

Dynamics of Three Structures of Responsibility in Education under the New Basic Law of Education

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I. INTRODUCTION

In December 2006, the coalition government of the Liberal Democratic Party (*Jimin-tô*, LDP) and the Kōmei Party (*Kōmei-tô*, KP) succeeded in passing the Bill on the Revision of the Basic Law of Education.¹ It took the legislators more than 100 hours of serious debate over two sessions of the Diet. The Basic Law of Education (hereinafter: the former BLE) enacted in 1947 had been “quasi-constitutional” in its form and substance. Drafted as a special law to complement the Constitution of Japan² adopted in 1946, the

1 *Kyōiku kihon-hō no kaisei-an* (for the subsequently enacted law, see note 3).

2 *Nihon-koku kenpō*, enacted November 3, 1946.

former BLE broke down the spirits and principles of the new Constitution into the aims and objects of education, the ways in which education should be responsible for the public, and the principles concerning the operation of the educational administration. The revision in 2006 was so comprehensive and fundamental that the revised BLE can rightly be labeled the New Basic Law of Education (hereinafter: the new BLE).³

Since the LDP was established in 1955, the party had listed as priorities in its political agenda the revision of the Constitution of 1946 and the former BLE. Until the revision in 2006, the LDP had tried to revise the BLE twice. The first time was in 1955, just after the creation of the party, and the second time was in 1986 when Prime Minister Yasuhiro Nakasone established the Ad Hoc Committee on Educational Reform. The attempts to reform the BLE failed each time. Recognizing the difficulties with revising the former BLE, the LDP, hand in hand with the Ministry of Education, gradually established a legal system on education that was in strong disaccord with the spirit of the former BLE. This was done by interpreting the former BLE in a way that was not in line with the legislators' original intent. Laws that were the fruit of the postwar education reform were replaced with new laws, amendments were added to existing laws, and by-laws were adopted. Before the Cabinet Office and the business world launched a movement for the revision of the former BLE in 2000, there were two parallel legal systems on education. On the one hand was the system envisioned by the former BLE, and on the other hand was the system that was developed by the LDP and the Ministry of Education to undermine the former BLE. Both systems of education were replaced by a different institution that was the result of the movement that began in 2000 to revise the former BLE.

The public school system is run by actors such as the central government, the Ministry of Education, the local governments, boards of education, schools, teachers, parents, and children. These actors are organized based on a set of principles defining who is required to do something in some way or who has to refrain from doing something in some way. I call this set of organized principles "the structure of responsibility."

The aims of this paper are twofold. The first goal is to clarify the characteristics of three different types of structures of responsibility that have taken root: the first type was the result of the former BLE; the second type was inherent to the legal system on education as developed by the LDP and the Ministry of Education; and the third type of responsibility structure was developed under the new BLE of 2006. This paper analyzes each of the structures of responsibility from a different perspective: first as a "direct responsibility to the people," then as an "indirect responsibility to the bureaucratic control by the Ministry of Education," and finally as "accountability to the Cabinet." The second goal of this article is to analyze the political dynamics among the three structures of responsibility that led from the former BLE to the reform of 2006.

3 *Kyōiku kihon-hō*, Law No. 120/2006.

In the second part of this article, I will analyze the structure of direct responsibility stipulated in the former BLE and clarify how this structure was extracted from the Constitution. In the third part, I will give an overview of how LDP and the Ministry of Education counterpoised the former BLE by using the structure of indirect responsibility. Moreover, in the fourth and fifth part, I will clarify how the popular movement and the Supreme Court set the political and legal barriers against it. In the sixth and seventh part, I will show how the neo-liberal political movement led the political movement for the revision of the former BLE with the aim of establishing the structure of accountability. I also will analyze the relationship between the three structures. In the eighth part, I will assess to what degree the structure of accountability is incorporated into the new BLE, and how the political and legal barriers established under the former BLE caused imperfections in the new system.

II. THE STRUCTURE OF DIRECT RESPONSIBILITY IN THE FORMER BLE

1. *The principle of separation of education and educational administration*

In sharp contrast with the prewar Constitution, which kept silent about education, the Constitution of Japan of 1946 anchors education in the field of human rights. It stipulates the right to receive education in Article 26, which reads as follows:⁴

1. All people shall have the right to receive an equal education correspondent to their ability, as provided by law.
2. All people shall be obligated to have all boys and girls under their protection receive ordinary education as provided for by law. Such compulsory education shall be free.

Because the former BLE was enacted as a “quasi-constitutional” law, the basic characteristic of the structure of responsibilities adopted in the former BLE can be found in its emphasis on the state’s “responsibility” (*sekinin* 責任) toward the realization of the individual’s right to education. In Article 10, the former BLE divided responsibility into two categories: the category of “education” (*kyōiku* 教育) and the category of “educational administration” (*kyōiku gyōsei* 教育行政). It assigned different subjects that fell in each category and belonged to its responsibility. Moreover, the former BLE established different ways in which the so-called responsibilities had to be fulfilled.

4 In this article, I use as the English text of the Constitution of Japan the translation publicized on the web page titled “Japanese Law Translation” provided by the Ministry of Justice of Japan at <http://www.japaneselawtranslation.go.jp>.

Article 10 reads as follows:⁵

1. Education shall not be subject to improper control, but it shall be directly responsible to the whole people.
2. Educational administration⁶ shall, on the basis of this realization, aim at the adjustment and establishment of the various conditions required for the pursuit of the aim of education.

The first paragraph of Article 10 of the former BLE clarifies the way in which education should be responsible to all the people. It establishes the principle of “direct responsibility of education” by asserting that education “shall be directly responsible to the whole people.” The meaning of “direct responsibility” can be made clear if it is compared with the notion of indirect responsibility. When teachers, who organize and conduct education, are supposed to follow laws adopted by the Diet or by-laws adopted by the Cabinet or the Minister within the scope of what is delegated by laws, they are responsible for the whole people through the members of the Diet elected by the people. This is the normal way in which the administration is responsible for the whole people under the notion of rule of law. In lieu of this indirect responsibility, the paragraph established the principle of direct responsibility. This means that only if teachers organize and conduct their educational activities by responding to the voices expressed directly to them by children, parents, and community members in daily school life can education be responsible for the whole people.

Paragraph 1 also establishes the principle of prohibition of improper control of education. According to the Research Group on Education Law in the Ministry of Education in their Commentaries on the Basic Law of Education (1947) (hereinafter: the Commentaries),⁷ the educational administration is a typical subject for “improper control.” Even if the educational administration intervenes into the education under provisions of laws, it should be deemed as “improper control” and thus violates the former BLE.

Paragraph 2 identifies “the adjustment and establishment of the various conditions required for the pursuit of the aim of education” as the task of the educational administration. Though it says nothing about the way in which the educational administration is responsible to the whole people, it implicitly confirms that the educational administration shall be indirectly responsible.

5 In this article, I use the translation by the General Headquarter as the English text of the former BLE. The translation was published by: GENERAL HEADQUARTER (ed.), *Education in Japan*, (Tokyo 1948), 109-111. I have added corrections to it when they are necessary, and each correction contains a footnote where I explain its reasons.

6 The Headquarter translated the words of “*Kyôiku gyôsei*” as “School administration.” I translate these words as “Educational administration.”

7 KYÔIKU HÔREI KENKYÛ-KAI [Study Group on Education Law, supervised by T. Tsujita & J. Tanaka], *Kyôiku kihon-hô no kaisetsu* [Commentaries on the Basic Law of Education] (Tokyo 1947).

In sum, Paragraph 1 implicitly identifies teachers as those responsible for education and specifically requires them to fulfil their responsibility by being directly responsive to the voices of children, parents, and community members. Paragraph 2 specifically identifies the educational administration as the subject that is responsible for the educational conditions and implicitly requires the administrators to fulfil their duties by acting according to the provisions of the law.

