

## **Class No. 11 (June 23, 2010)**

### **Law and Culture: Japanese Law and Japanese-style Public-and-Private Structure; (1) On the Theme of City Plan**

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I Introduction: the way “public” should be which is now being called into question

“Public” and “private”; e.g., “public law” and “private law”

According to “Japan's Goals in the 21st Century: The Frontier Within—  
Individual Empowerment and Better Governance in the New Millennium”

One is to change the methods and systems whereby citizens interact with the nation.

This means defining the relationship between citizens, who entrust government with authority, and government, which is so entrusted, in the context of a new form of governance led by citizens as the chief actors.

After World War II Japan established democracy in society, but although the form of society changed, not all its content did so. Notably, the traditional channels and organization of one-way (top-down, or public-sector to private-sector) transmission of decisions and demonstration of power remained embedded through force of habit. This needs to be changed to a contractual relationship between those “below” and those “above,” or the private sector and the public sector, a more equal relationship. People must become more aware that government is their agent.

The other essential change is to redefine and rebuild the relationship between private and public space in civil society.

This means first and foremost promoting individuality and individual initiatives: unleashing sturdy individuals who are free, self-reliant, and responsible, individuals whose ability to empathize with others makes them inclusive. These tough yet \_flexible individuals will participate in and expand public forums on their own initiative, creating a dynamic public space. The public space thus cultivated will provide individuals with more diverse choices and opportunities. This will lead to the emergence of individuals and a society endowed

with diversity and vigor, individuals and a society that take risks more boldly, address pioneering challenges, and are more creative and imaginative. We should think, too, about developing a system to provide incentives to such individuals and a safety net for those who fail.

## II Japan's institution of City Planning Law that has failed in road (urban foundation) maintenance and improvement

(1) Japan's institution of City Planning Law does not have a well-planned system for town zoning.

- A town block does not constitute an urban community unit in Japanese cities.
- Better by design
- Ugly (unattractive) towns of Japan
- Loose restraints on city planning, and the insufficiency of the system concerning the return of developmental benefits out of public works

(2) Failure in transplanting the system to return developmental benefits on account of public works

- The system of payment by the beneficiaries has turned into a dead letter.
- Underlying consciousness of the minimum standards for the facilities and environment of a city
- The system of payment by the beneficiaries that had already failed in prewar times

## III Cultural background where the return of benefits originated in public works has failed to operate: "the public" and "*ohyake*"

(1) "The public" that is not equal to the nation: the nation, being an agent of "the public," is a public existence.

"The Constitution stipulates, not that the value of an expropriated property should be paid, but that a just compensation should be provided. A just compensation is not only just to an individual accepting the expropriation, but also to the public... It is a state's duty to be considerate not only of justifiability for an individual whose property is expropriated, but also of that for the public who pays this... A just compensation required by

the Constitution should be measured by the property owner's loss brought about by the public expropriation. He is entitled to receive the worth that he has been deprived of, and that's all to it. It is not just to him to give him less than the worth, not is it just to the public to give him more than that."

(2) "*Ohyake*" that has been impossible to be "ours"

Japan's container-like structure of the public and private, and a thought of sacrificing one's personal interest to public good.

"*Samurai* carried out public works as a consequence, and contributed themselves to the public benefit. Nonetheless, their original way of thinking was different: they worked by producing more, not for the common people's interests, but in order to grow into a more affluent and powerful *Daimyo*, or a stronger *shogun*."

#### IV At the conclusion

#### Bibliography

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