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The Impact of Cultural Heritage on Japanese Towns and Villages

*Yuichiro Tsuji**

ABSTRACT

In 1954, when historically significant clays and clay pots were found in the *Iba* district of Shizuoka prefecture, the city applied to the prefectural education committee for a historic site designation. The committee granted this designation to the city..

However, in 1973 the education committee lifted its permission to promote development around the location. Historians have sought revocation of this decision under the Administrative Case Litigation Act (ACLA), but the Supreme Court has denied standing. By denying standing, the Japanese Supreme Court allows the prefecture to destroy a historical site.

First, this paper seeks to discuss the doctrine of standing in administrative litigation. The general public typically takes great pride in their cultural heritage, yet they seldom have the ability to defend these interests and values. The judiciary is required to limit the scope of plaintiffs who can bring cases to protect cultural heritage sites. The revised ACLA broadened the scope of standing and established new litigations such as action for injunction, and mandamus action. These litigations make the Japanese judiciary switch from concrete to abstract judicial reviews.¹

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¹ NOBUYOSHI ASHIBE, KENPŌ [CONSTITUTION] 339-340 (Iwanami Shoten 2015); TOSHIHIKO NONAKA, MUTSUO NAKAMURA, KAZUYUKI TAKAHASHI, & KATSUTOSHI TAKAMI, KENPŌ II [CONSTITUTION II] 274-276 (Yuhikaku 2012); KEIKO SAKURAI & HIRYOYUKI HASHIMONO, GYŌSEIHŌ [Administrative law] (Kōbundo 2016), at 12. These three books are fundamental textbook in constitutional and administrative law.

In the Japanese judiciary system, standing doctrine functions to limit the scope of those who have standing. For example, the judiciary is likely to deny standing to litigants suing on behalf of wildlife and wild animals.²

Second, this paper reviews the efforts of local governments to maintain autonomy when making decisions regarding cultural heritage. As a result of Japan's aging society, the population in small cities and towns are decreasing rapidly.³ Local governments prefer using historical or cultural sites to revitalize towns and entice more people into visiting.⁴ The Act on Protection of Cultural Properties (APCP) is a Japanese statute originally established in 1949. The law aims to preserve and put to use cultural property for Japanese people. When it was amended in 2018, it shifted the towns' focus from preservation of cultural heritage to revitalization of small towns.⁵ Cities and towns undergo financial burdens to prepare applications for their registration as world heritage sites and then to maintain the quality of the heritage site. The registration may promise to bring more people into the small region, but may also change the quiet life amidst nature. These cities and towns are seeking to maintain a balance between protection of the environment and their cultural heritage, and revitalization. The interests of citizens and non-governmental organizations (NGOs) have become disenfranchised because they are often unable to attain standing. Enlarging the doctrine of standing to allow these groups to attain standing would promote balance by allowing individual and NGO interests to bring suit whereas before they were prohibited from protecting their interests.

I. STANDING AND JUDICIAL POWER

Before analyzing the impact of cultural heritage

² Kagoshima Chihō Saibansho [Kagoshima Dist. Ct.] Jan. 22, 2001, Hei 7 (gyou 行ウ) no. 1 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail5?id=15675

[<https://perma.cc/DX27-A9BF>] (Kagoshima district court denied standing to an NGO bringing suit on behalf of animals); *see also* Masanori Doi, *The Amaminokurousagi Rights of Nature's Suit and the Amended Administrative Procedure Act*, 20 AMAMI NEWSLETTER 12, 12-18 (2005), <http://hdl.handle.net/10232/17770> [<https://perma.cc/E8FW-BKSR>].

³ Norimitsu Onishi, *A Generation in Japan Faces a Lonely Death*, N.Y. TIMES (Nov. 30, 2017), <https://www.nytimes.com/2017/11/30/world/asia/japan-lonely-deaths-the-end.html> [<https://perma.cc/77V4-3FNY>].

⁴ *Japan to focus on cultural, historical sites in bid to pump up tourist numbers*, JAPAN TIMES (Mar. 21 2016), <https://www.japantimes.co.jp/news/2016/03/21/national/plan-boost-overseas-tourist-numbers-involves-highlighting-cultural-historical-assets/#.Xc5jPuTV6Uk> [<https://perma.cc/MVA4-DRRM>].

⁵ Bunka zai hogo hō [Act on Protection of Cultural Properties], Law No. 214 of 1950 (Japan).

designations on Japanese towns and villages, it is necessary to review the Japanese doctrine of standing. In the *Iba* case, citizens brought an action to court to seek revocation of an administrative decision that lifted the ban on construction on the *Iba* heritage historical site.

It has been 70 years since the current Japanese Constitution was established. The current constitution grants judicial power through Article 76 Chapter 6.⁶ The judiciary exercises judicial review when there are legal disputes.⁷ The judiciary interprets the text of statutes during disputes and determines the application of the law.⁸ The aim of judicial review is to provide a remedy for the competing parties.⁹ In general, there is no equivalent to the US Constitution Article III Case or Controversy Clause¹⁰ in the Japanese Constitution. Japanese courts function similarly to how US courts do as laid out in Article III of the US Constitution. Article 3¹¹ of the Court Act requires legal disputes to provide remedy between competing parties,¹² which is also known as subjective litigation.¹³ Article 3 of the Court Act further provides that other litigation is “specifically provided for by law.”¹⁴ Finally, the Administrative Case Litigation Act (ACLA) provides objective or exceptional litigation, which, in comparison to subjective litigation, functions to maintain the legality of government activities.¹⁵

⁶ NIHONKOKU KENPŌ [CONSTITUTION], art. 76 (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main%3Fre%3D%26vm%3D02%26id%3D174 [<https://perma.cc/QPD4-D8HH>].

⁷ Saibansho hō [Court Act], Law No. 59 of 1947, art. 3 (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?id=7&vm=2&re= [<https://perma.cc/8AUF-Q2KH>].

⁸ KOJI SATO, KENPŌ [CONSTITUTION] 581 (Seibundo 2011).

⁹ *Id.* at 589.

¹⁰ U.S. CONST. art. III.

¹¹ Saibansho hō [Court Act], Law No. 59 of 1947, art. 3 (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?id=7&vm=2&re= [<https://perma.cc/8AUF-Q2KH>].

¹² *Id.*; Yuichiro Tsuji, *Disparidade Do Valor Do Voto E Revisão Judicial No Japão [Vote Value Disparity and Judicial Review in Japan]*, 5 REVISTA DE INVESTIGACIONES CONSTITUCIONALES [JOURNAL OF CONSTITUTIONAL RESEARCH] 57, 57-91 (2018).

¹³ Gyōsei jiken soshō hō [Administrative Case Litigation Act], Law No. 139 of 1962, art. 2, 43(2) (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=1922 [<https://perma.cc/9FN9-QDFJ>].

¹⁴ Saibansho hō [Court Act], Law No. 59 of 1947, art. 3 (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?id=7&vm=2&re= [<https://perma.cc/8AUF-Q2KH>].

¹⁵ Gyōsei jiken soshō hō [Administrative Case Litigation Act], Law No. 139 of 1962, art. 42 (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=1922 [<https://perma.cc/9FN9-QDFJ>].

