

Article

The Guarantee of Local Self-Government in the Japanese Constitution: The Theory and Practice

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I. INTRODUCTION

As in Taiwan, the issue of local self-government has become important since the 1980s in Japan. Although the Japanese Constitution sets a separate chapter to guarantee local self-government, local governments were under the severe control of the central government. Local self-government had not worked out precisely as the Constitution had designed. In the 1990s, promotion of decentralization was one of the administrative reforms executed in Japan.¹ Local governments gained more rights to manage their affairs and administration thus complying with the constitutional demand. This paper focuses on the guarantee of local-government from the viewpoint of constitution and examines its practice in reality from the viewpoint of administration. Since many local administrative reforms are currently being executed in Taiwan, this paper may make a small contribution to Taiwan's scholar circle.

II. LOCAL GOVERNMENTS IN THE MEIJI CONSTITUTION

In 1872, with the abolition of the feudal domains and the establishment of a system of prefectures, the Meiji government had made Japan a modern country. It was not until 1890 that a system of regional and local government was decided on and became relatively stabilized, after 20 years of trial and error.

During the 1880s, under the leadership of Home Minister Yamagata Aritomo, the Meiji government enacted a set of laws determining the structure of local governmental units, and established a system of municipalities in 1888 and prefectures and counties in 1890. The prefectures, counties, and municipalities were endowed with the legal status of local governmental entities. Japan's 47 prefectures were subdivided into cities and counties, and counties were subdivided into towns and villages. In each governmental unit a popularly elected assembly was established.² On the surface, this amounted to the modernization of local government.

The immediate impulse behind the institutionalization of the legal framework of local government was the Freedom and Popular Rights

1. In Japan, with deregulation, decentralization may be tinged with character of administrative reforms. The contents of administrative reforms are many topics. The main object is to reduce the expanding administrative sections. Deregulation and decentralization, therefore, are the concrete means. See HONDA MASATOSHI, *MODERN JAPANESE POLITICS AND ADMINISTRATION*, at 184 (2001, Kitaki Publishing Co., Tokyo).

2. At first, the popular election laws granted the right to vote only to male taxpayers in Japan. Then, the restriction was revoked and all males were guaranteed the right to vote. See Tanifuji Etsushi, *The Election and Voting Behavior*, *CONTEMPORARY POLITICAL ANALYSIS* 195 (Horie Hukashi & Okazawa Norio eds., 1997, Hogakushoin, Tokyo).

Movement of the 1880s. The Meiji government, which is an oligarchical,³ clan-based coalition of elements of the former lower warrior aristocracy, wished to create a stable system of domination over the entire nation. Moreover, it set as a goal the achievement of equality with other foreign powers, which required the modernization of Japan's systems of politics and administration. Toward these goals, in 1881, the Emperor proclaimed that a parliamentary government would be established in 1890; at the same time, the government began preparing for the promulgation of a constitution. When this political agenda became public, however, groups demanding immediate freedoms and popular rights sprang up in every part of the country among landlords, fallen former nobles, and smaller and poor farmers. These groups, under the influence of Western European political ideas, sought the protection of democratic rights, the prerogative of political participation, and the devolution of political power to regional and local levels.⁴

Under the Meiji Constitution, however, local autonomy was treated as a matter of national legislative policy and not as a constitutional matter. Because there was no constitutional guarantee of local self-government, the system of local governments could easily be changed by the central government. However, some Japanese scholars, for example Prof. Minobe Tatsukichi⁵ and Prof. Moriguchi Sigechi,⁶ had introduced and emphasized the importance of local self-government.

In the period of "Taisho democracy", the intellectuals, workers, and farmers sought the expansion of political participation and the guarantee of democratic rights. They also gave rise to changes in the system of centralized local government. The central government loosened its control on local governments. For example, the Gun system was abolished in 1923, universal male suffrage was introduced in elections for the House of Representatives in 1925 and in elections for prefectural and municipal assemblies the next year.

However, as Japan moved towards a military structure in the Showa years and especially after 1931, democracy itself was viewed with skepticism, and local autonomous institutions were criticized for their deficiencies and for the financial burden they represented. Consequently,

3. The Meiji Constitution (1889) laid down in Article 1, "The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal," and in Article 3, "The Emperor is sacred and inviolable." Sovereignty rested with the Emperor, and the Diet, though it existed, acted as a rubber stamp to give "consent" to the governing acts of the Emperor. The people were stipulated to be "subjects" of the Emperor.

