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Governance instead of government – some theoretical considerations from the study of the postwar Japanese political system

I. Introduction

This paper presents the system of postwar Japanese political institutions in the theoretical framework of contrasting the „good government” and „good governance” models by reviewing the relevant English and Japanese literature. First, the elements of the two models are presented. Second, the appearance of the elements of the “governance” model in Japan is analyzed. Third, Japan’s recent structural reforms are presented. The point of the argument is that while the original form of the institutions are close to a model of „governance” and this system was able to collect legitimacy by efficiency, after the 1990’s economic crises, the reform of the institutions got them closer to the „government” model. Finally, some theoretical conclusions are drawn.

II. The two models of governance

Governance in a *broad sense* means every method how a society’s common problems are dealt with. This way, “regulators” like law, market, social norms, self-regulation and architecture can also belong to governance methods.

There are two basic models of governance. One is called “good governance” (governance in a *narrow sense*) and the other is “good government”. Since the literature on these is broad and well-known², their discussion can be short.

II.1. Good governance

“Good governance” is a concept connected to the changes in public policies after the 1990’s. The Commission on Global Governance, led by Willy Brandt, defined it in the following way:

“Governance is the sum of the many ways individuals and institutions, *public and private*, manage their common affairs. It is a continuing *process* through which conflicting or diverse interests may be accommodated and *co-operative* action may be taken. It includes *formal* institutions and regimes empowered to enforce compliance, as well as *informal* arrangements that people and institutions either have agreed to or perceive to be in their interest.”³

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²Kaufmann, Daniel (2003): Rethinking Governance: Empirical Lessons Challenge Orthodoxy, Discussion Paper, The World Bank; Koozinmann, Jan (2003): Governing as Governance. London, Sage; Pierre, Jon – Peters, B. Guy (2000): Governance, Politics and the State. University of New York Press; Rosenau, James N. – Czempliel, Ernst-Otto (ed.) (1992): Governance without Government: Order and Change in World Politics. Cambridge University Press; Ringen, Stein (2006): The Possibility of Politics. Transaction Publishers; Ringen, Stein (2007): What Democracy Is For: On Freedom and Moral Government. Princeton University Press

³Commission on Global Governance (1995): Our Global Neighborhood: The Report of the Commission on Global Governance. Oxford University Press

The reason why these changes were needed is globalization, and this way, governance is in close connection with globalization. The most important elements of governance include rule of law, transparency, accountability and lack of corruption, participation of civil organizations and privatization/deregulation (giving opportunities to the market and third sector). Besides these, new communicative and controlling forums, self-regulating institutions, fair competition and civic activism are required. It is not the state which should act, but there is the *civil society* and *market* as means to govern. The state can only create the *conditions* of governance, but it is not the main actor anymore.

In summary, the governance model has the following elements:

- It consists formal and informal institutions (formal elements by the state /government/ just consist the rules of the game, but state itself does not play)
- Mostly based on self-regulation and cooperation of the actors
- Based on horizontal and not vertical structures (decentralized)
- Communication-centered: debate, negotiation and consensus make it work
- It makes a *connection* between state affairs and private sphere, and
- Instead of building on an actor, it builds on a process.

II.2. Good government

According to the “(good) government” model, the state should not only create the conditions of governance, but take the responsibility of governing: the provision of public good to all members of the political community, and this can be done only by a concrete *actor*. Governmental performance can be evaluated and government can be made giving an account for his performance. Welfare state and democracy are closely associated in this model: good government means the economic *efficiency* of democratic governments. It is argued that social integration can be only provided by the institutions of democracy and the sustainability of welfare state depends on the *quality of democracy*. Democracy has an instrumental value; it is not a value for itself. It is good if – and because – it provides good life to everyone, provided by an *actor* which should take the responsibility for it. This actor is the government.

Thus, elements of the good government model are the following:

- The government is the actor who is responsible for the public good
- Formal institutions and legal democracy
- Vertical structure
- Decision-centered
- Strictly separates state (government) and society

III. The elements of governance in the Japanese political system

By reviewing the literature on the institutions of the Japanese political system, I would like to show that however surprising it is, Japan is originally closer to a system of governance in the meaning of the “governance model” above, but far from the “government” model. This system worked well while it could gather legitimacy by effectiveness; but it may fail because the lack of the mechanism to effectively correct serious mistakes coming from institutional failures. After the 1990’s, experiencing crises, there were several steps from “governance” to

the direction of “government”. This can be seen especially in the changes of the relation of the governing party and the legislative process and the finally realized regime change⁴.

Thus, I show how the following elements of the governance model appear in the Japanese political process:

- Coexistence of formal and informal institutions
- Self-regulation and cooperation of the actors
- Horizontal structures
- Communication-centered, negotiation and consensus-seeking
- Instead of building on an actor, building on a process

Note that we should be aware that in the governance model these elements are strongly connected with each other, composing a coherent system, and it is hard to separate which elements belong to which institution. This paper attempts to do this but it is important to remember the interconnectedness of these features in the different institutions. Thus, while I connect some of these elements to certain institutions, I always have to refer back to the appearance of the other elements in the same institution.

Also, I would like to emphasize that the phenomena and institutions I mention here are mostly connected to the system *before the structural reforms*, because these elements defined the tradition of the Japanese political system for decades, and they got into crisis, but remained existing after the 1990’s, too.

III.1. Coexistence of formal and informal institutions

In Japan, the importance of informal elements points out the lack of rule of law or at least a limited importance of rule of law (here I take rule of law’s thinnest definition: “government officials are bound by law”⁵). In connection with public law and constitutional structure it can be pointed out that several institutions actually have a hidden informal meaning, while the legal regulation is a mere display.

As an illustration of this, take the following case, reported in 2004. A member of the House of Representatives attempted to propose a bill in accordance only with the formal legal rules:

“Further, informal norms gave top party leaders, including the chair of PARC [Policy Affairs Research Council], the power to block any bills proposed by backbenchers independently, despite the fact that this contradicts Diet law. *Diet law allows bills to be proposed with the support of 20 members.*⁶ Yet when the Diet member cited above and others introduced a bill, the House of Representatives’ Secretariat (Shugiin Jimukyoku) refused to accept it without the seals (*hanko*) of four party leaders: the secretary-general, the chair of PARC, the chair of the Executive Council, and the chair of the Diet Strategy Committee. When the member threatened *legal action*, they said, “Go ahead.” He shrugged when he mentioned how other Diet members had tried it and the Supreme Court refused to intervene on the grounds that it was an *internal Diet matter.*”⁷

The preliminary inspection of laws by the governing party and the importance of the Policy Affairs Research Council (PARC) and its divisions have to be pointed out here. This

⁴Except a short interval in 1993, Japan was governed by the Liberal Democratic Party (LDP) for almost 50 years when finally it was replaced by the Democratic Party of Japan (DPJ) in 2009

⁵Tamanaha, Brian Z. (2004): *On the Rule of Law – History, Politics, Theory*. Cambridge University Press, p 138-140

⁶See the Diet Law of Japan, Article 56

⁷Krauss, Ellis S. – Pekkanen, Robert (2004): *Explaining Party Adaptation to Electoral Reform: The Discreet Charm of the LDP?* *The Journal of Japanese Studies*, Volume 30, Number 1, Winter 2004, p 21-22

organization has long tradition. When legislator-initiated bills - designed to promote the interests of the legislators' own electoral districts - appeared in a great number in the 1940-50's, there was a need to restrict them. Thus, an agreement was reached that legislators would consult with the government before submitting budget-increasing bills and the government will consult with the governing party first.⁸ This is called "preliminary check", started in the early 1960's. After that, the *norm requiring consensus* in each division of PARC gradually appeared. These divisions were specialized in certain policy areas. In the beginning, they had exactly this function: to cultivate experts in those areas. Later, this process led to the appearance of "zoku giin" ("policy tribes"), which tried to utilize this organization to get more benefits to their own area, attempted to provide benefits to their supporters, and at the same time, to reach consensus about the distribution of these benefits. PARC was the *institutionalization* of the originally *informal rules* which helped the representation of the interests of several groups and industries.

