

Breaking the State Monopoly on Public Affairs

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The 1990s have been called a “lost decade” for Japan. Certainly it was a period in which the country seemed to flounder without a clear, long-term strategic vision, scrambling to cope with the long recession that followed the burst of the bubble economy and with the various problems that then came percolating to the surface. In the political sphere, there was a succession of party realignments, changes of government, and reforms of the administrative setup, but none of them amounted to the real reform that people had hoped for.

The current decade may be seen as just the next act in the longer drama of Japan’s post–World War II history. Half a century since the war’s end, the cheery—and sometimes euphoric—first act ended. The second act has begun on a gloomy note. A whole series of “reforms” have been undertaken on an emergency or ad hoc basis to deal with the changing conditions of the moment. The January 2001 overhaul of the ministries and agencies of the central government, however, has been seen by many as yet another supposed reform that lacks real substance. And the National Public Service Ethics Law, adopted after scandals sullied the reputation of the bureaucracy, is viewed with even greater skepticism.

The background to each of these reform efforts, and the cool reception they have received, is similar. The media makes a great commotion over a problem without digging beneath the surface to uncover the deeper story. The ruling parties, which lack a solid base for their position in power, and the opposition parties, which lack a sense of direction, are swayed by the media uproar and cobble together a compromise set of measures designed more for show than for content. Meanwhile, the bureaucracy does its best to maintain the status quo. This—if I may offer my own media-style sketch—seems to be the common pattern. One wonders if the administrative setup will in fact be improved through this kind of repeated patching. But one can

also take the view that there is no need to be so pessimistic. A picture can look quite different depending on the angle from which it is viewed.

Leaving aside the individual measures that have been taken and the results that they have produced or failed to produce up to now, if we turn our gaze to the broader current, we can see a certain coherence and inevitability in what is going on. What is happening is the emergence, in various forms, of the unsustainability of the approach that Japan has taken since the mid-nineteenth century in the name of modernization, that is, to have the government take charge of all public affairs. The fact that we are near the end of this particular road is something that not just politicians and bureaucrats but society as a whole must deal with. This broader view suggests that even though the individual measures implemented in the name of reform may in many respects be wasteful, ineffective, or even harmful, the overall current is moving in the direction it must. Looking at the reform process as a whole issue, we find that the second act of the drama is crucial in bringing Japan's modernization to a conclusion and switching to a greatly different set of economic, social, and political systems. Given the nature of this period and the fact that democracy is essentially a wasteful system, a certain amount of confusion and waste is only to be expected as part of the effort to achieve change. So, one wonders, is it appropriate for journalists and commentators to detachedly discuss those lost years?

THE STATE MONOPOLY ON PUBLIC AFFAIRS

Both Japanese and non-Japanese often remark that Japan is a country where people rely on the government, or *okami* (those on high), for everything. It is true that the government, national and local, is involved in a vast range of activities, from care for children and the elderly to implementation of public works projects, both directly and through the payment of subsidies. This is a state of affairs which most Japanese have grown accustomed to. Even the media, which trumpet small government, are quick to demand that authorities take responsibility when something goes wrong. And when the economy stalls, the government is expected to provide stimulus to promote a recovery. So pervasive is the hand of government that Japan has been called "the world's most successful socialist country."

Japan had a much smaller government in the Edo period (1600–1868), when the shogun and his vassals ruled as real *okami*. Regardless of the ostensible power of these overlords, the country's civil society had, in practice, a considerably broader reach than is the case today. All kinds of activities, ranging from the education of children and care for the infirm to local public works, were carried out in principle as “civilian” undertakings.

So how did the government end up getting its hand in everything? In recent years, talk of civil society has become all the rage, and nonprofit organizations (NPOs) have emerged as active players in various fields. Moves to regularize the status of NPOs are also progressing apace. This trend would seem to suggest the type of society Japan is headed toward. To understand this better, let us review the course Japan has followed since the Meiji era (1868–1912), when it embarked on its program of modernization.

Before the rise of the modern nation-state, the role of the national government was very limited, involving only internal security, diplomacy, and defense. Japan was a “night-watchman state.” Under this setup, people basically took care of the public affairs affecting their own lives. Local communities, for the most part, handled disaster prevention and relief, public works, education, sanitation, town development, and assistance for the disabled and elderly. In the age of the night-watchman state, control of ordinary public affairs was highly decentralized, and the main actors were civil communities. This was true of traditional Japanese society as well.

