

Power to the Local Governments:  
The Kobe Reconstruction Plan and the Decentralization Policy

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## 要 約

### 神戸・淡路大震災復興計画事例研究：地方分権政策により中央政府から 地方政府への権限移譲推進による効果分析並びに法学的分析

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本稿は阪神・淡路大震災後の神戸市都市復興計画を事例研究対象とし、地方政府のリーダーシップ分析並びに被災民救済の法学的分析を試みたものである。改正都市計画法、地方分権政策、関連法令並びに条例を多角的に検証しつつ、中央政府から権限委譲を受けた地方政府の政策決定策定過程への市民の参画モデルを現状分析をととして模索した。地方政府の自治能力が試されつつある時代である。都市計画は市民の権限を制約する側面が強いものであるが、迅速な被災民救済を目標にいかに行政は動いたのか、また市民の反応はどうであったのか。短期的のみならず長期的な視点による都市計画が必要であるが、どのように法律は立法され、解釈され、執行され、どのような効果を市民にもたらしたのか、そしてどのように市民はかかわったのか等の検証を試みた。加えて、中央集権から地方分権へいたる歴史的背景並びに地方分権政策へのシフトと新しい都市政策との関連性にも言及をしている。

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*I appreciate Alexandre L. Wolfe<sup>1</sup> for suggestions on this paper.*

## Introduction

This paper is based on research on the Kobe city reconstruction plan after the Great Hanshin and Awaji earthquake (Kobe earthquake). It examines legal aspects of the local government's leadership and public relations initiatives. It also discusses the recent policy of decentralization of power from the national to local governments, as put into effect by the newly amended Urban Planning Act and related laws and ordinances, and its merits and demerits. The increased decision-making power of local municipalities is putting their policy-making abilities to the test. I have tried to project a new relationship model between city and its residents upon the Kobe city reconstruction plan.

## Chapter 1. Overview of the Kobe Earthquake

At 5:46 a.m. January 17<sup>th</sup>, 1995, the Great Hanshin and Awaji Earthquake hit the Kansai area, including Kobe. Brief statistics are as follows:<sup>2</sup>

The total death toll was 6,430.

Place of death: 86.6% at home, 3.8% at hospital, and 9.6% unknown.<sup>3</sup>

Time of death: 71.2% during 5:46 a.m. to 5:50 a.m., 95.9% within January 17<sup>th</sup>.<sup>4</sup>

How they were killed were: 89% crushed to death and suffocated to death, 11% burn to death and sever burns and scalds to death.<sup>5</sup>

There were 43,782 injured people.

The number of houses destroyed was approximately 200 thousand.<sup>6</sup>

The number of severely damaged houses was approximately 280 thousand.<sup>7</sup>

The number of damaged houses was approximately 530 thousand.

### 1-1. Three questions

1. Who were the quake victims?
2. How was the damage compensated?
3. How did the Kobe city government rebuild the city?

#### 1. "Who were the quake victims?"<sup>8</sup>

Because the earthquake fault stretched from east to west, relatively close to the coastline, small-sized factories, old residential areas, and working class neighborhood were heavily damaged by the quake. Those areas were concentrated areas of old wooden apartment

buildings, with narrow allies. The residents were mostly elderly and not relatively financially affluent people. 52% of the total death toll was elderly people. As a consequence of having lived in a temporary shelter or/and having been financially and psychologically traumatized, many elderly people died or killed themselves after the quake.

## 2. "How was the damage compensated?"

### A. The Right to Life issue

According to the Disaster Relief Act both national government and local government have the duty to protect victims' right to life. The Government has the responsibility to provide people the necessary minimum requirements for survival, such as clothing, food, and shelter. How should victims' property rights be protected? Some scholars<sup>9</sup> as well as the government claimed that the government has no legal responsibility for natural disasters; therefore the government does not need to compensate/reimburse victims' lost property with public funds (tax money). On the other hand, lawyers, a majority of scholars, and residents claimed that the government needed to compensate, at least partially, the victims for damage to lost property; otherwise, people would have been unable to survive the enormous damage to private property. Opinion polls showed support for the latter course, given the decision that the government was going to funnel tax money to save financial institutions, which have almost gone bankrupt.

