

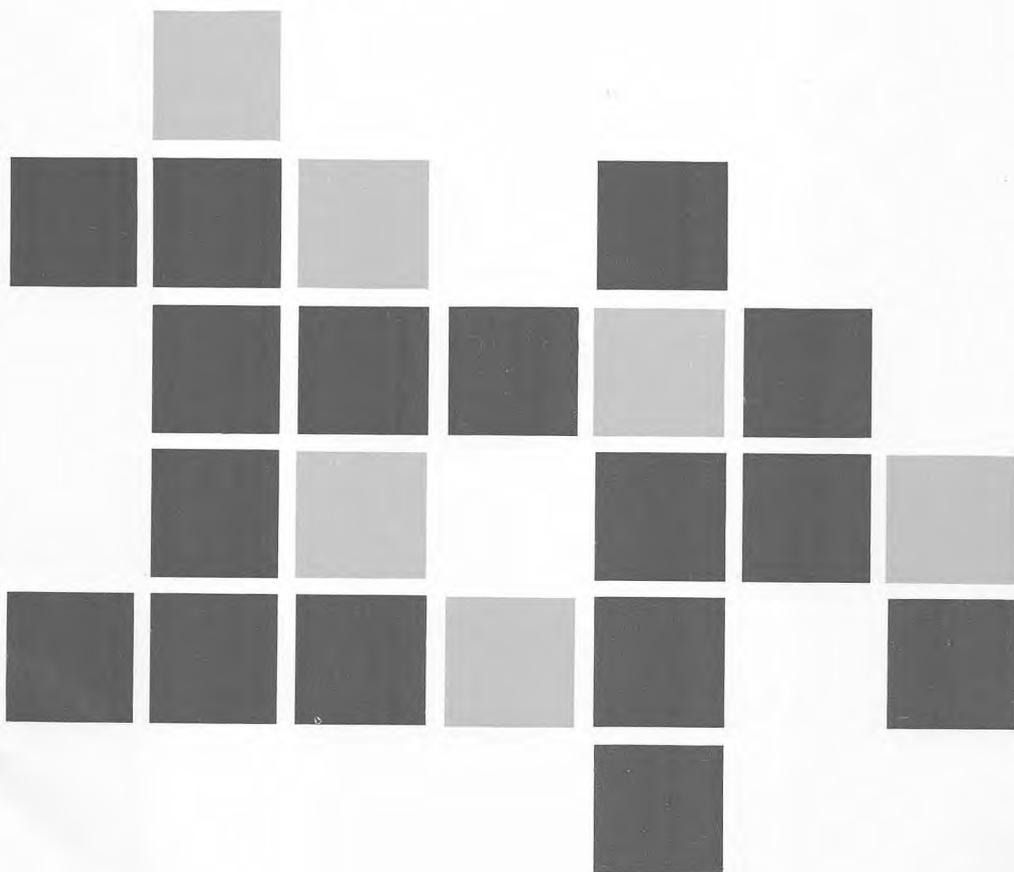


INSTITUTE OF EAST ASIAN STUDIES  
UNIVERSITY OF CALIFORNIA • BERKELEY

# Institutions for Change in Japanese Society

EDITED BY

George DeVos



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UNIVERSITY OF CALIFORNIA, BERKELEY

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## Preface and Acknowledgments

The present volume is the result of a series of special conferences held by the Center for Japanese Studies at the University of California, Berkeley. This particular conference was made possible by funding from the Institute of East Asian Studies, the Stanford-Berkeley Joint East Asia Language and Area Center, the California First Bank, and the Consulate General of Japan. We are most grateful to those sponsoring this conference and would like to indicate that these funds were generously given us with no intention of guiding the selection of topics for the individuals involved.

While the editor takes responsibility for the topics selected and the final form of the presentation, he would like to acknowledge the helpful advice of the Executive Committee of the Center for Japanese Studies and the early assistance of Dr. David H. Stark, whose advice and involvement was very helpful in the selection of participants and discussants.

Dr. Theodore C. Bestor spent considerable time and talent communicating with participants and, in some instances, was extremely helpful with editing contributions from our Japanese participants. His assistance was invaluable in helping to coordinate the activities and with the always difficult preparations necessary for a successful conference. Also, the helpful assistance of Eugenie T. Bruck, secretary of the Center for Japanese Studies, made the setting of the conference and the hospitality accorded our participants a most successful occurrence. Susan Stone very ably processed the original papers and transcribed tapes onto our central computer, thus considerably facilitating the editorial process.

The purpose to which we directed this effort was to examine some Japanese institutions that are often neglected by the social scientist in the more prevalent concern with the political and economic institutions as they operate in contemporary Japan. Because public opinion and the agencies through which it is expressed have a complex influence upon legal and extralegal institutions within any functioning democracy, I had hoped to include some examination of the mass media in direct juxtaposition with the operation of the court system, the police, and the

extralegal but very important social processes involved in public protest. Limitations of time and funding made this inclusion of the study of mass media unfeasible in the present context, although Michael Reich did prepare a paper on the subject (Chapter 6) subsequent to the conference. It is to be hoped that this topic will receive more attention at a future conference.

George A. DeVos

Summer 1983

# Part One

# Introduction: Trends toward Social Democracy in Japan

George DeVos

Some observers of post-war Japan are still uncertain whether the contemporary Japanese society is to be considered a true democracy and whether democratic institutions have acquired sufficient viability or robustness of character to insure their continuity in Japan. I would contend that by most criteria Japan is a political democracy, not only because it has a parliamentary system but because, if one examines other institutions such as its court system or its police enforcement of law, one can perceive the institutional operations of a democratic society.

As an anthropologist I am aware that there is sometimes a necessary distinction to be made between cultural change, so-called, and social change. A psycho-cultural change necessitates changes in basic institutions such as the family (Caudill, 1976, p. 18ff.), whereas social change refers to changes in technology or formal organizations that may or may not alter the cultural "ethos" (Bateson, 1936). The ethos of a culture is the characteristic spirit, prevalent tone, or sentiment of a people, institution or system. Ethos is, in effect, the emotional patterns reflected in continuing culturally transmitted behavior (DeVos, 1976, p. 9ff.). It is sometimes useful to distinguish between cultural continuities in the ethos and the forms of social change that is brought about by technological innovation, by government reorganization, or by the establishment of new legal institutions. In this volume we are examining with some specificity the reorganized administrative institution of the police and the institution of a supreme court and family court system in the contemporary post-war period in Japan. There is a necessary distinction to be made between such changes brought about by formal legal means and those changes that come about gradually through changes in the atmospheric conditions of a society which we could vaguely define as its ethos.

In situations of abrupt change, patternings in the emotional tone or implicit feelings underlying social interaction may persist in spite of legal or other forms of official revision. These implicit patterns may be

influential in guiding the direction taken by more formal institutions in the society. As symptomatic of possible change in Japanese ethos in our present context, we are examining how Japanese conduct protest movements and how the movements are interactively influencing contemporary society. Protest movements are in origin non-formalized means of expressing group discontent. They attempt to alter already established legal and social traditions.

In what follows we examine processes of change in Japan specifically in relation to problems of industrial pollution, minority status, and crime. These problems are inherent in all large complex industrial states. However, the way they are treated reflects national differences in the relative effectiveness of bureaucracy and administrative policy and the effectiveness and fairness of law enforcement. A critical situation in any democratic society is the adequate functioning of police—whether the police afford protection to the populace or are used as possible instruments of oppression. A court and legal system in a changing society should be amenable to change and adaptation to new circumstances and problems. Protest movements are a means of bringing to the attention of both the public and the government needed response on the part of legal, legislative and administrative institutions. Unfortunately, another related concern, the functioning of the mass media, was a topic that we could not encompass within the limitations of our conference. The interaction between mass media and protest movements and subsequent political or legal responses is a topic that needs further consideration than given in this volume. We have been able to touch upon the mass media as an institution in influencing change only in chapter six by Michael Reich.

The two issues that we do focus upon trace how various formal institutions are responding to issues of environmental pollution and the yet-to-be-resolved problems of minority status within Japan. Environmental pollution is a by-product of industrial growth, especially noticeable in the pyro-chemical industries and in the widespread use of oil- and gas-operated machines including the ever-present internal combustion engine of modern automobiles.

Minority status is a heritage of the past, in which given individuals were relegated to a special status. The approximately two million burakumin, for the most part still living in ghettoed communities, are a heritage of the pre-modern society that was divided rigidly along caste as well as class lines. The Korean minority residing in Japan is a more recent heritage of the pre-World War II imperial militaristic period and the colonization of the Korean peninsula in 1910. A test of democracy is how these and other minorities are afforded not only basic human rights but the expectations of citizenship within a complex modern Japanese state.

In our examination of institutions for change in Japan we are not attending directly to certain basic institutions that are most often examined in interdisciplinary conferences by social scientists, namely, the legislative political institutions or the parliamentary system. The processes of these institutions have been very systematically examined in many works in Japanese and English, and we deemed it unnecessary to make any repetition of the issues related to the legislative and executive branches of government. A second topic that we have avoided is the functioning of the economic institutions in Japan: the business world, the interaction of government and business practices, questions of economic rationality, the interaction of management and labor, the role of labor unions as a political force, etc. All these issues have been studied and discussed in a number of previous conferences and publications. The aim of this present volume was, rather, to make an interdisciplinary approach to certain institutions that have found less representation in studies of change in post-war Japan.

### **The Legal System and Social Change**

In the first chapter, Professor Taniguchi directly addresses the role of the court in post-war social change. He first considers the pre-war legal institutions as they were organized after the Meiji Restoration of 1868. He points out that the Meiji constitution of 1889 did not provide for judicial independence except for assuring tenure for judges. However, the Ministry of Justice, which was in effect part of the Cabinet and an organ of the executive branch of government, was directly responsible for supervising the court system. There was no power to exercise any control over legislation by judicial review, but what was very important in considering the influence of the court system was the relatively low status afforded those seeking a career before the bar or as judges. Those sensitive to how to gain a high-status career avoided the judiciary. This relatively low status of the legal system was symbolized in the examination practices in universities. Until 1923 any graduate of a national (then imperial) university's law faculty was eligible to practice law. It was only in 1936 that a year-and-a-half apprenticeship was introduced as requirement for admission to the bar. Bar associations were not independent or autonomous bodies, but under the close supervision and control of the Ministry of Justice. The general attitude of the public reflected the low esteem held by professionals generally of the law as a career. The role of lawyer in the court was to humbly submit pleas to dominant judges and procurators. Taniguchi points out that the general disgust felt about litigation and the legal practitioners engaging in it was a legacy of the Tokugawa regime, and despite some changes with Meiji

modernization, the attitudes of the public did not change. It certainly was not in the minds of those becoming judges or lawyers that the court and court procedures could become an instrument for significant social change. In discussing Professor Taniguchi's paper in respect to the constitution of 1946, promulgated during the American occupation, Professor Steiner points out that although there were very strong American influences from the American legal system, Japanese court procedures maintained their continental European structures.

The family court, however, has been an innovative institution. It is a mix, according to Steiner, of traditional ideals of conciliation with American concepts, which include the possibility of non-jurists being involved in court procedures.

Unlike American law, no doctrine of precedence has been established in the Japanese system. Professor Haley comments that the reforms introduced into the Japanese legal system by the Supreme Command, Allied Powers (SCAP) were a skillful combination of liberal U.S. legal policies with continental statutorially established judicial practices. Seen philosophically, the modern court system as viewed by Americans was an attempt at reconciling concepts of individualism with those of implicit neo-Confucianism. He points out that what has changed is not so much the role of the court as the expectations directed toward it.

Professor Taniguchi examines very carefully the organizational independence established under the constitution of 1946. Under the structure of the supreme court, the judicial system was effectively separated from the Ministry of Justice, which maintained control over law enforcement and prosecution. The chief justice was, in effect, of equal rank to the prime minister or to the chairman of the Diet. A judicial conference of the supreme court became the responsible body. Taniguchi carefully points out how there was some executive and legislative influence possible, since it was the executive that appointed both supreme court judges as well as lower court judges, while the legislature maintained power through its ability to allocate funds in the national budget. Taniguchi considers the power of constitutional review the most significant post-war innovation brought in from American law. This power was invested not only in the supreme court, but also in lower courts. Carefully delineating the structure of the court system on its various levels, Taniguchi directly addresses himself to the question of how this newly organized institutional structure may be influencing the direction of social change in Japan. He argues carefully that it is very difficult to distinguish cause and result and that, if we consider the social impact of legal reform, the very limited effectiveness of the court system as an instrument for social change should be kept in mind for what he considers

three basic reasons. First, the court system is a responsive body, rather than an initiator of change through the legal structure. He points out, curiously enough, that some change is simply due to the tolerance of policy in prosecution, giving the example that the policy of the police not to prosecute illegal forms of abortion has had a very strong demographic effect on post-war Japan as well as allowing for increase in the nuclear family as the major form of family structure in post-war Japan. The courts in this instance became an instrument of change because they were *not utilized* for prosecution. But more important are the cultural patterns still evident in Japan related to an overall reluctance of Japanese to bring lawsuits. It is noteworthy that cases of litigation are much less numerous compared with the United States. Professor Haley suggests that this is so because the Japanese court system makes it difficult to pursue litigation, but Taniguchi would rather stress three psychological and social barriers to the exercise of a right to litigation by the populace in general.

He points out that psychologically the Japanese are reluctant to engage in a direct dispute. There is much discomfort in the direct confrontation necessary in a trial situation. The Japanese characteristically prefer to air their grievances in some form of group procedure. They are more apt to address grievances against an impersonal body, like a government or a corporation, in situations where single, direct confrontation is unnecessary. Taniguchi is quite perceptive in this matter, certainly demonstrating that Japanese collective procedures remain more important and salient than is the emphasis on individual contention in the United States.

The second barrier preventing the use of the courts is that many individuals do not wish to take the time and bear the financial costs necessary for litigation. This is particularly the case when a Japanese considers the outcome unclear or dubious.

The third major barrier is the lack of easy availability of proper legal service in Japan. The low level of regard for trial lawyers obtaining in the past is compounded by the fact that cases that are socially innovative demand unusual capacities for raising novel questions of law to overcome previous thinking. Only a very imaginative and energetic legal service can engage in laws bringing about innovative change. The problem is further compounded by the limited ability of most judges to be responsive to subtle questions of interpretation of the substantive rules of law under which they must proceed. Such conclusions demand an independence of mind as well as concern with procedural due process. In discussing these issues, Taniguchi points out the inducements to remain conservative and careful in judicial functioning so that individual judges are assured a successful, continuous career. Even when a particular case has potential

innovative ramifications, results do not occur automatically. Other efforts must be made to involve community movements, activities by labor groups, interest of the mass media, etc. to bring about sufficient public and professional attention on the need for legal change or legislative change influencing social patterns.

Taniguchi considers one by one the various levels of post-war functioning. He finds that the family court has been a very successful institution, principally because of its accessibility and because it uses for most of its cases the well established institution of indirect conciliation and mediation. Thus, the family court has indeed been an instrument through which the trend toward a nuclear family from the previous paternalistic and even joint family decisionmaking has been eased. It has taken the place of the dispute mechanisms that were previously contained within the family lineage. Since in many instances family patterns that could enforce resolution no longer operate, there is now a direct need for conciliation by the family court. The principal gain in this instance has been the legal status of women being more assured and substantiated by the conciliation procedures within the family courts.

This relative success of the newly instituted function of the family court and its ready availability to ordinary citizens is contrasted somewhat by Taniguchi with the use of summary courts, whose small claims functions and capacity to handle small grievances by consumers is somewhat hampered by their being relatively less accessible to the ordinary person. Nevertheless, conciliation prospers in the summary court and has been used indirectly in informal utilization of extra-judicial institutions, such as central pollution control commissions or labor relations commissions and the like, that function in an auxiliary manner to the courts themselves. In each instance it is the conciliation aspects of the procedures that are most utilized in Japanese contemporary law.

In considering the supreme court, Taniguchi concludes that, despite its reputation for being liberal and innovative, a careful analysis of its post-war functioning would make it seem to be more conservative and protective of the status quo than innovative in pushing toward more liberal interpretations. Since its inception the supreme court has held state acts, including legislation, unconstitutional in only ten cases, and even in some of these cases the effects of the decision of unconstitutionality have not caused direct amendments by the legislature. There have been many more constitutional decisions upholding legislative activities. Since Japan has been governed continuously by a conservative Liberal Democratic party, the court has not had to respond to progressive acts on the part of the legislature, so it has not been tested as to whether it would in such instances act conservatively or go along with the liberal

legislation.

