

Vacant Properties: A New Challenge for Commons Studies

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Abstract

Commons Studies have long struggled with the challenges posed by the overuse of finite resources. However, in Japan, where economic recession and population decrease are ongoing problems, the issue of vacant properties such as abandoned houses has become prominent. This issue arises from the underuse of resources, which produces negative externality to surrounding communities

Based on my field works in Fukui prefecture, this paper examines how the community-based approach and the theory of property law should evolve in order to solve the issue of the underuse of resources.

In recent years, most of Japan's local governments have enacted ordinances that impose upon the owners of vacant properties the duty of appropriate management. However, municipal legal enforcement action is rare. It is often the neighborhood or community that persuades owners to take appropriate measures, referring to the municipal ordinance. To avoid having to undertake legal action, the municipality relies on the pressure of the community.

Even though vacant properties often have the potential for habitability, the Japanese, timid around strangers, have a tendency to avoid renting or selling these properties on the market. To reduce the owner's anxiety and to assess the personality of a newcomer, there are community-based organizations that serve as mediators between the parties.

This community-based approach is effective, to some extent, although too much emphasis on the homogeneity of the community—which is often an inevitable consequence of such approaches—tends to exclude diversity. This paper suggests that a rights-based approach, drawing from French Housing Law, in which housing is regarded not as private property but as a condition of human rights, and the American Landbank system's perspective, which relies on Heller's anticommons theory and the pursuit of efficiency, must be combined with the Japanese community-based approach.

Keywords: Property, Vacant house, Community-based approach and Housing Policy

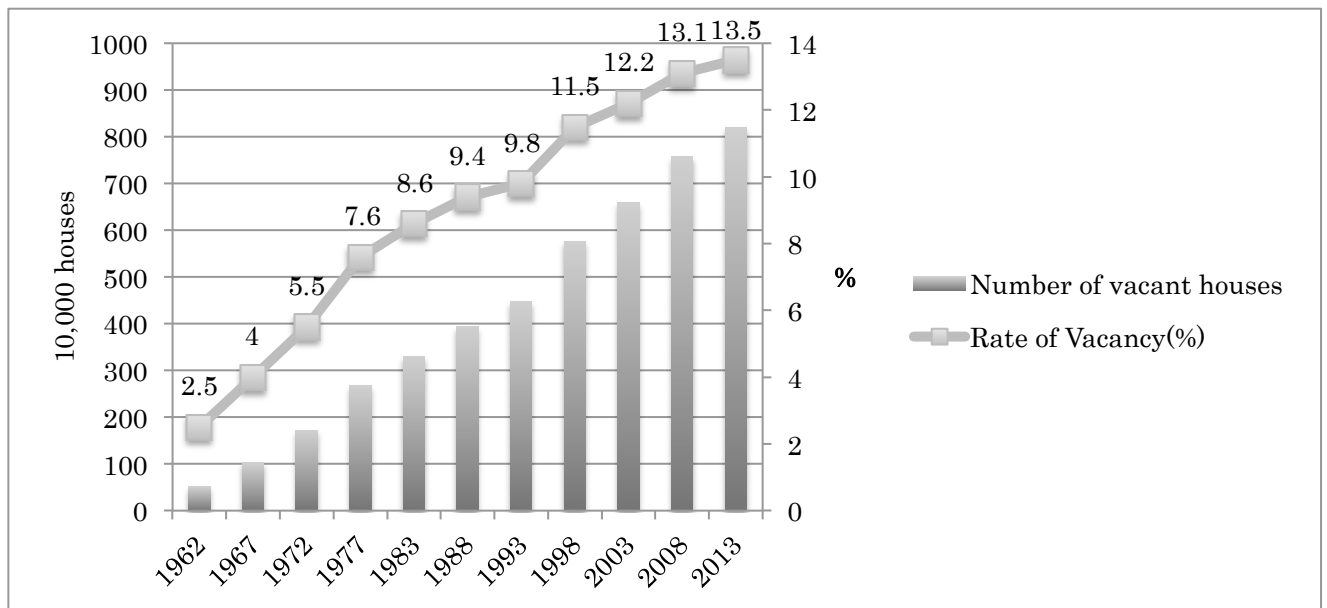
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1. Introduction

The origin of property arises from an intention and an act of appropriating a thing in pursuit of economic value (Rose 1985; Carbonnier 2000:84). However, in Japan, where the issue of vacant properties, such as abandoned houses, vacant lots, and deserted cultivated lands, has become prominent, we can observe the new phenomenon of property owners finding no economic value in their properties and abandoning them without selling or leasing them to the others.

Because property law is based on the assumptions that there are active uses for properties and that the role of property law is the attribution of resources for efficient use, providing the legal rules for competitive use, we might want to provide a new framework to solve the question of vacant properties and analyze the causes of the underuse of resources.

