Credible Commitments:
Taxpayer Suits and Freedom of Information in Japan

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Abstract

During the 1990s Japan experienced a three-fold increase in the number of taxpayer suits brought against local governments. These lawsuits allow residents of prefectures and municipalities to file suit against the local government or its employees for fiscal malfeasance. The taxpayer suit itself was one of the “direct democracy” reforms introduced by the Occupation and modeled after U.S. state and local government practices. Taxpayer suits were relatively uncommon until the mid-1970s, but they suddenly gained popularity after the mid-1990s. Information disclosure ordinances, which had been on the books since the mid-1980s but which only came into broad use after a body of pro-plaintiff precedent had accumulated in information disclosure lawsuits, help explain the taxpayer suit boom of the late 1990s. Information disclosure provided a way to gather the evidence necessary to prosecute taxpayer suits, whose main stumbling block had been the burden of proof borne by the plaintiff. Information disclosure also added to the social base for the government watchdogs that pursued taxpayer suits. Taxpayer suits and information disclosure thus produced a synergy, both institutionally and organizationally.
I. Overseeing the Government by Lawsuit

Section 242 of Japan's Local Autonomy Act grants residents (jûmin) the right to sue local government and local officials to enjoin or remedy the illegal expenditure of government monies. This "taxpayer suit" mechanism is neither new nor unique to Japan, but recent changes in Japan's legal and political landscape have given renewed importance to taxpayer suits. Local information disclosure ordinances and lawsuits stemming from them have given plaintiffs in taxpayer suits new tools with which they can prosecute their cases. Taxpayer suit plaintiffs have responded to the growing volume of favorable precedent in information disclosure cases by filing an ever larger number of Section 242 complaints. But how has information disclosure affected the taxpayer suit institution?

This paper first examines the taxpayer suit as a democratic institution that, like many others, Japan imported in the aftermath of World War II. Next, the paper locates the taxpayer suit mechanism in the framework of Japanese legal institutions and shows that it fits the notion of a typical institution in some ways and departs in others. The paper then addresses how information disclosure litigation and taxpayer litigation reinforced one another in the 1990s by examining the organizational base for such lawsuits as well as the practical, legal grounds by which information disclosure helps enable taxpayer actions. The paper concludes by evaluating the role of courts as vehicles of government reform.

Taxpayer Suits

Before I discuss the characteristics of taxpayer suits, some semantic distinctions are in order. The first of these cuts to the root of concept of a "taxpayer suit." Initially, Japanese legal scholars and drafters translated the term from English literally (nôzeisha soshô), but because the text of the law did not impose any taxpayer or citizenship requirements (merely residency in the area governed by the local authority in question), the Japanese legal community adopted the term "resident suits" (jûmin soshô) (Satô 1986, 29). Although this paper will continue to use the English term "taxpayer suit" to refer to jûmin soshô, the linguistic distinction remains historically important. While there are conditions a prospective plaintiff in a Japanese taxpayer suit must meet, an actual
"pocketbook injury" is not among them. American taxpayer litigants typically must show that they have suffered some kind of harm at the pocketbook, although now this essentially means that public funds have been expended.

The Japanese taxpayer suit, as set out in Section 242 of the Local Autonomy Act (Chihô Jichi Hô), allows a resident (a natural or corporate "person") of a local government jurisdiction (i.e., a prefecture or municipality) to request an audit of local government finances when he or she suspects that the chief executive, an executive committee, or an employee thereof has committed an illegal or improper fiscal act. Fiscal acts include 1) expenditures of public funds; 2) acquisition, management, and disposition of property; 3) conclusion or performance of contracts; 4) assumption of debt or other obligations (or where such may be reasonably forecast); and 5) improper or illegal negligence in the levying or collecting of public funds or the management of property (Satô 1986, 48-49). A board of audit appointed by the local mayor or governor conducts fiscal audits not only under Section 242 but also at the request of the local assembly or chief executive, on its own accord, and during regular reviews (Imai 2000, 38-39, 96-97).

In order to file a taxpayer suit, a would-be plaintiff must first pursue the audit process and receive either an unsatisfactory response or no response at all. The would-be plaintiff must also show that the fiscal act in the complaint is illegal or unconstitutional and not merely inappropriate (Satô 1986, 48). There are essentially four types of requests for relief under Section 242: 1) injunction; 2) revocation or invalidation; 3) declaration that government “negligence” is illegal; and 4) “derivative” (daii) suits, whereby the resident brings suit on behalf of the local government entity against an individual (usually either an official of that government or a third party, such as a contractor) in order to collect damages or effect restitution (Satô 1986, 101; Ban and Ôtsuka 1997, 65).

Although the taxpayer suit process can be considered a legal transplant from common law-systems, especially state law in the United States, the Diet and the courts have indigenized the institution. The current outlines of the system have been in place since 1963 (Satô 1986, 38-40), but suits under Section 242 were few until the mid-1970s. After a boomlet around 1980, taxpayer suits receded, until dissatisfaction with government performance, a persistent recession, and a social movement around freedom of information caused the number of suits to swell in the late 1990s. The remainder of
this paper will examine the taxpayer suit as a legal import, vis-a-vis typical Japanese legal institutions, in its symbiotic role with information disclosure, and as a route by which courts act as vehicles of reform.

II. The Taxpayer Suit as a Legal Transplant

Taxpayer Suits in the United States

Japanese legal scholars trace the Local Autonomy Act’s taxpayer suit provisions to American state laws that specifically granted taxpayers standing to sue (Satô 1986, 21-24; Kaneko 1999, 74). In the United States, the taxpayer suit is almost entirely a creature of state-level courts and legislation. Federal courts have so far accepted the standing of taxpayers to sue over national government expenditures only in connection with the Establishment Clause. The conditions for taxpayer standing in the United States are relatively stringent, even compared to Section 242, and, as befits a common-law system, have developed through precedent.

U.S. legal doctrine on municipal or state taxpayer standing is fairly settled. There are three requirements for standing to sue: pocketbook injury (to the taxpayer), causal relationship between the government action and the alleged injury, and redressability of that injury by court decision. The standards for injury and redressability are in reality low hurdles to standing, because all taxpayer must do is show that the government made some measurable expenditure of public funds or loss of public revenue and, typically, that the court can prevent further such expenditures. If the expenditure is not recurring or ongoing, then the taxpayer would have to show that a court ruling would provide redress by reimbursement, for example (District of Columbia Common Cause, 7-11, 22). The doctrine of municipal taxpayer standing has not taken into account the magnitude of the individual taxpayer’s interest at stake in the case; instead, courts have stuck to the standard that the misuse of some measurable quantity of public funds constitutes an injury that satisfies that prong of the standing test. This standard is essentially the same as in Japan.

