

A Presidential Prime Minister: Japan's Direct Election Debate

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- I. Introduction
- II. Constitutional Issues Associated with Direct Election
- III. The Background of the Direct Election Debate
- IV. Direct Election in Context
 - 1. Direct Election as a Measure for Reform
 - 2. The "Presidentialisation" of the Prime Minister
- V. Direct Election and Prime Ministerial Power
- VI. Direct Election and Popular Political Participation
- VII. Risks of Direct Election
- VIII. Conclusion

I. INTRODUCTION

In August of 1999 the Diet of Japan voted to amend the Diet Law¹ to establish a new standing Research Commission on the Constitution in each House, representing the first serious consideration of constitutional amendment by members of the Diet in over 40 years. Stefan Wrбка has already examined the arduous process by which the Commissions were established in an earlier issue of this publication, in his discussion of one of the major themes studied by the Commissions: Upper House reform.²

To Wrбка's analysis I would add that the establishment of the Commissions came against the backdrop of nearly a decade of popular debate about the suitability of the Constitution to contemporary Japan and the need for revision. In contrast with previous decades, constitutional discussions since the early 1990s have focussed not only on the

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1 Law No. 79/1947.

2 S. WRBKA, The Research Commission on the Constitution and the Upper House Issue, in: ZJapanR / J.Japan.L. 11 (2006) 105.

controversial Article 9 – the clause which ostensibly prohibits Japan from possessing or exercising military force – but, as Wrbka’s article indicates, on a number of areas of the Constitution more generally. In 1994 the Yomiuri Shinbun newspaper published its first Yomiuri Draft for an entirely new constitution, mapped out by top constitutional scholars. This was soon followed by a rash of private drafts by politicians, promoted as a means of re-inventing Japan during its “lost decade”. In the latter half of the 1990s public opinion polls for the first time showed more respondents in favour of constitutional revision than against, and in recent years support has exceeded 50 and even 60 per cent.³

While Western media have often latched onto these figures as a sign that the Japanese public is becoming more pragmatic in its approach to Article 9, this in fact tells only half the story. In fact, the majority of the population continues to oppose amendment to Article 9.⁴ Rather, a number of other proposed amendments, dealing with human rights or democratic reform, have received popular currency, and none more so than the topic of this article: amendment to allow for the direct popular election of the Prime Minister. Direct election of the Prime Minister has consistently topped opinion polls as a favoured reason for constitutional amendment, has featured in many of the private drafts of the 1990s, and was considered by the Research Commissions more closely than any other non-Article 9 issue.

Direct election of the Prime Minister and other popular constitutional amendment issues have largely gone unnoticed in the West, yet arguably merit closer analysis. These issues have significantly contributed to discussions of constitutional revision becoming socially acceptable, and for public opinion rising ever in favour of revision. Given the public support for such issues it seems likely that the first amendment to be made to the Constitution will in fact be in an area other than Article 9. For this reason, however, some commentators suggest that the direct election issue is in fact just a populist “ice-breaker” issue, cynically promoted by revisionists to minimise the stigma of amending Article 9.⁵ This article will contend that direct election is a genuinely substantial issue, closely linked with broader political developments of the past decade.

After examining briefly the constitutional ramifications of introducing a direct election system in Part II, in Part III I will trace the background of the direct election debate, showing that while suggestions for directly electing the Prime Minister appeared as far back as 1946, true support did not emerge until the 1990s alongside popular discontent with party politics, reaching its crescendo in 2000-2001 with the transition

3 ‘61% in Japan Now Want Constitutional Revision’, UPI NewsTrack, 8 April 2005.

4 M. KITANO, Most Japanese Back Constitution’s Pacifist Clause, in: Reuters News, 5 October 2005.

5 GENDAI SHIRYÔ SHUPPAN (ed.) *Kenpô o Kangaeru (Dai 147 Kai Kokkai Shûgiin Kenpô Chôsakai Giroku)* [Thinking About the Constitution (Hansards from the Constitutional Committee of the 147th House of Representatives)] (Tokyo 2000) xi.

from the unpopular Prime Minister Yoshiro Mori to the wildly popular Prime Minister Jun'ichirō Koizumi. Koizumi was a long-standing advocate of direct election and in the lead-up to the Liberal Democratic Party presidential election, and again in his maiden policy speech, stressed his determination to put the issue firmly on the political agenda. Direct election has also drawn support from a number of other politicians (most notably former Prime Minister Yasuhiro Nakasone), the Japanese business community, and even the religious group Sōka Gakkai. One group that has definitely not been behind the direct election movement is constitutional and legal scholars, otherwise behind other proposed amendments such as the creation of new environmental or privacy rights or the establishment of a separate Constitutional Court.⁶ This suggests that the direct election debate is very much an active political, rather than simply an academic, debate.

Indeed, in Part IV it will be argued that support for direct election must be understood within the context of two key political developments of the past decade: widespread institutional and legal reform (particularly targeting the bureaucracy and party politics), and the trend towards the “presidentialisation” of the Prime Minister. Although presidentialisation has been noted in a number of parliamentary countries, there has been relatively little attention paid to this trend in Japan.⁷ Yet one needs only look at the tremendous impact of Koizumi over the past five years, as well as the lead-up to the appointment of now Prime Minister Shinzō Abe, to see the growing importance of charismatic leadership and personality-based politics in Japan.

From general discussions on the utility of direct election two broad aims can be discerned. The first is to increase the personal power or “leadership” of the Prime Minister by providing him⁸ with a persuasive popular mandate. The second is to make Japan's political system more representative, and in doing so restore public faith and engagement in politics. Parts V and VI of this article will consider the likely success of a system of direct election in achieving these respective aims in light of deeper institutional challenges in the Japanese political system, while Part VII will examine common concerns about the risks of implementing a direct election system in Japan.

6 F. KUBO, *Shushō kōsen-sei ni kansuru kōsatsu* [Considerations Relating to a Direct Election System], in: Advisory Council to Consider the Direct Election of the Prime Minister (ed.) *Shushō kōsen o kangaeru: sono kanōsei to mondai-ten* [Considering Direct Election of the Prime Minister: Possibilities and Problems] (Tokyo 2002) 52.

7 E.S. KRAUSS / B. NYBLADE, ‘Presidentialization’ in Japan? The Prime Minister, Media and Elections in Japan, in: *British Journal of Political Science* (2005) 357.

8 For the sake of simplicity and fluency, this article will refer to the Prime Minister as “he” when making reference in the abstract. This should be seen as a reflection less of any personal prejudices and more of the unfortunate reality of the gender composition of Japanese politics.

II. CONSTITUTIONAL ISSUES ASSOCIATED WITH DIRECT ELECTION

Before proceeding with an analysis of the direct election issue, it is appropriate to briefly define “direct election” as it is envisaged by the debate. This is surprisingly problematic, since, despite the long history of the direct election debate, there is as yet no consensus on what form constitutional amendment may take. Proposed constitutional models range from minor changes to the current parliamentary system to a semi-presidential system. Indeed it is not even settled that election of the Prime Minister should be by direct ballot: the Japanese term, *shushô kôsen*, is perhaps better translated as “popular” election. Alternate methods, such as an electoral college or public referendum to ratify the Prime Minister’s selection by the Diet, have also been suggested.⁹

Rather, the debate until now has largely been one of principle. (In this the direct election debate is somewhat like the Article 9 debate, whereby altering the constitutional principle of pacifism is far more contentious than whether the specific amendment is simply a recognition of the Self-Defence Forces, or restoring the right of “belligerency”.) Shortly after coming to power in 2001 Koizumi established an “Advisory Council to Consider the Direct Election of the Prime Minister”,¹⁰ with the aim of constructing a concrete constitutional model against which direct election could be debated more substantially and consistently. The Advisory Council settled on two models, set out below.

It is certain that a true system of direct election is not possible without amendment to the current Constitution. Article 67(1) of the Constitution requires that, “The Prime Minister shall be designated from among the members of the Diet by a resolution of the Diet”. In conventional practice the Prime Minister is not designated by the Diet *per se*, but rather is the leader of the party with the greatest number of seats in the House of Representatives. For most of the post-war period the Liberal Democratic Party (LDP) has held a majority in the House and the appointment of its party leader as Prime Minister has simply been a matter of course. The true negotiation over the selection of the Prime Minister has instead occurred within the LDP itself; a process which traditionally excludes the public and ignores popular opinion. Both Article 67 of the Constitution and conventional practice therefore unambiguously exclude the possibility of direct public election.

