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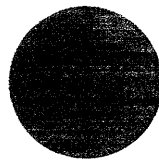
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**EXPLORING THE INTERSECTION OF GOVERNMENT,  
POLITICS AND THE NEWS MEDIA IN JAPAN:**

**THE TSUBAKI HATSUGEN INCIDENT**

**Paul M. Berger**

**MITJP 95-04**

Center for International Studies  
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**Distributed Courtesy of the**

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For an intense six weeks in the fall of 1993, the news media in Japan were obliged to take stock of the changes their industry was undergoing and assess their responsibilities and limitations. This introspection was neither amicable nor voluntary; it was a response to a crisis of intervention in their business by the government bureaucracy, which in turn was led by the agenda of a political party. While the LDP attacked prejudiced reporting and the media groups chose sides, newspapers and TV news programs suddenly found themselves in the uncomfortable position of reporting on developments in which their conflicts with the government and one another were the main topic.

Politics and the public had grown sensitive to the expanding role of the media, especially television, and were ready to react; the spark that set off this disruption was a single allegation of the abuse of TV's influence: Tsubaki Sadayoshi, the news director of a prominent TV network, claimed to have arbitrarily guided news coverage in order to affect a major election. The Japanese term used to describe the assertion is *hatsugen*, which literally means an utterance or speech or observation, but which in this case translates best simply as "statement."

The Tsubaki *hatsugen* incident rapidly developed from a boastful claim of bias made in a private meeting to a summons for testimony before the Diet. Along the way, it gave rise to debates about the limits of freedom of speech, the powers of broadcasters, and the right of government to interfere in the business of private organizations. The fact it happened at all was testimony that TV's role as a political force, which was less than half a year old, had been accepted in earnest.

The majority of work on the Japanese media so far has focused on the press club system, and there have been few comprehensive studies, in English or Japanese, on its role in affecting events. Most of the information available is anecdotal experience told by professionals. Despite the wide-ranging furor the Tsubaki *hatsugen* caused and the attention it received at the time, there has been very little written about the case as a phenomenon since, and no explanation offered for how it spread so quickly or why it encompassed so many influential actors. The many articles that appeared in Japanese legal journals and monthly magazines after the affair quieted down seem to

all be descriptions of the roles of the relevant statutes or opinion essays and panel discussions about the nature of the media in general.

Less is known about the case in the American academic community: other than newspaper articles, there are no English-language materials on the incident. Even in Japanese, the most comprehensive sources are reports that recount the play-by-play development without discussion or analysis. This paper is an attempt to draw insight into the interaction of the Japanese press, politics and government by recreating the Tsubaki *hatsugen* incident and its aftermath, and to establish the factors that fostered its sudden appearance, rapid escalation, and abrupt abatement.

### *Television as a Political Force*

1993 was the year television came into its own as a political force in Japan. For decades, the roles of the various news media had been fixed: Newspapers were the public's major source of news. Fed as well as restricted by their close personal ties with their sources and each other, they gave detailed, twice-daily reports of political developments, but were largely captive to the government, and revealed only a fraction of what they knew.<sup>1</sup> Most serious political discussions, scoops and exposés appeared in the weekly and monthly newsmagazines -- often written pseudonymously by newspaper reporters dodging the constraints of the press club system. Television was even less thorough and more supportive of the government in its news programs than the papers, and contributed to the political scene mainly through gossip shows and late-night panel discussions.

From late 1992, however, it gradually became clear that TV was affecting the way politics was conducted. Kume Hiroshi, the anchor of TV Asahi network's unorthodox program "News Station," began focusing on political scandals involving the ruling Liberal Democratic Party, taking care to illustrate the complex paths of corruption with simple diagrams and even dolls. Television's emphasis on the need for political reform gave the relatively unknown politicians challenging the LDP on the reform issue an opportunity for exposure and attention.<sup>2</sup> These challengers were quick to grasp the idea that TV's strongest message is the image it conveys, and

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<sup>1</sup> Feldman, Ofer, Politics and the News Media in Japan, University of Michigan Press, 1993

<sup>2</sup> Altman, Kristin Kyoko, "Telemocracy: How Television Transformed Politics in Japan," Occasional Paper, Program on U.S.-Japan Relations, Harvard University 1994

they learned to exploit it, creating polished presentations that stressed their integrity, energy, and relative youth.<sup>3</sup> Until this point, national television had always been an inefficient campaign medium, since in Japan's parliamentary system every public office represents a local electoral district. The difference this time is that attention had been shifted from individual races to the competition between nation-wide parties.

The LDP was slow to acknowledge TV's power, assuming that since the government kept close control of broadcasters through the licensing process and informal guidance, they would naturally support the status quo. By the spring of 1993, they were proven wrong. Live-broadcast programs that provided politicians and critics the opportunity to debate freely had become popular for their raw and unscripted immediacy, and had developed into important venues for political expression. Statements made in these forums were considered news, and were often reported in subsequent programs and in the papers the next day.

In an effort to bolster his flagging administration, Prime Minister Miyazawa agreed to a live interview on the most popular of these shows, TV Asahi's "Sunday Project." Immediately before the interview, Miyazawa insisted he would not discuss reform of the election system, which had become his most vulnerable issue and a symbol of his administration's ineffectiveness.<sup>4</sup> Although it is common practice for interviews with the print media, this interviewer, Tahara Soichirô, refused to set conditions, and pressed Miyazawa on whether he would be able to carry out the reforms. Put on the spot, a very uncomfortable Miyazawa was obliged to answer, "I will do it," several times, expressing greater and greater resolve with each response.<sup>5</sup> In later weeks, Miyazawa was completely unable to effect reform, and the statement was often replayed in news broadcasts to demonstrate his weakness; his opponents referred to the incident as the "*Uso-tsuki* [Liar's] Interview."<sup>6</sup> The damage this caused to his image played a large part in the success of the no-confidence vote against Miyazawa and the dissolution of the Diet that June.

The election campaign that followed highlighted the differences between the pro-reform parties' and the LDP's understanding of television. The leaders of the reformers, especially

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<sup>3</sup> Tahara, Soichiro, "TV Ga Kimeru Seiji" ["Politics Dictated by TV"], *Bungei Shunju*, September 1993

<sup>4</sup> Altman "Telemocracy"

<sup>5</sup> Tahara "TV Ga Kimeru Seiji"

<sup>6</sup> Kawasaki, Yasushi "Tsubaki Hatsugen Hôdô' Jushô Naitei No Kai" ["A Suspect Informal Announcement on the Award to 'The Tsubaki Statement Coverage'"], *Sekai*, October 1994

Hosokawa Morihiro, Takemura Masayoshi and Hata Tsutomu, appeared on several live shows a day, capitalizing on their clean images and their ability to convey their goals to the general public. Senior LDP members rarely used this approach. Accustomed to the tradition of “*ryotei seiji*,” or political dealmaking conducted out of public view in restaurants, they had little feel or respect for strategies that depended on communication with voters. They also showed an unwillingness to acknowledge television’s new importance, partially because they felt TV politics -- with its heated public debates and reliance on image gimmickry -- was below them, and partially because they did not think the medium could be so effective. Sunday Project’s Tahara writes:

The LDP underestimated television. They felt they had to take newspapers and magazines seriously, because these were not subject to political control. All television networks, however, are under the jurisdiction of the Ministry of Posts and Telecommunication as licensed enterprises and are thus subject to political control, so the LDP felt it could take them lightly. Therefore, the LDP made no serious effort to develop the “know-how” to express itself through TV or to use it to persuade the public.<sup>7</sup>

It was a costly oversight; television exposure legitimated the newly-formed opposition parties. The LDP lost its majority for the first time since 1955 in the July 18 Lower House election, and relinquished power to an eight-party coalition dedicated to reform, led by Hosokawa Morihiro.