Today, everyone thinks of the police, firefighters, schools, and public works as being naturally part of the government's domain. But in the Edo period, the bulk of these activities were in civilian hands. This is clear from the old terms used for the above four services: *meakashi* (police), *hikeshi* (firefighters), *terakoya* (schools), *jifushin* (public works). All evoke the notion of community members working for the public interest, neither paid for nor controlled by the government. Of course there was no nationwide system of uniform public education, but in the mid-nineteenth century, some 70 percent to 80 percent of the children in Edo (present-day Tokyo) went to school, apparently a much higher rate than in Europe at the time. Textbooks on all kinds of subjects were prepared for the pupils of the *terakoya*; there are over seven thousand examples extant, and about a thousand were geared specifically for the education of girls.

To fight the fires for which Edo was famous, neighborhood residents throughout the city supported their own bands of *hikeshi*. While the two offices of magistrates administering Edo for the shogun were staffed by only a few hundred samurai in total, the city is said to have had almost ten thousand firefighters. The point is that both the *terakoya* teachers and the *hikeshi* were basically neighborhood volunteers whose reward was the respect and admiration of their community (see Ishikawa and Tanaka 1996).

Edo Japan was an absolute monarchy, where *okami* (the shogun and his retainers and vassals) controlled everything. Based on this fact, most Japanese believe they are a nation with a long tradition of relying on authorities to look after them. But closer examination of history reveals this to be incorrect. The role of *okami* was no more than the superficial control, under which the vast majority of public affairs was handled with complete autonomy by local communities. In addition to the four terms mentioned above, the vocabulary of the period included words like *yui*, *shu*, *ko*, and *kumi*, all referring to groups organized locally for joint undertakings of one kind or another. In other words, the basic setup was that ordinary citizens took care of virtually all public affairs relating to their lives.

Behind the transformation of this system of small government into the big government of the twentieth-century state lay the social changes that followed the industrial revolution. These included the rise of a population of factory workers and the progress of urbanization, accompanied by a widening income gap, the decline of traditional communities, and the emergence of problems like poor sanitation and crime in cities. At the same time, on the basis of their industrial power, countries competed intensively in the economic arena. In order to succeed, they needed proper roads, ports, and other infrastructure.

Meanwhile, in order to deal with rapid urbanization, assure workers a minimum standard of living, and build up national order, states found that they needed to provide various public services previously handled at the community level. This process, which led ultimately to the creation of the welfare state, meant the transfer of responsibility for public affairs from civilian to government hands. From the perspective of community residents, this represented the outsourcing of public activities previously handled by themselves.

In Japan's case, this process occurred in dramatic fashion, starting in the Meiji era as the country raced to catch up with the West. Because of the huge setback of World War II, it had to repeat much of the process after the war. During this period, the government adopted a variety of measures: an ever-growing volume of public works; industrial policy, starting with the priority production system that concentrated scarce resources for the development of core industries; the income-doubling plan of the 1960s and other economic policy; uniform nationwide education, in part to produce the workers required by industry; and the concentration of authority in the central government's hands to ensure that these policies would be implemented throughout the country. The strategy proved extremely effective—the economy grew very rapidly—but at the same time it sped up the further outsourcing of public affairs from the civil sector to the government. As this happened, the role communities had once played came to be rejected as premodern.

The result of this process then was a setup whereby the government monopolized the decisions as to what constituted the public interest as well as the actions carried out to serve this interest. Hoshino Eiichi (1998) refers to this as the “state monopoly on public affairs.”

Japan has many arrangements institutionalizing this monopoly. Here are two critical examples: the provisions of Article 34 of the Civil Code and the establishment laws of the central government organs.

Article 34 of the Civil Code, which requires the approval of the competent authorities for the establishment of a public-interest corporation, has not been changed since it was promulgated in 1898. The article, in the archaic language of prewar legislation, declares: “Associations or foundations relating to ritual, religion, charity, academics, arts and crafts, or other fields of public interest and not having the purpose of seeking profits may be incorporated subject to the approval of the competent authorities.” On the surface, the clause allows for the incorporation of public-interest organizations, but the deeper implication is that government determines the public interest. To administer this interest, the government creates uniform nationwide standards, and groups seeking to meet these standards apply for official approval.

