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Reform of Corporate Legislation

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Since first elected to the House of Representatives in 1993, I have been working in different capacities and with a wide variety of political and policy issues. A major problem that has particularly concerned me in dealing with these issues is the way policy decisions are made. Conventional decision-making processes, including the heavy reliance of the legislative branch of government on the administrative branch (the ministries) and the peculiar symbiosis of politicians and bureaucrats, no longer seem to be effective for the exercise of government at this time of major economic and social transition.

Japan's policymaking system is the subject of numerous studies and discussions that point up both the advantages and disadvantages, so suffice it here to say that, on the whole, it has long worked fairly well within the established framework. And the system has gained respect overseas for having mobilized politicians, bureaucrats, and business leaders in a spirit of cooperation and teamwork.

In the 1980s, while there were signs this system was malfunctioning, the bubble economy generally blocked out evidence of institutional fatigue. As the recession dragged on, however, the inability of politicians, bureaucrats, and businesses to respond to changing times and the resulting sense of deadlock brought the system's endemic problems to the surface.

Various initiatives for reform have been sought since the 1990s in order to break the impasse, but little progress has been made in administrative and economic reform, a situation many observers blame on the bureaucracy's excessive control over policymaking. Calls for stronger political leadership have grown louder. Drastic institutional and policy reforms

are needed, but it may be asking too much of the bureaucracy, which is by nature resistant to change, to lead any kind of reform movement. Politicians should take the lead in policymaking initiatives, but the clear outlines of a politician-led government have yet to emerge.

Before entering politics, I worked for the Ministry of Agriculture, Forestry and Fisheries from 1981 to 1992, specializing in infrastructure development projects in rural areas and trade in agricultural, forestry, and fishery products. I observed that the major objective of bureaucrats was simply to maintain the status quo. Though policies might be fine-tuned, I saw that it was impossible to implement major reforms if the initiative was left to bureaucrats. Considering that political leadership would be essential in a time of dramatic change, I decided to become a politician. My studies at the Johnson Graduate School of Management of Cornell University in the United States from 1984 to 1986 also contributed to my skepticism about the workings of the Japanese bureaucracy.

In 1996, I joined the House of Representatives Committee on Judicial Affairs representing the New Frontier Party, which was then among the opposition parties. I remained on the committee for the next five years, although during that time the party with which I was affiliated became part of the ruling coalition. I also served as parliamentary deputy minister of justice for a short period in 2000, during which time a number of amendments were made to corporate legislation and the Commercial Code. I cosponsored, with other Diet members, the bills for some of these amendments. What follows is based on these experiences. Future policymaking and the desirable role of politicians are examined using specific cases of corporate legislation revision. Since I majored in agricultural engineering at university and obtained a master's degree in business administration, I am not an expert in legal affairs. For this reason, the specialist may find the discussion in this chapter problematic in various ways, but I believe my views may be of help from a somewhat different angle.

BACKGROUND OF CORPORATE LEGISLATION

Japanese corporate legislation can be traced back to the Commercial Code established in 1899. Though it has been amended many times since, the text remains written in old-style Japanese. The present legal framework for public corporations is a result of a major revamping of the Commercial Code in 1950. There were further amendments in 1966, 1974,

1981, 1990, 1993, and 1994, although they only partially amended, or supplemented, the basic framework.

Amendments made since 1997 include those resulting from bills introduced by Diet members (table 1). Four amendments were made in 1997, three in 1998, two in 1999, and three in 2000. In 2001, the Diet further liberalized corporate financing by enacting six amendments, including ones originally proposed by Diet members. In addition, as part of bankruptcy-related legislation, the Civil Rehabilitation Law was enacted in 1999, and two amendments to the law were passed in 2000.

INCREASING NEED FOR REVIEW OF CORPORATE LEGISLATION

Until 1993, the Commercial Code was amended mainly to rectify inappropriate business practices, and these amendments were made in response to proposals from parties outside the business community. While amendments were frequently made, designed to promote diversification and smooth the procurement of funds and flexible regulations for small companies, the majority sought more transparent corporate management equipped to deal with such dishonest practices as window dressing of accounts settlements, compensation for trading losses, and the illegal offering of financial benefits to corporate racketeers.