4. ABE HITOSHI, SHINDO MUNYUKI & KAWATO SADAFUMI, *THE GOVERNMENT AND POLITICS OF JAPAN* 55-56 (James W. White trans., 1994, University of Tokyo Press, Tokyo).

5. MINOBE TATSUKICHI, *THE MEANING OF ARTICLES OF THE CONSTITUTION* 132-133 (1927, Yuhikaku, Tokyo).

6. MORIGUCHI SIGECHI, *THE PRINCIPLES AND EXERCISE OF CONSTITUTIONAL GOVERNMENT* 437-440 (1929, Gaisosya, Tokyo).

supervision by the central government was drastically increased, and local autonomous bodies degenerated into the smallest units of national policy.

III. LOCAL SELF-GOVERNMENT AS GUARANTEED BY THE JAPANESE CONSTITUTION

After the Second World War, Japan was occupied by an allied army, in reality, dominated by the U.S. forces. Under the Occupation, a variety of reforms were carried out in order to dismantle the prewar Japanese political system. The objects of these reforms were demilitarization and democratization. In order to demilitarize Japan completely, the Supreme Commander for the Allied powers (SCAP) efficiently demobilized the Japanese army and navy.

In addition to the system of local government, as an area of bureaucratic control, there were many democratic reforms in the areas of politics, administration, economy, and society that were enacted during the occupation.

The culmination of these reforms was the promulgation in 1947 of a new Japanese constitution. The Meiji system of transcendent imperial sovereignty was abolished and the principle of popular sovereignty was established, with the emperor becoming merely a symbol of national unity. By contrast with the “rights of subjects” in the Meiji Constitution, which were guaranteed only insofar as it was consistent with one’s duties as a subject and were easily restricted by legislation, the postwar Constitution guaranteed a broad variety of individual rights to the citizenry as basic and inviolable. Moreover, the Constitution is now the supreme law of the land—amendable only by the will of the people—and the Supreme Court is the court of last resort in a newly independent judiciary, with the power to decide the constitutionality of all laws and government actions.

The postwar Japanese Constitution includes a separate chapter with four articles concerning local self-government. However, it was not the Japanese Government that introduced these provisions into the draft of the Constitution. They were, instead, a product of GHQ (the General Headquarters) direction. At first, especially the Ministry of the Interior expressed disapproval of the SCAP’s draft, which contained rules for the direct election of each prefectural governor. As a result, based on the draft by the GHQ, the Constitution had come to provide for the following: A. rules and regulations governing local public entities to be fixed in accordance with “the principle of local self-government; B. the direct popular election of executive officers and assembly members in all local public entities; C. the right of local public entities to manage local government property, affairs, and administration and to enact their own

regulations; and D. consent by the majority of the voters before any special law applicable to one local public entity can be enacted by the Diet.⁷

As these rules express, it is significant that the Constitution guarantees local self-government. A constitutional guarantee of local self-government means that any alterations or abolition of the various regulations or basic provisions concerning local self-government in Chapter 8, Article 92 to Article 95,⁸ has to be made through the process of constitutional amendment. This is an essential difference from the local self-government recognized under the Meiji Constitution.

Accordingly, a number of laws were enacted concerning local government, but the core legislation for dealing with its organization and management is the Local Autonomy Law. The provisions of this law deal mainly with residents' affairs, elected councils, and their executive bodies – all that which forms the core of local government. The law also defines the status of local authorities, including their relationship with central government as well as with other local authorities, and has legal provisions for their financial affairs and other important administrative matters.

Although the local self-government is guaranteed by the Constitution, the academic theories are divided. At first, the theories were divided between the Indigenous Right Theory and the Introduction Theory. The former theory insists that the rights of local public entities are guaranteed by the Constitution as the fundamental human rights. The latter theory holds that the right of local self-government is based on the recognition of the state. These two theories contain many inconsistencies. The most prevailing theory is the Institutional Guarantee Theory in Japan.⁹

This theory was introduced from German scholarly circles, and it also prevails in Taiwan.¹⁰ This theory holds that legislative branch should not violate the essence of local self-government. The question is, however, what part of local self-government will be guaranteed under the Constitution? According to the scholars' theory, the essential part of local self-government includes the double structure of all prefectures and cities, towns and villages;¹¹ the installation of the district assembly as a

7. Yoshida Yoshiaki, *Authority of the National and Local Governments under the Constitution*, JAPANESE CONSTITUTIONAL LAW 111 (Percy R. Luney Jr. & Takahashi Kazeyuki eds., 1993, University of Tokyo Press, Tokyo).

