Accountability of Administration in Japan after the Mid-1990s

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I. Introduction of the "Accountability" Concept in Japan

The concept of "accountability" (*akauntabiritî*) was first introduced into Japanese public discussion by the Dutch Japan specialist Karel van Wolferen in 1994 in his book *Japan as a System that Does Not Make People Happy*.[1] Beginning with the distinction between "accountability" and "responsibility," van Wolferen states that Japanese bureaucrats have strong feelings of responsibility – or an awareness that their actions will have grave consequences – so any issue should be handled seriously. However, they are not expected to explain their judgments or activities to society at large; hence they lack the feeling of accountability. This book had a considerable impact on several politicians and academics, including the present Prime Minister Naoto Kan, who at that time was regarded as the symbolic figure in the fight against bureaucracy.

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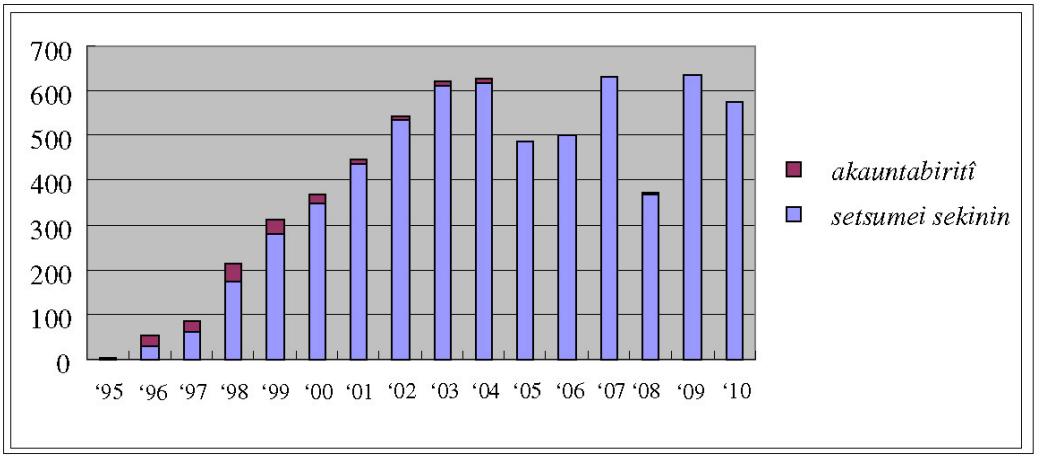
1 K. Wolferen, (translated by C. Suzuki), *Ningen o kôfuku ni shinai Nihon to iu shisutemu* [Japan as a System that Does Not Make People Happy] (Tokyo 2000) 96-97 (1st edition: Mainichi Shinbunsha 1994, translated by Masaru Shinohara).

The Japanese expression *"setsumei sekinin"* (説明責任), which literally means "duty to explain," was gradually accepted as the fixed translation for "accountability." *Chart 1* describes how often the words *akauntabiritî* (written in *Katakana*, the phonetic writing system used for loanwords) and *setsumei sekinin* have been used in one of Japan's leading newspapers, *Asahi Shinbun*. The word appeared in *Katakana* for the first time in 1994, but it did not take long for the translated expression to get the upper hand and be widely used.

Chart 1: Frequency of *akauntabiritî / setsumei sekinin* in *Asahi Shinbun*



II. THE ADMINISTRATIVE INFORMATION DISCLOSURE ACT (AIDA) AND FURTHER "ACCOUNTABILITY RELATED LEGAL SCHEMES" (ARLS)

The concept of accountability was introduced in the realm of statutory laws by the Act on Access to Information Held by Administrative Organs (Administrative Information Disclosure Act 1999, hereinafter: AIDA),[2] which mentions the "duty of government to explain its activities to the people" (Art. 1) as its purpose. Three other laws followed: the Incorporated Administrative Agencies, etc. Information Disclosure Act (2001), the Government Policy Evaluations Act (2001), and the Pubic Record Management Act (2009). All of them stipulate "accountability" in their purpose clauses and can therefore be regarded as "accountability-related legal schemes (ARLS)." Another legal scheme, the Public Comment Procedure (PCP), which was introduced in administrative practice by a cabinet decision in 1999 and enacted as a Diet Law by an amendment of the Ad-

2 *Gyôsei kikan no hoyû suru jôhô no kôkai ni kansuru hôritsu*, Act No. 42/1999; Engl. transl.: *http://www.japaneselawtranslation.go.jp/law/detail_main?re=02&vm=02&id=99;*
cf. N. KADOMATSU, The New Administrative Information Disclosure Law in Japan, in: ZJapanR/J.Japan.L 8 (1999) 34-52.

ministrative Procedure Act in 2005, will also be referred to as part of the ARLS for the benefit of consideration in this paper.

