

# Analysis on Budget System

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## Introduction

What really are the national budget and public finance systems? It is not easy for a legal scholar to answer this question, partly due to methodological constraints. Although in autumn 2001 the author published a book entitled “Legal Analysis of Budget System” (Yuhikaku Publishing Co., Ltd.), extensive examinations of public finance from the legal perspective have not been historically common in many countries. However, given the foundations of the national budget and public finance laid down by our national Constitution, it is both important and necessary to analyze budgeting and public finance from the perspective of public law. In this way we can send a message of great social significance from the legal point of view concerning the concept of what a budget and public finance system should be. For example, while the Japanese central government reforms in 2001 included reform of the Ministry of Finance as a major element, where is the jurisprudential justification for the age-old thesis that the national budget should be drawn up by the Cabinet? How should this reform package, which renamed the Ministry of Finance from “*okura-sho*” to “*zaimu-sho*” (though the English name has not been changed) and set up a “Council on Economic and Fiscal Policy” in the newly established Cabinet Office, be evaluated in terms of an appropriate government framework? And more broadly, what, and to what extent, does—or does not—financial democracy specifically mean facing the growing awareness of taxpayers?

This paper intends to propose an answer to what the national budget and public finance systems are in the eyes of the law—a different perspective from those usually adopted in prior discussions.

## 1. Normative meaning of budget measures

### 1-1 Strangeness in conventional discussion on budgets

Those who have studied constitutional law will know the theme, “the legal nature of a budget.” There are three major theories about the legal nature of a budget: a budget as an administrative act; a budget as a legal norm; and a budget as the law. Most textbooks on constitutional law explain these as follows: while budgeting was interpreted as an administrative act under the Meiji Constitution, such an interpretation is not appropriate under the present Constitution of Japan, which has adopted a financial democracy; and a budget should be taken as a type of legal norm, and therefore the theory of budgeting as a legal norm has been commonly accepted. On the other hand, the theory of budgeting as law seems to be the most democratic, but it has attracted only minor support as it is

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considered that a budget actually differs from the law. These three theories are directly relevant to the Diet's authority to amend a budget. While the theory of budgeting as an administrative act does not allow the Diet to amend the budget, the theory of budgeting as a legal norm allows such amendments, to a certain extent. The theory of budgeting as law also does not impose any restrictions on such amendments.

These arguments seem rather peculiar to the author, and this is the starting point of the discussion here. For example, the theory of budgeting as a legal norm has been argued as a "democratic" interpretation that replaces the obsolete theory of budgeting as an administrative act. The essence of the former is that the budget should be constructed as a type of legal norm because as long as the Diet is involved in the planning of a budget, there should be some binding force on the administrative organs to comply with the agreed budget. However, the binding force relating to the agreed budget was also permitted under the theory of budgeting as an administrative act, and the thesis that the binding force in the budget is acceptable because the budget is a legal norm should be regarded as a typically circular argument. What is important is not to confine the discussion to such a narrow problem area as the legal nature of the budget, i.e., making abstract arguments about whether the budget is an administrative act, a legal norm, or a law. Rather, we should identify the characteristics of budget measures taken as part of national functions in comparison with the legislative functions as represented by the enactment of the law in general. The author believes that discussions should be focused on the meaning of the budget being drawn up by the Government, which is different from the laws, and to what extent the Diet should actually be involved in the establishment of the budget on the said premise. Also, the roles of the Government and the Diet in budget measures as a whole, under the constitutional process in which the budget is drawn up by the Government and then discussed and resolved by the Diet, should be examined.

### **1-2 Separation of powers**

(1) The discussions on a budget from the law perspective have been made largely in terms of the nature of the budget, based on the recognition that budget measures are different in substance from legislative measures and are usually considered as an "administrative function." In this regard, there are no differences between the theory of budgeting as an administrative act and that of budgeting as a legal norm. However, the definition of an "administrative" function has now come into question. Although many say that such an administrative function may encompass a wide range of diverse elements and therefore it is hard to positively define the word, these arguments do not elucidate the natures of budgeting and administrative functioning. Useful concepts will be needed to understand the issue correctly.

