

New Administrative Mechanisms for Local Government

Proposal for a Basic Law Reforming the Local Autonomy Act



IIPS

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Institute for International Policy Studies

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(The contents of this proposal were prepared by the Institute for International Policy Studies.)

Although local autonomy is described as a “school in democracy,” it has long ranked as an auxiliary entity that assists the central government in the execution of administration, and this execution by heads of local government (mayors and governors) has come to be seen as being central to local autonomy. In reality, however, local assemblies cannot even involve themselves in the system whereby administrative tasks are imposed on local governments by the central government. Unable even to determine the level of a single local tax without the involvement of the central government, local assemblies have found it impossible to independently achieve local autonomy. However, with decentralization reform commencing in the early 1990s, a major devolutionary trend has since become established—both in terms of authority and revenue sources. The Democratic Party of Japan (DPJ) administration which was inaugurated last autumn has also voiced a major public commitment to local sovereignty. There is also no doubt that the drive to promote decentralization is a desirable trend from the perspective of citizens’ autonomy as well.

However, the objective of decentralization of authority is to give substance to citizens’ autonomy, and the functioning of effective governance aimed at improving public welfare for the citizenry is a necessary prerequisite to this. There have unfortunately been many instances of irresponsible administration in the local-government policy determination process, as has typically been seen in the striking deterioration in local government finances. Amid the exclusively bipolar “central versus regional” debate on decentralization, discussion of the essential problem of how to strengthen the administrative function of local government on the basis of citizens’ autonomy has been wholly inadequate.

Aware of this issue, the Institute for International Policy Studies staged a Seminar on Governance for Local Self-Government, and has since October 2009 been considering what would constitute an effective administrative function for local government. Specifically, we conducted a bottom-up review of the respective roles that citizens, mayors and governors, assemblies, and local public offices ought to play, and considered new roles for them. This report is a compilation of all these results in the form of a proposal designed to stimulate public discussion.

The numerous highly realistic suggestions that we received from current and former mayors and governors regarding the current state of local self-government and related problems enabled us to compile this proposal in a short period of time. We will refrain from listing their names individually; however, we would like to express our profound gratitude. We are also grateful for the extremely helpful opinions on the draft report that we received from academic experts.

As well as being a ground-up review of the way local-government governance should be and demonstrating the form that it should take, this proposal also compiles these elements into an IIPS-drafted Proposal for a Basic Law Reforming the Local Autonomy Act and charts a course for basic reform. With the advent of a genuine

“local era,” we will be fulfilling our expected objective as a research institute if we can stir up mass discussion and help to bring about decentralization of authority for the sake of the people. We welcome the frank opinions of everyone who takes the trouble to read this proposal.

Three Principles of Reform

(Extracted from the Draft Basic Law Reforming the Local Autonomy Act)

Principle 1: Strengthening the autonomy of local government

Increase the autonomy of local public authorities in terms of their organization and operation (including tax and public finances), consistent with the principle of self-responsibility, in line with the principle of complementarity.

- (1) Rejection of the principle of organizational uniformity, and the enactment of regulations by individual municipalities (Article 1, Section 2).
- (2) Two-tier system of local public authorities and the stipulation of the principle of complementarity (Article 2).
- (3) Major expansion of annual income autonomy in terms of tax finances (including the right to levy taxes independently).

Principle 2: Strengthening citizens' autonomy

As well as strengthening citizens' autonomy under the system of dual representation with directly elected mayors, governors, and assemblies, enhance the information disclosure and accountability necessary for direct participation by citizens.

- (1) Guarantee the principle of citizens' autonomy and the rights of direct participation by citizens, and strengthen the system of direct democracy (Article 1, Section 1; Article 2, Section 3; Article 6; and Article 8).
- (2) Reduce requirements for requests for enactment, amendment, or abolition of regulations (at least 1%) (Article 6).
- (3) Reduce requirements for requests for the recall of mayors and governors and the dissolution of assemblies (at least 10%) (Article 7).
- (4) Stipulate strengthened accountability of mayors, governors, and assemblies, and information disclosure as a premise for citizens' voting rights (Article 11).
- (5) Flexibility of the timing of assembly sessions (periodic sessions with the introduction of an all-year-round system, holidays, evening sessions).
- (6) Strengthening of the audit function.

Principle 3: Strengthening the workings of assemblies and the consistency of the dual-representation system

Review the relationship between the mayor or governor and the assembly, and enhance the competitive relationship between them. Abolish the system of no-confidence resolutions and the right to dissolution of the assembly. If agreement cannot be reached between the mayor or governor and the assembly, the matter shall be submitted to a referendum with the involvement of both parties.

- (1) Enhancement of assemblies' policy formulation function (such as involvement in drawing up plans and the right to make minor adjustments to a draft budget).
- (2) Strengthening of the oversight authority of assemblies (granting of the right to investigate to the minority party) (Article 5, Section 2).
- (3) The right to submit a matter to a referendum and the restrictions on an assembly

when there is conflict between the mayor or governor and the assembly (Article 8). ((3) Represents preconditions to the abolition of the dissolution of the assembly by the mayor or governor, and of motions of no-confidence in the mayor or governor by the assembly.)

(4) Right of the mayor or governor to partial reconsideration and abolition of the sole initiative of the mayor or governor except on matters specifically entrusted by the assembly (Article 9).

(5) Strengthening the sole authority of the executive staff (Article 10, Section 2).

1. The current state of the issue

The debate on decentralization of power heats up

In the history of constitutional government, local autonomy in Japan was first officially recognized in the Constitution of Japan, which was promulgated in 1947. After a history spanning more than 60 years, it is now at a turning point. Having passed its sixtieth birthday, it is now about to demonstrate its true value with the advent at long last of a genuine “local era.”

Between the Meiji period and the pre-war period there was strong centralization of power, and although the prefectural system, county system, and municipal system spread, it cannot be said that there was local autonomy. A structure was perpetuated whereby the regions were “ruled” by government-appointed mayors and governors, acting as subordinate agents of the central government. With the establishment of the post-war Constitution of Japan, local populations came to directly elect their mayors and governors for the first time, as well as their local assemblies, and local governments became local public authorities independent of the central government. On the surface at least, local self-government has undergone dramatic changes from one era to the next. Against a background of urbanization and industrialization, the period from the 1960s to the early 1970s witnessed an upsurge in citizens’ movements and the emergence of many reforming mayors and governors. With its emphasis on financial reconstruction and administrative reform in an era of stable growth, the period from the latter half of the 1970s to the 1980s was notable for the emergence of hands-on mayors and governors, some of whom were former bureaucrats. The period from the 1990s to the present has been distinguished by politically unaffiliated mayors and governors, especially in large metropolitan areas. On the other hand, local self-government did not change much in reality, and over time it came to be seen as an auxiliary entity that assisted administrative execution by the central government. This was vividly encapsulated by household phrases such as “thirty-percent autonomy” or “forty-percent autonomy” that signified the narrow scope for discretion in terms of revenues.

However, in the wake of the administrative and political reforms of the latter half of the 1980s, reforms to decentralize authority began in earnest in the 1990s, gathering steam from the mid-1990s onwards. The 1993 Diet Resolution on the Promotion of Decentralization paved the way for the Decentralization Reform Promotion Law, which came into effect in 1995. Debate then commenced, led by the Decentralization Promotion Committee, and this bore fruit in the form of the Comprehensive Decentralization Law enacted in 2000. This was a ground-breaking reform in that the relationship between local government and central government was clearly defined as being one of support and cooperation rather than a master-servant or hierarchical relationship. With this, local self-government entered a new era. This

was emblematic reform to the existing pattern of local-government involvement in which administrative tasks were imposed on local governments by the central government. Prior to the reform, this system was characterized by the central government delegating administrative tasks to the heads of the local public authorities (mayors and governors), which were then carried out under the direction and supervision of the central government, with local assemblies unable to participate in the process. This bred a hierarchical relationship between central and local government, fostered a subservient form of administration, and accounted for a sizable proportion of the business conducted by prefectural and city governments. With this reform, however, the responsibility for self-government has been increased, the duties of local public authorities have been split into a restricted set of duties that are legally consigned to them and the business over which they have autonomy, and procedures for dealing with points of contention between central government and local public authorities have been determined.

Since 2001 the trend towards reforms to decentralize authority has continued unabated. Under the Koizumi administration, which was intent on “small government,” a so-called “Trinity of Reforms” was advanced (the elimination or reduction of state subsidy liabilities, the handover of tax revenue resources, and a complete revision of the allocation of national taxes to local governments) and in terms of authority and financial resources, the major trend from “central” to “local” remained unchanged. Recently the mass media has taken up the statements of mayors and governors who actively advocate decentralization of authority. The new DPJ administration has also touted the establishment of local sovereignty, whereby a region’s own citizens can decide matters pertaining to their region, as one of its most important public commitments. In November 2009 the new administration set up the Local Sovereignty Strategy Council and has now commenced investigation of the issue.