### B. Legal issues

The Provisional Law for land lease and rented houses in disaster-stricken areas says that disaster victim tenants have a priority right to leasing land and renting houses from landlord.<sup>10</sup> Although disaster victim tenants with financial power are able to exercise their priority right of leasing land and renting houses, tenants without financial power are not protected by their priority right because they do not have sufficient means (money) to exercise their right. This is like a pie in the sky. A further problem is that since this law was written immediately after World War II, legislators did not consider the issue of joint apartment housing, simply because there was no joint apartment housing at the time.

## 3. "How did the Kobe city reconstruct the city?"

To answer this question, we need to answer the question of whether the Kobe Earthquake was a natural calamity or a man-made disaster.<sup>11</sup> An earthquake is clearly a natural disaster, but if national and local governments' disaster countermeasures before and after the quake are insufficient, if building construction standards do not measure up to probable earthquake scales, if both national and local governments do not exercise their duty to investigate buildings which did not satisfy the construction standards, if urban planning does not take disaster risks into consideration, then we can say this is a man-made disaster as well. If people are suffered from man-made problems relating to the quake, the government should compensate for damages, and the government has a duty to prepare measures and laws to save victims' rights.

## A. Reconstruction Plans

The original plan by the government was simply an urban development plan, of which the city had received criticisms. The government did not hear opinions from residents for a plan how the city should be rebuilt even though people kept on living there. Residents were not silent this time; they demanded that the city should change it. There are two different urban planning. Plan A: A city needs to secure public space such as main streets, parks, and greenery. In order to secure public space, private land space is subjected to reduction, called "Genpo"<sup>12</sup>, for the sake of the public safety. Plan B: Residents want their land, houses, and life back as they used to be. They want to reconstruct the city as it was before the quake.<sup>13</sup>

## Chapter 2. New Vision of Urban Planning

Conventional urban redevelopment type planning put too much emphasis on the construction of high-rise commercial buildings in the downtowns of big cities.<sup>14</sup> Along with commercial buildings, undergrounds were developed for shops and restaurants. As a consequence, land prices rose, people could not afford the cost of living, and many residents left, which has led to the problem of urban sprawl.

### 2-1. Kobe new vision

Kobe new vision of urban planning is "Safe City Resilient to Disasters".<sup>15</sup>

A. The process of how the city planning was made is as follows:

January 15<sup>th</sup>, The Great Hanshin Awaji earthquake→February 8<sup>th</sup>, A draft plan→2 weeks public inspection→March 13<sup>th</sup>, Approved by the city earthquake committee→Approved by the prefecture earthquake committee→March 17<sup>th</sup>, An urban reconstruction plan determined by the Governor→Strong opposition and criticism (too hasty and no reflection of residents' opinion)→Neighborhood Conference Activities

B. What necessary to realize the new vision is:

- Risk management (disaster management) against unexpected risks.
- Better traffic functions (Restrict width of roads (wider roads)).
- Better infrastructure (Use nonflammable building materials).
- Effective space use in order to keep fires from spreading. (Prepare emergency shelters considering flow planning.)

C. Problems

Among skyscrapers, there were traditional old neighborhoods for working class families and seniors. Many of those people were killed by the quake. Conventional urban planning did not pay enough attention to these under-privileged old residents, but it focused instead on young generations. A cross-section of all age brackets has to be taken into consideration for urban planning. Residents started their own community-based networking after the quake. Neighborhood conferences consisting of citizens, consultants, and lawyers started working as a

core-networking group for gathering residents' opinions.<sup>16</sup> The number of Neighborhood conferences in Kobe city increased to more than 100 in a year after the quake. A question was raised, however, whether the Neighborhood conference's opinions clearly reflected residents' opinion, as residents criticized some of the Neighborhood conferences for acting as an agent of the city.

