Harmony and the Antimonopoly Law

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The oil cartel case

The Tōkyō High Court's ruling on the oil cartel case on September 26 was a judgment not only against the oil industry for forming a price cartel but also against the administrative guidance extended to the industry by the Ministry of International Trade and Industry. MITI's administrative guidance is inseparable from its industrial policies.

As one who has worked for MITI for 32 years and played a role in the execution of its industrial policies, I cannot help having mixed feelings regarding this court decision. As a citizen of Japan and as a public servant, I must respect the Antimonopoly Law as positive law. However, I find it not only appropriate but also necessary, both as a private citizen and as a public official, to question whether the present law is the best possible or whether it should be revised.

I think that intensive efforts to achieve harmony between the structure of Japanese society and the legal principles of the Antimonopoly Law are necessary to make the law and its applications more realistic and rational. The relationship between antimonopoly and industrial policies should be clarified, and greater harmony and solidarity must be sought in the implementation of both types of policies for the sake of the common goal of Japan's economic development. It is vital that mutual understanding be deepened through the frank exchange of opinions representing a variety of viewpoints and that as broad a consensus as possible be formed. The social attitudes toward law that support the existing legislation and policies on monopolies are sharply divided and lack breadth and depth.
The individuality of economic systems

The ideologies and theories of the free enterprise system, the market economy system, and the capitalist system are conceptual structures. Therefore, their content is universal. But actual economic systems, even though they may be commonly referred to by such labels as capitalism, differ from country to country. The factors that shape the unique features of each nation's economy are complex. Here I would like to examine these differences in terms of antimonopoly policies.

If a free enterprise system were to be left entirely unregulated, crimes like fraud and extortion might occur, and such inequitable business practices as unfair and misleading labeling, secret consultations, commodity cornering and hoarding, price manipulation, and dumping might proliferate. Practices like these are undesirable when conducted by individual organizations, but they are even more dangerous when planned and perpetrated by cartels or trusts.

If such organizations and business practices were to be left unchecked, the free enterprise system might be destroyed from within, just as liberalism and democracy were swept away by Nazism. From this point of view, the main purpose of antimonopoly legislation and policies is to exercise control over unfair business dealings and the mechanisms that cause their spread: cartels and trusts. In other words, antimonopoly policies distinguish between healthy and unhealthy freedoms, with governments seeking to maintain and promote the development of healthy free competition in as pure a form as possible while curbing unhealthy freedoms.

Since judgments as to what constitutes healthy or unhealthy freedoms cannot be based on arbitrary decisions by the government, criteria for determining what is unhealthy and punishments for wrongful acts are prescribed by law. The organs set up to enforce such laws are not regular administrative agencies but are more judicial in nature. In the case of Japan, this work is carried out by the Fair Trade Commission.

This description of antimonopoly policies is based on my own interpretation. A glance at the existing antimonopoly legislation in various countries and the ways in which antimonopoly policies are developing will reveal vast differences. The nature of the free economy and of antimonopoly legislation in each country is controlled by such factors as the social structure, values and attitudes toward the law that have developed in the course of the country's history. The relationship between social attitudes and structures and the law is like that between a stream and a water wheel. Just as the wheel cannot turn without water, law cannot live outside the context of social structures and attitudes.

Antimonopoly legislation in the United States

In a country like the United States, which prides itself as a modern free nation without ever having gone through an ancient or medieval period, it is possible for both the free enterprise system and antimonopoly policies to be very close to the theoretical models.

The United States can be accurately described as a country established on the basis of a social contract among the people who immigrated there from Britain and a variety of other countries. These people fled from the oppression of their societies or were driven out penniless. In the New World they became free and equal atomistic individuals. And when they united to build a nation, the resulting structure was comparatively close to Adam Smith's model society. In this new society those who had been freed from the discrimination and restrictions of the Old World had equal opportunity, and free and fair competition that regarded ability as the only yardstick for success developed.

Another historical factor that influenced the establishment of an ideal of free and fair competition was America's subjection to humiliating and unfair treatment by Britain's government and merchants during the colonial period. The dissatisfaction this produced finally exploded in the War of Independence. But even after achieving independence, Americans continued to suffer under the pressure of overwhelmingly powerful European capital and developed a strong adherence of the high-handed trading practices that were conducted with this capital.