How authority should be decentralized

The actual drive for decentralization of authority is thus certainly on the right track. However, the important point here is that discussion has focused almost exclusively on decentralization of authority (in other words on the transfer of authority from the central government to local governments), and there has so far been little discussion of how to try and bring about citizens’ autonomy—the very ideal of local autonomy. It is precisely now, with the genuine advent of a local era for the first time in the history of constitutional politics, that we should go back to square one, sketch out an ideal vision of local autonomy using broad brush strokes, and stimulate popular discussion.

The current decentralization debate includes the following reasoning:

First, the implicit starting point is what the nature of the dichotomy between central and local should be. From the point of view of the essential function of government, central government and local government would appear to share the aims of holding the trust of the people and improving their welfare (since they are both forms of government). However, in the decentralization debate, discussion is often premised on the notion of central government and local government as entities that are antagonistic towards one another.

Second, there is the emphasis on the wholesale transfer to local government of the central government’s funding resources and authority. This originates in the perception of central government as an entity that binds the hands of local government and robs it of its identity, based on central government’s excessive

involvement in local government thus far. This also derives from the attitude that matters are best entrusted to the local government, which is closer to the people, than to the central government, which is unaware of the true state of affairs.

Third, indispensable to the attainment of local self-government that is accessible to the local populace is the question of what form the local government should take. This argument runs as follows: if decentralization of authority proceeds, local public authorities will naturally assume a major role, which they are currently not large enough to adequately fulfill; thus, larger forms of local governments ought to be put in place.

In fact, the Great Heisei Merger of cities, towns, and villages—which was carried out in response to such fears—has led to a sharp decline in the number of municipalities. It is further being proposed that the future course of action should be to consolidate basic local municipalities even further and introduce a “state and county” system. In terms of concrete proposals, however, opinions differ between the prefectures and the municipalities, and between different regions, and it cannot really be claimed that any consensus has been reached; discussion of how these local-governments should function effectively has also been lacking.

Self-governing mechanisms for local government—the essential perspective

Decentralization of authority will achieve its expected objectives only, however, if local governments have the capacity for self-government and are thus able to govern effectively to improve the welfare of the people. Unfortunately, as typified by the striking deterioration in local public finances, local governments do not presently rise to this basic level, and there have been many instances of irresponsible government. Amid the discussion of decentralization based on the dichotomy between central and local government, the essential problem of strengthening the administrative function of local government is being ignored.

It certainly cannot be denied that, due to excessive central-government meddling, local public authorities have so far proved incapable of creative and imaginative self-government. Just as with the discussion of local-governments (which has dealt with the notion of structural reform), much of the discussion on decentralization has focused on this point, and has hardly touched at all on the other side of the coin—what the actual nature of the governing mechanism should be.

As regards the current state of local self-government, however, in many cases the governing mechanism of local government has lapsed into dysfunction. The following examples are typical of this dysfunction.

(1) As is evident from the increasing numbers of municipalities whose public finances have collapsed, it is not clear with which of the respective principal actors (the governor or mayor, the local assembly, the people, or the central government) responsibility lies. Although demands to the regions by the central government for large-scale public-spending as a stimulative measure to combat the economic stagnation that commenced in the 1990s certainly played a major part, in the city of Yubari, in Hokkaido, for example, the local assembly failed in its oversight function with regard to the moral hazard of the mayor, and the problem was exacerbated by the irresponsibility of financial institutions and the central government, and by the indifference of the populace. Also, in instances of corruption by a mayor or governor, the local public office or assembly has proved unable to restrain them. The key point here is that, despite the numerous oversight functions with which the system was equipped, in the end it proved impossible to avert a tragic outcome. This illustrates

how local governments are lacking in any sense of administrative urgency and how they have lapsed into collusion and mutual dependence.

(2) The deliberations of local assemblies have turned into ceremonial formalities, and without any meaningful discussion, their deliberative function is paralyzed. Although assemblies certainly hold regular sessions, it is rare to witness policy debate—the majority of questions are of a formal nature and it is not uncommon for the substance of questions in the assembly to be devised in the local public office. More than the deliberation of a draft bill, it is so-called “inquiries”—involving finding fault with an executive agency, such as the mayor’s or governor’s office, that really energize an assembly. In terms of gender, age, and occupation, the composition of assemblies does not mirror the people of the locality, and is unduly weighted towards specific social strata, with businessmen predominating.

(3) The “public office family,” consisting mainly of present and former local public officials and those with ties to them, wields substantial clout over decision-making within local public authorities. The “public office family” attempts to forge “give-and-take” relationships with long-serving local-assembly members, to enmesh the local business world and local people of influence, and to preserve vested interests. The desire of assembly members to benefit from this situation as well is demonstrated by the exclusivity of the ruling party in local assemblies, which is at an even greater level than in the National Diet. In order to perpetuate this system, assemblies and local public offices try to get mayors and governors elected who endorse the status quo. As a result, the mayors and governors themselves (aware that protecting this “turf” will strengthen their re-election base) are reduced to giving up on reform. If by chance a mayor or governor were to try to implement reforms that would infringe on this “turf,” he would likely find himself in head-on conflict with the assembly and leave office without accomplishing what he intended. Even within local public offices, strong alliances are formed, and declining levels of morale and service are in evidence. However, even if a mayor or governor attempts to resist these alliances, he himself can appoint only about half a dozen subordinate government officials, such as a deputy mayor or lieutenant governor—as a rule appointments below the level of bureau chief are handled internally by the local public office. In addition, the local mass media, who are supposed to function as a third-party monitor of local self-government, need the cooperation of the local public office in order to operate locally, and are thus restricted to making superficial criticisms.

As Japan seeks to forge a future for itself as a nation, there should be a nation-wide consensus to adopt an overall course of decentralization, so as to create an environment which adequately shows off the diversity and creativity of the regions.

In current circumstances, however, it is hard to imagine that simply proceeding with decentralization will resolve all the country’s problems. It is possible that proceeding with decentralization while continuing to neglect the establishment of the administrative mechanisms for local self-government, which are a prerequisite to decentralization, will generate new problems. With Japan elevating local public authorities to much greater levels of importance than ever before and proceeding with decentralization, now is the very time that the country should go back to square one and redesign local self-government from scratch.

Of particular concern at present ought to be the neglect for improvement of the welfare of the people—the ultimate goal of local self-government. To this end, it is essential that Japan steadfastly adhere to the following basic course of action: mayors, governors, and local assemblies should work equally hard and compete to craft

high-quality policy; the basic principle that local autonomy (determining matters that relate to one's own locality) resides in local citizens' autonomy should be revived; opportunities for citizens to participate directly should be increased; and citizens should be allowed to play a more independent and constructive role. Using this as a base, Japan must sketch out an ideal picture of how to forge imaginative and creative self-government, reviewing the roles that the principal actors in local self-government (mayors and governors, local assemblies, and local government offices) should play, and making the best use of the characteristics of the regions. The time is fast approaching when it will be essential to discuss the specific nature of administrative mechanisms that will enable local self-government to function smoothly in practice.

2. Legal characteristics of local autonomy

Local autonomy as envisaged in the Constitution

How is local autonomy envisaged within the current legal system? In addition, how is it provided for in positive law? Before considering what the nature of local autonomy ought to be, it is first necessary to clarify the institutional characteristics of present-day, local-self-government administrative mechanisms in comparison to administrative mechanisms at the central-government level.

The Constitution of Japan is the ultimate legal basis for local autonomy. The following four articles are set out in Chapter 8 of the Constitution of Japan, "Local Self-Government."

Article 92: Regulations concerning organization and operations of local public entities shall be fixed by law in accordance with the principle of local autonomy.

Article 93: The local public entities shall establish assemblies as their deliberative organs, in accordance with law. The chief executive officers of all local public entities, the members of their assemblies, and such other local officials as may be determined by law shall be elected by direct popular vote within their several communities.

Article 94: Local public entities shall have the right to manage their property, affairs and administration and to enact their own regulations within law.

Article 95: A special law, applicable only to one local public entity, cannot be enacted by the Diet without the consent of the majority of the voters of the local public entity concerned, obtained in accordance with law.

Although Article 92 is regarded as the article that demonstrates the basic principle of local autonomy, it is stated in somewhat abstract language.

Article 93 stipulates that the principal operatives in local self-government, such as the heads of local public authorities and the members of the local assembly, must be directly elected by the populace. The distinctive point here is the adoption of what is known as a dual-representation (or separation of powers) system in that, in addition to the members of the local assembly, the mayor or governor must also be directly elected by the populace.

