On the Enactment of the Act on the Forum for Deliberation between National and Local Governments

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1. The State = National + Municipal Governments

The Japanese state is comprised of national and municipal governments. This is the governing structure stipulated by the Constitution. Yet over a long period of time an unconstitutional system has become pervasive under a mistaken impression that sees the national and municipal governments as sharing a superior-subordinate-type relationship. The first round of decentralization reform that was carried out in 2000 was a peaceful revolution that restored this to the calculus wherein “the state = national + municipal governments.” However, since most of the existing institutions were retained as they were, it was difficult to achieve any concrete results from the reforms.

The series of tasks of statutorily relaxing and repealing the imposition of obligations and frameworks sought to revise the stock of existing laws and ordinances that stood in opposition to decentralization reform, as it were. Partial results for this were achieved through the Act to Improve Related Laws to Promote Reform for the Sake of Increasing the Independence and Autonomy of Local Governments (First Omnibus Law) that was passed by the 177th Session of the Diet. Conversely, the Act on the Forum for Deliberation between National and Local Governments that was passed at the same diet session is a forward-looking measure. This established what appears to be a stage for having the national and municipal governments work together to promote national governance. The effects of this have been unclear from the outset, but it carries with it the latent potential to radically reform the notion of “the state = the national government” that has become deeply ingrained within the national government. While this author may harbor some misunderstandings with respect to the system, he will state his miscellaneous impressions on this here.

2. Chronology Leading to the Submission of the Bill

(1) The Three Phases Leading to Enactment

Taking a look back from the present allows us to arrange the path leading up to the enshrining of a forum for deliberation between national and local governments into law into a first phase (September 2004 - December 2005), second phase (September 2007 - August 2009), and a third phase (August 2009 - April 2011).

(2) First Phase

In the first phase, a total of 14 meetings were held to serve as forums for deliberation between national and local governments. The first such meeting established measures to postpone the transfer of tax revenue sources and substantial reductions in government subsidy contributions and local tax grants. These came about during a tense period and condition in which local governments had decisively lost faith in the central government. Given the circumstances, at later meetings the discussions focused solely on the so-called tripartite reforms.

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(3) Second Phase

After this, these conferences were not held for a while. During this time six local government organizations established the Investigative Commission for New Ideas on Decentralization and moved ahead with their own examination. In May 2006 this commission proposed that a forum for debate known as the Council on Local Financial Affairs be enshrined in law. Since then these six local government organizations have been calling for legal measures for the Council on Local Financial Affairs (tentative title) in a number of different reports and resolutions. Through such moves a forum for national and local governments to periodically exchange opinions has been revived since November 2007. This was the second phase, during which a total of five meetings were held. Their agenda primarily consisted of issues with local financial affairs.

(4) Third Phase

It was during the third phase that significant progress was made towards institutionalizing this forum. The Democratic Party of Japan, which ousted the administration through the Lower House general election in August 2009, called for legal measures for a forum for deliberation between national and local governments in the Manifesto that it had campaigned on. In his policy speech before the 173rd Session of the Diet, then Prime Minister Yukio Hatoyama declared, "We must change the relationship between the national and regional governments. This will entail a fundamental shift from the present hierarchical relationship, in which the central government stands above regional ones, to a new partnership which allows dialogue among equal parties. At the same time, we must provide the forum for such equal dialogue between the national and regional governments with a legal basis."

The Decentralization Promotion Committee was a carry-over from during the previous administration. In the first chapter of its Third Recommendations, entitled Toward the Realization of 'Self Government' through the Expansion of the Legislative Authority of Local Governments (October 7, 2009), the committee proposed a draft plan for the National and Local Government Coordination Council (tentative title) to serve as a springboard for discussions. Afterwards, the Group for Practical Considerations of a Forum for Deliberation between National and Local Governments (an investigative committee) held meetings from December 2009 to February 2010 where it performed wrap-up work with a view towards enshrining this into law. As a result, a cabinet decision was handed down on the Bill on the Forum for Deliberation between National and Local Governments in March 2010. But amidst the reversal between the majority and minority parties in the Upper House, deliberations ran into problems concerning the wording "regional sovereignty" that was used in the First Omnibus Bill. The Bill on the Forum for Deliberation between National and Local Governments, which had also used this phrase in its target provisions, was also subjected to continuing deliberations time and again in the aftermath of this. Owing to the fact that a political compromise that revised this was worked out afterwards, this bill, the First Omnibus Bill, and the Bill to Partially Revise the Local Autonomy Act were all approved and enacted on April 28, 2011.