The Washington Post’s T.R. Reid writes that print press coverage of the election campaign was slanted strongly towards the reformers and anyone with even a vague promise of change. There were many newspaper editorials criticizing politicians for not making their policy positions clear, but “surprisingly few stories to help voters sort out the policy differences between one party and another...This shortfall in print coverage was largely filled by aggressive and innovative TV reporting.” The new reliance on talk shows, live broadcasts and national news programs to reach voters directly had created a novel style of Japanese campaigning.<sup>8</sup>

This change in campaigning and the unprecedented emphasis on personal image was obvious to anyone watching Japanese politics, and the power shift in the Diet was widely attributed to the influence of television. TV’s new role became the trendy subject for intellectual debates. The

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<sup>7</sup> Tahara “*TV Ga Kimeru Seiji*”

<sup>8</sup> Reid, T.R. “Japan’s Feisty New Press,” *Nieman Reports*, Fall 1993

*Nihon Keizai Shimbun* newspaper referred to the vote as “the television election.” Probing TV’s effect on politics and TV’s ethical obligations as a medium for news became a major topic of the most respected monthly magazines: *Chuô Kôron*, for example, published articles called “The LDP Lost to TV” and “The Merits and Demerits of Television Politics”<sup>9</sup> and *Bungei Shunju* ran a piece titled “Politics Dictated by TV.”<sup>10</sup> Some writers wryly referred to the reformer’s government as “the Kume-Tahara Coalition Government,” an acknowledgement of the influence of TV Asahi’s most popular news anchors.<sup>11</sup> The LDP had suffered its worst defeat in nearly forty years, and the media attention on the new techniques involved in the upset conveyed the impression that it had been due to the LDP’s failure to grasp the nature of TV as a political force.

In fact, the availability of TV exposure for exploitation as a campaigning tool may have made it feasible for the reformers to defect from the LDP and form new parties; by that measure, television was an important political tool. However, since the LDP’s loss of power was due mainly to the mass defection, not defeat at the polls, it is not at all clear that TV was an especially effective means of communicating candidate’s views. The victory of the coalition government may simply have reflected an existing disgust with the status quo. Nevertheless, television’s newfound influence was on the minds of politicians and the public -- as well as a sensitive topic for the LDP -- and was thus easily exaggerated. This was the context in which the incident surrounding the Tsubaki *hatsugen* occurred.

### *The Tsubaki Statement*

On September 21, 1993, *Nihon Minkan Hôsô Renmei* -- the National Association of Commercial Broadcasters, often abbreviated as “*Minpôren*” -- held its sixth Broadcast Programming Investigation Committee Meeting. The Committee was a study group composed of five lawyers and mass media specialists from outside the broadcasting industry, and seven representatives of the major Tokyo-area broadcasters. Its chairman was Aoyama Academy Professor Emeritus Shimizu Hideyo, a specialist in freedom of speech issues. *Minpôren* had first

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<sup>9</sup> *Chuo Koron*, October 1993

<sup>10</sup> *Bungei Shunju*, September 1993

<sup>11</sup> Tase, Yasuhiro, *Seiji Jaanarizumu No Tsumi To Batsu* [The Crimes and Punishment of Political Journalism] Shinchôsha, Tokyo, 1994, p.168



convened the Committee in November of 1992 to address the spreading problem of *yarase*, or the practice of scripting programs that were ostensibly live and spontaneous, and its other recent topics had included the issue of programming and religion.<sup>12</sup> This time, the topic of the closed session was “Politics and Television,” and the guest speaker was a man deeply involved in the issue, Tsubaki Sadayoshi, the director of TV Asahi’s News Bureau.

Tsubaki made astounding claims concerning the arbitrary power of news broadcasting. In the middle of his 25 minute-long presentation, he asserted that by late June, shortly after the campaign had started, he had decided:

Shouldn’t we cover it in such a way as to prevent the continuation of the LDP government, and to help establish a non-LDP coalition administration? I organized the coverage with that thought in mind, without discussing it with the political news desk or with the programming directors. That’s how I determined the “political winds” that are blowing now... As you know, in the Lower House election [reform candidates] Kaeda Banri and Kurimoto Shin’ichiro were elected without any preparation, and Takaichi Sanae of Nara and Yanase Susumu were certainly no match for the political situation. Their election is of course due to TV’s influence.<sup>13</sup>

The main theme of Tsubaki’s statement is that he personally chose and executed a strategy of bias that moved the public to effect the historic change in government. Television news programs are constrained to standards of fairness and neutrality by law. In light of the current sensitivity to TV’s role, Tsubaki’s claim was immediately taken very seriously.

In actuality, TV Asahi’s coverage may have been no more anti-LDP than that of the other networks, and there was no particular reason to accept his assertions that his programming had had a clear impact, or even that it had in fact been biased. Tsubaki’s statement was shocking mainly because his network had had the highest profile during the campaign, and because he implied there had been an official policy against fairness.

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<sup>12</sup> “*Hi-Jimin Seiken Tanjō Wo Itoshi Hōdō*” [“Coverage Biased Towards the Creation of a Non-LDP Administration”], *Sankei Shimbun*, October 13, 1993, p.1

<sup>13</sup> “*Tsubaki Zen-Terebi Asahi Hōdō Kyokuchō No Hatsugen*” [The Statement of Former TV Asahi News Director Tsubaki], *Asahi Shimbun*, October 23, 1993, p.20

## *Legal Regulation of Broadcasters*

The government agency responsible for overseeing broadcasting is the Ministry of Posts and Telecommunications (*Yūseishō*, or the MPT). It has a broad range of jurisdictions that includes the postal system and an extensive savings system in which every post office serves as a bank branch. The MPT also has much the same legal role regarding radio and television as the American Federal Communications Commission, regulating license allocation and broadcast content.

Free speech is not accorded the same ideological sanctity in Japan as in the U.S. Although the freedom of “speech, press, and all other forms of expression are guaranteed” as a constitutional right,<sup>14</sup> that right is commonly interpreted to extend only so far as the expression does not endanger the common good, as defined by the courts. Jonathan Weinberg writes that Japanese academics and bureaucrats “are much more concerned than their American counterparts about the damaging or corrosive effects on society of too much information or speech, which they sometimes characterize as information ‘pollution’ or ‘overload.’”<sup>15</sup>

Biased news coverage, especially election campaign coverage prejudiced the way Tsubaki claimed, is a violation of several points of law. The statute that set the tone of the government’s response is the *Kōshoku Senkyō-hō*, or the Public Office Election Law. Article 150 (2) of the Election Law holds broadcasters to the same restrictions that apply to the print media. these limits are spelled out in Article 148 (1):

The regulations set forth in this law concerning the restriction of election activities... do no obstruct the freedom of newspapers(including the various forms of news communication) or magazines from publishing coverage or judgement concerning elections. *However, these media may not compromise fairness regarding an election through the publication of falsehoods or distortions of the facts, which is an abuse of the freedom of speech.* [Italics added]<sup>16</sup>

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<sup>14</sup> The Constitution of Japan, Article 21(1)

<sup>15</sup> Weinberg, Jonathan, “Broadcasting and the Administrative Process in Japan and the United States,” *Buffalo Law Review*, Fall 1991, vol. 39 no. 3 p. 615-735

<sup>16</sup> *Kōshoku Senkyō-hō* [The Public Office Election Law], Article 148 Paragraph 1, *Roppō Zenshō* [The Complete Compendium of the Six Codes], Yūhikaku, 1994, vol. I, p.111

The *Hôsdô-hô*, or Broadcasting Law, includes restrictions on content of general news coverage that apply only to TV and radio. Article 3 (2.1) delineates the requirements:

In the editing of programming for domestic broadcasting, broadcasters must abide by the following:

- (1) They shall not disturb public security or good manners and morals;
- (2) They shall be politically impartial;
- (3) They shall broadcast news without distorting the facts;
- (4) As regards controversial issues, they shall clarify the point of issue from all possible angles.<sup>17</sup>

Tsubaki's alleged bias clearly relates to items (2) and (4), and could also be viewed as violating the remainder.

Some Japanese legal scholars have criticized these fair coverage regulations for their abstractness and lack of guidance, saying that they have led to "variety without fairness." Those who seek more concrete guidance often look to the American FCC's "Fairness Doctrine," which obliged a broadcaster to give sufficient time all the major viewpoints of an issue, and required that opposing sides of a debate be allotted equal time to present their opinions. (Ironically, the U.S. eliminated the Fairness Doctrine in 1987, calling it too restrictive and finding it unnecessary after the proliferation of cable TV channels.)<sup>18</sup>

The MPT has two main legal mechanisms that it uses to influence broadcasters: it can suspend or terminate broadcasting licenses, and it has the ability to grant new licenses, thereby increasing the competition existing firms must contend with. The source of these powers is the *Denpa-hô*, or Wireless Telegraphy Law. Article 7(2) concerns the qualifications for new licenses and license renewal:

Upon receiving an application described in Article 6 Paragraph 2 [which lists the points to be covered in an application for a broadcasting license], the Minister of Posts and Telecommunications shall without delay investigate whether the application meets the following qualifications:

[(1)-(3) Omitted]

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<sup>17</sup> *Hôsdô-hô* [The Broadcasting Law], Article 3 Paragraph 2.1, *Roppô Zenshō*, vol.II, p.4097

<sup>18</sup> Hamada, Jun'ichi, "Hôsdô To Seiji-teki Kôhei" ["Broadcasting and Political Fairness"], *Hôgaku Kyôshitsu*, February, 1994

(4) That, in addition to the previous three points, the applicant conforms to the Fundamental Standards for the establishment of a broadcaster as set forth by Ministerial Ordinance of the Ministry of Posts and Telecommunications.<sup>19</sup>

Article 3(2) of the MPT's Fundamental Standards Ordinance states that in the case of an application for license renewal, the broadcaster must prove "through its past performance" that it observes the four restrictions listed in the Broadcasting Law, including the demand for impartiality.<sup>20</sup> From this, the MPT derives the legal right to deny renewal to any broadcaster that shows bias in coverage.

