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CREATING A SYSTEM FOR CITIZEN PARTICIPATION: HOW THE NONPROFIT SECTOR CAN PROVIDE CITIZENS A VOICE IN TOKYO'S URBAN DEVELOPMENT SYSTEM

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Abstract: Recent changes in Japan's civil society together with the current political and economic environment have created the first opportunity to develop a viable nonprofit sector that represents citizen interests and allows for public participation in Tokyo's urban development scheme. Tokyo's urban environment has failed to meet the social and cultural needs of its citizens due to unprecedented economic and industrial growth from the beginning of the *Meiji* era until the 1990s. Through this extended period of growth, the goal for urban development was solely to increase Tokyo's economic strength, while social needs were not addressed. While the City Planning Law of 1968 ("CPL") sought to require citizen participation in urban planning, the law was largely ineffective due to its narrow scope and weak legal remedies. During much of the twentieth century, Tokyo's governance was controlled by an iron triangle comprised of bureaucracy, government, and big business, which drove Tokyo's economic growth. This form of governance did not allow citizens to participate in the political process. The iron triangle lost its strength only after the collapse of the economic bubble in the 1990s. With urban development failing to meet the needs of the citizens and the iron triangle having lost its strength, citizens groups began to assert more influence over the city's governance. Successes for the citizens groups and growing media attention prompted the promulgation of the Nonprofit Organizations Law of 1998 ("NPO Law"). The NPO Law created a framework for a nonprofit sector and began to strengthen its legitimacy. Unlike past attempts to introduce a viable nonprofit sector, the NPO Law came at a time when the political and economic environments of the city allowed for outside influence in the political process. While the foundation has now been laid for a viable nonprofit sector, the sector must gain legitimacy and independence before it is a truly viable means to public participation. With increased legitimacy and independence, Japan's nonprofit sector will serve to improve the urban development scheme by balancing the interests of citizens and corporations and meet long-standing social goals.

I. INTRODUCTION

Residents of Kunitachi, a suburb west of Tokyo, are proud of the roadside trees and stylish street lights along *Daigaku Dori* (University Avenue).¹ The town is known as a college town and has attracted famous writers, painters, and sculptors who are fond of the town's *sakura* (cherry

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¹ *Kunitachi City*, available at <http://members.tripod.com/~callstudy/Kunitachi/Kunitachi.html> (last visited Nov. 17, 2005).

blossom) lined streets.² These are the avenues that often appear in television love stories.³ These same streets are also threatened by Tokyo's prevailing goal of economic growth and development, and citizens have little power to influence future urban development.

The consequences of Tokyo's economic focus have recently reached Japan's courts in a case involving the Kunitachi section of western Tokyo.⁴ The case involves a condominium complex in Kunitachi's scenic district that for decades had a voluntary height restriction of twenty meters.⁵ A developer, Meiwa Estate Co. ("Meiwa"), purchased the land and sought to build a forty-three-meter-tall building on the scenic avenue.⁶ Concerned citizens brought suit against Meiwa to prevent construction of the condominium complex, arguing that it destroyed scenery along University Avenue.⁷ Specifically, the residents claimed that the apartment complex "seriously violated their rights to scenery and sunlight, and created a strong feeling of oppression among the residents."⁸ In a landmark decision, a three judge panel of the Tokyo District Court found in favor of the plaintiffs, ordering Meiwa to remove the top twenty-three meters of the forty-three-meter building.⁹ Judge Akira Miyaoka stated, "The condominium violates the local residents' rights to scenery."¹⁰ Meiwa argued that they acted within the legal restrictions for the site, which did not include a mandatory height restriction.¹¹ On appeal, the Tokyo High Court overruled the lower court, finding that Meiwa was within the municipal code in force at the time of construction.¹² The Court stated, "Beautiful scenery is a mutual asset that benefits all people and residents. But this does not mean that individual residents can claim private rights to enjoy the scenery."¹³ The citizens have indicated their intent to immediately appeal the decision to the Japanese Supreme Court.¹⁴ Without changing the urban development system, citizens

² *Id.*

³ *Id.*

⁴ *Court Orders Complex to Lose Seven Floors*, JAPAN TIMES ONLINE, Dec. 19, 2002, <http://www.japantimes.co.jp/cgi-bin/makeprfy.pl5?nn20021219a1.htm>.

⁵ Yumi Wijers-Hasegawa, *Judge Reverses Kunitachi Ruling*, JAPAN TIMES ONLINE, Oct. 28, 2004, <http://search.japantimes.co.jp/print/news/nn10-2004/nn20041028a3.htm>.

⁶ *Appeal Court Rules Kunitachi High-Rise Condominium Legal*, MAINICHI DAILY NEWS, Jun. 7, 2002, at 8.

⁷ Wijers-Hasegawa, *supra* note 5.

⁸ *Id.*

⁹ *Court Orders Complex to Lose Seven Floors*, *supra* note 4.

¹⁰ *Id.*

¹¹ Wijers-Hasegawa, *supra* note 5.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

have no means to effectively participate in decisions affecting the development of their urban environment.

Citizen participation¹⁵ in the urban development of Tokyo has been limited from the beginning of the *Meiji* era in 1868.¹⁶ The highly centralized and paternalistic government¹⁷ allowed for rapid growth as well as efficient and effective redevelopment¹⁸ in the face of massive urban destruction in the beginning of the nineteenth century.¹⁹ The preeminent goals for Tokyo from the end of the nineteenth century to the early 1990s were industrial and economic growth.²⁰ These goals did not allow for effective citizen participation.²¹ Following the destruction of the Great Kantō Earthquake and World War II until the 1960s, however, Tokyo citizens largely believed that economic and industrial recovery needed to take precedence over socio-cultural goals.²² It was not until the citizens' movements of the 1960s that pressure was applied to change the urban development structure.

Pressure for increased citizen participation in the urban development system began to grow in the 1960s,²³ but Tokyo's political and economic environment prevented significant changes to the system.²⁴ The result of the successful redevelopment of Tokyo after World War II was a strong political iron triangle comprised of government, bureaucracy, and big business.²⁵ The

¹⁵ "Citizen participation," "citizen involvement," and "public participation" are used interchangeably and are used here in their most general sense. The terms include any activity, organized, independent, or otherwise, in which private citizens provide input to the political or administrative process of urban development. Common forms of citizen participation include, but are not limited to, participating in public hearings, commenting on development projects, and participating in groups such as neighborhood associations or other interest groups.

¹⁶ ANDRÉ SORENSEN, *THE MAKING OF URBAN JAPAN: CITIES AND PLANNING FROM EDO TO THE TWENTY-FIRST CENTURY* 54 (2002). "The role of government was to strengthen the country while the role of the people was to serve the emperor. . . . Little political space was left for the development of independent conceptions of the public good, or for activities that might support them." *Id.*

¹⁷ *Id.* at 52-54.

¹⁸ *See id.* at 178-83.

¹⁹ The destruction caused by the Great Kantō Earthquake of 1923 and by World War II is discussed *infra* Part II.B.

²⁰ SORENSEN, *supra* note 16, at 178.

²¹ *Id.* at 208.

²² The term "socio-cultural goals" will be used to describe, in general, the largely intangible goals that a community holds to improve the livability of their local environment. Common goals included within this category are the desire for green spaces, access to air and light, convenient access to everyday needs such as grocery stores, a clean environment, reliable transportation, efficient roads, and access to public transportation. This list of goals serves simply to aid in the understanding of the term "socio-cultural goals"; it is by no means an inclusive list and many of the goals may also fit within the desired goals for other objectives such as economic growth.

²³ *See generally* ROMAN CYBRIWSKY, *TOKYO: THE CHANGING PROFILE OF AN URBAN GIANT* 93-97 (1991) (discussing Tokyo's urban problems in the 1960s and 70s).

²⁴ *See generally* Tom Ginsburg, *Dismantling the "Developmental State"? Administrative Procedure Reform in Japan and Korea*, 49 AM. J. COMP. L. 585 (2001).

²⁵ *Id.* at 589.

iron triangle governance prevented individuals from affecting change in the urban development. Furthermore, the legal structure in Japan made it difficult for nonprofit organizations (“NPOs”)²⁶ to form or function.²⁷ Citizen participation gained a few small footholds at this time. Although the City Planning Law of 1968 required citizen consent in urban development projects,²⁸ and a few small judicial victories gave citizens some influence over the urban development system,²⁹ these victories did not eclipse the strength and influence of the iron triangle and citizen participation remained limited.

The first major steps toward allowing citizen participation in the urban development system came in the early 1990s. The collapse of the economic bubble reduced the strength of the iron triangle and allowed citizen groups to assert more effective influence over the Tokyo government.³⁰ The Kobe earthquake of 1995 was also an effective catalyst for NPOs, bringing attention both to the effectiveness of NPOs and to the ineffectiveness of the government in response to the earthquake.³¹ The weakened political iron triangle, paired with the favorable media attention for the nonprofit sector, allowed for the hasty passage of the Nonprofit Organizations Law of 1998 (“NPO Law”).³²

The promulgation of the NPO Law created the first viable framework for citizen participation in the urban development system in Tokyo. In order to move from a framework for citizen participation to actual participation, the nonprofit sector must first gain legitimacy and independence.³³ Gaining local constituent support and improving the reputation of the NPOs in local

²⁶ References to the nonprofit sector and nonprofit organizations (“NPOs”) are to organizations formed for the good of the general public. As the terms are generally recognized in Japan, NPOs refer to domestic organizations, working in the interests of Japan’s citizens and does not include international aid organizations that are referred to as nongovernmental organizations (“NGOs”). Unless otherwise noted, this Comment does not distinguish between organizations organized under the NPO Law of 1998 and those not formally organized.