Taniguchi stresses, however, that the very institution of constitutional review has brought about a major social change. The society has now realized that the constitutionality of legislation and other state acts can be discussed freely before a court of law. Constitutional norms have become the norms of positive law.

In assessing the overall influence for change operant within the legal system, Taniguchi concludes that perhaps the greatest innovative trends can be attributed to the increasingly high social status afforded the practicing bar. One finds true innovation within the judicial system because there is a more self-confident body of trial lawyers. He traces the interesting progression of involvement of lawyers generally in cases concerning industrial pollution. These cases were originated first by a group of leftist lawyers with strong political motives to use these issues as an inducement toward increasing the political constituency of the leftist parties. However, the problems were so real that politically neutral lawyers also stepped in, deciding that they too should become concerned professionally as part of their social responsibility. A host of particular litigations have followed involving citizens' rights. Practicing lawyers no longer hesitate to raise novel questions of law and to attempt to persuade courts in a more aggressive manner. These activities of lawyers are aided by the interest shown in newspapers and other mass media. In the pre-war period it was only criminal behavior that drew public attention. Now questions of the environment and civil rights are interactively considered through the mass media and members of the legal profession who bring these cases to trial.

In chapter 2 Hiromi Nishimura examines in detail recent cases of pollution litigation directed against both the state and private corporations. These followed the significant changes toward remedial recognition of victimization in which the state was considered to bear some responsibility. The courts adopted an epidemiological approach to the issue of causation. Only later did the legislative and executive branches enact comprehensive remedial measures. The more recent cases explored by Nishimura involve noise pollution at both civil and military airports. These cases show the reluctance of the courts to contravene administrative decisions and policies, a somewhat conservative disposition noted by Taniguchi. It is interesting to note, however, that these cases also show a recognition that the state has some culpability: inactivity in situations of potential public harm is recognized as irresponsibility on the part of the government. This trend differs from that found in American litigation, where suits are generally brought against private industry rather than against a government agency. Article 25 of the Japanese

Constitution imposes on the state the affirmative duty to promote public health. This duty was emphasized in the litigation in respect to the side effects of dysentery drugs that according to the litigants were improperly tested before receiving state licensing. The modern Japanese government, therefore, can be sued by its citizens when it does not properly employ its regulatory powers. Such litigation against the state has stimulated remedial measures in some instances. The Diet, for example, amended the pharmacy law in 1979 and established a remedial fund to recompense injury induced by improperly licensed medicine.

Nishimura in his chapter shows how judicial rulings are helping to redefine areas of state responsibility. As a general trend these decisions continue a tradition of respecting administration discretion in enforcing laws and policies. The courts, according to some Japanese scholars, are more conservative than their American counterparts in policymaking. The Japanese interpretation of separation of powers tends to emphasize a lack of intervention. Nevertheless, pollution cases are one area in which the courts are playing an important part in what Nishimura sees as a hesitant and somewhat contradictory step toward a redefinition of the relationship between branches of government.

In the third chapter we turn from the consideration of the courts and litigation as a means of social change and take an overview of direct protest as a form of social pressure. Contrary to easy supposition, as James White points out, protest is an established tradition in Japan, and numerous incidences can be found occurring during the Tokugawa and early Meiji periods. White quickly adds that the frequency of protest tells us little about the social impact of such behavior, and he would argue that overall this impact is not too great. In the pre-modern period, peasant protests seldom effected any actual change in the feudal regime, and one could argue that in the pre-world war period numerous protests by workers and tenant farmers had very little institutional effect. White would also argue, perhaps somewhat contrary to the position taken by Tsurushima in the following chapter, that protest by burakumin has had little direct social effect. Another instance of very little change is the effect of women's protest movements on equitable consideration in the job market. Given these cautionary considerations, White does not dismiss the effect of the protests on the physical, social, and political context of the participants themselves. This in turn is some force for gradual change. White points out that numerous forms of protest never gain the legitimacy of public support, not even massive demonstrations such as that held against the security treaty or the longstanding activities of students and farmers against the Tokyo Narita Airport. White would contend that it is in the pro-system protest wherein participants do not

question basic institutional forms but express dissatisfaction with their inadequate functioning that one finds genuine ameliorative results. White ultimately considers protest as a necessary and positive function in contemporary Japanese democracy. He sees the Japanese, like all people in modern democratic societies, learning to live with considerable open, continuous conflict. White informs us of the various institutional weaknesses that are compensated for by direct public participation.

Throughout his chapter White makes an interesting differentiation between populist and elitist forms of protest, pointing out that elitist, more romantic, emotionalized, and idealistic forms of protest have generally failed whereas the populist protests, more goal-oriented, have often succeeded to various degrees. White contends that major social and political changes have occurred as a result of protest in Japanese government, political parties, and corporations, but perhaps the greatest effects have been evident in the morale of protestors and in the acceptance of protest as a legitimate component of the ethos of contemporary Japanese political culture. White contends that the effects of protest on a national government, while perhaps not directly recognizable, are operative on the policy process and on the content of policies. Not only has an environmental protection agency been instituted, for example, but one must also note the proliferation of citizens' consultative bodies attached to central ministries. White also aptly distinguishes between institutional change that is effective and some form of institutional change that simply substitutes for a realistic response. Institutional change is sometimes resisted if it is likely that further protest will result. The Japanese so far, for example, have avoided using environmental impact statements or requirements since in their view these statements have caused considerable protest where they have been instituted in either Western Europe or the United States. What is apparent is that the political process in Japan and the use of protest have sensitized the government to some form of anticipatory response. This is the way that protest is working in a participatory democracy.

An important consideration pointed out by White in this chapter is that popular protest on the local level has resulted in considerable devolution of political authority from Tokyo to prefectural and municipal governments. Steiner et al. (1980) point out that local government has changed from a haven for conservatives into a highly competitive arena because citizens have chosen to protest misgovernment at the local level, given the monetary, educational, and organizational resources available to them. The functions of municipal offices are therefore characterized more today by public hearing processes and dealing with citizen complaints. None of these activities were in evidence before the wave of

environmentalist protest of the 1960s. This change has resulted in increasing competitiveness and conflict on the local level. It has altered local governmental priorities and contributed to more substance and less ideological debate. Considering the historical oppressiveness of pre-war Japanese governments, this is indeed a radical change.

Political protest has led to some change in what is expected of Japanese political parties. Both the Socialist and Communist parties have expediently tried to link up with non-institutional protest movements. They have often suffered damage when their purposes were exposed as not directly related to the protest at hand. Such has been the case, for example, in the Socialist-Communist conflict over which party was to represent burakumin interests in the Tokyo area.

White points out in respect to the effects of protest on corporations that a notable change has occurred toward more flexible and responsive openness to public requests than occurred before the protest movements were initiated in the sixties, but he stresses that perhaps the area of greatest cultural change brought about by protest is in the attitude about protest itself. Open conflict has become more accepted and probably more effective thereby as a means of pressing political demand. There has been increased competition between local governments in exhibiting a responsive attitude toward dissent. There is a greater toleration now and expectance of difference of opinion. There is an agreement to disagree that has come into effect, and one notices some ability to compromise. White is optimistic that techniques for negotiation and a more pluralistic distribution of power have been developing concomitantly with the exercise of protest. Conversely, in some instances there has probably been some breakdown of community cohesion and change in the intensity of social control exercised on the interpersonal level. White cautions, however, that whatever the changes are, the attitudes toward minorities and women have not shifted in cultural actuality even though they may have moved in legal terms. The pressures of matrimonial and maternal norms, for example, drive the great majority of politically active women out of politics during their twenties (Pharr, 1981, 1982). One may well argue that women, as approximately half the Japanese population, are the largest social segment still suffering the effects of a cultural lag between a new ideological commitment to equality being established under law and the ethos of the traditional culture that still rigidly defines sex roles.

From the general overview of protest movements by James White in chapter 3, we turn in chapter 4 to Setsure Tsurushima's discussion of the rather complex history of Japan's two principal minorities, the burakumin and Koreans. These two groups in disparate ways still suffer severe status disparities due to a continuing Japanese racialist concern with their own

supposed hereditary uniqueness as a people. Again, in the post-World War II history of the attempts of these minorities to gain equality in treatment we can note a dynamic interplay between institutional and social change on the one hand and cultural continuities in Japanese interpersonal behavior on the other. In the post-war period these two groups have each had a rather complex history of protest, political lobbying, and litigation in their efforts to ameliorate their disparaged status. There are significant differences to be noted in their attempts to counter the social, economic, and political discrimination they are attempting to overcome. The manner in which their efforts gain response is evidence of the present uncertain direction being taken slowly toward a more inclusive definition of modern Japan as a pluralistic modern state rather than a traditional ethnically exclusive political society espousing human rights in general terms and contributing economically to refugee problems and other world economic issues, but refusing to consider itself capable of incorporating new members into a Japanese citizenry. It is yet a basic incongruity to consider the possibility that one could be Japanese and maintain adherence to an ethnically distinct background. The cultural definitions of race, ethnicity, and citizenship are yet inseparable in Japanese social perceptions.

The history of the Koreans in Japan dramatically symbolizes Japanese difficulty in recognizing and allowing for ethnic diversity. Whatever the legal issues still to be resolved, it is very difficult psychologically and socially for Koreans to maintain ethnic loyalty alongside Japanese citizenship. Tsurushima in his chapter touches upon some of the post-war relationships between a newly independent Korea and Japan. The problem of the legal status of Koreans remaining in Japan is documented in detail in our recent volume (Lee and DeVos, 1981). Suffice it to remark here, the Japanese legal system has not yet come to grips with having four generations of Koreans living in Japan totally Japanese in a cultural sense, but in a legal sense resident aliens. The situation is such that many Koreans with a sense of personal integrity and loyalty to parentage find it impossible to accept Japanese citizenship under present conditions. They have therefore decided to test the Japanese present ideological commitment to human rights in court cases dramatizing blatant acts of economic or social discrimination. We have discussed elsewhere (Lee and DeVos, 1981, chapter 11, pp. 252ff.) how these court cases provide us glimpses into both the positive and negative features of Japanese law enforcement as well as the positive and negative features of contemporary Japanese journalism. Both burakumin and Koreans face periodically derogatory treatment by the police, and a sensationalist press can at times manipulate the news using shock tactics

rather than education in informing its readers. In summary, however, one can note that the results of minority Koreans testing the functioning of the Japanese court system, both as defendants and plaintiffs, have been somewhat encouraging. Although the specific laws about citizenship for Koreans have not yet been altered, court reinterpretation of existing general laws are tending more and more toward procedural fairness and respect for human rights.

We might briefly cite two cases discussed in our volume. In 1974 Pak Chong-Sok sued the Hitachi Company for unfair labor practices. Pak was born in Japan of Korean parents who migrated to Japan in 1929. Until he finished high school he used his Japanese name, Arai Shoji, like many others, hoping to advance occupationally through educational means and by disguising his Korean background. In 1970 he applied to the Hitachi Company and successfully passed the company's examination and received official notice of hiring. However, the Hitachi Company, as is customary, asked him to submit a certificate showing his *koseki*. It was then the company learned of his Korean nationality. When Pak initially filed his application, he had simply used his Japanese name and put down his place of birth as Japan. Legally, he should have used his Korean name as it appears on his alien registration card and the permanent address of his *koseki* to identify his national origin. Pak received a letter of rejection from the Hitachi Company on the ground he had committed perjury by providing false information. A long litigation ensued, with at times the Hitachi Company wishing to hire him and settle out of court. Pak was adamant. The dispute was finally settled in June, 1974. The judge read the decision that, "The court finds no apparent reason other than a factor of ethnic discrimination why the defendant rescinded the contract to hire the plaintiff in the case." The court decided that, as to the plaintiff's use of his Japanese name, there was neither malignant motive nor harm inflicted upon the contending party. Rather, "the court's sympathy rests with the motive of the plaintiff," because it was Japanese society that compelled him to act in the way he did to escape from discrimination practiced against Koreans. Therefore, stated the judge, "The rescission of the initial hiring notice should be construed as an arbitrary breach of the labor contract, which is a violation of article 3 of the Labor Standard Act and article 90 of the Civil Code of Japan."

In another case, that of Kim Kyong-duk, we find a break-through in the very tight restrictions on the practice of law related to citizenship in Japan. Kim, born in 1949 of Korean parents, graduated from Waseda in 1972. He successfully passed the judicial examination given by the Ministry of Justice in October, 1976. The passing of this examination is merely an initial step to becoming an attorney in Japan. The successful

candidate is then required by the lawyers law to complete a two-year training period at a judicial research and training institute operated under the Ministry of Justice. Kim applied for admission to the judicial research and training institute, but his application was summarily rejected because he refused to declare an intent to become a naturalized Japanese citizen. Kim considered the institute's grounds legally untenable since an amendment of the 1955 law eliminated the imperial subject clause among the list of qualifications, and it did not specify naturalization as a requirement for becoming a lawyer. The rationale for excluding aliens had been that during the two-year training period a trainee was paid by the government like any other regular government employee, and that furthermore trainees were required to serve apprenticeships under the close supervision of judges and public prosecutors. According to the official view, such an apprenticeship for a non-citizen would be equivalent to appointing an alien to a Japanese government position. Kim, determined not to naturalize as a point of integrity, decided to submit a petition to the Japanese supreme court in November, 1976. He appealed directly to the conscience of the supreme court justices, requesting that they accept him without forcing him to renounce his Korean nationality. He stated that he wanted to become an attorney to defend fundamental human rights. There is indeed a need for Korean attorneys to handle the wide range of litigation occurring in the present. According to Kim, Japanese society had failed to ensure fundamental human rights for Koreans in Japan. Their human dignity and worth had been constantly threatened by deeply entrenched prejudice and systematic discrimination. He stated: "Throughout the years of my life in Japan, I have hated myself for being a Korean and have always tried to pretend to be Japanese. I don't know how often I have trembled with fear of having my real identity discovered by my peers. It has been an agonizing experience to go through. As I grew older, I began to realize what a fool I had been; my endeavors should not have been directed toward hiding my identity, but toward fighting against discrimination and helping to protect the rights of Koreans in Japan" (Lee and DeVos, 1981, p. 279). It is noteworthy that civil libertarians rallied behind Kim and supported his case. It took four months for the court to deliberate. On March 23, 1977, they issued a short statement that in the case of Mr. Kim, nationality should not be a factor to deny admission to the judicial research and training institute. The court, however, refused to elaborate further, and it is uncertain whether its ruling would apply more generally to all aliens. The legal question concerning the general eligibility to become lawyers has not been resolved, but awaits further clarification.

These cases are important since there is now official admission of the existence of legal discrimination on the basis of human rights against Koreans in Japan. There is now legal sanction for arguing that the phrase "all people" in the Japanese constitution refers literally to all people who establish legal residence in Japan.

If one is to generalize from the material presented by Tsurushima, one can state that the historical record of ameliorative attempts by both the Koreans and the burakumin have gone increasingly toward the seeking of redress through litigation. That there is such amenability now in the courts, however, cannot be divorced from the fact that direct protest has caused considerable discomfort in Japanese and in effect has dramatized the inconsistency between a democratic ideology and a cultural tradition of status discrimination. The protests by Koreans during the occupation perhaps were counterproductive to some degree, whereas the *kyudan* tactics of the burakumin, the attempts at overt denunciation and embarrassment of individuals discriminating against them, have had more effective results. In the case of the burakumin, legislative redress has been very impressive. However, again one must reiterate that there is a difference between institutional redress and social acceptance. No democracy can force its people quickly to change emotionalized patterns inherited from the past. What it can do is to ensure quick redress under the law should there be discriminatory behavior.