Yet evildoers do not come solely from without; they dwell within as well. Elements employing underhanded tactics emerge in competition that was originally fair and free. Just as criminals congregate and form organizations like the Mafia, so these corrupt business elements join together to form cartels. Or trusts are formed and enter the arena of competition, as unfairly and unevenly matched as heavyweight boxers competing with flyweights. For the United States to maintain its freedom, it had to eliminate this type of unfairness.

America's beginnings and early experiences implanted such values as freedom, equality, fairness, quality of opportunity, and an open-door policy in its social genes. U.S. antimonopoly legislation is the legacy of these values.

(from this it is a simple matter to deduce that in free and fair American competition, where ability is the sole criterion, the basic rule of the game is that the weak will fall, and when they fall they must withdraw gracefully.) The defeated must pack up their wares, get on the stagecoach, and go to a new frontier where they can look for new opportunities. Corporate sellouts and takeovers are everyday occurrences! It is on this popular consensus that American free competition, rationalism, and antimonopoly legislation are based. The structure of antimonopoly legislation, the people's attitudes in support of this legislation, and the structure of the society in which this legislation is applied are all infused with the same American spirit. As a result, American antimonopoly legislation is genuine living law, for it is law, to borrow a phrase from Abraham Lincoln, "of the people, by the people, and for the people."

Antimonopoly legislation in Europe

Let us now consider antimonopoly legislation in Europe. Unlike the United States, Europe has a very old history and culture, and this is naturally reflected in its social structures and values.

The European individual is not the purely atomistic individual of America. The emergence of the sense of self in modern times does not mean that the sense of community that existed since ancient and medieval times has disappeared. Although
individuals are atomistic egos on one plane, they are also members of communities each of which has its own history. In Europe, therefore, it is not possible to place the same degree of importance on the freedom of the atomistic individual as in the United States.

Even today the divisions between social classes are still in force in such countries as Britain and France. Competition is free, yet there is not always equality of opportunity between ordinary citizens and those armed with class privilege and inherited property. The work force has considerably less mobility than in the United States, both geographically and in terms of social class.

The principle of eliminating weak elements operates in the working class and in small business, but the law of survival of the fittest does not really apply in the upper echelons of society. Although there may be free enterprise and free competition, freedom is not as pure as in the United States.

Today the United States has virtually no state-run enterprises. In Europe, however, such enterprises are extremely common. This, too, is probably a result of differences in history and value system. For the same reason, the incompatibility and abhorrence that Americans feel toward cartels and trusts does not seem to exist in Europe.

Although European countries have accepted antimonopoly laws and policies in principle, they have made major adjustments to fit these American garments to their own measurements and tastes. And countries like France and Britain, with their national pride and long traditions, have hung these new clothes in the back of their legal wardrobes. In Europe, only West Germany and the Common Market are enforcing strict antimonopoly policies.

Generally speaking, then, antimonopoly legislation is accorded a much lower status in Europe than in the United States. Controls are looser. For example, only when cartels and trusts, whose very existence is regarded as evil in the United States, harm the public good it is judged necessary to eliminate them.

**Japanese society’s macromolecular structure**

Japan’s history is as old as Europe’s, but it has been subject to less outside interference and consequently has more spontaneity and continuity.

Since the Yayoi period (c. 200 B.C. to c. A.D. 250), the Japanese have cultivated fields in the warm, moist climate of these islands. As a result, the social structure has evolved into a form most suited to agriculture. Countless villages—communities formed for the purpose of conducting agriculture—sprang up throughout Japan, and these have survived down through the centuries. A comparison of any two villages selected at random will reveal structures that are almost identical. Yet each village has its own life and history, and mergers have been extremely unusual, even for neighboring villages.

Japanese society differs from American society in that the atomistic individual never became established as the basic unit. Those who struck out on their own were exceptions, and today, as in the past, the basic unit of Japanese society is not the atomistic individual but the molecular group, most commonly represented by the household and the village. The household is like a monomer and the village like a polymer. The individual exists as an organic part of these groups.

