

Not-for-Profit Law and Culture in Asia

**GLOBALIZATION, GLOCALIZATION, AND
GALÁPAGOS SYNDROME:
PUBLIC INTEREST CORPORATIONS IN JAPAN**

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To facilitate public interest activities by private entities, some countries, including Ireland and New Zealand, have inaugurated Charity Commission-style independent regulators of the type that originated in England and Wales. In the first attempt far from the Commonwealth's culture, Japan has launched the Public Interest Corporation (PIC) Commission. The aim of the Japan's reforms, the first revision since establishment of the Civil Code 1886, is to abolish unclear discretionary regulations and to make clearer stipulations in the laws. The author witnessed the policy as Commissioner in Japan for six years. This article summarizes and evaluates the reforms, with a focus on the interplay between globalization, "glocalization," and "Galápagos Syndrome."

I. Introduction

There is a consensus in many countries around the importance of public interest activities by private entities (Cordery & Morgan 2013). Encouraging the public interest sector is an aspect of public policy. It is, however, difficult to define "public interest." Some countries assign the task to independent agencies, such as the Charity Commission in England and Wales (Cordery 2013).

Japan has adopted the independent commission style by launching *Koeki Ninteinto Inukai* (Public Interest Corporation Commission or PIC Commission) as part of the reforms of *Koeki hojin* (Public Interest Corporation or PIC). The reform in 2006 was the first substantial change to the Civil Code on nonprofit corporations since the establishment of old Civil Code in 1896.

This article provides an overview of Japan's PIC reforms, with particular focus on the influence of globalization, "glocalization," and "Galápagos Syndrome."

II. History of the Nonprofit Legal System in Japan

Japan's legal system for "public interest"² and for not-for profit organizations dates back to the old Civil Code, adopted in 1896, and carries forward into the 2006 Civil Code. Article 34

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divides Public Interest Corporations (PICs)³ into two categories: the *shadan hojin*, or incorporated association; and the *zaidan hojin*, or incorporated foundation (Amemiya 1998). The association is formed as a group of members, whereas the foundation is formed around an endowment and, legally, does not have members (Larratta & Mason 2010).

Some PICs pursue only a quasi-public interest (Moriizumi 1977; Tanaka 1980; London 1991). In addition, the concept of the public interest has varied over time. The activities of some PICs, accordingly, have been almost indistinguishable from those of for-profit organizations (London 1991; Ministry of Internal Affairs and Communications 2008).

After World War II, Japan enacted special laws to give organizations different types of legal personalities: religious corporations (the Religious Corporations Act 1951), school corporations (the Private Educational Institutions Act 1949), social welfare corporations (the Social Welfare Services Act 1951), and medical corporations (Revised Medical Care Act 1949). Hatsutani (2001) emphasizes that the diversification of legal personalities was affected by the new Constitution. Article of 89 of the Constitution of Japan states that “no public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.” Just after the war, it was necessary for some types of PICs to receive public money in order to survive. One aim of the acts was to have a robust legal background for “under the control of public authority” in the Constitution.

Despite these special laws, most grassroots-level organizations in Japan had no legal status, because they lacked the level of assets that PICs require (London 1991; Deguchi 2001). The great Hanshin Awaji Earthquake in 1995 unveiled the defects of the legal system. Many volunteers were active as members of uninstitutionalized nonprofit organizations that had no legal status (Deguchi 2001; Pekkanen 2000, 2001; Kawashima 2006). In 1998, the Diet enacted a new act so that citizens’ groups could form and operate with legal personality (Deguchi 2001). The law created the Specific Nonprofit Activity Corporation (SNC), usually called NPO *hojin* (NPO corporation). The act was called the NPO law.

In 2001, yet another category of organization was created. A nonprofit and non-public benefit organization could be incorporated as *Chukan-hojin* (Intermediate Juridical Person, or IJP).

The various types of organizations are overseen by different government agencies, each with its own accounting standards and regulations: School Corporation Accounting Standard for school corporations, Social Welfare Corporation Accounting Standard for social welfare corporations, Religious Corporation Accounting Guideline for religious corporations, Medical Corporation Accounting Standard for medical corporations, and SNC Accounting Standard for SNCs.