In order to understand the substance of budget measures, it will be useful firstly to fundamentally reconsider the interpretation of the concept of the "separation of powers," in which budget measures are automatically classified as an "administrative" function, and to develop a prerequisite for describing the characteristics of budget measures in clear terms.

(2) It is firmly believed that the Constitution of Japan has adopted the "separation of the three powers," an idea originated by Montesquieu. Is this really true? As incorrect interpretations of Montesquieu have been brought into question in Germany, and also pointed out for a long time in Japan, it should be noted here that in light of its provisions, there is no necessity to interpret the Constitution in such a way. It is true that the Constitution stipulates that the legislative, judicial, and administrative powers are vested in the Diet, the Courts, and the Cabinet, respectively (Articles 41, 65, and 76), but the premise that these three powers encompass all elements of the power of the state lacks grounds and represents nothing but a presumption. There is no logical necessity for holding such a groundless premise and believing that the above-mentioned three powers are so rigid and exclusive that no gray areas are allowed among them, or that the three powers must be automatically allocated to the three state organs. It should be understood that the principle of the separation of powers is more flexible and affirmative, and that the provisions of the Constitution only indicate a basic image of the powers and basic guidelines on their distribution so that they can command closer coordination among the state organs.

(3) While public finance as a national function has been conventionally classified as an "administrative power" for the negative reason that it is not a legislative power, how is public finance treated in the Constitution? Let us read the provisions of the Constitution from this angle.

Article 83 of the Constitution stipulates that the power to administer national finances shall be exercised as the

Diet shall determine. The Constitution further stipulates that national revenues shall be administered by law (Article 84; as you may know, this principle is called “no taxation without representation”) and that national expenditures shall be based on the authorization by the Diet (Article 85). These three provisions may be interpreted as indicating that the Constitution has an explicit intention to vest the Diet with the highest authority in the “sphere of public finance” on both the revenue and expenditure sides.

In a stipulation of the Constitution that the Cabinet shall prepare a “budget” and “submit” it to the Diet for its consideration and “decision” (Article 86), it has been assumed that the basic policies on the administration of national finances are formulated within the framework of a “budget” in terms of both revenue and expenditure, and that both the Cabinet and the Diet are institutionally required to be engaged in a “budget.” This system is different from that of legislation, in which the Diet is institutionally vested with powerful authority even though the Cabinet in practice submits the great majority of bills. Such a characteristic is unique to public finance, and therefore should be considered separately from the general characteristics of the ruling structure—the parliamentary cabinet system.

(4) The above-mentioned assumption that budget measures should involve both the Diet and the Cabinet is evidence of the fact that budgeting has a unique legal status that lies astride the legislative and administrative powers and therefore cannot be accounted for with a simple model of the separation of the three powers. On the other hand, however, the Diet is assumed to have ultimate predominance. How should we interpret such apparently contradictory arrangements? Although the characteristics of public finance as a national function need to be established in real terms and we should also consider separately why the Diet is required to present the grounds for ultimate justification, you will at least agree with the point that it is meaningless to make abstract arguments about whether public finance represents an administrative power or a legislative power.

### 1-3 Characteristics of budget measures

(1) Budgeting in reality has active characteristics that cannot be understood through a negative discussion of “administrative power.” Unfortunately, however, such an awareness of the issue has been latent and rarely taken into consideration because German public law, which has deeply influenced Japanese jurisprudence, was extremely devoted to an abstract “conceptual legal debate,” though this is now ridiculed as mere wordplay. As a result, there is a meager amount of legal discussions about the characteristics of public finance and budgeting, and it is now necessary to reorganize such discussions from a legal perspective taking account of recent achievements in public finance.

(2) If we think very simply, there will be no objections to the observation that the basic task of a budget is to provide an economic basis to individual national tasks required by superordinate norms, such as the law. In this context, the act of supplying a fund in itself can be characterized by its “nature as a means” of materializing these superordinate norms and therefore considered as “value neutral” in that it will not contribute to any purposes that are independent of superordinate norms. The aggregate of these individual fund supply measures then constitutes a “budget.” This type of budget has the objective of balancing revenues and expenditures as a premise and can be regarded as a “classical budget.” The present Constitution of Japan appears to suppose such a classical budget. On the other hand, in its other function of “allocating funds” to all the national tasks to be undertaken in a fiscal period, it is imperative to “differentiate” individual national tasks, and this process inevitably involves value judgments to prioritize the tasks in the fiscal period concerned. In this regard, a budget has a characteristic as a “ruling program in numerical form.” Although such a view may appear to be quite natural, the fact that budget measures include the development of a ruling program means that they are at the core of state power in the course of unifying the country. Thus, it can be deduced with logical necessity that budget measures need a democratic justification independent of superordinate norms. This is the significant point of the principle of vesting the Diet with the power to administer national finances, as stipulated in Article 83.