The basic internal principle in the formation of such groups is harmony. This applies to the current Suzuki government in the same way that it did to the Shōtoku government of the early seventh century. The American values of freedom, equality, equal opportunity, and an open-door policy are alien to the traditional character of Japanese society.

Japan was injected with vast quantities of such foreign “protein” in the periods following 1853 and August 15, 1945. China and other Asian countries reacted to this injection by going into convulsions. In Japan, however, although there was an allergic reaction, the injection was successfully broken down and assimilated. As a result, Japanese society now has a dual structure like that of the human brain.

My knowledge of anatomy is meager, but I know that the brain can be broadly divided into the paleopallium and the neopallium. The paleopallium is the heart of the brain, and it is here that human instincts are generated and controlled. The neopallium comprises the outer layer of the brain and produces and controls memory, thought, judgment, and the other higher abilities characteristic of human beings.

People who like to make value judgments in terms of black or white may tend to think that only the neopallium is important to human beings. But without the functions of the paleopallium a person would probably die within a few days. And without the functions of the neopallium, a person’s existence would differ little from that of a snake or frog. A person’s existence as a whole depends on the delicate balance between the neopallium and the paleopallium.

The traditional structure and ethics of the village form a solid base in the lower stratum of Japanese society, which can be likened to the paleopallium of the human brain. I believe that it is this lower stratum that the basic nature of Japan’s society and people comes into being, just as human instincts are generated in the paleopallium.

At the same time, Western values and Western-style human relationships exist as norms on the surface of Japanese society, which is like the neopallium of the human brain. Mainstream values thus regard freedom of the individual and basic human rights as absolutely essential.

It seems to me that the outward principles of Japan’s society and people originate in this surface layer. Such groups as the so-called progressive intellectuals, the worshipers of America and Europe, the majority of journalists, and progressive opposition parties seem to think that this surface layer represents the ideal Japan. They are unwilling to acknowledge the existence of the lower layer beneath. Even when they do admit that it exists, they try to dismiss it as a relic of old times.

But whether we like it or not, the paleopallium inside the Japanese brain is still alive and kicking. And in this part of the brain, community values take priority over individual values. Belonging to a group and working for, harmonizing with, and cooperating with that group constitute the individual’s values, rights, and duties. Whatever illusory progressive intellectuals may harbor, the employees of such companies as Nippon Steel, Toyota, and Matsushita are working both for them—
selves and for the community formed by their company.

Tension and conflict between the neopallium and the paleopallium of Japanese society provided the main theme of the stormy hundred years that followed the 1868 Meiji Restoration. This tension has been a major source of the extreme dynamism that has characterized Japanese history since the Meiji era. During the century following the Meiji Restoration, the process of harmonizing the demands of both layers of Japanese society was generally completed in the areas of civil, commercial, and criminal law, and a point of balance between the two was barely achieved.

Still, the shock that resulted from the injection of foreign protein in the form of the Antimonopoly Law has not subsided. It will be extremely interesting to see how modern civilization copes with the task of implanting the spirit of such a typically American idea as antimonopoly legislation into Japan’s unenlightened culture. In my opinion, most of the people enthusiastically supporting the Antimonopoly Law in Japan today have a psychological structure similar to that of the progressive intellectuals I mentioned earlier. Those vehemently opposed to the law, on the other hand, tend to be extremely nationalistic in their thinking, and the recent decline in their numbers is understandable. I believe that a middle-of-the-road course, not leaning too far to left or right or to new or old, is the most virtuous path to tread.

The Structure of the Village

The traditional way of achieving harmony in Japan is through a consensus based on discussion among the members of the group concerned. A well-known Japanese myth tells how all the gods and goddesses held a conference on the shores of the river of heaven, and ever since it has been a noble tradition of Japanese society that matters of importance concerning a group be dealt with through discussion and consensus.

A society of this type can generally be expected to give strong expression to feelings of harmony in “inner circle” (sōkaw) relationships, such as those within the household, village, or nation, and to feelings of competition, confrontation, and conflict in external relationships, such as those between households, villages, or nations. In such a society the strengthening of internal solidarity against outsiders is a basic pattern of behavior.