Taxpayers wishing to sue the federal government have had to clear much higher hurdles. The U.S. Supreme Court had decided taxpayer claims without definitively deciding the standing issue until Frothingham v. Mellon (1923), when the Court
essentially denied taxpayer standing in cases over the expenditures of the United States government. The Court held that a federal taxpayer’s interest in federal government expenditures was “minute and indeterminable,” whereas that interest was “direct and immediate” in municipal taxpayer cases. The Court had earlier held (in Crampton v. Zabriskie, 1880) that municipal taxpayers could seek to enjoin the misuse of public monies. In Frothingham, the court likened the relationship between taxpayers and municipalities to those between the stockholder and the business corporation, but held that the relationship between the taxpayer and the federal government was qualitatively different. The Court could not grant relief to a taxpayer because the individual effect of an expenditure was too uncertain. In addition, granting federal standing based on taxpayer status invited a volume of work that the Court did not welcome. The Court thus denied taxpayer standing on “prudential” (i.e., practical) rather than strictly constitutional grounds (Common Cause, 4-5; Egan 1983, 729-731).

U.S. taxpayers did not gain standing to challenge federal expenditures in court until Flast v. Cohen in 1968.¹ In Flast, the Supreme Court ruled that a taxpayer had standing to challenge a specific instance of Congress’ power to tax and spend based on a specific constitutional provision, which was in this case the Establishment Clause (Gilles 2001, 320-321). Flast laid out two significant hurdles to taxpayer suits. To gain standing the taxpayer first had to establish a connection between her status as a taxpayer and the claim she brought. This condition limited taxpayer cases to taxing and spending and excluded those cases in which the expenditures were incidental to an essentially regulatory act. Second, the taxpayer had to demonstrate that the challenged enactment exceeded the Constitution’s specific limitations on Congress’ taxing and spending powers (Egan 1983, 733-734). This essentially tied federal taxpayer standing to Establishment Clause issues, and as a practical matter U.S. federal courts did not relax the conditions for

¹ The plaintiffs in Flast claimed that the appropriation of funds to finance instruction in and purchase textbooks for religious schools under the Elementary and Secondary Education Act of 1965 violated the establishment of religion clause of the First Amendment. The U.S. District Court for the Southern District of New York ruled that the plaintiffs’ status as federal taxpayers did not give them standing to sue. The Warren Court heard the case on direct appeal and ruled that the plaintiffs did have standing to sue in federal court because of the substantial expenditures at issue and because the Establishment Clause served as a specific constitutional limitation on Congress’ exercise of its power to tax and spend (1968 U.S. LEXIS 1347).
taxpayer standing. Japanese taxpayer suits, not encumbered by the concerns of federalism, have stayed true to the doctrine of taxpayer standing established in the 19th Century, as have their state-level U.S. counterparts.

**Taxpayer Suits as an Occupation Reform**

What is now the taxpayer suit provision of Section 242 of the Local Autonomy Act (LAA) began as part of a package of “direct democracy reforms” that SCAP\(^2\) directed the Japanese government to incorporate into the 1948 revisions to the LAA, which had been passed the previous year. The Japanese Diet incorporated the changes at a time when there was no alternative, but the direct democracy provisions have remained intact for more than half a century. Although there may have been some degree of approval for the democratic nature of SCAP’s modifications to the LAA, Japanese officials could countenance the changes for several reasons. First, aside from the constitutional provisions requiring referenda on constitutional amendments, special legislation applying to a single locality, and Supreme Court appointments, the direct democracy provisions affected only local governments. Second, the barriers to using initiative, recall, and direct request provisions under the LAA are rather high, at least for routine citizen oversight of government. Finally, lawmakers and bureaucrats in 1948 probably did not foresee significant oversight from an independent judiciary.

The original Local Autonomy Act, passed to coincide with the entry into force of Japan’s postwar constitution in May 1947, established direct petition provisions but left local governments under the thumb of central ministries. At the end of 1947 SCAP put through revisions that strengthened the power of local legislation and the authority of prefectural governors. The following year, SCAP had additional changes incorporated into the LAA. One of these changes was the insertion of taxpayer audit and suit provisions as Section 243.2 of the 1948 Act. Other changes included an exemption of taxation and revenue laws from the initiative process. SCAP and the Japanese government instituted that particular change as a result of a union campaign to request repeal of a utilities tax that succeeded in petitioning 16 local legislatures, all of which

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\(^2\) Supreme Command Allied Powers
rejected the petitions and voted against repealing the tax (Kaneko 1999, 22-23, 55-56; Satô 1986, 24-25).

The LAA provides for four types of direct participation: petition for legislation, request for general audit, recall of the legislature at large or of individual legislators or executive officials, and taxpayer audits and suits. The barriers for petition for legislation and for general audit are reasonably high: each requires a petition with the signatures of 2% of registered voters. Petitions for legislation have a two-month deadline from registration to filing at the prefectural level and a one-month deadline at the local level, whereas general audit petitions have no specific deadline. The hurdle for recall petitions is far higher; recall petitions require the signatures of at least one third of the locality’s registered voters within a one-year period from the last election or inauguration. The LAA sets the threshold for taxpayer audits as low as is possible; a single individual, who need not be eligible to vote, may file an audit request. (Imai 2000, 34-45).

In short, most of the direct oversight or participation provisions under Japanese law are quite similar, in terms of their barriers to entry, to their Progressive Era United States counterparts. Even the taxpayer audit provision of the LAA is similar to state laws authorizing taxpayer suits in the U.S. Cross-national differences in the frequency of use for these mechanisms probably have more to do with their likelihood of creating a successful outcome for those who do the legwork than with any differences in barriers to entry. The record shows that the barriers have been surmountable during certain times in past half-century. Recall petitions were filed relatively frequently from the late 1940s through the late 1950s, as were general audit petitions, but most of these were at the municipal rather than the prefectural level. Recalls of mayors were relatively successful,

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3 General audits under Section 75 of the LAA are broader in scope than taxpayer audits. The former cover all government business, the latter are formally restricted to fiscal matters.

4 For comparison, the State of California’s threshold for initiative petitions are 5% and 8% of the total vote for governor in the previous election for initiative statutes and constitutional amendments, respectively. These proportions are equivalent to about 1.2% and 2.0% of California’s total population. California allows five months to collect signatures on initiative petitions, however (http://www.ss.ca.gov/elections/init_guide.htm).