For this reason, PARC can be understood as a *non-legal institution used for veto* both by politicians and bureaucrats. Using it to create a consensus on the content of bills beforehand, usually bills accepted here were expected to pass the Diet's plenary discussion without modification. Bureaucrats were allowed to take part in PARC discussions. A research in 1995 pointed out that "spending ministries report to the relevant PARC divisions before they submit their requests to the Ministry of Finance".⁹ This meant that *bureaucrats communicate informally* with groups of Diet members and *not formally* with the governing party's leadership as a single entity representing the whole party. What party leaders did was mostly balancing and negotiating in this process.

Also, departments of PARC were assigned to the specific departments of the government: divisions were organized parallel with ministries. Those legislators who were not members of the divisions could not give a significant effect on the content and acceptance of the bills later. Specialists of the relevant policy area had to approve the planned measure here, before it could go up to the party leadership, and *finally*, in front of the Diet. In other words, this structure made possible controlling legislation coming from independent legislators (even if the right of the independent legislators was provided by law). Committees of the governing party "took the place" of standing committees of the House of Representatives, suggesting that the real decision and discussion was organized not in the *formal legally* established ground, but within this *institutionalized informal framework*. Bills supported and initiated by the Cabinet first had to pass in this forum. Since cabinet members could attend in PARC divisions, they can also have power to modify them.¹⁰

Several historical contingencies contributed to the appearance and long continuity of this structure and it is especially important to understand the role of the electoral system in this. According to the original single non-transferable vote (SNTV) system, several (3-5) candidates were elected from every district, and political parties tried to nominate as much nominees as possible. This way, single nominees could not be differentiated based on the party label, so they had to appeal to the electors using different methods – for example, by providing benefits to their constituencies (or rather, for some *groups of voters* in their

⁸Kawato, Sadafumi (1999): 1950-nendai Giin Rippo to Kokkaiho Kaisei. In: Hogaku 63 (4), page 481-518, quoted by Nemoto, Kuniaki (2009): Committing to the Party: the Cost of Governance in East-Asian Democracies. PhD dissertation, University of San Diego, p 138

⁹Cowhey, Peter F. – McCubbins, Mathew D. (1995) (eds.): Structure and Policy in Japan and the United States, New York, Cambridge University Press, p 66

¹⁰Ohyama, Reiko (2001): Kokkai ni okeru ishikettei – genan fuzai no rippokatei wo tou. In: Inoue, Tatsuo – Kawai, Mikio (eds.) (2001): Taiseikaikaku toshite no shihokaikaku. Tokyo, Shinzansha, p 158

constituencies to whom they provide benefits)¹¹. In other words, the activities of representatives were turned into votes and support in elections. The fund for their campaigning was not provided by a central state or party fund¹², so individual representatives had the incentive to seek for it by themselves. In order to get this support, they were in constant debate and negotiation with the executive and with other party members. To make a Diet member's informal power (and resources) rise, it was important to go higher in the PARC executive hierarchy. This also required specialization on certain policy areas. If one could specialize and join a "policy tribe", then he was able to get more benefits also from bureaucrats. Thus, there is a pejorative view which states that policy experts eventually become *lobbyists of special interests*, as ministries also seek benefits through influential politicians.¹³

In this section, I showed how *informal elements* gave an impact on the legislative process of Japan. By pointing on PARC, its role to desuetude the rule of law in the context of the political process was shown. Of course the preliminary check of laws by the governing party is also closely connected with consensus-seeking, cooperative and horizontal coordination, mentioned in the next point.

III.2. Cooperation and horizontal structures in the political process

The meanings of self-regulation, cooperation and horizontal structure are close, so they will be discussed together. From the perspective of governance, horizontal structure can be seen within the organization of the governing party and in the form of factionalism. In the discussion of the PARC above it was already emphasized that the governing party needed to coordinate between several diverging interests. These diverging interests appeared in the form of factions in the framework of the governing party.

According to a generally accepted definition, a faction is "any relatively organized group that exists within the context of some other group and which competes with rivals for power advantages within the larger group of which it is a part".¹⁴ Factionalism, the name of this phenomenon in case of inside political parties, refers to the importance and systematic role of factions. Factionalism in Japan was regarded as the result of the SNTV electoral system briefly mentioned above.¹⁵ It was a problem of Japanese politics for decades and it has extended literature which tries to explain its causes, forms, appearance, and consequences. Factionalism was obviously not included in the constitutional structure; it emerged for reasons

¹¹Shiratori, Rei (1995): The Politics of Electoral Reform in Japan. *International Political Science Review*, Vol.16, No. 1, p 79-94

¹²As Scheiner puts it „access to funding is controlled by the central government and thus local organizations, politicians, and voters have strong incentives to affiliate with the national ruling party”. See: SCHEINER, Ethan (2005): *Democracy without Competition in Japan: Opposition Failure in a One-Party Dominant State*. Cambridge University Press, p 4

¹³This structure was characterized as “Japanese-style corporatism without labor”. It has to be noted, however, that small business interests were also represented, and welfare measures were taken from the 1970's

¹⁴Beller, Dennis C. – Belloni, Frank P. (1978): *Party and Faction: Modes of Political Competition*. In: Belloni, Frank P. – Beller, Dennis C. (ed.): *Faction Politics: Political Parties and Factionalism in Comparative Perspective*. Santa Barbara, CA: ABC-Clio, page 419. Quoted by: Bettcher, Kim Eric (2005): *Factions of Interest in Japan and Italy. The Organizational and Motivational Dimensions of Factionalism*. In: *Party Politics*, vol. 11, no. 3, p 340

¹⁵Nominees had to differentiate themselves from other nominees at the same electoral district and they needed funding for their campaigns

of historical contingency. It is defined by the Constitution of Japan that both Houses of the Diet are consisted of “*elected members, representative of all the people*”¹⁶, which, according to the interpretation of Higuchi Yoichi, means that the members of the Diet are the representatives of *the whole political community*, not the particular district where they were elected, and not the representatives of special interests¹⁷. Factionalism made this rule practically ignored.

In Japan, the first reason for factionalism was that the governing party – the governing parties so far, since the LDP and DPJ are the same in this sense – was composed from the *mergers of independent parties*. Thus, there was an initiative to keep their profiles while governing together. Factionalism was also regarded as something connected to *clientelism*. Scheiner points out that the Japanese political system it is a clientelistic system which “create[s] direct and personal bonds, usually through material side payments... economic actors who do not control votes directly give politicians money in exchange for favors”¹⁸ and “it is much less likely that voters will bring an opposition to power... voters support the ruling party simply because it provides them clientelist benefits”¹⁹. In a clientelist system, if a nominee wants to win an election, has to include personal elements to his campaign and using personal network for this purpose.

It is also important to notice that factions in the governing party did not base on certain ideologies²⁰, simply because of the large diversity of thought within each of them. Parties tend to gather according to common interests and not political visions. Party mergers and breakups are often, and parties usually consists members with several seemingly incoherent views. At the same time, local party organizations are usually not developed, so they can not be used to mobilize voters. Coalition governments are also not created on the basis of similar views on political vision, but in order to gain governmental power. Besides, because of historical contingency, leftist political parties’ participation was traditionally restricted in East-Asia after the war. Most parties became “catch-all” parties remaining centrist, without questioning the status quo.²¹

This system was mostly “person-oriented” and not “policy-oriented”. It can be stated that a policy-oriented system contributes to create the rule of laws and not the rule of persons. But in the Japanese context it seems to be that persons do not “rule”, just *negotiate* and *coordinate*. The most important element of the rule of laws is that persons who fulfill a position and the position itself are separated, as the person is bounded by the formal legal rules. In the Japanese political system, on the one hand, the rule of persons was restricted, not so much by formal legal rules, but by the need of coordination with others.

