenant farmers.⁸⁸

One typical illustration where law did not settle but, rather, intensified the tension between tenant farmers and landowners was the Imaomachi conflict of 1932 in Gifu Prefecture.⁸⁹ The tenants' dissatisfaction began in 1931, when the region had to cope with a poor harvest due to heavy rainfall. The farmers asked for a rent reduction of 36 liters of rice per field of about 10 acres for that year and emphasized their demand by means of violent action. Highly irritated by this aggressive attitude, the landowner ordered the immediate return of the farmland. The tenant farmers, afraid to lose their land, abandoned their demand and paid their rent. The landowner, however, still wanted to evict his tenants and stressed this intention through formal action in court. He first obtained a "provisional attachment" of the tenants' household effects and other mobile goods anticipating a victory in the "eviction lawsuit."⁹⁰

At this point, the tenant farmers accused the landowner of having a bad attitude and decided to confront him. The tenants first joined the National Farmers' Union and thus "consolidated their unity."⁹¹ The union assumed responsibility for challenging the legal action of the landowners. The tenants did not actually participate in forming the legal strategy, but rather, gave carte blanche to the union's lawyer. The union leaders ordered that *all* tenants involved in the dispute be present at the court sessions. As a result, the trial was extended for more than 6 months and every session was a serious irritation

⁸⁸ Morinaga Eizaburo, *Zoku shidan saiban* [Continuing the Historical Talk on the Court] (1969), pp.105-114. Morinaga reports of a famous incident involving a violent obstruction. This famous case happened in the Niigata Prefecture and became known as the *toriya-jiken*. After the judgement, the bailiff went to the tenants' residence to perform a compulsory execution of the court's verdict. At that time, the following occurred: "the shutters at the entrance of [tenant] Mori's house were closed by Sato and Tomatsu as if they wanted to shut the bailiff up. To free the bailiff, the police destroyed the shutters and entered without taking off their shoes. Sato and Sato Hajime yelled at them that it was of poor manners to enter without taking off their shoes. Sato himself had not taken his shoes off either, and was arrested on the spot. Then 600 peasants arrived to help the tenants and they confronted the police. The police ordered the dispersion of the tenants, but the peasants threw mud at the policemen." Morinaga Eizaburo, *op. cit.* (1969), p.109.

⁸⁹ *Jirei* (1932), pp.229-236. The dispute erupted on January 28th 1932 and lasted until November 8th of the same year.

⁹⁰ *Jirei* (1932), p. 230. The landlords were angered by the "tenant's oppressive action". Actually the landlords were irritated that the tenant farmers did not obey them unconditionally anymore.

⁹¹ *Jirei* (1932), p.231.

for the owner due to the overwhelming presence of tenants. After a while, the owner fell into serious financial trouble and personal depression because of the mounting trial costs. In August, 1932, both parties agreed to discontinue litigation and to apply for out-of-court mediation.⁹²

The judges, too, were becoming aware of their lack of power to resolve farm tenancy disputes and, therefore, became more active in guiding the parties to an out-of-court settlement. Although few statistical sources remain, it is apparent from the civil actions between landowners and tenant farmers in Shiga Prefecture that an inclination existed to settle disputes other than through court judgement.⁹³ Between 1926 and 1935, only three conflicts ended with a judgment and three other cases were dismissed in Shiga.⁹⁴ A much higher number of disputes (15 cases) was mediated by the judge during the trial, while the overwhelming number of formal court actions, 71 disputes, ended with the withdrawal of the lawsuit. Once the lawsuit was withdrawn, the dispute could be settled by out-of-court mediation.⁹⁵

In the farm tenancy disputes, the opposition between the parties only became “*more and more intense*” when litigation was initiated.⁹⁶ Not only the lack of trust in the neutrality of the court, but also the threat of the loss of their land, caused tenants to view the entire process as “a betrayal of the tenant

⁹² *Jirei* (1932), pp.229-236. In at least 14 other representative cases recorded by the bureaucrats, the escalation of the farm tenancy conflict after the landlord's initiation of a lawsuit is noted. Dispersed over the whole country and over several years, the involvement of the court became a turning point in the disputes. This signified the end of the tenancy relationship as a factor in the farm tenancy disputes.

⁹³ Sakane Yoshihiro, *op. cit.* (1990), pp.172-173.

⁹⁴ Sakane Yoshihiro, *op. cit.* (1990), pp.172-173. Sakane points out that many records of local tribunals concerning tenancy disputes were lost during the war. According to Sakane, only the records of Shiga Prefecture were preserved. In his view the incentive of the judge to conciliate is motivated by a political consideration. This interpretation by Sakane of the tendency by the Japanese judge to prefer conciliation over adjudication coincides with that of Hironaka Toshio, who asserts that the tendency is caused by an aversion of Japanese judges to rendering verdicts with a strong social impact as a precedent. See: Hironaka Toshio, ‘Shimin no kenri no kakuho to minjisaiban’ [The Preservation of the Citizen's Rights and Civil Court Action]. in: Hironaka Toshio, *Ho to saiban* (1971), pp.117-141.

⁹⁵ Sakane Yoshihiro, *op. cit.* (1990).

⁹⁶ *Jirei* (1929), pp.439-445. The tenants in the Omichi village demanded, in January, 1929, that their rent be reduced by 50 percent. The landlords responded that a rent reduction would be accorded, but only after they investigate the crop. The tenant farmers, however, refused to negotiate with the landlords and, on the advice of Morita, the branch chief of the Japan Farmer Union and of a lawyer sent by the main office of the union in Osaka, the tenant farmers refused to pay any rent until an agreement was reached. The landlords reacted by initiating a lawsuit to evict the tenants from the farmland. Also in this dispute, a confrontation between the union and the landlords was the cause of the escalation of the farm tenancy dispute.

community.”⁹⁷ In view of the intensification of the problem, the head of the village and other authorities advised the landowners to avoid litigation. They argued that it would only result in a waste of money and time, and, more importantly, that “litigation would result in a loss of social support.”⁹⁸ The authorities needed to avoid this because it could engender an even larger social movement that would threaten the power of the political elite.

5. The Legal Foundations for a Farm Tenancy Conciliation System

Beginning in the 1920s, it became apparent in the farm villages that traditional means of conflict resolution could not contain the tension between landowners and tenants. Nor could existing formal measures, such as adjudication, resolve the numerous disputes. The number of disputes and their intensity gradually increased, prompting the government to seek efficient measures to prevent stagnation of the developing Japanese society.

Central to the attempts to resolve the disputes was an effort to control the influence of the unions in the farmer village. Although farmers' unions had existed since the beginning of the Meiji Period, it was not until the early 1920s that the unions proliferated and became increasingly confrontational.⁹⁹ In response to those aspects of the unions, the first measure of the Japanese

⁹⁷ *Jirei* (1930), pp.254-264. The sale of land and the reluctance of the new owner to have the tenant farmers continue the tenancy relationship was the start of the conflict in the Ikuri village in Niigata Prefecture (1929). Further, in 1933, in the Iwanota village in Gifu Prefecture, the tenants and landlords disagreed on the terms of a new tenancy agreement that was negotiated. In view of the impasse of the negotiations the landlords sued the tenants. This measure resulted in the “irritation” of the tenants and the escalation of the conflict as all further contact with the landlords was broken. See: *Jirei* (1934), pp.286-290.

⁹⁸ These kinds of arguments were often used by the mediators in order to put pressure on the landlords to withdraw the lawsuit. Landlords and tenant farmers were sensitive to the capital-related arguments, as was the case for the disputes in Sakamoto village in 1933 and in Ninomiya village in 1934, both situated in Kagawa Prefecture. See: *Jirei* (1933), pp.484-490 and 1934, pp.378-381. Even more important for both parties was the fear to lose support for their struggle and to become isolated. Isolation had always been the worst sanction in the farm village and even in the interwar period villagers remained sensitive to this fear. In Niigata and Yamaguchi Prefecture in 1934, some disputes were settled after a warning in that sense by the mediator. See: *Jirei* (1934), pp.254-258 and 372-375.

⁹⁹ Noshomusho nomukyoku (ed.) *Honpo ni okeru nogyo dantai ni kansuru chosa* [Survey of the Agricultural Organizations in this Country] (1922). See also: Ann Waswo, *op. cit.* (1982), p.369. In 1920, Aomori, Iwate, Akita and Yamagata in the Tohoku region and Okinawa in the most southern part of Japan were the only prefectures where no disputes were recorded. In 1917, 173 unions were reported and the development of tenant unions reached its peak in 1927 with 4,582 unions and a total membership of 9.6 per cent of tenant farmers.

government in addressing the problem between tenant farmers and their landowners was through the promotion of a “family ideology” by way of the “Temporary Educational Committees” (*rinji kyoiku kaigi* 臨時教育会議) created in January, 1919.¹⁰⁰ The regional and central rulers were convinced that “an overhaul of the education system would be necessary to educate the farmers to maintain a society based upon proud customs and strong, uncomplicated values.”¹⁰¹ The unions targeted this paternalistic order in particular to encourage the tenants’ reliance upon formal legal provisions. Promoting the family ideology actually resulted in widening the gap between the landowner elite and the unions. Accordingly, another formal system for the resolution of farm tenancy disputes that would be acceptable to both groups had to be established in order to restore order in the farm village.

5.1. A Special Committee for the Development of Measures

In 1920, a few bureaucrats in the Ministry for Agriculture sought to take the initiative in reforming the farm villages. They wanted to establish a special committee to pursue reform measures. The initiative of these bureaucrats was only implemented when the danger of real class conflict intensified, drawing widespread media coverage.¹⁰² As a result of the awareness of this danger, the government reluctantly referred all further efforts to address the farm tenancy problem to the “Board for Investigation of the Farm Tenancy System” (*kosaku seido chosa iinkai* 小作制度調査委員会) which had been established in November, 1920.¹⁰³ The Board consisted of bureaucrats from various departments, influential scholars, and legislators. Together, they debated reform measures to restore peace in the farm villages. The government instructed them that their main objective in the reform measures should be to restore the stability of

¹⁰⁰ Hironaka Toshio, *op. cit.* (1977), p.13. See also: Kawashima Takeyoshi, *Ideologii toshite no kazokuseido* [The Family System as an Ideology] (1957), pp.49–50. As Kawashima Takeyoshi explains, the goal of these committees was to pacify the class conflict in society. It also made military exercise in school compulsory and, according to its decisions, the Council for Temporary Legal System was established in 1919 to amend the stipulations in the Meiji Civil Code so that they would match the “beautiful customs existing from ancient times in our country.”

¹⁰¹ Hironaka Toshio, *op. cit.* (1977), p.13.

¹⁰² The initially negative advice from high level bureaucrats failed to be enthusiastic. They felt that the establishment of the Board would be “inevitable” in view of recent developments in the conflicts. See: Kawaguchi Yoshihiko, *Kindai nihon no tochi hokannen* [The Idea on Land Law in Modern Japan] (1990), pp.178–181.

¹⁰³ The term “Board” will be used to refer to the “Board for Investigation of the Farm Tenancy System.”

agricultural production, necessary to satisfy the demands of the growing urban centers.¹⁰⁴ Industry had become too important for the government to allow problems between tenants and landowners to endanger the development of Japanese society.

Coordination of the Board's activities was entrusted to bureaucrats of the Ministry of Agriculture's Tenancy Section. This Section was headed by Kodaira Kenichi and Ishiguro Tadaatsu.¹⁰⁵ They selected prominent scholars, who were to suggest possible measures and to compare conflict resolution systems in foreign countries coping with similar problems.¹⁰⁶ The Board intended to develop measures designed to promote independent farming, but initially failed to implement such measures due to their perceived high cost. Another measure that was proposed to the Board members was a draft bill regulating the farm tenancy unions. This, however, would mean that the division between tenants and landowners would be formalized within the organization of the village.

5.2. Amending the Provisions of the Meiji Civil Code

The first proposal was for a new tenancy law to be incorporated in the Civil Code. This was submitted to the Board in the form of the "Secretaries' Private Draft" (*kanji shian* 幹事私案) prepared by Ishiguro and Kodaira. This Draft, and the research material upon which it was based were discussed in the Special Committee meeting of June 17th, 1921. Many elements of the Draft revealed an increased willingness to concede to the tenants' demands for formal legal rights.

Article 3 of the Draft stipulated that a permanent tenancy agreement would

¹⁰⁴ Kawaguchi Yoshihiko, *op. cit.* (1990), p.15. Structural changes in the market made the concentration on commercial activities by the landowners an impediment to the development of Japanese society.

¹⁰⁵ The Ministry of Agriculture and Commerce (*noshomusho* 農商務省) was first established in April, 1881, on the initiative of Okuma Shigenobu and Ito Hirobumi. Later, in the early 1920s, the name of this ministry was changed to Ministry of Agriculture and Forestry (*norinsho* 農林省). Ishiguro Tadaatsu (1884-1960) became Minister of Agriculture first in 1940, under Prime Minister Konoe Fumimaro and, later, in 1945, under Prime Minister Suzuki Kantaro. See: Norin suisansho hensan iinkai, *Norin suisansho hyakunen shi* [History of 100 year of the Ministry of Agriculture] (1979). See also: Otake Keisuke, *Ishiguro Tadaatsu no nosei shiso* [Ishiguro Tadaatsu's Ideas Concerning Agricultural Policy] (1984).

¹⁰⁶ Hironaka Toshio, *op. cit.* (1977), p.19. See also: Ono Takeo, *Kosaku rippo junenshi* [10 years of Farm Tenancy Legislation] (1932). They also conducted empirical research on the circumstances of the farm tenancy relationship in several regions of Japan. The bureaucrats of the Ministry of Agriculture considered the lack of such empirical research a major handicap for resolving the farm tenancy problem.

be valid for up to 50 years, thus providing more security for the permanent farmers, whose agreements were valid for only 20 years according to Article 604 of the Meiji Civil Code. Perhaps the most important provision for the tenant farmers in the Private Draft appears in Article 7 and abolishes the need for the tenant farmer to obtain the explicit permission of their landowner in order to transfer their tenancy right. This article also stipulated that, in the event a doubt existed as to whether the tenancy agreement was permanent or ordinary, the agreement would automatically be considered as permanent.¹⁰⁷ As a result of this change, landowners could no longer claim complete control over the land upon the lapse of a renewable contract since most farming was carried out for generations without a written contract (a situation that inevitably caused friction when owners and tenants did not agree on the nature of the oral contract). The Draft would render most tenancy relationships into permanent tenancy agreements.¹⁰⁸

In contrast to the reforms urged in the Private Draft, other members of the Board argued for the restoration of the paternalistic structure in the relationship between tenants and landowners. The government also considered the proposed legal amendments inappropriate, as was explained in the Board's general session of November 27th, 1920 by the Minister of Agriculture, Yamamoto Tatsuo.¹⁰⁹

Inadequacies in the [farm tenancy] system sometimes cause conflicts between tenant farmers and landowners, which disturbs order in the farm villages. Moreover, I think that this problem is not just restricted to one local village, but is an important social problem (...). I would like to urge the development of a strategy to improve the farm tenancy system, but in spite of loud voices demanding an immediate enactment of a farm tenancy law, it is not possible at this time to stipulate in a uniform way which customs exist in the different regions. I think this issue cannot be compared to legislation regulating industrial relationships. Please, bear this in mind (...).¹¹⁰

The message was clear. The government was reluctant to formally change

¹⁰⁷ Hironaka Toshio, *op. cit.* (1977), p.36. Yokoi Tokiyoshi stated that he thought that in this article 7 the "interest of the tenant farmers is taken too much into consideration" See: Hironaka Toshio, *op. cit.* (1977), p.38.