8. Article 92 provides for the regulation of local government in accordance with the basic principles of local autonomy; Article 93 provides for local authority members and executive heads (Governors and Mayors) to be directly elected; Article 94 empowers local authorities to manage their own affairs and enact by laws; and Article 95 forbids the enactment of special laws peculiar to a particular local authority without the approval of the majority of the electorate.

9. TONAMI KOZI, *THE CONSTITUTION* 480 (1998, Gyosei, Tokyo).

10. No. 498, the Constitution Interpretation, the Council of Grand Justices.

11. 17 Keishu 2 at 121; Sup. Ct., Mar. 27, 1963.

legislative organ; the public electoral system of district assembly members and Chiefs; the local government's right of organization, personnel management, management of property, regulations establishment, government enterprise management; and the local government's financial right, and autonomous administrative power.¹²

IV. GROUP AUTONOMY AND RESIDENT AUTONOMY

According Article 92 of the Constitution, regulations concerning the organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy. However, what is the principle of local autonomy? It can be divided into two categories.

The first type is Group Autonomy, which was introduced from France and Germany. According to the right of Group Autonomy, "the local public entity should be expected to be independent from the central government in conducting its affairs within its own capacities," and "the central government manages only matters relating to the whole nation and citizenry based on the opinions of the People."¹³

As long as the guarantee of the right of autonomy is to be assumed, the following principles should apply:¹⁴

A. The functions of local public entities are to be processed autonomously. In other words, they should not be subject to the authority of the central government.

B. The distribution of local functions should favor local public entities. If this rule were carried through, then the functions appropriate to cities, towns and villages would be carried out by those entities. Functions not appropriate to cities, towns, and villages would become the functions of prefectures. Functions not suitable to the prefectures would become the work of national or central government. The ideas of the Shoup Report of August 1954 serve as reference for this distribution of functions.

C. In order to give priority to local public entities in the carrying out of governing functions, it is necessary that the autonomous taxation rights of such entities be recognized and that the distribution of revenue sources matches the distribution of functions.

The second type is Resident Autonomy, which was introduced from the United Kingdom and the United States. It differs from the first type based on people's sovereignty and requires the democratization of local

12. NAKAMURA MUSUO, *THE POINT OF ISSUE: THE CONSTITUTIONAL CLASSROOM* 331 (1190, Yuhikaku, Tokyo).

13. SUGIHARA YASUHIRO, *THE CONSTITUTION I*, Tokyo: Yuhikaku, 1987, p.384.

14. Yoshida Yoshiaki *The Guarantee of Local Autonomy: Traditional and Modern Constitutional Viewpoints*, FIVE DECADES OF CONSTITUTIONALISM IN JAPANESE SOCIETY 239-240 (Higuchi Yoichi ed., 2001, University of Tokyo Press, Tokyo).

autonomy as a precondition for the democratization of the whole national government structure. The residents, therefore, have the right to participate in local affairs and local administration by their own intentions, and their participation at this level would lead to more effective participation of citizens in the national government structure. The special content of residents' participation in government included the following principles:¹⁵

A. The will of residents is reflected in local public entities through assemblies and chiefs. Unlike in the national government, two-dimensional representation is required in local public entities.

B. The will of residents must be reflected accurately in assemblies (through social representation).

C. The representing assembly members and chiefs have a responsibility toward residents. Also, because local autonomy is held in high regard, Article 95 of the Constitution stipulates that any "special law applicable only to one local public entity" must be subject to a vote by residents. This is an example of residents' autonomy.