The establishment laws of the central government organs define the roles and organization of ministries and agencies. This set of laws involves the core of Japan's system of governance, not just since the end of World War II but since the latter part of the nineteenth century. Two key

terms in this regard are discretionary authority and administrative guidance, the latter being carried out on the basis of the former, which is broadly defined. Through administrative guidance, the organs of the central government exercise authority in ways that have not been specified under legislative provisions.

This authority has two sources. The first is the general provisions of individual laws, which grant authority to bureaucratic organs. The second is the establishment laws of each of the ministries and agencies that remained in effect until the revised laws in January 2001. In practice, most cases of administrative guidance have their basis in specific legislation, but the critical thing about establishment laws is that they gave bureaucrats sweeping, abstract powers that ranged across the entire scope of specific legislation.

How did these establishment laws work? Their fundamental purpose was to set the administrative responsibilities of each ministry or agency; in other words, they defined turf. They did not stop there, however; they also defined each organ's authority. For example, Article 4 of the original Ministry of Finance Establishment Law defines the ministry's functions to include "matters concerning the formulation of the national budget and settlement of accounts" and "matters concerning the imposition and collection of domestic taxes." Article 5 defined its corresponding powers to include the "formation of the national budget and settlement of accounts" and the "imposition and collection of domestic taxes."

Article 5 is the problem. Powers of the kind granted by Article 5 should, properly speaking, be based on specific fiscal and tax legislation. In a country under the rule of law, the powers of government organs are reasonably delimited by legal provisions, but the establishment laws for Japan's central government organs gives them comprehensive authority over the areas of their responsibility. They permit the sweeping exercise of administrative guidance.

There are many examples of administrative guidance given by ministries or agencies on the basis of establishment laws, but one of the better known is the system of acreage-reduction quotas for rice cultivation. Until the new Staple Food Law came into effect in 1995, there was no law specifically providing for reductions in the area of rice cultivation, but this did not stop the Ministry of Agriculture, Forestry and Fisheries from stipulating quotas. Another example involves nursing homes for the elderly. Medical corporations seeking to open such facilities have

been subject to demands by the Ministry of Health and Welfare that the wishes of local physicians' groups be met; the Health and Medical Service Law for the Elderly contains no such provision.

Before police officials can search any premises in the investigation of a crime, a specific search warrant must be secured. If criminal investigators had the power to barge into a home or office without a search warrant, we would not be living in a country under the rule of law. Though this analogy may not be precise, the establishment laws of Japan's central government organs in effect gave bureaucrats that power.

While it may now be accepted that government organs must have the authority of specific legislation in order to act even within their areas of responsibility, from the Meiji era to the end of World War II, bureaucrats exercised governing authority and administrative powers as "officials of the emperor." Provisions establishing the bureaucracy were introduced at the time of the first Meiji government cabinet in 1885. These provisions, which defined the organization and powers of the bureaucracy, actually predate the creation of laws governing public administration, which occurred with the inauguration of the nation's first parliament in 1890.

Given its long tradition, that this system carried over into the postwar period as a part of Japan's distinctive set of generally accepted arrangements is not surprising. The problem is that public administration even today is performed as a natural extension of this archaic structure. Thus, until its revision in 2001, the Science and Technology Agency Establishment Law included a provision granting this agency power "to promote the use of space (except for matters under the responsibility of other administrative organs)." If this were taken at face value, the Japanese bureaucracy had the right to parcel out control not just of Japan but of the entire universe!

The bureaucratic setup in Japan accordingly has placed every aspect of national life under the purview of a government organ. Citizens and businesses depend on the government and are in turn controlled by it. The authority that bureaucrats have assumed affords them sweeping discretionary power, but it has also been reason for frequent cases of corruption. It also explains why deregulation and decentralization have failed to progress. For example, if the bureaucrats of

the Ministry of Land, Infrastructure and Transport can dispense administrative guidance without any direct basis in the Road Transportation Law, then revising this law changes nothing.