Article 94 stipulates that local public authorities possess property rights, administrative rights, and legislative power. Notably, the final part of this article is also referred to as the "right to enact regulations." Article 95 ensures the independence of local public authorities from the central government, and is thus regarded as guaranteeing local self-government as an institution. However, these four articles alone do not establish the administrative mechanisms for local government.

The Constitution does not prescribe the specific powers of mayors, governors, and local assemblies, or the substance of local-government administrative mechanisms in the form of the respective checks and balances that apply to them. The specific details of these are left to the Local Autonomy Act, which came into effect on the same day as the Constitution.

The principle of local autonomy in terms of citizens' autonomy and community-based self-government

In order to fathom the form of local autonomy that the Constitution envisages, it is necessary to take a close look at the import of the “principle of local autonomy” (Article 92) which is the central concept of local self-government. The “principle of local autonomy” refers to the notion that close involvement by the central government with a view to standardizing local-government operations throughout the entire country should be minimized, and that these operations should be carried out according to the actual situation in a locality, based on the wishes of the local populace. In order to satisfy this requirement, the principle of local autonomy is normally interpreted in terms of two established ideas—citizens' autonomy and community-based self-government.

Citizens' autonomy (a concept that originated in the UK) refers to the notion that the operations of a local government should be conducted with the participation of the local populace and in accordance with their wishes. In other words, citizens' autonomy embraces the democratic elements of local autonomy as follows. As determined by Article 93 of the Constitution, the chief executive officers of local public entities, the members of local assemblies, and certain other officials shall be elected by a system of direct election by popular vote. In addition, as will be seen later, the Local Autonomy Act establishes systems for direct requests from citizens (proposed initiatives in the form of requests for enactment, amendment, or abolition of regulations, or requests for the recall of a mayor, governor, or assembly member), public requests for investigation, and citizens' lawsuits against the local government. In the law at least, then, even today there are many provisions for achieving citizens' autonomy.

By way of contrast, community-based self-government (a concept that was developed in France and Germany) refers to the notion that local administration should be carried out by legal entities (local public authorities or local governments) that possess the right of self-government independent of the central government. This concept embraces the liberal elements of local autonomy. By recognizing local public authorities and defining their roles (in Articles 92 and 95), the Constitution of Japan clearly recognizes the principal actors in local self-government. To make this interpretation effective, however, local autonomy must encompass independent administrative bodies with sufficient capability to adequately conduct the administration of their respective localities. Under current law as well, municipalities have their own administrative rights independent of the central administration, since the administrative rights of the central administration are distinct from the municipalities' right to take executive action. Thus the relationship between the central government and a local government is understood as being a relationship between separate governments.

Characteristics of local autonomy: (1) the dual-representation system

These notions of citizens' autonomy and community-based self-government are also reflected in the Local Autonomy Act, which (in tandem with the Constitution)

stipulates what the nature of local-government administrative mechanisms should be. Two major characteristics of the administrative mechanisms of local government that are not seen in central government can be cited.

The first is the so-called dual-representation (separation of powers) system. In the case of the central government, the members of the National Diet are elected by the people by direct ballot. However, the prime minister is not chosen directly by the people; instead a mechanism (known as the parliamentary cabinet system) is used in which the prime minister is elected by the Diet, which is comprised of members elected by the people. As a result, the authority of the prime minister is bound up with the majority in the Diet's House of Representatives.

In the case of local government, however, a mechanism is used in which the heads of government—the mayors and governors—as well as the members of the local assemblies are elected by the people by direct ballot. As a result, both have democratic legitimacy and the authority of the mayor or governor and that of the assembly are separate.

The fact that the mayor or governor is elected directly makes the current system akin to a presidential system, although it is important to bear in mind that there are many different forms of presidential system (of which the US system is only one), and the head of a local public authority in Japan possesses even greater power than a US president.

The head of a local public authority—a one-man executive agency—leads and represents his organization (Article 547 of the Local Autonomy Act), manages and executes its duties, and acts like a sovereign in representing the municipality as the “face” of the local public authority. (Unless specifically stated otherwise, all subsequent citations refer to the Local Autonomy Act.)

Unlike a local assembly, a mayor or governor is authorized to propose a budget (both the mayor or governor and the assembly are authorized to submit bills regarding the enactment, amendment, or abolition of regulations). In addition, if a mayor or governor objects to a resolution by the assembly, he can submit it for re-deliberation (exercise of the right to veto: Articles 176 and 177). At the same time, since the Local Autonomy Act offers mayors or governors and assemblies the means to forestall one another, it incorporates elements of the parliamentary cabinet system, and it is sometimes said that Japan possesses an eclectic system of local self-government. That is, an assembly can vote on a motion of no-confidence in the mayor or governor, and if the motion passes with a special majority of at least three-quarters of the members present (Article 178), or alternatively, if it is deemed legally that there is no confidence in the mayor or governor (for example, if a draft budget is voted down), then the mayor or governor is authorized to dissolve the assembly.

In addition, while existing law espouses “presidentialism,” at the same time it also places within executive agencies some executive committees or committee members (such as members of the personnel commission, election board, agricultural committee, education board, or audit commission) who are to a certain extent independent of the mayor or governor. This is done to divide responsibility for duties which require political neutrality. In addition, since the special personnel whom mayors and governors appoint as their subsidiary executives (deputy mayors and lieutenant governors) also require the consent of the assembly, this represents a further opportunity for the assembly to exercise influence over the mayor or governor.

Characteristics of local autonomy: (2) direct participation by citizens

The second characteristic is the legal guarantee to citizens of the opportunity to

participate directly in the operations of local government through various channels. This is the embodiment of the notion of citizens' autonomy in the form of the principle of local autonomy, and is in marked contrast to the central-government level.

Specifically, the Local Autonomy Act essentially recognizes two categories of participation: direct requests and public requests for audit. Direct requests are further subdivided into initiatives proposed by citizens and recall requests. Initiatives include requests to the mayor or governor for enactment, amendment, or abolition of regulations (Article 74) and petitions to special audit commissioners to audit government affairs (Article 75). There is wide discretion for recalls, which are conducted by local referendum. In addition to petitions to the election administration commission for the dissolution of an assembly (Article 76), for the recall of a member of the assembly (Article 80), or for the recall of a mayor or governor (Article 81), petitions to the mayor or governor for the recall of an official (a deputy mayor, lieutenant governor, chief treasurer, city controller, election administration commissioner, audit commissioner, or public safety commissioner) are also permitted (Article 86).

With public requests for audit, if for example a citizen recognizes that a mayor, governor, committee, or staff member has spent public money illegally or recklessly, and can provide documentary evidence to that effect, he can request the audit commission to investigate (Article 242). Moreover, the law provides for citizens to sue the local government if they are unsatisfied with regard to a public request for audit, or if the necessary steps are not taken despite the fact that unfair or illegal actions have taken place (Article 242).

Exceptions are permitted with regard to the assemblies prescribed by Article 93 of the Constitution. The Local Autonomy Act allows for the establishment of general councils comprised of registered voters, instead of assemblies, in small municipalities (Article 94). Thus, if direct democracy involving citizens is possible due to the small scale of their community, this is deemed to be preferable to an assembly in terms of citizens' autonomy.

Although under current law there is thus broad discretion for direct participation by citizens as one aspect of enfranchisement, the conditions for actually invoking these rights are extremely strict. Thus, it would certainly be hard to argue that citizens' autonomy has been made a reality. In the direct-request category, requests for enactment, amendment, or abolition of regulations and requests for audits of government affairs require the signatures of at least one-fiftieth of the electorate, while requests for the dissolution of an assembly, the recall of a mayor, governor, or member of an assembly, or the dismissal of a senior civil servant require the signatures of at least one-third of the electorate (that is, at least one-third of the registered voters in the constituency for constituency-elected mayors, governors, and assembly members). Although the restrictions are relaxed somewhat for requests for dissolution and recall when the total electorate exceeds 400,000, the barrier is still high. The combined total of cases for cities and small municipalities in which the conditions pertaining to a direct request have been met and a local referendum has taken place is low. On the other hand, the barriers to public requests for audit are lower than the barriers to requests for audits of government affairs, in that a public request for audit can be made by a single individual citizen. However, public requests for audit can only be made in relation to illegal or improper conduct in connection with financial accounting, and must be made within one year. (Requests for audits of government affairs can be made in relation to the general affairs of local public

authorities and are not limited to this one-year period.) In addition, even if an external audit is requested, it is up to the decision of the audit commissioners whether the request will be met (or the decision of the assembly in the case of a request for an audit of government affairs).