(3) In reality, the significance of a budget is that it forms an important part of social and economic policies and is expected to be, and actually operated as, a means of stimulating the economy (fiscal policy) in conjunction with monetary policy. In theory, however, the use of a budget as a means of improving the economy implies that a budget is a policy tool to pursue its own goal. Such a characteristic is structurally inconsistent, and ultimately has a gap, with the nature as a means and the value neutrality of the classical budget which has superordinate norms as a

premise. Although the present Constitution of Japan does not actively prohibit a budget from being used in this way, many provisions apparently maintain a premise of the classical budget, and there is a gap between the constitutional budget and the actual budget.

## **2. Development of the Budget System**

The peculiarity of budgeting will become clearer if we look at the history of its development. In this section, the significance of a budget as a norm and its binding power is examined by looking back over its history, in which budget measures were initially taken solely by the administrative branch, while the legislative branch gradually expanded its involvement.

It may safely be said that Japan first adopted a modern budget system under the Meiji Constitution. The Meiji Constitution was a substantial constitution that was established based on a much deeper understanding of systems in foreign countries and on much more deliberate policy decisions than we imagine it now. Although its basic framework was largely modeled on the Prussian Constitution established in 1850, it was not a simple translation from German to Japanese but one that recognized the problems and constructively adopted the essence of the Prussian Constitution. It thus brought forth a more sophisticated budget system under constitutional monarchy.

The foundation of the budget system and budget theory under the present Constitution of Japan is derived from that of the Meiji Constitution, which consulted not only the Prussian Constitution but also those of other German states that had influenced it as well as the constitutions of France, Belgium, Spain, and Sweden. Given the significant influence that the German system exerted on Japan, one cannot help but be surprised by the fact that the unique Prussian system, which stipulated that a budget be developed in the form of a law, was established by chance or even by mistake.

### **2-1 Budgeting as a state secret**

The budget system of modern nations, which is characterized by a single state power, was first developed during the era of absolute monarchies in the 18th century, and universalized during the era of constitutional monarchies in the early 19th century. Initially, budgets that were called modern budgets—as having the minimum function of a budget to ensure a “general view” of the national budget—existed only as an “administrative technique” to provide a paperwork guide for rule by an absolute monarch. Consequently, budgets had a binding power on public servants through the monarch’s commandment, but there was no way of thinking that the budget could bind the monarch. In addition, in developing a budget, attention was focused on the revenue side, i.e. planning the collection of taxes from every district. Thus, budgets were treated as a “state secret,” disclosed only to a few authorized ministers, and kept in a silver box as the monarch’s will to the crown prince.

### **2-2 Budget as material for tax approval**

(1) Budgets, which were then only an administrative technique within the state, acquired legal status when they were stipulated in the constitutions of southern German states in the 19th century. In the following, the Wurttemberg Constitution established in 1819 is taken as an example of those German states that are classified as early constitutionalist states.

The Wurttemberg Constitution secured parliament’s authority to approve taxation, which was the gravest concern of citizens, and the submission of a “budget” (*Etat*) was required to establish the “deficit in the national budget” as a basis to justify the monarch’s demand for approval by the parliament for taxation. This was the first budget to appear on a constitution. Thus, the budget was an “evidential document” to be submitted to the parliament for “deliberation” in the process of tax approval by parliament. As a basis to justify taxation, the government was required to persuade parliament by establishing the existence of a “deficit” in revenue to pay for further expenditure. Next, parliament examined the government’s statement of revenue and expenditure for a fiscal period (three years) under the Wurttemberg Constitution, taking into consideration the submitted budget.

