the people, and that his position derives from the will of the people (Constitution, art. 1). It is very strange that the State operating in the new regime has the same "*Kimigayo*" as it had in the old regime. So comprehensible are the attitudes of the people who reject "*Kimigayo*". The same with the "*Hinomaru*".

As is clear in the Barnette case in the United States, no official can prescribe what shall be orthodox in politics, nationalism or other matters of opinion. Also no official can force citizens to confess their faith. The Government should not disturb citizens, even concerning the National Flag or Anthem, to have various opinions and conduct according to their own. This is what the Articles 19, 20 and 21 of the Constitution guarantee.

Therefore, the Government is banned from implanting into the people, especially school children, a specific value from only one side. Based on this idea, the Article 10 of the Fundamental Law of Education declares that the education should not be subject to undue control. When there are plural opinions in conflict, teachers should show pupils plural choices. About the National Flag and Anthem problem in Japan, teachers should explain various standpoints to pupils, and let them choose their own standpoint.

As mentioned above, the rule of law has been always ignored in Japan. This is the core of the Japanese National Flag and Anthem problem. Then, how can a statute solve the problem?

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2. Administrative Law

Laws related to the Reform of the Central Government

Basic Law for the Reform of the Central Government, Law No. 103, June 12, 1998.

Amendments to the Cabinet Law, Law No. 88, July 16, 1999.

Law to Establish the Cabinet Office, Law No. 89, July 16, 1999.

Background:

Today, we are facing a radical reconstruction of Japan's administrative system. First, based on the final report by the Administrative Reform Council (hereinafter referred to as 'the Final Report'), the Basic Law for the Reform of the Central Government was passed in 1996. Guided by this Law, a movement of administrative reform was launched designed to strengthen the function and authority of the Cabinet and to reconstruct the system of central government offices. Finally more than one thousand bills will be passed. As the first step to meeting this challenge, seventeen bills were passed in July 1997. These statutes were called 'Laws related to the Reform of the Central Government' (hereinafter 'the Administrative Reform Laws').

The origin of the current administrative reform dates back to before the 1996 general election. So far the Japanese public had a sincere trust in the bureaucracy. But recent cases, including HIV infections among hemophiliacs, huge debts of housing loan corporations ("*Jūsen*"), scandals among banks and securities corporations and the corruption of the Vice Minister for Health and Welfare, have seriously damaged this trust. Disappointment in the present system made reform a hot issue in the 1996 election. Before the election, major political parties without exceptional publicly promised post-election commitment to the reform of the central ministries. Even the Liberal Democratic Party, a major supporter of the bureaucracy, published a plan to decrease the twenty-two central ministries to fourteen.

After the election, a coalition cabinet was formed by the Liberal Democratic Party, the Socialist Party, and *Sakigake*. These three parties reached an agreement to introduce and pass the bills for a large-scale reform of the administrative system. The Administrative Council, a council under the Prime Minister, was established in November 1996. The Council held intensive discussions in August 1997, made an interim report in September, and submitted the Final Report on December 3, 1997. Following this process, the Basic Law for the Reform of the Central Government was passed in 1996. This Law sketched an outline of the reform and provided for the establishment of the Head-

quarters for the Reform of the Central Government. The Headquarters drafted a framework for the bills concerning the ongoing administrative reform. And the bills became the Administrative Reform Laws. The process advanced rapidly, beyond the expectations of the mass media, experts and the public.

The past reforms had not targeted the organization of the central government. Reform plans were apt to be made in a bottom-up style in which public officials of the central government defined the contents of plans convenient to them. But this time, the Prime Minister Ryutaro Hashimoto, as a chairman of the Administrative Reform Council, governed and influenced the whole decision-making process. Since the first half of the 1990s, public opinion had became critical of any administrative interference in politics. In such an atmosphere, public opinion began to hope for the politicians' leadership.

The Final Report declared that a basic idea of the current reform was 'to abolish the old patriarchal system of the post-war administration and to produce a new administrative system suitable for forming a more liberal and fairer society composed of independent individuals'. As a first step to embodying the idea, the Cabinet Law and the National Government Organization Law were partially amended, and ten odd bills were introduced and passed to establish the Cabinet Office and other governmental offices. The major goals of these amendments and bills were ① to strengthen the function of the Cabinet, ② to reorganize the Central Government, ③ to make the administration effective, and ④ to streamline the government. With some exceptions, these acts become effective on January 4, 2001.

Main Provisions:

The Administrative Reform Laws contain a lot of issues covering a wide range, so this article will narrow the argument down to one theme, the reconstruction of the politics-administration relationship. Especially, the reinforcement of the Cabinet is discussed.

The current reform is marked by the reconstruction of the politics-administration relationship. This means that politics recaptures the authority and jurisdiction violated by the bureaucracy. The provisions for the reinforcement of the cabinet are expected to change this situation.

But why does this matter? In Japan, ministries are separated vertically and there's no exchange of staff except for the Minister. So, a ministry tends to pursue its own domain and interest, and not to coordinate with other ministries. Directive control at the top is insufficient, since not only Ministers but also political parties in Japan do not have independent think tanks to compete with the bureaucracy. Ministers do not control their ministries, but instead promote the interest of each ministry. The Prime Minister has a power to appoint or remove other Ministers, but he cannot direct each ministry effectively. Therefore, the conflicting departmental policies and interests prevent appropriate planning and effective execution of governmental functions. Criticism of usurpation by the bureaucrats seeks consistency in a whole system of policies that calls for the recapture of leadership by the Cabinet and Ministers.

Reinforcement of the Cabinet required amendment of the Cabinet Law. First, I will discuss the main provisions of this amendment.

