

Molding Japanese Civil Society: State-Structured Incentives and the Patterning of Civil Society

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What is the role of the state in the development of civil society?! Rather than a simplistic, oppositional relationship, the state's influence has typically been to shape, not suppress, civil society. Through its direct and indirect structuring of incentives, the state promotes a particular pattern of civil society organization; political institutions structure the "rules of the game," which in part determine who plays and who flourishes. This pervasive influence can be overt or subtle. Legal, regulatory, and financial institutions and instruments create varying incentives for the organization of civil society by the processes of group formation and development and institutionalization of social movements.² Rules on what kind of groups are allowed to form have clear implications, but less obvious are the implications of bulk-mailing discounts for nonprofit organizations, which promote mass memberships, or a difference in access points for interest groups in the policy-making process. In making this argument, this chapter joins an emerging trend of more sophisticated understandings of how the organizational dimensions of civil society are influenced by state action and political institutions (e.g., Carapico 1998; Skocpol 1999; Levy 1999; Chessa 2000).

State structuring of incentives accounts for the pattern of civil society development found in Japan today, with state actions promoting one type of group at the same time they have hindered another. Specifically, small, local groups such as neighborhood associations have been promoted by the state; large, independent, professionalized groups such as Greenpeace have faced a much more hostile legal environment. While few observers would dispute the existence of this pattern, it

1 The author thanks John Campbell, Steven K. Vogel, Jonah Levy, Saadia Pekkanen, Richard Samuels, Apichai Shipper, and the participants of the "Global Perspectives on Civil Society in Japan" conference of January 2000 for comments on this text. The author also gratefully acknowledges the support of the Aspen Institute Nonprofit Sector Research Fund.

2 This is the meaning of the word "molding" in the title, which also acknowledges Sheldon Garon's important study (1997) on the relationship between groups and the state in several spheres.

is not often recognized that this state of affairs exists in large measure because of state action.

The distinctive pattern of many small, local groups and few large, professionalized groups has a variety of consequences. Small, local groups can contribute to stocks of social capital and perhaps to the performance of local governments. They form a crucial basis of social life. These groups lack professional staffs, however. Unlike small, local groups without full-time employees, professionalized groups that have a large core of full-time employees can develop expertise, institutionalize movements, and influence policies and other outcomes down the road; they change the political landscape.

Compare the many old people's clubs in Japan with the American Association of Retired Persons (AARP) in the United States. The AARP claims 30 million members, 160,000 volunteers, 1,837 employees, and, through its dozens of registered lobbyists and more than 150 policy and legislative staffers, an important influence on policy making (Karen Stewart, AARP staff; telephone interview, July 31, 2000). Although Japanese old people's clubs might improve the quality of life of many aged people by providing them opportunities to socialize, they are neighborhood affairs with limited membership, no professional staff, and no impact on policy making. The distinction is not in the number of members or volunteers,³ but rather in the concentration, in the U.S. case, of membership in one organization with professional staff. Original research made a crucial contribution to the success of the Nobel Prize-winning International Campaign to Ban Land Mines, which compiled gruesome statistics such as the fact that one in every 236 Cambodians is an amputee, compared with one in every 22,000 Americans (Price 1998: 620). Beyond research, the message must be put out. Greenpeace, for example, has its own media facilities and can distribute photographs to newspapers and circulate video news spots to television stations in 88 countries within hours (Wapner 1995: 320). The point is not that one organizational configuration is more effective or "better" than the other, but rather that these institutional forms have many implications for politics, policy formation, and government performance.⁴

In short, it is clear that different configurations have different consequences. Japan has many of the small, neighborhood watch-type groups, and relatively few large, independent groups like the AARP, and state action in large measure

3 Although volunteers as a percent of the population are higher in the United States than in Japan (48.8 percent in 1995 vs. 26.9 percent in 1996), they are numerous in Japan, too (Yamauchi 1999: 59). Two important new studies that investigate the volunteer phenomenon in Japan are Pickert 2001 and Kage 2001.

4 With a focus on the organizational level, Shimizu Hiroko (2000) demonstrates the importance of the distinction between paid staff and volunteers. She argues that paid staff are crucial to the development of organizational capacity in the nonprofit sector and that they cannot be replaced by volunteers. Compared with the United States, however, few Japanese organizations have paid staff. See also the work of Jeffrey M. Berry (1998), whose research indicates a correlation between the size of professional staffs in citizens' groups and their political influence as measured by citations in news media, appearances to testify before Congress, and citations of research produced by these groups as authoritative.

accounts for this pattern. The Japanese state has structured incentives to promote this pattern of development because it seeks to nurture social capital-type civil society groups and to discourage pluralistic, lobbying-type civil society groups. Although democratic theory sometimes conflates these types of groups, they can be analytically distinguished for greater theoretical leverage.⁵

Defining Civil Society

Too often, vagueness plagues discussions of civil society. To clarify causal claims about the patterning of civil society, we must be clear as to exactly what we mean by civil society. For my purposes, *civil society* is the organized, nonstate, nonmarket sector. This definition encompasses voluntary groups of all kinds, such as nonprofit foundations, charities, think tanks, and choral societies. It includes nonprofit organizations (NPOs), nongovernmental organizations (NGOs), and other voluntary or tertiary associations. It is larger in scope than the category of civic groups, which more narrowly comprises participatory organizations. It is also broader than the nonprofit sector, which at the least excludes unincorporated voluntary groups and which is also sometimes limited to groups performing public purposes (Hall 1987). On the other hand, it does not include labor unions, companies, or other profit-oriented groups.⁶ It also excludes government bureaucracies, parastatal organizations, and political parties as well as the family. Under this definition, the Japanese pattern of few large, professionalized, nonprofit organizations and many smaller, grass-roots organizations snaps into focus.