Beginning in the 1980s, Japanese companies were encouraged to rationalize their management as a result of the rapid globalization of the economy and intensifying international competition. Calls for deregulation in corporate law grew louder in the 1990s. Business had been bad as a result of the sluggish domestic economy, so a loosening of government regulations was sought to boost competitiveness. The 1990s saw amendments aimed mainly at the needs of corporate management, but they were not really enough. Nevertheless, structural changes progressed, with a proliferation of mergers and acquisitions, corporate restructuring, and the growth of venture enterprises, as well as changes in employment patterns. As a result of the numerous drastic economic changes, corporate law has frequently been amended since 1997.

However, business leaders feel strongly that Japanese companies cannot compete with their European and American counterparts in the global arena because Western companies operate with fewer restrictions. These leaders have grown increasingly dissatisfied with the slow response of the Ministry of Justice and other government agencies as well as the Diet in tackling this challenge. Economic organizations like Keidanren

Table 1. Amendments to the Civil Rehabilitation Law

Year	Law	Proposer	Purpose
1997	Law for Partial Amendment to the Commercial Code	Diet members	Introduces stock option programs
	Law for Partial Amendment to the Commercial Code		Simplifies procedures for mergers
	Law for Partial Amendment to the Commercial Code		Strengthens regulations to curb the activities of corporate racketeers (<i>sōkaiya</i>)
	Law Covering Exceptions to the Commercial Code on the Auditing Practices of Stock Companies, Etc.		
1998	Law Concerning Exceptions to the Commercial Code on Procedures for Stock Redemption	Diet members	
	Law Concerning the Enactment Etc. of Relevant Laws for Reform of the Financial System		
	Law for Partial Amendment to the Law Covering Exceptions to the Commercial Code on the Auditing Practices of Stock Companies, Etc. Law Concerning Reassessment of Land		Diet members Diet members
1999	Law for Partial Amendment to the Commercial Code Etc.	Diet members	Simplifies the establishment of complete parent-subiliary companies
	Law for Partial Amendment to the Law Concerning Reassessment of Land		Extends the law
2000	Law for Partial Amendment to the Commercial Code	Diet members	Establishes a corporate-division system
	Law for Partial Amendment to the Law Concerning Exceptions to the Commercial Code on Procedures for Stock Redemption		Expands and extends the law
	Law for Partial Amendment to the Securities and Exchange Law and the Financial Futures Law		

2001 Law for Partial Amendment to the Commercial Code	Diet members	Lifts ban on Treasury stocks, abolishes unit stock system
Law for Partial Amendment to the Law Concerning Reassessment of Land	Diet members	Expands and extends the law
Law Concerning Transfer of Short-Term Corporate Bonds, Etc.		Introduces paperless CP
Law for Partial Amendment to the Law Concerning Safekeeping and Transfer of Stock Certificates		Introduces paperless CP
Partial Amendment to the Commercial Code		Revises regulations governing stock options and equity issuance; diversifies the range of equity instruments that can be traded (including allowing tracking of stocks); and recognizes electronic documents as official corporate documents
Law Covering Exceptions to the Commercial Code on the Auditing Practices of Stock Companies, Etc.	Diet members	Strengthens auditing system and revises regulations governing lawsuits by shareholder representatives

Source: Ueda Eiji et al. 2000. *Heisei shōhō kaisei handobukku* (Heisei-era Commercial Code amendments handbook). Tokyo: Sanseido.
 CP: commercial paper.

(Japan Federation of Economic Organizations) have intensified their pressure on the government and ruling coalition to revise the relevant laws.

In response, the Ministry of Justice started examining this issue in its Legislative Council, an advisory body to the minister of justice, in the fall of 2000. And, with a view to introducing drastic reforms in 2002, the ministry is currently submitting bills to the Diet. Further, it is hoped that the entire text of the Commercial Code will have been rewritten in modern Japanese by fiscal year 2004 (ending March 31, 2005).

AMENDMENT PROCEDURES AND PROBLEMS

The Legislative Council

The Legislative Council of the Ministry of Justice, established in accordance with Article 57 of the Justice Ministry Organization Ordinance, studies and deliberates basic matters concerning civil and criminal law and other legislation as requested by the justice minister. The council examines the bills under the jurisdiction of the ministry and, in principle, even drafts bills. Other government councils can examine basic policy directions and write reports compiling views of their members; only the Justice Ministry's Legislative Council goes as far as to prepare drafts of bills.

The Legislative Council is usually composed of up to 20 members with two-year terms of office. Currently, the council consists of 20 members—scholars of law, judges, lawyers, journalists, and representatives of business organizations and labor unions. Takeshita Morio, president of Surugadai University, is the current chair.