¹⁰⁸ Hironaka Toshio, *op. cit.* (1977), pp.36-55.

¹⁰⁹ Yamamoto Tatsuo (1856-1947) was a pioneer for introducing members of the financial world to politics. He was not a member of a political party, but made his career at a private company (Mitsubishi).

¹¹⁰ Cited in: Hironaka Toshio, *op. cit.* (1977), pp.20-21.

the farm tenancy system, because it feared doing so would result in a situation similar to the antagonistic relation between employers and employees in large industries. Yokoi Tokiyoshi, a member of the Board, fervently defended the traditional relationship between tenant and landowner and was therefore radically opposed to the Private Draft.¹¹¹ In his opinion, if the Draft became law, the traditional paternalistic relationship between landowner and tenant would collapse. Yokoi and Yamasaki feared that the Secretaries' Draft would undermine the dominant position of the ruling elite in the village and that this, in turn, would result in the disintegration of the village due to a lack of organization and consequent stagnation of production.¹¹² Moreover, Yokoi argued, it would be unjust to take land from the landowners who had obtained ownership of the land through "hard labor and love for the land."¹¹³

In the tense atmosphere created by these disagreements, many Board members ultimately chose to dilute the provisions for granting rights to tenants in the secretaries' personal proposal to such an extent that the draft became remarkably less favorable for tenant farmers than it had originally been. Nevertheless, no consensus with regard to a final bill was reached.

The reaction of both tenants and landowners to the Board's proposals was negative. On the one hand, landowner unions in, for example, Tochigi and Niigata Prefectures, organized intensive lobbying to revise articles of the Draft. On the other hand, tenant farmers stated through the Japan Farmer Union that such a farm tenancy law would not go far enough to alleviate their oppression. Tenants issued their own proposed draft law.¹¹⁴ As a result of these pressures from affected groups, the Board decided to shelve the Draft law because proceeding with it would jeopardize their primary purpose — preventing further escalation of the tenancy problem.

The Board finally arrived at a breakthrough in its deliberations over the

¹¹¹ Kawaguchi Yoshihiko, *op. cit.* (1990), pp.179-180. Despite the opposition by the Board members in favor of the landowners, they did not oppose the draft too strongly in the beginning, as Kawaguchi Yoshihiko points out, because of the pressure that was put on them.

¹¹² Hironaka Toshio, *op. cit.* (1977), pp.36-55.

¹¹³ Kawaguchi Yoshihiko, *op. cit.* (1990), pp.91-92.

¹¹⁴ Ogura Takekazu, *Tochi rippo no shiteki kosatsu* [An Historical Survey of Land Legislation] (1951), p.492, note 5. Ogura Takekazu states that a first proposal for a "bill for tenancy rights" (*kosakuken ho soan* 小作権法草案) was prepared in 1931, by the Japan Farmer Union, but Hironaka Toshio points out that the first concrete legislative proposal from the tenant farmer movement in that sense had already been made in 1924. Hironaka Toshio, *op. cit.* (1977), p.86, note 10.

farm tenancy problem at the Sixth Session of the Special Committee in February, 1922. The consensus reached was divided into three major elements. First, it was decided that independent farming should be developed and promoted as much as possible at the local level.¹¹⁵ Secondly, the Board decided to postpone amendments to the Meiji Code's provisions relating to farm tenancy. Finally, the Board determined that a farm tenancy conciliation system should be established as soon as possible in order to settle the farm village conflicts.

Following the Board's failure to amend the stipulations in the Meiji Civil Code regulating the farm tenancy system, the Board focussed its attention on the establishment of a farm tenancy conciliation system. This major shift was motivated mainly by two factors. First, the two secretaries had become convinced that conciliation in similar disputes, specifically those resolved under the Land and House Lease Conciliation Law (enacted in March 22 1922),¹¹⁶ had proven efficient. The secretaries felt, then, that a farm tenancy conciliation system would be equally appropriate in settling disputes between tenant farmers and their landowners.¹¹⁷ Secondly, the pro-landowner Board members became increasingly confident that they could handle the disputes without making major formal concessions to the tenant farmers.¹¹⁸ Landowner unions were proliferating and motivating landowners to intensify their actions against recalcitrant tenant farmers.

Changes in society by the time of the Board's second general session in 1922 reinforced the government's sense of danger in the face of social instability. As Arai Kentaro, Minister of Agriculture, noted, disputes between tenants and landowners were intensifying and increasing rapidly in number, from 408 disputes in 1920 to 1,680 in 1921.¹¹⁹ Therefore, an efficient conflict resolution

¹¹⁵ Hironaka Toshio, *op. cit.* (1977), pp.134-135.

¹¹⁶ Kawaguchi Yoshihiko, *op. cit.* (1990), p.232.

¹¹⁷ The Land and House Lease Conciliation Law was enacted as Law no. 41 in 1922. This informal procedure settled disputes between tenants and owners of houses and land, mainly situated in urban centers. Conflicts in this sphere became numerous due to the increased number of people living in towns. In 1923, this conciliation system helped to settle many problems that occurred due to the Tokyo Earthquake of 1923. Whether this conciliation system could really solve the disputes remains the questioned according to Honma Nobuyoshi, but in that time's complex social situation, conciliation was the only possible means to resolve rapidly the various problems related to land and house lease. See: Honma Nobuyoshi, 'Kanto daishinsai to shakuchi shakuya funso no shori' [The Settlement of Disputes Related to the Lease of Land and Houses after the Big Kanto Earthquake]. in: *Hokei kenkyu* (1984), pp.18-19.

¹¹⁸ Hironaka Toshio, *op. cit.* (1977), p.88. This was pointed out at the sixth meeting of the Special Committee.

¹¹⁹ *Kosaku chotei nenpo* (1925-1926).

system was needed as quickly as possible.¹²⁰ And yet, some doubts remained about the appropriateness of a conciliation system in which the parties involved in the dispute would not be limited to formal legal norms for reaching a settlement.¹²¹ However, hasty legislation to allay such fears would only create more problems in rural society. This point was stressed by Board member Suehiro Izutaro, whose general opinion was that law should be adapted to custom and not the other way round, as had been done since the Meiji Period.¹²² Only when stability in the village was restored, then, could a farm tenancy law be enacted.

Convincing the Board that farm tenancy conciliation was the best solution to the farm tenancy problem was not a major problem for the special committee. Suehiro Izutaro explained that, in Europe, disputes similar to the farm tenancy disputes were solved by first establishing an informal system as a prelude to the establishment of formal legal reforms.¹²³ Also, Miyake Shotaro, the Board's advisor on judicial affairs who was involved in the drafting process of the bill for the Land and House Lease Conciliation Law, advised the Board to use conciliation as a means to deal with farm tenancy disputes. He opened the last day of the sixth session by explaining that:

(...) As to the project for a tenancy law, many people criticize it as being extreme. Therefore, I think it is better to first establish a farm tenancy conciliation law. Today, society is on the move, and it is therefore extremely difficult to make an appropriate law that is immovable and still applicable to all problems. Many problems would arise if such a law were to be realized. Consequently, it is better to first establish an institution to resolve [the disputes] and await the results of its efforts —results that will provide standards for the establishment of a tenancy law.¹²⁴

The 7th Special Committee Session in May, 1922, addressed preparations for

¹²⁰ Nochiseido shiryo hensan iinkai, ed. *Nochi seido shiryo shusei* [Collected Materials on the Farmland System] (Volume 3), pp.1034-1037. Reference to this primary source will be abbreviated to: *Shiryo shusei*.

¹²¹ Hironaka Toshio, *op. cit.* (1977), pp.193-194.

¹²² After the general session, three special sessions were held. Further discussion probably took place concerning further changes but all records of these three sessions were lost in the Tokyo Earthquake of 1923. For Suehiro Izutaro's view on the farm tenancy problem, see: Suehiro Izutaro, *Noson horitsu mondai* [Legal Problems Related to the Farm Village] (1924) (reedited in 1977) and Suehiro Izutaro, *Hoso zatsuwa* [Various Themes on Law] (1930).

¹²³ *Shiryo shusei* (Volume 3), p.696. Suehiro explained that in Belgian factories the conciliation system was first used to settle the disputes which occurred there. Only thereafter an amendment to the law was performed.

¹²⁴ *Shiryo shusei* (Volume 3) and commented in Kawaguchi Yoshihiko, *op. cit.* (1990), p.267.

the Draft Farm Tenancy Conciliation Law. What kind of conciliation was appropriate for resolving disputes between tenants and their landowners? Central questions raised in this session included the appropriate location for conciliation, capacities and character the ideal mediator, specifically whether mediators should be members of the village.¹²⁵

The secretaries prepared a proposal for the farm tenancy conciliation law and submitted the draft to the Special Committee during its 8th session in June, 1922. At this time, it became clear that the qualifications of the mediators would prove a difficult issue. This forced the Board to consider the relative benefits of judicial and administrative conciliation. In administrative conciliation, a local authority, such as the head of the district or village, would serve as mediator in the conciliation procedure. A judicial procedure would, of course, involve mediation by a judge.¹²⁶ As a result of this discussion, the Board decided to establish a judicial conciliation system which would make the compromise binding by law but, with strong involvement of the local administrators so that the traditional order in the village could be maintained.

The Farm Tenancy Conciliation Bill (*kosaku chotei hoan* 小作調停法案) was prepared and submitted for approval at the 46th Imperial Assembly in 1923. Minister of Agriculture Arai Kentaro presented the Bill. He stressed the urgency of its enactment because of the escalation of farm tenancy disputes due to the collapse of the traditional tenancy relationship. Arai blamed the tenants for the relationship's demise.¹²⁷

Landowners, who realized that reliance upon the outdated paternalistic tenancy relationship would not be enough to resolve the disputes, welcomed the Bill. Nevertheless, doubts within the Seiyukai, Japan's most powerful political party at the time, remained.¹²⁸ Members of the Seiyukai, traditional advocates of the landowners' interests, feared an undermining of the dominant position of the landowner in the farm village. As a result, voting on the Bill was postponed.

Two months later, a Committee for Investigation of the Farm Tenancy System (*kosaku seido chosa kai* 小作制度調査会) was established and given the

¹²⁵ These issues were raised by Okamoto, Suehiro, Yamasaki and Yokoi. Further, the remuneration of the mediators was discussed and it was decided that a small fee would be paid by the parties, but that general travel expenses were to be paid by the Treasury.

¹²⁶ Hironaka Toshio, *op. cit.* (1977), pp.157-186.

¹²⁷ *Ibid* (1977), pp.225-226.

¹²⁸ Takaochi Matsuo, 'Kosaku chotei ho shigi' [My Opinion on the Farm Tenancy Conciliation Law] in: *Horitsu jiho* (1930), No. 10, p.41.

task of amending the procedural provisions of the Farm Tenancy Conciliation Law. Several pro-landowner clauses were added, including a special provision to restrict the enactment of the Farm Tenancy Conciliation Law to those prefectures where farm tenancy disputes occurred in large numbers. In areas where landowner power was unchallenged, the conciliation procedure was not to be enforced. Moreover, although the procedure itself was judicial in nature, certain administrative aspects were incorporated into the farm tenancy conciliation law. Thus, while the actual mediator would be a judge, very close ties were ensured with local authorities traditionally belonging to the landowner class in the village.

The final Farm Tenancy Conciliation Bill was presented to the 49th Imperial Assembly on July 13th, 1924. Without encountering further obstacles, it was promulgated as Law No. 18 on July 22nd, 1924. The Farm Tenancy Conciliation Law (*kosaku chotei ho* 小作調停法 “The Law”), came into effect on December 1st in a limited number of prefectures encountering farm tenancy disputes. The bureaucrats explained the principal purpose of conciliation in an internal ordinance from the Minister of Agriculture for the prefectural governors, entitled “Directives and Information for the Operation of the Farm Tenancy Conciliation Law.”¹²⁹

Instability in the village often has its origin in problems related to rent and other economic difficulties, therefore [the Farm Tenancy Conciliation Law] was created to maintain and promote the economic benefits of agriculture in a fair way....¹³⁰

Legislators who passed the Law were satisfied that conflict resolution through conciliation was in keeping with Japanese tradition, as is apparent from a comment by Shimura Gentaro (1867-1930), a member of the House of Peers:

The provisions of the Farm Tenancy Conciliation Law are the result of intensive research by people recruited by the government. Given today's circumstances, it is not the right time to discuss a law for the redistribution of land [the object Europe's land reform] nor is it the right time to establish a farm tenancy law. As tradition is very complex, it is better in this situation to establish an informal procedure and to encourage the parties to seek understanding of their mutual circumstances in order for them to compromise where a compromise is

¹²⁹ This Internal Ordinance was sent to the prefectural governors on September 26th, 1924, as Internal Ordinance, No. 8294.

¹³⁰ *Internal Ordinance*, No. 8294.

appropriate. This will, for the present, resolve the problem and, in my opinion, this is the essence of the Farm Tenancy Conciliation Law.¹³¹

The Japan Farmers' Union was critical of the new conciliation system which, in their view, would be only another repressive means for restoring the landowner's dominant position in the village. In their opinion, the conciliation system would not be efficient as a permanent solution for the difficulties between tenant farmers and landowners, but would serve only as a temporary fix for the problems.¹³²

6. The Farm Tenancy Conciliation Law: Effective Dispute Resolution ?

6.1. The Formal Mediators in the Conciliation Procedure

During the Board's discussion concerning the establishment of a farm tenancy conciliation system, opinions about the proposed makeup of the conciliation committees caused heated discussions between two groups. On one hand, advocates of equal representation of both tenant and landowners, such as Kuwata Kumazo, argued that it would be unrealistic to expect neutrality from potentially influential members of the conciliation committee, since those connected to landowners were prominent and experienced members of the rural community.¹³³ Many tenant farmers involved in tenancy disputes were, according to Kumazo, conscious of "new" and modern ideologies and would therefore no longer accede to the paternalistic authority of the landowner elite in their village. According to this group of Board members, the growing wave of conflicts between tenant farmers and landowners signalled a final rupture between two different social classes in the farm village. Accordingly, farm tenancy disputes could only be efficiently resolved by committees consisting of an equal number of tenants and landowners. Only then could compromises hope to address each group's interests. Kumazo's faction therefore advocated the creation of a "formal mediator" as a part of the conciliation process.