Civil society is not a dichotomous variable. Rather, attention should be paid to the types of organizations that exist as well as to participation in organizations and their numbers. Civil society can vary in level and composition from time to time and from place to place. Because civil society comprises a motley crew, there should be theoretical gains from disaggregating the concept. Unpacking also allows us to fine-tune our analysis of the relationship between state and civil society. Rather than search for either the suppression or nurturing of civil society, we can examine the patterns that the state creates in civil society and the patterns of state-civil society relations that emerge. This chapter thus adopts this perspective on the pattern of development of civil society organizations in Japan before linking this pattern to causal arguments about state influence.

Direct versus Indirect State Influence

State institutions shape civil society in Japan both directly and indirectly. "Direct" refers to purposeful attempts to influence the configuration of organized civil soci-

⁵ I am indebted to John Campbell for this observation. See also Theda Skocpol's argument (1999) distinguishing the advocacy and membership dimensions of voluntary associations.

⁶ See Cohen and Arato (1992) on the exclusion of market organizations from definitions of civil society. Although I have excluded unions and other economic associations from this analysis to maintain definitional consistency, their inclusion would only provide additional evidence in favor of my central argument. The importance of the legal context for labor organization is well documented.

ety. This can consist of regulation of groups' legal status or activities, tax benefits, or direct financial flows such as grants, contracts, and the like. Legitimation is another important resource the state can often give or withhold from a group. This could be especially true in Japan, where the state's historical and cultural weight is often regarded as greater than in other nations. Legitimation comes from legal recognition of the social value of civil society groups through the creation of a special class of groups or through recognition of a particular group's belonging to that sanctioned category. Intriguingly, preliminary evidence from implementation of the so-called NPO Law of 1998 suggests that legitimation may be the key resource for new groups (Pekkanen 2000b).

Examination of the regulatory framework and state actions provides compelling evidence that the state has shaped civil society in Japan into its distinctive pattern. That may reflect an attempt to foster groups intended to safely harness the energy of the population in directions helpful for administration while discouraging the formation of groups that could challenge the bureaucracy by monitoring policy outputs or providing an alternative source of expertise. As Frank Upham (1987: 17) writes, one of the "major instruments for such control is the manipulation of the legal framework within which social change and its harbinger, social conflict, occur."⁷

"Indirect" refers to unintentional influences on civil society's organization that are the by-products of institutional structure. Japan's institutional structure has had a large indirect influence. A relatively insulated bureaucracy and uninfluential parliament have shaped how groups that seek to influence the state must form in order to be effective. Although exceptions such as the farm lobby exist, close coordination with ministries is typically more important than mass membership (Richardson and Flanagan 1984; Richardson 1997; Schwartz 1998). Susan Pharr (1990) argues that the state's response to social conflict has typically been to seek to privatize it. Preemptive concessions and the privatization of conflict also have the effect of making group formation less likely. This can have long-term consequences in shaping the nature of protest in two senses. First, lack of institutionalization raises collective-action problems should another potential conflict emerge, thus making such conflict more manageable for the state. Working conditions can become much worse before a strike will occur if workers must reestablish a union every time conditions deteriorate, for example. Second, Charles Tilly (1979) has shown how state responses to protest can over time structure the nature of protest itself.

An electoral system (e.g., proportional representation vs. single-member districts) might have an effect on how interests are structured (e.g., into small, ideological parties vs. pressure groups). Theda Skocpol (1998) argues that the increase in U.S. congressional staffers from 6,255 in 1960 to 20,000 in 1990 was a key factor in the rise of advocacy groups in the United States. Her reasoning is that the presence of more staffers translated into more opportunities for advocacy groups to lobby and get their message across. Compared with twenty-six staffers for a U.S.

⁷ Upham (1987) meticulously documents the importance of the legal framework in a number of social realms. This chapter is in line with his overall approach to the study of law in society and many of his conclusions about the way law has structured social conflict (for me, civil society) in Japan.

senator, Japanese Diet members can hire only three, and there are correspondingly fewer opportunities for lobbyists to get their message across to legislators.

The political opportunity structure is clearly important for the development of advocacy groups, but even seemingly unimportant regulations can have an important effect in structuring incentives for organizational development. Indirect influences may include such factors as the lack of a bulk postage discount for nonprofits in Japan. Although this might seem a trivial example, in the United States, this discount is important in promoting large membership organizations, which can deliver a letter to your door for less than a nickel (*total cost, including printing and sorting if done internally*). They rely on the discount to attract and communicate with wide membership bases. In Japan, on the other hand, the lack of this discount can make the operation of groups aiming at large memberships quite expensive and thus less likely to succeed.

The head of a small citizens' group in Tokyo confessed to me that he has actually found it cheaper on occasion to pack a suitcase full of mailings, fly to Korea, and mail them from there because the cost of mailing from Korea to Japan is less than the cost of mailing within Japan - even when the additional expense of an air ticket is included (Watanabe Bungaku, TOPIC; personal interview, November 22, 1996). Incidentally, this gentleman heads an antismoking group in Tokyo of which he is the sole full-time employee. I could not help but contrast the image of him laboring alone with that of the plush office space of the American Cancer Society.

Competing Explanations

The state directly and indirectly structures incentives for the formation and development of civil society organizations. This insight allows us to understand why Japanese civil society is distinctive in international comparison by reference to the regulatory framework that Japanese civil society organizations face. Let me detail that argument, then briefly review two competing explanations.