The relationship between the Constitution and the Local Autonomy Act

The legal system surrounding current local-government administrative mechanisms is thus mostly determined by the Local Autonomy Act, with very little established by the Constitution. Supposedly, this is a consequence of the fact that, amid the post-war reforms, the enactment and promulgation of the Constitution of Japan was given the highest priority, in tandem with the need to proceed quickly to make alterations to local-self-government institutions. In short, although the new Constitution's chapter on local self-government guarantees local-self-government institutions, with regard to the nature of administrative mechanisms, it merely confines itself to creating provision for a popular election system for mayors and governors (and thus the abolition of government-appointed governors) and to stating the right of institutions to enact regulations. By contrast, it was intended that the Local Autonomy Act would completely re-arrange the pre-war local system—including the regulations regarding local authorities—under the principles of the new Constitution. However, the deadline for the promulgation of the Constitution did not allow sufficient time for major alterations to the system, and as a result it was deemed that the only option was to use the pre-war local system as a blueprint.

The current Local Autonomy Act includes extremely wide-ranging provisions covering everything from the fundamentals of local-self-government administrative mechanisms to highly technical matters. Thus although local self-government is the institution that is closest to the ordinary citizen and forms the bedrock of democracy, it is extremely hard for the ordinary citizen (that pillar of local self-government) to understand. It is also vital to note that, despite the fact that the post-war Local Autonomy Act has indeed undergone numerous revisions, it is still based on the pre-war local-government system. As a result, there is absolutely no guarantee that the form of local self-government implied by the principles of the Constitution of Japan and the form of local self-government set out in the Local Autonomy Act are consistent with one another. Far in excess of the principle espoused in the phrase “shall be fixed by law” in Article 92 of the Constitution, the relevant laws regulate matters to the nth degree, such that a major aspect of local self-government is the unnecessary degree to which freedom is denied. For example, the law applies unnecessarily rigid strictures to the nature of the organization and duties of local public authorities. The vigorous trend in recent years in enactment of basic self-government regulations in localities everywhere could even be seen as the antithesis of the Local Autonomy Act imposed by the central government, which demands standardized systems while extolling local autonomy.

With the advent now of a genuine “local era,” it is of the utmost importance that Japan go back to square one and sketch out a complete vision of local self-government that is suitable for the twenty-first century—premised on the provisions of the Constitution of Japan and free from the constraints of the thinking behind the current Local Autonomy Act. As part of this process, it will be necessary to consider what has actually taken place in the localities themselves over the course of 60 post-war years of local self-government. Essential to the designing of future institutions will be an awareness that the situation surrounding local self-government is dramatically different now to what it was at the time of the enactment of the

Constitution of Japan, and an understanding of how self-government has been conducted up until now under the existing system.

3. The non-institutional characteristics of local self-government

The political characteristics of local self-government

The previous section described the legal characteristics of local self-government. However, local self-government does not in fact always work as it is supposed to do under the legal system. Instead, there is in reality a substantial gap between the legal characteristics and the non-institutional characteristics of local self-government. Consequently, it would be pointless to try and sketch out administrative mechanisms for local self-government without understanding the non-institutional characteristics or political characteristics of local self-government. On the other hand, the way in which real-life local self-government works is not completely unrelated to the legal system. It is a given of the current system that the mainstays of the management of the locality (who could also be termed the actors in local self-government)—the citizens (the local populace), mayor or governor, assembly members, local business community, and local media—all act in consideration of their own respective interests, and it is essential to understand the incentive structure that is at work. Law, political science, and sociology each place more emphasis on either the institutional characteristics or the non-institutional characteristics of local self-government, and undeniably past discussions of local autonomy have been likely to emphasize either one approach or the other. However, in considering what the future form of local self-government should be, it will be essential to take a multi-faceted view that encompasses both its institutional and non-institutional aspects.

The reality of the dual-representation system

The most striking non-institutional aspect of local self-government is the relationship between mayors and governors, and assemblies. As described previously, in the case of local government, a system of “dual-representation” is used, in which both mayors and governors and assemblies are directly elected by popular vote—in contrast with the system used for central government. Both the heads of government (mayors and governors) and the assemblies represent the citizens, and it is expected that they—together with the local public authorities—do all that they can to improve the welfare of the citizens. Although they both have the same aims, however, it is naturally possible to segregate them, and their respective roles are kept functionally separate. The differences between them are heavily dependent on the differences between the respective election systems that are used to elect mayors, governors, and assemblies, and frequently engender tension in the relationship between the executive and legislative branches.

Each local public authority can of course have only one elected head (the mayor or governor). The mayor or governor’s constituency consists of the entire locality covered by the local public authority. It is thus difficult for a mayor or governor to win election unless he can obtain widespread support from the citizens of the locality. As a result, it is not sufficient for the mayor or governor to have the support of only part of the locality, and he must act in balanced manner so as to obtain widespread (or macroscopic) support from the locality as a whole. On the other hand, for prefectural assemblies, a system combining medium-sized multiple-seat constituencies and small

single-seat constituencies is employed, while in the municipalities, a system of large multiple-seat constituencies is employed (except in the cases of the 12 legally designated major cities). For members running in medium-sized multiple-seat constituencies and small single-seat constituencies, it is not necessary to obtain the support of the entire area covered by the local public authority—they can win election simply with the unvarying support of the citizens in one part of their constituency. (Conversely, strong support outside the member's own constituency will not have any effect on whether the member is elected.) As a result, assembly members' interests lie in how best to obtain votes in their own constituencies—not in the entire area covered of the local public authority. Even when large multiple-seat constituencies are used, an assembly member requires far fewer votes to secure election than the mayor or governor, making it easy to win election by obtaining strong support from a section of the locality. (Under the single-ballot system, there are often dozens of seats available.) As a result, assembly members are naturally channeled into pursuing the narrow individual interests of a section of the locality—in other words, into obtaining microscopic support.

This difference in interests between mayors and governors on the one hand and assembly members on the other is exceedingly natural, given that their greatest objective is to gain election (or re-election) and thus that they have a strong motivation to be victorious in an election. The problem is the cooperative and competitive relationship between the mayor or governor and the assembly members elected in these different contexts. If the interests of the mayor or governor and the interests of the assembly members do not correspond with each other, a cooperative relationship born of indifference will arise; however, if the interests of the two parties do correspond and they are on different courses, this will engender a relationship involving frequent conflict. For example, if a mayor or governor is touting financial reconstruction and wants to reduce the overall scale of operations, an assembly member with microscopic interests would resort to opposing this strongly if it worked to his or her individual disadvantage in terms of votes (even if he or she agreed in general terms).

In addition, under the current Local Autonomy Act, there is provision for a no-confidence resolution by the assembly or for the dissolution of the assembly if there is conflict between the mayor or governor and the assembly. In contrast to the parliamentary cabinet system employed in central government, which has the facility for reconciling the dispositions of the Diet and the prime minister through the selection of a new prime minister after a snap general election, local government employs a system whereby mayoral and gubernatorial elections are held separately, which does not allow for the dispositions of the mayor or governor and the assembly to be reconciled. No amount of elections will resolve such conflict under the system of dual representation. Conflict can be overcome only by cooperation between the assembly and the mayor or governor (not settled by an election), and unless this process is open to the public, the result may be that citizens are excluded from it.

The role of the local public office

When considering local self-government in the real world, it is not sufficient to simply focus on the mayors, governors and assemblies elected by direct popular vote and the relationship between them. Attention must also be paid to one other key player—the local public office. On the surface, the local public office itself does not undertake a political role. In practice, however, it often wields significant political power. Local public office personnel—that is, local public officials—are employed

until retirement age under the lifetime-employment system and (unlike mayors, governors and assembly members) do not face the risk of unemployment after an election loss. Under a cloak of anonymity and neutrality, they represent a long-term on-going presence, become privy to a much greater wealth of information in the course of their duties than do mayors, governors and assembly members, and are thoroughly acquainted with policy. As a result, they are in a position to build up their own interests independent of the politicians—the mayors, governors and assembly members.

In reality, in many local public authorities, the “public office family,” consisting of currently serving and former public officials and those with ties to them, often exerts a major influence over decision-making. Naturally, not everything is determined according to the volition of the local public office. Thus, by showing favoritism to local assembly members and occasionally becoming closely involved in the allocation of work and resources to individual interests, the “family” builds up long-term “give-and-take” relationships. For local assembly members wishing to receive this favoritism, the incentive is to avoid making their positions clear and derive the benefits of incumbency, in order to pave the way for their re-election, and in many cases a system of ruling-party exclusivity is built up. Moreover, in order to perpetuate this system, the assembly and the local public office attempt to effect the election of candidates for mayor or governor who are sympathetic to preserving their vested interests. In many cases the local public office attempts to put forward as candidates for mayor or governor people with whom it has ties and who fully understand this state of affairs. Since mayors and governors are also severely constrained by the wishes of the electorate, they have no choice but to go along with the status quo—particularly if they have their sights set on re-election. Alternatively, when a mayor or governor who does not understand this emerges, the local public office attempts to get him or her to abandon reform, first by denying consent in matters of personnel, and then by using various measures such as effectively invoking the right of veto by dragging out deliberations, under the pretext of giving careful consideration to the mayor or governor’s proposals.