Figure 1 Rate of Vacancy and Number of Vacant Houses in Japan



Source: Ministry of Internal Affairs and Communications, *Housing and Land Survey 2013*

In last five years, most of Japan's local governments have enacted ordinances that impose upon the owners of vacant properties the duty of appropriate management (Kitamura ed. 2012). Following this enactment of local ordinances, the national government enacted a law for abandoned houses in 2014, clarifying the legal authority of local governments to order appropriate management by the owners and, if they neglect this order, to remove the dangerous house, subrogating the owners.

The houses that have been abandoned for a long time without management are so dangerous and produce so many negative externalities for their surroundings that we need the

above-mentioned public law approach and have to concretize the criteria that enable the administrative subrogation measure in order to help the enforcement of this measure. However, this measure is nothing more than an ex-post measure for extreme cases. It is more important to deepen the legal analysis of why vacant properties are increasing, how Japanese property law and the Japanese attitude toward the law are related to this increase, and how property law can work to prevent vacant properties.

The Japanese civil law that include its property law and the Japanese land use law were enacted in the period when capitalism was growing and the overuse of land was recognized as a social problem (Takamura 2014, 2015). Consequently, they focus mainly on the regulation of overuse and competitive use of resources and cannot cope well with the problem of underuse (*ibid.*).

Japan has been faced with economic stagnation for 20 years, and with the exception of Tokyo, population numbers are decreasing. In parallel with this economic stagnation and population decrease, the rate of vacant houses has increased: it rose to 13.5% in 2013 (Figure 1). In addition, according to one report, the number of young women is expected to halve in half of local governments by 2040 (Japan Policy Council 2014). The myth of economic growth is no longer believed in Japan. As Anderson (2012:124) has proposed, we have to put away the old assumption that urbanization is a progression rather than a lifecycle, and elaborate a new legal theory based on the assumption that cities are shrinking.

As to actions on the issue of vacant housings, there are two approaches: a community-based approach and a rights-based approach. Whereas most of the actions taken in Japan have adopted the community-based approach, this paper suggests that there are limits to this approach and proposes a hybrid that incorporates a rights-based approach, drawing from French Housing Law, which regards housing not as private property but as a condition of human rights, and the American Land Bank system's perspective that relies on Heller's anticommons theory.

In this paper, based on participant observation that we conducted in the communities and local governments of Fukui prefecture, we first explain why the community-based approach has been preferred in Japan, and we measure the effects and the limits of this approach. Second, we describe the types of new, rights-based approaches that are required, comparing the characteristics of Japanese land use regulations and the Japanese concept of property with those of France and the United States. Third, we summarize the theoretical implications of the issue of vacant properties and outline the necessary future research.

2. Why is the community-based approach so popular?

It is often said that the increase in vacant houses is a result of the aging and declining population of rural areas. It is true that rural areas are facing the problem of an aging population and a diminishing number of children, and that the depopulation correlates with the increase in the rate of vacant houses, at the macro level of analysis (Yoneyama 2012:8). However, after having conducted micro-level field surveys, we were able to identify a factor other than aging and the depopulation of rural areas.

It is not that there is no demand for vacant houses in rural areas. Rural areas have an appeal because of their historical and natural landscape and slow life style. Most of them have tourist potential. Recently, young people from urban areas have been showing a tendency to prefer the rural life style.

Why is there a mismatch between such demand and the supply of vacant houses? As we will see in more detail later, the closed nature of the Japanese community is a factor that discourages transactions in vacant houses. It is here that the reason for the popularity of the community-based approach in Japan can be found.

a. Law and economics approach to the market in existing houses

Before getting down to the results of my research, let us have a quick look at the policy measures other than the recent national law for vacant houses and at the research model that this policy option relied on.

The research model on which the central government relied in order to elaborate the policy for vacant houses is the theory of information asymmetry (Akerlof 1970). In law and economics, a drop in the number of transactions in existing houses is explained by the information asymmetry between seller and buyer (Hatta 1997): the seller knows more about his or her house, including information about its defects, than the buyer does; the buyer can only guess at the defects, meaning the price of house becomes lower than the expectation of the seller, and as a result, fewer transactions occur. This is the tragedy of the market for lemons.

