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Japanese Bureaucratic Transparency

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Summary

This brief examines the issue of transparency during and after the period of political dominance by the Liberal Democratic Party of Japan (LDP) which ruled with only a brief nine-month interruption from 1955–2009. It highlights two related but analytically separate dimensions of governmental transparency—transparency in decision-making processes and transparency in official policies. The first concentrates on the public visibility of how agencies decide on matters under their jurisdiction; the second focuses on how visible actual government policies are to those most affected by them and to the general citizenry. I argue that Japanese agencies have been far more open on policy content than on the processes by which those decisions were reached. In addition, this brief examines recent changes designed to foster greater transparency in both process and policy, including a Freedom of Information Act, e-government provisions, enhanced roles for parliamentary inquiry, a greater role for non-governmental organizations, and other measures. It also highlights the broad shifts in government attitudes toward transparency under the Democratic Party of Japan (DPJ), which has governed since 2009.

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Governmental transparency has long been an issue in Japan but it took on enhanced salience with the triple disaster of March 11, 2011: the earthquake, tsunami, and Fukushima Dai-ichi nuclear plant. In the wake of that tragedy, widespread criticisms arose concerning what appear to have been substantial official and quasi-governmental efforts to cover up mistakes made in response to the crisis, but more significantly criticisms of the broader lack of transparency in the interactions between government agencies and the private sector (in this case the nuclear sector). Though specific to the disaster, these issues had long been percolating as more general worries about the un-transparent nature of Japan's government agencies.

SHADOWY PROCESSES BUT VISIBLE OUTPUTS UNDER LDP RULE

Japan has traditionally been a highly-regulated country with a powerful tradition of bureaucratic leadership in lawmaking and public administration. Japanese government agencies have traditionally favored broadly worded statutes offering them substantial scope for discretion in their actual application. Decisions were typically made on a case-by-case basis rather than as the consequence of specific and preannounced rules (Ginsberg 2008).

Discretionary bureaucratic leadership can be traced to the Meiji government's efforts at rapid economic catch-up with the West, with the desire to create a "rich country, strong army" that followed, with the centralized state apparatus of Japan under conditions of total war from 1937–1945, and with the economic and social demands of postwar reconstruction. Long-term rule by the conservative Liberal Democratic Party (LDP) from 1955 until 1993 (and then again from 1994 until 2009) forged close ties between elected officials and the bureaucracy that allowed for considerable behind-the-scenes coordination and cooperation between politics and administration. This arrangement rarely focused on the kinds of public disclosure that often occurs in democracies where alternative parties take office and find it politically worthwhile to reveal any skeletons left dangling in the closets of departing officials.

Important too, individual government agencies had rather strictly defined areas of responsibility and most career officials joined an agency in their early twenties and spent their entire careers within that agency before retiring in their later fifties or early sixties (Pempel and Muramatsu 1995); usually to a job with an organization under the regulatory umbrella of the ministry or agency the official was leaving. In short, a premium was placed on loyalty to one's agency over loyalty to the government or the public at large and agency-to-agency turf battles were notorious, if usually out of the public eye. An anecdote provided by Tsuji Kiyooki (1952), a foremost student of the Japanese civil service, provides a typical example. As a young official he was told by his section chief to collect data on a particular problem. The official recalled that a parallel section in the same agency had already done a similar survey, so Tsuji went next door to request their data and was summarily informed that if his section needed the data they should collect it themselves.

The media, a watchdog force in many countries, was not always so vigilant in revealing the darker sides of official actions, nor at probing matters that agency officials wished to conceal. The rather unusual Japanese system of 'kisha clubs,' or press clubs, worked against such revelations. All government agencies and all powerful politicians (as well as major private interest groups) had agency-specific press clubs whose members were assigned to cover that agency alone. Press offices were maintained at these agencies and food and drink were provided to reporters along with official press statements and "off the record" background material. Chumminess between reporters and those they covered was the order of the day. Considerable information and exchanges for information took place between reporters and officials but reporters were usually loath to reveal information that might shed negative light on their subjects. Consequently, newspapers and other media more frequently served as conduits for what officials wanted the public to hear than investigations driven by skeptical investigative reporters.

Ruling politicians, meanwhile, were more likely to align their political interests with the fortunes of a particular agency such as education, construction, agriculture, or defense than they

were to seek a broad overview of the multiple facets of public policies. Within such a context, government transparency was often jointly resisted by both ruling politicians and civil servants as entailing risk to the powerful rather than ensuring responsibility to the public.