Contrary to Kumazo's group, an important faction of the Board was

¹³¹ Cited in Hironaka Toshio, *op. cit.* (1977), pp.264-265.

¹³² *Tochi to Jiyu*, (1924), July 8th, No. 31 (special issue).

¹³³ Kawaguchi Yoshihiko, *op. cit.* (1990), pp.273-274.

opposed to the equal representation of classes in the conciliation committee. Acknowledging the opposition between the tenant and landowner class in the committees, argued members of this faction, would create two distinct groups at the conciliation negotiating table, resulting in the widening of the gap between the parties. This would, in turn, lead to an escalation of the conflict and inevitably result in the failure of conciliation. This group therefore proposed that the committees be formed with regard only to the qualifications of individual mediators, without regard to their respective social class. This would help to restore the tenant farmers' trust in the landowners' authority and revive the harmonious relationship of the farm village. Only when conciliation committees were created without regard to class could mediators rely solely upon "their personal human qualities" during the negotiations.¹³⁴ This faction favored the appointment of "substantive mediators" who would take into consideration all factors surrounding the dispute.¹³⁵

After much discussion, the Board devised yet another compromise on the subject of the mediation committees. Under the Board's final proposal, the farm tenancy conciliation procedure would be directed by a judge who would serve as both the head of the conciliation committee and as the "principal mediator" (*chotei shunin* 調停主任). The other mediators in the conciliation would be two laymen "committee members" (*chotei iin* 調停委員), drawn from either the landowner, tenant or independent farmer community. These three mediators would be in charge of the conciliation procedure. As envisioned by the Board, the mediators would be appointed as follows: the principal judge at the District Court would appoint mediators (Art. 29, first clause), following consultation with each of the parties involved in a given conflict (Art. 29, second clause).¹³⁶

Considering the social context of the farm village, the provision that

¹³⁴ *Ibid* (1990). See also: Kawaguchi Yoshihiko. 'Kosaku chotei ho ni okeru kihan kozo' [The Normative Structure in the Farm Tenancy Conciliation Law]. in: Toshitani Nobuyoshi, Yoshii Tamio, Mizubayashi Takeshi (ed.) *Ho ni okeru kindai to gendai* (1993), p.354.

¹³⁵ Kawaguchi Yoshihiko, *op. cit.* (1990), pp.272-275.

¹³⁶ Article 29 (TCL):

1. The director of conciliation will be appointed every year by the director of the regional court from among eligible judges.
2. The director of conciliation will appoint the conciliation committee members from among appropriate people selected by the head of the Regional Court. However, when both parties consent or when both parties have selected a person other than one selected by the director of the Regional Court, the court may appoint such persons.

required the judge to select the laymen mediators was, in fact, detrimental to the tenant farmers. For one thing, the judge would have to select a mediator likely to be respected by both landowners and tenants. This would be essential for the success of the conciliation procedure because the actual work of the conciliation would be done by the laymen committee members, with the judge serving only to ensure that the procedure's legal technicalities were observed. The mediators had to moderate between the parties, talk to them, propose the compromise—in other words, they had to be able to convince the parties to be lenient toward each other.

Tenant farmers were selected to act as mediators in the conciliation procedure less frequently than were landowners. As their status in the traditional paternalistic village was inferior to that of the landowners, tenants would be unable to wield authority over landowners in crafting a compromise. The landowner might possibly be too proud to subordinate himself to a tenant mediator. Consequently, the village representatives of the committees were generally members of the landowner class. Watanabe Yozo questions the neutrality of a conciliation committee composed of a judge and two landowners. Figures concerning the composition of the conciliation committees, in fact, report that in 1931, for example, 5327 landowners acted as mediator in conciliation while only 1945 tenant farmers were appointed.¹³⁷

Yamamoto Teijiro, Minister of Agriculture in 1924, stressed in an address introducing the conciliation law before the Diet that the “deficiencies” of the farm tenancy system were not limited to particular villages, but could cause the instability of the whole of Japanese society and were thus of concern to all of its members. Nevertheless, not a single direct representative of the tenant farmers had been a part of the Board.¹³⁸ This provoked criticism by union leaders, who felt that if only the elite landowner class was represented in the board establishing the conciliation system, one could not expect the system to honestly consider the grievances of tenant farmers.

The fundamental criticism made by the union was that the tenants' primary desires and, in fact, the leading cause of the farm tenancy disputes—specifically,

¹³⁷ Ushiomi Toshitaka, Watanabe Yozo, Ishimura Zensuke, Oshima Taro, Nakao Hideo, *op. cit.* (1957), p.397.

¹³⁸ Onose Yutaka, ‘Rippo katei kara mita kosaku chotei ho no seikaku’ [The Characteristics of the Farm Tenancy Conciliation Law as seen from the Legislative Process] in: *Horitsu ronso* (1975), pp.78-79.

obtaining cultivation rights and independence from the landowner— were not realized. Cultivation rights, it was argued, would offer an improvement of the social status of the tenants in a modern society characterized by the rule of law. The failure of the Board to establish such cultivation rights was the major reason for the unions' evaluation of the Tenancy Conciliation Law as a piece of conservative legislation. Such a conciliation system, it was argued, did not comport with the evolution of Japanese society but would restore landowner domination in the village. Legal scholars, as well, considered that the Law might indeed lead to the restoration of the landowners' domination over "rightless" tenants.¹³⁹

One of the Law's provisions criticized as being favorable to the landowner class was allowing for "in-court farm tenancy conciliation" while supporting the involvement of administrators. The members of the Board felt that these administrative elements in conciliation were "highly appropriate" because the mediator in such cases could be a member of the local community.¹⁴⁰ One of the Board members was, in this respect, convinced that "frequent contact with the courts would transform people in an unpleasant way".¹⁴¹ Kawaguchi Yoshihiko points out that the Board opted for strong administrative elements in the conciliation system at its 7th Special Session, not only because, as was the official justification, a local influential administrator could react promptly to any trouble in the village, but also because the gap between the courts and the villages was too wide.¹⁴²

Nevertheless, the government was favorable to judicial conciliation because it would increase state control over the village. In a compromise between the Board and government officials, a conciliation procedure was established in which the judge would preside, but which would involve many administrative elements. The farm tenancy conciliation system, then, became an amalgam of administrative and judicial conciliation, making it quite different from existing conciliation systems.¹⁴³ Judicial farm tenancy conciliation guaranteed the legal enforceability of compromises reached, as if they were "compromises reached by

¹³⁹ Ushiomi Toshitaka, Watanabe Yozo, Ishimura Zensuke, Oshima Taro and Nakao Hideo, *op. cit.* (1957), p.396.

¹⁴⁰ *Shiryō shusei* (Volume 3), p.711.

¹⁴¹ *Shiryō shusei* (Volume 3), p.698.

¹⁴² Kawaguchi Yoshihiko, *op. cit.* (1990), p.269.

¹⁴³ *Ibid.* (1990), pp.270-271.

the judge". Under that system, two different kinds of legal compromises (*wakai* 和解) could be reached. First, compromises reached by the judge in the midst of litigation (*soshojo no wakai* 訴訟上の和解), and second, compromises reached out of court (*saibangai no wakai* 裁判外の和解).

Under the farm tenancy conciliation system, "compromise reached in court through mediation by a conciliation committee" would have the same validity as a compromise reached by a judge. Such compromises were equivalent to court judgements. Conciliation compromises reached out-of-court by other mediators, such as the police, the tenancy officer or assembly men, would have the same validity as a consensual contract. In other words, such an out-of-court conciliation agreement would represent the explicit wishes of the parties and could be canceled whenever that mutual wish ceased to exist, which was not the case with an in-court conciliation compromise.¹⁴⁴ Thus, the out-of-court compromise was a less stable and less conclusive solution than in-court compromise, which could be enforced regardless of the parties' attitudes following conclusion of the compromise.¹⁴⁵

6.2. Stipulations of the Farm Tenancy Conciliation Law

The application for farm tenancy conciliation could be brought to either the local authorities (Art. 2), or directly to the Regional Court with jurisdiction over the land involved in the dispute (Art. 1).¹⁴⁶ In order to be assured that an equitable compromise could be reached in their dispute through tenancy conciliation, the tenant farmers needed to apply to neutral mediators. Therefore, tenants often avoided applying for conciliation through the head of the village, who was considered an ally of the landowners, but would rather apply directly to the District Courts. Nevertheless, tenants could not prevent the landowners from informing the judge of matters surrounding the dispute after the application was filed, because Article 4 stipulated that the court, after reception of a

¹⁴⁴ See: Articles 540 to 548 in the Meiji Civil Code.

¹⁴⁵ Article 27 (TCL):

Conciliation has the same validity as conciliation-during-trial.

¹⁴⁶ Article 1 (TCL):

1. When a conflict occurs concerning tenancy rent or other farm tenancy-related matters, the parties involved can apply for conciliation at the Regional Court of the place in which the land in question is situated.
2. The parties involved can, upon mutual consent, apply for conciliation at the District Court in which the land in question is situated.

conciliation application, had “to notify the local authorities without delay” (Art. 4). This provision certainly undermined the confidence of tenant farmers in the fairness of the informal conciliation procedure. In fact, Diet members also feared that this element could undermine the success of the conciliation procedure, as in the case of Yuasa Kurahei, a Diet member who was opposed to any involvement by the head of the village:

If clauses are approved calling for the parties to apply for conciliation through the head of the village or district, or requiring, according to Article 4, after they directly applied to the court, that the court shall without delay notify the head of the district or village where the land of the conflict is situated, then the village head will be continually involved in conciliation. While it could possibly be positive to have him involved in the conciliation procedure, considering today's circumstances, as the village head in many cases has the tendency to take side with the landowners, I am surprised at the voices who want to make the parties apply elsewhere than in court.¹⁴⁷

The head of the village or district often sided with the landowners because finances played a large role in local elections, although perhaps not as large the role as in national elections. As a result, voting rights between landowners and tenants were not equal.¹⁴⁸ In order to vote in local elections, one had to pay land taxes, which implied the ownership of land. Therefore, the village head was directly dependent upon the support of the landowners.

Progressive members of the Board feared that the involvement of this pro-landowner village head in the conciliation procedure to any great degree would compromise the equitable resolution of the tenancy problem. Pro-landowner representatives in the Board, nevertheless, insisted that the head of the village participate in the conciliation sessions. Ultimately, this was rejected, although local authorities could, on their own initiative or in response to a specific request, inform the judge of the circumstances underlying the conflict (Art. 18).¹⁴⁹ Insofar as this unofficial contact was made before the parties could state their positions in the dispute, the landowners' influence over the judge's attitude as a mediator could hardly be avoided. Moreover, after a compromise was reached, Article 43 of the Farm Tenancy Conciliation Law

¹⁴⁷ Cited in Horitsu shinbunsha (ed.) *Kosaku chotei ho gengi* [Significance of the Farm Tenancy Conciliation Law] (1924), pp.162-163.

¹⁴⁸ Cfr. *Supra*.

¹⁴⁹ Onose Yutaka, *op. cit.* (1975), p.94.

stipulated that the judge was to notify the head of the village about the content of the agreement.¹⁵⁰

Article 11 of the Farm Tenancy Conciliation Law stipulated that, whenever possible or when the judge decided it was more appropriate, conflicts should be mediated out-of-court by a third person appointed by the judge and that the mediator in such an action would not be bound by the provisions of the Farm Tenancy Conciliation Law.¹⁵¹ Even among some landowners, confidence in the traditional authority of the village or district head as a mediator was decreasing, especially in light of the undue influence of large-scale, absentee landowners exercised over such mediators. Still, the importance of out-of-court conciliation should not be underestimated. In 1937, for example, of a total of 5695 farm tenancy disputes resolved, 3085 disputes were resolved by out-of-court mediators while 2463 conflicts were terminated following in-court conciliation.¹⁵² Even members of the conciliation committee were mediating in order to reach an out-of-court compromise.

The link between landowners and the courts via the farm tenancy conciliation system is also apparent in that the courts were to be kept apprised of developing conflicts by local pro-landowner officials, such as the village head (Art. 17).¹⁵³ Therefore, the judge, who was often unfamiliar with the customs of a specific farm village community, would be subject to influence by people close to the landowners.¹⁵⁴

6.3. The Negotiation Table: “Divide and Conquer”

The Board considered the exclusion of lawyers and union representatives from the negotiation table as essential to the success of conciliation.¹⁵⁵ The

¹⁵⁰ Article 43 (TCL):

When the conciliation case is terminated, the court will inform the head of the village or district of the place in which the land in question is situated.

¹⁵¹ Article 11 (TCL):

When according to circumstances, the court judges that a person is more appropriate, it can disregarding the previous article request that person to conciliate.

¹⁵² *Kosaku nenpo* (1937). Another 8 conflicts ended after adjudication, 18 after in-court conciliation (*saibanjo no wakai*), 3 after mediation by local assembly men and 269 by other means.

¹⁵³ Article 17 (TCL):

The head of the village or district of the place in which the land in question is situated, or of the place in which the parties involved reside, can inform the court of the circumstances of the conflict.

¹⁵⁴ Ushiomi Toshitaka, Watanabe Yozo, Ishimura Zensuke, Oshima Taro, Nakao Hideo, *op. cit.* (1957), pp.396-397.

¹⁵⁵ This was certainly the case in the Tohoku region, where the traditional structure of landlord domination in the village was very strong.

Board felt, in particular, that unions lacked the flexibility necessary to make concessions in reaching a conciliation settlement. In order to exclude the union from the negotiation table, Article 12 of the Farm Tenancy Conciliation Law restricted participation in the negotiation process to one direct representative, to be chosen from the tenants and landowners involved in the dispute.¹⁵⁶ Tsuchiya Seisaburo argued during the Diet's debates on the conciliation law, that landowners and authorities alike feared the involvement of union activists in conciliation. As Tsuchiya stated:

According to this Bill, parties involved in the conflict should choose a representative when one of the conflicting groups is composed of several people. Today, the element to be feared most in the farm tenancy disputes is the influence of the tenancy union. Because they are proliferating in the whole country and ferment tenancy conflicts, their involvement should not be allowed.¹⁵⁷

Diet members feared that leftist lawyers defending tenant farmers would settle the dispute in legal terms and would fail to restore the traditional farm tenancy relationship. The exclusion of tenant farmer unions and lawyers was certainly a handicap for the tenants, because the union's involvement was the only effective counterweight to the traditional power of the landowner elite.¹⁵⁸ As Adachi Mikio points out, the legislators used the "principle of division" with the goal of neutralizing the union's influence on the tenants and, by doing so, undermining the tenants' collective strength.¹⁵⁹

As a considerable number of tenants were members of tenancy unions and refused to decide anything without prior approval of the union, the exclusion of the union from conciliation was likely to make most tenant farmers reluctant to participate in the procedure. Thus, a conciliation resolution could only be reached if a union representatives were involved in the conciliation procedure. Article 15 of the Farm Tenancy Conciliation Law provided for this possibility in

¹⁵⁶ Article 12 (TCL):

1. When a "party" consists of several individuals, the group must select a representative of the whole or a part of the party. The representative will perform all acts related to conciliation.
2. The court can, when there is no representative under the previous clause, order the selection of a representative when it deems this to be necessary.
3. The representative must be selected from among the parties involved.

