

**Civil Society and its Regulators**  
**Non-Profit Organizations in Japan**

**Pr—cis**

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Nonprofit or non-governmental organizations (NPOs and NGOs) are considered important elements of political discourse and the voluntary sector in the United States. These groups provide not only education and assistance but also organized political voices for a range of interests. Until recently, in Japan, nonprofit organizations could not form without strict controls by the Japanese government. Many that did exist, unable to incorporate, were small, local, and temporary. Consumer, environmental, health, research, “voluntary,” and other groups were often informal arms of the Japanese government. The emphasis was less on innovating public policy than on promoting existing governmental programs.

Japan’s new NPO law can be viewed as part of a larger trend to activate citizen participation in government and social needs. Much like the new moves toward administrative reform, deregulation, larger more, active staff for Diet members, and a Freedom of Information Act (FOIA), the NPO Law suggests that new perspectives on who rules Japan are necessary. These new legal instruments, institutions, and ideas have the potential to chip away at the power of the central bureaucracy and established political parties. The process of the making of the NPO Law gives us our first glimpse of the political changes many observers predicted after the 1993 elections.

- ***What is the NPO Law?***

The “NPO Law” (Law to Promote Specified Nonprofit Activities) is legislation passed by the Japanese Diet in 1998 and enacted December 1, 1998 that essentially liberalizes regulation of Japan’s civil society. It provides a legal basis by granting incorporation for citizen’s groups to form and to operate without bureaucratic strict sanction and supervision.

- ***Why does the NPO Law matter?***

The NPO Law is a major change in the way Japan regulates civil society organizations in three respects. The law will allow thousands of new civil society groups to participate more actively in

Japanese life. Moreover, it aims to grant these groups unprecedented freedom from the bureaucratic oversight that characterizes Japan's "strong state." Most important, the law legitimates a new kind of social group and, by implication, a shift in state-society power balance.<sup>1</sup>

The NPO Law also deserves attention because it represents early fruit of the important changes in Japanese electoral institutions in 1994. These reforms altered incentives for politicians and parties, which in turn encouraged change in the rules for civil society organizations. For example, citizen's groups could be mobilized to vote for small liberal parties while in the past voters were restricted to voting for individual candidates within small geographic areas.

Another important precursor of change, is that the NPO Law came about through an unprecedented series of "MP's Bills"—legislation proposed directly by members of Japan's Diet or parliament. Traditionally, bureaucrats write the legislation introduced by Japan's parliamentarians. In striking contrast, all parties in Japan submitted or amended the NPO legislation from 1995-1998. Bills promoting NPOs were submitted by the New Frontier Party (NFP), Sun Party, Heisei Party, Japan Communist Party (JCP), and by the ruling Liberal Democratic Party (LDP), working with the Social Democratic Party (SDP), Sakigake Party, and the Democratic Party of Japan (DPJ). Politicians responding to new electoral incentives pointedly excluded bureaucrats from the process. Citizens groups participated actively in the making of the law, and their lobbying altered the law's content. That is also new is the process that was led by legislators who heeded the opinions of lobbying groups, the media, and coalition politics.

***Background: Japan's Strict Regulation of Civil Society***

The NPO Law, although only covering a subset of civil society organizations, is an important departure in state-civil society (the non-state, non-market sector) relations in Japan. In the past, Japan managed its NPOs with one of the most severe regulatory environments in the developed world. Japanese law stipulated that such groups can acquire legal status only through the explicit permission of the competent (related) bureaucratic authority, and grants this authority continuing powers of supervision and administrative guidance. This combination of a discretionary screening function, close supervision of operations, and sanctioning power has compromised the vitality of the civil society and NPO sector in Japan. Moreover, legal blind spots have impaired the legitimacy of many groups and the whole sector.<sup>2</sup>

Under Japan's Civil Code system, by 1997 only 26,089 groups gained legal status as nonprofit Public Interest Legal Persons (PIPs), versus the 1,140,000 American groups to which the U.S. IRS (an arm of the US Treasury Department) has granted nonprofit status.<sup>3</sup> Without legal status, small groups can still operate in Japan, but they are at a significant disadvantage. Under a civil

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<sup>1</sup> See also Pekkanen, Robert. 2000a. "Japan's New Politics: the Case of the NPO Law." *Journal of Japanese Studies*, 26, 1, pp.111-143; Pekkanen, Robert. 2000b. "*Hou, kokka, shimin shakai [Law, the State, and Civil Society]*." *Leviathan*. 27, Fall, pp. 73-108.