The Political-Institutional Hypothesis

My political explanation focuses on how institutions structure incentives to explain which groups form and operate in civil society. It does not claim that civil society is a product of what state agencies or politicians want to happen, but rather that institutions have effects through structuring action. The focus here is on the regulatory framework as an independent variable, and no attempt is made to distinguish between bureaucratic intentions and politicians' desires in shaping this framework.

It would be useful to describe Japan's laws and regulations and how they apply to civil society groups. Japan's nongovernmental organizations (hereafter NPOs⁸)

⁸ In Japan, domestically active groups are called "NPOs," while "NGOs" usually refer to groups involved in international activities. I use the Japanese term "NPO," which, while technically referring to all nonprofit organizations, in practice overlaps significantly with the meaning Americans attach to NGO.

face one of the most severe regulatory environments in the developed world (Salamon and Anheier 1996). In the United States, it is an uncomplicated procedure for groups to register as nonprofits and qualify for tax exemptions. Because authorities apply the technical definition of nonprofit - an organization that does not distribute profits to shareholders - the procedure of gaining this legal status is straightforward. Rather than using the concept of "nonprofits," however, Japanese law uses the category of "public-interest legal persons" (*koeki kOjin*). This begs the question of who decides what is in the public interest. In Japan, the bureaucracy has a legal monopoly on this decision, and it cannot (legally) err in making this determination. Furthermore, Japanese law stipulates that public-interest legal persons can acquire legal status only through the explicit permission of the competent bureaucratic authority, and it grants this authority continuing powers of supervision and administrative guidance. This combination of discretionary screening, close supervision of operations, and sanctioning power is one of the essential causes for the Japanese pattern of civil society development, and it has compromised the vitality of that development.

This strict regulation is based mostly on Article 34 of the Uniform Civil Code, which was promulgated in 1896. Although Article 21 of Japan's Constitution provides for freedom of association, Article 33 of the Civil Code requires that all legal persons be formed in accordance with its regulations, which in practice limit that freedom. "Legal persons" (*hojin*) are groups or organizations that are legally provided with an independent existence and attendant rights and obligations. Without this status, groups have no legal existence. Articles 34 and 35 flank Article 33's general provisions to create two classes of legal persons. Although Article 35 provides for the establishment of for-profit organizations, Article 34 does not provide for a corresponding category of nonprofit organizations, but rather for a much more restrictive category of public-interest legal persons (PIPs).⁹ This creates a legal blind spot: most groups that are nonprofit but not in the public interest have no legal basis to form. Needless to say, there are many such groups, especially when the "public interest" is interpreted by the bureaucracy in a narrow or arbitrary manner. There is simply no legal category for such groups to occupy, and as a result, they are reduced to operating as informal, voluntary groups, or even to becoming corporations if they can.

Still other groups are prevented from becoming legal persons because of another legal peculiarity. The Civil Code left the handling of PIPs to the "discretion of the competent ministry." This provision has been interpreted in such a way that each ministry or agency handles the PIPs in its bailiwick. In addition to having been established by funds from that ministry, many PIPs will also host a large number of retired bureaucrats and receive operating income from that same ministry. Group s whose activities cut across ministries, on the other hand, such as those involved in education or the environment, have extreme difficulty in winning legal status.¹⁰

9 Public-interest legal persons include both foundations (*zaidan hojin*) and associations (*shadon hojin*).

10 Special laws have established a number of subcategories of PIPs, mainly as part of the liberalization imposed by Occupation authorities. Such groups include education legal persons (first established

Table 5.1 *Civil Society Groups in Japan*

	Type of group	Numbers
With legal status	Education legal persons	16,155
	Social welfare legal persons	13,000
	Public-interest legal persons (<i>zaidan</i>)	13,476
	Public-interest legal persons (<i>shadan</i>)	12,451
	Religious legal persons	183,894
	Medical legal persons	22,838
	PIP subtotal - broad definition ^a	(261,814)
	Cooperatives	23,718
	Political groups	72,796
	Think tanks (not counted elsewhere)	449
	Neighborhood associations (with legal status)	8,691
Legal status subtotal		367,468
Without legal status	Neighborhood associations	292,227
	Children's groups	130,000
	Elderly people's groups	150,000
	Other civic groups	598,000
	Voluntary groups with offices	42,000
Without legal status subtotal		1,212,227
Total		1,579,695

aSee note 10.

Sources: Yamauchi 1997: 218, 227; Tsujinaka and Mori 1998: 298; Japanese government documents.

Even for those groups that do fit into the appropriate category, bureaucrats have raised high financial hurdles. Citing the Civil Code's call for a "sound financial base," bureaucrats have frequently insisted on an aspiring PIP's possessing at least ¥300 million (\$3 million) in capital.¹¹ Many viable groups can not accumulate such funds. Although the United States has 1,273,000 tax-exempt nonprofit organizations registered with the Internal Revenue Service (the great majority of which have budgets of at least \$100,000 a year and which collectively employ 10 million full-time workers), Japan has about 260,000 public-interest legal persons (see Table 5.1).

Japan's authorization system has been implemented in such a way that groups whose objectives or styles differ from those of the authorizing ministry find it very difficult to gain approval. These groups are de facto denied legal status by a system

in 1947), medical legal persons (1948), religious legal persons (1951), and social welfare legal persons (1951). These should be considered special categories within Article 34. Together with the *shadan hojin* and *zaidan hojin*, these groups constitute PIPs under my broad definition. The latter two groups alone constitute PIPs under my narrow definition.