The Legislative Council has seven divisions for deliberation of specific issues by people with professional expertise, namely, the Company Law, Bankruptcy Law, International Jurisdiction System, Warranty-Execution Legislation, Medical Treatment Parent-Child Legislation, and Civil and Personnel Procedure Codes divisions, as well as the Division for the Law Concerning Ownership of Buildings. Each division includes scholars, jurists, journalists, businesspeople, and labor union representatives, all of whom are known for their expertise in their respective areas. Some division members also sit in the Legislative Council, but most are appointed independently of the council. Subcommittees deliberate issues and draft bills, and their reports are brought before a general meeting of the Legislative Council and submitted to the minister for justice after they have received the council's approval. After receiving the reports, the

Ministry of Justice submits the bills, with any minor changes deemed necessary, to the Diet for deliberation.

Assessment of the Legislative Council Approach

Laws under the jurisdiction of the Ministry of Justice are drawn up by a unique process in that the Legislative Council even drafts the text of the bills. Opinion varies concerning this procedure, and its merits (the first three points) and demerits (the second three points) may be summed up as follows.

- Generally, the ministries and agencies hear the views of a wide range of parties in their councils before drafting bills. Under the Ministry of Justice, the Legislative Council, which comprises representatives from various sectors of society, drafts the essential points of the bills, producing a well-balanced product.
- Members with highly specialized knowledge deliberate the details of each bill, which makes it possible to create fine-tuned and reliable legislation. Bills for laws under the jurisdiction of the Ministry of Justice often require particularly cautious examination, because they include not only basic codes for criminal, civil, and commercial law, but also highly technical issues.
- Jurists, businessmen, and labor leaders discuss and adjust differences of opinion in advance, making it less probable that bills will be amended unfairly under undue political pressure after submission to the Diet.
- It takes a long time for bills to be completed because of the time-consuming deliberation by specialists.
- There is little flexibility, since it is difficult to adapt to different situations the conclusions of specialists and representatives of various fields.
- As politicians are rarely involved in drafting legislation, the bills are not written in a format that lends itself to Diet deliberation.

Often, criminal legislation has direct bearing on human rights, and needs to be deliberated widely and carefully. Civil law, too, involves basic legislation bearing on individuals' social standing and property and, therefore, requires thorough discussion. In these cases, where experts attach great importance to diverse and multilayered discussions on legal loopholes and consistency with other laws and ordinances, hypothesizing the various possible applications of the law, the procedure followed by the Ministry of Justice's Legislative Council is most suitable.

In the area of corporate legislation, however, revisions must be made quickly to keep up with the rapidly changing economic conditions. Although precision and reliability are certainly important, the Legislative Council's method of revising legislation is often so slow that the legislation becomes outdated by the time it is approved.

Deregulation of Stock Options

The business world called for the lifting of the ban on the use by venture businesses of stock options as employee incentives, which practice is common in the United States. However, the introduction of stock-option programs was postponed when the Commercial Code was revised in 1994, and was not approved until 1997, when Diet members introduced the requisite legislation. Even so, the law had its limits: stock options were not only limited to board members and company employees, but the options of parent companies could not be offered to board members and employees of subsidiaries. This rule was finally removed in the 2001 extraordinary session of the Diet.

Companies had been banned from acquiring or redeeming their own shares until the Commercial Code was amended in 1994 but, even then, the law stipulated strict conditions. Diet members proposed legislation in 1997 that drastically relaxed these conditions by allowing for there to be "exceptions" to the Commercial Code requirements. Thereafter, Diet members introduced laws that were treated either as exceptions or temporary, so as to relax the regulations concerning the acceptable sources of shares. The main text of the Commercial Code itself was finally amended in the extraordinary Diet sessions in 2001—the bill having been proposed by Diet members—and the ban on companies acquiring and redeeming their own shares was lifted.

The changing of the regulations in the aforementioned two cases was vital if companies were to flexibly finance their operations and corporate management was to become more flexible. Yet the fact that it took a long time for the existing rules to be amended and deregulated shows that existing legislation is not able to keep up with the increasing diversity of corporate activities.

When I studied at business school in the United States, a textbook in one of my basic finance courses explained in detail how this method of acquiring company shares can be a powerful financial tool. Yet it took years for Japan to institute the necessary deregulation. No wonder Japan's corporate law is criticized as being too rigid.