5 Again for comparison, California (California Constitution Article II, Sec. 14(b), §11221) requires a number of signatures equal to 12% of all votes for the office in question for statewide officials (there is also a geographic dispersion requirement) and to 20% for state legislators, appeals court judges, and Board of Equalization members (http://www.ss.ca.gov/elections/recall.pdf).
in that they led either to resignation or a successful test at the polls 37% of the time, and
recalls of municipal assembly members were slightly more successful (Steiner 1965, 454-
460). The period between the 1947 enactment of the LAA and 1960 demonstrates that
the recall is above all a partisan political weapon. It is quite logical that the recall lost
much of its salience once the conservative parties had consolidated and the left had
weakened. Town and village parochialisms also affected the popularity of the recall,
since there was a wave of consolidations of local governments during the mid-1950s
(Steiner 1965, 454). The signature barriers were more important at the prefectural level;
the only recall petition drive at the prefectural level was one in 1957 in Fukuoka, which
failed over invalidated signatures (Kaneko 1999, 64; Steiner 1965, 465). Petitions for
statutes remained salient, although infrequent, into the 1970s and enjoyed a couple of
successes (Kaneko 1999, 57-59), although these too reflected battles between
conservative local governments and relatively strong progressive opposition coalitions.
Although the barriers to entry do not foreclose direct democracy, they are more a
“weapon of the strong” and are useful in environments (like California) where partisan
competitors are relatively evenly matched. Taxpayer audits and suits, in contrast, do not
require the mobilization of a large number of weak preferences; they require merely that
an individual or small group of individuals feel strongly enough about some fiscal action
that they are willing to take on the costs of pursuing an audit and then perhaps a lawsuit.
The taxpayer audit and suit provisions of the LAA are “weapons of the weak,” in a
manner of speaking.

There are two key differences between the Section 242 citizen oversight
provisions and the other mechanisms of direct participation in local government in Japan.
The first, noted above, is the dramatically lower barrier to entry presented by Section 242
oversight; there is no need for a signature gathering campaign, and the grant of oversight
authority (essentially all fiscal matters) is in effect nearly as broad as for the petition-
driven general audit. As in the case of the petition-driven oversight, probability of
success has likely been more important than barriers to entry in determining how
frequently the mechanism is used. Through the early 1960s, in fact, it probably seemed
as though Section 242 would fail utterly to provide remedy for those seeking to monitor government.⁶

The second important difference between Section 242 and the other oversight institutions in the LAA is the involvement of the courts in the oversight process. The history of administrative law in Japan as a tool for overseeing government provided little prospect, in 1948, for the new institution. In the prewar era, a specialized system of administrative law courts on the Continental European model reviewed state actions in a very limited domain and had a reputation for favoring the state (Sugai 1999, 64). The Occupation eliminated the separate administrative court system and formally consolidated civil and administrative litigation.⁷ SCAP also initially envisioned the taxpayer audit and suit as an adjunct to the general audit provisions in the LAA; it was the Internal Affairs Bureau on the Japanese side that proposed locating the novel institution in its own section because of the difference in subject matter and process between the two audits. Diet deliberations on the 1948 revisions had little debate about the role of the courts in fiscal oversight and showed little imagination about what taxpayer suits might do (Satô 1986, 25-27).

The initial version of the taxpayer suit and audit provisions was also flawed. There was no time limit within which an audit had to be requested, there was considerable overlap and terminological confusion in the six types of proscribed fiscal acts, and the legislators left it to the Supreme Court to draw up procedural rules under which to try taxpayer suits. The Supreme Court gave jurisdiction to the district court where the plaintiff resided and let the Administrative Litigation Extraordinary Act cover procedural matters, even though this left all the taxpayer claims that resembled private law claims (such as recovery of public funds from government employees) in procedural

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⁶ In his discussion of local “inspection” (audit) commissions, Kurt Steiner (1965, 343-345) mentions only the general audits under Section 75 of the LAA, which required signature gathering; he fails to mention individual taxpayer requests for audits under Section 242 and the potential for appeal through the court system. From the vantage point of the early 1960s, however, such an omission is understandable.

⁷ Civil court judges hear both civil and administrative cases; only in Tokyo are there judges who specialize solely in administrative cases, and this specialization is by convention.
limbo. Issues of standing were also left to scholars and precedent. \(^8\) SCAP pressure pushed the technically flawed law through (Satô 1986, 27-29).

The flaws and “transplanted” nature of the taxpayer suit provisions in their 1948 version are apparent in the low levels of litigation and even lower plaintiff win rates before the major amendments to the Local Autonomy Act in 1963. Of the 280 taxpayer suits brought under Section 243.2 between 1949 and mid-1962, only two or three ended in plaintiff victories (Satô 1986, 36). The hasty transplantation of the taxpayer suit and a lack of popular experience with democratic oversight via the courts may have skewed the results against plaintiffs, but Japan’s corps of judges and their schooling in prewar Continental jurisprudence no doubt also played a role in the strikingly low plaintiff win rate.

In 1963 the Diet amended the LAA in tandem with the first major revamping of local finance practices since the prewar era. The Supreme Court, Local Autonomy Ministry, Justice Ministry, and scholars had also been investigating improvements to the taxpayer suit provisions in the Act to coincide with the 1962 enactment of the Administrative Litigation Act. The 1963 amendments clarified the confusing language of old Section 243. The acts subject to taxpayer suit were simplified, and fiscal negligence was added to the list. The amendments added a statute of limitations for filing an audit request, extended the audit deadline, and added a requirement that the results of the audit be made public. The revised act guaranteed taxpayers an opportunity to present evidence and argue orally in the audit process. Finally, the amendments clarified the kinds of relief available in both the public law and private law actions under the Act. The revised provisions, Section 242.2 of the LAA, are those currently in force (Satô 1986, 35, 38-39). Although the modifications strengthened the position of taxpayers somewhat, they did not make judicial relief that much more likely. It took more than a decade for taxpayer suits to gain popularity as an oversight mechanism.

\(^{8}\) In contrast, the Information Disclosure Act of 1999 came from the Diet with specific instructions on jurisdiction and procedure.
III. Taxpayer Suits Vis-a-vis Typical Japanese Legal Institutions

Despite its American roots, the taxpayer suit is in many ways a typical Japanese legal institution. Relief through the courts is time-consuming and difficult. There is an administrative analog, the taxpayer audit, that has many of the trappings of judicial proceedings and that is speedier and cheaper (albeit not necessarily effective). Demand for the services of the courts has, over time, far outstripped the supply. All these features characterize Japanese legal institutions in general (Upham 1987, Haley 1978), and taxpayer suits seem very similar to information disclosure suits along these dimensions, although the success rates for plaintiffs in information disclosure suits has been remarkably high.\(^9\) Like information disclosure suits, taxpayer suits have some atypical characteristics that set them apart from Japanese administrative law as a whole. For example, it is easy to for plaintiffs to gain standing in both types of cases. The lower hurdles have allowed taxpayer suits, as well as information disclosure suits, to increase in frequency and salience in the past decade.