A. Standing in Japan

Until 2004 when the ACLA was revised, the Japanese judiciary had limited the scope of standing, which can be demonstrated using case law.¹⁶ A lawsuit brought by housewives regarding store-bought juice illustrates how the judiciary reviews standing. In this case,¹⁷ the Fair Trade Commission approved a fair competition code for the regulation of juice products from the Japanese Fruit Juice Association. A group of housewives argued that the Fair Trade code leads to a misunderstanding of labels and should require that product labels have a list of all ingredients, and that only those products made up of 100% fruit or vegetable juice should be labeled as juice. The Supreme Court denied standing to the housewives and explained that as general consumers they had no legal interest.¹⁸

Another example is the Naganuma Nike Missile case. In Naganuma City, Hokkaido, the government lifted the designation of a public forest as a water source reservation site for natural disaster emergencies and planned the construction of a missile base. The purpose of the public forest was to protect people from natural disasters, and residents near this base brought an action against the government. Sapporo District Court held that the Self-Defense Force's¹⁹ actions were unconstitutional under Article 9 of the Japanese constitution.²⁰ Meanwhile, during the appeal process, the government constructed a new dam in a felled forest to prevent natural disasters in response to arguments from residents that new missile sites without forests would lead to floods. Ultimately, the Sapporo High Court denied standing because the court determined that the interest of the residents to preserve the forest was lost through the construction of the dam. The Supreme Court affirmed the Sapporo High Court's decision.²¹

¹⁶ Gyōsei jiken soshō hō [Administrative Case Litigation Act], Law No. 139 of 1962. art. 9 (2) (Japan) *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=1922 [<https://perma.cc/9FN9-QDFJ>].

¹⁷ Saikō Saibansho [Sup. Ct.] March 14, 1978, Showa 49 (gyo tsu) no. 99, 32(2), SAINBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 211 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail?id=53238 [<https://perma.cc/5ZTJ-J8DQ>].

¹⁸ *Id.*

¹⁹ When the Korean war occurred in the Korean peninsula in 1950, the GHQ ordered the Japanese government to establish a Police Reserve Force. It then changed into the current Japanese Self Defense Force (SDF). The constitutionality of the SDF has been controversial since.

²⁰ Article 9 of Japanese constitution prohibits the Japanese government from having an army. Sapporō Chiō Saibansho [Sapporo Dist. Ct.] Sep. 9, 1982, Showa 52 (gyo tsu) no. 56, 36(9), SAINBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 1679 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail?id=55157 [<https://perma.cc/GH2X-ZKSG>].

²¹ *Id.*

These cases demonstrate that the Japanese Supreme Court has narrowly defined standing. When granting standing, the court reviews a statute of the issue to determine whether its purpose was to protect a specific legal interest and whether the plaintiff's arguments distinguished individual interest from general public interest. If the text of a statute protects the public interest, the court is likely to deny standing.

In Japanese administrative litigation, citizens may seek a declaration from the government to revoke the permission of an applicant.²² For example, business operators may apply for permission to build a nuclear power plant. In turn, citizens can sue the government to revoke any permission granted by arguing that construction of nuclear power plants infringes on their interests.²³ Administrative litigation has three dimensions: the government, applicants (such as business operators), and citizens. In relation to these three dimensions, standing functions to limit the number of plaintiffs in court.

Another example of the Japanese Supreme Court denying standing occurred in *Bochi Keiei Kyoka jiken*. In that case, citizens who lived near a cemetery sought to revoke a government decision allowing an applicant to manage the cemetery.²⁴ The applicable law on cemeteries and burials provided that those who want to manage a cemetery or crematorium must apply for permission from the governor.²⁵ In order to obtain permission, the law required that the cemetery be located 300 meters from houses, schools, hospitals or stores. The government approved the application even though the cemetery was too close to a residential neighborhood. Inhabitants who lived less than 300 meters from this cemetery brought a suit to revoke this permission, but the court explained that the applicable law protected the public's interest in old customs, religious beliefs, and activities, but the law did not protect the individual's interest.²⁶ As a result, the Court denied

²² Gyōsei jiken soshō hō [Administrative Case Litigation Act], Law No. 139 of 1962, art. 3(2) (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=1922 [<https://perma.cc/9FN9-QDFJ>].

Applicants may apply for permission to do activities that are generally prohibited.

²³ Saikō Saibansho [Sup. Ct.] Sep. 22, 1992, Hei 1 (gyo tsu) no. 130, 46(6), SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 571 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail2?id=52773 [<https://perma.cc/VP7E-74QN>] (This case is referred to as the Monju nuclear power case).

²⁴ Saikō Saibansho [Sup. Ct.] March 17, 2000, Hei 10 (gyo tsu) no. 10, 197 SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 661 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail2?id=62411 [<https://perma.cc/47UB-SA7V>].

²⁵ Bochi maisō tō ni kansuru hō [Law on cemetery and burial], Law No. 48 of 1948, art. 10(1) (Japan).

²⁶ *Id.*

standing.

Some legal scholars have criticized this holding and have argued that the doctrine of standing should be broadened. In 2004, the Administrative Litigation Act was revised to expand standing, and Article 9 (2) now reads as follows:

In this case, when considering the purposes and objectives of said laws and regulations, the court shall take into consideration the purposes and objectives of any related laws and regulations which share the objective in common with said laws and regulations, and when considering the content and nature of said interest, the court shall take into consideration the content and nature of the interest that would be harmed if the original administrative disposition or administrative disposition on appeal were made in violation of the laws and regulations, which give a basis, therefore, as well as in what manner and to what extent such interests would be harmed.²⁷

This revision reflected previous judicial decisions and academic theories that criticized the narrow scope of standing, and the dichotomy of the public's interest versus the individual's interest.²⁸ If an interest is widely shared with the general public, the court is not likely to recognize standing. The court tried to strictly distinguish between individual interest and widely shared interest. Under Article 9(2) of the revised ACLA, the judiciary first reviews whether a plaintiff suffers damage from a certain administrative decision.²⁹ Standing is denied if there is no damage recognized. Next, if damage is recognized and standing is established, the interest at issue can be protected by local ordinance or statute. If the interest at issue is not written into local ordinance, statute, or ministerial ordinance, the court is likely to deny standing. Lastly, because standing does not cover the general public, the interest at

²⁷ Gyōsei jiken soshō hō [Administrative Case Litigation Act], Law No. 139 of 1962, art. 9(2) (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=1922 [<https://perma.cc/9FN9-QDFJ>].

²⁸ Saikō Saibansho [Sup. Ct.] Dec. 7, 2005, Hei 16 (gyo hi) no. 114, 59 SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 2645 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail2?id=52414 [<https://perma.cc/Q5C6-KJ8U>] (recognizing that inhabitants living a certain distance from a railroad have standing).

²⁹ Gyōsei jiken soshō hō [Administrative Case Litigation Act], Law No. 139 of 1962, art. 9(2) (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=1922 [<https://perma.cc/9FN9-QDFJ>].

issue must be limited to specific individuals. Courts now hold that the individual's interest does not conflict with the public's interest; they now interpret statutes to protect the general public as well as the individual. By revising the law of standing in this way, the court has given individuals the ability to obtain standing in disputing public issues, as is the case with cultural heritage designations.