1. Administrative Information Disclosure Act (1999)

The concept of accountability (= "duty to explain") was introduced in the AIDA as a result of a controversial decision by lawmakers[3] that it would not stipulate the concept of the "right to know" in its purpose clause.[4] "Accountability" stands in relation to "the principle of sovereignty of the people" (Art. 1) and results in the guarantee of a concrete right of the citizen to request disclosure of administrative documents (Art. 3). At least in this aspect, the government is understood to owe direct responsibility to the people, not indirectly via the Parliament. However, it should be noted that the right to request disclosure is guaranteed to "any person" (Art. 3), not limited to Japanese nationals or to residents of Japan.[5] Some other features of the Act are also noteworthy.

1) Although "to endeavour towards greater disclosure of *information*" (Art. 1) is included in the purpose of the Act, the concrete target of disclosure is limited to "administrative documents"[6] in which information has been crystallized. One can only request existing documents *held* by the administration. When no documents have been created, or when the documents have already been discarded at the time of the disclosure request, the AIDA basically has no effect.[7]

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3 Cf. KADOMATSU (note 2) 39-40; N. KADOMATSU, The right to be informed – the obligation for providing information: The case of Japanese Information Disclosure Law, in: Hôsei Kenkyû 69 (2) (2003), 464-441, retrievable at: *http://hdl.handle.net/2324/2300.*

4 It is a customary legislative technique in Japan to state the purpose of a statutory law in Article 1. It is commonly understood that this "purpose clause" serves as a guideline for the interpretation of the act.

5 KADOMATSU (note 2) 41-42; KADOMATSU (note 3) 455.

6 "Administrative documents" under the AIDA mean not only paper documents but also pictures and electromagnetic records (Art. 1 para. 2).

7 KADOMATSU (note 3) 458-457. However, the Tokyo District Court recently rendered a very interesting decision (9 April 2010, in: Hanrei Jihô 2076 (2010) 19) on this issue. This case involved secret financial documents concerning the reversion of Okinawa to Japan from the United States in 1972 (controversies about those secret documents set the stage for an information disclosure movement in the 1970s, KADOMATSU (note 2) 35). The Minister of Foreign Affairs and the Minister of Finance refused disclosure requests of these documents on the grounds that they did not possess the documents. However, the court revoked the administrative dispositions and ordered the ministers to disclose them. The burden of proof for the existence of administrative documents in information disclosure litigations was an important issue in this case. According to the District Court decision, as a general rule, it is the plaintiff (the requester) who owes the burden of proof for the document's existence. If the plaintiff succeeds in proving that they were being held by the administrative organ for organizational use at a certain point in the past, it can be presumed that the documents are still being held. In this case, the administrative organs would need to argue and prove that the documents were lost by disposal or transfer. The court found that the documents existed in 1971 and that the ministries did not search enough for the existence or disposal of the documents. Therefore, it presumed their existence and ordered disclosure.

2) The AIDA is understood to be basically *indifferent to the purpose* of the disclosure request or the motive of the requester. So long as there is no harm as stipulated in Article 5 Item 1-6 (non-disclosure information) in disclosing the requested documents, in principle they have to be disclosed, regardless of whether the disclosure may serve any kind of public interest.[8]

3) Information disclosure as stipulated under the AIDA takes place on an *ad-hoc* basis and only *passively* upon request from the citizen. It stands in contrast to an (obligatory) information provision system, which transmits information *actively and systematically.*[9] The AIDA does not determine what kind of information is important from the aspect of "accountability." Nor does it provide any rules about which information shall be documented so that it can be a future target of information disclosure and ensure accountability.

2. Incorporated Administrative Agencies, etc. Information Disclosure Act (2001)

The Incorporated Administrative Agencies, etc. Information Disclosure Act (hereinafter: IAA-IDA),[10] enacted in 2001, was a part of the governmental effort for the reform of Special Corporations (*Tokushu hôjin* 特殊法人). It was introduced after the discovery of many scandals in government-affiliated public corporations.

The foremost issue in the legislation was the scope of the law, namely which corporations would be subject to information disclosure. In the legislative process, it was discussed that "corporations that constitute *a part of the government* should fall under this law, since they are also *accountable to the people* like administrative organs."[11] Based on this recognition, criteria for categorizing what should be regarded as "part of the government" became a point of discussion. There was, however, also criticism against this dualistic (government/non-government) approach. The phrase "part of the government" was finally omitted from the IAA-IDA.

The scheme of the IAA-IDA is virtually identical to that of the AIDA. However, it is to be noted that the IAA-IDA puts more weight on information provision measures compared with the AIDA. "Information provision concerning activities of IAAs, etc." is included in the purpose clause (Art. 1). Article 22 para. 1 stipulates that IAAs, etc.,

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8 Only in the case of exceptional disclosure of non-disclosure information (information which is found necessary to be disclosed in order to protect a person's life, health, livelihood, or property," proviso to Art. 5 para. 1, proviso to Art. 5 para. 2), there will be a balancing between the public interest and the harm a disclosure would cause; cf. KADOMATSU (note 2) 43-44.