*Taxpayer Suits as Typical Administrative Law*

One feature that taxpayer suits share with other disputes between the state and society is an alternative, quasi-judicial dispute resolution mechanism that is part of the bureaucracy. In areas such as pollution, equal employment opportunity, labor law, maritime safety, and local information disclosure, quasi-judicial proceedings provide a means whereby disputes can be resolved without the interference of an independent judiciary. Although located in the bureaucracy, these mechanisms can be expert and fair and they are often established as a result of litigation in the courts (Upham 1987, 18-27; Uemura 2000, 286-289). These sorts of mechanisms are by no means unique to Japan, although their use there seems more widespread. Even at the local level, such mechanisms enjoy credibility as an alternative to courts. The best examples of this

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\(^9\) Before the implementation of Japan’s national Information Disclosure Act in April 2001, information disclosure suits had to be brought under local information disclosure ordinances (jôhô kôkai jôrei). Kanagawa Prefecture passed the first important example of such an ordinance in 1982. Information disclosure ordinances typically granted residents of a municipality or prefecture the right to request documents from the local government, with certain exceptions. Information disclosure is often rendered into English as “freedom of information.”
phenomenon are the information disclosure review panels established by the prefectural and municipal freedom of information ordinances. These panels hear challenges to local government decisions to withhold documents and dissatisfied requestors view them as effective alternatives to the courts (see Okutsu 1999, 89).  

The quasi-judicial alternative for taxpayer complaints about fiscal improprieties or illegalities is the taxpayer audit. Boards of audit vary in size from 2 (in towns and villages) to 4 (in prefectures and big cities). The local governor or mayor appoints the members of the board, who serve four-year terms. Members must be of “unimpeachable character” and be expert in finance or administration. At least one of the “experts” must be someone who has not been employed by the local government for five years, and at least one must be a member of the local assembly for audit boards of more than two members. The board is empowered to investigate fiscal or administrative matters. Audit boards are charged with producing an audit at least annually, and the chief executive or assembly can also order audits. Requests for audits from taxpayers can come either through the petition mechanism (LAA §75) or through the taxpayer audit request (LAA §242). The board must reach a consensus on the results of the audit. Residents who request audits have one year from the alleged wrongdoing to bring their complaint, and the audit must be completed within 60 days.  

Requestors must submit evidence of the wrongdoing (the evidence condition is largely formalistic) and a specific request for relief, and they must be given an opportunity to argue their case in person. Like a court, the audit board can enjoin government action, order action (to correct past action or when the government has been negligent in its fiscal duties), or order financial compensation to the local treasury. The board must publicize the results of the audit and its recommendation for remedy. The recommendation is not legally binding on the government agency in question, but the agency has a “duty to respect” the audit board’s recommendation. If the requestor is not satisfied with the audit’s findings or

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10 In contrast to taxpayer audits, disappointed document requesters can appeal local government non-disclosure decisions to both the review panel and the district court at the same time, although most choose to try the review panel route first.

11 Courts will allow exceptions to the one-year limit if there is a substantial reason, such as the fact of the wrongdoing coming to light after the filing period has passed (Ban and Ôtsuka 1997, 34-35; see Complaint, Wakabayashi v. Kemuriyama et al., [Wakabayashi v. Kemuriyama II] filed 10 November 2000, Tokyo DC). There is no set time limit for filing of audit requests in cases of negligence (Satô 1986, 64).
recommendations, or if there is no response within the 60-day time limit, the requestor may file suit in court, but she must complete the audit process before filing. The deadline for filing a court challenge is only 60 days, as is the case for all challenges to administrative dispositions under the Administrative Complaints Investigation Act (Imai 2000, 38-39, 96-97; Kaneko 1999, 79; Satô 1986, 64-69, 77-90).

The whole audit process resembles a court trial: requestors submit evidence, may be represented by counsel (not necessarily a lawyer), can submit briefs, and the board may call on people to testify or submit documents (Ban and Ôtsuka 1997, 38-44). The weaknesses of the quasi-judicial audit board process are nevertheless clear. The executive, with the consent of the assembly, appoints the members of the audit board. At least half of the members are drawn from among former local civil servants and assembly members. Boards of audit thus tend to be filled with “old boys,” have a pro-executive bias, and focus on accounting technicalities rather than on substantive irregularities. Auditors are the finders of fact, but people bringing complaints can only see the results of the audit and have no discovery process by which they can see the evidence produced during the board’s investigation. Since would-be plaintiffs have the burden of proof in any future court case, this inability to collect evidence has important consequences for the success of taxpayer suits, even if it does not serve to deter people from filing. The rising volume of taxpayer suits (see Figure 1) and the 1997 revisions to the LAA that introduced an external audit system are strong indications that the 1963 audit board system was “soft on family” (Kaneko 1999, 79-80).

[Figure 1: Taxpayer Suits 1987-2000]

Although the disclosure decision review panels set up by local information disclosure ordinances are appointed like audit boards, they have tended to provide more effective oversight of government decisions, albeit within the narrow domain of information disclosure requests. Even freedom of information activists acknowledge that most review panels do a good job of remedying improper decisions to withhold documents (Interview 990812). Although appointments to the information disclosure review panels are not subject to assembly approval, there seems to be an informal norm of appointing academics and lawyers to most of the positions on the panel, at least in large and populous localities like Tokyo and Kanagawa Prefectures. These expert panels
generate legal precedent, but their very effectiveness caused their “case load” to skyrocket starting in the late 1990s (see Repeta 1999, 16-17). This “neutral expertise” norm, and signals from the court system, may explain the greater effectiveness of the quasi-judicial alternative in the case of information disclosure. Finally, in both quasi-judicial and judicial proceedings, the burden of proof is on the local government rather than the requester—the government must be able to demonstrate that the law allows it to withhold a document. In taxpayer cases, the plaintiff must show that the fiscal action in question did in fact occur and was illegal. This, more than any other single cause, probably accounts for the unusual success of information disclosure complainants (Uga Katsuya, personal communication).