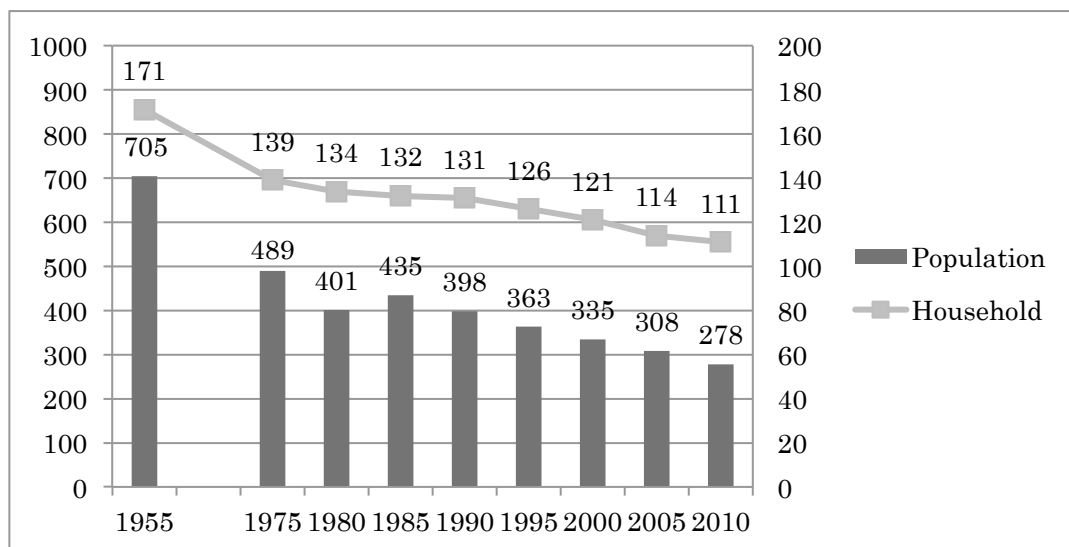
Compared with other developed countries, Japan had fewer regulations on real estate transactions, and the market share of existing houses is smaller: about 10% (Saito 2010). Consequently, in the last five years, central government has pushed regulations that require the disclosure of information and has strengthened the code of professional conduct for realtors in order to protect consumers. We approve of the enhancement of these regulations. However, from the viewpoint of a sociologist in the field, it seems that this market-oriented policy option is out of tune with the concept of property among the people of

rural areas and thus less effective.

b. The sociological concept of property in the case of Kumagawa community

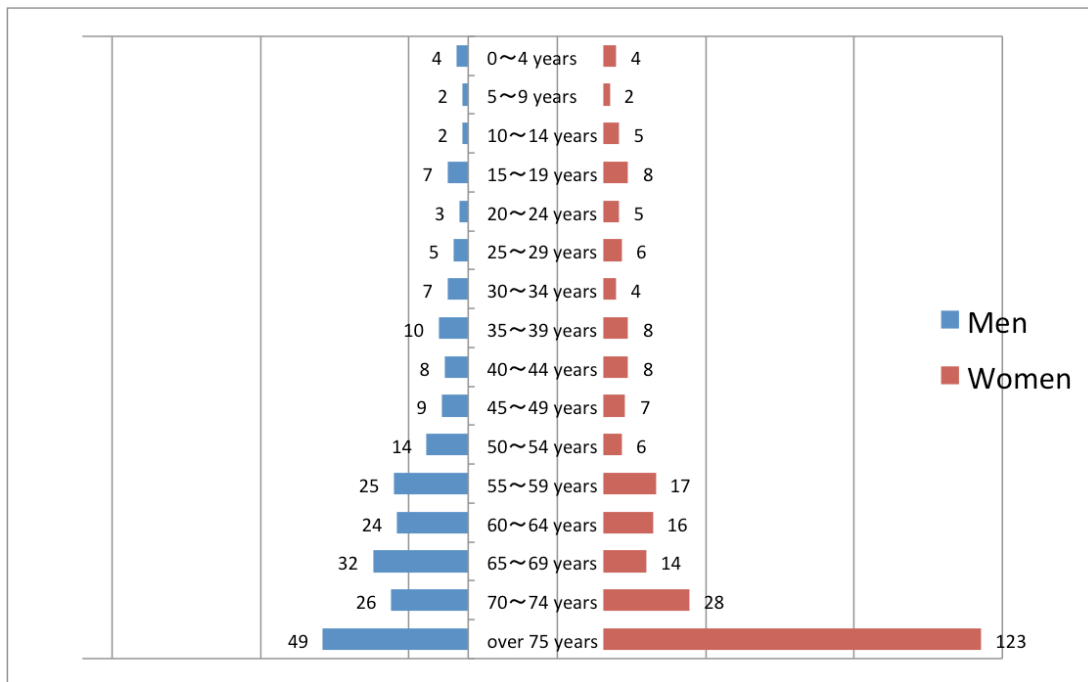
What is the concept of property in Japanese rural society? To illustrate it, we would like to show here some key findings from my field survey of a local community in Fukui prefecture. This community is Kumagawa district, the population of which is gradually decreasing and aging, as Figures 2 and 3 show. Before motorization, Kumagawa flourished as an inn town on the route between Kyoto and the Japanese Sea, and was a retail center for the surrounding rural area. There are so many historical and high quality wooden houses that in 1996 this district was designated an Important Preservation District for Groups of Traditional Buildings. However, even after this designation, the decline of the community has not stopped. In fact, the rate of vacant housing in this district in 2010 was 28% (Figure 4). Most of the visitors to Kumagawa are surprised to encounter the shocking deterioration of the abandoned houses rather than an historical landscape. For the local government, Wakasa Town, which includes Kumagawa, this decline is especially undesirable because Kumagawa has the greatest potential to attract tourists in Wakasa Town. Therefore, the town and my laboratory conducted community surveys and participant observation from 2011 to 2013. We tried to research the concept of property among inhabitants and to identify why the transaction of vacant properties is less active.