How, precisely, Article 67 should be amended to facilitate direct election raises a number of associated issues. How would the Prime Minister be elected? How could he be dismissed? Would the Prime Minister be a member of the Diet, or would there be a separation of powers? How long would a prime ministerial term be, and would the

9 See, e.g., T. HAYAKAWA, *Jidai ni atta atarashii kenpô o tsukuru* [Making a New Constitution to Match the Times] (Tokyo 1999) 110; M. ÔISHI, *Kokumin no kokusei sanko no to o tô hirogeru ka* [How to Increase the Public’s Participation in National Politics?], in: Advisory Council (*supra* note 6) 30.

10 “*Shushô Kôsen o Kangaeru Kondan-kai*”: Official English translation taken from Prime Minister’s website, www.kantei.go.jp.

number of terms be restricted? Would the Prime Minister have the power to dissolve the Diet? And what criteria would determine the eligibility of candidates?

The two constitutional models proposed by the Advisory Council illustrate the range of possible permutations. The first model is largely based on a US-style presidential system, and in many ways resembles a private constitutional plan drafted by former Prime Minister Nakasone (a long-time advocate of direct election) in 1961.¹¹ Under this system the public would directly elect the Prime Minister and his nominated Deputy Prime Minister, who would form an executive Cabinet external to the Diet. Terms of office would be four years, and each Prime Minister would be limited to two consecutive terms. Otherwise the Prime Minister and Cabinet could be dismissed only by a resolution of two-thirds of the House of Representatives. Needless to say, this model involves a significant departure from the current Constitution and considerable re-writing of Chapter V.

The other model suggested by the Advisory Council assumes the continuation of parliamentary government. Under this model, the Constitution would be amended to recognise the existence of parliamentary political parties, and to place a duty on parties to consult public opinion in choosing party leaders. A single-member constituency electoral system would be introduced, and parties would need to make clear their party leaders ahead of elections. The intended effect would be to make House of Representatives elections quasi-prime ministerial elections. In other words, constitutional changes would be made to bring Japan closer to Westminster parliamentary convention, and would not technically be a *direct* election system at all. (The perceivable flaw with this model is that it assumes that Japan will become a two-party system, with one party or the other always holding a stable majority, rather than the three-party system that Japan appears to be moving towards today.)

The above models could be said to represent two extremes of the direct election debate. It is possible also to suggest a third, “middle” option: a fused parliamentary-presidential system, similar to that introduced in Israel in 1992, whereby the Prime Minister and Cabinet would continue to be members of parliament, but the Prime Minister be directly elected from a list of candidates at House of Representatives elections. This model certainly appears to be the assumption of much of the discourse on direct election.

Enabling direct election would also require amendment to Article 6 of the Constitution, which states that the Emperor appoints the Prime Minister “as designated by the Diet”. It is not resolved whether amendment would simply be one of form, or whether Imperial appointment would be removed altogether. While the Advisory Council among others suggests that Imperial appointment be retained to emphasise the Emperor’s constitutional authority, there may also be a case that Imperial appointment would breach

11 [Unpublished], taken from www.takaoka.ac.jp/news/2002/10-01/resume/rej-04.PDF.

the constitutional principle of popular sovereignty by intersecting the popular will. After all, while the Emperor does nominally appoint official figures as designated by Cabinet (Article 7), he does not appoint directly elected figures such as individual Diet members or prefectural governors.

The role of the Emperor is an issue that particularly sticks in the craw of direct election's more conservative detractors, who argue that a semi-presidential Prime Minister would be inconsistent with the Emperor's role as head of state.¹² In fact, the Emperor's status is not clearly spelt out in the Constitution, with the very first article designating him as a "symbol" of the state. Both the Diet Constitutional Committees and the LDP's own party constitutional committee decided against amendment to clarify the Emperor's status.¹³ Nevertheless, the fact that suggestions for direct election should be so concerned with the role of the Emperor indicates that support for direct election should be seen as a measure of political reform, rather than an ideological republican movement.

III. THE BACKGROUND OF THE DIRECT ELECTION DEBATE

In one sense the direct election debate is in fact as old as post-war Japanese politics. Direct election of the Prime Minister appears to have first been suggested in 1945 by constitutional scholar Professor Junji Nomura, a member of the Shidehara Cabinet-appointed Matsumoto Constitutional Committee.¹⁴ A presidential system of government was also strongly advocated the following year by Nakasone, then a junior member of parliament, during the Diet debates preceding the promulgation of the GHQ-drafted constitution.¹⁵ Nakasone revived his arguments for direct election a decade later when a member of the original 1950s Constitutional Commission,¹⁶ from which it appears to have achieved some popular currency. Then-Prime Minister Hayato Ikeda considered the issue at the time, but, concerned by the broader implications of constitutional

12 Y. HATAYAMA, A New Liberal Manifesto, in: Japan Echo (1999) 27, 31.

13 HOUSE OF REPRESENTATIVES CONSTITUTIONAL COMMITTEE, *Shūgi-in kenpō chōsa-kai hōkoku-sho* [Final Report of the House of Representatives Constitutional Committee] (2005) 232; HOUSE OF COUNCILLORS CONSTITUTIONAL COMMITTEE, *Nihon-koku kenpō ni kansuru chōsa hōkoku-sho* [Final Report on the Inquiry into the Japanese Constitution] (2005) 62; 'LDP Panel Drafts New Constitution Calling for "Self-Defense Military"', Asahi Evening News, 2 August 2005.

14 Y. KATŌ, *Nihon seiji no kakkō no kyōzai* [Materials on the Shape of Japanese Politics], in: Advisory Council (*supra* note 6) 127-128.

15 H. ROWEN, A Western Easterner, in: Washington Post, 27 October 1985.

16 R.E. WARD, The Commission on the Constitution and Prospects for Constitutional Change in Japan, in: Journal of Asian Studies (1965) 401, 412. See Wrбка's article (*supra* note 2) for more details on the Commission on the Constitution appointed in 1956 by the Hatoyama cabinet.

amendment, postponed acting on it until popular opinion was “passionately” in favour, and public attention instead shifted to his economic policies.¹⁷

After being confined to a purely academic subject for several decades, direct election was revived as a political issue by the appointment of a bi-partisan Diet study group on direct election in 1993, in response to widespread dissatisfaction with the administration of Prime Minister Kiichi Miyazawa and calls for greater public participation in the process of selecting the Prime Minister. In the latter half of the 1990s, as popular support for the issue grew, direct election became a founding policy of the Democratic Party of Japan (DPJ) and was also actively promoted by Sôka Gakkai (and, consequently, Kômeitô).¹⁸ Significantly, from around 1997 opinion polls began to show for the first time more respondents in support of constitutional revision than opposed. Direct election of the Prime Minister was invariably given as the top reason.

Popular support for direct election appears to have reached its pinnacle in 2000, in inverse proportion to the plummeting popularity ratings of Prime Minister Mori. A national opinion poll conducted by the Sankei Shinbun newspaper just prior to Mori's resignation showed 74 per cent of respondents in favour of direct election.¹⁹ More than half of all Diet members also claimed to be in support.²⁰ The Diet Constitutional Committees established that year considered direct election on no fewer than eight occasions, as did the specially convened Prime Minister's Commission on Japan's Goals in the 21st Century. Also in 2000 a private citizens group, the “Council for the Direct Election of the Prime Minister”, was formed to campaign on the issue. In the following year alone no fewer than five books on the subject were published.