Article 76 of the Wireless Telegraphy Law describes other penalties the MPT may impose on broadcasters. Article 76(1) allows the Minister of Posts and Telecommunication to suspend a license for up to three months in response to a violation of Ministerial orders or ordinances relating to the *Denpa-hô* or the *Hôsô-hô*. Article 76(2) allows the Minister to revoke a license entirely in the following cases:

- (1) When a broadcaster ceases operations for more than six months without a legitimate reason;
- (2) When a broadcasting license is received through dishonest means...;
- (3) When orders or regulations based on the previous items are violated;
- (4) When the licensee comes under Article 5 Paragraph 3.1 [i.e. is punished by more than a monetary fine for violating the *Wireless Telegraphy Law* or the *Broadcasting Law*].<sup>21</sup>

Therefore, if Tsubaki's own allegations were found to be true and he were convicted of violating the Broadcasting Law, the MPT would theoretically have grounds for revoking TV Asahi's broadcasting license.

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<sup>19</sup> *Denpa-hô* [The Wireless Telegraphy Law] Article 7 Paragraph 2, *Roppô Zenshō*, vol.II, p. 4073.

<sup>20</sup> Hamada, "Hôsô To Seiji-teki Kôhei"

<sup>21</sup> *Denpa-hô*, *Roppô Zenshō*, p. 4072, 4078.

## *Administration by the MPT*

Broadcasters in Japan are rarely found to have violated content laws, and are even more rarely prosecuted in court for their violations. Instead, the government's informal management strategy and the structure of the licensing system itself serve to limit transgressions.

The government ministries in Japan have typically exercised control over industry through the informal process of *gyōsei shidō*, or administrative guidance. To avoid the friction or outright resistance that formal orders or legal coercion might engender, Japanese administrators instead rely on frequent meetings, bargaining and consensus-building with the private actors they regulate.

This emphasis on consensus helps government decisions appear to be the natural outgrowth of the general populace's needs; political motivations are disguised, but they do exist. One institution the ministries often use as a source of legitimacy is the *shingikai*, the "advisory" or "deliberation" council. These are boards composed of experts from related academic and industry fields (and on rare occasions, consumer groups), which advise and guide ministry policies. Despite the cultivated image that they reflect the interests of all concerned parties, *shingikai* are rarely completely impartial; members are often selected specifically for their views, and their reports typically echo the ministry's goals.<sup>22</sup>

The ministries tend to justify their guidance through a flexible application of the spirit of the law rather than its letter: legal regulations providing for drastic measures are used mainly as motivation for the private actor to accept the bureaucracy's less extreme direction. It has been suggested that the ministries' influence is based more on their roles as coordinators and an aura of authority than the legal ability to impose their will,<sup>23</sup> but they can also enforce cooperation through either the threat of formal regulatory action on a specific issue, or the threat of becoming uncooperative in general regulatory matters.

This often enables them to get the same results with a suggestion that would require an outright order in the U.S. As a result, the ministries can often influence the action of private

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<sup>22</sup> Weinberg, "Broadcasting and the Administrative Process..."

<sup>23</sup> Haley, John O., "Governance by Negotiation: A Reappraisal of Bureaucratic Power in Japan," in Kenneth B. Pyle, ed. The Trade Crisis: How Will Japan Respond? The Society for Japanese Studies, Seattle, 1987

organizations without strict observation of the limits of their legal authority. It also makes it possible for them to attempt coercion for which they do not have clear legal authority or Diet support. Because of the vague informality of the administrative input and lack of transparency in the process, the courts have rarely been able to provide private actors relief from unwanted or misguided *gyōsei shidō*.

The Ministry of Posts and Telecommunications' strategy for awarding radio, TV, and cable TV broadcasting licenses is to apply an extreme form of *gyōsei shidō*. The MPT fosters a sense of compromise and co-opts all influential applicants for a license -- even competing groups -- into a single body within the political mainstream with close ties to the Ministry. Since 1952, when the MPT first started overseeing licensing, this has been done through a policy of *ipponka chōsei*, or "unification coordination." This strategy means, explains Michael Weinberg, "that when many different entities file applications for a single license, the regulator, instead of engaging in a competitive selection process, facilitates the creation of a joint venture, representing, to the extent possible, all influential applicants."<sup>24</sup> Every applicant that can reach a meeting of minds is encouraged to participate in a voluntary merger to create one broadcaster. Multiple licenses are only awarded when two or more influential groups absolutely cannot agree, and when the MPT has the frequencies available.

The applications are dominated by a few sprawling networks of related firms, their shareholders and their former employees, who are almost all acting as proxies for leading local businesses and the national media groups. When a new regional license becomes available, it draws hundreds of applications. The MPT then selects someone with influence and familiarity with the mainstream business and politics of the region to sort through them all, weed out everyone but the major players, and negotiate to incorporate the remainder into a single organization.<sup>25</sup>

Once the local station is formed, the various banks, businesses and media groups holding shares choose a network to become affiliated with. Most affiliates are entirely dependent upon their network for national news shows and other nation-wide programming.<sup>26</sup> The networks are based around the state-sponsored *Nippon Hōsō Kyōkai* (NHK) and the four major Tokyo-area

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<sup>24</sup> Weinberg, "Broadcasting and the Administrative Process..."

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

stations: Nippon TV (NTV), Fuji TV, the Tokyo Broadcasting System (TBS), and TV Asahi. Thus, if a single key Tokyo-area station producing national programming were to go out of business, it could undermine an entire network. The hub of each of these media groups is in turn one of the five major daily newspapers, which own and control their key stations directly and through personal links: The *Yomiuri Shimbun* owns NTV; the *Sankei Shimbun* and Fuji TV together form Fuji/Sankei; the *Mainichi Shimbun* owns TBS; the *Asahi Shimbun* owns TV Asahi; and the *Nihon Keizai Shimbun* (often considered the “Japanese *Wall Street Journal*”) is affiliated with the smaller TV Tokyo.

The MPT influences programming content in three ways. The first is the result of the *ipponka chōsei* policy: since the licensees are groups of several organizations from the conventional power structure, it is unlikely that they would have liberal tastes, or allow a single shareholder to slip in unconventional content. The second is the MPT’s licensing power: if a broadcaster steps out of line, the Ministry has the ability to license a new competitor, which would substantially harm the established firm’s business. The MPT actually applied this strategy in the late 1960s: in response to NTV and TBS’s critical news coverage of the Vietnam War, it suddenly released a flood of new licenses that allowed TV Asahi and Fuji TV to gain affiliates and become major networks overnight. Fuji/Sankei is said to still harbor especially strong loyalty and personal ties to the LDP as a result.<sup>27</sup>

The third option would be to actually revoke a broadcast license. The MPT has never taken this step. For one thing, it is too drastic to be useful in daily administration matters. More importantly, there is strong doubt that the ministry actually has the power. The laws and regulations that provide for license revocation serve mainly as last resorts, and are used mostly to justify less radical bureaucratic intervention. Revocation would be challenged in the Diet and in the courts, and the MPT would have had a hard time finding the support it needed there to carry through such a bold step, even when the LDP controlled the government.<sup>28</sup>

Nevertheless, the MPT has come to rely more heavily on this legal authority as the basis of its power in recent years. In the mid-1980s, the ministry’s potential to affect major management decisions through its ability to affect the market waned as commercial broadcasters became

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<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

economically stronger and cable TV broadcasters became more common. In response, the MPT increased its emphasis on official, legal mechanisms. One sign of this is that in the 1988 revision of the Broadcasting Law, the provision restricting the content of news coverage was moved from article 44 to article 3, where it was considerably more prominent. Now that the government was a non-LDP coalition, the MPT's ability to actually revoke a license was judged to be even weaker than before.<sup>29</sup> However, Tsubaki's violation of these laws would give it justification for more direct intervention in management.