In order to realize local self-government, the local public entity should first become independent of central government: this is the central tenet of Group Autonomy. Although Group Autonomy is accepted, it cannot be said that local self-government is complete. The participation of residents must be guaranteed and public opinion must be adequately reflected in the organization's decision-making: this is the basic idea of Resident Autonomy. These values guarantee local self-government. Group Autonomy and Resident Autonomy, therefore, are the two pillars for local self-government.¹⁶

V. THIRTY PERCENT SELF-GOVERNMENT IN REALITY

As of April 2000, there are 3,229 municipalities and 47 prefectures in Japan. These 47 prefectures are divided into one metropolitan district (Tokyo), two urban prefectures (Kyoto and Osaka), forty-three rural prefectures, and one district (Hokkaido); and municipalities are divided into cities, towns, and villages. Prefectures and municipalities vary widely in terms of population and area. For example, Japan's 47 prefectures range in population from Tokyo with more than 10 million, to Tottori with just 600,000; and in size, from Hokkaido with an area exceeding 80,000 sq km, to Kagawa with a little under 2,000 sq km. The municipalities exhibit even greater variety. They range from Yokohama City, with a population in excess of 3 million, to Aogashima village in Tokyo, with a population

15. *Id.* at 111-112.

16. SASAKI NOBUO, MODERN ADMINISTRATION, 52 (2000 Gakuyo Shobo, Tokyo).

below 200. As for area, Ashoro Town in Hokaido covers about 1,400 sq km, compared to Takashima Town in Nagasaki, which is about 1.27 sq km.

Although these local governments are guaranteed as independent entities to pursue their work, they have not worked out precisely as the Constitution had designed. The reasons are as follow: A. There already were defects in local self-government before the establishment of the 1947 Constitution. Under the old system, a large number of services that should have been treated as local affairs fell under national jurisdiction. There still persists a tendency of central control in the areas of finance and employment, as well as police and education. B. The dependence on the central government reflects the long-lasting dominance of the national bureaucrats and their distrust of local government. National bureaucrats are confident in their management of local governments, and they oversee the local governments' executive affairs, sources of revenue, and personnel matters. Even if it is better to have these affairs managed by the local government, the national bureaucrats distrust local management and are reluctant to transfer their power. C. Although revenue between central and local governments is distributed in accordance with the national tax base, revenue to local governments has not increased significantly over the years. Consequently, there has been a lack of general revenue for local governments, and local governments must depend on special revenue sources like grants from the National Treasury.¹⁷

The control of central government over local government affairs is mainly under three categories – authority, finances and human resources. A few key examples of increased central control are presented below.¹⁸

A. Agency Delegation (or more specifically Agency-Assigned Functions) are particularly controversial since central government can assign them to local government, which then acts as an agent of central government. The local assembly has limited influence over the implementation of these functions. A total of 128 assigned functions were originally set out in the Local Autonomy Act. This had risen to 327 by 1980 and 561 by 1995.

B. Local government can enact ordinances within the limits of national law. However, each time a local authority attempts to enact an innovative policy, the concerned ministry can argue that the ordinance conflicts with national law and is therefore illegal. It has been common practice for local government to confirm with the relevant ministry that any ordinance enacted is *intra vires*.

17. See YOSHIDA, *supra* note 7, at 111-112.

18. Brendan F. D. Barrett, *Decentralization in Japan: Negotiating Transfer of Authority*, 37-38 JAPANESE STUDIES 20, 1(2000).

C. Central government collects the greater part of tax revenue in Japan. Local authorities through the independent local taxation system collect the remainder. The greater part of local government spending is funded from local reallocation tax and program- or project-specific financial transfers from the central treasury. In 1995, for instance, roughly 46% of the national tax revenues were transferred to local government through various measures.

D. Central interference in local affairs takes place in various forms. The most recent survey indicates over 3,333 instances in 1995 of central government involvement at the local level. In addition, there were 10,000 cases in 1985 where central government licensing and approval was required of local governments, increasing to 10,983 in 1996.

E. Central government places a large number of its staff in local government in order to, amongst other things, more closely monitor their activities. In 1996 there were 1,197 central government officials working in local government. This is supplemented by the retirement (*amakudari*) of national government officials to positions in local public organs. Also in 1996, 26 governors and 24 vice-governors were former central government officials.

Especially in considering the financial relations of central and local governments, local government's expenditure is correspondingly high and it is even more than the central government's general account. The financial relationships of central and local governments are intertwined to a high degree. Because the central government takes in roughly twice as much tax revenue as local governments,¹⁹ most of the budget of local government came in the form of transfer payments and subsidies from the central government. These enormous financial transfers from central to local are in the form of Local Allocation Tax, Local Transfer Tax, and the Treasure Grant and so on.