This impetus was seized by Koizumi upon his appointment in 2001. Interest in direct election was likely increased in 2001 in part because Koizumi was, to an extent, himself popularly elected: in the 2001 party presidential election a number of rank-and-file LDP members from each local branch were allowed for the first time to cast ballots alongside the parliamentary party. Although Ryûtarô Hashimoto was the logically inevitable candidate (heading as he did the largest faction) Koizumi was by far the popular favourite; in one public opinion poll receiving 65 per cent support to Hashimoto's 8 per cent.²¹ Consequently Koizumi received 87 per cent of the rank-and-file votes, and was

17 ‘*Shushô kôsen tsuyoi seiji motomeru kokumin no yume, gutai-ron de wa kakujin kakusetsu* [Direct Election of the Prime Minister: Dream of the People Who Long for Strong Government, but the Details Vary from Person to Person]’, Mainichi Shinbun, 28 January 2002.

18 A. WASHIO, Hatoyama Calls for Change, in: The Japan Times, 15 September 1996; K. MURAYAMA, Soka Gakkai Official Spreads Light on Komeitô's Direction, in: Japan Economic Newswire, 15 March 1999.

19 ‘*Konshû no yoron chôsa kara: shushô kôsen-sei ni sansei 73%* [This Week's Opinion Poll: 73% Approve of a Direct Election System]’, Sankei Shinbun, 16 April 2001.

20 T. YAMASAKI, *Dôgi kokka o mezashite kenpô kaisei* [Constitutional Revision for a Moral Country] (Tokyo 2001) 131.

21 ‘*Konshû no yoron chôsa kara: jimintô akaretenai 84%* [This Week's Opinion Poll: The LDP Isn't Open- 84%]’, Sankei Shinbun, 3 April 2001.

able to secure the presidency. No doubt seeing the people's choice achieve the prime ministership aroused public sentiment conducive to further popularly-based appointments.

In the past five years momentum for direct election, both political and popular, appears to have slowed. It is clear that currently only a minority of lawmakers continue to support direct election, and certainly nowhere near the two-thirds majority that would be necessary for constitutional amendment. According to the final reports of the Research Commissions handed down in 2005, the majority of commission members opposed direct election.²² So too have the constitutional committees of the major parties (created to form policies based on the Diet Commissions' recommendations) been muted on direct election, despite it formerly being a platform policy for the DPJ and Kômeitô in particular. In what is apparently the most recent opinion poll specifically on direct election, conducted in 2003, public endorsement also had dropped to 63 per cent.²³ Current Prime Minister Shinzô Abe does not appear to have expressed a firm position on direct election, but in any event will almost certainly prioritise amendment to Article 9. It is therefore probable that amendment for the direct election of the Prime Minister will not be implemented in the very near future.

This drop in support has no doubt been in part a consequence of Koizumi's prime ministership. Koizumi's very selection and his strong, pro-active leadership style demonstrated that the type of leader that direct election is hoped to produce can, to an extent, exist within the confines of the current constitutional system. Moreover, Koizumi's leadership style proved unpopular among Diet members, particularly factional and *zoku* leaders of the LDP, who complained that his policy-making style was autocratic and non-consultative.²⁴ If direct election genuinely is able to strengthen prime ministerial leadership, these groups no doubt see Koizumi's prime ministership as an omen of their decline. Nevertheless, it will be argued that support for direct election can be expected to re-emerge in the future.

22 HOUSE OF REPRESENTATIVES CONSTITUTIONAL COMMITTEE (*supra* note 13); HOUSE OF COUNCILLORS CONSTITUTIONAL COMMITTEE (*supra* note 13) 174.

23 '*Kenpô wa ima: yoron chôsa ni miru kokumin ishiki; tasû wa 'kaisei sansei', demo kanshin wa imahitotsu* [This Is the Constitution: The People's Consciousness According to an Opinion Poll; the Majority 'Approve of Amendment', but Awareness Is Lacking]', *Yomiuri Shinbun*, 17 February 2003.

24 A.G. MULGAN, *Japan's Failed Revolution: Koizumi and the Politics of Economic Reform* (Canberra 2002) 139.

IV. DIRECT ELECTION IN CONTEXT

1. *Direct Election as a Measure for Reform*

Japanese politics for the better part of the past two decades has been marked by an ongoing process of reform – political, economic and legal – triggered by the shock of the burst of the bubble economy in the early 1990s. Some commentators point to this period as a “third wave” of national reinvention, equivalent to the Meiji Restoration or the post-war occupation.²⁵ Reform has sought to cure not only economic inefficiencies, but also endemic problems in Japan’s system of government no longer tolerable to the public in a period of economic slowdown. The electoral popularity of reformist politics has dramatically changed the political landscape, beginning with the collapse of the so-called ‘55 system of LDP dominance in 1993, and the emergence of popular reformist politicians such as Koizumi and Tokyo Governor Shintarô Ishihara. The direct election movement should properly be placed within the context of this wider movement for political and legal reform.

One source of public discontent targeted by reforms in this period has been the role of the bureaucracy, traditionally perceived as the driving force behind policy-making in Japan. In a 2003 opinion poll, respondents ranked the bureaucracy as the most powerful institution in Japan (the Prime Minister was placed fourth).²⁶ For a long time bureaucratic dominance was publicly tolerated, in part because of a history of deference to the bureaucracy, and in part because bureaucrats were seen (in contrast with politicians) as competent professionals, selflessly dedicated to the national interest. However, public confidence in the bureaucracy has been eroded in the past decade by a series of corruption scandals and revelations of profligate public spending and incompetency. So too was Japan’s economic collapse of the early 1990s blamed on the interventionist policies of the economic ministries.²⁷ Significantly, in a number of cases the bureaucracy has actually sought to cover up its wrongdoing and stonewall internal investigations. The upshot is that the bureaucracy has lost its legitimacy as the defender of the public good. In 1994 around 50 per cent of Japanese claimed to lack trust in the bureaucracy.²⁸ By 2004 that figure had risen to 77 per cent.²⁹

25 *E.g.* J. KINGSTON, *Japan’s Quiet Transformation: Social Change and Civil Society in the Twenty-First Century* (London 2004) 2.

26 ‘*Kanryô to kotonaru shushô no sekinin gensoku* [The Prime Minister’s Principle of Responsibility, Unlike the Bureaucracy]’, *Yomiuri Shinbun*, 30 June 2003.

27 R. MATSUBARA, *Why Bureaucrats Don’t Serve the Public Interest*, in: *Japan Echo* (Autumn 1996) 12.

28 M. TANIKAWA, *Japan – Unhappy with the Service: Public criticizes its public servants*, in: *Far Eastern Economic Review*, 12 October 1995, 32.

29 ‘*Konshû no yoron chôsa kara: kanryô shinrai dekizu 77%* [This Week’s Opinion Poll: 77% Can’t Trust the Bureaucracy]’, *Sankei Shinbun*, 27 December 2004.

A number of reforms implemented in the past decade have been aimed at weakening bureaucratic control of policy, including economic liberalisation and deregulation (reducing bureaucratic interference in the economy); the 2000 ministerial reorganisation, breaking up more powerful ministries to reduce their influence; and the de-centralisation of bureaucratic functions among prefectural and local government agencies.³⁰ Several administrative reforms, such as the Administrative Procedure Law³¹ and Information Disclosure Law³², introduced to improve bureaucratic transparency and accountability, are administered by the Prime Minister's own Cabinet Office. So too has the Cabinet Office's policy department been expanded to take the responsibility for drafting nationally significant policy out of the hands of the bureaucracy.³³ Given that direct election in part seeks to centralise and strengthen policy-making powers in the Prime Minister, it can arguably be seen as another such measure, giving the Prime Minister greater policy autonomy as well as an ombudsman-like role to oversee government departments.

Reforms since the 1990s have also sought to respond to popular perceptions of politicians – government politicians in particular – as unresponsive to the public will and inadequately representative. Frustration with the LDP in particular as well as routine revelations of corruption prevented the LDP from re-attaining an absolute majority in the House of Representatives until the 2005 election. One element of this dissatisfaction has focussed on the traditional exclusion of the public from, and lack of transparency in, the selection of the Prime Minister, determined instead by the LDP's factions. The high turnover rate of Prime Ministers has meant that the public seldom has a chance to demonstrate personal approval or disapproval at general elections. Because the Japanese Prime Minister rarely resembles the people's choice (often being more a skilled factional player than a charismatic leader), and in any event has a short tenure, there is usually little rapport between the Prime Minister and the public. According to the Advisory Council, popular dissatisfaction with the process of selecting party leadership is a key reason for the direct election movement.³⁴

Several reforms of the past decade have been aimed at making politics and politicians more representative. Televised parliamentary "question time" has been introduced to broaden the appeal of politics and improve transparency. The LDP has introduced rank-and-file ballots for its party presidential elections, as has the DPJ. In its most recent party presidential election the LDP took a number of steps to further

30 M. FUKUOKA, *Te ni toru yô ni seiji no koto ga wakaruru hon* [A Handbook to Understanding Politics] (Tokyo 2002) 124-129.