9 KADOMATSU (note 3) 463.

10 *Dokuritsu gyôsei hôjin-tô no hoyû suru jôhô no kôkai ni kansuru hôritsu*, Act No. 140/2001.

11 TOKUSHU HÔJIN JÔHO KÔKAI KENTÔ I'IN-KAI [Study Group on Special Corporation Information Disclosure], *Tokushu hôjin-tô no jôhô kôkai seido no seibi ni kansusu iken* [Opinion on the Consolidation of an Information Disclosure System for Special Corporations], July 27, 2000.

should provide documents, drawings, or electromagnetic records that contain information on their organization, activities, and finances, including their evaluation or the record of audit. These regulations are similar to rules applied to private joint stock companies, etc. When we think of the nature of activities of those corporations, it is not surprising. This fact may also hint at the difficulty of the dualistic (government/non-government) approach, which focuses upon the organizational nature of corporations. One should also pay attention to the nature of activities they perform.[12]

3. Public Comment Procedure (1999 → 2005)

The Public Comment Procedure (PCP) is a so-called "one-and-a-half return trip" communication between the administration and the public. Before an administrative organ establishes an order, it has to publicly notify the proposal so that the public can submit comments on it. When the organ finalizes the proposal after the designated period, it has to make public the submitted comments and the organ's response to them.[13]

When the PCP was first put into administrative practice by a Cabinet decision,[14] the target of the procedure was limited to orders, etc., that "*formulate, amend, or repeal a regulation*." Orders affecting pensions or other social welfare services, for example, were not required to undergo the procedure. The introduction of the procedure was related to de-regulation policies of the government at that time. However, when the procedure was enacted as a Diet Law by the amendment of the Administrative Procedure Act (APA)[15] in 2005, the target was expanded to all administrative orders classified as delegated legislation and some important types of administrative internal guidelines (review standards, disposition standards, and administrative guidance guidelines) (Art. 2 item 8).

In contrast to the AIDA, the PCP sets out the administrative organ's obligation to *produce* information. Proposals for administrative orders have to be accompanied by "relating materials" (Art. 39 para. 1). When we also consider that the administrative organs have the duty to respond to the comments (Art. 43 para. 1), there is ample reason to assume that the PCP and not the AIDA is the typical legal scheme that focuses upon fulfilling the "duty to explain."[16]

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12 T. NAKAGAWA, *Beikoku-hô ni okeru seifu soshiki no gai'en to sono rinsetsu ryôiki* (Boundaries of Governmental Organizations and Adjoining Areas under US Law), in: Usui *et al.* (ed.), Kôhô-gaku no hô to seisaku (Tokyo 2000) 494.

13 Cf. T. NAKAGAWA, Participatory Administrative Law: How Is It Emerging in Japan?, in: Journal of the Japan-Netherlands Institute 10 (2010) 208-209.

14 Public Comment Procedure for Formulating, Amending or Repealing a Regulation (Cabinet Decision March 23, 1999), retrievable at: *http://www.soumu.go.jp/gyoukan/kanri/pdf,word/iken/Public%20Comment%20Procedure.pdf.*

15 *Gyôsei tetsuzuki-hô*, Act No. 88/1993, Engl. transl.: *http://www.japaneselawtranslation.go.jp/law/detail_main?re=01&vm=02&id=85.*

16 It may also suggest a gap between "accountability" and its Japanese equivalent "duty to explain."

However, the purpose clause of the amended APA does not include expressions such as "duty to explain" or "accountability" and retains its original purpose of "transparency" of 1993, when the law was first enacted. This was the first law to use the term "transparency" (*tômei-sei* 透明性) in Japan, which is defined as "clarity in the public understanding of the contents and processes of administrative determinations" (Art. 1). The primary concern of "transparency" in the APA in its original form were the administrative organ's obligations vis-à-vis the subject parties of administrative dispositions and not the relationship vis-à-vis the public in general.[17] Since the PCP aims at the latter, the non-amendment of the purpose clause in 2005 is often criticized.[18]

Critics argue that the law should have mentioned the public's "right to participation" (*sanka-ken* 参加権). This was the word that appeared in the deliberative council's opinion that served as the basis for the amendment.[19] On the other hand, it should be noted that the Public Comment Procedure under the APA is usually done only at the final stage of deliberation of an administrative rule-making. The law requires the proposals for administrative orders to have concrete and clear contents (Art. 39 para. 2). This is only possible at a final stage. There it would usually be difficult for the administrative organ to make substantial changes to the original proposal in response to the comments from the public.[20]

The rationale of the public comment procedure, therefore, would be to let an administrative organ (i) make clear the content, objective, and grounds for a policy proposal before presenting to the public and (ii) refine the content and objective in response to public comments. In doing so, the administrative organ clarifies its position in the midst of many ideas existing in civil society. This will be an important factor for judging the organ's responsibility for the policy result. It may be open to question whether one can call this role of the public "participation" if the comments have only minimal effects on decision making. However, the record of communication in the PCP may serve as an important material for the evaluation and revision of the administrative order, namely in the "second policy cycle."