Taxpayer suits also resemble other sorts of administrative law suits in their low plaintiff success rate. Over the past 15 years, on average only about 10% of cases that have gone to verdict at the court of first instance (District Court) level have resulted in at least partial victories for the plaintiffs. This success rate is similar to that for tax complaint cases and for administrative cases on the whole, but is markedly lower than that for information disclosure cases, the one big exception in plaintiff outcomes (Secretariat Statistics). Mark Ramseyer and Eric Rasmusen (1999) have found no systematic pro-government bias among Japanese judges in tax-enforcement cases and no

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12 Most of the statistics in this paper have been generated from aggregates provided by the Supreme Court Secretariat based on electronic data files (and coding documentation) that are not open to the public but are used to calculate the aggregates in the Shihō Tōkei Nenpō (Yearbook of Judicial Statistics). In this paper, “administrative cases” are complaint (kōkoku) suits (i.e., appeals to administrative dispositions) heard in district courts. The category “administrative cases” includes certain types of election law cases, local government cases (most of which are information disclosure and taxpayer suits), tax cases, condemnation and zoning cases, public employee cases, police cases, public property cases, and a large residual category. There is no public documentation on the rules the Supreme Court Secretariat uses to categorize cases. The taxpayer suit and information disclosure suit categories are pretty transparent, but the police category is not. It is also important to note that not all cases go to verdict in Japan. Some have a court supervised settlement and others are settled out of court. For example, some information disclosure suits have been settled by the plaintiff’s withdrawing the suit in return for the requested documents. Interpreting the total number of victorious plaintiffs in administrative suits is thus rather difficult. For the purpose of comparison most legal scholars take “claim accepted” verdicts as clear plaintiff wins, and aggregate cases for which only a part of the plaintiff’s claims were accepted with those for which all the plaintiff’s claims were accepted (Ramseyer and Nakazato 1999, 219). Far more administrative cases been withdrawn than have won “claim accepted” verdicts, and the number of court-supervised resolutions without verdicts has also tended to be about the same as the number of plaintiff wins. Finally, even “dismissed without prejudice” (kyakka) verdicts can conceal a victory for the plaintiff, as discussed later on in the paper. The “win rate” figure obtained by dividing the number of “claims accepted” verdicts by the total number of verdicts is thus a conservative estimate.
evidence for judges favoring the central government more frequently than local governments. Recent data show an upward trend, in fact, in the proportion of taxpayer suit verdicts in favor of plaintiffs (see Figure 2). There is probably no systematic difference between the Tokyo District Court and other District Courts in the proportion of verdicts in favor of plaintiffs for administrative complaints in general, for suits involving local government (primarily freedom of information and taxpayer suits), or for taxpayer suits alone (Secretariat Statistics). On average, however, suits against local governments are perhaps more likely to succeed than those against the national government (Ramseyer and Rasmusen 1999, 577-578).

One interpretation that would square Ramseyer and Rasmusen’s findings with the upward trend in verdicts favorable to plaintiffs would be generational replacement in the judiciary. While older judges moved out of District Courts, younger and more liberal judges moved in. The rapidity of the change makes this interpretation suspect, however. Another possible explanation for the upward trend in taxpayer and information disclosure plaintiff victories is that local governments have decided not to back down and have fought in court, although a quick look at the recent history of information disclosure and taxpayer activism shows that this explanation too is unsatisfactory. The most likely explanations for the upward trend are a growing body of precedent and a popular disgust for government waste that grew in salience during the recession-plagued 1990s. The growing body of favorable precedent (especially in information disclosure lawsuits) may have led to a positive feedback dynamic—more pro-disclosure precedent allowed more judges to rule in favor of plaintiffs in disclosure cases. Improved plaintiff access to local government documents because of the disclosure ordinances may, in turn, have allowed them to prevail in a larger percentage of taxpayer cases, a dynamic discussed in the following section.

13 The suspected pro-government bias of the Tokyo District Court was one of the issues that delayed passage of the Information Disclosure Act of 1999. Opposition legislators pushed to give jurisdiction not just to the court located in the same jurisdiction as the central government office being sued (i.e., Tokyo), as the Administrative Litigation Act stipulates, but also to the district court located at the seat of the high court in the plaintiff’s jurisdiction (eight courts in all). Attorneys and watchdog groups also believe that it is easier to bring taxpayer and disclosure suits in “the provinces” than in Tokyo.
How Taxpayer Suits Differ

In contrast to other types of administrative cases, taxpayer cases pose low hurdles to standing for would-be plaintiffs. The Administrative Litigation Act requires that a would-be plaintiff have a “legal interest” in the case, as is true in U.S. law. In certain instances, such as challenges to nuclear power plants, Japanese courts have granted standing on safety concerns, but complaints typically must be a particularized injury (Ramseyer and Nakazato 1999, 199-200). Taxpayer cases are different. As noted above, plaintiffs only need to satisfy two conditions: 1) residency in the local government unit where the alleged wrongdoing occurred; and 2) completion of the taxpayer audit process (Ban and Ôtsuka 1997, 59). Information disclosure suits pose similarly low hurdles to standing, because ordinances typically give any resident the right to request documents, and (unlike taxpayer complaints) because there is no requirement for completing any review panel process, which for information disclosure can itself take over one year.

The other major practical hurdle for getting a hearing in court in administrative cases is “ripeness” (shobunsei). Courts will ordinarily review an administrative action only if it involves an administrative disposition. Administrative dispositions are not equivalent to all actions a government agency takes based on law; they are only those actions that involve the government’s exercise of its public, as opposed to private, powers. For example, a high school’s expulsion of a student is the exercise of public power, while the purchase of beers in a meeting of government officials at a tavern is an exercise of private power. In purchasing the beer, the government is doing what a private person would. In the former instance, administrative rules of procedure apply, but in the latter, civil rules apply (Ramseyer and Nakazato 1999, 196-198). For local information disclosure ordinances and the Information Disclosure Act of 1999, disposition is automatic—either the government discloses a document (or portions thereof) or it does not. The decision is thus ripe for adjudication in the courts. For taxpayer suits the issue of ripeness is a bit more complicated, but Section 242 itself separates taxpayer suits into public law and private law actions. Under claims 1 through 3, taxpayers can sue the government and its agents for public-law relief (enjoining, voiding or revoking administrative acts or ordering the government to act in cases of negligence). Under claim 4 (“derivative claims”), the taxpayer can sue government agents (in their capacities
as private individuals) as well as third parties, such as government contractors, for damages, return of ill-gotten gains, or restoration of the status quo ante (Ban and Ōtsuka 1997, 65; Satō 1986, 29-33, 39). Since the issue is some kind of fiscal action, usually spending, ripeness has not been an important barrier to standing. Typically, actions in private capacities (like concluding a contract or purchasing something) are not administrative dispositions and thus are not justiciable, while actions involving internal matters (such as circulars changing a ministerial policy) fail to meet the standard of administrative disposition, because they involve public power that has not yet been invoked (Ramseyer and Nakazato 1999, 198-199).