31 Law No. 88/1993.

32 Law No. 42/1999.

33 T. SHINODA, Japan's Cabinet Secretariat and Its Emergence as Core Executive, in: *Asian Survey* 45 (2005).

34 ADVISORY COUNCIL TO CONSIDER THE DIRECT ELECTION OF THE PRIME MINISTER, *Shushô Kôsen o Kangaeru Kondan-kai hôkoku-sho* [Advisory Council to Consider the Direct Election of the Prime Minister Final Report], in: Advisory Council (*supra* note 6) 157.

increase public participation, including “block meetings”, at which the main candidates spoke to party branches on their personal policy platforms. Perhaps most significant has been the 1994 reform to the electoral system: changing it from a system of multiple-member constituencies to a combination of single-seat and proportional constituencies, while also limiting campaign funding. It was hoped that the new arrangement would weaken factional influence in the LDP and eventually lead to the creation of a two-party system, allowing the public to influence the selection of the Prime Minister and making parties more responsive to voter wishes.³⁵ In this sense direct election can perhaps be seen as a further step in electoral reform. Discussions of direct election are often run alongside proposals to introduce a full single-seat constituency system: the ultimate aim of the major parties.

That support for direct election throughout the 1990s has been part of a broader reform movement can perhaps be evidenced by its proponents. Its most vocal advocates, Nakasone and Koizumi, were also two of the most reformist and “presidential” Prime Ministers in recent Japanese history. Other reformist politicians supporting direct election include Shintarô Ishihara,³⁶ former DPJ leader Yukio Hatoyama,³⁷ and popular Yokohama mayor Hiroshi Nakada, who in 2001 edited a book of essays on direct election.³⁸ Within the LDP support appears to have come from the younger LDP legislators, particularly members of the party’s *83-kai*, or, the so-called Koizumi Children.³⁹ It is the younger legislators of the LDP that have agitated for many of the political reforms of the past decade, and who are rejecting the LDP’s factional hierarchical system of Cabinet appointment in favour of merit-based selection. Osamu Watanabe alternately makes the case that the direct election issue, and indeed the entire constitutional revision debate, has been mounted by the Japanese business community, hoping to create a stronger Prime Minister better able to push through economic reform.⁴⁰

2. *The “Presidentialisation” of the Prime Minister*

Why, then, if there has always been dissatisfaction with prime ministerial selection, should support for direct election emerge now? Takeshi Sasaki points out that discussion of direct election did not emerge during earlier scandals and reform movements before

35 G. CURTIS, *The Logic of Japanese Politics: Leaders, Institutions and the Limits of Change* (New York 1999) 138-139.

36 ‘*Kokumin wa Ishihara Shintarô o eranda: tokubetsu intabyû* [The People Chose Shintarô Ishihara: Special Interview]’, *Bungei Shunjû* (2000) 116.

37 WASHIO (*supra* note 18).

38 H. NAKADA, *Ima shushô kôsen o kangaeru* [Thinking About Direct Election Now] (Tokyo 2001).

39 T. ANDO, *Constitutional Reform Is Hard Work*, in: *Nikkei Weekly*, 9 May 2005.

40 O. WATANABE, *Kenpô “kaisei” wa nani o mezasu ka?* [What Is the Aim of Constitutional “Revision”?] (Tokyo 2001) 29-30.

the 1990s.⁴¹ Moreover, if there is sentiment for reducing bureaucratic influence in policy-making, why should power be channelled towards the Prime Minister individually, and not the Cabinet as a whole? Or continue be spread among regional levels of government? The desire for a stronger Prime Minister, and impetus for direct election, can arguably be traced to the more recent trend of the “presidentialisation” of the Prime Minister in Japan. That is to say, there is a greater centralisation of power in the office of the Prime Minister, and greater public interest in the individual office-holder himself than in the majority party as a whole. This stands in contrast with the Prime Minister’s traditional role as “articulator of consensus”.⁴²

Presidentialisation as a phenomenon is certainly not unique to Japan. Governments in a number of parliamentary democracies have become increasingly centralised, with parliamentary elections hinging on the popularity and personality of party leaders. Kenji Hayao states two reasons for the trend towards presidentialisation both in Japan and elsewhere. Firstly, the increasing complexity of governance and economic management since the Second World War, particularly as a result of globalisation, has created demands for strong and incisive decision-making by a central authority. Secondly, improved technological developments in transport and communications have enhanced the mobility and visibility of the Prime Minister in everyday life.⁴³ Indeed, Ellis Kraus and Benjamin Nyblade link presidentialisation in Japan to increasing political coverage on commercial television since 1985.⁴⁴ Demographic change may also be partly responsible, with Japan’s increasing urbanisation, combined with the 1994 electoral reforms, shifting significance away from local pork politics and towards national politics and political leadership.

The presidentialisation of the Prime Minister appears to have first been identified in the 1980s, with the self-styled “presidential” prime ministership of Nakasone.⁴⁵ Similarly presidential tendencies can be seen in other popular Prime Ministers since: Morihiro Hosokawa, Ryûtarô Hashimoto and Koizumi. The public has responded well to the leadership qualities demonstrated by each, and buoyed them with a sufficient mandate to implement an albeit limited reform agenda. One need only look to Koizumi’s initial cult status and electoral success to see the increasing importance of prime ministerial leadership and personality to the public. Personality was the defining factor between the popularity of Koizumi and his predecessor, Mori, who were, after all, from the same

41 T. SASAKI, *Shushô kôsen-sei ron to gendai nihon no seiji* [The Direct Election Debate and Contemporary Japanese Politics], in: Advisory Council (*supra* note 6) 5.

42 R.C. ANGEL, Prime Ministerial Leadership in Japan: Recent Changes in Personal Style and Administrative Organisation, in: *Pacific Affairs* (1988) 583.

43 K. HAYAO, *The Japanese Prime Minister and Public Policy* (Pittsburgh 1993) 43.

44 KRAUSS / NYBLADE (*supra* note 7) 357-368.

45 M. MURAMATSU, In Search of National Identity: The Politics and Policies of the Nakasone Administration, in: *Journal of Japanese Studies* (1987) 307.

party and even the same faction. No doubt the presidentialisation of the Prime Minister has also been stimulated in part by the prominence of popular mayors and prefectural governors, who under Article 93 of the Constitution are required to be directly elected. Certainly real interest in direct election coincided with the emergence of strong, independent governors.⁴⁶

The increasingly significant role of the Prime Minister has been manifested by a number of reforms since the 1990s which have (at face value) shifted policy-making power to the Prime Minister individually. The size of the Cabinet Office has increased three-fold from 2001. So too has the number of private secretaries and special policy advisors that the Prime Minister can appoint increased.⁴⁷ From 2001 the creation of the Economic Policy Council has given the Prime Minister greater control over the drafting of national budgets. The new National Emergency Laws (*Yûji-hô*) also grant the Prime Minister statutory emergency powers to over-ride the Cabinet in dealing with natural disasters or terrorist attacks.

Similarly, there are a number of alternate, but less radical, suggestions for constitutional amendments to augment or better clarify the Prime Minister's powers. The Yomiuri Draft proposes emphasising the Prime Minister's role under Article 66 as "representing (*daihyô*) and leading (*tôsotsu*)" the Cabinet, and changing his executive powers from "supervising" (*shiki kantoku*) to "presiding over" (*tôkatsu*) the executive arm.⁴⁸ Taku Yamasaki, among others, suggests changing Article 66 from, "Executive power is vested in the Cabinet", to, "Executive power is vested in the Prime Minister", and accordingly making the Prime Minister alone responsible to the Diet.⁴⁹ There is also a perceived need to constitutionally provide the Prime Minister with emergency powers, beyond those of the *Yûji-hô*.⁵⁰ Although passive on direct election *per se*, the major parties and Research Commissions generally approve of constitutionally strengthening prime ministerial powers in some way.⁵¹ By way of contrast, the original 1950s Commission was not at all concerned with prime ministerial powers, and if anything was far more supportive of expanding the constitutional role of the Emperor.

