

SYMPOSIUM/CONFERENCE

Discussing ‘Inclusion’ in Shrinking Societies: The Case of Japan

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Today’s Japan is coping with social issues that at times require a radical re-thinking of the way that law and politics operate. A rapidly aging population (super-aging society) and the depopulation of neighborhoods are just some of the many developments that are based on the phenomenon of shrinking society. Japan is a pioneer with regard to this important phenomenon.¹ Which answers have been formulated by Japan’s legislators and courts? How should we assess these answers and what are the challenges ahead?²

Japanese society is shrinking with respect to population, economic activities and space. In this unprecedented context for one of the world’s largest economies, it is important to take into account an emerging new paradigm that requires a fundamental rethinking of the framework established to support growing societies. This also was the premise for the development of public law. Modern public law reduces the individual to an abstract level, consolidating these individuals into a larger context that is then adjusted to market principles focusing on growth. This is no longer sustainable in a shrinking society which requires a more concentrated approach to the individual. This individual – member of a community – should be understood in a multitude of capacities and attributes essential for a more detailed consideration when developing policies to cope with challenges of today’s society.

In response to these challenges, a number of academics active in various disciplines such as law (public law, private law, labor law and social security law), political studies, economics, history, pedagogy and psychology

1 See for example N. MURAMATSU/H. AKIYAMA, Japan: super-aging society preparing for the future, *The Gerontologist* 51(4) (2011) 425-432.

2 This conference is taking a deeper look at the issues debated in the international symposium *Responsibility and Accountability in Japan after the 1990s: A Legal Perspective* (symposium at the KU Leuven, 24 September 2010), See D. VANOVERBEKE/N. KADOMATSU, Responsibility and Accountability in Japan after the 1990s: A Legal Perspective, *ZJapanR/J.Japan.L.* 31 (2011) 1.

have set up a joint research project to tackle the issues of *care*, *inclusion* and *community* in Japan and to analyze the process of change related to law and policies in Japan's approach to its societal changes. The following three articles will focus on the second issue of the inquiry – inclusion – by analyzing legal developments intended to cope with the challenges of shrinking society. Observation of the path taken in the past and anticipation of the future are important approaches for scholars focusing on dynamic reforms of policies, law and jurisprudence involving measures to tackle the issue of shrinking societies.

The first article by *Narufumi Kadomatsu* (Kōbe University) addresses the 2014 Ōsaka City local ordinance which marked Japan's first attempt to introduce a legal scheme of Business Improvement Districts (BID). Kadomatsu approaches inclusion in the context of Japan as a shrinking society from the point of view of the reforms of public law in urban policy. Increased levels of area management activities in Japan's urban policy can be observed and are a reaction to the third and present context – shrinking society – of area management (the two previous contexts being first urbanizing society and then urbanized society). The current challenge focuses on how to improve quality of life. Local governments play an important role by collecting money, but this is only for the expenses needed for the management of *public* facilities. The goal of BID is to institutionalize public support for area management activities including public and private entities as these cannot be separated when considering the quality of life in a community. Kadomatsu considers this tension between the public and the private spheres. Today's social context of public law is different from the context of urbanizing societies where the public nature of city planning policy was quite obvious. Underuse of property in a shrinking society is a challenging issue but whether it belongs to the public or to the private realm is not clear. This tension goes some way to explaining the cautious approach of Japan's legislators to the way that public support is provided to the development of neighborhoods in Japan. Is Japan headed toward a US model of development that results in the proliferation of gated communities and therefore fosters exclusion more than inclusion?³ Some signs point in that direction, but Kadomatsu stresses that it is too early to draw the conclusion that exclusion is the necessary effect of the new role of public law in the field of area management dealing with shrinking society.

3 One of the discourses that can be observed in this respect is the issue of crime prevention. See for example S. E. OLAJIDE/M. LIZAM, Gated Communities and Property Fencing: A Response to Residential Neighbourhood Crime, *British Journal of Education, Society and Behavioural Science*, 13(3) (2016) 1–9.

In the second contribution, *Jun Nishimura* (Kanagawa University of Human Services) addresses the changes in Japan's welfare systems. Nishimura notes important changes towards a more integrated community care system. He has distinguished four phases in the long-term development of the social welfare system in Japan. The fourth and most recent stage, starting at the dawn of the 21st Century, is less top-down in the sense that there is less interference by the state in providing personal social services. Personal social services are provided to the needy regardless of their level of income according to contracts between service providers and users. This is an important change from the past where the law was construed initially (until the end of the 1950s), to regulate placement of poor people in institutions; before secondly (until the end of the 1970s), to regulate services beyond poverty relief; until finally (until the end of the 1990s), to regulate a more universal offer of a wide array of services for the needy in a developing context of decentralization. In his contribution, Nishimura explains that the three types of social welfare services – those provided by the government (placement and direct services), by private entities (contracts) and by local residents (cooperation) – correspond to the theory of “new civil society”⁴ which, according to the author, entails a shift from a government and contract centered approach to mutual assistance between the members in the community. This idea developed in the 1990s and signified an important departure from the past. The changing role of law with regard to social welfare in Japan today reflects a shift from regulation to support. Law should indeed support the dynamics of and interaction between the main community stakeholders. The transition does not therefore require the government to enter into contracts with individuals, but at all times a pallet of these three elements can be found in the social welfare system. Yet, it is clear that the top-down relationship, centered around government service provision, is giving way to a more horizontal relationship where the main actors are various public and private service providers and the users themselves.

The final article addresses an important and overarching problem related to inclusion in a changing context: the question of nationality. How is Japanese nationality acquired? How exclusive a right is this? *Hiromichi Sasaki* (Tōhoku University) focuses on the changes in Japan's Nationality Act and the related 2008 Supreme Court Decision. As is well known, the Nationality Act of Japan of 1950 stipulates *jus sanguinis* as its basic principle. The only other way to acquire Japanese nationality was through naturalization, but the administration involved in this procedure is complex and the outcome unpredictable. In 1984 a revision of the Nationality Act opened the path to acquisition of nationality by means of legitimation for a child born

4 See for example J. KEANE, *Civil society: Old images, new visions* (Hoboken, 2013).

in wedlock and acknowledged by a parent at the time of the birth, but what then is the case for a child born out of wedlock and acknowledged by the Japanese father only after birth? Moreover, what if the parents remain unmarried? According to the Nationality Act, naturalization would have been the only way to acquire the Japanese nationality. In such a case, the Supreme court in 2008 decided that this is a violation of Article 14, para. (1) of the Constitution (non-discrimination), also acknowledging the changing realities of family life and the progressing internationalization of Japanese society. Is the recent jurisprudence related to Japan's Nationality Act heralding a shift from an exclusive to an inclusive society? It is probably much too early to draw this conclusion, but a thorough understanding of the legislation and jurisprudence related to who is allowed Japanese nationality is certainly essential in understanding measures to cope with the challenges of shrinking societies. In contrast with area management and social welfare, the steps related to nationality taken over a longer period of time are much more modest. Yet, Sasaki rightly acknowledges the important impact of the constitutional limitations on legislative discretion, which is not only relevant when analysing the dynamics of law in Japan, but also when observing politics in today's Japan.

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