

How could the law avoid the tragedy of urban commons? : Socio-legal study on collaboration between Soft and Hard Law.

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Abstract

The urban landscape is much like the Commons—if the design of buildings and stores in a street is harmonious, the quality of the street improves. However, if the design of buildings is not harmonious, the dignity of the street is diminished.

Each street has its ambiance. The most important is that residents themselves recognize the local identity of their area, create local rules to preserve the landscape, and enforce these rules themselves. Soft law, and not hard law, plays an important role in regulating the quality of the local landscape.

Prior studies on Japanese urban law have focused on how we could give legal binding force to local spontaneous rules laid down by residents. On the contrary, this paper focuses on how formal law can help popularize, enforce and democratize soft law.

Through a field study of the regulatory processes of outdoor advertising regulation in Kyoto, I will identify the ideal collaboration between soft and hard law, and redefine these concepts.

Keywords: Urban Commons, Soft Law, Regulation, Community Policy and Weber

1. Introduction

The Concept of Soft Law was firstly used by International Law Scholar to refer the norm that does not have the legal binding force in the strict sense, but does not lack the legal significance and thus should be recognized as having some binding force on the fact (Dupuy 1977). Dealing with the documents like resolutions of General Assembly of United Nations or declarations of the other international organizations, which are not recognized as source of the law, they tried to give to these documents the power of norms as much as possible in order to keep the autocracy under control of international opinion (Dupuy 1990).

In contrast with such a normative concern of 1970 and 80's International Law Scholars¹, the Japanese Commercial Law and Economic Law Scholars, who begin to use this concept later while relying approach of Law and Economics, focus on the efficiency of Soft Law Regulation comparing with Hard Law's one and analyses the payoff structure under which private actors comply the Soft Law (Fujita ed. 2008).

Defining Soft Law as the norm which is not enforced by the Court or the State Institution, but on the fact has binding force to privates corporations and actors, Fujita (2008) argue that Soft Law like *lex mercatoria*(custom of merchants) and trade usage plays a key role to enhance predictability of action of other party and resole a dispute filling up State's Hard Law, that even in cotemporary society Soft Law type's Norms are increasing and their flexibility has advantage to regulate an innovative field, and that the Court should interpret the law and decide the mode of conflict resolution while considering this positive role of Soft Law if his contents has the rationality.

We, socio-legal scholars, have the concept of "Living Law (*Lebendes Recht*)" since our academic foundation was built (Ehrlich 1913). How Soft Law and Living Law differ? What is new challenging of Soft Law? Before get down to cases, we should response these questions. Ehrlich's concept of Living Law presupposes the dualism between State and Society: Living Law is spontaneous norm of the Society that will save the life of the people resisting against the oppression of State's Law. So, we can say that Living Law is people's conviction based on the tradition and not artificial product. In contrast, Soft Law is artificially selected measure by Government Bureaucrats. Administrative Law Scholar, Harada (2007), doing comparative studies with American and Germany Laws and historical study on Japanese Regulation System², emphasizes State's role

¹ Thereafter, as Shelton (2000) shows us, International Law Scholars have also engaged in empirical and sociological studies on Soft Law.

² Harada (2007) says that Self Regulation Governances are largely used in Japanese Law domains like economic, informatics, environmental, social and urban regulations. But he affirms that the rely on Self Regulation is also observed in American and Germany Regulation Systems and is not unique Japanese Legal Culture. According to him, what are different between three countries are the intensity of judicial review on Self Regulation and the mode

that decides Soft Law's type Regulation to resolve certain social issue while calculating the governance cost of the State, the specialization of control subjects and the flexible advantage of Soft Law which can escape from due process of law³.

Standing on the above distinction between Living Law and Soft Law, both Fujita and Harada clarify research agendas of Soft Law: Why did the State choose Soft Law Regulation not Hard Law's one in certain case, What points are considered in general when he decides a Regulation measure, Do his choice perform well in the real enforcement process, and Whether a Soft Law Regulation conflict with the Rule of Law and Minority's Rights or not. Such agendas are quiet new topics, not posed by Living Law Theory, to which today's Soft Law approach should address.

In this paper, we would like to discuss how Soft and Hard Law could collaborate complementally in the field of Japanese Urban Landscape Regulation.

It is recent that the Japanese Urban Landscape Regulation is developed legally. Landscape Act is enacted by the National Government in 2004. Before its enactment, it was gentlemen agreement of inhabitants or voluntary ordinance of local government, both having no legal binding force, that regulated landscape quality and construction of buildings. Thus, we had many conflicts about construction project, to which the law could not give adequate solution (Hasegawa 2009:73-). Landscape Act is formulated to give legal binding force to the landscape rules that local governments will elaborate in their council.

By grace of this Hard Law development, many local governments began to elaborate their landscape rules. However, because these rules are hard rule made by the top-down approach of the local authority not by inhabitants, it is said that the vision of landscape protection is not shared by inhabitants, the regulator applies legal rule bureaucratically without considering the locality of

of organization of membership of regulatees. Those differences are issues to which legal scholar must engage.

³ Harada don't use the word of Soft Law and forward discuss about the concept of Self Regulation and its impact on Public Law Theory. But, he says that his Self Regulation Concept is one kind of Soft Law (Harada 2007: 238).

control subjects and as a result the proper nature of the landscape is distorted.

Faced with the paradox that the development of landscape law, from no legal binding Soft Law to binding Hard Law, does not give a grafting result, we should explore the role of Soft Law which complements Hard Law Regulation and assures the adequate evolution of rules based on belief and life of local inhabitants.

Therefore, we address this question through the case study of Outdoor Advertisement Regulation in Kyoto City. Based on my field research during 5 years, we examine the limit of unique Hard Law Regulation and the ideal collaboration between Soft and Hard Law while trying to theorize each proper role.

2. Characteristics of Kyoto's Outdoor Advertisement Regulation

Before explaining the framework and the research method, we should briefly sketch the characteristics of outdoor advertisement regulation in Kyoto.

2.1 Overview of Japan's National Outdoor Advertisement Law

Outdoor advertising is what is displayed to the public at all times, or for a certain period of time outdoors. It refers to signs, billboards, posters, and so forth (Article 2, Section 1 of Outdoor Advertising Act).