The reality of citizen participation

Finally, the current role of the citizen—the backbone of local self-government—will be considered. As described previously, citizens participate indirectly in local self-government by exercising their political rights through the selection of mayors, governors, and assembly members in elections. In addition, they can also participate in local self-government directly, by means of direct requests (initiatives and recalls) and public requests for audit. At a minimum, opportunities for direct and indirect participation by citizens are guaranteed under the system.

In reality, however, the opportunities for citizens to participate in local self-government are somewhat limited. In terms of elections, the electorate can certainly exercise their right to vote by casting ballots; however, since the barriers to assembly member candidacy itself are extremely high, candidates must be selected from a specific population that is extremely skewed. The specific composition of local assemblies is overwhelmingly slanted towards men, people of advanced age, and independent businessmen. The proportions of women, young people, and salaried workers are extremely low. The reasons for this are that assembly sessions are held at fixed times during the daytime, that these latter categories of people cannot freely spare sufficient time for political activities, and that the restrictions relating to candidacy under the Public Office Election Law are extremely severe. The result is

that a situation has arisen whereby career assembly members exercise great influence as “citizen representatives,” and those who are chosen in elections cannot really be said to represent the wishes of the citizens. In addition, since these career assembly members are highly attentive to the microscopic individual interests of their own voter constituency, the subjects of deliberation in the assembly are apt to be removed from the concerns of the ordinary citizen. Even if an ordinary citizen is interested enough to want to attend the proceedings him- or herself in order to familiarize him- or herself with the debate in the assembly in more detail, he or she will often have to abandon the idea, simply because the sessions are held on weekdays during the day. In addition, although there is certainly ample provision in the law for direct participation (by means of direct requests or public requests for audit), in the case of a recall, for example, the signatures of at least one-third of the electorate must be collected (although this requirement is relaxed somewhat in municipalities with populations of 400,000 and above), and meeting such a requirement would be virtually impossible in one of the legally designated major cities with a population exceeding one million people. In addition, although a public request for audit can be made by a single individual citizen, there are limitations on the subjects of audit requests, and it is up to the decision of the audit commissioners (some of whom will be serving assembly members) whether the request is to be met.

Although it is also true that interest in politics among the general public is low, it is undeniable that the reason why this system does not work is that indifference is encouraged by the difficulty encountered in participating in local self-government—even for people who wish to do so. As a result, the current reality is that local self-government is apt to be missing its principal actor (the ordinary citizen) and differs substantially from the essential form that it is supposed to take—that is, local self-government of the citizens, by the citizens, and for the citizens.

4. Forms of administrative mechanism for local self-government

This section will set out in specific terms what form administrative mechanisms for local self-government should take, based on consideration of the institutional and non-institutional characteristics of local self-government, as described above. Three basic principles will be suggested as a course of action for reform of the current status quo. Specifically, these involve strengthening the autonomy of local government, strengthening citizens’ autonomy, and making the dual-representation system consistent with a more highly functional assembly.

When considering what form local self-government should take, it is possible either to start completely from scratch or to use the current Local Autonomy Act as the premise. In global terms there are myriad forms of local self-government, and there is no real prototype. For example, one system of local government that has been introduced in the USA is known as the “city manager system” and involves entrusting the administration of the city assembly to an appointed manager. In France, the chairman of the assembly (elected by vote of the assembly) serves as head of the local government. The discussion here is postulated on the four provisions set out in the Constitution of Japan, with the premise that they will not be altered. For example, since the discussion is premised on the dual-representation system prescribed in Article 93 of the Constitution, the adoption of systems like the city manager system mentioned above is excluded from this discussion. However, Article 93 of the

Constitution excessively restricts local-government administrative mechanisms in that it requires the dual-representation system to be used in all local governments, from the prefectures right down to the smallest municipalities. There is now no longer the same need for this in terms of advancing democracy as there was when the Constitution was enacted, and this will eventually need to be revised.

First reform principle: strengthening the autonomy of local government

The first principle involves strengthening the autonomy of local government. In short, this involves increasing the autonomy of local government in terms of its organization and operation (including tax and public finances), consistent with the principle of self-responsibility and based on the principle of complementarity.

In sketching out a complete vision of local self-government, it is first necessary to determine its character, functions, and scope. First, local self-government can be characterized as being the embodiment of the “principle of local autonomy” as expressed in the Constitution of Japan, and the concrete form of citizens’ autonomy and community-based self-government. That is to say, in order for local self-government to manifest its primary function, it is first necessary to explicitly validate the principle of local autonomy, which involves citizens acting according to their own wishes and on their own responsibility, and the principle of community-based self-government, whereby citizens establish local public authorities for carrying out the duties necessary for the welfare of the people, based on the wishes of the people. Unlike central government, citizens’ autonomy guarantees the right of citizens to participate directly, as in the second principle, which follows, based on its trademark of citizens dealing with problems to which they are closer, and thus puts a premium on direct democracy first. With citizens’ autonomy, the relationship between central government and local public authorities is clearly stated as being an equal relationship between governments. A Committee for Handling Disputes between Central and Local Government has been established to deal with the disputes that have arisen so far between the two sides during the decentralization reform process, from a standpoint of impartiality and neutrality and on the premise that the two sides enjoy a relationship of equality.

It is also necessary to verify the scope of local government on this basis. The key here is the “principle of complementarity.” In short, the basic municipality will be responsible for matters that it judges itself capable of taking charge of, while matters that the basic municipality cannot manage will be the responsibility of a larger upper-tier entity that encompasses the three basic municipal divisions of city, town, and village. Matters that even the upper-tier entity cannot manage will be the responsibility of the central government. This principle of complementarity is widely recognized in Europe. Japan, however, has been employing a method whereby the central government allots work and passes it down to local municipalities—just like the former system of delegation of administrative functions. From now on, the country must adopt a concept that is the complete opposite. Moreover, there is absolutely no need for these upper-tier entities to be limited to prefectures, as at present. Also, as regards whether to introduce a regional system or persist with the prefectural system, it would be best to determine this in the future for each region individually based on the local situation—there is no need to legally impose a blanket solution for the whole country. It would even be permissible to introduce the regional system in part of Japan and to continue with the prefectural system in the remainder of the country.

In order to achieve a more efficient form of local self-government, based on

validation of the principles of citizens' autonomy and community-based self-government and the principle of complementarity, it will be desirable to strengthen the autonomy of local government in the execution of duties—for example, in terms of its organization, as well as tax and public finances, which represent the basis of its annual revenue and expenditure. First, the principle of organizational uniformity should be abolished and the different municipalities allowed to use regulations to set the form of organization that best enables them to fulfill their mission. As regards the system of taxation, which lies at the heart of democracy, the municipalities should be granted the definitive right to levy taxes (having first clarified citizens' benefits and liabilities). Further to this, without reducing the incentives for the different local public authorities to exercise fiscal discipline, tax grants should be issued to local government by means of a simple mechanical allocation method, in a way that guards against moral hazard. In addition, the annual revenue autonomy of local public authorities should be substantially guaranteed by broadening their freedom to issue local government bonds. On this account (as with annual revenues), it will be necessary for every single assembly member to recognize his or her responsibilities in the form of proper deliberation in the assembly, the provision of information to citizens, and the raising of issues. At present, assemblies all over Japan set their own basic regulations, and to this extent invigoration of the assemblies is taking place; however, it will be necessary to strengthen oversight authority over assemblies further and in particular to grant investigative powers to minority groups within the assembly. In addition, recent court judgments have nullified the fundamental rejection of the system of citizen lawsuits against local government as an abuse of voting rights by assemblies. This was in regard to debt forgiveness resolutions by local assemblies in reaction to court decisions allowing civil-liability cross-examination of individual mayors and governors for inappropriate use of public funds. Instead of investigating the liability of the mayor or governor, the assemblies (which are supposed to exercise a monitoring function over the mayor or governor) were avoiding responsibility—a course of action which could have negated the very role of assemblies. In terms of annual expenditure, it will be necessary to instigate reforms to increase the creativity and imagination of local government, such as introducing more flexibility in the accounting year and abolishing the practice of encouraging business activity using government subsidy contributions (so-called conditional contributions).