Nor were parliamentary inquiries likely to provide major revelations. Questions about government policy were the purview of legislators from the opposition parties and were typically formalized dramas attempting, usually unsuccessfully, to show ‘failures’ or ‘weaknesses’ in government action. It was most typically the highest-ranking civil servant from the agency involved who was questioned, and as one former Ministry of Foreign Affairs official made clear, the key goal of bureaucrats during such question periods was to prepare the most anodyne but unrevealing responses possible. Parliamentary inquiries, he noted, were seen as a necessary but frustrating hurdle that had to be cleared in the efforts at effective governance.

In short, the long legacy of bureaucratic influence and one-party conservative rule worked against ensuring that decisions made by civil servants and government agencies were transparent or that agencies were accountable. A premium was placed on policy results, and with government officials chosen through a highly competitive process, the underlying presumption was that decisions by such officials would most often represent the best possible solution under the most complex of circumstances. Without question, as Uga (2008) has suggested, Japanese bureaucrats operated in a “culture of secrecy.”

That said, while the sausage-making process involved in making decisions has often been hidden from public scrutiny, government agencies regularly provided considerable useful and comparative information on a host of official matters that were in fact decided. Over the entire postwar period, laws, ministerial regulations, and government directives have rather consistently been publicly available in numerous official government publications. Virtually every government agency publishes an annual white paper that highlights major problems faced, major laws passed, general approaches taken in a range of areas, and broadly reliable and usually internationally and chrono-

logically comparative statistics. All such information is usually presented to the parliament in the form of an annual agency report.

In recent years, most of these white papers have been made available in English translations and are accessible on government websites, the latter also providing considerable coverage of official tables of organizations, lists of major officials and their contact information, top-level meetings, monthly statistics, access to databases, and often a chronology of recent events salient to the agency’s activities. All of these make Japanese decisions relatively visible and transparent to the rest of the world, as well as to Japanese citizens.¹ Finally, in the case of many agencies such as Labor, Environment, Justice, Finance, and Education, agencies regularly provide globally consistent data to international bodies such as the ILO, the IMF, the OECD, and the like.

MOVES TOWARD ENHANCING GOVERNMENT TRANSPARENCY

Over the past two decades, Japan has moved in various ways that have made the policy-making process and information about policies more open and transparent. First, there has been a rise in non-governmental organizations (NGOs) or, as they are known in Japan, non-public organizations (NPOs).

The NPO Boomlet

Various countries have shown that NGOs are often capable of examining issues of public policy from perspectives that differ from those of government officials and simultaneously providing alternative solutions to problems, shedding light on areas less subject to official attention, and/or revealing shortcomings of public policy and the policy process that serve at a minimum to keep officials a bit more responsive to public opinion and broader segments of society.

Japanese NPOs were relatively few in number and lacking in legal status until the Kobe earthquake of 1994. As government officials stumbled in their response to this tragedy and as competing

1. <http://web-japan.org/links/government/ministries/cabinet.html>.

agencies fell back on mind-numbingly strict adherence to rules that impeded the recovery (such as demanding six months of quarantine for rescue dogs being brought in from Europe to aid in the rescue or refusing to allow cell phones authorized for Eastern Japan to be used in the West), numerous volunteers moved into the breach and following the worst of the disaster many citizens' groups morphed into non-public corporations. Eventually on March 19, 1998, in response to citizen pressures, the government passed the "Law to Promote Specified Nonprofit Activities" (hereafter called the "NPO Law"). The law makes clear that a nonprofit organization is different from an administrative agency, the activities of which are supported by taxes and which aims to provide social services evenly and fairly to everyone. NPOs, as their name implies, also differ from corporations in that profits are not their goal (Pekkanen 2000).

Following passage of the law there was a burst of new NPOs in Japan. At the same time, as the numbers grew, the independence of these NPOs was more limited than the case in the United States and Western Europe. For example, all NPOs must be under the aegis of a single government agency and hence while they receive no budgetary help from taxes they are typically far from fully autonomous bodies. But NPOs were not easily brought into the policy-making process, as was shown, for example, in the case of Tokyo's February 2003 global conference for planning of non-military assistance to Afghanistan. At that conference Japanese NPOs anxious to join in the planning—on areas of their specialization such as water purification or solar energy—were denied access to the meeting. Moreover, most NPOs remain thin in their professional staff, making it difficult to see them as posing a serious counterweight to government resources.