## 2-2. Temporary Shelters

How were temporary shelters provided to survivors?

Disaster Countermeasure Basic Law Article 87 and Disaster Rescue Law, Article 23 Clause 1 say that the Minister of Health and Welfare is in charge of providing shelters for disaster survivors. Local Government Law Article 43, 1<sup>st</sup> clause says that, as an organization so designated by the Ministry of Health and Welfare, the governor of Hyogo Prefecture is in effect in charge of providing shelters for survivors. Disaster Rescue Law Article 30 says that the governor may devolve part of the authority on rescue matters to municipalities, if necessary, for the sake of smooth operation. The Law mandates that public schools and parks should be used for temporary shelters. Surrounding Kobe areas did not have enough, so far distant locations, such as the far south of Osaka prefecture, prepared shelters for Kobe Quake survivors. Many were reluctant to go live that far. Shelters on very expensive land cost about 3.75 million dollars per 3.3 m<sup>2</sup>, which is \$1.137 million per 1 m<sup>2</sup>, and had many vacancies. The cost was borne by the government. Kobe Earthquake emergency city planning ordinance selected designated reconstruction prioritized area. In such designated areas, an application for permission of construction must be filed 30 days prior to the construction confirmation. In the other areas, there was no restriction, but no public fund were granted. Thus, shelter issue is not a simple risk management and social policy issue, it is also an urban planning issue.

## 2-3. Conflicts between the government and residents

On March 17<sup>th</sup>(two months after the quake) the government announced the city plan. However, prior to the announcement, there was no public hearing, but only a briefing for the public and a two-week-public inspection carried at one location in the city. Many were living in the shelters and evacuated from the city; however, residents sent approximately 3500 opinions to the city from evacuating places. Briefing was poor. There were not enough experts to answer questions. The briefing was held in a cramped location, and many people had problems accessing the briefing location. Most criticisms were: "it is too hasty, we need more time." On the other hand, people who lost their houses and buildings on their own land wanted to rebuild as soon as possible if their financial situation allowed it.

### A. Restrictions (Police Power)

Construction Standard Law Article 84 stipulates that the government can permit people to rebuild their houses with a promise of dismantling their house when the city plan requires to take lands for the public use. The reality is once people were granted a permission to rebuild a house on their land; the city plan will never be realized. Therefore, the government needs to hurry to finalize the city reconstruction plan as soon as possible. Permission comes from the

Minister of the Health and Welfare, but after a revision of urban planning law, governor and mayors are to make a final decision. Regarding urban development issues, the government holds eminent domain for land takings.

#### 2-4. Beyond disagreements, a partnership between the government and residents

Urban planning inevitably restricts people's rights when government is exercising its legal power over the city. A possible solution is to facilitate people's involvement for the decision making processes by introducing public hearings and public inspection.

#### A. Legal Issues<sup>17</sup>

Urban Planning Law, in Articles up to 53 says that wooden two-storied housing (lower than 3 storied buildings) can be constructed in restricted areas with a governor's permission. However, if governor prohibits building, a landlord can ask the governor to purchase the land. In the case of disaster stricken areas, people who lost houses for living and who lost buildings for business, had no alternative but rebuild a house if their financial situation allowed. If more and more people reconstruct less-than-three-storied houses in the restricted area, restrictions for realizing an overall security plan for the city would never be realized. Hence, it was necessary to produce the city plan as soon as possible, to prevent housing from getting jumbled, which is not desirable and has to be avoided from the perspective of creating a disaster-resilient city.

#### 2-5. Housing for Survivors

On February 6<sup>th</sup>, 1995, the government issued a government order to apply the Provisional Law for Land Lease and Rented Houses in the Disaster Stricken Cities to the quake-stricken cities. When a landlord of a destroyed or severely damaged house, does not rebuild /repair it, tenants have no right to claim the lease/rent, and they have to leave. When an owner of lost property has the right of land leasing, as long as 5 years after the quake, the owner can protect his right of land leasing against third parties. An owner of lost property bears the burden of paying the land lease, as he keeps the leasehold. In practice, an owner of lost house can rebuild a house by himself if he will. Since many owners of lost and damaged houses suffer financial problems while trying to pay the land leasing after the quake, the number of owners who cannot afford to rebuild houses without any financial support is large.