¹⁵⁷ Horitsu shinbunsha (ed.), *op. cit.* (1924), pp.194-195.

¹⁵⁸ *Shiryō shusei* (Volume 3), p.701 and p.722.

¹⁵⁹ Adachi Mikio, *op. cit.* (1959), p.72.

highly exceptional cases.¹⁶⁰ This section provided that, upon special permission by the court, people having interest in the outcome of conciliation could participate in the conciliation negotiations.¹⁶¹ The possibility for representation by such “interested” people was important for both the tenant farmers and absentee landowners.¹⁶² Many landowners who lived far away from the village, for example, entrusted the care of their farmland to managers. Shimura Gentaro, a member of the Board, predicted strong opposition by the landowner Diet members to the conciliation system if those managers were not allowed to participate in the conciliation negotiations in the court. If this were not permitted, many landowners would have to travel from Tokyo to the countryside to defend their interests.¹⁶³

Responding to the above concerns, Suehiro Izutaro agreed that a union representative should not be involved in conciliation negotiations, but argued that a total restriction of the tenants’ right to be represented would be too severe.¹⁶⁴ A provision was therefore added in order to control the representatives. Article 16 of the Farm Tenancy Conciliation Law, provided for the possibility of forcing the resignation of a representative from the conciliation procedure. When the judge and the conciliation committee members, for example, decided that the attitude of a representative was not flexible enough to make a successful conciliation possible, they could make that representative resign.¹⁶⁵

Either landowners or tenants could apply for farm tenancy conciliation by simply filling out an application form at the Regional Court (Art. 1) or at the office of the village head (Art. 2). Nevertheless, if the conciliation committee considered that an applicant had no real intention to compromise and merely applied to gain time, then article 2 stipulated that the judge could reject the application for lack of appropriate cause.¹⁶⁶ An inappropriate application, for

¹⁶⁰ Article 15 (TCL):

1. Those having special interests in the outcome of conciliation can participate in conciliation when permitted by the court.
2. The court, in fact, can require such interested persons to participate.

¹⁶¹ Adachi Mikio, *op. cit.* (1959), p.72.

¹⁶² Moreover, in addition to Article 15, Article 25 stipulated that the court could take measures prior to conciliation in order to promote the functioning of conciliation, such as evaluation of the crop etc. Adachi points out that this article was almost never employed.

¹⁶³ *Shiryo shusei* (Volume 3), p.726.

¹⁶⁴ *Shiryo shusei* (Volume 3).

¹⁶⁵ Adachi Mikio, *op. cit.* (1959), p.71.

¹⁶⁶ Article 2 (TCL):

The court can reject the application for conciliation when it judges that an application has been submitted for inappropriate reasons.

example, might be one submitted by a tenant farmer who simply wanted to supersede pending litigation. This was possible according to Article 9 of the Farm Tenancy Conciliation Law, which stipulated that related law suits would automatically be discontinued upon application for conciliation.¹⁶⁷

6.4. The Informal Mediator in Farm Tenancy Conciliation

Ishiguro Tadaatsu and Odaira Kenichi wanted desperately to settle the farm tenancy problem.¹⁶⁸ Therefore, balancing the relative bargaining power of the parties involved in conciliation was a major issue. The issue was originally raised in the Board by Okamoto Hidetaro, who stated that “the main problem in the farm village is the absence of a neutral intermediary.”¹⁶⁹ Board member Kuwata Kumazo also noted the need for a new kind of administrator, someone whom both parties could trust to resolve disputes in an “equitable” way.¹⁷⁰ That intermediary, further, had to be a kind of advisor who, in the opinion of another Board member, Yamasaki Nobukichi, should have more authority than the parties. The ideal advisor would be a person well acquainted with the technical aspects of farming so that discussion during conciliation concerning the farm tenancy system could be based upon objective data.¹⁷¹ This was, in fact, considered to be a fundamental condition for the achievement of equitable conflict resolution. Board members felt that the middleman should do more than act as an assistant to the conciliation committee—that he should actually try to settle the dispute prior to the conciliation procedure.

Some Board members, bureaucrats and academics were aware that the farm tenancy conciliation system would be unlikely to function successfully if they did not motivate the tenants and landowners to actually use the conciliation procedure. Ishiguro Tadaatsu pointed out that only a kind of advisor to the parties—one who was neither tenant nor landowner, but who could influence the committee members and the parties—could motivate the parties to resolve a given farm tenancy dispute according to the conciliation system. Extended responsibilities were ultimately allocated to that advisor in farm tenancy concili-

¹⁶⁷ Article 9 (TCL):

If a lawsuit concerning the case for which an application for conciliation has been submitted, is in process, the litigation will be discontinued until the end of conciliation.

¹⁶⁸ Kawaguchi Yoshihiko, *op. cit.* (1990), pp.285-286.

¹⁶⁹ *Shiryo shusei* (Volume 3), p.695.

¹⁷⁰ *Shiryo shusei* (Volume 3), pp.780-782.

¹⁷¹ *Shiryo shusei* (Volume 3), pp.695-696.

ation, namely the tenancy officer (*kosaku kan* 小作官).¹⁷²

The tenancy officer was to be a bureaucrat from the Ministry of Agriculture. In order to be effective, the tenancy officer had several objectives. First, he had to become acquainted with the customs of the farm village by conducting surveys and submitting them to the government so that it could control the farm villages.¹⁷³ Second, the tenancy officer was to advise and assist the members of the conciliation committee. Third, he had to mediate whenever he could in order to settle disputes prior to conciliation. In sum, the tenancy officer was to be a general counsellor the tenancy conciliation procedure and had, therefore, to ensure that the procedure functioned efficiently. The tenancy officer was even allowed to participate in the negotiations (Art. 19).¹⁷⁴ The Board had very high expectations for the tenancy officers. Kawaguchi Yoshihiko summarizes the position of the Board in the following way:

Okamoto stressed that the spirit of conciliation is to be found in the expansion of out-of-court conciliation [by the tenancy officer on demand of the local prominent people and authorities] and (...) Ishiguro and Odaira feel that the tenancy officer will be "responsible for establishing a new order in the farm village"¹⁷⁵

The tenancy officer was a bureaucrat appointed and dispatched by the Ministry of Agriculture. In principal, there was one tenancy officer for each prefecture where the Farm Tenancy Conciliation Law was put into effect. In out-of-court conciliation, the involvement of this officer from the Ministry accounted for a large percentage of the farm tenancy disputes resolved. Often, however, the officer would, after mediating an out-of-court agreement, advise the parties to apply for in-court conciliation.

The post of tenancy officer was created specifically for the farm tenancy conciliation procedure.¹⁷⁶ The tenancy officer's general duties were stipulated by the Board and his position was different from that of any existing official. Ishiguro Tadaatsu and Kobayashi Heizaemon were the bureaucrats of the

¹⁷² Kawaguchi Yoshihiko, *op. cit.* (1990), pp.270-273.

¹⁷³ Tenancy officers were first called *kosaku kantoku kan* 小作監督官, then *kosaku riji kan* 小作理事官, and, finally, *kosaku kan* 小作官.

¹⁷⁴ Article 19 (TCL):

The tenancy officer can participate in the session and can state his opinion to the court at all times.

¹⁷⁵ Kawaguchi Yoshihiko, *op. cit.* (1990), p.292.

¹⁷⁶ Kawaguchi Yoshihiko, *op. cit.* (1993), p.345.

Ministry of Agriculture responsible for drafting the provisions relating to the tenancy officers, as is confirmed in Ishiguro's biography:

We made strenuous efforts to create the position of a regional tenancy officer, who would work in the front lines of farm tenancy conciliation. Someone strictly fair who was not influenced by power and political struggle, someone who kept a close relationship with the courts, and who was well acquainted with the local circumstances and, moreover, was able to take the appropriate measures.¹⁷⁷

Ono Takeo, asserted that the authority of the tenancy officer was intended to go beyond that of any other intermediary in disputes between tenant farmers and landowners. As the following statement shows, the tenancy officer not only had to have authority towards the parties involved in the dispute, but also towards the mediator-judge:

The correct term for the tenancy officer was not immediately agreed upon. The name for this new public official had to be chosen in order to ensure that he would be considered authoritative by the farmers. Moreover, his title also had to make the court accept what he said.¹⁷⁸

Board members justified this allocation of authority by pointing out that it would enhance the equity of the informal settlement procedure since the officer would serve to moderate among the laymen mediators and could also offer some assurance to tenants, who often perceived the judge to be pro-landowner. Needless to say, the discussions concerning the tenancy officer became one of the major obstacles in the discussion on the Farm Tenancy Conciliation Law, and it was not until the 49th Imperial Diet under Prime Minister Kato Takaaki, in June, 1924, that the nature of the tenancy officer was finally agreed upon.¹⁷⁹

According to the Farm Tenancy Conciliation Law, the tenancy officer's task would be divided into two parts. First of all, he was an assistant to the formal mediators during the conciliation procedure. Article 19 stipulated that the

¹⁷⁷ Otake Keisuke, *Ishiguro Tadaatsu no nosei shiso* [Ishiguro Tadaatsu's Ideas Concerning Agricultural Policy] (1984), pp.43-44.

¹⁷⁸ Ono Takeo, *op. cit.* (1932), p.15. Ono Takeo conducted many surveys of the agricultural customs in Tokugawa and Meiji Japan. One of the main criticism on the farm tenancy system in the Meiji Civil Code was that not enough surveys had been available for the creation of a satisfactory formal farm tenancy system.

¹⁷⁹ *Shiryō shusei* (Volume 3), pp.1120-1123.

tenancy officer could assist in negotiations and was allowed to intervene during the conciliation sessions. Furthermore, according to article 18, the judge could ask for the tenancy officer's opinion in a tenancy dispute whenever necessary.¹⁸⁰

The officer's second task was to prevent disputes by maintaining close contact on a daily basis with the villagers and, as Article 20 stipulates, by conducting surveys in the village in order to allow other officials and middlemen to take appropriate measures to restore peaceful relationships in the village.¹⁸¹ He was to settle disputes whenever he could in order to prevent the escalation of opposition between tenants and landowners. Article 11, therefore provided that the judge could, at any time, refer disputes between tenants and landowners to an "appropriate out-of-court mediator". In most cases, this "appropriate out-of-court-mediator" was the tenancy officer who, due to his everyday contact with the parties involved in the dispute, was much more aware than any other mediator of the elements necessary to settle disputes. These instances of extra-legal conciliation by the tenancy officer became so important that they were recorded in official surveys of conciliation cases.¹⁸²

The typical tenancy officer studied agriculture, agricultural economy or rural policy at specialized colleges. He was therefore a technical expert on farming, who could discuss with and advise the tenant farmers concerning issues relating to the tenancy rent, fertilizers, and the harvest. Armed with this educational background, the tenancy officers were dispatched to the villages, where they had to become acquainted with the circumstances underlying the farm tenancy conflicts.¹⁸³

The tenancy officer was a central government bureaucrat working under the authority of the Minister of Agriculture. As a bureaucrat, the officer could be posted either in the Ministry of Agriculture itself, or in "the field."¹⁸⁴

¹⁸⁰ Article 18 (TCL):

The court can, if necessary, request the opinion of the tenancy officer, the head of the village or district or another person it deems appropriate.

¹⁸¹ Article 20 (TCL):

The court can request a summary of the facts from the tenancy officer when it deems this necessary.

¹⁸² *Jirei* (1929–1934). These records include representative cases involving the resolution of farm tenancy disputes according to the conciliation procedure. The out-of-court conciliation amounts to approximately 1/3 of the legal conciliation.

¹⁸³ Norinsho nomukyoku (ed.), *Chihokosakukan kaigiroku* [Proceedings of the Meetings for Regional Tenancy Officers] (1924). References to this primary source will be abbreviated to: *Chihokosakukan kaigiroku*. During a meeting of all tenancy officers, before being dispatched to the prefectures to which they were assigned, their duties and role were explained in detail by several persons closely involved in agricultural policy making.

Tenancy officers posted in the Ministry were known as central tenancy officers (*kosaku kan* 小作官), while tenancy officers who were actually involved as mediators and assistants to the conciliation committees in the villages were called “regional tenancy officers” (*chiho kosaku kan* 地方小作官) or the “prefectural tenancy officers” (*ken kosaku kan* 県小作官).¹⁸⁵ At the time of the entry into force of the Farm Tenancy Conciliation Law, in December, 1924, four central tenancy officers were assigned to the Ministry of Agriculture (Tenancy Section), together with four assistant tenancy officers (*kosaku kan ho* 小作官補). These assistants were responsible for all “administration concerning farm tenancy conciliation.”¹⁸⁶

In December, 1924, 20 regional tenancy officers and 28 assistant tenancy officers were appointed.¹⁸⁷ No tenancy officers were dispatched into the prefectures situated in the northeastern and south western parts of Japan, because these areas were not experiencing farm tenancy disputes. From 1926, the prefectures of Nagasaki, Fukushima, Yamagata, Akita and Kagoshima were each allotted a tenancy officer (Imperial Ordinance No. 65). Furthermore, in 1929, when the Farm Tenancy Conciliation Law came into force in Miyagi, Iwate and Aomori, new tenancy officers were assigned (Imperial Ordinance No. 141). Finally, in 1938, the conciliation system was established in Okinawa, under Imperial Ordinance No. 529. One year later, 12 new tenancy officers were sent to various prefectures in anticipation of difficulties in coping with new wartime regulations, such as the National Mobilization Law.

The regional tenancy officer performed his daily work in the Internal Section or in the Industrial Section of the administration of the Prefectural Government, but he worked independently of the Prefectural Governor. The officer was only bound to obey orders coming from central tenancy officers, who themselves were only answerable to the Minister of Agriculture.¹⁸⁸

¹⁸⁴ Both kinds of tenancy officers were aided by assistant tenancy officers.

¹⁸⁵ Most studies of the Farm Tenancy Conciliation Law do not make any distinction between the types of tenancy officer and only mention the regional tenancy officer. The regional tenancy officer will hereinafter be referred to as “tenancy officers.” The term “central tenancy officer” will indicate those who remained in the Ministry of Agriculture.

¹⁸⁶ Regulation on Regional Officers, Art. 10 part 2.

¹⁸⁷ There were no regional tenancy officers assigned in the following prefectures: Aomori, Iwate, Miyagi, Akita, Yamagata, Fukushima, Nagasaki, Kagoshima and Okinawa. The organization of the tenancy officers’ tasks was, for the central tenancy officer, found in the Regulations of the Ministry of Agriculture, and Imperial Ordinance No. 204 of September 9th, 1924, Article 10, clause 2 part 1, and for the regional tenancy officers in the Regulation for Regional Officers by the Imperial Ordinance No. 215 of September 17th 1924.

