論　説

Administrative Action and the Succession of Illegality

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Preface

In this paper, I will introduce the notion of administrative action, and review both it and the succession of illegality from the perspective of Japanese constitutional and administrative law. The administrative process is composed of several administrative actions (*Gyousei-Koui*). Under the Japanese Administrative Case Litigation Act (*Gyousei Jiken Soshou Hou*, or JACLA), each administrative decision is subject to a time limit for filing the action. The plaintiff must file a lawsuit to revoke an administrative disposition (*Gyousei-Shobun*) only under the JACLA (*Torikeshi Soshou no Haitateki Kankatsu Ken*).

In the case of the expropriation of land (*Tochi Shuyou*), for example, the constitutional issue of property rights and compensation are being questioned in Japan. Business plans are discussed and approved by the government, and an expropriation procedure must be initiated by a committee. Each administrative disposition is used for one expropriation project.

The legal doctrine of the succession of illegality means that if an administrative action depending on a preceding illegal administrative action exists, the subsequent administrative action is therefore also illegal. In the case of a plaintiff alleging that one of a series of administrative decisions is illegal, and a preceding administrative decision has eliminated the possibility of filing an action due to the statute of limitations, a problem arises if a

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subsequent administrative action allows the plaintiff to argue that the preceding administrative decision was illegal. The time limit substantially reduces the opportunity for a party alleging an illegal series of administrative actions to file a lawsuit.

This issue regarding the succession of a preceding illegal administrative disposition is called *Ihousei no Shoukei* in Japanese.

Japanese administrative law has been influenced in part by civil law and the common law tradition. By examining specific Japanese cases and theories, I will demonstrate that these problems are part of a common issue outside Japan.

I. The rule of law and administrative law

Japan's current Constitution, which was proclaimed on November 3, 1946, and came into force on May 3, 1947, and Japanese administrative law have one principle in common: the Constitution prevents the arbitrary and capricious exercise of power.

The Japanese government and General Headquarters (GHQ) jointly discussed the amendment of the Meiji Constitution. According to GHQ instructions, universal popular suffrage was guaranteed, and popular elections were conducted. The imperial parliament called after this election deliberated the proposed amendment of the Meiji Constitution.

The Meiji Constitution was influenced by the Prussian Constitution,[1] which was centered on the strong leadership of the Emperor.[2] The Meiji Constitution did not incorporate the today's notion of the rule of law:[3] a law was a law, however undesirable it

1 "Birth of [the] Constitution of Japan" [English], National Diet Library Web site, http://www.ndl.go.jp/constitution/e/index.html (retrieved February 26, 2016); MAKOTO OHISHI, *NIHON KOKU KENPOU SI* [*History of the Japanese Constitution*] (Yuhikaku, 2005).

2 DAI NIHON TEIKOKU KENPO (MEIJI KENPO) [Meiji Constitution], Article 1. The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal.

3 The rule of law established in the Japanese Constitution was influenced by the nineteenth-century English Professor Albert Dicey. The content of rule of law is still unclear, and the rule of law in Japan has also been influenced by the United States since World War II. Japanese Constitutional scholars studied Dicey's thought after World War II and adapted some of his ideas to Japan, particularly the rule of law in Japan means, inalienable human rights, the Constitution as supreme law, judicial remedy, and the due process of law. ALBERT DICEY, *INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION* (1885). Dicey's book was translated into Japanese by Hiroshi Tajima and Masami Ito.

Dicey focused on the rule of law and parliamentary sovereignty. A recent analysis was written in English by the Japanese scholar, Shuji Yanase: *The Standards of Judgement for Dispute Resolution in*

may be.[4] There was no notion that government exercised its power arbitrarily or capriciously. The government had no responsibility to act justly, even when it or its officials caused illegal damage. This is called absolute sovereign immunity. The government could not do wrong or infringe on the rights or interests of the people. There was no provision for judicial review in the Meiji Constitution; all power was exercised in the name of the Emperor.[5] Japanese administrative law was influenced by European law during the Meiji era.

The current Japanese Constitution, based on the concept of justice, guarantees the dignity of the human,[6] and the people's sovereignty means that the ultimate authority and power to decide national politics belongs to the people.[7] The Constitution is the supreme law of the land,[8] and the list of fundamental rights[9] in Chapter III cannot be infringed by parliamentary statutes. These rights trump majority decisions by judiciary review, which is provided in Article 81[10] of the Japanese Constitution.

The due process of law, codified in Article 31,[11] is interpreted as meaning that not only procedures but also the contents of statutes should be legal and appropriate. This principle binds the government's actions.

The status of the judiciary was thereby strengthened.[12] Under the Meiji Constitution, which was influenced by the constitutions of European countries before World War II, the administrative court, which was the court of first instance,[13] did not allow appeals. It had

Financial ADR of Japan, 26 Colum. J. Asian L. 29, 55 (2013).

4 YOSHIKAZU SHIBAIKE, *GYOUSEI HOU SOURON* [Administrative Law, General Theories] 43 (Yuhikaku 2006); HIROSHI SHIONO, *GYOUSEIHOU* 1 [Administrative Law], 5th edition, 69−70 (Yuhikaku 2013); KATSUYA UGA, *GYOUSEIHOU GAISETSU I* [Administrative Law Text, Vol.1: General Theories] 27 (Yuhikaku 2013).

5 *Supra* note 2, Art.4. The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them according to the provisions of the present Constitution.

6 NIHONKOKU KENPO [KENPO] [Japanese Constitution], Arts. 11−13.

7 *Id*., Preamble, Art. 1.

8 *Id*., Preamble, Art. 98

9 *Id*., Arts. 10−40.

10 *Id*., Art. 81.

11 *Id*., Art. 31.

12 *Id*., Art.76.

13 *Supra* note 2, Art. 61. No suit at law, which relates to rights alleged to have been infringed by the illegal measures of the administrative authorities, and which shall come within the competency of the Court of Administrative Litigation specially established by law, shall be…[recognized] by [a] Court of Law.

exclusive jurisdiction over litigation against the government. Administrative courts had jurisdiction over cases involving taxes, business licenses, water and engineering works, and land and property.

The current Constitution, however, prohibits special tribunals, which had exclusive jurisdiction and were independent of the hierarchy of regular courts.[14] In 1947, the State Redress Act (*Kokka baishou Hou*)[15] was provided under Article 17[16] of the Japanese Constitution, and held the government liable in cases of government officials' misconduct.