<sup>2</sup> See Yamamoto, Tadashi, ed. 1998. *The Nonprofit Sector in Japan*. Manchester, UK and New York: Manchester University Press; Pekkanen, Robert. 2001. "An Analytical Framework for the Development of the Nonprofit Sector in Japan." Washington, DC: Aspen Institute, Nonprofit Sector Research Fund Working Paper; Pekkanen, Robert. Forthcoming. "Molding Japanese Civil Society: State-Structured Incentives and Patterning Civil Society." Frank Schwartz and Susan Pharr, eds. *Overstating the State: Japan's Civil Society in Comparative Perspective*.

<sup>3</sup> Established under the Special Laws, there are also 14,000 social welfare legal persons, 7500 tax exempt schools, 184,000 religious legal persons, and 20,000 other groups. "Koeki hojin no genjyo" in Koeki Hojin Vol. 26 No. 8, 1997.

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code system of laws, groups must become legal persons in order to have legal standing. Groups that are not legal persons cannot sign contracts. This means, for example, that as a group they can not open bank accounts, hire staff, own property, sign lease agreements for office space, undertake joint projects with domestic government bodies, or even, on a mundane level, lease a photocopy machine.

The NPO Law could dramatically increase the number of civil society groups able to gain legal status. Legal status is important not simply because of its operational ramifications, but because it confers legitimacy on groups themselves and on the civil society sector as a whole. The provisions of the NPO Law are designed so that the groups will not suffer from the onerous bureaucratic supervision and regulation that stifles many of Japan's civil society organizations.

This strict regulation is based mostly on Article 34 of the Uniform Civil Code promulgated in 1896. Article 21 of the Constitution provides for freedom of association. This broad guarantee is limited by Article 33 of the Uniform Civil Code, which requires that all legal persons be formed in accordance with its regulations. Legal persons are groups or organizations that are legally empowered with an independent existence, and the ability to possess rights and obligations. Without this legal status, groups can have no legal existence.

The twin pillars creating classes of legal persons, Article 34 and Article 35, flank article 33's general provisions. These two general articles are supplemented in turn by a host of attached Special Laws, which often serve to create special categories within the general article framework. Although Article 35 of the code provides for establishment of for-profit organizations, or companies, Article 34 does not provide for a corresponding category of nonprofit organizations, but rather for a much more restrictive category of public interest legal persons. This creates a legal blind spot—most groups that are nonprofit but not in the “public interest” had no legal basis whatsoever to form.

Needless to say, there are many such groups, especially when “public interest” is interpreted by the bureaucracy in a narrow or arbitrary manner. For such groups, there was simply no legal category for them to exist in, and as a result, they were reduced to operating as informal, voluntary groups, or perhaps even becoming corporations. This situation also constitutes a denial of public legitimacy. In Japan, where the legitimating role of the state is perhaps larger than many other industrialized democracies, this is especially deleterious.

The permitting system has been implemented in a way that groups whose objectives or styles differ from the permitting ministry find it very difficult to gain approval. *De facto*, such groups are barred from legal status by a system reliant on bureaucratic discretion. This is the screening mechanism, how the bureaucrats select which groups are allowed to organize, and which are not. The PIP has reporting duties to the competent ministry, which retains the power to investigate the group, or even to revoke the PIP's legal status. The associated tax benefits are not as generous as in other industrialized democracies, either. Even worse, the bureaucrats have insisted on continuing “administrative guidance” (based on Civil Code Article 67 Paragraph 2). Backed by sanctioning power, this administrative guidance forces licensees to comply with bureaucrats' preferences and impairs the independence of the civil society sector.

- ***Immediate Impact of the NPO Law***

In the long run, the NPO Law passed in 1998 could invigorate Japan's civil society. The law will allow many more groups to gain legal status. The Japanese government, itself, estimated that this group could expand by 10,000. This increase alone is significant to the vitality of Japan's civil

society. More important, the NPO Law is designed to permit groups to gain legal status without being subjected to bureaucratic screening. Furthermore, it aims to allow the groups to operate without continuing bureaucratic administrative guidance. The groups themselves, however, put the highest value on the legitimating function of having legal status. This legitimacy extends to the groups themselves as they gain legal status, and also to the sector as a whole which is recognized as having a socially-valued purpose.