17 H. SHIONO, *Gyôsei-hô* I [Administrative Law I] (Tokyo 2009) 286.

18 K. KAMINO, *Gyôsei rippô tetsuzuki no seibi to tômei-sei no tenkai* [Development of Administrative Rule-Making Procedure and Transparency], in: Nagoya Daigaku Hôsei Ronshû 213 (2006) 500.

19 T. TSUNEOKA, *Paburikku komento to sanka-ken* [Public Comment Procedure and the Right to Participation] (Tokyo 2006) 21, 50-51.

20 In some cases, administrative organs also perform voluntary public comment procedures in addition to the procedure required by the APA to better reflect the comments in the content of the orders.

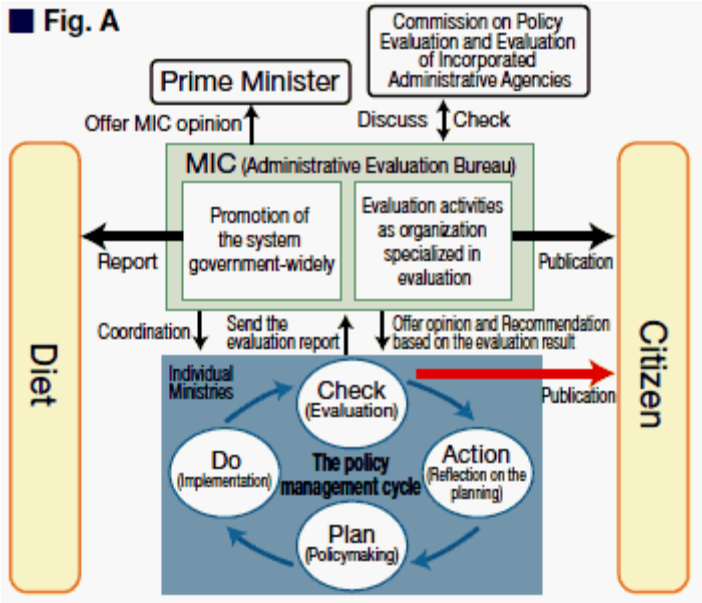
4. Government Policy Evaluations Act (2001)

The Government Policy Evaluations Act,[21] enacted in 2001, requires administrative organs to study and acquire information on the effects of their policies. The term "policy" here is defined in a wider sense to include (1) policies in a narrow sense (i.e., basic guidelines for specific administrative areas), (2) measures (i.e., a set of administrative activities aimed at a specific target based on a fundamental guideline), and (3) administrative affairs and projects (i.e., specific administrative activities) (Art. 2 para. 2).

On the basis of such studies on effects, each administrative organ has to perform a self-evaluation of its policies according to necessity, efficiency, effectiveness, etc. In this study, the organ has to use measurable methods obtaining concrete figures as far as possible and refer to expert knowledge (Art. 3 para. 2). Results of these evaluations are to be reflected in the planning and development of policies (Art. 3 para. 1), i.e., in the following policy cycle. The Ministry of Internal Affairs and Communications evaluates cross-cutting policies among administrative organs and controls the quality of those policy evaluations conducted by each administrative organ (Art. 12).

Here it is clearly intended to incorporate policies into a PDCA (Plan-Do-Check-Action) management cycle.

Chart 2:



source: http://www.soumu.go.jp/english/aeb/index.html

21 *Gyôsei kikan ga okonau seisaku no hyôka ni kansuru hôritsu*, Act No. 86/2001, Engl. transl.: *http://www.japaneselawtranslation.go.jp/law/detail_main?re=01&vm=02&id=114.*

5. Public Records Management Act (2009)

The Public Records Management Act,[22] enacted in 2009, aims to regulate the "life cycle" of public documents. Since the law deals not only with administrative documents in current organizational use but also with historical documents transferred into the National Archives of Japan, the purpose clause stipulates accountability to the people "at present and in the future." It also emphasizes the importance of public documents as the "people's common resource that form the pillar for a sound democracy" (Art. 1). The law imposes on administrative organs the duty to prepare documents for enactment or repeal processes of laws and regulations, cabinet decisions or agreements, etc. Written documents ensure the possibility to trace or verify the administrative decision-making process or the effects of administrative acts and projects (Art. 4). A final report of an expert panel, which served as the bill's basis, points out the importance of an "evidence-based policy."[23]

6. The Context of an ARLS Shift Toward "Structural Reform"

Features of ARLS examined so far can be put into the context of the "structural reform" discourse in the Japanese political scene from the mid-1990s.