Because of its licensing authority and control of news content (and the political and financial windfalls associated with them), the MPT has traditionally been a coveted political ally. The LDP has paid it particularly close attention; during the 1980s, for example, the *Yūsei-zoku*, or Posts and Telecommunications Policy "Tribe" was composed of some of the LDP's most influential politicians, including Kanemaru Shin, who was considered the ruling party's "kingmaker."<sup>30</sup> The LDP may have lost this ally when it lost its majority. Many political journalists in Japan commonly believe that after the reformers came to power, the MPT's sympathies began to shift to the coalition government, and that the LDP began political manipulation in an attempt to regain control. In fact, they see all the debates over the freedom of expression and the role of media in politics and government intervention in the media that erupted as a result of the Tsubaki statement merely as tools of a deeper struggle. The more important, hidden story was the LDP's attempt to regain political territory from the reformers by exercising control over the broadcasting industry and the MPT.<sup>31</sup>

"Political maneuvering was constantly in the background" of the Tsubaki *hatsugen* incident, explains TV Asahi news anchor Kanise Seiichi. To journalists' frustration, however, there was no way to report responsibly on it. "If we had had that information, we would certainly have written a story on it," says Kanise.<sup>32</sup> Instead, the story remained recondite, discussed only among those with first-hand knowledge.

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<sup>29</sup> Personal interview with Teshima Ryu'ichi, Washington Correspondent for NHK, and fellow at the Harvard University Center for International Affairs '94-'95, March 13, 1995.

<sup>30</sup> Inoguchi Takashi and Iwai Tomoaki, *Zoku Giin No Kenkyū [A Study of Diet Policy "Tribes"]* Nihon Keizai Shimbunsha, Tokyo, 1988

<sup>31</sup> Teshima Ryu'ichi

<sup>32</sup> Personal interview with Kanise Seiichi, news anchor for TV Asahi's "Sunday Project," March 23, 1995.



It certainly seems possible that this struggle could have taken place and that it could have focused on the MPT. The LDP's presence in the *Yûsei-zoku* has recently been significantly weakened, which is a grave loss to the party. Kanemaru was involved in a political scandal in the spring of 1993, and several other members abandoned the LDP for the reform party *Shinseitô*, including its leader, Hata Tsutomu.

### *Initial Reactions*

The gist of Tsubaki's speech was leaked to the LDP by September 22 -- the next day -- and by the 29th TV Asahi's top executives had heard rumor that the party was considering action.<sup>33</sup> On October 4, TV Asahi president Itô Kunio strongly reprimanded Tsubaki for his comments.

"I think 'afraid' may be the word to describe the general atmosphere within [TV Asahi] after rumors of the speech spread through the company," says anchorman Kanise Seiichi. The most common response was that Tsubaki had overstepped the role of a TV journalist; there was no vocal support for either the truth of his claims or his right to make them. Although TV Asahi executives were accustomed to subtle, nearly constant pressure on their management decisions by the MPT, they were now fearful that the affair would attract stronger intervention by either the ministry or the LDP itself. Kanise feels that the poor timing of the incident compounded their worries: until a year or two previously, TV networks had had the independence and financial strength to withstand unwanted administrative guidance, but that power had disappeared in the recession.<sup>34</sup>

When *Minpôren* published an account of the conference on the 10th, it omitted Tsubaki's comments. Later, it claimed no notes or audio tapes of the meeting were made.

With members of the LDP and *Minpôren* as well as TV Asahi's top executives aware of the incident, it is no surprise that news leaked to the press. On October 13, the *Sankei Shimbun* newspaper scooped the story with a front-page article based on interviews with *Minpôren* members, under the headline, "Coverage Biased Towards the Creation of a Non-LDP Administration -- Statement by TV Asahi Director to National Association of Commercial

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<sup>33</sup> "Tsubaki Hatsugen E No Terebi..."

<sup>34</sup> Ibid.

Broadcasters Concerning General Elections.” The article stated, “Tsubaki indicated that coverage should be aimed at the birth of a non-LDP administration...and actively backed [selected candidates] during the election.” In a separate section at the end, the article quoted Tsubaki’s response to the allegations as, “I did say ‘I felt the growing call for dissolution of the 1955 system,’ but no coverage was guided by the goal of the dissolution of the 1955 system. It isn’t necessary for private broadcasters to maintain neutrality the way NHK does.”<sup>35</sup>

Tsubaki’s comment on neutrality could be construed as a philosophical stand. Unlike the private networks, *Nippon Hôshô Kyôkai*, the Japan Broadcasting Corporation, is structured to maintain unbiased coverage, or at least coverage that is supportive of the government. It is a public-service broadcast agency with nominal independence concerning its day-to-day administration and its budget, which it funds through the direct billing of receiver fees. In fact, though, it is accountable to the government through its Board of Governors, which is appointed by the prime minister, and through the Diet and the MPT, which must approve its budget and any fee increases.<sup>36</sup>

A 1983 study by Ellis Krauss found that NHK news devoted three-fifths of its air time to stories about policy-makers and the bureaucracy; commercial broadcasters generally have less government coverage and more human interest stories.<sup>37</sup> The Japanese public apparently feels that NHK’s focus on “hard” news makes the fairness and reliability of the reporting easier to judge; surveys in the 1970s found that not only was NHK news trusted by the public far more than any of the commercial broadcasters, but NHK itself was regarded as the most trusted and reliable institution in Japan.<sup>38</sup>

In his response to the *Sankei* allegations, Tsubaki attempted to present NHK as a special case that did not set the standard for other broadcasters. This implied he felt commercial broadcasters should be able to operate just like newspapers, which are not bound by content restrictions. If Tsubaki were serious about this stand, it would have been a clear challenge to the validity of the

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<sup>35</sup> “*Hi-Jimin Seiken Tanjô Wo Itoshi Hôdô*” [“Coverage Biased Towards the Creation of a Non-LDP Administration”], *Sankei Shinbun*, October 13, 1993, p.1. “The 1955 system” is a reference to the LDP’s 38-year dominance of the government.

<sup>36</sup> Teshima Ryu’ichi, personal interview; and Krauss, Ellis S., “Portraying the State in Japan: NHK Television News and Politics,” in *Media and Politics in Japan*, Pharr, Susan J. and Krauss, Ellis S., ed., pp.81-120, forthcoming

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

Broadcasting Law. Even at this point, however, his position seemed defensive rather than a sincere ethical stance; he was ignoring the Public Office Election Law, which forbids biased coverage of campaigns by any news medium.

### *Japanese Journalists and Their Sources*

More significant than the fact the Tsubaki statement was leaked to the press was the fact only one paper broke the story. Japanese reporters are bound by tight networks of relationships to their sources and each other that make it extremely difficult for an organization to unilaterally select and run news stories. Instead, news organizations have developed practices specifically to limit their competition at the expense of the public's access to information, a situation which Laurie Freeman characterizes as an "information cartel."<sup>39</sup>

A major root of this situation is the close tie between reporters and their sources. This relationship is key to the news coverage of all large institutions, but is absolutely vital to the coverage of politics and the bureaucracy. Japanese reporters rely heavily on personal bonds with high-ranking Diet members for information on and insight into policy-making. Journalists seldom draw policy data from staged events like speeches, but they often write stories without verification or even background research if the information has been confided in a private conversation by a prestigious Diet member.<sup>40</sup> This means the most important newsgathering occurs in informal settings.

Intense competition for access to sources and stories has led Japanese print and television news media to form *kisha kurabu* (press clubs) for every major news source, including institutions and political offices. Competing reporters on the same beat (*ban*) work as a pack, and gather information together. The source fosters this sense of cooperation as well as a sense of obligation by providing them with a room and office facilities, usually a few moments' walk from the

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<sup>39</sup> Freeman, Laurie A., *Ties That Bind: Press, State and Society in Contemporary Japan*, Ph.D Thesis, University of California at Berkeley (in progress). Ms. Freeman is a research fellow in the Harvard U.S.-Japan Relations Program 1994-1995.