²⁷ See generally Takako Amemiya, *The Nonprofit Sector: Legal Background*, in *THE NONPROFIT SECTOR IN JAPAN* 59-98 (Tadashi Yamamoto ed., 1998).

²⁸ See Byron Shibata, *Development Procedure Law in Japan: Its Operation and Effects on Law and Economy*, 20 *UCLA PAC. BASIN L.J.* 149 (2003) [hereinafter Shibata 2003]. See generally Byron Shibata, *Land Use Law in the United States and Japan: A Fundamental Overview and Comparative Analysis*, 10 *WASH. U. J.L. & POL’Y* 161 (2002) [hereinafter Shibata 2002].

²⁹ SORENSEN, *supra* note 16, at 210.

³⁰ *Id.* at 296-97.

³¹ See generally Makoto Imada, *The Voluntary Response to the Hanshin Awaji Earthquake: A Trigger for the Development of the Voluntary and Non-Profit Sector in Japan*, in *THE VOLUNTARY AND NON-PROFIT SECTOR IN JAPAN* 40-50 (Stephen P. Osborne ed., 2003).

³² Robert Pekkanen, *The Politics of Regulating the Non-Profit Sector*, in *THE VOLUNTARY AND NON-PROFIT SECTOR IN JAPAN* 53-75 (Stephen P. Osborne ed., 2003).

³³ See *infra* Part V.C.

communities will improve NPO legitimacy.³⁴ Building a sound financial base independent from government funding will allow NPOs to gain independence.³⁵ To bring this about, the tax structure of NPOs must be changed; there must be tax incentives for people to contribute to NPOs.³⁶ With the respect of the community and the ability to act independently from the government, the nonprofit sector would have the opportunity to effectively represent the interests of Tokyo citizens.

This Comment argues that the recently developed framework for a nonprofit sector representing the interests of the citizens of Tokyo embodies the first viable means of meeting the socio-cultural goals for urban development. Part II discusses the modern historical development of urban planning in Tokyo and describes the political and economical forces that have shaped urban development and planning. Part III explains Tokyo's previous attempts to introduce citizen participation into the urban development scheme as well as the impediments to these early attempts. Part IV analyzes Tokyo's goals for urban development and why many of these goals have not been successfully implemented. Finally, Part V argues that the recent emergence of a framework for a nonprofit sector in Japan can meet Tokyo's goals for urban development.

II. TO RECOVER FROM THE DISASTERS OF THE EARLY TWENTIETH CENTURY, JAPAN ENFORCED A HIGHLY CENTRALIZED URBAN DEVELOPMENT SCHEME THAT EMPHASIZED ECONOMIC GROWTH

The repeated destruction of Tokyo in the early twentieth century shaped the city's urban development scheme and created tension between the necessities created by wartime ruin and the socio-cultural needs of its citizens. Despite its history of destruction, Tokyo quickly and capably recovered from the disasters.³⁷ The key to this success was the hyper-centralized governance that emphasized economic growth.³⁸ The price of this success was an absence of citizen participation in the urban development scheme, resulting in citizens becoming disconnected from a "town" they once knew.³⁹ Post-war Tokyo was a place for economic prosperity and decidedly not a place for emphasizing the needs of the citizens.

³⁴ Robert O. Bothwell, *The Challenges of Growing the NPO and Voluntary Sector in Japan*, in *THE VOLUNTARY AND NON-PROFIT SECTOR IN JAPAN* 129-33 (Stephen P. Osborne ed., 2003).

³⁵ *Id.* at 137-39.

³⁶ *Id.* at 145.

³⁷ *See infra* Part II.C.

³⁸ *Id.*

³⁹ *Id.*

A. *The Meiji Period Resulted in Rapid Urban and Industrial Development, but Failed to Incorporate Citizen Participation*

The story of Tokyo's urban development begins largely with the fall of the Shogun and restoration of imperial rule in 1868.⁴⁰ This era, termed *Meiji* or "enlightened rule," had a particularly strong impact on Tokyo's urban development.⁴¹ Shortly before the beginning of the *Meiji* era, the United States entered Japan to open trade relations, effectively ending 250 years of Japanese isolation.⁴² Japanese ports became open to both foreign trade and the exchange of ideas.⁴³ In 1868, Tokyo became the imperial capital. The imperial government set a goal of modernizing Tokyo physically and culturally under the Western influence.⁴⁴ It was in the *Meiji* period that Tokyo began to emerge as an industrial center in Japan. With heavy government and private investment in industry and factory production, Tokyo became Japan's leading manufacturing city.⁴⁵ The *Meiji* period saw Tokyo's population boom,⁴⁶ vast improvements in urban infrastructure, and tremendous downtown growth, as well as increasing cultural opportunities for the citizens.⁴⁷

B. *The Great Kantō Earthquake and World War II Devastated Tokyo, but Provided an Opportunity to Properly Redevelop the City*

The period of growth and prosperity of the *Meiji* era came to an abrupt end in 1923 with the Great Kantō Earthquake, which struck just off the shore of Tokyo in Sagami Bay ("the Great Quake").⁴⁸ The Great Quake devastated the city, toppling buildings, and sparking scores of fires and a fire storm that in turn triggered cyclones and other weather patterns that killed tens of thousands more citizens.⁴⁹ All told, over 100,000 citizens perished and seventy-three percent of the houses in Tokyo were damaged or destroyed.⁵⁰

⁴⁰ CYBRIWSKY, *supra* note 23, at 62.

⁴¹ *Id.* at 63.

⁴² *Id.* at 62.

⁴³ *Id.*

⁴⁴ *Id.* at 63.

⁴⁵ *Id.* at 72.

⁴⁶ The population of Tokyo grew from 600,000 at the time of the *Meiji* restoration in 1868 to 2.2 million at the end of the era. Michael Wegener, *Tokyo's Land Market and its Impact on Housing and Urban Life*, in *PLANNING FOR CITIES AND REGIONS IN JAPAN* 93 (Philip Shapira, Ian Masser & David W. Edgington eds., 1994).

⁴⁷ CYBRIWSKY, *supra* note 23, at 76.

⁴⁸ *Id.* at 78.

⁴⁹ *Id.* at 78-81.

⁵⁰ *Id.* at 80.

Prior to the Great Quake, Tokyo had plans to redevelop its heavily industrialized city to better meet the needs of its citizens.⁵¹ Gōtō Shimpei, former mayor of Tokyo, researched how to redevelop and address the needs of the growing city.⁵² Gōtō sought input from leading American planners and established the Tokyo Institute for Municipal Research (“the Institute”) in order to meet his planning goals.⁵³ The Institute’s proposal was an 800 million yen project referred to as “the big kerchief” because it covered so much of the city.⁵⁴ The plans included paving and widening the streets, expanding water, electrical, and gas services, improving the harbor and waterways, building parks, schools, municipal buildings, and public structures, and offering a wide variety of new social services for the citizens of Tokyo.⁵⁵ These plans ultimately proved cost prohibitive, however, and Gōtō’s grand scheme never came to fruition.⁵⁶

With the devastation of the Great Quake, Gōtō had the opportunity to rebuild the city. However, his plans, at three times the amount of the national budget, were again cost prohibitive.⁵⁷ Because the economy of Tokyo was destroyed, Tokyo was forced to rebuild largely with the same insufficient design as prior to the Great Quake with “narrow streets, slum areas, open sewers, and many other urban maladies.”⁵⁸ With the introduction of Western-style apartments, despite the widespread destruction of the Great Quake, the city’s population continued to grow in the 1920s and 1930s.⁵⁹

Nearly as soon as Tokyo began to recover from the devastation of the Great Quake, Tokyo’s population was again devastated—this time by the U.S. bombing campaigns of World War II. In the winter of 1944-45, the United States attacked Tokyo over 100 times, again leading to the deaths of over 100,000 citizens.⁶⁰ The attacks culminated in March 1945 when, in the course of three hours, American bombers dropped over 700,000 incendiary bombs on Tokyo, which alone killed over 77,000 civilians and destroyed over 276,000 buildings,⁶¹ reducing most of the post-earthquake reconstruction to ashes.⁶²

⁵¹ *Id.* at 81.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 82.

⁵⁷ *Id.*

⁵⁸ *Id.* (citing Y. HAYASE, *THE CAREER OF GŌTŌ SHINPEI: JAPAN’S STATESMEN OF RESEARCH, 1857-1929* (1974)).

⁵⁹ The population of Tokyo grew from 2.2 million at the end of the *Meiji* period to 6.8 million at the end of the 1930s. Wegener, *supra* note 46, at 93-95.

⁶⁰ CYBRIWSKY, *supra* note 23, at 83-84.

⁶¹ *Id.* at 84.

⁶² TOKYO METROPOLITAN GOVERNMENT, *A HUNDRED YEARS OF TOKYO CITY PLANNING* 44 (1994) [hereinafter *A HUNDRED YEARS OF TOKYO CITY PLANNING*].