2. *The constitutional and pedagogical base of the structure of direct responsibility*

The previously explained structure of responsibilities is founded upon the constitutional principle of respect of individual dignity and on pedagogical principles. The preamble, Article 1, Article 2, and Article 10 are reflective of the backbone of the former BLE, which, as already mentioned, was extracted from the constitutional principle on the respect of individual dignity.⁸

In its preamble, the former BLE stipulates that “we” shall spread education “which esteems individual dignity.” Based upon this declaration, Article 1 sets “full development of personality” as the first aim of education. It reads as follows:

Education shall aim at the full development of personality, striving for the rearing of people, sound in mind and body, who shall love truth and justice, esteem individual value, respect labor, have a deep sense of responsibility, and be imbued with an independent spirit, as builders of the peaceful state and society.

This article lists two notions as the basic aim of education: on the one hand, the realization of “full development of personality” of people, and on the other hand, the rearing of people as “builders of the peaceful state and society.” The fundamental issue that the drafters faced in designing the postwar public school system was which of both notions should be set as the primary aim of education. This implied a choice between human education, which realizes the full development of personality, and civic education, which rears people to become good democratic citizens. This choice can also be framed in another way: “Does Japan choose ‘law on human education’ or ‘law on civic education’?”

The drafters could have chosen the latter, and by doing so they could have legalized the state’s power to indoctrinate the people with democratic virtues. But they refused to do so, based on the lesson that the Japanese people learned from their experiences in the era of the former Constitution: once we admit the state’s power to indoctrinate people, it is extremely difficult to prevent the government from abusing this power. Actually, in the Commentaries, it is clarified that the primary aim of the former BLE shall be human education, and that civic education shall be realized only through human education.

8 For further analysis, see Y. YOTORIYAMA, *Kyôiku kihon-hô no kiki* [The Basic Education Law in Crisis], in: *Rekishi-gaku Kenkyû* [Journal of Historical Studies] 819 (2006) 48.

It is clarified that

[t]he full development of personality is the base for the rearing of builders of the peaceful state and society. The former covers broader than the latter. Only when people receive broader education which would realize the full development of personality, they can become builders of the peaceful state and society.⁹

How will this human education be realized? The answer can be read in the second sentence of Article 2 with “Principles of Education” as its heading. It reads as follows:

In order to achieve the aim, we shall endeavor to contribute to the creation and development of culture by mutual esteem and cooperation, respecting academic freedom, having a regard for actual life and cultivating a spontaneous spirit.

As is shown by the fact that the subject of the sentence is “we,” this sentence is substantially a declaration by the people. “We” declared that the primary way to realize human education is “mutual esteem and cooperation.” According to the Commentaries, these words express the characteristic of the human relationship that should be established and maintained among teachers, children, and parents to secure human education. An informal human relationship cannot be enforced by law, whose essence is formality. Here, arguably, resides the reason why the subject of the sentence is “we.” Still, there certainly is something that the law can do to help realize informal human relationships.

Article 10 was there to clarify this. According to the Commentaries, Article 2 and Article 10 are closely related. It was even asserted that Article 10 “should have been incorporated into Article 2 because it stipulates the relationship between education and people in a democratic country.” Yet Article 10 was separated from Article 2 because “it stipulates the principles of the educational administration.”¹⁰ Article 10 establishes the condition of “mutual esteem and cooperation” by prohibiting the control of education by the educational administration under the laws. If both articles were merged, then education would be made a matter of execution by law and, thus, the informal human relationship would be sacrificed. Article 10 also provides the legal expression of the direct responsibility of education as implied in the pedagogical concept of “mutual esteem and cooperation.”

9 *Ibid.*, 63.

10 *Ibid.*, 127.

III. THE STRUCTURE OF INDIRECT RESPONSIBILITY DEVELOPED BY THE LDP AND THE MINISTRY OF EDUCATION

1. *The structure of bureaucratic control*

The principle of the separation of education and educational administration was substantiated in the sister law of the former BLE, the School Education Act¹¹ enacted in 1947. The Act gave the ministry the right to decide “matters concerning subjects” in Article 20. The meaning the drafters of the Act gave to these words was the “names” of the subjects to be taught in school. They never intended to give the Minister the authority to regulate what should be taught under the subjects.¹² Isao Amagi, chief of the Educational Finance Section, Department of Elementary and Secondary Education of the Ministry at that time, gave a commentary on this article in his book and clearly stated that “it is the responsibility of teachers to decide contents to be taught and materials to be used.”¹³

Though the Act gave the Minister the authority to screen textbooks, the Act said this authority was assigned to the Minister “for the time being” in Article 106. The drafters of the Act planned to transfer this authority to local school boards soon after the government quitted its control over the commercial exchange of the scarce resource of paper. Except for the authorities admitted in these articles, the Act did not provide the Minister with any other authority concerning education.

With regard to the state’s responsibility to provide the conditions for education, the former BLE did not clarify the principles on how this responsibility should be fulfilled by the central, prefectural, and city government(s), or how these actors should share this responsibility. These principles were left to other related laws to decide. The Local Autonomy Act¹⁴ enacted in 1947 established the principle of education as the inherent function of local governments, and the Local School Boards Act¹⁵ enacted in 1948 established the principle of independence of the educational administration from mayors. The former reflects the skeptical attitude toward the central government. The latter aimed at preventing politically elected mayors from controlling educational conditions. It was, for example, feared that by deciding where to build a school, mayors would neglect the needs of children and consider instead their re-election.

The principle governing the inter-governmental financial relationship among the central, the prefectural, and city government(s) was established in 1950 by the Act on

11 *Gakkô kyôiku-hô*, Law No. 26/1947.

12 For a detailed analysis of the intents of the drafters, see, M. OHASHI & S. SASAKI, *Gakkô kyôiku-hô no keisei katei* [The Drafting Process of School Education Law], in: *Kyoiku Gaku Kenkyu* [Journal of Educational Studies] 50 (1983) 373.

13 I. AMAGI *Gakkô kyôiku-hô chikujô kaisetsu* [Article-by-Article Commentary on School Education Law] (Tokyo 1954), 84.

14 *Chihô jichi-hô*, Law No. 67/1947

15 *Kyôiku i'in-kai-hô*, Law No. 170/1948.

Equalization of Appropriation by Local Governments.¹⁶ Giving weight to the principle of local autonomy, this act established the system of non-dog-eared money transfer from the central to local governments. The amount of money transferred from the central to a local government was decided by reducing the amount of income calculated by standard tax ability from the amount of expenditures calculated by national minimum standards on financial needs. Under this system, the national minimum standard setting was totally under the authority of the Minister of Local Autonomy. Furthermore, the Minister of Education had no way to force a local government to spend a certain amount of money to achieve the educational conditions that were assumed by the national minimum standards. In order to balance the principle of local autonomy with the principle of the state's responsibility in educational conditions, the Ministry of Education started to draft laws on ideal standards for educational conditions and equipment. The draft laws broadly covered conditions such as the number of teachers, class size, and school buildings. The Ministry of Education planned to step up its efforts toward guiding local governments to spend money as was shown in the law.¹⁷

These principles were stipulated not by the former BLE, which was “quasi-constitutional,” but by normal laws. This provided the LDP and the Ministry of Education with a hole to push the bureaucratic control into the structure of direct responsibility assumed by the former BLE. Bureaucratic control means integrating other educational organizations in a strictly hierarchical way. Hence the organizations situated higher in the hierarchy control those organizations downstream by order and supervision, budget allocations, personnel appointments, and internal rules.

