

**“Conceiving new urban commons”(II):
The proposal of legal and institutional change
in the property/ownership regime in Japan
(Preliminary summary for the full paper)**

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Abstract:

Following up the presentation delivered at the First Thematic Conference on Urban Commons in Bologna in 2015, this paper deals with more categorical and institutional aspect of the needed reform in the Japanese property/ownership regime.

In order to cope with depopulating and aging society more positive creation of urban commons should be a challenge. In the Japanese civil code established in the late nineteenth century two clauses were stipulated and effective today on iriai or communal ownership, usually applicable to forestry or fishery. In the academic world this reality in the field has been interpreted as the same way corresponding to the old German legal concept of joint communal ownership, Genossenschaftsrecht or Gesamteigentum. That was translated into the Japanese word, “sou-yu”, as a legal technical term. Although our research still attaches this term to a new reforming concept of ownership regime, titled “contemporary sou-yu”, effectuating and supporting urban commons. It is not our intention to resurrect the old traditional iriai today. Rather we try to fit it for the present and needed situations in the future. There are de facto urban commons trials in Japan. What we need is a comprehensive legal support for creating such urban commons.

This scholarship not only addresses Japanese situation but contributes to reconsidering the property/ownership concept and rendering options for the

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societies in transition to so-called modernisation.

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Keywords:

property ownership regime, modernisation, ageing and depopulating society, “contemporary sou-yu”, new urban commons

1. Introduction

Coming into this century, polar extremes of application of property ownership have happened in Japan. One is exhibiting urban renewals creating good ambience for global businesses in the metropolis fully utilizing securitisation and also becoming elaborate in the form of grouping for better undertakings of not only land owners but also related stakeholders. (See Exhibits 1 and 2) The other is tending conspicuousness of unoccupied premises, houses and rooms, mostly in the rural districts, but there are becoming more cases surrounding metropolitan areas. (Exhibits 3 and 4) Most of the reason of abandoning responsibility of ownership is due to rapid demographic changes in terms of aging and depopulation. However, under the assumption of modern absolute and individualistic property system in Japan, people do not like to release the right of title easily. Abandoning ownership but leaving grid-locked situation appear just as the Michael Heller's “the tragedy of anti-commons” goes.

Exhibit 1: Skyscrapers in the business district, Marunouchi, Tokyo.



(Source) The Council for Area Development and Management of Otemachi, Marunouchi, and Yurakucho

Exhibit 2: Ambience of the street in Marunouchi



(Source) The Council for Area Development and Management of Otemachi, Marunouchi, and Yurakucho