Factionalism initiated by the electoral system²² is connected to the factionalism within the governing party, which feature served as an “effective functional equivalent of formalized procedures and norms of party management”²³. These institutionalized informal rules served

¹⁶The Constitution of Japan, Article 43

¹⁷Sugihara, Yasuo – Tadano, Masahito (2007): *Kenpo to Gikaiseido*. Horitsu Sobunsha, p 214

¹⁸Scheiner (2006) p 14

¹⁹Ibid, p 30

²⁰Richardson, Bradley (2001): Japan’s “1955 System” and beyond. In: Diamond, Larry – Guthner, Richard (ed.): *Political Parties and Democracy*. Johns Hopkins University Press, p 157

²¹Curtis, Gerald L. (1999): *The Logics of the Japanese Politics: Leaders, Institutions and the Limits of Change*. Columbia University Press, p 143; Reed, Stephen R. (2009): *Party Strategy or Candidate Strategy: How Does the LDP Run the Right Number of Candidates in Japan's Multi-Member Districts?* In: *Party Politics* Vol. 15 No. 3, pp 295-314

²²It is important to point out that factions were not only the features of the LDP but every Japanese political party, with the exception of the Communist Party

²³Köllner, Patrick (2006): *The Liberal Democratic Party at 50: Sources of Dominance and Changes in the Koizumi Era*. In: *Social Science Japan Journal*, Vol. 9, No. 2, p 248

as a centripetal force against the centrifugal force of the different interests within the party. Size of factions was always very important, especially in case of presidential elections. Because of this, leaders of factions tried to support as many candidates as they could, regardless to their views. As they could gain more members with offering positions and support, they did so.

There was always a problem how to avoid the fragmentation of factions and thus the collapse of the governing party. According to researches, the method of this in the Japanese context was the allocation of positions, also for “anti-mainstream factions”. The party’s leadership was formed from the “mainstream factions”. Until the 1970’s, at times when the party’s majority was certain, mainstream factions tended to monopolize positions. Later they had to allocate more the non-mainstream factions.²⁴ This point shows that an important element of “governance” – horizontal structure, coordination and consensus-seeking – was formed gradually.

A basic evaluation of this system of factions as institutionalized informal norms of the system can be that it is “ambivalent”. There was a certain degree of pluralism in this system, together with some flexibility and adaptability. Still, if changes made it necessary to revise some of the basic presumptions of the system, than these institutions are not capable to do that. The problem is that “these mechanisms have been unable to contain a more fundamental instability in the basic relationship that existed between the party as a governing entity and the electorate it served”²⁵. But on the other hand, the positive function of factions can be also emphasized. “It has to be noted though that the existence of factions has permitted a substantial degree of pluralism... within the LDP. Factionalism has also constrained the power of individuals... serve as a ‘check-and-balance mechanism’ to prevent a dictatorship by the party president”²⁶. This may show that factionalism makes cooperation and horizontal structure central, avoiding strong leadership, which is vertical and more decisive, not cooperative. The importance of cooperation will be also seen in the next point.

III.3. The role of negotiation and consensus-seeking

The significance of consensus-building and negotiation was already seen in the unanimity rule of PARC and the allocation of positions between factions. In a broader meaning, negotiation between politicians, bureaucracy and business can be mentioned. But there is another possible meaning of consensus-seeking and negotiation: that is, the consensus-building between (1) rival political parties in general (in the form of possible coalitions), and (2) between governing and opposition parties. These will be discussed in two points. The first one is connected to the possible models of parliamentary democracy, the second is to the opportunities of the opposition to influence legislature.

²⁴Fukui, Haruhiro (1970): *The party in power: The Japanese Liberal-Democrats and policy-making*. University of California Press; Cox, Gary W. – Rosenbluth, Frances M. (1996): *Factional competition for the party endorsement: The case of Japan’s Liberal Democratic Party*. In: *British Journal of Political Science*, Vol. 26, no. 2 (April 1996), pp 259–269

²⁵Browne, Eric C. – KIM, Sunwoong (2003): *Factional rivals and electoral competition in a dominant party: Inside Japan’s Liberal Democratic Party, 1958–1990*. In: *European Journal of Political Research* Volume 42, Issue 1, p 131

²⁶Köllner, Patrick (2004): *Factionalism in Japanese political parties revisited or How do factions in the LDP and the DPJ differ?* In: *Japan Forum*, Volume 16, Issue 1, 2004, pp 94-95

III.3.1. Japan: a majoritarian or consensual democracy?

“Majoritarian” and “consensual” models of democracy (using Lijphardt’s classical terminology) are closely related to the electoral system of a country. It is a widely known commonplace in political science that single-member districts tend to create a two-party competition giving absolute majority for one party, while proportional systems tend to create a multi-party system, where the single parties may not have the majority in themselves to form a government, so they are forced to form coalition governments (Duverger’s law). Also, there are elements which are associated with the former and the latter model in the structure of the parliament itself. In the majoritarian model, there is no veto right of the minority, however, the possibility of regime change is always easily provided. Thus, the place of political responsibility is also clear. Because of the single-member districts, accountability of the individual representatives is also emphasized as a positive point and according to some opinions, this can make the general public more sufficient with the political system overall.²⁷

On the other hand, under “consensus” model, there are lots of smaller parties, so there is usually a need for a coalition building. Also, several laws and constitutional amendment require the 2/3rd of representatives, so in this sense the minority has a veto right. However, in the level of actual functioning, a system can be called majoritarian if a single party is able to get the absolute majority of the votes.

At the time of the occupation of Japan after the Second World War, the General Headquarters of the Allied Forces sketched the plan of a governmental reform, proposing a system which is closer the British Westminster model than to the American type of presidential democracy.²⁸ The first central feature of the model is a strong cabinet government, which is able to set the political-legislative agenda. Secondly, policy-making functions executed within the cabinet. The approval of the governing party is not needed, as party is subordinate to the executive. And the third element is that central party leadership which executes control over the nomination of individual members in constituencies.

If one only looks at the structure seen in the Cabinet Law and the Constitution, he can think that Japan also operates this way. Just by looking at the institutions themselves, they look like as if it was always a strong cabinet government. But remember the practice of “preliminary check” from the side of the governing party and the existence of factionalism as introduced above. “Cabinet policies, new laws, and the budget... are... introduced to the Diet only after review and debate by the ruling party”.²⁹ It can be concluded that PARC is an utmost important veto point based on the unanimity rule, dominated by several veto player groups.

Bureaucracy is said to be another constraint of the cabinet power. In fact, there is a huge literature stating that the Japanese bureaucracy had more power than politicians, and they can be credited for the Japanese economic miracle by using continuous economic planning and administrative guidance. Here we focus on their connection with legislators and the executive (cabinet). In Westminster, the support of bureaucracy towards the cabinet is typical. Ministers appointed by the Prime Minister are the absolute leaders of their ministerial organization. Thus, bureaucracy is not treated as *independent from the government*. However, in the Japanese case, this is not so. Rather, cabinet ministers used to be under the authority of their

²⁷Norris, Pipa (2001): The Twilight of Westminster? Electoral Reform and its Consequences. In: Political Studies, Vol. 49, Issue 5, pp 877-900

²⁸Sugihara – Tadano (2007), p 128

²⁹Yamato, Hiroshi (1983): Political Parties and the Diet. In: Valeo, Francis R – Morrison, Charles E. (eds.): The Japanese Diet and the US Congress. Boulder, Colo., Westview Press, pp 35–36

own ministries. It can be said that ministers do not represent the cabinet, but the interest of their own ministry. Bureaucrats have the information amount and power to set up policy initiatives. The branch they can negotiate with is not the cabinet, but the ruling party. This is separated from communication of politicians within the PARC. One commentator calls this separation as the difference of “interference” (bureaucrats) and “intervention” (PARC)³⁰. In strict administrative rules where the bureaucrats’ discretionary decisions are not allowed, this kind of negotiations would not have been possible.

The influence of bureaucrats on policy-making process can be seen the most easily in their contribution to legislation. Masuyama Mikitaka’s research on legislation also found the agenda priority is given to bills proposed by administrative agencies,³¹ which means that these kinds of bills have a bigger possibility to become enacted laws within that session.

At the same time, bureaucrats do not dominate the legislative process, since the governing party has the power to totally control the agenda. According to Masuyama, “the extent to which the parliamentary majority exercises legislative authority within the Diet must have enormous impact on the extra-parliamentary stages where administrative agencies draft legislative proposals and implement policies.”³² This way, bureaucracy has to “internalize parliamentary preferences”. In the time of coalitional government, this structure included the negotiation with coalition partners. Thus, it does not mean that big difference from the former governing methods, especially that the other coalition parties also applied the methods of preliminary screening.

Westminster model also has another condition which Japan lacked: party cohesion. This problem was already discussed above in the framework of factionalism. Historically, there were several methods to reach party cohesion, which was not a given condition but gradually appeared even in the UK.³³ In the Japanese case, the factor which helps the most in reaching is the distribution of positions and benefits; there were several rules and norms emerged to maintain the order of the party in times of implementing its legislative policy. Without effective whips from leadership, leaders offered positions and benefits to representatives. At the same time, representatives followed the party line in legislative politics, which led to a more consistent policy.