In administrative cases, a plaintiff files a lawsuit in a regular court, and appeals are allowed to go to the Supreme Court. Judicial review,[17] newly established under the 1947 Constitution, not only monitors statutes and governmental actions; it also includes family courts[18] in the hierarchy of regular courts, at the top of which is the Japanese Supreme Court.

The current Constitution bases administrative power on three basic principles[19] originally derived from civil law countries, referred to as *Prinzip der gesetzmäßigen verwaltung unter Rechtsstaat* in German and *Houritsu ni yoru Gyousei no Gensoku* in Japanese.

First, the statutes governing the exercise of administrative power shall be passed in the Diet (*Vorbehalt des Gesetzes* in German, *Houritsu no Ryuho* in Japanese).[20] Second, any activity that contravenes a statute is illegal (*Vorrang des Gesetzes* in German, *Houritu no Yusen* in Japanese). Third, any norm that binds people's freedom and imposes a duty shall be passed in the form of a statute (*Rechtssatzschaffende Kraft des Gesetzes* in German, *Houritsuno Houki Souzouryku* in Japanese).

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14 *Supra* note 6, Art. 76(2).

15 KOKKA BAISHOU HOU [The State Redress Act], Law No. 125, October 27, 1947.

16 *Supra* note 6, Art. 17.

17 *Id*., Arts. 81, 98.

18 SAIBANSHO HOU [The Court Act], Law No. 48, 2013, Arts. 31−2.

19 The *Prinzip der gesetzmassigen verwaltung* under *Rechtsstatt* was influenced by Otto Mayer during the Meiji Constitution era. Otto Mayer was introduced by Professor Tatsukichi Minobe. Shibaike, *supra* note 4, at 39−42; MITSURO KOBAYAKAWA, *GYOUSEIHOU (JOU)* [Administrative Law, vol. 1], 116−130 (Koubundou 2004); TAKASHI TEJIMA, TUYOSHI NAKAGAWA, *KENPO TO GYOUSEIKEN* [Constitution and Administrative Power] 15, 19 (Houritsu Bunkasha 1992).

20 This doctrine derives from criminal and tax law (*nullum crimen sine lege*); the notion of the government began with the watchman state.

The purpose of these principles is to protect the rights and freedoms of people by preventing the abuse of administrative power under the *Rechtsstaat* in Germany. The principles were originally introduced and developed by the courts and constitutional and administrative law scholars in Japan during the Meiji era, and their adoption in Japan was influenced by the German professor Otto Mayer.[21] The limits of these fundamental principles have been discussed in Japan since World War II, and there are several issues involved in the interpretation of administrative power under the law.[22]

First, only administrative activities that infringe upon the freedoms of the people (*belastender Verwaltungsakt*) shall be grounded by statutes.[23] This is called *Shingai Ryuho* in Japanese, and was a common theory of administrative law during the Meiji Constitution era. This opinion indicates that social rights do not necessarily need to be defined in statutes passed by the Diet, but it ignores the facts that the Japanese Constitution guarantees social rights[24] and that it is the duty of the government to protect these rights.

Second, not only administrative activities that infringe on the freedom of the people, but any activity that provides or secures benefits (*begünstigender Verwaltungsakt*) shall be grounded in statutes. This is called *Jueki Ryuho* in Japanese. This interpretation ignores the fact that some statutes are passed with defects, and that some administrative activities are conducted with the cooperation of private citizens.

Third, all administrative activities shall be grounded by statutes. This is called *Totalvorbehalt* in German and *Zenbu Ryuho* in Japanese. This opinion has not gained strong support in Japan, because it is felt that administrative discretion should be allowed in some cases.[25] It is impractical to think that all activities are grounded by statutes in order to enable quick, flexible administrative activity. Not only parliament statutes but other factors may also be used to support the legitimacy of administrative activities.

Fourth, the essential character of administrative activities shall be grounded in statutes. It is called *Wesentlichkeitstheorie* in German and *Juyo (Honshitsu) Ryuho* in Japanese. This

21 Otto Mayer's thought was deeply analyzed by Tatsukichi Minobe and Hiroshi Shiono. HIROSHI SHIONO, *OTTO MAIYAR GYOUSEIHOUGAKU NO KOUZOU* [Structure of Otto Mayer's Administrative Law], 107 (Yuhikaku 1988).

22 Shibaike, *supra* note 4, at 39−42; Uga, *supra* note 4, at 26.

23 *Id*., at 45−54.

24 *Supra* note 6, Art. 25.

25 *Supra* note 19, at 124−126.

idea does not clearly indicate what the essential character of administrative activity is.

Fifth, activities that exert control and power shall be grounded in statutes. This is different from the first interpretation in that some administrative activities providing benefits to people are conducted in the form of controlling and powerful actions.

There are no clear-cut answers in these interpretations in Japan. The first principle was imported by Professor Tatsukichi Minobe during the time of the Meiji Constitution. Today some textbooks of Japanese administrative law indicate that the Japanese courts might have adopted the first principle; some administrative law scholars[26] think that the first principle should be expanded, while others feel that the fourth principle is better.

1. Defining administrative action

In order to review continuously illegal administrative actions, I must first define administrative action (*Gyousei Koui*) and disposition (*Gyousei Shobun*)[27] (*Verwaltungsakt* in German). In Japan, administrative action is defined as legal action by an administrative agency that provides a concrete definition of discipline externally and directly in the exercise of public power. This notion is defined academically, unlike administrative disposition, which has been defined in decisions rendered by courts.

Administrative actions are subcategorized as administrative dispositions.[28] For example, tax assessments, orders to remove illegal buildings, or public assistance for indigent people are all identified as administrative actions, whereas public construction is not an administrative action but a disposition.

Administrative dispositions include administrative actions and actions of a controlling, continuous, and factual character. Factual action is not legal action, and does not entail the right or duty to control or influence private parties.

In this paper I will not use such strict definitions of these two notions, and I will also use the alternative term "administrative decision" (*Gyousei Kettei*). It is still important to ask in court whether or not an action in a dispute is an administrative action, because the status of such an action depends on the remedy given by the court. In Japanese administrative

26 *Id*., at 116–130.

27 See also YASUTAKA ABE, *GYOUSEIHOU SAINYUMON (JOU)* [Reintroduction of Administrative Law, vol. 1] 44 (Sinzansha 2015).