In chapter 5 we return to the specific examination of environmental pollution and the functioning of the social protest in specific cases. Michael Reich cogently examines what he terms public and private responses to a chemical contamination that poisoned more than 1,600 people. He uses the Kanemi Yusho case to examine the response of Japanese society and explores specific questions related to how victims achieve redress. He examines the particular case as it reveals general psychological consequences of Japanese homogeneity, how group consciousness operates, how the effects of a traditional aversion to litigation and how Japanese concepts of responsibility and apology operate, and direct social expectations. He uses two approaches, first examining the substance of redress in a chemical disaster, that is, who is responsible for care, compensation, and clean up. He also approaches the subject from the standpoint of process: how does what is perceived first as a personal injury come to be associated with a public issue? Once it is perceived as a public issue, how does collective action take place? How do the victims become involved with various organizations, and thereupon face dilemmas of political alliance? He addresses himself also to the paradox that as the victims gain redress they are also exposed to new problems and personal costs not anticipated when they initiated action. In

the course of his arguments, Reich is somewhat critical of easy explanations for the observed behavior in terms of homogeneity and the tendency of victims to hide their difficulties initially since they do not want to face social ostracism. He also questions a quick reference to the group behavior as a culture pattern demonstrating group consciousness. He points out that if one examines specific responses in various places, one finds that the responses were not in all instances similar and that one can observe various levels of group competence and resourcefulness in their concerted action. In comparing the various responses to the same problem, Reich would draw more upon the differences between urban and rural experiences than on any vague allusion to group consciousness among the Japanese. In examining the particular case Reich also questions whether there is a true reluctance to undergo litigation or whether it is more to be considered a lack of availability in some instances but not in others. Reich supports Haley's contention that Japanese do not feel a special aversion to litigation, but face considerable significant institutional obstacles, especially a lack of competent lawyers and sympathetic judges, and of course the very long delays encountered in completing a trial. Reich sees that the Yusho case demonstrates that some Japanese have more ready access to lawyers and are therefore more able and willing to litigate. He points out, however, a traditional cultural pattern that leads Japanese to expect symbolic and actual forms through which officials take personal responsibility for social wrongs, and that in this instance the failure of company officials to conform to such expectations deepened individual and collective resentment, which made the desire to persist more adamant among some of the victims. The Yusho case, according to Reich, demonstrates that a demand for apology does not substitute for formal legal proceedings, but is pursued in parallel. Reich would agree with the White's remarks that the instance of this case illustrates how conflict has influenced policy in important ways, and that overt conflict often is necessary to change political policy. In the Yusho case, social conflict was a necessary condition to changing policy on how victims were certified, the criteria for admitting victims to medical examination, and negotiation between victims and corporate officials. In sum, the Yusho case and its protest as well as litigation forced policies to be changed in respect to redress for victims. Finally, Reich sees the Yusho case as an illustration of how social class affected the victims' ability to search for allies in the same way that it determined their ability to organize in protest. The middle class showed its greater access to redress than did the marginal fishermen also involved in the chemical disaster. When the case became a political issue, conflict among the victims' allies followed the structure of political competition. There were

differences in strategy and conflict between the Communist and Socialist parties related to their organizational structure and ideological purposes, a pattern to be noted not only in the Yusho case but in other social issues in contemporary Japan.

In chapter 6, Michael Reich turns to another issue of considerable importance, not focused upon in the present volume, namely, the role of the press as related to protests or to litigation on social issues. Through his intensive interviews, both of reporters of the *Asahi Shinbun* and a number of bureaucrats working in the public agencies dealing with environmental problems, Reich is able to point out the institutionalization of an interaction pattern between members of the news media and administrative personnel utilizing, for their competitive purposes within the Japanese government, dramatic episodes to help them effect their desired policies. This type of mutual interaction goes on not only between legislators and reporters, but between government administrators and reporters. Reich, for example, illustrates from the environmental news coverage of 1977 the way that officials need and use episodic crises and how the press tends to establish and routinize procedures for news-gathering by establishing liaison with given sources. The environmental bureaucracy needed some news in order to credit agency activities. They were concerned, in effect, that there was a lack of dramatic episodes useful to enhance their arguments for support to overcome resistant elements in other agencies of government. Reich compares Japanese group behavior among reporters with that obtaining in the United States and finds, although there is a tendency for press clubs to formalize such behavior in Japan, that the functioning of the press together is not considerably different from that obtaining in the United States. Reich also illustrates in these specific instances how the policy of the newspaper discourages independence in reporting and how reporters are bent to taking a position representing the company and management of the newspaper. Reich thus illustrates the complex manner in which social change is influenced by internal processes governing the functioning of mass media in a modern changing society such as Japan.

The final chapter of Part I, by Ellis Krauss, summarizes and comments on the preceding chapters, remarking that they are concerned not only with the description of protest but with the processes involved and how consequences occur. He reiterates that protest has to be considered an inherent property of social functioning in a contemporary society. Krauss raises the issue of how we define whether a protest movement has been successful or not, an issue not easily resolved. He also cautions us that we have to see the use of protest in the entire context of social change, since it is one factor in a very complex process.

He ends with a plea for more attention to the social psychological dimensions of protest movements, attending to the psychological as well as the social and material costs of political activism. He asks for more material of an “emic” or experiential nature—how, for example, do the burakumin themselves perceive the material changes brought about by the restitutive legislation?—and he aptly points out that a study of protest cannot neglect further attention to the role of the mass media. In effect, the media is a crucial silent partner of protest in democracies. Without media to transmit the fact that a problem exists or that people are dissatisfied or that the authorities are or are not handling the protests, there is no protest movement. Indeed, Krauss’s remarks suggest a further topic to be considered in the future.

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# I

## The Post-War Court System as an Instrument for Social Change

Yasuhei Taniguchi

In what follows, I shall first explain the pre-war Japanese court system and related institutions as a prerequisite for understanding the direction taken by the post-war reforms. Then I shall proceed to consider the impact of these judicial reforms on the post-war social change.

### The Pre-War Court System and Related Institutions

#### CHARACTERISTICS OF THE PRE-WAR SYSTEM

*The Organizational Dependence of the Judiciary.* The court system developed under the Court Organization Law (Saibansho koseihō) of 1890 was largely patterned after that of Germany. The whole judiciary was made part of the Ministry of Justice (Shihōshō), which functioned as a branch of the executive, headed by the Minister of Justice. Thus, the judiciary branch of government in post-restoration Japan was not organizationally independent from the executive. Such incorporation of judiciary functions under a Ministry of Justice is still very common in European countries. The Meiji Constitution of 1889 did not provide specifically for judicial independence except in regard to the tenure of judges (Art. 58) and the principle that a judge must follow the law (Art. 57). Nevertheless, a judge's independence in deciding cases was well established vis-à-vis the executive power. It is fair to assume, however, that the judiciary remained in obscurity, hidden behind the powerful Ministry of Justice.

*Limited Judicial Power.* The power of the judiciary was limited in two important areas. First, it was not given power to exercise any control over legislation by judicial review. Therefore, judges were bound even by provisions of law which they considered clearly violated the Constitution. Correction of such legislation was left entirely to the political process,

which, in turn, did not characteristically function in a democratic fashion.

Another limitation was that administrative acts remained outside judicial review. Such power was given exclusively to a special organ called the "Administrative Court," which belonged to the executive rather than to the judiciary. It was staffed not with ordinary judges, but with administrators serving as judges, a system borrowed from France (cf. the Conseil d'Etat). The availability of the Administrative Court for redress was limited: it sat only in Tokyo; no appeal was allowed from its decision; and its jurisdiction was limited to five specifically designated categories of cases, such as cases involving taxation or public construction.

*Hierarchy within the Judiciary.* The judiciary was organized on four levels: the Grand Court of Judicature (Daishin-in), created in 1876 as the highest appellate court; the Court of Appeals (Kōsoin), as an intermediate appellate court; the District Courts (Chihō saibansho), as first-instance courts of general jurisdiction; and the Ward Courts (Ku saibansho), as first-instance courts of limited jurisdiction. The Grand Court of Judicature had about fifty judges, each of whom belonged to one of ten Chambers consisting of five judges. These Chambers were either criminal or civil, according to their specialty. Under certain conditions all civil and/or criminal Chambers had to be united for a decision. All of these judges were chosen from among lower court judges. It was the highest position obtainable as a judge. There was no recruitment from outside the judiciary. Its decision always was given *per curiam*, no dissenting opinion being published.

The Court of Appeals and the District Courts were also collegial courts. Only at the level of the Ward Court were there single judges. Ward Courts were not simply small claims courts. They had exclusive jurisdiction over bankruptcy, land registration, and noncontentious matters related to family law and succession.

*Career Judiciary.* Judgeships were career positions like other positions in governmental offices. Judges were paid no better than administrators of the same rank. Up until 1923, judges and procurators (presently public prosecutors) were recruited through a national examination held for that purpose. Applicants for private practice in law had to take a separate bar examination which was substantially easier. The system was later changed so that applicants for any one of these three legal careers had to take a uniform national examination called the "High Civil Service Examination—Judicial Section." After the examination, candidates for judgeships and procurator positions were separated from those aspiring to private practice and were trained an additional year and a half as judicial apprentices. After this training, a second examination qualified them to become either judges or procurators. Young judges

received further training as members of collegial courts and could expect gradual promotion upward, the most fortunate ones eventually reaching the bench of the Grand Court of Judicature. Judges, especially able ones, were transferred in the course of promotion from a court to the administrative section of the Ministry of Justice to engage in supervisory work or legislative work such as rulemaking and preparation of bills. They were sent back to a court after several years of these extrajudicial services. Most judges served until retirement age.

*Strong Procuracy Attached to Courts.* As noted, judges were recruited and trained together with prospective procurators. As a matter of fact, procurators were officers of the court. A "procurator," taken from the French *procureur*, was considered a guardian of social order and public good. Procurators not only brought criminal prosecutions before a court, but also controlled the police and even had theoretical power to watch over judges' work. Their office (Kenjikyoku) was attached to each court and was called, for example, the Kenjikyoku of the Tokyo District Court. It was always housed in the same building as the corresponding court. Thus, judges and procurators appeared similar in function to the laity. In the courtroom, the procurator sat on the elevated platform with the judge, while the defense counsel had to stay on the floor with the accused. Since the procuracy was a politically powerful organ, the more ambitious and elitist young men tended to aspire to become procurators rather than judges.

#### OTHER FACTORS AFFECTING THE PRE-WAR SYSTEM

*The Weakness of the Barrister.* Until 1923, any graduate of a national (then imperial) university's law faculty was eligible to practice law. Other graduates had to take a national examination for admission to the bar. From that year on, a uniform civil service examination was imposed even on those who wished to practice law; but unlike judges and procurators, they were allowed to practice immediately without any further training as apprentices. It was only in 1936 that a year-and-a-half apprenticeship was introduced as a requirement for admission to the bar. But those apprentices were not paid any salary, while judicial apprentices were paid by the State. It is evident that small importance was attached to the practicing bar. Bar associations were not independent and autonomous bodies, but under the close supervision and control of the Ministry of Justice and its powerful local agency, the Kenjikyoku.

The general attitude of the public toward litigation and practicing lawyers, as well as the relative weakness of the Japanese economy and the way business was conducted at the time, did not favor the practicing bar. It could not attract youth from among the social elite except for a period during the early Meiji era when some ambitious youth who had studied in

the United States and England endeavored in vain to build up a more prestigious Japanese bar. Lawyers' activities were mostly limited to representation of clients in court, where they were minor figures humbly submitting their pleas to dominant judges and procurators. On the whole, practicing at the bar fostered little concern, let alone enough ability or prestige, to bring novel social problems as issues to be presented at court or to fight for the cause of social justice through the judicial process.

*Authoritarian Procedures.* At the end of World War II, civil procedures were still regulated by the Code of Civil Procedures of 1890, and criminal procedures by the Code of Criminal Procedures of 1922. Both were based on German codes. Common to both was the leading role played by the judge and the relatively minor roles played by private parties, either the criminal defendants and their counsel, or the parties to civil actions with their lawyers, if any were used. For example, witnesses were questioned mainly by the judge. Lawyers had a right to question supplementarily, but they normally did not exercise this right, fearing that it might offend the judge. Since the judge had the power to conduct by his own motion whatever investigation he thought necessary, a natural tendency on the part of the parties and lawyers was to depend on the judge's initiative. In criminal cases, the role of the procurator was dominant. Most characteristic of pre-war criminal justice was the institution called the "preliminary hearing." Originated in France as "instruction," it was first adopted in Japan as early as 1881 in the French-style Code of Criminal Instruction (Chizaiho), and was kept on in the still French-style Code of Criminal Procedure of 1890, and was further maintained in the German-style Code of Criminal Procedure of 1922. The preliminary hearing was the proceeding whereby the "judge of instruction" examined the case, without the presence of a defense counsel, simply on the basis of the evidence provided by the procurator and, only if deemed necessary, further evidence gathered by the judge himself in order to decide whether the case was suitable for a formal prosecution. If he ruled for prosecution, the documents gathered were handed over to the sentencing court far before trial. This practice implied a continual danger of biasing the sentencing court against the accused.

*The Weak Political and Social Status of the Judiciary and the Legal Profession as a Whole.* From the early Meiji period on, the modern Japanese judiciary was not intended to become a strong locus of power. The most important incentive for creating a modern judicial system was to persuade foreign powers to abandon their extraterritorial privileges. The Ministry of Justice and the judiciary within it were considered secondary to the formation of policy or the exercise of state control. When the new Grand Court of Judicature was founded and one of the then top political

leaders, Iwakura, was asked to take the position of its president, he bluntly refused. For a considerable period, the judiciary could not be staffed by first-class candidates. Legend holds that the best graduates of Tokyo Imperial University's Law Faculty became administrators, the second best became professors, and the residue accepted judgeships. Very few even thought of becoming barristers. Under such conditions, the subordinate role of the judiciary was inevitable.

The public looked at the judiciary with awe rather than with respect or expectation. It was an institution that a good citizen should avoid. Disgust with legal practitioners and the process of litigation was a legacy of the Tokugawa regime that could not be easily removed, especially since the newer generation of leaders had no real intention to change such attitudes. It did not occur to judges or lawyers that the court and court procedure could become an instrument for significant social change.

## Post-War Reforms

### THE JUDICIARY UNDER THE NEW CONSTITUTION

*Organizational Independence.* Under the Constitution of 1946, the judiciary was separated from the Ministry of Justice and became an independent branch of government on a par with the Cabinet and the Diet. The judicial branch of government was now headed by the Supreme Court. Its Chief Justice was raised to a rank equal to that of the Prime Minister and the Chairman of the Diet. Administration of the whole court system became the responsibility of the Judicial Conference of the Supreme Court. Thus, the judiciary was made an autonomous organization, still controlled indirectly only by the legislature's power to allocate funds in the national budget and by the power reserved to the executive to appoint both Supreme Court justices and lower court judges.

*A Unitary Judiciary and Abolishment of Administrative Courts.* The post-war Constitution does not recognize any special administrative courts. All judicial power belongs to the Supreme Court and the lower courts subordinate to it. Accordingly, the pre-war Administrative Courts lost their constitutional basis and were abolished. Power to review any acts of administration became the province of the judiciary branch. The Family Court system was newly created, but not as special courts because the system was subordinate, as were all other lower courts, to the Supreme Court. Although many quasi-judicial bodies such as a Fair Trade Commission and a Labor Relations Commission were also created, their decisions were made subject to judicial review. A citizen's right to have any "legal controversy" resolved by the court system is constitutionally guaranteed.

*The Power of Constitutional Review.* This is probably one of the most significant post-war innovations brought in from American law. The judiciary is now given the power to review the constitutionality of legislation and any other state action. This power is vested not only in the Supreme Court, but also in all lower courts, the theory being that an unconstitutional law is to be considered null and void whenever an issue is brought to legal attention. The Supreme Court has exercised this power with much caution. While it has used all sorts of avoidance techniques in order to forego judgments on constitutional issues, nevertheless there have been certain decisions on important constitutional questions. The lower courts, in fact, have been more courageous in their decisions on pressing issues and have had some social impact, although most of their decisions have subsequently been reversed on higher appeal.

#### THE ROLE OF THE SUPREME COURT

*Judicial and Administrative Functions.* The Supreme Court is the highest appellate court, having no first-instance jurisdiction. Since it is the court of last resort for any constitutional question, an eventual appeal to the Supreme Court is always guaranteed. It serves also as the highest organ through which the entire judiciary is administered. The Ministry of Justice has no judicial function—rather it is principally concerned with law enforcement, as will be discussed in following chapters in this volume.