Exhibit 3: derelicted houses in rural Japan



(Source) Japan Organization for Internal Migration

Exhibit 4: Started vacancy in the metropolitan housing complexes

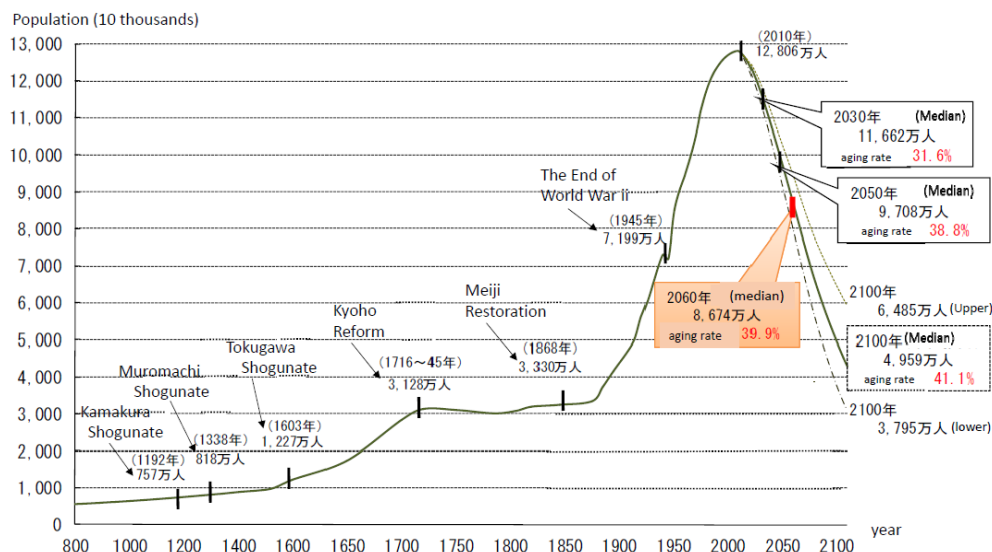


(source) Urban Renaissance Agency

From year 2010 Japan's population began to decrease and the country will face squeezing its population by 25% less than the peak at 2050. At the end of this century the population would stand at less than half of a hundred million and in a lower estimated case it would state around one third of the peak. It will be as large as the population of the end of Edo period. (See Exhibits 5 and 6)

Therefore until the middle of this century Japan has to cope with ageing and depopulating nature of society not only in economic and sociological condition but in urban and regional space usage terms. As well as vacant houses and rooms are tending conspicuous in the regions nowadays, the same will be true at metropolitan areas more severely in the near future. In terms of coping with aging society more positive creation of urban commons supporting aged people in addition to generic existing ones should be a challenge. In order to complement this mandate overhauling the present urban institutional systems is a logical option. If these are overhauled, planning/building permits lessening outright freedom of owners' building intention should be set at the local level in conforming to the agreed plan/program upon citizen's consent.

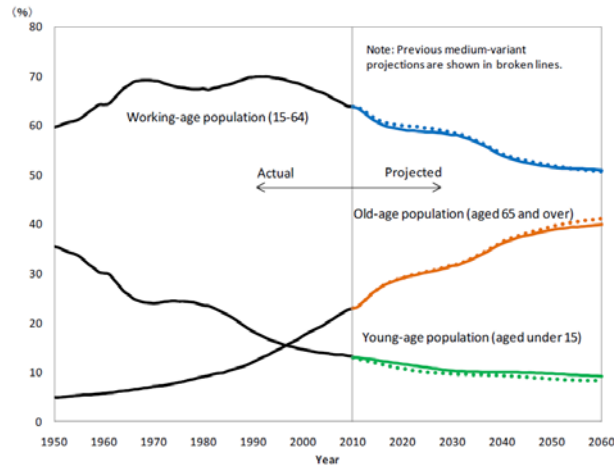
Exhibit 5: Past Trend and Long-term Projection of the Population in Japan



(Source) Cabinet Office, Government of Japan (2014)

Exhibit 6:

Trend and Projection of the Proportion of Three Major Age Groups in Japan



(Source) NIPSSR (2012)