Another area in which taxpayer suits differ from other sorts of administrative suits is their cost to the prospective plaintiff. Administrative cases are conducted under the same procedural rules as civil cases. In addition to whatever evidence-gathering and attorney costs litigants must pay, Japanese courts impose fees on those who file civil cases. In regular civil actions, the court charges a filing fee that is roughly proportional to the amount of damages being claimed. For example, the court charges 500 yen for every 50,000 yen claimed for claims up to 300,000 yen, an additional 400 yen per 50,000 yen in damages for claims between 300,000 and 1 million yen, and so on. Thus, for a 15 million yen (US$134,435 at 115 yen/dollar) claim, the filing fee would be 82,600 yen (US$718), or about 0.5% up front (Nomura 1997, 36). Japan, like Britain, has a “loser pays” principle; judges usually make the loser pay the court costs (but not the attorney fees). Since the fee for filing a suit is proportional to what the plaintiff can hope to recover, public interest cases like information disclosure and taxpayer suits pose a bit of a problem. The Supreme Court resolved the issue for taxpayer suits in 1978, when it ruled that the benefit derived from such suits benefits all residents and is therefore incalculable. Since the code of civil procedure placed the value of such suits at 350,000 yen, the Supreme Court applied the figure to taxpayer suits as well (Satō 1986, 123). Revisions to the operative part of the Code of Civil Procedure in 1982 changed this value to 95,000 yen, so that the cost for filing a taxpayer complaint is 8,200 yen (US$71) (Ban and Ōtsuka 1997, 217). For information disclosure cases the value attached to the claim seems a bit more arbitrary; for a case involving the disclosure of documents that were supposed to expose overcharges in the hundreds of millions of yen, the value of the case
was set such that the filing fee was 14,900 yen (US$130) (Complaint, Wakabayashi v. Kemuriyama I). The court costs themselves are probably not a barrier to would-be plaintiffs in taxpayer suits.

Lawsuits typically also involve the costs of a lawyer, although a large number of taxpayer suits are brought by pro se litigants. In the Tokyo District Court during the 1990s, about half of all administrative complaint (kōkoku) suits were brought by pro se litigants (see Figure 3). This proportion grew from about 30% to about 50% over the course of the 1980s. Outside Tokyo the figure is between 30 and 40%. Tokyo holds a similar lead over other district courts in the proportion of pro se litigants in taxpayer suits—in the Tokyo District Court during the 1990s, well over half of taxpayer plaintiffs represented themselves, while in other district courts the figure hovers around 30%. The figures for information disclosure suits are roughly similar. It is unclear whether or not plaintiffs who represented themselves in taxpayer suits did any worse than those who retained counsel in Tokyo over the course of the 1990s, although elsewhere the pro se rate of winning verdicts seems to be a bit lower than the overall rate (Secretariat Statistics, 3-year aggregates). Even when plaintiffs do not retain a barrister (bengoshi) to represent them in court, they may get professional legal help for preparing the case.

[Figure 3: Pro Se as Percent Total Cases]

The law also sets taxpayer suits apart from other administrative and civil actions in its extension of the loser pays principle to attorney fees. This may be a weaker version of the logic of the American qui tam suit, in which the relator who brings suit on behalf of the government is rewarded with a portion of the amount recovered. Taxpayer plaintiffs are not rewarded for bringing a successful action to recover public monies, but neither are they penalized by having to pay for their attorney fees out of pocket. Only “number 4” claims for restitution of funds to local coffers are subject allow the plaintiff to recover attorney fees. In such cases the party being sued is an individual employee of

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14 Kōkoku suits are complaints against a government agency’s exercise of its public powers.

15 This discrepancy in rates of pro se litigation is in a counterintuitive direction, because the conventional wisdom among lawyers is that it is easier to win “out in the provinces” than it is in Tokyo.
the local government, while for the other three types of possible claims under Section 242.2 the taxpayer sues the local government itself. Number 4 claims are the only sort that involve damages. Even though the defendant can wind up subsidizing a successful plaintiff, overall success rates probably do not provide much hope of breaking even. The Supreme Court has also ruled that, while in principle the loser should pay, the local government may subsidize the legal expenses of the losing civil servant when 1) the suit is against an individual civil servant and the principle issue is the legality or legitimacy of his official action; 2) when the official act is legal or legitimate, or the civil servant wins the case; 3) when the amount of the public funds to be expended is both necessary and appropriate; and 4) when the formal procedures for assembly approval have been completed. In 1994 Section 242 was amended to enshrine condition 2 into the code, allowing the local government to pick up the tab when the civil servant wins in court (Kobayashi 1998, 14; Satô 1986, 119-121; Uemura 2000, 402-403).

Low filing costs, low standing and ripeness barriers, and amenability to pro se plaintiffs set both taxpayer and information disclosure complaint suits apart from other administrative suits. The burden of proof lies much more heavily on taxpayer plaintiffs, since for disclosure plaintiffs it is shifted to the defendant government. This key difference may go a long way toward explaining the differential in outcomes between taxpayer and disclosure suits. Finally, both types of suits attract the same “constituency” of activists and government watchdogs. Because they provide access to records like unit prices and receipts, disclosure suits can yield the evidence required to solve the burden of proof problem that weighs on taxpayer plaintiffs. The two sorts of cases in which “residents” have standing thus feed off each other, a dynamic the next section will explore.

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16 Barristers, or bengoshi, are the only legal practitioners that can represent clients in a courtroom, and they are few in number. “Judicial scriveners” [shihô shoshi] can help prepare briefs (see Ramseyer and Nakazato 1999, 10-11; Watanabe et al. 2000, 131-136).

17 The Court’s reasons for allowing local governments to underwrite the defense of civil servants were that a) taxpayer suits as susceptible to use as a political weapon; b) exposing civil servants to the risk of high legal expenses would have a chilling effect on civil servants’ performance of official tasks; and c) since an individual employee is likely to be named in a suit, forcing him to bear the economic burden of is excessively harsh (Satô 1986, 121).
IV. Taxpayer Suits and Freedom of Information

Unlike the other sorts of government oversight processes that require the mobilization of voters, taxpayer audits and information disclosure requests can be pursued by an individual or a small group of activists. One “crank” can obtain a review of a governmental action, at least in two very specific domains, and even if Japanese society on the whole contains a very small proportion of cranks, their absolute numbers can still yield a great volume of audit and disclosure requests and lawsuits. These two oversight institutions, the taxpayer audit and information disclosure request, reinforce one another. Disclosure requests provide the evidence necessary to request a taxpayer audit and then, if need be, pursue the matter in court. The taxpayer audit and suit allow individuals or groups in a locality to obtain redress for the wrongdoing exposed as a result of freedom of information requests (Takahashi 1998, 267). The trajectories of both types of suits provide evidence for this sort of symbiotic relationship (see Figure 4).