The judicial function of the Supreme Court is normally performed by a bench of five justices, called the “Small Bench.” However, in cases involving constitutional questions and on other special occasions, fifteen justices are seated as the “Grand Bench.” The justices are assisted by a group of judge-investigators (Saikōsaibansho Chōsakan), who are themselves experienced judges. There is suspicion that the current justices are much too dependent on these very competent helpers.

The administrative function of the Court belongs to the “Judicial Conference,” which is assisted by a rather large subsidiary organization, the Secretariat of the Supreme Court. This organization is divided into several sections and many subsections, each headed by a judge and staffed by the administrative employees of the court.

*The Justices.* Unlike the former Grand Court of Judicature, the Supreme Court has only fifteen justices. They are appointed by the Cabinet without any right of approval by the Diet. In this sense, the Supreme Court can be said to be under the influence of the executive. Appointments, however, must be approved by the electorate. At the first general election after an appointment, the populace can vote for or against the appointment. If a majority votes against, the justice is removed from the office automatically. Such electoral review over appointment takes place every ten years thereafter. So far, no justice has been removed

from office in this way. Against-votes have rarely exceeded one percent.

Supreme Court justices are recruited from within as well as from outside the judiciary. The law provides that five of the justices need not be full jurists. At the time of the court's foundation, career judges, practicing lawyers, law professors, public prosecutors, and even nonjurists shared the bench. But the subsequent tendency has been to appoint more career judges. From the foundation of the Supreme Court till 1979, seventy-four justices have been appointed. Out of these, twenty-seven were judges from a lower court, eight were prosecutors, twenty-six were lawyers, seven were professors, three were diplomats, and three were administrators. Because the lawyers appointed tended to be older than the other appointees, they have served less time, and hence their relative presence has not been as large as it may look. At any rate, there are important differences from the practice of the former Grand Court of Judicature.

*The Case Load of the Court.* The Supreme Court is said to be suffering from an almost unbearable case load. The enormity of the task can be readily imagined if one considers that fifteen justices must now handle constitutional cases and administrative cases in addition to ordinary civil and criminal cases which were handled by the previous fifty justices of the Grand Court of Judicature. Except for criminal cases, there is no device similar to the American "certiorari" which screens undeserving cases. In 1980, the Supreme Court received 2,187 appeals in civil cases and gave a judgment in 1,522. In the same year, it received 2,409 criminal defendants on appeal and disposed of 2,300. With this heavy burden, the Supreme Court could not take time to consider constitutional or otherwise important issues in a satisfactory manner and had to rely heavily on the help of its judge-investigators.

#### THE LOWER COURTS

The District Courts remained more or less unchanged. The Courts of Appeals changed their name to the High Courts (Kōtō saibansho), but their function has not been greatly changed. The Family Court system is new. The Ward Courts became Summary Courts (Kan-i saibansho) and underwent functional changes. Here I shall consider only the Family Courts and the Summary Courts.

#### THE FAMILY COURTS

*Jurisdiction.* The Family Court has two divisions: the Juvenile Division and the Family Division. The Juvenile Division handles juvenile delinquency and is essentially a criminal court of a special character. The Family Division handles family conciliation and a variety of cases of a so-called noncontentious nature. The latter cases include the division of a decedent's estate among heirs, adjudication on support, declaration of

incompetence and appointment of a guardian, permission to change a name, etc. But such contentious procedures as may occur in divorce or in the recognition of an illegitimate child must be dealt with formally by the District Court. Conciliation of family disputes is conducted by the conciliation committee, consisting of a judge and two conciliators, set up for each case. In 1981, 83,873 family conciliation cases were filed, and a successful conciliation was achieved in roughly 41 percent of the cases. Conciliation is not only popular but also a required prerequisite to any action involving domestic relations. One cannot go, for example, directly to the District Court to bring a divorce action without having gone through an unsuccessful attempt at conciliation in the Family Court.

*Personnel.* Family Court judges are ordinary judges having no previous special training. They are rotated periodically by transfer from other lower courts.

One important feature of the Family Court is that it is staffed with special Family Court Investigators (or Family Court Counselors, Kateisaibansho Chōsakan) who are trained in programs in sociology or psychology considered relevant to family and/or juvenile problems. This nonlegal professional resource makes the Family Court a unique institution. The investigators' task is to pursue investigation and give objective advice to the deciding judge or to the conciliation committee as well as to give counseling to the parties.

Family conciliators are part-time personnel and, unlike the civil conciliators described later, usually have no training in law. They are volunteers such as housewives, Buddhist priests, retired businessmen, and retired public officials. Originally some were considered to be too elderly, thus losing the confidence of the users. Retirement age recently was set at 70 to remedy this situation.

*Procedure.* Proceedings in the Family Court are informal and not open to the public. In its juvenile cases, it receives delinquent and pre-delinquent juveniles (under 20) sent from the Public Prosecutors' Office. It sends back to the Public Prosecutor those juveniles considered appropriate for a formal prosecution before a criminal court. Other juveniles are either sent to a Juvenile Home or put under the official supervision of a probation officer. The probation officers in turn put the juveniles under the direct attention of volunteers known as *hogoshi* (voluntary probation officers) (Wagatsuma and DeVos, 1983, Chapter 3).

Applications for a noncontentious adjudication of family matters are numerous (277,594 cases in 1981), but are disposed of swiftly (82.9 percent within a month). There is no formal trial. Parties are heard informally. In the conciliation proceeding the conciliation committee hears both parties together or one by one and proposes, if necessary, a

plan for settlement. Conciliation sessions normally are repeated several times until unreconcilability becomes apparent. Representation by a lawyer is allowed but not encouraged. Even if a lawyer is retained, the personal appearance of the parties is always required. The filing fee is nominal, and applications can be filed orally. Some courts are open in the evening. All in all, the Family Court is the most accessible and, accordingly, the most popular court in Japan.

#### SUMMARY COURTS

*Jurisdiction.* The Summary Courts may look like direct successors of the pre-war Ward Courts, but in fact they were intended to be a radically different court system. "Summary" is the translation of "kan-i," meaning simple and easy. The Summary Courts' jurisdiction is much narrower than that of the Ward Courts. Former bankruptcy power has gone to the District Court system. Noncontentious jurisdictions are the province either of Family Courts or District Courts. The Summary Courts can handle minor criminal cases and civil litigation involving lesser monetary amounts. Judicial power is limited to imposing fines or imprisonment up to three years only for certain designated crimes, and adjudicating civil cases involving less than 900,000 yen (raised in 1982 from 300,000 yen). Summary Courts handle most nonfamily civil conciliation cases under the Civil Conciliation Law of 1951. In 1980, 61,863 conciliation cases were brought to the Summary Courts (2,189 in District Courts). Successful conciliation was achieved in 55.7 percent.

*Personnel.* In addition to ordinary judges (including assistant judges with over three years experience), special "summary court judges" serve here. They are not full jurists, but are selected by a strict competitive examination from persons who have engaged in legal work for many years as court clerks, family court investigators, conciliators, prosecutor's clerks, etc. Therefore, they have considerably more experience than simply appointed lay judges, which do not exist in Japan.

*Procedure.* Summary Court procedure was made as simple and flexible as possible so that citizens could have daily disputes adjudicated with relative ease. But actual practice seems to have developed in a contrary direction. As far as civil cases are concerned, the function is similar to District Court procedures. An oral filing of complaint, though permitted by law, is hardly practiced. Judges and clerks, as well as lawyers, seem to feel more comfortable with a more complicated and dignified procedure. The recent increase of the jurisdictional limit to 900,000 yen has made it difficult for the Summary Courts to function as small claims courts for ordinary citizens. The trend seems to be returning toward the practices of the pre-war Ward Courts.

## THE LEGAL PROFESSION

*Unified Training for Prospective Judges, Public Prosecutors, and Practicing Lawyers.* As before the war, a uniform national examination must be taken by all. But the further training of the candidates for these three branches of legal jobs is no longer separate. They all go through the same educational program at the Legal Research and Training Institute (Shihō Kenshūsho), which is under the administration of the Supreme Court. Training lasts for two years. The first and last four months are spent in the classroom, and the middle sixteen months in the field: eight months in civil and criminal courts, four months in the Public Prosecutors' Office, and four months in a lawyer's office. A second examination qualifies the candidates as full jurists eligible to be appointed as judges (assistant judges) or public prosecutors, or to be admitted to the bar for legal practice. The extreme difficulty of the legal examination is well known. Only about 500 out of almost 30,000 applicants pass each year. Out of 500 graduating from the Institute, seventy to eighty become assistant judges, thirty to forty become public prosecutors, and the rest become practitioners.

Post-war reform of legal education has not quite brought about a more unified legal profession as envisioned in the Anglo-American tradition. However, the more unified training program has had a considerable social impact. It has greatly raised the quality of the practicing bar. It has also fostered a mutual understanding between barristers and the judicial officialdom, so notably lacking under the separate pre-war training programs.

*The New Role of Prosecutors.* As a result of the organizational independence of the judiciary from the Ministry of Justice, the prosecutor's office was separated from the court and remained with the Ministry. At the same time, the power of the procurators was much curtailed. Their power is limited now to criminal investigation (supplemental to that of the police, over whom prosecutors no longer have any control) and prosecution of suspects before the court. The previous French style procurator has thus become a mere public prosecutor, although the Japanese title "kenji" has not been changed. The Procurators' Office, however, has become the Public Prosecutors' Office (Kensatsu-cho) and is no longer housed in the same building as the court.

*The Judges.* The independence of judges (and justices) is better guaranteed than before by the new Constitution. A judge's salary was drastically increased as compared with that of other civil servants, although the difference over the past thirty years has become progressively smaller. Judges are appointed for a term of ten years, a new system

introduced in the post-war reform. Whatever the legislative intention, it has not brought about the total independence of judges in a career judiciary, as I shall discuss later.

Young judges are first appointed as assistant judges for a ten-year term. As such they cannot decide cases alone. But special legislation has made exceptions. An assistant judge can decide alone after three years of experience in a Summary Court, and after five years he (or she) can function in the same capacity as a full judge with an approval of the Supreme Court—which approval is invariably given. That means that an assistant judge as young as twenty-nine can sit as a single judge in a District Court.

Lower court judges are recruited almost exclusively from fresh graduates of the Legal Research and Training Institute. The appointment of practicing lawyers to the bench occurred only in the early post-war period, although the practice is strongly advocated by Japanese bar associations. It is practically impossible because judicial positions, except on the prestigious Supreme Court, are not attractive enough for eligible practitioners, who in general earn substantially more than judges. Accordingly, the traditional career nature of the judiciary has been preserved except for the Supreme Court, for which outside appointment remains common. Young judges must go up the ladder by promotion, which is controlled by the Secretariat of the Supreme Court. There is a danger, therefore, that judges seeking a promotion will sacrifice judicial independence and make carefully noncontroversial decisions. The Supreme Court even has the power to refuse reappointment for a judge at the end of his or her ten-year term. Nonreappointment happened in 1971 to an assistant judge who was a member of the Communist-oriented Youth Lawyers' Association (Seihōkyo). This action caused a memorable social controversy. A judge's independence is not jeopardized by outside influences, but by stringent internal control. Bar associations have been voicing criticism of the "bureaucratization" of the Supreme Court and the judiciary in general. As already mentioned, the Supreme Court itself is under political influence in that its justices are appointed by the Cabinet and its budget is controlled by the Diet. Moreover, the Cabinet maintains its theoretical power to refuse the reappointment of lower court judges. Appointments and reappointments are made by the Cabinet from a list prepared by the Supreme Court. Although the recommendations of the Supreme Court so far has been followed by the Cabinet, the Cabinet remains aware of its power to reject. The Supreme Court's caution and self-restraint can be partially explained in this context.

The proportionate number of judges has not increased in any drastic way since the Meiji era, although the number of lawyers has (see Table 1).

Table 1

| Year | Population<br>(in thousands) | Civil Actions    | Judges       | Non-Summary<br>Court Judges | Lawyers       |
|------|------------------------------|------------------|--------------|-----------------------------|---------------|
| 1900 | 43,847 (100%)                | 585,355 (100%)   | 1,244 (100%) | —                           | 1,590 (100%)  |
| 1925 | 59,737 (136%)                | 943,616 (161%)   | 1,116 (90%)  | —                           | 5,673 (357%)  |
| 1950 | 83,200 (190%)                | 794,655 (136%)   | 2,261 (182%) | 1,533 (123%)                | 5,883 (370%)  |
| 1975 | 111,934 (255%)               | 1,376,470 (235%) | 2,643 (212%) | 1,864 (150%)                | 10,146 (638%) |

*An Independent and Autonomous Bar.* Practicing lawyers and their organizations are no longer supervised by any governmental agency. Under the provisions of the Attorney Law of 1949, they enjoy full autonomy. According to that law, lawyers must belong to a local bar association. There is one bar association for each prefecture, except for Tokyo, which has three. Local bar associations are organized into a Japan Federation of Bar Associations. Absorbing the great majority of the graduates from the Legal Training Institute, bar associations in the larger cities and the Federation have become influential politically and socially.

As mentioned earlier, Japanese lawyers had minor social and political importance in the past. People did not accord them much respect. This condition started changing from the late 1950s on. Younger and more promising people began to become practitioners. Soon the judiciary began to experience some difficulty in finding a sufficient number of assistant judges because many eligible young graduates from the Institute chose to go to the bar. A solution was to increase the number of students at the Institute. The number has been increased gradually from 250 in the middle 1950s to the present 500. There has been an unprecedented improvement in the quality of practicing lawyers. Legal practice is now one of the most popular career goals of the better law students. The public attitude toward lawyers has also changed considerably. People now look at them with respect and recognize them as doing a socially useful job. The involvement of progressive lawyers in civil rights activities, pollution, and other social issues has certainly improved the public image of the bar as a whole.

Japan remains noted for its small number of lawyers. As shown in the above table, there are only a little more than ten thousand lawyers, two-thirds of them concentrated in metropolitan Tokyo, serving more than one hundred million people. But it should be mentioned that much legal work performed by lawyers in other countries is assumed in Japan by trained nonlawyers such as legal scribes, tax attorneys, corporate

personnel, etc. They can be called "quasi-lawyers." It certainly has been a way to reduce costs. There is fear that any further drastic increase in the number of lawyers could damage the now well established bar's present reputation.

#### PROCEDURAL REFORMS

*Criminal Procedures.* The post-war reform of criminal procedures has been most drastic. A new Code of Criminal Procedure replaced the old one; but it is not necessary to go into the details. The rights both of suspects and the accused have been enhanced. The notorious preliminary hearing was abolished, and an adversary system was introduced. With no previous knowledge of the presented case, the court considers only evidence presented by both parties at the trial. Since the prosecutor has discretion not to bring prosecution, and unsure cases are not normally prosecuted, most criminal trials result in a conviction. Moreover, since most defendants admit their crimes, the task of the defense counsel often is to plead for mitigation of punishment.

*Civil Procedures.* The Code of Civil Procedure has undergone only a few amendments, but their philosophical impact has been considerable. A basic change has been the introduction of adversary procedures. Pre-war civil procedures were already adversary in a sense, but the judge was expected to play the leading role. Post-war reforms have emphasized the parties' roles. The judge was deprived of power to initiate any examination of evidence by motion of the court. A witness must be questioned first by the party who called him or her, and then cross-examined by the adversary party. Although there was no written amendment to this effect, it was believed that the judge should not exercise the so-called clarification right to make any suggestions to the parties to present further allegations or to produce added evidence. In considering this last point, the Supreme Court has changed its view and now declares that the proper exercise of such power is the judge's duty. One fact is clear: post-war reforms have offered a more important role and an expansion of activities to the practicing bar.

*Administrative Litigation Procedure.* Under the pre-war system, relief from any illegal act of the administration could be obtained, in limited circumstances, from an Administrative Court. Now relief is directly available through a lower court. In order to better regulate procedures in such cases, there is the Administrative Litigation Procedure Law of 1962, which is an amendment of the previous law of 1948. There are three principal kinds of administrative litigation recognized by the Law: "attacking action," "party action," and "taxpayer's action." Attacking action (*kokoku soshō*) is the most popular procedure, through which one seeks either to have an administrative act or decision set aside or declared

void, or administrative inaction declared illegal. An attacking action can be brought to the District Court or to the High Court in certain categories of cases by any citizen whenever he has "legal interest" to do so. What constitutes a legal interest has been the main issue of discussion. "Party action" can be brought to court by a governmental employee for payment of his salary, for example. Such cases are far less numerous than attacking actions.

