

〔論 説〕

Decentralization Reform in Japan¹

—Ambitions to create real local self-governments and
the framework of the constitution—

Towa NIIMURA

I. Profile

A global trend towards decentralization is underway. It seems that the more globalization advances, the more decentralization develops. Japan is no exception. Decentralization reform started in Japan in the early 1990s, together with many others such as reforms of the administrative structure and political system. Most reforms were characterized as part of deregulation, with slogans proclaiming “from government to the private sector” and “from the central government to local governments”. In the background of this movement was the widely recognized assumption that to respond to a dynamically changing international society, it is

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necessary to promote decentralization and clarify the role of the central government, which must concentrate on its international and national tasks. In contrast to a decentralized administrative system, a centralized one focuses on uniformity and efficiency, which was efficient when Japan was in a catch-up mode. However, later, this administrative system began to suffer system fatigue. Therefore, the centralized system no longer seemed appropriate for the circumstances and capable of coping with the issues of a new age.

In addition to the needs of the changing times, decentralization was also inevitable to correct the excessive concentration in Tokyo and apportion the territory in a multifunctional manner to respond to the demands of a society characterized by an aging population and decreasing birth-rate. When emphasizing the creative power of municipalities, to form local communities rich in individuality, it is necessary to promote decentralization, strengthen the decision-making powers of local societies, and encourage a comprehensive approach to administration by fostering more cooperation between the public and private sector.

Moreover, there was also a financial reason for the recent reforms in Japan. Local governments are considered the most appropriate to respond to local societal issues to manage their tasks and use the budget efficiently and effectively. This is because the nearest administrator knows what is needed and what is not, which differs between places². Within this contextual environment, the promotion of decentralization began to win the support of the people, who were traditionally connected with local autonomy, and others including politicians, representatives of the economic world, and the mass media. Thus, this movement led to the realization of large-scale decentralization reform in Japan³.

From the “first stage reform” through financial reform, referred to as

2 Reasons including that decentralization reform is needed are explored in the interim report by the Decentralization Promotion Committee (*chihou bunken suishin iinkai*). See, Ikawa (2008) p.12.

3 See, Brendan's (2000) political and social analysis of the reasons this movement occurred, pp. 34-39.

the “Trinity Reform”, decentralization reform in Japan is now evolving as “second stage reform”. While in the ongoing process deregulation of the central government administration has been promoted, this has progressed slowly, as if the reform seems to be stopping.

First, this paper describes the Japanese local government system (II) and its constitutional foundation (III), and outlines the process and evaluation of decentralization reform (IV) by highlighting the main issues thereof. Thereafter, it focuses on the dispute regarding the local governance system in constitutional theory and concepts such as the nation-state and sovereignty as devices to solve the problems of reform (V). Finally, the paper finishes with a provisional conclusion (VI).

II. The System of Local Self-Government in Japan

Japan has a two-tier local government system that consists of 47 prefectures at the upper-tier and 1718 municipalities⁴ at the lower-tier, that is, cities, towns and villages. Exceptionally, Tokyo prefecture has 23 wards, which while not the same have similar functions as the municipalities. Both prefectures and municipalities perform numerous different tasks. As wide-area local government bodies, prefectures offer administrative services that are difficult for municipalities to provide. On the other hand, municipalities are able to carry out a wide range of tasks centering on services that are closely connected with people’s daily lives, such as sanitation, social welfare, school education, and debt services. Fiscally, about 60% of the total expenditure of the Japanese government is used for the many tasks undertaken by local governments⁵. Although

4 As of September 2018. The number of municipalities has dramatically changed through the three big consolidation movements, namely Great Meiji Consolidation (1888-1889) from 71314 to 15859, Great Showa Consolidation (1953-1956) from 9868 to 3472, and Great Heisei Consolidation (1995-1999) from 3232 to 1821. Otherwise, the number generally tends to decrease over time.

5 As the datum of the Ministry of International Affairs and Communications

prefectures and municipalities conduct many tasks, they cannot manage these completely freely based on their own decisions, but are supervised by the central government. In other words, the character and characteristics of a centralized system are to a significant extent also evident in the Japanese local government. Here, regarding central government interference, three aspects are worth considering, namely tasks, financing and enactment of regulations in local governments. To confirm local autonomy, a) the abolition or reduction of the control of or intervention by the central government in the tasks of local governments is essential. On the other hand, in the financial sphere, b) the National Treasury Subsidy and Obligatory Share System was criticized, because of how it has limited the degree of freedom of local governments to formulate and implement their policies. In addition, c) creating more freedom to enact local regulations is needed. This is because although local governments enact regulations to implement their special policy, and even if the envisaged local regulation promotes local autonomy, it is impossible to enact regulations that may conflict with relevant laws established by the National Diet. In order to understand these problems more deeply, the constitutional and legal foundation of the local government in Japan must be examined.

