

THE *KOTSUNAGI* ARCHIVES:

From legal disputes on the commons to  
Large-N analysis of Commons  
In Iwate Prefecture, Japan, in the Twentieth Century

As the first presentation of the panel on

**COMBINING DOCUMENTARY ARCHIVES WITH SURVEY  
DATA TO ADVANCE FROM CASE STUDIES TO LARGE-N  
ANALYSIS OF THE JAPANESE COMMONS**

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## ABSTRACT:

Villagers of Kotsunagi in Iwate Prefecture in Japan fought a famous legal battle over the span of four generations to recover their lost commons; the courts have assigned the case to mediation, with negotiations currently at a stalemate. During the struggle many citizens and scholars from around the nation formed a support group, called Iwate Kotsunagi no Kai [Supporters of Kotsunagi in Iwate]. In 2003 our group established the Kotsunagi Archive [Kotsunagi Bunkō] to collect, preserve and study historical documentation on as many of the Commons [*Iriai*] in Iwate as possible, which also required that we persuade Japan's courts not to discard records from completed court cases.

Our group aimed to gather documents on the commons in Iwate, and especially on disputes about the commons, as comprehensively as possible, to elucidate the actual variety as well as the shared features among all these cases from many points of view. We are also entering the results of government surveys of the commons into a database, which we will augment with material from the Kotsunagi Archive. In some cases the Kotsunagi Archive includes documents produced by the protesting commoners themselves, their arrangements with lawyers, and their thoughts after particular developments or events; thus the archive can actually illuminate the ways in which the experience affected their thoughts about protest, rights, and environmental management. We are presently working on the government's nationwide survey of 1911, which in Iwate Prefecture alone examined 275 units of common [*Iriai*] lands, subsuming a total area of 110,478 hectares of commons. This survey was detailed enough to include inquiries about rules for managing resources, the user groups, income from the commons, and the local economy. This survey did not examine all of the commons in Iwate at that time, but we have reason to believe that there were approximately 600 commons in Iwate in the late 19<sup>th</sup> century, which suggests that the survey sampled almost 50% of the available commons. These commons were lands that were not merely used in common but were actually owned jointly either by villages (村有) or by the hamlets within villages (部落有) – in Iwate. This survey is the only one done on hamlet-owned and village-owned commons over a 140 year period of modern Japanese history that will allow us to deduce the real figures for total common land (by adding two additional categories of commons -- state-owned commons (国有地入会) and commons nominally registered as the land of individuals (名義個人有入会地) with an additional legal agreement on file stipulating that these individuals are simply representing the community of customary owners. Insofar as the Kotsunagi Archive and other records permit, our plan is to trace the history of every Iwate case that appears in the 1911 survey for which we have archival documents before and after the 1911 survey date, and to build a secure and reliable database useful for many kinds of quantitative and qualitative analysis.

In this paper for Edmonton we will offer examples of the legal disputes to be included later in the database we are now building, as a prerequisite for large-N analysis.

Keywords: iriai (commons), Iwate, Japan, categories of ownership of commons; confiscation of iriai rights

**THE KOTSUNAGI ARCHIVE:**  
from legal disputes on the commons to large-N analysis of  
Commons in *Iwate* Prefecture, Japan, in the Twentieth Century

Building Up Comprehensive Regional Archives for Collecting Historical  
Documents on *Iriai* Practice and Trials

or

On the Archives "Kotsunagi-Jiken-Bunko:"  
Aiming at a Comprehensive Regional Collection  
of *Iriai*-Related Documents and Materials in Iwate District

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**Foreword**

Iwate Prefecture is an administrative unit located in northeastern part of Honshu, the main island of Japan, with the following features in the present day:

	<b>Iwate Pref. (percentage within Japan)</b>	<b>Japan</b>	<b>Source</b>
Area of land mass	1,527,889 ha (4.0%)	37,796,173 ha	MAFF, 2012
Forests & Fields (2011-2012)	1,158,497 ha (4.7%)	24,845,302 ha	Ibid.
Forests and Fields as percentage of land mass	75.8%	65.7%	Ibid.
Length of Shoreline	710.8km (2.1%)	35,643.5km	GSI. 2010
Population (2011)	1,330,147 (1.0%)	128,057,352	Ministry of Internal Affairs and Communications, 2011

Japan as a whole is heavily forested, but an even larger portion of Iwate Prefecture is forested, and forestry and fishery are among the most important industries in Iwate Prefecture. Moreover, the traditional custom of *Iriai* (commons) has played an essential role in the long life history of farmers and fishers who struggled against incursions on their rights. Regrettably,

however, these facts have been almost forgotten, since the documents about them were scattered and lost.