That said, in recent years, government agencies have come to be more welcoming of their cooperation. Thus, for example, the Ministry of Health and Welfare has demonstrated its eagerness to utilize the services of NPO volunteers in nursing homes. In addition, the Ministry of Foreign Affairs has gone so far as to publish a guide to

its "partnerships" with NPOs.² It outlines, among other things, ways in which NPOs can partner with MOFA, a website to demonstrate which projects have moved forward, and what kinds of funding might be available.

The Freedom of Information Act

A number of measures were taken to boost government transparency in the early 2000s following a raft of scandals involving government agencies found, among other things, to have substantial slush funds, to have misused entertainment funds for government officials, and/or to have been in collaboration with client agencies in ways that led to serious citizen injury (as was the case with the Ministry of Health and Welfare, which allowed an exception to blood testing for a favored client that eventually resulted in the transfusion of AIDS-tainted blood to a substantial number of hemophiliacs).

The government adopted a series of laws and regulatory measures intended to make government administration more transparent and to enhance the opportunity for greater public participation in policy-making. These measures include an Administrative Procedure Law adopted in 1993, regulations establishing a no-action letter system, a government-wide policy review system, and a "notice and comment" procedure to allow public comment on proposed regulations (Repetta 2003). Of particular significance is the Information Disclosure Law (Law concerning the Disclosure of Information in the Possession of Administrative Agencies, Law No. 42 of 1999). Roughly patterned on the U.S. Freedom of Information Act, this law, for the first time, provides a legally enforceable right to request information in the possession of Japan's national government.

All national administrative agencies, including "organs within the Cabinet or established under the jurisdiction of the Cabinet" are subject to disclosure requests. Since its adoption, the law has seen an explosion in the number of requests received for information. Topping the list was

2. <http://www.mofa.go.jp/policy/oda/category/ngo/partnership/english.pdf>.

the National Tax Agency, undoubtedly due to the agency's standard practice of publishing lists of the people with the highest reported incomes. Many merchants are eager to obtain this information and the new law has provided a handy tool. Other agencies receiving more than 2,000 requests included the Ministry of Land and Transportation, the Ministry of Health and Labor, the Financial Services Agency and the Ministry of Foreign Affairs.³

Requests can be made in person or by mail. All ministries and major agencies have established information windows with staff assigned to assist requesters in filling out request forms and identifying documents of interest. In addition, all national government agencies have established virtual windows on their websites to allow for requests to be made.

Application of the disclosure law took an unexpected turn on May 28, 2002, when the *Mainichi Shinbun* revealed that officers of the Self-Defense Agency had compiled a list of people who had submitted information requests, then conducted background investigations of those people and distributed this information to officers in the Agency. The Defense Agency incident suddenly threw a spotlight on the threat of government invasion of individual privacy and its relationship to a disclosure system.

AN INCREASED TRANSPARENCY UNDER THE DPJ

The Democratic Party of Japan (DPJ) while in opposition created a policy manifesto, one of the main promises of which was to "make the bureaucracy more accountable to elected officials." Simply put, the DPJ argued that Japanese democracy was rotten precisely because the authorities in Tokyo did not see fit to trust the public with information about how tax revenue was being spent and who was making national policy. Protected by a press that did not venture beyond press clubs in search of stories, stories that might reveal how policy emerged from opaque negotiations among bureaucrats and LDP fixers, LDP rule was

shrouded in a cloud. As a result, public confidence eroded not just in the LDP but in Japan's government more generally.

Central pillars in the DPJ proposal involved, among other things, providing more political oversight to government agencies, increasing the number of political appointees in each agency, requiring ministers rather than career civil servants to testify before the Diet, and providing more public information on government procurement practices. E-government efforts were also to be expanded. Since the DPJ took power in 2009 most of these measures have been implemented, although not without both resistance and the realization that practicality often required extensive delegation to career civil servants.

The DPJ also set about trying to unearth and make public various actions under the LDP that the DPJ felt had been of dubious constitutionality. This had a differential effect on specific government agencies. Most prominent were a number of secret agreements between Japan and the United States over transit of nuclear weapons by the United States into and out of Japan, the use of Japan-based U.S. troops in the event of any crisis on the Korean peninsula, and arrangements concerning American weapons on Okinawa following its revision to Japanese sovereignty. The existence of such agreements had long been known among academic circles in Japan but the Ministry of Foreign Affairs had long denied their existence.

When the DPJ came to power, Foreign Minister Okuda created a commission to investigate. A panel of six experts came together on September 16, 2009. (At the same time, 15 members from inside the Ministry of Foreign Affairs were entrusted to clear this problem by internal investigation.) Their goal was to assemble a report by mid-January 2010. But the investigation took longer than expected, so when the panel handed in its final report, it was already March 9, 2010. The report, however, did open up some long-closed doors on U.S.-Japan relations and made public a number of items that MOFA had preferred to keep under wraps (Iwama 2012).