3. Diet Deliberations

(1) The Significance of Institutionalizing the Forum

Let's try to pick up on the central government's recognition when it comes to the content and significance of the Act on the Forum for Deliberation between National and Local Governments, which consists of a total of ten articles, from the minutes of the General Affairs Committee of both chambers of the 177th Session of the Diet, which debated the legislation.

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The quoted replies all came from Minister of Internal Affairs and Communications Yoshinori Katayama.

To start with, he claimed that, "It would be better to not expect that all of our problems would be solved as if we were cutting the Gordian Knot just by setting up a forum for deliberations between the national and local governments" (Lower House No. 11, Page 20). But what he sees as important in this deliberative process is that, "The forum will clearly reveal that there are objections, rejoinders, and various other diverse views, which will lead to providing the vast majority of people with an understanding of the extent to which the national government is properly living up to its accountability in response to these" (ibid)." This deliberative process has the facet of being a procedural provision designed to reflect the "principal of local autonomy" from Article 92 of the Constitution into important individual policies.

The local government side is committed to deciding on important policies related to local government. Although the authority to make the final decisions is reserved by the Diet, local governments carry a lot of weight when it comes to creating draft proposals. While it is doubtful that attitudes at the local level in municipalities will change overnight, it would still have to be said that the six local government organizations bear a heavy responsibility regarding the forum for deliberations in order to implement this gradually.

(2) Enshrining the Procedures into Law

With respect to the significance of enshrining the procedures into law, Minister Katayama said, "At the very least, enshrining this into law would make it impossible for the national government and ministries to continue deciding on important policies in such a way that completely ignores the local municipalities" (Lower House No. 11, Page 7). Up until this point there had been no such procedures, but the thinking was most likely that it would be beneficial to have something like this. In this sense, this is definitely progress. Let us now evaluate the institutional consequences for the *equal governing* structures under the Constitution, which mandates that an equal relationship be achieved. It is only through deliberations that this equal relationship becomes conceivable, and these represent a configuration for negotiating that is completely different from the existing pattern of petitions that are founded upon a hierarchical relationship.

Article 3 of the Act on the Forum for Deliberation between National and Local Governments spells out the categories that are subject to deliberations. These are: (1) Matters related to the sharing of roles between the national government and local public agencies (No. 1); (2) Local government administration, financial affairs, taxes, and other matters related to local municipalities (No. 2); and (3) Policies that could conceivably have an impact on local municipalities out of the economic and fiscal policies; policies related to social security, education, and improving social capital; and any other matters related to policies by the national government (No. 3). The "important policies" included among these are regarded as matters that require deliberation. It is important that not only things that existed in the form of institutions be subject to review, but that those in the more embryonic stage of policies also be covered.

(3) Running the Meetings

With regard to running the meetings, Minister Katayama said, "We will continue making decisions in a resilient and flexible manner, without going about this haphazardly ... Naturally, as these accumulate-in trial terms as precedents accumulate-then we will decide on them as a single rule. That's the best way," and "We should probably do this about four or five times a year" (Lower House No. 11, Page 6).

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The constituent members include the Chief Cabinet Secretary, the Minister of State for Promotion of Local Sovereignty, the Minister of Internal Affairs and Communications, the Minister of Finance, and the Minister for State nominated for Prime Minister on the national government side, as well as representatives from the six local government organizations on the local government side. Particularly with respect to certain matters for which conflicts of interest were envisioned on the local government side, Minister Katayama said, “For some reason there is the impression that the local governments seem unified, but that is not to say that there are not people in the municipalities who are more put off by the prefectures than by the national government … It is not the case that the six organizations are intrinsically unified. [Line break] The mayors and Diet inherently have a dual representative system, which gives them an opposing structure. And even though there is no basis in reality to their combining to form a single entity, this still gives people a rather strange feeling.” (Lower House No. 11, Page 6). The same holds true for the National Governors’ Association: “It’s unreasonable to expect that their representatives will head to the deliberation forum, state their opinions, reach a consensus, and then have every municipality all across Japan from the Tokyo Metropolitan Region to Tottori Prefecture be bound by this” (Lower House No. 11, Page 7). Article 8 imposes the obligation to respect the results of the deliberations equally on all of the participants, but in reality the recognition is that the national government will treat these as binding.