*Iriai* researchers in Japan have assumed that the systematic formation of social structure, historical developments throughout Japan, along with some particularly Japanese traits have determined the course of *Iriai* in Japan. That is, they have proceeded from understanding of broad externally developed theory, applied deductively, rather than building inductive generalizations based on the features of many cases of commons within Japan. Thus the original researchers who studied the commons thought that only a few dispersed examples from Japan could be relied on, to play the role of illustration, to understand all of Japan's commons. Of course this deductive methodology is fundamentally correct and meaningful with important results so far as an application of classical theories of social sciences (Marx, Weber etc.), though its verification is problematic without examining many cases of commons to test the original assumption that Japanese commons are highly uniform. The researchers concluded that *Iriai* relations would surely disappear as "modernization" progressed (Kawashima, 1959-1968). In addition, because it is difficult to find and collect documents and materials sufficient to analyze *Iriai* relations in large numbers to verify these assumptions, it was impossible in reality to use inductive methods.<sup>1</sup>

### **Building up an Archive, "Kotsunagi-jiken Bunko"**

We established "Kotsunagi-jiken Bunko", an Archive on *Iriai* materials, in commemoration of the Kotsunagi Case, one of the most famous *Iriai* struggles in Japan, which occurred in the small hamlet of Kotsunagi, Iwate Prefecture, and continued from 1910 to 1975 across 3 generations of the farmer-commoners who resided there, including 2 civil and 2 criminal trials, each of which proceeded from Lower to Higher to Supreme courts, or into out-of-court conciliation and settlement. Some negotiations in Kotsunagi continue today.<sup>2</sup> The Archive was founded in 2003 and began to acquire documents and materials related to *Iriai* practices not just in Kotsunagi but also in other parts of Iwate Prefecture. The Bunko is now located in Iwate University Library.

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<sup>1</sup> Nationwide surveys on *Iriai* customs were carried out three times by the Japanese government, in 1893, 1930 and 1974, the last of which is the object of colleague Kanazawa's analysis.

<sup>2</sup> Regarding Kotsunagi-jiken, see Kaino, 1964; Nozato, 2013-2014; etc.

The main collection of the Kotsunagi Archive consists of the following documents and materials:<sup>3</sup>

1. Originals (or digitized images) of entire records of some *Iriai* trials;
2. originals of the rulings from *Iriai* and related trials, mostly in digital format;
3. various materials hand-made by the commoners and other local residents involved in *Iriai* trials;
4. documents and materials made and/or kept by the lawyers who stood by and pleaded for *Iriai* commoners,
5. documents (some originals and some digital copies) on surveys and administrative practices on *Iriai* problems obtained from original collections that have been preserved by public institutions, such as the National Archives of Japan (NAJ), National Diet Library (NDL), Iwate Prefectural Archives, and the Ishinomaki Cultural Center (which had special archives for attorney Tatsuji Fuse that have now been gravely damaged by the tsunami of March 2011); and
6. others, such as documents, photographs, memos etc. made and preserved by supporters of the Kotsunagi case and researchers on *Iriai*.

We have thus far collected during these 12 years more than 3000 items and are now on our way to completing the collection. Meanwhile, in 2012, we published first-hand records of trials on the Kotsunagi case, photographed and prepared over a 10-year period, on DVD (Hata, 2012-2013). Our goal is to build as comprehensive a collection of *Iriai*-related documents and materials in the Iwate district as possible. We are convinced that this archive will contribute not only to preparing rich data for large-N analysis but also to accumulating case studies themselves and meta-analysis of them. Moreover, the archive would also enable us to verify and find an alternative to the above-mentioned conclusions based only on deductive methods. Moreover, the existence of the archives themselves would offer a solid base not only for interdisciplinary cooperation but also for collaboration, both contemporary and through many generations, because continuously and comprehensively collected documents and materials would be an information commons – a common-pool resource for studying *Iriai*, commons, far beyond the interest of a single discipline or individual.

We are pleased and proud that our panel members represent colleagues from about 30 various disciplines (foresters, ecologists, statisticians, sociologists, economists, historians, etc.) who have collaborated for more than 5 years. The Kotsunagi Archive itself is also the product of the work of about 40 persons, mostly above 70 years old, who have served as supporters and publicists for the *Iriai* farmer-commoners of Kotsunagi and beyond<sup>4</sup>.

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<sup>3</sup> For a more detailed explanation of "Kotsunagi-jiken bunko" and the Kotsunagi legal case, see the Executive Committee of Prof. M. McKean's Lecture, Seminar and Field Trip, 2013.

<sup>4</sup> We are also collecting documents and materials on *iriai* practices in other commons -- fisheries,

## Development of the "Modernization" Policies

As Margaret McKean introduced to English-reading audiences (McKean, 1986, 1991, 1993), the customary practice of *Iriai* had spread almost nationwide in Japan several centuries before the Meiji Restoration (1868). The Meiji government, having reformed the former Tokugawa regime to promote economic modernization and strengthening of the country by means of military and fiscal measures, also pursued reform of taxation and creation of a land tax in 1873 as well as a classification of all lands into *kan* 管 (government-owned) and *min* 民 (privately owned) lands. This project attempted to register all land as either state-owned forests and fields or privately-owned lands (comprising those owned by hamlets and villages as well as those owned by individuals, groups of individuals, or listed representatives of owners). However, property rights in Japan have existed historically as a multi-layered arrangement, including rights of samurai retainers (with fiefs from which they derived income), vassals (feudatories), mountain guards, village headmen, landlords, ordinary farmer-producers (including tenants) who might have both individual and shared rights to resources, and so on. The registration project used the pretext of modernization to unify (enclose) these layered ownerships simply and one-sidedly into the hands of a single owner – the state, municipalities, or private individuals, excluding underlying layers. Even though the government's own modernizers wrote protection of *iriai* customs into the civil code, they simultaneously regarded these *iriai* customs as obstacles to their vision of "modernization" (Ministry of Agriculture and Commerce, 1922). The Meiji government's policies for taxation and registration of land were, in effect, a land grab, disguised and justified as modernization of taxation, that moved property rights from ordinary commoners to the state and to well-connected privileged elites.