28 Shibaike, *supra* note 4, at 22–27.

litigation procedure, a plaintiff may file a lawsuit to revoke an administrative action. The JACLA[29] limits litigation to revoke administrative actions exclusively to administrative dispositions.[30] If the alleged action does not constitute an administrative disposition, the court will dismiss the case.

Administrative action has tentative validity (*Kouteiryoku*),[31] which means that even if an administrative action contravenes certain statutes, it would still be tentatively legal until an agency or court revoked it.

Professor Yasutaka Abe insisted it is too absurd to say illegal administrative action has tentative validity, explaining that such a notion does not exist in German and should be removed from Japanese administrative law studies.[32]

Professor Toshufumi Sowa[33] explained that the purpose of tentative validity is to quickly establish a legal relationship and an administrative purpose, and to maintain the legal stability of a particular decision. In the case of compulsory tax collection, for example, in order to collect taxes quickly, a court's decision can allow tentative validity. After the statute of limitations for filing an action passes, the litigation will not be allowed, even if the collection is deemed wrong. This principle may be beneficial for the government, but other people involved in certain administrative decisions also need legal stability.[34]

There are three methods of revoking this tentative validity. First, the plaintiff can file a lawsuit with a judicial court to revoke an illegal administrative action if less than six months has elapsed since he or she learned of the disposition.[35] Second, the plaintiff can file a petition for revocation with the administrative agency, under the Japanese Administrative Appeal Act (*Gyousei Fufuku Sinsa Hou*, or JAAA). The old JAAA allowed a filing period of

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29 GYOUSEI JIKEN SOSHOUHOU [Administrative Case Litigation Act], Law No. 59, 2015.

30 Ibid., Art.3(2), 14.

31 Shibaike, *supra* note 4, at 146-153; Uga, *supra* note 4, at 332; Shiono, *supra* note 4 at 69, 144. Tatsukichi Minobe translated *Rechtskraft* into *Kouteiryoku* in Japanese. In Minobe's analysis, people believe in administrative agency with full authority, the decisions of which are assumed to legal. Today, the effective achievement of administrative purpose and rapid legal stability are emphasized in order for administrative decisions to be presumed to be legal.

32 *Supra* note 27, at 75-77.

33 TOSHIFUMI SOWA, *GYOUSEIHOU SOURON WO MANABU* [Administrative Law: General Theory], 145-146 (Yuhikaku 2014).

34 Shibaike, *supra* note 4, at 145-153.

35 *Supra* note 29, Art. 14(1).

only 60 days, but the new JAAA has extended this to three months for appeals.[36] Third, the administrative agency that rendered the original decision is allowed to revoke its validity.

2. Classifying administrative actions

Different cases highlight various forms of administrative actions (*Gyousei Koui*). In this chapter, administrative actions are classified academically according to their contents.[37] First, to order a measure or a prohibition is when the government orders an action (or the cessation of an action) against a private person, such as an order to cease the construction of or demolish an illegal building, to collect a tax, or to undergo a diagnostic procedure. This is called *Befehl* in German, *Kamei* in Japanese. The suspension of a food service business or the imposition of a road block are classified as prohibitions, which are called *Verbot* in German and *Kinshi* in Japanese.

Second, permissions and exemptions are instances where the government permits the removal of a general embargo in certain cases, called *Kyoka* (*Erlaubnis*) and *Menjo* (*Dispens*) in Japanese. For example, approval to operate a restaurant or an adult entertainment business, to acquire a driver's license, or to establish an industrial waste disposal facility are all classified as permissions (*Kyoka*); an exemption would be to excuse someone from the general duty to act, deliver, or tolerate something—for instance, being excused from the duty to attend compulsory education is classified as an exemption (*Menjo*).

Third, to patent or secure people's rights is when the government grants or creates special rights for certain people that are not enjoyed by the general public. This is called *Verleihung* in German and *Tokkyo* in Japanese. For example, patents are classified as permissions to reclaim public water, the creation of mining rights, and the right of occupancy. The permission to use public property for a purpose other than its official use is to secure people's rights. According to Professor Yoshikazu Shibaike, the difference between patents and permissions is now blurred.[38]

Fourth, to deprive people of legal rights is when the government revokes established legal rights—for example, the cancellation of a permit to operate a restaurant or the

36 GYOUSEI FUFUKU SINSA HOU [The Administrative Appeal Act], Law No. 68, 2014, Art. 18.
37 Shibaike, *supra* note 4, at 127; Shiono, *supra* note 4, at 112, 120; Uga, *supra* note 4, at 315.
38 Shibaike, *supra* note 4, at 130.

revocation of a medical or driver's license fall under this category, and is called *Tekkai* in Japanese.

Fifth, an authorization is when the government approves the initiation of a process or projection by a private individual or entity, called *Genehmigung* in German and *Ninka* in Japanese. For example, authorizations may be granted to an association formed to carry out a land-readjustment project, to collect passenger fare from travelers, and to organize agreements among a building's owners for building standards.

Sixth, a certification is a public recognition of a particular fact or legal relationship, such as the decision to provide the right to receive national health insurance, a certificate of permission to construct a building, approval of an expropriation of land, etc. This is called *Feststellung* in German and *Kakunin* in Japanese.

These classifications were formulated in academic processes, and are not always consistent with statutory use and court decisions in Japan. Some administrative actions reflect several of the factors mentioned.[39]

II. The consequences of flawed administrative actions

An administrative action (*Gyousei Koui*) has binding power that controls the concrete rights and duties of the people, and is also tentatively valid. In Japan, it is explained that the grounds for tentative validity (*Kouteiryoku*) are the exclusive jurisdiction of administrative case litigation (*Torikeshi Soshou no Haitateki Kankatsu Ken*)[40] under Article 3 of the JACLA.[41]

Professor Katsuya Uga has asserted that exclusive jurisdiction to revoke an illegal administrative disposition is legislative policy, not a Constitutional requirement. A private person who wants to revoke a disputed administrative action must file an action by administrative case litigation under the JACLA.[42] Plaintiffs who allege that an administrative decision has been revoked may sue for state compensation for an illegal administrative

39 *Id*., at 126–127.
40 *Id*., at 130; Shiono, *supra* note 4, at 146; Uga, *supra* note 4, at 313, 332.
41 *Supra* note 29, Art. 3.
42 *Id*., Art. 3(2), Art. 14.

action under the State Redress Act.[43]

Tentative validity does not arise if the administrative action has significant and clear defects, and is thus clearly illegal and void.[44] The proper benchmark between clearly void and legally valid has been analyzed in Japan.