III. Constitutional Foundation

Chapter 8 of the Constitution of Japan, which deals with local government, was first introduced in the new Constitution of Japan, which was enacted after World War II in 1946. The Meiji Constitution, valid from 1889 to 1947, included no provisions regulating the local government. Therefore, the local administrative system was merely considered part of the state administrative organization that could be changed or abolished by ordinary state laws or ordinances. As a result of the

“White Paper on Local Public Finance, 2018, FY 2016 Settlement”. See, http://www.soumu.go.jp/iken/zaisei/30data/chihouzaisei_2018_en.pdf

enactment of the new Constitution, the existence of local self-government was henceforth directly guaranteed by Articles 92 to 95 of the Constitution. Chapter 8 of the Japanese actual Constitution on the local government includes the following provisions (using the official translations⁶). Article 92 states that “Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with *the principle of local autonomy*” (italics added by the author). Based on this provision, in 1947, the year after the enactment of the Constitution, the Local Autonomy Act (LAA)⁷ was enacted as the fundamental law of local autonomy. Generally, in accordance with the principle of local autonomy mentioned in Article 92, the Diet had and has to enact such laws to regulate the local government. However, what is “the principle of local autonomy”? This is a very basic question. Legal scholars mostly share the view that the principle comprises two dimensions, the “Autonomy of the Entities (*dantai-jichi*)”, which aims at a decentralized local government, and “Autonomy by Citizens (*jumin-jichi*)”, which proclaims the democratic character of local self-governance. However, the degree of importance of each principle is not that obvious, leaving room for an arbitrary interpretation by the central government, for example. Under Article 93, section 2 of the Constitution⁸, governors of prefectures are to be directly elected in a public election, unlike under the Meiji Constitution. In addition, the direct public election of the chief executive officers of the local government is also required. The democratic elements are also more elevated. According to Article 94, “Local public entities shall have the right to manage their property,

6 Official translation by the Ministry of Justice. See, <http://www.japaneselawtranslation.go.jp/law/detail/?ft=2&re=01&dn=1&yo=日本国憲法&x=46&y=18&ia=03&ph=&ky=&page=1>

7 Act No. 67 of 1947 (*chihou jichi hou*)

8 Article 93 (2) The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

affairs⁹ and administration and to enact their own regulations within law”. This article is problematic in the context of decentralization. According to this article, local public entities have the right to manage their tasks. However, it is unclear what their tasks are and if they can or should manage those belonging to another public entity or the central government. Furthermore, the meaning of the phrase “the right to enact their own regulations within law” is heavily disputed.

IV. Process and Evaluation of the Decentralization Reform

1) First Stage¹⁰

The main results of the first stage of decentralization reform from 1993 to 1999 were brought about by the “Act on the Amendments of Related Laws to Promote Decentralization¹¹” abbreviated as the “Omnibus Decentralization Act”. The Cabinet submitted the draft law to the National Diet in March 1999 and enacted it in 2000. The law has drastically changed the local government system. The 1,500-page bill contains amendments to 475 laws, and was deliberated in the Diet. According to this law, the relation between the central government and local governments must be changed from a “superior-subordinate relationship of dependency” to a “relationship based on equality and cooperation”. The essential points of the first stage reform are the following:

- a) Under the system of the agency delegated functions (*kikan inin*)

9 Although this is the official translation, I think, the word “affairs” is not suitable translation of the term “*jimu*” in Japanese. therefore, I use, the word “tasks” instead of “affairs” in this paper, as far as they match in context. Matsui also uses “tasks”. See, Matsui (2011) pp. 32-33.

10 To describe this part of the first stage of the reform, I refer mainly to Ikawa (2008).

11 Act No. 87 of 1999 (*chihou bunken no suishin wo hakaru tameno kankei houritsu no seibi tou ni kansuru houritsu*)

jimu), which has existed since the Meiji Constitution, the head of a municipality implements local government tasks as an agent or organ of the central government. These functions were delineated into self-governing functions and statutorily entrusted functions. Most tasks to be carried out by local governments fell under the previous agency delegated functions system. This widely criticized system was completely abolished.

