The Formation of Regional Spaces by Agreements

Is it a Valid Approach to Regulate the Shape of Future Communal Spaces Based on (Majority) Consensus Among the Stakeholders?

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I. THE ACT ON SPECIAL MEASURES CONCERNING URBAN RECONSTRUCTION (URA) AND THE CITY PLANNING ACT (CPA)

The Act on Special Measures concerning Urban Reconstruction (hereafter, the "Urban Reconstruction Act" [URA])[1] is a law that seeks to "enhance urban functions and improve the residential environment in cities ('urban reconstruction'), and ensure disaster-preparedness measures in city spaces (Art. 1)". Enacted in 2002, this piece of legislation emphasized the creation

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This work is based on the presentation made by the author at KU Leuven – Kōbe University Law Faculty International Symposium, "Regulation and governance in an interdisciplinary perspective" (6 March 2020). This work was supported by JSPS KAKENHI, Grant Numbers 18H00796 & 19H01448. The author would like to thank Gengo *(https://gengo.com)* for draft translation and Editage *(www.editage.com)* for English-language editing.

1 *Toshi saisei tokubetsu sochi-hō* [The Act on Special Measures Concerning Urban Reconstruction], Act No. 22/2002.

of a legal framework for deregulation and monetary easing. However, successive amendments have brought about changes in the scope of the law.

In general, issues of urban planning in developed countries have shifted their focus from accommodating urbanizing societies, wherein the city space grows, to accommodating urbanized societies, wherein industrial and cultural activities create a common urban sphere and cope with cities facing a shrinking population. In 2014, the system of the Location Improvement Plan was incorporated into the URA. The system sought ways to foster a "compact city" as an antidote to the shrinking city. Furthermore, the various agreements discussed later in this paper were set forth under the same act. Today, these agreements have led to the URA being considered a comprehensive law on urban planning.[2]

The City Planning Act (hereafter, the "CPA")[3] was established in 1968 as a core piece of legislation for urban planning in Japan. Yasuo HARADA remarks that the CPA and URA constitute two parts of the whole currently responsible for Japanese urban planning.[4] He compares both acts using the following table.

Table 1: Yasuo HARADA's comparison of URA and CPA.

URA		CPA
Urbanized society	↔	Urbanizing society
Active	↔	Passive
Project-oriented	↔	Emphasis on the use of land
Introduction/guidance oriented	↔	Regulatory
Emergency measures	↔	Long-term and gradual measures

Several amendments to the URA since 2009 have led to various agreements being incorporated into this legislation. Of these, this paper looks at those agreements that have focused on outcomes achieved through ideas and consensus brokered between landowners and stakeholders with regard to the micro-level dimensions of creating local communal spaces. These agreements are the "Urban Reconstruction Pedestrian Route Agreement," the "Facility Location Guidance Promotion Agreements," and the "City Con-

2 Y. HARADA, *Toshi saisei tokubetsu sochi-hō ni okeru"kanri" ni tsuite* [On the Concept of "Management" in the Act on Special Measures Concerning Urban Reconstruction], *Shukutai no jidai ni okeru toshi keikaku seido ni kansuru kenkyū-kai hōkoku-sho* [Report of the Research Group on City Planning System in the Era of a Shrinking Society], Tochi sōgō kenkyū-sho [The Land Institute of Japan] 2017, 85, 86.

3 *Toshi keikaku-hō* [City Planning Act], Act No. 100/1968.

4 HARADA, *supra* note 2.

venience Increase Agreement". Below, we give a brief introduction to the mechanisms behind these agreements[5] and then consider the implications of the use of these agreements as a means to broker consensus among stakeholders towards the formation of local communal spaces. Thereafter, we consider the use of such agreements from the viewpoint of participation.

1. Urban Reconstruction Pedestrian Route Agreements

The 2009 amendments to the URA enacted the Urban Reconstruction Pedestrian Route Agreement *(Toshi saisei hokō-sha keiro kyōtei).* The agreement stipulates the methods to improve and manage urban pedestrian routes and share the burden of costs to be borne by landowners and other stakeholders (namely, landowners and parties with surface rights and lease rights).