Diet Member Bills and Associated Problems

There are an increasing number of cases in which groups of Diet members have proposed bills for corporate law amendments that are ultimately passed into law. I myself have cosponsored some of them. When the cabinet submits bills to the Diet, the justice minister must consult the Legislative Council, and it often takes years for a conclusion to be reached. When Diet members introduce legislation, consultation with the Legislative Council is not required, substantially cutting down on the time needed for legislation to be passed.

Although discussion and expert input is desirable, the process can be an obstacle when prompt action is needed. However, legislation introduced by Diet members without such deliberation can present problems. Bar associations are generally critical of legislation introduced by politicians because corporate legislation involves numerous technical details, many of which are beyond the expertise of most Diet members.

Given that politicians have to deal with various political and policy issues, there is a limit to which they can follow any one specific issue. As it is difficult to take a broad overall view of the complex and highly technical legal system, politicians inevitably concentrate on the most urgent issues. Laws introduced by politicians are thus often of an emergency nature, being either temporary laws enforced for only a limited period of time, or exceptions relevant to individual cases. Some say that legislator-introduced laws are partial and inconsistent, lacking integrity with the entire legal system. This criticism is difficult to deny.

To compensate for this deficiency, the House of Representatives and the House of Councillors have legislative bureaus and committee research offices. Although the staff of these offices are very capable people, their organizations are not familiar with the intricacies of corporate legislation and so not fully able to deal with specialized and technical issues. Thus Diet members must cooperate with Ministry of Justice officials when they introduce legislation. Officials of this ministry believe that fundamental legislative changes should be handled by groups of experts centering on the justice ministry, and that only those bills addressing major political and social needs should be dealt with by amendments introduced by Diet members. Inevitably, revisions introduced by Diet members will thus be only partial.

Problems of Diet Deliberation

A look at the process of reviewing corporate legislation over the past several years also reveals many problems in the way the Diet deliberates bills.

The passage of bills into law takes a long time, one reason being that the Committees on Judicial Affairs in the House of Representatives and the House of Councillors are extremely slow in examining bills. The committees review corporate, criminal, civil, and immigration-related legislation. Yet, as a rule, they meet only twice a week. During these gatherings, committee members call for explanations from ministers and ministry officials, and the time spent on discussion leaves members little opportunity to examine in depth the bills put before them. Even if the drafting of bills is expedited, it is impossible to shorten the time required for legislation to be passed because of the bottleneck in Diet deliberations.

In addition, politicians and the mass media have little interest in corporate legislation and other areas not closely linked to people's everyday lives. Consequently, much time is spent on bills that are of broad interest to society, and far less on bills that attract little attention. For example, 20 to 30 hours were devoted to deliberating three bills concerning the fight against organized crime, while, due to strong criticism from the opposition, about the same amount of time was spent on a bill to amend the Juvenile Law. Meanwhile, usually less than ten hours are spent deliberating a corporate law amendment.

What is more, since few members of the Committees on Judicial Affairs in the Diet follow particular issues continuously, it is difficult for them to grasp the background and salient features of each issue in a short time. As a result, a few committee members with specialist knowledge will repeatedly take up matters of interest to their supporting organizations, making ideological assertions on their behalf. In reality, few constructive discussions take place in these committee meetings.

Debate on specialist or technically arcane bills, therefore, is often merely a matter of form. Diet judicial affairs committee members are usually faced with processing so many bills that they do not really take part in policymaking. This is true not only in the judicial affairs committees, but also in committees with jurisdiction over industry, finance, the environment, and social security, which issues increasingly require specialized and technical expertise. The problem is most serious with the judicial affairs committees, because they have so many bills to deliberate.

THE DECISION MAKERS

The revision of corporate legislation on the part of politicians, ministry officials, and private sector professionals requires special expertise and

prompt policy implementation. Regrettably, however, lawmaking and policy execution do not adequately meet the needs of citizens.

The speed of change in the economic environment of corporate activity continues to accelerate. The development of a global economy has ushered in an era of borderless business and free exchange of both capital and personnel. Capital investment in Japan and mergers and acquisitions of Japanese companies by foreign enterprises are expected to increase rapidly. Corporate law, which can have significant impact on the economy and society, must respond quickly and precisely to these changes and also be in harmony with international rules.

To deal with issues appropriately and quickly, politicians, bureaucrats, and private sector specialists, all of whom differ in position, authority, and capacity, must be aware of their roles and cooperate with each other in a systematic manner. In establishing such relationships, the role played by politicians is the most important.