These rules also appeared gradually: “in the 1950s and 1960s, backbenchers most often complained about leaders’ tyrannical nature of policymaking and personnel management, while leaders most often ignored the career ladder and picked up their favorites to the highest posts... the career ladder only emerged gradually after the late 1960s and was finally stabilized in the late 1970s to the early 1980s. Therefore the more correct story is that the monopolized control by party leaders over policy and personnel issues in the 1950s was gradually replaced by the stable career ladder”.³⁴ In other words, in the 1950-60’s there was a duality in the party leadership between mainstream factions and non-mainstream factions, but from the 1970’s, all-coalition of factions became the rule because of the centripetal force of losing elections in a new environment where the LDP majority is very fragile, even if the opposition parties are

³⁰Mulgan, Aurelia George (2003): Japan’s Un-Westminster System. In: *Government and Opposition*, Vol. 38, Issue 1, p 73–91

³¹Masuyama, Mikitaka (2003): *Gikaiseido to Nihonseiji*. Tokyo, Bokutakusha; Cox, Gary W. – Masuyama, Mikitaka – McCubbins, Mathew D. (2000): *Agenda Power in the Japanese House of Representatives*. In: *Japanese Journal of Political Science*, Vol. 1

³²Masuyama, Mikitaka (2001): *The Japanese Diet in the 1990’s*. Presentation at the Annual Meeting of the Public Choice Society, San Antonio, Texas, March 9-11, 2001

³³Cox, Gary (1987): *The Efficient Secret: The Cabinet and the Development of Political Parties in Victorian England*. Cambridge, Cambridge University Press

³⁴Nemoto (2009), p 256

ideologically inconsistent, thus do not mean a credible threat (the threat was only realized one time in 1993).

In this section it was shown that there was an attempt to create a parliamentary democracy close to Westminster system in Japan, but there were also several deviations from the real Westminster model. Some elements of this (factionalism, preliminary check of laws by the governing party) were already introduced in details above. Now let us see the relationship of governing and opposition parties.

III.3.2. Relationship of governing party and opposition

The view that the Japanese legislative and political process is basically consensual dates back to the 1970's when the ruling LDP experienced a slow decreasing of votes due to several factors – mostly urbanization³⁵. As the proportion of its seats went down as 40% in the Lower House, thus, the party needed to listen to the opposition parties in several fields. Krauss analyzed this dynamics in legislation, pointing out that while in the 1950's and 60's a confrontational majoritarian politics was the typical for the LDP, later from the 1970's it became more consensual³⁶. While the LDP majority was not threatened by until the 1970's, but after that, its majority was reducing slowly but continuously. “The LDP's vote margin continued to shrink during the 1970s. In the early 1950s, the LDP's predecessor parties together obtained about two thirds of the votes nationally. The LDP's official candidates vote shares declined to 41% in 1976. Despite this declining vote share, the party was able to maintain its lower house majority due to malapportionment and the fragmentation of the opposition into multiple parties”.³⁷ From the 1970's, a multiparty system appeared gradually and voters also become to float between parties.

Some works in the 1970's and 1980's³⁸ argued that the opposition has no effect on the legislative procedure at all. The first research which questioned this view was Mochizuki in 1982. He pointed on consensus rules in committees and showed how it is used to postpone and delay legislation, also by using the rule limited length of Diet sessions and the non-continuity of bills (in Japan, bills which are not voted until the end of the parliamentary term are automatically dropped). Thus, it was shown that actually there *are* negotiations between governing parties and opposition parties on legislative topics.³⁹ From 1970's, the LDP began consultations with opposition parties over controversial bills.⁴⁰ “Instead of compromising only

³⁵LDP's supporters are traditionally the rural districts, where this party has deep imbeddedness.

³⁶Krauss, Ellis S. (1984): *Conflict in the Diet: Toward Conflict Management in Parliamentary Politics*. In: Krauss, Ellis S. – Rohlen, Thomas P. – Steinhoff, Patricia G.: *Conflict in Japan*. Honolulu, Hawaii: University of Hawaii Press, pp 243-293

³⁷Rosenbluth – Saito – Yamada (2011), p 8. “Malapportionment” refers to the serious unbalance of certain electoral districts, to the favor of countryside

³⁸Baerwald, Hans H. (1974): *Japan's Parliament: An Introduction*. Cambridge: Cambridge University Press; Dore, Ronald (1986): *Flexible Rigidities: Industrial Policy and Structural Adjustment in the Japanese Economy 1970–80*, Stanford University Press

³⁹Misawa, Shigeo (1973): *An outline of the policymaking process in Japan*. In: Itoh, Hiroshi (ed.) (1973) *Japanese Politics: An Inside View*, Cornell University Press, pp. 12–48; Kobayashi, Naoki (1973): *The small and medium enterprises organization law*. In: Itoh, Hiroshi (ed.): *Japanese Politics: An Inside View*. Cornell University Press, p 49–67

⁴⁰Mochizuki, Mike (1982): *Managing and Influencing the Japanese Legislative Process: The Role of Parties and the National Diet*. PhD Dissertation, Harvard University; Richardson, Bradley (1997): *Japanese Democracy: Power, Coordination, and Performance*. Yale University Press, pp 127–151; Stockwin, J. A. A. (1999): *Governing Japan*, 3rd ed. Oxford, MA: Blackwell Publishers, pp 113–121

with the new centrist parties, the LDP increasingly sought to find common ground with all parliamentary groups. The share of bills winning the support of all parties in the Diet rose from 45.2 percent in 1970–72 to 50.3 per cent in 1973–76 to 64.5 per cent in 1977–80... ‘this wise attitude is the reason for the long stability of the predominant party system’⁴¹.

It is important to remember that as opposition party has the opportunity to delay the votes with obstruction because of the non-continuity rule of bills. Thus it is important to reach a minimum level of consensus with the opposition on the bills before they appear on the agenda. If opposition parties prolong the discussion on a bill, they can cause its failure. Government – opposition negotiation also appeared in a formalized but not opened structure by the negotiation of the parties’ “Diet Affairs Committee”. It was regarded as a key structure of inter-party coordination politics (not intra-party – that was the role of the PARC). “The members of the committee not only scheduled Diet sessions but also developed the electoral and financial relations between the ruling and the opposition parties”⁴². As mentioned before, it had role especially at times when the governing party’s majority was especially small. Also, as Ohyama puts it, the Diet Affairs Committee’s control “can be understood as a result of struggle to enhance certainty for the cabinet brought bills, in the Diet without the Cabinet”⁴³. Even after the 1990’s, opposition parties usually supported governmental legislation, since the opposition considered that they have a bigger participation in decisions, especially under the coalition government⁴⁴ – this continued until 2007.^{45 46}

This may be not an exceptional phenomenon, since it is widely recognized that there are consensual issues in other parliaments as well.⁴⁷ But once again, the quasi-formal institutionalization of this practice in the form of the real meaning under the *mere display of the legal rules* is quite special.

However, besides emphasizing the changes by time, several researches expressed doubts on this point. It is true that the schedule of bills has to be decided in a consensual way (unanimity rule) in the Standing Committee of Rules and Administration. Viscosity theory supposes that a bill will become more viscous and deliberation becomes longer if a bill is important or controversial. All in all, this can be called as “agenda power”.⁴⁸ But Ramseyer and Rosenbluth pointed on the limits of the explanation based on unanimity norm and the limited length of Diet sessions since the unanimity norm is frequently violated in practice and

⁴¹Wolfe, Eugene L. (2004): Creating Democracy’s Good Losers: The Rise, Fall and Return of Parliamentary Disorder in Post-war Japan. In: Government and Opposition, Vol. 39, Issue 1, p 75

⁴²Kato, Sota (2009): Caught Between Two Worlds: Political Change in Japan. Global Asia Volume 4, no. 1, p 37

⁴³Ohyama (2003), page 54. Quoted by: Ohya, Takehiro (2008): Twisted Diet: a Failure in Legislating Politics in Japan. *Legisprudence*, Vol. 2, No. 3, p 260

⁴⁴See: Masuyama, Mikitaka (2001): The Japanese Diet in the 1990’s. Presentation at the Annual Meeting of the Public Choice Society, San Antonio, Texas, March 9-11, 2001.