¹¹ This provision is theoretically open to a liberal interpretation. I contend that bureaucrats' narrow interpretation results from political will rather than a close reading of the relevant laws.

reliant on bureaucratic discretion. Due to this screening mechanism, bureaucrats select which groups are allowed to organize and which are not (*Jurisuto* 1997; NIRA 1995).

For whatever reason, many NPOs can not qualify as legal persons, and this puts them at a significant disadvantage. The logistical difficulties should not be underestimated, especially for groups that seek to become large, professionalized organizations. Tales abound among civil society organizations of the problems created by a lack of legal status. Tanaka Naoki (personal interview, March 12, 1998), director of Wonderful Aging Club, told me that before his group became a PIP in 1988, "Without legal status, the officials at the Ministry of Welfare wouldn't even give me their business cards. In companies, I couldn't even get past the reception desk." The *Asahi Shinbun* (March 23, 1998) reported how a citizens' group in Kyllshll could not receive the donation of a car from a local company for over a year because, without the group's enjoying legal status, the donation would look as if it went directly to the group's leader. As another group leader put it, "to relate to other bodies, legal status is a necessity." The *Asahi Shinbun* (March 25, 1998) also cited the example of an aged-care group that would receive about ¥12 million (\$120,000) a year from the government if it had legal status. Because it had no legal status, however, it received no money at all.

These examples demonstrate that it is hard for independent groups to become large in Japan. Legal status is just one part of the equation, and other important resources that the state can direct to favored groups include legitimation (mainly through legal status), public funds, and tax breaks. Not only is it hard for independent groups to grow large in Japan, but it is hard for large groups to remain independent. The latter is due primarily to an institutional arrangement that confers significant monitoring and sanctioning powers on a single bureaucratic ministry or agency. Even in the abstract, it is easy to understand that if a single agency grants permission to a group to form, monitors it, is able to punish it, and can even dissolve the group entirely, often without effective legal challenge, that agency will hold significant power over the group.

In Japan, a PIP must report to the competent ministry, which retains the power to investigate the group or even to revoke its legal status. Attendant tax benefits are not as generous as those of other industrialized democracies, either. Even worse, bureaucrats have insisted on continuing administrative guidance. This supervision is established by Article 67 of the Civil Code. Paragraph 2 establishes a "supervision system" (*kanshi seido*) by the "competent supervising ministry" (*shumu kancho*). Article 84 makes further provisions for fines on directors of PIPs who violate the directions of the competent ministry.

Backed by the power to punish, this administrative guidance forces licensees to comply with bureaucrats' preferences and impairs the independence of civil society organizations. It has been employed in such a heavy-handed way that many observers regard social welfare legal persons, for example, as little more than cheap subcontractors for the government, bereft of the independence necessary to qualify as true NPOs. As Iriyama Akira, director of the Sasakawa Peace Foundation (a PIP), put it, "even those like us who make it through and get permission have to

suffer from very severe control and guidance from authorities. If I start to talk about the notorious administrative guidance, it'll take days" (Pekkanen 2000b: 119).

Despite the great logistical problems it creates, foreign groups such as the Asia Foundation sometimes choose not to become a PIP' precisely to avoid bureaucratic interference. In a nationwide Economic Planning Agency survey of Japanese NPOs, the most common reason cited for not applying for legal status was that accounting and finance reporting requirements were too onerous (61 percent of groups cited this reason), and the third most common reason (cited by 45 percent) was the fear that the objective of the NPO or the content of its activities could be controlled by bureaucrats (*Jurisuto* 1997). PIPs must submit reports on annual activities, lists of assets, accounts of changes in membership, and financial statements for the past year; as well as planned activity reports and budget estimates for the coming year.

An authorizing agency is empowered to investigate PIPs. The agency can make on-site inspections and audits. Article 68 of the Civil Code provides that a PIP' can be dissolved if its authorizing agency cancels its authorization of incorporation, and Article 71 states that the authorizing agency may cancel its approval if a PIP' has engaged in activities outside its purposes as defined in its articles of association, has violated the conditions under which its establishment was approved, or violates supervisory orders issued by the agency. Article 25 of the Civil Code Enforcement Law requires an inquiry by the authorizing agency and also requires that the agency indicate the reasons for dissolution to the affected parties, who then have the right to a legal proceeding and appeal. It is interesting to note that cancellation of authorization is interpreted as a response to changed circumstances and not as a mistake by the authorizers as to the degree to which the PIP' was in the public interest to begin with. Despite the possibility of appeal, the legal deck is stacked in favor of the authorizing agency, in part because of the considerable discretion attached to its evaluation of the public interest (Hayashi 1972: 192-93; Pekkanen and Simon 2003).

Two recent legal changes improve the legal environment: the 1998 Law for the Promotion of Specified Nonprofit Activities (or "NPO Law") and the 2001 granting of tax privileges (in the Fiscal Year 2001 Tax Reform). Designed to limit administrative guidance and bureaucratic discretion in the granting of legal status and allow many more civil society groups to gain that status, the NPO Law created a new category of PIPs by means of a special law attached to Article 34 (Pekkanen 2000a, 2000b). On the one hand, there is some evidence that administrative guidance continues, and a survey of the 1,034 groups granted NPO legal person status by November 1999 (to which 463 groups responded) found only 5.2 percent "satisfied" with the law (C's 2000: 9). On the other hand, as of April 27, 2001, some 3,933 of the 4,626 groups that had applied had been granted the status of NPO legal person (<http://www5.cao.go.jp/seikatsunpo/index.html>). The 2001 tax changes created a subcategory of NPO legal persons (tax-deductible (*nintei*) specified nonprofit activities legal persons) to which individuals or corporations can make a contribution that is deductible from their income tax. Although

implementation had yet to occur at the time of this writing, the change will not lower tax rates for NPOs and allows only some NPO legal persons to receive tax-advantaged charitable contributions. Those groups must be certified by the commissioner of the National Tax Administration of the Ministry of Finance as meeting a number of stringent criteria, including a requirement that one-third of the organization's budget derive from donations. This "public-support test" alone could disqualify as many as 90 percent of NPO legal persons (Pekkanen 2001a).