46 SASAKI (*supra* note 41) 7.

47 SHINODA (*supra* note 33) 807.

48 H. ODA, *Shushô no shidô-ryoku kyôka to kinkyû jitai jôkô shinsetsu* [Strengthening the Prime Minister's Leadership Abilities and Establishing Emergency Powers], in: The Yomiuri Shinbun Company (ed.), *Kenpô kaisei: Yomiuri shian 2004-nen* [Constitutional Revision: The 2004 Yomiuri Draft] (Tokyo 2004) 200.

49 YAMASAKI (*supra* note 20) 144-145.

50 ODA (*supra* note 48) 206.

51 HOUSE OF REPRESENTATIVES CONSTITUTIONAL COMMITTEE (*supra* note 13); HOUSE OF COUNCILLORS CONSTITUTIONAL COMMITTEE (*supra* note 13) 171.

V. DIRECT ELECTION AND PRIME MINISTERIAL POWER

As indicated above, one of the principal aims of constitutional amendment for the direct election of the Prime Minister is to enhance his policy-making powers. There is a common consensus that the Japanese Prime Minister is one of the weakest leaders in the democratic world. From a purely constitutional perspective there is no reason why this should be so: the Prime Minister's powers do not appear significantly different from those of Prime Ministers in other parliamentary countries, and indirect election hardly diminishes their authority. In fact, for the most part, the forces that conspire to constrain the Prime Minister's policy-making powers are not constitutional at all, but have to do with Japan's political culture and institutional framework. There are numerous arguments as to the dynamic of power politics in Japan. The purpose of this section is not to solve the question of "who governs Japan", but simply to demonstrate that, whoever does govern, it is certainly not the Prime Minister. Constitutional amendment, then, may have limited effectiveness in increasing prime ministerial power.

To begin with, the Prime Minister is subject to a number of legal constraints not set out in the Constitution. For example, the Cabinet Law⁵² limits the number of ministerial portfolios that can be distributed and the number of upper-level bureaucrats in each ministry that the Prime Minister can personally appoint. It also mandates that Cabinet decisions on policy and legislation be taken on a consensus rather than majority basis, meaning that the Prime Minister technically has no greater authority over policy than any other minister. Nor is he able to directly command individual ministries without Cabinet approval, making it impossible for him to over-ride a Cabinet deadlock. Keigo Komamura argues that the amendment of the Cabinet Law would be far more effective than amendment to the Constitution itself.⁵³

Several other institutional constraints are in fact inherent not in the post of Prime Minister itself, but are associated with LDP. Although they rarely influence policy directly, the party's factions have traditionally limited the Prime Minister's effectiveness by frequently rotating the prime ministership and Cabinet portfolios in order to lever their members into positions of power. The vulnerability of the Prime Minister to removal has traditionally required him to spend inordinate time tending to internal party affairs and responding to factional demands, distracting time and attention away from matters of state.⁵⁴ The need to make factional concessions in Cabinet appointments has stifled the Prime Minister's discretion in forming a policy team, while individual ministers have been less than loyal to the Prime Minister's agenda.⁵⁵

52 Law No. 5/1947.

53 K. KOMAMURA, *Dai-16-sho: nihon rikken shugi sono mono no sai-settei o* [Chapter 16: Re-Establish Constitutionalism Itself in Japan], in: H. Katô (ed.) *Kenpô kaikaku no kôsô* [Framework for Constitutional Reform] (Tokyo 2002) 164.

54 YAMASAKI (*supra* note 20) 131.

55 A.G. MULGAN, Japan's Political Leadership Deficit, in: *Australian Journal of Political Science* 35 (2000) 183, 190.

It is hoped that by shifting the power to select the Prime Minister from the majority party into the hands of the public the influence of the factions could be reduced; yet to some extent it appears that measures to increase public participation in the LDP presidential election have already achieved this. Koizumi and now Abe were both elected across factional lines, while Koizumi used his popularity to stay in power longer than nearly any post-war Prime Minister. Both Prime Ministers have also utilised their relative independence to appoint (and re-appoint) technocratic Cabinet members to implement specific policy objectives.⁵⁶ Nevertheless, it may yet be too early to predict the collapse of the factional system.

Furthermore, notwithstanding Koizumi's record tenure, it remains the case that Japanese Prime Ministers have an inordinately short term of office. Under the LDP constitution party presidents are appointed on only a two year basis, with a maximum total term of five years. This is barely a single term of the House of Representatives, although two-year presidencies are more common. Consequently, Japan has one of the highest turnover rates of Prime Ministers in the world. The limited tenure makes it difficult for Prime Ministers to pursue a long-term policy agenda. In addition, since it is rare for Prime Ministers to be party leaders in successive Diet elections, it is difficult to interpret election results as personal mandates to pursue policy goals.⁵⁷ It is hoped that with the security of a longer tenure and a clearer mandate Prime Ministers would be able to better dedicate themselves to the affairs of state, and more consistently implement reform.⁵⁸ Direct election has allowed some prefectural governors to stay in power for as long as 24 years.⁵⁹

A more significant constraint within the LDP is the Policy Affairs Research Council (or PARC), the convergence point of the party's various informal policy *zoku*. Each *zoku* or "tribe" is made up of a number of members of parliament who specialise in a particular area of policy. Before any government-sponsored policy can reach the Cabinet for discussion it must first be approved by the PARC. The original rationale for this restriction was to afford the LDP greater independence in policy-making by researching policy and preventing Cabinet from simply blindly following bureaucratic advice. Yet in reality the *zoku* have become direct conduits for the bureaucracy and other vested interest groups to influence policy while bypassing the Cabinet altogether.⁶⁰ Through the PARC the *zoku* are able to lobby for specific policy outcomes, and frustrate or amend Cabinet policy.

56 H. NAKATA, New Lineup a Good Indicator Where Policy Emphasis Will Be, in: The Japan Times, 27 September 2006.

57 SASAKI (*supra* note 41) 12.

58 WATANABE (*supra* note 40).

59 Governor Suketaka Matsukata of Miyazaki Prefecture.

60 SASAKI (*supra* note 41) 146.

Ending the process of prior policy approval by the PARC is a commonly cited measure for increasing prime ministerial power. Even reform panels within the LDP itself have called for its removal. Makoto Ôishi argues that the PARC process may well be unconstitutional, since the Constitution designates the power to introduce bills to the Diet to the Cabinet, not the governing party as a whole.⁶¹ Direct election of itself would not alter this process: even a directly elected LDP prime minister would need the support of his party to implement policy, requiring prior PARC approval. Moreover, as informal bodies within the governing party, the *zoku* may have little electoral incentive to respect a prime ministerial mandate over the interests of their constituent interest groups.

Nevertheless, while the above constraints may not be cured by constitutional amendment, they can potentially be resolved by changing the Cabinet Law or LDP party rules. A constraint that has proved harder to resolve has been the dominant role of the bureaucracy in policy-making. Differences exist as to precisely how influential the bureaucracy is. While theories which see the entire Japanese economy centrally planned and orchestrated by the financial ministries are no longer widely accepted, most commentators would agree that the Japanese bureaucracy is more influential than that of most Western democracies. Administrative reforms over the past decade appear to have only been partially successful in combating bureaucratic power.⁶²

There are several reasons for the traditional dominance of the bureaucracy. The first is that the bureaucracy has traditionally recruited from an elite and often privileged body of graduates from prestigious universities that might ordinarily be expected to enter political life in other countries. Japan's "natural leaders", in a sense, are bureaucrats, rather than politicians. Perhaps because of its historical sense of legitimacy, the bureaucracy has tended to pursue its own agenda and leave the business of politics to the politicians. Anecdotal evidence suggests that where government and bureaucratic policy differ, ministries often seek to undermine government authority by evading and defying ministerial directions.⁶³ On the other hand, Curtis Milhaupt and Mark West have demonstrated that reforms to the Japanese legal admissions process in the 1990s appear to be siphoning an increasing number of "ivy league" graduates into legal rather than bureaucratic careers.⁶⁴

Another reason for the bureaucracy's dominance is its monopolistic control of information, severely limiting the ability of the Prime Minister and Cabinet to make informed, independent policy decisions. The Prime Minister and Cabinet have traditionally had one of the smallest support staffs of all industrialised democracies, with the

61 ÔISHI (*supra* note 9) 46.