Outdoor advertisements are essential elements of an urban landscape. If their design is harmonized with the ambiance of a street area, the quality of the street will be improved. However, if a shop owner displays an ostentatious sign to attract attention only to her or his store, the quality of the urban landscape is easily devalued. Other stores will want to do the same thing, and with many ostentatious signs, the dignity of the street area will be eliminated, and then the number of visitors will decrease for all stores in the area.

Therefore, the urban landscape can be characterized as the Commons (Hardin 1968). If all members of a local area use a common-pool resource and respect the rules that dictate the resource's use and maintenance, each member could obtain a sustainable profit from the resource. On the contrary, if a few members do not respect the rules and instead pursue their own short-term interests, the resource will be easily destroyed.

Given the character of the urban landscape just mentioned, outdoor

advertisement regulation is necessary to avoid the Tragedy of the Commons. For this purpose, cities in developed countries in Europe have implemented regulations—evolved from earlier ones—governing design of signs. Each store creates and displays an elegant sign that conforms to the regulation, and all the signs together improve the urban landscape of the street area.

Japan's Outdoor Advertising Act has existed since 1949. But, its main purpose was to ensure safety, such as preventing falling signs (although in a district with outstanding scenic beauty, the purpose was also to preserve that beauty). On a parallel with the citizenry's growing interest in environmentalism, the repeated revisions of the law began to focus on regeneration of the landscape. However, the effect of the regulation on regenerating the landscape is said to be very weak (Nishimura 1997).

In 2004, when the Landscape Act is enacted, Outdoor Advertising Act is amended drastically. The legislative and regulatory power of local governments about outdoor advertisements was strengthened, the integration of landscape planning and outdoor advertising regulation was ensured, requirements for administrative subrogation and removal measures were relaxed, and a mandatory registration system of outdoor advertising manufacturers was installed. Through these legal measures, the regulation system was expected to become more Hard Law type's one.

2.2 Kyoto's Regulation

Kyoto has had outdoor advertising regulation since before national outdoor advertising law is strengthen. Kyoto's outdoor advertising ordinance was enacted in 1956 to prohibit neon colors on signs. In the process of administrative guidance by Kyoto City to an advertiser, which preceded the authorization of the installation of outdoor advertising, Kyoto succeeded in allowing nationwide chain stores to change the corporate design of their signs to meet Kyoto's specifications.

In 1996, the ordinance was fully revised: in all areas of the city, the authorization to install outdoor advertising depended on aesthetic concerns. The city was zoned into five areas, and for each of them, standards of height, display dimension, design, and sign color were set. For four traditional architectural preservation districts in the city, special, strict regulations of outdoor advertising

were enacted. However, even though the regulations were consolidated, Kyoto did not take the measures necessary to enforce the regulations. Thus, illegal signs continued to exist, and most Kyoto citizens did not know of the existence of the outdoor advertisement regulation. The regulation existed on the books, but not in practice.

Using new authority granted to local governments by the 2004 Landscape Act, Kyoto has promulgated and implemented its new landscape policy since 2007. The policy limits the height of condominiums, refines the design criteria for buildings, strengthens outdoor advertising regulation, preserves landscape views, and restores ancient townhouses, called “Machiya.” Kyoto’s Outdoor Advertising Ordinance was revised in 2007 to take advantage of the new authority given by the National Outdoor Advertising Act of 2004.

The ordinance of 2007 revised the zoning districts, dividing Kyoto into twenty-one districts, with enhanced regulations for each district. This ordinance prohibited installation of outdoor advertisements on building roofs throughout the city, limited height and display dimensions for outdoor advertisements, prohibited flashing signs, and enhanced and externalized color regulation by the introduction of the Munsell color system.

Figure 1: Prohibit of outdoor advertisement on buildings roofs.

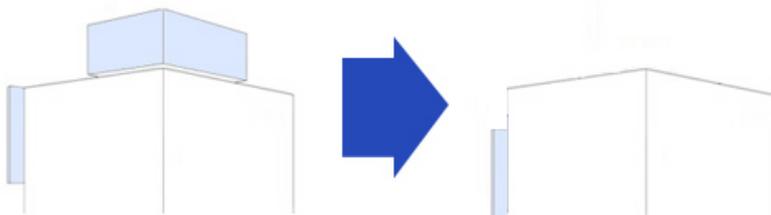


Figure 2: Limitation of display dimensions.

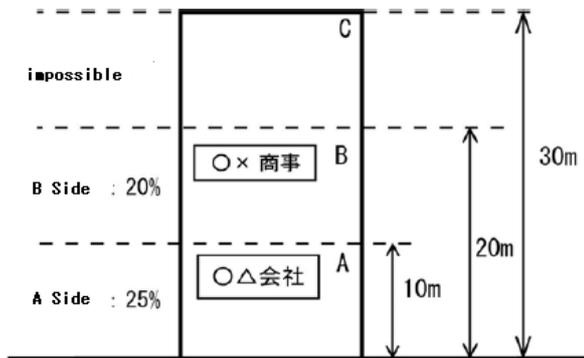
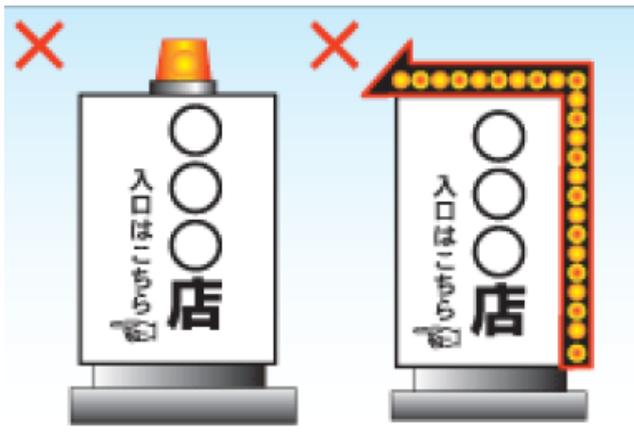
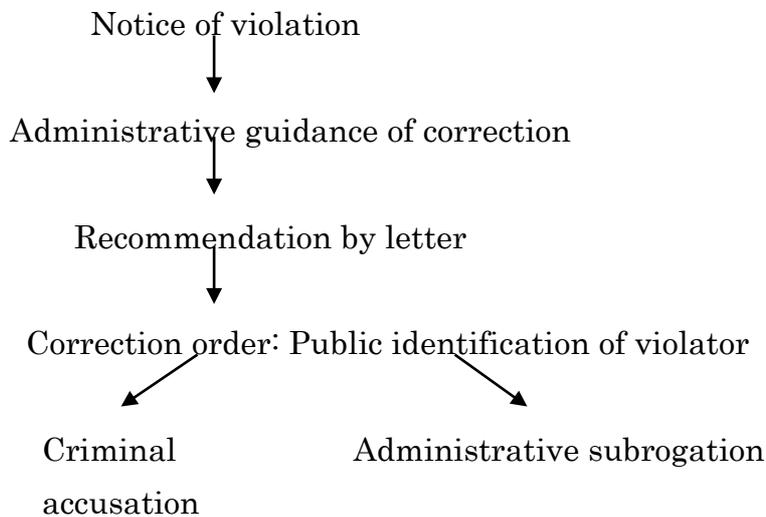