Since the early 1950s, the LDP and the Ministry of Education revised the related laws so as to undermine the principle of education as an inherent function of local governments. It also challenged the principle of separation of education and educational administration. To the maximum extent possible, they integrated school boards of education and schools into the Ministry of Education, and expanded the Minister's power in controlling both education and the educational conditions. However, they did not touch the principle of the independence of educational administration from mayors. Leaving this principle untouched, the Ministry could exercise bureaucratic control independently of mayors.

16 *Chihô zaisei heikô kôfu-kin-hô*, Law No. 211/1950.

17 For a detailed analysis of the draft law, see T. UCHIZAWA, *Kyôiku zaisei to sengo kaikaku-ki no dôkô* [Trends in Educational Finance under Postwar Reform] in: Suzuki (ed.), *Kyôiku kaikaku to kyôiku zaisei* [Education Reform and Educational Administration] (Tokyo 1995) 124.

2. *Organizational integration of school boards and schools*

The epoch of organizational integration can be situated in 1956. In that year, the Local School Boards Act was abolished, and the Law on the Organization and Operation of Local Educational Administration¹⁸ was adopted. The primary feature of the Law was the hierarchical chain of personnel management. The Minister of Education was located at the top of the chain. A governor, a mayor, members of a board, a superintendent, and a principal followed the minister. The teacher was positioned at the end of the chain. With regard to the personnel management of the educational board members, the Law replaced the election system – under which a superintendent of an educational board was elected from among its members – with the appointment-by-mayors system. The Law assigned to a governor the power to appoint a superintendent of a prefectural board, and to a mayor the power to appoint a superintendent of a city board. The governor's power was subject to the Minister's approval and the mayor's to a governor's. The Law delegated the power of a city board to appoint teachers to a prefectural school board because the Law required a prefecture to take the financial responsibility of paying the teachers' salaries.

The second feature of the Law was the Minister's control over school boards. The Law did not allow the Minister to issue orders to school boards, but it recognized the Minister's power to issue an order to a governor or mayor. This power of the Minister was an exception to the Local Autonomy Act. This Act gave equivalent power only to the Prime Minister and prohibited the Ministers from exercising this. Furthermore, the Minister could exercise this exceptional power on the vague ground of a board's violation of laws or a board's hindering of the realization of the aim of education.

Under the Law, the Minister held neither the power to issue orders directly to a board, nor the complete power to control the personnel management of board members, superintendents, and teachers. Still, the Minister's power to issue orders to a governor or a mayor was threatening enough to the school board. Backed up by this threatening power, the Ministry could control boards by means of administrative guidance (*gyōsei shidō* 行政指導). The Law was sufficient to make teachers of schools run by city boards identify themselves as employees of prefectural boards, because they got paid by a prefectural board and they were subject to evaluation under the prefectural guidelines. As is analyzed below, with the Minister of Education holding power to decide the class size and the standard salaries of teachers as well as asserting that the National Course of Study determined by the Minister is legally binding, teachers were made to feel they were controlled by the internal rules of the Ministry and worked at the bottom of the hierarchical organization of the Ministry.

18 *Chihō kyōiku gyōsei no soshiki to un'ei ni kansuru hō*, Law No. 162/1956.

3. *Retreat from its responsibility for educational conditions*

In parallel with the organizational inclusion of boards and teachers, the LDP and the Ministry of Education established the power of the Ministry to adopt and carry out rules concerning both educational conditions and education. They started by attacking the Act on Equalization of Appropriation by Local Governments. The Ministry of Education stopped drafting the comprehensive law on educational conditions. Instead, the Ministry pursued the idea of reviving the national treasury system of the prewar era. Under this system, the central government held the power to decide the rules concerning the number of teachers and their salary scales. It transferred half of the total amount of salaries from the national treasury to prefectural governments. The transferred money was dog-eared, and prefectural governments were obliged to use it for paying teacher salaries. This system was abolished in 1950 when the Act on Equalization of Appropriation by Local Governments was enacted.

The Ministry revived this system to take back a part of the power concerning educational conditions and finance from the Ministry of Local Autonomy and establish its bureaucratic power over local governments. The Ministry succeeded in taking the first step in 1952. In that year, the Diet abolished the Act on Equalization of Appropriation by Local Governments and adopted the Local Allocation Tax Act¹⁹ and the Act on the National Treasury's Sharing of Compulsory Education Expenses.²⁰ In 1958, the Diet took a second step. The legislators adopted the Act on Standards for Class Formation and Number of School Personnel of Public Compulsory Education Schools.²¹ This Act stipulated the standard number of students in a class as fifty. It also stipulated the way to calculate the standard number of teachers on the basis of the number of classes. When the Diet adopted this Act, it also added revisions to the Local Autonomy Act in order to identify the task of a prefectural board to decide on the class size and on the number of teachers as an "assigned function" (*kikan in'in jimū* 機関委任事務).

By the late 1950s, the educational finance system shifted from an appropriation equalization system backed up by the planned comprehensive law on educational conditions to a national treasury system accompanied by the Minister's strong control. This was a substantial retreat by the Ministry from its responsibility vis-à-vis educational conditions. The Ministry relieved itself of the responsibility to set up the full range of standards on educational conditions. This shift established the Ministry practice that pays attentions only to those educational conditions that would strengthen its power over teachers. The Minister has prioritized conditions affecting the working conditions of teachers over those affecting learning conditions of children and over the financial burden of parents. The reform also established the practice to set standards not as a

19 *Chihō kōfu zeihō*, Law No. 211/1950.

20 *Gimū kōiku-hi kokko futan-hō*, Law No. 303/1952.

21 *Kōritsu gimū kyōiku sho-gakkō no gakkū hensei oyobi kyō-shoku'in teisu no hyōjun ni kansuru hō*, Law No. 116/1958.

result of a careful study of children's needs, but as a result of the negotiation with the Ministry of Finance and the Ministry of Local Autonomy.

4. *Shift from direct responsibility to indirect responsibility of education*

The year of 1958 was the turning point when the Ministry of Education departed from the principle of direct responsibility for education and embraced the principle of indirect responsibility. The Ministry started establishing its own bureaucratic control over education. Based upon Article 20 of the School Education Act, which delegated to the Minister of Education the power to decide the details of "matters concerning the subjects," the Minister adopted a by-law that gave the Ministry the power to decide upon the so-called National Course of Study (hereafter: NCS) (*gakushû shidô yôryô* 学習指導要領). The NCS was first published in 1949 as a guide for teachers. In 1958, when the Minister published an NCS in its Official Gazette (*Kanpô* 官報), the official opinion on the legal nature of the NCS was altered. The Minister of Education argued that, being published in the Official Gazette, it became legally binding, and thus teachers were obliged to organize and conduct their educational activities under the NCS. The Minister also backed up this formal reasoning of the legally binding force of the NCS with the substantial reasoning that to maintain and raise education standards throughout the country is the state's legitimate concern. According to the Minister, providing the NCS with a legally binding force was a reasonable measure to realize this concern. This argument substantially changed the principles on how education should be responsible to the whole people.

Strictly speaking, the NCS could not work as internal rules of the Ministry. Insofar as city boards of education held the disciplinary power against teachers, the Minister could not inflict disciplinary measures upon teachers at city schools on the grounds that they violated the NCS as a legal document. It was up to local boards whether to use the NCS as legal rules and to what degree they would make the teachers observe it. With the goal of overcoming this weakness, the Ministry took other measures. In 1958, the Minister began to use the NCS as criteria for textbook screening. Being obliged to use textbooks that are screened by the Minister under Article 21 of the School Education Act, teachers were forced to convey what was stipulated in the NCS. From 1961 to 1964, the Ministry sponsored the National Standardized Testing for all eighth and ninth graders. The Ministry argued that the test was nothing more than administrative research on the degree to which students learned what was stipulated in the NCS. Local boards voluntarily carried out the test upon request from the Minister. Responding to the request, all the city boards took part in the testing and submitted the data.