Greater autonomy must naturally be accompanied by greater self-responsibility. The obligation on small local governments will be small, while the obligation on larger local governments will be greater. This choice is none other than the choice of the citizens themselves. Developing short-sighted policies in the irresponsible expectation that if some kind of problem should arise, the central government will help out in the end, and pushing the bill onto anyone other than the citizens represent a moral hazard that must be avoided at all costs. For this reason, it will be necessary to clarify the terms of liability between the local governments concerned, by developing a legal system that defines the mechanisms for dealing with a financial failure and the respective responsibilities of the mayor or governor, the assembly, and the citizens, and to increase awareness of the citizens' responsibility that accompanies citizens' autonomy. The essential issue is that this must go hand in hand with the drive to strengthen citizens' autonomy, as described in the second principle.

Second reform principle: strengthening citizens' autonomy

The second principle involves strengthening citizens' autonomy. In short, it involves

explicitly putting a premium on direct democracy and strengthening the role of direct public requests and local referenda, under the dual-representation system, in which mayors, governors, and assemblies are all directly elected.

Citizens have the right to participate indirectly in local self-government through the system of direct popular vote for mayors, governors, and assemblies which is prescribed in the current Constitution. In addition to this, a premium should be explicitly put on direct democracy by guaranteeing the right to participation by citizens. This concept does not negate the indirect democracy of the present, but rather confers on it an active complementary role. As with the first principle, there is wide scope for making much greater use of direct participation by citizens than has been done in the past, if the major principle is adhered to of letting the citizens make decisions on any locally arising matters that closely involve them.

First, although direct requests for enactment of, amendment to, or abolition of, regulations can be made with the signatures of two percent of the total current electorate, the actual power to enact regulations belongs exclusively to the assembly. That is, unless the assembly approves, regulations cannot be enacted, amended, or abolished. In particular, over the past few years, virtually all public-referendum regulations that might have diverged from the wishes of an assembly have been voted down by the assembly. However, given the skewed and unrepresentative nature of the composition of assemblies, the wishes of the assembly and the wishes of the citizens are not in total accord with each other, and it is due to this very lack of accord that referenda are proposed. Thus, if the assembly votes down a request, the mayor or governor should be able to make the result of the referendum binding on the assembly. The current requirement for two percent of the electorate should also be relaxed to one percent.

Further, under the current law requests for the recall of a mayor or governor and requests for the dissolution of an assembly require the signatures of at least one-third of the electorate, which is impossible to achieve in practice in major cities with large populations. This should be reduced to at least 10%, and since this could easily be submitted to a public referendum, there should be a switch to a system that directly reflects the wishes of the citizens. In addition, when the opinions of the mayor or governor and the assembly differ, referenda should be used in the actual decision-making process for the local public authority. This is stated below in the third principle.

This strengthening of direct requests by citizens and citizen participation is a two-edged sword which could lead to stronger direct citizen democracy, or at the same time could, if misused, lead to the very destruction of local self-government. In particular, the disclosure of information necessary for direct citizen participation and the monitoring function must be strengthened hand in hand, so that decision-making is not swayed by the provision of erroneous information to citizens. Specifically, this will involve strengthening information disclosure in accordance with the accountability of the mayor or governor and the assembly, and expansion of the monitoring function. Under the current system, the monitoring function involves the submission of requests for audit of government affairs and public requests for audit to the audit commissioners. However, since the audit commission is partially comprised of assembly members and former employees of the local public office, and since the mayor or governor also nominates audit commissioners, it is impossible for an audit to be independent. In addition, there is supposed to be provision for the introduction of an audit system based on individual external audit contracts that allows audits

conducted by third parties. In practice, however, regulations must be enacted before an individual external audit contract can be requested—in the absence of such regulations, this system cannot function. It will be vital to eliminate the requirement for the enactment of regulations, in order to make external audits on the initiative of citizens effective.

With regard to the disclosure of information, more staff should be deployed, procedures should be made simpler and more effective, and mayors, governors and assemblies should periodically release detailed items of relevant information in their possession. In addition, a system should be developed for offering quick and accurate responses to simple requests from citizens. As a starting point, in keeping with the principle of citizen participation, mayors, governors and assemblies must be aware that they are accountable to citizens with regard to their duties, and that this is an even more fundamental duty than responding to requests for disclosure of information. Existing executive agencies are making progress on citizen participation and provision of information by collecting opinions and holding meetings for dialogue with citizens. However, in order to allow the general public to participate in the workings of the assembly as well, flexibility should be introduced into the timetable for assembly sessions, in principle with sessions held in evenings, on holidays, and periodically throughout the year. Furthermore, it is essential that the topics of debate be made more accessible to citizens who attend the assembly, by actively opening committee sessions to the general public and by introducing the right for citizens to engage in question-and-answer and cross-examination. Beyond the assembly, it will be necessary to make active use of local government websites to widely publicize the activities that the local public authority currently has scheduled, and at the same time to create opportunities for opinions on these to be heard. These endeavors will enable the accurate provision of policy information which is essential to direct democracy.

Third reform principle: strengthening the workings of assemblies consistent with the system of dual representation

The third principle involves strengthening the workings of assemblies in the context of the current mayor- and governor-centric local politics. In order for local governments to draw up policies based on citizens' autonomy, it will be essential to promote citizen participation with the leadership and to strengthen assemblies so that they are better able to reflect the multiple opinions of their citizens. Participation in policy-drafting is already being promoted in a number of assemblies, with the establishment of basic assembly regulations and the deliberation of long-term plans. However, a mechanism is required (based on the dual-representation system of local government) whereby assemblies can be invigorated so that mayors, governors, and assemblies can compete to draft policies to improve the welfare of the citizens.

Specifically, the responsibility for drafting policies—including policy on financial resources—should be shared out by extending the right to draft budgets, currently the exclusive preserve of mayors and governors, to the assemblies including to some degree the right to amend a budget (including the right to increase it), if a certain number of assembly members agree. This ought to make the discussion in the assembly more policy-oriented. A mechanism in the assembly for summarizing the opinions of assembly members will be necessary in order to enable this competitive relationship. Under the current election system, assembly elections are centered around individuals and tend to lapse into the pursuit of microscopic interests. Encouraging assembly members to form a majority group in the assembly and making them more macroscopically oriented are prerequisites to enabling them to present

counter-proposals to the mayor or governor. This formation of majority groups in the assembly will be enabled by a stronger willingness of parties to club together; however, since the nature of the party system is regulated by the election system, the election system must be reformed with a view to strengthening assemblies. The small single-seat constituency system and the proportional-representation system can be expected to increase party discipline. Instead of trying to proceed with reform of the assemblies on the basis of unrealistically high expectations of the capabilities of every assembly member, it will be necessary to develop a mechanism that makes the most of the power of the parties, unearths a wide range of talent from among the general public, and enables the average citizen to shine.

The assembly's own monitoring function must also be greatly strengthened in order to make it more effective. Although the assembly's monitoring function is supplemented by direct citizen participation, it naturally functions in a different manner to monitoring by the general public. The best way to strengthen the assembly's monitoring function is to strengthen its investigative rights. In particular, the monitoring function over executive agencies should be made stronger than it has been in the past (even on matters that it would be inappropriate to reveal to the ordinary citizen) by relaxing the requirements that must be met in order for an assembly to exercise its investigative rights. In order to enable more agile and effective exercise of investigative rights, the requirement for a resolution to exercise so-called Article 100 investigative rights (investigation under Article 100 of the Local Autonomy Act), which are the equivalent of the national government's investigative rights, should be relaxed to at least 20% of members of the assembly, to enable minority groups to pass this resolution. As well as strengthening these investigative rights, it will be necessary to clarify the responsibility of the assembly and of the members themselves to citizens. Key points will be disclosure of how each member votes (yea or nay) on resolution topics, imposition on assembly members of the same obligation that is incumbent on mayors and governors to disclose information on expenditure on political activity, and renunciation of the right to vote on bills in cases of conflict of interest (on pain of dismissal). Regarding the maximum number of members in an assembly under the current Local Autonomy Act, it would be appropriate to determine this in line with the actual situation in each locality, taking into account direct citizen participation. Increasing the scope of citizen participation may even make it possible to greatly reduce the total complement of members in an assembly. Conversely it might also be possible to increase the total complement of assembly members in small municipalities, in order to create assemblies that are similar in form to citizens' councils.

Abolishing the system of session terms in favor of a year-round system will go a long way towards strengthening the policy-formulation and monitoring functions. As a result, there will be no need for decisions taken on the sole initiative of the mayor or governor, as is currently permitted when the assembly is unable to convene, and the assembly will have greater stature. Decisions taken on the sole initiative of the mayor or governor should be confined to simple matters that are entrusted to him or her by the assembly. If a matter should arise on which the assembly needs to take a decision, the assembly should hold an extraordinary session. On such occasions it will be important to set the proceedings schedule so as to enable citizen participation.