More detailed directives for the tenancy officer were issued in Circular No. 8860 of October 18th, 1924, which stipulated the duties of the prefectural tenancy officers.¹⁸⁹ The tenancy officer was encouraged to fulfill his tasks in a fair and equitable way in order “to improve agricultural policy and the economy.”¹⁹⁰ The Minister of Agriculture, in addressing the prefectural governors, warned against the potential danger for the whole nation if farm tenancy disputes escalated. Recently, he stated, the disputes had become increasingly complicated, and he feared that disputes had the tendency to occur in a “collective way.” First, in explaining the goal of conciliation, the Minister emphasized the economic importance of the farm village in Japanese society and the politically dangerous situation caused by tension in the farm village. The situation, he argued had caused the stagnation of the villages’ productivity and undermined peace in the rural communities.

Bureaucrats came to believe, as reflected in a statement by a tenancy officer in Kanagawa Prefecture, Kobanawa Eitaro, that the landowners lived “a useless existence.”¹⁹¹ The future prosperity of Japan had to be safeguarded by protecting the actual producers in the farm villages. In practice, realizing the instability of the landowner’s wealth and, thus of their political power, the country’s bureaucratic leaders grew increasingly confrontational with landowners. This opposition reached its climax in the 1930s in the wake of what Watanabe Yozo calls the “establishment of the rule by bureaucrats.”¹⁹²

Bureaucrats counted on the tenancy officers to realize the bureaucracy’s goals. During the first orientation meeting for tenancy officers, their Minister, Yamamoto Teijiro, explained the officers’ responsibilities. At that time tenancy officer’s duties first included preventing disputes, improving tenancy conditions and helping to resolve the farm tenancy problem. Secondly, they had to try to resolve disputes before they were brought in court and, if an action was filed in court, the tenancy officer, as an independent bureaucrat, had to advise

¹⁸⁸ Regulation on Regional Officers, art. 20 part 3.

¹⁸⁹ In this circular, the regional tenancy officer is referred to as the “prefectural” tenancy officer. In studies on the tenancy dispute resolution, both terms for the village tenancy officer are used.

¹⁹⁰ Circular No. 8860 issued by the Ministry for Agriculture on October 18th, 1924.

¹⁹¹ Yokohamashi somukyoku shishi henshushitsu (ed.), *Chihokosakukan to nosonjosei* [Circumstances in the Farm Village and the Regional Tenancy Officer] (1990), p.497. Reference to this primary source will be abbreviated to: *Yokohama shishi*.

¹⁹² Watanabe Yozo, *Nogyo to ho* [Agriculture and Law] (1972), pp.6-7.

the judge. The officer also had to select the members of the conciliation committee and was to offer advice in the selection procedure of the head of the committee, i.e. the judge. The tenancy officer then had the obligation to carefully research the backgrounds of all mediation candidates in order to find mediators acceptable to both landowners and tenant farmers.

Very precise instructions were given with respect to the tenancy officer's participation in the selection of the members of the conciliation committee. The officer was to consider such factors as the age of the candidates, their affiliation to the landowner or tenant classes, their current employment, their financial condition, their involvement in collective actions and their political tendencies. Moreover, any connection between a candidate's family and a largescale landowner had to be mentioned in the report on the candidate mediator.¹⁹³ In his orientation address, Minister Yamamoto further emphasized that the tenancy officer was to perform his duties independently of local authorities and should remain loyal and aware of his status as a bureaucrat of the Minister of Agriculture. In conclusion, the tenancy officer had, according to the Minister, to devote himself to the improvement of the tenants' status.¹⁹⁴

¹⁹³ Circular No. 8292, September 23rd 1924. Addressed to the prefectural governors.

¹⁹⁴ In May, 1947, the Regulation of Local Officers was abolished as the prefectures were granted broad autonomous powers under Article 18 of the Regional Autonomy Act. According to this law, the tenancy officers could no longer be central bureaucrats and so they became subject to the prefectural authorities. The tenancy officers' duties were defined in the Civil Conciliation Law (Law No. 222). The Farm Tenancy Conciliation Law was incorporated into the new law's special provisions for "Farm Land Conciliation Law" (*nochi chotei ho* 農地調停法). The Regional Autonomy Act was enacted in 1947 as Law No. 67 in order to attribute to local public bodies the security of an efficient and democratic administration. Chapter 8 of the Constitution regulates the autonomy of local governments. Under this new section, the tenancy officer was to be advised by a "director for farm tenancy" (*kosaku shuji* 小作主事). The revision of the Farm Tenancy Conciliation Law was made on June 20th, 1949, according to Law No. 215. Even after the Farm Tenancy Conciliation Law was absorbed into the Civil Conciliation Law (*minji chotei ho* 民事調停法) of 1951, the position of the tenancy officer remained. Although quite different from that described above, the position of tenancy officer exists even today. Today, the tenancy officer is an advisor on technical aspects of farming employed by the prefectural authorities. In the postwar conciliation procedure however, the tenancy officer advised the conciliation committee and, according to article 28 of the Farm Land Conciliation Law (*nochi chotei ho* 農地調停法), the committee had to follow this advise. Nevertheless, the tenancy officer became independent from local politics and, therefore, as Tamai Yukio a post-war tenancy officer asserts, the prewar tenancy officer's social status was higher than that of the postwar tenancy officers. Tamai Yukio further points out that the modern tenancy officer's status is totally different from the prewar tenancy officer's but that "like before the war he is primarily concerned with the promotion of agricultural productivity." The post-war tenancy officer finds the legal basis for his status in Art. 4 and 17 of Ordinance No. 47 of the Minister of Agriculture, enacted on May 31st, 1949.

7. The New Order in the Farmer Village: A Closer Look at the Tenancy Officer

Following entry into force of the Farm Tenancy Conciliation Law, applications for and the use of the conciliation procedure by tenant farmers gradually increased and, after a few years, exceeded that of the landowners.¹⁹⁵ In some prefectures, conciliation was no longer used by the landowners. Such was the case in Okayama, where the rate of procedures initiated by landowners decreased from 143 cases (56.52 percent) in 1925 to 20.35 percent of cases filed in 1926 and even further to 2.1 percent of the total amount of conciliation applications in 1927.¹⁹⁶ The tenant farmers, who had initially been strongly opposed to the procedure at the time of its enactment, gradually entrusted their grievances to the farm tenancy conciliation system. Why did the farm tenancy conciliation system become increasingly popular among the tenant farmers?

The tenancy officer's actions were in keeping with the government's instructions, holding that, in order to prevent social instability and stagnation in the rural economy, the "status of the tenant farmers had to be improved." Tenancy officers' influence in the farm village increased gradually after December 1924, for several reasons. First, the tenancy officer's status as a civil servant, which in Japan was and remains a highly respected position, made him important in the farm village.¹⁹⁷ Secondly, and of particular importance for the tenant farmers, was that the tenancy officer resided in the farm village and was therefore easily accessible. The tenant farmers were able to express their grievances directly to the tenancy officer who, as a specialist in agriculture, could understand their arguments. Thirdly, the tenancy officer intervened in some way in almost all farm tenancy disputes between 1924 and 1938 and therefore developed extensive expertise in the farm tenancy problem. The officer was then able to use this knowledge in their contact with those involved.¹⁹⁸ As Kawaguchi Yoshihiko

¹⁹⁵ See also: Adachi Mikio, *op. cit.* (1959), pp.65-68.

¹⁹⁶ *Chihokosakukan kaigiroku* (1928), pp.251-252.

¹⁹⁷ Until the 1890s, civil servants' salaries were higher than those of the other citizens working for private industry. Ronald Dore points out that the origin of this difference in evaluation of the civil servants and employees in private firms, was due to the fact that "fighting and governing were the only noble occupations according to Samurai tradition." Bright, educated youths' highest ambitions were to be employed by the government. The high social status of the bureaucrat had, according to Ronald Dore, its historical origins in the Tokugawa period. Ronald Dore, *British Factory-Japanese Factory* (1973), p.391.

¹⁹⁸ Kawaguchi Yoshihiko, 'Kosaku chotei ni okeru kihan kozo' in: Toshitani Nobuyoshi,

observes, regional tenancy officers did play an important role in the resolution of the disputes in farm tenancy conciliation “through persuasion and guidance of the responsible judge and the conciliation committee.”¹⁹⁹

The tenancy officer organized frequent meetings with villagers. During those meetings, he explained what options were available to the parties for settling disputes, and stressed that landowners who hoped to settle the dispute by traditional means such as mediation by the head of the village or by suing the tenant farmers would fail in their efforts if the tenants applied for conciliation. He advised all parties to apply for Farm Tenancy Conciliation and sometimes even completed the application forms on behalf of the tenant farmers.²⁰⁰

The tenancy officer’s educational background enhanced his understanding of the technical aspects underlying the tenant farmers’ demands for rent reduction and cultivation rights. Increased production cost, fluctuation in market prices of agricultural products, and fluctuations in climate were aspects of farming which were more familiar to the tenancy officer than to the non-cultivating landowner. Advice from this powerful expert was welcomed and respected by the tenant farmers.

7.1. Adjudication and Conciliation

A primary motivation of the tenant farmers in applying for conciliation was Article 9 of the Farm Tenancy Conciliation Law, which stipulated that lawsuits would be suspended when a petition for conciliation was made. An illustration of the motivation behind the tenants’ submission of applications for conciliation occurred in Kagawa Prefecture. In the early 1920s, the landowner-tenant relationship in this prefecture was relatively stable, but the growing awareness of “new ideologies” among the tenant farmers lead to tension in the farm villages. In 1930, in the central area of Kagawa Prefecture, a farm tenancy dispute occurred in the Yusa village.²⁰¹ The tenants of Yusa village demanded a reduction of the rent for 1929. The deadline for the payment of tenancy rent had expired two months prior to the demand and, although negotiations between

Yoshii Tamio, Mizubayashi Takeshi (ed.), *Ho ni okeru kindai to gendai* (1993), p.345.

¹⁹⁹ Kawaguchi Yoshihiko, *op. cit.* (1993), p.341.

²⁰⁰ Adachi Mikio, *op. cit.* (1959), p.67. The speeches by the tenancy officer were directed mainly to the tenant farmers in order to point out to them that they, too, could apply for assistance through the conciliation system when they wanted to settle the dispute.

²⁰¹ *Jirei* (1930), pp.381-385.

tenant farmers and landowners had resulted in an agreement in 1924 for the future amount of rice to be paid, the exceptionally bad climate of 1929 caused a crop failure. As was customary, an evaluation of the crop was done by representatives of both tenant farmers and landowners and because the failure was obvious, a temporary rent reduction was accorded.

Two non-resident and non-cultivating landowners living in Takamatsu City nevertheless refused to accord that reduction to 16 of their tenant farmers in Yusa village. Paying rent to those two landowners would prove that all the tenant farmers did not really need the rent reduction and would prove their lack of respect to the landowners, which would make them “lose face.”²⁰² They paid no rent in 1929. The landowners in Kagawa Prefecture “adhered to the litigation strategy.” Without any further negotiation, the two landowners initiated a lawsuit for rent payment and eviction of the tenant farmers. In Kagawa, it was reported that tenancy officers made the tenant farmers apply for conciliation in order to counter the landowner’s litigious efforts.²⁰³ The tenant farmers realized that the judgement would under any circumstances be to their disadvantage and asked the tenancy officer for help. Following the officer’s advice, the tenants applied for farm tenancy conciliation in September, 1930.²⁰⁴

Negotiations between the parties involved were set up and tenancy officer and court officials successfully mediated the dispute. One problem they faced was that the communication between tenants and landlords that had existed when landowners and tenants lived together in the village had deteriorated because of the proximity to the big city. Tenant farmers were influenced by industrial labor actions and many young farmers abandoned the fields for better-paying and easier jobs in the factories, there was a lack of communication. As is pointed out in the above cases, if a dispute occurred, the parties involved referred directly to the court in the case of the landowners, and to the union in case of the tenants.²⁰⁵

In the remote northern region in the 1930s, the intensity and determination of the tenant farmers in their struggles increased. This was true, in part, because the recession had caused many landowners to sell their farmland or to

²⁰² *Jirei* (1930), pp.381-385. The cases studied that will be discussed were selected for their representative nature.

²⁰³ Kawaguchi Yoshihiko, *op. cit.* (1993), p.356.

²⁰⁴ *Jirei* (1930), pp.381.

²⁰⁵ Okado Masakatsu, *op. cit.* (1983); Richard Smethurst, *op. cit.* (1986), pp.333-335.

increase the farm tenancy rent. New ideologies gradually found their way into the northern villages and eventually farmers unions were established. The tenant farmers, who tenanted the farmland in the particularly harsh circumstances typical of this remote region, began to question the landowners' repressive attitudes. Thus, in this area, conciliation had to address more serious conflicts than had existed in the 1920s and the role of the tenancy officer was more complex.

The landowners of the Northern region were angered by the unions' involvement in farm tenancy disputes and took measures to prevent the tenants from seeking membership. This was done on an individual basis because the tenant farmer was easier to control when he was alone. In Akita Prefecture, for example, landowners were fighting against their tenants' involvement in unions. In the 1930s tenant farmers applied frequently for farm tenancy conciliation in order to prevent the termination of their agreements. Akita had both a very active union, the Tohoku Farmers' Union, and very strict landowners. This atmosphere led to many violent clashes, which often escalated into serious disputes as the landowners' attempted to divert tenants from participation in collective action.²⁰⁶ Typically, orders for eviction in Akita were intended to deter tenants from seeking union membership. These orders were "intended to punish" the tenant farmers for holding membership in the unions.²⁰⁷ The landowners tried to maintain their traditional authority by suing the tenant farmers but they were countered by applications for farm tenancy conciliation by the tenants.

The landowners of Akita were opposed to participating in the conciliation procedure as they considered the Farm Tenancy Conciliation Law a "law favorable to the tenant farmers."²⁰⁸ The applications for conciliation in this region were generally made in response to a landowner's initiation of lawsuits for farm rent payment and/or land reversion.²⁰⁹ In such cases, the survey made

²⁰⁶ Akita was the region with the highest number of farm tenancy conflicts from 1931 till 1935, with the exception of 1933, when Miyagi Prefecture was at the top of the list. See: *Kosaku nenpo* (1937).

²⁰⁷ *Jirei* (1934), pp.196-200. In Maeda village, a landowner ordered the eviction of the tenant farmers, but when the tenant farmers agreed to pay the requested amount of farm tenancy rent, the tenancy agreement was continued.

²⁰⁸ See: Kawaguchi Yoshihiko, *op. cit.* (1993), p.352.