IV. POLITICAL BARRIERS AGAINST THE IMPOVERISHMENT OF EDUCATIONAL CONDITIONS UNDER BUREAUCRATIC CONTROL

The Ministry's retreat from responsibility for educational conditions during the 1950s caused the subsequent low public and high private expenditure on education. Article 26 of the Constitution stipulates that "compulsory education shall be free." For fifteen years since the enactment of the former BLE, what was free of charge had been limited to tuition. When the Diet adopted the Act on Free Textbooks²² in 1963, textbooks were made free. This Act was adopted with the aim to run the textbook screening system smoothly. With this Act, the Ministry responded to the question, "Why should we pay for what is compelled by the government?" Since then, nothing has been made free. Parents must pay for items that teachers decide are necessary for students' learning activities. Those items include school uniforms, physical education uniforms, educational materials other than textbooks, school trips, etc. What is meant by the principle of free compulsory education is not what the teaching profession deems necessary for education to be free of charge, but what the government imposes to the people.

The standard number of students in a class was set at fifty in 1958 by the Act on Standards for Class Formation and Number of School Personnel of Public Compulsory Education Schools. The large class size became the concern of teachers' unions, not only because it affected their working conditions, but also because, their job opportunities, namely the number of teachers, depended on the class size. During the 1960s, the Japan Teachers' Union (JTU, *Nihon Kyô-shoku'in Kumi'ai*) activated the movement for a class size reduction with the aim to prevent the decrease in the number of teachers which was being triggered by the fall of the birth rate. Her movement achieved the reduction from 50 to 45 in 1963. It was not until late 1970s that JTU organized the movement with the aim to realize the better learning conditions of children. Different from the movement during 1960s, which organized only JTU's members with the aim to secure the job opportunities, the movement in 1970s carried out researches on the appropriate class size and organized the people at large. JTU collected about 4.5 million signatures on the petition to reduce the class size. In 1980, the law was amended so as to reduce the size from 45 to 40.²³

All Japan Teachers and Staff Union (AJTU, *Zen-nihon Kyô-shoku'in Kumi'ai*), which split off from JTU in 1989, took over and expanded the movement. Since 1989, it has organized the movement to "realize the high quality educational conditions," in cooperation with the All Japan Federation of Private Schools Teachers' Unions (*Zenkoku Shiritsu Gakkô Kyô-shoku'in Kumi'ai Rengô-kai*). AJTU has collected more than 10 million

22 *Gimu kyôiku sho-gakkô no kyôka-yô tosho no mushô sochi ni kansuru hôritsu*, Law No. 182/1963.

23 NIHON KYÔSHOKUIN KUMIAI [Japan Teachers' Union] (ed.), *Nikkyôsho yonjû-nen-shi* [Forty Years History Of JTU] (Tokyo 1989) 659 - 669.

signatures on the petition for the class size reduction and an increase in subsidies for private schools from nationwide, every year.²⁴

As a way to respond to this movement, the Ministry was supposed to conduct a pedagogical study on the functioning of a class to identify the ideal number of students in a class. The Ministry of Education, however, has not responded in this way. The Ministry has deferred the issue to a political process where the dynamics among the Ministries and political parties govern. As a result, it took thirty years to lower the class size from fifty to forty. Though the movement for reducing class size has not produced fruitful results, it is certain that it has added pressure for the improvement of educational conditions and has set a political barrier against their impoverishments.

V. THE LEGAL BARRIER AGAINST BUREAUCRATIC CONTROL OVER EDUCATION

The strengthening of bureaucratic control of the Ministry over education drew strong resentments from teachers. In the case of the National Standardized Testing, conflicts between school boards who were to carry out the testing and teachers who tried to block it arose nationwide. Some of the teachers were prosecuted on charges of obstruction of performance of public duty. In the criminal courts, teachers challenged the lawfulness of the testing. Professor Saburô Ie'naga, an author of a textbook on Japanese history, could not have his book authorized by the Minister on the grounds that it did not observe the NCS of 1958. He brought the case to the court and challenged the lawfulness of the Minister's decision and of the textbook screening system.

In both cases (testing and textbook screening), the central issue was whether the testing and the screening system constituted "improper control" by the educational administration as prohibited by the former BLE. Teachers and Professor Ie'naga also clarified the constitutional basis of the prohibition of "improper control." They argued that those measures to expand the control of the Ministry over education violated the teachers' right to freedom of education as protected by Article 23 on academic freedom and Article 26 on the right to receive education.

They started their constitutional justification of the prohibition of "improper control" by articulating the concept of children's right to learn. Since learning is indispensable for children to develop as independent human beings, that learning should enjoy constitutional protections in two ways. The first is to be free from the state's intervention, and the second is to be provided with the conditions necessary for their development. These two aspects were constructed as civil rights and social rights of the children's right to learn. With regard to the former, the right to learn requires the freedom of the teacher to decide what and how to teach in classrooms for two reasons: first, only if teachers are allowed to be independent can they raise children into independent human

24 ZEN-NIHON KYÔ-SHOKU'IN KUMI'AI [All Japan Teachers And Staffs Union] (ed.), *Zenkyô jû-nen-shi* [Ten Years History Of AJTU] (Tokyo 2002) 70 - 72.

beings; second, in order to realize the education that follows the laws of the child's development, that education should be organized and conducted on the basis of teachers' professional judgments.²⁵

In 1976, the Grand Bench of the Supreme Court handed down its judgment on the case of the Standardized Testing in Hokkaido Prefecture²⁶ and accepted the core of the argument for the children's right to learn and the teachers' right to freedom of education. The Court admitted the constitutional concept of the children's right to learn by saying, "The notion of children's right to learn exists behind the right to receive education as stipulated in Article 26."²⁷ The Court also admitted that teachers' freedom to teach is a human right under Article 23:

Considering the fact that education essentially requires the direct personal interaction between children and teachers and teachers' response to the unique personality of each child, teachers should be allowed to freely exercise a certain amount of discretion in deciding what and how to teach. Accordingly we cannot deny that to a certain degree teachers should enjoy the freedom to teach.²⁸

The Court set three limits on the state's control over education: First, it cannot be legitimate when it is motivated by non-educational or political considerations. Second, the state is prohibited from compelling teachers to teach one-sided views because it would undermine the development of children into independent individuals. Third, even if the state's control is reasonable and necessary for legitimate aims, "such intervention should be moderate to a maximum extent."²⁹ The Court examined whether the NCS of 1958 exceeded these limits and concluded that it did not because it only set broad outlines on the education. The Court also examined the compatibility of the testing with Article 10 of the former BLE by checking its necessity and its moderateness. The Court admitted that the testing was necessary to carry out the legitimate aim of collecting data on scholastic ability and using it for elaborating policy to maintain and raise education standards nationwide. The Court also admitted its moderateness on the reason that the testing did not give substantial impact to education. According to the Court, the testing did not deviate from administrative research, and thus it did not transfer educational activities from teachers to the Ministry. Though the testing as administrative research influenced the educational activities, the extent to which it did was trivial: it took only one day and did not require special preparations from teachers or students.

25 The concept of the children's right to learn was first proposed by Teruhisa Hori'o, a researcher on the philosophy of education. For further information, see T. HORI'O, *Kodomo no hattatsu to kodomo no kenri* [Development of Children and Their Rights], in: Hori'o/Kaneko (eds.), *Kyôiku to jinken* [Education and Human Rights] (Tokyo 1977) 43 *et seq.* This concept was articulated into a legal concept by Masashi Kaneko. For further information, see M. KANEKO, *Kyôiku-hô* [Education Law] (Tokyo 1978) 195-202.

26 Supreme Court, 21 May 1976, Keishu 30, 615.

27 *Ibid.*, 633.

28 *Ibid.*, 634.