In addition, the motion of no-confidence in the mayor or governor by the assembly, and the dissolution of the assembly by the mayor or governor as a countermeasure to this should be abolished, as a means for making assemblies competitive in the policy debate with mayors and governors. Instead, mayors and governors should be given

the right to submit to a referendum draft regulations that are in dispute between the mayor or governor and the assembly. The result of this would be to rein in the mayor or governor and the assembly, and thereby introduce a mechanism for resolving conflict between the two parties on each specific point of contention. Strong opinions have been expressed with regard to making the result of a referendum binding, including criticism that this might lead to contempt for assemblies and fears of the possible exploitation of a plebiscite by a mayor or governor seeking to foment political populism. However, given that it is already possible to set down a consultative referendum in regulations, there would be no need to enact referenda unless they were to be binding. Moreover, the submission of a proposition to a referendum requires the consent of at least one-third of the assembly, and the accompanying process—in which information is provided to citizens by means of the mayor or governor’s explanations to the assembly, the points of contention are laid out, and diverse opinions are generated—can serve to dispel such fears. Above all, this will also be extremely effective in making citizens aware that if the result of a referendum determines the course of a policy, they themselves will bear responsibility for the results.

Under the system of dual representation, both the mayor or governor and the assembly can assert their democratic legitimacy. In this regard, both the mayor or governor and the assembly can be regarded as bearing direct responsibility to the citizens. (With the central government, which uses the parliamentary cabinet system, the cabinet bears responsibility to the nation.) However, the opinions of the mayor or governor and the assembly are not always in accord. Under the current system, when the opinions of the two sides conflict, the mayor or governor has the right to a veto; the assembly can overturn this veto and pass a bill by resubmitting it, if it has a majority of at least two-thirds. With a special majority (at least three-quarters) the assembly can pass a resolution of no-confidence in the mayor or governor, and as a countermeasure to this the mayor or governor can dissolve the assembly. With this system, however, there is a high degree of risk that the two sides will ultimately diminish one another’s status. Consequently, there have been numerous cases in which attempts to employ these mechanisms have elevated the policy discussion differences to the level of emotional conflict between the two sides, with constructive debate falling by the wayside.

Furthermore, unlike the parliamentary cabinet system, the system of dual representation has the fundamental problem that there is no guarantee that conflict between the two sides will be resolved after an election. In short, with a parliamentary cabinet system, the majority group in the newly formed assembly will match the opinions of the assembly and the prime minister after an election, by virtue of selecting a prime minister in line with the same popular will that has brought them to power. By way of contrast, under the system of dual representation it can happen that even after an assembly has been dissolved, it pushes the mayor or governor to resign by passing a resolution of no-confidence by a simple majority, only for the same mayor or governor to be elected again in the subsequent election. In these cases the popular will reflected in the assembly and the popular will that elected the mayor or governor are permanently divorced from one another. Moreover (in contrast to the situation with central government), when dealing with the immediate affairs of the local public authority, the points of contention are very often clearer and simpler, making it easier to break the deadlock by inquiring of the popular will in line with the points of contention—instead of resorting to the election of individual assembly members and the mayor or governor.

Under the new system, the mayor or governor would gain the right to submit draft regulations which had been vetoed in the assembly to a referendum—in addition to the existing right to veto assembly resolutions (the right of reconsideration). This would allow mayors and governors considerable scope for strengthening their leadership, while at the same time taking direct responsibility with respect to the citizens. It would be up to the mayor or governor's political judgment whether to submit draft regulations that had been opposed in the assembly to a referendum. To support this leadership in practical terms, the scope for political appointments—currently limited to around half a dozen people—should be increased, and the mayor or governor should have the discretion to make such appointees executives or special personnel. If an environment for equal labor-management negotiations can be developed, consideration should be given to granting non-executive local public officials the three major labor rights (except for some outdoor work), in order to change the mindset of public officials themselves.

5. IIPS-Drafted Proposal for a Basic Law Reforming the Local Autonomy Act

By way of amending the law relating to local self-government (including the Local Autonomy Act) and in order to give specific form to the three reform principles outlined above, IIPS would like to propose a “Draft Basic Law Reforming the Local Autonomy Act,” with the aim of establishing a course for this reform. To date there have been several proposals for a basic draft law on local autonomy. To start with, there are extremely diverse ideas on what characterizes a “basic law,” and these run the whole gamut from drafts that are confined to declaratory acts stating principles or directions to drafts that attempt to offer prescriptions covering all important matters relating to local self-government. In this instance, in an attempt to establish a basis for administrative mechanisms for local self-government, IIPS would like to propose a “Basic Law Reforming the Local Autonomy Act,” which is intended as a guideline for future amendment of the Local Autonomy Act. The need will of course arise to amend requisite related draft laws, including the Local Autonomy Act, in line with this Basic Law Reforming the Local Autonomy Act.

Article 1: Principle of local autonomy and the objectives of the basic law

In principle, local self-government should be carried out by the citizens in line with their own wishes and on their own responsibility.

2: Local public authorities exist to carry out the duties deemed necessary by the citizens, based on the wishes of the citizens, in order to improve the welfare of the citizens. The particulars of the relevant organization and administration shall be specified in regulations by each local public authority.

3: In accordance with the principle set out in paragraph 1, the objective of this law shall be to establish the basic matters for amendment in the Local Autonomy Act.

Purpose To clarify the “principle of local autonomy” in Article 92 of the Constitution in terms of citizens’ autonomy and community-based self-government, and to reject the principle of organizational uniformity.

Article 2: Principle of the two-tier system and the complementarity of local public authorities

Local public authorities are defined as being either basic small municipalities or larger upper-tier entities that encompass these small municipalities.

2: The primary mission of a local public authority at any level is to make its own decisions regarding all powers that will enable its operation at maximum effectiveness.

3: Local public authorities shall guarantee citizens the right to participate in making these decisions.

Purpose To introduce a two-tier system consisting of basic municipalities and larger upper-tier entities. Upper-tier entities are envisaged as being prefectures and regions; however, they are stipulated simply as upper-tier entities without an elucidation, based on the viewpoint that there is no need for nationwide uniformity, even if the regional system is adopted. The principle of complementarity is also affirmed, and a premium is put on direct democracy by guaranteeing the right to citizen participation.

Article 3: Direct election by popular vote of mayors, governors, and assembly members

Local public authorities shall establish mayors and governors as their executive agencies and assemblies as their legislative organs.

The citizens resident in a local public authority shall directly elect its mayor or

governor, and its assembly members.

Purpose To specify the prescriptions of Article 93 of the Constitution. To preserve the system of direct election by popular vote for mayors and governors.

Article 4: The role and authority of the mayor or governor

The mayor or governor of a local public authority shall supervise the local public authority's executive agencies, represent it, and conduct its business.

- i) Submit draft regulations, budgets, and other bills to the assembly.
- ii) Assess and collect local taxes, collect assessed contributions, rental fees, admission fees, and commissions, and to impose administrative fines.
- iii) Submit accounts settlements for approval by the assembly.
- iv) Oversee the accounts.
- v) Conduct the business of the local public authority, with the exception of matters stipulated in the preceding paragraphs.

Purpose To clarify that the mayor or governor shall not supervise the local assembly, by means of the phrase "shall supervise the... executive agencies."

Article 5: The role and authority of the assembly

When making policy decisions for the local public authority, the local public authority's assembly, as the representative of the citizens, shall fulfill the functions of compiling opinions and building consensus, and decide the following matters.

- i) Enactment, amendment, and abolition of regulations.
- ii) Determination of the budget.
- iii) Approval of settlements of accounts.
- iv) Monitoring and evaluation of the work of the executive agencies.
- v) Matters that fall under the purview of the assembly according to other regulations.

2 If at least one-fifth of the full complement of members of the assembly so request, an audit of the affairs of the local public authority must be carried out.

Purpose To prescribe the role of the assembly as the representative of the citizens, in order to define what constitutes fulfillment of the opinion-compilation and consensus-building functions.

In addition, to grant investigative powers to minority groups within the assembly in order to strengthen the monitoring function.

Article 6: Direct democracy—initiatives

Citizens with the right to vote can petition the enactment, amendment, or abolition of regulations. Such petitions require the signatures of at least one percent of the total electorate and should be made through a representative.

2 When a petition of the type described in the previous paragraph is made, the mayor or governor must submit it to the assembly immediately.

3 When deliberating a matter submitted as prescribed in the previous paragraph, the assembly must give the representative mentioned in paragraph 1 the opportunity to express his or her opinion.