A large number of administrative litigations were processed during the early post-war period in response to problems raised by post-war land reform. Ever since, the number has been stable at around 1,000 per year. In 1981, out of 763 administrative litigations brought to the District Courts, 655 were attacking actions (539 seeking the setting aside of an administrative decision), 25 were party actions, and 80 were taxpayer's actions. The most numerous kinds of attacking action are those which attack decisions of the Patent Office and those involving tax problems. Recently, many administrative litigations have involved legally difficult and politically and socially controversial issues, such as the use of injunction against excessive noise at an international airport, the construction of a nuclear power plant, etc. These actions have attracted much public attention.

The procedures involving administrative litigation are a modification of civil procedures. Even if an action is instituted to attack an administrative act, the relevant administrative agency is not prevented from proceeding to enforce it. But the court may order a suspension of the act if necessary. Such suspension is automatically removed when the Prime Minister files an objection to it. This is the way in which the law balances the powers of the two branches. Judgment is binding not only on the defendant administrative agency, but also on other agencies. This is an exception to the rule that a judgment binds only the parties to the action.

## **The Social Impact of the Post-War Court System**

### **BACKGROUND CONDITIONS**

No social change can be brought about by a single causal agent. Social change is a more complicated phenomenon than that. Even if the reform of a court system could be considered one of the major causes of a particular social change, it is difficult to determine how much it alone affected the society. It is also difficult to distinguish cause and result. What looks like a cause can in fact be a result of something else. In considering the social impact of court reform, the very limited effectiveness of the court system as an instrument for social change should be kept in mind. There are three basic reasons for such

limitations.

Firstly, the judicial machinery can be set in motion only when someone comes to the court to do so. The courts are responders rather than initiators. Passivity characterizes the courts in comparison with other branches of the government. Curiously, social change can occasionally be brought about by not using the court machinery at all. For example, the general reluctance to prosecute for certain forms of abortion (a crime under the Japanese penal code) may have contributed to considerable change in Japanese society by decreasing the birth rate and increasing the proportion of small families. But this result is rather due indirectly to the policy of the police department, a part of the executive. The function of criminal justice is thus always dependent on the policy of the executive. Not pursuing such issues, we limit the scope of our consideration to the civil side, where private initiative determines the use or nonuse of the judicial machinery. Whether a person decides to go to court or not depends on many factors.

It is generally admitted that the Japanese do not like to bring a lawsuit. The number of lawsuits is certainly much less than in the United States, Germany, or France. It could be a result of the nonlitigious character of the Japanese people. Professor Haley (1978) doubts this, however, and has proposed the hypothesis that the Japanese are as litigious as other people, but are only prevented from bringing suit because of their difficult court system. Another possible explanation could be that the total number of disputes in Japanese society is less than elsewhere, although the degree of litigiousness is similar. Whatever the correct answer may be, the Japanese do resort to the court. But there are at least three barriers to overcome.

The first barrier is psychological. It originates from the feeling of discomfort most people have with a dispute. Because of such discomfort, one tries not to recognize even the existence of the dispute. But when a grievance passes a certain bearable point, one takes an action to seek relief, such as bringing a suit to court. Perhaps this mechanism is common to all cultures. If the Japanese are different, their bearable point may be higher than elsewhere. But the psychological barrier seems to become lower in Japan in a number of situations—notably, where a grievance is shared by many others and an action for relief can be taken collectively; where a grievance is directed against an impersonal body like the government or a corporation; and where the process of resolving the grievance does not imply too much direct confrontation.

The second barrier is economic—namely, the availability of money and the time needed to go to court. This barrier becomes a particularly prohibiting factor when the result of an action cannot be clearly foreseen.

The third barrier is the availability of proper legal service. Good legal service is essential in a difficult case. Therefore, this barrier is low for a simple case. When we consider the social impact of court actions, this barrier is very important, because socially influential cases normally involve novel questions of law and complicated questions of fact. Only an imaginative and energetic legal service can engage such purposes. In large cases the task can be accomplished through a concerted effort of many lawyers.

Secondly, the judicial machinery can work only according to the law. Procedure and substance are both regulated by law. If there is no procedure to attain an objective, no relief can be attempted. It would have been just a waste of time under the Meiji Constitution to seek relief from unconstitutional legislation, because there was no procedure for the constitutional review of legislation. In addition to the available procedure, there must also be a proper substantive rule of law which permits particular relief. This poses a more subtle problem because there are always subtle possibilities as well as definable limits in legal interpretation. A judge's responsiveness to subtle questions of interpretation varies. It is inevitable that his conclusion will be affected by unique features of personality and background. The legitimacy of his conclusions could be derivative of the independence of his mind as well as the procedural due process he observed.

Thirdly, the judicial proceeding is intended, as a rule, to affect only the parties to it. If so, any social change cannot be expected from it, because a social change is something that affects everybody in a society. But the fact is that there can be some de facto effect of a court proceeding upon others, even the society generally. When a provision of law is declared unconstitutional, it is likely to be deleted voluntarily by the legislature. Even if an action is lost, the very fact of bringing the action to court can trigger the political process to remedy the situation. Such results do not occur automatically. Certain efforts must be made to mobilize machineries for social change in connection with a court action, such as a community movement, a labor movement, the mass media, etc. Such de facto social effects will be greater when the number of persons involved in a court proceeding is large. The strategy of so-called mass action aims at this. All this shows that a court action as such can have little, if any, social impact.

#### SOME REFLECTIONS ON NEW INSTITUTIONS

Taking these conditions into account, I shall proceed to evaluate how the post-war reforms of the court system could and did work to bring about social changes during the past thirty years. I begin with some of the new institutions.

*Family Court.* This court, particularly its Family Division, succeeded in removing some of the aforementioned barriers by making itself very accessible to citizens. It is said that when asked about the location of the courthouse in town, an ordinary citizen would be likely to indicate the Family Court rather than the District Court. The Family Court was founded at the same time as the promulgation of the radically progressive new family laws. The court was instrumental in having the ideals of the new family laws permeate the citizenry. Family conciliation was utilized to educate the people, so to speak. It was also a convenient device by which the court could itself avoid a socially inadequate result of the new laws. Taking the middle way became possible in conciliation, whereas in a decision the result would of necessity be for one side or another. Interestingly enough, the institution of conciliation promoted a social change intended by the substantive rules of the new family laws and, at the same time, mitigated any adverse effects. Moreover, many disputes which would have been resolved previously within a family—for example, through the assertion of paternal or joint family authority—have been brought to conciliation because the family is no longer capable of performing such a function, especially once legal support of such authority is withdrawn. In this sense, Family Court conciliation has constituted a useful tool of conflict dissolution in a changing society.

*Summary Court.* This new court could have become a significant instrument for consumer justice. But, as explained before, it failed to make itself sufficiently accessible to ordinary citizens by removing some of the barriers to accessibility mentioned earlier. Small grievances of consumers are now better processed by consumer centers often run by local (city or prefecture) governments. Such contact costs nothing, and is rapid and effective, too.

The civil conciliation taking place in Summary Courts has in general been successful. These processes are not a post-war institution, but were started in the 1920s in order to cope with the social changes occurring after the First World War in such matters as housing disputes, agricultural tenancy disputes, and family disputes. Their contemporary function should not be ignored.

Conciliation prospers in the Summary Court, but also has been utilized successfully in some extrajudicial institutions, such as the local and central Pollution Control Commissions, the Labor Relations Commission, and the Construction Disputes Dissolving Commission. These are areas where the substantive law is not yet firmly established and where a case-by-case consideration is highly needed.

At one time, civil conciliation within Summary Courts had to assume the task of trying a large amount of traffic accident cases. By now

these cases are not particularly numerous, because the substantive rules governing fault have been relatively well established through previous courts' decisions. Now traffic accident disputes can be better settled in an Automobile Accident Disputes Settlement Center, an extralegal private organization. Such utilization again demonstrates how conciliation is only partially processed in legal institutions and how social change is only indirectly influenced by court procedures.

*The Supreme Court and Constitutional Review.* By its very nature, a constitutional decision should have great social and political impact. In fact, the labor movement, for example, has been much affected by the Supreme Court's decisions on whether or not public employees have a right to strike. It first upheld the constitutionality of a restriction on strikes, then loosened its attitude, and finally went back to the original strict position. There are only nine or ten occasions on which the Supreme Court has held a State act, including legislation, unconstitutional. But what kind of social change eventuated from each of them is a good question. Some decisions have not even been followed by legislative action. A 1973 decision holding unconstitutional a Penal Code provision punishing patricide more severely than normal homicide was unpopular among the members of the Liberal Democratic Party, and no amendment or deletion of the provision has been made. A 1976 decision held unconstitutional the way voting districts were organized because the weight of each vote differed very much from district to district. But this decision did not nullify the result of the particular election attacked by the plaintiff.

Constitutional decisions upholding the constitutionality of given laws are numerous. They have frequently approved the present state of affairs as meeting the constitutional standards. These decisions are more or less conservative politically (for example, decisions upholding restrictions on demonstrations) as well as socially and culturally (for example, decisions on obscenity). The Supreme Court has not had the occasion to respond to the constitutionality of progressive acts passed by the legislature, a situation most unlikely to change, given the generally conservative orientation of the Liberal Democratic party.

However, it must be admitted that the very institution of constitutional review has brought about one major social change, a society has been developing in which the constitutionality of legislation and other State acts can be discussed freely before a court of law. Constitutional norms have become the norms of positive law. And here we should not overlook the role of an active bar which has presented those issues to the court, removing the legal service barrier of the private parties.

The Supreme Court has been more innovative in nonconstitutional matters. It has issued a series of decisions protective of the socially weak, restricting the landlord's right to rescind the lease of a house, protecting the interests of an unregistered wife, interpreting against the language of an Anti-Usury Law on the payment of interest as part of principal, relieving the victims of medical malpractice by lessening the burden of proof, etc. In criminal cases, it has several times exercised its exceptional power to reverse conviction on the ground of an error of facts. Whether these rather liberal decisions could have come out from the highest pre-war court or whether they are really a result of the post-war reform of the court cannot be answered.

*Administrative Litigation.* Here main issues center around the proper relation between judicial power and that of the executive. Courts have often refrained from giving any relief, saying that the attacked act of an administrative agency falls within the proper discretion of the agency, thereby upholding the validity of the act. Courts have also dismissed many attacking actions by saying that there is not yet an administrative act vulnerable enough in its application to become a proper target of an attack. This has been particularly detrimental to plaintiffs, given Japanese administrative practice, which more often takes the form of informal "administrative guidance" rather than a formal administrative order or a clearly identifiable act of administration. But probably the most controversial issue in this area is the problem of standing to sue: the question of whether a particular plaintiff has sufficient legal interest to attack a particular administrative act. Courts have been rather restrictive, generally requiring actual harm to the plaintiff's interest specifically protected by law. This doctrine has limited the availability of judicial relief in the environmental field. Many actions have been brought attacking a grant of license to build a power plant or petrochemical plant, for example, by the residents nearby. The well-known Osaka Airport case (see Chapter 2) raised the issue of whether residents can enjoin the operation of an airport, a public agency. Osaka High Court granted such an injunction, but the Supreme Court reversed it, saying that an injunction is too much judicial interference with administrative power.

Here again, one thing cannot be disputed: the new institution of administrative litigation has brought about a society in which an act of administration can be attacked by the persons affected. Such a general rule was lacking under the pre-war system. And again we must also think about the bar's ingenious activities on behalf of this law despite the conservative disposition of the Supreme Court.

*The New Position of the Practicing Bar.* This leads me to the last, but not the least, important point I would like to make: the role of the bar in

social change. As suggested earlier, this kind of caption would have been almost, if not totally, irrelevant under pre-war conditions. Today the bar's initiative in socially important problem areas cannot be passed over without mention.

Perhaps the first notable success of trial lawyers was in pollution cases. These cases were originally instituted by a group of leftist lawyers with a strong political motive to use litigation as a tool to make known the vices of the capitalistic economy, to attack the government policy of expanding the economy, to organize pollution victims politically, etc. But the problems so utilized were real and also came to attract the attention of politically "neutral" people. Such politically neutral lawyers soon became sympathetic to the causes and came to consider "public interest" activities as a normal part of their professional concern. A host of litigations followed, involving a "right to sunshine," a "right to a healthy environment," or a "right to seashore," as well as product liability of drugs, medical malpractice, and other consumer issues. There is no longer any inhibition on the part of practicing lawyers to raise novel questions of law and to attempt to persuade the courts in what some consider aggressive moves. Such activities are reported daily in newspapers or other mass media. In pre-war times, newspapers only reported criminal cases that attracted public attention. Nowadays they are more concerned with civil cases. Whether this is a result of a general social change or a cause of further social change is a difficult question. Most likely an interactive process is involved. One can be sure that the practicing bar has become instrumental in utilizing the open forum of the court as a means of directing change. This has been made possible by the increased freedom of action as well as the higher status afforded the bar, which have resulted from the post-war reforms affecting the bar and the standards of legal education.

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## II

# Environmental Pollution Cases: Recent Trends and Their Implications

Hiromi Nishimura

### Introduction

In the late 1960s, a series of lawsuits stimulated public consciousness about pollution. Victims of Minamata disease sought compensation for mercury poisoning in Niigata and Kumamoto. There was the notoriety caused by the Yokkaichi disease of Mie prefecture, consisting of various pulmonary disorders induced by air pollution, and Itai-itai disease in Toyama caused by cadmium poisoning (Gresser et al., 1981, pp. 55–132). In these major pollution cases, the victims sued polluters for monetary reparations in tort. At first the plaintiffs had considerable difficulty demonstrating who polluted the environment and caused these diseases. The orthodox tort principles in effect at the time required plaintiffs to demonstrate causation with scientific precision. There was still some scientific uncertainty about the mechanisms causing these diseases.

The courts, however, played an important role in giving remedial consideration to the victims by adopting an epidemiological approach to the issue of causation. The political branches of government, both the Cabinet and the Diet, were laggard in attempting to implement necessary remedial measures. The courts began to presume legal causation when statistical evidence showed a strong correlation between pollution and disease, even if its scientific mechanism remained unknown.

The courts' decisions in these four cases eventually encouraged the government to enact comprehensive remedial measures like the 1973 Law for the Compensation of Pollution-Related Health Injury. Under this law, the victims of officially designated diseases arising in officially identified pollution areas are now exempted from the burden of demonstrating the

causation of those diseases. They can request reimbursement for medical treatment, lost earnings, and other compensation (Gresser et al., 1981, pp. 290-300).

As I think these facts are well known even in the United States, and the time for reporting is limited, I would like to explore the most recent trend of environmental pollution cases in Japan. First of all, as one of the most important and controversial cases, I will discuss the Osaka International Airport noise pollution case in order to illustrate certain characteristics appearing in pollution litigation in Japan.

### **The Osaka International Airport Noise Pollution Case**

The Osaka International Airport is in the center of one of the most populated areas in Japan. Aircraft are flying continually over the nearby residential areas at low altitudes for landing and takeoff. The noise of aircraft landing or taking off every few minutes, the noisome smell of exhaust fumes discharged from jet planes, and house-trembling vibrations have seriously affected the residents' environment. Those who live near the airport appealed in vain to the government for regulatory measures. The residents finally filed a suit against the State in Osaka District Court in December 1969.

The plaintiffs demanded the following remedies:

1. An injunction against night flights between 9:00 P.M. and 7:00 A.M.
2. A payment of 650,000 yen per plaintiff as partial damages for past injuries.
3. A monthly payment of 11,500 yen per plaintiff as compensation for future suffering, until such time as the government implements a ban on night flights between 9:00 P.M. and 7:00 A.M. and reduces the airport's noise level to 65 phons during the daytime.

The plaintiffs considered injunctive relief as most important. Continuing pollution such as aircraft noise cannot be resolved by reparations. The true remedy is to get rid of the source of pollution. In this context, a total ban on night flights was regarded as most efficacious by the plaintiffs.