(2) It should be noted here that it was quite natural that the government prepared the budget because it was required as material to justify the monarch’s demand for taxation. In addition, since the attention of parliament was focused on tax collection, which represented the revenue side, the purpose of the budget was fully attained once

the government obtained parliament's approval for taxation, and thereafter the government was given a free hand in its expenditure. This marks a significant difference from present budgets, in which attention is more focused on the use of collected taxes.

However, since a budget required as evidence to justify taxation should also have meaning as a guideline for expenditure, a system that placed the budget approved by parliament at the complete disposal of the government was institutionally insecure. This inevitably caused disputes between the government and the parliament over government expenditure. The manifestation of political confusion, known as "budget conflict (Budgetkonflikt)" in German states that had a similar constitutional structure with that of Wurttemberg, exposed the inherent defects in such a system. Thus, these systems in which the parliament "examines but does not bind the budget" were destined to collapse. (In Wurttemberg, which was influenced by France, parliament's authority to examine the budget was executed to the maximum, and the government respected the intention of the parliament when taking political action. As a result, the system was operated so that the budget as a material for deliberation was able to function as a guideline for government expenditure.)

(3) Once the budget, which was developed as an administrative technique to take a general view of the financial condition of a nation in the era of absolutism, became subject to deliberation by parliament as a basis to justify the monarch's (or government's) demand for taxation in the era of early constitutionalism, it was given a political role as a standard for national expenditure. Depending on the political climate, even such a budget deliberation system may be operated so as to allow a budget to relatively strictly bind the government's expenditure authority, and not only the governments of Wurttemberg but also those of other German states were gradually forced to take a coordinated line with the parliament. Then, the northern German states, which had established their constitutions later, also adopted measures that would expand parliament's involvement in public expenditure, for example, stipulating parliament's authority to reduce the budget, while maintaining the same basic framework.

Although the binding force of budgets as standards for government expenditure gradually expanded as parliament extended its sphere of influence, there was an institutional limit that a budget was required under the constitution as a premise for the establishment of a taxation law. This is the reason why the binding force of budgets in this era was only regarded as "political." However, if the budget system of this era is considered within the framework of constitutional rules as a whole, it is not appropriate to regard its effects as purely "political," as the system was indeed supported by certain legal functions. The submission of a budget required as a premise for the execution of parliament's authority to approve taxes means that it is impossible for the government to obtain the revenue needed to fulfill national requirements without the approval of parliament. In other words, the budget approval system made the government's persuasion of parliament an indispensable process, and the government was no longer permitted by the Constitution to take measures ignoring parliament. In such a system, the government was required to "agree" or "compromise" with parliament.

A budget under a budget deliberation system or budget approval system may be appropriately called a "coordinated budget" because it is expected to be established through "coordination" between the government and parliament. If a budget is a product of "compromise" between the government and the parliament, it is an institutionally natural result that the budget approved by the parliament exerts a certain "binding force" on the government's fiscal spending activities, and in such a case, the binding force of the budget may be grounded on "a certain contractual nature." It should be noted, however, that this effect may be rather weak, as represented by the acceptance of over-budget and off-budget spending.

If a budget in the 19th century was the product of "coordination" between the government and the parliament, what would happen in the event of no coordination? Various constitutions made provisions for measures such as the king's right to dissolve or impose emergency taxes for a certain period in case of a failure of the government and the parliament to reach a timely coordination arrangement. However, they did not stipulate any measures to be taken when the budget itself failed. As a result, budget conflicts became political problems in many states. Such situations were not caused by defects in their constitutions but rather the exposure of inherent contradictions in the compromising nature of the constitutional monarchy. As one prominent scholar said, "The constitution ends here," and this was the essence of the "coordinated budget." Therefore, it was natural that various budget conflicts became political conflicts. After the famous budget conflict of 1850 in Hesse, which was not able to avoid foreign intervention as the confrontation between Prussia and Austria intensified, governments other than Prussia took a

clear turn towards a coordinated line with parliament.

This basic mode for budgetary systems was also introduced by the northern German states, which established their constitutions later than the southern German states. Prussia also came to adopt the same framework.

### **2-3 Statutory budget establishment system in Prussia**

(1) In Prussia, a “budget in the form of law” suddenly appeared in its Imperial Constitution in 1848 for the first time in Germany. Such a statutory budget establishment system was inherited by Bismarck’s Constitution in 1871, the Weimar Constitution in 1919, and the present German Fundamental Law. It has also exerted a very strong influence on the budget system and budget theory in Japan.