One of the most transparent agencies is the Environmental Agency. As early as the 1970s it was putting publicly visible pollution monitoring

3. <http://bkofsecrets.wordpress.com/2011/06/20/freedom-of-information-foi-in-japan/>.

devices throughout Japan to allow for ongoing monitoring of various pollution levels. Its technical standards and legal measures are all available in the agency's white paper and on its website as well. The agency has also been highly public in its discussion of the problems of disposing of nuclear waste following the March 2011 disaster.

The Japanese Ministry of Education, Sports, Science, and Technology (MEXT) has put in place an initiative entitled "Transparency and Enrichment of Japanese Laws concerning International Transactions in the 21st Century: Doing Cross-Border Business with/in Japan Project" (the "Transparency Project"). First begun in 2004, the project was extended to six years. The Transparency Project strives to develop a corpus of reliable translations of Japanese legal materials relevant to international dealings to facilitate the global exchange of ideas on Japanese law.

The Justice Ministry under Minister Chiba Keiko has undergone strong political pressures for greater transparency in criminal investigations, an area previously kept in the shadows of police activity. Additionally, Chiba has been pressing the Justice Ministry to establish an independent Human Rights Commission to deal with previously murky issues involving legal and illegal migrants as well as issues of sex tourism, abuse of children, and a host of related issues.

Financial agencies such as the Ministry of Finance and Ministry of Economics, Trade, and Industry typically win applause for the extent to which they provide comprehensive and internationally comparable data on a host of monetary, budgetary, and sectoral support policies. In addition, more information on government procurement procedures are now available in English, increasing the possibility that foreign-based firms can compete for such contracts with their Japanese counterparts.

In contrast to such enhanced openness in some agencies, ministries like Construction and Local Government remain clouded in their decisions. Close ties between the agencies, the construction industry, and local government officials remain opaque as contracts are typically awarded with limited public scrutiny. The central government and a majority of the local governments in Japan have been using opaque and discretionary prac-

tices while qualifying suppliers for bidding for small-scale public works projects. The practice is discretionary in that, for each bid letting, procuring officials use their discretion to decide which suppliers are qualified to submit bids. It is opaque in that the officials are not accountable as to the reasons why particular suppliers are qualified for the bidding.

One final and highly visible example of DPJ efforts has been the Government Revitalization Unit's (GRU) comprehensive review of government. For the first time, all bureaucratic agencies are being forced to account for programs for which they are responsible, an effort that has failed to generate enthusiasm among bureaucrats affected but one that has reinforced the DPJ's image as the party that cares about how tax revenues get spent (Harris 2009). Harris goes on to note that publicizing the GRU's hearings was an important first step. "Opening up the press clubs could be another important step" while the "finance ministry's decision to publicize the budget compilation process piece by piece should help too."

The broad conclusion is that over the past two decades, but since the creation of the DPJ government in particular, a number of valuable and significant measures have been instituted that have opened up the Japanese policy-making process in addition to continuing the generally open access to the actual policies of government. Although some measures have affected all agencies alike, some agencies have quickly embraced the changes, while other agencies try to resist.

CONCLUSION

Japan long had a government which was far more open on the policies it followed than on the means by which it has reached those policies. A host of institutional mechanisms provided for rather closed decision-making by officials during the days of LDP preeminence. As the LDP's power began to wane, as bureaucratic scandals began to hit the headlines, and as citizen activism began to challenge government unilaterality, a number of measures began to open up aspects of Japan's policymaking process.

With the coming to power of the DPJ in 2009 further efforts were made to throw back the cur-

tain concealing official decision-making. The 1955 system was effectively premised on the idea that the LDP and therefore the government could take the time to craft a consensus, often working in secret and making various side payments to make it stick. Getting the distribution of benefits right was more important to the LDP than providing a full account of its activities to voters. The DPJ's nascent system, on the other hand, implicitly recognizes that since the ruling party could lose in competitive elections, transparency is on average preferable as it enables the government to promote its achievements (while trying to spin away the failings) (Harris 2009).

Although the emphasis here has been on stressing the moves from a closed to a more transparent system, it is important to close with the reminder that in comparative terms Japan has generally had a relatively open and transparent governmental set of processes. And most clearly its eventual decisions and the basis on which administrative actions will be taken are usually clear to those affected.

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