2. Prevailing phenomena: Causes and effects

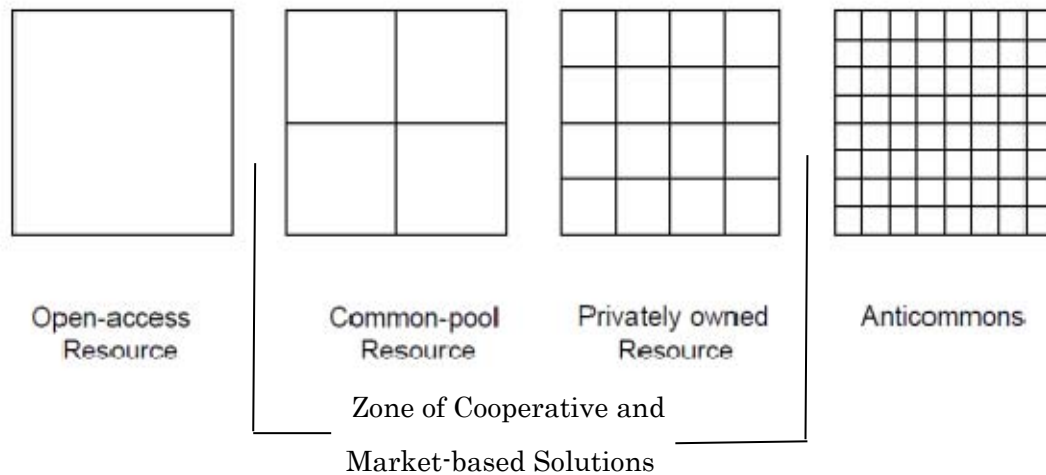
2.1 The tragedy of anticommons

According to Michael Heller's proposition (1998) about anticommons, where multiple owners are each endowed with the right to exclude others from a scarce resource, no one has an effective privilege of use, the resource is prone to underuse --- a tragedy of anticommons. The tragedy of anticommons goes because of a kind of coordination failure, in which a single resource has numerous rights-holders who prevent others from using it, frustrating what would be a socially desirable outcome. It creates a mirror image of the tragedy of the commons. (See Exhibit 7)

Exhibit 7:

The full spectrum of property – the tragedies of commons/anticommons -

Heller's classification of Resource/Ownership types in spatial term



(Source) Heller (2008)

2.2 Shuttered high streets in Japan

Under the economic downturn and suburban commercial shift, closing of shops in the high street shopping area is rampant for the past 20 years in medium and small cities in Japan. High streets tended to become out of business and retailing activities. So-called “shuttered” streets (See Exhibit 8 and Exhibit 9) are rampant. A kind of the tragedy of anticommons happens due to coordination failure among stakeholders, particularly land owners in the case of trying a redevelopment plan.

Exhibit 8: The scene of shuttered high street in Japan



(Source) A photo of the high street at an anonymous city

Exhibit 9: Diagrammatic plan of shuttered street



(Source) Author's sketched plan

3. Legacy of the past – Need of change

3.1 Property right regime in Japan

Secured right of absolute property ownership (much idealized) since establishment of the civil code in 1898. Through the post-war high-growth period, clinging attitude of holding lands in the public has been rooted because of continuous appreciation of land prices. Sharp decrease of land prices due to economic downturn from the 1990s and the policy of increasing liquidity of property transactions have made changes in business and society. Introduction of fixed-term leasehold in 1992 has made a great impact on the concept of property holding and management.

However, the modern property law system which is technically based on the absolute private ownership was introduced only one and a half century ago, landownership extremism has been exacerbated at the high-growth period after the Second World War.

3.2 Structural problems in the post high-growth period in Japan

Urban development in Japan has been executed under the condition of high growth economy with which assumption lasted until 1990s. The task in that period was to respond to the population growth to support the city lives of increasing population because of agglomeration. Government provided

mostly infrastructural improvements. At the same time cities have been flourishing under the private initiatives. In Japan legal frameworks and regulations are still based on the assumptions in the past.

What we need now in the urban policy is to change the legal framework to address unoccupied spaces problem and to provide services needed for the elderly, and to utilize dwelling people's participatory and community-based inputs to promote such welfare services and to maintain amenity for the urban life.

3.3 “Individualisation” – Mindset

Individualism has undergone hand-in-hand with modernization because people came away from the embedded community-based social structure, customs and values typically in the pre-modern feudal periods. Through modernisation, in a sense people have been free away from rather confinement as human existence. Recent phenomenon as is expressed by the coined word “individualisation”, found in the Japanese society after the high-growth period, seems to have pathological aspects. Each dweller's life has been isolated and segregated within the confinement of block of rooms which firmly secured by the Act on Building Unit Ownership created in 1962. This law was established because legal environment should address and accommodate post-war housing situations which had been provided in the way of apartments, flats and condominiums. The condominium by its origin in the Roman law means co-ownership. However, its status of right is very individualistic and divided ownership rights among owners. Demands of single-family housing coming prevalent in the postwar period have been facilitated by this provision of physical structures and also such legal preparations. Almost up until the end of last century that law addressed such challenges in the society. But the mode of housing in the manner of smaller family or sole living either by singles or elderlies affected the mindset of dwellers in terms of indifference to political, societal subjects and neighbours, in the attitude of whatever happens except infringing his or her family and/or him or herself. Another material reason for fixing such mindset is the Japanese peculiar work-life inclination. As much discussed in

the subject of Japanese modern society since Meiji period is the company- or workplace- orientation of people's mind, particularly men, traditionally family-earners, but as much as women are, however the latter tended to participate industrial workforces since 1980s.