29 *Ibid.*, 636.

The Court concluded that the NCS and the testing were lawful, but, judging from the way the Court examined their lawfulness, the legal barrier the Court set against the state control of education is not showy but substantial.³⁰ If measures taken by the state could be seen as taking educational activities away from teachers, and if those measures had a broad or deep impact on educational activities, they would be evaluated as exceeding the limits.

VI. THE PATH TO REVISION: THEORETICAL AND POLITICAL DYNAMICS AMONG THE THREE STRUCTURES

1. *Movement for the structure of accountability*

As a result of the dynamic between the structure of direct responsibility and that of indirect responsibility, the central educational administration became different from what the former BLE envisioned. With regard to education, it was active in its control. It was also active in controlling the functions of the local governments concerning the working conditions of teachers, but it was negative in taking responsibility to improve learning conditions and reduce the financial burdens of parents. The Cabinet Office and the business world have led the movement for the revision of the former BLE since 2000. Their aim was not to reinforce the structure of indirect responsibility but to replace both the direct and indirect structures with the structure of responsibility, which substantiates neo-liberal thought. This structure can be characterized as “the structure of accountability of education to the Cabinet Office.”

The first momentum of the movement for revision was triggered by the report³¹ of the National Commission on Educational Reform (NCER, *Kyôiku Kaikaku Kokumin Kaigi* 教育改革国民会議), which was established in 1999 as a private advisory body of the Prime Minister. The report was submitted to the Prime Minister in December 2000. In its last chapter, the report proposed the revision of the former BLE. It raised three grounds: The first was to reconstruct education so as to make it keep up with such new issues as the global economy, aging society, and rapid progress of science and technology. The second was to strengthen education for developing a deep respect for tradition and culture. The third was to establish in the educational administration the system of a “basic plan.” This system of basic planning has been adopted in other policy areas under the laws whose titles begin with the words “*Basic Law on*.” Under this system, the

30 Whether the limits the Court set are showy or substantial was seriously debated among researchers and practitioners. See generally M. KANEKO, *Saikô-sai ga kute hanketsu no yomitorikata* [How to Read the Supreme Court Decision on the Case of National Standardized Testing in Hokkaido Prefecture], in: *Quarterly Journal of Education Law* 74 (1976) 21. I agree with Kaneko and, as is shown in this chapter, I view the limits as substantial.

31 *Kyôiku kaikaku kokumin kaigi* [National Commission on Educational Reform], 17 Proposals for Changing Education, retrievable in English at: <http://www.kantei.go.jp/foreign/education/report/report.html> (last accessed on February 28, 2011).

Cabinet is supposed to adopt the plan on important issues that several Ministries are concerned with and to take special financial measures to guarantee the implementation of the plan. The report explained rationales for and details of this system in chapter 5. The central sentences read as follows:

Society in the 21st Century is said to be a knowledge based society. With the rapidly declining birthrate, we must seriously consider investment in education as a national strategy. Reform cannot be implemented if investment in education is spared. The expansion of financial expenditures is required for the implementation of educational reform, and the establishment of performance targets also should be studied. In such a case, the most essential thing is not to invest precious taxes while leaving the organization unchanged and ineffective measures intact. Rigorous evaluation should be made of plans at the stages of planning and after implementation, and based on the results of evaluations more financial support should be allocated to places where reform is actively being carried out at the expense of less successful examples. Information should be positively disclosed to taxpayers concerning how taxes are spent on education reform and what achievements have been attained.

The neo-liberal reform of education typically seen in Anglo-Saxon countries has been conducted as a part of the structural reform of the government. This is also true for Japan. The theoretical base for the structural reform is provided by the administrative theory called “New Governance Theory” (hereafter: NG Theory).³² The distinguishing feature of NG Theory is that it incorporates the Principal/Agent Theory (hereinafter: PA Theory) developed by the New Institutional Economics.³³ PA Theory identifies the reasons why a principal who holds the purse strings cannot fully control an agent who receives money from a principal to do something on behalf of him/her. The theory proposes the measures to be taken to realize full control.

NG Theory argues for dividing the organizations for planning and those for implementing plans, as well as establishing a PA relationship between the planning and the implementing organizations. The planning organization, as a principal, adopts a plan, sets standards, evaluates how the implementing organization, as an agent, achieves the standards, organizes the competition among the implementing organizations, and gives them rewards and sanctions. The implementing organizations owe to the planning the responsibilities to achieve the standards, take part in the competition, and receive rewards and sanctions. This set of responsibilities is called “accountability.”³⁴

The above excerpts from the report of the Commission did not use the word “accountability.” However, it is easy to see how the proposal on the basic education plan reflects the idea of accountability. The Commission identified education as the state’s

32 See generally L.M. SALAMON, *The New Governance and the Tools of Public Action: An Introduction*, in: *Fordham Urban Law Journal* 1611 (2001) 28.

33 See generally J.W. PRATT / R.J. ZECKHAUSER (eds.), *Principal and Agents: The Structure of Business*, (Harvard 1985).

34 P.L. POSNER, *Accountability Challenge of Third-Party Government*, in: Salamon (ed.), *The Tools of Government: A Guide to the New Governance* (Oxford 2002) 523.

investment for the future. It called for the establishment of performance targets. It required the system to evaluate how the investment could be efficient. It proposed to take out money from the inefficient and transfer it to the efficient. The report was not clear about who would set the performance targets, but insofar as it argued for the establishment of the system of the basic plan that has been adopted in other policy areas, it supposed the Cabinet to hold this power.

2. *Dynamics among the three structures*

The structure of accountability is both consistent and inconsistent with the structure of indirect responsibility. Two structures share the orientation toward the state's intervention into educational activities. Interestingly enough, the structure of indirect responsibility, which had already implemented standardized testing more than forty years ago, has recently become fashionable in countries carrying out neo-liberal education reform. The structure of accountability contradicts the structure of indirect responsibility in that the former does not imply bureaucratic control over educational conditions and finance.

The proponents of the structure of accountability call the standard setting for educational conditions the input control, and the standard setting for the outcome or performance of education the output control.³⁵ The argument that pursues efficiency and emphasizes the ineffectiveness of the input control, prioritizes output control over input, and sometimes it goes so far as to deny input control at all.³⁶ This argument clashes with the bureaucratic control by the Ministry of Education over educational conditions. The Ministry was to discard its power, which it got back in 1952 from the Ministry of Local Autonomy under the Act on the National Treasury's Sharing of Compulsory Education Expenses. Furthermore, the system of the basic plan would deprive the Ministry of its primary authority to design educational policies.

It is easy to see that the structure of accountability and the structure of direct responsibility are mutually exclusive. The output control collides with the principle of direct responsibility of teachers concerning education. If output control goes so far as to establish educational standards and hold schools and teachers accountable by according rewards and sanctions, it would go to the heart of education. This surely establishes the system of indirect responsibility of education and thus constitutes the improper control prohibited by the former BLE. The downsizing or abolishment of input control would vaporize the state's responsibility for providing educational conditions.

The proponents of the accountability structure need to carry out three major tasks: to establish output control, to abolish or downsize input control, and to establish the basic plan system. In each task they would face strong opposition. Though the Ministry would

35 *Ibid.*

36 E. HANUSHEK, Throwing Money at Schools, in: *Journal of Policy Analysis and Management* 1 (1981) 19; E. HANUSHEK, The Economics of Schooling: Production and Efficiency in Public Schools, in: *Journal of Economic Literature* 1144 (1986) 26.

be in favor of establishing output control, it would be fearful of exceeding the constitutional limits and facing a dramatic situation similar to the time of the National Standardized Testing during the early 1960s. Teachers' unions would protest against the establishment of output control. The Ministry would argue against the basic plan and the abolishment or downsizing of input control for fear of losing its established bureaucratic authorities. The popular movement for the improvement of educational conditions would criticize the downsizing of input control.

