

The transformation of trusts and its implication  
to Japanese law  
—Institutional competition with the companies  
and succession

Masayuki Tamaruya  
(The University of Tokyo)

In his essay 'Trust and Corporation,' Maitland says: 'when once a Rechtsinstitut has been established, it does not perish or become atrophied merely because its original function becomes unnecessary.' This observation, as well as his analysis in the essay, applies equally to what happened to trust outside English borders and after his writing. The diffusion and transformation of trusts in the global settings began in the seventeenth century as the British Empire expanded and London became an increasingly prominent financial center. In the process, trusts engaged in an institutional competition with companies as in the form of mortgage trusts, industrial trusts to create monopoly, and mutual funds in the nineteenth to early twentieth century, and as securitization vehicle in more recent years. Ever since trusts were used to avoid primogeniture before the Statute of Wills 1540, trusts have also competed with wills and other method of succession as in the form of strict settlement in England and the modern will-substitute in the U.S. After certain period of competition, the trust would often lose its institutional significance, but, to quote Maitland again, 'by this time the trust has found other work to do and does not die.' This perspective is helpful not just to identify the historical significance of the Japanese Trust Act 1922 but also to understand the historical significance of various challenges with which the Japanese law and

practice of trust is confronted in the present day.