This form of agreement is utilized in conjunction with urban planning projects to pursue the creation of pedestrian decks and underground walkways that adjoin and connect to train station buildings, commercial facilities, and office buildings. Entering such an agreement allows an explicit statement on the sharing of costs and responsibilities surrounding the creation and maintenance of urban pedestrian routes and walkways. This helps in stipulating before actualization, through consensus among the parties, the division of expenses, cleaning, upkeep, crime prevention and security, and other measures.[6]

Concluding this agreement requires the consensus of all the landowners and stakeholders implicated in the site and the approval of the municipal mayor. Before approval, the proposed agreement is published and posted for public review, and the stakeholders are free to submit written opinions regarding its content. The mayor, after reviewing whether the proposed agreement is in compliance with the regional development policy set forth under the URA, approves or rejects it. If approved, the finalized measure is once again published and posted for public review.

A key aspect of this system is that the agreement recognizes the succession of obligations therein. In other words, the Urban Reconstruction Pedestrian Route Agreements continue to apply to subsequent or successive landowners within the zone in question, even if they became landowners only after the agreement was published. This means that if landowners

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5 The URA stipulates other forms of agreements, such as the agreement on urban reconstruction security facilities and the agreement on the management of vacant lots. This paper does not deal with them. The former rather focuses on disaster preparation. The latter is a "vertical" agreement between an administrative entity and land owners, not a "horizontal" argument among landowners.

6 MINISTRY OF LAND, INFRASTRUCTURE AND TRANSPORT AND TOURISM, *Kanmin renkei machi zukuri no susumekata* [How to Promote Public-Private Partnership in Town Building] (2019) 59, *http://www.mlit.go.jp/toshi/common/001283644.pdf.*

change because of financial or other circumstances, the new owners still carry the obligation to maintain pedestrian routes[7, 8]

One example of the Urban Reconstruction Pedestrian Route Agreement is the underground walkway at *Hakata Ekimae-dōri* in Fukuoka City. An underground walkway was installed to ease the above-ground traffic congestion and create an underground pedestrian network in front of Hakata Station. Given the narrow breadth of above-ground pedestrian walkways and the inability to install entryways and exits above the surface, an entrance/exit had to be created inside an underground concourse operated by Japan Railway Kyushu Company and on the grounds of a private bank. This case is often cited as an example of the need to have a succession of obligations in these agreements.[9]

2. Facility Location Guidance Promotion Agreements

An amendment in 2018 to the URA led to the incorporation of the Facility Location Guidance Promotion Agreements *(Ritchi yūdō sokushin shisetsu kyōtei)*. The agreements have been nicknamed "the Commons Agreements". They seek to set forth measures for the comprehensive creation and management of facilities ("location improvement facilities") by arriving at an agreement between all the landowners and stakeholders. Specifically, it focuses on facilities that contribute to the greater convenience of residents and visitors and people who stay overnight, including elements such as public spaces, advertising towers, trees, and other fixtures therein. This agreement is only possible in city-function-inducing districts and habitation-inducing districts designated in the Location Improvement Plan.

The provisions of Urban Reconstruction Pedestrian Route Agreements apply mutatis mutandis as above: approval of the municipal mayor and public posting is required, with the same being needed for measures of succession.

This system is built around finding ways to reuse vacant homes, as well as minimally or unused plots resulting from "urban spongification[10] *(Toshi no*

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7 *Supra* note 6, 59.

8 The Urban Reconstruction Pedestrian Route Agreement employs essentially the same measures as those set forth in the Improved Movement Route Agreement under the Act on Promotion of Smooth Transportation, etc. of Elderly Persons, Disabled Persons, etc. (Barrier-free Act). *Kōrei-sha, shōgai-sha tō no idō tō no enkatsu-ka no sokushin ni kansuru hōritsu*, Act No. 91/2006.