Figure 3 : Prohibit of flashing signs.



In order to assure the effectiveness of the regulation, this ordinance enhanced punishments. It imposed a prison term for outdoor advertising manufacturers who do not register in Kyoto's mandatory registration system, and stated that it would publish the names of advertisers who do not obey the recommendation by letter which succeed the administrative guidance. The ordinance would suspend the business of outdoor advertising manufacturers who neglected to follow correction orders. It also clarified the behaviors that would result in fines, and strengthened the fines, and clearly defined the procedures of administrative subrogation for removal of illegal outdoor advertisements and criminal accusation.

Table 1 : Process of Corrective Measures



Enhancing negative sanction, this ordinance aimed the compliance of the regulatees. However, as we discuss later, because the design code of outdoor advertisement is made in decision only by city officials and does not reflect the local commercial activities of each zoning district, local inhabitants and shop owners have the tendency to neglect or resist the new strict rule. Not limited in this outdoor advertisement regulation, Kyoto's new landscape policy of 2007 was the product of top down decision and hence the purpose of other regulations like the height and design code of buildings were not also well understood by inhabitants.

2.3 Installation of Soft Law Regulation: CLLS System

Based on the ex-post facto evaluation of the implementation of this landscape policy, Kyoto City decided to introduce the community-based local landscape council (CLLC) system to permit the local inhabitants to create their own landscape rule. In 2011, the ordinance of city landscape regulation is revised to set rules on this CLLC system. According to this new ordinance, the local landscape rule created by CLLC has no legal binding force. However, in the case that there is permit application of construction of building or installation of outdoor advertisement in the area of a CLLC, Kyoto City demands applicant to go to meet the CLLC to do consultation about the project of applicant before he applies his permit officially to the City. In the local landscape rule elaborated by

the CLLC, they can prescribe not only outdoor advertisement or building design rule strengthening municipal or national rule, but also they can create the rules concerning opening hours, business manners, commercial noises and cooperation to the disaster prevention activity.

State Act and municipal ordinance have hesitation to intervene such soft matters in fear of the violation of individual property right and fundamental rights. On the other hands, the local rule of CLLC can intervene bravely because their decision is based on the collective choice of the community and this rule is ultimately nothing but non-binding target. Considering that above soft matters are important components of the local landscape, Soft Law Regulation that can include and manage them flexibly with the participation of inhabitants is necessary measure to ameliorate the quality of the urban landscape.

After each consultation, the applicant is required to report the minutes and the result of the consultation with CLLC to the City Office. This process assures the openness and the due process of the CLLC activities. If there is expressive pressure and violation of individual rights in the name of community interests, Kyoto City can void the approval of the foundation of CLLC. To have this approval, the community-based association like neighborhood association or shopping district association should acquire support from the large majority of neighbors or shop owners about the creation of CLLC indicating them this bylaw and activity plan. This creation process is defined by the Kyoto's ordinance. In this sense, the CLLC system is Soft Law Regulation system but supported and controlled by Hard Law. Until now, there are five CLLCs approved in Kyoto City.

3. Framework and Research Method of This Study

Reviewing previous empirical studies and theoretical models concerning the regulatory process, we would like to explain the framework and research method of this study.

3.1 Preceding Japanese Studies on the Regulatory Process

As stated in the quote, "if there is life in a law, almost all of its life is the enforcement process" (Kitamura 1997:1), the regulatory process of law has a very important position in the legal process. Rokumoto (1991) and Kitamura (1997) are pioneers of empirical Japanese studies about regulatory processes.

Having studied regulations on water quality and industrial waste disposal facilities, they pointed out that an “informal behavioral style” is characteristic of the Japanese legal process—regulators prefer to maintain a cooperative relationship with regulatees rather than strictly applying the law.

If we investigate the literature on the regulatory process of other countries, we find that this informal behavioral style is also found in western developed countries. Ayres and Braithwaite (1992) and Braithwaite (2002) illustrated the rationality of a cooperative enforcement style based on empirical research about environmental regulations. Using the study of game theory, Scholz (1984) argued that the existence of continuous relationships between regulator and regulatees makes both choose cooperative strategy as a rational choice.

Aoki (2006), using a questionnaire to survey American and Japanese companies that are regulatees of the Clean Air Act, demonstrated that the past differences in behavioral style between the two countries tend to converge in recent times: American companies have more and more an experience of a cooperative enforcement style, while Japanese companies have more and more an experience of a legalistic enforcement style. Therefore, the informal behavioral style that was pointed out by Rokumoto and Kitamura as a Japanese characteristic commonly exists in America, which was heretofore described as the most legalistic country.