⁴⁵Inoguchi, Takashi (2008): Parliamentary opposition under (post) one party rule: Japan, In: *The Journal of Legislative Studies*, Volume 14, Issue 1 & 2 March 2008, p 113 – 132, especially p 129

⁴⁶From 2007, the opposition parties got a majority in the Upper House; thus, Article 59 of the Constitution has to be used in order to succeed legislation. In the Japanese case, a law has to pass both in both Houses with a simple majority; but if the Upper House rejects it, it can still be accepted with the qualified majority of the Lower House. Of course it is a serious systematic problem if the governing parties do not have a qualified majority in the Lower House in this kind of case, since this system creates a new veto player and makes the whole structure more far from Westminster model. See Matsuura, Yusuke (2010): 2007 nen “shusan nejire” ni okeru seifu no ripposenryaku. *Keio SFC Journal*, Volume 10, No. 1, 2010, p 71-81

⁴⁷Richardson (1997), Loewenberg, Gerhard – Pattenson, Samuel C. (1988): *Comparing Legislatures*. Lanham, MD: University Press America

⁴⁸Masuyama et al define agenda power as “the power to determine (a) which bills are considered in the plenary session of the legislature, and (b) restrictions on debate and amendment for these bills”. Cox – Masuyama – McCubbins (2000), p 1

institutionally the majority has the opportunity to use restrictions on the length of deliberation.⁴⁹

Fukumoto Kintaro's research⁵⁰ examined bills between 1947 and 1996 to prove or disprove viscosity theory. He found three types of bills: non-conflict mode, viscous mode and deliberative mode ("confrontation in discussion"), and viscous mode were only around 22% of all of the bills. More important bills seem to be debated for a longer time; both the average length and the frequency of the deliberation are longer/higher.

However, this analysis seems to methodologically overlook the preliminary check of the bills. Masuyama Mikitaka criticized Fukumoto's research because of using aggregated data, this way he tends to not realize critical issues besides the non-formalized grounds of legislation. He points out that bills with strategic importance of the government and bills previously desired by administrative agencies are more likely to pass. At the same time, if there is no conflict on proposals between parties, we can not tell whether this was because the opposition is powerless or the bill was prepared in accordance with their preferences.

Masuyama tried to understand how legislative time affects agenda power and at the same time to "conceptualize the broader policymaking process including *pre-parliamentary stages*"⁵¹. Based on the formalized para-legal institutional structure reviewed above, we can conclude that the creation of consensus with the opposition – if it was needed – was not in plenary debates or committees, although the basic rule of committees was also consensual, but the process which led to consensus may have happened behind the scenes, in informal framework. In any case, even if Masuyama is right in emphasizing the opportunity of the majority to exercise power, the bicameral structure of the Diet gives a very strong veto point to the opposition parties, if they are able to get the majority in the Upper House. Under these circumstances, the *importance of consensus-seeking* is clear.

III.4. The importance of process instead of some dominant actors

The importance of process and the lack of a dominant actor were already included into the former elements (factions, coordinated interests within PARC, consensus-building with the opposition); here let us focus on the lack of effective political leadership.

In the level of laws on governmental structure, there was always a system of cabinet government in Japan. However, due to the importance of the governing party and the bureaucracy, it is stated by some commentators that Japan does not have a cabinet government but it has a party-bureaucratic government⁵² because of the special relationship of the cabinet with the governing party and the bureaucracy. This is not only because of the traditionally "bottom-up" structure of policy-making, instead of the "top-down" way; not only because of the prior approval in PARC and the custom from the 1960's that proposals must be approved by the LDP General Affairs Committee, too, as one part of the preliminary inspection, but also because of the custom that a bill has to pass the administrative vice-ministers meeting before cabinet meetings.⁵³ Under this system, the Cabinet is not the

⁴⁹Ramseyer, Mark – Rosenbluth, Frances (1993): *Japan's Political Marketplace*. Harvard University Press, page 30; Ohyama, Reiko (2003): *Kokkaigaku Nyumon*. Sanshoto, p 45

⁵⁰Fukumoto, Kintaro (2000): *Nihon no Kokkaiseiji: Zenseifu Rippo no Bunseki*. Tokyo Daigaku Shuppankai

⁵¹Masuyama, Mikitaka (2000): *Legislative time and agenda power in the Japanese Diet*. *Review of Asian and Pacific Studies*, Volume 20, p 66

⁵²Mulgan (2003), p 84

⁵³Estévez-Abe, Margarita (2006): *Japan's Shift toward a Westminster System: A Structural Analysis of the 2005 Lower House Election and Its Aftermath*. In: *Asian Survey*, Vol. 46, No. 4 (July/August 2006), pp 632-651, p 637

“executive” in the sense of Westminster system. Looking only at the level of the legal framework, the governing party is *the only* important veto player. However, because of factionalism, there are several potential veto players within the governing party. Almost everywhere, including the Cabinet’s decisions, we can find a unanimity rule (this is especially important in PARC); and since ministers are factional nominees, instead of being loyal to the Prime Minister who appointed them, they are loyal to their own factions.

Originally, under this kind of legislative environment, the person of the Prime Minister was not that important. Under the former SNTV electoral system, campaigns were not organized according to policy issues. Thus, the Prime Minister nominee, who would propose these policies for the general public did not get importance. Even in the system’s level, the Prime Minister lacked the right to propose policies to the Cabinet.⁵⁴ Thus, if he wants to realize his political will, he has to negotiate and build informal support.

Also, as a practice, there was a rotation in the position of the Prime Minister among the factions of the governing party. This is the explanation why Japan had so many Prime Ministers throughout the years. Of course not only the Prime Minister but other ministers were also factional nominees, so they were also rotated as the power balance was needed to be kept; and at the same time, ministers were more loyal to their faction leaders than to the Prime Minister. It is worth to notice that policy experts in PARC had long-standing influence compared to the limited period of most ministers and Prime Ministers.

The meaning of leadership in this system is obviously different from usual political leaders in other context. Bargaining, negotiating and coordinative skills seem to be more important than presenting a public vision or effective communication. Also, coordination and consensus-seeking means that the leadership tends to maintain status quo and distribute something to everyone; but radical alternatives do not appear.

IV. Political, administrative and judiciary reform in Japan – turning towards the government model?

In this point, we focus on the significance of the several changes and reforms after the 1990’s, which were not included so far. Referring to the two models of governance, let us examine which model the Japanese structural reforms’ aims belong. What I would like to show is that there is an overall change from “governance” to the direction of the “government” model.

IV.1. Electoral reform: a quest for reversibility and majoritarian democracy

Since the causes and effects of the old SNTV electoral system were already mentioned above, the discussion on the electoral reform can be brief. The Diet accepted the reform bills in 1994 March. The new electoral system became a complicated dual electorate. Electors have two votes, one casted on single members in their district (SMD), and one on party lists (PR). There is no compensational list, which means that votes given on candidates of parties, who finally did not get majority, are lost. But there is an opportunity to run nominees on both lists,

⁵⁴There is a rule in the Cabinet Act that “The Prime Minister shall propose the measures as Cabinet brought Bills, Budgets and other measures to the Diet representing the Cabinet” (Act no. 5, 1947, Article 5) but no rule like the above-mentioned

and those who are elected in a single-member district are deleted from the list; those, who are not elected in their district, can gain position in the Diet from the list.

It was expected that the new, more majoritarian electoral system would lead a two-party system. It should be emphasized, however, that this new system can rather be called mixed than majoritarian (pure single-member district) or proportional, although the majoritarian element is more important than the proportional; a dual listing of candidates without proportionality (closer to Italy and unlike Germany, which has proportional mixed member system). But as it is pointed out, under the old system “normal vote shifts tended to produce no more than a change in one seat per district”⁵⁵ from the possible 3-5 seats. In the old system, independent candidates tended to win, and in the parliament they joined the LDP. However, since then, “two-candidate races featuring one candidate from the government and one from the opposition have already become the norm in Japanese SMDs. The PR tier may allow small third parties to survive and might muffle the swing to some degree”⁵⁶ and “legislative organization both reflects the different reelection incentives facing MPs elected in the SMD and PR portions of the mixed member electoral system and also their collective interests in building a strong party label and maintaining their position in government”.⁵⁷ In this new system, factions were expected to disappear since there is no more systematic factor which makes specialization necessary; and a new campaign finance law erased the funding function of factions. The main purpose of the reform – to not let more than one candidate from the same party compete for the same chair in the Diet – was reached per definition, but for a long time it was a question however whether the real purpose – the creation of a two-party, reversible system – was reached.