Each year the cabinet must put together a document giving the total estimated amount of revenue and expenditures of local governments for the next fiscal year. This document must be made public and submitted to the Diet. Ordinarily called the local finance plan, it becomes the main

19. Local taxes, which constitute an autonomous sort of revenue for local governments, are collected by local administrations within the limits of their authority to levy taxes. There are both prefectural taxes and taxes levied by cities, towns, and villages. Both types of taxes are subcategorized into special-purpose taxes, to be used for certain designed ends, and ordinary taxes, whose use is not specially designated. A system of local consumption taxes was instituted in 1997 as a means of increasing local government financial resources in order to promote local autonomy.

However, the Local Government Finance Law prohibits the local entities from introducing new tax levies other than those specified in this Law: under the provisions of Local Government Finance Law, the prefectural governments are allowed to draw their major financial resources from resident tax and corporate business tax, while other local entities depend on resident and real estate levies.

guideline for local government financial operations. The expenditure of local governments is about 60 percent of the country's total public expenditure. However, the rate of the local tax revenues occupied in the annual revenue of a local self-governing body is only 30 percent, and the rate of the local tax revenues occupied in the whole tax revenues is only 30 percent, the term "thirty percent self-government" is frequently used to describe local government.²⁰

VI. PROMOTION OF DECENTRALIZATION AND REALIZATION OF LOCAL SELF-GOVERNMENT

The period of 1960s was a period of high economic growth in Japan. During this period, the central government tried to undertake most of the increased administrative demand. For this purpose, the central government strengthened its branch offices. But at the same time that high-speed economic growth pushed the GNP upward, it gave rise to a multiplicity of urban problems in areas such as pollution, housing, transportation, and social welfare, which proliferated in response. But solutions were beyond both the means and the will of local politicians who owed allegiance to the very central government whose development-at-any-cost strategy had produced the problems in the first place. Consequently, these sorts of citizens' movement gave rise to a nationwide "local government reform" movement that questioned the contemporary quality of local government overall. This was the popular side of the new quickening of local self-government, symbolized institutionally by the increase of what were called "progressive local governments" in the hands of leftist mayors and governors. These governments, attempting both to resolve urban problems and stimulate popular participation in local government, developed distinctive policy activities.²¹

The recent series of events toward decentralization was initiated by the resolutions passed by both the House of Representative and the House of Councillors in 1993.²² The underlying reasons for this move was the

20. See HONDA, *supra* note 1, at 176.

21. ABE HITOSHI, SHINDO MUNHEYUKI & KAWATO SADAFUMI, *THE GOVERNMENT AND POLITICS OF JAPAN* 62 (James W. White trans., 1994, University of Tokyo Press, Tokyo).

22. In 1993, the Hosokawa coalition cabinet was formed after the collapse of the long continued Liberal Democratic Party government since 1955. This was because the political and economic structure that was called "the year '55 system" came to a deadlock, and reform and change were internationally or domestically demanded against the administration. The current also gave a strong influence on the movement for realization of decentralization.

When Hosokawa took office as Prime Minister, he brought forward many of the PCPAR's recommendations in a Cabinet Decision issued in February 1994 entitled "Fundamental Principle for the Future of Administrative Reform." Following this decision, a working group on decentralization was set up in the Headquarters for the Promotion of Administrative Reform in

awareness that the current centralized system had become incapable of coping with many newly emerging problems. These circumstances may be summarized as follows:²³ A. The present centralized administration system, previously effective in pursuing economic growth, has accumulated institutional fatigue and as a result is unable to meet the present demand for diversified development. B. The present centralized administration system can not deal effectively with new demands such as “adjustment to the changing global society,” “correction of the over-centralization (of government, business, and population) in Tokyo,” “creation of diversified local communities,” and “aging population and declining birth-rates.”

Following these resolutions, the Law for Promotion of Decentralization was enacted in May 1995. This law stated as its basic concept that “decentralization is to be promoted with ‘clarification of the role sharing between the central government and local government,’ ‘promotion of independence of local authority’ and ‘realization of diversified, vigorous local community’ as the basic purpose.” The law obligates the central government to compile the “Decentralization Promotion Plan.” The law also stipulates the establishment of the Commission for the Promotion of Decentralization (CPD), whose responsibility includes submitting recommendations to the Prime Minister concerning compilation of the “Decentralization Promotion Plan.” The Commission submitted recommendations in four parts, in December 1996, July 1997, September 1997, and October 1997. The content of these recommendations was highly respected and were adopted almost entirely into the “Decentralization Promotion Plan” announced in May 1998.