Figure 2 Population and Household Numbers for Kumagawa District 1955–2010



Source: National Population Census 2010

Figure 3 Age-Sex Pyramid of Kumagawa District in 2010



Source: National Population Census 2010

Figure 4 Map of Vacant Houses in Kumagawa Community



*Red buildings are vacant houses.

As the first characteristic of the concept of property, we might point to an anxiety concerning market transactions in property. According to a district by-law, an owner must give notice to the community organization and receive advice from it when he wants to sell or rent his property. This shows the general anxiety concerning outsiders. In Kumagawa community, there are many community events and forms of mutual assistance; most of the inhabitants participate in sustaining community life, and they are concerned that newcomers from urban areas will not adopt the same attitude.

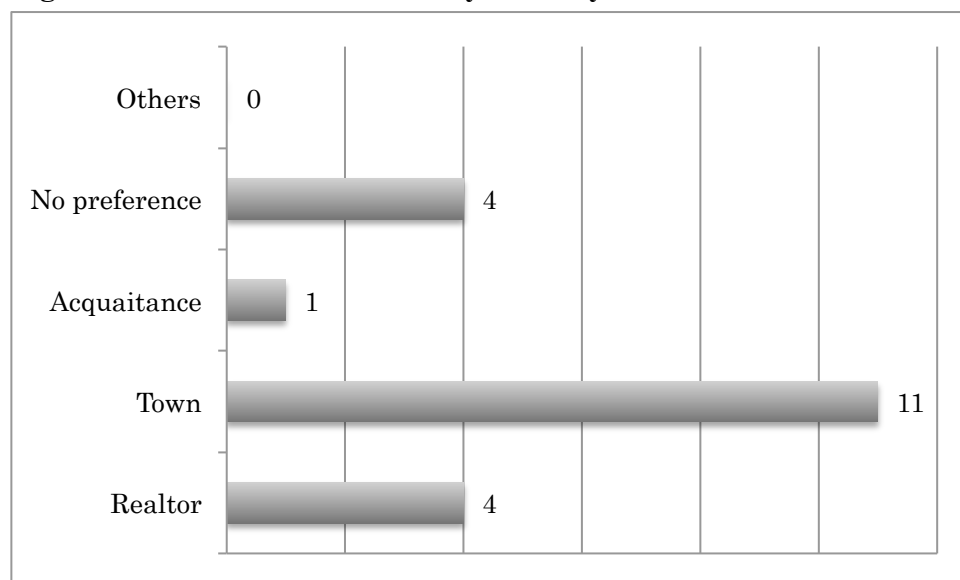
It is rare for a community to have a by-law that restricts transactions. However, in

general, it is also rare for outsiders to come to live in rural areas. Most property acquisitions in rural areas of Japan are the result of inheritance or a gift from parent to child. Of course, there are property transactions, but they are mostly carried out through relatives or acquaintances rather than a realtor. Hence, property is conceived of not as an individual asset but as a patrimony and a component of local community. It is regarded as a shame for an ancestor if their descendant has to sell this patrimony in the market, putting up a sign of an estate sale in the front yard. This sociological concept of property reduces the number of transactions for property that the owner has no plan to use himself.

To explore the possibility of a change to this situation, the town and my laboratory conducted questionnaire surveys of the owners of vacant houses. The contact information of these owners was provided by their community organization.

According to the questionnaire survey conducted by the town, half of respondents expected the town to be the intermediary in transactions involving vacant houses (Figures 5 and 6). Relatively speaking, they trusted professional realtor less, because they believed that professional realtors would pursue economic interests only and would not be concerned about the character of any newcomer.

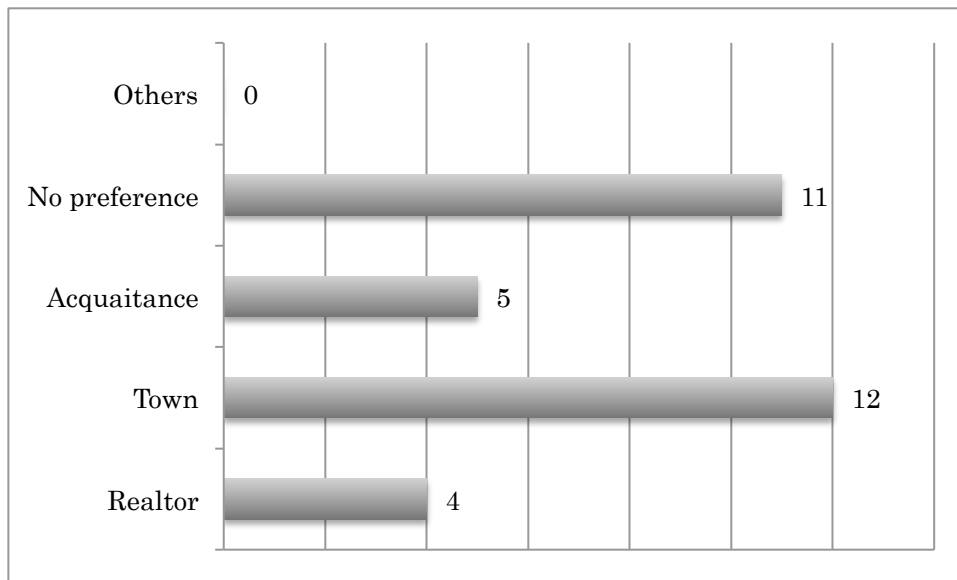
Figure 5 Preferred intermediary to rent your vacant house



N=15, Multiple Answers Allowed

Source: Wakasa Town questionnaire survey of owners of vacant properties in Wakasa Town, 2010. Mail-in survey. Response rate: 75.4%. Number of valid responses: 132. This question was answered by respondents who might consider renting their house.