62 KUBO (*supra* note 6) 60.

63 MULGAN (*supra* note 55) 187.

64 C.J. MILHAUPT / M.D. WEST, Is the Japanese Bureaucracy Hollowing Out? Evidence from the Market for Legal Talent, in: *Journal of Japanese Law* 8 (2003) 5.

gap in policy expertise further entrenched by the high turn-over rate of Cabinet ministers, preventing them from acquiring specialist understanding of their portfolios or creating a personal policy style.⁶⁵ The Cabinet Office reforms outlined in Part IV(1) have gone some way to addressing the information imbalance.

The bureaucracy's influence over the policy-making process is arguably at odds with the spirit of the Constitution, which assigns policy responsibility to the Prime Minister and Cabinet. Indeed the ambiguous Article 41, which declares the Diet to be the "highest organ of state power", was inserted by the Constitution's drafters precisely to negate bureaucratic rule.⁶⁶ Since the bureaucracy already appears to subvert the Prime Minister's constitutional authority, amendment may have little effect in dampening its powers. Nor, like the *zoku*, would the bureaucracy necessarily respect a directly elected Prime Minister's mandate since it can not be "punished" electorally. Constitutional amendment to allow for the direct election of the Prime Minister may alone do little to increase prime ministerial power.

VI. DIRECT ELECTION AND POPULAR POLITICAL PARTICIPATION

While the potential for direct election to increase prime ministerial power may be of academic concern, perhaps of more significance to the voting public is the potential for direct election to create a more representative political system, and a leader more responsive to the public's wishes. In doing so it is hoped that direct election will re-engage the public in politics and restore its faith in the political system.⁶⁷ Voter turnout at national Diet elections over the past decade certainly reflects a degree of public disillusionment, having historically hovered between 65 and 75 per cent, turnout plunged to 44 per cent at the 1995 House of Representatives election, and until the 2005 election had not since risen above 60 per cent. So too has the proportion of "swing" voters – voters that do not associate themselves with any particular party – risen sharply in the 1990s, and is currently around 50 per cent of the electorate. These statistics are even more acute where younger voters are concerned.

Yet while the introduction of direct election would certainly increase the opportunity for public participation in politics, it would not necessarily guarantee actual participation. From a constitutional perspective, certainly, the ability to directly elect the chief executive need not necessarily translate into higher voter turnout. A brief comparison of voter turnouts in several parliamentary and presidential polities shows that turnouts tend

65 YAMASAKI (*supra* note 20) 132.

66 J.M. MAKI, Japan's Commission on the Constitution: The Final Report (Seattle 1980) 295.

67 ADVISORY COUNCIL (*supra* note 34) 157.

to be higher in parliamentary countries.⁶⁸ The United States, for example, has consistently had voter turnouts around 10-20 per cent lower than Japan. In the case of Israel, voter turnout peaked in the first two elections after its direct election amendment, but by 2001 had dropped to its lowest ever level: conversely because Israelis felt that the direct election system had limited their choices to two centrist governments.⁶⁹ Renewed voter engagement in Japan might be similarly short-lived.

There is in any event a fallacy in equating voter turnout with interest in politics. By way of illustration, at a poll after the 2003 House of Representatives election, with one of the lowest turnouts on record, 82 per cent of voters nevertheless claimed to have an interest in politics. Among the reasons given for not voting were, “voting doesn’t change anything” and, “to express my dissatisfaction”.⁷⁰ Similarly, in a subsequent poll aimed at young people, almost half of participants answered that, “politics doesn’t reflect my opinions”, or “I don’t feel any connection”.⁷¹ This suggests more a sense of disenfranchisement than apathy. So too might the increase in swing voters be explained not by ignorance or apathy towards political issues (and a readiness to be “swung” by populist issues during election campaigns), but a frustration with the established parties and refusal to passively support them.

Instead, there is evidence to suggest that voters are seeking more direct forms of political participation. Participation in civil society has increased markedly since the passage of the NPO (Non-Profit Organisation) Law⁷², introduced to facilitate greater civil society co-operation in governance.⁷³ Civil society groups have lobbied on political issues (of which the citizens’ group formed to campaign for direct election is but one example), have become involved in drafting legislation reflective of community attitudes, and are increasingly relied upon to provide government services.⁷⁴ A number

68 Comparing Canada, Germany, India, Italy, New Zealand, Spain, the UK and the Scandinavian Countries with Argentina, Brazil, France, Ireland, Mexico, the Philippines, South Korea and the US. Australia is excluded because its compulsory voting laws ensure consistently high turnout. Statistics taken from International Institute for Democracy and Electoral Assistance, “Voter Turnout” [Online] www.idea.int/vt/.

69 D. PERETZ ET. AL., Knesset Election 2003: Why Likud Regained Its Political Domination and Labour Continued to Fade Out in: *Middle East Journal* 57 (2003) 591.

70 ‘*Yûken-sha 7-wari, seiji ni fuman: kensen-kan ga chôsa, kanshin wa 20-dai de takamaru - Yamagata* [70% of Voters Dissatisfied with Politics: Prefectural Electoral Committee Poll. Interest Increased among 20-Somethings – Yamagata]’, *Yomiuri Shinbun*, 9 April 2004.

71 N. DAISUKE, *20-dai yon-wari chô ‘seiji ni kanshin nashi’ – kensen-kan ‘shûinsen ishiki chôsa’ – Yamagata* [Over 40% of 20-Somethings Have ‘No Interest in Politics’ - Prefectural Electoral Commission ‘House of Representatives Election Opinion Poll’ – Yamagata], in: *Mainichi Shinbun*, 27 March 2004.

72 Law No. 7/1998.

73 R. PEKKANEN, Japan’s New Politics: The Case of the NPO Law, in: *Journal of Japanese Studies* 26 (2000) 111.

74 M. ETO, Public Involvement in Social Policy Reform: Seen from the Perspective of Japan’s Elderly-Care Insurance Scheme, in: *Journal of Social Policy* 30 (2001) 17, 26-28; ‘Government Bodies Turning More to NPOs’, *The Japan Times*, 31 July 2006.

of NPOs use local and national disclosure laws to gather information on government expenditure, seeking to increase transparency by acting as quasi-ombuds.⁷⁵

Similarly, Japanese appear to be embracing direct democracy measures introduced at local levels of government. The Local Autonomy Law⁷⁶ provides for several forms of direct democracy, including referenda and citizens' initiatives on controversial issues. Beginning with the Okinawa initiative on US troop reductions in 1996, both forms have increased in the past decade, with voter turnouts consistently around 90 per cent.⁷⁷ Local governments have also been active in introducing popular "e-government" initiatives. A survey in 2000 found that while 47 per cent of Japanese felt their views were adequately represented at the municipal level, only 8 per cent felt so for the national Diet.⁷⁸ Party politics appears to be losing legitimacy in the face of more representative and inclusive institutions such as local assemblies and civil society.

On the one hand, the appeal of direct election is understandable in this context. Voters who seek a more direct form of political participation at the national level could feel enfranchised by the ability to directly select a chief executive and policy platform reflective of their views. Turnout at local government referenda indicates that voters respond well when they feel that their vote is genuinely influential. Indeed, at the 2005 "postal election", where voters were effectively invited to express their views on a specific item of policy, turnout rose to 67 per cent: the highest in over a decade. Certainly the sheer popular support for direct election suggests that the public would eagerly participate in prime ministerial elections.