C. *Tokyo's Urban Recovery Focused Solely on Promoting Economic and Industrial Growth*

World War II marked the final great destruction of Tokyo and set the stage for a great modern-day miracle of urban reconstruction and renewal.⁶³ The end of the war was perhaps the single most important event in Tokyo's city planning history and can mark the beginning of the modern Tokyo urban plan.⁶⁴ Unfortunately, the beginning of this era was characterized by a desperate need to meet the short-term goal of redevelopment.⁶⁵ The wartime population of Tokyo dropped to 2.8 million, but after the war, citizens returned to the city along with repatriates from Japan's colonies and a large number of rural immigrants.⁶⁶ Tokyo's population ballooned to seven million by 1955, making even the city's large public housing programs grossly inadequate.⁶⁷ Tokyo was forced to forsake grander goals of modernization for more fundamental needs.⁶⁸

Governance in Japan was controlled by a powerful iron triangle composed of government, bureaucracy, and big business.⁶⁹ The centralized control of power, with blurred lines and members intermingling between all three groups, created an environment that allowed for tremendous economic growth and consistent promulgation of pro-business policies.⁷⁰ This left little room for outside forces such as citizen groups or nonprofit organizations to influence the governance of Japan.⁷¹ Practically speaking, Tokyo's post-war needs were two-fold: to house an unexpectedly growing population and to achieve economic stability and independence.⁷² To meet these goals, a hyper-centralized government was created with politicians, bureaucracy, and big-business driving the goal of economic growth.⁷³ The result was a tremendous financial success that allowed Japan to catapult itself into being one of the most economically successful powers in the

⁶³ CYBRIWSKY, *supra* note 23, at 86-87.

⁶⁴ World War II provides a logical starting point for this discussion regarding Tokyo's urban development. For a thorough historical analysis of Tokyo and Japan's development, see generally CYBRIWSKY, *supra* note 23. See also RICHARD STORRY, *A HISTORY OF MODERN JAPAN* (rev. vol. 1983).

⁶⁵ SORENSEN, *supra* note 16, at 152.

⁶⁶ Wegener, *supra* note 46, at 95.

⁶⁷ *Id.*

⁶⁸ "Tokyo recovered rapidly from the devastation of the earthquake and the war but sacrificed long-range plans for the optimal functional use of the city." Takashi Hirai, *The Heart of Tokyo: Today's Reality and Tomorrow's Vision*, in *JAPANESE URBAN ENVIRONMENT* 26 (Gideon Golany, Keisuke Hanaki & Osamu Koide eds., 1998)..

⁶⁹ Ginsburg, *supra* note 24, at 589.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² A HUNDRED YEARS OF TOKYO CITY PLANNING, *supra* note 62, at 50-51.

⁷³ Ginsburg, *supra* note 24, at 585.

world. The cost of this success, however, was that citizens lacked any type of participatory role in urban development decisions and Japan's modern culture was shaped by the single goal of economic growth.

III. EARLY ATTEMPTS TO INCORPORATE CITIZEN INVOLVEMENT INTO TOKYO'S URBAN DEVELOPMENT SYSTEM WERE UNSUCCESSFUL

The first attempts to incorporate citizen involvement into urban development realized only small victories. City planners recognized the importance of having a livable city that met the citizens' socio-cultural goals long before the city's modern urban development scheme.⁷⁴ Despite the recognized importance of the socio-cultural goals, citizens accepted the fact that housing and economic needs in post-war Tokyo trumped these goals.⁷⁵ In the 1960s and 1970s, however, Tokyo's citizens began to decry the condition of Tokyo's urban development.⁷⁶ It is in this era that the citizens began to press for an improved urban development system that incorporated citizen involvement. The citizens ultimately realized some success, including the passage of the City Planning Law of 1968 ("CPL").⁷⁷ After the passage of the CPL, citizens continued to press for change at the polls and in the courtroom. While the citizens were victorious at the polls and in a few influential court decisions,⁷⁸ the success of their efforts was limited because economic growth continued in Tokyo.⁷⁹ This continued economic growth allowed the iron triangle to block outside influences, including citizen participation, from entering the political process.

⁷⁴ See CYBRIWSKY, *supra* note 23, at 81 (discussing Gōtō Shimpei's lofty development plans prior to the Great Kanto Earthquake).

⁷⁵ See *infra* Part III.A.

⁷⁶ See CYBRIWSKY, *supra* note 23, at 200-03.

⁷⁷ Toshi Keikaku Ho [City Planning Law], Law No. 100 of 1968, art. 33(14) [hereinafter CPL]. For a thorough examination of the specific articles of the CPL, see generally Shibata 2003, *supra* note 28, at 154.

⁷⁸ The most influential cases include: Judgment of June 30, 1971, Tōyama District Court, 635 Hanrei Jihō 17, *aff'd* by Judgment of August 9, 1972, Nagoya High Court, 674 Hanrei Jihō 25 (Tōyama Itai-itai disease case); Judgment of September 29, 1971, Niigata District Court (Niigata Minamata disease case); Judgment of July 24, 1972, Tsu District Court (Yokkaichi Branch) 672 Hanrei Jihō 30 (Yokkaichi asthma case); and Judgment of March 20, 1973, Kumamoto District Court, 696 Hanrei Jihō 15 (Kumamoto Minamata disease case). These cases are discussed at length in JULIAN GRESSER, KOICHIRO FUJIKURA & AKIO MORISHIMA, ENVIRONMENTAL LAW IN JAPAN 29-132 (1981).

⁷⁹ See *infra* Part III.C.

A. *The Creation of a Bottom-Up Approach to Urban Development Was the First Attempt to Pierce the Iron Triangle*

Translated generally as “community building” or “community development,” *machizukuri*⁸⁰ represents what planners in Japan believe to be the “most hopeful development in Japanese planning in many years.”⁸¹ At the root of *machizukuri* is the first attempt to pierce the iron triangle in the 1960s and 1970s and the organization of citizen groups in response to vast environmental degradation and housing shortages caused by unchecked industrial growth in Tokyo.⁸² While *machizukuri* began to see success in the 1960s, strong economic growth sustained an impenetrable political iron triangle with the singular goal of economic growth blocking much of the success of the early *machizukuri* movement.

The post-war industrialization and population growth of Tokyo was marked by the emphasis of economic growth at the expense of adequate housing needs and a livable urban environment.⁸³ Prime Minister Ikeda Hayato justified the neglect of citizens’ needs, stating, “[w]e must first make the pie bigger” – a reference to the need to build an economic and industrial base before addressing other needs.⁸⁴ This type of governance was possible because of the unique relationship between the state and the citizens.⁸⁵ Where Western society “counter-poses” itself with the state, Japanese society has been strongly integrated with and dependent on the state for its very existence.⁸⁶ At the very backbone of Japanese government is the centralization of power. While strongly centralized government is not favored in Western culture, the Japanese dependence on the state for social welfare stems from the success of the post-World War II governance.⁸⁷

The centralized aspect of the government began to unravel when citizens’ patience for improved conditions ended after the success of the 1964 Summer Olympics. The 1964 Summer Olympics in Tokyo symbolized

⁸⁰ While the term *machizukuri* may have a far wider application, here the term will refer only to bottom-up, citizen involvement in urban development projects.

⁸¹ SORENSEN, *supra* note 16, at 308.

⁸² See generally CYBRIWSKY, *supra* note 23, at 93-97 (discussing Tokyo’s urban problems in the 1960s and 1970s).

⁸³ SORENSEN, *supra* note 16, at 201-02.

⁸⁴ CYBRIWSKY, *supra* note 23, at 202.

⁸⁵ SORENSEN, *supra* note 16, at 52. Government control stressed the duties instead of the rights of citizens.

⁸⁶ Stephen P. Osborne, *The Voluntary and Non-Profit Sector in Contemporary Japan*, in THE VOLUNTARY AND NON-PROFIT SECTOR IN JAPAN 9 (Stephen P. Osborne ed., 2003) (citing Takayoshi Amenomori, *Japan*, in DEFINING THE NONPROFIT SECTOR: A CROSS NATIONAL ANALYSIS 193 (Lester M Salamon & Helmut K. Anheier, eds. 1997).

⁸⁷ Bothwell, *supra* note 34, at 123.

Japan's emergence as an independent state.⁸⁸ Although the Olympics allowed the city to proceed with projects aimed at "presenting their city [to the world] in the best possible light," these projects unfortunately failed to address the needs of Tokyo's residential neighborhoods and left housing, sewers, and recreational facilities woefully inadequate.⁸⁹ These inadequacies came to a head when a "noisome plague of black flies descended on the blue-collar wards."⁹⁰ The citizens took action at the polls, voting the conservative municipal government out of office,⁹¹ and formed loosely organized groups in order to protest the poor urban environment.⁹²

The citizens' movements of the 1960s had an "idealistic but confrontational style," which led to "deep-seated distrust" of the organizations formed through the citizens' movement.⁹³ The groups were largely anti-establishment and anti-American, which alienated them from a large section of Japanese society.⁹⁴ In contrast to the citizens movements, corporations began to support organizations in the scientific and technological fields.⁹⁵ The government viewed the corporate-sponsored organizations as "a useful vehicle for stimulating the modernization process of Japan" and accordingly offered these organizations beneficial tax treatment.⁹⁶ On the other hand, the citizen movement groups were viewed as an impediment to the growth and modernization of Japan.⁹⁷ This bifurcation prevented a unified nonprofit field from emerging⁹⁸ and allowed the government to maintain significant control over nonprofit organizations. Despite the divided field, negative image, and strict government oversight, informal citizen groups continued to propagate through the 1980s and 1990s.⁹⁹

⁸⁸ SORENSEN, *supra* note 16, at 191.

⁸⁹ CYBRIWSKY, *supra* note 23, at 201-02.

⁹⁰ *Id.* at 202.

⁹¹ *Id.*

⁹² SORENSEN, *supra* note 16, at 210.

⁹³ Takayoshi Amenomori, *Japan*, in *DEFINING THE NONPROFIT SECTOR: A CROSS NATIONAL ANALYSIS* 193 (Lester M. Salamon & Helmut K. Anheier eds. 1997).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Bothwell, *supra* note 34, at 123.