An administrative action must be legally conducted. An administrative action that is illegal or invalid may be revoked by litigation under the JACLA or by the administrative agency itself. A defective administrative action has tentative validity and legality until it is revoked by litigation or an appeal.

In the case of illegality, an administrative action is conspicuously and naturally null and void, and the question of tentative validity and legality is not relevant. The plaintiff may therefore bring a civil or public-law-related action for recompense for illegal damage based on an illegal, null, and void administrative action.[45] The statute of limitations for filing an action under the JACLA is not relevant if the administrative action is clearly illegal, and thus null and void. For example, in the case of a clearly illegal tax assessment, the person who paid the tax based on the wrong and illegal assessment may bring a civil suit for recompense under the Civil Code.[46]

1. The criteria for a null and void administrative action

The criteria for null and void administrative actions have been established by the courts. In 1956 the Japanese Supreme Court[47] held that an administrative action would be null and void if the defect of the administrative action was significant and clear. In this chapter I will review several cases involving null and void administrative actions.

The first case is the so-called Gantlet case of 1956. The plaintiff was John Gantlet, born in Japan in 1906, the son of an English father named Edward Gantlet, and had lived and worked as English teacher. John was a British subject due to his father's nationality. During World War II, he was advised to apply for Japanese nationality in order to avoid being

43 *Supra* note 15; *supra* note 27, at 76. This tentative validity tends to make judges believe that the government does not make mistakes or commit illegal acts.

44 Shibaike, *supra* note 4, at 154–165; Shiono, *supra* note 4, at 159; Uga, *supra* note 4, at 335–337.

45 *Supra* note 29, Art. 36.

46 MINPO [THE CIVIL CODE], Law No. 89 of 1896, Arts. 703–708.

47 Saiko Saibansho [Sup.Ct] July 18, 1956, Showa 25(o) no. 206, 10(7) Saiko Saibansho Minji Hanreishu [Minshu] 890.

treated as an enemy alien. He was afraid of being arrested for treason, so he applied for Japanese naturalization under the old Japanese Nationality Act (*Kyu Kokuseki Hou*),[48] which limited naturalization to certain conditions. Article 7, section 2, paragraph 5 required an applicant to renounce his or her original nationality before being granted Japanese nationality. According to English common law, however, a British subject did not have the right to apply for naturalization in a foreign country during wartime. At the time the plaintiff applied for Japanese nationality, this information was not shared. Permission for Japanese naturalization was granted, but was illegal at that time.

The plaintiff later argued that he did not have Japanese nationality because the permission granted was null and void. The Supreme Court determined that whether he lost his English nationality or not depended on English common law, and the Court mistakenly thought that he automatically lost his original nationality, which was not particularly significant but clearly illegal.

In this 1956 case, the significant and clear factors were different, and each was measured separately. The "significant" factor was measured by the criteria that the administrative decision was made without valid and legal authority, or a required notice and hearing procedure.

2. Property rights in Japanese Constitutional law

Before considering the factors of significance and clearness, an explanation of property rights in Japanese Constitutional law is necessary.

Article 29[49] of the Japanese Constitution guarantees property rights for people and the private property system. The government may expropriate property only for public use. If the public use causes special damage to a particular person, that person shall receive compensation from the people who will benefit from the expropriated property. On the other hand, in the event that the use does not inflict damage, but only inconvenience within a tolerable limit, no compensation will be provided. The amount of compensation is usually understood to be the market price of the property in question.[50] However, in the Supreme

48 KYU KOKUSEKI HOU [Ex-Japanese Nationality Act], Law no. 147 of 1950, Art.7 (2)-(5). (Expired).

49 *Supra* note 6, Art. 29.

50 Saiko Saibansho [Sup.Ct] October 18, 1973, Showa 46(o) no.146, 27(9) Saiko Saibansho Minji

Court decision,[51] reasonable rather than full compensation was granted by the Court under special circumstances just after World War II in an effort to create independent farmers. The Agricultural Affairs Committee for Public Expropriation was established between 1946 and 1950 particularly for this reform.

3. The significance and clearness factor

In 1963 the Supreme Court[52] reviewed the scope of authority of the administrative agency that conducted the following administrative action. The Agricultural Affairs Committee decided to purchase the land in question, but the commissioner had an interest in this land that conflicted with the Farmland Adjustment Law. The Supreme Court held that this decision did not constitute an illegal administrative action because the authority of the Committee was fixed by law to a considerable extent, and the resolution was declared when the expropriated land was sold. The Supreme Court explained in this case that the Committee's decision was fairly concluded after fair deliberation. If the convocation and quorum in the case had been missed, the decision would have been null and void.

It might be difficult for the Supreme Court to show a certain apparent standard for significant factors.[53] In 1959 the Japanese Supreme Court[54] explained the concept of a factor's "clearness." In this case, the plaintiff had a farm in the city of Nishinomiya. After World War II, the government decided to purchase his land under the Law Concerning Special Measures for the Establishment of Landed Farmers.[55] During this time, the government was allowed to purchase land cheaply and sell it to tenant farmers.

A few historical details are important in understanding this case. Before World War II, many landowners dominated a huge amount of Japan's land and controlled the tenant farmers who worked it. Between 1946 and 1950, just after Japan lost World War II, the

Hanreishu [Minshu] 1210.

51 Saiko Saibansho [Sup.Ct] December 23, 1963, Showa 25(o) no.98, 7(13) Saiko Saibansho Minji Hanreishu [Minshu] 1523.

52 Saiko Saibansho [Sup.Ct] December 12, 1963, Showa 37(o) no.1388, 17(12) Saiko Saibansho Minji Hanreishu [Minshu] 1682.

53 Shibaike, *supra* note 4, at 154–165; Shiono, *supra* note 4, at 161–164; Uga, *supra* note 4, at 336.

54 Saiko Saibansho [Sup.Ct] September 22, 1959, Showa 32(o) no.252, 13(14) Saiko Saibansho Minji Hanreishu [Minshu] 1426.

55 JISAKU NOU TOKUBETSU SOCHI HOU [Law Concerning Special Measures for the Establishment of Landed Farmers], Law No. 43 of 1946.

GHQ reformed the old feudal ownership system of agricultural farms. The government purchased designated portions of farmland stipulated as excessive by this Law. If the owner did not live in the municipality where his (or her) land was located, the government could purchase all the land, which was then sold cheaply to tenant farmers. GHQ encouraged tenant farmers to be independent.