If we try to summarize the characteristics of the previous studies, we can describe them as follows. First, they understand regulation style in the schema of a formal and legalistic enforcement style versus an informal and cooperative enforcement style. This study aims to grasp the legal enforcement process as follows. First, we do not recognize legalistic and cooperative enforcement styles as antagonistic toward each other, but we accept that both styles coexist. Second, we investigate the behavior and perspectives of regulatees more than the previous studies did. Third, we are interested in the role of communication between regulatees and their intermediate group. The intermediate group has the possibility to create their-own Soft Law to complement the formal regulation. Fourth, we focus on internalized norms of regulatees: why they obey the regulation, under what conditions their cooperative action will occur, and how the Hard and Soft Law could cooperate effectively to accomplish the aim of the

regulation.

3.2 Research Framework of This Study

Since the number of outdoor advertisements is very large, in order to enforce the regulation on a large scale, the voluntary legal compliance of regulatees is a necessary condition. Therefore, to ensure successful regulatory enforcement, regulators need regulatees to morally commit to the regulation.

Tyler (2006: 3) explains the motivations behind peoples' legal compliance in two ways. First, an instrumental perspective: a person decides whether or not she or he will obey by calculating cost and benefit, considering the possibility of sanctions for her or his action. Second, a normative perspective: people obey the law because the value of the law is already internalized. Regardless of the possibility of sanctions, she or he obeys the law because she or he thinks it is the right thing to do.

If the value of the regulation is internalized by regulatees, Cooter (1998) says the effectiveness of the regulation is guaranteed. The regulation, which is the object of our study, needs voluntary compliance by regulatees. Thus, we investigate regulatees' motivation for compliance using Tyler's classifications.

However, if we examine the internalization of legal regulations by regulatees, we must distinguish two kinds of moral commitment to the law based on Weber's theory of law. First is a commitment to the formal legitimacy of law: people have to obey the law because it is the law. Second is a commitment to the substantive contents of the law: people obey the law because they agree with the contents and the values that the law embodies. Therefore, when we analyze moral commitment of regulatees, we should distinguish these two motivations for legal compliance.

To assure more effective legal compliance, members of a society must morally support regulations. If the regulation aims to change a social situation, it becomes important that the government explain the purpose of the new regulation very well to the people. Fujii (2007) call this process of explanation "legal framing."

This "legal framing" is not only done by legislators in the legislative process, but also by regulators in the enforcement process of the regulation. In order to persuade regulatees to comply with the regulation, the regulator has to

explain to them the purpose and objective of the regulation. In this research, we focus on how she or he explains the new outdoor advertisement ordinance to regulatees, and if she or he succeeds in persuading them.

To analyze the processes of diffusion of legal information and the transformation of the behavior of regulatees, we cannot ignore the role of intermediate groups of regulatees. When the regulation does not penetrate into the community of the regulatees and they cannot expect the compliance of the others, the equilibrium of this game is that they do not respect the regulation, and display signs that attract customers to their stores but that devalue the urban landscape of their area.

However, if the intermediate group of regulatees decides among itself to voluntarily comply with the regulation, the equilibrium of game is that every regulatee will comply with the regulation in displaying signs, which will enhance the street's image.

Enhancement of legal sanctions and enforcement systems is also the way to gain the later equilibrium that every one respects the regulation. However, if regulatees do not know if other regulatees will comply with the regulation, they will not change their attitude toward the regulation. However, if intermediate groups, such as community-based organizations or trade groups, declare their compliance with the regulation, the members of those groups can forecast that others will also comply with the regulation, and cooperation with the regulatory law becomes possible. This avoids the tragedy of the commons.

Intermediate groups of regulatees could also create their-own Soft Law concerning outdoor advertisement design and business manner. As we described before, the municipal design code is product of top down decision and does not reflect the life of the local community and the tradition of each trade. To complement this Hard Law's deficit, Soft Law making is indispensable.

3.3 Research Methods

This study aims to investigate not only external behaviors of regulators and regulatees, but also the strategy of "legal framing," enforcement methods of regulators, and motivations of regulatees to comply with regulations. Thus, we conducted more than one interview with each interviewee to better determine what they were really thinking. The list of interviewees is below.

Table 2 : List of Interviewees

Regulator

Department chief of execution of outdoor advertisement ordinance

July 2007, October 2007, May 2008, June 2008, January 2010,
December 2011

Regulatees

Cooperative of outdoor advertising manufacturers in Kyoto

October 2007, February 2008, November 2008, October 2010

Cooperative of Japanese pinball stores in Kyoto

October 2007

Trade group of restaurants and bars in Kyoto

October 2007

Building owner of the commercial avenue Kiya-machi

October 2008, December 2008

Manager of Convenience Stores Chain “Lawson” in Kyoto

October 2007

Manager of Convenience Stores Chain “Seven Eleven” in Kyoto

October 2007

Participant observation

Ninen-zaka Area’s every month meeting from July 2008 to March 2013

Total is forty two times participation.

Besides these interviews, we participated in town meetings in the Ninen-zaka area, where the foundation of CLLC is allowed just recently. In Ninen-zaka area, the community-based organization of stores has their Soft Law that declare their own voluntary compliance to municipal regulation and defines local and autonomous rules that are more rigorous and broad than municipal regulations. We participated in a meeting every month from July 2008 to March

2013, a total of forty two times, to observe how the new outdoor advertisement ordinance is received and mobilized by inhabitants of this area and what role their Soft Law plays.

4. Enforcement Strategies of Regulators and Their Effect

First, in order to recongize the Hard Law's function, we describe how the regulator executes her or his enforcement strategy, and how it is received by regulatees.

4.1 "Legal Framing" of the New Ordinance

As we have already mentioned, the new outdoor advisement ordinance is positioned as one of the pillars of Kyoto's new landscape policy. Soon after its enactment, Kyoto launched a public relations campaign in newspaper ads and the city's public relations magazine. In addition, Kyoto issued four different pamphlets to inform citizens of the contents and purpose of the new ordinance.

We did discourse analyse in these public relations materials. According to this analysis, the necessity of enhancing outdoor advertisement regulation is explained as follows: "[o]utdoor advertisements are an important component of the urban landscape," "[t]o add more value and attractiveness to Kyoto, we must create beautiful and elegant urban landscapes," and "Kyoto has to follow the advanced examples of western cities." Thus, the purpose of the new regulation is concerned only with the public interest of Kyoto, not with the common interests of regulatees, which could be reduced to their individual interests. The "legal framing" by the regulator is very abstract.