B. *The City Planning Law of 1968 Codified the Requirement for Citizen Consent in Urban Development Projects*

Statutorily, citizen involvement in Tokyo's urban development began with the promulgation of the City Planning Law of 1968 ("CPL").¹⁰⁰ The CPL was the first urban development instrument that included a citizen consent provision and was also the first step toward decentralizing the urban development scheme.¹⁰¹ The underlying concept of the CPL was:

To plan for the wholesome development and orderly growth of cities by determining the factors necessary for city planning and to contribute thereby to the promotion of the public welfare and the balanced development of the national land.¹⁰²

While the CPL citizen consent provision was the first step toward greater citizen involvement, it provided only weak legal remedies for local governments and citizens who sought to enforce the statutory requirements.¹⁰³

The two most important changes embodied in the CPL were that it: 1) transferred planning power to the prefectural governors and municipalities at the city, town, and village level; and, 2) allowed for citizen participation.¹⁰⁴ These changes were an effort to "enable every citizen to lead a healthy, civilized existence and to ensure an adequate supply of city services while recognizing that protecting one person's property rights sometimes requires restricting the private rights of others."¹⁰⁵ Recognizing the importance of balanced and prioritized rights was ineffectual, however, without the proper political and economical environment to allow for a shifting balance of power.

Citizens and developers alike have decried the provisions of the CPL. The citizen consent provision requires developers to notify citizens of impending development actions that fit within tightly defined characteristics.¹⁰⁶ Tokyo ordinances limit the notification and consent requirements to those citizens residing within the radius equal to twice the

¹⁰⁰ Toshi Keikaku Hō [City Planning Law], Law No. 100 of 1968; *See also* SORENSEN, *supra* note 16, at 219.

¹⁰¹ SORENSEN, *supra* note 16, at 310.

¹⁰² A HUNDRED YEARS OF TOKYO CITY PLANNING, *supra* note 62, at 74.

¹⁰³ SORENSEN, *supra* note 16, at 219.

¹⁰⁴ A HUNDRED YEARS OF TOKYO CITY PLANNING, *supra* note 62, at 74.

¹⁰⁵ *Id.*

¹⁰⁶ CPL, *supra* note 77 at art. 30; *see also* Shibata 2003, *supra* note 28, at 203 (summarizing CPL articles).

height of the development project.¹⁰⁷ One critic of the system noted that while citizen movements centered on slogans like “the real leaders of community building are the local people,” the real reason for the citizen consent requirements was that “[leaders didn’t] want them to complain they didn’t know about [the development].”¹⁰⁸ The reason for much of the public criticism was that the scope of consent required was so narrow that it did not adequately capture the desire of the greater community. Furthermore, the consent requirements were largely de facto in nature.¹⁰⁹ Because consent requirements are not judicially enforceable,¹¹⁰ citizens cannot enforce violations of the requirement and developers are unsure of the consequences for failure to comply. National ministry circulars went so far as to note that it would “not be appropriate” for local governments to require a developer to “submit a form evidencing consent from all relevant parties.”¹¹¹ Nonprofit organizations can address these issues by providing more efficient communication between developers and citizens. NPOs could also reach a wider breadth of citizens, thus not limiting feedback to citizens statutorily defined as “affected.”¹¹²

Developers also decry the citizen participation requirements as inefficient and costly. They complain that considerable time and resources are spent in the effort to acquire local citizen consent and that it requires skillful “politicking” of local residents and bureaucrats.¹¹³ The main argument against the imposition of the de facto procedural requirement of citizen consent is that the process is “a private process without public oversight.”¹¹⁴ It is “problematic because it arguably compromises due process, the rule of law, and basic equity by vesting interest groups with de facto veto authority over development applications.”¹¹⁵ An effective nonprofit sector would address this issue by balancing the bargaining power

¹⁰⁷ Tokyo-To Chu Koso Kenchiku Butsu No Kenchiku Ni Kakaru Funso No Yobo To Chosei Ni Kan Suru Jorei [Tokyo Metropolis Ordinance on Prevention of Disputes and Adjustments Related to Medium and High Rise Structures], Ordinance No. 64 of 1978, art. 2(4).

¹⁰⁸ SORENSEN, *supra* note 16, at 219 (quoting a Ministry of Construction spokesman describing the reason for implementing the citizens’ participation regulations).

¹⁰⁹ Shibata 2003, *supra* note 28, at 165 (citing Takuchi Kaihatsu Shido Yoko Ni Kan Suru Hoshin [On Policy Measures Related to Outline Guidance on Residential Development], circular no. 54 of 1973 (from Construction Ministry administrative vice-minister to prefectural governors), provisions 1 (IV)(5), 1(VI)(2), 2(1)(1)). Government issued directives are not judicially enforceable, but de facto adherence is common. *Id.* at 153.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² The breadth of NPOs would not be statutorily confined as is the current citizen consent provision of the CPL. See Shibata 2003, *supra* note 28, at 162.

¹¹³ *Id.* at 167.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

of the developers and citizens, eliminating the need to require costly and inefficient consent provisions.

The CPL has been criticized in two other main areas. First, the procedural requirements of the CPL weaken the development system economically.¹¹⁶ They create inefficiency by hindering development applications with slow processing times and duplicitous administrative requirements.¹¹⁷ Second, a lack of predictability created by the citizen consent requirement reduces efficiency.

The bottom-line argument against citizen consent requirements for development projects is the inefficiency of the process. This inefficiency expresses itself in a number of ways. The requirement is inefficient for developers because they face high costs associated with acquiring citizen consent. It is also inefficient because it adds an element of unpredictability to the development process. The citizen consent requirements also fail to consider the inequity between citizens and developers. This inequity may lead to developers simply purchasing citizens' consent, which effectively destroys the goal of the citizen consent requirement. Finally, the CPL citizen consent requirement is inefficient because it fails to inform or capture the consent of an adequate breadth of the community, emphasizing the interests of micro-communities instead of the Tokyo community at large. The development of a strong nonprofit sector could balance the bargaining power between citizens and developers and eliminate these inefficiencies. This balance would remove the need for statutory consent requirements.

C. *After the Passage of the City Planning Law, Citizens Remained Active at the Polls and in the Courtroom*

Citizens continued to take action at the polls after the passage of the City Planning Law of 1968 by voting members of the long-serving conservative municipal government of Tokyo out of office.¹¹⁸ Minobe Ryōkichi was elected governor of Tokyo after running as a government skeptic who longed for the return of the habitable city environment that he remembered as a boy.¹¹⁹ Minobe pledged *taiwa* (dialog) with citizens and instituted a "civil minimum" policy that cracked down on Tokyo's urban maladies.¹²⁰ It was under this vision that the "Tokyo for the People"

¹¹⁶ *Id.* at 201.

¹¹⁷ *Id.*

¹¹⁸ CYBRIWSKY, *supra* note 23, at 202.

¹¹⁹ *Id.*

¹²⁰ Alan G. Rix, *Tokyo's Governor Minobe and Progressive Local Politics in Japan*, 15 *ASIAN SURV.* 530, 531 (1975).

campaign was introduced in 1972.¹²¹ According to Governor Minobe, “[i]n giving priority to Tokyo’s development as the economic and industrial hub of the nation after World War II, the welfare of its citizens was forced to take a back seat. Creating a good living environment was secondary.”¹²² While the thrust of his campaign remains the impetus of today’s urban planning schemes from the “My Town Tokyo” plan to the Long-Term Development plans discussed below,¹²³ the goals of the plan remained largely unmet because, despite the social ills of the society, Japan’s economic growth continued.

In addition to taking action at the polls, citizens mobilized against the government. Local governments received as many as 75,000 pollution-related complaints in 1971.¹²⁴ Many of these complaints gained national media attention and the movements began to see favorable court response to the petitions.¹²⁵ Despite the increased citizen mobilization, the tremendous amount of energy put towards the movement resulted in relatively few substantive results.¹²⁶ Even with the limited success of these movements, it has been noted that:

In the longer run, even though so many citizens’ movements achieved little for their efforts, the cumulative impact of their very numbers proved great, as this huge wave of local opposition movements transformed Japanese politics, especially at the local level, and led to an electoral crisis for the ruling LDP government in the late 1960s and early 1970s.¹²⁷

In short, the citizen movements of the 1960s and 1970s were a good start toward effective citizen involvement, but were by no means the end of the road for the movement.

While Tokyo’s goals have been identified and citizen involvement began to enter the political process of Tokyo’s urban development in the 1960s and 1970s, the success of *machizukuri* was limited because of the strong economic growth of Tokyo occurring at the same time.¹²⁸ Between

¹²¹ TOKYO METROPOLITAN GOVERNMENT, TOKYO FOR THE PEOPLE (1972) [hereinafter TOKYO FOR THE PEOPLE].

¹²² *Id.* at i.

¹²³ CYBRIWSKY, *supra* note 23, at 203.

¹²⁴ Ellis Krauss & Bradford Simcock, *Citizens’ Movements: The Growth and Impact of Environmental Protest in Japan*, in POLITICAL OPPOSITION AND LOCAL POLITICS IN JAPAN 187-227 (1980).

¹²⁵ SORENSEN, *supra* note 16, at 210 (citing N. HUDDLE ET AL., ISLAND OF DREAMS (1975)).

¹²⁶ *Id.* at 211-12.

¹²⁷ *Id.* at 212.

¹²⁸ CYBRIWSKY, *supra* note 23, at 109.

1972 and 1986, the number of employees in Tokyo grew from 6.7 million to 8.0 million, and the number of business establishments grew from 643,973 to 797,483.¹²⁹ The strong and growing economic environment allowed big business to remain closely allied with the bureaucracy and the legislature, which effectively blocked outside interests from having any significant influence on the governance of urban development.