Therefore these policies of registration and taxation under the rubric of "modernization" threw the villages and hamlets into much confusion. The Japanese government enforced the policy using ambiguous or inconsistent criteria – for instance, on some occasions allowing ownership by hamlets only on the basis of surviving written evidence that only some hamlets were lucky enough to have, and in other cases transferring rights in common land even to privileged individuals without written evidence but just on the verbal claims made by influential persons in neighboring hamlets. In these ways, much common land was converted into personal property of fortunate individuals or into state-owned and prefecture-owned forests. In addition to the policies we have already mentioned -- *kan-min* classification (1875-1885) and the

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irrigation, hot springs, water mills etc., though have not included these data from, our present research. See, for the present, Iwate Prefecture, 1984, Izumi, 2006, etc.

enforcement of the Forestry Act and the National Forest and Field Act (1897-1899), the Japanese government also launched additional policies with the goal of limiting or even eliminating *iriai* land and *iriai* rights. The government was singularly devoted to shrinking the number of local hamlets and villages by consolidating them into larger administrative units, justifying this partly on grounds of economic and administrative efficiency and obviously intending also to have tighter central control over a smaller number of local governmental units. But by amalgamating villages, the government also planned to amalgamate or unify hamlet-owned and village-owned commons, to eliminate *iriai* rights on these lands, and thus to convert these common resources into a fiscal foundation for the exclusive use of municipal governments. The local amalgamations of the 1880s were conducted mostly on paper at a time when the Meiji government was busily establishing itself and creating new institutions, from a constitution and new body of codified national law to a parliament, public education, a modern military, railways, and new industries. Reality did not change much until the national government adopted a new policy during 1910 to 1930 to enforce the unification of hamlet-owned forests and fields together with the liquidation (confiscation) of the *iriai* rights. The government pursued this policy step by step<sup>5</sup> until it was satisfied that all forests and fields in Japan fell neatly into one of its three preferred categories of ownership: state-owned, hamlet-owned, and individually-owned forest. We will review what happened to *iriai* commons that ended up in each of these categories.

**The first category was state-owned land.** After the registration, the "Kokuyū Rin'ya Hō" (the Act on Nationally-Owned Forests) launched the government's project to collect land designated as government-owned ("kan" 官) began, but farmer-commoners strongly resisted this loss of land that they considered theirs. The government then created the "Kokuyūchi sanrin-gen'ya sagemodoshi Hō (the Act to Return Nationally-Owned National Forests and Fields)" of 1899 to calm the strong resistance of the resident commoners. As a result of the mechanism offered by this law, farmer-commoners sent enormous numbers of petitions to the government demanding the restoration of this privately-owned common land: in Iwate 780 petitions demanded 116,123ha; in the whole of Japan, 20,675 petitions demanded a total of 2,056,936ha). But many said this government measure was only a tactic to quiet popular indignation, as the Act was valid for only 2 years. In Iwate, only 5.4% of the petitions (comprising an even smaller 0.8% of the land area resulted in victory for petitioners and return of the commons as the petitioners demanded. For Japan as a whole, 6.3% of the petitions and

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<sup>5</sup> Unification and liquidation of commons declined in priority once the government was disabled and distracted by the Great Depression and military adventures abroad, but the government resumed these priorities after World War II.

14.7% of the land respectively, resulted in the return of commons to petitioners (MoA, 1943). Then the farmer-commoners brought administrative lawsuits (*gyōsei soshō* 行政訴訟) before the court against the government actions (75 lawsuits in Iwate, 1,927 lawsuits in the whole country) (Hōjō, 1983). However, in the Iwate district, only 3 cases (4% of the number of lawsuits involving 13.6% of the land area related to them) succeeded (MoA, 1943). Elsewhere, farmer-commoners were arrested for continuing to use resources that had been theirs before the creation of national forests. In Kadoma Hamlet, for example, where 100% of its forests and fields were confiscated by the government, 9 farmers were imprisoned in 1884 with hard labor for 1 month and probation for 2 years on the charge of secretly felling 312 Japanese cypresses for roofing in 1882 (Editorial Committee of Kawai village, 1962). Statistics by the Aomori Forestry Office give the yearly number and area of the secret felling in Iwate Prefecture between 1908 and 1922, during which the government reported violations every single year. The lowest number of violations recorded was 78 cases involving 16 ha of land, and in the year with the most violations there were 226 cases involving 721 ha of land (Aomori Dairinku-sho, 1943). This was not simple theft; clearly, the inhabitants resolved to cut as a means of resistance to being driven into a corner regarding their livelihood. In some cases we should consider their actions to be an instance of civil disobedience -- that is, intentional disobedience of new laws they regarded as illegitimate, and as intentional defiance of the government. Moreover it is often said that there were even cases of arson to resist confiscation of land and forest (Kobayashi, 1968). When the government discovered it could not manage its confiscated forests and fields without some cooperation from the original commoners, the government revised the Act on Nationally Owned Forests to introduce various patronizing contrivances to reduce opposition among commoners. These mechanisms included forest loans, special sales of forest products to the farmer-commoners residing in the villages or hamlets with customary common access rights (*iriai*), entrusting the forest to the related municipalities or hamlets, the creation of "*bubunrin* 部分林 or forests whose profit would be shared between government and commoners if the farmer-commoners assisted with afforestation, and the designation of "*kyōyōrin* 共用林" or national forest subject to joint use with inhabitant farmer-commoners (hereafter, "jointly-used" forests<sup>6</sup>). However these contrivances were far more burdensome and degrading to the farmer-commoners than regular *iriai*, as most of these ostensible benefits were given only along