Recent changes notwithstanding, the status, number, and independence of NPOs have been severely curtailed in Japan as a result of the regulatory environment. Groups can form as corporations or remain voluntary groups without legal status, of course, but the legal system has a heavy bias against such NPOs. This bias is, again, an essential element in the structuring of incentives that helps to create the pattern of civil society development found in Japan. It makes it difficult for many groups to grow, especially those seeking to be independent of the state.

It is important to keep in mind that the negative role of the state is only one part of the equation. The Japanese state also *promotes* many groups it deems cooperative. Although that does include some PIPs, neighborhood associations are an excellent example of the civil society organizations positively promoted by the Japanese state. Neighborhood associations benefit from de facto legal recognition, the devolution of powers and jurisdiction, the conferral of a monopoly of legitimacy (tantamount to the repression of rival organizations), and state funds. Japan's civil society is characterized by few large, independent organizations and many small, local groups for reasons that are flip sides of the same coin.

To frame my political-institutional hypothesis more formally:

Hypothesis: Groups facing less favorable regulatory conditions will be smaller. Groups with access to greater resources from the state (e.g., legal status, financial flows, tax benefits, legitimation) will *ceteris paribus* be larger.

My independent variable is the regulatory framework, including licensing, tax, and operational provisions and financial support. As a dependent variable, civil society is operationalized by the measurement of group numbers and group membership. Large and small groups are distinguished by the number of professional, full-time staff they employ.

The Culturalist Hypothesis

Culturalist hypotheses make two claims. First, they explain the level of civil society organization by proclivities to join or form certain kinds of organizations. Second, they uniformly posit a *low* level of civil society activity in Japan because of distinctive cultural characteristics. A richer understanding of the importance of culture in shaping civil society emerges from a longitudinal study of the interplay of institutions and culture, of how institutions themselves structure cultural expectations (e.g., about the public sphere and legitimate social activity) that in turn

instruct actors within that cultural framework. For the purposes of this chapter, however, I extract the following claim:

Hypothesis: There will be few civil society groups in Japan, and groups that espouse abstract ideals or involve aid to unknown third parties will be especially small in number.

Cultural constructs influence individuals' framing of social problems and provide a repertoire of organizational responses. By themselves, however, cultural explanations fail to explain the pattern of civil society organizations that has developed in Japan. Although the culturalist hypothesis would predict few instances of volunteerism, for example, it is contradicted by the outpouring of volunteerism in the aftermath of the 1995 Kobe Earthquake, when 1.2 million volunteers went to that city to join relief efforts and nearly ¥160 billion (\$1.6 billion) was donated. The difficulties these spontaneous groups faced in gaining legal status and in institutionalizing, on the other hand, are consistent with the political-institutional explanation.

The Heterogeneity Hypothesis

An abundant literature explains the size of a nonprofit sector by relating it to the distribution of preferences in a population. In short, where there is greater heterogeneity of preferences regarding a good, the nonprofit sector will be larger. Many analysts (e.g., Weisbrod and Schlesinger 1986; Weisbrod 1988; James 1989) argue that residual unsatisfied demand for public goods exists and can be supplied by nonprofits because governments provide public goods only at the level demanded by the median voter. An observable implication of this explanation should be that in sectors or nations where greater heterogeneity and intensity of preferences exist regarding public goods, the market share of nonprofits versus government should be higher (James 1987, 1989).

Hypothesis: The greater the residual unsatisfied demand for public goods (i.e., the heterogeneity of preferences), the larger the size of the nonprofit sector.

Even a cursory review of a single sector, education, reveals problems with this explanation. In Japan, it is not nonprofits, but rather private, for-profit educational institutions - the cram schools (*juku*) - that meet the surplus demand for education. This is true of both catch-up schools and those schools that prepare students to get ahead in the university entrance exams. In fact, Thomas Rohlen (1980: 38) observes that "[n]o other country in the world comes close in the percentage of their populations involved in buying private educational advantage." Moreover, stratification begins in high school. This is due not to a feature of demand, but rather to the historical legacy of an acute space shortage among high schools in the postwar period. Although the social heterogeneity explanation offers helpful insights, it fails to explain important elements of the development of civil society in Japan.

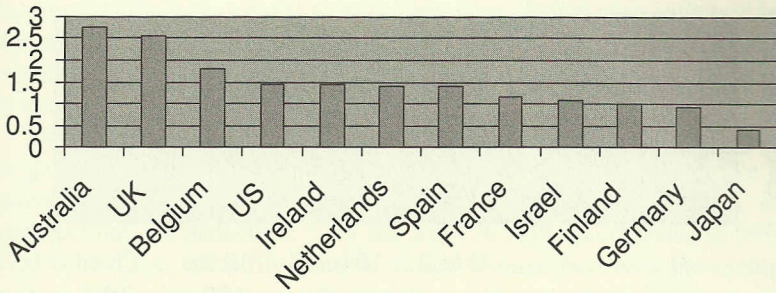


Figure 5.1 Civic group employment as a percentage of total employment. *Source:* Author calculations based on 1995 data supplied by the Johns Hopkins Comparative Nonprofit Sector Project.