IV. SINCE THE EARLY 1970S, TOKYO HAS FORMULATED GOALS TO MEET THE SOCIO-CULTURAL NEEDS OF ITS CITIZENS, BUT THESE GOALS HAVE NOT BEEN IMPLEMENTED TO DATE

As a result of early citizen participation movements, the Tokyo Municipal Government began to openly express the goals for Tokyo urban development. Although the socio-cultural goals of the city began to be recognized and publicized, the city faced many impediments to actually satisfying the lofty objectives expressed in the government publications.

A. *The Tokyo Government Formulated and Revised Its Goals for Urban Development for Several Decades*

In the 1970s, Tokyo's city planners began to recognize that the tension between the developers and the citizens was growing because citizen interests had been neglected for decades.¹³⁰ Buildings were built and demolished and roads opened without the knowledge of the citizens. The town "that was once [the citizens'] own," the drafters of the Second Long Term Plan stressed, "change[d] to an 'unknown town' before they realized what was happening."¹³¹

Tokyo's government recognized the need for well-planned development. The city has also had unique, albeit tragic, opportunities to revamp its city planning goals in order to meet the needs of its citizens. However, several obstacles have prevented Tokyo from fully realizing its objectives. Two of the main impediments in the past have been booming population growth¹³² and a dominating and unilateral need for economic growth.¹³³ Today, with Japan being a dominant and stable world power, Tokyo has the unique opportunity to, at last, successfully meet the dynamic

¹²⁹ *Id.*

¹³⁰ See generally TOKYO FOR THE PEOPLE, *supra* note 121, at 7-21.

¹³¹ TOKYO METROPOLITAN GOVERNMENT, THE SECOND LONG-TERM PLAN FOR THE TOKYO METROPOLIS preface (1987) [hereinafter SECOND LONG-TERM PLAN].

¹³² SORENSEN, *supra* note 16, at 171-73.

¹³³ Nobuko Kawashima, *The Emerging Nonprofit Sector in Japan: Recent Changes and Prospects*, 1 THE NONPROFIT REV. 5, 6-7 (2001).

and diverse needs of each of its interests—citizens, government, and economy.

With a stabilized population, the Tokyo Municipal Government (“TMG”) saw the need to redefine its redevelopment goals. The intent was to change the urban development scheme from “demand-led” development that is always trying to keep up with infrastructure development, to “policy-led” urban development that satisfies objectives with the participation and cooperation of various entities.¹³⁴ The My Town Tokyo plan documented the needs and desires of Tokyo in the publication *City Planning of Tokyo*,¹³⁵ a precursor to the subsequent Long Term Plans.¹³⁶ The basic goal was to “create a safe and invigorating city that the citizens c[ould] call their home.”¹³⁷

The My Town Concept Council and the Tokyo Long Term Planning Council launched the long-term planning scheme of Tokyo in the early 1980s.¹³⁸ The planning documents were updated first in 1986 (Second Long-Term Plan) and again in 1990 (Third Long-Term Plan).¹³⁹ They contain two main ideals: “a ‘basic concept’ that projects an image of Tokyo as it should be in the twenty-first century, and a ‘10-year operating plan’ that sets out specific projects for the TMG to pursue.”¹⁴⁰ These plans demonstrate the vigor with which Tokyo has approached its land use policy.¹⁴¹ The illustrative and concisely written documents are accessible to the general public and signal that the TMG wants this plan to be well received by each of its citizens.¹⁴² The accessibility of the documents also serves as world-wide notice that Tokyo has set, and will continue striving to meet, the wide range of its city’s needs.

¹³⁴ Bureau of City Planning Tokyo Metropolitan Government, *A New City Planning Vision for Tokyo*, UNITED NATIONS ONLINE NETWORK IN PUBLIC ADMINISTRATION AND FINANCE (UNPAN) § 1, <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN015060.pdf> (last viewed May 15, 2005) [hereinafter UNPAN].

¹³⁵ See generally TOKYO METROPOLITAN GOVERNMENT, CITY PLANNING OF TOKYO (1983) [hereinafter CITY PLANNING OF TOKYO].

¹³⁶ See generally TOKYO METROPOLITAN GOVERNMENT, LONG-TERM PLAN FOR TOKYO METROPOLIS (1984) [hereinafter FIRST LONG-TERM PLAN]; SECOND LONG-TERM PLAN, *supra* note 131; TOKYO METROPOLITAN GOVERNMENT, THE THIRD LONG-TERM PLAN FOR THE TOKYO METROPOLIS (1991) [hereinafter THIRD LONG-TERM PLAN].

¹³⁷ CITY PLANNING OF TOKYO, *supra* note 135, at Foreword.

¹³⁸ See generally A HUNDRED YEARS OF TOKYO CITY PLANNING, *supra* note 62.

¹³⁹ *Id.* at 92.

¹⁴⁰ See generally THIRD LONG-TERM PLAN, *supra* note 136.

¹⁴¹ The plans were well distributed, written in a style accessible to average citizens, and even made widely available in English language versions. See FIRST LONG-TERM PLAN, *supra* note 136; SECOND LONG-TERM PLAN, *supra* note 131; THIRD LONG-TERM PLAN, *supra* note 136.

¹⁴² See generally FIRST LONG-TERM PLAN, *supra* note 136; SECOND LONG-TERM PLAN, *supra* note 131; THIRD LONG-TERM PLAN, *supra* note 136.

Together with the My Town Tokyo Plan, the Bureau of City Planning in the Tokyo Metropolitan Government specifically listed five goals for urban development in Tokyo. The Bureau of City Planning considers of great importance:

1. Maintenance and development of economic dynamics that ensure international competitiveness;
2. Coexistence with environment-enabling continuous prosperity;
3. Creation and diffusion of original urban culture;
4. Realization of high-quality living environment in which people can live safely and healthily;
5. Participation and cooperation of various entities including metropolitan citizens, corporations, and NPO's, etc.¹⁴³

While these priorities are extremely broad, they represent the basic goals of Tokyo urban development and redevelopment in the beginning of the twenty-first century.

B. Tokyo's Urban Development Goals Have Repeatedly Met with Significant Challenges and Have Not Been Implemented

There are several factors that make land use policy particularly important and challenging for Tokyo. Central to this challenge is the need to balance the interests of a highly advanced and technical society with having a livable city with cultural ideologies and traditions.¹⁴⁴ The often conflicting goals of economic growth and urban culture have left Tokyo with two idealized images—a modern, highly advanced, and developed city that is globally competitive in the business sector, and an image of a green, lightly developed, extremely “livable” environment that allows for peace and tranquility.¹⁴⁵ While the cultural importance of land use planning is by no

¹⁴³ UNPAN, *supra* note 134, at § 2.

¹⁴⁴ The role of Tokyo within Japan is “ever-expanding.” THIRD LONG-TERM PLAN, *supra* note 136 at 31. First, Tokyo must be a place of dignity for each of its residents. *Id.* Second, Tokyo must foster the growth of business. *Id.* It is important for Tokyo to “contribute to the world not only economically but also culturally as well as for world peace.” *Id.*

¹⁴⁵ *See id.*

means unique to Japan, it is apparent that Japanese culture places great importance on the environment in which they live, work and play.¹⁴⁶

In addition to the dichotomy between economy and culture, Tokyo has encountered and must plan for future natural and human disasters. Japan's history of tragic and devastating disasters has forced Tokyo to rebuild, nearly from scratch, several times. These tragedies have, however, implanted Tokyo with the feeling that the city is not a static entity, but rather, an ever changing, evolving, and improving instrument of the people and government.¹⁴⁷ The history of destruction has also allowed the government to gain significant power in a paternalistic sense.¹⁴⁸ Despite recognized opportunities to meet the development needs of the city, however, Tokyo has never fully met its socio-cultural goals. In the wake of the destruction of the early twentieth century, citizens relied on the government to rebuild the city and the government accomplished this task.¹⁴⁹ It is precisely this history of strong urban recovery and economic growth with highly centralized governance that creates a challenge to decentralization and the introduction of citizen participation.¹⁵⁰ Koshiro Ishida, the government minister responsible for improving public access said: "We felt we had to catch up with the West after the chaos left by the war and so did not pay attention to rights. But that attitude has to change now."¹⁵¹

Tokyo is also the capital city of the third largest national economy in the world behind the United States and China.¹⁵² Beyond being the seat of the national government,¹⁵³ Tokyo is the financial and business capital¹⁵⁴ as well as the hub of popular culture in Japan.¹⁵⁵ These roles put immense

¹⁴⁶ Tokyo seeks to change its urban development focus to a "multi-core urban structure" that seeks to find a "balance between the people's places of work and their homes." CITY PLANNING OF TOKYO, *supra* note 135, at 136.

¹⁴⁷ "[D]emolish and build' is not only a familiar sight in Japanese city centers but has fixed the idea in the minds of city dwellers that the townscape is always changing." Takashi Hirai, *The Heart of Tokyo: Today's Reality and Tomorrow's Vision*, in JAPANESE URBAN ENVIRONMENT 26 (Gideon Golany, Keisuke Hanaki & Osama Koide eds., 1998).

¹⁴⁸ Bothwell, *supra* note 34, at 124.

¹⁴⁹ Kawashima, *supra* note 133, at 6.

¹⁵⁰ The rapid urban growth of the 1950s and 1960s was a "conservative's paradise," and government resources were put behind economic growth. SORENSEN, *supra* note 16, at 178.

¹⁵¹ James Sterngold, *Japanese Begin to Crack the Wall of Secrecy Around Official Acts*, N.Y. TIMES ONLINE, May 15, 1994, available at http://www.bekkoame.ne.jp/~fk1125/ny_times.html.