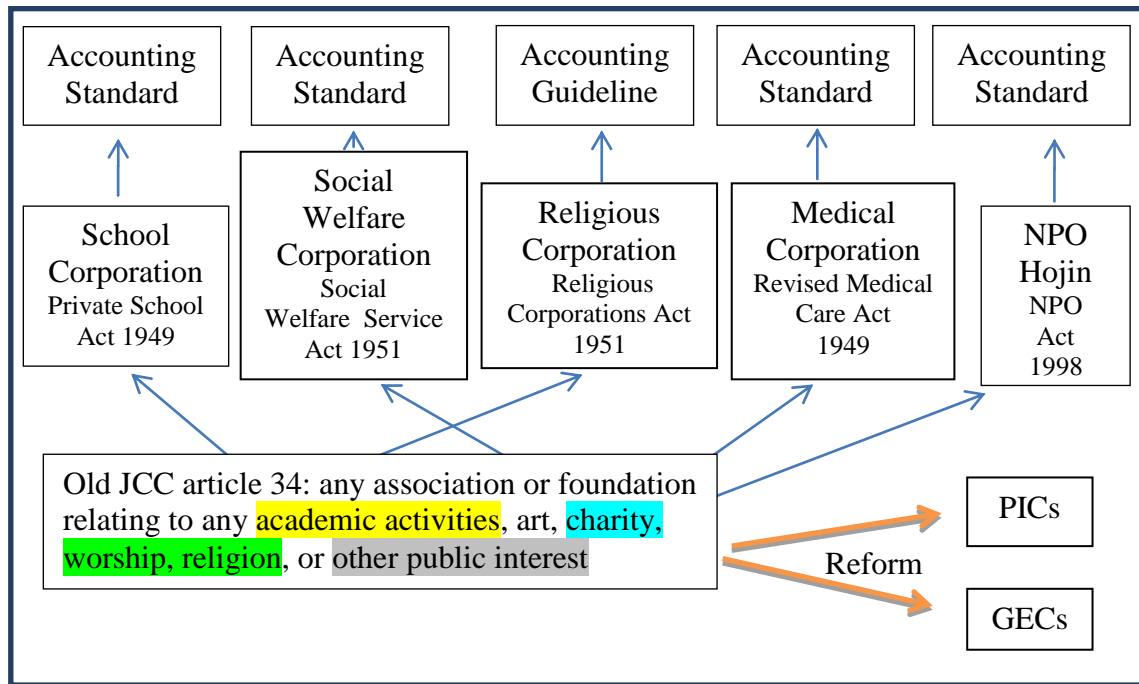
The reform of the legal framework targeted only PICs and IJPs. School Corporations, Social Welfare Corporations, Medical Corporations, Religious Corporations, and SNCs continue to exist. The complicated situation of Japan’s nonprofit organizations, as Figure 1 illustrates, might be called an example of “Galápagos Syndrome” (Deguchi 2015). Nakamura explains,

² Reflecting the Japanese legal context, this article uses the term “public interest” rather than the more common term in the academic literature, “public benefit.”

³ Sometimes referred to as Public Interest incorporated Persons (PIPs).

“Galápagos syndrome is a frequently used term in Japanese business circles to mockingly refer to technologies and specifications advancing in a form that lacks compatibility with other countries, much like how animals on the Galapagos Islands evolved uniquely in a closed environment” (Nakamura 2013: 66). Cellular phones represent one example of Galápagos Syndrome in Japan. Each company produces phone that address different consumer needs, and they are very difficult to standardize.

Figure 1: “Galápagos Syndrome” of Japan’s Nonprofit Legal Personality



Source: author’s analysis from the version written in Japanese (Deguchi 2015). *Kaikei-kijyun* is translated into Accounting Standard, and *Kaikei-jyunsoku* is translated into Accounting Guideline. Each accounting standard and guideline is different.

III. Overview of Reforms

One impetus behind the reforms was to encourage activities by the Third Sector, whose importance is recognized by the government (Expert Meeting 2004, Tax Commission 2005). The reform process began with a Cabinet Decision released as Reform of the System of Public Interest Corporations in 2002 (Cabinet Decision 2002). After a confusing start, the Tax Commission issued a report in 2005 (Tax Commission 2005) that proposed that new PICs should be tax-exempt and tax deductible.⁴

A particular problem was the *Kyoka* (permission) system for establishment of PICs (Expert Meeting 2004). Organizations seeking PIC status had trouble finding the appropriate agency and then finding the appropriate person or division within the agency, and once they succeeded in doing so, a laborious series of consultations, negotiations, and compromises would follow (London 1991). The system set no time limits and no clear criteria for agency decisions (Pekkanen 2006). Further, the public interest element of some PICs seemed questionable, such as

⁴ As a member of the Tax Commission from 2003 to 2009, the author contributed to the report.

parking lots and golf courses (London 1991). In addition, retired government officials sometimes took high-paying positions in the PICs that they had previously overseen (Kaihara 2008; Deguchi 2009).