The Evidence

Although support is also found for the cultural hypothesis, evidence from a variety of cases supports the political-institutional hypothesis.¹²

The Pattern of Groups

As predicted, the evidence confirms that groups without access to state resources are smaller and that less provocative groups have easier access to state resources. This is true cross-nationally as well as across sectors in Japan. As a percentage of their total revenue, public-sector support of civic/advocacy groups is small in Japan compared with other industrialized nations (Salamon and Anheier 1997). As the political-institutional hypothesis predicts, these groups are quite small, averaging 3.35 employees and expenditures of ¥36.12 million yen (\$361,200), only 22.7 percent of the average for all nonprofits in Japan (Atoda et al. 1998: 105). Civil/advocacy groups are an especially good example because of their frequently oppositional relationship to the state. In other words, it is precisely these troublesome groups among which we would expect to find the least state support.

Figure 5.1 shows the proportion of the total work force occupied by civil society organization. (These figures exclude workers in education, health, and social services, whose figures vary widely because of state policies, but they do include workers in all other civil society groups.) This represents the professionalization of civil society organizations. Proportionally, Japan's 73,500 civil society professionals are fewer than half the number of the next lowest nation (Germany) and fewer than a third of the average for these developed nations. Even those groups with the most secure financial bases are small in Japan. Figure 5.2 shows how the overwhelming majority of PIPs have only a handful of employees.

¹² See also Reimann, this volume, who shows how changed government policies toward international development NGOs (IDNGOs) influenced the growth of these groups in the 1990s.

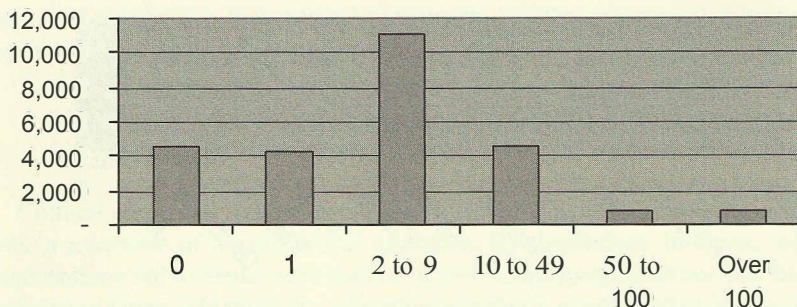


Figure 5.2 Public-interest legal persons by number of employees. Source: Prime Minister's Office, *KiJeki hOjin hakusho 2000*, p. 361..

Table 5.2 Citizens Groups' Main Activities (%)

Social welfare (aged care, child services, disabled services, other)	37.4
Local groups (crime prevention, traffic safety, disaster prevention)	16.9
Environmental	10.0
Other (e.g., consumer issues, human rights, gender issues, supporting citizens activities, peace promotion)	5.7
Medical	4.7
Education, sports, culture (education, research, sports, nurturing youth, arts, culture)	4.6
No answer	4

Source: Economic Planning Agency, "NPO ni tsuite no shiryuJ" Data on NPOs), 1998.

The status of independent groups formed by citizen activists provides another example. These groups typify what Americans would regard as "real" civil society groups. They engage in a wide range of activities (see Table 5.2), and the very category implies independence from the state. Citizen groups are small; very few have large staffs. A recent survey of several thousand such groups found that only 1.6 percent of them have more than five full-time paid employees, and as a category, they average only 0.5 full-time paid employees (Yamauchi 1997: 220). As might be expected, very few of these groups have legal status. Tokyo-area citizen groups, for example, are almost all (82 percent) voluntary associations without legal status (Tsujiinaka 1998: 19).

The flip side of cutting off resource flows to provocative groups is that the state often seeks to coopt or supervise those groups that do earn legal status. Intense supervision and personnel transfers compromise the independence of many groups. The price of gaining legal status is often a de facto agreement to employ ex-bureaucrats of the authorizing ministry. Besides providing a cozy refuge for these erstwhile denizens of Kasumigaseki, this practice also confers on ministries

substantial influence over the group's operations. This is especially true when the bureaucrats assume posts on a group's board of directors. The former practice occurs in over one-third of PIPs supervised by the national bureaucracy, the latter in about one-sixth (Prime Minister's Office 1998: 124).

The pattern of tax benefits also supports the political-institutional hypothesis. In general, charitable contributions by individuals or corporations are not tax-deductible in Japan. There is a subcategory of Special PIPs, however, to which contributions are deductible.¹³ Of the 232,776 PIPs incorporated in 1997, only 17,000 held this status. In contrast, the government has been promoting social welfare legal persons in an effort to deal with such social issues as the aging society, and not surprisingly, everyone of the 14,832 social welfare legal persons held Special PIP status (Yamauchi 1997: 198).

Social Movements

Where social movements of comparable size arise in different countries, their institutionalization in different forms offers a means to test the political-institutional hypothesis. In general terms, that hypothesis predicts that social movements similar in scope will not take similar institutional forms because of the direct and indirect influence of state institutions. In Japan, large social movements do not tend to result in large civil society organizations that institutionalize their aims. This supports the interpretation that political-institutional barriers are higher in Japan than in other advanced industrialized democracies, preventing the development of large, independent civil society organizations.