4.2 Enhancement of the Regulatory Enforcement System

The enhancement of the regulations generated strong resentment from the outdoor advisement manufacturers. Soon after the publication of the preliminary draft of the new ordinance, the cooperative of outdoor advertisement manufacturers in Kyoto waged an opposition campaign and submitted an opposition opinion report to the mayor of Kyoto.

After some time, the department responsible for the enforcement of the outdoor advertisement ordinance (hereinafter "execution department") organized a round table with the said cooperative to persuade them of the necessity of the regulation. At first, the members of the cooperative took a

hard-line attitude against the new ordinance. However, after they understand that the enactment of the new ordinance was inevitable, they changed their strategy to accept the city's plan with reservations.

They demanded that the execution department take strict measures to rectify illegal outdoor advertisements. According to the outdoor advertisement manufacturers, almost all outdoor advertisements are illegal. Thus, even if the members of the cooperative complied with the new ordinance, advertisers would place an order to the outdoor advertisement manufacturers who are not members of the cooperative, and would not hesitate to install illegal advertisements. The manufacturers said to the department chief, “[h]onesty does not pay if illegal activity is left uncontrolled.”

In response to this demand, the city council passed an additional resolution, which declared it would enforce its measures to rectify illegal advertisements. Consequently, the execution department increased personnel from two to ten persons. Such an increase was said to be exceptional in a municipality that was downsizing staff.

4.3 Concentration of Human Resources in the Model Area

Obligated to rectify illegal advertisements, Kyoto decided to zone the model area, Kyoto's central shopping area, where human resources of the execution department are intensively engaged in showing Kyoto's citizens the tangible results of the ordinance.

According to the survey conducted by the city in the model area before the enactment of the new ordinance, 82.4% of stores displayed illegal signs. This illegal rate was reduced to 34.6% as a result of most of the human resource staff's being devoted to stemming illegal advertisements for three and a half years. This illegal rate may still seem high, but, as Table 3 illustrates, the rate has been significantly reduced in the main streets, and reduced to a lesser extent in narrow alleys where there are many small restaurants.

Table 3 : Illegal rates after three and half years

	Illegal rates
Kawaramachi Avenue	5.0%
Shijo Avenue	14.6%
Kiyamachi Avenue	23.9%
Narrow alleys	55.1%
Total	34.6%

*Date of July 2011

However, if we look at the real process of corrective measures, the reality is very complex and inefficient. This process advanced in sequences, as already described in Table 1.

The first difficulty that the regulator faces is identifying the person to whom she or he should issue the notice of violation. The relationship between building owners and tenants is so complex that the regulator encounters difficulty in getting a contact number for the violator and in meeting the violator.

The second difficulty that the regulator faces is regulatees' ignorance about outdoor advertisement regulation. Even if the regulator issues a notice of violation to the violator, most violators do not know that permission is required to install an outdoor advertisement. They dispute the necessity of permission: "[w]hy do I need permission to display a sign?", "I have never heard about this ordinance. For a long time before you were born, I have been doing business here using this sign."

The regulator tries to explain to them that Kyoto's outdoor advertisement ordinance has existed since 1956. But regulatees contend that Kyoto has never enforced the regulation: "[w]hy have you never enforced the ordinance until now," "I am not the only violator. Everyone does what I do."

When regulatees maintain a defensive attitude, the regulator assumes a humble attitude, apologizing for the longtime omission, and asks them to correct the violation, promising to enforce the regulation against every illegal sign.

Despite the regulator's persuasions, most regulatees question the contents of the regulation: "[s]mall signs dry up business", "[a]ttractive signs are needed in the central shopping area."

The regulator continues to persuade them, saying, "[y]our compliance with the outdoor advertisement ordinance contributes to Kyoto's regeneration." However, such an abstract legal framing does not trigger regulatees' apprehension.

If the regulator's humble attitude does not work, she or he adopts a strong attitude, implying that legal sanctions will follow. If the regulator issues the recommendation by letter containing the scheduled dates of the correction order and administrative subrogation, most regulatees will correct their outdoor advertisements. The regulator explained to us the reasons why regulatees act this way: "[t]hey fear being publicly identified as a violator. Nowadays, companies place much importance on legal compliance. Regulatees do not want to lose people's confidence."

Therefore, the regulator has never followed through with a correction order, administrative subrogation, or criminal accusation. This nonuse of legal sanctions does not come from the regulator's hesitation toward legalistic enforcement styles, but rather from no need to use them. The regulator told us, "[regulatees] do corrections before we execute a correction order or administrative subrogation. So, we have never imposed those measures. However, many times we have been prepared to, and have even contacted the police."

However, sometimes the regulator simply does not carry through with a legalistic enforcement style:

[s]ometimes, traditional bars and cabarets located off-street respond with a defiant attitude, saying to us, "[p]lease do administrative subrogation if you can." In such a case, it is difficult to undertake administrative subrogation because the regulatee's violation is minor, and it is impossible to crack down on every minor violation. So, we cannot enforce the ordinance against her or him, and say, "[y]ou have to change your sign when it becomes decrepit."

4.4 Peoples' Reception of the Regulation in the Model Area

As I discussed above, regulatees in the model area do not agree with the substantive contents of the regulation. They comply only because society views compliance as important, and because they fear being publicly identified as a violator. Therefore, correction of violations always occurs after the regulator supplies notice of violation, and issues an administrative guidance of correction to the regulatee. Regulatees will not correct their signs just because they see another regulatee correcting her or his sign. The only way that signs are corrected is through the process where the regulator contacts individual regulatees. According to the regulator, she or he must contact a regulatee an average of ten times for the regulatee to take corrective action. Considering that there are about 20,000 signs in Kyoto, it would be very expensive to abate all violations.

According to the regulator, recently there is the tendency that regulatees that have corrected their signs after being approached by a regulator later reinstalled the illegal signs. To prevent this, the execution department assigned additional personnel to watch for this behavior. This phenomenon indicates that regulatees act opportunistically because they are not committed to the purposes behind the regulation. If regulatees estimate they have a low chance of being policed, they do not comply with the regulation.