(4) Conclusions at the End of the Deliberations

The results of the deliberations are to be reported to the Diet pursuant to Article 7. “Regardless of whether the deliberations are concluded or not, their results will be reported to the Diet” (Lower House No. 12, Page 9). Upon receiving this, “The Diet, as the highest organ of state power and the representative of the people, will bear the responsibility for deciding. It will bear the responsibility for reaching a decision through legislative measures and so on” (Lower House No. 11, Page 7).

It would be absurd for the deliberations to continue on as long as they failed to reach an agreement, rendering it impossible to decide on policies during that time, and so it would be important to assess whether there were any glitches. Regardless of any glitches there might be, in cases where legal measures are taken that could presumably be perceived as infringing upon local government’s right to self-government, it would be ideal if they could legally declare these to be unconstitutional in a court of law. But as is well known, the common line of reasoning on this is that it would be impossible based upon the interpretation of existing laws.

(5) The Six Local Government Organizations and the Ministry of Internal Affairs and Communications

Fourthly, there is the relationship with the Ministry of Internal Affairs and Communications. Naturally, there are times when the interests of the local governments are in conflict with those of the Ministry of Internal Affairs and Communications. However, Minister Katayama recognized that, “As is to be expected, the six organizations all receive so-called *amakudari* (high-ranking bureaucrats who retire to lucrative positions), including such bureaucrats from the Ministry of Internal Affairs and Communications, and given these circumstances there are some areas in which they act as if they were of one mind, so to speak. This being the case, I’m not saying that it is pointless to hold deliberations, just that they will not be all that productive” (Lower House 10, Page 7).

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However, he also mentions the, "March [2011] recall of the general secretary for the National Governors' Association" (Lower House No. 12, Page 8), and says that, "The conventional relationship between the National Governors' Association and the Ministry-the sort of love struck relationship they had going on-has been largely cast aside, and so the National Governors' Association can function effectively in its role" (Lower House No. 10, Page 7). The extent to which the measures will be effective is unclear. But assuming that these are meaningful in and of themselves, then the appropriate responses must also be taken with regard to the secretary-generals and deputy secretary-generals at the other five remaining organizations.

4. Several Impressions

(1) How Decisions concerning Municipalities should Be Regarded

Article 1 of the Act on the Forum for Deliberation between National and Local Governments uses the phrase "the planning, drafting, and implementation of national government policies that will have an impact on local autonomy" with respect to what is subject to deliberation. Since this concerns "national government policies," by rights the national government can arbitrarily wield its power to render decisions. But this is saying that when local autonomy for organizational and municipal aspects is taken into consideration, then the national government will deliberate with the municipality side when making decisions since it will be the one affected. This can be interpreted as a stance that gives greater consideration to the local municipalities, since the government says it will deliberate with them rather than just listening to their opinions. There is enormous significance in clearly laying out institutional grounds whereby the local governments can commit to the planning and drafting that had previously been left up to the sole discretion of the national government.

Under the Constitution the Diet, which administers to the national government's legislative work, enacts laws that stipulate the administrative work of both the national government and the municipalities. Whether improvements in the public welfare are achieved as a result of the degree to which the national government and municipalities fulfill their respective roles varies from policy to policy. That is not to say that laws that stipulate that the work is to be done entirely by the national government are not covered here. Rather, it is possible to better achieve improvements in the public welfare, including that of municipal residents as well, by essentially establishing areas that are deemed to be the work of the municipalities. Therefore, it would be best to assume that even for policies that the national government has arranged so that it will handle all of the work, some of these will have an effect on local municipalities. How such policies should be handled is a topic for future debate.