In this case the landowner argued that the land in question had been exempted from the forced acquisition policy. The plaintiff argued that according to the Law, his land was located in a land readjustment project district that was not subject to the forced acquisition policy.

The Supreme Court determined that the factors of significance and clearness were not satisfied in this case, even though the illegal administrative action was to be revoked. The factor of clearness had to have existed to be evident to anybody, and would have been satisfied only if the significant defect had existed at the time that the administrative action was made. The plaintiff failed to demonstrate that the factors of significance and clearness were present in this case.

In 1961 the Supreme Court[56] provided additional criteria for the clearness factor. Takeo Watanabe, the owner of a forest and a mountain in Fukushima, adopted a daughter, Sadami, in 1915. Takeo went to Tokyo to work as timber merchant, where his son Kentaro was born in 1918. Takeo later enlisted in the Pacific War, at the end of which it was unknown for some time whether he had survived. During this period, Takeo's family stayed at Sadami's home. She treated them cruelly. After the war finished and Takeo returned, Sadami brought a legal action against him, arguing that all the forest and the land belonged to her. Takeo and Sadami finally reached a settlement that Takeo would donate the forest and mountain to her, but that the trees on the land would be sold and the proceeds would go to Takeo. Sadami agreed to sell the trees, and an out-of-court settlement statement was written. This statement, however, stated that Takeo, the original landowner, would sell the trees first and then sign over the land to his adopted child, Sadami.

Sadami sold the trees, but she kept the proceeds. After Takeo passed away, the tax office followed up on the settlement statement and held Kentaro liable for the tax on the

56 Saiko Saibansho [Sup.Ct] March 7, 1961, Showa 35(o) no.759, 15(3) Saiko Saibansho Minji Hanreishu [Minshu] 381.

proceeds from the sale of the trees. Kentaro argued that the proceeds from the sale of the trees had gone to Sadami, and therefore the tax decision was based on a significant and clear error.

The Supreme Court held that the administrative action was null and void in this case because its defect was significant and clear: the administrative decision was clearly and objectively an error on the part of the administrative agency, due to its failure to establish the facts of the case when the administrative decision was made. The government's duty to investigate did not matter.

In 1961 the Tokyo District Court,[57] rather than the Supreme Court, added further criteria for the duty of investigation by an administrative agency. The plaintiff ("A") purchased a plot of land designed for house building from a real estate agent ("B"). Because A borrowed money from another individual ("X") to purchase the land, the name on the registration for the land was changed from the real estate agent's to X's, not A's. The beginning of World War II prevented the planned house from being built on the land. After the war was over, an employee of B permitted a farmer ("Y") to plow the land. The Agricultural Committee in the city of Kodaira found the rental contract between B and Y, and therefore determined that the planned forced purchase of this land should proceed. Part of the land was sold to Y under the Law Concerning the Special Measures for the Establishment of Landed Farmers as a part of land reform. Landowner A argued that this administrative action was null and void.

The Tokyo District Court held that the principle of clearness was satisfied in this case because the government did not sincerely perform its duty to investigate and the defect was clear on appearance, so the administrative decision was null and void.

In another case, the Supreme Court found in 1973[58] that the significance factor was sufficient and clearness was unnecessary. The criteria of significant and clear errors are needed because the quick and effective achievement of the administrative purpose—the protection of a third party who trusts in the existing administrative effective decision—is balanced by the need to avoid infringing on the rights of the party by administrative illegal

57 Tokyo Chiho Saibansho [Tokyo Dis.Ct] February 21, 1961, 256 Hanrei Jiho [Hanji] 23.

58 Saiko Saibansho [Sup.Ct] April 26, 1973, Showa 37(o) no.1388, 27(3) Saiko Saibansho Minji Hanreishu [Minshu] 629.

conduct. Such questions are decided on a case-by-case basis; if the protection of a third party is unnecessary, the factor of clearness is not required.

In 1973 the Supreme Court determined that the factor of clearness was in fact necessary to protect a third party. The plaintiff (“A”) registered his own land in the name of his de facto wife’s sister (“C”) without her consent, and then sold it to someone else (“B”) in 1960. The Kanagawa tax office charged C income tax based on the register file in 1962, and C failed to submit a formal objection within the prescribed period. The Supreme Court determined that a relationship of tax charging existed between the tax office and the charged person, so the administrative action to charge C was null and void unless C implicitly or clearly accepted the registered file.

In 2003 the Nagoya High Court[59] determined that an administrative action was null and void in a case involving the Monju nuclear reactor plant. This reactor was a high-speed breeder reactor. Civilians living near the nuclear plant filed a lawsuit alleging that the permission to establish a nuclear plant in the area was null and void.

The Kanazawa branch of the Nagoya High Court held that the significance factor alone was sufficient and clearness was unnecessary in this case, because the nuclear reactor was potentially dangerous. The Court further held that the Science and Technology Agency and the Nuclear Safety Committee were wrong in their decision-making process. The plaintiffs had to prove a significant error in the permission of building nuclear plant, while the administrative agency had to demonstrate that there were not enough significant defects on its side, based on considerable grounds and documents. The illegality of the planned reactor was presumed unless the administrative agency could meet the burden of proof.

Regarding the same case, the Supreme Court held in 2005[60] that the permission was legal if no serious mistakes had been made by the decision-making committee. In reviewing safety concerns before granting permission to build the nuclear reactor, the safety of the fundamental design was assessed by the Nuclear Safety Committee, who also determined which items to include in the safety review; its reasonable decision-making process was

59 Nagoya Koto Saibansho [Nagoya High Ct.] January 27, 2003, Heisei 12 (Gyo Ko) no.12, 1818, Hanrei Jiho [Hanji] 3.

60 Saiko Saibansho [Sup.Ct] May 30, 2005, Heisei 15 (Gyo Hi) no. 108, 59(4) Saiko Saibansho Minji Hanreishu [Minshu] 671.

respected by the Supreme Court.[61]

4. Errors in procedure

Before any administrative decision is made, the administrative agency shall ask advice from the relevant council and in a public hearing. Not only the general public but all interested parties shall attend, and their opinions must be submitted beforehand. If these procedures are not observed, a problem arises as to whether or not the subsequent administrative decision is null and void.

One opinion is that the due process of an administrative procedure requires[62] that not only the contents of the administrative decision but also the procedure must follow the statutes strictly. This opinion holds that procedural defects lead to an illegal administrative decision.

Another opinion holds that the due process of administrative procedure must implement methods to maintain the legality of any administrative decision. Following this opinion, errors in procedure do not necessarily lead to illegal administrative decisions if the same conclusion would be reached by a defective procedure.