[Figure 4: Taxpayer suits, disclosure suits, as proportion of administrative suits]

While the overall number of administrative suits has grown substantially since 1987, the number of taxpayer and information disclosure suits has grown more than twice as rapidly. In 1987, 11% of all administrative complaint (kôkoku) cases in courts of first instance were either taxpayer or disclosure suits. This proportion grew to 14% in the early- and mid-1990s and then exploded to about 27% after 1998. Both types of suit had increased in number, but disclosure suits had essentially increased from a zero base. Tax kôkoku cases, the largest single statistical category, are included in Figure 4 for reference (Secretariat Statistics).

There are several candidate causes for the upswing in the number of taxpayer suits. The first is environmental: the combination of a stagnant economy and a series of highly publicized corruption scandals made the public less tolerant of waste on the local government level. This pattern would be analogous to the rise in the number of taxpayer suits in the late 1970s and early 1980s. The general salience of government waste, though, is not the most logical cause, since only a cranky minority need be present to

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18 The court of first instance is the district court for almost all kôkoku cases, with the exception of some election law suits.
bring lawsuits. This minority is, presumably, always in existence. Another cause might be an independent shift in jurisprudence that made the chances for success in taxpayer cases higher, but the success rate for plaintiffs has not changed much over time (until very recently). It is doubtful that more potential plaintiffs decided to sue on the basis of recent taxpayer suit precedent alone. That leaves two other recent developments that have encouraged taxpayer plaintiffs: the development of organizational muscle and the arrival of an effective “discovery” mechanism in the form of information disclosure suits.

The Citizen Ombudsman network has been the main organizational muscle behind the movement that aimed to expose and curb local government waste and that emerged nationally during the mid-1990s. Citizen Ombudsman started in Osaka in 1980, and was originally motivated by the Lockheed and Douglas-Grumman corruption scandals of the mid-1970s and the waste of taxpayer dollars by quasi-public corporations (Zenkoku Shimin Ombudsman 1998, 58-59). By the mid-1980s the Osaka Citizen Ombudsman had brought two lawsuits that would ultimately set important precedent for freedom of information law, the so-called Osaka Water Works case and the Osaka Governor’s Entertainment Expenses case. Both cases were motivated by the need to document feeding at the public trough by bureaucrats and government contractors, and the Osaka group fought both cases to the Supreme Court. The case against the Osaka Governor was ultimately a draw, but Citizen Ombudsman prevailed in the case against the Water Works. Local bureaucrats could no longer conceal their spending of public monies on beer and snacks (see Marshall 2001). Other Ombudsman information disclosure suits, including a precedent-setting suit brought by the Sendai Citizen Ombudsman, have sought and won the disclosure of the names and titles of public officials, which courts had previously exempted from disclosure on privacy grounds (Repeta 1999, 39). The Citizen Ombudsman strategy is not merely to embarrass political incumbents to get them to “clean house.” By pursuing names and generating evidence like ledgers and receipts, information disclosure suits enable watchdogs to use the courts to sanction individual government employees. The legal strategy for disclosure is clearly integrated with the strategy of pursuing taxpayer litigation and reforming the board of audit system (Sendai Shimin Ombudsman 1999). Citizen Ombudsman has used information disclosure and taxpayer actions as a springboard for a broader campaign
against corruption and waste in the more conventional political arena of electoral politics; an offshoot of the Osaka group published candidate rankings, based on measures such as degree of openness to constituents and clarity of policy positions, for a “throw the bums out” campaign in both the 2000 Lower House and the 2001 Upper House elections (www1.kcn.ne.jp/~imashu/kantei.htm).

The right to information disclosure established by the local disclosure ordinances has made it possible to generate evidence to bring cases of fiscal malfeasance to trial. This discovery mechanism allows even individual actors to engage in political battle with the majoritarian institutions of local government, the assembly and the chief executive. An individual who hears of some boondoggle can make a document request and find out whether documents that can substantiate an allegation of improper or illegal spending exist. If the local government withholds some of the information or documents, the requestor can go on to submit an appeal to the local information disclosure review panel, which may order a broader disclosure (review panels expand the scope of disclosure over half the time). If the necessary information is still not forthcoming, the requestor can ask a court to order the disclosure of the information. Such suits are often successful, and local governments often yield before the judge reaches a verdict. If the requestor obtains information that serves as evidence of fiscal wrongdoing, then she can use it in pursuing a taxpayer audit and ultimately a taxpayer suit.

An ongoing taxpayer case is a good example of this dynamic. In 1995 the voters of Bunkyo Ward in metropolitan Tokyo elected a reform candidate, Wakabayashi Hitomi, to the ward council based on her pledge to cut waste and graft in ward government. At that time Bunkyo had just built a $495 million civic center building. When Councilwoman Wakabayashi tried to get the unit costs for various parts of the building, ward officials refused to disclose them to her. They felt they were on firm ground. The Bunkyo Ward Assembly is an “all governing party” assembly—most of its members identify themselves as part of the governing coalition, and only a handful of independent and Japan Communist Party councilmembers are excluded. This pattern is common in Japanese local government, much to the chagrin of watchdog groups (Sendai Shimin Ombudsman 1999, 17-19; Weiner 2001). Although Wakabayashi was on the budget committee, she could not get the committee to request the unit costs for the Civic
Center’s construction (LAA §100; Interview 000410). Moreover, since the anti-Civic Center movement had gone through an information disclosure request and review panel appeal in 1994, she knew that her own disclosure request would fail and that she would have to take her complaint straight to court. In order to have standing to sue, she made requests for the unit cost breakdown for both phases of Civic Center construction in March and April 1999. By the beginning of May she had obtained “partial disclosure,” which consisted of an itemized list from the contractor’s estimate with each and every unit price blacked out (Interview 990723; Complaint, Wakabayashi v. Kemuriyama I). She took the case to court in July 1999, and ward officials finally gave her the figures she sought over a year later, after it became clear that the judge would rule against Bunkyo Ward.19

Councilwoman Wakabayashi then used the unit costs for one part of the structure, a skylight, as well as other information from an architectural trade publication that explained how the skylight was supposed to have functioned, in a derivative suit seeking restitution for the cost overruns and flaws in the building. The suit, filed in November 2000, claims on behalf of the taxpayers of Bunkyo Ward damages of 100 million yen each from the Mayor of Bunkyo Ward (Kemuriyama Tsutomu), the ex-mayor (Endô Masanori, who proposed and built the Civic Center), the architectural firm that designed the Civic Center, and the joint venture that built it (Complaint, Wakabayashi v. Kemuriyama II). Wakabayashi had successfully used a disclosure suit to generate evidence for a taxpayer action that was clearly “politics by other means.”20

Freedom of information has helped with the burden of proof barrier in taxpayer of suits. According to an aide for Nagasu Kazuji, governor of Kanagawa from the late 1970s through the early 1990s, transparency was supposed to enable broader

19 Ward officials relented because they did not want a disclosure precedent established. Wakabayashi’s attorneys pushed for a “dismissed without prejudice [kyakka]” verdict as well as court costs. Such a verdict showed that the case had become moot because Bunkyo had disclosed the unit costs and allowed the judge to order the payment of court costs, which would clearly indicate that Bunkyo had lost (Ikuko Komachiya, personal communication).