<sup>40</sup> Feldman, Ofer, *Politics and the News Media in Japan*, University of Michigan Press, 1993.

source's own office.<sup>41</sup> The closest American phenomenon is the White House press corps, in which all members share a room and accompany the president when he travels. Even though this system tends to lead the journalists to identify with each other and the man they cover more than the readers they represent, a quick comparison of their reports shows it still yields more variety in coverage than the *kisha kurabu* system.<sup>42</sup>

Whereas American TV news executives mostly find their first hints of upcoming events through the AP and UPI wire services, domestic Japanese news starts with the reporters stationed in these press club rooms. Because of TV's heavy use of events such as interviews and press conferences for visual material (though rarely for data), TV journalists are especially dependent on the reliable flow of information from the source's office into the press club room in order to plan the dispatching of camera crews.<sup>43</sup>

Up to 80% of the data a political reporter acquires comes from *kondan*, or informal exchanges of information between a source and the reporters covering his work.<sup>44</sup> Reporters usually attend *kondan* for each source several times a week, not just during the day in the source's office, but in "morning visits" (*asagake*) and "night attacks" (*yo uchi*) before and after work in the source's home as well. In order to maintain the source's confidence, only a tiny fraction of what is actually discussed in these talks is ever printed; the rest consists of deep background information, or information the reporters voluntarily share in order to reciprocate. Both sides know that the closer the friendship, the more useful the information exchanged, so the conversation is often purely social.

Journalists are motivated by *toku-ochi kyôfushô*, the fear of missing a story their competitors use. After a *kondan*, the reporters involved reach a consensus on its significance, and then write nearly identical articles for their respective papers and news programs. "Generally speaking, [reporters in the same *ban*] can accomplish their work only by cooperation," Ofer Feldman writes.<sup>45</sup> Among the five most popular newspapers, there is practically no difference in political

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<sup>41</sup> For example, in the 9-story Kumamoto Prefectural Government building, where I worked for two years, the *kisha kurabu* room was down the hall from the governor's office, directly opposite the Public Affairs Division and the International Affairs Division.

<sup>42</sup> See Crouse, Timothy, *The Boys on the Bus*, Ballantine Books, Canada, 1974, for a description of media coverage of the 1972 U.S. presidential elections.

<sup>43</sup> Krauss, "Portraying the State in Japan: NHK Television News and Politics"

<sup>44</sup> Feldman, *Politics and the News Media in Japan*

<sup>45</sup> *Ibid.*

coverage, and there are almost no scoops. The press' inability to break free of this dependency, take an adversarial stance towards the establishment and do serious investigative reporting is a source of frustration for many Japanese journalists.

Feldman finds that a reporter's sympathy for a Diet member he covers daily serves the source in ways the public never sees. During *kondan*, Diet members often use experienced reporters as advisors. They also rely on friendly reporters to funnel them background information acquired in other meetings, especially with political opponents.<sup>46</sup>

From the Diet member's perspective, however, the reporter's most important role is that of go-between. Reporters can usually speak frankly and informally with all the bureaucrats and Diet members on their beats, and these officials rely on reporters to serve as the vehicle for the vital process of consensus-building. Feldman writes that "Diet members view reporters as the only group having continual contact with them and access to all the political parties and even the bureaucracy; this makes reporters not only the best choice for such a role, but the only choice." Since policy-making in the Diet is completely dependent on consensus, and reporters are usually more sympathetic to the government than opposition parties, they unavoidably contribute to the ruling party's dominance in this process. Ironically, Feldman also finds that these same journalists do not consider themselves to have any role in the policy process other than educating the public.<sup>47</sup>

Each newspaper divides its journalists into four main categories: the *seijibu*, or political affairs division, which focuses on key politicians to report on policymaking; the *keizaibu*, or economic affairs division, which concentrates on the economy and the Ministry of Finance; the *shakaibu*, or social affairs division, which covers a wide variety of the remaining major news topics, including law enforcement and the Imperial Household Agency; and the *yūgun*, or roving reporters, who are assigned to the investigative reporting of a particular issue as it develops. *Seijibu*, *keizaibu* and *shakaibu* reporters all operate from within their respective *kisha kurabu*, among which there is practically no communication. Because *seijibu* reporters must maintain their relationships with their sources, they almost never break news a source wishes to keep confidential; on the rare occasions when they do produce a scoop (*tokudane*, or *sukuupu*), they

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<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

are published anonymously or under false names in weekly or monthly journals. On the other hand, because *shakaibu* journalists do not have the ties to individual politicians, they are utterly unable to report on policy-making; however, they are always the ones who follow political scandal stories for papers. This results in an institutionalized rivalry as *seijibu* reporters work to protect their sources' secrets from the *shakaibu* reporters employed by the same paper.

Inada Sachio, the *Sankei Shimbun* editor responsible for the scoop of the Tsubaki statement, wrote that it was reported by *shakaibu* journalists. This is not surprising, since representatives of each media group were on the Broadcast Programming Investigation Committee: the news could easily have been passed along by the Fuji/Sankei member to the newspaper, and the media is a typical *shakaibu* beat. Inada was conspicuously silent, however, on why the *Sankei* was the only member of its *kisha kurabu* to break the story.<sup>48</sup> Fuji/Sankei has traditionally been a conspicuously strong supporter of the LDP and rival of the liberal Asahi news group. It seems likely that the *Sankei* scoop was motivated by its personal ties to the LDP and desire to strike a blow against a competitor as much or more than by its quest for a good news story.

### *The Public Debate*

On October 13, the day of the *Sankei* article, the LDP protested Tsubaki's claims (it was probably prepared), saying it expected fairness in all coverage, and calling for a Diet commission to investigate the issue. Although it was now the opposition, it still had enough influence to determine the focus of certain committees, and still had connections with the bureaucracy. Egawa Nobumasa, director of the MPT's Broadcast Administration Office, announced that violation of the Broadcasting Law's fairness requirement could result in being taken off the air. TV Asahi issued a statement to the effect that Tsubaki's comments represented private opinions and did not reflect network policy. Tsubaki himself, not quite concurring, made a statement saying that his coverage only reflected the changing political trends, and therefore involved no bias. News Station anchor Kume Hiroshi denied there had been any pressure or guidance at all in his own statements.

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<sup>48</sup> Inada, Sachio "‘Seiji To Terebi’ Wo Meguru Giron No Hottan Ni” [“The Origin of the Debate Surrounding ‘Politics and Television’”], *Shimbun Kenkyū*, October 1994

By the next day (October 14), there were already suggestions from the LDP that Tsubaki be summoned to testify before the Diet. Ozawa Ichirô, one of the strategic leaders of the reformers, took a position opposing the LDP with the declaration, "Fair coverage is compatible with an assertion of one's beliefs."<sup>49</sup> Each of the five major daily newspapers -- the *Asahi Shimbun*, the *Mainichi Shimbun*, the *Yomiuri Shimbun*, the *Nikkei Shimbun* and the *Sankei Shimbun* -- had begun to run articles reporting on the government's investigation of the incident. That same day, Tsubaki was rotated out of TV Asahi's News Bureau and reassigned.

On the 15th, four of the five main dailies printed editorials about the issue. The *Sankei* (practically defending its decision to break the story) asserted that if TV Asahi's coverage was biased it had done viewers a disservice, since they did not know the news that determined their votes was not balanced.<sup>50</sup> The *Yomiuri* saw it as a freedom of speech issue, supporting the idea that there are reasonable limits to the freedom, and that violating them gives government a legitimate excuse to intervene.<sup>51</sup> The *Mainichi* discussed the relationship between politics and television only in general terms, asserting that if there were doubts regarding journalism's ability to act as a check on the abuse of power, it was due to journalists failure to distance themselves from their subjects.<sup>52</sup> The *Asahi* (affiliated with TV Asahi) wrote that the TV industry was suffering from overconfidence and was in danger of forgetting it had restrictions, but that a thoughtful reassessment of the relationship between government and the broadcast media was in order.<sup>53</sup>

Although each of the papers had its own perspective on the incident, they all criticized Tsubaki's belief he had the right to bias television coverage. At the 46th Annual Newspaper Convention held on the 16th, the president of the *Yomiuri Shimbun* said, "The Tsubaki statement has strong illegal connotations, and if coverage were conducted with that policy, it would be a clear violation of the Broadcasting Law and the Public Office Election Law." The president of the

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<sup>49</sup> "Tsubaki Hatsugen E No Terebi..."

<sup>50</sup> "Kakusha No Shasetsu Kara" ["From Each Company's Editorials"] *Shimbun Kenkyu*, February 1994

<sup>51</sup> Ibid.