The more inward-directed this type of society becomes, the more its harmonious relationships of solidarity and cooperation grow. Conversely, a greater degree of external orientation produces more relationships of tension, such as distrust, confrontation, and conflict. For this reason almost pathetic efforts are being made to create more inner-circle relationships in Japanese society, particularly in interpersonal and intercorporate relations in the business world. The type of business group that became controversial in connection with the oil cartel case exists in vast numbers in Japan. The force that creates these groups seems to lie in the vectors of Japanese society.

The line that separates the inside from the outside is not absolute. A member of a particular section or department of a company, for example, regards that department as the inside group and other sections and departments as outside groups. From the corporate point of view, however, the company is the inner circle and other companies constitute the outside. These “us versus them” relationships extend outward in concentric circles to encompass the sector of industry to which one’s company belongs and the country of which one is a citizen. The old nationalistic slogan sekkō ichie (the eight corners of the world under one roof) took this ideal to its romantic, egocentric extreme.

During the period of rapid economic growth after World War II, changes occurred in the nature of the traditional Japanese village that led to its disintegration. The fragments that remained entered companies, government agencies, political parties, and every type of Japanese organization. And in these organizations the principle of the village was born again.

Competition in Japan and America

Competition is fundamental to economic phenomena. Yet competition between Japanese companies differs from that between U.S. companies. American-style competition resembles that described in economics textbooks. Competition in Japan does not.

The Japanese version of competition takes the form of solidarity within the company (that is, village) and burning enthusiasm for combat in intercompany relationships. Within a company it is not enough for employees merely to carry out the duties set down in their contracts. Regardless of what is or is not stated in their contracts, employees are expected to strive day and night to be good members of the company. What exactly this entails is not written down, for there is no need to stipulate it in a contract or in the company regulations.

Similarly, it is not enough for the company simply to pay its employees their prescribed salaries. The company and its executives must take a warm interest in such concerns of the workers as marriages, funerals, health, housing, and children’s education. The form this “warm interest” takes is also based on tacit understanding.

At the core of the centrifugal force in Japanese groups is the warmth within the inner circle as opposed to the coldness of the outside. Japanese cooperate, integrate, and unite for the sake of this warmth. The powerful “fusion energy” this produces finds an outlet in the form of competition with those outside.

Corporate communities of this type are not merely cold instruments for the purpose of seeking profit. Of course companies are strongly motivated toward making profits, since profits are essential to a company’s existence. But Japanese companies are also deeply attached to the emotional value of prestige.

A company’s market share is an important symbol of prestige that ranks as high as or even higher than the company’s profits. That is why companies will sometimes embark on all-out efforts to expand this share. This is the source of the fierce competitiveness of Japanese companies, a characteristic that neither European nor American companies can imitate.

The problem with Japanese-style competition is how to bring a reasonable degree of order to the rivalry between companies burning with such fierce competitiveness. Recently, I have made several official trips to the United States and Europe in con-
connection with trade friction, and I have noted that "moderation" has become a favorite word among the officials of other governments as they entreat Japanese business to ease up on its export activities and oil purchases.

These people feel that Japanese business activities are too out of line, and there is a firmly rooted impression that Japanese companies are fiercely aggressive. Of necessity, the Ministry of International Trade and Industry is now attempting to encourage moderation through a variety of administrative guidelines. In fact, most of the guidance the ministry implements is aimed at achieving moderation.

This guidance sometimes comes into conflict with the logic of the Antimonopoly Law, however, resulting in clashes between industrial and antimonopoly policies. I intend to examine industrial policies and administrative guidance in a future article, so I will not go into detail here.

In regard to antimonopoly policies, however, I would like to emphasize the importance of eschewing stereotyped notions of forced competition. Careful consideration should be given to the peculiarities and realities of competition as it occurs in Japan, and to the problems this competition creates and the steps taken to counter these problems. History proves that extremely effective results can be obtained by determining the peculiarities of competition in Japan and applying appropriate controls.

It was indeed fortunate that Japanese industry and the Japanese government were able to avoid such pitfalls as developing mistaken notions about the nature of competition in Japan and making rash value judgments based on Western concepts regarding industrial and antimonopoly policies.