B. From a Specific to an Abstract Review of the 2004 ALA

The 2004 ALA established several other litigations that the court mentioned in its decision such as the juice regulation case³⁰ and cemetery case³¹ and broadened the scope of subjective litigation.³² Subjective litigation deals with an individual's rights or interests, and is a dispute of law provided in the Court Act.³³ When the Court Act was amended just after World War II, the Japanese judiciary believed its main mission was to provide remedies in concrete cases and it used the standing doctrine very strictly. As the administrative state has progressed, the judiciary's mission has evolved into restraining the administrative state and reviewing whether or not administrative activities are legal.³⁴ Japanese constitutional and administrative law scholars have focused on how to limit the administrative state in objective litigation, and review if the judiciary appropriately recognizes standing for a litigant.³⁵ Otherwise, the judiciary compels the government to take a specific action.

Article 37-2³⁶ of the ALA provides for mandamus action,

³⁰ Sapporō Chihō Saibansho [Sapporo Dist. Ct.] Sep. 9, 1982, Showa 52 (gyo tsu) no. 56, 36(9) SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 1679 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail2?id=55157 [<https://perma.cc/GH2X-ZKSG>].

³¹ Saikō Saibansho [Sup. Ct.] March 17, 2000, Hei 10 (gyo tsu) no. 10, 197 SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 661 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail2?id=62411 [<https://perma.cc/47UB-SA7V>].

³² Gyōsei jiken soshō hō [Administrative Case Litigation Act], Law No. 139 of 1962, art. 2 (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=1922 [<https://perma.cc/9FN9-QDFJ>].

³³ Saibansho hō [Court Act], Law No. 59 of 1947, art. 3 (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?id=7&vm=2&re= [<https://perma.cc/8AUF-Q2KH>].

³⁴ Gyōsei jiken soshō hō [Administrative Case Litigation Act], Law No. 139 of 1962, art. 5 and 6 (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=1922 [<https://perma.cc/9FN9-QDFJ>].

³⁵ KATSUYA UGA, ADMINISTRATIVE LAW TEXT, 368 (Yuhikaku 2012); YOSHIKAZU SHIBAIKE, ADMINISTRATIVE LAW, 352 (Yuhikaku 2016); KEIKO SAKURAI & HASHIMOTO HIROYUKI, ADMINISTRATIVE LAW, 329 (Kobundo 2016).

³⁶ Gyōsei jiken soshō hō [Administrative Case Litigation Act], Law No. 139 of

where the court orders administrative agencies to act only when serious damage is likely to be caused if an original administrative disposition is not made and when no other appropriate means to avoid damage exist. There are two kinds of mandamus action.

The first type of mandamus action covers³⁷ citizens who have no ability to apply for or seek a specific exercise of administrative agency power. For this type of mandamus action, citizens must meet three requirements: (1) they would suffer serious damage unless an administrative decision is made; (2) no alternative measure exists; (3) and they have standing. For example, a citizen may seek mandamus action to obligate an administrative agency to order the improvement of the facilities of a factory, or citizens living near a condemned building may seek mandamus action to obligate an administrative agency to order the removal of the illegal building. Citizens living near condemned buildings may suffer from collapse of the illegal buildings. Owners are obligated to remove condemned buildings and the government owes a legal duty to monitor and order removal of these illegal buildings. However, in some instances, neither the owner nor the government does their job. Governmental inaction can cause serious property damage to neighbors. The first type of mandamus action can order the government to issue the removal of illegal buildings. Standing for this mandamus has the same requirements as for an action for revocation of administrative disposition.

The purpose of this litigation is that third parties may argue that there is insufficient regulatory administration, and to obligate administrative agencies to observe the law. The regulatory administration protects certain interests but may infringe on the interests of others at the same time, such as when citizens are harmed by living in close proximity to a dangerous location, as above. Thus, mandamus action functions to compel agencies to review their adjudication.

The second type of mandamus action³⁸ is when a citizen files for permission or seeks adjudication, but agencies either do not respond, or do not respond within a reasonable time. A citizen asks the court to obligate administrative agencies to approve or deny an application.³⁹ This mandamus action is helpful when

1962, art. 37-2 (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=1922 [<https://perma.cc/9FN9-QDFJ>].

³⁷ *Id.* [ACLA] Law No. 139 of 1962, art. 37-2.

³⁸ *Id.*; *see also id.* art. 37-2(2).

³⁹ [ACLA] Law No. 139 of 1962, art. 37-2(1) (Japan) (stating, “[i]n the case set forth in Article 3, paragraph (6), item (i), a mandamus action may be filed only when any serious damage is likely to be caused if a certain original administrative disposition is not made and there are no other appropriate means to avoid such damage When judging whether or not any serious damage would be caused as prescribed in the preceding paragraph, the court shall

agencies accept an application, but then hold onto it without doing anything. In the case of agency inaction, citizens may not seek revocation of administrative decisions such as permits because no administrative decision exists yet. A litigant cannot bring an action to revoke an agency decision to reject an application until the application has, in fact, been rejected. Therefore, this second mandamus action requires a plaintiff to seek revocation of an administrative disposition because the administrative agency may deny application.⁴⁰

Both provisional orders of mandamus and provisional injunctive orders have the same requirements: Irreparable damage is caused imminently, sufficient reason on the merit, and no serious effect on public welfare.⁴¹ For example, a citizen might seek provisional orders of mandamus when they apply for a place in kindergarten for their child, but their application is rejected.⁴² In one such case, a kindergarten denied the application of a child living with a disability who required specific instruments for breathing. Subsequently, the child's father brought an action in court.⁴³ This case shows that now a citizen may seek mandamus when they apply for public assistance and the government denies this assistance.

In another case, a Chinese widow lost her husband, and her late husband's brother appeared and took control of her finances, including her bank account.⁴⁴ The city denied her application for public assistance because she had a bank account.⁴⁵ In this case, the plaintiff could seek revocation of administrative decisions that denied her application for public assistance and could also seek a second type of mandamus action for the government to accept her application.

In order to apply for this type of mandamus action, a plaintiff must meet the following requirements: (1) a rejection of an application must exist; (2) the plaintiff must argue that an action was illegal and bring an action to declare the illegality of inaction when the government does not act. Alternately, the plaintiff can

consider the degree of difficulty in recovering from the damage and shall take into").

⁴⁰ *Id.* art. 37-3(3).

⁴¹ Gyosei jiken sosho ho [Administrative Case Litigation Act], Law No. 139 of 1962, art. 37-5 (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=1922 [<https://perma.cc/9FN9-QDFJ>].

⁴² Tokyo Chihō Saibansho [Tokyo Dist. Ct.] Oct. 25, 2006, Hei 17 (gyo u) no. 510 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail5?id=33769 [<https://perma.cc/F644-FHY6>].

⁴³ *Id.*

⁴⁴ Saikō Saibansho [Sup. Ct.] July 18, 2014, Hei 24 (gyo hi) no. 45, 386 HANREI CHIHŌ JICHI 78 (Japan).

⁴⁵ *Id.*

seek revocation of an administrative decision⁴⁶ or the declaration of illegality through inaction when an application is rejected.⁴⁷ Actions for declaration of illegality of administrative inaction require both that the plaintiff filed for an application and that the government did not take action. If the government permits or rejects the application, then the plaintiff's interest disappears.

The purpose of the second type of action is to obligate a government to provide a service to its citizens. Without this litigation, the government might ignore citizen applications after a reasonable time.⁴⁸

The revision of mandamus action in the ACLA demonstrates that the mission of the judiciary is to intervene and retain the legality of administrative agencies.