9 At the time that an agreement is concluded, it is necessary that all parties involved give their consent. However, it can be withdrawn by a majority vote.

10 I am aware that "spongification" may not belong to the ordinary English vocabulary (this translation is in accordance with the White Paper on Land, Infrastructure, Transport and Tourism in Japan 2019, 55 [*https://www.mlit.go.jp/en/statistics/white-paper-mlit-2019.html*]). As explained in the text, the "sponge" metaphor is used to

suponji-ka)." The terms are meant to describe the situation wherein vacant homes and minimally used or unused plots appear for brief intervals, exhibiting spatio-temporal randomness, but which exist in relatively significant amounts in their totality.[11] A report on the above phenomenon is what led to the respective amendment. The report described how minimally or unused plots, such as plazas, green tracts, snow yards, farms, disaster preparedness warehouses, and others, could be communally used as community centers. This concept bears resemblance to the notions of "modern-day commons" or "urban commons".[12]

3. City Convenience Increase Agreements

City Convenience Increase Agreements were incorporated in the Act following a 2011 amendment. It primarily seeks to utilize spaces for area management,[13] driving greater activity and interaction in cities.

Under this system, groups of landowners and/or private enterprises promote urban renewal within the area set forth under the urban reconstruction plans to conclude an agreement for the comprehensive installation and management of public plazas, streetlights, trees, and other fixtures (hereafter "city convenience increase facilities"). Following this, they file for approval with the municipal mayor.

The methods for installation and management and the bearing of expenses are equivalent to those found in the Urban Reconstruction Pedestrian Route Agreement. However, the City Convenience Increase Agreement carries the following features: (1) it does not require all the landowners to be a party thereto; an approval can be obtained, provided a "reasonable number" of them participate; (2) it does not set forth measures for succession; and (3) the law does not explicitly define the purpose of this agreement, and there are various types of city convenience increase facilities.

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show that the cities are becoming porous. The metaphor has gradually become more common in Japan since the 2010s, and today it is accepted as a technical term in the area of city planning. It is said that a similar expression exists in Spanish *(https://criticalista.com/2018/02/20/sponging-the-city/);* however, this usage in Spain seems to focus on intentionally perforating a dense urban atmosphere. The Japanese usage rather refers to an unintentional random perforation.

11 *Toshi no suponji-ka e no taiō* [Dealing with Urban Spongification], Interim Report of Subcommittee on Basic Issues in City Planning, 10 August 2017, 3; *https://www.mlit.go.jp/common/001197384.pdf.*

12 *Supra* note 11, 18.

13 The phrase "area management" *(eria manejimento)* has been a buzzword in Japanese urban policy and city planning since 2005. See N. KADOMATSU, Inclusion and Seclusion in Area Management Activities, ZJapanR/J.Japan.L. 45 (2018) 1.

II. Agreements as a Means to Form Local Communal Spaces

In the following section, we look at the use of agreements discussed in section I and examine them from the viewpoint of justifying the formation of local communal spaces via consensus among stakeholders.

1. Shifts in Urban Planning Issues and the Formation of Agreements

The URA emphasizes agreements based on the following interpretation of the way urban planning issues have changed. This is a quote from a commentary on the 2018 amendment to the same law:

"The main purpose of urban policy during periods of population growth is preventing sprawl due to development in a growing private sector; it has generally revolved around 'negative planning', whereby regulations are enforced on development and architecture. With a declining population, the 'urban spongification' effect has caused prevailing 'negative planning' modalities to no longer be effective. If we look at regional cities, they are increasingly emphasizing 'positive planning' approaches whereby, despite their small scale, they actively seek to foster use of land, such as through the creation of local communal spaces. To achieve this, municipalities are being called on to shift towards setting forth plans and standards by which, through the passive control of development and construction, coordination and incentives can be used to actively back and encourage community-building initiatives and community-building firms".[14]

In this way, the act emphasizes the importance of micro-level responses to population decline and "urban spongification", such as "actively emphasizing […] the creation of local communal spaces […] in spite of their small scale", and the private initiatives leading to the creation of "community-building initiatives and community-building firms", with these being "actively backed" by public actors.