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<sup>6</sup> Both the English and the Japanese terms for joint use or using together 共用 could refer broadly to all sorts of situations. But in this context, we will use the term to refer only to forests that the government owns but on which it allowed some use by citizens. We will not use the term "co-management," which implies that the government acknowledges that citizens have substantial rights to a resource and also allows citizens not only to use but also to participate in managing (making decisions about) the resource.



with tolls and substitute duties such as fire prevention, monitoring of felling trees, patrol duty, all to retain use of forests that had been wholly their own without such burdens before. Worse, the government insisted on retaining the one-sided right of cancellation of these arrangements if it believed that the farmer-commoners had broken the contracts (Forest Bureau of the Ministry of Agriculture and Commerce. 1913)<sup>7</sup>.

As a nationwide survey in this period, we have "Meiji 26 nen Zenkoku sanrin gen'ya *Iriai* Kankō Chōsa [The national Survey on *Iriai* Customary Practices in Mountain Forests and Fields] 1883" by the government committee assigned from 1893 to 1903 to study, write, and prepare for the adoption of Japan's modern legal codes (Fukushima, 1956). This survey is extraordinarily valuable, but most unfortunately it has been only partially preserved, and records for Iwate Prefecture are lacking entirely in spite of that the survey itself was surely done in Iwate. Nor are any records found in the Iwate Prefectural Archives. Instead, we have 18 handwritten volumes<sup>8</sup> of the survey "*Iwate-ken Meiji Rinseishi Shiryō* (Material on the History of Forest Policy during the Meiji Era in Iwate Prefecture)" edited by the Aomori Regional Forestry Office in 1959 (Aomori Regional Forestry Office, 1959), for which the Forest Agency produced a mimeographed summary pamphlet -- "*Iwate-ken ni okeru rin'ya no kan-min yū kubun no gaikan* (An Outline on Distinction between State-owned Forests and Fields and Privately-owned Ones)" in the same year (Forest Agency, 1959). The Aomori Regional Forestry Office gathered 355 distinctive cases in Iwate Prefecture and reported their outcomes. Additionally, we collected some statistical data from the Ministry of Agriculture on state-owned forests and fields (e.g., MoA, 1937). Our colleague Yōsuke Kira will compare the situation on forests confiscated to become national forest and forests left with *iriai* rights on it for our panel.

**The second category was hamlet-owned land, and jointly-owned land – that is, forests and fields listed as the joint property of a list of individuals.** In 1889, the government amalgamated old hamlets into new administrative municipalities but these new municipalities had no financial assets yet. Therefore the government policy was to transfer the hamlet-owned as well as jointly-owned forests and fields to the new municipalities as municipal assets and, at the same time, to extinguish and thus to confiscate the *Iriai* rights on these commons from the farmer-commoners. Although administrative unification of hamlets and villages into municipalities began in the 1880s, the government did not try to complete the financial consolidation and the elimination of *iriai* rights attached to the transferred forests and field until a new policy enforced between 1910 and 1930: this was the so-called "*Buraku-yu rin'ya tōitsu*

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<sup>7</sup> Eventually these arrangements also included the opportunity for commoners to buy back from the government their own forests, very similar to instances of this type in the conflicts between the American government and Native Americans.

<sup>8</sup> The Kotsunagi Archive has digitized copies of the entire collection.

and *iriaichi seiri*<sup>9</sup> [The Unification of Hamlet-owned Forests and Fields and Simultaneous Liquidation of common access rights]. Although at first the government intended that the transfer should be done "unconditionally and without compensation,"<sup>10</sup> in reality this kind of transfer was extremely difficult and confused because the farmer-commoners and hamlets obstinately opposed the policies. This opposition from commoners was of the main reasons that the unification/liquidation policy took more than 20 years to carry out and eventually had to be abandoned. In Iwate Prefecture, 671 hamlets were amalgamated into 267 municipalities in 1889 (Local Section of Iwate Prefecture, 1957). However, since almost all the forests and fields that were distinguished as hamlet-owned or jointly owned continued to function as commons, just as they had before the kan-min distinction and registration of land, the government decided that it had to continue enforcing the unification policy among landowners.

In 1910, as a first step, the government announced that it would undertake an exhaustive nationwide survey of hamlet-owned and jointly owned forests and fields under the authority of both vice ministers of the Ministry of Home Affairs and of Agriculture and Commerce (IPA-1). At first, as the investigations depended only on the reports from villages, the government found the results to be insufficient. Therefore it dispatched the experts from prefectural governments to investigate and testify to the veracity of these village reports, as well as to discover unreported cases between 1911 and 1920. The government should have published the results, as it did with all the other national surveys (in 1930, 1974, and 1993), but to date we have not discovered even information about the publication, though we are still searching. Instead, we have collected the local hand-writing documents on the process of conducting the survey (hereafter, we refer to this as the 1911 survey even though data-collecting efforts continued until 1920) in Iwate Prefecture (IPA-2). In 1974, the late Professor Dr. Kahei Mori used documents available to him then to prepare a summary table (Mori, Kahei, 1974) but it was incomplete, based only on the above-mentioned insufficient reports. We have since made a supplementary table based on the original records with the additional reports, though this may not yet be a complete representation. We arrived at a total of 278 units (51 more than the reports from villages) and 92,132ha of hamlet-owned and jointly owned *Iriai* forests and fields in Iwate Prefecture in 1911 (IPA-3 etc.), constituting 8.4% of the total forest and field areas in Iwate Prefecture and 15.2% of all private forest and field areas (e.g., excluding state-owned forests). In reality, the total area of *Iriaichi* in Iwate Prefecture is a total of not only this 92,132ha but also the area of *Iriaichi* held nominally by individual owners who are actually serving as representatives for a set of co-owning

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<sup>9</sup> The Japanese term *seiri* 整理 means both organizing, or putting in order, and liquidating or settling a debt; it is thus a built-in ready-made euphemism for confiscation.