Regarding this matter, in 1975 the Supreme Court,[63] deliberating the case of the Gunma Central Bus Company's application to the Ministry of Transport to extend a bus line in 1956, asked if a procedural defect would depend on the conclusion of an administrative decision. The Minister requested that the Land Transport Bureau hold a public hearing under the Act of Establishment of the Ministry of Transport. In 1959, the Bureau called for a Committee to be convened and heard opinions from competing bus companies and the general public. In June, 1961, the application was rejected after this hearing, and the Gunma Bus Company filed a lawsuit alleging that the Commission had neglected to perform the necessary investigation and collect the necessary materials in the region, and thus the decision was unfair.

The Supreme Court held that procedural errors did not render the denial of the license

61 Yuichiro Tsuji, *The Legal Issues on Environmental Administrative Lawsuits under the Amendment of ACLA in Japan*, 1(2) Yonsei L. J. 340, 353 (2010-11).

62 Shiono, *supra* note 4, at 164; Uga, *supra* note 4, at 26.

63 Saiko Saibansho [Sup.Ct] May 29, 1975, Showa 42 (Gyo Tsu) no.84, 29(5) Saiko Saibansho Minji Hanreishu [Minshu] 662.

illegal in this case. The purpose of holding a public hearing was to give the interested parties an opportunity to submit evidence and argue opinions; the Bureau's hearing was an additional event, not the principal means of gathering evidence, and therefore the Court found that the rejection of the application was not illegal in this case.

In this case the original Gunma Bus Company was divided, and the Gunma Central Bus Company was newly established. The original and new companies would be competing against one another if the new subsidiary extended its route to the Gunma prefectural region. The original company was managed by the Tokyu Corporation, under the leadership of Budayu Kogure. Kogure was Minister of Transport in June of 1961 when the Ministry rejected the application, and he became the representative director of the original company later that month.

Therefore, it is still disputable that a procedural error rendered the administrative decision illegal.[64] The current Japanese Procedure Act (*Gyousei Tetsuduki Hou*),[65] promulgated in 1994, provides that administrative agencies shall publish the standards of administrative procedure.

5. Defects too minor to justify a rescission

If the defects in a case are too minor to justify rescinding a decision, the illegal administrative action may be corrected.[66] First of all, procedural and formal defects do not affect the contents of an administrative action; second, the defects can be corrected and fixed; third, the defects must be clear to everybody, so that there can be no further misunderstandings; and fourth, the illegal administrative action may be changed to a totally different legal action.

In 1961 the Supreme Court[67] held that in the plan to expropriate land, an objection could be appealed, but the committee allowed the procedure to continue without reviewing the objections. The Court explained that this illegality was not sufficient to render the decision to expropriate the land as an administrative action null and void. It could be

64 *Supra* note 33, at 331.
65 GYOUSEI TETSUDUKI HOU [Administrative Procedure Act], Law No. 88, 1993.
66 Shibaike, *supra* note 4, at 39−42; Uga, *supra* note 4, at 348.
67 Saiko Saibansho [Sup.Ct] July 14, 1961, Showa 32(o) no.1096 15(7) Saiko Saibansho Minji Hanreishu [Minshu] 1814.

corrected if the committee reviewed the matter afterward.

The reason for approving the correction of illegality is to guarantee legal stability and administrative efficiency by upholding the original administrative action.

6. Changing an illegal administrative action

Changing an illegal administrative action into a legal one is possible when a certain administrative action does not satisfy legal requirements, but would be legal if seen from a different perspective.[68] Case law maintains its effectiveness even if applied as a different administrative action. For example, there was a case of provisional replotting plans being sent to a person who had passed away; the notice was instead delivered to the heir of the deceased individual. Submitting the provisional replotting plans to the deceased was illegal, but a change of procedure was allowed in the replotting plans being submitted to his heir.[69] In the expropriation of the farm in question, the original application of the statute was illegal, but was rendered legal by applying a different statute.[70]

The reason for accepting the change of an illegal administrative action into a legal and valid one is to maintain the effectiveness of the administrative action. The option to change an illegal action should not be abused to emphasize administrative efficiency.

III. The succession of illegality

1. The expropriation of public land

In Japan, land may be expropriated for public work enterprises. This special procedure involves two steps. First, the Ministry of Land, Infrastructure, Transport, and Tourism or the governor of a prefecture reviews and approves the commencement of an enterprise in the public's interest. Second, the Expropriation Commission (*Shuyou Iinkai*) publishes the expropriation decision, and a private business operator acquires the land based on the decision. This decision, called a "public-law-related action" (*Keishiki teki Toujisha*

68 Uga, *supra* note 4, at 348–354; Shiono, *supra* note 4, at 165.

69 Chiba Chiho Saibansho [Chiba Dist. Ct.] February 28, 1974, Showa 45(Gyo ko) no.12, 740 Hanrei Jiho [Hanji] 48.

70 Saiko Saibansho [Sup.Ct] July 19, 1951, Showa 25(o) no.236, 8(7) Saiko Saibansho Minji Hanreishu [Minshu] 1387.

Soshou),[71] is litigation to contest an illegal administrative action, and Article 133[72] of the Compulsory Purchase of Land Act (*Tochi Shuyou Hou*) regards it as special private litigation in name of a public-law-related action. This litigation is automatically contested to increase the amount of compensation granted to the person whose property is being expropriated by the private business operator.

In administrative litigation, the plaintiff files a lawsuit with the Expropriation Commission to rescind the administrative action, but the statute regards it as private litigation.[73]

2. Cases involving the succession of illegality

The legal doctrine of the succession of illegality means that if an administrative action depending on a preceding illegal administrative action exists, the subsequent administrative action is therefore also illegal.[74] However, the illegality of a preceding administrative action may be questioned if the illegality stems from the nature of the subsequent action. Generally, the illegality of a preceding action does not arise from that of a subsequent one. This is called *Ihouseino Shoukei* in Japanese.

The reason for this doctrine is that a preceding administrative action has its own statute of limitations, and an action to revoke an administrative disposition has exclusive jurisdiction as well. The time limit substantially limits the opportunity for a party alleging an illegal series of administrative actions to file a lawsuit. The succession of illegality is usually not allowed, because it would mean that the time limit pertaining to the preceding action is meaningless.