According to the demographic change, the proportion of dependents, mostly the elderly and children, will be larger and larger. Because more personal care will be needed, such jobs should be burdened both by the official institutions via the public services or insurance system but accommodated by voluntary help and neighbouring attention, however the situation depends on either being hospitalized or living on by himself/herself. However the author observes symptom of realizing these necessary change amongst people including young people, particularly after the big earthquake in the 1990s in Kansai, again in 2011 in Tohoku.

In this regard the author sides with much contemporary communitarian thought. After the debates between liberals and communitarians in the 1980s it seems that they can share several points such as basic human rights, political independence, non-discrimination, etc, albeit they differ with starting points where the former begin with rights and justice, while the latter make much of the common "good" shared among inherently joined community. As a communitarian my position takes much of policy-oriented approach which should be built up from the bottom of the society. Although upper government/administration should be instrumental, they will not be the sole solving agent of the society. Intermediaries, such as commons associations, co-operatives, NPOs, potentially social enterprises are the candidates of governance organisations.

Neighbouring commons would appear to the scene and the topic of the day. Or care/share/fair society will be a mandate.

3.4 How to alter the system

Talking about cities of Japan, they have been developed along with the

guidance of the government, pursuant to certain national/urban development plans designed based on the creation at days of the high growth period. All the legal framework/working systems are accommodative with economically expanding days. Although the measure of government decentralization had been undertaken pursuant to the change of the Local Autonomy (Government) Act and related laws enacted in April 2000. Roughly to say, local governments eventually were endowed with the function of local government affairs in lieu of central government. However, tax resource/authority has yet been transferred to the local government sufficiently.

In the area of civic construction or development field huge legacy of legal structure still dominate. In order to change the system one has to start with the alteration of City Planning Act and related laws whose numbers are extended to hundreds. Main points to be undertaken are establishing a city master plan which is to be created by collaborative works with stakeholders, namely inhabitants, planning and building professionals, and public administration with endorsement by the city council. Then after enactment every development activities (any change of present physical stock of the city) should be reviewed and must be permitted by the city office administering the whole process. In the present law there are mandatory items of master plan making, but they are real master plans defined as above, just a nationally uniform plan that does not reflect each specific situations. Overhauling this area of laws are badly needed in the way that a law could fundamentally reorganize the present system.

4. The case of Manazuru Town

There are attempts to change the city's physical structure and scenery through the enactment of by-laws prepared by the city council. This paper introduces the case undergone at a small fisherman village within the reach of 2 hours train travel from Tokyo.

The profile of Manazuru Town

- A small peninsular in Kanagawa Prefecture: two hours travel from Tokyo
- Population: 7,552 (as of 2016)
- Area: 7.0km²
- Industry: fishery, quarry, agriculture(orange)

At the time of bubble economy in Japan in the latter half of 1980s this area was targeted as a location of resort condominium because easy reach from metropolis and neighbouring to famous Hakone, Izu and other spots. Inhabitants were wary of being targeted by outside parties. They started to make sure with their regional resource findings and identity.

Exhibit 10: View of Manazuru harbour



(Source) Manazuru Town

Exhibit 11: Fishermen at ease



(Source) Manazuru Town

Exhibit 12: By the street of Manazuru



(Source) Manazuru Town

Exhibit 13: Design codes for Manazuru



(Source) Manazuru Town

Followings are the result of their efforts:

1991 The movement started for establishing town's own by-laws.

Learning by doing for self-made 8 standards by inhabitants with scholars and professionals including Igarashi's team

Struggles with Kanagawa Prefecture (having supervising authority to lower townships)

Features: Introduction of Manazuru design codes reflecting Christopher Alexander's pattern language