The NPO Law was implemented on December 1, 1998, making it still too early to judge the long-term results of the law. At this stage, however, three things stand out. First, the numbers of applicants was low. It was not until early August 1999 that the number of applicants topped 1,000. This reflects the wait-and-see approach of many groups, especially the established ones. It also partially explains why most NPO applicants are relatively new groups; also, many groups see the law's benefits as a short-cut to legitimacy. As in other cases where "the rules of the game" are changed, it requires time for actors to adjust to altered incentives through a learning process.

- *Why Did the NPO Law Pass?*

Besides the growth of civil society and NPOs, the political key to the success of the NPO bill lay in the altered political circumstances after 1994, including the changed electoral institutions that had encouraged politicians to promote these group's formation. The writing of the law saw Dietmen wrest legislation away from bureaucrats and the LDP make concessions to small coalition parties (Social Democratic Party and Sakigake) in the face of electoral pressure from a viable opposition (New Frontier Party).

These smaller parties viewed the legislation as crucial as a means to mobilize voting support for party list seats. The other side of the equation was that the LDP was willing to compromise with the SDP and Sakigake. In part, the LDP was following its tried-and-true formula of co-opting opposition party policies. Moreover, the LDP concessions on the NPO Law were prompted by the necessities of coalition politics with a viable opposition. The LDP leadership in particular gave in to Sakigake and SDP to preserve a coalition. The pressures of coalition politics should not be underestimated in top-level decision-making. The submission of New Frontier Party bills to the Diet usually immediately preceded some action by the governing parties, acting as a stimulus.

*Nihon Keizai Shimbun* editorialized about the NPO Law and administrative reform as if the two were twins. In fact, they have very different origins, but both could undermine the concentration of power in the central bureaucracy. The new trend towards more "MP's Bills" will do the same thing to diminish bureaucratic command over new laws. Devolution could also diffuse central bureaucratic power, and its linked to the licensing provisions of the NPO Law. Moreover, because the NPO Law is a "MP's Bill," the former Ministry of Home Affairs (now the Ministry of Public Management, Home Affairs, Posts and Telecommunications, *Somusho*) did not provide a model law for the prefectures to draft their own implementing legislation.

Instead, the prefectures were forced to come to terms with their larger relationship with NPOs. Already there is a policy difference between prefectures that aim to promote NPOs (via creation of NPO promotion centers, passage of supporting laws, etc.) and those that have not taken such measures. More closely related is the push for an Information Disclosure Law, a Japanese version of the United States' Freedom of Information Act (FOIA). The provision of the NPO Law calling for the new NPO legal persons to disclose information publicly, rather than reporting to bureaucrats (who were not obligated in until April of 2001 to disclose information) reflects this. Although many unresolved questions remain, all of these movements—strengthening civil

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society, deregulation, decentralization, MP's Bills, FOIA—are likely to have a common effect, in diminishing the power of the central bureaucracy.

- ***Policy Implications***

What does the NPO Law mean for US-Japan relations? The increasing vitality of Japanese civil society encouraged by the NPO Law will make Japan's democracy decidedly more vibrant and accountable. As noted in the *Armitage-Nye Report*: "Political change could lead to unprecedented opportunities to reinvigorate the U.S.-Japan relationship—as well as test it further."<sup>4</sup> New policy-oriented civil society groups will likely change the tenor and nature of the traditional government-to-government relationship. Public opinion and new political voices will matter more, making rigid, U.S.-conceived plans of structuring the U.S.-Japan moot before they can be implemented. Long-cultivated old friends among the Japanese elites may prove ineffective in assisting U.S. policy. Although the U.S. will find it easier to team with potential Japanese domestic allies, there will be an equally well organized opposition. Civil society groups span a wide spectrum creating a more complex mosaic of Japanese domestic and international politics.

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<sup>4</sup> Institute for National Security Studies. "The United States and Japan: Advancing Toward a Mature Partnership," October 11, 2000. P. 3.