C. Natural and cultural heritage cases

The doctrine of standing applies to natural and cultural heritage. Two cases demonstrate that the Japanese judiciary has played a vital role in the protection of natural and cultural heritage in Japan.

In 1954, the Shizuoka committee of education designated an *Iba* heritage location as a historical site in Shizuoka Prefecture. In 1973, the prefecture planned to use the *Iba* land for the national railways and a train station; because of this, the prefecture removed the historical site designation. Archaeologists argued that lifting this designation would result in a loss of items of value at the historical site and sought revocation of the designation removal. The Court⁴⁹ denied their standing and explained that the law at issue was a local ordinance under the Cultural Protection Act.⁵⁰ The Act's purpose was to preserve an important cultural site and had no specific provision to protect individual interest. This Act granted power to the committee to designate the area as a historical site, as well as power to revoke the designation if the site lost its cultural value. The court held that the ordinance protected

⁴⁶ Gyosei jiken sosho ho [Administrative Case Litigation Act], Law No. 139 of 1962, art. 3(2) (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=1922 [<https://perma.cc/9FN9-QDFJ>] (regarding "action for the revocation of the original administrative disposition").

⁴⁷ Gyōsei jiken soshō hō [Administrative Case Litigation Act], Law No. 139 of 1962, art. 3, para. 5 (Japan), *translated* at http://www.japaneselawtranslation.go.jp/law/detail_main?re=&vm=2&id=1922 [<https://perma.cc/9FN9-QDFJ>].

⁴⁸ Saikō Saibansho [Sup. Ct.], Oct. 15, 2004, Hei 13 (o) no. 1194, 58 SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 1802 (Japan), http://www.courts.go.jp/app/hanrei_en/detail?id=1260 [<https://perma.cc/AF2R-2392>].

⁴⁹ Saikō Saibansho [Sup. Ct.], Jun. 20, 1989, Showa 58 (gyo tsu) no. 98, 21 HANREI JIHŌ [MINSHU], 2192 (Japan).

⁵⁰ Bunka zai hogo hō [Act on Protection of Cultural Properties], Law No. 214 of 1950, art. 98, para. 2 (Japan).

public interest and that individual interests are *absorbed* in this public interest. The law at issue did not protect the interest of the archaeologists, who argued that they studied the items of value at the historical site, and their research achievements were provided to the general public. The Court explained that this fact did not change standing doctrine.

Another case was made famous by a movie titled *Gakeno ue no Ponyo* (Ponyo on a Cliff by the Sea).⁵¹ Some fans think that this movie was modeled on Tomonoura bay.⁵² In this case, Fukuyama City applied for permission from Hiroshima Prefecture for a landfill license to fill a body of public water in the Tomonoura Bay area under the Public Waters Reclamation Law.⁵³ The prefecture reviewed the application and granted permission. Citizens who lived near this bay brought an action to seek an injunction against the Hiroshima Prefecture landfill license and against the authorization to construct a bridge over the bay. The plaintiffs argued that the landfill license infringed on their interest to view an area of natural beauty, that the construction of the bridge and the landfill would cause unrecoverable damage, and that the historical sites at Tomonoura would be damaged.⁵⁴ The plaintiffs further argued that a tunnel through the mountainside would improve the traffic situation more than a bridge over Tomonoura bay.⁵⁵

Hiroshima District Court⁵⁶ approved the legal interest of the citizens and approved their standing. The court admitted that the construction would cause irreparable harm, and the landfill would infringe on their right to view an area of beauty. As the court reviews policy very carefully, the court explained that the necessity of the landfill was too weak to be sustained, and the governor's exercise of power was arbitrary and capricious. Hiroshima High

⁵¹ GAKENO UE NO PONYO (PONYO ON A CLIFF BY THE SEA), <http://www.ghibli.jp/ponyo/> [<https://perma.cc/E29S-U538>].

⁵² *Tomonoura: Lost in a Storied Landscape*, JAPAN TIMES (Nov. 14, 2005), <https://www.japantimes.co.jp/life/2014/11/15/travel/tomonoura-lost-storied-landscape/#.Xa2Cn-j7TD4> [<https://perma.cc/J6AS-N2LU>].

⁵³ Kōyu suimen umetate hō [Public Waters Reclamation Law], Law no. 57 of 1921 (Japan).

⁵⁴ Hiroshima Chihō Saibansho [Hiroshima Dist. Ct.] Oct. 1, 2009, Hei 19 (gyo u) no. 16 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail5?id=80175 [<https://perma.cc/X7KN-EZRR>]; see also Naoto Nakajima, *Hiroshima ken tomono ura umetate kakyō mondai no genkyō* [*Hiroshima prefecture Tomono ura bay bridge issue*], 39 KANKYO TO KOGAI 65, 66, http://utud.sakura.ne.jp/research/publications/_docs/magazine/kinkyutomo.pdf [<https://perma.cc/6U4E-K4N3>].

⁵⁵ Hiroshima Chihō Saibansho [Hiroshima Dist. Ct.] Oct. 1, 2009, Hei 19 (gyo u) no. 16 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail5?id=80175 [<https://perma.cc/X7KN-EZRR>].

⁵⁶ *Id.*

Court closed the case because the government gave up on its plan to build a bridge over the bay.

These cases demonstrate the meandering path that the Japanese judiciary has taken on standing doctrine. Before the 2004 ACLA, the judiciary focused on the text of the statute and rigidly granted standing, as exemplified by the court's denial of standing in the Shizouka case. After Article 9 of the ACLA was revised in 2004, the judiciary adopted a looser and less textual approach to adjudicating issues, as it did in the Tomonoura Bay case.⁵⁷ The court now takes into consideration the content and nature of the interest being litigated.

In the landfill case, the court recognized the right to enjoy an area of beauty, and because of that, granted standing. The court recognized standing because it saw that not only the Public Waters Reclamation Law, but also the Setouchi Sea Environmental Reservation clearly provide a right to enjoy natural beautiful landscapes.⁵⁸ In comparison, prior to the 2004 ACLA revision, the *Iba* case had narrowed standing and denied the arguments of the plaintiff archaeologists.

In these cases, citizens brought arguments as plaintiffs to protect natural and historical sites. In contrast, Japanese courts hesitate to grant standing to animals. In 1995, citizens brought an action seeking to revoke permission the government had granted an applicant to develop in a forest on Amami Ohshima Island; they argued that the endangered animals were the plaintiffs.⁵⁹ However, the Civil Procedure Act⁶⁰ limits plaintiffs to humans or corporations; animals are unable to be parties in court. Kagoshima District Court asked citizens to use the name of a person or corporation as the plaintiff. The court dismissed the argument because the correction was not made within a reasonable time. The citizens then brought an action and named a person as the representative of animals. In 2001, the Kagoshima District Court⁶¹ denied standing and explained that there was no statute providing standing to animals. The court added that the right to nature was an exception, and this created a serious and inevitable issue about

⁵⁷ *Id.*

⁵⁸ Setonaikai kankyō hozon tokubetsu sochi hō [Seto Inland Sea Environmental Conservation Special Measures Law], Law No. 110 of 1973, amended by Law No. 78 of 2015, art. 3 (Japan).

⁵⁹ Kagoshima Chihō Saibansho [Kagoshima Dist. Ct.] Jan. 22, 2001, Hei 7 (gyou 行ウ) no. 1 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail5?id=15675 [<https://perma.cc/DX27-A9BF>]

⁶⁰ Minji Soshō hō [Code of Civil Procedure], Law No. 109 of 1996, art. 28 (Japan).