Figure 6 Preferred intermediary to sell your vacant house

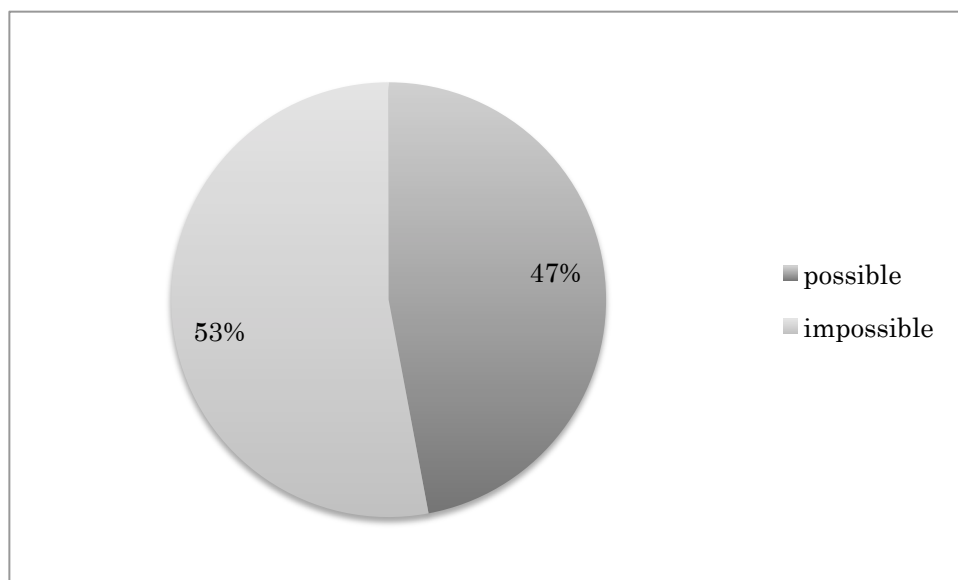


N=24, Multiple Answers Allowed

Source: The same as Figure 5. This question was answered by respondents who might consider selling their house.

The questionnaire survey conducted by my lab showed that the owners of vacant houses would be more positive about selling their property under circumstances in which the community organization explained the social customs and community activities of Kumagawa to any would-be newcomer beforehand and supported the process of his integration into community life (Figure 7).

Figure 7 Question: Provided that Kumagawa Community Organization carried out an interview with a would-be buyer or tenant explaining the social customs and community activities beforehand, would you be willing to register your vacant house on the list of available properties of the Vacant House Bank?



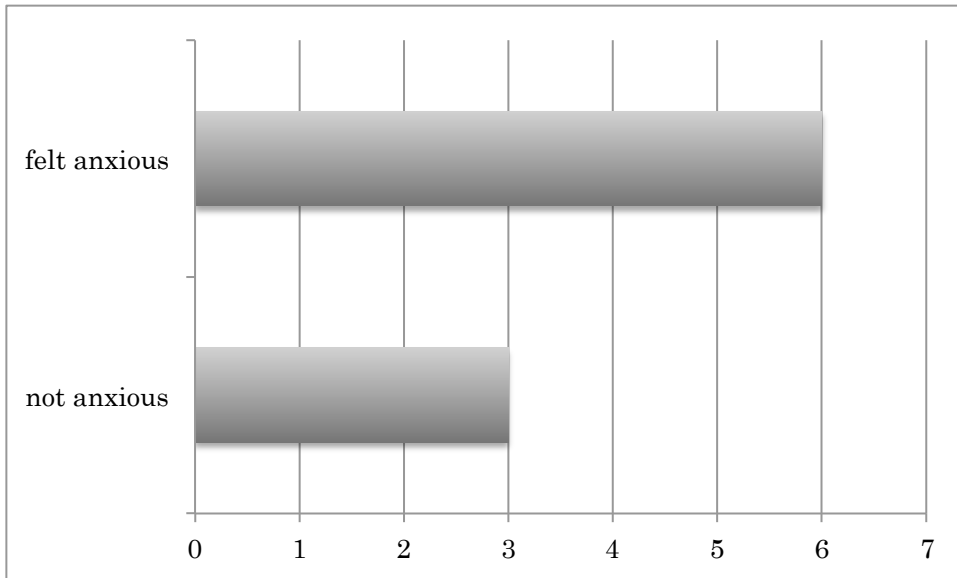
N=17, Takamura Lab questionnaire survey of the owners of vacant houses in Kumagawa, 2012. Mail-in Survey. Response Rate: 68%.