The owner of many buildings on the commercial avenue Kiya-machi, who is a member of the town management commission of this avenue, suggests the problem:

To comply with the regulation, I have undertaken difficult coordination between tenants of my buildings. But, because there is no vision or plan for how we will redesign this area after the removal of signs, newly installed signs do not add to a new urban landscape. I agree that Kyoto is a historical city and must protect its image. However, all stores and tenants in this area think that gaiety and diversity are needed in this area where people go out drinking.

As this comment indicates, the gap between the outdoor advertisement ordinance and the regulatees is large: regulatees do not have a clear view of the positive effects that will occur if they comply with the regulation. People obey the

law because they fear being publicly identified as a violator. Even the people who participate in the town management do not believe in the purpose of the ordinance. This above fact shows us the limit of the top-down Hard Law approach. Because the purpose of regulation was not shared with regulatees and the contents of regulation did not reflect their views, the regulator could not avoid the tragedy of the commons even he had taken high administrative cost.

5. Cooperative Compliance Action by Intermediate Groups

5.1 Behavioral Changes of Outdoor Advertisement Manufacturers

As already mentioned, the cooperative of outdoor advertising manufacturers in Kyoto, which was at first against the new ordinance, changed its attitude, and now demands that Kyoto take rigorous corrective action. This cooperative has regular monthly meetings with the execution department to exchange information and opinions to assist the execution department in enforcing the regulation more efficiently. The cooperative voluntarily conducts its own patrol to check the security and legality of signs. This activity might be understood as a “signal” to show that the members of this cooperative comply with the law and are credible.

Figure 5: Patrolling illegal signs by the cooperative of outdoor advertisement manufacturers of Kyoto



One member of this cooperative increased his sales after the new ordinance went into effect. He carefully studied the details of the new regulation

and proposed to his clients that he could produce new signs that perfectly conformed to the new regulation. However, according to a questionnaire conducted by this cooperative one year after the effective date of the new ordinance, 60% of its members witnessed a decrease in sales, and some manufacturers closed their business.

This cooperative comprises only 30% of the manufacturers who do business in Kyoto. Half of all manufacturers, who do business in Kyoto, have their main office in Osaka and are not member of this cooperative. The manufacturers who are not member of this cooperative have the tendency to do not respect the regulation, while the members of the cooperative do comply. Dissatisfied with this situation, the cooperative demanded that Kyoto take more serious corrective action against illegal manufacturers.

5.2 Attitude of Japanese Pinball Stores

In general, Japanese pinball stores display ostentatious and flashing signs to ignite people's gambling spirits. Thus, we investigated the cooperative of Japanese pinball stores in Kyoto to determine the influence of the new regulation on them. This cooperative comprises 100% of pinball stores in Kyoto, and its purpose is regulating and improving the entertainment and amusement business.

The secretary-general of this cooperative, who was formerly a policeman, said, "[I]legal compliance is absolute. We completely respect the regulation. Our mission is to contribute to the amelioration of the urban landscape of Kyoto."

According to him, the cooperative developed self-regulations in 2001, when the previous ordinance was enacted: a prohibition of flashing signs and searchlight signs, a design of stores and signs with Kyoto's unique qualities, and voluntary restraint of advertising inserts and TV commercials. These self-regulations are well enforced by this cooperative. In fact, the design of Kyoto's Japanese pinball stores is modest compared to other stores. After the self-regulations were imposed, each store's sales did not decrease. A positive result is that all stores were able to cut costs for advertising and electricity.

However, the reason why Japanese pinball stores are eager to comply with the regulation and to use self-regulations stems from their marginal legal position: they can do business only after they receive permission under the Act

Regulating Adult Entertainment Business, and they are scared of losing permission to operate due to minor violations of the outdoor advertisement ordinance. Thus, we can understand their compliance action as a “signal” sensitive to the eyes of police and authority.

5.3 Attitude of Community-Based Organizations

Of all signs, most belong to restaurants and bars. However, their trade group has recently declined in the percentage of stores it represents, now only representing 20% of stores. Its activity consists only of insurance affairs of their employees and it takes no position on the new regulation.

In the model area, there are shopping area associations called Shijo-Haneikai and Kiyamachi-Kyoeikai. However, they are indifferent to the regulation and do nothing to elaborate a new local rule concerned with the design of signs. Thus, the execution department only notifies them beforehand about the investigation of illegal signs in the area. There is no collaboration between the associations and the regulator.

6. Soft and Hard Law Collaboration in the CLLC institution

6.1 The Ninen-Zaka Area

In contrast to the said model area, there is an active community-based organization that engages in legal compliance activity and elaborate their Soft Law in the Ninen-zaka area located in the district classified as a traditional architectural preservation district in 1976. Positioned between Kiyomizu temple and Kôdaiji temple, Ninen-zaka has always had many tourists. Most of the street’s buildings are stores for tourists. There are about sixty stores. Because the rent is very high, stores turn over very often—about ten stores change each year.

Figure 6: the landscape of Ninen-zaka



Kyoto enacted special outdoor advertisement regulation for this district in 1997. Because this is a preservation district, the regulations are severe and detailed. However, Kyoto did not seek the participation of inhabitants when it wrote the regulation, and did not inform them of the regulation. Thus, until recently, no one in this area knew of the existence of the regulation.

6.2 Development of Local Rule for Urban Landscape Regeneration

In 1985, in protest against taxes on admission to temples and shrines, the Buddhist Association of Kyoto held an extended strike, refusing to admit tourists. This strike dramatically decreased the number of tourists, and caused severe economic damage to every store in Ninen-zaka. In response, the stores of this area organized “Ninen-zaka Kyoto’s Old Town Association” as a town management organization to improve the urban landscape of the area. They believed that Ninen-zaka could no longer depend on the nearby famous temples, but must have its own tourist attractions. Every store in this area became a member of this association. Thus, “Ninen-zaka Kyoto’s Old Town Association” is the community-based organization who is representative in this area.