⁶¹ Kagoshima Chihō Saibansho [Kagoshima Dist. Ct.] Jan. 22, 2001, Hei 7 (gyou 行ウ) no. 1 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail5?id=15675 [<https://perma.cc/DX27-A9BF>].

whether the current statute to protect individual interests should be maintained or broadened.

As seen with previous decisions, in this case, it is understandable for lawyers to predict that the courts would deny standing. The citizens thought that this litigation would make more people aware of the endangered animals on the island. In Japan, unlike with U.S. law,⁶² the judiciary tends not to recognize non-governmental organizations on behalf of animals.⁶³

The Japanese judiciary takes on the role of ensuring that people protect nature and the environment and faces this issue as a part of administrative litigation. The Japanese judiciary also monitors the legality of administrative agency activities, but this is not the same as an abstract review, such as the court used in allowing standing in the landfill case. The judiciary has developed a definition of the individual and public sphere through the standing doctrine; standing draws a line between the private and public sphere.

II. TO REVITALIZE THE TOWN USING THE ACT ON THE PROTECTION OF CULTURAL PROPERTIES

Given the inconsistent path of Japanese judicial standing doctrine, individual interests and public interests have become blurred in disputes taken to court. Citizens expect the Japanese judiciary to review the legality of administrative action, and the judiciary must address the subjective and objective aspects of litigation; the 2004 ACLA revision purported to expand standing doctrine. For example, the right to view natural beauty was recognized in court. Citizens may win standing, but they still need to survive on merit. The judiciary reviews the administrative discretion of the government and reviews the effectiveness of alternative plans to protect natural areas or historical sites.

A. Autonomy of the local government and financial crises

Local governments use cultural heritage and national scenery to revitalize small towns. The autonomy of local government is provided in chapter 8⁶⁴ of the current Constitution, and Articles 92 to 95⁶⁵ establish the basic framework of the autonomy of local governments, while the details are left to

⁶² 16 U.S.C. § 1540(g) (2002); *see* Lujan v. Defenders of Wildlife, 505 U.S. 555 (1992).

⁶³ *Id.*

⁶⁴ NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], ch. 8 (Japan).

⁶⁵ *Id.* art. 92-5.

statutes⁶⁶ that are passed in parliament. The current Constitution is an improvement because it includes a section protecting the autonomy of local governments. Inferior statutes dictate the details of autonomy,⁶⁷ which means that parliament may weaken the autonomy of local governments through statutes unless parliament destroys the core of the institution of local government.⁶⁸ This is imported from German constitutional studies.⁶⁹ Japanese constitutional scholars on German law are again focusing on methods to strengthen local governments.⁷⁰

One reason why local governments are weak is tax revenue. Citizens pay a local tax to local governments, and the amount of collected local tax depends on the population size. The national government then allocates the collected tax revenue to local governments to coordinate the imbalance among local governments.⁷¹

The central government's financial power allows it to assign central governmental business to local governments, and subsequently, local governments have become more focused on central government business and less on local government business. In 1999, the Local Autonomy Act⁷² abolished this structure, but the revitalization of local governments still largely depends on the size of their population. In some circumstances, tax allocations to local governments cannot cover the large deficit they face, and bonds for extraordinary financial measures are issued to cover these debts.

B. Revitalization and the Act on the Protection of Cultural Properties

Japanese society faces both an aging population and a depopulation of rural areas. Combined, these factors contribute to the loss of cultural properties.⁷³ Before the Act on the Protection of

⁶⁶ Chiho Jichi hō [Local Autonomy Act], Law No. 67 of 1947 (Japan).

⁶⁷ Chiho Jichi hō [Local Autonomy Act], Law No. 67 of 1947, art. 1 (Japan).

⁶⁸ SATO, *supra* note 8, at 127, 549; KENJI ISHIKAWA, *Jiyu to Tokken No Kyori [Between Liberty and Privilege]* (Nihon hyōronsha 1999).

⁶⁹ KENJI ISHIKAWA, *Jiyu to Tokken No Kyori [Between Liberty and Privilege]* (Nihon hyōronsha 1999).

⁷⁰ *Id.*

⁷¹ MINISTRY OF INTERNAL AFFAIRS AND COMMUNICATIONS, REVENUE, 2017 WHITEPAPER, <http://www.soumu.go.jp/iken/zaisei/29data/2017data/29020201.html> [<https://perma.cc/YR6D-59BS>].

⁷² Chiho Jichi hō [Local Autonomy Act], Law No. 67 of 1947, art. 2, para. 8, as last amended by Law No. 37 of June 14, 1966 (Japan).

⁷³ *Bunka zai hogo hō no gaiyō ni tsuite [Summary of APCP]*, AGENCY FOR CULTURAL AFFAIRS (Jul. 2018), http://www.bunka.go.jp/seisaku/bunkashingikai/bunkazai/kikaku/h30/01/pdf/r1407909_03.pdf [<https://perma.cc/STS6-UFUT>]; *see also* Editorial, *Bunkazai hogo hō no ōhaba*

Cultural Properties (APCP) was revised in 2018, the purpose of this Act was not to promote tourism, but was instead to protect cultural properties.⁷⁴

Usually, the first Article of Japanese statutes provides for the purpose of the legislation. The number of individuals who manage cultural sites is decreasing due to an aging population and a weakening of local government power. It is necessary for communities that site usage is promoted and that sites are better maintained.

In June 2017, the Council for Cultural Affairs began discussions. In August 2017, it released an interim report. In December 2017, it published a report that indicated the value of cultural properties was not clear and that these properties would be better utilized by the community as a whole.⁷⁵ In March 2018, the bill to revise the APCP was proposed to the Diet and passed in June.

The revision of APCP has three missions: (1) legalization of planning to use and maintain cultural properties; (2) legalization of maintenance plans for each individual cultural property; and (3) to shift administration of cultural properties to local governments.

Access to cultural properties provides the general public with more opportunities to learn about their domestic and foreign historical value. But the increased public use of the property could lead to overuse and subsequent degradation. Generally cultural properties are used at a rate that is sustainable given a certain maintenance schedule. For example, the sun degrades some materials such as paper or wood. The amount of time these materials are exposed to sunlight is usually limited to prevent deterioration in museums.

The revision of APCP encourages use of cultural property, but establishing appropriate maintenance requires expert investigation and research that consumes time and human resources. Not all cultural properties attract tourists or promise financial profit; they may serve a greater purpose. Cultural properties touch the lives of people in their respective communities

kaisei hozon to katuyō no jinzai ikusei wo [Drastic Revision of the APCP, Demand Human Resource Who Can Maintain Cultural Properties], MAINICHI SHIMBUN (Apr. 1, 2018), <https://mainichi.jp/articles/20180401/ddm/005/070/152000c> [<https://perma.cc/H598-ZPXG>].

⁷⁴ Bunka Zai hogo hō [Act on Protection of Cultural Properties], Law No. 214 of 1950, as last amended by Law No. 69 of June 13, 2016 (Japan).

⁷⁵ *Bunka zaino kakujitsu na keishō ni muketa korekara no jidai ni fusawashii hozon to katsuyō no arikata ni tsuite. [For appropriate maintenance and use of cultural properties in coming age toward stable inheritance of cultural properties]*, AGENCY FOR CULTURAL AFFAIRS (Dec. 2017), http://www.bunka.go.jp/seisaku/bunkashingikai/sokai/pdf/r1391804_01.pdf [<https://perma.cc/L4CS-93QL>].

and tell a story about the region. The revision of the APCP faces problems whether it can successfully achieve this goal or not.