On the other hand, if voters are indeed already disenchanted with voting as a means of political participation, then more voting may not be an effective solution. The House of Councillors Research Commission concluded that producing a Prime Minister reflective of the popular will would be meaningless if he was ultimately unable to put that will into practice.⁷⁹ As has been demonstrated, direct election alone may not effectively address many of the problems associated with the Prime Minister's weak policy leadership. Nor would a directly elected Prime Minister, once elected, necessarily be any more responsive to the public will than an appointed one. If the status quo were to prevail under a direct election system then public disenchantment would naturally continue, if not worsen.

75 Y. TAKAO, Participatory Democracy in Japan's Decentralization Drive, in: *Asian Survey* (1998) 950, 961.

76 Law No. 67/1947.

77 FUKUOKA (*supra* note 30) 151.

78 Y. TAKAO, Democratic Renewal by 'Digital' Local Government in Japan, in: *Pacific Affairs* (2004) 237, 251-252.

79 HOUSE OF COUNCILLORS CONSTITUTIONAL COMMITTEE (*supra* note 13) 398.

VII. RISKS OF DIRECT ELECTION

Whether or not the introduction of direct election would successfully achieve its stated aims, its detractors point to a number of potential risks associated with direct election that could leave Japan in an even worse state politically. A commonly voiced concern is the potential for elections to degenerate into “popularity contests”, resulting in the election of a populist (but incompetent) Prime Minister. It is true that the most popular politicians in Japan tend to be outspoken, anti-establishment mavericks. In a mock direct election poll conducted by Bungei Shunjū in 2000, the three top-scoring candidates were just such figures: Governor Ishihara (achieving nearly half of all votes), former foreign minister Makiko Tanaka, and now-Democratic Party leader Ichirō Ozawa.⁸⁰ Although the poll is far from conclusive, it does illustrate the very real possibility that under direct election a populist or even celebrity candidate would be selected.

Such a trend can already be seen at the prefectural level of government. Among the more colourful governors elected in recent years have been Ishihara, novelist Yasuo Tanaka in Nagano, and comedians “Knock” Yokoyama, Yukio Aoshima and (most recently) “Sonomanma” Higashi in Osaka, Tokyo and Miyazaki respectively. Yet the appeal of such figures to the electorate is perhaps less their celebrity or radical policies, and more a reflection of voters’ frustration with the established parties. The most common reason given by Tokyo voters for electing Ishihara in 1999 was the perception that he would “take action”; only 6 per cent were attracted to his personality.⁸¹ If so, then it may only increase the likelihood of a similar individual being elected as Prime Minister; particularly given the number of swing voters. Naturally, however, this outcome could be avoided by restricting the qualifications for candidacy, such as by requiring that candidates receive the endorsement of a certain percentage of the Diet or national population.

The prospect of voters electing an independent or populist candidate also highlights the potential problem of “split” voting: *i.e.*, electing one party to a majority in the Diet, and an independent or another party’s candidate as Prime Minister. Gerald Curtis predicts this outcome under a direct election system because of the traditionally weak identification between parties and individual party leaders.⁸² Prime ministerial popularity often does not correspond with the popularity of the party as a whole. (Certainly in the past opposition leaders such as Takako Doi have led opinion polls as preferred Prime Minister, even while the LDP was the preferred party of government.)

80 *Supra* note 36, 115.

81 A. TANAKA, Why Ishihara Shintarō Won Election as Tokyo Governor, in: *Japan Quarterly* (1999) 1.

82 G. CURTIS, Politicians and Bureaucrats: What’s Wrong and What’s to Be Done, in: G. Curtis (ed.) *Policymaking in Japan: Defining the Role of Politicians* (Tokyo; New York 2002).

Indeed, there is already evidence that Japanese voters split their votes between parties in the single-seat constituency (local member) and proportional representation (party) sections of their House of Representatives ballots.⁸³ A split vote may be entirely rational, given the pork-barrelling benefits of having a local LDP member. On the other hand, it is argued that by focussing attention away from local politics and onto issues of national significance direct election could improve public identification of parties with their leaders.⁸⁴

The election of independent populist candidates or a “split” vote could ultimately weaken the power of the Prime Minister. It is argued that a legislature dominated by parties hostile to the elected Prime Minister could frustrate policy, or could demand concessions upon threat of a no-confidence motion.⁸⁵ There is already precedent for this at the prefectural level: in 2002 Governor Tanaka of Nagano was sacked by the Prefectural Assembly for opposing it on an unpopular dam-building project (although later re-elected by a landslide). Nevertheless, Tanaka’s clash is arguably an extreme example (certainly it is as much an argument against direct election at the prefectural level). Parties would ordinarily be reluctant to sack a Prime Minister with a strong popular mandate for fear of electoral retribution.

Some sceptics of direct election point to the example of Israel as a reason for caution.⁸⁶ As noted above, Israel amended its electoral law in 1992 to allow for the direct election of the Prime Minister at Knesset elections, where its proportional electoral system had fostered a multitude of small to medium-sized parties and prevented any one party from gaining an absolute majority. It was felt that direct election would deliver the Prime Minister a stronger mandate to force through policy, even without a parliamentary majority.⁸⁷ Instead, Israeli voters began to split their votes: no longer needing to vote strategically to ensure a government centred on the larger Labour or Likud parties, Israeli voters gave their prime ministerial vote to one of the primary right or left candidates, but their party vote to the party closest to their beliefs. As a result smaller parties gained votes at the expense of Labour and Likud, and successive Prime Ministers were held ransom by smaller coalition partners, causing successive Cabinets to collapse within a short space of time. Ehud Barak won a strong victory in 1999, but

83 I. KABASHIMA / R. IMAI, Evaluation of Party Leaders and Voting Behaviour: An Analysis of the 2000 General Election, in: *Social Science Japan Journal* (2002) 85, 90.

84 K. ASAO / I. YAMAMOTO, *Shushō kōsen-sei no tetsuzuki wa kore da* [This Is How to Have a System of Direct Election of the Prime Minister], in: *Chūō Kōron* (2001) 160, 162.

85 For example, by the LDP Constitutional Committee: *Tsuiseki – kenpō: ‘shushō kōsen-sei’ ni hantai tasū, ‘i’in-sei’ iken wakareru jimin chōsa-kai* [In Pursuit of the Constitution: Majority of LDP Constitutional Committee Opposed to ‘Direct Election System’, Opinions Split on ‘1 House System’], *Mainichi Shinbun*, 27 February 2004.

86 See, e.g. HOUSE OF REPRESENTATIVES CONSTITUTIONAL COMMITTEE (*supra* note 13) 397.

87 M. HARRIS / G. DORON, Assessing the Electoral Reform of 1992 and Its Impact on the Elections of 1996 and 1999, in: *Israel Studies* 4 (1999) 16.

took 50 days to form government.⁸⁸ The system eventually reverted back to Knesset appointment after the woeful 2001 election.

Yet given the stable two (or three) party system that Japan appears to be moving towards, it may be equally valid to compare Japan with other presidential and semi-presidential systems such as the United States or France, where it is commonly the case that opposing parties control the presidency and parliament without causing a constitutional crisis. As in these countries a minority Prime Minister in Japan may simply have to compromise with opposition parties to implement his policy. To some extent there is already a culture of compromise in Japan: the LDP is itself a broad church, has successfully dealt with opposition-led upper houses or opposition filibustering in Diet committees, and has managed a string of coalition governments since 1994. Indeed an independent Prime Minister may have greater flexibility to negotiate with parties on both sides of politics.

VIII. CONCLUSION

It should by now be apparent that suggestions for amendment to the Japanese Constitution to allow for the direct election of the Prime Minister have featured prominently in discourse on constitutional amendment throughout the past 15 years, fuelled by a broader agenda of political and administrative reform, and the gradual “presidentialisation” of the Prime Minister. Disenchantment with the bureaucracy and the political class during Japan’s “lost decade” has led to public support for a restraint on these actors and increased public participation in the process of government; the greater significance of the Prime Minister in the centre of Japanese politics has focussed attention on him as the agent of change.