It is true, of course, that everyday government administration is not conducted solely on the basis of the establishment laws. But these laws have been rather like water and air for the bureaucrats, and to large degree, these laws sustain the bureaucrats still. The mandarins of the Ministry of Economy, Trade and Industry, for example, feel that anything relating to industrial policy or international trade is naturally their concern and their responsibility; the bureaucrats of the Ministry of Education, Culture, Sports, Science and Technology feel the same way about all matters relating to the school system. And on and on.

Both Article 34 of the Civil Code and the establishment laws of the central government organs served as the original institutional framework for the state monopoly on public affairs. This framework has since been filled out by a variety of other arrangements, such as central government subsidies and revenue sharing for local governments. By providing subsidies, the central government determines the shape of public services provided locally, leaving no room for regional discretion. The revenue sharing that is carried out under the local allocation tax theoretically provides funds for local authorities to use as they see fit. But here, too, the bulk of the money goes for the provision of services mandated by the central government, and the apportionment of the revenues is based on uniform standards for services in line with the goal of equal development throughout the country. Here again is a demonstration of the central government claiming the right and duty to decide the public interest.

FROM OUTSOURCING TO “INSOURCING”

Even as Japanese have relied on the government to handle tasks that properly should be carried out by the general public or by local communities, this policy was an efficient and fair approach in promoting national development. But during the long period that this setup has been operative, great changes have taken place in people’s values and in national and global conditions; meanwhile, the organizational units and functions of the bureaucracy have proliferated, and the interests served have become ossified. As a result, the system of public administration has

become overgrown, inefficient, and inequitable, and it has been sapping the vitality of the nation. This has led to drives for privatization, small government, and decentralization.

The reliance on the government to handle public affairs has also led to the hollowing out of community and individual life. The transformation from the Edo-style community groups that fulfilled community functions to the present system of outsourcing, where things are left to the government, was considered part of the process of modernization. But as a result of this process, communication among residents of local communities was attenuated.

After the Kobe earthquake in January 1995, rescue efforts reportedly went more smoothly in the older districts of the city, where people knew their neighbors. While modern Japanese seem to prefer an anonymous, independent lifestyle to the community of the old-fashioned village, where nothing can be kept secret, this trend has not been without cost. Leaving aside the issue of disaster relief (knowing whom to search for where in a jumble of collapsed buildings), we encounter various problems born of this mutual alienation, including something as mundane as getting people to sort their trash properly before putting it out for collection. We also see disregard for social rules, bad etiquette, and ill manners.

Without harking back to the Edo period, surely many people have enjoyed a small but warm feeling of satisfaction from giving and receiving bits of help in neighborhood relationships. Opportunities for interchanges of this kind, however, are few. The recent popularity of involvement in NPOs may be, at least in part, a result of an attempt to fill the void left by the social atomization of modern life.

What can we do to counter this situation and develop a “civil society” in today’s Japan? A variety of moves are already under way, including activities by NPOs and nongovernmental organizations (NGOs) on both the domestic and international fronts. Overall, the process we need to encourage is one that switches back to the “insourcing” of everyday, local activities. To put it in political terms, we must seek a transformation away from a society where the state holds a monopoly on public affairs to one where public affairs are decided and implemented by the people whose interests are at stake.

As discussed above, the provisions of the establishment laws vesting general powers in ministries and agencies were abolished in 2001. This was the result of the efforts of the group

Japan Initiative, which I am a member of. The ideal approach to reform would be to eliminate these laws altogether, but with the abolition of the general-powers provisions, all that remains is the assignment of functional responsibility to particular organs. Unlike quantitative change, such as reducing the number of concerns subject to bureaucratic approval or narrowing the scope of administrative guidance, this change represents a revolution in the relationship between the government and the people. It should transform the mind-set of bureaucrats, who will no longer hold the scepter of authority, as well as the attitude of the general public.

The effect of this change may not be seen immediately. But the culture of dependence and control that has prevailed since the latter part of the nineteenth century is about to lose its structural backbone. I am confident that this reform will be of tremendous significance in the history of Japan's system of governance.

While incremental changes are required—such as the system by which the central government sets the level of costs for local services—various institutional changes are necessary as well. The revision of Article 34 of the Civil Code, which goes a long way toward reconceiving the role of the state in public affairs, is at a critical juncture. Known as the NPO Law, the Law to Promote Specified Nonprofit Activities went into effect in December 1998. The review of the law's supplementary resolution concerning tax provisions resulted in the 2001 Law Amending in Part the Special Tax Measures Law. This law took effect from October, but the requirements to qualify for tax breaks are so strict that most NPOs do not qualify.