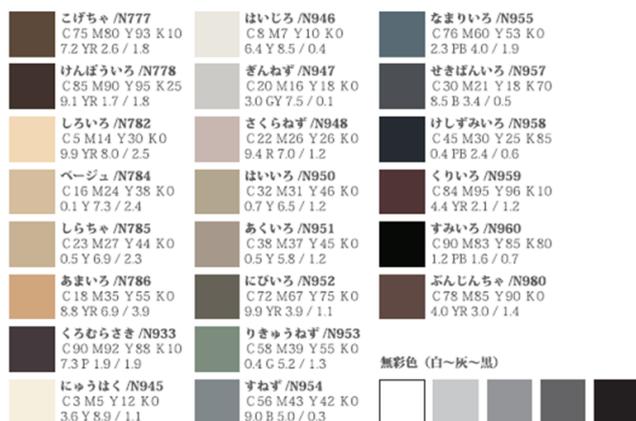
This association became concerned with the design of signs because the new stores tended to display ostentatious signs to attract business. Owners of older stores became concerned that this would damage the old-world flavor of the area. Since 2001, this association has held regular monthly meetings to work on the improvement of the landscape. As a result of the association’s efforts, it was decided that Kyoto will lay power lines underground. However, at the same

time, core members of the association recognized the necessity of developing a local design code for signs because after the elimination of power lines, the signs will be easier to notice. Thus, in regular monthly meetings, they began to discuss local rules for signs.

In the association’s 2006 general assembly, they passed a resolution prohibiting streamers and banners, and conducting sales and handing out ads on the street. After successive meetings and workshops, the 2009 general assembly passed a declaration of self-regulations to aid the town’s regeneration.

The declaration advocated voluntary compliance with the municipal outdoor advertisement regulation for all stores. It also enacted more severe rules than those of the ordinance, limiting allowable colors and the total dimension of signs. The administrative board of the association manages and enforces the local rules.

Figure 7: Allowable colors for signs in the declaration of -Ninenzaka



From a legalistic view, this declaration is only a facultative rule of the intermediate group—it is not legally binding. However, it is remarkable that in the preamble to the declaration, the association describes their member’s reciprocal relationship to the historical, urban landscape by saying

The historical urban landscape of Ninen-zaka, which is now regarded to be of excellent quality by all tourists, is the result of longtime efforts of self-regulation and self-governance of each store. The urban landscape is the common property of this area. We have to protect it so the future generations can enjoy it. However, if one of our stores does not respect

our self-regulation and pursues only her or his narrow interest, the unified landscape's quality will be easily destroyed, the image of our area will be aggravating, and every store will lose business. Thus, we declare our rule to protect and improve our historical landscape.

This preamble flaming defines very well and clearly the nature of the urban landscape and why they should comply the municipal regulation and their own self-regulation. So, even their declaration is no legal binding rule, it helps the inhabitants to understand the necessity of the rule.

6.3 Invoking the Municipal Hard Law to Legitimize Local Soft Law's elaboration

Even though the above declaration is well written now, the core members of the association were very troubled on how to legitimize the allowable colors (which would normally seem to depend on individual taste) to the other members when they prepared the text. There was a cognitive gap between core members who regularly assist in the meetings and the other members who do not participate in town management on how to evaluate the value of the historical landscape. Thus, core members were anxious about persuading the other members.

They used two methods to determine which colors to allow. One method is technical: they analyzed the pattern of colors in the area by a computer that took digital pictures, and found the colors used as the base of signs in the area with the aid of a consultant. This method could define the colors that were generally acceptable in the area, but it could not explain why colors needed to be limited to those that were most popular.

The core members of the association used a legal interpretation method as the second step in determining allowable colors for the regulation. In 2009, they began to have contact with an official of the execution department. They did not know of the existence of the special regulation for this district, which was enacted in 1997, until the official informed them of it. In the special regulation, an article already limited the colors that could be used: "the colors usable as base colors of signs are white, light gray, light cream, light brown, and *other soft colors*" (emphasis added). It seems that the regulation is sufficient. However, the

association's core members thought that the meaning of "other soft colors" was obscure and open to interpretation. So, the association's core members presented the list of usable colors, which they had prepared from the computer graphic analysis, to the association members as the official legal interpretation of "other soft colors."

In the 2009 general assembly of the association, administrative board members explained to the other members that "the limitation of colors has existed since olden days. But an obscure point could be troubling our decision. So, we need to formulate an interpretation of the text that limits the colors that are usable that will be our legitimate interpretation of the law." Thus, the list of colors usable in the declaration was positioned as the product of local legal interpretation of municipal Law. As a result, none of the participants in the general assembly doubted the necessity of declaring self-regulation. The text was unanimously approved.

6.4 Using the Hard Law to Promote Local Soft Law's enforcement

To overcome the declaration's lack of legal force, the administrative board of the Ninen-zaka Kyoto's Old Town Association tactfully invoked the special regulations of Kyoto. Because the existing signs, which would harm the landscape, almost always violate the special regulations of Kyoto, the administrative board began to demand that violating stores take corrective action, providing notice of the violation and promising to report the stores to authorities if they do not remedy the violations. For new stores, the administrative board collaborated with the office that issues permission for signs: when there is a permit application for a store located in the area, the office that issues permission will suggest that applicants take a preliminary consultation with the administrative board, thereby promoting the self-regulation rule. Thus, de facto, for stores in this area, they will not get permission for a sign without consultation with the members of the administrative board.

This collaborative strategy worked so well that the quality of existing signs has improved. It is well established that the members of the administrative board of the association will control the design of a sign based on the design code of the declaration of the self-regulation when a sign is changed or newly installed.

The core members of the association are very proud of the existence of their local rule, which is the most severe design code in Kyoto, and which they manage themselves. They think they are leaders of Kyoto's urban regeneration movement.