What changed in the role of Policy Affairs Research Council with this reform? Originally, it was expected to disappear after the reform since one important factor which contributed to the importance of PARC was the need for specialization for politicians. After the electoral reform there was no need for specialization anymore⁵⁸ or at least an important incentive disappeared for it. Before, it was possible to gain a Diet seat by searching for a smaller amount of votes, so it was enough for lots of politicians to specialize on representation of the interest of some groups.

It is true that after 1994 there was a need to represent more and diverse interest for a politician if he wants to win an election. Also, there is no need to differentiate between the single nominees, since there is only one nominee for one district, and the others are on list. It is notable that after the electoral change, the rules of PARC affiliation were also changed by the (that time) governing party: “Prior to the 1994 electoral changes, LDP Diet members could belong to only two PARC committees. This limitation created specialization. Since 1994, however, the LDP now permits LDP Diet members to belong to as many PARC committees as they wish.”⁵⁹ Why? According to a possible explanation, SMD nominees have to concentrate on bigger groups to win elections now. So they *still* specialize, but not on that narrow interests as before. Nominees on party list also try to differentiate themselves from others.

⁵⁵Reed, Stephen R. (2002): Evaluating Political Reform in Japan: a Midterm Report. In: Japanese Journal of Political Science (2002), Vol. 3, Issue 2, p 259

⁵⁶Ibid

⁵⁷Pekkannen, Robert – Nyblade, Benjamin – Krauss, Ellis S. (2006): Electoral Incentives in Mixed-Member Systems: Parties, Posts and Zombie Politicians in Japan. In: American Political Science Review, Volume 100, No. 2 (May 2006), p 184

⁵⁸Although there were some doubts towards this claim. See: McKean, Margaret – Scheiner, Ethan (2000): Japan's New Electoral System - La plus ca change... In: Electoral Studies 19 (2000), pp 447–477

⁵⁹Krauss – Pekkannen (2004), p 19

Even after the 1994 reform, PARC remained existing, since its role is not only help in electorate but also “career advancement and specialization for deputy ministers and helps to train future party leaders” and “a means for specialized [groups to control] the policy and legislative agenda of individual Diet members and the bureaucracy in the party’s and government’s lawmaking process”.⁶⁰ The appearance of coalition government in the 1990’s then gave an “up-down” dynamics to policy-making, which is different from the traditional “bottom-up” dynamics in PARC. These were continuing to be in conflict until the regime change of 2009. But the function which is important in connection with the informal elements of the governance (preliminary check of legislative politics) still remained.

Factions also changed after the 1990’s. From the functions they formerly had – distributing party, government and Diet posts, channeling funds to faction members and securing party endorsements for faction candidates standing in national elections⁶¹ – the structural incentive which led to their functions within the LDP – namely the SNTV electoral system – disappeared, thus, the third one was destroyed. As for the second one, the funding function, since political financing was also regulated in the framework of the political reform of 1994, politicians now do not depend on factions but on their own networks and connections. It is only the third which largely remained: the factions’ “role in distributing party and government posts remained largely intact during the 1990s”⁶² except the members of cabinet under Koizumi Junichiro’s leadership, but even at that time, vice-ministers and lower bureaucrats were still allocated proportionally to the different factions.⁶³

However, discipline in factions clearly reduced; leaders can not count on members’ support on presidential elections. This weakened faction discipline gave more opportunity to the government and the Prime Minister to exercise influence. It became atypical that factions support other candidates for the Prime Minister’s seat than the party’s official candidate.

This shows that negotiation and coordination between factions remained important even after the structural reforms. One thing which is quite noteworthy is that while factions was existing for a long time, there was no major split in the LDP for decades and party discipline was maintained effectively in case of votes for legislation. The LDP mostly split over prime minister’s non-confidence votes, but the most famous split was the case of the postal privatization bill under Koizumi. It is stated that Koizumi’s reforms attacked some core points of the distributive politics; that is why they met with strong resistance from the side of party members.⁶⁴

But besides this, LDP was able to take the advantage of agenda power for decades, and put bills on the agenda which was favorable for them. Even after the electoral reform, in several elections, the electoral performance of nominees depended on their performance for their district, which could be reached negotiation within PARC and with the bureaucracy.

⁶⁰Pekkannen (2004), p 14

⁶¹Park, Cheol He (2001): Factional Dynamics in Japan’s LDP since Political Reform: Continuity and Change. In: Asian Survey, Vol. 41, No. 3 (May/June 2001), pp 428-461

⁶²Reed, Steven R. – Thies, Michael F. (2001): The Consequences of Electoral Reform in Japan. In: Shugart, Matthew Soberg – Wattenberg, Martin P. (ed.): Mixed-Member Electoral Systems: The Best of Both Worlds? Oxford University Press, pp 380-403, especially p 393

⁶³Uesugi, Takashi (2007): Kantei hokai. Shinchosha; Yomiori Shinbun Seijibu (2008): Shinku kokkai. Shinchosha

⁶⁴Mulgan, Aurelia George (2003): Japan’s ‘Un-Westminster’ System: Impediments to Reform in a Crisis Economy. In: Government and Opposition, Vol. 38, Issue 1

It is clearly seeable that the purpose of the political reform was a more effective and responsible government, especially by ending factionalism and promoting change of the governing party. It can also be stated that the electoral reform tried to achieve two aims for the same time. One is a possibility of regime change (reversibility). The other is a movement towards more party- and less candidate-based selection; toward a clear Westminster model. However, the two aims seem to be contradictory since the first one requires a change to SMD districts, and the second requires more proportional representation, emphasizing the role of party lists. Any case, if we take a look at historical developments, it can be seen that reversibility was finally reached in a form of regime change; and consensus-seeking gradually became less important. Thus, this is clearly a *movement* from the direction of the governance model to the direction of the government model, although a “movement towards it” does not mean its total adaptation.

IV.2. Administrative reform: strengthening leadership

Several elements of the administrative reform were already mentioned above in connection with the problem of the Cabinet and the Prime Minister’s leadership. This reform is dated from 1997⁶⁵, as one important element of the response strategy to the recession after the 1990’s. The primary aim is stated in the final report of administrative reform as to restructure “the shape of the country”, aspiring to form a society that is free and fair and composed of autonomous individuals” by reforming the “governmental organization that has grown excessively large and rigid, and to realize a streamlined, *efficient and transparent government*”⁶⁶.

What measures could be done in order to reach this purpose? These can be categorized into four groups. The first one is to “reinforce the Cabinet’s functions; define the “leadership of the Prime Minister in terms of legal authority vested in that office”. This means that “the Prime Minister shall exercise control and supervision over the administrative branches in accordance with the policies to be decided upon at Cabinet meetings”. Detailed changes embrace measures like creating a Cabinet Office, which is under the Prime Minister’s direct control and it replaced the former Prime Minister’s Office, created in order to expand the coordination of the Prime Minister above overall governmental policies and “reinforce the support of the Cabinet and the Prime Minister”.⁶⁷

This way, “the Cabinet Office gained financial and human resources to craft their own policies... the Cabinet [can] develop its own policy alternatives”.⁶⁸ According to the new rule, the Cabinet has to approve the state minister’s decision.⁶⁹ At the same time, state ministers are allowed to appoint more party politicians as deputy ministers.

Overall, this is the centralization of leadership and concentration of power in the hand of the Prime Minister. “The prime minister had to act through unanimous cabinet action to direct the

⁶⁵Even the creation of a new administrative procedure law (Law No. 88 of 1993, in effect from 1994 October) can be mentioned as one part of the reform

⁶⁶All quotes in this section, if not signed otherwise, are from the Final Report of the Administrative Reform Council, available online: <http://www.kantei.go.jp/foreign/971228finalreport.html> (Last access: 2012.05.01.)

