rate a voter-led element into the framework of a proportional representation system based on political parties, has some rationality of its own and this system has the potential to become a very useful system, depending on how it is used. If a non-binding-list-system of proportional representation as such is given a bad name due to the system's design and the process of deliberation based on party interests and party strategies this time, it may even be a tragedy for representative democracy in our country.

At any rate, the non-binding-list-system of proportional representation introduced this time was used in the House of Councilors election held in July, 2001. It is necessary to ascertain the utility of the non-binding-list-system of proportional representation carefully through calmly analyzing the actual conditions in which it is employed, the results, and so on.

ASAHO MIZUSHIMA
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## 2. Administrative Law

**The Package of Laws concerning Decentralization**
(Promulgation in 1999; Enforcement in 2000)

**Background:**

With regard to the relationship between the central government — the State — and local governments — local public bodies —, the Japanese Constitution assures local self-government or autonomy in chapter 8, and its concrete realization is provided by the Local Autonomy Law, the Local Finance Law and others. In Japan, local autonomy is interpreted as consisting of the autonomy of local bodies, which means that local public entities deal with public services independently of the State and with their own responsibilities, and the autonomy of inhabitants, which means that local inhabitants or their rep-

resentatives deal with those services by themselves. But it has been said that, in Japan, the centralism of the old Constitution has been continued through agency-delegated services, subsidy systems and so on. A state of affairs in it is hard to say that "the principle of the local autonomy" has been realized has proved lasting.

The third Provisional Council on Administrative and Fiscal Reforms, which made a start in 1990, proposed the following in its final report in 1993: radical decentralization; a real check of the assignment of roles between the state and local bodies; promotion of measures such as the transfer of authority from the country; strengthening of the financial base of self-governing bodies; the establishment of independent local administration systems; promotion of laws concerning decentralization; and so on. In the same year, before this report was offered, "a resolution concerning the promotion of decentralization" had been adopted in both the House of Representatives and the House of Councilors. In 1995, "the Act for Promoting Local Decentralization" was enacted which provided "a basic policy concerning the promotion of decentralization". The act contained the following: (1) the assignment of roles between the State and the local government; (2) the policy of the State concerning the promotion of decentralization; (3) the fulfillment and securing of sources of revenue by local taxes; (4) the maintenance and establishment of the constitution of the administration in self-governing bodies. In the same year, the Committee for the Promotion of Decentralization was established by the Prime Minister's Advice was received from the committee, and "a local decentralization promotion plan" was settled on in 1998. As this plan provided, the "agency-delegated services" system would be abolished and reorganized into "the legally committed services", in which self-governing bodies were committed the State's services on the basis of the statute, and "autonomous services" which were proper to self-governing bodies, so the State and the local bodies would manage the administration from an equal position. In 1999, "laws concerning the maintenance of the related laws to plan the promotion of decentralization", consisting of several 475 related revision laws, were enacted. This is "the package of laws concerning decentralization" which is the object of this note.

**Main Provisions:**

1. **The Assignment of Roles between the State and the Local Public Entities**

The package of laws is an experimental attempt explicitly to provide an assignment of roles between the State and the local public entities in the direction of local decentralization. Article 1.2, which was established in the revised Local Autonomy Law, prescribes the role of local public entities in the first clause as follows: "local entities, on the basis that they work for an increase in inhabitants' welfare, shall broadly have the role to enforce administration in the area independently and totally." And the same article, in section 2, prescribes the role of the State as follows: "the State, with the purpose of attaining the point of the previous section, must properly share roles with local entities and, in making and implementing systems concerning local entities make an effort to have local entities' independence and autonomy fully exercised, on the basis of the State carrying out functions concerned with existence as a state in international society; mainly carrying functions concerned with the service about the fundamental rules about nationals' activities or local autonomy which it is desirable to have provided uniformly nationwide; or the implementing of measures and business which must be carried out nationwide or from a national perspective, or other roles which the State should inherently play."

2. **Abolition of Agency-Delegated Services**

The point of this revised local autonomy law is that "agency-delegated services", in which the chief of a local entity make as a agency of the state under command and supervision of State Ministers is abolished and divided into "legally committed services" and "autonomous services" (Art. 2). "Agency-delegated services", in which local entities were bound to act for the State as agencies of the State, had played a core role in the centralistic system of local autonomy. Among local entities services, in the metropolis, districts, urban and rural prefectures, 80% were such services, and in the cities, municipal districts, towns and villages, 40% were such services. On the contrary,

"legally-committed services" inherently belong to the State's services but are committed to local entities by statutes because they are more efficiently dealt with at a local level. This adoption of legalism will rule out the "instructions" which were substantial obstacles to the independence of local entities. "Autonomous services" are ones which local entities independently carry out within statutes in accordance with the actual circumstances of local areas. Many of the "autonomous services", though, are "legal autonomous services" which local entities are bound to deal with by law.