The Japanese Constitution provides that local governments have two layers; prefectures and municipalities (city, village, town). The principle of complementarity works in that larger communities provide a general plan and manage issues which smaller communities are incapable of resolving. This supplementary doctrine works in the APCP as well.

The revisions to the APCP expanded local governments' support of nationally designated important cultural properties by giving prefectures more tools with which to support cultural heritage sites. Prefectures may draft an outline of comprehensive plan to reserve and use cultural properties located within the prefecture's administrative districts. The prefectures then develop general policies and implement measures to prevent damage from natural disasters such as typhoons or floods. The policies also protect against changes of ownership. The prefectures assist the municipalities in maintaining and managing cultural properties. The municipalities develop a general regional plan to preserve cultural properties. The property rights of individual owners are restricted because of the need to prepare plans for use and preservation to match with the general plan created by the municipality.

The central government may designate important cultural properties, and may order owners or managers of the properties to repair deficiencies if necessary. The central government can also restrict the export of cultural properties. Local government, made up of prefectures and municipalities, may establish local ordinances for cultural properties, and designate cultural properties that are not designated by central governments. Owners and managers of cultural properties are obligated to manage and repair sites and to decide whether to open the sites to the public. Such owners and managers must obtain permission to transfer away ownership of the site.

The APCP is a statute passed in the parliament, and covers all of Japan, but the uniqueness of cultural properties and the history of a region may require special considerations in order to account for regional characteristics. For example, some regions are prone to natural floods that require special preservation measures, and most regions contain cultural sites with lacquerware or potteries that are vulnerable to earthquakes. Therefore, prefectures may develop guidelines beforehand that classify the different types of cultural properties within their administrative districts and clarify the outline of the prefecture's comprehensive plan for these properties.⁷⁶

⁷⁶ *Bunka zai hogo hō ni motodoku bunkazai hozon katsuyō taikō, bunkazai hozon*

Under the APCP, municipalities may prepare a basic general plan to preserve and use cultural properties by submitting an application to the central government. This plan includes the basic policy to preserve or use any cultural property within the municipality, the details of the properties, the research necessary to evaluate the nature and quality of the cultural properties, and the timeframe of the plan.⁷⁷

The municipality may establish a council to draft the plan. In drafting the plan, the council of municipalities comprises of owners of properties, researchers, commercial and industrial associations, and tourism organizations. The municipality makes an effort to understand the opinions of residents and hears advice from the council on local cultural property protection.⁷⁸

The central government will approve of the municipality's plan if the plan contributes to the preservation and use of cultural properties, can be implemented smoothly, and is appropriate as a municipality plan.

Before the APCP was revised, owners and the government maintained cultural properties together. Under the revised APCP, the municipalities may certify NGOs as official supporting organizations that is qualified to advise the owners of cultural properties and conduct research on the properties. The mission of these certified organizations is limited to the following: maintenance and use of cultural properties; provision of necessary information and advice; maintenance of the properties; and conduct of research for maintenance on the properties.⁷⁹

Because of the various natures of cultural properties in different regions, the APCP cannot cover and regulate all of the unique natures and backgrounds of cultural properties.⁸⁰ Therefore,

katuyō chiiki keikaku no sakutei tō ni kansuru shishin [Guideline for Maintenance and Use of Cultural Properties on the APCP (draft)], CULTURAL PROPERTIES CONSERVATION AND UTILIZATION CHARTER, http://www.bunka.go.jp/seisaku/bunkashingikai/bunkazai/ozuna_sagyobukai/03/pdf/r1409358_01.pdf [https://perma.cc/BE4P-YPCN].

⁷⁷ *Kawasaki City Plan for Maintenance and Use of Cultural Properties, KAWASAKI CITY BOARD OF EDUCATION (Apr. 12, 2016), <http://www.city.kawasaki.jp/880/page/0000048101.html> [https://perma.cc/BJ5X-TSZ5].*

⁷⁸ *Bunka zai hogo hō no gaiyō ni tsuite [Summary of APCP], AGENCY FOR CULTURAL AFFAIRS (Jul. 2018), http://www.bunka.go.jp/seisaku/bunkashingikai/bunkazai/kikaku/h30/01/pdf/r1407909_03.pdf [https://perma.cc/STS6-UFUT]; *Council for Cultural Properties, SENDAI CITY (Oct. 8, 2019), <http://www.city.sendai.jp/bunkazai-kanri/shise/security/kokai/fuzoku/fuzokukikan/kyoikukyoku/bunkazai.html> [https://perma.cc/M7QN-NWME].**

⁷⁹ *E.g., JAPAN CONSERVATION PROJECT, <http://www.jcpnpo.org/> [https://perma.cc/2J5H-ER2Z].*

⁸⁰ *Bunka zai hogo hō no gaiyō ni tsuite [Summary of APCP], AGENCY FOR CULTURAL AFFAIRS (Jul. 2018), http://www.bunka.go.jp/seisaku/bunkashingikai/bunkazai/kikaku/h30/01/pdf/r1407909_03.pdf*

the prefectures make outlines of comprehensive plans and municipality-designed basic plans for recognition. The Agency for Cultural Affairs within the central government receives applications for recognition and reviews whether they should be recognized. The central government reviews these plans if they are the same as the regional plans of the owners of cultural properties or of a municipality's educational committee's plan to maintain cultural properties. Once these regional plans are approved, the municipality may implement plans, including building temporary information centers for nationally designated cultural properties or sites,⁸¹ installing electricity at the properties, and developing roads and transport facilities for the properties. Nowadays, owners of cultural properties are aging and have become unable to manage facilities, in spite of their desire to renovate them for tourism. If the owners hand over the cultural property to a museum, the owner is granted a deferral on paying the inheritance tax.⁸² This tax deduction encourages owners to give up cultural property that owners can no longer manage because of their age.

When the APCP was revised, the Act on the Organization and Operation of Local Educational Administration moved the maintenance of cultural properties from educational committees of the municipalities to the governor in order to enable revitalization for tourism.⁸³ This move made sense because the administrative functions of some educational committees are too weak to function to protect cultural properties, and educational committees cannot work beyond their administrative districts. Therefore, if cultural properties are used for tourism, governors of municipalities work better beyond the district of an educational committee.⁸⁴

[<https://perma.cc/STS6-UFUT>].

⁸¹ *Bunka zaino hozon oyobi katuyō no kihonteki hōsaku [Basic Plan for Use and Maintenance of Cultural Properties]*, CITY OF HIROSAKI, <http://www.city.hirosaki.aomori.jp/jouhou/keikaku/files/rekimati5shou.pdf>

[<https://perma.cc/4DG2-H5Y6>] (barrier-free equipment, aseismic reinforcing work and bathroom (toilet) construction inside castle); *see also* Editorial, *Bunkazai hogo hō no ōhaba kaisei hozon to katuyō no jinzai ikusei wo [Drastic Revision of the APCP, Demand Human Resource Who Can Maintain Cultural Properties]*, MAINICHI SHIMBUN (Apr. 1, 2018), <https://mainichi.jp/articles/20180401/ddm/005/070/152000c> [<https://perma.cc/6XQV-EXYG>].