²⁰⁹ The landowners in the majority of the farm tenancy disputes did not intend to evict the tenant farmers. In traditional regions where the personal relations between the tenant and the landowner's households were important, it took time and energy to find a new tenant and

by the Ministry of Agriculture shows that the landowners considered suing the tenant farmers as the most efficient way to restore their authority. The tenant farmers were intimidated by their landowners' recourse to lawsuits.

Litigation almost always resulted in a judgement against the tenant farmers and, proved more of an irritant than an effective resolution. The tenancy officers often encouraged the tenants to apply for conciliation. They explained how and why the tenants should apply for conciliation. Thus fear of litigation was turned into action, as tenants sought recourse to conciliation.²¹⁰ On the other hand, it was also the tenancy officer who advised the judge on whether or not to reject an application submitted for "inappropriate reasons." The contact between the judge and the parties was very limited, so the judge relied on information provided to him by the tenancy officer during "meetings related to farm tenancy conciliation."²¹¹ In addition, the conciliation mediators could advise to suspend the farm tenancy conciliation procedure if they felt that no prospect for successful conciliation existed.²¹²

Thus, if a tenant farmer was not lenient enough and unwilling to accept a compromise, the application could be dismissed and the landowner would be free to resort to litigation. If the tenant farmers' attitudes changed for the better, they could be advised to apply once more for conciliation, which would result in the interruption of the lawsuit.²¹³ As Adachi Mikio argues, the tenancy officer made use of the threat of trial in order to make the conciliation procedure function more smoothly. In sum, it can be said that after the farm tenancy conciliation procedure was put into practice, litigation became subject to the conciliation procedure in the tenancy officer's attempt to settle the farm tenancy disputes.²¹⁴

to establish a relationship of trust with him. Therefore, the expression of the wish by the landowner to evict the tenant farmers was meant as a warning for the tenant farmer. It was a clear sign that the landowner was serious about his claim for the rent payment and that no further delay would be tolerated.

²¹⁰ In 1925, landowners in Niigata Prefecture applied for conciliation twice as often as their tenant farmers, but between 1926 and the end of the 1930s, that tendency was reversed. By the 1930s, most applications for farm tenancy conciliation were submitted by tenant farmers.

²¹¹ Adachi Mikio, *op. cit.* (1959), p.68.

²¹² See: Article 2 of the Farm Tenancy Conciliation Law. Also, when the conciliation procedure had begun, it was reported that the mediators could interrupt conciliation when the tenant farmers did not accept the conciliation agreement proposed to them by the conciliation committee. They waited for the trial to "soften the attitude" of the tenant farmers and when they started conciliation again, the tenants would easily accept the chotei agreement. Adachi Mikio, *op. cit.* (1959), pp.70-71.

²¹³ Adachi Mikio, *op. cit.* (1959), pp.70-71.

²¹⁴ Adachi Mikio, *op. cit.* (1959), p.68.

7.2. Gaining Trust in the Farm Village

Tenancy officers were not permanently assigned to the same prefecture. Kita Masaharu, for example, was a tenancy officer in Oita for three years before being assigned to Kumamoto Prefecture in Kyushu. Upon being transferred, the first thing he did was to become acquainted with the circumstances in the villages where farm tenancy conflicts were occurring. He explored the general atmosphere of the village in which farm tenancy disputes occurred and met the parties involved in the disputes. Kita Masaharu describes his early days in Oita Prefecture:

I borrowed a bicycle and I rode around in the farm village where the problems occurred and formed an impression about the rice we could expect to be harvested. This was a so-called "preparatory survey." Next, in order to explore the "atmosphere," I officially visited the parties with one of my assistants. And, finally, I summoned all concerned people to the main temple and there addressed them. I spoke about how the peace in the village should be maintained, but from a dark nook of the main temple I could hear a threatening voice saying: "You will not be able to leave this place in one piece..."²¹⁵

Tenants and landowners initially considered the tenancy officers as intruders in their closed communities and, in the beginning, often expressed aggressive feelings towards them. But when the tenancy officers visited the individual tenant farmers involved in a dispute, that attitude changed. Kita Masaharu, for example, relates that when he first visited the tenant farmers' residence, he was often offered old tea of inferior quality served in a broken tea cup.²¹⁶ The tenant farmers thus showed their distrust towards the tenancy officer. This reception was in stark contrast to that of the landowners, who tried to win the tenancy officer's sympathy. Kita, for example, wrote of a landowner who had waited patiently for him and, at lunch time, offered him a very expensive lunch box.²¹⁷ The tenancy officer took care not to accept the landowner's advances:

[At the tenant farmer's house] I drank the tea in one swallow and complimented the tenant farmer while asking him for another cup. In contrast, from the landowners (...) I accepted the lunch box but always paid for it (...) Rumors of this speech in the village and the result

²¹⁵ Kita Masaharu, *op. cit.* (1993), p.29.

²¹⁶ Kita Masaharu, *op. cit.* (1993), p.30.

²¹⁷ Kita Masaharu, *op. cit.* (1993), p.30.

was that both the tenant farmers and the landowners respected me. And the first requirement for successful conciliation is, of course, being respected by both sides.²¹⁸

7.3. Promoting Aversion to Law

According to the cases recorded by the Ministry for Agriculture, the tenancy officer discouraged the parties from engaging in formal actions. If the parties involved in the dispute wanted to resolve their dispute through litigation, the tenancy officer diverted them from such actions. In some cases, the tenancy officers permitted several tenants and landowners to participate in the conciliation. This was the case in the 1932 Kiri-hara village dispute in Shiga Prefecture. The conciliation negotiations in this dispute were conducted by three landowners and five tenant representatives.²¹⁹ During that conciliation negotiation, the tenancy officer encouraged the parties to settle their dispute by a conciliation agreement by explaining that the verdict they could expect in a lawsuit would not be favorable for them. In a similar case, in Kagawa in 1932, a struggle over succession rights to land occurred between the sons of a deceased landowner. Each of the sons claimed a right to the tenancy rent. The tenants, not knowing to whom they had to pay rent, were sued by one son when they paid another son. The tenancy officer explained to the son who had sued that, according to the terms of the Civil Code, he may not win the case.²²⁰ The officer advised the son to resolve the dispute through conciliation and the son agreed.

Tenancy officers also convinced the landowners that a lawsuit would be an improper way to resolve their disputes. Tenancy officers were strongly opposed to any mention during conciliation of legal rights, and to reference to the provisions of the Meiji Civil Code. Kobanawa's diary reveals that he avoided the possibility of any lawyer participating in the conciliation procedure.²²¹ The landowners were warned by the tenancy officer that they would lose their elite status in the farm village if they preferred litigation rather than conciliation.²²² In Yamaguchi in 1933, a tenancy officer explained to the

²¹⁸ Kita Masaharu, *op. cit.* (1993), p.30.

²¹⁹ *Jirei* (1932), pp.282-289. As we can see in the reports the parties actually involved in the dispute included 1 landowner and 23 tenant farmers.

²²⁰ *Jirei* (1932), pp.363-370. Ten tenant farmers and two landowners were involved in this case. The dispute was settled after 8 months with a compromise in which one son gave up his claims for landownership and the tenants continued tenancy under the other son.

²²¹ *Yokohama shishi* (1990), p. 495. In his diary the tenancy officer, Kobanawa Eitaro, describes the landowners as only stressing "omnipotent ownership right" (p.504) and as always stressing legal rights (p.495).

landowners how they should reorganize their relationship with the tenant farmers, and advised the tenants:

Don't argue in legal terms for perpetual tenancy rights or for compensation, but rather appeal to the sentiments of the landowner.²²³

Tenancy officers prevented the tenants from developing a modern "legal consciousness" by using terminology other than that used in formal legal procedures. This is illustrated in the farm tenancy disputes in Yamaguchi Prefecture, where discussion of rights and duties was avoided. If the tenant farmers and owners nevertheless used legal terms in their arguments, the tenancy officer interrupted the conciliation session and delivered long speeches about the "spirit of conciliation".²²⁴ He criticized the judge's approval of a "legal attitude" among the parties. The judge, in the words of the tenancy officer in Kanagawa, "lacked a fundamental sense for developing norms fitting in society."²²⁵ In the same context, the tenancy officer of Kanagawa Prefecture recorded the following in his diary:

It is good that the judge "respects the law" but it is bad that he has an inflexible attitude in protecting the landowners. The only way to make the tenant farmers feel respect is to make the landowners feel a sense of social obligation.²²⁶

The tenancy officer wanted to restore the tenant farmer's respect for superiors and was convinced that the law was not appropriate means to realize this goal. Once the parties were in a "conciliatory mood," the negotiations could be started.²²⁷ Such negotiations, however, often lasted the whole night and failed to result in compromise. In such cases, the tenancy officer would ask the parties to entrust further resolution of the dispute to him. The tenancy officer Kobanawa, for example, succeeded in settling the farm tenancy dispute

²²² Litigation, said the tenancy officer in Wakayama Prefecture in 1933, would be expensive and take time and it was not sure that the verdict would be favorable for the landowners. Therefore, he said, it was advisable to settle the dispute according to conciliation. *Jirei* (1933), p.478. See also: *Jirei* (1934), p.379.

²²³ *Jirei* (1933), p.601. This statement was made by the tenancy officer to the tenant farmers in Yamaguchi Prefecture in 1933.

²²⁴ *Jirei* (1932), p.232.

²²⁵ Yokohama shishi, *op. cit.* (1990), p.581.

²²⁶ Yokohama shishi, *op. cit.* (1990), p.696.

²²⁷ *Jirei* (1934), pp.290-296.

by promoting the parties “to do it for their country’s and prefecture’s sake.”²²⁸ In reports of other conciliation cases, it can be seen that other tenancy officers pressured the parties to settle the dispute by pointing out that if the parties maintained their harsh demands, “the impact would go beyond their dispute.”²²⁹

The tenancy officer only intervened when all other possibilities for conflict resolution had failed and conciliation became the “only possibility left for settling the dispute.”²³⁰ This was the case in 1931 in Niigata Prefecture’s Kita Kanbara district, where the tenancy officer was asked to mediate in a dispute involving 44 tenants and one landowner in the Kinoto village. The conflict occurred because the latter rejected a request by the tenants for a reduction in tenancy rent. The landowner initiated a lawsuit in order to evict the tenant farmers. In response, the tenancy officer assembled the tenants and landowner in order to hear their opinions concerning the dispute. The tenancy officer took into consideration the statements of both parties. After some time, the officer paid a second visit to the village, where he submitted and explained a draft conciliation agreement to the parties.²³¹ The parties accepted the draft settlement, which was then submitted to the conciliation committee for approval. Although the conciliation agreement was formally approved by the conciliation committee, it is apparent that the tenancy officer played a decisive role in the compromise process.

Another illustration of the far-reaching involvement of the tenancy officers in conciliation occurred in a dispute in Niigata in 1929. In this dispute, the tenancy officer wanted to reach an equitable and rapid resolution of the conflict. The tenancy officer pressured the parties by “summoning them to the prefectural office and talking to them until the parties accepted the mediators’ proposal”.²³²

²²⁸ *Yokohama shishi* (1990), p.673.

²²⁹ *Jirei* (1933), p.493.

²³⁰ *Jirei* (1934), p.330.

²³¹ *Jirei* (1932), pp.194-198. Tenant farmers requested: (1) rent reduction for 1.5 years of tenancy rent for the period of 5 years between 1927 and 1932, (2) payment of past-due rent over a period of 10 years, (3) exemption of payment from the lawsuit cost and the interest on the rent due, (4) continuation of the farm tenancy relationship. Landowners requested: (1) that rent reduction only be granted after annual evaluation, (2) tenants have to pay cost of law suit and interest on past-due rent, (3) past-due rent had to be paid within 5 years, (4) rent reduction can only be accorded when harvest amounted to less than double of the rent, (5) that violation of the conciliation clauses would result in the cancellation of the tenancy contract and immediate eviction. See: *Jirei* (1932), pp.195-196.

²³² *Jirei* (1929), pp.277-285.

7.4. Replacing the Landlord with State Paternalism

This village consists of 400 households, of which over 300 are involved in a dispute. For the whole village, it really is a serious issue, for as the autonomy of the village collapses rapidly, industry loses vigor and the village's economy stagnates. However, in the past many conflicts occurred here, such as those due to the bad harvest in 1926. However, usually a harmonious solution could be reached in a meeting that lasted a few hours thanks to [the landlords'] kind intention and resolute decisions, but this time none of this can be achieved. (Kyoto, Uchisato village, 1929)²³³

In this petition from a tenant farmer to a local leader, it is interesting to note the apparent nostalgia for "resolute decisions." Indeed, the local landowner leaders were often blamed for failing to offer solutions for the villages' problems and for no longer exercising their paternalistic authority. In most farm tenancy conciliation cases, a similar claims by the tenant farmers towards the tenancy officer could be seen. The tenant farmers entrusted their dispute unconditionally to the tenancy officer and, according to the tenancy officers, this was the "spirit" in which the parties should negotiate.²³⁴

In Gifu in 1934, disputes were recorded in which conciliation was initiated only after the tenancy officer had talked several times to the parties involved. In these cases, the tenancy officer would only begin the mediation procedure when the parties were in what he called a "conciliation mood."²³⁵ During the first sessions of the conciliation, the tenancy officer continued his informal contact with the parties and the conciliation committee would not formally convene until the parties had agreed in principal to accept the compromise.²³⁶ For Kita Masaharu, tenancy officer in Oita and Kumamoto Prefectures, the essence of tenancy conciliation was to be trusted and respected by the parties. In order to accomplish this, Kita often talked with the parties throughout the night. When Kita felt that the talks had reached a certain point, he would

²³³ *Jirei* (1929), pp.339-343. This is an extract from a petition of a villager to the village head in which he urges the village head to take steps to interfere, as used to be done in the village.

²³⁴ *Jirei* (1932), pp.229-236. The parties were not allowed to discuss too extensively their justification for their claims and were urged to entrust the dispute resolution unconditionally to the tenancy officer. The records of the resolution process of farm tenancy disputes through conciliation and diaries reveal that tenant farmers in many cases entrusted unconditionally the dispute resolution to the tenancy officer. In this case in Gifu Prefecture, the tenancy officer took his time to explain what spirit the parties should have when participating in the negotiations. The claims of the parties and their justification of their point of view was discussed only very briefly.

²³⁵ *Jirei* (1934), pp.290-296.