### 3. Establishment of the New System of Settling Disputes

The characteristics of this revised Local Autonomy Law are to reduce the involvement of the State respecting independence and autonomy of local entities (Art. 245.3), and to adopt legalism as regards the involvement of the State (Art. 245.2; Art. 246 ff.). In order to secure such a system, "[t]he Committee for Settling Disputes between the State and the Local Areas" has been established as a system of settling disputes between the State and local areas (Art. 250.7). This committee is established by the Prime Minister's Office, and consists of five members appointed by the Prime Minister and consented to by the Diet. This committee receives complaints from any local entities, examines whether the involvement of the State is illegal or not or unjust or not, and, if so, makes recommendations to the government office of the State. The special features of this systems are that it gives complaint examination of complaints priority, and limits the authority to "recommendations", not "adjudications".

### 4. Other Issues

There are so many laws revised by this package law that this note can introduce only a small part parts of these. There are great changes other than the above three points: for example, to expand the objects of ordinances which are autonomous legislation by local entities with the abolition of agency-delegated services; as for the securing of local revenue source, which the some revisions are made to enhance the autonomy of local tax — to establish a non-legal object tax system; to make non-legal general taxes require prior consultation; to make con-

sultation necessary for local bonds.

**Editorial Note:**

The package is the first step in making revisions in the direction to decentralization. That decentralization, however, depends not on a monolithic argument. Rather, it might be said that, because and so far as there is agreement among various ideologies and interests, these revisions have been made. Recently in Japan, there is no force against decentralization, and the focus of discussions are its degree and contents. But there have been powerful arguments, among constitutional scholars in Japan, that the state's historical reason for being is to rule out intermediate groups and thereby to protect individual human rights. Whether decentralization is superior to centralization needs to be subject to further examination, even if the answer is that it is.

It has been said that this package, despite aiming at decentralization, partly reinforces intervention by the state. The ratio between legally committed services and autonomous services, despite initial suggestions that it would be about 2 to 8, is in effect about 5 to 5. In this regard, it is said to be insufficient too. Also the Committee of Settling Disputes between the State and the Local area seems an institution on the State side rather than a third-party-institution. Thus, depending on one's view point, it can be said that these revisions have not only been insufficient but also containing elements running counter to decentralization.

Moreover, the greatest fear is whether local entities, being accustomed to the system of centralization, can effectively use the supposedly reinforced autonomy provided by the package. Thus far this fear seems well-founded. The package aims to assign determinate roles between the State and the local areas, but the local system has not been ready to discharge these roles appropriately. It is an aspect of the truth that changing laws changes the consciousness of officials sense change, there may be parts which cannot be supplemented by a change in consciousness and which will be too late to allow us to expect a change in consciousness.

By the way, as noted earlier, local autonomy is interpreted as consisting in the autonomy of the body and the autonomy of inhabitants.

This reform places an emphasis on the former element, because the focus has been to assign determinate roles between the State and the local and to embody and secure these. So it can be said that this reform will make the agency of local politics change from the officials of the central government to officials of the local governments, but it cannot be said to apply to local inhabitants. This package is a great revision, but it should not be overlooked that its scope does not aim to increase the effectiveness of the autonomy of the inhabitants.

ASAHO MIZUSHIMA
KIYOSHI TSUCHIYA

## 3. Law of Property and Obligations

**Consumer Contract Act**
Law No. 61, May 12, 2000 (Effective on April 1, 2001).

**Background:**

In recent years, there has been an increase in the number of disputes concerning consumer contracts, or contracts entered into by consumers and businesses. Because there are differences between consumers and businesses in terms of access to information and negotiating power, the equality of the contracting parties and the principle of private autonomy, presupposed by the Civil Code, do not apply to consumer contracts.

So far, the *gyōhō*, or laws to regulate a particular industry, have dealt with this situation. However, recent Japanese national policy has been to deregulate regulations by government, and so regulation by gyōhō has also been deregulated. Therefore it is difficult to deal with this situation by means of *gyōhō*. And again because *gyōhō* apply to particular industries, they do not apply to industries that are recently in trouble with consumers. Moreover the effect of a violation of gyōhō is generally administrative or penal in nature, not civil. So consumers are