In contrast with Wurttemberg’s system, in which a budget was decided on by parliament, budgets in Prussia were established by law. Some scholars who note such legal status comment on the Prussian budget system as if it was more “democratic” than that of Wurttemberg, but such an understanding is superficial and improper. The budget-making process in Prussia was dominated by concerns about how to hold down the demands of parliament for their extended involvement in financial affairs, as is evident from a comprehensive analysis of the structure of power allocation between the parliament and the government in terms of both national revenue and expenditure. The statutory budget establishment system may be understood as a distorted system that was produced out of the struggle between powers, while sharing its basic structure with preceding systems.

(2) The Prussian system is described in more detail below:

The Prussian Constitution was modeled on the Belgian Constitution, which was considered to be most advanced at that time. However, while Article 115 of the Belgian Constitution stipulated that the budget be adopted by Parliament and the final accounts of the state be approved in the form of law, stating that “every year, the Parliament shall pass a Finance Bill (loi des comptes) and adopt the budget (le budget),” Article 70 in the draft of the Prussian Constitution (prepared based on the Belgian one) stipulated that “every year, all state revenues and expenditures shall be estimated in advance and entered in the national budget, and the latter shall be annually established by law (Gasetz).” Although this Article only addressed budgeting, a budget involves both revenue and expenditure. It stipulated that a budget be established in the form of law, which, in the Belgian Constitution, was applied to the approval of the final accounts of the state.

Although the detailed process of preparing this draft Article 70 is not clear, given the circumstances in which the lack of an independent closing procedure was put in question when revising the draft and the procedure was introduced at the request of the parliament, it has been assumed that the government created a legal framework called a “budget law” by combining the “adoption of law” and “finance law” under the Belgian Constitution and thereby intended to omit the closing procedures. In the official Prussian Constitution established in 1850, Article 70 in the draft survived as Article 99, and, in addition, Article 104 was introduced to stipulate the final accounts of the state to be submitted to both chambers of the parliament for the exemption from the government responsibility. Thus, the prior adoption of a budget by the parliament and ex post exemption were provided, and the resultant legal framework was materially comparable to that of the Belgian Constitution. However, this framework contrasted strikingly with the Belgian one because its formalities, in which a budget was adopted in the form of law and exemptions were decided on by parliament, were actually the reverse of those in its model, the Belgian Constitution.

(3) While the development of the new legal framework of establishing a budget in the form of law has been described above, a more important question is the allocation of power in the preparation of the budget. Detailed explanation cannot be provided here, but in Prussia, not only the parliament but also the government itself accepted at face value the stipulation that a budget shall be established in the form of law, and at first was little aware of differences between general laws and the budget law after the Constitution was established. However, the essential principle that the purpose of budgetary measures is to provide the economic basis necessary for the implementation of laws should not change even when the budget is established in the form of law. Accordingly, in the field of budgeting as distinguished from legislation, both the parliament and the government are supposed to have an obligation in budget measures as far as is stipulated by law.

In light of this premise, the relationship between parliament and the government is examined below. Article 62 of the Prussian Constitution provided that the general legislative power shall be exercised jointly by the king and

both houses of parliament and demanded agreement among these “three elements of legislation.” However, it still assumed that the submission of a national budget shall be under the authority of the king. In other words, it demanded the joint execution of the power based on the premise that the authority over budget measures shall be allocated between the king and the parliament. While it was essential for the government to obtain the approval of parliament when establishing a budget law, parliament had an obligation for budget measures in relation to the law, and had to make concessions as necessary about a budget law submitted by the government. Thus, the constitution stipulated that both parties should reach an agreement. The predominant theory that found a “contractual nature” in budget laws and attributed the source of the effect of a budget to this “agreement” between the government and the parliament, stating that “budget law is effective at a point where both the parliament and the government agree in the recognition of the indispensability and usefulness of an expenditure.” If this is correct, the success of a budget in the form of law also depended on the “coordination” between government and parliament, and therefore the basic structure of the Prussian budget system can be considered as the “coordinated budget.”