b) Second, provisions regarding the respective roles of the central government and local governments and possible considerations by the central government are stipulated in Article 1-2 LAA, and the roles to be carried out by the central government and local governments clarified. Specifically, it is stipulated that local governments “will undertake a wide role, implementing in an autonomous and comprehensive way the administration of local areas”, while the central government “will share an appropriate role with local governments” and “must ensure that the autonomy and independence of local governments can be sufficiently displayed”.

c) The transfer of authority to local governments is also an important issue in terms of decentralization. According to the Omnibus Decentralization Act, 475 laws including the Forest Act¹², the City Planning Act¹³, and the Child Rearing Allowance Act¹⁴, were to be revised, and the respective transfer of authority was implemented. For example, the City Planning Act was amended so that local governments no longer needed ministerial approval of urban development plans.

d) The system of intervention or control by the central government in the tasks of local governments has been reviewed, and provisions concerned with the principles or rules and procedures of intervention were newly established in the LAA.

From a legal theory viewpoint, the confirmation of the relationship between the central government and local governments and the transfer

12 Act No. 249 of 1951 (*shinrin hou*)

13 Act No. 100 of 1969 (*toshi keikaku hou*)

14 Act No. 238 of 1961 (*jidou fuyou teate hou*)

of tasks as a result of the first stage reform were meaningful. However, a financial imbalance remained between the central government and local governments. The more tasks local governments carry out as part of their own responsibility, the more financial resources they need. That local governments have sufficient financial resources remains an unsolved problem. In this meaning, decentralization reform is still “unfinished¹⁵”, as clearly indicated in the last report on the first reform stage prepared by the Decentralization Promotion Committee.

2) Trinity Reform¹⁶

To deal with the remaining issues of the unfinished first stage, financial reform was subsequently implemented. In April 2001, the Koizumi Cabinet decided that the national treasury subsidy and obligatory share system would be rationalized and the local allocation tax re-examined. Furthermore, the allocation of tax sources between the central government and local governments, including the transfer of tax sources, was to be re-examined. As a result, the local fiscal reform, the so-called “Trinity Reform” (*sanmi ittai kaikaku*), was implemented in the following years until 2006. This reform was, in short, a failure. A few positive results included the transfer of 3 trillion yen of tax revenue sources to local governments and establishment of a forum for cooperation between the central government and local governments. Otherwise, the reform of national treasury subsidies and obligatory shares did not sufficiently support the expansion of the autonomy and independence of local governments. As seen in the reduction of the national treasury subsidy (share) levels, there was no tangible increase in the level of autonomy in the formulation and implementation of local government policies. In contrast, it is feared that general revenue source obligations incurred by

15 The word “unfinished” become popular and is now used by many people after the publication of a book about the process of the first decentralization reform entitled “Unfinished Decentralization” by Nishio (1999).

16 For a quick understanding of this reform, Doi’s (2004) description is very helpful. For an English description, see, Ikawa (2007).

local governments in the course of implementing subsidy-aided projects have increased, and that the level of autonomy and independence of local government administrative management has decreased.

3) Second Stage

Since around 2006, the “Second Stage” of the reform is ongoing. Meanwhile, the transfer of authority to local governments and deregulation in local governments have been promoted by the enactment of individual laws. Based on such achievements, it was expected that local governments would enjoy more autonomy to enact individual regulations and implement their tasks as necessary to cope with specific local circumstances. However, the reform unfortunately produced no strong responses from local governments.

Recently, to encourage local governments to participate in the decentralization project and become aware of their autonomy, unusual methods have been introduced to emphasize their “initiative” and “diversity”. First, there are proposals to transfer more authority in specific areas and for more deregulation to produce the necessary freedom for local governments to address the issues they deem important. In addition, in some cases, local governments are now permitted to decide whether they would like to gain authority in specific areas, which differs from the previous situation where specific authorities were always transferred uniformly to all local governments, without exception. However, a quick look at the survey on the central government, disclosed on the official government homepage¹⁷, reveals that the reaction from local governments to these new opportunities has until now been limited.

17 The Cabinet Office shows some attempts as the results of the decentralization reform by some local governments. But considering the number of examples and the proportion to the total number of municipalities, the interest or initiative of local governments is not that great. See, <http://www.cao.go.jp/bunken-suishin/jirei/jirei27.html>

4) Evaluation of the Reform

As outlined, the reform process is characterized by the following features:

First, this reform was not “bottom-up”, but “top-down”. Second, the reform was pushed by the central government, because of the need to reduce the number of burdensome tasks that were inefficiently handled by ministries in the past. Another reason was the fiscal crisis of the central government, which can be inferred from the fact that different from the transfer of troublesome tasks, financial reform that would provide local governments with sufficient financial resources was delayed. Third, the dependent character of local governments has not changed.