VII. DEVELOPMENT OF THE STRUCTURE OF ACCOUNTABILITY UNDER PRESSURE BY THE CABINET OFFICE

After the report was issued, the role of implementing the structure of accountability was taken by the Council on Economic and Financial Policy (*Keizai Zaisei Shimon Kaigi* 経済財政諮問会議). This was an official advisory body of the Prime Minister, established by the Act for Establishment of the Cabinet Office.³⁷ It has the power to discuss the basic policy on economics, finance, budget, and other matters concerning economic and fiscal policies. The Council is composed of the Prime Minister as the chairperson and ten other members. The law requires the Chief Cabinet Secretary and the Ministers of Finance and Economics to be members as well. The other members are to be appointed by the Prime Minister. The law requires that more than two-fifths of the members be non-politicians. Leaders of the business world and researchers on new institutional economics have been appointed as members of the Council. These members were the conduit for the business world to build its demands into the report on the "Basic Principles of Budget Formulation" (the so-called "bone-thick plan" or *honebuto no hôshin* 骨太の方針), which the Council has adopted every year since 2001. Being approved by the Cabinet, the report controls the policies of the Ministries in a top-down fashion.

The Cabinet Office started attacking the input control. The "Basic Principles of FY 2003 Budget Formulation," issued in June 2002, proposed a comprehensive reform of the fiscal relationship between the central and the local government(s) by abolishing the national treasury system, reforming the local tax allocation system (*Chihô kôfu-kin seido* 地方交付金制度), and transferring tax resources from the central to the local institutions. In the subsequent two years, the Cabinet Office required the reform of the national treasury system in compulsory education. After two years of debate, the Minister succeeded in avoiding the abolishment of the national treasury system, thanks to the strong support by the popular movement for the improvement of educational conditions.

The Ministry, however, agreed to revise the law so that the share of the national treasury would be reduced from fifty percent to one-third, and to ease the strings attach-

37 *Naikaku-fu setchi-hô*, Law No. 89/1999.

ed to money transferred from the national treasury. The revised law was enacted in 2006. Before the revision of the law, the local governments could use the transferred money only for salaries of full-time teachers, of which the number was decided on the formula based on the number of classes decided by the law and by-laws. After the revision, the formula did not bind the local governments and functioned merely as a basis for calculating the amount of transferred money. The local governments are free to set the number of teachers, their employment types, and their salaries. They can use the transferred money for the salaries of teachers, of which the total amount is calculated on the basis of the number of teachers disaggregated by the employment types, and each type of salary is set by local governments.

The reports on the “Basic Principles of Budget Formulation” for fiscal year 2005 and 2006 provided the momentum for the establishment of output control. They proposed to establish the school choice system and the school evaluation system, as well as to deregulate the rules controlling who can establish schools with the aim to organize the environment of schools in a competitive way. They also proposed reviving the National Standardized Testing, in which all the students take part, and disclosing information on the average scores of each school with the goal of activating parents’ school choice.

In parallel with the progress of the reform of input and output control, the coalition government carried out the drafting of the new BLE. After the NCER issued its report in December 2000, the Minister of Education asked the Ministry’s major advisory board, the Central Council on Education (CCE, *Chûô Kyôiku Shingi-kai* 中央教育審議会), to examine whether the Law should be amended. After the CCE issued its report in 2001 confirming the conclusions of the NSER, the ruling parties took an exceptional procedure for drafting. Instead of letting the Ministry of Education draft the bill, the LDP and the KP established a Consultative Body of Ruling Parties on the Revision of the Basic Law of Education (*Kyôiku Kihon-hô Kaisei ni kansuru Yotô Kyôgi-kai* 教育基本法改正に関する与党協議会, hereinafter: “the Consultative Body”) in 2001 and assigned the Consultative Body the role of drafting the bill. The coalition government hid the process not only from the public but even from the Ministry. This Consultative Body was composed of only a handful of Diet members from the ruling parties. The meeting was totally closed. The minutes of the meeting were not released to the mass media. The body publicized its interim report in June 2004 and the final report – the Bill – in April 2006. These reports were the only information issued by the Consultative Body. Until the publication of the interim report in 2004, even the high-ranking officers of the Ministry of Education had not been allowed to take part in the Body even as secretaries.

This closed drafting process shows that the proponents of accountability were cautious about resentment, not only from the public but mainly from the Ministry. Some of the opponents of the revision argued that the main intention of the revision was to strengthen the Ministry’s power to indoctrinate nationalistic values in exchange for a

concession to the popular movement for the improvement of educational conditions.³⁸ They assumed that the public expenditures on education would be increased under the basic plan system. They were unsure about how to react to the revision. They saw behind the revision a reinforcement of bureaucratic control by the Ministry over both education and educational conditions. If this argument had been true, the Ministry should have been allowed to become a founding father of the new BLE. The Ministry of Education, however, was kept outside. Furthermore, the attack by the Cabinet Office on the Ministry's input control would not have preceded the revision. The opponents' argument missed the driving force behind the revision – it was not driven by neo-nationalism but by neo-liberalism – and a tension between the accountability structures on the one hand and the bureaucratic control on the other. The reality was that, in the end, the Ministry accepted the basic plan system, despite the fact that it would weaken its power, in exchange for strengthening its power to indoctrinate.

VIII. THE STRUCTURE OF ACCOUNTABILITY INCORPORATED IN THE NEW BLE

1. *Substantial weakening of the backbone of the former BLE*

The Consultative Body submitted the Bill on the Revision of the BLE through the Cabinet in April 2006.³⁹ The Lower House of the Diet adopted the Bill in November 2006 and the Upper House in December 2006. Without any amendment, the Bill became the new BLE. In the following part of this article, I will take a close look at the new BLE. First, I will analyze the results of the neo-liberal reform for the Ministry of Education. Second, I will take a closer look at the progress made by the neo-liberal reform concerning the Ministry's power. And finally, I will also explain the incompleteness of the reform and clarify its causes.

The new BLE largely removes the obstacle for the establishment of output control from the former BLE. As Chapter II of this article analyzes, the backbone of the former BLE was the Preamble and Articles 1, 2, and 10. The most prominent feature of the new BLE is that it waters down this backbone. Though the words “human dignity” exist in the same way as in the former BLE, from Article 1 on the aims of education the idea of civic education as a result of human education is excluded.

38 T. KARIYA, *Kyôiku shinko kihon keikaku: “Daki’awase” kaisei ni dô taisho suru ka* [Basic Plan for the Promotion of Education: How Should We Respond to the “Tie-up” Revision], in: *Sekai 100* (2006) 754.

39 For a critical analysis of the bill, see NIHON KYÔIKU-HÔ GAKKAI KYÔIKU KIHON-HÔ KENKYÛ TOKUBETSU I’IN-KAI [Special Committee on the Study of the Basic Law of Education of Japan, Education Law Association] (ed.), *Kyôiku no kokka, kyôiku kihon-hô kaisei hô’an to minshu-tô an no chikujô hihan* [The Government’s Comprehensive Control over Education: Article-by-Article Analysis of the Bill on the Revision of the Basic Law of Education by the Ruling Parties and the Draft by the Democratic Party of Japan] (Tokyo 2006).

Indeed, Article 1 reads as follows:⁴⁰

Education shall aim for the full development of personality and strive to nurture the citizens, sound in mind and body, who are imbued with the qualities necessary for those who form a peaceful and democratic state and society.