The State, as defendant, in April 1972, under mounting pressure because of the suit, terminated all flights after 10:00 P.M. in accordance with the advice of the Environment Agency. As a practical matter, the gap between this regulation and the demand of the plaintiffs remained only one hour. The plaintiffs, however, insisted that keeping the hour from 9:00 P.M. to 10:00 P.M. quiet was indispensable for family conversation and early sleeping. Moreover, since the government voluntarily instituted this regulation, based on a Cabinet agreement, it was not legally binding and the government could reverse it at any time.

The lower courts and the Supreme Court were also induced to respond to the demands of the plaintiffs.

The Osaka District Court ruled on February 27, 1974, that the landings and takeoffs of aircraft at the airport should not be allowed after 10:00 P.M. (Gresser et al., 1981, p. 165). The court recognized "the right to human dignity" (Jinkakuken) based on Article 13 and Article 25 of the Japanese Constitution as a legal justification for injunctive relief. Article 13 of the Japanese Constitution ensures the "right to life, liberty, and the pursuit of happiness." And article 25, clause 1 provides that "All people shall have the right to maintain the minimum standards of wholesome and cultured living." The court defined the right to human dignity as follows:

We believe that unreasonable invasions of an individual's life liberty, honor, and so on, or of the benefits of one's life as an individual should not be permitted. Such individual benefits are esteemed as legally protected in themselves. They can be called the right to human dignity, by analogy to the property right. (Gresser et al., 1981, p. 166.)

The court, however, rejected the theory of an "environmental right" (Kankyoken) asserted by the plaintiffs, which holds that "pollution and environmental destruction, which is injuring individuals' legally protected interests, could be curtailed before the outbreak of a specific harm by the exercise of an environmental right" (Gresser et al., 1981, p. 167). The court said that "to endow an environmental right with this function would be going beyond the zone of individual legal remedies, and it would be necessary to have a clear legislative provision as a basis [for judgment]" (Gresser et al., 1981, p. 167).

Then the court rejected the plaintiff's claim to enjoin the flights for the controversial one hour between 9:00 and 10:00 P.M., finding that the public interest in the airport's use outweighed the plaintiffs' individual interests. As a result, the court approved the existing *status quo ante*, i.e., a ban on night flights between 10:00 P.M. and 7:00 A.M.

The court also found that the airport's noise level exceeded the level set by Cabinet order and that the plaintiffs suffered mental anguish from the resulting disruption of their lives. The court awarded the plaintiffs a nominal sum for past damages. The court rejected the plaintiffs' demand for compensation for their future sufferings from aircraft noise because of a lack of certainty as to any basis for assessing such damages. Both parties appealed to the Osaka High Court against this ruling.

The High Court's decision of November 27, 1975, substantially expanded remedies for the plaintiffs by developing further the theory of the right to human dignity adopted by the district court (Gresser et al., 1981, p. 167). The High Court extended the injunction to 9:00 P.M., just as the plaintiffs sought. The High Court also increased the amount of

money awarded for past harm because it found a causal relation between aircraft noise and the plaintiffs' alleged physical injuries not considered by the district court, by accepting subjective evidence such as the plaintiffs' statements and answers to questionnaires about individual damage. It should be noted that the High Court also made an on-site examination in the plaintiffs' residential areas.

In addition, the High Court ordered the defendant to pay future damages of 11,000 yen per month per person until such time as the injunction was observed, and 6,600 yen per month until the government agreed to decrease the number of daily flights. On this point, the High Court held the following:

The plaintiffs seek compensation for damages which may result in the future. Their claims rest on the assumption that the wrongful act will continue to be committed and damage will result in the future. In this case, where the infringement of the plaintiffs' rights has continued over a long period of time, it can be presumed that the same situation will continue into the future unless the defendant proves that there is a probability that the wrongful act will cease or that the damage will be terminated in the near future. Therefore, it is possible to ascertain at present a factual basis on which an action for future damages would arise. Even if there is uncertainty about the degree or extent of damages arising in the future, the court can make a judgment on that portion of the damages which is accurately predictable. Furthermore, it would be unfair to punish the plaintiffs who have suffered continuously over a long period simply because one portion of potential damage cannot be ascertained at present. In the event of any new developments, the defendant can prove facts sufficient to show the mitigation of damages or the nonexistence of future injuries. Defendant could then ask the court to enjoin further execution of the judgment. (Gresser et al., 1981, p. 193.)

The award of future damages put a great pressure morally as well as economically on the government in implementing immediate and appropriate remedial measures. This High Court decision was considered epoch-making in the history of pollution cases in Japan.

The State, however, appealed to the Supreme Court against the High Court decision, and the Court handed down its decision on December 16, 1981, after more than six years of deliberation (*Hanrei Jiho*, 1982, no. 1025, p. 45). By a vote of nine to four, the Supreme Court reversed the Osaka High Court decision which upheld the residents' claim for the suspension of night flights between 9:00 P.M. and 7:00 A.M., ruling that such a demand for an injunction is inappropriate in a civil action because it interferes with administrative jurisdiction. The Court summarized:

The use of the airport is left to the discretion of the Transport Minister, who is in charge of navigational administration. The plaintiffs' demand for

the injunction against the night flights inevitably includes the claim seeking the Transport Minister to withdraw or change his decision in enforcing navigational administration. Such a demand is inappropriate as a civil action. (*Hanrei Jiho*, 1982, no. 1925, p. 47.)

In Japan, there is an Administrative Litigation Law in addition to the Civil Litigation Law, and a suit for revocation of administrative disposition or decision has to be filed according to the procedure prescribed in the Administrative Litigation Law. The majority of the Court implied that the plaintiffs' demand for the injunction may be possible in an administrative action. Justice Itoh, in his concurring opinion, noted that the plaintiffs' claim for the injunction is appropriate as an administrative suit, and two other justices agreed with him (*Hanrei Jiho*, 1982, no. 1025, pp. 55-56).

However, in an administrative suit involving the Niigata Airport, the Tokyo High Court decision of December 21, 1981, handed down just five days after this Supreme Court decision dismissed the residents' demand for the revocation of the Transport Minister's decision because the court argued that the plaintiffs did not have standing to sue.<sup>1</sup>

It is therefore not easy for the residents to file an administrative suit for injunctive relief, and in effect there is no way that the residents may seek judicial relief. Therefore, such decisions undermine residents' expectations for judicial remedies, while the political branches, i.e., the Cabinet and the Diet, have failed to implement effective remedies; and consequently, they endanger the peoples' constitutional right of access to the courts provided in Article 32 of the Constitution.

On the other hand, it is notable that four justices wrote separate dissenting opinions on this point. For example, Justice Nakamura said that even if the injunction might in effect force the Transport Minister to change his decision in carrying out navigational policies, such a result should be regarded as only an incidental consequence of the court's decision, and therefore it would not conflict with the separation of powers doctrine, and civil actions for injunctive relief are not inappropriate (*Hanrei Jiho*, 1982, no. 1025, pp. 64-65). Considering the inattention of the political branches in giving remedies to the victims, I would support Justice Nakamura's opinion.

It is said that this Supreme Court decision reflects the State's anxiety that the construction of necessary public facilities may be hampered by suits if the courts have general power to give injunctive relief (Kato, 1982, p. 9). In fact, there is considerable litigation seeking injunctions

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<sup>1</sup> Article 9 of the Administrative Litigation Law confines standing to file a suit for revocation of administrative dispositions or decisions to persons who have an interest recognized by statute. See Gresser et al., 1981, pp. 133-134.

against the operation or construction of disfavored public facilities like waste treatment facilities, nuclear power plants, and Bullet Train rights-of-way.

It is also said that this judgment may have been influenced by American court decisions (Fujita, 1982). There seem to be no cases in which American courts have granted an injunction against flights at a public airport. In some cases, the courts have given precedence to the interests of navigational transportation over the interests of residents and adjacent local governments, and dismissed demands for injunctive relief. In other cases, the courts have struck down noise regulation by the state or the city because under the Supremacy Clause of the U.S. Constitution (Article 7, Clause 2) and under the Federal Aviation Act of 1958, regulation of navigational transportation is preempted by the federal government.

Despite American cases to the contrary, it still may be appropriate for the Japanese Supreme Court to consider demands for injunctive relief. The degree of noise damage to the public seems to be different between the Japanese cases and the American ones. For example, when I landed at the Dallas-Fort Worth Airport to change planes, I was surprised to find that I was surrounded by open space as far as I could see. In such a setting, only cows may be annoyed by aircraft noise.

Generally, airports in the United States are in open areas. On the contrary, in Japan it is difficult to find a spacious site which is not adjacent to residential areas, because of the limited amount of land available in high-density areas. I think, therefore, that the degree of noise pollution suffered by residents near the Osaka International Airport is not easily imaginable to Americans.

In Japan, all the major airports are operated by the State or some quasi-governmental organization so that the Transport Minister may implement national navigational policies effectively. The Supreme Court took this situation into account and dismissed the claim for an injunction. Therefore, the Court's logic for denying injunctive relief in this case can be applicable to national airports only. However, this is not persuasive, because it is strange that the permissibility of injunctive relief should depend on whether or not the airport is operated by the State without regard to the degree of damage.

The Supreme Court also rejected the plaintiffs' demand for advance payment of compensation for their suffering from future airport noise because of the unpredictability of future damage and approved damages only for their past suffering. However, in awarding damages only for past suffering, the Court upheld the Osaka High Court decision in this regard and held that each plaintiff need not establish his or her specific damage

individually, because the plaintiffs as a whole had proved common sufferings and claimed compensation for only this common damage sustained by all of them. On this point, the Court made meaningful progress in finding for injuries in pollution cases.

### **Other Recent Environmental Pollution Cases**

The Osaka International Airport case is typical of other recent noise pollution litigation. A number of similar suits are pending in the courts. For example, encouraged by the Osaka High Court decision in the Osaka International Airport case, residents neighboring on the Fukuoka Airport filed suit against the State in March 1976, seeking an injunction against night flights between 9:00 P.M. and 7:00 A.M., a payment of 2,300,000 yen as past damages for each victim, and a monthly payment of 23,000 yen as future damages until such time as all flights over 65 phons were prohibited. After six years, this case is still pending in the Fukuoka District Court (*Jurist*, 1982, no. 761, p. 136).

In April 1976, the residents near the Yokota Base used by the U.S. Air Force also filed a suit against the State. The Hachioji Branch of Tokyo District Court decided the case in July 1981. The plaintiffs demanded an injunction against night flights between 9:00 P.M. and 7:00 A.M. and damages for future as well as past suffering.

The court dismissed the demand for an injunction for the reason that whether or not the State should limit the operation of military facilities provided for the U.S. Air Force is a highly political question, and so it is inappropriate for the courts to decide the merits of such a problem. The court also rejected the demand for future damages and awarded only damages for past suffering (*Hanrei Jiho*, 1981, no. 1008, p. 19).

And on October 20, 1982, the Yokohama District Court decided a case concerning the Atsugi Base used by the U.S. Air Force as well as the Japanese Self-Defense Force (*Hanrei Jiho*, 1982, no. 1056, p. 26). The court granted damages for past suffering, noting that the victims had suffered intolerable injuries. However, the court rejected the demand for an injunction against night flights and the demand for future damages. The court held that the demand for an injunction is not appropriate in a civil action because it means asking for the revocation or change of administrative decisions, in this case concerning national defense, and because the U.S. Air Force is using the base under the Japan-U.S. Security Treaty and the State has no power to regulate the U.S. Air Force. The court equated the administrative prerogatives of the Transport Minister and the Director of the Self-Defense Agency, and thus we can see the obvious impact of the Supreme Court decision in the Osaka International Airport case on this court's judgment.

It is said that there are some differences between civil airports and military bases. (1) Aircraft for military use are not equipped with noise-reduction devices and therefore may cause greater noise than civil aircraft. (2) It is more likely that military aircraft will have accidents, because they are designed mainly for attack rather than for safe transportation. In fact, some military aircraft have crashed near their bases and have killed residents as well as destroying houses. (3) The scheduled operation of military aircraft is quite irregular. Considering these factors, environmental damage caused by military bases may be more serious than that caused by civil airports (*Jurist*, 1982, no. 761, p. 142). A similar suit is pending concerning the largest American Air Force base in the Far East: Kadena Base in Okinawa (*Jurist*, 1982, no. 761, p. 133).

There is some litigation over noise and vibration pollution caused by the "Shinkansen," the so-called Bullet Train. In the Nagoya Bullet Train case, the court rejected the demand for injunctive relief by balancing the plaintiffs' interest against the general social interest (*Hanrei Jiho*, 1980, p. 40). This case is pending in the Nagoya High Court. A suit demanding an injunction against the construction of the Tohoku Bullet Train right-of-way in the Kita Ward of Tokyo City is also pending (*Jurist*, 1982, no. 761, p. 148).

### The State's Liability for Inaction

In the Osaka International Airport case, the residents sued the State as the operator of the airport, but they did not sue each airline company that uses the airport and causes noise pollution. This is one of the major characteristics of pollution cases in Japan. The victims of pollution, in addition to suing the direct polluter, try to sue the State as indirectly causing pollution by improper lack of prevention even if the State is not directly involved (*Zenkoku*, 1982).

A series of so-called SMON (subacute myelo-optico-neuropathy) disease cases resulting from the harmful side effects of licensed drugs are further examples.<sup>2</sup> In these cases, the courts held that the State bears responsibility for insufficient examination when licensed medicine proves

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<sup>2</sup> Kanazawa District Court Judgment, March 1, 1978, *Hanrei Jiho*, 1978, no. 879, p. 26; Tokyo District Court Judgment, August 3, 1978, *Hanrei Jiho*, 1978, no. 899, p. 48; Fukuoka District Court Judgment, November 14, 1978, *Hanrei Jiho*, 1979, no. 910, p. 33; Hiroshima District Court Judgment, February 22, 1979, *Hanrei Jiho*, 1979, no. 920, p. 19; Sapporo District Court Judgment, May 10, 1979, *Hanrei Jiho*, 1980, no. 950, p. 53; Kyoto District Court Judgment, July 2, 1979, *Hanrei Jiho*, 1980, no. 950, p. 87; Shizuoka District Court Judgment, July 19, 1979, *Hanrei Jiho*, 1980, no. 950, p. 199; Osaka District Court Judgment, July 31, 1979, *Hanrei Jiho*, 1980, no. 950, p. 241; Maebashi District Court Judgment, August 21, 1979, *Hanrei Jiho*, 1980, no. 950, p. 305.

to have harmful qualities. It must also accept responsibility for not withdrawing the license when a drug's harmfulness becomes known. The court held that the State's failure to enforce appropriate preventive measures was illegal on the ground that Article 25 of the Constitution imposes on the State an affirmative duty to promote public health. Article 25, Clause 2 provides that "In all spheres of life, the State shall use its endeavors for the promotion and extension of social welfare and security, and of public health."

Of course, the State has some discretion in carrying out policy. It is therefore exceptional that the State's inaction can be held illegal. The Tokyo District Court's decision of August 3, 1978, in the SMON disease cases put forth the following five guidelines for determining under what circumstances inaction by the State should be considered illegal (*Hanrei Jiho*, 1978, no. 899, p. 339):

1. When there is danger that would cause disruption of people's lives, bodies, and health.
2. When the resulting disruption can be prevented easily if the government employs its regulatory powers.
3. When disturbance or injury would be unavoidable unless the government employs its regulatory powers.
4. When the government knows or can easily presume a coming danger.
5. When it is socially acceptable that the victims ask and expect the government to employ its regulatory powers.

In the Kanemi Rice Oil PCB Poisoning Case, discussed by Michael Reich in a later chapter, the Fukuoka District Court also noted similar guidelines, but it denied the State's liability because there was no prediction of resulting damage (*Hanrei Jiho*, 1978, no. 881, p. 17).

At any rate, the recent litigation against the State in pollution cases seems to have stimulated the State to implement preventive remedial measures more promptly. Encouraged by a series of district court decisions, SMON cases have ended through conciliatory negotiation without appeals to higher courts. The Diet amended the Pharmacy Law and in 1979 enacted the Law for a Remedial Fund to Compensate for Injuries Induced by Aftereffects of Medicine.