In the annual meeting of the Japanese Academy on Public Administration in 1997, Takashi Nishio argued that "accountability" should have priority over "responsibility," since the former was heteronomous and externally controlled and the latter autonomous and internally controlled. According to Nishio, this priority became necessary as a result of a structural change in the government's role. While the Japanese administration until the 1960s had the main function as a production manager (i.e., in providing industrial infrastructure and in the promotion of industries), since the end of the 1970s new fields had gained importance, such as urban planning, welfare, culture, and environment; these fields can be referred to as life-management functions. This shift also changed the source of administrative legitimacy. Instead of bureaucratic professionalism that is transcendent from society, the present society demands responsiveness[24] of bureaucrats. They are expected to have common perspectives with society members. Nishio also says the ideal type of civil servants would therefore be dialogue-oriented with high explaining abilities.[25] In this context, "accountability" is related to issues such as decentralization and politics-bureaucracy relationships. These were all focal issues in the late 1990s,

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22 *Kôbun-sho-tô no kanri ni kansuru hôritsu*, Act. No. 66/2009.

23 Final report of the expert panel for the management of official documents (Nov. 4, 2008).

24 Nishio links this idea to the concept of "responsive law," P. NONET / P. SELZNICK, Law and Society in Transition: Toward Responsive Law (New York 1978).

25 T. NISHIO, *Gyôsei no akauntabiritî to sono naizai-ka – ôtôteki seifu e no michi* [Accountability of Administration and the Way to Internalize It: The Way to "Responsive Government"], in: Nenpô Gyôsei Kenkyû 3 (1998) 70-74.

under the recognition that there was a structural change of governance going on in Japanese society.

In the case of the Policy Evaluation Act, this linkage with the notion of a structural change in governance does not need any explanation. A similar linkage can also be seen in the legislative history of the AIDA. Although citizen movements for such legislation began as early as in the 1970s and had long been a favorite issue for public law scholars, the actual governmental move for a national legislation began only in the 1990s. The impetus for the move was two bureaucratic scandals: the abuse of "food expenditure" in local governments as well as the HIV blood scandal of the Ministry of Health and Welfare. In the latter case, ministry officials first denied the existence of documents related to HIV-contaminated blood products. But they were soon "discovered" after the newly appointed minister Naoto Kan ordered a complete search.[26]

Compared to the 1970s, we can see that the focus on information disclosure has shifted from political-social issues such as military secrets, political scandals (such as the Lockheed incident), and consumer movements to administration monitoring. Information disclosure in the 1990s was connected with anti-bureaucratic sentiments and was seen as one of the tools for an "administrative reform" or slimming the government. It was part of the New Public Management (NPM) strategy.[27] It was symbolic that the bill was deliberated in the sub-committee of the administrative reform committee, which at the same time was discussing deregulation issues and public-private role division. In this context, it should be remembered that the target of the PCP was limited to orders that "formulate, amend, or repeal a regulation" when the procedure was first put into administrative practice by a Cabinet decision in 1999.

III. Issues and Dilemmas of the ARLS

We will analyze how "accountability" or the "duty to explain" is to be attained in each legal scheme that can be classified as ARLS. In this process, we must investigate three perspectives: (a) How and what do the administrative organs have to "explain"? (b) To whom are administrative organs accountable? and (c) Does accountability focus on the outcome or the process?

1. How Should They "Explain"?

To begin with the AIDA, the information disclosure system focuses upon crystallized information stored in existing documents. It does not stipulate any rules on information

26 Kadomatsu (note 2) 36-37.

27 Kadomatsu (note 2) 38-39; H. Shindo, *Shimin sanka to jôhô kôkai* [Citizens' Participation and Information Disclosure], in: Ide (ed.), *Kôza jôhô kôkai* [Information Disclosure] (Tokyo 2000) 572.

production.[28] In controlling the administration as an information processing system, the AIDA does not directly regulate the information *flow* – i.e., gathering and processing information – but stipulates rules on the handling of the *information stock*.[29]

It was already mentioned that the obligation of administrative organs under the AIDA is passive and on an ad-hoc basis.[30] With this system, the public cannot expect an active and systematic provision of information. However, at the same time, the information disclosure system upon request would have a "unique significance when it comes to obtaining information not provided automatically or to verifying the provided information by the raw information."[31] This can be regarded as a positive aspect of information disclosure when it comes to the fact that accountability is externally influenced.[32]

On the other hand, some argue that providing such raw information alone is something apart from the "duty to explain."

> The "duty to explain" can only be fulfilled when the information-requester is able to classify and arrange information based on his or her *constructive framework* [...]. Therefore, information disclosure does not fulfill the duty to explain. Information disclosure is merely about allowing public access to raw facts which have not been subject to constructive activities of the information provider nor of the requester. The duty to explain must entail coordination of a mutual constructive framework based on *interactive communication*, which is lacking in this type of information disclosure system."[33]

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28 Cf. p. 7 *et seq*.