⁸² *Chiho bunka gyosei no arikata [Outline of Administration of Local Culture]*, MINISTRY OF EDUCATION, CULTURE, SPORTS, SCIENCE AND TECHNOLOGY-JAPAN (Oct. 30, 2017), http://www.mext.go.jp/b_menu/shingi/chukyo/chukyo15/sonota/1398951.htm [<https://perma.cc/46KD-LWJW>].

⁸³ *Chihō kyōiku gyōsei no soshiki oyobi unei ni kansu hō [Act on the Organization and Operation of Local Educational Administration]*, Law No. 162 of 1956, as last amended by Law No. 42 of 1990 (Japan).

⁸⁴ Hiroshi Sugimoto, *Bunazai hogo hō kaisei ni okeru tenbō to kadai ni tsuite [Future of Revised APCP]*, 33 THE WORLD OF CULTURAL HERITAGE (Oct. 17, 2018), https://www.isan-no-sekai.jp/feature/33_03 [<https://perma.cc/8DWP-ZBEE>].

C. Standing and Revitalization of a Local Village and Town

Revitalizing local towns and cities using the APCP has several issues. Prior to the APCP, the *Tomonoura* case was approved in court because the court accepted the right to view areas of natural beauty as a valid legal interest. The interest in natural beauty depends on the subjective judgment of individuals. Judiciary might hesitate to protect such an interest as a protected legal right without any basis in ordinance or statute. The degree and scope of protection should be reached through consensus in the parliament. The court hopes such an interest may be provided in local ordinance or statute. The Judiciary first reviews whether an interest has been legally protected and written into statute through the political process. The standing doctrine of the ACLA functions to limit the scope of plaintiffs who argue that construction infringes on their right to view an area of natural beauty. The court is likely hesitant to protect interests that are widely shared among the public unless it is clearly written in a statute or ordinance. Therefore, if the right to a beautiful view is legally written in statute, the judiciary is likely to protect it. For example, even when an archaeologist or a zoologist finds historical clay or a rare animal, they can't argue that cultural properties should be protected from construction as long as the location where the object was found belongs not to the finder of the object, but to another party.

Under the APCP, the judiciary must allocate standing to certified organizations. The APCP currently permits the government to modify historical sites for tourism, which is bad given the foreseeable damage caused by overuse of the historical lands. The ACLA now allows the courts to admit modifications to cultural and historical sites that infringe on research. Today, the courts take into consideration the purposes and objectives of any related laws and regulations that share the objectives of the laws and regulations at issue during a case.⁸⁵ For example, in the *Tomonoura* case, the court reviewed the Special Act on Setouchi Sea Environmental Reservation⁸⁶ when it reviewed if the landfill application met with the requirements of the Public Waters Reclamation Law.

⁸⁵ See also Narufumi Kadomatsu, *Keikan rieki to kōkoku soshō no genkoku tekikaku [Scenic Profit and Plaintiff Eligibility in Appeals-Tomonoura World Heritage Case]*, 22 NIHON FUDOSAN GAKKAI SI [JOURNAL OF JAPAN REAL ESTATE ASSOCIATION] 71 (2008) (Kadomatsu argues for judiciary review distinction of public interest and individual interest in Tomonoura Bay case).

⁸⁶ *Setonaikai kankyō hozon tokubetsu sochi hō [Seto Inland Sea Environmental Conservation Special Measures Law]*, Law No. 110 of 1973, as last amended by Law No. 78 of 2015 (Japan).

This judicial doctrine guarantees that, in the future, the court is likely to read the APCP and consider the content and nature of the protected interest and review whether the permission to modify the historical site was made in violation of the laws and regulations such as prefecture guidelines when a dispute arises. Under the revised APCP, the court is likely to recognize the research value of historical sites and the right to view areas of natural beauty. The *Iba* decision noted that individual interests are absorbed into public interest and that the relationship of archaeologists and historical sites was too weak for standing.

The *Iba* decision did not clearly explain the dichotomy of private and public interests. The Japanese Constitution vested the judiciary with the power to interpret and declare laws, and consequently the judiciary has a mission to clarify the border between private and public interests. The revised ACLA demonstrated that there are certain factors⁸⁷ for the judiciary to review in order to make a distinction between the private and the public.⁸⁸

As the *Tomonoura* case illustrates, sometimes when cities and prefectures work together, conflict arises. The APCP encourages smaller local governments and municipalities to submit a plan to use and maintain cultural properties, and encourages larger communities such as prefectures to support smaller local governments by providing comprehensive guidelines.

In order to attract tourists, the revised APCP re-coordinates the relationship among the government, prefectures, and municipalities, but it has not been determined if this is successful or not. Local governments face serious financial crises.⁸⁹ Maintaining and using cultural properties is a heavy burden

⁸⁷ Hiroshima Chihō Saibansho [Hiroshima Dist. Ct.] Oct. 1, 2009, Hei 19 (gyou) no. 16, SAIBANSHO SAIBANREI JŌHŌ (SAIBANSHO WEB) (Japan), http://www.courts.go.jp/app/hanrei_jp/detail5?id=80175 [https://perma.cc/53E3-CQM8]; see also Tokyo Chihō Saibansho [Tokyo Dist. Ct.] Dec. 4, 2001, Hei 13 (gyou) no. 120, SAIBANSHO SAIBANREI JŌHŌ (SAIBANSHO WEB) (Japan), http://www.courts.go.jp/app/hanrei_jp/detail5?id=15475 [https://perma.cc/WBS6-6WRB] (Both of these administrative litigation cases recognized interests in areas of natural beauty by referencing relevant statutes and ordinances. Both Hiroshima and Tokyo district courts recognized that these relevant statutes and ordinances protected interests in areas of natural beauty as both public interests and individual rights).

⁸⁸ See Yuichiro Tsuji, *Reflection of Public Interest in the Japanese Constitution: Constitutional Amendment*, 46 DENV. J. INT'L L. & POL'Y 159 (2018).

⁸⁹ Nobuyuki Uda, Japan: Fiscal Discipline of Local Government (June 11, 2015), https://www.mof.go.jp/pri/research/seminar/fy2015/tff2015_s5_03.pdf [https://perma.cc/3U7R-3TFF]; Yukihiro Matsuyama, *Aging, Safety Net and Fiscal Crisis in Japan, No. 75: Local Government Finance*, THE CANON INSTITUTE FOR GLOBAL STUDIES (Mar. 26, 2018), https://www.canon-igs.org/en/column/macroeconomics/20180326_4870.html [https://perma.cc/C8SR-LZ2A].

involving people, time, and financial resources.

The improvement of temples or historical sites may cause additional damage as a result of increased attention from tourism. Attracting tourists may involve sacrificing the value of cultural properties. The APCP was originally established in 1949 after a famous drawing on the wall of Hōryū temple was accidentally burned while the drawing was under repair.⁹⁰ Historical treasures, such as the Hōryū temple drawing, are vulnerable to drastic environmental changes. Increased tourism can be a source of just such drastic environmental changes. The more people visit certain cultural properties, the more resources are required for maintenance. Conversely, plaintiffs may argue in the future that cultural properties unable to lure people might be ignored and become damaged through neglect.