²³⁶ Among the representative cases of farm tenancy conciliation, analyzed for this report, the term "carte blanche" (*ichinin 一任*) is often used.

conclude the negotiations in the following way:

[I would say] “Well, what do you think ? Isn’t it better to leave the matter to me because anyway, I know what I’m doing.” This way I finally got the assurance [to end the negotiations] and in a surprising number of cases, the parties resigned themselves. How should I say it; I had a subtle talent, as if I was put unconditionally in charge of the conciliation agreement by the parties.²³⁷

In 1928, the report of the annual meetings of the regional tenancy officers, relates that parties were often impressed by the zeal of the tenancy officers and were often therefore motivated to entrust their conflict to him. As a tenancy officer states:

In farm tenancy conflicts, the opposition is often so severe that the Evaluation Board, which represents and addresses the interests of tenant farmers and landowners, no longer functions properly. The resolution of the conflict depends upon the tenancy officer showing “compassion” towards the tenant farmers and landowners. It is based on the illusion [that the traditional village structure is restored], but it is independent from the previous village order, and does “harmonize fairly” the interests of both parties.²³⁸

The tenancy officer in prefectures such as Yamaguchi and Akita attempted to move towards conciliation by guiding participants, as Kawaguchi Yoshihiko asserts, from a feeling of apathy or non-awareness to an awakening of their consciousness.²³⁹ With the “awakening of consciousness,” the tenancy officer wanted to restore the awareness of the importance of the traditional cooperative structure of the tenancy relationship in the village. Of course, this depended largely upon the strength of the landowners, the talent of the mediator, and the intensity of the opposition.

Tenancy officers intervened in the resolution of disputes in almost all cases and at different stages of the dispute resolution.²⁴⁰ The officer was involved not only in the preliminary investigations of the particular dispute, but also in attempting to resolve the conflict before conciliation was started. The officer also assisted both the conciliation committee and the parties during the conciliation negotiations, and proposed alternatives for settlement to the parties. The

²³⁷ Kita Masaharu, *Waga jinsei* [My Life] (1993), pp.30-31.

²³⁸ *Chihokosakukan kaigiroku* (1928). Cited in: Kawaguchi Yoshihiko, *op. cit.* (1993), p.361.

²³⁹ Kawaguchi Yoshihiko, *op. cit.* (1993), pp.354-355.

²⁴⁰ Kawaguchi Yoshihiko, *op. cit.* (1993), p.345.

tenancy officer was allowed to state his opinion during the conciliation negotiations and was reported to be the actual mediator in most of the conciliation cases.²⁴¹

Nevertheless, the tenancy officer was officially only an assistant to the official mediators, the members of the conciliation committee and in the resolution of farm tenancy disputes. The fact was that they did much more than assist, as the diaries of some regional tenancy officers reveal. This was the case for Kobanawa Eitaro, a regional tenancy officer in Kanagawa Prefecture from 1927 to 1943; and Kita Masaharu, a regional tenancy officer for Oita and Kumamoto Prefectures.²⁴²

In an internal memorandum to the tenancy officers, the Minister of Agriculture, Takahashi Korekiyo, urged them to stimulate the “social conscience” of tenants and landowners in order to prevent disputes. In addition, tenancy officers were told to study how the tenancy problem could be resolved in an efficient, systemic manner. The concept of “social conscience” was further explained in an additional notice from the head of the Agricultural Section. According to this notice, the tenancy officers had to contact tenants and landowners on as many occasions as possible—to talk with them, give lectures, and distribute pamphlets. They also had to urge the landowners to improve the tenants’ overall conditions and to upgrade the agricultural infrastructure. In pointing out that the tenancy disputes were putting Japan’s agricultural production at risk, the head of the Agricultural Section defined “social conscience” as an awareness of the heavy social toll imposed by the disputes.²⁴³ According to a notice:

In today’s Japan, many people have to survive on a very limited area of agricultural land. Therefore you must gently urge the parties to overlook their difficulties.²⁴⁴

In other words, the above notice urged the tenancy officers to mediate, not by helping the tenants to reach an equitable and fair compromise according to

²⁴¹ Adachi Mikio analyzed the role of the tenancy officer, who, in his view, was responsible for the uniform functioning of the conciliation system in Japan. Kawaguchi Yoshihiko agreed with this idea, but felt that much of the power of the tenancy officers depended upon the landowners. See: Adachi Mikio, *op. cit.* (1959) and Kawaguchi Yoshihiko, *op. cit.* (1993).

²⁴² *Yokohama shishi* (1990); Kita Masaharu, *op. cit.* (1993).

²⁴³ *Chihokosakukan kaigiroku* (1924), pp.1-6.

²⁴⁴ Ordinance no. 8860, October 18th, 1924 of the Ministry of Agriculture.

a “legal consciousness,” but by making them feel guilty for being involved in a dispute. The parties involved in a dispute should first think of the interests of the nation. This instruction was understood well by the tenancy officers, who as Tamai Yukio points out, were aware of their status as “servants of the Emperor.”²⁴⁵

Respect for the traditional pro-landowner authorities, such as the village head, was gradually replaced by respect and trust for the tenancy officer. The tenant farmers, who before had often resigned themselves to their disadvantageous situation, sought and accepted the tenancy officer’s support. Landowners attempted to prevent the tenancy officer from intervening with the tenants. Kita Masaharu relates that in Kumamoto, he was summoned to the governor’s office and was there told that he was to stop having any contact with the tenant farmers because “it was troublesome that the tenants were becoming motivated by him each time he went to meet them.”²⁴⁶ Although Kita attempted to maintain a sense of impartiality, he was too concerned with and irritated by the landowners’ lack of compassion and their “egoistic attitude.”²⁴⁷

In the midst of the meetings with tenant farmers, the landowners sometimes went so far as to have police officers shadow the tenancy officer.²⁴⁸ On one occasion, the landowners dispatched an armed military officer in uniform to scold Kita Masaharu in the prefectural building, but the tenancy officer was not impressed. He reported that he was not afraid because he was “proud to be the representative of the Ministry of Agriculture.”²⁴⁹ In the diary of Nishiyama Genjiro, a landowner involved in a dispute in Kanagawa Prefecture, the following comment is found:

We adjourned the session at 11 p.m. and agreed to start again tomorrow. Judge Kubota

²⁴⁵ Tamai Yukio, who acted as a tenancy officer in postwar Japan, explained the change in status of the tenancy officers. According to Tamai, the tenancy officer’s situation as “servants of the Emperor” before the Second World War gave an extra dimension to their authority. See also: *Yokohama shishi* (1990), p.492; Watanabe Yozo, *op. cit.* (1972). Gradually, the Japanese government started to change its policy from one of cooperation with landowners in order to secure tax revenues to a policy of opposing the parasite landowners, in order to better promote agricultural production.

²⁴⁶ Kita Masaharu, *op. cit.* (1993), p.41.

²⁴⁷ *Yokohama shishi* (1990), p.417 and p.484. The tenancy officer in Kanagawa Prefecture makes repeated references of the landlord’s egoism.

²⁴⁸ Adachi Mikio, *op. cit.* (1959), p.67. The tenant farmers were prevented from applying for conciliation by the landowners. During the annual meeting the officer asked the tenant farmers several times for authority to apply for conciliation on their behalf.

²⁴⁹ Kita Masaharu, *op. cit.* (1993), pp.34-35.

addressed the claims of both parties and proceeded with the conciliation from a neutral position. Tenancy officer Kobanawa is protecting the tenant farmer's side and is therefore unpopular with the landowners.²⁵⁰

7.5. The Standardization of the Conciliation Agreement

Conciliation agreements were fairly similar in most compromises reached in a farm tenancy conciliation procedure. The content of the typical conciliation agreements were characterized by the use of provisions established in the several tenancy bills submitted by the Tenancy Investigation Board the Diet.²⁵¹ The "Outline for a Farm Tenancy Law" (*kosaku ho yoko* 小作法要綱) of 1926, the "Draft Farm Tenancy Law" (*kosaku ho soan* 小作法草案) of 1927, and, finally, the "Farm Tenancy Bill" (*kosaku hoan* 小作法案) of 1931 had each stipulated norms that were appropriate to Japan's new social circumstances.²⁵² As mentioned in part above, issues to be changed from the provisions of the Meiji Civil Code relating to farm tenancy were numerous. Of primary importance was that the new norms provide the tenant farmers with more security in the tenancy agreement. Provisions regulating the farm tenancy rent and related practices, such as the right to reduce the payment of rent in times of poor harvest, were equally important. Although the Tenancy Bill did not clear the Diet, its provisions served as norms in the conciliation procedure.²⁵³

Uniformity was also promoted through regular meetings in which all the tenancy officers participated. In fact many tenancy officers and the conciliation committee members tried to convince parties involved in a dispute to use the agreements arrived at in similar disputes. The parties were told, for example, that in neighboring villages, the farm tenancy disputes were settled according to

²⁵⁰ Diary of Nishiyama Genjiro (possession of Nishiyama Yutaka), cited in: *Yokohama shishi*, (1990), pp.885-886.

²⁵¹ The Farm Tenancy Investigation Board was established on May 24th, 1926, to investigate the enactment of a farm tenancy law. Enacting a farm tenancy law was the main interest of the tenancy officers, who feared that tenancy conciliation could not contain disputes sufficiently. From 1926, the limitations of the efficiency of farm tenancy conciliation became obvious and Machida Chuji, Minister of Agriculture, stressed the need for "fundamental measures." See: Kawaguchi Yoshihiko, *op. cit.* (1990), pp.323-324. Ogura Takekazu relates that the government realized the need for a Farm Tenancy Law because disputes were still increasing despite the establishment of the farm tenancy conciliation system. Other reasons for the investigation into the need for legislation were that more disputes for land return were recorded, more provisional measures by courts were issued, and that disputes were spreading to the northern regions and the ideological character of the disputes was getting stronger. See: Ogura Takekazu, 'Tochi shoyu no kindaika' [The Modernization of Land Ownership] in: *Ogura Takekazu chosakushu*. pp.148-152.

²⁵² Kawaguchi Yoshihiko, *op. cit.* (1990), pp.323-326; Adachi Mikio, *op. cit.* (1959), p.76.

²⁵³ Adachi Mikio, *op. cit.* (1959), p.76.

certain provisions.²⁵⁴ Reliance upon such standards gradually led to the establishment of a de facto system of precedent. In addition, agreements were put into writing in, for example, internal reports of the Ministry of Agriculture, to increase their precedential value.

Interestingly, the lack of representation by lawyers, the lack of public access to hearings, and the absence of a formal law stipulating which norms were to be used in the conciliation agreements did not adversely affect the uniformity of agreements.²⁵⁵ In Shiga Prefecture in central Japan, for example, a “fixed” conciliation agreement was distributed to all the parties involved in farm tenancy disputes. The model for this conciliation agreement had been drafted by the local tenancy officer in 1929, and resulted in the printing and distribution of ready-made agreements into the 1930s.²⁵⁶ In general, the clauses of those conciliation agreements were of two types. First, certain clauses stipulated the amount of rent reduction to be accorded, the amount of overdue rent to be paid, and the form of payment. Such clauses, then, were related to the existing dispute. A second type of clause stipulated how the farm tenancy relationship should be organized in the future. For example, they established the amount of tenancy rent, the procedure to be followed by the tenant farmers if in the future they considered themselves entitled to a rent reduction, and, moreover, the sanctions that could be applied if one of the parties did not live up to the provisions of the conciliation agreement.²⁵⁷

Many of the norms in the conciliation agreements prescribed measures usually reserved for the traditional farm tenancy relationship, such as determination of rent reductions and the allotment of grants to tenant farmers from landowners.²⁵⁸ In this way, the standardization of the farm tenancy conciliation agreements increased state control over the relationship between tenant farmers

²⁵⁴ Adachi Mikio, *op. cit.* (1959), pp.40-42.

²⁵⁵ *Chihokosakukan kaigi roku* (1924). The Farm Tenancy Conciliation Law did not stipulate which criteria the mediators should use in the settlements but included only some general stipulations concerning the “spirit” of the mediators and the general purpose to which they should devote themselves. The aim and spirit in the tenancy conciliation system was pointed out to the mediators by internal ordinances which were issued in regular intervals by the Ministry of Agriculture. Concepts such as “restoring economic and social stability,” “harmony” and “interest of the nation” were predominant.

²⁵⁶ Sakane Yoshihiro, ‘Kosaku chotei ho no unyo katei no bunseki: shigaken no jirei o chushin toshite’ [Analysis of the Working Process of Farm Tenancy Conciliation: Emphasis on Cases in Shiga Prefecture] in: *Nogyo keizai kenkyu* (1984), p.206.

²⁵⁷ Kawaguchi Yoshihiko, *op. cit.* (1993), p.342.

²⁵⁸ Kawaguchi Yoshihiko, *op. cit.* (1993), p.360.

and the landowners. Thus, where litigation did not allow for state intervention, the farm tenancy conciliation system did.

The conciliation compromises were very detailed, as can be illustrated according to the following examples from Kyoto and Miyagi Prefectures. In Kyoto, strong unions and well-developed strategies for confronting the landowners caused conflicts to escalate quickly. The tenancy rent was high in this region, but the amount was often variable.²⁵⁹ The tenant farmers wanted a more technical and rational organization for their tenancy relationship and challenged the mediators of the conciliation committee to establish such a relationship. The tenant farmers were satisfied with the farm tenancy conciliation agreement that was forwarded to them by the committee.²⁶⁰ As Kawaguchi Yoshihiko points out, over 60 percent of the conciliation compromises in rent-related disputes in Kyoto included provisions concerning the method that should be used to reduce rent.²⁶¹ From 1926, the agreements became uniform with regard to provisions concerning the methods to calculate rent and rent reduction.²⁶²

The conciliation compromise in the Nakasuji conflict in Kyoto, in which the tenant farmers confronted the landowners for a reduction of the tenancy rent, was a typical example. Under the agreement's terms, the rent was divided into 15 different levels, depending upon the quality of the farmland.²⁶³ Furthermore, the conciliation agreement stipulated that rent had to be paid in "approved quality rice" and that it had to be paid before the end of December each year. The tenant farmers had to deliver the rent to a place indicated by the landowner. However, if the landowner lived outside the village, he had to provide financial compensation to the tenant farmer for the cost of transporting the rent. Article 3 of the agreement provided for sanctions if tenant farmers failed to pay their

²⁵⁹ Kawaguchi Yoshihiko, *op. cit.* (1993), p.364.

²⁶⁰ Court actions by the landowners increased rapidly after the establishment of the Kyoto branch of the Japan Landowner Association in 1926.

²⁶¹ Kawaguchi Yoshihiko, *op. cit.* (1993), p.364. Characteristic of the rent reduction method in the conciliation agreements were the following stipulations: first, the settlement of the period of application for rent reduction; second, that application was to be done through representatives of tenants; third, that evaluation should be done by representatives of both parties jointly assisted by a technician from the district or village agricultural association; and, finally, the granting of "carte blanche" to the technician to conduct the evaluation in case the tenant and landowner representatives did not agree. See: Kawaguchi Yoshihiko, *op. cit.* (1993), p.364.

²⁶² Kawaguchi Yoshihiko, *op. cit.* (1993), p.364.

²⁶³ The farmland of first quality paid most: 1.38 *koku* per *tan* (approximately 9.91 are), while the farmland of worst quality paid only 0.84 *koku* per *tan*.

rent. The landowner could send a warning to the tenant who had to pay within 15 days from date of the notice. If tenants failed to pay, the landowner could evict them at once.