The reason the agreements are used in particular as a part of the sundry methods to foster the dynamic encouragement of privately led initiatives is that the parties to the draft are able to explicitly set forth their rights and obligations in advance. This can be seen in the following remark made by a bureaucrat who participated in the drafting process of the act.

"As seen in the management of privately owned roads, where the rules concerning management and stakeholders' rights and obligations are to a certain extent clear by custom, there may be little need to go so far as to conclude a codified agreement. However, when launching new initiatives,

14 Toshi Keikaku Hōsei Kenkyū-kai [Research Group on City Planning Law], *Akichi akiya o katsuyō shita toshi no suponji-ka taisaku Q&A* [Q&A on Dealing with Urban Spongification by Utilizing Vacant Lots and Vacant Houses] (2018) 10.

such as those aiming to improve the quality of community buildings or foster the installation of new facilities or fixtures to meet local needs, it is of great interest to the stakeholders therein to explicitly set forth in advance terms such as the scale and structure of the facilities, what sort of users make use of them, and the obligations of each party thereto, such as the provision of land and the bearing of expenses. Leaving these unclear can increase the risk of disputes occurring as a result of differences in opinion between stakeholders after the project goes into effect".[15]

While concluding agreements carry with them the concomitant costs associated with deliberation, codifying the measures as text, and forming a consensus, the agreements are effective in terms of being able to launch measures thereafter in a more effective and smoother fashion by using the final agreement as a master set of rules. Therefore, they can play a critical role in maintaining the quality and sustainability of communal spaces. With regard to the Facility Location Guidance Promotion Agreements and City Convenience Increase Agreements, the URA does not explicitly provide for the public nature contents of the grounds in question. The embodiment of publicness is left to the initiative of the stakeholders.

In this way, the various agreements arising from the URA could be said to focus on the formation of micro-level local communal spaces in particular, the importance of which is only growing in the field of urban planning. By doing so, the agreements give landowners and other stakeholders a platform for voicing their intent and reaching a consensus. Concluding an agreement better clarifies the intentions of landowners and other stakeholders in advance and helps the measures therein to more likely be realized.

In contrast, a given urban space now and in the future continuously faces complex and stratified relationships among stakeholders. Another issue that arises is the question of how to justify the claim that consensus among parties to an agreement affects the interests of other stakeholders.

2. Comparison with Building Agreements

Of the agreements discussed in the above section, Urban Reconstruction Pedestrian Route Agreements and Facility Location Guidance Promotion Agreements set forth measures for the succession of obligations. This system is modeled after the Building Agreements set forth in the Building Standards Act.

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15 Y. ŌHASHI / T. SUZUKI, "*Toshi no suponji-ka taisaku" to arata na kyōtei seido* [Dealing with Urban Spongification and New Systems of Agreements], Gakushūin Hōmu Kenkyū 13 (2019) 119, 124.

According to the Ministry of Land, Infrastructure, Transport, and Tourism, Building Agreements "seek to promote greater convenience of residential and commercial spaces". For that purpose, "when landowners and other stakeholders enter into agreements on the standards that apply to a given building (a higher standard exceeding the minimum standards set forth in the Building Standards Act), a public organ (a specific administrative agency) authorizes the above, with third-party effects, which would ordinarily not arise from a contract being included therein to guarantee the stability and perpetuity of the measures". By endowing such legal effects, the residents' initiative contributes to the promotion of "the creation of a better environment and community".[16]

The prevailing view on the legal dimensions of Building Agreements is that they act as a contract via the parties' agreement. Insofar as these are contracts, the parties thereto are bound by their provisions. However, there are ordinarily no grounds for the contract to be enforced against third parties. The Building Standards Act sets forth measures for the succession of obligations, whereby the provisions therein hold effect on the subsequent owners of land after the conclusion of the agreement. Given these particularities of Building Agreements, some are of the opinion that they function not as mere contracts but as normative and joint acts.[17] There are still others who are of the opinion that these agreements can be seen as quasi-local government ordinances.[18] These opinions (described below as the "minority opinions")[19] are somewhat problematic in terms of statutory interpretation, but they do incorporate important premises.