The Hōryū temple case influenced the legislature to protect cultural properties by passing the APCP in 1949. The original 1949 APCP did not enable archeologists to seek injunctions against construction at locations where historical clay might be buried, unless the locations belonged to the archaeologist. The judiciary lacks specific knowledge about cultural properties and historical sites when the court review standing to a certified organization. The revised APCP certifies NGOs to support maintenance of cultural properties of owners so that the judiciary is likely to recognize the NGO's standing because certified NGOs officially work to assist owners and managers with cultural properties.

When a certified NGO is likely to be at issue in the revised APCP in the near future, the *Odakyu Railroad* case provides guidance. In this case, the judiciary recognized standing of citizens living a certain distance from a railroad under construction.⁹¹ The citizens could not win in the *Odakyu* case on merit because the judiciary noted that it should defer to an administrative agency's discretion and expertise. As the *Odakyu* case suggests, expertise on the maintenance of cultural properties would be the core issue decided on the merits. The standing doctrine requires judges to review a case if there is a serious injury-in-fact, causation, and remedy. Although citizens or certified organizations use mandamus action, the court is obligated to review expert opinions on cultural properties and heritage. Expert opinions are a necessity with Japanese cultural properties, as many properties use unique materials such as paper, silk, and other special materials requiring

⁹⁰ *Hōryū ji chuumoku no nazo bunkazai no hōko chōsa honkakuka* [Research started on treasure box of Horyu temple], ASAHI SHIMBUN (April 17, 2016).

⁹¹ Saikō Saibansho [Sup. Ct.] Dec. 7, 2005, Hei 16 (gyo hi) no. 114, 59 SAIBANSHO SAIBANREI JŌHŌ [SAIBANSHO WEB] 2645 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail?id=52414 [<https://perma.cc/V593-HBNE>] (This case is referred to as the *Odakyu* case).

special knowledge to handle and maintain.

Financial issues for local governments could appear in courts as a policy judgment: local governments can and should spend their resources to maintain and use cultural properties. Local governments will continuously determine and allocate funding. Even after the revision of the APCP, the judiciary still affects how cultural properties and historical sites are passed on to the next generation. Standing before the court thus remains a vital issue determinative of how the government may allocate funds to historical and cultural sites.

III. CONCLUSION

In Japan, the local government has two layers: prefectures and cities. They are expected to work together, but sometimes collide when local governments attempt to revitalize their cities and towns. The strength of the national government has substantially influenced the decision making of local governments.

After World War II, the Japanese judiciary started to review disputes of law that are similar to “case and controversy” in the US Constitution. The Japanese judiciary has exercised specific judicial review and strictly reviews standing. The decision-making power of parliament has gotten weaker and the executive branch’s power has strengthened, which means the separation of powers is failing. Simultaneously, as the administrative state has grown, so has the judiciary’s duty to ensure these states are observing the law.

As the administrative state expands, the legislature provides standing to the public to sue administrative agencies. Revision of the ACLA expanded the scope of standing leading to several litigations that have enabled the judiciary to obligate agencies to observe the law. Now, the ACLA instructs the judiciary to determine whether administrative agencies have exercised their discretionary power in arbitrary and capricious ways: purpose,⁹² equal principles,⁹³ proportional tests,⁹⁴ and human right infringements⁹⁵ that are developed in judicial decisions.

⁹² Saikō Saibansho [Sup. Ct.] June 16, 1978, Showa 50 (a) no. 24, 32 SAIKŌ SAIBANSHO KEIJI HANREISHŪ [KEISHU] 605 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail2?id=50195 [<https://perma.cc/FDV9-KQG3>].

⁹³ Saikō Saibansho [Sup. Ct.] Jan. 31, 2002, Hei 8 (gyo tsu) no. 42, 56 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 246 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail2?id=52603 [<https://perma.cc/9K5B-BA3W>].

⁹⁴ Saikō Saibansho [Sup. Ct.] June 4, 1964, Showa 37 (o) no. 49, 18 SAIKŌ SAIBANSHO MINJI HANREISHŪ [MINSHŪ] 745 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail2?id=53809 [<https://perma.cc/4JUU-ZPHB>].

⁹⁵ Osaka Chihō Saibansho [Osaka Dist. Ct.] July 19, 1984, Showa 57 (gyou) no. 84, SAIBANSHO SAIBANREI JOHO (SAIBANSHO WEB) (Japan), http://www.courts.go.jp/app/hanrei_jp/detail5?id=16844 [<https://perma.cc/4GA2-7X4E>].

The *Iba* decision illustrates that before the 2004 ACLA revision, the judiciary has hesitated to recognize standing.⁹⁶ The judiciary first reviews whether interests at issue are provided in local ordinance or statute because the judiciary believes that a legally defined or provided interest is proof that the people should determine how a “beautiful scene” is legally protected. If the protected right is written in statute, the judiciary will likely recognize and review whether the protected right has been infringed or not. When the courts reviews standing, it looks at the purpose and objective of the laws at issue and the related laws and other administrative regulations that share common objectives with these laws and regulations, and then considers the content and nature of the interest.

Under the revised Act on the Protection of Cultural Properties, certified NGOs may take a role in revitalizing local cities and towns that face aging and depopulation. The revised Act on the Protection of Cultural Properties provides a procedure to revitalize these cultural properties. In this procedure, prefectures draft general plans and submit them to the Agency for Cultural Affairs, which has the power to recognize the plans. Municipalities prepare community plans and consult with councils.

Certified organizations work to maintain and manage cultural properties as well as provide necessary information and advice. They are also entrusted to maintain the properties and conduct research. The judiciary would approve their standing in court, allowing them access to mandamus action.

It may sound attractive to hear that new construction, changes, or infrastructure development will bring in more tourists. At the same time, the judiciary will likely vacate the *Iba* decision if plaintiffs argue that the repair of the historical site would cause unrecoverable damage. The standing doctrine demonstrates that the private and public distinction is blurred in the courts. The Constitution vests the judiciary with the power to distinguish private from public interest.

In the political process, politicians deliberate as to which legal interests, such as “beautiful scenery,” are written in statute. In 2004, Parliament amended the ACLA to widen the standing doctrine curb the administrative state. On the other hand, in development, both subjective and objective litigation forced the government to observe the law. The Japanese judiciary has reviewed to clarify distinctions between individual rights and general public welfare, such as “beautiful scenery.” The people are given an opportunity to deliberate whether judicial clarification is

⁹⁶ Saikō Saibansho [Sup. Ct.] Jun. 20, 1989, Showa 58 (gyo tsu) no. 98, 2192 HANREI JIHŌ [HANJI] 21 (Japan), http://www.courts.go.jp/app/hanrei_jp/detail2?id=62315 [<https://perma.cc/PC3N-2D6V>].

made through the judiciary or legislature.

If the *Iba* litigation comes to court, the judiciary will review the special knowledge of the cultural properties and historical site. Expertise on the maintenance of cultural properties would be central to the merit. The standing doctrine requires judges to review if there is a serious injury in fact, causation, and remedy. Although citizens or certified organizations could use mandamus action, the court is obligated to review their expertise on cultural properties and heritage sites.

As depopulation occurs and an aging society develops, more serious financial issues will affect local governments. Because of financial strains, the policy judgments on how local governments spend their resources to maintain and use cultural properties will become scrutinized. By allowing greater access to standing by individuals and municipality-appointed NGOs, the judiciary will help prevent damage to important cultural and historical sites. Consequently, the judiciary may send a message to citizens on how cultural properties and historical sites are handed to the next generation.