Politicians

Since politicians daily meet people from many walks of life, they can readily observe the impact of economic changes as well as gauge the need for legislative and/or administrative measures. Ministry officials and private sector specialists, meanwhile, often only have contact with those involved in specific industries. Politicians are familiar with the various views of leaders within the government through their Diet activities and so, being in a position to understand both policymakers and those demanding change, they are well placed to coordinate conflicting interests.

Although Diet members have the right to investigate and are responsible for all matters of national government, there is a limit to the influence a politician can have on policy decision making. Therefore, policy decisions are often first made at the party level, through discussions within politicians' respective parties, and a majority opinion is formed in the Diet by approaching other parties and politicians. But because of the rapid pace of social change and the increasingly specialized nature of issues, it is difficult for political parties to deliberate issues in depth. Among individual lawmakers, discussions tend to be affected by the media and pressure from interest groups. Decisions are often left up to the directors of divisions and executive members of committees, who follow pet issues and maintain contact with the parties concerned. In many cases, they demonstrate wise policy judgment. For issues that

attract strong interest or that are fundamental to the ruling of the nation, it is increasingly necessary to reach a consensus within each political party, which in turn helps promote people's understanding of issues through the mass media. However, it appears the role and the capability of political parties in deciding individual policies has weakened. Now that no party holds a secure, absolute majority in the Diet and coalition government is the norm, Diet members who share similar views generally make nonpartisan decisions reflecting the governing parties' views.

In order to do so, politicians must fully understand the background, interests, and international assessment of individual issues and policies that the cabinet aims to achieve. They must concentrate on specific policies for a time, while maintaining communication with government officials and others concerned. The *zoku* or groupings of Diet members that represent the interests and opinions of specific alliances are harshly criticized today, but legislators do need in-depth expertise on certain issues and, as long as they do not distort policy decisions to benefit specific interest groups, their communication with such alliances need not necessarily be censured.

Politicians are not expected to have as much detailed knowledge as bureaucrats, scholars, or private sector experts, although they must make proper judgments on national policies in specific areas and have an adequate level of knowledge and understanding to coordinate the opinions of various interest groups. More importantly, however, they should have insight into both the basic policies of the government and international affairs.

Senior Vice Ministers and Parliamentary Secretaries

In the Japanese parliamentary system, ministers, senior vice ministers, and parliamentary secretaries play important roles. They are selected from among lawmakers and are directly involved in and responsible for policy decisions and their implementation. The system of senior vice ministers and parliamentary secretaries was established in January 2001 in response to the criticism that ministers depended too much on input solely from the officials of their respective ministries and agencies.

Representing their ministries and agencies, ministers are responsible for policy as a whole and are so busy that they cannot become directly involved in specific and specialized policy issues. Senior vice ministers and parliamentary secretaries are expected, therefore, to coordinate the

opinions of bureaucrats, private sector experts, and other concerned parties, integrate those opinions with cabinet policies, and come up with a relevant agenda for each ministry. Since senior vice ministers and parliamentary secretaries are sensitive to the various needs of the people, they can prevent bureaucrats, who often hear the voices of only a limited number of interest groups, from employing self-serving measures detrimental to the nation.

In addition, they are expected to play a major role in coordinating opinion in the Diet and among political parties; indirectly support and coordinate Diet deliberations on bills and discussions within parties; as well as communicate with both their counterparts in other ministries and agencies when issues overlap, and ruling and opposition party members in charge of policy.

I served as parliamentary vice minister in the Ministry of Justice in the second half of 2000, immediately before the ministerial reorganization. Besides the minister, the parliamentary vice minister was the only lawmaker appointed to serve in a ministry, and I found it impossible to take part in every policy discussion. While the minister was busy dealing with questions in the Diet and attending official functions, I was involved in discussion with political parties on the details of bills and coordination of their Diet activities. Based on this experience, I felt that at least three lawmakers should be assigned to each ministry to take senior vice minister or parliamentary secretary posts, so that they might be involved in each policy area at a more specialist level. This practice was, in fact, introduced in January 2001.