First, the minority opinions are presaged on the notion that Building Agreements function as "regional urban planning rules over small units". If we assume this to be the case, it leads to the question of whether it is valid to justify the creation of urban planning rules with succession to the subsequent rights holders solely on the basis of the unanimous consent of the present

16 *https://www.mlit.go.jp/jutakukentiku/house/jutakukentiku_house_tk5_000002.html.*

17 K. KAMEDA, *Kenchiku kyōtei no hōteki mondai* [Legal Issues of Building Agreements], Sandai Hōgaku 17-1/2 (1983) 1, 15; M. KOBAYAKAWA, *Gyōsei-hō (jō)* [Administrative Law (1)] (1999) 320; M. USUI, *Gyōsei keiyaku seigi* [Commentaries on Administrative Contracts] (2011) 465.

18 H. ARA, *Kenchiku kijun-hō ron*［Treatises on the Building Standard Act］(1976) 162, 195; KAMEDA, *supra* note 18, 15.

19 For a survey of the discussion, see N. ISHII, *Kenchiku kyōtei, ryokka kyōtei no seishitsu* [Legal Nature of Building Agreements and Greening Agreements], in: Y. NARITA (ed.), *Gyōsei-hō no sōten（shinpan）*[Issues in Administrative Law (New Edition)] (1990) 288–289; K. NISHIDA, *Gyōsei-ho ni okeru shijin-kan no kyōtei no ichi to kiritsu (jō)* [On Position and Regulation of the Private Agreement in Administrative Law(1)], Hōgaku Shirin116-2/3 (2019) 235, 254–263.

landowners. Yōichi ŌHASHI states that "Building Agreements are a means of realizing systematic and planned use of land by taking into account the local conditions".[20] He uses this to suggest a legislative framework in which these agreements could be interpreted in the context of integration with master plans to understand the existing process of publicly posting and publishing the proposed agreements as a method of civic participation that justifies the architectural regulations codified in these agreements and engenders outcomes in the public interest.[21]

Second, the archetypal example of a "joint act" espoused by the minority view is the establishment of a corporation or association. Building Agreements, for their part, include aspects with which "human unions" or "associations" are formed. While the law makes no explicit requirements for it in common practice, a steering committee is established by members to lend functionality to the Building Agreement. Kiyoshi HASEGAWA states that "Building Agreements are concluded based on the voluntary intent of each party thereto, so they are perforce treated as contracts, but after the formation of a group or organizational relationship, the parties thereto are continuously bound to a status requiring them to comply with the common rules established by said agreement". In this way, he highlights how Building Agreements function to codify organizational groupings and define relationships among members.[22]

This debate on Building Agreements can be variously thought of as (a) having dimensions focusing on the justification of binding (future) landowners in the region and (b) justifying outcomes against other stakeholders and general citizens.

First, considering that Building Agreements create rules for a given district or zone and codify how the local space is to function, does this not necessitate justifying outcomes in the interests of stakeholders and general citizens other than landowners (b)?

Second, is it not the case that agreement by contract does not suffice as a basis for justifying binding landowners (a)? Considering the succession of obligations and the formation of human unions, we need an explanation that leads to the premises formulated in (b): could (b) not be used as a justification for (a)?

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20 Y. ŌHASHI, *Kenchiku kyōtei no kadai to seido sekkei* [Tasks of Building Agreements and on their Legal Design], *Toshi kūkan seigyo no hō-riron* [Legal Theory of Regulating Urban Space] (2008) 117, 129.

21 ŌHASHI, *supra* note 20, 129–130.

22 K. HASEGAWA, *Toshi komyuniti to hō* [Urban Communities and the Law] (2005) 54.

The above debate on Building Agreements can generally be held to apply to the Urban Reconstruction Pedestrian Route Agreements and Facility Location Guidance Promotion Agreements, which inherit the same framework.