29 KADOMATSU (note 3) 457.

30 Cf. p. 8.

31 Y. SHIBA'IKE, *Tokushu hôjin no jôhô kôkai ni kansuru hôkoku-sho no kentô* [Analysis of the Final Report on Information Disclosure of Special Corporations], in: Jurisuto 1187 (2000) 39. It should also be noted that one may have access to the "raw" information only as long as it is already crystallized in existing documents.

32 "The significance of accountability can be found in re-externalization of responsibility. (Note: the Japanese word "*sekinin*" used in the original article here has multi-faceted meanings, including responsibility, liability, guilt, accountability, answerability, burden, and imputation; H. TAKIGAWA, *Sekinin no imi to seido* [Significance and System of Responsibility] (Tokyo 2000) 16. The abstract and vague understanding of responsibility, which is left to subjective or arbitrary judgment of whoever assumes it, is not appropriate here. One should understand responsibility concretely and objectively. It should be clearly stated, so that someone outside can call for it. 'Accountability' in its original meaning implies result-oriented responsibility of the accounter vis-a-vis the accountee, based on objective facts. To be sure, the English term has also the meaning of 'explanation,' but the word rather implies the basic attitude of disclosing the very facts and results. Judgment on those objective facts should be left to the people as the accountee." Y. IDE, *Kôkai paradaimu no juyô to henyô* [Acceptance and Transformation of the Disclosure Paradigm], in: Ide (ed.), *Kôza jôhô kôkai* [Information Disclosure] (Tokyo 2000) 127-128. However, one should keep in mind that this remark is given in order to criticize that the "right to know" was omitted in the AIDA and replaced by "accountability"="duty to explain", cf. p. 6.

33 H. TAKIGAWA, *Kôkai-sei toshite no kôkyô-sei* [Publicness as Openness], in: Hô-tetsugaku Nenpô 2000 (2001) 37.

In the case of the PCP, administrative organs are required to produce information materials and response to submitted comments.[34] However, since the procedure under the APA is a "one-and-a-half return trip" communication between administrative organs and the public, there will be no "coordination of a mutual constructive framework." In fact, as already mentioned, substantial changes to the original proposal in response to comments will be unlikely.

Therefore, it might be better to straightforwardly accept that there is always a gap of "constructive framework" between the administrative organs and comment-submitting citizens. Therefore, administrative organs have to classify and arrange information based on their own framework. The PCP's function is to make clear and keep record of the very gap between the administrative framework and people's opinion, which enables clarification of the responsibility and will gain significance in the "second policy cycle."

2. *To Whom Are They Accountable?*

As confirmed, so far the AIDA understands "accountability" as an issue for people's sovereignty. However, the actual legal scheme gives the right to request disclosure to "any person" without any limitation.[35] One reason for this can be a natural conclusion from a merely pragmatic point of view, since it is practically impossible to limit the right holders. One can easily sneak through the intention of a limitation, since anyone would be able to ask a right holder to request disclosure.[36]

There may, however, also be theoretical explanations to this "any person" clause. If accountability is understood as a relationship between the "principal" and the "agent,"[37] the question can be rephrased as "who is the principal?" Following this line of thought, it can be argued that the principal has expanded to include various stakeholders. For example, one can say that administrative organs today are also accountable to foreign residents[38] or to investors, all of them being potential addressees of administrative activities. The "any person" clause in the AIDA can also be seen as a necessity for offering a "global standard."[39]

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34 Cf. p. 9.

35 Cf. p. 7.

36 K. UGA, *Shin jôhô kôkai-hô no chikujo kaisetsu* [New Commentary on the Information Disclosure Act], (Tokyo 2010) 56-57.

37 Cf. R. GRAY / D. OWEN / C. ADAMS, Accounting & Accountability: Changes and Challenges in Corporate Social and Environmental Reporting (Upper Saddle River 1996) 38-39.

38 Some propose the somewhat radical viewpoint that the holders of sovereignty should not be limited to Japanese nationals but could be expanded to domiciled foreigners, M. TSUJIMURA, *Shimin shuken no kanô-sei* [Possibilities of Citizens' Sovereignty] (Tokyo 2002) 52, 180, 260, 290. However, even with this viewpoint, it would naturally be impossible to regard foreigners living abroad as holders of sovereignty.

39 SHINDÔ (note 27) 576. This way of thinking is similar to the discussion on environmental accounting.

The other line of thought is to understand "accountability" in the context of information disclosure not in relation to "the principal" but in relation to "the public sphere"; in other words, to understand administrative disclosure as openness against "the third party." Takigawa, who advocates this point of view, contends that "it is not the publicness that requires information disclosure. On the contrary, the publicness first emerges out of disclosure. Therefore it has to be assumed that there cannot be any publicness without openness."[40] However, he also argues that "national administration in today's society requires a certain publicness not only vis-à-vis its nationals but also vis-à-vis its foreign residents." It is not clear whether the rationale for a necessity of "publicness vis-à-vis foreigners" can be found in the universal "third party" character stated above or in their nature as stakeholders. In addition, Takigawa understands information disclosure in relation to the "fundamental responsibility," implying that one should respond when questioned by others. However, information submitted to the public sphere by the information disclosure system is basically passive and on an ad-hoc basis.