<sup>52</sup> "Seiji No Terebika Genshō To Shimbun" ["Newspapers and the 'Televization' of Politics"], *Mainichi Shimbun*, editorial, October 15, 1993, p.5

<sup>53</sup> "Kakusha No Shasetsu Kara"

*Sankei Shimbun* said, “It is unforgivable for one person to dominate the policy of a company like that.”<sup>54</sup>

On October 18, five days after the *Sankei*'s scoop, members of the LDP decided to summon Tsubaki to testify before the Diet. They worked through one of the few committees they still controlled, the Lower House Special Committee for the Investigation of Political Reform, which was chaired by LDP member Ishii Hajime. The coalition government protested that it was a Broadcasting Law issue, but the LDP insisted that it was directly related to political reform and that this committee was an appropriate venue. This step made it clear that the LDP considered the incident a crisis; the Diet normally reserves formal summons and sworn testimony for investigations of extremely serious scandals. The coalition parties, on the other hand, generally tried to distance themselves from the inquiry.<sup>55</sup>

On the 19th, the management of TV Asahi forced Tsubaki to submit his resignation, and imposed temporary pay cuts on his superiors. *Minpōren* issued a statement saying the incident that had occurred at their conference was “regrettable,” and that commercial broadcasters had a responsibility to maintain fairness and uphold the Broadcasting Law. After the statement, the Chairman of *Minpōren*, Kuwada Kōichirō resigned, explaining in a press conference the next day that because he was also a TV Asahi executive, he was “100% useless” as a leader of the organization.<sup>56</sup> (On this day, the *Sankei Shimbun* was the only paper to run an article on the MPT's assertion that Tsubaki had made his statement in a public setting, a story that, not incidentally, helped legitimate the *Sankei*'s scoop.)

On October 20, the Diet decided that Tsubaki would give his testimony on the afternoon of the 25th, a conspicuously early date that implied it was extremely concerned with the issue and was setting other priorities aside. For the second time in its inquiry, the MPT sent a memo to *Minpōren* asking if it had made any notes or recordings of Tsubaki's speech and requesting to use them as evidence in the Diet's investigation. Executives of *Minpōren* admitted to reporters that afternoon that it did in fact have a tape of the speech. At a late-night press conference, they said they had kept it secret in order to prevent government intervention in freedom of speech and

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<sup>54</sup> “*Tsubaki Hatsugen E No Terebi...*”

<sup>55</sup> Teshima Ryu'ichi, personal interview.

<sup>56</sup> “*Tsubaki Hatsugen To Sono Eikyō*” [“The Tsubaki Statement and its Effects”], *Shimbun Kenkyū*, December 1993



freedom of broadcasting, and because Tsubaki's comments had been made in a closed, private setting that the government had no right to oversee. They refused to present to the tape to the MPT, but offered an unofficial account instead.

The morning of the 21st, the Diet's Special Committee for Investigation of Political Reform demanded *Minpôren*'s official notes by noon on the 22nd, threatening to resort to an official order under the Diet Evidence Law. The MPT demanded that the association submit the materials by 10 a.m., so that the ministry would have time to pass them on to the Diet.<sup>57</sup>

On the morning of the 22nd, Posts and Telecommunication Minister Kanzaki Takinori hinted that when TV Asahi's broadcasting license ran out at the end of the month, his ministry might impose conditions on its renewal. The same morning, *Minpôren* yielded to MPT pressure and agreed to hand over both the written record and the tape of the conference, explaining:

[Tsubaki's] alleged remarks have been misunderstood by society. We have judged that it is vital and urgent in these circumstances that we clear up the phenomenon that is amplifying this misunderstanding, and that the public understand commercial broadcasters are devoted to strict fairness and neutrality.<sup>58</sup>

Shimizu Hideyô, the chairman of *Minpôren*'s Broadcast Programming Investigation Committee, protested the summons and demand for the conference's records, saying the MPT was abusing its authority and violating *Minpôren*'s privacy and freedom of speech. Handô Kazutoshi, the Committee's vice chairman, resigned from his position in protest.

The issue had shifted to the government's right to intervene in the situation. On the 21st, the president of NTV had issued a statement criticizing Tsubaki for believing television had the same right to shape public discourse as the print media, and urging *Minpôren* to release the audio tape of the speech. On the 22nd, the politically middle-of-the-road *Mainichi Shimbun* took the other extreme in an editorial saying that the Tsubaki *hatsugen* incident did not call for political

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<sup>57</sup> Ibid.

<sup>58</sup> "Tsubaki Hatsugen To Sono Eikyô"

investigation, but rather an independent resolution by the journalism industry.<sup>59</sup> The president of TBS, its affiliate, made a similar statement.<sup>60</sup>

The incident reached its climax on the 25th. That morning, the five non-industry members of *Minpôren*'s Broadcast Programming Investigation Committee, including the chairman, resigned in protest of the government's inquiry, citing invasion of privacy, violation of the freedom of speech and thought, the improper rush to bring the issue before the Diet without proper discussion, and the summons' encroachment on the media.<sup>61</sup> Eight well-known newscasters, including TV Asahi's Kume and Tahara, and Kanise Seiichi, who was interviewed for this paper, held a press conference to release their own statement of opposition to the summons, saying that the issue was best settled within the network and that the precedent this testimony would set might lead Diet members to intervene whenever they were unhappy with broadcasters.<sup>62</sup> As independent contract employees, they had the freedom to take controversial stands without drawing government antagonism to their networks.<sup>63</sup>

That afternoon, Tsubaki went before the Lower House Special Committee for Political Reform, and answered questions from its LDP and Communist Party members for a grueling two hours. His testimony showed none of the bravado of his earlier statements. He began with an abject apology:

First, let me make a heartfelt apology to you all for the trouble I caused with my unnecessary, unconsidered, inappropriate remarks...<sup>64</sup>

Tsubaki described his claims as the product of pride and bragging. He told the committee he had been mistaken to think his network's coverage had had any significant effect on the election's results. In response to questions, however, he asserted his network had upheld standards of fairness, and denied he had actually biased any reporting or indicated that it should be biased. The

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<sup>59</sup> "*Kakusha No Shasetsu Kara*"

<sup>60</sup> "*Tsubaki Hatsugen E No Terebi...*"

<sup>61</sup> "*Tsubaki Hatsugen To Sono Eikyô*"

<sup>62</sup> "*Tsubaki Hatsugen E No Terebi...*"

<sup>63</sup> Kanise Seiichi, personal interview

<sup>64</sup> "*Tsubaki Zen-Tele-Asa Kyokuchô Shônin Kanmon No Omô No Naiyô*" ["Excerpts from Former TV Asahi Director Tsubaki's Testimony"], *Asahi Shimbun*, October 26, 1993

reason he had never expressed his position to the programming department, Tsubaki claimed, was that he had known all along that his view was “nonsense” (*kôtômukeyi na bôgen*). He explained he had used such strong language at the conference because he was under the impression it was a closed meeting where he was expected to speak freely. He also mentioned that he hoped the resulting loss of confidence in the media would not bring about government intervention.<sup>65</sup>

This abrupt turnaround was unpardonable in the eyes of fellow journalists. The one factor that could mitigate the arrogance of his statement would have been an ethical stand on the role of the press in society. By backing down so completely, he showed he had no interest in that issue at all, and reinforced the image of his own weak moral character.<sup>66</sup>

The following day, the coalition government criticized the LDP for its hastiness in issuing the summons. On October 27, TV Asahi President Itô Kunio spoke before the Lower House Communications Committee on the issue. Itô disavowed the network of any part in the incident, saying, “[Tsubaki] might have believed what he said in his own mind, but there were neither suggestions nor orders to that effect, and our own internal investigation found the broadcasts to be fair.”<sup>67</sup>

### *Media Response*

The newspapers had been clearly opposed to Tsubaki’s arrogance and claims to have violated the Broadcasting Law and Election Law. However, after the widely publicized summons and Diet hearing, the major dailies began to feel that the LDP had gone to far. On October 22, a *Mainichi Shimbun* editorial contended that the summons threatened freedom of speech, and that it was better to let the TV industry solve the problem itself. It also suggested it was inappropriate for the LDP to focus on a single news executive, and said that if the MPT imposed conditions or a shorter term on the renewal of TV Asahi’s license, it “would be a blow to the Broadcasting Law and the Wireless Telegraphy Law.”<sup>68</sup> An *Asahi Shimbun* editorial on the same day said the

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<sup>65</sup> Ibid.

<sup>66</sup> Personal interviews, Teshima Ryu’ichi and Kanise Seiichi.