These results suggest that the owners of vacant houses do not sell or lend their properties because they are afraid of the uncertainty about the character of newcomers and do not want to cause trouble for the community in the form of a lack of co-operation on the part of newcomers.

We also conducted a questionnaire survey of the inhabitants of Kumagawa who were not born there. According to them, their main concern before moving to Kumagawa was whether they would be welcomed by the community and be able to adapt to community life (Figure 8), although most of them expressed satisfaction with life in the community today (Figure 9).

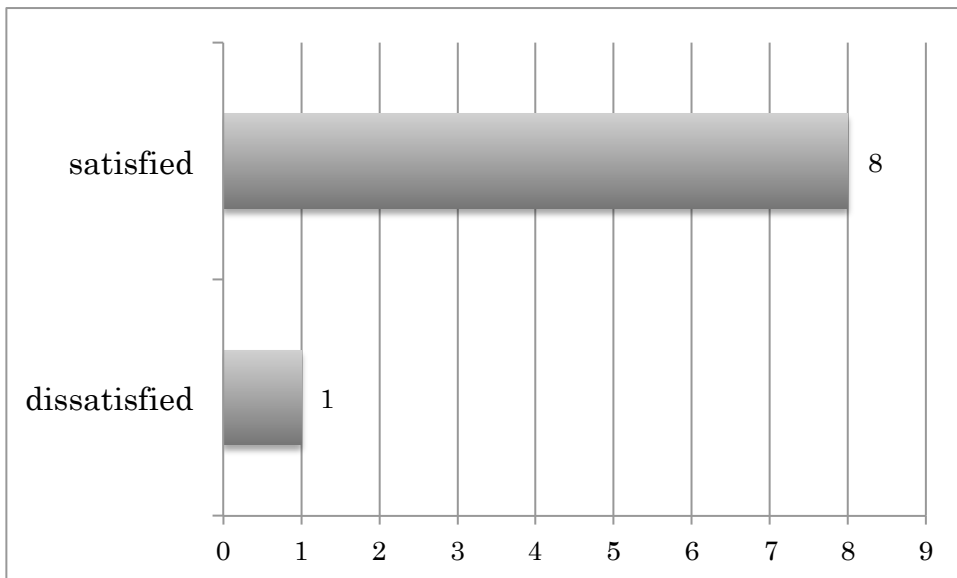
As the social psychologist Yamagishi (1994) demonstrated, the Japanese have a tendency to be wary of community outsiders, trusting only members of their own community. This tendency is confirmed by the results of the surveys in Kumagawa.

Figure 8 Question: Did you feel anxious about whether you would be welcomed by Kumagawa Community before you moved in?



N=9 Source: Takamura lab questionnaire survey for inhabitants who were not born in Kumagawa, 2011. Door-to-door survey by students. Response rate: 100%.

Figure 9 Question: Are you satisfied with the human environment of Kumagawa Community today?



Source: The same as Figure 8

Let me summarize the findings from our surveys. In the theory of information asymmetry, there are only two parties: a seller and a buyer. What matters is the information about the quality of the housing unit. However, in the social reality described by our surveys, both parties are very conscious of the community as a third party: it matters how the

community regards them. We may note that this hyperconsciousness of the community and the less up-front communication among these three parties are important social factors in preventing transactions of vacant houses.

c. Community-based organization as intermediary in vacant house transactions

To remove this inhibitory factor, Wakasa Town, Kumagawa District, and my laboratory collaborated to set up a community-based organization that would act as an intermediary in vacant house transactions. This type of community-based organization is called a “Vacant House Bank” (*Akiya Bank*) and is on the increase in rural areas of Japan. This community-based organization aims to mediate between owners of vacant properties and new inhabitants in the place of professional realtors; it encourages the former to register their houses on the list of available properties and explains to the latter about the community life beforehand. The list of available properties is accessible on the Internet, but the would be new inhabitants have to meet the community organization to move the transaction forward.

The organization is intended to help to reduce the anxieties of owners and new inhabitants. For the owners, it provides the security of knowing that the new inhabitants would buy or rent their homes with an understanding of community life and an awareness that they must be good people. For the new inhabitants, they can feel that the community welcomes newcomers and know what is expected of them in the life of the community before they decide to contract with owner.

The set-up process of the community-based organization gave the inhabitants of Kumagawa the opportunity to reflect on their community, to clarify their community rules and expectations for new inhabitants, and to make Kumagawa more open and welcoming to them. They created a brochure to describe their community and their hopes to new inhabitants, and in the spring of 2013, they organized a community walking tour for those interested in living there.

According to my other field interview surveys of community-based organizations for the mediation in vacant house transactions—at Imai-cho in Nara prefecture, Ayabe City and Nishijin District in Kyoto prefecture, and Onomichi in Hiroshima prefecture—they would perform very well if they could succeed in clearly defining their local identities and attractive points and in formulating a positive message for new inhabitants (Takamura 2010). This defining process would make the community more open to others and would clarify the procedure for vacant house transactions and the adaptation process of new inhabitants to the community.