This examination of the Prussian Constitution from the angle of the involvement of the government and the parliament in budget measures indicates that in spite of the novelty of “adoption as a law,” if a budget in the form of law was based on “coordination” between the government and the parliament with shared financial authority, the “binding force” of such a budget should rest on the “agreement” between both national branches as in conventional systems. In this regard, the form of “law” itself does not have a special meaning for the binding force of a budget, and, to this extent, the evaluation that giving a budget the status of a law was “excessive,” is quite appropriate.

#### **2-4 Budget support system under the Meiji Constitution**

(1) A system drafted after the model of the Prussian budget system, which was developed as described above, was the budgetary framework supported by parliament under the Meiji Constitution. As is generally known, this framework, in which a budget does not take the “form of law” but has an independent status, has been inherited by the present Constitution of Japan. The Meiji Constitution was theoretically more sophisticated than the Prussian Constitution as represented by Article 70, which provided an extraordinary financial authority to prevent budget conflicts, taking into consideration the practical inconveniences in budget operation under the Prussian Constitution.

(2) The framework in which parliament supports a budget is itself an expression that is unique to Japan. When evaluating a budget system, however, it is indispensable to observe the actual involvement of the parliament in budget measures within the context of the ruling structure as a whole rather than focusing attention on the form of the decision of parliament only. From this point of view, the budget systems starting from that of Wurttemberg in the early 19th century, in which a budget was approved by parliament as a material for tax approval, to the statutory budget system in Prussia, can be characterized by the coordination structure in which the authority over budget measures was allocated between the government and parliament, and a budget conflict was unavoidable in the case of a failure to attain the “coordination,” unless otherwise provided. Such a structure was inherited by the Meiji Constitution as well. This means that these systems may be understood as a series of budget systems under constitutional monarchy regardless of whether a budget is adopted in a single decision by the parliament, is established in the form of law, or takes an independent status.

### **3. Budget system under the Present Constitution of Japan**

After the regime based on the Meiji Constitution collapsed when Japan was defeated in World War II, a new constitution was established supported by radical new ideas for the country. Even though the new Constitution was established as an “amendment” to the Meiji Constitution, there has been a change in sovereignty in the new Constitution. It is therefore undeniable that there is a theoretical discontinuity between the constitutions, and naturally, there are some systems and theories that were eliminated together with the Meiji Constitution. On the other hand, it must also be admitted that there exist theoretical principles of universal applications relating to certain subjects that remain valid, even after the changes to the constitution. For example, while it is undoubtedly true that expenditures under imperial prerogatives directly connected with a monarchy may be justifiable only under the former Constitution, the reasoning that a certain general norm needs funding measures, in which the

government's involvement is unavoidable, remains valid regardless of any changes in the constitutional regime. This is why an examination of the present Constitution is necessary.

The present Constitution provides the following:

Article 83: The power to administer national finances shall be exercised as the Diet shall determine.

Article 84: No new taxes shall be imposed or existing ones modified except by law or under such conditions as the law may prescribe.

Article 85: No money shall be expended, nor shall the State obligate itself, except as authorized by the Diet.

Article 86: The Cabinet shall prepare and submit to the Diet for its consideration and decision a budget for each fiscal year.

Article 87: In order to provide for unforeseen deficiencies in the budget, a reserve fund may be authorized by the Diet to be expended upon the responsibility of the Cabinet. The Cabinet must get subsequent approval of the Diet for all payments from the reserve fund.

These provisions are examined below.

### **(1) Meaning of the principle of vesting the Diet with the power to administer national finances (Article 83)**

Since the present Constitution stipulates the principle of vesting the Diet with the power to administer national finances (Article 83), the most fundamental rule is that the ultimate responsibility for both revenues and expenditures shall rest on the Diet. It is natural that the Diet may consider individual budget items, but the Diet's involvement in budget measures has a more important meaning in that the Diet shall provide a democratic justification to the entire budget, which is essentially a ruling program. This is the original meaning of the principle of vesting the Diet with the power to administer national finances. This is not just a meaningless assertion. As for the question of whether there is a limit on the Diet's authority to amend a budget, the Constitution's assigning the Cabinet to the task of "preparing" and "submitting" a budget cannot be interpreted as providing the Cabinet with an exclusive "privilege" as if to exclude the involvement of the Diet. The logical conclusion should be that, in a critical situation where the Diet and the Cabinet cannot reach an agreement, the status of the Diet as the supreme state organ will become obvious, and the Diet will take the ultimate responsibility of preparing a budget.