3. Result-oriented or Process-oriented Control?

The Policy Evaluation Act clearly incorporates a so-called PDCA cycle based on the idea of NPM. Information production plays a central role in understanding the effect of policies. Outcomes of policies are to be measured as quantitatively as possible and will be used as a performance indicator.[41] This result-oriented type of control probably fits well with the idea of "managerialism," which recommends giving more authority and resources to the frontline.[42]

However, not all of the ARLS and their practices seek such result-oriented control. Sometimes "accountability" is understood to be a tool to ensure compliance to procedural rules. In this case, control of administration will be rather process-oriented, and the administrative organs will be required to produce and submit more documents. The AIDA, the very pioneer of the ARLS, was expected to have such a function, determined by its legislative history combined with bureaucratic scandals.[43] Since the ARLS were placed in the context of distrust of bureaucracy and were linked with deregulation strategies, tension and dilemma between result-oriented and process-oriented control was almost unavoidable.[44]

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40 TAKIGAWA (note 33) 34-38.

41 Cf. p. 11.

42 Here the term "managerialism" is used in its broad sense, including "entrepreneurism," which is used in D. OSBORNE / T. GAEBLER, Reinventing Government (New York 1992) 250 *et seq*.

43 Cf. p. 12.

44 Yamatani argues that this dilemma or "confusion" comes from the unique situation in Japan, where (i) the administrative reform toward "modern" (the end of 19th century to the beginning of 20th century) administrative accountability and (ii) reform of management/accountability in the latter half of the 20th century had to proceed simultaneously, K. YAMATANI,

A conceptual relationship between "accountability" and "transparency" is interesting in this context. As pointed out above,[45] in 1993 the APA introduced the concept of transparency. It was enshrined in the Diet Law for the first time and defined as "clarity in the public understanding of the contents and processes of administrative determinations" (Art. 1). However, "the public" in this context was understood to be the subject parties of administrative dispositions and not the public in general. Since the AIDA clearly regulates accountability vis-à-vis the public in general, the distinction between transparency/accountability seemed to be clear-cut at this stage. However, since the APA amendment in 2005 introduced the PCP without amending its purpose clause,[46] this distinction is no longer evident.[47] Furthermore, if the result/process distinction is combined with this terminology issue, the problem becomes even more complex. While accountability has both result and process aspects, transparency would probably apply only to the latter. However, the PCP in the APA, which stipulates only transparency as its purpose, can be expected to produce information that is useful for a result-oriented control.

Currently there is a discussion on an AIDA amendment in the government on the initiative of the so-called "Team for Administrative Transparency" (*Gyōsei tômei-ka kentō chīmu* 行政透明化検討チーム). This team published an interim report in August 2010 that proposes to amend Article 1 of the AIDA and include the "right to know" and "administrative transparency."[48]

Seisaku hyôka no jissen to sono kadai [Practice and Tasks of Policy Evaluation] (Nara 2006) 230. On the other hand, Maikuma finds the root of such a dilemma in the conflict between new institutional economics and managerialism, two theoretical foundations of new public management, K. MAIKUMA, *NPM gata gyôsei sekinin sairon* [Reexamination of NPM Type Administrative Responsibility], in: Kaikei Kensa Kenkyû 25 (2002) 108. Also cf. R.A.W. RHODES, Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability (Buckingham/Philadelphia 1997) 48-49. Another practical dilemma can be found even within "result-oriented" control. The cost for information production prescribed by the ARLS may be too high, which will have the opposite effect of hampering efficiency of administration, cf. YAMATANI (in this footnote) 11.

45 Cf. p. 10.

46 Cf. p. 10.

47 Cf. TSUNEOKA (note 19) 51.

48 Interim Report of the *Gyôsei tômei-ka kentô chîmu* [Team for Administrative Transparency], Aug. 24, 2010, retrievable at: *http://www.cao.go.jp/sasshin/shokuin/joho-kokai/summary.html.*

IV. CONCLUDING REMARKS

If administrative activities are understood as an information processing system,[49] the ARLS can be seen as a set of rules imposed upon an administrative organ as one of the actors participating in a democratic process. These rules regulate how the administrative organ produces, crystallizes, and stores information in documents as a medium. They also define when and how the organs have the duty to provide this information to other actors. Each legal scheme can be classified and examined from the perspectives of what kind of communication arena the scheme will open up and how it would contribute in controlling administrative activities.

A further task will be to examine which other actors may appear at the implementation of each ARLS and what type of communication structure can be expected. It also has to be distinguished between the stages of an administrative process or of a policy cycle. As stated above, PCP's function can only be examined when the "second policy cycle" is taken into consideration.[50]

Probably it may not be so easy to regard the relationship between actors as a single principal-agent relation. Assuming the "principal" does exist, it cannot be regarded as something substantial rather than a construct of the partly stipulated systematic communication. An analysis of various communication types between multiple stakeholders will be necessary.