There remains the difficult question of determining what the relationship is between the State's responsibility and that of pharmaceutical companies. In the SMON cases, the Tokyo District Court held that the State and the involved pharmaceutical companies had to pay compensation in a ratio of 1 to 3. Many scholars, however, argue that there is no reasonable justification for allocating the defendants' responsibility in such a fixed ratio.

In their relation to victims, the companies and the State should both acknowledge complete liability. In determining the payment of damages for injury, the manufacturers should bear the primary obligation to pay all the damages; and if they cannot do so, the State should pay as a guarantor (Harada, 1978). Imposing responsibility on the State should not lead to the manufacturers' exoneration.

In this sense, the Law Establishing a Fund for the Injuries Induced by Aftereffects of Medicine has some further implications. Under this law, the fund for the victims is created out of mandatory contributions from all licensed pharmaceutical companies. A similar system was established for the airport noise pollution cases. In September 1975, the Ministry of Transportation began to levy a special landing fee on each jet plane according to its weight and noise level, in order to apply the funds mainly to the Neighborhood Development Plan for the Osaka International Airport, creating a green-belt buffer zone, soundproofing houses, and relocating resident housing. Then Pan Am and twenty-seven other foreign airline companies filed a suit against the Japanese Government, seeking a declaratory judgment that they have no obligation to pay such a fee, on the ground that it is not reasonable to levy the fee on all when only eight of the airlines use the Osaka International Airport.

However, in May 1979, the Tokyo District Court held the collection of this fee reasonable, deferring to the Transport Minister's discretion in levying a fee necessary for the maintenance of the airports (*Hanrei Jiho*, 1979, no. 935, p. 7). This decision was upheld by the Tokyo High Court on October 28, 1982.

Thus, these legal decisions require offending companies to bear the primary financial responsibility. This is important from the perspective of social cost allocation, because otherwise the taxes levied on the people would have to be appropriated for the State's payment of damages.

In March 1982, in the Second Kanemi Rice Oil PCB Poisoning Case, the court denied the State's responsibility for inaction in employing its regulatory powers under the Food Sanitation Law, ruling that it had been impossible to predict that rice oil might become polluted with PCB (*Hanrei Jiho*, 1982, no. 1037, p. 15).

On September 30, 1982, however, in the Daito Manganese Poisoning Case, the Osaka District Court imposed liability on the State for its failure to regulate or supervise by applying guidelines in accordance with the expectations of the Labor Standard Law and the Labor Safety and Public Health Law (*Hanrei Jiho*, 1983, no. 1202, p. 3).

The case filed in May 1980 by the victims of the Kumamoto Minamata Disease is still pending (Zenkoku, 1982, pp. 157-184). In this case, a suit was filed both against the State and the Prefecture, citing their

failure to act by duly employing regulatory powers under the Food Sanitation Law, the Water Pollution Prevention Law, and the Fishery Law, in order to prevent the conditions causing the Minamata Disease.

Thus, litigation against the State for its failure to act protectively has become a frequent and continuing occurrence.

## **Conclusion**

Generally speaking, Japanese courts respect administrative discretion in enforcing laws and policies. Because of a tradition of administrative supremacy, there is in Japan a peculiar application of the separation-of-powers doctrine. In the United States, such a doctrine is interpreted as a system of checks and balances. American courts can be far more active in policymaking, employing their equitable remedial powers.

In Japan, however, the interpretation of the separation-of-powers doctrine tends to emphasize the notion that one branch should not intervene in the affairs or territory already staked out by another branch. This notion derives from a theoretical contradiction evident in the constitutional system itself. That is, on the one hand, Japan has a parliamentary cabinet system, which implies the sovereignty of parliament as in the English constitutional system. On the other hand, Japan adopted a judicial review system of the American type, which implies a judicial supremacy over the legislative and executive branches in securing or protecting human rights. However, a sense of non-interference seems to make judges hesitant to hold laws enacted by the Diet unconstitutional. The fact that there are only three cases in which the Supreme Court held established statutes to be unconstitutional explicitly manifests this judicial hesitation.

According to the presently prevailing judicial theory, a "duty-imposing suit" (*gimuzuke soshō*) which demands that a governmental official take a specific action is not allowed without an explicit statutory foundation, because such litigation might "invade" the territory of administrative discretion.

In addition, as a practical matter, the homogeneity obtaining in the political branches makes the position of the judiciary in the national governmental system less prestigious and certainly less powerful. It is the appointment of judges directly by the Cabinet, as discussed in the first chapter, that brings about a conservative cautiousness among judges.

Such influences make Japanese courts less active in policymaking than is evident in American courts.

However, victims of industrial or chemical pollution, as a growing social minority group who cannot realize their rights directly through political pressures, have tried as a last resort to make use of civil litigation

against the State as well as against private companies, not only for monetary reparation for past suffering, but also as a preventive means ensuring against further pollution and as a means of gaining compensation for future damage.

In some instances, the lower courts have responded to such litigation in favor of the victims, considering occasional malfunctioning of the political process when it fails to establish prompt and appropriate remedial measures. It can be noted that it is in the pollution cases that one notes especially how the courts are beginning to play a more important role in the national policymaking system, and how they are beginning, in a hesitant and sometimes contradictory fashion, to redefine the relationship between the three branches of government.

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### III

## Protest and Change in Contemporary Japan: An Overview

James W. White

#### **Introduction: Social and Political Protest in Japanese Society**

Protest is one of the most enduring aspects of the Japanese social and political landscape. Aoki Koji, in his monumental compilation of protest during the Tokugawa and early Meiji periods (1975), recorded over 7,500 incidents of protest and inter- and intravillage conflict; and this tradition has continued right up to the present day in the opposition to environmental degradation (McKean, 1981), the decade-long opposition to the new Tokyo International Airport, and the massive protest surrounding the university upheavals and extension of the U.S.-Japan Security Treaty in the late 1960s: 18.7 million participants, 26,373 arrests, 6.65 million policemen mobilized, and 14,684 police officers injured.<sup>1</sup>

But the frequency of protest tells us little about the impact such behavior has upon social and political institutions, and there are indications that in Japan this impact may be small. Peasant protest seldom affected the feudal regime and, indeed, like protest in most premodern societies, was usually more an endorsement of than an objection to that system (Vlastos, forthcoming; Bendix, 1977). One study has suggested that there was in fact an inverse relationship between peasant protest in the feudal domains and involvement of the domains in the anti-Tokugawa movement of the 1860s (Sugimoto, 1975, 1978). Despite frequent

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<sup>1</sup> These data cover the period October 1967–June 1970. They do not mean that 18.7 million different people or 6.65 million different police officers were involved; they are aggregate measures of man-days, but they still convey the magnitude of protest activity clearly. White, 1981; *Japan Times*, September 6, 1971.

protest, pre-war workers and tenant farmers had little institutional impact (Smethurst, 1980; Waswo, 1977); and today, after more than two generations of protest against their low station, women and burakumin still are the targets of discrimination.

To some observers this is unsurprising, since protest in Japan is viewed as basically expressionistic, ritualistic, and nonchallenging of the institutional status quo (Koschmann, 1978). Such protest surely exists (Steinhoff, 1976; Krauss, 1974), and I would further suggest that most of it is usually conservative, if not positively reactionary (Morris, 1975). But this sort of protest is most characteristic of Japanese elites (defined politically, socially, or economically); and if we ignore the grandiose and utopian paradigms of protest constructed by the parties of the left and by Japanese intellectuals in general (Takabatake in Koschmann, 1978), and focus instead on plebeian actors and immediate, concrete goals, then we find a lively tradition of instrumental, challenging protest which has had, and continues to have, a significant impact on the physical, social, and political context of the actors themselves. It may not be revolutionary or even class-based, but to dismiss it as trivial or not authentic would be wrong (Piven and Cloward, 1979, pp. xi ff., 5, 20).

### **Types and Functions of Protest**

Supported by a rich historical legacy, protest in Japan today takes a wide variety of forms.<sup>2</sup> Farmers, students, workers, peace marchers, residents of threatened neighborhoods, housewives, burakumin, environmentalists, Koreans, leftist politicians, nihilist radicals—all have at one time or another taken to the streets, the media, the barricades, or the petition clipboards to make demands upon the political establishment for changes in policy or personnel. The scope of such protest runs from a delegation of two or three from the local PTA demanding a stoplight at a dangerous corner from a city employee to massive anti-Security Treaty

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<sup>2</sup> "Protest," as used here, refers to collective political participation which opposes the procedural or substantive status quo. It *challenges* the cultural, institutional, behavioral, policy, or personnel status quo to redress wrongs; it *defies* regular participatory norms and channels; and it is *unconventional* (although not necessarily either illegal or illegitimate in the eyes of the public). This definition excludes such activities as interest-group lobbying, litigation (although some protest movements, such as the burakumin and the Kanemi yusho movements, may employ litigation as one part of their strategy), wage-oriented labor movement activities (although political strikes and demonstrations by unions occasionally qualify), and in their later and more institutionalized and litigious stages, citizens' movements as well. For discussions of this definition see Piven and Cloward, 1979, pp. 3 ff.; McKean, 1981, pp. 169 ff.; Marsh, 1977, pp. 13 ff.; Barnes and Kaase, 1979, p. 27, 544; Gusfield, 1970, pp. 8, 86; Skolnick, 1969, pp. 3 ff.

demonstrations, millenarian calls for revolution, and unique combinations of actors such as the student-farmer alliance against the Tokyo Airport.

Some of this protest is disruptive, violent, and a threat to the stability of Japan's political system. Such protest, however, tends to be illegitimate in the eyes of the people, and this illegitimacy can be translated by the government into license to repress the protest. Given the efficiency of the Japanese police, such threatening protest has therefore seldom become large in scale, significant in effect, or long-lived (Steinhoff, 1978), and it will not be our concern here. What we shall be concerned with is the much vaster volume of moderate, pro-system protest whose participants do not question the basic institutional outlines of Japanese society and polity, but are dissatisfied with their position and seek to make their views known to those in power. To repeat myself: such protest is not trivial. It can be of life-and-death consequence to those involved; and in the case of women and burakumin, it is aimed at significant transformation of Japan's political culture. But it is *not* a threat to the political structure—indeed, it is (like America's civil rights movement) a demand for protection under the stipulations of that structure, and thus can hardly be described as anti-system.

Moreover, I would assert, this type of protest is essential to the health of Japanese political and social institutions (Nieburg, 1962). Not only this; such protest is not simply a necessary evil, but is rather a positive aspect of Japanese politics: it is not irrational, it is not anti-system, and it is certainly not simply abstract and expressive (although to the extent that it is, its effect is blunted), but highly constructive.

### **The Necessity of Protest**

In his introduction to Japan, *The Japanese* (1977, pp. 328 ff.), Edwin Reischauer states that the "greatest potential weakness" in Japanese democracy lies in the people, among whom the roots of democracy are relatively weak, whose penchant for collectivism might lead to the submersion of the individual in mobilized groups, and whose "longing for harmony" and "abhorrence" of open conflict make politics as Americans think of it difficult. I would assert, rather, (1) that the people—especially insofar as they participate directly—are the key to the *success* of democracy in Japan because many of the institutions one expects to guarantee responsive and responsible government are weak, (2) that organization is more likely to provide the only possible vehicle for effective political participation (especially protest participation), and (3) that the Japanese, although preferring harmony, have never been so fixated on it as their intellectual mythmakers would have us believe. They are learning, like people in all modern democratic societies, to live with

considerable open conflict (Smith, 1978).

Direct participation by the people in Japan, as a way of keeping political institutions accountable, is necessary because those institutions, or at least the ethos which they have inherited, contain elements of repressiveness, governmental autonomy from popular will, co-optativeness, and minimization of popular inputs.<sup>3</sup> Even before the war, such policies as aid to burakumin were designed to forestall protest (DeVos and Wagatsuma, 1966, pp. 41-42), as has been the refusal of the Japanese government to enact a comprehensive requirement for environmental impact statements for public and private projects (Watanuki, 1982; see below). And the thrust of the government's educational programs to combat discrimination against burakumin by "enlightenment" rather than confrontation or even explicit recognition suggests anew the nonresponsiveness of those institutions which one might expect to sponsor change (Brameld, 1968, p. 101).

Certain cultural factors contribute to the basing of public decisions in popular will, but they are offset by other factors, such as the deference of inferiors, the organic nature of social groups, the collectivization of responsibility, political fatalism (*nariyuki no seiji*), and carte blanche leadership (*hakushi inin-kei shido*: Ishida, 1970). Moreover, the structural restraints on political leaders are weaker in Japan than elsewhere: the courts are tentative and do not do much to bolster the restraining power of the Constitution; the laws regarding corruption in general and electoral campaigning in particular are unrealistic (Curtis, 1971); regulative agencies are frequently either intimidated by or actively solicitous of the interests they are supposed to restrain; and the parties of the opposition, whose function elsewhere is to keep the incumbent government's toes to the fire, are disunified, unrealistic, fearful of actually taking power, and seldom really concerned with bread-and-butter domestic issues. The most recent, but by no means the only, example of this last is Socialist Party leader Asukata's 1982 trip to Europe, where he asked France's President Mitterand to scrap France's nuclear arms and "embark on unilateral disarmament" (*Japan Times Weekly*, May 8, 1982). The interests of seriously anti-nuclear Japanese are ill-served by a party with so tenuous a grip on reality, although present Chairman Ishibashi is making attempts to remedy the problem. The opposition is in disarray nationally and on the defensive, if not in retreat, in local governments. Here, the people must take matters into their own hands occasionally if their interests are to be served.

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<sup>3</sup> This and the following paragraph draw heavily upon White, 1982.

Other forms of political participation, while effective in their way, do not eliminate the need for protest behavior. The votes of the organized working class are tied to the ineffectual Japan Socialist Party, while the middle class has no organization or party of its own at all. Votes for the Liberal Democratic Party are often nothing more than signs of the impotence of the opposition, but a vote for the LDP can be interpreted by the LDP itself as a mandate to continue its prior policies. Neighborhood associations perform many demand-making functions, but they still carry, in many locales, the stigma of local bossism and pre-war authoritarianism (White, 1983). Interest groups are many, but they are effective only if tied to the LDP, and only vis-à-vis the interests of their members. If one is not a member of such a group, he (or she) has few ways in which to seek the accountability of leaders or the responsiveness of institutions.

Until recently, the great majority of protest action in Japan was directed toward bread-and-butter material issues, from the heavy taxation of Tokugawa peasants to livable environments for contemporary citizens. But now that not only the broad mass of the citizenry but even its more discriminated-against elements enjoy constitutional rights and a measure of economic, educational, and organizational resources, status protest and other forms of nonmaterialistic protest have come, to a significant degree, to supplement protest over more tangible ends (Inglehart, 1977). This is so because although Japanese women, Koreans, and even burakumin are better off economically today than ever before, the dominant elements in society will prefer to ignore their deprived status and thus to deny them the full equality the law promises. Indeed, it is precisely the combination of economic improvements and the post-war egalitarian promise that has made the unimproved status of Koreans, burakumin, women, and the young so grating (Tsurutani, 1977, pp. 51 ff.). And with government institutions little more enthusiastic about changing the norms of political culture than is society at large, it is small wonder that protest has ensued (Pharr, 1982).

### **The Positivity of Protest**

There is, then, reason to believe that protest in general might be essential to the long-term health of Japanese democratic institutions, and that certain specific groups in society will not enjoy all the rights guaranteed them under the Constitution unless they protest to get them. There is also a growing body of evidence that protesters in a wide variety of societies are rational resource-mobilizers and goal-pursuers, whose goals are in fact quite modest and reasonable,<sup>4</sup> and neither millenarian nor

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<sup>4</sup> At least in terms of the formal political framework: what could be more reasonable than suggesting that the provisions of the Constitution apply to all citizens?

expressive (Barnes and Kaase, 1979; Tilly, 1978; Tarrow, 1981; White, 1981; Moore, 1978; Oberschall, 1973).