A second problem regarding competition in Japan is its contradictory nature: Competition produces losers, but Japanese society finds it hard to accept such a consequence. According to the American concept of competition, that the loser should perish is natural under the basic principle of taking responsibility for one's own actions. But no amount of indoctrination will make this attitude any more than superficial in Japan.

In the United States, the losers get on a stagecoach and travel on to a new frontier. As I stated earlier, corporate sellouts and takeovers are everyday occurrences. Japanese society, however, is not so hard-boiled. It takes a major emergency to make villagers abandon their village en masse. Japanese feel a powerful sense of guilt and tragedy when a community is dismantled and abandoned. The cold, detached attitude that responsibility for oneself, survival of the fittest, and elimination of the weak constitute the ultimate in rationalism will not work in Japanese society.

Safeguards under Japanese competition

Japan's competitive society has incorporated a variety of devices in its national and industrial foundations to eliminate the danger of ruinous internee competition and mutual destruction.

The first of these devices is, of course, the pursuit of high growth. High growth provides the smoothest solution to the problems described above. The high-growth policy of the Ikeda Hayato Cabinet of the early 1960s was a superb strategy aimed at releasing in an organized manner the vast energies accumulated within Japan's competitive society and directing them toward the outside. This policy blended remarkably well with both the endogenous Japanese social structure and values and the contemporary world situation. Fortunately, the internal and external frontiers at that time were practically limitless, so Japan's sudden rise did not cause any great friction.

The second device is the reinforcement of relationships of mutual dependence. Just as feudal lords during Japan's period of civil strife in the sixteenth century ensured their survival through a variety of mutual safeguards, such as retainerships, alliances, marriages, and hostage exchanges, modern corporations take considerable pains to create relationships of mutual dependence and aid with banks, trading companies, parent companies, subsidiaries, politicians, and government agencies.

Any company that collapses because it has failed to take these steps will be an object of scorn and criticism for its rashness in not at least establishing a close relationship with a bank. And there would be severe social criticism if a bank, trading company, major corporation, politician, or the government agency with the relevant jurisdiction tried to apply the rules of economic rationalism and responsibility for one's own actions and do away with a "vassal" company that was in trouble.

One feature of Japanese society is the formation of emotional relationships of mutual dependence over a wide range and to varying degrees. In such relationships an appropriate degree of service is provided in normal times as collateral for favors in times of difficulty. This is another instance of the powerful functioning of the typically Japanese phenomenon whereby companies are linked with other companies in relationships that are not atomistic and unrealistic but molecular and organic.

The third device is the setting up of a variety of relief measures by the government. A typical example is the policy of not allowing banks to collapse. This is not mere rhetoric; it is historical fact. And once it is established that banks are absolutely exempt from collapse, reliance on a bank becomes the best guarantee of safety. If a company relies on a bank and borrows large amounts of money to expand its share of the market, its security is guaranteed.

This protection is not limited to banks. Mechanisms have also been set up with a degree of care unheard of in other countries to ensure the security of farmers and small businesses.

Antimonopoly legislation and Japanese society

With fiercely competitive attitudes (the spear) on the one hand and powerful safeguards (the shield) against the risks that competition incurs on the other, sparring competition is as natural a consequence as the increasing severity of war resulting from the parallel development of offensive and defensive weaponry. This brings us to a chicken-or-egg type of controversy regarding whether excessive competition is caused by the spear or the shield.

In my opinion the main cause of excessive competition in the Japanese context is the "village" structure and ethics of Japanese businesses that I described earlier. This situation leads to the creation of a variety of safeguards where necessary, and yet it has also been a secondary factor in intensifying competition. And protective controls
formed by independent political or social causes have doubtless been a factor in the escalation of competition.

Yet it is utterly unthinkable that the simple elimination of these impurities would lead to the appearance in Japan of the pure Western-style competition described in economics textbooks. Even if all these impure factors were removed, how would one approach the remaining peculiarities of Japanese-style competition? This is where the source of Japan's antimonopoly, industrial, and economic policies lies?

But most Japanese scholars do not seem to think this way. They claim that safeguards are the real cause of excessive competition, that the indiscriminate erection of shields by the government has prompted businesses to shake their spears. The chimera of excessive competition would vanish and all would be well if the government would simply cease its excessive protection and intervention and allow free competition and markets to take over.