There are already several new inhabitants in Kumagawa since the installation of the above-mentioned community organization. The owners of vacant properties, who were negative about the sale of their property, have been changing their attitude and have begun to register their homes on the list of available properties. There is no shame in them doing this because it was the community that solicited the registration.

This is why the community-based approach is so popular in Japan in resolving the issue of vacant properties. If the community acts as an intermediary between owner and new inhabitant, both of them feel at ease. This attitude is related to the Japanese sociological concept of property, which regards property not as an individual asset but as a component of the local community, but also related to Japanese psychological anxiety about others in general.

3. Toward a rights-based approach: Beyond the limits of the community-based approach

The community-based approach is in a way effective, although too much emphasis on the community inevitably reveals the limits of this approach. First, the Japanese community-based approach could not link the issue of vacant houses with the issue of the poorly housed because the community selects only desirable people. Second, it could not deal with long-term abandoned houses that are severely dilapidated or the owners of which have been difficult to identify. Third, this approach presupposes the growth of communities and does not respond to the issue of shrinking communities. We therefore we need to blend a rights-based approach with the community-based approach to overcome these limits. A review of the policies and practices of other countries will help to identify the kind of rights-based approach that is needed.

a. The Right to Housing

While the number of vacant houses is increasing, the housing conditions of the young and the elderly are becoming severe in Japan (Hirayama 2010). Young people without stable employment and an elderly people who do not own their own homes find it difficult to obtain adequate housing. They are excluded from the housing market because it is suspected that they will be unable to keep up payments on the rent or a housing loan. Japanese housing policy, weighted toward home ownership, does not provide enough support for their circumstances.

One solution might be to provide them with vacant housing as through the government, thereby improving their situation. However, the involvement of

community-based organizations has inevitably resulted in the exclusion of these vulnerable people.

In the case of Kumagawa, Wakasa Town is not in favor of receiving elderly persons from other local governments because they will be dependent on the town's welfare and do not pay income tax, which is the main revenue for local government in Japan; new elderly residents would only a financial burden on the local government. Kumagawa community is particularly in favor of young families with children in order to keep a nearby elementary school open and to help run community events; they are cold to types of would-be new inhabitant other than this family model.

It is same in other communities. They are keen to receive young families who can contribute to the community and cold to the elderly, foreigners, and those leading a precarious economic existence.

On this point, the movement of the Right to Housing in France is suggestive. The issue of vacant houses was an issue in France because a non-profit organization, The Right to Housing (*Droit au logement*) began to squat vacant apartments to provide housing for vulnerable people. Demanding that the public authorities expropriate vacant properties in order to convert them into social housing, the movement succeeded in linking the issue of vacant houses with the issue of the poorly housed (Péchu 2007).

In fact, the French government and housing authorities are active in buying or expropriating vacant houses to provide remodeled social housing (Dietrich-Ragon 2011). France regards housing not as private property but as a basic element of human rights. It is much more inclusive of the vulnerable and active in public intervention in abandoned housing than Japan is.

b. Public intervention in abandoned housing

Necessarily, vacant houses that can be sold through the community-based system have to be in relatively good condition and cost little to repair. Even in communities where this system has worked very well, long-term abandoned houses remain. To address these difficult cases, a rights-based approach is necessary.

However, in Japanese property law, we have not discussed the question of abandoned properties. It is true that the Japanese building code has a section on dangerous abandoned buildings, which gives local governments the authority to remove the dangerous building. However, the application of this section has been very rare; most local governments do not know how to apply this section (Kitamura 2012).

To clarify their authority and the procedure to remove a dangerous building, many local governments have enacted local ordinances in the last five years. However, these local ordinances are symbolic. Even after their enactment, municipal legal enforcement action is rare.² It is often the neighborhood and community that persuades owners to take the appropriate measures, referring to the municipal ordinance. To avoid having to undertake legal action, the municipality relies on this social pressure.

For the Japanese municipality, the right of property is absolute, sacred, and inviolable. They have no confidence in the judicial legitimacy of public intervention in relation to abandoned housing. This is very unusual when compared to other countries.

In France, where the declaration of the rights of man and the citizen in 1789 defined the right of property as sacred and inviolable, a municipal police code for abandoned properties has existed since the French Revolution and has been frequently applied (Takamura 2014).

In the United States, most cities have municipal codes that impose upon the owners of properties the duty of appropriate management and give the city the authority to remove any dangerous building, subrogating the owners when they neglect their duty.

In both countries, the right of property is not absolute and can be exercised only as long as this right does not interfere with the rights of others; the rule of the appropriate exercise of property rights is assured by police power; property rights have internal restrictions on their realization. By contrast, in Japan, it is thought that respect for the right of others belongs to moral or social manners rather than being a legal issue. Thus, the municipal code is less developed for the exercise of property rights.

As mentioned earlier, the national government enacted a law for abandoned houses in 2014, giving judicial legitimacy to public intervention in abandoned housing by local government. This legislation would make local government more active in undertaking legal actions (Kitamura 2014). However, given the traditional concept of property and the non-litigious orientation of the Japanese, it is still uncertain how often such actions might be undertaken.