#### 2-6. Priority Rights

Rent leasers have a priority right to rent an apartment, when an owner rebuilds an apartment building.<sup>18</sup> Problems are: the first, uncertainty of a building plan, the second, present and immediate urgency of finding a place to live, the third, harder renting conditions (higher rent) for a newly built apartment. For pensioners, who used to live in an inexpensive apartment complex, it is almost impossible to pay the rent for a newly built condominium.

The "Disaster Stricken City Law" was originally created immediately after the World War II for war-stricken area survivors. At that time the law did not assume high-rise apartment complex or condominium type housings, but considered individual houses only. Therefore, leaser's rights for protection are open to interpretation. The examination of how many votes are necessary for

claiming the right, and of how much damage for rebuilding are discussed in the following 2-7. Mechanism of Solutions.

If rent leasers of an apartment/condominium exercise their priority right of land leasing against the third party, possibility A is that the land will be allocated to each of them and each leaser will build a house, which brings small houses to be built close together. This is not desirable design from the point of view of city planning. Possibility B is that a landlord cannot build a building for other purposes, which means landlord's choices are restricted by leaser's priority leasing hold. As a consequence, a landlord will not be able to use the land space in the most economically effective way.

Because of financial strength differences, some of the leasers cannot afford to live in a newly built apartment/condominium, even though they desire to. Particularly, old people who incapable of returning money cannot borrow money from banks. Most pensioners have a single income source of pension. Thus, low interest rate or 0 interest rate does not help them. The only option left to help them is a government subsidy.

## 2-7. Mechanism of Solutions

Using public funds (tax money) is the best available option to save old pensioners with little financial power. This could be done by selling the leasing hold of a person without financial power to public organizations, such as the Housing and Urban Development Public Corporation, and the Housing Providing Public Corporation. In return, those without financial power can rent an apartment from such public corporations at an affordable price.

### A. Voting System

Partial Ownership Law, Article 63, Clause 4 stipulates that if damage is 50% and less than 50% of the total building price<sup>19</sup>, 50% and more owners have to agree for rebuilding. If damage is more than 50% of the total building price, 80% and more than 80% of 75% and more of owners have to agree for rebuilding. If the entire building is destroyed, all of the owners' approval is necessary for reconstruction. In reality, it is extremely difficult to reach a consensus. On March 2<sup>nd</sup>, an amendment of Article 3 of the Special Measures Basic bill regarding reconstructing quake stricken buildings passed; 80% of all the owners' approval satisfy the condition of rebuilding.

The next step after having necessary approval of the owners is that owners who agree to rebuild need to purchase rights of owners who disagree for rebuilding. In order to do so, owners who agree to rebuild need the financial power to carry out a reconstruction plan. This is not easy. As a best available alternative, Public Corporations purchase rights to realize a plan for residents. If current apartments not satisfying the construction standard, and when they are rebuilt, the floor area ratio will be smaller from a safety point of view, because high floor area ratio building is more disaster-prone. If residents want to keep the same living space, they need to bear part of the construction cost, bear part of the cost of shared land space, and purchase the partial ownership for shared space. Even though residents do not have financial power but want to keep on living there, what they need to do is to share the burden of partial ownership of the shared space. In other words, when the financial burden of a public corporation

becomes larger, the financial burden on the side of residents becomes smaller.

### Chapter 3. Private Benefits versus Social Benefits

#### 3-1. Restrictions on private ownership for the sake of social benefits: Public welfare influences private ownership<sup>20</sup>

The amended Urban Planning Act, article 53, specifies an extended restriction of construction of a building on owned land from one month to two months. The Amendment of the Construction Standard Act, Article 84, 1st and 2<sup>nd</sup> clauses extended the restriction period from two months to six months.