The recommendations included six issues. They are: A. Abolition of Agency Delegation, B. Creation of new rules concerning central-local government relations, C. Promotion of the transfer of authorities from central to local governments, D. Re-examination of “Compulsory Organization and Posts,” E. Streamlining of central government disbursements and the amplifying of local revenues, and F. Restructuring of local governments’ administrative structures.²⁴

These changes effectively represent the abolition of “Agency Delegation”. The Commission clearly declared its intention to abolish Agency Delegation by stating that “it (Agency Delegation) consists of the core of the highly centralized administration system (in Japan)... In order

May 1994, and work began on the drafting of a new law to promote decentralization. Based on proposals made by this working group, the Cabinet approved a document entitled “Fundamental Principles Regarding the Promotion of Decentralization” on 24 December 1994.

23. Kamiko Akio, *Recent Trends Toward Decentralization in Japan*, 194 *ASIAN REVIEW OF PUBLIC ADMINISTRATION* , 1 (1997).

24. *Id.* at 194-195.

to achieve the relationship of equality and cooperation between the national and local government in accordance with the spirit of Local Autonomy Law, we have come to the conclusion that Agency Delegation be abolished” (CPD, 1996). Instead, all the existing functions of local entities are transformed into two distinct types of functions: one is the Autonomous Function, the other is the Legally Contracted Function. The Autonomous Function is further divided into two different types: one not subject to national law regulation, and the other under such jurisdiction. It is estimated the approximately 80 per cent of the total functions of local entities will fall under the Autonomous Functions, whereas the Legally Contracted Function will be less than 20 per cent.²⁵

In order to implement these proposals, a bill was prepared by the Prime Minister’s Office in May 1999. The 1500-page bill containing amendments to 475 laws was deliberated in the 145th Session of the Diet and enacted in July 1999 to take effect before April 2000. It included amendments to 351 laws (i.e. City Planning Laws, Food Hygiene Laws, Public Elections Law, etc.) in order to clarify the new functional arrangements between local and central government. In addition, another 138 laws were amended to curtail the extent of central involvement in local affairs. For example, the City Planning Law was amended so that local governments no longer needed ministerial approval for urban development plans. Rather, the amendments required that local government undertake discussions to reach agreement with the Ministry of Construction. Furthermore, the bill included amendments to 38 laws so as to enforce the transfer of authorization powers from central to local government, and from prefectural authorities to the municipalities. Finally, the bill contained provisions for the amendment of 35 laws governing the Mandatory Regulation of local government organization. For instance, certain committees within local government may be disbanded, or in other cases flexibility is allowed in determining their title.²⁶

In the process of promoting decentralization, however, much resistance came from the central government, especially the attitude of the ruling-party, the Liberal Democratic Party and officials of central government. They did not want to lose their powers of control because the authority of local autonomies had strengthened. Because the powers of control on local governments would make the central governments carry out their policy easily.²⁷

The central government does not express opposition to decentralization,

25. Dairokuno Kosaku, *Restructuring Central-Local Relationships: Beyond the Redistribution of Power and Financial Resources*, 271 ASIAN REVIEW OF PUBLIC ADMINISTRATION, 5, 1 (1998).

26. See BARRETT, *supra* note 18, at 45-46.

27. See HONDA, *supra* note 1, at 183.

but it often expresses doubts as to whether local authorities are capable of taking on the new responsibilities and does not abandon the control on local governments. For instance, the Ministry of Construction contested the CPD's city planning-related recommendation. Ultimately, the Ministry of Finance proved to be the most significant obstacle to the CPD's work and undermined the efforts to review the financial arrangements between central and local government. As a result the Committee made only limited progress with the reform of the subsidies system and no progress in relation to the issue of taxation.²⁸

However, decentralization is the realization of local self-government, which is guaranteed in the Constitution. Moreover, decentralization is a worldwide trend; it takes place in many countries. I think the promotion of decentralization will continue in Japan. The powers of local governments have been much more than before, it will more comply with the Constitution.

