

Conflict Resolution in Legislative Process: How It Happens in Japan

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Introduction

(1) Two Forums of conflict resolution in legislative process

- Bill-deliberation in the Diet
- Bill- formulation outside the Diet

The Constitution of Japan and the Diet Law provide only for the deliberation process in the Diet while certain customary practice has been formed with regard to the bill-formulation process.

My talk will focus on the latter, especially the formulation process of the Cabinet-made bills (not those introduced by the Diet members which are quite few).

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Introduction

(2) Viewpoint of a Legal Scholar

The very best persons who can talk about the practice of such bill-formulation process should be bureaucrats or at least political theory scholars.

I, as a public law student, can only present “a picture from outside” about what is happening in the legislative process. The picture is based on my own experience of having advised the Government for the past 15 years.

I will also try to evaluate the current practice from public law perspectives.

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I. Overview of Legislative Process

(1-1) Parliamentary System

The Diet is composed of the Lower House (House of the Representatives) and the Upper House (House of Councilors).

The Diet nominates the Prime Minister from among the Diet members. The Premier appoints other members of the Cabinet at his/her will.

The Lower House may make a resolution to the effect that the Cabinet should leave. In such case, the Prime Minister must either resign with all the other Cabinet members or dissolve the Lower House for a general election. The Premier also may dissolve the Lower House at any time.

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I. Overview of Legislative Process

(1-2) Proceedings for lawmaking at the Diet

The Constitution basically provides that the bill, when affirmed in both Houses, becomes a law.

Each House first considers the bills in one of its committees. The committee deliberation is more extensive and intensive than the House-wide discussion for final votes.

Although the Cabinet has no formal veto power, it is perhaps impossible for the Diet to pass bills opposed by the Cabinet.

The Constitution nor any statutes provide for nothing about how the bills should be formed.

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I. Overview of Legislative Process

(2) Administrative State

In the administrative state (regulatory state and welfare state of the 20th century), more and more bills, which tend to be technical in their nature, are originated from among the bureaucrats. Most of the bills in Japan are introduced by the Cabinet.

The bill-formulation process in the administrative state can be described as how bureaucrats negotiate with each other (conflict resolution within the bureaucracy) and with outside players (conflict resolution with, e.g., Diet members). This is the focus of my talk today.

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I. Overview of Legislative Process

(3) Roles of Political Parties

The LDP (Liberal Democratic Party) has occupied the majority seats in both Houses since 1955, and has been most influential on Prime Ministers' nomination.

This is called "the 1955 system"

Under the 1955 system, once approved by the LDP, bills are easily expected to be made into law.

Thus, there has been formed a customary procedure. The custom goes that any bill to be introduced by the Cabinet must first be approved by the LDP.

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I. Overview of Legislative Process

(3) Roles of Political Parties –continued

For the bureaucrats, it is a very convenient way to accelerate the Diet proceedings.

For the LDP, it is a very convenient way to exert its influence on the bills. The LDP itself has various different opinions within it on policy issues. Such conflicts are resolved, not in the House, but rather in the bill-formulation process through discussion with bureaucrats.

The Minority parties, on the other hand, can basically attack the bills only in the House after their introduction.

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I. Overview of Legislative Process

(4) End of the 1995 system

It is widely believed that the 1995 system has ended in the 1990's when the LDP lost its dominant control in the Houses. Two non-LDP Cabinets (Hosokawa and Murayama) were consecutively formed in mid-1990's.

Though we have again LDP Cabinets these years, the Democratic Party (and its allies) now controls the Upper House. Thus, the Diet discussion has much more importance than before. However, the LDP approval procedure still exists, and deserves attention.

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II. Formulation Process of Cabinet-Bills

Two Forums for bill formation

- Conflicts within the Bureaucrats, especially technical issues requiring expertise
- Conflicts within the Political Parties (LDP), especially issues having political connotations

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II. Formulation Process of Cabinet-Bills

(1) Conflict resolution within the Bureaucrats (Kasumigaseki)

Most bills originate from the ideas of bureaucrats (especially, section chiefs who are in charge of certain fairly limited policy areas) while “big bills” arise through the top down initiative, such as the Prime Minister, and the Diet’s “resolutions added the Law” (mostly by the minority political party’s initiative).

Either way, any idea of making of bills must have Kasumigaseki-wide acceptance. Other wise, the Cabinet would not decide to introduce such bill to the Diet.

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II. Formulation Process of Cabinet-Bills

(1) Conflict resolution within the Bureaucrats (Kasumigaseki)

“Study-Group Sessions”:

Typically, the first thing such bureaucrats who are in charge of making bills (section chiefs and his/her staff) would do is to set up a study-group, often composed of outside experts (mostly university professors). Any other bureaucrats who may have any interest can see the meetings.

The study group is to make researches on various issues and problems regarding the bill. Outside the study group sessions, relevant bureaucrats may talk with each other about possible conflicts.

It is rather a forum to find what conflicts could ever exist regarding such bills.

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II. Formulation Process of Cabinet-Bills

(2) Conflict resolution outside the bureaucrats

“Councils”:

If the bill contains important policy issues, and can be attacked from various parts of the society, the bureaucrats typically ask a relevant Council (or set up a new Council and ask it) for discussion to make an outline of the bill.