##### A. Taking land for zoning of urban planning

By purchasing land ——— costly

By removing residents from the land ——— difficult

By purchasing rent/land leasing rights ——— less expensive than purchasing land

By reducing land space, “Genpo”<sup>21</sup> for public purposes, such as for parks, widening road’s width, and public space. ——— not costly

##### A—a. Conditions for ‘Genpo’

It must be an area heavily damaged by an Earthquake.

It must concern old buildings that are in need of rebuilding.

It must be poor infrastructure, such as roads, parks, or greenery needing improvement.

With above conditions, public welfare claims may restrict private ownership. Article 29, 3<sup>rd</sup> clause of the Japanese Constitution stipulates, “Private property may be taken for public use upon just compensation therefor”. Whether ‘Genpo’ provides ‘just compensation’ or not is at issue. Whether land value rises equally or higher than ‘Genpo’ ratio must be investigated in order to justify invasion of property rights for the public use.

#### 3-2. New Zoning

Designated areas by city ordinances are as follows:

Urban redevelopment district: 254.8 ha

Urban district planning district: 325.4 ha

Earthquake stricken reconstruction district: 5887 ha

Specially selected reconstruction district: 1225 ha

In the concept of new zoning, the major changes are from absolute land ownership to relative land ownership by purchasing leasing rights, and from individual houses to apartment/condominium with shared spaces. Residents’ duty to cooperate and residents’ right to participate in the city planning process are stipulated in the Kobe City ordinance in order to help the new partnership make the transition from conventional top down decision-making process to bottom up flow.

## Chapter 4. Policy Changes

### 4-1. Land Policy Change

After the economic bubble burst, the Japanese government announced a new comprehensive land policy on February 1997. The major change was from land prices controlling policy to facilitating more effective land use policy.

Past

- Absolute land ownership.
- Principle of free construction. (Landowner had little restriction on constructing on his own land.)
- Land price mythology: land prices never declines.
- Scrap and build development policy to help the construction industry. (one of the biggest lobbyist groups)
- No public hearing and few public inspections for the city planning.

New

- Restrictions on construction. (Landowner's right to build on his land is more restricted than before.)
- The government has a master plan (vision) of urban planning.
- More residents' participation in the decision making process is guaranteed in the law. (Less construction industry influence than before.)

### 4-2. Decentralization Policy

On July 1999, Decentralization Comprehensive Law was enacted and started influencing the power shift from the national government to local governments. Before then, the autonomies of prefectures' and cities' governments were limited. Local governments were under supervision of the national government, and they in effect functioned as its subdivision. This is a work product of the long history of centralization policy since the Edo period.<sup>22</sup> One of the major centralization policies then was called "sankinkotai", the system of alternate residence of feudal lords in Edo (Tokyo) in order to wear down feudal lords' finances and in order to take hostage of their children and wives.<sup>23</sup> Lords had to send much tribute to the Shogunate to keep their country untouched from the attack. The sankinkotai system was abolished, but in the following Meiji, Taisho, and Showa eras the central government kept the centralization policy. In the past decade, Japan has been suffering from an economic downturn and no drastic change has taken place. The Japanese government currently has serious financial problems<sup>24</sup>, and would prefer to devolve duties regarding local matters upon local governments. As local governments gain authority that the national government used to have, local governments have to manage to run their cities on their own. Along with the decentralization policy, incorporation of municipalities<sup>25</sup>(merger of municipalities) is encouraged by the national government and facilitated with subsidies. Municipalities that decide to incorporate are entitled to receive a type of local subsidies from national government during the 10 years following the year of their incorporation.

## Conclusion

The Japanese Government faces major systemic changes and reforms for the first time since 1945. Among others, local governments have been gaining power and their abilities are being tested. Regarding city management, we have observed shifts from authoritative top down control to cooperative partnership with residents. The Kobe earthquake unfortunately hit the Kobe area, but fortunately a new neighborhood networking group started conveying residents' opinions directly to the decision-making process. Whether the recent changes of decentralization policy and land policy with related laws and ordinances will give an impetus to active public involvement in local governance ought to be continuously observed.