Takashi NODA compares the City Convenience Increase Agreements to Building Agreements, which function as a "framework for justifying the enforcement of micro-regulations through the consent of the parties thereto." Of the former, he states that "there remains a need to consider the rationale for justifying agreements, whereby the decision of a select group of landowners affects the entirety of landowners in a given region". He adds that "this is a system whereby the intent of a select group determines the shape of a given district […] yet there is no systematic method present to sufficiently justify this".[23]

This opinion should not be seen solely in the context of an argument that looks at the justification of binding forces against landowners, as discussed above in (a). We interpret NODA's argument as follows: There are insufficient grounds to justify the codification of the nature of a given district based on the intent of a few parties and application of the said rules to the general populace (b). Conversely, this also implies that it does not serve as a justification for binding the landowners (a), notwithstanding the fact that this represents only a slight infringement.

In addition, as mentioned above, compared to the Building Agreements, the City Convenience Increase Agreements do not define a specific purpose, and several different facilities are covered within their scope. In other words, the "public" character is amorphous. This raises doubts about the validity of determining the nature of a given district or zone through the intentions or motives of a select group. How should we truly think about this issue?

III. PARTICIPATION IN THE PUBLIC SPHERE

1. Allocation of Rights for the Formation of Space and the Re-emergence of Commons

Generally, the legislation regulating urban space is interpreted as a complex of rules for the allocation of titles and rights to space and land. This allocation of title is carried out via a "dual" division of space through the exercise of private ownership rights. First, given that the surface of the earth is continuous and connected, unless legislative means are used to deliberately allocate and zone it, it would be impossible to identify who owns what or to

23 T. NODA, *Tōji-sha-jichi teki seido to "kōeki" no yukue* [The system of self-regulation of the parties concerned and the whereabouts of the public good], Kōhō Kenkyū 80 (2018) 205, 211–214.

transact negotiations thereon. The law artificially divided commons to avoid the tragedy of the commons. The Civil Code stipulates that the rights to the allocated ground surface also extend to underground and airborne spaces. Laws and regulations concerning urban spaces have generally been interpreted as having a structure of binary opposition, wherein the rights arising from the allocation of space are restricted for public interest.[24]

However, this local communal spatial aspect or commons nature inherent to a space persists even after it is apportioned into a dual space, and it reappears thereafter. First, this occurs through the nature as a "place" of urban spaces. Cities are places wherein people meet and interact on a continuous basis. This interaction and interchange occur not only on public roads and in public facilities but also in privately owned shops and restaurants: that is, in a space that resides atop what is ordinarily private land. Second, when people walk the street or spend time in public spaces, the landscape and scenery they see is largely made up of the cityscape of buildings, many of which are private property. Even after its allocation as or into private properties, urban space is inevitably subject to the involvement of many people; thus, it retains the original aspect of a commons, which is nearly indivisible. Properly controlling these spaces and landscapes solely through the allocation of private rights would, at a minimum, be considerably difficult.[25]

In this way, urban spaces possess a complex and stratified nature: private rights and interests, public regulatory rules, and dimensions as a local communal space (i.e., commons). As the situation changes around a space, a commons aspect that had once been latent may reappear. In the 2000s, the landscape rapidly came to be recognized as a social issue, and "landscape interests" were widely debated in terms of jurisprudence, a phenomenon that arose as a result of the "urbanized society" reaching fruition and people showing increased interest in the landscape and economic significance therein. This led to a much heightened awareness of the tragedy of the commons in the context of landscape.[26]

Facility Location Guidance Promotion Agreements seek to prevent negative externalities such as vacant houses and the minimal use or non-use of lots due to urban spongification. In this way, the system looks to the potential of utilizing them as commons. City Convenience Increase Agreements seek

24 See N. KADOMATSU, Legal Management of Urban Space in Japan and the Role of the Judiciary, in: Rose-Ackerman / Lindseth / Emerson (eds.), Comparative Administrative Law (2nd ed., 2017) 497, 498.