⁶⁷Mulgan (2003), pp 87-88

⁶⁸Mcelwain, Kenneth Mori – Umeda, Michio (2011): Party Democratization and the Saliency of Party Leaders. In: *Shakaigaku Kenkyu*, Vol. 62, Issue 1, p 176

⁶⁹Shinoda, Tomohito (2004): *Kantei Gaiko: Seiji Ridashippu no Yukue*. Asahi Shinbunsha, Tokyo, p 20

bureaucracy previously [but now] the Cabinet Office Establishment Law allows him to more directly control the bureaucracy”.⁷⁰

The second group of measures connected to the first one is: “...strengthening the functions of the Cabinet and reorganizing the government under large functional areas in accordance with administrative objectives” and “enhance the government's policy-drafting and execution capabilities, based on the principle of a separation of the policy-drafting function from the policy-execution function...” One can show to the reduction of the number of ministries as the most important element of this “reorganization”.

Based on the changes brought by the administrative reform, it was Koizumi Junichiro who attempted to change the bottom-up structure to a real Westminster style “top-down” policy-making. The attempt was to centralize more power for the leader of the party who is the prime minister for the same time. Koizumi also did not regard the interests of PARC members, and finally he managed to impose a limit of terms of LDP committee presidents. He also disregarded the proportionality of factions in choosing his ministers; this way, ministers were able to have bigger influence on policy-making and at the same time, more dependent from the Prime Minister. Koizumi attempted to shape the most important policies in the framework of the Cabinet. Thus, he was regarded as a “presidential” style prime minister, blamed as being “undemocratic” by some politicians.

On the other hand, he had to accept some compromises from the side of policy tribes, and “only in the first few months after the electoral triumph of 2005 was Koizumi genuinely able to practice a centralized top-down style of decision-making”.⁷¹ Also, “at the sub-cabinet-level, vice ministers were still proportionally allocated to factions”.⁷²

The attempts of Koizumi were continued under the DPJ government: the centralization of decision-making under the Cabinet. “Hatoyama [the first DPJ Prime Minister] ended the practice of administrative vice ministers meeting the day before each Cabinet meeting to determine the Cabinet agenda, and he forbade bureaucrats from calling press conferences... also indicated that Cabinet ministers no longer would rely on bureaucrats in meetings and Diet discussions, and the DPJ would closely supervise the bureaucracy and review promotions in order to ensure bureaucratic compliance with Cabinet mandates”.⁷³

Generally in connection with the changes is pointed out that the administrative reform strongly increased the powers of the prime minister in policymaking⁷⁴ and show that certain *actors* become more important in the process.

The third principle of the final report is “from the public (= state, government, administration) to the private sectors” and “from the national to local governments”. This shows to the direction of deregulation, which was already promoted by the Economic Planning Research Group which submitted this report for request of the government of Hosokawa Morihito (1993-1994).⁷⁵ Privatization and deregulation would normally suggest a turn to the direction of the governance model, since it is usually regarded as an important element of good governance. But the Japanese case is not general. First, the Japanese state never had that

⁷⁰Krauss, Ellis – Nyblade, Benjamin (2005): ‘Presidentialization’ of Japan? The Changing Role of the Japanese Prime Minister, *British Journal of Political Science*, Volume 36, p 358

⁷¹Köllner (2006), p 253

⁷²Nemoto (2009), p 129

⁷³Arase, David (2010): Japan in 2009: a Historical Election Year. In: *Asian Survey*, Vol. 50, No. 1 (January/February 2010), pp 40-55, especially p 47-48

⁷⁴Asano, Masahiko (2006): *Shimin Shakai ni okeru Seido Kaikaku: Senkyo Seido to Kohosha Rikuruto*. Tokyo: Keio Daigaku Shuppankai; Shimizu, Masato (2005): *Kantei Shudo*. Tokyo: Nihon Keizai Shimbunsha;

Takenaka, Harukata (2006): *Shusho Shihai*. Tokyo: Chuo Koron Shinsha

⁷⁵Uchihashi, Katsuto (2002): *Kiseikanwa to iu akumu*. *Bunshun*, p 5 of the appendix

enormous amount of state property which could be privatized⁷⁶ although there was a wide range of regulation which could be reduced.⁷⁷ However, a large amount of regulation appeared not in formal legal framework, but in forms like administrative guidance. Thus, one meaning of “legalization” of the society can be that this kind of informal regulation is replaced with more formal legal procedures. Due to lack of space, we can not enter to the details here, but one interesting point is that Japan lacked a law on the rules of administrative procedure until 1993.

Finally, some other directions are mentioned in the report like “the strengthening of the check functions of the Diet and the reform of the judiciary (extending the “rule of law”)”. These lead to the direction of the judicial reform.

IV.3. Judicial reform: stronger judiciary and rule of law

The third of the large-scale structural reforms began in 1999. As the primary aim, the final report of the Judicial Reform Council in 2001 offers “a justice system that is easy for the people to utilize, participation by the people in the justice system, achievement of a legal profession” and also “improvements in the infrastructure of that system”.⁷⁸

Compared to the political and administrative reforms, the judicial reform does not seem to give such a huge impact on governance, since its target is not the political process. In this case, why is it important to at least mention it from the viewpoint of our topic?

The answer lies in the reform’s significance connected to the other structural reforms. “What commonly underlies these reforms is the will that each and every person will break out of the consciousness of *being a governed object* and will *become a governing subject*, with *autonomy* and bearing *social responsibility*, and that the people will participate in building a free and fair society in mutual cooperation and will work to restore rich creativity and vitality to this country.” What is it that has been sought in the various reforms is to “transform the excessive advance-control/adjustment type society to an after-the-fact review/remedy type society and, in promoting decentralization, to reform the bloated administrative system and improve the quality of governing ability... of the political branches (Diet, Cabinet)...”

This is an important element of the concept of rule of law which is sought by the reforms: “to transform... the rule of law... into ‘the shape of our country’” and “what is necessary to realize, in the true sense, respect for individuals (Article 13 of the Constitution) and popular sovereignty (Article 1).” As for the meaning of rule of law, there are some further points: “rule of law constitutes an essential base for promoting deregulation, aiming at *abolishing unclear advance administrative control*...”

According to the former views, bureaucracy of the government was entrusted with the development of the nation, in the form of a “developmental state”⁷⁹. Thus, “instead of rule of

⁷⁶Jinno, Naohiko (1998): *Shisutemukaikaku no seijikeizaigaku*. Iwanami Shoten, p 97

⁷⁷Ibid, p 175

⁷⁸If not signed otherwise, all quotes in this section are from the final report of the Judicial Reform Council, available online: <http://www.kantei.go.jp/foreign/judiciary/2001/0612report.html> (Last Access: 2012.05.01.)

⁷⁹Carlile, Lonny – Tilton, Mark (1998): *Is Japan really changing?* In: Carlile, Lonny – Tilton, Mark (eds.) (1998): *Is Japan Really Changing its Ways?: Regulatory Reform and the Japanese Economy*. Washington D.C.: Brookings Institution Press, p 199

law, a rule of bureaucracy” could be seen in the Japanese context. Of course as it was seen above, it is better to say that no one “ruled”; simply there was coordination and cooperation between several influential groups.

But since the informational governing mechanisms were breaking down by the slower economic growth and the lack of resiliency from the side of bureaucracy⁸⁰ - which seems to be an element of governance model; with a legal system which becomes very restricted in the end – a need for a reform appeared, to “establish a flourishing, self-responsible society where the rule of law extends everywhere...”

Publications⁸¹ also emphasized these features: the connection of rule of law, governance, responsibility, accountability and transparency. These evaluations can be also seen as general opinions on the topic of governance and the structural reforms. Tanaka Shigeaki mentions that law was originally regarded as a mere method of governance in Japan. By the structural reforms, however, a movement began from “ex ante” regulation by administration to “ex post” regulation by judiciary.

According to Inoue Tatsuo, the need for these three reforms goes back to the same problem of the society: the fact that intermediary groups have strong privileges in several fields of social, political and economic life.⁸² Also, as there is a basic consensus among them, they can decide on the distribution of merits and privileges. As everyone agrees in everything in a form of total consensus, this way, no one takes responsibility for any decisions. At the same time, intermediary groups appear not as the subjects of rule, but the objects of protection, therefore, they do not have the consciousness of responsibility as a subject of rule. Instead, they maintain each other in a connection of mutual dependency. In reality, this system leads to the powerlessness of the state; actually, Japanese administrative power is not too strong, but too weak. Also, those intermediary groups who are strong in reality have a consciousness of weakness. This may be because without formalized structure of rules and authorities, their influence is rather informal. At the same time, the state is also powerless in a sense that it does not protect the rights of the weak by universal law and litigation system.