<sup>10</sup> See "Gun-Shicho Kaigi Shimon An (A Draft for Deliberation to the Meeting of Municipal chiefs, Iwate prefecture)", in IPA-1, 197th frame of the digital photo-file.

individuals, as I will discuss below. However, we do not have statistics for this latter category, but merely examples of several cases, because the government does not regard the individually owned lands with common access rights attached as an object of its measurement). The 1911 survey includes following information about each *iriaichi* or parcel of common land:

1. the location of each *Iriaichi*: We can specify not only in which of the 237 municipalities, but also in which of the 671 hamlets (hamlets are sub-units of amalgamated municipalities) the land was located.
2. registered owner of each *iriaichi*: Hamlet(s) and municipality(ies), including joint owners (lists of individuals who share ownership).
3. the area of each *iriaichi*: We have both actual measurements and measurements according to the land ledgers (registers?), so we also know what percentage the total area in a hamlet or municipality is common land.
4. rights-holder(s): We know the numbers of person, hamlets, and municipalities who own common access (*iriai*) rights.
5. contents of products and usufruct allowed: We know the purposes for which the commoners used any particular *iriaichi*: for fodder, grazing, logging, fuel wood and charcoal, collecting mushrooms or nuts, etc.
6. restrictive operational rules: the 1911 survey reported rules concerning the time and period for mowing or cutting, the allowable tools for use, the portion and allowable period of time for pasturage, and often the penalties for violating the rules. (Of course where the survey reports no rules there may have been rules-in-use that the surveyors did not discover.)
7. financial burden: the 1911 survey reported the taxes and other charges per owning household, e.g. fees for pasturage per head of cattle.
8. history: In most cases the 1911 reported the history of each commons as "unknown but commonly used since ancient times;" but it also identifies whether some commons were newly formed after the Meiji Restoration (1868) by purchasing former feudal fiefs, buying back state-owned land, or registering land as the nominal property of a representative individual (an mechanism that some commoners used as an alternative to more difficult legal procedures to regain former commons).
9. conditions for acquisition or loss of *Iriai* rights of person or household: inhabitant only, legal domicile holder only, or including the movers.

Unification of hamlet and village commons – that is, forced transfer to amalgamated municipalities with extinction of *iriai* rights – stimulated opposition and sometimes forced the government to compromise with commoners. Transfers in which commoners successfully resisted occurred anyway, but with conditions attached that allowed the survival of *iriai* use rights on the land transferred to municipalities. The intensity and success of protest varied by prefecture, but conditions granting *iriai* custom were attached to 38,385.1ha or 74.9% of the

forest commons that were unified in Iwate Prefecture, giving us some idea of the extent and strength of protests against government policy there. Unconditional unification comprised only 12,860.2ha or 25.1% of the commons that were transferred in Iwate. For 821.6ha of forest commons in Iwate, commoners renounced their *iriai* rights by subdividing the commons into (their own) individually owned parcels (and in this way prevented the land from turning into government property). Commoners with another 20,527.0ha of forest commons in Iwate managed to reject unification altogether (MoA, 1943). The Japanese government reports these cases as “unfinished” (未済面積), but it was unable to complete these transfers because of powerful resistance from the commoners involved. Thus “unfinished” really means that the commoners successfully rejected the government’s efforts to liquidate their common access *iriai* rights. Whether we treat the unifications with conditions as successful implementation of policy or as an indicator of successful protest determines how we evaluate these policies as a whole. Of course, the government claims that the policy was almost successful, but specialists say it almost failed because “conditional” transfer essentially meant that *Iriai* customs survived (Kobayashi in Kawashima III 1968, Hōjō, 2002). In any case, the reality is that problems and confusion in ownership and use rights continue even now.

To illustrate the continuation of *Iriai* disputes, we can examine a few particular cases. Kazawa hamlet, which was amalgamated into a larger village also named Kazawa, had held *Iriai* forests of 659 ha through the mechanism of joint ownership by 272 named individuals (IPA-3). In the 1910s the bureaucracy of the prefecture and county forced the village to transfer ownership of the hamlet’s common access rights from the hamlet into the village, and to liquidate these rights. The hamlet leaders agreed with the government’s policy but the farmer-commoners in the hamlet opposed it. This kind of disagreement in commoner communities was frequent, and we need very detailed information to know whether the hamlet leaders advised deference and cooperation because that was simply their philosophical preference or because of corruption, which was frequent. But we know that resistance from commoners was very powerful. After several years, the village chief, as administrator of the hamlet, brought a lawsuit against 272 *Iriai* habitants and confiscated the *Iriai* right from them through a judgment by default on a busy day during the farming season in 1923(IPA-6). However, in 1956, when Kazawa village itself was amalgamated into the town of Hanaizumi, the village gave only 102 ha of the above-mentioned 659 ha to the town as “zaisanku (financial ward)” and gave 416 ha of the rest for free to the Kazawa Productive Forest Cooperative, which is a de facto *Iriai* group revived as a corporation. It still survives, as the 1974 survey includes it (Hayasaka, 2014).