25 KADOMATSU, *supra* note 24, 499.

26 N. KADOMATSU, The Tragedies of the Commons and Anticommons in an Era of Underuse, in: Kadomatsu et al. (eds.), Legal Responses to Vacant Houses: An International Comparison (2020) 61, 64–67.

to utilize space for area management that drives greater activity and interaction in cities. Both can be interpreted as a context for the reemergence of commons, in which the private allocation of space renders the commons aspect of urban space temporarily latent. However, this then comes to the fore anew through economic changes, and the new modalities for joint management and operation are set forth.

2. Participation and Public Space as a Transient Discourse

The notion of "participation" indicates an unstable concept, the boundaries of which are in a flux between "decision" and "information exchange." In this way, this perforce implies a transient discourse. If we assume that a comparatively stable decision-making system exists, the discourse on "participation" involves relativizing the decision-making system and justifying the incursion of a foreign entity.[27]

As seen above, urban space has a multi-layered nature. It is subject to private ownership rights but at the same time has apparent or latent aspects of the community-sharing attribute of the commons. For example, when rules for the formation of local spaces are created through Building Agreements, they can be interpreted as contributing to the self-determination of private property when seen from the vantage point of private ownership rights. However, when seen from the vantage point of communal space, they can be seen as contributing towards "participation" in the process of forming communal space through the actions of private rights holders. This notion of participation indicates the duality and instability inherent in a decision-making system focused on the multilayered nature of urban space.

The same structure can be found in Urban Reconstruction Pedestrian Route Agreements and Facility Location Guidance Promotion Agreements, which are modeled after Building Agreements. In the case of City Convenience Increase Agreements, which do not incorporate the succession of obligations, the issue is that the consent of a substantial majority of landowners and stakeholders can greatly affect the formation of the local communal space.[28] Given that it incorporates a certain instability resulting from the weak legal implications of this agreement, it seems suitable to interpret it from the vantage point of "participation".

Two other points bear mentioning here.

(1) Stakeholders involved in local communal spaces may encompass categories other than the private landowners of the area and landown-

27 N. KADOMATSU, *Gyōsei katei ni okeru sanka to sekinin* [Participation and Accountability in Administrative Process], Hōritsu Jihō 87(1) (2015) 14, 17.

28 See NODA, *supra* note 23.

ers/residents in neighboring areas. The nature of these spaces is implicated in a wider range of interests and relationships. Thus, this requires compatibility to be ensured at the micro-level through agreements, and at the macro-level through public city planning.[29]

(2) On the other hand, it can be problematic to overemphasize the need to regulate the process of concluding agreements and their legal effect by focusing too much on the formation of public space and the relationships therein. This is because it can impair the flexible formation of the content therein, or be of detriment to the significance and benefits that would foster the autonomous formation of order by the community.[30] The same can be said of agreements under the URA. Takashi NODA's skepticism about the validity of codifying the nature of a local space through agreements that incorporate the intentions of only a sample of stakeholders does hold validity.[31] However, inhibiting the conclusion of such agreements would ultimately lead to the formation of a regional space solely through the will of the landowners. When exploring the significance of agreements in the context of space formation, one must first consider there being multiple rules on the allocation of titles concerning space, with the reciprocal relationships of the rules also given due consideration. Only after this consideration can the ideal balance between these contrasting rules be explored.

SUMMARY

The City Planning Act (1968) serves as the foundation of Japan's legal framework with respect to city planning. However, the Act on Special Measures concerning Urban Reconstruction (2002) plays an equally important role today. The latter has been revised several times, and multiple agreement systems among private landowners have been put in place to realize the formation of micro-level regional community spaces through initiatives from and consensus among land owners and other related parties (Urban Reconstruction Pedestrian Route Agreements, Facility Location Guidance Promotion Agreements, and City Convenience Increase Agreements.)