¹⁵² CIA, THE WORLD FACTBOOK: JAPAN, available at <http://www.cia.gov/cia/publications/factbook/geos/ja.html> (last visited Feb. 6, 2006).

¹⁵³ *Id.*

¹⁵⁴ See Takahiro Miyao, *Japan's Urban Economy and Land Policy*, 513 ANNALS AM. ACAD. POL. & SOC. SCI. 130, 131 (1991).

¹⁵⁵ CYBRIWSKY, *supra* note 23, at 15. "[T]he city is the political capital of Japan, the headquarters of its largest economic enterprises, its main contact with the world abroad, the leading center of higher

pressure on Tokyo to meet the many needs of its citizens.¹⁵⁶ It also faces the pressure of being a growing metropolis.¹⁵⁷ Tokyo's ubiquitous appeal to many different sections of the nation has created a sprawling city, pressed for both space and infrastructure.¹⁵⁸ These unique attributes of Tokyo make its land use policies central to the continued success of Tokyo as a world-wide center of commerce, culture, and livability.

V. THE EMERGING NONPROFIT SECTOR PRESENTS THE FIRST VIABLE MEANS OF MEETING TOKYO'S URBAN DEVELOPMENT GOALS

The nonprofit sector that is beginning to develop under the NPO Law of 1998 has the potential to overcome past impediments to citizen participation in Tokyo's urban development scheme. Citizen groups in Tokyo have been attempting for decades to influence the city's urban development. Today's political and economic environments have opened the political structure of the government to allow participation by the nonprofit sector. Along with this increased political openness, the nonprofit sector has gained significant legitimacy both legally and in the opinion of the general public. While the nonprofit sector has realized unprecedented success, it still has significant strides to take before it is a truly viable conduit to meaningful public participation. Tokyo's current environment provides a unique opportunity to take these strides and create a viable nonprofit sector.

A. *Political and Economic Obstacles Have Prevented the Creation of a Nonprofit Sector That Effectively Represents the Citizens of Tokyo*

While the government has recognized the need for a viable sector representing the needs of the citizens for decades,¹⁵⁹ there have been a number of significant barriers to the establishment of such a sector. The major challenges facing the development of a nonprofit sector are the role of government, the source of funding, and the legitimacy of the nonprofit sector.¹⁶⁰

education, its largest manufacturer, the dominant media center, [and] the locus of the largest number of cultural events" *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ See generally FIRST LONG-TERM PLAN, *supra* note 136; SECOND LONG-TERM PLAN, *supra* note 131; THIRD LONG-TERM PLAN, *supra* note 136.

¹⁶⁰ See generally Bothwell, *supra* note 34, at 121-49.

Historically, the Japanese government has been a provider for its citizens¹⁶¹ and the government's desire to continue as provider is the first major obstacle to the establishment of a strong nonprofit sector. Through much of the twentieth century, citizens looked to the Japanese government to provide them with necessities such as adequate housing and economic security. The government capably met these needs. The current socio-cultural needs of the citizens cannot, however, be provided by the government, and the citizens and government alike have struggled to find the appropriate provider of such services. As Japan's governance shifted away from the "Japan, Inc." model of post-war Japan,¹⁶² the relationship between the Japanese government and its citizens has changed. Katsuji Imata, President/CEO of Japan-US Community Education and Exchange, discussed this change:

Bureaucrats won't give up their territory. And the sad thing is that they are not villains. They are not "control freaks." Rather, they are paternalistic. After all, they are the ones that created the economic miracle in Japan's postwar era by setting policy priorities and focusing of the welfare of the corporate sector They can't see how the society will sustain itself if they don't play the fatherly role. As a result, people are suffocated by the same-old uniform measures in different social, economic and educational policies.¹⁶³

The nonprofit sector is the appropriate mechanism to overcome this challenge and meet the socio-cultural needs of citizens.

Underlying the Japanese system of governance is the basic public understanding of what the public sector means. The preconceived notion in Japan is that "public" means "government;" the idea that "public" may also mean "citizen" is foreign to the citizens of Japan.¹⁶⁴ The current nonprofit sector in Japan is referred to as the "third sector."¹⁶⁵ The "third sector" is so heavily influenced by the government and big business that the Japanese term for the third sector, *dai san sekuta*, refers to a "hybrid sector of quasi-public, quasi-business organizations," not an independent sector.¹⁶⁶ With

¹⁶¹ Kawashima, *supra* note 133, at 6.

¹⁶² See generally Ginsburg, *supra* note 24.

¹⁶³ Bothwell, *supra* note 34, at 124.

¹⁶⁴ *Id.* at 129.

¹⁶⁵ Amenomori, *supra* note 93, at 189.

¹⁶⁶ *Id.*

this understanding, the NPOs are not seen as makers of public policy, but rather as pawns merely serving the interests of the government.¹⁶⁷

For the NPO sector to be successful, it must be truly independent from the government and bureaucracy. If it remains significantly influenced by the authoritarian government, it will not effectively influence society.¹⁶⁸ One way to describe the relationship between the government and nonprofit sector is that of “patron-client,” where NPOs are seen as protected or supported by the government.¹⁶⁹ The close supervision of NPOs through the relevant ministries demonstrates this relationship.¹⁷⁰ NPOs are required to register with the ministry or ministries that govern the subject matter of the organization’s activities.¹⁷¹ The ministry also has the discretion as to whether or not it should grant an organization’s application for incorporation.¹⁷² In 1999, one organization sought to incorporate with the intention of providing support to Indonesia, but authorities denied its application demanding that the organization change the recipient of its aid to “developing nations.”¹⁷³ Such governmental controls over incorporation significantly impede NPOs’ independence.

In addition to the close supervisory role that the government plays, NPOs also rely heavily on government funding for their operations, which further erodes organizational independence.¹⁷⁴ Funding for NPOs can come from numerous sources, including direct grants from government and corporations, private donations, and membership fees.¹⁷⁵ Empirical evidence demonstrates that the source of NPO revenue is divided as follows: 1.3% – private contributions; 38.3% – public sector payments, and 60.4% – private fees and payments (which include primarily tuition to private schools).¹⁷⁶ The development and housing sector has a similar, but more polarized division of revenue: 0.0% – private contributions; 24.4% – public sector payments; and; 75.6% – private fees and payments.¹⁷⁷ The government can maintain significant control over the nonprofit sector

¹⁶⁷ Bothwell, *supra* note 34, at 129.

¹⁶⁸ *Id.* at 121.

¹⁶⁹ Tadashi Yamamoto, *The State and the Nonprofit Sector in Japan*, in *THE NONPROFIT SECTOR IN JAPAN* 120 (Tadashi Yamamoto ed., 1998).

¹⁷⁰ *Id.*

¹⁷¹ MINPŌ [Civil Code], art. 34.

¹⁷² *Id.*

¹⁷³ Norio Adachi, *Free Nonprofit Groups from Tangle of Red Tape*, *THE NIKKEI WEEKLY*, Nov. 15, 1999, at 7.

¹⁷⁴ Yamamoto, *supra* note 169, at 123.

¹⁷⁵ *Id.* at 113.

¹⁷⁶ *Id.* at 112-13.

¹⁷⁷ *Id.* at 113

through this type of funding. By failing to provide adequate tax incentives to individuals, the government is limiting private donations that would strengthen the independence of the organizations.¹⁷⁸

Donations to government entities are fully tax deductible for corporate entities and are deductible for up to one-quarter of household income after a ¥10,000 threshold donation is made.¹⁷⁹ In contrast, donations to public interest organizations are tax deductible for corporations only when there is an “urgent [public] need.”¹⁸⁰ Furthermore, donations are only tax deductible if the organization has applied for and received special tax status from an appropriate ministry.¹⁸¹ If the ministry does not support an organization, it can simply deny the organization’s application for special tax treatment, effectively limiting a substantially viable source of potential revenue. That this procedural hurdle, however logical, is at the full discretion of the relevant ministry, severely limits NPOs’ independence because only those NPOs that reflect the interests of government receive funding.¹⁸²

Corporate interests also create a major challenge to the viability of the nonprofit sector because of the tenuous relationship they have with the nonprofit sector. On one hand, the nonprofit sector relies heavily on the corporate world for financial backing.¹⁸³ On the other hand, the sector is threatened by corporate influence in times of economic stagnation.¹⁸⁴ NPOs are threatened for two reasons when there is a weak economy. First, reduced profit for corporate entities leads directly to reduced revenue for nonprofit organizations.¹⁸⁵ Second, corporate entities expect powerful government—a threat to nonprofit independence in times of economic stagnation.¹⁸⁶ Importantly, however, both the economic and nonprofit sectors share a common goal of economic growth. This common goal must be emphasized in order to foster a relationship between the two sectors, thus avoiding a sense of divisiveness. There is also strong evidence that increased social capital leads to aggregate economic growth.¹⁸⁷

¹⁷⁸ *Id.* at 126.

¹⁷⁹ *Id.* at 125.

¹⁸⁰ *Id.* at 126.

¹⁸¹ *Id.* at 125.

¹⁸² *See id.* at 126.

¹⁸³ In 1995, 1.43% of corporate income in was donated to NPOs. Bothwell, *supra* note 34, at 127.

¹⁸⁴ *Id.* at 126.

¹⁸⁵ *See id.* at 127.

¹⁸⁶ *Id.* at 126. (quoting an interview with Makoto Imada, Director of the Civil Society Research Institute in Kobe, Japan).