Another case is the village of Koromogawa. In 1930 it had 9,426.3 ha of forests and fields, of which 4,232.5 ha were state-owned, 148.5 ha village-owned, 1,628.1 ha hamlet-owned

and 3,417.2 ha individually owned (MoA, 1930). At the time of the 1911 survey, enforcement of the unification policy had almost ended, which explains why many of the hamlet-owned forests and fields remained. Koromogawa had 6 *Iriai* forests and fields used by multiple hamlets spread across neighboring villages. One forest was 639 ha, according to the land register, an *Iriai* commons that was jointly owned and used by 22 hamlets distributed across 8 municipalities and 2 counties. The unification process in this case was obviously extremely complicated and finally failed, in spite of frequent meetings of 22 hamlets attended by officials of the related counties and the prefecture, boiling down to the only solution they could settle on -- the distribution of the area of forests and fields to the 8 village municipalities containing commoners, in proportion to the respective shares of tax burden on this common land that these villages had paid to date. The documents available do not allow us to ascertain the reason that unification and extinguishing of *iriai* rights failed (Hayasaka, 2014b).

Two other cases are the hamlets of Ibonai and Toda, which since 1956 have belonged to the same newly amalgamated village, Kunohe. Ibonai managed to hold onto its 852 ha of forests and fields and Toda also kept its 1,180 ha of forests and fields, respectively, through the unification policies and the amalgamation of municipalities in the 1880s and also after World War II in the 1950s. Especially during the unification policies in the 1910s and 1920s, inhabitant peasants of both hamlets so furiously opposed the intervention by the village, county and prefecture that a bureaucrat reported on having to face too many opponents in Ibonai hamlet in 1917. A county (*gun*) chief also reported to the prefecture that he had intended to decide on unification with a sudden announcement at the general meeting of the hamlet in 1924, but a person "regarded as representative of the poor class stood to criticize the unification angrily, under the influence of drink, and 60-70 attendants of the meeting sympathized with him," so that the meeting ended in failure for the government. Moreover, 43 farmer-commoners brought a case before the court against Kunohe village, in 1925, settled in the same year with the commoners successfully rejecting unification and transfer of their commons (IPA-9). From these documents and the 1911 survey about hamlet-owned and jointly-owned commons, we have materials and a dataset amenable to large-N statistical analysis, on which our colleague Masahide Hayashi will report today.

The government resumed its effort to amalgamate municipalities (the goal even today is to continue reducing the 70,000 hamlets in Japan in 1867 to only 1,000 municipal-level units covering all of Japan), to unify lands with *iriai* rights in the hands of single owners, and to transfer ownership rights in such a way as to extinguish *iriai* rights. The government's overall policy in the postwar period was called "modernization of the *iriai* forests and fields," the results of which will be analyzed in this panel by our colleague Yusuke Kanazawa. Regrettably,

Professor Utako Yamashita could not attend the Edmonton meeting to share her exemplary studies of transformation in *iriai* commons in Nagano prefecture. For the postwar period, we have a nation-wide survey, "*Showa 49-nen Zenkoku Sanrin Gen'ya Iriai Kanko Chosa* (The National Survey on *Iriai* Customs of Forests and Fields in 1974)" edited by Saburo Kuroki, Kaisaku Kumagai and Hidetoshi Nakao, whose data Kanazawa analyzed. This survey covers 1,440 *Iriai* user-groups, of which 26 reside in Iwate Prefecture. In the explanatory notes to the survey, legal scholar Hidetoshi Nakao writes that the 1974 survey follows up on the cases studied in the 1930 survey but excludes the ones that have since dismantled their commons (Kuroki, Kumagai, and Nakao, 1975). This omission is regrettable (and an error in research design), as we need information about the dismantled commons in order to know why, when, and how certain commons and *iriai* rights were discarded, and whether perhaps they might have survived in another form. As we continue this project, we plan to examine the 38 cases that the government surveyors for the 1930 survey labeled as "typical" and described in great detail, as well as the 114 cases that the government surveyors designated as "similar" to the "typical ones," but provided somewhat less detail. By tracking these 152 cases from the 1930 survey as well as the 278 cases included in the 1911 survey in Iwate, we will begin to get some idea of change over time during this period of enormous economic and political change in Japan.

**The third category of land ownership that the government wanted to arrive at was individually-owned land**, which actually includes not only (a) purely individual ownership (we are not concerned with this, as no *iriai* rights are involved) and (b) designated joint-ownership by listed individuals, but also (c) nominal ownership by a named individual person who is actually just the representative for local farmer-commoners with *iriai* rights who actually own and use the land. The government treated type (b) in the same way that it regarded hamlet-owned commons and made it a target of unification and transfer policies. However, by disregarding the existence of *iriai* rights on the third type of land, the government regarded type (c) as identical to (a) fully individual ownership without *iriai* rights attached — and omitted it from unification policies and surveys related to implementation of the unification policy. Originally, the possibility of registering land as the nominal property of one person who represented other commoners arose because of a short-term generous measure created by the government in 1873 called "Chisokaisei Jimukyoku Otsu Dai-3-gou Tasshi (B-3 Notice of the Bureau of the Land Tax Reform)" (Forestry Agency, 1959). This provision allowed for the designation of *Iriai* forests and fields as privately owned lands even without any documentary evidence<sup>11</sup> of private