It is the dimension of private law, rather than that of public law, that has remained untouched by lawmakers. If a property has been abandoned for a long time, there may be intestate succession and, in consequence, many co-owners difficult to contact. To transfer this property to someone, the unanimous accord of co-owners is required, and each has a right of

² According to Kitamura (2014:37–38), there are only 7 cases that local governments in Japan have removed dangerous vacant houses by themselves based on the local ordinances of vacant house.

veto. This is the anticommons situation³ described by Heller (1998). Thus, the transaction cost of overcoming this situation is very high.

In addition, in inner-city areas in Japan, the size of each property is small. For the effective use of the property, integrated redevelopment with the surrounding properties is necessary. To overcome this spatial anticommons situation, the unanimous accord of every property owner is required.⁴ The transaction cost is so high that nothing has been done and buildings have been allowed to deteriorate.

In the United States, under the influence of the theory of the anticommons, the reintegration of rights of properties has been carried out through a system of land banks and land assembly. Working together with local governments and the courts, these hold the titles to abandoned properties, managing them and coordinating on their desirable future use.

Japan has to follow this rights-based approach in order to prevent the tragedy of the anticommons and to economize the transaction costs for future use.

c. A shrinking strategy and the paradigm shift of law

However, Heller's anticommons approach presupposes that there would be effective utilization of the land if multiple claims on the land are untangled. This approach is valid in areas where there is a high demand for land, such as inner-city areas in metropolitan cities. For rural areas, we need another approach: we must admit low growth and adopt a shrinking strategy, converting residential plots to open spaces and returning urban zones back to nature.

On this point, the challenge of Echizen town, located an hour's drive from Kumagawa, is interesting (Takamura 2012). The town subsidizes a neighborhood association that removes vacant abandoned housing and creates and manages open common spaces on the vacant plot. This subsidy menu encourages a community-based approach: it is a neighborhood association that convinces the owner of the vacant properties, untangles multiple claims on the properties, settles any conflict over the boundary of property lines, places the order to demolish vacant houses, and manages the open common space.

³ Heller (1998:624) defines the anticommons situation as follows: "In an anticommons, by my definition, multiple owners are each endowed with the right to exclude others from a scarce resource, and no one has an effective privilege of use. When there are too many owners holding rights of exclusion, the resource is prone to underuse—a *tragedy of the anticommons*."

⁴ Referring to Japanese Land Law and the situation in Kobe after the earthquake, Heller (1998:684) argues that the small parcel of each land plot in Japanese cities and too much respect for property owners, co-owners, and tenants in Japanese Land Law have created an anticommons situation and prevented efficient land use.

According to my 2012 interview survey of this town and several neighborhoods, 14 vacant houses have been removed under this scheme, and all the sites have been well maintained and actively used by the neighborhood as recreational spaces. The open spaces where there were abandoned houses became local commons managed by the community. Such a transformation could not be done in any other way than by the community-based approach. The case of Echizen town illustrates one advantage of the Japanese community-based approach.

Nonetheless, we should not ignore the fact that the town plays an active role in facilitating this scheme: the town concludes lease contracts for ten years with the owners of vacant properties free of charge and subleases the vacant lot to the neighborhood for free. These lease contracts provide the legal structure to transform abandoned properties into open commons space. The rights-based approach is thus an indispensable condition for the community-based approach.

After a ten-year transitional period, the town and the owner of the vacant property have to renegotiate how to use the land. At that point, the town would have to give serious consideration to the ownership of the land: whether the town legally recognizes the property as abandoned and becomes the new owner or not. We might need a serious discussion on the negative prescription of property rights. A new theory of property law in the era of underuse is required to solve this future problem.

4. Conclusion

This paper attempted to explain why the community-based approach has been popular in Japan to address the issue of vacant properties. Whereas legal and economic analyses of the market in existing houses supposes only a seller and a buyer in their models, the results of our field surveys suggest that both buyer and seller are highly conscious of how the community would regard them and that more up-front communication between the seller, the buyer, and the community can break the social-psychological barriers that prevent transactions in vacant housing. This is the reason why community-based organizations for mediation in the sale of vacant houses have been established and are preferred by rural areas in Japan.

However, the community-based approach has limits: an exclusionary attitude toward outsiders and vulnerable groups, the lack of an adequate solution for long-term abandoned houses, and an inability to adapt to the shrinking of the community. Therefore, this paper proposes that a hybrid approach, drawing from the French view that regards housing not as private property but as a condition of human rights, and the American

perspective that relies on Heller's anticommons theory and the pursuit of the efficiency of transaction and land use, be combined with the Japanese community approach.

The issue of vacant properties presents a new challenge for the existing theory of property law that assumes that there are active uses of properties and that the main role of property law is the provision of rules for competitive use. We have to provide a new framework in the era of the underuse of properties.

Compared with the United States and France, the issue of the underuse of resources is more serious for Japan. Thus, continual field surveys on this problem are helpful in elaborating the new legal framework.

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