¹⁸⁷ A leading example of the success of the “social capital approach” is California’s Silicon Valley, where the use of social networks within the economic community led to strong economic and industrial growth along with public-private cooperation on everything from “taxes to building permits to literacy.” ROBERT. D. PUTNAM, *BOWLING ALONE* 324 (2000). This can be compared to Silicon Valley’s primary

The legitimacy of nonprofit organizations is the final major obstacle to the viability of the sector.¹⁸⁸ In order to build strong NPOs, citizens must understand the importance of the nonprofit sector and contribute to the organizations.¹⁸⁹ Currently, Japanese nonprofits have shallow support bases with only a few NPOs having more than 1000 supporting members.¹⁹⁰ Support for Japanese nonprofit organizations is simply not a part of the culture.¹⁹¹ Even with NPO growth and development, only twenty-two percent of adults with full-time jobs engage in charitable activities.¹⁹² Without a strong base of citizen support, Tokyo will continue to struggle to create a viable nonprofit sector. A leading scholar in the nonprofit field in Japan, Yasuo Harima, states that “[citizens] must change [their] paradigm from individualism to community-ism NPO’s are ‘community.’ Their value is in their performance as community.”¹⁹³ The strength of the nonprofit sector lies not with the strength of the organization’s officers, the amount of government support, or the amount of local support alone, but rather with each of these components working in unison towards a common goal.¹⁹⁴

B. Political and Economic Changes in the 1990s Allowed for the Creation of the First Viable Framework for a Nonprofit Sector

The political and economic setting of the 1990s in Tokyo weakened the rigid political system and allowed citizen interests to gain a foothold in Tokyo’s governance. The bursting of the economic bubble in Japan, as well as political scandal and the devastation of the Kobe Earthquake in 1995 led to the promulgation of the Law to Promote Specified Nonprofit Activities of 1998 (“NPO Law”).¹⁹⁵ The NPO Law is the keystone of the current framework for the nonprofit sector and its promulgation can provide the momentum needed to build a more effective nonprofit sector.

competitor, Boston’s Route 128, where the “I’ll succeed on my own” philosophy led to poor performance in comparison to Silicon Valley. *Id.*

¹⁸⁸ Bothwell, *supra* note 34, at 146.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 131.

¹⁹¹ Kawashima, *supra* note 133, at 13.

¹⁹² Bothwell, *supra* note 34, at 130.

¹⁹³ *Id.* at 134.

¹⁹⁴ *Id.* at 136.

¹⁹⁵ Tokutei hieiri katsudō sokushinhō [Law to Promote Designated Nonprofit Activities], Law No. 7 of 1998, amended by Law No. 173 of 2000, translated at http://www.worldvolunteerweb.org/dynamic/infobase/pdf/2002/JPN980301_law_npa.pdf (last visited Jan. 28, 2005) (unofficial translation) [hereinafter NPO Law].

Japan's economic downturn in the early 1990s set the stage for the growth of the nonprofit sector.¹⁹⁶ The 1990s marked the end of Japan's inflated land market and brought Japan's unprecedented history of economic growth to an end.¹⁹⁷ The end of economic growth severely reduced the finances of central and local governments and limited the government's ability to support programs such as "lifetime employment."¹⁹⁸ With fewer governmental resources, the previously dominant political powers were unable to appease competing interests, thus weakening the ubiquity of the iron triangle.¹⁹⁹

Corruption in the bureaucracy came to light in the wake of the stagnant economy and further weakened the political iron triangle.²⁰⁰ While corruption was nothing new to Japan, citizens forced accountability onto the politicians after the economic collapse.²⁰¹ The corruption led to a political shakeup and ultimately to the Liberal Democratic Party ("LDP") losing power in 1993 for the first time since 1955.²⁰² This shakeup allowed for electoral reforms, which were expected to reduce the LDP's power and allow for other parties to gain more influence over the legislature.²⁰³

Finally, the Kobe Earthquake of 1995 brought significant changes to the role of the nonprofit sector.²⁰⁴ The inadequacy of the government response to the Kobe Earthquake brought poor bureaucratic governance into the public's view, while concomitantly highlighting the efficiency of non-governmental organizations and the voluntary response of citizens.²⁰⁵ The bureaucratic response has been described as, "ministries jealously guard[ing] their bailiwicks" and sectionalism that "inhibit[ed] cooperation or effective action."²⁰⁶ Importantly, however, the Kobe Earthquake was not the catalyst that began the volunteer activity. Rather, it allowed for widespread recognition of the preexisting voluntary and nonprofit sector.²⁰⁷ Volunteer

¹⁹⁶ In a "high-growth era," the Japanese political system was able to maintain control over challenging interest groups by "buying them off with a share of the ever-expanding pie." Ginsburg, *supra* note 24, at 598. When the era of growth ceased, the political machine as it was known became ineffective because there were fewer government resources. *Id.*

¹⁹⁷ SORENSEN, *supra* note 16, at 290.

¹⁹⁸ *Id.*

¹⁹⁹ Ginsburg, *supra* note 24, at 598.

²⁰⁰ SORENSEN, *supra* note 16, at 296.

²⁰¹ *Id.*

²⁰² Pekkanen, *supra* note 32, at 53.

²⁰³ SORENSEN, *supra* note 16, at 296-97.

²⁰⁴ See generally Imada, *supra* note 31.

²⁰⁵ Pekkanen, *supra* note 32, at 54.

²⁰⁶ *Id.*

²⁰⁷ Imada, *supra* note 31, at 40-41.

groups began in earnest in the late 1980s alongside the growing prominence of the corporate citizenship movement.²⁰⁸

Along with the Kobe Earthquake, the media was vitally important to the growth of the nonprofit sector. The media generally has three effects on the policy making process: “1) identifying issues and setting the agenda for policymakers, 2) influencing attitudes and values toward policy issues, and 3) changing the behavior of voters and decision makers.”²⁰⁹ Media attention to the voluntary response to the Kobe Earthquake is a prime example of how the media influenced each of these areas and forced the promulgation of the NPO Law.²¹⁰

The purpose of the NPO Law is to promote the development of nonprofit activities.²¹¹ In order to achieve this goal, the NPO Law provides incorporated status to NPOs and makes tax exempt status available to the organizations. Although the NPO Law does not remove NPOs from ministerial supervision,²¹² it allows citizen-led activities to proceed with less government intrusion.²¹³ The burst of the economic bubble in Japan was marked by political scandals and wide-scale skepticism of bureaucratic competency.²¹⁴ Many of the scandals either involved fraudulent dealings directly between politicians and NPO officials,²¹⁵ or led to the demand for government accountability for misdealings with NPOs.²¹⁶ At the time of these scandals, it was nearly impossible for NPOs to incorporate as legal entities and many NPOs felt that legal incorporation was the best means to improving political strength and legitimacy.²¹⁷ Although the Japanese Constitution provides for freedom of association,²¹⁸ the Civil Code allows

²⁰⁸ *Id.*

²⁰⁹ THOMAS R. DYE, UNDERSTANDING PUBLIC POLICY 41 (11th ed. 2004).

²¹⁰ See generally Pekkanen, *supra* note 32, at 53 (providing an in depth analysis of the promulgation of the NPO Law of 1998).

²¹¹ See generally, NPO Law, *supra* note 195.

²¹² NPO Law, *supra* note 195, at art. 10 (requiring authentication by the relevant government ministry and art. 29 (requiring an annual report be submitted to the relevant government ministry).

²¹³ Yoshida Shin'ichi, *Rethinking the Public Interest in Japan: Civil Society in the Making*, in DECIDING THE PUBLIC GOOD: GOVERNANCE AND CIVIL SOCIETY IN JAPAN 47 (Yamamoto Tadashi ed., 1999).

²¹⁴ SORENSEN, *supra* note 16, at 293-95.

²¹⁵ Masayuki Deguchi, *The Distinction Between Institutionalized and Noninstitutionalized NPOs: New Policy Initiatives and Nonprofit Organizations in Japan*, in THIRD SECTOR POLICY AT THE CROSSROADS: AN INTERNATIONAL NONPROFIT ANALYSIS 160-61 (Helmut K. Anheier & Jeremy Kendall eds., 2001).

²¹⁶ *Id.*

²¹⁷ *Id.* at 162.

²¹⁸ See Nihonkoku Kenpō [KENPŌ] [Constitution] art. 21 (1946). translated at <http://www.solon.org/Constitutions/Japan/English/english-Constitution.html> (last visited May 15, 2005).

only a limited number of groups to gain status as a legal entity.²¹⁹ Prior to the NPO Law, the first obstacle to forming a legal corporation was that the group had to act in the public interest.²²⁰ The second obstacle was that the recognition of a group was at the “discretion of the competent ministry.”²²¹ Specifically, NPOs felt that incorporation would allow the groups to: 1) improve public credibility, 2) increase the ability to qualify for public donations, 3) demonstrate that the group does not seek to make a profit, and 4) allow for more favorable tax treatment.²²²

The NPO Law has, however, been criticized as being an inadequate means of achieving increased NPO legitimacy. The first weakness in the NPO Law is that instead of amending the Civil Code, which provides the general law for the incorporation of NPOs, the NPO Law is a “special law” contained within the Code.²²³ The NPO Law requires that an organization fit within one of seventeen exclusive categories provided within the statute.²²⁴ Most troublesome about the required categorization is that the prefectural government is responsible for deciding whether or not an organization fits within one of the categories. This type of bureaucratic control over the nonprofit sector limits its effectiveness.

The fact that the economy has slowed,²²⁵ the LDP’s power has weakened,²²⁶ and there is a general acknowledgment of the need to improve the urban environment with an eye towards meeting the socio-cultural needs

²¹⁹ MINPO, arts. 33-5.

²²⁰ *Id.* at art. 34.