Some background should clarify the situation. Corporations fall into two broad categories: for-profit and nonprofit. For-profits are ordinary business enterprises as specified under the Commercial Code, and incorporation can be done simply by registration. Nonprofits, however, could be incorporated only if approved as a public-interest corporation under Article 34 of the Civil Code or under special legislation. The NPO Law has changed this situation somewhat, the requirement for official approval replaced with a requirement for “authentication,” which is a less rigorous procedure. Today, a body may become incorporated even without the recognition of the government that its activities serve the public interest

Public-interest corporations created under the earlier law are eligible for tax breaks and other favorable treatment. They are also subject to almost no monitoring as to whether their

activities continue to serve the public interest. Essentially, the incorporation process and the certification of public-interest activities were the same procedure. Corporations set up under the NPO Law and unincorporated nonprofit groups, on the other hand, receive no tax breaks, even if their activities are in fact in the public interest.

To rectify this inequity, Japan Initiative has recommended that Article 34 of the Civil Code be revised so that the incorporation process for nonprofit corporations follows that of for-profit corporations. Accordingly, the provision of tax breaks and other favorable treatment would then be based on whether the body's activities were truly in the public interest.

Who would make this determination, and on what basis? The public interest is not an abstract, indeterminate whole. Any single set of standards adopted to judge the full range of activities across the country is therefore bound to run into spots where the standards do not apply. What is needed instead is a set of rules and procedures that actively involve members of the various publics whose interests are the real issue.

To this end, Japan Initiative has proposed the creation of independent public-interest accreditation committees in each of the forty-seven prefectures. These committees would determine the qualification of NPO activities, and government organs would provide tax breaks and the like on the basis of what these committees decide. The city of Abiko, Chiba Prefecture, has in fact passed a municipal ordinance that puts much of this proposal into practice, starting in fiscal 2000. The mayor has appointed a five-member committee, consisting of academic experts and people with experience in public administration, whose charge will be to assess publicly solicited applications for municipal subsidies. Subsidies will be granted based on the committee's decisions.

Inasmuch as the members are appointed by the mayor, the committee may not be independent in the strict sense of the term. Further, how they are chosen, what their qualifications are, and what procedures the committee operates under—all must be subject to open accountability. Despite the need for fine-tuning, however, the Abiko model goes a long way toward involving the public in the determination of the public interest.

A JAPANESE REVIVAL

In the United States, local governments often form panels of citizens to take part in the decision-making process. In Japan as well, the voices of citizens are now being heard in the example of Abiko. If independent committees like this were formed at the national level, then we could say that Japan will have broken away from the state monopoly on public affairs.

To sum up, the core of civil society lies in a set of arrangements that provide autonomy for local communities. In the past, the neighborhoods in cities and towns and hamlets were Japan's communities. Now, however, there is not even a proper Japanese word for "community"; the English word instead is used to express the concept. At least for the past half century, Japanese have lived without thinking about activities that should be conducted through joint social efforts or about collective units that should serve as the vehicle for such efforts. But it is only through joint activities in communities that Japan can hope to rebuild its social conventions. The fact that many people are now participating in NPOs and other forms of volunteer activity seems to represent a desire for the satisfaction that comes from joint endeavors. As I see it, however, in order to achieve a true "Japanese revival," the society must be one where such community activities become a normal part of everyday life.

Put another way, the nation must adopt a clearer vision of the balance between what citizens need to do for local society and what citizens can expect that society to do for them. Instead of having to choose between a "high welfare, high burden" society and a "low welfare, low burden" one, the nation might think to create a "low cost, high satisfaction" society. Citizens would enjoy a high level of autonomy, free from dependence on or control by the government, and at the same time they would have much closer ties with each other.

Obviously my points are not just a set of arguments about systems of the state. The issues I have raised concern the setup of Japanese society that needs to be addressed through individual activities in everyday lives. Without proper social systems, the foundation of the nation will collapse. And inasmuch as the prosperity of the nation depends on the creation and maintenance of such social systems, the biggest issue for Japanese politics at the start of the twenty-first century should be to determine how the national and local governments can contribute to this cause.

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