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### Notes

- 1 Alexandre L. Wolfe is my best friend and a Ph.D candidate in Mathematics, the University of Michigan.
- 2 Referred to Prof. Funada, Masatomi. "Analysis of Housing Damages from the Great Hanshin Awaji earthquake". The Earthquake Investigation Theory and Practice. (p.p.127-141)
- 3 Prof. Ueno, Yasuhiro M.D. Kobe Univ. "The Earthquake Damages". The Kobe University Earthquake Special Research Group. The 100 days after the Kobe Earthquake: The Quake Research Vol.1. Kobe Newspaper Publishing Co., Kobe. 1995. p.59.
- 4 — , p.60.
- 5 — , p.61.
- 6 190,654.
- 7 276,573.
- 8 Referred to Prof. Ueno, "Quake Victims' and Survivors' Mental Trauma", The Five Years After the Kobe Earthquake. p.p.269-283.
- 9 Osaka City Univ. Prof. Emeritus Kai, Michitaro criticized in his book, "The Great Earthquake and Law". Doubunsha. Tokyo. 2000. p.p.9-11.
- 10 Referred to Kobe Univ. Prof. Yasunaga, Masaaki's section about the Provisional Law for Land Lease and Rented Houses in the Disaster-stricken Areas. The 100 days After the Kobe Earthquake. p.p.252-260.
- 11 Prof. Kai also argued in p.55.
- 12 'Genpo' is carried out based on the assumption that zoning will improve basic infrastructures, and as a consequence land prices will rise. The expected rise of land prices is computed with the past statistics data, and land space for the same land price is calculated. The difference of the land space before and after the 'Genpo' shall be computed from the land price rise. In theory, the price of the land subject to 'Genpo' stays the same. The property value will stay the same. When a landowner files a complaint regarding assessed land value, if necessary, compensation in money will be considered.
- 13 Kobe Univ. Prof. Abe in "The Kobe Quake and Law." (p.293) and Sakawa in "A Search for the Kobe Earthquake Reconstruction Planning" (p.193) expressed a critical view regarding this idea.
- 14 Sakawa, Shohei pointed out in Urban Planning Law and Policy. p.p.156,7.
- 15 Sakawa analyzed examples including JR Rokkomichi vicinity and JR NewNagata St. South in "A Search for the Kobe Earthquake Reconstruction Planning" p.171.
- 16 Yao city, Osaka prefecture has "community center", which is a branch office of city government with almost full function within a walking distance for citizens convenience. (An administrative version of the Japanese Police Koban system.)
- 17 Referred to Kobe Univ. Prof. Yamashita, Atsushi. The 100 days After the Kobe Earthquake. p.p.261-276.
- 18 Referred to Prof. Yasunaga. p.p.257-260.

- 19 Building price after disaster is calculated from reconstructed building price minus reconstruction cost.
- 20 Prof. Kai argued in the Chapter 4-1, "Public Theories in the Public Law" p.p.199-204.
- 21 See note 12.
- 22 1603-1868, a period of 265 years during which the Tokugawa shogunate government ruled the nation from Edo until the Meiji Restoration(1868).
- 23 Force to live both in Edo and in their domains alternately for a specified length of time, usually a year or two, making their wives and children live in Edo as hostages.
- 24 According to the 2002 financial year annual financial report by the Minister of Economics and Finance, Takenaka, 528 trillion yen long term national government debt is predicted by the end of 2002 financial year, and 195 trillion yen long term local governments debt is predicted by that time. As a result of making up for the debt, the ratio of government bond issued will constitute approximately 36.9% of the total general account expenditure; which will be the record high ratio.
- 25 2% of the total eligible voters and more can propose to the city assembly a proposal of incorporation of their city with other city (cities). Mayor has a veto but a majority of the assembly approval can underwrite the mayor's veto.

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