### **(2) Cabinet to play the leading role**

Although the predominance of the Diet may be ultimately admitted, the Cabinet plays an important relative role in the field of public finance, unlike in legislation. In particular, the significance of the fact that the Cabinet's authority to prepare and submit a budget is expressly stipulated in the Constitution should not be underestimated. While the Constitution expects both the Cabinet and the Diet to be involved in the budget-making process, it permits a certain expenditure on the responsibility of the Cabinet, which implements a budget by providing for a "reserve fund" (Article 87) to be expended by the Cabinet subject to subsequent approval of the Diet.

The Constitution assigns the preparation of a budget to the Cabinet because budgetary measures basically involve an act of allocating expenditures, which falls within the executive domain, and requires significant technical work, such as totaling all individual expenditures; because fiscal matters by nature have a fluidity in that both revenues and expenditures cannot be fixed until they are actually executed; and because budget measures are unique national functions in which the preparation and implementation of a budget cannot be clearly distinguished. It is theoretically and empirically logical to assign the preparation of a draft budget to the Cabinet that is actually engaged in the management of public finances as an "executive organ" based on bureaucracy. Furthermore, such a structure in which the executive organ plays a special role in budget measures is inherited from budgetary systems in the UK, where modern budget systems originated, and France, which refined it. They can also be seen in Germany and the United States, which had a more direct influence on the Japanese budget system, despite differences in the ruling structures. The author is of the opinion that this situation can be explained by the "principle of functional qualifications," which is acceptable after the "openness" and "flexibility" in the principle of the separation of powers are permitted.

The significance of the Cabinet in budget measures can be a certain guide to the allocation of budgetary work within the administrative system. The provisions made in the recent central government reforms in this regard are referred to later in this paper.



### (3) Coordination structure

These activities of the Cabinet and the Diet performing their respective duties have resulted in the “coordinated budget” as the normal state of budgets, and this is understood as being demanded by the Constitution. The most rational state of budget measures should be possible through coordination between the government and parliament, while respecting the budget proposal of the government. The stipulations of the Constitution that assign the Cabinet to prepare the budget and at the same time require a decision by the Diet may appear to be inconsistent but are in conformity with such an understanding. In contrast with former budget systems up to those under the Meiji Constitution, which provided for a “coordination structure” based on the premise that the authority over finances shall be divided between parliament and the government, the budget system under the present Constitution is based on the major premise that the Diet holds predominance. In spite of such a significant difference in the basic principles of these systems, the ordinary state of the budget system can still be found in the “coordination structure,” which lies as a norm at the base of the “flexible structure” (detailed below) of a budget.

### (4) Flexible structure of the budget as a norm

#### 1) Joint preparation of the budget

Even though budgets under the present system are coordinated budgets based on the premise that the Diet holds predominance, given the fact that the Diet respects the budget proposals of the Government only in terms of the suitability to the intended purposes and eligibility, it is not necessarily appropriate to express the Diet’s involvement in budget measures as the “authority to amend” a budget. Since the present system demands that the Diet be involved in the whole process, from the preparation of a draft to the adoption of the proposed budget, the activities of the Diet and the Cabinet in the budget-making process should be understood as the process of jointly establishing a budget, but assuming the predominance of the Diet.

#### 2) Formative implementation of a budget

Such a coordination structure is also demonstrated in the implementation of a budget. When the Cabinet implements a budget that has been finally adopted by the Diet, the budget exerts a “binding force” on the Cabinet as a standard for the management of public finances. Since a budget is a norm that has a uniquely adaptable structure (referred to as the “flexible structure” of a budget), as represented by “blank” provisions, such as the reserve fund allowed under the Constitution, there is plenty of scope for the Cabinet’s activities in implementing the budget, and this may be called “formative implementation.” This may suggest that the implementation of a budget actually forms a part of the budget-making process. If so, the involvement of the Diet in this stage should also be demanded in accordance with the principle of vesting the Diet with the power to administer national finances. The role of the Cabinet, which is responsible to the Diet based on the collaboration, must also be reconsidered.