No doubt the presidentialisation of the Prime Minister is also the basis for concerns that, in spite of various administrative changes in the past decade to expand the Prime Minister’s powers, he is still weak in terms of policy-making power. It seems unlikely that constitutional amendment to allow for direct election (or, for that matter, any other suggested amendment) would alone be successful in increasing prime ministerial power, as many of the factors which currently constrain the Prime Minister are institutional, not constitutional. Many constraints could as easily be altered legislatively, with sufficient will (certainly concrete administrative reforms are more likely to be effective in tackling the bureaucracy). Moreover, several constraints – in particular the role of the *zoku* and the factions – are apparently unique to the LDP. Presumably these would not apply to a non-LDP Prime Minister, the election of which is more likely under a direct election system. Yet changing the constitution simply to release the Prime Minister from that party’s constraints seems counter-intuitive: the landslide electoral victory that would be

88 *Ibid.*, 32.

needed to alter the country's constitution could as easily be mustered to simply vote out the LDP.

On the other hand, institutional reforms designed to strengthen the Prime Minister's hands are only as effective as the Prime Minister utilising them. Prime Minister Mori, appointed by an LDP cadre before his predecessor Keizô Obuchi's death has even been made public, failed to implement the reform agenda set down by the Hashimoto Cabinet, even turning control of the Administrative Reform Council over to the bureaucracy.⁸⁹ Direct election at least has the virtue of allowing the public to choose a leader they believe will actively pursue policy.

Similarly, although direct election of the Prime Minister would extend the opportunity for voters to formally participate in politics, it would not guarantee that such participation would occur. In order to do so, two conditions must arguably be satisfied. Firstly, voters must be able to choose from candidates that are genuinely appealing, and not simply the factional "machine-men" of the LDP. Secondly, voters must feel that their vote actually affects government policy. If a directly elected Prime Minister continued to be institutionally weak then voting in prime ministerial elections could be seen as "hollow" participation, as are Diet elections today. Already there appear to be signs that Japanese are rejecting voting and opting for alternate means of participation.

There is therefore a strong possibility that direct election will not succeed in addressing the various sources of political dissatisfaction that have spurred on its promotion. The Research Commissions acknowledged as much, and also pointed to additional risks if such a system were introduced, such as the potential for elections to devolve into popularity contests, and the consequent risk that voters would "split" their prime ministerial and parliamentary vote, further diminishing the Prime Minister's ability to implement policy. Why, then, does direct election continue to be promoted? Some (but certainly not all) of its supporters may indeed see direct election as a means of facilitating amendment to Article 9. It may also be the case that a large number of Japanese are not concerned with the practical utility of direct election at all: they may simply feel, in part as a result of presidentialisation, that it is natural and desirable for a nation to directly elect its head of government. Nakasone has since the 1960s used the catch-phrase, "we should choose our lovers and our Prime Ministers for ourselves".⁹⁰

For this reason, in spite of the current reticence of the major parties, direct election can be expected to re-emerge as a political issue into the future. In the first place, it continues to enjoy popular support. In a recent Mainichi Shinbun opinion poll direct election was still given as the top response among those in favour of amending the

89 N. NORIHIKO / E. KENJI [Interview], How the Prime Minister is Kept from Leading, in: Japan Echo (June 2002), 16.

90 'Dochira o nihon no rîdâ ni: jijitsu-jô no shushô sentaku senkyo [Which Should Be Japan's Leader: An Election That Actually Chooses the Prime Minister]', Sankei Shinbun, 1 September 2005.

constitution, with 43 per cent of respondents giving it as their first response. (Amendment of Article 9 to allow Japan to participate in collective self-defence, by contrast, was selected by only 15 per cent.)⁹¹ So too may the “young turk” reformers of the LDP and DPJ return direct election to the agenda as they rise through their party hierarchies in years to come.

Moreover, the issues that have spurred on support for direct election since 1993 have not been resolved by Koizumi’s prime ministership. The postal bill “crisis” which led to the snap House of Representatives election in 2005 demonstrates that the Prime Minister is still constrained in implementing policy, while newspaper editorials at the time of the recent LDP presidential election reveal that there remains public dissatisfaction with the process of selecting the party’s leader. While the public may have largely been content with Koizumi’s leadership, if Abe and successive Prime Ministers are not equally popular or presidential in their approach the desire for direct election could well be re-ignited. While on the one hand Abe has made moves to strengthen the Cabinet Office by appointing a record five special policy advisors and seeking to create a National Security Council, he has also demonstrated some spectacularly weak leadership in his handling of a series of ministerial gaffes and scandals, and in failing to prevent the return of the “postal rebels” to the LDP. His public support has consequently plummeted to 36 per cent in the first six months of his premiership, with the public perceiving a return to the bad old days of the LDP.⁹²

Lastly, we may expect support for direct election to continue because it strikes at the very heart of constitutional government in Japan. For as long as Japanese question the relevance of their Constitution – viewed by some as a hastily-drafted document imposed upon the Japanese by American invaders, or one which improperly imposes Western values and norms upon Japan – they will question the principles that underlie it. Those who call for the introduction of a purely indigenous document invite discussion on the appropriateness of a quasi-Westminster parliamentary system, and whether a uniquely Japanese model (that may incorporate both a presidential Prime Minister and an Emperor) would not be more appropriate.

91 ‘*Kenpô kaisei: mainichi Shinbun yoron chôsa ‘10-nen-nai ni kaiken’ yôsoku 54%* [Constitutional Amendment: A Mainichi Shinbun Opinion Poll. 54% Predict Amendment within 10 Years]’, Mainichi Shinbun, 5 October 2005.

92 ‘*Shiji-ritsu gyakuten: kokumin to no gyappu o chokushi seyo* [Support Rate Reverses: Face up to the Gap with the Public]’, Mainichi Shinbun, 26 February 2007.

ZUSAMMENFASSUNG

Die Hoffnung, der Regierungsstil von Premierminister Shinzô Abe werde an den seines Amtsvorgängers Jun'ichirô Koizumi anknüpfen, hat sich im ersten halben Jahr seiner Amtszeit nicht erfüllt. Meinungsumfragen, die im Frühjahr 2007 abgehalten wurden, belegen, daß die Öffentlichkeit den Premierminister für schwach hält und eine Rückkehr zu den „schlechten alten Tagen“ der innerparteilichen Vetternwirtschaft der Liberaldemokratischen Partei befürchtet. Vor diesem Hintergrund liegt es nahe, eine politische Debatte eingehender zu betrachten, die in Japan in den vergangenen zehn Jahren wiederkehrend geführt wurde und die im westlichen Schrifttum jedoch bislang weitgehend unkommentiert blieb: die Diskussion über eine Verfassungsänderung, die es dem japanischen Volk erlauben würde, den Premierminister direkt zu wählen.

Der Beitrag untersucht die geschichtlichen Wurzeln der politischen Bewegung für die Direktwahl des Ministerpräsidenten und ordnet sie in den Zusammenhang zweier Entwicklungen der neunziger Jahre ein: den Willen zu Reformen im Bereich von Verwaltung und Politik und die allmähliche „Präsidentialisierung“ des Premierministeramtes. Er berührt dann kurz die Frage, ob durch eine entsprechende Verfassungsänderung tatsächlich die beiden Ziele der Befürworter der Direktwahl – die Stärkung der Macht des Premierministers und eine stärkere Beteiligung der Öffentlichkeit am politischen Prozeß – erreicht würden. Zum einen wird diesbezüglich argumentiert, daß aufgrund traditioneller institutioneller Beschränkungen die Direktwahl für sich genommen die Macht des Premierministers vermutlich nicht stärken dürfte, obwohl dieser dann von den politischen Zwängen der Liberaldemokratischen Partei stärker abgeschirmt wäre. Zum anderen wird dargelegt, daß die offensichtliche Entwicklung zu einer partizipativen Demokratie in Japan verschiedene Folgerungen für das Potential der Direktwahl, die Wahlbeteiligung zu verbessern, zulasse.

Abschließend setzt sich der Beitrag mit den Risiken, die im Zusammenhang mit der Diskussion über die Direktwahl angeführt werden, auseinander. Der Verfasser kommt zu dem Schluß, daß in der japanischen Bevölkerung die Befürwortung der Direktwahl voraussichtlich in dem Maße wachsen dürfte, wie die Unzufriedenheit mit Premierminister Abe zunimmt, selbst wenn Zweifel bestehen, ob die mit der Änderung angestrebten politischen Ziele damit wirklich erreicht werden können.

(dt. Übersetzung durch die Red.)