IV.4. Regime change: reversibility reached?

Although it is not considered as a part of the structural reforms, the regime change in 2009 as a historical event has to be mentioned here, since the lack of reversibility was one important feature of the political process in Japan. All of the elements introduced above were based on the long-time rule of the Liberal Democrat Party and on the assumption that LDP would stay in power. For a long time, this remained the presumption of every criticism and political initiative in Japan. Thus, it is important to ask: what changed with the regime change? Is there a difference in the leadership and factionalism of the DPJ?

DPJ is also a party without a clear profile, even if it is different from LDP in some policies and connections with interest groups. In economic policy, the DPJ emphasized equality more

⁸⁰Milhaupt, Curtis – Miller, Geoffrey (1997): Cooperation, conflict and the convergence in Japanese finance; evidence from the ‘jusen’ problem. Law and Policy in International Business, Vol. 29, pp 1–78

⁸¹Tanaka, Shigeaki (2000): Tenkanki no Nihonho. Iwanami Shoten; Inoue, Tatsuo – Kawai, Mikio (eds.): Taiseikaikaku toshite no shihokaikaku. Shinzansha Shuppan; Miyazawa, Setsuo (2001): The Politics of the Judicial Reform in Japan: The Rule of Law at Last? In: Asian-Pacific Law & Policy Journal; Vol. 1, Issue 2 (Spring 2001)

⁸²Inoue (2001b), p 16

(they are critical to the postal privatization); and it is more closely connected to labor unions (the Japanese Trade Union Confederation supports it).⁸³

Still, not every members of DPJ embrace the idea of being a modern labor's party. There is some sign of factionalism within DPJ; but obviously, since factions did not have that much time to be institutionalized, they do not have the same function as in the case of LDP. Some of the factions are based on the former party affiliation (since DPJ was also created as a result of a party merger) some are based on ideologies, and some on simply trends of interests. Researches⁸⁴ pointed out factions have identity, but they are not as official as in the LDP; and they are more flexible, for instance it is possible to be in more than one for the same time. Several factions are just "cliques and tendencies" and some of them are more institutionalized. What are the functions of factions in the case of DPJ? Mostly "mutual aid in times of campaigns" and representation of some interests; however, factions closer to labor unions tend to emphasize that they are not the "political arms" of the unions. Besides, factions have some role in allocating positions. It is also pointed out that "representing external groups, providing mutual aid and fulfilling subjective needs, factional groups in the DPJ have one more function, which is perhaps the most important, namely *the articulation of views and positions in areas of central interest to the individual factions*"⁸⁵ which may show to the direction of the creation of new "policy tribes".

Another question is whether the change to DPJ means a real reversibility in the Japanese government? Is the DPJ fundamentally different from the LDP?

DPJ consist lots of politicians who left the LDP, in order to defeat it in 1993. The "old" DPJ, formed in 1996, consist representatives from the Social Democratic Party and the Harbinger Party (*Shinto Sakigake*). After this, in 1998, members from *Shinshinto* also merged to it. Thus, former party affiliations remained important in a certain range, showing to the direction of factionalism.

As for terms of policy vision on the level of individual members, based on Asahi-Today Elite Surveys in 2003-05, it is pointed out that "the two parties widely overlap with each other, mainly because each of the parties indeed has diverse membership" and the difference of the two main parties "do not represent clear-cut ideological cleavages in society".⁸⁶ DPJ can be regarded as a "catch-all" opposition party, which was created simply in order to be a challenger of LDP, composed from several elements who are linked together only by this aspiration.

Despite this, DPJ tried to differentiate itself from LDP. In 2005 the Koizumi election they were against postal privatization. In the 2007 Upper House election they managed to win with mobilization of rural voters alienated from the LDP. An evaluation in 2009 said: "the DPJ puts more emphasis on public investments, fiscal expenditures, and redistribution, all targeted at rural areas, making some researchers say that 'the DPJ is becoming more like the old LDP'".⁸⁷ Since then, the growing inequality gave opportunity to the party to emphasize the protection of labor market and welfare.

The reason why the DPJ was able to appear and be united despite its being a franchise party like the old LDP is partly its balanced personnel policy; and partly the incentives of the

⁸³Shiota, Ushio (2007): *Minshuto no Kenkyu*. Tokyo: Heibonsha

⁸⁴ See: Köllner, Partick (2004): *Factionalism in Japanese political parties revisited or How do factions in the LDP and the DPJ differ?* Japan Forum, Volume 16, Issue 1, 2004, pp 87-109

⁸⁵Ibid

⁸⁶Kabashima, Ikuo – Yamamoto, Koji (2005): *2003-nen Tokyo Daigaku*, Asahi Shimbunsha Kyodo Seijika Chosa Kodo Bukku. *Nihon Seiji Kenkyu*, Vol. 2, Issue 2, page 392-418; and Kabashima, Ikuo – Yamamoto, Koji (2008): *2005-nen Tokyo Daigaku*, Asahi Shimbunsha Kyodo Seijika Chosa Kodo Bukku. *Nihon Seiji Kenkyu*, Vol. 5, no. 1/2, p 283-297

⁸⁷Uenohara et al. (2007), p 59

current electoral system. And it managed to win is that it produced itself to the electorate as an alternative which is able to govern.⁸⁸

At the same time, DPJ tries to continue the process of taking the ground of policy-making from bureaucrats and informal party councils; they stated that legislation is placed under the responsibility of the cabinet.⁸⁹ Besides, more importance is taken on plenary deliberation.

Also, the DPJ does not have the long-time institutionalized practice of PARC and policy tribes. Since it is merged from several political parties, and its merger happened recently compared to the LDP several decades practice, its leaders had a more prominent role in its leadership and coordination.

All in all, the change of government may be an irreversible shift in party-bureaucrat and party-interest group relations. “With the DPJ victory, popular sovereignty became a genuine foundation of legitimacy, marking the beginning of a new political life in Japan”.⁹⁰ Some possible failures of the decision-making process in the systematic level, however, can easily reduce the opportunity to reach real reversibility.⁹¹ As it can be seen, several elements are different in the two parties, but even if the systematic problems are solved, there is no guarantee that political culture, brought by the new government, will be totally different from the one cultivated by old system of governance. It can be stated, at least, that the structural reforms and the regime change created the possibility of it; namely, that Japan can move from the original “governance” to the direction of “government”.

V. Conclusion

If the analysis is correct and the Japanese system is originally a system of “governance” changing to the direction of “government”, than deregulation and privatization seem to be unfitting to it. “Governance” is strongly associated with neoliberalism in the sense that one point is common between them: the governing role of some “groups” or “mechanisms” (civil society, market) which are hard to identify as “responsible for the public good”. But actually, Japan was closer to neoliberalism in the sense that as it was pointed out above: it was *not known who actually governs* (and this is why there are contradictory theories on the economic success and order of the Japanese society). After this governance became a target of criticism, demands appeared for a government which is capable to take the responsibility of decisions. Thus, strengthening decisive capacity, transparency and accountability were emphasized in order to decide the place of responsibility for a certain decisions and policies.

But transparency and accountability should be a composing element of any possible model of governance. Governance model lacks them in reality. And unfortunately, in case of governance, it is not easy to reach these if several actors have the best interest to not be transparent, and under several circumstances, they can avoid the demand to be transparent. On the other hand, the definition of “public good” which should be provided by the state in the “government” model – if it is not reduced to a simplified welfare state – also remains an opened question.

⁸⁸Ushiro, Fusao (2009): *Seikenkotai e no kiseki: shosenkyokusei-gata minshushugi to seito no senryaku*. Kadensha, Tokyo

⁸⁹Kan, Naoto (2009): How the DPJ will govern, Japan Echo, October issue, pp 27-32

⁹⁰Satoh (2010), p 586

⁹¹See the “Twisted Diet” problem. Kato, Kazuhiko (2010): *Gikaiseiji no Kenpogaku*. Nihon Hyoronsha

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