6.5 The Installation of CLLC and Linkage of Soft and Hard Law

From 2011, Kyoto City installs the CLLC system as a Soft Law Regulation. It was proposition by the Ninen-zaka association that such an intermediate system is necessary to ameliorate the quality of local urban landscape. When Ninen-zaka association was preparing to elaborate their self-regulation declaration, the members of the association examined the possibility to conclude landscape agreement, based on National Landscape Act, which give them a legal binding force. However, to conclude it, the agreement of every landowner with the certificate of his officially registered seal is needed. To regulate the design of outdoor advertisement, such a procedure is too hard so that they renounce to conclude a legal binding agreement and demand Kyoto City to create a new system, which is easier to conclude the mutual agreement. Thus, Kyoto City installed the CLLC system that requires the agreement of shop owners or inhabitants regardless whether he is landowner or tenant. To prove the agreement of local community members, the questionnaire survey to inhabitants and shop owners or the decision of general assembly meeting of neighborhood association or shopping district association is enough in the CLLC system.

Therefore, soon after the installation of CLLC system by Kyoto City ordinance, Ninen-zaka Association began to prepare the creation of their CLLC to give more legitimate power, which does not mean legal binding force, to the content of their self-regulation declaration. If they created their CLLC, Kyoto City demands applicant of permission of building renovation or outdoor advertisement installation in the Ninen-zaka Area to go to meet the CLLC to do consultation. The Ninen-zaka CLLC could this consultation relying on their existing self-regulation declaration and their new rules that are approved in CLLC meeting. In other words, Kyoto City helps the effectiveness of Local Soft Law with administrative guidance and municipal ordinance. Thus, after the

creation of the CLLC, it become impossible the construction and renovation of buildings and the installation of outdoor advertisement without the prior consultation.

Preparing the creation of their-own CLLC, Ninen-zaka Kyoto's Old Town Association tries to identify the local history and describe the proper features of the area as a basis of the ideal urban landscape that must be protected. After 2 years discussion, the association has finally concretized the regulations not only about outdoor advertisement but also concluding buildings design and business manners.

In the pamphlet that educates these local regulations for new comers, the local history and the proper features of this district are well explained. This explanation functions as a "framing" why they should comply landscapes regulations, what destination they want to go and how this area will be in the future. This framing will aide the new comers and the existing inhabitants to understand the reasons of the regulations. That could not be done by the municipal outdoor advertisement regulation.

To be approved as a CLLC by Kyoto's Mayer, the bylaw rules of the CLLC should be clarified. Thus, the members of the association define very well the constitutional rule, the collective choice rule and the operational rule in their bylaw (Ostrom 1990). The constitutional rule gives the legitimacy of the activity of CLLC defining the membership, the activity area and the objectives of this organization, the collective choice rule prescribe the decision procedure of the contents of regulation and the consultation procedure, and the operational rule concretizes what is prohibited and encouraged to protect and ameliorate the landscape of Ninen-zaka.

Previously, the handling of the association depends on the charismatic personality and leadership of the president who is in this position since 15 years ago. From now, by grace of the developed bylaw rules, the structure of community organization is modernized; the administration of this organization is based on the rules and anybody may succeed the position of the president in the future.

Kyoto City asks the CLLC to report the minutes and the result of the consultation. This process assures the openness and the due process of the

Soft Law Regulation. The ordinance of Kyoto City aids to provide the information of the regulations of CLLC with demanding the applicant, who wish to begin the business in the Ninen-zaka Area, to go consultation, and ensure the democratic and transparent management of local community. We could find the collaboration between Hard and Soft Laws in this point⁴.

7. Conclusion.

To conclude this paper, we examine the findings from our field research in light of the theoretical framework that we discussed earlier.

As far as we investigated, only the members of the association of Ninen-zaka approved of the substantive legitimacy of the regulation and organized the voluntary compliance activities. Yet everyone else must also respect the ordinance of local government because the social pressure for legal compliance is very high.

Yet if regulatees do not believe in the substantive contents of the law, it is very expensive to enforce it. The regulator must provide notice to violators individually and be patient in requests for corrective action.

To obtain regulatees' moral commitment to the law, legal framing might be useful. However, the framing of Kyoto's regulator was not understood by regulatees because it was too abstract and general.

Therefore, it is difficult for the regulator to persuade the regulatees of the importance of the value of the urban landscape as a "general interest" above regulatees' individual interests. Even though the urban landscape impacts everyone, in order to promote behavioral changes in regulatees, we need to emphasize common interests, which could reduce to individual interests.

The urban landscape has double dimensions by nature: a public good and a common-pool resource. Regulation of the urban landscape must consider both dimensions to be most efficient. The local government of Kyoto should have comprehensively explained the merits of the regulation for each area to the regulatees. It also should have presented its vision for the future landscape to

⁴ Harada(2007) emphasized the importance of the rule of law even when the contemporary state uses the Soft Law Regulation approach to govern the social autonomous fields.

the regulatees.

On the other hand, if the intermediate group could play such a role with the elaboration of his-own Local Soft Law, the common-pool resource aspect of the urban landscape would be better shared by the regulatees. If the intermediate group presents the future vision, declares its voluntary compliance activity and adds local rules to complement municipal rules, the members of the group could understand the necessity of the regulation and expect the cooperative action of the other members.

In previous studies of the regulatory process, people emphasized the advantage of cooperative action and communication only between the regulator and the regulatee. But this study aims to show the importance of cooperative action by the intermediate group of regulatees, and the importance of Soft Law making among them for the regulation of goods which are local common-pool resources. It is the regulatees themselves who could have the most detailed knowledge about the condition of the resources, find violations first, and evolves the contents of the regulation. Thus, as Ostrom (1990) recommended, it is better to relegate the governance of the local commons to community-based organizations. To ameliorate the quality of the landscape, the flexibility and the totality of Soft Law Regulation have the advantage.

However, as the case of the Ninen-zaka association demonstrated, to successfully govern the local urban landscape, self-governance by community-based organizations is not enough. Local organizations need the authority of the Hard Law to legitimize their governance. To diffuse the information of the existence of the Local Soft Law to the public and to assure the democratic operation, the Hard Law's Intervention is necessary.

Previous Japanese Socio-Legal Scholars and Urban Lawyers were interested in only how they could give a legal binding force to local spontaneous rule to complement the insufficient regulation of Hard Law. Their perspective was "From Soft Law to Hard Law". On the other hands, this paper aims to emphasize the collaboration between Soft and Hard Law to success the quality control of urban local commons.

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