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<sup>11</sup> Fire is a routine occurrence in Japan, where structures are built of wood, and as a result documents are often lost even when carefully protected. The government adopted this measure allowing oral testimony in the absence of documentary evidence to assist communities that had no adequate documentary records.

individual ownership, simply on the basis of testimony by the leaders of the neighboring municipalities, as the government placed more confidence than farmer-commoners. This notice was soon replaced, in the same year, by "Otsu Dai-11-gou Tasshi (B-11 Notice of the Bureau)" which was far stricter. Iwate Prefecture made full use of the B-3 Notice and gave out the land certificates for almost all hamlet-wide common forests and fields to representative persons. Because the government classified this type of land as individually owned, even though all of it was de facto *iriai* forest and field, it is difficult to impossible to obtain the total number of cases and the area of the common land held in nominally individual ownership by representative persons. This type of ownership led to many lawsuits, because almost all of the nominal owners eventually asserted themselves as sole owners based on their monopoly of written land certificates. Moreover, they felled trees on this land themselves, and used violence to hinder and even to prevent *iriai* farmer-commoners from exercising their *iriai* rights. As far as we know in Iwate, there is only one case, which happened in Narakasa hamlet in 1908 regarding 257 ha of the forests, in which the nominal owner quite generously gave back his title both in name and reality to the 135 inhabitant peasants and transferred it to their joint-ownership including himself. His grandson manages it now very well as the leader of the Narakasa Productive Forest Cooperative (Iwate Kotsunagi no Kai, 2013). Apart from this instance, as a substitute for the statistics that the government never collected, we are now building a comprehensive collection of documents related to rulings in *iriai* lawsuits from the original Collection of Civil Affair Judgments. This material amounts to 780 volumes for Iwate Prefecture alone, now kept in the National Archives of Japan (NAJ) thanks to a subsidy from the Japan Society for the Promotion of Science (JSPS) that we have received for five years since 2011. This work involves costs for travelling to the National Archives, selecting documents to copy from an enormous quantity of miscellaneous judgments, and then making the copies. Thus in five years' time we have finished going through only 200 volumes of judgments to collect rulings in more than 300 *Iriai*-related lawsuits. We did not include them in this panel report for Edmonton, although they contain very important descriptive records on *Iriai* lawsuits such as those from Kotsunagi, Heromachi, Nikarube, Ono, Ishikiridokoro, Hinosawa, Kintaigi, and more. These documents include rich information about customary *iriai* rules and practices, so they tell us about much more than the process of conflict and legal development.

In addition to this category, we offer the example of one of a few large-scale commercial farms in Japan, Koiwai Farm, covering a total area of approximately 3,600 ha. This land was all originally *Iriai* forests and fields owned by 11 hamlets but the government confiscated the land in the 1870s during the kan-min registration. Then, in 1889, the government offered a 20-year lease on these lands for very low rent to three privileged persons: Ono 小野, vice president of the Japan Railway Company; Iwasaki 岩崎, president and founder of Mitsubishi

Company; and Inoue 井上, director general of the Railway Agency. From the first syllables of their surnames came the name Koiwai: the initial syllables of their names when written in Chinese characters 小岩井 can be pronounced Ko (also O), Iwa, and I, respectively. In the same year, since the inhabitant farmer-commoners resisted strongly, Iwate Prefectural government interceded and negotiated a settlement between Koiwai and the commoners, which promised that the farmer-commoners could cut grasses freely until Koiwai was ready to use land for its own afforestation, grazing, or any other purpose. This arrangement did not guarantee *iriai* rights, however. In 1902, the government sold the leased forests and fields to the Koiwai company, which then expanded the afforestation of meadow and the cutting of forests to produce grazing, achieving complete exclusion of the *iriai* commoners. After WWII, the American Occupation policy to distribute the assets of Japanese zaibatsu (capitalist holding companies who had gone along with the militarists' pursuit of war) was about to break up the farm. Additionally 1,039 ha of the total of 3584ha of the Koiwai farm land was liberated by the Occupation's agrarian reform, but Koiwai farm survived further land reform due to having been designated a ranch (not subject to land reform) by the Ministry of Agriculture and Forestry. Now the historical facts have passed into oblivion and the Farm enjoys its prosperity (Executive Committee of Prof. M. McKean's Lecture, Seminar and Field Trip, 2013). The Koiwai name is a nationally known leader in dairy products today but few Japanese know that the land was all commons, confiscated by the Meiji government.

### **Our Purpose, First Step and in the Future**

Our goal is to gather as comprehensive a collection as possible of documents on *iriai* commons in Iwate Prefecture, and especially materials on the lawsuits about the right of common, because we would like to be able to elucidate the actual variety from many angles as well as the shared features as precisely as possible. Although almost all of the *Iriai* commons were similar to each other to start with, the arbitrary policies of the government since the Meiji Restoration in 1868 divided them into these three categories that differ not only in property form but in their course of development, so they are difficult to analyze together. In reality, no unified statistical data exist for all *iriai* commons. This is one of the main reasons our report can deal now, as a first step, only with the 1911 survey about unification policies. We chose the 1911 survey as an object of our first step of research, because it is so comprehensive in its scope and sampling. For instance, we have reason to believe that it surveyed a full 50% of all existing commons in Iwate alone. We aim as second step to develop comprehensive materials on state-owned forests and fields, including de facto *iriai* customs, and then we hope to move to the commons registered as nominally individual property. This would give us information



about all three categories of commons that the government created, which I see as a very solid starting point to obtain accurate information about *iriai*.