The reform process resulted in three related PIC acts in 2006, which abolished the *Kyoka* (permission) system: first, the Act on General Incorporated Associations (GIA) and General Incorporated Foundations (GIF) (Act No. 48 of 2006); second, the Act on Authorization of Public Interest Incorporated Associations (PIIA) and Public Interest Incorporated Foundations (PIIF) (Act No. 49 of 2006); and third, the Act Concerning Special Measures for Enforcement (Act No. 50 of 2006). While the old civil code on PICs consisted of only 56 articles, these laws amount to 868 articles.

In order to authorize PICs among GIAs and GIFs, which are considered nonprofit organizations that do not always operate in the public interest, the laws established two new entities: the Public Interest Corporation Commission (PIC Commission), for national organizations; and the Council Organization Established in Prefectures (COEP), for local ones.

The PIC Commission's function resembles that of the Charity Commission in England and Wales.⁵ The PIC Commission has seven commissioners appointed by the Prime Minister with the consent of both houses of the Diet (Act. No. 49, Article 35).⁶ In operation, the Commission is independent of ministerial government. It has a staff of almost 100.⁷ Article 5 of Act No. 49 sets forth clear criteria for the Commission to apply, addressing an organization's purpose, financial operations, and governance and accountability.

In addition, the tax system underwent major positive changes. An organization approved by the PIC Commission is exempt from corporate tax and enjoys tax-deductible status, except that its for-profit businesses (which are permitted) are taxed. Under another law, donors to certified PICs can choose tax deduction or tax credit.

The reforms drew applause from stakeholders (JCIE 2005; JACO 2014).

IV. Globalization and the Shadow of the Business Sector

In 2008, the PIC Commission issued a new accounting standard: Public Interest Corporation Accounting Standard 2008 (PICAS-2008). Previous standards had been issued in 1977, 1985, and 2004. PICAS-2004 reflected the trend of "financial accounting" that spread following enactment of the Sarbanes-Oxley Act of 2002 (SOX) in the United States (Ribstein 2003; Shirley 2004). SOX influenced nonprofit organizations internationally (Stone & Ostrower 2007; Johnson 2009; Breen 2013). Although Kawashima (2006) points out that nonprofit organizations in Japan paid less attention to SOX than those in some other countries, SOX did make a substantial impact on accounting standards in Japan. One effect was felt through the Statement of Financial Accounting Standards No. 117 (FASB 1993), issued by the Financing

⁵ Commissioners do not have a free hand to change charitable purposes, as the Charity Commission is a government body and the discretion of Commissioners remains confined by established precedent (O'Halloran, McGregor-Lowndes, & Simon 2008).

⁶ The PIC Commission operates at the nationwide level. Local authorities are responsible for each council organization. Article 50 of Act. No. 49 of 2006 stipulates that council organizations shall be established in prefectures for the purpose of dealing with the matters assigned to it by this Act.

⁷ As of the end of March 2013

Accounting Standards Board in the U.S. (FASB),⁸ which emphasized fiduciary duty (On Revision of PICAS 2004). Among other things, PICAS-2004 created categories paralleling those in American tax law.

PICAS-2008 represents a hybrid of principles from the Charity Commission in England and Wales, American accounting practices, and Japanese tradition. Critics contend that it facilitates control by government rather than serving users (Tetsuyoshi Hasegawa 2012).

PICAS-2008 resulted from a process of working groups of stakeholders, which has also been used in New Zealand (Sinclair & Bolt 2013). The PIC Commission set up a research meeting with accountants and representatives from constituents. They discussed accounting standards to be applied under the new acts. The result of the discussion was a proposal submitted to the PIC Commission. Some commissioners were startled with the revision of the accounting standard (PIC Commission the 33rd Official Minutes 2008).