(2) Criteria for the Deliberations

The question of what sorts of criteria should be used for carrying out the deliberations over concrete policies is not one that can be settled unequivocally. As indicated by the Cabinet Minister's replies, its reputation will be decided in a precedent law-type manner. To put this abstractly, as stipulated in Article 1, Section 2-2 of the Local Autonomy Act the criteria include: "Has government administration that is of immediate interest to the public been entrusted to local public bodies to the extent possible?" and "Can local public bodies adequately demonstrate their independence and autonomy with regard to the formulation and implementation of institutions related to said bodies?" What is more, as is stipulated by the legislative principles found in Article 2, Section 11 of the same law, for the policies in question it asks, "Do they contain an appropriate sharing of roles between the national government and local public bodies?" In addition to these, despite the continued recognition that the interpretation principle in Article 2, Section 12 and the consideration principle in

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Section 13 of the law are the concrete embodiment of Article 92 of the Constitution, the limitations in their interpretation stemming from their abstract nature have been pointed out. The hope is that specific criteria will be formed inductively through the deliberation process, and that these will be clearly specified in the form of fundamental principles in the event that a basic law on local autonomy were to be enacted in the future.

(3) Important Matters

In reality, it is the "important matters" found in each number in Article 3 of the Act on the Forum for Deliberation between National and Local Governments that were previously mentioned that will be subject to deliberation. Who decides these based on what sort of criteria could be said to be a question of the utmost concern for the system.

What should be kept in mind here is that a biased view toward downplaying their importance undoubtedly arises on the national government's side. Consequently, procedures for judging their importance should be established internally within the national government that give adequate consideration to such tendencies. This is to say that the process prior to the start of the deliberations will be important.

Yet there are no clear-cut provisions related to this within the law. The right to demand the convening of meetings has been granted to the six local government organizations (Article 4, Section 3), but so long as information is not disclosed then it will be impossible to judge their importance in regards to the policies (that is to say, their eligibility as subjects for deliberation). Creative schemes that will make it possible to properly set the agenda will be needed.

(4) Subjects for Non-Binding Resolutions

Regarding additions to the Diet's non-binding resolutions from the time of the first round of decentralization reform, the important point that "issues pertaining to statutory entrusted functions are excluded" was stipulated (Article 96, Section 2 of the former Local Autonomy Act). This has come in for fierce criticism regarding the fact that it has been comprehensively excluded from the purview of resolutions, as they are the function of the municipalities. In regards to this point, through the recent partial revisions to the Local Autonomy Act, this important point was taken to mean: "Statutory entrusted functions stipulated by government ordinance because they are not suitable for being subject to a resolution by the Diet owing to their relation to national security or for any other reasons." These government ordinances should be regarded as subject to deliberation.

This stipulation is in the form of a negative list, so to speak, which marks a sea change from the former principle of rejecting everything outright. This has been appraised as being "groundbreaking" (Lower House 11, Page 2).

Unless something has been designated by ordinance then it will fall subject to a resolution, which is appropriate as a decision-making method for the decentralized age. Going by this method, general principles are possible but exceptions are not, so for their application there must not be anything that would prompt a reversal of these. Failing to hold the forum for deliberations on all that frequent a basis would serve to provide an institutional check against the profusive establishment of exceptions.

Moreover, this negative list method should also be applied to matters that are subject to regulation. That is to say, the purpose of matters for which a primary decision has been made by law or ordinance and for which a final decision will be made (in other words, matters not

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acknowledged as being handled by regulation) should be clearly identified, regardless of whether this is for statutory entrusted functions or statutory municipal functions. This should be considered the main provision of the law, but it is possible that this will be handled through laws and ordinances on the premise that rigorous checks are performed.

(5) The Act on the Forum for Deliberations between National and Local Governments as a Model

Though it is only a mere ten articles, the process of enacting this bill itself-particularly the several months spent in the investigative committee-served as a model for the deliberations. Of course, the participants most likely acted with a full understanding that this was the case. We should be delighted that for the time being this has ended in success.

There are no prior precedents for these deliberations, and so they may fail on occasion. Over the next several decades this may be a series of trial and error. In light of the chronology leading up to the establishment of this system, it is believed that the results of the deliberation system will be positively correlated with the central government’s understanding of decentralization reform.

Realizing better local autonomy is the duty of both the national government, which is responsible for affairs of state, as well as the municipalities, which are responsible for municipal affairs, under the Constitution. In light of the fact that neither one of them can achieve this on their own, it must be said that the significance of this deliberation system is truly enormous. There have already been case examples of deliberations ((June 13, 2011) Comprehensive Reform of the Social Security and Tax Systems, Measures for Rebuilding from the Great East Japan Earthquake), and the hope is that hereafter both sides will create excellent case laws for decentralization through sincere cooperation for the future of the country.

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