<sup>67</sup> “*Tsubaki Hatsugen E No Terebi...*”

<sup>68</sup> “*Genron No Jiyû’ Ishuku Sassenai Ka*” [“Doesn’t This Strangle ‘Freedom of Speech?’”] *Mainichi Shimbun*, October 22, 1993, p.5

summons was inappropriate, and that both politicians and the media would be able to solve their problems on their own by paying attention to each other's criticism and public opinion.<sup>69</sup> Another Asahi editorial on the 26th claimed that the summons did not resolve any part of the immediate incident, and that it never addressed the deeper issue of media fairness.<sup>70</sup>

An October 24 editorial in the *Yomiuri Shimbun*, the nation's most popular newspaper, claimed that taking action against a single man in one particular case -- despite an environment filled with the media's abuses of its freedom of coverage -- was tantamount to the LDP using TV Asahi as a "scapegoat" for its defeat.<sup>71</sup> On the 26th, another *Yomiuri* editorial asserted that neutrality requires the constant supervision of editors, and that the media bears the ultimate responsibility for reconciling its freedom of coverage with the law.<sup>72</sup> Since the *kisha kurabu* system fosters alliances between newspapers and the governing parties, it is likely that these views also reflect the coalition government's desire to put an end to the issue.

The only major paper that found no faults with the LDP's response was the *Sankei Shimbun*. Its editorial on the 25th supported the summons as a reflection of public opinion, and as a check on the mass media, which it claimed does not have the restraint to keep itself in check.<sup>73</sup> On the 26th, it called the summons a means of fostering discussion about TV's custom of using images rather than objective facts in political coverage.<sup>74</sup>

### *The Aftermath*

The incident began to dissipate immediately after Tsubaki's high profile testimony. The LDP had managed to turn the media and the public's initial anger at Tsubaki's arrogance to concern the

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<sup>69</sup> "Hito Terebikyoku No Mondai De Wa Nai" ["It's Not a Problem With a Single TV Station"], *Asahi Shimbun*, October 22, 1993, p.2

<sup>70</sup> "Kakon Nokoshita Zen-Hôdô Kyokuchô No Kannon" ["The Subpoena of the Former News Director Left the Evil Roots"], *Asahi Shimbun*, October 26, 1993, p.2

<sup>71</sup> "Hôdô No Jiyû No Ranyô Wo Imashimeru" ["Admonishing Abuses of 'The Freedom of Coverage'"], *Yomiuri Shimbun*, October 24, 1993, p.3

<sup>72</sup> "Fukametakatta Hôdô No Jiyû To Sekinin" ["The Freedom of Coverage They Wanted to Expand and Responsibility"], *Yomiuri Shimbun*, October 26, 1993, p.3

<sup>73</sup> "Seiji To Terebi No Kakushin Wo Kokkai Shôninkanmon No Igi Wo Tou" [Asking the Meaning of the Diet Subpoena Concerning the Core of 'Politics and Television'], *Sankei Shimbun*, October 25, 1993, p.2

<sup>74</sup> "Kôseisa No Naibu Kenshô Wo Isoge" ["Speed the Internal Verification of Fairness"], *Sankei Shimbun*, October 26, 1993, p.2

government was empowering itself to intervene in news coverage. After Itô's testimony, the Diet ended the inquiry, and the MPT returned *Minpôren's* tape of the conference.

It was TV Asahi's bad fortune that its five-year broadcasting license expired the last day of October, while the LDP's outrage at the incident was still at its height. The day after Tsubaki's testimony, MPT officials suggested to the ministry's Broadcast Frequency Oversight *Shingikai* that conditions be imposed on the license's renewal. It was an unprecedented step, but the *shingikai* assented a day later. On November 1, the MPT formally renewed the licenses of all 192 broadcasters throughout the country whose terms had expired. MPT Minister Kanzaki presided over a ceremony in the Kasumigaseki district of Tokyo for the 14 Tokyo firms. The renewal certificate he handed to TV Asahi president Itô was qualified by an attached statement, which read: "The Ministry will take further necessary measures once the facts concerning TV Asahi's relationship to the [Tsubaki] Statement are clarified."<sup>75</sup>

In a related statement, Minister Kanzaki announced:

We are aware of the problem the gentlemen in question have created, and we demand that they uphold the Broadcasting Law and their own editorial standards, and join together to work to regain the nation's confidence.<sup>76</sup>

This was the final move in the public drama. From November until the following year, there was no further news coverage of developments in the incident, and no repercussions. TV Asahi conducted its own internal investigation to find if there were any substance to Tsubaki's allegations over the course of the following year. This process was closely supervised throughout by the MPT.<sup>77</sup> Nevertheless, when the report was released on September 2, 1994, the MPT responded with further administrative guidance in the form of a stern warning.<sup>78</sup>

In late 1994, the Japan Newspaper Publishers and Editors Association (*Shimbun Kyôkai*) the *Shimbun Kyôkai-shô*, its prestigious prize for the most influential article of the past year, to the

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<sup>75</sup> "Tere-Asa Ni Jôken-Tsuki Menkyô" ["To TV Asahi, A License With Conditions Attached"] *Asahi Shimbun*, November 2, 1993, p.2

<sup>76</sup> Ibid.

<sup>77</sup> Kanise Seiichi, personal interview

<sup>78</sup> Inada, Sachio "'Seiji To Terebi' Wo Meguru Giron No Hottan Ni." Although he does not mention the content of the reprimand, Inada himself refers to it as "administrative guidance."

*Sankei* for breaking the Tsubaki *hatsugen* story. The other nominations were a *Mainichi* article about the scandal involving Prime Minister Hosokawa's purchase of NTT stock, and an *Asahi* story about insider trading. (*Sankei*, known more for its assertiveness than thorough reporting, had also won the previous year with a scoop about the mayor of Sendai city accepting bribes from the construction industry.)<sup>79</sup>

Receiving the award, *Sankei* editor Inada Sachio wrote he had felt Tsubaki's statement was "big news" because it was so surprising, and he had wanted to pass that sense of surprise on to his readers. He claimed the story was significant because it had set off so much political activity, and had engendered the first real discussion of the relationship between TV and politics. What made it deserving of the award, he explained, was that this was the first significant coverage to question the future of news coverage.<sup>80</sup>

The *Shimbun Kyōkai*'s choice was controversial. The other nominees may have had greater impact: Hosokawa eventually stepped down due to the financial scandal. Many journalists protested that the *Minpōren* study group had been a private meeting, and that the *Sankei* had no right to publish its content.<sup>81</sup> More galling, however, was the idea that newspapers, especially the *Sankei* and the *Yomiuri*, had intentionally invited government intervention in order to check the growing influence of a competing media group's broadcaster.<sup>82</sup> Often during the course of the incident, editorials in other papers had suggested that a more effective and appropriate -- and, by implication, "more Japanese" -- approach would have been to let the industry address the concern without outside intervention. The newspapers' original positions supporting the Diet's interest indicate that they were either threatened by the rise of this new power, or doubted broadcasters had the desire or ability to restrain themselves. It was only when the LDP went too close to threatening the rest of the news industry that they protested its actions.

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<sup>79</sup> Kawasaki, Yasushi "Tsubaki Hatsugen Hōdō' Jushō Naitei No Kai" ["A Suspect Informal Announcement on the Award to 'The Tsubaki Statement Coverage'"], *Sekai*, October 1994

<sup>80</sup> Ibid.

<sup>81</sup> Hara, Tsuneo, *Jaonarizumu Wa Kawaru [Journalism is Changing]* Banseisha, Tokyo, 1994, p.142

<sup>82</sup> Kawasaki "Tsubaki Hatsugen Hōdō' Jushō Naitei No Kai"

## *New Limits on Administrative Guidance*

Japanese government agencies no longer have the same arbitrary power to influence private actors that they have exercised in the past. On November 12, 1993, less than two weeks after the MPT renewed TV Asahi's license with conditions attached, the Diet passed the Administrative Procedure Act (APA, or *Gyōsei Shidō-hō*). The law went into effect the following year.

The APA is the government's first measure to codify the rules of administrative procedure and create a legal basis for *gyōsei shidō*. The motivation for this move was twofold: to establish the government's right to conduct administrative guidance, which appeared in no previous laws; and to protect private actors by introducing transparency and clarifying that compliance is not mandatory.