For this system to function well, the right people must be appointed to positions appropriately reflecting their expertise, and their term in office should be at least two years. I had not been directly involved in judicial administration before I was appointed parliamentary vice minister in the Ministry of Justice, but had served in posts as a director and/or member of the House of Representatives Committee for Judicial Affairs for about five years. Because of this experience, I had a basic understanding of the content, background, and priorities of the ministry's policies. That enabled me to take part in the making and implementation of policy decisions immediately after my appointment. Had I lacked experience in judicial issues, it would have taken me a long time to develop a basic understanding. Yet, since I left my post after just six months, I had to drop most of the issues I had started to tackle.

Regrettably, the new system of senior vice ministers and parliamentary secretaries is not being fully utilized by the cabinet under the Koizumi

Jun'ichirō administration. Instead, it is increasing the number of people working in the cabinet secretariat and using specialists from the private sector, thereby augmenting the capability of basic policymaking, and formulating many new policies for economic management and administrative reform. I have a high opinion of the Koizumi cabinet because it is less dependent on bureaucrats and, under the prime minister's leadership, has broken down the stratification of each ministry and agency, and come up with bold reform measures. However, the cabinet secretariat's staff is not enough to adequately implement policy measures, especially those involving a wide range of technical information. The key to establishing true political leadership is to allow the appointed senior vice ministers and parliamentary secretaries to fulfill their mission.

Bureaucrats

The staff of government ministries have an in-depth understanding of very specific policy areas due to their many years' work in the bureaucracy. Many competent officials deal with issues systematically and their organizations excel in gathering and analyzing information. The role of bureaucrats, therefore, is particularly important in a highly technical policy area such as corporate legislation.

In the course of their work, however, bureaucrats have frequent contact with specific interest groups, so there is a risk that these groups may unduly influence their making and implementation of policies. With regard to corporate law, Ministry of Justice officials spend enormous amounts of time with law scholars, judges, and lawyers whose views tend to be reflected strongly in legislation. At the same time, the views or practical expertise of business executives, managers, and related interest groups are often slighted.

Bureaucrats tend to attach great importance to the continuity and consistency of policy, preferring to follow precedent. They are also criticized for their tendency to focus excessively on details and to lack a broader perspective, which inclination stems from their specialist knowledge and access to detailed information.

Bureaucrats should provide professional and technical advice to their ministers, senior vice ministers, and parliamentary secretaries so that the politicians appointed to serve in their ministries can make appropriate judgments. Government officials should also have sufficient professional knowledge and experience to carry out wise policy decisions, for their role in drawing up and implementing policies is crucial.

Opposition Politicians

Opposition parties also have an extremely important role to play in government policymaking. Given the need to deal expeditiously with the making and implementation of policy in this age of rapid change, the government and the ruling parties cannot pay enough attention to the interests and views of the various groups concerned, which increases the risk of biased judgments. Since politicians have contact with people in all walks of life, putting them in a position to readily gauge legislative and administrative responses to the people's needs, they should consider policy issues and problems from perspectives other than those of ruling party politicians and bureaucrats.

In the area of corporate law, while amendments are made in response to requests from the business world, the views of labor unions, management and employees of small and medium-sized enterprises, as well as lawyers, accountants, tax accountants, and other specialists should also be taken into account. Diet members from the ruling parties should try to accommodate differences as much as possible, but opposition lawmakers should present perspectives that ruling politicians may lack, make constructive criticisms, and offer policy proposals from a different standpoint in a sustained and systematic manner.

For policy planning and proposals, the ruling parties can expect the support of bureaucrats, but opposition parties must rely on their own politicians and the small staffs of Diet secretariat officials. This makes it difficult for the opposition to present specific policy proposals that require special expertise and continual involvement, often enabling it to do little more than criticize bills submitted by the government and ruling parties.

If political leadership is to become more dynamic, the opposition parties must play a more active and constructive role: The shortages of personnel and resources in their parties and the Diet secretariat must be resolved and full use must be made of private sector think tanks and non-profit organizations (NPOs). This would allow surveys and research to be conducted on policy issues from perspectives other than those of the government and ruling coalition.

Diet Secretariat Staff, Think Tanks, and NPOs

There are many talented people in the Diet secretariat, as well as scholars, researchers, businesspeople, lawyers, and others with more professional expertise than bureaucrats.

Although lawmakers depend mainly on bureaucrats for specialized information, greater participation by other elements would add dynamism to policymaking, rendering it more responsive to the needs of the public.

To this end, it must be made possible to undertake policy surveys and research from a relatively stable position, which would require the recruiting of scholars and private sector personnel to work in the Diet's legislative bureaus and committee research offices. This would necessitate diversified employment conditions allowing fixed-term employment and the holding of other jobs concurrently. There should also be a recruitment system encouraging employment of talented and diverse personnel as policy secretaries to Diet members and policy officers in political parties.