4 When a petition for enactment, amendment, or abolition of a regulation that has been submitted as prescribed in paragraph 2 is vetoed by the assembly, the mayor or governor can submit it to a vote by the electorate.

5 If a vote is taken as prescribed in the previous paragraph and the matter is approved with a majority of the total number of valid ballots, this is equivalent to passage by

the assembly.

Purpose To relax the requirements for enactment, amendment, and abolition of regulations. In addition, to create the same kind of opportunity for opinions to be heard as in existing law. Although the assembly possesses the absolute right to vote, to enable a matter that is voted down by the assembly to be submitted to a popular vote, the result of which shall be binding on the assembly.

Article 7: Direct democracy—recall

Citizens with the right to vote can petition the election administration commission for the recall of the mayor or governor. Such petitions require the signatures of at least 10% of the total electorate.

2 Citizens with the right to vote can petition the election administration commission for the recall of a member of the assembly. Such petitions require the signatures of at least one-third of the total electorate.

3 When a petition as prescribed in paragraph 2 is made, the election administration commission must submit it to a vote by the electorate.

4 If a majority of the total electorate votes in favor of recall in a vote taken as prescribed in the previous paragraph, the mayor, governor, or assembly member shall lose his or her job.

5 Citizens with the right to vote can petition the election administration commission for the dissolution of the assembly. Such petitions require the signatures of at least 10% of the total electorate.

6 When a petition as prescribed in the previous paragraph is made, the election administration commission must submit it to a vote by the electorate.

7 If a majority of the total electorate votes in favor of dissolution in a vote taken as prescribed in the previous paragraph, the assembly shall be dissolved.

Purpose To relax the requirements for recall of the mayor or governor and dissolution of the assembly to at least 10% of the total electorate, compared to the requirement for recall petitions under existing law of at least one-third of the total electorate.

Article 8: Direct democracy—right to referendum for the mayor or governor

The head of a local public authority (the mayor or governor) can submit specific matters of major importance to the welfare of the citizens, which fall within the powers of the local public authority, to a vote by the electorate, in order to seek the judgment of the citizens in terms of their approval or disapproval.

2 When submitting a matter to a vote as prescribed in the previous paragraph, the mayor or governor must first obtain the consent of at least one-third of the full complement of members of the assembly.

3 If a majority of the total electorate votes in favor of a matter in a vote taken as prescribed in paragraph 1, the result shall be binding on the mayor or governor and the assembly.

Purpose To enable the citizens to directly settle points of contention between the mayor or governor and the assembly, by prescribing that the mayor or governor conduct binding referenda on points of contention regarding important matters. However, this shall be conditional on the mayor or governor obtaining the advance consent of at least one-third of the members of the assembly, in order to restrict a mayor or governor from unilaterally shunning deliberation in the assembly, without adequate presentation of the points of contention, and then proceeding to submit the matter to a referendum.

Article 9: Relationship between the mayor or governor and the assembly—the mayor or governor’s right of veto and sole initiative in taking decisions

If a mayor or governor disagrees with a resolution passed by the assembly, he or she can with reason submit part or all of the resolution for reconsideration.

2 If the same decision is reached on a bill that has been resubmitted as prescribed in the previous paragraph, with the consent of at least two-thirds of the members present, the decision shall be confirmed.

3 On simple matters that are within the authority of the assembly, the mayor or governor can take decisions on his or her sole initiative with regard to items specially designated by resolution of the assembly.

4 When the mayor or governor takes a decision on his or her sole initiative as prescribed in the previous paragraph, he or she must report it at the next session of the assembly.

Purpose To increase the mayor or governor’s options by granting him or her the additional right to partial resubmission. In addition, to abolish the taking of decisions on the sole initiative of the mayor or governor, as this negates the role of the assembly, and instead to limit this to simple items that the assembly delegates to the mayor or governor.

Article 10: Diversification of executive agencies; subsidiary executives

As prescribed by regulations, the mayor or governor can establish committees as executive agencies, under his or her own supervision.

2 The mayor or governor can employ a certain number of staff, as prescribed in the regulations, to assist him or her in performing the duties that fall under his or her authority.

Purpose To clarify political accountability by allowing the mayor or governor to establish various committees like the existing education board under his or her supervision, and to increase the scope for making political appointments within executive agencies.

Article 11: Accountability and disclosure of information

The mayor or governor and the assembly must remain accountable to the citizens regarding their various activities, in accordance with the principle of citizens’ autonomy.

2 The mayor or governor and the assembly shall establish regulations on disclosure of information and shall publish information on their work in response to public requests.

Purpose To clearly define the accountability of the mayor or governor and assembly, and to make enactment of regulations based on this accountability on the disclosure of information a legal requirement, as a prerequisite to citizens’ voting rights.

6. Conclusion

On the advent of a genuine “local era,” this proposal conducts a thorough review of the nature of the administrative structure of local government, starting from a clean slate, based on a direct look at the current state of local autonomy. The resulting suggestions have been compiled into the IIPS Proposal for a Basic Law Reforming the Local Autonomy Act, which demonstrates a specific course for reform. There is no doubt that Japan should follow a path of developing local self-government, and for this very reason it is now time for the country to rebuild the administrative mechanisms of local government.

Firmly premised on the current Constitution, this proposal focuses on what the nature of these administrative mechanisms should be. However, in the course of the debate we came to realize that it is necessary to address the fundamental question of the way in which local autonomy is prescribed in the Constitution. Although the Constitution specifies the adoption of the system of dual representation, the notion is advanced that the actual choice of whether to adopt the system of dual representation should be left up to each local government. Even when the dual-representation system is adopted, there should also be diversity in the respective roles and powers of the mayor or governor and the assembly, in order to make the competitive relationship that is envisaged between them work. It would also be problematical to try to apply a uniform standard to the appropriate division of roles between the political institutions of representation and direct democracy. This diversity derives naturally from the diversity in the local public authorities. The notion is also advanced that since local public authorities vary greatly in terms of scale and area, there should be leeway for them to choose whether or not to adopt the status of a legal entity. From the point of view of citizen participation, and taking regional diversity into account, administrative mechanisms that are currently non-institutional actors—in the shape of neighborhood municipalities, NPOs, and NGOs—could be given an active role.

It will also be necessary to consider the course of future reform of various institutions that are inextricably linked with these administrative mechanisms—the election system being one example. As described earlier, in the local self-government of today, both heads of government (mayors and governors) and assembly members are elected by direct popular vote; however, since they are elected according to different systems, their areas of interest naturally differ as well. The ordinary citizen possesses the right to vote in elections for six different types of elected official: prefectural governor, prefectural assembly member, municipal mayor, municipal assembly member, member of the House of Representatives, and member of the House of Councillors (the latter two being at the central-government level). However, there is a sense of disorganization as regards who represents what, lending an air of confusion to the notion of representation. Considering the microscopic orientation with which assembly members act in the assembly, it will be necessary to construct an election system that produces incentives that will encourage them to switch to a more macroscopic orientation. If the emphasis is on the role of political parties and factions, the proportional-representation system and the small single-seat constituency system are both desirable. This being the case, major reform of the election system will be required for both national and local elections. Another institution requiring reform will be the system surrounding local public employees. In order for the administrative mechanisms outlined in this proposal to function properly, the very nature of the executive agencies will also have to be reformed, and a system design will be required that enables local self-government to run smoothly.

In terms of the reform of administrative mechanisms, this proposal also offers substantial suggestions on the nature of administrative mechanisms at the central-government level as well at the local level. There is currently discussion of strengthening leadership and reviewing the relationship between politicians and the bureaucracy at the central-government level also, and the diversification and evolution of local self-government should naturally lead to the creation of a more desirable form of central government and stronger central-government administrative mechanisms. Furthermore, as mayors, governors, and assembly members work hard and take direct responsibility to the citizens under the new local-government administrative mechanisms, in the very localities where they can be closest to the citizens, they will be able to improve as politicians. Their numbers are likely to produce a flow of promising talent who can build on the experience that they have acquired at the local level and go on to flourish on the central-government stage. Local self-government should thus prove to be a fertile source of supply of capable politicians for the national government.

To ask what the nature of administrative mechanisms for local government should be is really to inquire after the true nature of democracy—a complex question that goes to the heart of our political system. The wellspring of democracy has resided in the achievement of the welfare of the citizens by virtue of the ability of citizens in the localities to establish their own rules independently. As Japan stands at the threshold of a genuine local era, it is of the utmost importance that the country return to the source once again and, by encouraging direct citizen participation and raising political awareness, develop a system of administrative mechanisms that will enable local self-government to serve in a genuine sense as Bryce and Tocqueville's "school of democracy."