V. Sovereignty, Nation-State, Individual, Citizenship

The aims and manner of the reform process, however, cannot be fully evaluated by only examining efficiency issues. The right structure of the Japanese administration must also consider constitutional conceptions from which to approach existing problems. The metamorphose from the Meiji Constitution, under which the Emperor had full sovereignty to the post-war Constitution of Japan, which guarantees the sovereignty of the people, has also substantially changed the role and function of local autonomy, which is in principle guaranteed by the Constitution¹⁸. With the coming into force of the new Constitution after the war, the nation-state theory, which demands the absoluteness and exclusivity of sovereignty, is widely accepted in Japanese society and among scholars. The theory also supports the unity of the state, which leads to legal unity throughout the country. At the same time, a French theory of modern constitutionalism, which denies intermediate entities in state governance to build a two-pole construction between the state and individuals, is advocated by the influential public law scholar Youich Higuchi, whose

18 For details on the Emperor system in Japan, see, Higuchi (1993), pp. 57-67.

theory is well-known and partly accepted in the academic community¹⁹. However, local governments are guaranteed in the Constitution of Japan, and their legal autonomous nature is incompatible with Higuchi's theory, since it denies the possibility of intermediate entities such as local governments. Moreover, the conservative politicians and bureaucrats of the central government, which were in control of power continuously throughout modern times since the Meiji era, have executed the local government system as before as part of a centralized government system, and interpreted the constitutional clause on "the principle of local autonomy" in favor of the central government. Thus, local governments were long neglected, especially by constitutional law scholars, who should have clarified the legal nature thereof long before.

On the other hand, another movement of constitutional interpretation tried to accept the nation-state and public sovereignty theory corresponding to local autonomy. The political scholar Keiichi Matsushita created the term "civil autonomy" (*shimin jichi*), advocating that the citizens themselves can realize a real autonomous society²⁰. Regarding the concept of "government", he identified the local government, state government, and international government levels. He insisted that in an autonomously civil society, both the nation-state and local government have sovereignty. In other words, through segmented sovereignty²¹, the (nation-) state is substantively governed.

VI. Conclusion

To evaluate Japanese decentralization reform, I believe it is useful to utilize and consider the constitutional framework in terms of the concept

19 Higuchi's theory is included in many of his works, for example, Higuchi (1994).

20 See, Matsushita (1975).

21 As the solution to the conflict regarding the nature of sovereignty that cannot be separated, Matsushita created the concept of the "segment political system", in Matsushita (1975) p.43.

of government, sovereignty, individuals, and citizens. Comparing the two images of people, namely Higuchi's individuals and Matsushita's citizens, both are based on the traditional constitutional theories of Hobbes, Rousseau, Rock and others, but moderated to match their theory of Japanese society. Higuchi thought that the Japanese people never experienced a democratic civil revolution aroused from the bottom of society. Therefore, it is important to create rational individuals, who can think by themselves without influence from intermediate entities such as companies, the community, and social class or rank. This is because in Higuchi's theory, denying intermediate entities is an inevitable element in crystallizing individuals, who alone must face the state without the protection of the intermediate entities to which they belong. In contrast, for Matsushita, autonomous citizens are people aware of being actors in a democratic society. This consciousness developed through participating in their political society through the local government. Matsushita considered local governments, which can be viewed as intermediate entities, as optimal stages where people can learn what democracy is and how to behave as autonomous citizens. Matsushita personally participated in some municipalities, observing successful examples of democratic public participation²². In this regard, the viewpoints of the two images of the people are now closer. Apart from the interpretation of the constitutional structure regarding the placement of local governments, both value the consciousness of the people who participate in a political society.

Coming back to the decentralization reform, the reform has restored the centralized character of local governments to the right place in line with the constitutional foundation. However, we have seen that it has been promoted not by local communities or citizens but by the central government and policy-makers. Therefore, the still dependent attitude of local governments remains after the reform.

22 Matsushita recollected as such his experience in Musashino-city. See, Matsushita (1999) p.195.

Now, all that remains to be done is to fully utilize the results of decentralization reform. It is necessary to sufficiently consider the questions of how to advance decentralization and achieve the expansion of the autonomy and independence of local governments. Furthermore, regarding strengthening citizen autonomy, this item has not yet been strongly promoted in the reform discussion. To strengthen decentralization and advance decentralization reform, it is important to breathe new life into local communities by encouraging citizen participation and fostering collaboration between local governments and local citizens²³. I still believe that most important in achieving real local autonomy is creating real individuals or citizens.

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23 See, Nimura (2018), pp. 266-269.

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