The United States now possesses large, professional, and entrenched environmental NGOs that are involved in almost every feature of environmental policy. These include such organizations as the Environmental Defense Fund, Friends of the Earth, Environmental Action, and Greenpeace USA (Gelb and Palley 1982). Although a German-style Green Party is (with apologies to Ralph Nader) unlikely to succeed in the United States due to its single-member electoral districts, the plethora of lobbying opportunities and easy rules for formation make the creation of NGOs an attractive option. The American and Japanese environmental movements involved roughly the same percent of the adult population (6 percent) at their zenith (McKean 1981; Broadbent 1998), yet the Japanese groups have melted away. The reasons for this divergence have more to do with differing incentives for institutionalization than with variation in the nature of the movements or national culture.

¹³ Given its civil code system, Japan's tax laws differ in many respects from America's. PIPs are taxed at a lower rate than corporations on activities subject to taxation; the United States uses a system of "related activities" instead. Donations are not tax-deductible in Japan, however, except for those made to a very select and numerically small group of Special Public Interest Increasing Legal Persons (*tokutei koeki zoshin kOjin*, commonly called *tokuzo*). Differences in tax privileges are more complex, and include deductible contributions, reduced taxation, and tax-free activities for PIPs.

Neighborhood Associations

Certain cases pose harder tests for some explanations than for others. With roots in the spontaneous self-organization of Japanese communities, neighborhood associations (NHAs) present a difficult case for the political-institutional explanation. Accordingly, NHA-related facts that support the political-institutional hypothesis represent important evidence. To support the political-institutional hypothesis, the spread of NHAs would have to have been actively promoted by the state, and this promotion would have to have been important for the success of NHAs as an organizational form.

Perhaps Japan's most widespread group, there are a total of 298,000 NHAs, which enjoy extremely high participation rates. Although many NHAs formed spontaneously by the first decade of the twentieth century, especially in rural areas, up to 90 percent of modern NHAs exist as a result of government promotion (Pekkanen 2002a, 2002b). Culturalist explanations might predict the maintenance of the authentic, early NHAs and even expect some NHAs to form in urban areas (as "surrogate villages"), but only government support can explain the spread of NHAs throughout Japan.

Unlike other civil society organizations, these groups have been actively promoted by the government. Although they are independent entities, they often work with branches of local government in disseminating information or maintaining public facilities. Government funds flow to NHAs for these and other purposes. The services are provided quite cheaply, yet the money is important to hold these locality-based groups together and may also create social capital-type externalities. When the government pays a neighborhood association to clean or maintain a local park, for example, the work is done more cheaply and better than if professionals were employed. At the same time, civic community is strengthened as local people work together to maintain the area. Despite strong efforts at cooptation, however, it is the state's support for and promotion of the NHAs that stand out in contrast to its treatment of other civil society organizations. Definitionally limited to small geographic areas, NHAs cannot challenge the state (e.g., in providing alternative sources of information).

Legal History

Additional corroboration of the political-institutional hypothesis can be found in documentary evidence and interviews. Thirty years after the Meiji Restoration (1868) put Japan on the path to modernization, the framers of the Civil Code made clear choices about legal frameworks to regulate civil society organizations. Legal documents, including the framers' notes and a comparison with the original German and Swiss laws that served as their models, indicate that the Civil Code was written with the intention of creating high hurdles for the organization of civil society groups. This is confirmed by evidence from the explanatory notes attached to Article 35 of the Civil Code and to an earlier draft of the code. There was a conscious shift from nonprofit to public-interest legal persons, for example, as part

of an attempt by the Meiji oligarchy to place strict limits on the formation of civil society groups. This was done not so much to cripple civil society as to prevent people from frittering away their energy in private organizations and to steer them instead toward the state's goals of nation building under the slogan "rich nation, strong army." Regulating civil society has always been a political process. Another example can be found in my research (Pekkanen 2000a, 2000b, 2003) on implementation of the NPO Law, which relies on documents as well as interviews to uncover the motives and interests of bureaucrats, politicians, and group leaders in negotiating the most significant change in the regulation of civil society in a century.

Accounting for Variation

Regulatory frameworks matter. They structure incentives, both directly and indirectly, that profoundly influence the development of civil society. But why do different countries regulate civil society in different ways? More narrowly, what accounts for variations in the regulation of civil society organizations across advanced industrialized democracies? Specifically, why does Japan regulate its civil society organizations so strictly? By shaping the "rules of the game," states determine who can and cannot play (and develop policy expertise, and so on), and this affects policy output.¹⁴ The rules of the game also determine the strength of players seated at the table in future games. What is at stake are state-society relations in their raw form. What, then, determines the rules of the game?

Several factors are important. First are political parties. With passage of Le Chapelier Act, associations were actually outlawed in France from 1791 until 1901. This policy may best be explained by people's equation of the state with the Rousseauian "general will," which led to a distaste for the intrusion of secondary associations between state and citizen. When France's Socialists came to power in 1981, however, they supported the creation of a number of associations. They promoted the concept of the "social economy" at domestic and European levels, even to the point of briefly appointing a Secretary of State for Social Economy under Prime Minister Michel Rocard. Measures to encourage peak nonprofit organizations were also implemented. The party took these policies because it regarded the nurturing of nonprofits as an essential part of decentralization (Archambault 1997; Ullman 1998; Levy 1999).

In general, conservative political parties are less likely to promote permissive regulation of civil society organizations. Analysis of Japan's NPO Law (e.g., the existence of a credible opposition inspired LDP compromise, and progressive parties pushed hardest for change) and the French example demonstrate that the Liberal Democratic Party's long dominance of Japanese politics from 1955 until 1993 and the party's ideology explain in part the regulatory stasis of the postwar period (Pekkanen 2000a, 2000b).

¹⁴ Regulation of civil society groups fits what some authors have seen as a typical panem of the Japanese bureaucracy's giving in on issues, but in a fashion that does not allow institutionalization of opposition claims. See Upham (1987) and Pharr (1990).