When the Cabinet Office opened the proposal to public comment, the influential Japan Association of Charitable Organizations said that the standards-setting body should not be the PIC Commission (JACO 2008). Similar comments came from academia (Hasegawa 2013). The Japan Institute Certified Public Accountants (JICPA) filed a petition with the PIC Commission in 2013, questioning whether Japan's Generally Accepted Accounting System should be applied to PICs, given that their missions and activities differ from those of for-profit corporations (JICPA 2013).

V. “Glocalization” of Standards

Tatsuo Ohta, a representative of the Japan Association of Charitable Organizations, said that the reforms were based on “free, fair and global” points (Ohta 2006, JACO 2014a), reflecting the fact that legislation, tax, and accounting all are moving toward global standards (JACO 2014a: 15).

Although globalization is an influence, as Ohta pointed out, the reforms continue to reflect particularization. PICAS-2008 applies only in Japan, for example. So do specific PIC accounting rules and regulations. Accordingly, experts in nonprofit entities of other types from other countries will not be familiar with the Japanese rules. In this respect, the PIC reforms simply extend Galápagos Syndrome.

Related to Galápagos Syndrome is what has been called the “glocalization” of the nonprofit system. Glocalization is a Japanese term that, in a journalistic context, reflects the notion of thinking globally and acting locally (Sudo 2012). The concept has been further developed by academics (Robertson 1995; Maekawa 2004; Sudo 2012; Fukukawa & Teramoto 2009). Generally, the term means that local cultures and the forces of globalization interpenetrate and interpret each other, resulting in both universalizing and particularizing tendencies (Thompson & Arsel 2004; Fukukawa & Teramoto 2009). Even the law shows glocalization (Randeria 2003). PICAS-2008 is an example.

At the same time, though, globalization is having a substantial effect on rules that apply to the for-profit sector (Kikuya, M. 2001). The legal reform of governance of business companies in Japan is influenced by global trends (Okabe 2009). In a sense, Japanese rules for

⁸ See Kaneko 2009 (in Japanese).

the nonprofit sector are not under the direct sway of globalization, but they are undergoing globalization through the for-profit sector.

VI. Conclusion: Complication, Regulation, and Globalization

Have the reforms succeeded? They can be evaluated in terms of the major purposes underlying them. Three purposes are particularly significant.

One purpose is to strengthen PIC self-governance. Here, the system has fallen short. It is difficult for many PICs to understand. With three acts, the new accounting standard, and new acronyms and jargon, even government officials have had trouble.

Especially for small PICs, further, the requirements are an overload (JACO 2014). Except for the requirement of an accounting auditor, the same rules apply to small and large PICs. Many PIC are small. In 2014, the median staff size was just five, and a third of PICs had two or fewer full-time staff members (Cabinet Office 2014c). In addition, Japan has few PIC experts. Experts in law and accounting typically focus on for-profit businesses. Nonprofit systems are different—at least, they should be.

A second purpose of the reform is “implementing such programs in a suitable manner” (Article 1 of APPI)—imposing the face of the regulator. With the PIC Commission, the reform succeeded in this regard.

Unfortunately, the regulator has not always helped fulfill a third purpose of the reform: to change unclear rules into clear ones. For example, the PIC Commission issued a statutory recommendation to a sports organization in 2014.⁹ The organization had set up a third-party committee to investigate an internal scandal and issue a report to their legal members and the administrative agency. These steps followed the PIC rulebook, but the PIC Commission was dissatisfied. It explained that “because the ultimate stakeholder is all Japan’s citizen as the taxpayers,” reporting to legal members and the cabinet office was insufficient. Instead, “according to the guideline of the Japan Federation of Bar Associations, the report by the third-party committee of a public-listed company should be open to the public” (Cabinet Office “Kankoku” 2014).

This is a typical example. Even if an organization masters all 868 articles of the new laws, the Cabinet Order, the Cabinet Office Ordinance, the new financial standard, and the PIC guidelines, the government may still step in and impose the standards of large for-profit companies on small PICs. In this respect, globalization seems to be prevailing over glocalization and Galápagos Syndrome.

The current problems of Japanese society are serious, and tax funds alone cannot solve them. The role of the PIC Commission should be to ensure that PICs perform flexibly in addressing social problems that the government cannot resolve, rather than imposing unnecessary restrictions on them.

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⁹ The author had left the Commission by that point.

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