Article 1 gives the same weight to human education and civic education by stipulating that education shall “aim for the full development of personality” and “strive to nurture the citizens.” In addition, it stipulates that children are to be imbued with the qualities necessary for them to be ideal citizens. Article 2, whose heading is “Objectives of Education,” lists more than twenty virtues that children shall be imbued with. Article 2 reads as follows:

To realize the aforementioned aims, education shall be carried out in such a way as to achieve the following objectives, while respecting academic freedom:

- (i) to foster an attitude to acquire wide-ranging knowledge and culture, and to seek the truth, cultivate a rich sensibility and sense of morality, while developing a healthy body.
- (ii) to develop the abilities of individuals while respecting their value; cultivate their creativity; foster a spirit of autonomy and independence; and foster an attitude to value labor while emphasizing the connections with career and practical life.
- (iii) to foster an attitude to value justice, responsibility, equality between men and women, mutual respect and cooperation, and actively contribute, in the public spirit, to the building and development of society.
- (iv) to foster an attitude to respect life, care for nature, and contribute to the protection of the environment.
- (v) to foster an attitude to respect our traditions and culture, love the country and region that nurtured them, together with respect for other countries and a desire to contribute to world peace and the development of the international community.

The virtues listed in this Article are extracted from and ordered according to the NCS on Moral Education edited by the Minister of Education. Article 2 of the former BLE was substantially a declaration by the Japanese people on how they would realize human education. Article 2 of the new BLE is totally different. The former BLE, moreover, articulated Article 10 on the basis of Article 2. With this shift in the essential meanings of Article 2 from the declaration for the realization of human education through “mutual esteem and cooperation” to the list of the government-approved civic virtues, the Article concerning educational administration in the new BLE takes a direction exactly opposite

40 In this article, I use the translation by the Ministry of Education as the English text of the new BLE, retrievable at: http://www.mext.go.jp/b_menu/kihon/data/07080117.htm (last accessed on February 28, 2011). I have added corrections to it when they are necessary, and each correction contains a footnote where I explain its reasons.

that taken by Article 10 of the former BLE. Paragraphs 1 and 2 of Article 16 on “Educational Administration” reads as follows:

1. Education shall not be subject to improper control and shall be carried out in accordance with this and other acts; education administration shall be carried out in a fair and proper manner through appropriate role sharing and cooperation between the national and local governments.
2. The Minister of Education⁴¹ shall comprehensively formulate and implement education measures in order to provide for equal opportunities in education and to maintain and raise education standards throughout the country.

From the new Article 16, the wording that education “shall be directly responsible to the whole people” is excluded. In lieu of these words, Paragraph 1 stipulates that education “shall be carried out in accordance with this and other acts.” These new words intend to establish the structure of indirect responsibility of education.

From Article 16, the words “Educational administration shall...aim at the adjustment and establishment of the various conditions...” are also excluded. In lieu of identifying the inherent role of the educational administration, Paragraph 2 of Article 16 allocates to the Minister of Education comprehensive power that would cover the power to control education. The article states that the Ministry holds power to “comprehensively formulate and implement education measures” with the aim to “maintain and raise education standards throughout the country.” The latter words are the cliché the Ministry has repeatedly used to legitimize the expansion of its control over education. The Ministry would authorize the National Standardized Testing, to whose results schools and teachers are held accountable, by arguing that it is an “education measure” to “maintain and raise educational standards.” Though the paragraph does not clearly stipulate the principles concerning the structure of accountability, it at least paves the way for it.

The backbone of the former BLE that still exists in the new BLE is the principle of prohibition of “improper control” of education. Whether the words “education shall not be subject to improper control” hold the same meaning as they did in the former BLE was seriously debated during the discussion of the Bill in the Diet. Paragraph 1 of Article 16 could be read as saying that only controls through laws can be seen as “proper.” This reading would lead to the argument that, if teachers organize and conduct education without the basis of laws, their educational activities should be seen as “improper control.” The Minister of Education substantially denied this interpretation. In the discussion, the Minister admitted that these words have taken over the meanings that the Supreme Court gave them in 1976. Also under the new BLE, the control by the educational administration over the educational activities of teachers could constitute

41 The English text of the Ministry translates the Japanese word “*kuni*” as “the national government.” I translate this word as “the Minister of Education” because in Japanese laws “*kuni*” means the Minister who holds the authority over the matters stipulated in laws.

“improper control” even if control is exercised under the related laws. Still, it is certain that the new BLE undercuts the foundations of the principle of the prohibition of “improper control.” This principle exists independently of human education as the first aim of education, the declaration of the way in which human education shall be conducted, and the principle of the direct responsibility of education.

2. *Establishment of the system of basic education planning*

With regard to educational conditions, in exchange for excluding the responsibility of the educational administration for educational conditions, the new BLE stipulates the responsibility of the Minister of Education to take “necessary financial measures,” in Paragraph 4 of Article 16. It reads as follows:

The Minister of Education⁴² and local governments shall take necessary financial measures to ensure the smooth and continuous provision of education.

The new BLE also stipulates the system of basic education planning at the central government in Paragraph 1 of Article 17. The paragraph reads as follows:

In order to facilitate the comprehensive and systematic implementation of measures for the promotion of education, the Cabinet⁴³ shall formulate a basic plan covering basic principles, required measures, and other necessary items in relation to the promotion of education. It shall report this plan to the Diet and make it public.

On the surface, the new BLE adopts the same basic planning system as those adopted in the other Basic Laws.⁴⁴ Other than the new BLE, thirty-two Basic Laws are now in force. The Basic Laws afford the power to formulate the basic plans to the Cabinet on matters that intersect several Ministries, or on matters that are concerned with one Ministry. When the plan addresses inter-ministerial matters, the law allows the Councils that are composed of several concerned Ministers the power to adopt a draft basic plan. When the plan addresses matters concerning only one Minister, the law allows the major advisory body of that Minister to adopt the draft basic plan. Many of the Basic Laws require the Cabinet (*seifu* 政府) to take financial measures to secure the budget for carrying out the basic plan.

42 The English text of the Ministry translates the Japanese word “*kuni*” as “the national government.” I translate this word as “the Minister of Education,” for the reason explained in note 41.

43 The Ministry’s English text uses the words “the government.” The original Japanese text uses the word “*seifu*.” In the Japanese laws, “*seifu*” means the Cabinet.

44 For a detailed comparison of the BLE and other Basic Laws, see Y. YOTORIYAMA, *Shin-jiyū shugi kyōiku kaikaku, kyōiku sanpō no kaisei to kyōiku shinko kihon keikaku* [Neo-Liberal Education Reform, Amendments to the Three Educational Laws and the Basic Plan for Promotion of Education], in: *Nihon Kyōiku-hō Gakkai Nenpō* 6 (2009) 38.

The new BLE is different from other Basic Laws in two points. First, it says nothing about who holds the power to discuss and adopt the draft basic plan. If the new BLE followed the other Basic Laws, it would have been reflected in the paragraph that allows the CCE – the major advisory body of the Minister of Education – the power to adopt the draft basic plan, because matters covered by the plan would fall under the authority of the Minister of Education alone. Since the new BLE is silent about who holds the power to adopt the draft, the Cabinet could require a body other than the CCE to draft it. Second, the responsibility to take financial measures is not allocated to the Cabinet (*seifu* 政府) but to the Minister (*kuni* 国). Since the Cabinet holds the authority to decide the budget, if one were to secure a sufficient budget he/she could hold the Cabinet responsible. Holding a Minister responsible is meaningless. The new BLE requires not the Cabinet but the Minister to “take necessary financial measures.” In contrast to other Basic Laws, the drafters of the new BLE did not intend to secure a sufficient budget for the public school system.⁴⁵ Instead, they intended to require the Minister to take financial measures to carry out the basic plan adopted by the Cabinet.

Though the new BLE does not explicitly say so, it implies the establishment of a relationship between the Cabinet and the Ministry of Education. Furthermore, by holding the Minister responsible for taking financial measures to implement the basic plan adopted by the Cabinet, it implicitly requires the Ministry to establish a system of rewards and sanctions in carrying out the basic plan.