Second, interest groups have also been active in lobbying for change in regulatory frameworks. In the United States, for example, while the charitable deduction for individuals was incorporated into the tax code in 1917, it was not until 1936 that firms received the same privilege. President Franklin Roosevelt opposed this deduction, but acquiesced after intensive lobbying by the Community Chest (Hall 1987). In Japan, the severity of the Civil Code has meant that fewer groups have been around to lobby for change and that these groups have often been coopted or tied into close relationships with ministries.¹⁵ The rise of new NPOs such as C's was important in passing the NPO Law (Pekkanen 2000a, 2000b, 2003). In general, the more conducive a political system is to interest group lobbying, the more likely it is that the regulatory framework will promote civil society organizations.

Third, institutional factors are clearly important in determining the regulatory framework for civil society organizations. Passage of the NPO Law demonstrates how a change in electoral institutions can alter incentives for politicians and have important consequences for policy toward civil society (Pekkanen 2000b). In historical perspective, however, it is opposition from the bureaucracy that has accounted for Japan's regulatory pattern. Similarly, institutional factors explain the Japanese bureaucracy's reluctance to promote vibrant, autonomous civil society organizations.

Subgovernments, or policy communities, are of particular importance in the Japanese political system (on subgovernments, see Walker 1977; Heedlo 1978; Kingdon 1984; Campbell 1989; Campbell et al. 1989). Although the term "iron triangles" is of American coinage, Gerald Curtis notes (1999: 54), "[P]olicy making in Japan, more than in the United States, is characterized by the existence of disaggregated policy communities, of a multiplicity of iron triangles." As John Campbell (1989: 6) noted, this is because the "governmental system of Japan is quite fragmented and compartmentalized" due to a weak chief executive, parties that participate in policy making most heavily at the specialized level, bureaucratic power that is concentrated at the ministry level, and an absence of corporatist bargaining across policy areas.

Although there are exceptions (e.g., the LDP-Japan Medical Association-Ministry of Health and Welfare triangle is politicized), Japan's policy communities are generally marked by bureaucratic primacy. In part because of the fragmentation of policy making, getting items onto the agenda requires an unusual degree of consensus in the policy community. Given the high salience of policy communities, bureaucratic primacy within them, and the importance of consensus to getting items on the agenda, the bureaucracy has a strong incentive to back regulations that retard the formation of autonomous civil society groups.¹⁶ Although Campbell (1989: 93) was writing in the abstract, observers might be forgiven for mistaking his general characterization of defensive subgovernments as an apt de-

¹⁵ Perhaps not coincidentally, the number and composition of Japan's civil society groups has recently begun to change. See Tsujinaka (1996, 1997) and Tsujinaka et al. (1998).

¹⁶ But it has perhaps a greater incentive to push for the formation of auxiliary organizations (*gaikaku dantai*), which are another striking feature of Japan's associational world.

scription of the attitude of Japanese ministries toward civil society regulation: "A 'cozy little triangle' trying to hold onto its own can often rely on monopolizing information, manipulating procedures, delaying decisions, simple stubbornness and other means of passive resistance"

The very fragmentation that renders policy communities important in Japan made a fundamental rewriting of the Civil Code unlikely. Meanwhile, Article 34's delegation of authorization for incorporation to ministries promotes interest groups and experts who are less capable of independent action and creates firmer boundaries for policy communities, thus diminishing the likelihood of their emerging looser issue networks (on issue networks, see Heald 1978).

Conclusion

The Japanese regulatory framework for civil society does not prevent all groups from forming. Rather, some groups face greater difficulties in formation, operation, and growth than do others. Although small, local groups such as neighborhood associations are promoted by the government, it is hard for autonomous groups to become large and hard for large groups to be autonomous. The issue of professional staff is critical. Only groups with full-time professional staff can develop the expertise necessary to participate in a policy community (see Pekkanen 1999, 2000d, 2001b, 2002a, 2002b; Shimizu 2000). Another critical issue is independence. Although no satisfactory metric for this exists, the regulatory framework for civil society groups in Japan included many institutional features that diminished the independence of civil society groups, at least until passage of the NPO Law.

State regulation shapes the development of civil society more than any other single factor. Understanding the sources of variation in state regulation across nations and over time is thus a critical task. The case of the NPO Law and comparative insights reveal that the support bases for Japan's regulatory regime are the long dominance of a conservative party and interest groups that are often coopted or compromised by bureaucratic supervision. Above all, we must examine institutional arrangements that promote policy communities characterized by bureaucratic primacy, high political salience, and ministerial jurisdiction over groups.

Although it is beyond the scope of this chapter to discuss the likely results of Japan's distinctive pattern of civil society development, we may speculate on its implications (see also Pekkanen 2002b for a discussion of, and some evidence on, these implications). Recall for a moment the two strains of democratic and civil society theory touched on at the start of this chapter, the social-capital strain and the pluralism strain. In Japan, social-capital-type groups have been promoted, while pluralist-type interest groups have been discouraged. To turn Skocpol's observation on the United States (1998) on its head, what we see in Japan are members without advocates, which might be of even greater concern to proponents of liberal democracy than its opposite. Preliminary evidence indicates that the direct elements of the state's effort have been targeted in this way partly out of a desire to nurture

social capital. At the same time, bureaucrats are concerned about groups that have large professional staffs because it is precisely these groups that develop policy and informational expertise that could rival or undermine the bureaucracy. This argument contributes to the increasing recognition in the civil society literature of the complexity of the relationship between civil society and democracy.