20 Just before filing the disclosure suit, Wakabayashi claimed “if we can win, public construction in Japan will change.” She saw information disclosure as a way to break down collusive bidding (dangô) practices and cushy deals for construction contractors (Interview 990628). Contractors’ inflated profits are recycled back into the political system, usually through a local Diet member, who has a subsidiary network (keiretsu) in the local assembly.
participation in local politics and build trust (Interview 991215). Two decades after that first information disclosure ordinance in Kanagawa, it is clear that the most contentious participation has developed not in normal political channels but in the courts.

Freedom of information has also energized the government watchdog movement that had been using taxpayer suits. The growth in the Citizen Ombudsman movement during the 1990s was around a pre-existing activist core, however. Although lawyers have been instrumental in the information disclosure movement from its inception, lawyers were not central to the watchdog movement before Citizen Ombudsman. The pre-existing core was made up of activists like the executive director of the Sendai Citizen Ombudsman group, Kurayama Tsunesuke. Kurayama founded his own watchdog-cum-research organization, the Local Government Research Association, in 1975, and it shares its office with Sendai Citizen Ombudsman. He is a professional government oversight specialist, not a lawyer (Interview 991014b). Taxpayer cases had also existed before the 1990s, although the precedent in areas such as official entertainment spending must not have been very encouraging. In one decision, the Supreme Court held that official entertainment, even by bureaucrats, was not an “abuse of discretion” and was therefore not justiciable under §242.2 (Satô 1986, 110-116). By 1996, information disclosure suits requesting the release of names of the individual officials doing the entertaining were winning in court. Local governments were responding to losses on the disclosure front by cutting back on funding for the wining and dining of civil servants (Repeta 1999, 39-40).

Section 242 alone could have provided an institutional opening around which groups like Citizen Ombudsman could form. The organization did not take off, however, until favorable information disclosure precedent became apparent in the mid-1990s. Part of the reason for this might have been the high level of media exposure afforded information disclosure once the Murayama Cabinet put a national law on the legislative agenda in 1994. A series of scandals in the early 1990s (one of which led to the arrest on bribery charges of the governor of Miyagi Prefecture, where Sendai is located) also increased the salience of information disclosure as an issue. The salience of information disclosure, and the readiness with which individuals or small groups of activists could raise challenges under disclosure ordinances and §242.2, created a political foothold that
allowed a real watchdog movement to form in the mid-1990s. The explosion of court cases in both arenas is evidence of this. While the taxpayer audit and suit provisions in the Local Autonomy Act provided some measure of opportunity for taking on local officials, the openings for contesting government were clearly insufficient to sustain a social movement.  

IV. Courts as Vehicles of Reform

The interaction of information disclosure and taxpayer actions, both at the level of the local administration and in the courts, shows that citizen oversight through the judiciary is effective enough, or easy enough, to attract a growing number of activists. The reforms achieved, such as the reduction in official spending on meals for civil servants, are retail rather than wholesale. Each oversight action requires effort and especially time. Taxpayer suits are almost entirely ex post actions; they contribute to political decision-making primarily as negative examples. Finally, taxpayer suits are uncertain, like any decision-making involving courts.

The advantage of the taxpayer suit is that it can perform when partisan political avenues are unresponsive. This certainly is the case in Japanese local governments dominated by an almost all-inclusive grand coalition, and it is also true to a lesser extent when there is a reform governor and a conservative assembly, as has been the case in Miyagi since 1994. Taxpayer suits are politically motivated, both in the American and the Japanese contexts. Citizen suits, of which taxpayer suits are a species, serve as a veto point for minority interests (or for interests who want to have a veto should they become the minority). Despite the uncertainty involved and the time required for taxpayer litigation, such suits do give very small minorities some policy influence. Based on the foregoing standards, local politics in Japan should have been ripe for a rising tide of taxpayer litigation since the late 1970s, and in fact there was a small wave of such suits around 1980 that never fully receded. The tide finally did rise in the 1990s not just because of ongoing revelations of waste and an extended economic slump, but

21 Information disclosure and taxpayer suits are clearly at a much more micro level than Tarrow’s political opportunity structures, but if the scope of opportunity here is narrow, the scope of the collective action is also rather small.
also because of the arrival of information disclosure as an effective means of discovery. Court rulings had made information disclosure ordinances effective, and the availability of discovery brought more taxpayer-plaintiffs to court. The mandatory discovery process under information disclosure statutes explains a part of the taxpayer suit boom as well as the symbiosis between the two kinds of court oversight. Information disclosure may even have started allowing more taxpayers to win.

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22 Petitioners in administrative cases have always had the discovery provisions of the Code of Civil Procedure available to them (Ramseyer and Nakazato 1999, 202). Attorneys connected with the freedom of information movement in Japan, though, criticize the discovery procedures as inadequate when it comes to obtaining important government documents, even under the 1997 revised Code of Civil Procedure (Miyake 1999, 175).
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Wakabayashi v. Kemuriyama et al. [Tokyo District Court, ongoing]
Figure 1
Taxpayer Suit Cases 1987-2000

- Claim thrown out
- Complaint withdrawn
- Other court resolution
- Claim accepted

Year

Cases
Figure 2
Proportion of Plaintiff Victories for Cases Brought to Verdict

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Disclosure Suits</th>
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<tr>
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- □: all administrative cases
- ■: taxpayer suits
- □: information disclosure suits

N above year is total number of disclosure suits brought.
Figure 3
Pro Se as Percent Total Cases by Category

Category and Period

- OtherDCs
- TokyoDC
Figure 4
Administrative Complaint Suits, Courts of First Instance

Year

Cases
0 200 400 600 800 1000 1200 1400 1600

- Other
- Tax (all types)
- Information disclosure
- Taxpayer