29 M. UCHIUMI, *"Kanrigata" toshi keikaku no kōi to shuhō* [Measures and Methods of "Management Type" City Planning], Tochi Sōgō Kenkyū 26-2 (2018) 12, 16.

30 M. NORO, *Machi zukuri ni okeru shijin-kan no kyōtei to gyōsei to no kankei* [The Relationship between Private Agreements in Town Building and Administration], in: Noro et al. (eds.), *Gendai gyōsei to nettowāku riron* [Network Theory and Contemporary Administration] (2019) 189, 200–201.

31 NODA, *supra* note 23.

After explaining these agreement systems, this paper explores the following questions: (1) How are these agreement systems related to the transformation of tasks for city planning in Japan? How will they cope with the contemporary issues of population decline and "urban spongification"? (2) These agreement systems form regional community spaces that have "public" significance via the agreements of landowners who are "private individuals" (a unanimous agreement is necessary for some systems and a considerable number of landowners suffices for others). The agreements affect various stakeholders of the corresponding spaces. Additionally, for certain agreement systems, the agreement of "current" land owners binds "future" land owners. What are the justifications on which the agreements of current land owners affect other stakeholders and bind future land owners? How can the agreement systems be compared with the building agreements set forth for the Building Standards Act? (3) Is it possible to understand these agreement systems from the perspective of "participation" in the formation of public spaces?

ZUSAMMENFASSUNG

Das Stadtplanungsgesetz von 1968 bildet den grundlegenden regulatorischen Rahmen für die Stadtplanung in Japan. Daneben kommt dem Gesetz über Sondermaßnahmen für den städtischen Wiederaufbau von 2002 jedoch heute in der Praxis eine ähnlich wichtige Rolle zu. Das Gesetz ist zwischenzeitlich mehrfach novelliert worden und zahlreiche typisierte vertragliche Vereinbarungen sind zwischen Grundeigentümern geschlossen worden, um auf der Mikro-Ebene vermittels der Initiative von und in Übereinstimmung mit den Eigentümern und anderen betroffenen Parteien regionale Gemeinschaftsbereiche schaffen zu können (etwa Vereinbarungen über Fußgängerzonen zum städtischen Wiederaufbau, Vereinbarungen zur Förderung von Geschäftsansiedlungen und Vereinbarungen zur Steigerung der Attraktivität von Innenstädten).

Nachdem der Beitrag diese typisierten Vereinbarungen analysiert hat, wendet er sich den folgenden Fragen zu: (1) In welchem Zusammenhang stehen diese Vereinbarungstypen zu den geänderten Anforderungen an die heutige Stadtplanung in Japan? Wie bewältigen sie die gegenwärtigen Herausforderungen durch den Bevölkerungsrückgang und die „städtische Durchlöcherung"? (2) Diese Arten von Vereinbarungen formen regionale Gemeinschaftsbereiche, denen auf der Grundlage von Verträgen zwischen privaten Grundeigentümern eine „öffentliche" Bedeutung zukommt, da in der Regel sämtliche betroffene Eigentümer zugestimmt haben müssen (in einigen Konstellationen reicht auch eine qualifizierte Mehrheit der Betroffenen). Die Vereinbarungen haben auf Dritte Auswirkungen, welche mit den so geschaffenen regionalen Gemeinschaftsbereichen in einer anderen Art von Beziehung stehen. Bestimmte Typen von Vereinbarungen binden ferner über die vertragsschließenden Grundeigen-

tümer hinaus auch künftige Eigentümer. Das wirft die Frage auf, welche Rechtfertigung es für die Einbindung dieser und der Dritten gibt. Zudem fragt es sich, in welchem Verhältnis dieses System von Vereinbarungen zu solchen über bauliche Standards auf der Grundlage des Gesetzes über derartige Standards steht. (3) Der Beitrag diskutiert sodann abschließend, ob sich diese verschiedenen Typen von Vereinbarungen aus der Perspektive einer „Teilhabe" an der Bildung von regionalen Gemeinschaftsbereichen interpretieren lassen.

(Die Redaktion)