Each Ministry and agency has one or more Councils to deliberate on “important issues” carefully. Members are: experts (professors, etc.), media, business, labor, NGOs, and other relevant people.

Relevant bureaucrats can only make presentations before the Councils or see the discussion as observers.

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II. Formulation Process of Cabinet-Bills

(2) Conflict resolution outside the bureaucrats

“Councils”:

Councils are expected to deliberate on matters from “a high angle” to make a reasoned decision on how the bills should be.

Councils are expected to input viewpoints of various parts of the society and also to reach a conclusion with reasoned explanation in face of various conflicts they detected.

Councils’ meetings are open and every discussion is recorded and published later.

The bureaucrats in charge of the bill serves as the administration of the Councils. They provide various help (sometimes informal direction) to the Council

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II. Formulation Process of Cabinet-Bills

(2) Conflict resolution outside the bureaucrats

“Negotiation with relevant Departments & Agencies”:

During the Council’s discussion, the bureaucrats who serves as its administration must negotiate with other departments and agencies who may have interest in the bill.

Whenever the Council is to decide on important issues, the administration is expected to resolve any conflicts with their counterparts of other Department and agencies.

The administration also must start negotiation with the Legislation Bureau (in the Cabinet) about the drafting of the bill.

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II. Formulation Process of Cabinet-Bills

(2) Conflict resolution outside the bureaucrats

“Negotiation with the LDP”:

During the Council’s discussion, the bureaucrats who serves as its administration must negotiate with the LDP, hopefully before the Council is to decide on important issues.

The LDP has “Policy Research Council” consisting of many “divisions” and “research commissions.”The Council’s administration visits relevant divisions to explain how the discussion in the Council is going, and to take questions and opinions from the LDP Diet members.

Draft bills will be explained in the same way for approval.

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III. Some Observations

To sum up:

- a) Formulation process of Cabinet-bills is a series of very important forums of conflict resolution. It is composed of study-group sessions, councils proceedings, LDP negotiation, negotiation with relevant other departments, and the Legislation Bureau negotiation. At the center of this relentless process, a few bureaucrats work as conflict mediators and drafters of the bill.
- b) Such formulation process can be divided, functionally, into: (1) procedures to input expertise and rationality (study-group, councils, and negotiation within the bureaucracy); (2) procedure to make the bill responsive to various needs in society (councils, LDP negotiation, negotiation within bureaucracy); (3) proceeding to ensure legal rationality (Legislation Bureau).

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III. Some Observations

Discussion 1: Roles of Bureaucrats and Politicians

- ❑ Bureaucrats as conflict manager, rather than policy maker.
- ❑ Bureaucracy itself represents various interests, viewpoints, and fields of expertise; thus, negotiation within the bureaucracy is very important, sometimes becomes very harsh.
- ❑ The LDP has been influential in the formulation process of the bills while minority parties could sometimes exert some influence in the deliberation process in the Houses.

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III. Some Observations

Discussion 2: Good Democracy?

- ❑ Formulation process of the bills seems more important than deliberation in the Diet. Is it good?
- ❑ The LDP negotiation and its bill-approval procedure can be understood as a cost-effective procedure both for the bureaucrats and the LDP.
- ❑ As far as the LDP is a catch-all party, at least during the 1995 system era, the LDP negotiation process can be described as an example of participatory democracy.

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III. Some Observations

Discussion 2: Good Democracy? -continued

- ❑ However, if the LDP only represents partial interests, the LDP negation and bill-approval process would end up as a capture mechanism. The process shall be seen as unfair because it works as a tool incorporating special interest advocacy in the bill-formulation process.
- ❑ If this is the case, such arguments should arise that the bureaucrats should be banned from negotiating with political parties, or should be forced to have negotiation with all the political parties.

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III. Some Observations

Discussion 2: Good Democracy?

- According to the Constitution, Cabinet-bills must be authorized by the Cabinet before being introduced to the Houses. The Cabinet (Prime Minister) has political responsibility for introducing their hand-made bills.
- From this viewpoint, the LDP negation and its bill-approval process can simply be an expression that the Cabinet has abandoned its executive power with regard to bill formulation. How can a political party be an agent of the Cabinet, even though such party politically controls the Prime Minister?

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III. Some Observations

Discussion 3: Influence of “Judicial Bureaucrats”

- “Judicial bureaucrats” oftentimes play important roles in the formulation process of Cabinet-bills.
- “Judicial bureaucrats” are judges and prosecutors who work, as part of the routine rotation managed by the General Secretariat of the Supreme Court or the High Prosecutors Office, either in the Ministry of Justice, Legislation Bureau, or some of the councils.
- “Judicial bureaucrats” are trying to stop “weird law” from their viewpoints.

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III. Some Observations

Discussion 4: Too Slow and Too Conservative?

- Multi-facet procedures for formulation of Cabinet-bills may have slowed down Japanese lawmaking and have produced too conservative laws.

- However, the end of the 1995 system is now bringing about a change. Though the same proceedings are still used, some laws are very quickly made while there is some critique that those laws are immature.

- What is the Korean experience to balance quickness and deliberation of lawmaking process?