3. *Incompleteness of the neo-liberal reform and its causes*

As is analyzed above, the new BLE largely wipes out the obstacles that existed in the former BLE and paves the way for a structure of accountability in the educational system. The new BLE, however, stops short by allocating power to the Ministry of Education to formulate comprehensive education measures and remains silent about the key issues surrounding the structure of accountability. Moreover, the new BLE says nothing clearly about accountability of schools and teachers, it says nothing about who is to set the standards of the outcome against which schools and teachers are evaluated, nor does it mention anything about affording rewards and sanctions as the principal way to hold them responsible to the outcome.

Because the BLE is not a law aimed at stipulating details, the drafter could have left the Diet and the Minister to respond to these issues in subsequent legislations. However, I would argue that they were cautious of going beyond the constitutional limits the Supreme Court set in 1976. As previously analyzed, these limits are not showy but sub-

45 After the Bill on the Revision of the BLE was passed, an article in *Asahi Shinbun* expressed the view that “there is no assurance of an increase in the budget,” and reported “the Ministry also admits this view” “*Kyōiku no kenpō*’ *Tenkan: Kaisei kyōiku kihon-hō, seiritsu*” [“The Constitution of education” was transformed: The Bill on the revision of the Basic Law of Education was passed.], *Asahi Shinbun*, 16 December, 2006.

stantial. If the new BLE explicitly stipulated the power of the Minister to set the outcome standards against which the Minister evaluated schools and teachers and defined their accountability on the outcome, it would be held unconstitutional. The combination of the Minister's power over the standards related to the outcome and the accountability of school and teachers toward the Minister cannot be evaluated as being moderate to the maximum extent. Indeed, the law implicitly allows the Minister to take over the educational activities from teachers, and this will broadly and deeply affect educational activities. The Ministry restarted the National Standardized Testing in 2007. As happened forty years ago, the Ministry asked local boards to voluntarily carry it out as their own administrative task and required them to submit the data. The constitutional limits worked against the drafters from 2001 to 2006 and against the Ministry in 2007.

The new BLE does not stipulate educational finance as the tool to hold schools and teachers accountable to the Ministry. The drafter used a tricky wording in Paragraph 4 of Article 16, probably with the goal of hiding the negative impact of the structure of accountability on educational conditions. Actually, the tricky wording caused even the opponents of the revision to miss the exact meanings of the paragraph and react in confusion. If the exact meanings of the paragraph and the priority of output control over input control had been made public, the resentment by the public would have been much stronger.

IX. CONCLUSION

The new BLE paved the way for the structure of accountability to enter the arena where the structure of direct responsibility and the structure of indirect responsibility had been conflicting with each other. As the struggles among the three go on, the structure of indirect responsibility is now being gradually absorbed into the structure of accountability.

In 2007, the Cabinet allowed the CCE to discuss and adopt the draft Basic Plan for Promotion of Education. The Cabinet approved the draft in June 2007. On the surface, the Ministry succeeded in maintaining its primary authority over educational policy. Under the surface, however, the Ministry of Finance was allowed to negotiate with and pressure the Ministry of Education outside the CCE when it was elaborating the draft plan. The Ministry of Education let the Ministry of Finance undermine the authority of its major advisory body. The Plan proposed policies which the new BLE was silent about. These policies included the comprehensive reconsideration of the national minimum standards on educational conditions. It proposed the allocation of money according to the achievement that schools and teachers show in raising the quality of education. In the same year, the Diet added amendments to Article 20 of the School Education Act to expand the Minister's power over education. The article was given a new number – Article 23 – and the words “matters concerning subjects” were replaced with the words

“matters concerning curricula.” The Ministry was allowed to expand its power as far as it would result in the strengthening of output control.

It is probable that, in the near future, the structure of indirect responsibility will be completely absorbed by the structure of accountability. Except for the bureaucratic control over educational conditions, there is no contradiction between these two structures. It would be easy to make the Ministry give up its power over educational conditions if the business world and the Cabinet Office strengthened their pressure on the Ministry. Indeed, the Ministry has mainly acted according to political considerations in elaborating the policies on the educational conditions.

The struggles are now gradually shifting from the three structures to the structure of accountability and the structure of direct responsibility. As has been analyzed in this article, these two structures are theoretically mutually exclusive. As a matter of theory, the structure extracted from the Constitution shall prevail. However, the matter is not only theoretical but also political. It is difficult to foresee the actual result of the struggles. What this article confirms as a matter of politics is that the structure of direct responsibility actually sets limits on the incorporation of the structure of accountability into the new BLE, silently but substantially. It is safe to say that the momentum for the development of constitutionalism as established in 1946 and developed afterward by the people is still working. As far as this “tradition” is alive, the struggles between the two structures would surely continue.

SUMMARY

In 2006, the Diet passed the Bill on the Revision of the Basic Law of Education (BLE) of 1947. The revision was so comprehensive that the revised law can be labeled as the new BLE. The aims of this paper are twofold. The first goal is to clarify the characteristics of three different types of structures of responsibility that have taken root: the first type was the result of the former BLE; the second type was inherent to the legal system on education as developed by the LDP and the Ministry of Education; and the third type of responsibility structure was developed under the new BLE of 2006. This paper analyzes each of the structures of responsibility from a different perspective: first as a “direct responsibility to the people,” then as an “indirect responsibility to the bureaucratic control by the Ministry of Education,” and finally as “accountability to the Cabinet.” The second goal of this article is to analyze the political dynamics among the three structures of responsibility that led from the former BLE to the reform of 2006. This paper shows that the structure of direct responsibility actually sets limits on the incorporation of the structure of accountability into the new BLE, silently but substantially, and, as the structure of accountability absorbs the structure of indirect responsibility, the struggles are now gradually shifting from the three structures to the structure of accountability and the structure of direct responsibility..

ZUSAMMENFASSUNG

Im Jahr 2006 verabschiedete das japanische Parlament das Gesetz zur Veränderung des Grundlagengesetzes betreffend die schulische Erziehung (GSE) aus dem Jahr 1947. Die Reform war so tiefgreifend, dass das veränderte Gesetz als neues GSE bezeichnet werden kann. Der Beitrag hat zwei Ziele. Zum einen will er die Eigenheiten der drei verschiedenen Typen von Verantwortlichkeitsstrukturen, die sich etabliert haben, aufzeigen. Der erste Typ war das Ergebnis des ehemaligen GSE; der zweite war im gesetzlichen Bildungssystem, wie es die LDP und das Bildungsministerium entwickelt hatten, angelegt und der dritte ist die Verantwortlichkeitsstruktur, wie sie sich unter dem neuen GSE entwickelt hat. Der Beitrag untersucht jede Verantwortlichkeitsstruktur aus einem anderen Blickwinkel: zunächst als „direkte Verantwortlichkeit gegenüber dem Volk“, dann als „indirekte Verantwortlichkeit gegenüber der bürokratischen Kontrolle durch das Bildungsministerium“ und schließlich als „Verantwortlichkeit gegenüber dem Kabinett“.

Der Beitrags will ferner die politische Dynamik in den drei Verantwortlichkeitsstrukturen, die vom ehemaligen GSE zu dessen Reform im Jahr 2006 geführt haben, untersuchen. Er zeigt auf, dass die Struktur der direkten Verantwortlichkeit der Eingliederung der Struktur der Rechenschaftspflicht in das neue GSE tatsächlich – behutsam, aber spürbar – Grenzen setzt und dass sich, in dem Maße wie die Struktur der Rechenschaftspflicht die der Verantwortlichkeit absorbiert, die Schwierigkeiten nun sukzessive von den drei Strukturen zu den Strukturen der Rechenschaftspflicht und der Verantwortung verschiebt.

(Übers. d. Red.)