Another issue that asks for clarification is the agent-produced professional and technical nature of information. With regard to environmental audit, for example, some analysts point out the danger that if "the principal" is a layperson, that person would hardly be able to question a professionalized technique such as the process of audit. Systematized accountability tends to "fossilize and become an obstacle for necessary dialogues between the principal and the agent."[51] This is the risk of a systematized information production control since it can lead to an inversion of the "principal-agent" relation as well as to an impoverishment of communication.

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49 N. KADOMATSU, *Kôshi kyôdô no isô to gyôsei hôri-ron e no shisa* [Phases of Public-Private Collaboration and What They Suggest to the Theory of Administrative Law], in: Kôhô Kenkyû 65 (2003) 204.

50 Cf. p. 11.

51 K. KOKUBU, *Shakai to kankyô no kaikei-gaku* [Toward Social and Environmental Accounting] (Tokyo 1999) 133-134.

SUMMARY

*The concept of "accountability" (*akauntabiritî*) was introduced into Japanese public discussion in the middle of the 1990s and was translated as "duty to explain" (*setsumei sekinin*) in Japan. The concept was first introduced in the purpose clause of the Administrative Information Disclosure Act (1999) and was followed by three other laws (Incorporated Administrative Agencies, etc. Information Disclosure Act (2001); Government Policy Evaluations Act (2001); and Public Record Management Act (2009)). In this article, these laws and the Public Comment Procedure (1999 Cabinet Decision and 2005 amendment of Administrative Procedure Act) are referred to as "accountability-related legal schemes (ARLS)" and their features are examined. The ARLS need to be put into the context of the governance movement toward "structural reform" that began in the mid-1990s.*

This article compares and analyzes how "accountability" or "duty to explain" is to be attained in each ARLS under the following perspectives: (a) How and what do the administrative organs have to "explain"? (b) Who are the administrative organs accountable to? and (c) Does accountability focus on the outcome or the process?

The ARLS can be seen as a set of rules that are imposed upon an administrative organ as one of the actors participating in a democratic process. Such rules regulate how the administrative organ produces information and crystallizes and stores them in documents as a medium. They also regulate when the organ has to provide such information stocks to other actors. Each legal scheme should be examined from the perspectives of what kind of communication arena it will open up and how it would contribute to control administrative activities.

ZUSAMMENFASSUNG

*Das Konzept der „Rechenschaftspflicht" (*akauntabiritî*) geriet Mitte der 1990er Jahre in die öffentliche Diskussion in Japan und wurde dort als „Erklärungspflicht" (setsumei sekinin) übersetzt. Zum ersten Mal wurde es in die Zielbestimmungsklausel des Gesetzes über die Offenlegung von Verwaltungsinformationen (1999) aufgenommen, gefolgt von drei anderen Gesetzen: dem Gesetz zur Offenlegung von Informationen von Körperschaften des öffentlichen Rechts (2001), dem Gesetz über die Evaluierung der Regierungspolitik (2001) und dem Gesetz über die Behandlung öffentlicher Dokumente (2009). Im vorliegenden Aufsatz werden diese Gesetze und das Verfahren für Öffentlichkeitsbeteiligung (Kabinettsentscheidung von 1999 und Reform des Verwaltungsprozessgesetzes von 2005) als „accountability-related legal schemes" (Rechenschaftspflichtbezogene Rechtsmaßnahmen) oder ARLS bezeichnet und ihre Charakteristika untersucht. Die ARLS müssen im Zusammenhang mit der Bewegung der Regierungsführung hin zu Strukturreformen, die Mitte der 1990er Jahre begonnen haben, gesehen werden.*

Dieser Aufsatz vergleicht und untersucht wie die Ziele der „Rechenschaftspflicht“ oder der “Erklärungspflicht“ in folgenden Hinsichten erreicht werden können: a) Was und wie müssen Verwaltungsorgane „erklären“? b) Welche sind die rechenschaftspflichtigen Verwaltungsorgane? und c) konzentriert sich die Rechenschaftspflicht auf das Ergebnis oder das Verfahren?

Die ARLS können als eine Reihe von Regeln angesehen werden, die einem Verwaltungsorgan als einem der Akteure, die am demokratischen Prozess teilnehmen, auferlegt werden. Solche Regeln bestimmen, wie das jeweilige Verwaltungsorgan Informationen erzeugt, manifestiert und in Dokumenten als Medium speichert. Sie regeln auch, in welchen Fällen die Behörde solche gesammelten Informationen an andere Akteure übermitteln muss. Jede Rechtsmaßnahme sollte aus dem Blickwinkel heraus untersucht werden, welches Kommunikationsforum sie eröffnen wird, und wie sie zur Kontrolle von Maßnahmen der Verwaltung beitragen könnte.

(Übers. d. Red.)