VII. THE RELATIONSHIP BETWEEN LAWS AND REGULATIONS

In order for local self-government to come to fruition, local governments must be able to legislate their ordinances. Article 94 of the Constitution stipulates that, "Local public entities shall have the right to manage their property, affairs, and administration and to enact their own regulations within law." Moreover, according to Article 14 of the Local Autonomy Law, "the common local self-governing bodies can enact regulations, unless a law is broken." Based on these regulations, a regulation of local self-governing body cannot be enacted as long as there is no explicit delegation by a law.

The relationship between laws and regulations, however, is an issue linked to the question of how wide the range of local self-governing bodies' powers to enact regulations. The legal interpretation has been to allow ordinances in areas not covered by national law when A. they regulate the same activity covered by the law but different purpose and B. when they regulate different activities for similar purposes.²⁹ This Law Preoccupation Theory, which considers national laws takes precedence, has been the dominant opinion until recent years.

However, there have been efforts to overcome this Law Preoccupation Theory, including the debate over the enactment of "*uwanose* regulations" (regulations are severer than existing laws with the same objectives) and "*yokodashi* regulations" (regulations regulate more widely

28. See BARRETT, *supra* note 18, at 43.

29. HARADA NAOHIKO, THE LAW AND STRUCTURE OF LOCAL SELF-GOVERNMENT 176-177. (2003, Gakuyo Shobo, Tokyo).

than existing laws with the same objectives). A representative example is provided by pollution regulations. If a national law enacts a loose standard, the local public entity cannot enact a severer standard and the local residents have to suffer the damage to a legal limit. At present, national laws, for example the Water Pollution Prevention Law and the Air Pollution Control Law, have recognized that local governments can make *uwanose* or *yokodashi* regulations to control pollution.³⁰

One opinion states: "Where a need for emission standards stricter than those of the national law is objectively recognized, in a case where a certain national law must be interpreted as prohibiting a regulation that would fulfill such a need (in other words, when there is no room to interpret the regulation's constitutionality), the pertinent law would oppose the principle of autonomy of Article 92 and be invalid."³¹ This opinion can be interpreted as approving the autonomy of local self-governing bodies' enactment of regulations. This is in accordance with the standpoint that the indigenous right to autonomy should be held.³²

Moreover, according to the Supreme Court decision,³³ the local public entity can tighten control with regulations in consideration of the characteristic of an area. This decision eased application of this Law Preoccupation Theory by interpretation of a statute, generally it is concluded that it is appropriate.³⁴

VIII. CONCLUSION

Local self-government, which was established under the Constitution, is the basic principle of democracy and a political, legal, and administrative problem in Japan. The interference of the national government is still strong, and local self-government does not fulfill its function as envisioned in the Constitution. Since the late 20th century, voices demanding decentralization of power have become stronger and stronger. At the same time, the guarantee of local self-government has become a focus for efforts toward political reform. However, such calls for transfer of power have not gone unheeded due to resistance from the central government and the bureaucracy.

Nevertheless, although the actual implementation of local autonomy

30. ABE YASUTAKA & AWAZI TAKEHISA eds., *THE ENVIRONMENTAL LAW* (2d ed.) 45 (1999, Yuhikaku, Tokyo).

31. Toshima Sugimura, Muroi Tsutomu & Hitoshi Kaneko have the same viewpoint on this issue (Muroi Tsutomu, *Laws and Regulations in National Administration*, 68 HOGAKU SEMINAR 177 (1970, Nihon Hyoronsya, Tokyo).

32. See YOSHIDA, *supra* note 14, at 246-247.

33. 29 Keishu 8 at 489; Sup. Ct., Sep. 10, 1975.

34. See HARADA, *supra* note 29, at 177.

meets with predictable dissenting voice and resistance, there is greater national consciousness on the issue of local self-government, and it has evidently become a part of government's agenda. Many laws about the guarantee of local self-government, therefore, have been made.

In Taiwan, on the other hand, after the drop of martial law, the Constitution has been amended many times. The relationship between the central and local governments and the structure of local governments are the important issues of these revisions of the Constitution. Its purpose is to make local self-government come to fruition. Like in Japan, however, there is much resistance from the central government. Therefore, how to restructure central-local relationships and deal with these problems on local self-government have become important issues in Taiwan. I think that there is value for Taiwan in learning from Japan's experience.

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