In the long run, we want to find the long-term dynamic changes and development of *iriai* through continuous causal as well as historical analysis through the 150 years since the Meiji Restoration. Thus far, it appears that situations outside of the commons themselves – particularly the government’s administrative attitudes and policies, affected collective decisions and actions of the *Iriai* user groups more strongly than did internal factors. Of course, the effect of other long-term developments must not be ignored -- for example, the change from autarkic to inexpensive commercial fertilizers (e.g. rape cakes, bean cakes, fish cakes in 1910s in Iwate district and, later, chemical fertilizers). Similarly, charcoal was used mainly to manufacture pig iron in the Tokugawa era (1600-1867) in Iwate, but later its use for home heating greatly expanded demand, especially from the 1920s to the 1950s, until home heating oil overwhelmingly took its place. Demand for forest products also declined dramatically in the 1960s, when petro-chemical products, such as polyethylene and polystyrene for paper and boards, took their place. Cultivators and trucks took the place of draft animals, prefabricated buildings replaced wooden houses, and most crucially, the arrival of cheap imported timber since the 1960s drove domestic timber out of the market.

If we could compare all of these factors – changes in commons along with changes in external economic and other developments -- with those in other countries that also have well-documented commons, such as several European countries as well as India, especially regarding how these circumstances affect the rise, continuity, and/or fall of *iriai* rights and practices, we could open a new direction for studies on the commons and more accurately characterize the tensions and possible complementarities between *iriai* and the market economy. For that purpose, however, we must still amass many still-scattered materials on the Japanese commons in order to trace historical changes in both each case of commons and the surrounding social, political, and economic context. We will continue inquiring in these directions.

Margaret McKean (McKean, 2014), attending our research group since 2013, Notes that we have barely tapped historical materials, because so much scholarship is on the urgent state of resource-dependent people in the developing world today. In fact, studies of historical commons did not even constitute an IASC theme for Edmonton 2015! However, she argues that historical analysis is more important than ever. Historical studies of well-documented commons, such as we will be able to do with our Kotsunagi Archive, offer the only setting where we can learn about:

- Origins of commons,
- Changes in their governance and social structure,

- Change in their internal economic function (using concrete information, not guesswork),
- Changes in their relationship with the larger economy,
- Changes in the relationship with governmental authority,
- Changes in their legal status, and
- Changes in consequences of commons (McKean, 2014)

Comparative studies of the legal histories of well-documented commons would allow us to investigate varieties in legal forms:

- Who owned ground rights to the land under the commons?
- Who held common access rights above the ground?
- Did different people have rights to different resources?
- Who wanted to change ownership, uses, and/or rights on the commons?
- When and where did commoners conduct enclosure of their own commons from below by deciding to divide or sell the commons?
- When and where did governments or elites conduct enclosure of the commons from above by deciding to confiscate the commons, expel commoners, or sell or lease to former commoners or to others?
- When did courts support commoners and when did courts align with the opponents of commons?
- And most important, how can we explain variations in the survivals of common land after two centuries of assault and decline – both in Japan and elsewhere?

Multivariate analysis – understanding complex change over time in more than one important contextual factor – requires large datasets. This is what we want to do, so we need to build a substantial dataset for Japan comparable to those already available for various European countries. The rewards from doing large-N quantitative analysis of the Japanese commons would be an improved understanding of

- Why commons survived in some places and not others, and
- How legal disputes served to secure or to damage commons and commoners.

We could then incorporate the Japanese case into robust comparative studies of legal and historical change on the well-documented commons of the world. When we understand how commons can be successful, and where and why some commons survive, we can use the design of commons for contemporary purposes, combining truly sustainable use with protection of environmental services and additional environmental amenities. Where commons have declined in use (as in Japan, now facing deterioration of the commons due to under-use!) or where reckless replacement of commons with individuated property now makes the resources vulnerable to severe externalities, we may be able to design modern commons that serve contemporary needs.

As we know, this research project is at present a small one limited to Japan, specifically to Iwate, to collect and study documents and materials on *Iriai* customs and experience. However, we acknowledge that it is an unprecedented experiment with respect to the following features:

1. we focus specifically on *iriai* or commons;
2. we are building a comprehensive collection of documents currently in scattered locations related to the theme;
3. we will synthesize the factual information and experience that *iriai* commoners experienced;
4. we are proposing collaboration with researchers in other prefectures of Japan to engage in similar efforts to gather materials about *iriai* using similar methods, so we will be able to compare results and cumulate generalizations in a new scientific sphere;
5. we hope to encourage and establish international comparative analysis of the experience in the countries with good documentation so that we can elucidate the shared and unique features of the development of commons.

Additionally, we can envision a future for *Iriai* commons by extending the analysis of the past and present. Is peaceful existence among commons, the market economy, and a state-governed society possible, or is there inevitably a competitive struggle for survival among them? *Iriai* customs in Japan have been and still are exposed to serious assault by government and commercial interests, yet many survive on their own vital energy – the power of resistance, the adaptability to difficult situations, creativity in management, careful preservation of their own autonomy (Hayasaka, 2006).

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