In order to prevent future conflicts in Nakasuji, most agreements included clauses such as Article 7, which stipulated that a reduction of tenancy rent could only be requested when the harvest was less than 1.8 times the amount of the rent. The tenant farmers had to apply for rent reduction, if this was to be done, before November 20th of each year, so that sufficient time remained to evaluate the crop.²⁶⁴ The crop evaluation was to be done by representatives of both parties with the assistance of an "adviser from the Agricultural Association." Inspection would be repeated between two and five times on farmland experiencing a typical crop. If the parties did not agree on the choice of the land, the technician would be free to choose. Further, if the tenants caused the poor harvest, by using unauthorized fertilizers for example, then no reduction could be accorded (Art. 12). The advisor would determine whether or not the tenants were at fault (Art. 13).

Finally, the agreement included stipulations regarding aspects of the farm tenancy relationship that were traditionally under the paternal care of the landowners. For example article 18 stipulated, that the tenant farmers could not sublet the land without approval of the landowner, and in the last clause, the parties were encouraged to restore their previous "harmonious relationship based on cooperation."²⁶⁵ Contact between the landowners and the tenants during the term of the tenancy agreement was to be maintained. However some stipulations in conciliation agreements coincided with the new norms that were stipulated in the three bills related to farm tenancy.

In the traditional northern prefecture of Miyagi, a standard conciliation agreement form was devised in a conflict in which the tenants opposed the landowners' orders for eviction.²⁶⁶ In this prefecture, in the Hashiura dispute of

²⁶⁴ For the most part, two Japanese terms were used to express this evaluation. First *kenmi* 検見; which was originally used in the Kamakura and Muromachi periods and was related to the investigation of a rebellion and, second, was *tsubogari* 坪刈 which was the estimate of the crop based on a random sampling of the cultivated land.

²⁶⁵ Kawaguchi Yoshihiko, *op. cit.* (1993), p.366.

²⁶⁶ Kaino Tamie, 'Kosaku chotei ho to nomin kumiai undo' [Farm Tenancy Conciliation Law and the Farmer Union Movement] in: *Waseda hogaku zasshi* (1972). The farm village in Miyagi was very peaceful until the recession in the early 1930s. The few disputes that had occurred did not show any sign of collective action, nor of the support of an organized union. But, after 1933, the opposition between tenants and owners intensified. Tenancy disputes

1932, the farm tenancy conciliation procedure was used to settle a dispute between 15 tenants and a new owner. The Hashiura tenant farmers had cultivated the land for a very small amount of rent because they had to develop land which had been previously uncultivated. When the farmland was sold to Watanabe, the new owner wanted to increase the rent but the tenants refused to pay the higher amount. Without further negotiation, the tenant farmers were evicted.

Following the above confrontation, the tenancy officer went to the village to assess the situation and urged the tenants to apply for conciliation, which they did. The conciliation was performed by the tenancy officer and the conciliation committee, and throughout the proceedings the tenancy officer remained in permanent contact with both parties. The owner, after realizing that the compromise was actually being mediated by the tenancy officer, went to visit him and tried to influence the tenancy officer to be favorable to his point of view.²⁶⁷ After four months of negotiation, however, a conciliation agreement was reached that allowed the tenant farmers to stay on the land and left the rent as it was.

The Hashiura agreement included several interesting stipulations. The tenant farmers could continue to cultivate the land for a minimum period of 3 years, which could be renewed after the end of this period. The level of tenancy rent was to be decided after an annual evaluation done by two representatives of each party and, if no agreement as to the evaluation was reached, the issue would be "entrusted to the decision of the tenancy officer."²⁶⁸ Finally, the tenancy rent had to be paid at a place designated by the landowner (Art. 5) and, if the tenants failed to comply, the landowner could demand the return of the land after issuing a warning. In the conciliation agreement, the sale of land did not allow the new landowner to evict the tenant farmer. The agreements also stipulated how the tenancy rent and the rent reduction could be calculated.

increased rapidly to 114 cases in 1934 then 269 the next year and reached a peak in 1936 of 369 farm tenancy conflicts. These conflicts were caused by the landowner's wish to evict his tenant farmers and occurred often after the sale of land. The new landowner usually appointed his own tenants-protegees. The previous landowner's tenants opposed eviction and claimed that they were entitled to a "customary right for permanent tenancy." All the other tenant farmers living in the farm village helped to cultivate the land of the tenant who was threatened by an eviction order in order to prevent the landowner from evicting the tenant, even when the owner obtained a court order.

²⁶⁷ *Jirei* (1932), pp.149-153.

²⁶⁸ *Jirei* (1932), p.152.

Finally, a few clauses addressed the circumstances under which the landowner could evict the tenants.²⁶⁹

The conciliation agreement was expected to contribute to the creation of a new legal structure regulating farm tenancy. The tenancy officers managed the conciliation procedure in order to make the resolution of farm tenancy disputes predictable and swift. Adachi Mikio asserts that the tenancy officers were, by virtue of their efforts to standardize the norms in the conciliation compromises, able to build a “new legal structure” in the farm village.²⁷⁰ What could not be changed by formal legislation, then, according to Adachi Mikio, could be accomplished by the tenancy officer in the conciliation procedure.

A question arises: did this uniform nature of the farm tenancy conciliation system prevent future conflicts from occurring and lead to a stable peace in the farm village? Even if the tenancy compromises were similar to a legal structure as it exists in the Common Law tradition, it can be questioned whether the tenants acquainted themselves with the emerging norms. Such norms would likely become mere tools for the mediators and tenancy officers in the process of farm tenancy conciliation. In line with Kawashima Takeyoshi we may say that the effect of conciliation in Japan was dependent upon whether or not the development of the consciousness of law and legal rights of the people was promoted or prevented.²⁷¹

8. Conclusion

*State informal justice under advanced capitalism is a very difficult phenomenon to understand and evaluate because it is constructed out of contradictions (...). It appears to be simultaneously more and less coercive than formal law, to represent both an expansion of the state apparatus and a contraction. For the same reason it is peculiarly resistant to criticism: When accused of being manipulative it can show its non-coercive face; when charged with abandoning the disadvantaged it can point to ways in which informal justice extends state paternalism.*²⁷²

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²⁶⁹ Kaino Tamie, *op. cit.* (1972), p.14.

²⁷⁰ Kawaguchi Yoshihiko, *op. cit.* (1993), pp.367-368. The significance of the norms, which as Kawaguchi points out, could be found more or less uniformly in the prefectures, differed according to the character of the tenancy relationship. In some prefectures, norms were adjusted to comport with the traditional authority of the landowner while in others, the norms reflected the finality of the separation between tenants and landowners.

²⁷¹ Kawashima Takeyoshi, 'Junpo seishin' in: Kawashima Takeyoshi, *Kindai shakai to ho* (1959), p.64.

²⁷² Richard Abel, *The Politics of Informal Justice* (1982), p.307.

The farm tenancy conciliation system was the primary system for conflict resolution in Japan before the Second World War. It was established to resolve the farm tenancy problem largely because the courts were seen as biased against the tenants and often led to an escalation of disputes. Nevertheless, the formal adjudication procedure did play an important role in the farm tenancy disputes by serving as a threat point for landlords trying to force the tenant farmers to become more flexible in fashioning a conciliation agreement. By threatening litigation the landlords had some leverage over tenants; litigation in the farm tenancy disputes, then, served to make the conciliation system work more smoothly.²⁷³

From 1917, the number and intensity of reported farm tenancy disputes increased annually. From 1925 to 1931, the conflicts between tenant farmers and their landlords increased to 2000 cases a year and, in 1934, tenancy conflicts reached a peak of 5828 cases.²⁷⁴ These increase in conflicts endangered the status quo and alarmed the government.²⁷⁵ The tenant farmers were assisted by several farmers' unions and labor associations, which increased the scope of the demands being made by tenant farmers. The nature of the farm tenancy disputes changed from a collection of isolated disputes to a general struggle between tenant farmers and landowners.²⁷⁶

One possible resolution would have been to restructure the tenancy relationship in accord with new social circumstances by adopting formal legal norms through the legislative process. However, participation in the legislative process was restricted to the upper class of society, who paid a high proportion of national taxes. Tenant farmers were not entitled to vote. No political organization of the time represented the interest of all classes in encouraging the establishment of a new formal tenancy law.²⁷⁷ The measure taken by the

²⁷³ Adachi Mikio, *op. cit.* (1959), p.72. Adachi Mikio points out that formal lawsuits were subordinate to conciliation.

²⁷⁴ *Kosaku nenpo*. After the recession in the 1930s, the tenancy disputes also occurred in large numbers in the Northern part of Japan.

²⁷⁵ *Kosaku sōgi ni kansuru chosa* (2 volumes, Tokyo, 1922-1923). and *Kosaku nenpo* (1926-1939).

²⁷⁶ The parallel between the rural tenant movement and the urban labor movement is explained by Imai Seiichi. See: Imai Seiichi, *Nihon no rekishi (Taisho demokurashii)* [Japanese History (Taisho Democracy)] (1974), pp.310-337. The government was conscious of the character of the tenant farmer's claim and therefore urged the tenancy officer to work toward "upgrading the tenant farmers status." See: Internal Ordinance no. 8294 (September 26th, 1924) from the Minister of Agriculture to the Governors.

²⁷⁷ Universal Male Suffrage was established in 1925, but potential voters had to wait until 1928 for the first election under the new roles. At that time, repression of socialist movements by

government to cope with the disputes in the farm village, then, was the establishment of the farm tenancy conciliation system. Under this system, the landlords formally maintained their domination over the village according to the Meiji Civil Code, but the tenant farmers were informally given the possibility to resolve their disputes according to different norms than those stipulated in the Code.

In many ways, the Farm Tenancy Conciliation Law of 1924 favored landowners. Of particular importance to the landlords were provisions allowing for regular contact with mediators (Article 17 and 18) and that providing for organization of the conciliation committee (Article 29). Watanabe Yozo, for example, argues that a far larger number of landlords than tenants acted as layman mediators in farm tenancy conciliation procedures.²⁷⁸ Yet another aspect of the new system favorable to landlords was the fact that the system was only in force in prefectures where tenancy disputes were perceived to be running out of control. In areas where tenant farmers did not confront their landlords, the government did not want to change anything.²⁷⁹

Of course, the farm tenancy conciliation system did not always favor the landlords. Adachi Mikio and Kawaguchi Yoshihiko argue that the tenant farmers used conciliation to counter litigation—one of the most powerful weapons of the landlords.²⁸⁰ The tenant farmers could obtain a more positive result through conciliation than through litigation thanks to the protection of the tenancy officer. This bureaucrat of the Ministry of Agriculture defended the “actual producers.” He was respected and trusted by the tenant farmers, who considered him to be an “exceptional official.”²⁸¹ The tenancy officer was charged with the duty to resolve the disputes in favor of the tenant farmers in order to restore order to Japan’s essential agricultural sector.²⁸² The initiative

the government was so severe that the political hierarchy did not change.

²⁷⁸ Ushiommi Yasutaka, Watanabe Yozo, Ishimura Zensuke, Oshima Taro and Nakao Hideo, *op. cit.* (1957), p.397.

²⁷⁹ As one local authority related, enforcing the conciliation law where no disputes occurred would be like throwing a stone into silent water. Adachi Mikio, *op. cit.* (1959), p.66.

²⁸⁰ Kawaguchi Yoshihiko, *op. cit.* (1993), p.356.

²⁸¹ Kita Masaharu, *op. cit.* (1993), pp.36–37. This statement was made by a farmer in Beppu city (Oita Prefecture). Manshu denden, a “company of national importance” was planning to build welfare facilities for its employees on the farmland. The farmer refused to leave the land and requested the help of the tenancy officer, who convinced the company to abandon its claim on the land.

²⁸² The Japanese government gradually changed its policy from the start of the Meiji period, when the domination of the landlords in the village was actively promoted in order to secure tax revenues, to a policy in the beginning of the 20th century in which agricultural production

in the conflicts, then, was taken from the hands of the parties and replaced by the control of the state through the tenancy officer.²⁸³

The tenancy officer was a trusted but imposing authority for the tenant farmers. The tenancy officer's role in the village developed according to the directives of the government stipulating that the tenancy officer should actually direct and advise the tenant farmers during the conciliation procedure.²⁸⁴ Thus, although the tenants could not expect any more from their opponents in the class struggle, they could expect a great deal from the tenancy officer. The tenants therefore unconditionally entrusted their disputes to the tenancy officer and thus, conciliation helped the tenants to articulate their grievances.²⁸⁵

The state could, through the intervention of the tenancy officer, limit the tenant farmers' independence. It did this by limiting tenants to recourse through the conciliation system. The tenants' grievances would not, therefore, result in a court's decision which might impact the tenants' situation generally, but was restricted to conciliation of particular cases. This, in turn, prevented the farm tenancy disputes from changing the status quo. The system offered redress to individual tenants while preserving the landlord's paternalism as long as it was not challenged by the tenants. Thus, although new farm tenancy disputes occurred each year, the conciliation system was unable to eliminate the tension between tenant farmers and landlords. The tenancy problem was only resolved after the second World War by a radical method: the Land Reform imposed on Japan by the Allied Powers in 1947.²⁸⁶

Alternative dispute resolution is becoming popular worldwide —not only in countries with a tradition of conciliation, like Japan, but also in traditionally litigious countries, such as the United States and a number of European countries.²⁸⁷ In most cases, the state creates new systems of conciliation which

replaced tax revenues in importance. See: Watanabe Yozo, *op. cit.* (1972).

²⁸³ The authorities stipulated that the tenancy officer was to interfere with all aspects of the farm tenancy problem and act as a "secretary for the conciliation of the farm tenancy disputes." Internal ordinance no. 8294 (September 26th, 1924) from the Ministry of Agriculture to the Prefectural Governors.

²⁸⁴ *Ibid.*

²⁸⁵ See: *Jirei*.

²⁸⁶ Ronald Dore, *Land Reform in Japan* (1959).

²⁸⁷ Kline J. Anthony, 'Curbing California's Colossal Appetite' in: *Los Angeles Times* (February 12th 1978). Regarding conciliation in the United States see: Garth B. 'Settlements of Disputes out of Court in the United States: the Role of Lawyers and the recent Emphasis of Neighborhood Justice Centers' in; Kotz, H. and Ottenhof, R. (ed.) *Les conciliateurs. La conciliation. Une etude comparative* (1983). On the tendency to resolve disputes informally in Europe, see: Stephan Parmentier and Hubeau B. *De rechter buitenspel. Conflictregeling buiten de rechtbank om* (1990).

are promoted by the State ostensibly so that disputes can be resolved faster, more cheaply and according to the party's actual needs. Alternative dispute resolution is offered as an improvement over the formal measures formerly relied upon to cope with disputes. But research on the actual functioning of these conciliation procedures will have to consider whether disputes can truly be resolved under such systems and if the important advantages associated with adjudication and legal formalism are not abandoned when informalism is introduced.