The services of some private sector think tanks and NPOs that conduct policy research and compile recommendations are already being tapped. The Basic Design for Reform of the Civil Servant System, a policy adopted by the Cabinet Headquarters for Administrative Reform on June 29, 2001, proposes that private sector personnel be recruited as administrative officers, the exchange of public and private sector personnel be promoted, a national strategy staff comprising bureaucrats and nonbureaucrats be created, and ministers' support staff be increased. Such changes would allow capable personnel from private sector think tanks and NPOs to help draft and implement policy.

To benefit from the talents of policy-oriented personnel with fresh ideas, it must be made easier for staff to move among government, private sector, and university posts. In the United States, there are many non-profit private think tanks in which those competent enough to take important posts in the legislative and executive branches of government can undertake research activities relatively freely when they leave those posts. Given Japan's different personnel management system, think tanks as large as those in the United States may not be required, but Japanese think tanks do, nevertheless, need to increase in number and size. In the United States, think tanks are mostly funded by companies and individuals. To encourage similar support in Japan would require the expansion and simplification of preferential tax regulations that currently apply exclusively to specific public-interest promotion corporations and particular nonprofit corporations.

Power shifts and realignments among political parties, as well as changes in the makeup of the ruling coalition are quite possible in Japan's current political climate: A party in the opposition today may become a ruling party tomorrow. It is thus important that opposition parties improve

their policymaking skills so that when they become a ruling party, those individuals from think tanks and NPOs who have helped them with policymaking can play an active role as staff in the government's state strategy programs or in the offices of cabinet ministers.

POLICY DECISION MAKING IN THE FUTURE

A New System Led by Legislator Initiative

Some of the problems in Japan's policy decision process can be understood by focusing on highly technical corporate legislation that has a powerful impact on the economy. Traditionally, politicians left to the bureaucrats such policy areas as corporate law. However, this system is no longer functioning properly and must be replaced by one in which lawmakers are the major players. To this end, complementary relations must be established among politicians, bureaucrats, and private sector experts, and should be coordinated by politicians who should play a major role in shaping policy. There need be no confrontation with bureaucrats as the politicians keep tabs on the trends of the times and changing circumstances so as to have a sufficient grasp of sophisticated policy issues to enable them to persuade others.

Institutional Reform

To introduce and firmly establish a new decision-making system driven by lawmaker initiative, there need to be a number of institutional reforms, to which end the following steps should be taken.

First, greater importance should be attached to the selection of senior vice ministers and parliamentary secretaries, taking into account aptitude and experience, and terms of office should be secured for at least one to two years.

Second, staff for ministers and senior vice ministers should be recruited from inside and outside the administration, transcending the boundaries among ministries/agencies and regardless of civil service rank. A wide range of private sector experts should also be recruited from think tanks and NPOs.

Third, the budget for Diet staff and their numerical quota should be increased to enable private sector experts to participate in research and lawmaking programs in the legislative branch of government. To encourage their recruitment, it is necessary to study the possibility of issue-based,

fixed-term contracts, and a relaxation of regulations on holding other jobs concurrently.

Fourth, expanding government support for personnel expenses should be examined so that politicians can recruit the most capable staff.

Fifth, preferential taxation and other effective measures must be instituted to encourage the growth of private sector think tanks and NPOs, which are the source of future policy staff.

Sixth, personnel mobility must be ensured so that competent people can exercise their talents in various positions and develop their expertise. To this end, government offices and private companies must drastically change their approach to personnel management, while the social security system must be reviewed accordingly.

Seventh, to encourage more lively deliberation in Diet committees, (1) committee meetings should convene more flexibly; (2) opportunities for an open exchange of views in subcommittees and panel meetings should supplement the standard deliberations in which committee members ask questions of the government, so that the details of the text of bills can be discussed and multiple themes can be debated simultaneously; and (3) the requirement that ministers and senior vice ministers attend committee meetings should be more flexibly applied.

Finally, the practice—already a mere formality—of giving reasons for proposals and party representatives' questions in the plenary sessions of the Diet should be abolished, except concerning the prime minister's policy speech and budget bills. In addition, a system should be set up in which ministers who do not have direct jurisdiction over issues being discussed can attend committee meetings as deemed necessary by the relevant committees.