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71 TOKIYASU FUJITA, *GYOUSEIHOU SOURON* [Administrative law, general theories] 397–398 (Seirin Shoin 2013); Uga, *supra* note 4, at 346. Professor Uga has asserted that exclusive jurisdiction to revoke illegal administrative disposition is granted for public-law-related action by legislative policy.

72 TOCHI SHUYOU HOU [Compulsory Purchase of Land Act], Law No. 219 of 1951, Art. 133(2).

73 *Supra* note 29, Art. 4. The term "public-law-related action" as used in this Act means an action relating to an original administrative disposition or administrative disposition on appeal that confirms or creates a legal relationship between parties, wherein either party to the legal relationship shall stand as a defendant pursuant to the provisions of laws and regulations, an action for a declaratory judgment on a legal relationship under public law, and any other action relating to a legal relationship under public law.

74 Shiono, *supra* note 4, at 148; Uga, *supra* note 4, at 343–347.

The succession of illegality was an issue during the Meiji era. Professor Tatsukichi Minobe, one of the most famous constitutional and administrative law professors, argued that if a series of administrative dispositions as a whole gives one effect, every administrative disposition would be a cause of action to revoke administrative actions for illegality. The subsequent administrative action is naturally also illegal in the case that an administrative action depending on a preceding illegal administrative action exists. Preceding illegality leads to subsequent illegality.[75]

In 1964[76] the Supreme Court rejected the concept of succession. In this case, the mayor of the city of Tateyama implemented measures to reduce the city workforce due to overstaffing. The mayor established an age limit of 55 years for public officials, and those who were over 55 years old were ordered to await further instructions. This overstaffing happened because promotion examinations were conducted beyond the legal requirement. In this case, the preceding action was a series of illegal promotions, and the subsequent one was an order to await further instructions. The Supreme Court did not allow the succession of the illegal preceding administrative action.

In 1950, however, the Supreme Court[77] allowed the succession of illegality. The preceding action was a plan to expropriate land that had been compulsorily purchased, and the subsequent one was a decision by the Agricultural Committee. The Court allowed the plaintiff to contest the preceding administrative compulsory purchase plan if the Agricultural Committee's decision was found to be illegal due to the inappropriate exercise of power.

In this case, the landowner ("Z") had three sons who were enlisted in the army in World War II. There were no men left to cultivate the farm, so Z loaned the land to "Q" on the condition that it would be returned when his sons returned from the war. The Agricultural Committee in Mie Prefecture decided the land had been cultivated by the tenant farmer Q for a long time, and not on a temporary basis. Z therefore lost his chance to contest the plan due to the statute of limitations.

75 TATSUKICHI MINOBE, *NIHON GYOUSEIHOU (JOU)* [Japanese Administrative Law] 940 (Yuhikaku 1936); TATSUKICHI MINOBE, *KOUHOU HANREI TAIKEI (JOU)* [Public law cases vol. 1] 630 (Yuhikaku 1933).

76 Saiko Saibansho [Sup.Ct] May 27, 1964, Showa 37(o) no.1472, 18(4) Saiko Saibansho Minji Hanreishu [Minshu] 676.

77 Saiko Saibansho [Sup.Ct] September 15, 1950, Showa 24(o) no.42, 4(9) Saiko Saibansho Minji Hanreishu [Minshu]404.

In the 1997 Nifudani Dam case, the Sapporo District Court[78] allowed the succession of illegality. The preceding administrative action was the permission for a project to construct a dam in the Nifudani area; the subsequent action was the Expropriation Commission's decision to impose the compulsory sale of the land. A tribe of Ainu people (a minority) had lived in this area for a long time. The Sapporo District Court held that the unique culture of this tribe had been ignored and should be protected under the International Covenant on Human Rights, Section b: Terms, and that the Japanese courts should follow this agreement under Article 98, Section 2 of the Japanese Constitution.[79] The Court allowed the plaintiff to file a lawsuit regarding the illegality of the preceding action carrying through to the subsequent administrative action of compulsory purchasing.

In 1990, the Nagoya District Court[80] admitted the succession of illegality from the permission for an infrastructure enterprise to a decision by the Expropriation Commission. In this case, the Chubu Electric Power Company was permitted to build a new grid in Aichi Prefecture in 1978. This grid would pass over one hospital. In 1980, the Aichi Expropriation Committee received one application from the Aichi Electric Company to commence the compulsory purchase of the land the hospital was built on. The Committee ordered the hospital to vacate the land, but the hospital argued that the preceding action should have satisfied the requirement that the land must be put to an appropriate and reasonable use.

The Nagoya District Court held that the preceding permission for the enterprise and the subsequent expropriation decision constituted a single administrative action. The combined series of administrative actions had one effect: even though each administrative action led to one lawsuit, the purpose of the law for expropriation was to secure the validity and propriety of the administrative procedure. It was wrong to think that each administrative action was independent, and thus the succession of illegality must be admitted. In conclusion, however, the Nagoya District Court held that the expropriation decision was illegal but still effective by invoking Article 31(1)[81] of Administrative Case Litigation Act (*Jijo Hanketsu* in

78 Sapporo Chiho Saibansho [Sapporo Dist. Ct.] March 27, 1997, Heisei 5 (Gyo wa) no.9, 1598 Hanrei Jiho [Hanji] 33.

79 *Supra* note 6, Art. 98(2).

80 Nagoya Chiho Saibansho [Nagoya Dist. Ct.] October 31, 1990, Showa 55 (Gyo u) no. 12, 1381 Hanrei Jiho [Hanji] 37.

81 *Supra* note 29, Art. 31 (Japan). In an action to revoke an administrative disposition, the court may dismiss a claim with prejudice on its merits in cases where the original administrative disposition or

Japanese).

In 2009 the Supreme Court[82] upheld the succession of illegality in a building certification procedure in Tokyo. This case involved Tokyo's safe building ordinance, which requires that before a new construction project begins, the building plan must be reviewed by the construction director of the prefecture, city, ward, or other organization responsible for certifying safety, and granted a safety and construction certificate. In the case in question, after the safety and construction certificate was granted, residents living near the building site filed a lawsuit, arguing that the safety certificate was illegal and thus the subsequent building certificate was null and void.

The Supreme Court allowed the lawsuit to revoke the administrative action due to the illegality of the preceding action to proceed. The safety and construction certificates were integrated in the original action: in order to achieve a single purpose, both stages were carried out at once, and thus produced the same effect. The inhabitants were denied the opportunity to learn of the existence of the safety certificate, and therefore due process was not properly protected. In the safety certification phase, it was reasonable to think that residents living near the building would not suffer any direct damage, and they did not file a lawsuit until the construction certificate was granted. It seems that the Supreme Court focused on the right procedural matter to provide a remedy to the affected citizens.[83]

The succession of illegality is subject to whether the interest of preserving the stability of an administrative law relationship is balanced by a remedy for the plaintiff.