(1) The amendment declares the official power of the Cabinet to be exercised in consistency with the idea of people's sovereignty (Art. 1, para. 1). The numbers of State Ministers should be reduced from not more than twenty to not more than fourteen (in exceptional cases, not more than seventeen) (Art. 2, para. 2). The Prime Minister, who presides over Cabinet meetings as the head of the Cabinet, may submit to the Cabinet proposals on basic principles on important policies for the Cabinet (Art. 4, para. 2).

(2) The system to support the Cabinet and the Prime Minister is reinforced. The Cabinet Secretariat is authorized to counsel, advice and support the Prime Minister in his (or her) office. The functions of the Cabinet Secretariat are strengthened to consist of planning, drafting and coordinating policies. Within the Cabinet Secretariat, the new posts of three Assistant Secretaries, a Secretary for Public Information, and a Secretary for Information Research have been created. And not more than five persons are to serve as regular assistants to the Prime Minister. These staff members are expected to strengthen the policy-making ability of the Cabinet. The Cabinet Secretariat is designed to function as 'a supreme and final stage to adjust essential matters of national policy.'

Next, some points will be discussed about a newly created organization under the Prime Minister, the Cabinet Office. The Cabinet Office is designed to advance the total strategy of the Cabinet Secretariat and to plan and coordinate policies spreading over the entire government.

In the Cabinet Office, Ministers for Special Missions are established (Law to Establish the Cabinet Office, art. 9). The Prime Minister appoints them at his (or her) discretion, when he (or she) considers the appointment necessary for the cohesiveness of the policies of administrative branches. However, three Ministers for Special Missions are always appointed respectively for Okinawa, the Northern Territories, and financial matters (Arts. 10–11). The top management of the Office is reinforced more than other Ministries. The Ministers are authorized to require Ministries or agencies to submit evidence or explanation, recommend to do something, and suggest the direct control by the Prime Minister. The Cabinet Office is expected to function as 'resources of wisdom' to support and advance total strategies of the Cabinet Secretariat.

Editorial Note:

It is now premature to comment on the ongoing administrative reform trends. The system of statutes reflecting the suggestions of the Final Report is only a blueprint for a new politics-administration relationship.

The evaluation of this blueprint depends on how it is realized in practice. However, it is meaningful to comprehend the trends of reform from the perspective of institutional history. Today, no one can ignore the deadlock of traditional bureaucracy. And the recent reform is undoubtedly the most promising means to break the deadlock.

Then, what kind of relation does the Final Report assume? Recognizing the defects in postwar administrative institutions, it has set forth as an effective attack the reinforcement of the Cabinet. The reinforcement of the Cabinet requires that the Cabinet substantially discusses strategies, plays a major role in planning policies, and coordinates the directions of each ministry concerned. In other words, it means that authority, information, and human resources (political appointees) are

concentrated on the Cabinet, so that it should play a major role in policy-making process. In this process, the role of the bureaucracy is to systematically execute policies decided by the Cabinet.

The Final Report and the statutes enacted on the basis of it make their principal object how to concentrate policy-making power on the Cabinet. However, a too-exaggerated identification of the Cabinet as 'top-down styled decision-maker which has an initiative in making policies' may cause ignorance of some serious problems brought about by the reinforcement of the Cabinet.

What are these serious problems? The major one is the comparatively minor role of the Diet caused by an over-concentration of political resources (information, authority and political appointees, and so on) onto the Cabinet. Reinforcement of cabinet power should require, in turn, the Diet to develop its own competence to examine, criticize and make counterproposals to cabinet-drawn policies. Because the members of the Diet represent a variety of demands and interests of the people, the consideration of bills and budgets there matters. Bills and budgets introduced by the Cabinet should not be called policies of the government until deliberated and passed in the Diet. Without thorough examination and discussion in the Diet, policies lack procedural legitimacy. Such a deficiency often appears where the Diet is composed of overwhelmingly powerful ruling parties and minority oppositions.

Reinforcement of the cabinet would be suitable for a political society in which people's opposition to the cabinet policies leads to the change of administration. For example, in England in recent years, the Labour Party has returned to power and political equilibrium between the two major parties has been maintained. In such a political society, reinforcement of the cabinet may not always mean a maldistribution of political resources. A political society in which the opposition parties can compete with the government parties has a probability of a change in the administration. The validity of policies introduced by the cabinet would be examined and investigated well in the parliament. On the contrary, with few or no opportunities of political change, we should prudently consider the advantages and disadvantages of a top-down policy-making process. We should not underesti-

mate the legitimacy of policies gained through deliberation and investigation in the parliament. Moreover, the policy-making process without substantial discussion in the parliament must destroy the basis of 'the policy arena' in the end.

In this sense, the current administrative reform should not be considered a mere reconstruction of the policies-administration relationship. In further revision of the political system, the reform must contain as a major part the reinforcement of the Diet, so that it could function as 'a policy arena' in which the legitimacy of policies requires a deliberate course of discussion.

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3. Law of Property and Obligations

1. Non-Profit Organization Law

Law No. 7, March 25, 1998 (effective on December 1, 1998).

When the Hanshin-Awaji earthquake disaster occurred in January 1995, rescue operations by volunteers were in full activity. The social need for promoting the operation of non-profit organizations like volunteer groups has increased more and more.

According to Article 34 of the Civil Code, public and non-profit associations can be juristic persons. But the process of creating a juristic person is complicated and takes too long. The "Non-Profit Organization Law" is intended to give a juristic person easily and quickly to associations, which aim at not only rescue operations but also environmental conservation or international cooperation. Public authority has to acknowledge associations as corporations with a juristic person (Art. 12), if the requirements are met, especially, of promoting the interests of many and unspecific persons and of not sharing profits among members (Art. 2).