8 standards: place, grade, scale, harmony, material, ornament, community, view

1994 Finally the by-laws were stated and had been endorsed by the town council

In order to cope with depopulating and aging society more positive creation of urban commons should be a challenge. In the Japanese civil code established in the late nineteenth century two clauses were stipulated and effective today on iriai or communal ownership, usually applicable to forestry or fishery. In the academic world this reality in the field has been interpreted as the same way corresponding to the old German legal concept of joint communal ownership, Genossenschaftsrecht or Gesamteigentum. That was translated into the Japanese word, "sou-yu", as a legal technical term.

Although our research still attaches this term to a new reforming concept of ownership regime, titled "contemporary sou-yu", effectuating and supporting urban commons. It is not our intention to resurrect the old traditional iriai today. Rather we try to fit it for the present and needed situations in the future. There are de facto urban commons trials such as Manazuru, and other outstanding examples such as Marugame-machi shopping street in Takamatsu City and other cases mentioned at my other opportunities. What we need is a comprehensive legal support for "contemporary sou-yu" through the efforts of establishing laws compatible with these principles.

5. Ending words

This paper starts from describing the present situation and ongoing trend into deeply aging and depopulating nature of the country. What we need is changing our mindset conforming to the high growth period.

At the same time what we want is overhauling legal and institutional systems. For the years Professor Igarashi, lawyer and legal professor, proposed the change of Urban Planning Act and make an effort to enact overarching “contemporary soyu” legislation (Igarashi , 2013) which puts a base for formal joint-ownership concept in the ownership law in Japan.

It is high time and might be the last chance to fundamentally change the system by the people’s initiatives rather than depending on bureaucracy in order to cope with this very new challenges that the Japanese have not experienced.

This scholarship not only addresses Japanese situation but contributes to reconsidering the property/ownership concept and rendering options for the societies in transition to so-called modernisation.

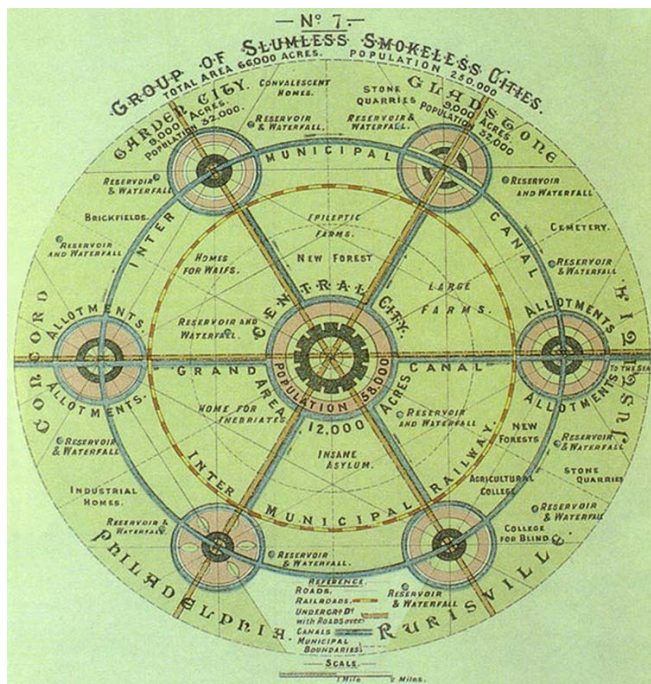
Appendix: Revisiting Ebenezer Howard’s “Garden City”

From the vantage point of contemporary “sou-yu” it is worthwhile to go back to Ebenezer Howard’s garden city concept. This paper encloses revisiting of garden city as an appendix. Garden city concept has mainly three principles. The first is that the land of a garden city is entirely bought and kept by a limited dividend company which is created by a group of people with funds collected by issuing bonds. Rents as revenues for the company eventually return to the garden city as a whole. The development value would pass to the entire community. The second point is that the countryside surrounding the city is kept perpetually as original agricultural lands, not to be urbanized. The third one is that when the garden city would reach its planned limit, another would be started at a short distance away. Each would also be connected to the other by a rapid transit system, thus giving satellite cities surrounding the mother city. Howard called this system a Social City.