The General Provisions section of the act provides the first official definition of *gyōsei shidō*. It is considered to be:

[any] act, not being a disposition, such as a direction, recommendation or suggestion by an administrative body, in order to ask for the performance or nonperformance by a particular citizen with a view of achieving a policy aim within the sphere of competence of said administrative body.<sup>83</sup>

The law stresses that administrative guidance is based on voluntary assent, and that the agency may not use any unfavorable treatment -- it specifically forbids abuse of the authority to issue licenses -- as retribution for a refusal to comply. It requires the agency to provide clear information on the nature of the guidance and the official responsible for issuing the request, and entitles the addressee to ask for any request to be put in writing.<sup>84</sup>

In the past, the courts usually overlooked the dubious legality of administrative guidance, and supported government actions by ruling in terms of vague, situation-specific procedural standards. The APA allows the courts to treat all acts of *gyōsei shidō* as aspects of the same form of official

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<sup>83</sup> Ködderitz, Lorenz, "Japan's New Administrative Procedure Law: Reasons for its Enactment and Likely Implications," *Law in Japan* vol. 24 no.105 1994

<sup>84</sup> *Ibid.*

behavior, with a legal basis and limits.<sup>85</sup> Theoretically, it should also allow private actors to resist unwanted government manipulation, and to hold agencies accountable for their intervention. However, the law has been in effect for less than a year, and it far from clear that private actors will be able to resort to the legal measures the APA recommends in the face of government agencies' real power to influence their business, or that it will have any effect against the agencies' networks of informal ties.

If the APA had already been established by 1993, it might have given TV Asahi the ability to refuse the MPT's involvement in its internal investigation of the Tsubaki *hatsugen*, or even the legal standing to resist any conditions the MPT might have imposed on its broadcasting license. With less leverage, this in turn would have reduced the LDP's propensity to interfere with the industry's internal affairs.

Lorenz Ködderitz writes that the reasons for the successful passage of the law are "difficult to pinpoint" and that there is not enough data made public to recreate with certainty the factors that led to its enactment.<sup>86</sup> In light of the Diet's timing, it would be fair to wonder if the November 12 vote for the APA were not a hasty response by the coalition government to perceived political manipulation by the LDP. If the uproar over the Tsubaki statement were in fact an orchestrated attempt to regain political territory, then passing a new law weakening that type of intervention might be seen as a reasonable political tactic to pre-empt similar moves in the future.

Neither the drafting of the bill nor the timing of the vote were related to this incident, however. The APA is the result of attempts to codify procedural law that began in the early 1950s. The issue had been on the political agenda of Prime Minister Kaifu in 1990, and U.S. trade negotiators had also pressed the Japanese government for measures to make administrative guidance more uniform and transparent in the Structural Impediments Initiatives talks under Bush.<sup>87</sup> The same bill had been scheduled for a vote in the previous Diet session, where it was expected to pass, but the no-confidence vote on the Miyazawa administration had caused its

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<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ködderitz, "Japan's New Administrative Procedure Law"



postponement until November.<sup>88</sup> If the Tsubaki statement incident played any role in this at all, it was only as a further example of the need to reform *gyōsei shidō*.

### *The Dog That Didn't Bark -- Lessons From the Tsubaki Hatsugen Incident*

The Tsubaki *hatsugen* incident packed a great deal of furor into a very short span of time. Part of the reason the incident was able to tap so much latent energy was that it marked the intersection of two separate spheres that happened to be evolving simultaneously. In the realm of the news media, television had just begun to establish itself as an influential actor filling a new and powerful niche; added to this was the danger that TV was not yet sure of its strength or its responsibilities. In the political sphere, the LDP's hold on the Diet's Lower House had been broken for the first time in almost forty years, by parties only a year or two old. Newspapers were threatened by TV's encroachment on their turf; likewise, the shaky government coalition's potential threat to the establishment met opposition from the LDP and resistance by those bureaucrats whose agendas were endangered by reform.

The issue of biased TV coverage was so sensitive that the reckless boasts of a single individual led to his Diet summons before it was even established that a transgression had actually occurred, or had had any effect. In a period of a little over two weeks, the incident engendered in an industry association, a Diet committee and the editorial columns of the four most-read newspapers earnest debates on topics ranging through television's influence and role in politics, the division between industry and government responsibility, government intervention in the affairs of private actors, and the limits of freedom of speech.

These responses shed light on the relationships of the actors involved. Instead of presenting a united front and insisting the government let them treat the incident as a matter internal to the journalism industry, media organizations looked after their own immediate interests and intentionally let the government intervene.<sup>89</sup> Divisions among them appeared to be based along lines of business affiliation rather than practical or ideological differences between print and

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<sup>88</sup> Discussion with Daniel Foote, Professor of Japanese Law at the University of Washington Law School, and visiting professor at Harvard Law School 1994-95. Professor Foote served as Ködderitz' advisor when he wrote the first version of "Japan's New Administrative Procedure Law" as his LL.M. paper.

<sup>89</sup> Personal interview, Seiichi Kanise

broadcast media: the strongest attacks against TV Asahi came from the Fuji/Sankei and NTV-*Yomiuri Shimbun* media groups while both parts of the TBS-*Mainichi Shimbun* group took a less critical stance.<sup>90</sup> This indicates the groups were more concerned with competition between them than in any threats to the future of their industries. The *Shimbun Kyōkai*'s decision to give its award to the *Sankei* for a story that caused a great deal of commotion but essentially changed nothing relevant to the issue suggests it was really a reward for keeping an upstart competitor in line.

Journalist Tase Yasuhiro writes, "If you consider the industry as a whole, there is no other business that has such a strong connection to 'politics' as television."<sup>91</sup> It is hard to imagine another private industry in Japan bound by legal mechanisms that provide for such severe and immediate disciplinary measures. The LDP's rush to take the offensive shows these devices are certainly open to exploitation by a political party, and the ending of the incident without a clear resolution could mean TV stations are even more vulnerable to these tactics now that a precedent for them has been established.

This incident also revealed how sensitive the MPT is to the designs of Diet politicians, even to the opposition LDP, which may not have commanded the ministry's full sympathies at the time. Throughout the incident the MPT matched the LDP's outrage with its own extreme stance, threatening license revocation from its first involvement. As soon as the LDP dropped the issue, the ministry also became less aggressive. Despite these powers, the LDP has shown that it is vulnerable to the influence of other actors; once the newspapers turned their criticism from TV Asahi's transgressions to the LDP's intervention in private matters, it stopped pressing the issue.

During the election campaign, the media had functioned as a "watchdog" as described by Susan Pharr; from a position of independence relative to the government, it stimulated political reform for society's gain.<sup>92</sup> Television had been most effective in this role, and the Tsubaki *hatsugen* was the extreme expression of this ideal. The media's behavior concerning the reaction to Tsubaki's allegations demonstrated that it could function as what Pharr refers to as a

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<sup>90</sup> Hara, Tsuneō, *Jaanarizumu Wa Kawaru [Journalism is Changing]* Banseisha, Tokyo, 1994, p.139

<sup>91</sup> Tase, Yasuhiro, *Seiji Jaanarizumu No Tsumi To Batsu [The Crimes and Punishment of Political Journalism]* Shinchōsha, Tokyo, 1994, p.170

<sup>92</sup> Pharr, Susan J., "Media as Trickster in Japan in Comparative Perspective," in Pharr, Susan J. and Krauss, Ellis S., eds. *Media and Politics in Japan*, forthcoming, pp. 15-40

“servant” as well: its power is dependent on the government’s support, and it manipulates societal actors in order to maintain the status quo. Finally, by turning its focus on the transgressions of the LDP, it proved it could play the “trickster”: a capricious, unpredictable force evaluating all actors and debunking false claims. The servant, Pharr claims, promotes public quiescence, while watchdog spurs reform and the trickster elicits public response and strengthens democracy. With a media that shifts rapidly among all three roles, it will be difficult to judge its true effect on society.

The single most revealing aspect of the political incident is the fact it dissipated without leaving anything behind. The public debate over Tsubaki’s statement and the government’s involvement focused on issues that were ostensibly of vital importance to the media and government, including the limits of freedom of speech and the state’s right to interfere in industry policy. Yet when the LDP ended its pressure, these debates simply ceased, unresolved.

As when Sherlock Holmes found the most telling aspect of a crime was that the dog in the night-time did nothing at all,<sup>93</sup> the most significant factor in this affair may be that despite the involvement of these major concerns, nothing at all changed afterwards. If they had been sincere worries, it is likely the debates would have continued past the first day of November. Instead, they stopped suddenly, as if they had only been justifications to challenge or defend the political and media industry status quo and were no longer relevant after the situation changed. The Tsubaki *hatsugen* incident ceased to have any public meaning when the LDP abandoned its inquiry. This suggests that the issues driving it were not really the ethical questions of freedom of speech or the future of news coverage, but more mundane goals. It seems likely that journalists were accurate in their assessment that the tumult was only an extension of a political turf battle caused when the LDP attempted to reassert its influence.

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<sup>93</sup> Doyle, Arthur Conan, “Silver Blaze”

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