Basic thinking on the subject of Japan's existing antimonopoly legislation seems to differ little from this view.

Such thinking is unacceptable to me. It is too far divorced from reality. For argument's sake, however, let us imagine for a moment that these views are correct. If this were the case, it would not be enough to indict only the oil-industry cartel. We would also have to attack, in legislative terms at least, the banking law, the temporary interest rate adjustment law, the smaller industries organization law, the innumerable financial safeguards, and the various protective laws dealing with small businesses and agriculture. If we did not do so, our logic would be inconsistent.

Living law and dead law

I have already described how in 1947 a brand-new American façade and an American neoclassic in the form of the Antimonopoly Law were abruptly superimposed onto a Japanese social structure and paleopolitum of markedly different character. American antimonopoly legislation was imported into Japan unmodified, with total disregard for the vast differences that existed in the histories, traditions, values, customs, and social structures of the two countries.

I am not saying that antimonopoly policies are erroneous, worthless, or harmful in the context of a society and economy like Japan's. As I mentioned earlier, powerful competition and confrontation between groups and companies occurs in Japan. It goes without saying that in any society where there is strong competition, be it Japanese style or American style, there are those who seek to win by competing in a way that is not desirable from society's point of view.

In Japanese society, for example, there is a tendency to try to force sacrifices onto temporary workers, subcontractors, and other outside elements whose position is weak. Operators of independent enterprises, unable to pass these sacrifices along to other parties, work weekends and nights simply to survive. Groups of corporations that conspire to bring about substantial price increases exist in any society.

Socially undesirable competition of this type must be controlled. The need to establish order in competition is common to American, Japanese, and every other type of competitive society. Just as measures to prevent damage caused by diseases and insects are necessary in agriculture, so business needs effective antimonopoly policies with few side effects.

The crux of the problem is deciding what method to use to eliminate these diseases and insect pests. The United States treats the problem with doses of antimonopoly legislation. But I am uncomfortable with the idea that Japan should use the same method, and I am not the only one who feels this way.

We have already seen how Japanese society makes desperate efforts to reduce conflict by internalizing outside elements. This method starts with a heart-to-heart talk over drinks. The relationship of conflict with the outsider is thus pacified and transformed into an internal relationship of harmony and cooperation. According to traditional Japanese values this is a praiseworthy, virtuous practice.

Why then should this practice be rejected? To say only that the law, which originated in America, stipulates that it should be nothing but a clever ploy. It seems to me that scholars and the Fair Trade Commission are obligated to provide a careful and detailed explanation. Without this explanation it will be very difficult to make the Antimonopoly Law a living law in Japan by simply brandishing existing legislation and classifying discussions among businesses as improper.

The key to the question of why cartels must be regarded as undesirable in a society that generally places a high value on discussion can perhaps be found in the terms "greater harmony" and "lesser harmony." Any lesser harmony that goes against the rules of society and the general good for the sake of private gain must be rejected.

From this point of view private cartels should not be regarded as undesirable simply because they are cartels. They should be condemned only when they are clearly, objectively, and positively seen to be acting in conflict with the general welfare.

This of course brings us to the question of what exactly constitutes the general welfare. To avoid arbitrary interpretations, the meaning of this term should be defined beforehand as concretely and objectively as possible, and this definition should be made public.

Many people would say that the Antimonopoly Law went through a period of emasculation from 1947 to 1953. I take exactly the opposite view. The revisions made in the law during that period were modest improvements designed to adapt American antimonopoly legislation to Japanese conditions. I suspect that those who see this as "emasculation" regard the American law as ideal and ignore Japanese conditions.

I do not have any concrete proposals for "living" antimonopoly legislation suitable to Japanese conditions. But I think it is extremely important to make the effort to formulate the necessary laws and policies. If a true antimonopoly law of the type I have described were to take root in Japanese society someday, it would be possible to bring order to the jungle of legislative controls and safeguards. And when that day comes, we can look forward to the establishment of a beautiful and orderly system that equally embraces both the paleopolitum and the neoclassic of Japanese society. (Courtesy of Bunset Shunji)