From evaluating point of view you can have the following. The first is that Howard realized that through building Letchworth and Welwyn Garden City, the city of this concept could be feasible in economic terms. Namely development of land greatly enhanced its value. The scheme turned the speculators’ gain into the community benefit through the original company’s constitution. The second is that he clearly had in mind that the purpose of

constructing garden cities is to create the co-operative society . The third is that in order to solve social problems it is important to employ knowledge and technology for merging city area and regional country with autonomy in terms of energy and resources. His concept has insightful influence to make the way for aging society of Japan. He proposed communal land holding using the trust mechanism even in terms of ordinary company governance, much later than his lifetime resulting in genuine “trust structure”. The whole land holding at the garden city in the case of Letchworth was trusted to Letchworth Garden City Corporation, a public limited Company. Another aspect which is noteworthy is the structure and function of that corporation. He proposed the concept as “semi-municipal enterprise”. It needed a fairly long period of time to this transformation and finally became to have a status of “Letchworth Garden City Heritage Foundation”. After swinging between a public orientation and a private inclination it finally follows Howard’s intention. His choice is neither public nor private but independent and economically viable institution.

Exhibit 14: Howard’s “Garden City”

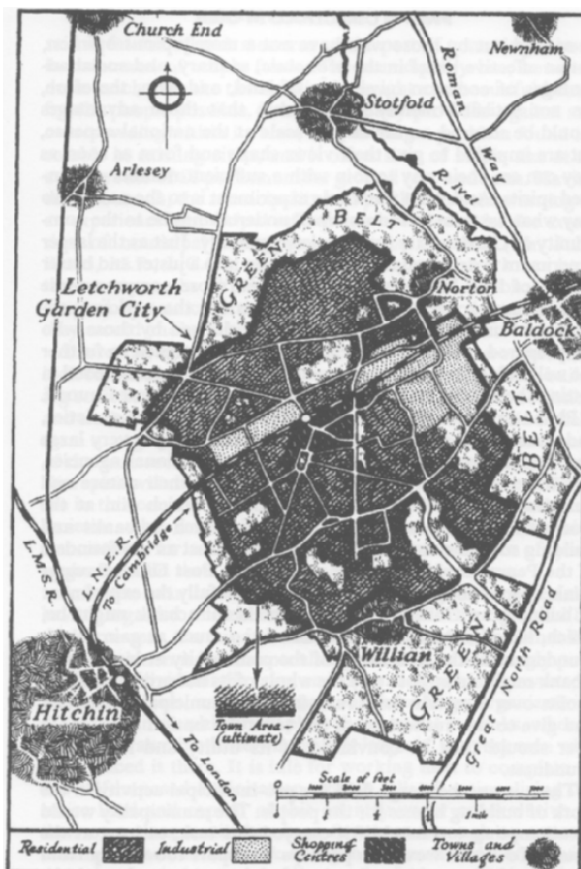


(Source) From Howard’s *Garden Cities of To-Morrow*

Exhibit 15: The first garden city: Letchworth, the brief history

1. Ebenezer Howard (1850-1928) born in London, knighted in 1927
2. (1871) went to Nebraska in the USA, stayed in Chicago
3. (1876) came back to Britain
4. (1898) published "To-morrow: A Peaceful Path to Real Reform"
5. (1899) founded Garden Cities Association
6. (1902) renamed and published "Garden Cities of To-morrow"
7. (1903) Letchworth started.
8. (1920) Welwyn Garden City started
9. (1946) created New Towns Act of 1946
10. (1965) republished "Garden Cities of To-Morrow,
with Osborn's preface and Mumford's introduction"
11. (1995) created Letchworth Garden City Heritage Foundation

Exhibit 16: Letchworth in 1920s



(Source) From Howard's *Garden Cities of To-Morrow*

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