#### 3) Meaning of the final accounts of the state

The final accounts of the state to be made in the final phase of the budget cycle must be also understood in connection with the coordination structure of budget measures. While the final accounts of the state is the ex post confirmation of the actual management of public finances performed by the Cabinet on the assumption that the budget allows “formative implementation” by the Cabinet, such confirmation may not be made by anyone but the Diet, which has the ultimate responsibility for budgetary measures. The “binding force” of a budget, existing only in the closed space between the Diet and the Cabinet, functions as the loose action standards for the management of public finances by the Cabinet, and its actual effects can be detected in the possibility of the sanction by the Diet not to issue a “confirmation” in the ex post control in the final accounts of the state. However, any denial of such “confirmation” does not void the past expenditures by the Cabinet but rather functions as a “warning” about the preparation and implementation of the budget for the following year in the budget cycle and therefore should be recognized only as a type of practical “future effect.”

There is also a question about the legal status of the Board of Audit of Japan, which was organized under the Constitution (Article 90.2). Budget measures are basically taken under the close relationship between the Diet and the Cabinet, and the Board of Audit is expected to perform its functions from a viewpoint of specialized and technical audit in the closed field of public finance. In this context, the Board of Audit is required to submit audit reports as a reference for the examination of the final accounts of the state by the Diet. It should be made clear that in their basic structure, these reports are subordinate to the final accounts of the state by the Diet. In

addition, recent discussions about the performance of the Board of Audit as an administrative inspectorate must be further pursued in order to clarify its relation with administrative inspections and policy evaluations.

### **In Place of a Conclusion - About the Council on Economic and Fiscal Policy**

There has been an awareness of the problem that, as long as budgetary matters are connected with general adjustments to national policies, they should be undertaken by the Cabinet in accordance with organization theory, and therefore it is not appropriate, in light of the organizational structure, to assign these matters to the Finance of Ministry, which is no more than a government agency on the same rank as other such bodies. As is generally known, in order to realize Cabinet-led budgeting, the Council on Economic and Fiscal Policy was established under the Cabinet Office as part of recent central government reforms.

After some twists and turns in the process of these reforms, it was determined that basic budgeting policies should be undertaken under the leadership of the Cabinet Office rather than the Ministry of Finance, and the Council on Economic and Fiscal Policy is expected to play a pivotal role. The Council, headed by the Prime Minister, consists of ten members, including four nongovernmental members. Although the Council was thought to be an “ordinary council” ranking slightly higher when it was first established under the Mori Cabinet, it suddenly stepped into the limelight under the Koizumi Cabinet. In particular, it demonstrated, to some extent, the leadership of the Cabinet in the budget-making process for FY 2002 (see the author’s work “Central Government Reforms—on the Reform of the Ministry of Finance,” detailed below). In practice, the Council developed a general framework, and the Ministry of Finance prepared the budget in specific terms. It is noteworthy that the Council was also involved in coordinating the councils and ministries concerned at the actual planning stage.

However, it must be admitted that the reforms contained not a few institutional imperfections in the budget-making system itself, and the organizational vulnerability of the Council on Economic and Fiscal Policy must be also pointed out from the legal perspective. Specifically, the Council does not hold a satisfactory position as a national organ, as shown by its status as a mere inspection and examination body, while the authority for final decision-making in planning a basic framework for budgeting is vested in the Cabinet Secretariat. It should be also pointed out that the Cabinet Office Establishment Act does not contain any stipulations about the secretariat of the Council, and the secretariat, with three directors, seems inadequate in light of the importance of the Council’s task. There is also a significant problem that all members of the Council work on a part-time basis, and that hiring of the nongovernmental members on a fulltime basis should be considered provided that sufficient provisions are made in their treatment.

As is commonly known, concerns about the organizational vulnerability of the Council being exposed as the Cabinet loses its leadership are turning into reality.

Note: For details about discussions and quotations in this paper, please refer to *Legal Analysis of Budget System* (Yuhikaku Publishing Co., Ltd., 2001) by Keiko Sakurai, and “Central Government Reforms—on the Reform of the Ministry of Finance” by Keiko Sakurai in *Administrative Reforms and Public Finance Law* edited by the Japan Association of Public Finance Law (Ryusei Publishing, 2003) p.9 et seq.