²²¹ Hana Heineken & Robert Pekkanen, *Legal Changes Affecting Not-for-Profits in Japan*, THE INT’L. J. OF NOT-FOR-PROFIT LAW, Nov. 2004, at 43, available at <http://www.icnl.org/JOURNAL/vol7iss1/IJNL%20Vol%207,%20Iss%201.pdf>.

²²² See generally, Robert Pekkanen & Karla Simon, *The Legal Framework for Voluntary and Non-Profit Activity*, in THE VOLUNTARY AND NON-PROFIT SECTOR IN JAPAN 76-101 (Stephen P. Osborne ed., 2003).

²²³ Heineken, *supra* note 221, at 47.

²²⁴ NPO Law, *supra* note 195, art. 2. Specified nonprofit activities include: 1) Promotion of health, medical treatment, or welfare, 2) Promotion of social education, 3) Promotion of community development, 4) Promotion of culture, the arts, or sports, 5) Conservation of the environment, 6) Disaster relief, 7) Promotion of community safety, 8) Protection of human rights or promotion of peace, 9) International cooperation, 10) Promotion of a society with equal gender participation, 11) Sound nurturing of youth, 12) Administration of organizations that engage in the above activities or provision of liaison advice, or assistance in connection with the above activities, 13) Information technology, 14) Science and technology, 15) Economic revitalization, 16) Job training and employment, and 17) Consumer protection. *Id.*; see also JAPAN CENTER FOR INTERNATIONAL EXCHANGE, *New Legal Reform Efforts Receive Mixed Welcome*, in CIVIL SOCIETY MONITOR, No. 8, Dec. 2003, at 2 (citing amendment adding five additional specified nonprofit activities).

²²⁵ CIA, *supra* note 152.

²²⁶ Kawashima, *supra* note 133, at 12.

of the citizens makes today a unique time ripe for the development of a nonprofit sector.²²⁷

C. *Tokyo Can Realize a Successful Nonprofit Sector by Improving the Sector's Legitimacy and Independence*

The Japanese government gave the nonprofit sector the framework to enter Japanese governance through the NPO Law, but now there are a number of steps that are essential to maintaining a politically salient nonprofit sector. The nonprofit sector must meet several objectives that are closely interrelated in order to implement a successful nonprofit sector. The nonprofit sector must improve its legitimacy and independence. These elements are closely related and without the growth of each element the nonprofit sector will not be effective.

The first goal of the nonprofit sector should be to build legitimacy. Legitimacy is an issue that nonprofit organizations must deal with regardless of the strength of the nonprofit sector. In the United States, organizations must continuously monitor their operations in order to maintain legitimacy.²²⁸ Japan has an even more challenging task, having to build the legitimacy of the sector from scratch. The first step toward building legitimacy should be for nonprofit organizations to act locally; this is particularly true in the field of urban development.

Urban development issues are acutely local—for example, zoning laws can affect people in a block-by-block manner and transportation decisions can have specific and drastic effects on a particular neighborhood. For this reason, gaining local recognition should be the primary goal for NPOs seeking public participation in the urban planning field. Hideaki Uemura, chair of the Citizens' Diplomatic Center for the Rights of Indigenous Peoples, addressed the importance of the involvement of local citizens, stating: "As the concrete assignment . . . we have to make sure that NPO activities benefit local people as much as possible."²²⁹ Local people would support NPOs if there were local benefits.²³⁰ This means that organizations must work at the grassroots level in order to build local support and recognition. Today, Japanese citizens largely do not know what

²²⁷ See generally, UNPAN, *supra* note 134.

²²⁸ See Gail A. Lasprogata & Marya N. Cotton, *Contemplating "Enterprise": the Business and Legal Challenges of Social Entrepreneurship*, 41 AM. BUS. L.J. 67, 73 (2003) (addressing the legitimacy crisis stemming from the tax-exempt status of nonprofit organizations and the faith of the public in the work of the nonprofit sector).

²²⁹ Bothwell, *supra* note 34, at 131.

²³⁰ *Id.*

the nonprofit sector is capable of or what it aims to achieve.²³¹ Building legitimacy must also start with community outreach. Outreach should include introducing children to community service activities and community involvement, encouraging such activity at a young age. Without building the legitimacy of the sector, the next two goals of the nonprofit sector will be impossible.

Building a strong financial base is a critical goal for nonprofit organizations, largely because without a viable financial base, independent from governmental funding, nonprofit organizations remain susceptible to government control. In essence, government funds become the “tail that wags the dog.”²³² Article 89 of the Japanese Constitution states that government funding cannot be distributed to organizations that are not under the influence of a government agency.²³³ Therefore, when nonprofit organizations receive government funding, they must also agree to abide by government regulations.²³⁴ This defeats the purpose of having an independent nonprofit sector representing the needs and interests of the citizens. It is vital that the nonprofit sector act independently from the state. A successful sector is one that “exists over and against the state, in partial independence from it, . . . a web of autonomous associations, independent of the state.”²³⁵ This leaves nonprofit organizations in a serious quandary: receive government funds and sacrifice independence, or reject government funding and rely on prohibitively scarce alternative funding sources. The only other potentially viable source of funding is through corporate support, which also fails to solve the issue of NPO independence. This financial dilemma demonstrates the strong need for private support of nonprofit organizations and legal reform to allow for more flexible use of government funds.

The financial dilemma also suggests that there is a need for tax reform to stimulate and encourage charitable contributions from individuals and corporations. The justification for such tax reform was well stated by the United States Supreme Court:

²³¹ See *id.* at 130-31.

²³² Bothwell, *supra* note 34, at 137.

²³³ “No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.” KENPŌ, art. 89.

²³⁴ *Id.*

²³⁵ Barbara K. Bucholtz, *Reflections on the Role of Nonprofit Associations in a Representative Democracy*, 7 CORNELL J.L. & PUB. POL’Y 555, 592 (1998) (quoting Charles Taylor).

The exemption from taxation of money and property devoted to charitable and other purposes is based on the theory that the Government is compensated for the loss of revenue by its relief from financial burdens which would otherwise have to be met by appropriations from other public funds, and by the benefits resulting from the promotion of the general welfare.²³⁶

The Japanese government must be willing and able to support the nonprofit sector without encroaching on its independence. There is strong evidence that balancing power between the public (government), private (entrepreneurial) and civil (nonprofit) sectors is vital to a stable government.²³⁷ The success of the nonprofit sector will help balance the control of power in Japanese urban development.

The final critical element to the success of the nonprofit sector is the development of a strong institutional infrastructure.²³⁸ A strong infrastructure includes having adequately trained and competent officers and managers within the nonprofit organizations.²³⁹ Jerry Inman, former representative of the Asia Foundation in Tokyo, states that development of this infrastructure is “essential and precedes NPOs being taken seriously by the Japanese government and corporate sector and, maybe more importantly, by their international NPO colleagues.”²⁴⁰ It is at this point that a vicious cycle is created:²⁴¹ NPOs lack the financial means to attract trained professionals, which reduces the sector’s ability to attract funding.²⁴² Increased training in public policy and administration, particularly in regard to the nonprofit sector, may supply the sector with more adequate human resources. Not only must there be professionals trained generally in nonprofit management, there must be city planners who understand how to operate a successful NPO. Such training may also create positive externalities by increasing the legitimacy of the nonprofit sector and improving the public’s knowledge of how the sector operates. Historically, there has been a high level of prestige attached to entering the civil service.²⁴³ In order to draw upon the top graduates from the University of

²³⁶ *Bob Jones University v. United States*, 461 U.S. 574, 590 (1983) (quoting H.R. Rep. No. 1860, 75th Cong., 3d Sess. 19 (1938)).

²³⁷ Bucholtz, *supra* note 235, at 593.

²³⁸ See generally Bothwell, *supra* note 34, at 139-40.

²³⁹ *Id.*

²⁴⁰ *Id.* at 139.

²⁴¹ *Id.* at 141.

²⁴² See *id.*

²⁴³ Kawashima, *supra* note 133, at 10.

Tokyo and other leading academic institutions, the nonprofit sector must gain legitimacy.

While the nonprofit sector faces an uphill battle to overcome these challenges, there is significant momentum in favor of the nonprofit sector.²⁴⁴ It is important that pressure is maintained on the government to continue passing favorable legislation that will allow the sector to reach its potential. The most important area of support for the nonprofit sector related to urban development is from the local government. Local government maintains significant control of development permitting.²⁴⁵ Therefore, without the support of the local government, NPOs will not have the momentum needed to impact urban developers.

VI. CONCLUSION

The recently developed framework for a nonprofit sector in Japan represents the first viable opportunity to incorporate the interests of the citizens of Tokyo into the city's urban development scheme. The NPO Law is the backbone of this framework. Continued support of this statute, together with government, corporate, and citizen support of nonprofit organizations will allow the nonprofit sector to blossom into a politically salient entity capable of balancing the urban development interests of the government, corporations, and citizens. The growth of the nonprofit sector will leverage citizens' ability to affect positive social policy in Tokyo's continued urban development. This growth is especially important in light of the conflict between the Tokyo citizens' sense of place and Japan's centralized legal structure. Without an adequate nonprofit sector, the urban environment will continue to be shaped by economic forces, as opposed to citizen participation. Development projects such as the Kunitachi condominium case continue today. Without the development of a strong nonprofit sector, citizens will be unable to influence the growth and development of their own urban environment.

²⁴⁴ See, e.g., Japan Center for International Exchange, *New Legal Reform Efforts Receive Mixed Welcome*, CIVIL SOCIETY MONITOR, No. 8, Dec. 2003 (citing amendment to NPO Law).

²⁴⁵ See generally CPL Law, *supra* note 77.