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administrative disposition on appeal is illegal but the revocation thereof is likely to seriously affect public welfare, if the court, having considered the extent of any possible damage to be suffered by the plaintiff, the extent and method of compensation for or prevention of such damage, and all other circumstances concerned, finds that the revocation of the original administrative disposition or administrative disposition on appeal is not in line with public welfare. In this case, the court shall declare the illegality of the original administrative disposition or administrative disposition on appeal in the main text of the judgment of dismissal.

82 Saiko Saibansho [Sup.Ct] December 17, 2009, Heisei 21 (Gyo hi) no.145, 63(10) Saiko Saibansho Minji Hanreishu [Minshu] 2631.

83 *Supra* note 33, at 167.

IV. For further consideration: Administrative discretion

1. The criteria of administrative discretion

This paper focuses on the issue of the succession of illegality from prior administrative actions to subsequent ones. Government agencies such as the Agricultural Committee, the Expropriation Committee, the Science and Technology Agency, and the Nuclear Safety Committee have granted authority for administrative decisions on the basis of special expertise. Their discretion is not unlimited, and clear criteria must be established. I have two further cases to examine in consideration of this issue.

2. The Nikko Taro case

In the famous Nikko Taro case[84] of 1973, the Tokyo High Court reviewed administrative discretion in the compulsory purchase of land. In response to a demand by the governor of Tochigi Prefecture, the Ministry of Construction granted permission for the compulsory purchase of land to expand the width of the national roads in the area. The Tochigi Expropriation Commission decided to purchase part of the land attached to the Nikko Toshogu Shrine,[85] where the first Shogun, Ieyasu Tokugawa, is entombed. This compulsory expropriation also involved plans to cut down fifteen (15) big trees, one of which was a cedar called the Taro Sugi.

The Tokyo High Court held that the administrative discretion to give permission was arbitrary and capricious because unnecessary factors were reviewed in making the decision. For example, it was found that the fact that the opening of the Olympic Games increases traffic should not have been taken into consideration, and that the dangers posed by storms had been overestimated.

3. The Odakyu case

The Japanese judiciary works to provide remedies in the event of disputes over the law.[86] A plaintiff must have the standing to prove that the alleged damage was caused by the

84 Tokyo Koto Saibansho [Tokyo High Ct.] July 13, 1973, Showa 44 (Gyo Ko), no.12, 24(6-7) Gyousei Jiken Saibansho Hanrei Shu 533.

85 *Nikko Tosho Gu*, available at http://www.toshogu.jp/, retrieved February 26, 2016.

86 *Supra* note 18, Art. 3.

defendant(s), and the court's decision must provide a remedy to the parties involved in a dispute. In the case of the expropriation plan for the construction of a railroad in Odakyu, it was questioned how many residents living near the route of the proposed railroad would suffer from noise, dust, and environmental pollution.[87]

Despite accepting that a certain number of residents would be living a certain distance from the railroad, the Supreme Court[88] rejected their argument on the grounds of the administrative agency's technical judgement. The Court held that administrative discretion was illegal if the decision made was based on the exercise of discretion, wrong fact-finding based on significant facts, an unreasonable evaluation of facts, factors that were not reviewed, or was invalid from a perspective commonly accepted in society. Any question of the succession of illegality in administrative actions must be reviewed in light of these limits.

Conclusion

In this paper, I reviewed Japan's laws, administrative actions, and dispositions. Japanese legal history shows that Japanese law is based partly on civil law and partly on common law.

The notion of an administrative action was originally developed under the Meiji Constitution, which was influenced by the constitutions of European countries. The current law code was established after World War II under the 1947 Japanese Constitution. In the event that the rights of citizens are infringed by negligence or the intentional exercise of public power on the part of the government, the government shall be held liable.

The exercise of power must be based on the statutes passed by the Diet. It is impossible, however, to review all the statutes in every branch of the law before every exercise of public power. Discretion in administration is admissible to a degree, but it should be limited.

In Japan, especially before World War II, landowners occupied huge farms that were

87 *Supra* note 61, at 340, 354.

88 Saiko Saibansho [Sup.Ct] November 2, 2006, Heisei 16 (Gyo hi) no. 114, 60(9) Saiko Saibansho Minji Hanreishu [Minshu] 3249.

worked by tenant farmers. After the war, under the directions of GHQ, the government purchased this land cheaply and sold it to encourage small tenant farmers to be independent. The Japanese Constitution ensures property rights and the private property system; the owners of any land expropriated for public use must be duly compensated, although special circumstances surrounding agricultural reform provide certain exceptions.

In this expropriation of land, business plans are approved by the government, and an expropriate procedure must be initiated by a committee. The expropriation of land comprises several administrative dispositions.

In Japan, administrative action has tentative validity (*Kouteiryoku*), which means that even if an administrative action contravenes certain statutes, it would still be tentatively legal until an agency or court revoked it. This is controversial among Japanese administrative law scholars.

The legal doctrine of the succession of illegality means that if an administrative action depending on a preceding illegal administrative action exists, the subsequent administrative action is therefore also illegal. Professor Tatsukichi Minobe argued that if a series of administrative dispositions as a whole produces one effect, every administrative disposition would then be a cause of action to revoke administrative action for illegality.

On the one hand, the succession of the illegality of administrative actions in cases of the rapid and flexible achievement of an administrative purpose emphasizes legal stability; on the other hand, there must be remedies for those who suffer as a consequence of a preceding administrative action. An administrative process is a series of small administrative actions that are subject to a statute of limitations, which dictates how long a plaintiff may wait to file a lawsuit to revoke such an action. The statute of limitations deprives affected parties of the opportunity to contest subsequent administrative actions, and the tentative validity provided to administrative actions is sustained unless and until an action is revoked. The JACLA and the JAAA have provided opportunities to revoke illegal administrative actions.

Administrative agencies have a certain discretion with regard to administrative actions, which should be limited under clear factors, and standard. Even though an administrative action has tentative validity, any significantly and clearly illegal administrative action is null and void, and a plaintiff can file a claim for damages under the State Redress Act. The

criteria for deeming an action significantly and clearly illegal is drawn from case law.

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