In the case of Japan, Margaret McKean (1981) has sketched out in detail the way environmental citizens' movements select tactics tailored to their goals and contexts, and mobilize resources accordingly (see also Reich in this volume). Students, and even radicals, appear to follow a predictable path of tactical escalation in both their instrumental and expressive protest, which suggests a highly structured rationality at work in tandem with institutional responses to their tactics (Steinhoff, 1981). The radicals' ends are, of course, unrealistic in their setting (as they themselves recognize), but most protesters' ends are not—despite the frequent assumption (among Japanese social and political commentators) of great popular alienation (Koschmann, 1978). In fact, the most massive protests are those based on organized labor, whose overall pattern of behavior since the war attests to this stake in the present system (Richardson and Ueda, 1981, p. 171). Even the massive demonstrations of 1960 involved as many people angered by the government's failure to conform to the rules of democratic procedure as it did people who primarily wanted to bring down an institution, i.e., the Security Treaty (Packard, 1966; Krauss, 1974, p. 169; Kubota, 1972). At the other end of the size continuum, Susan Pharr has recorded instances of protest among young members of the LDP, whose action was simply to withdraw from the party and set up a new party, the New Liberal Club, in which they would not be subject to gerontocratic discrimination, and among a small group of female employees of the Kyoto municipal government, who simply balked at being required to serve tea to their male colleagues (Pharr, 1982).

If the modesty and democratic justifiability of such aims and behavior suggest that protest is really part of the political and social mainstream, so do the tactics of other protesters: most citizens' movements, in fact, are based in, and led by individuals long active in, preexisting local organizations, including neighborhood organizations (Krauss and Simcock in Steiner et al., 1980; McKean, 1981); and even the leaders of the Buraku Liberation League (BLL) have on occasion opposed anti-discrimination laws with real teeth in them, preferring the education of people in general regarding the evils of discrimination and the upgrading of burakumin educational and economic status, so that individual social mobility is possible (Brameld, 1968, p. 224).

Thus, most protest in Japan is neither millenarian nor expressive, although neither type of protest is unknown there. According to a study by Ellis Krauss (1974), expressive protest has had little place in Japanese political history. According to a collection of Japanese essays edited by

Victor Koschmann (1978), almost all protest is expressive or, if it isn't so, it isn't really protest. Both contentions appear to me to be wrong: Japan has rather two largely separate traditions of protest, and both are thriving today. The first, or "elitist," tradition is best documented in Ivan Morris's *The Nobility of Failure* (1975), although the idealistic and romantic strain in Japanese culture presented by Tetsuo Najita (1974) is part of the same phenomenon. Such protest can appear on either the right or left of the political spectrum, counting among its practitioners such diverse characters as Oshio Heihachiro and Saigo Takamori, Young Officers and pre-war Communists, and Mishima Yukio and Okamoto Kozo.<sup>5</sup> Such actors often begin with the clear realization that their goals are unattainable. Their objective thus becomes not tangible impact on institutions or policies, but self-sacrificing, heroic protest in a romantic cause, a demonstration of sincerity of purpose and purity of motive through action divorced from consequence—but action which, for the very reason of divorce, seems reduced to ritual.

But such protest, although the more deadly and system threatening (Powell, 1982b), is not the totality of protest behavior in Japan. Most individuals do not have the economic leeway to enable them to focus on such "higher-order" values as self-actualization to the exclusion of concrete values concerning physical and economic well-being (Maslow, 1954). Today's general affluence in Japan makes higher-order value protest—for example, status protest—possible for more people, but they rarely follow an expressive path. It could be argued that the Young Officers led the way toward the demise of democratic institutions in pre-war Japan, but it would be exceedingly difficult to sort out the impact they had from the effects of a variety of social, economic, and political forces conducing in the same direction. In the post-war period, the only visible institutional effect of radical, expressive protest is the prodigious growth of the public security apparatus—an institutional change, to be sure, but not the sort with which this volume is concerned.

Where institutional change has occurred as the result of protest, it has followed upon the sorts of moderate, concrete protest discussed above, heir to a "populist" tradition going back centuries in Japan and perhaps universal in human society. Its goals are substantive and immediate, not ritualistic and apocalyptic; its means are instrumental and moderate, not expressive and violent; and its impact, even before the advent of democratic guarantees, has been substantial. In the premodern

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<sup>5</sup> Okamoto was one of three Red Army members involved in the attack on the airport at Lod, Israel, in 1972 (Steinhoff, 1976). See also Richardson and Ueda, 1981, pp. 179 ff.; Koschmann, 1978; Najita in Craig and Shively, 1970; Tsurutani, 1977.

era, it served to mitigate the severity of feudal rule, to hold the rulers to the observance of a kind of social contract or covenant which was the product not simply of elite imposition but of an ongoing process of “negotiation” between rulers who tried to extract the maximum from the people but were held back by the precepts of benevolent government and subjects who were bound by their peasant status to relinquish most of the surplus but who could demand observance of their right to continue to exist as peasants (Vlastos, forthcoming; Yokoyama, 1977; Moore, 1978; Irokawa in Koschmann, 1978). Such protest did not seek overthrow of the status quo but simply observance of its rules by all. Such limitations did not make it any less a serious matter, as those peasants who risked their heads in protest well knew (Yokoyama, 1977; Fukaya, 1978).

Since World War II, environmental, female, civil-rights, and other protesters have kept this tradition lively. The concreteness and realizability of their goals have contributed to their success, as measured by the impact they have had on social and political changes and institutions. In some instances, the two traditions have merged: Oshio’s rebellion may have been such an instance, as may have been some aspects of the Popular Rights Movement of the Meiji period and the agrarianism (*nohonshugi*) of the Taisho and early Showa periods; the 1960 Treaty riots and the Tokyo Airport movement are surely so.<sup>6</sup> But, as I shall suggest, the impact of such instances of protest on political and social institutions derived more from their “populist” than from their “elitist” components.

### **The Impact of Protest**

There are several dimensions to the impact of political protest on the society and polity in which it occurs. In the first instance, one must differentiate between the consequences of protest for the system in which it occurs and the consequences for the protesting groups and individuals themselves (Gurr, 1980, pp. 252 ff.). Since I am concerned here with social change (and since people do not protest in favor of the status quo very often) I shall consider only protest with systemic consequences, such as changes in institutions, in political processes, and in public policies. Apropos of individual and group implications, I shall consider the impact of protest on group solidarity, continuity, and internal resources.

Secondly, I shall distinguish between protest that is successful (or unsuccessful) in winning acceptance of the protester(s) as a legitimate

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<sup>6</sup> Of course, most protest movements no doubt include participants with a mix of motives, but I would suggest that in most there is a homogeneity at least of expressed goals which permits characterization of the movement as populist or elitist.

political actor and protest that succeeds (or fails) in winning material or nonmaterial benefits or advantage from the system (Tarrow, 1981a). The major areas in which social and political change have occurred in contemporary Japan as the result of protest are government (national and local), the political parties, corporations, the protesters themselves, and Japanese political culture. I do not assert that protest is the only, or necessarily even the major, cause of the changes described. Each change has multiple causes. What I am doing here is focusing on only a *single* cause—protest—among the many that could be analyzed, because it is at least a small contributory part of each of the changes discussed below. One must not underemphasize protest as a general factor in Japanese politics. Indeed, John Dower (1979, 1982) has intimated that a full “reverse course” from the reforms of the U.S. Occupation, including rearmament, was prevented primarily by actual and potential popular protest. Such an observation depends heavily on evaluation of “nonevents”—actions not taken because of anticipated protest—and I wish here to be more modest and to suggest only *some* types of social and political change upon which protest had *some* effect.

### **National Government**

Protest has produced some institutional changes in Japan’s national government, but its more striking impact has been on the policy process and on the content of policies themselves. The creation of the Environmental Protection Agency is certainly the major institutional change, but one must count also the proliferation of citizens’ consultative bodies attached to central ministries. In acknowledging such institutional response, however, one must note three things. First, it is highly unlikely that such changes are the consequence of the more extreme forms of protest. The sensitivity, for example, of the Construction Ministry to public outcry in the aftermath of the decade-long protest surrounding the new Tokyo International Airport appears to be much more a response to public sympathy for the grievances of the farmers involved than to the participation of radical leftist groups, whom the Japanese government is usually successful in isolating and substantively ignoring (Steinhoff, 1978). Second, institutional change can substitute for meaningful response: when consumers of contaminated cooking oil produced by the Kanemi Company were poisoned, the government created a research group whose empirical linking of the company and the victims defined the problem out of its own hands and into a private matter of corporate compensation, and which acted as a “buffer” between the victims and the government itself (Reich, 1982, pp. 7, 37; see also Reich, “Troubles, Issues, and Politics in Japan,” this volume). And third, the government has on occasion resisted

institutional change if the change contemplated appears likely to stimulate further protest: comprehensive environmental impact statement requirements have facilitated protest by environmentalists in Western Europe, and a similar prospect in Japan is one reason behind the reluctance of the government to establish similar institutions in Japan (Watanuki, 1982).

The effects of protest on the national political process can be summarized by the term "sensitization." Post-war Japan has operated under ideally democratic institutions, but it has taken some time for the people to push actual practices into these channels and for the government to realize that for certain forms of high-handed activity a high price must be paid. The most wide-ranging change in process, according to Hans Baerwald (1974, pp. 111 ff.), is the parliamentary caution resulting from the 1960 Security Treaty riots. All parliamentary activity, he asserts, has since 1960 been "indelibly" marked by the riots and has been calculated to prevent the reoccurrence of such a disruption: the Diet buildings have become a "fortress," the riot police are in a state of permanent readiness, and potentially disruptive issues are handled with much less permissiveness within the Diet than before. Outside parliament, the government also learned in 1960 that the scope of its actions is not limited, that the Prime Minister is not above the spirit of the law, and that there are some decisions that cannot be made without mass opposition (Kubota in Fuse, 1975).

The courts, too, have changed their attitudes as the result of protests, but in this case the trend has been toward more forthright rather than more cautious action. As early as 1933, a protest movement won the overturning of the conviction of a burakumin (DeVos and Wagatsuma, 1966, p. 58), and since the war citizens demanding the "right to sunshine" and recompense for pollution-caused injury (McKean, 1981) have pushed the courts into a limelight they would otherwise probably have shunned. It is possible that the courts have taken advantage of this popular support to go in a direction they wanted to go anyway (although the Taniguchi and Nishimura chapters in this volume suggest otherwise), but in either case the protest has been a key element in the change.

More widespread than institutional change and more tangible than change in the style of political process have been policy changes occasioned by protest. The most striking policy areas affected have been those of environmental law and treatment of social minorities. Environmental protest has resulted in a radical restructuring of Japanese tort law. Popular protest (abetted, certainly, by litigation) has also brought Japan's nuclear power generation program to an early halt, and has apparently terminated the nuclear-powered ship project as well.

Industrial projects in general have become difficult to locate, the large-scale *kombinat* type of petrochemical complex is apparently going the way of the dinosaur because of its unacceptability to local residents; and public projects of any type—railroad stations and new lines, garbage incinerators and dump sites, highways, airports, and so forth—have become more difficult, more expensive, and slower to build as local residents and local governments must be persuaded, cajoled, and ultimately bought off. One might debate what happens to the public interest when small areas and groups can prevent the construction of facilities of putative necessity to the entire community, but the impact of protest on policy in this area is unarguable.

Specific acts of legislation have also been the result of protest: Japan has adopted the world's most comprehensive system for compensating victims of pollution, complete with self-financing through exactions from polluting firms (McKean, 1981, p. 71), a development which is well-nigh unimaginable without the wave of protest (and protest-backed court decisions) of the 1960s and 1970s. And the 1958 Water Quality Preservation Law was directly stimulated by protest meetings and demonstrations by fishermen around Tokyo Bay (Watanuki, 1982, p. 2).

Considering the predominant cultural attitudes toward such minority groups as Koreans and burakumin, it is also highly unlikely that the wide variety of laws designated to improve minorities' status would have been enacted without protest. Pre-war protest by outcaste groups had some ameliorative effect on their position, but it was not until Japan had a constitutional framework which guaranteed equality to all and also guaranteed freedom of political expression that minorities were able—within this framework—to move into large-scale confrontation of the cultural status quo.

The triple strategy of the Buraku Liberation League and other organizations—lobbying, litigation, and open confrontation against discriminating individuals—has been massively successful in winning material advantages: sewage, housing, public baths, meeting halls, new schools, scholarships for burakumin, and loans to burakumin businesses and individuals have been a few of the uses to which the over \$2 billion pumped into buraku areas since 1969 have been put (Rohlen, 1976; Hah and Lapp, 1978; Tsurushima, Chapter 4 in this volume). In the area of intangibles, the movement has been less successful: in 1976, family records were closed to public view;<sup>7</sup> and in 1974, the buraku problem was

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<sup>7</sup> Such records, required by law to be kept in one's place of residence, previously made it possible to trace an individual's background to places of known burakumin concentration and were used in defining targets of discrimination. See Yoshino and Murakoshi, 1977.

included in school textbooks for the first time. Since 1974, an entire curricular unit on discrimination has been added, but this curriculum is in many places handled defensively and hypocritically by school officials and teachers afraid of personal attacks by offended burakumin (and probably in many cases biased themselves: Rohlen, 1976; Brameld, 1968; Donoghue, 1977). In the area of acceptance, the burakumin are fully accepted as a legitimate political force; but as we shall see, cultural acceptance of the burakumin as full citizens and human beings is still in the distance, despite over two generations of protest. What gains have been made are probably due to constant pressure, especially pressure on the school system, but protest is clearly not all-powerful.

### **Local Government**

Changes in local as well as national government have been occasioned by political protest. Cases such as the rejection of a petrochemical complex by the city of Mishima (Lewis in Steiner et al., 1980) or the recall of a town mayor who spoke out too forcefully in favor of an industrial project unwanted by his citizens have sensitized government to the efficacy of citizen demands expressed through litigation or through the ballot box. Protest by minorities has also had its effect: attitudes may resist change, but Japan has progressed to the point at which overt discrimination by governmental, corporate, or educational officials is almost unheard of (Devos and Wagatsuma, 1966, pp. 76 ff.).

Popular protest on the local level has also resulted in the devolution of considerable political authority from Tokyo to prefectural and municipal governments, especially in the environmental arena, and as local governments obtain more resources, they become both a rival of the national government in some fields and a more important arena for political competition. Indeed, local government has changed from a "conservatives' paradise" into a highly competitive arena in the last two decades (Steiner et al., 1980), and this has been largely because citizens with the constitutional resource of freedom and the educational, monetary, and organizational resources available in an affluent society have chosen to protest misgovernment at the local level.

Municipal offices today are almost universally characterized by public hearing processes and citizen complaint and consultation offices, hardly any of which were in evidence before the wave of environmentalist protest of the 1960s. The number of local governmental personnel concerned with pollution more than doubled during the 1970s, and local governments have responded widely to protest with policy changes such as budget alterations, action against polluters, and local environmental impact assessment procedures (McKean, 1981, pp. 236 ff.).

The environmentalist movement in particular has had far-reaching effects on local governments. Two of these—the increasing competitiveness and conflict characteristic of both intergovernmental relations and of politics in the local arena—have been mentioned. Additionally, the national wave of citizens' movements has broadened the local political agenda, forced more governmental attention to citizens' needs, altered local governmental priorities, contributed to a more substantive and less ideological political debate, and made overt dissent and political activism more legitimate (McKean, 1981, pp. 236 ff.; Steiner et al., 1980, p. 452). Even where the substantive aims of a specific citizens' movement are not met, acceptance of the movement in particular and of dissent in general is a typical consequence. Some residents of rural communities may not consider this acceptance a "success" (Smith, 1978), but in light of the historical oppressiveness of Japanese governments and rural social milieux, there are probably an equal number who would so term such an outcome.

Equally important as the consequence of environmental protest (Krauss and Simcock, in Steiner et al., 1980) has been the realignment of political power at the local level. Protest movements have cut across old alignments, forced established political parties to seek pragmatic solutions rather than abstract ideological explanations, divided whole communities along new political lines, and created new coalitions, sometimes including previously unheard-of combinations of right and left. Realism, pragmatism, and instrumentalism are on the increase, and local citizens are the beneficiaries.

### **Political Parties**

As noted, political protest has forced changes upon Japan's political parties, leading them to change their agendas and coalition arrangements and to seek to build grass-roots organizations able to tap into the popular sources of protest and, not incidentally, of votes. However, the involvement of parties in protest has also had some negative effects on the parties themselves, and also on the protesters with whom they have allied.

Citizens' movements, while anti-Establishment, have not by any means been automatically pro-opposition. Indeed, where local government is in the hands of leftists, the "opposition" has been the target of such movements. Citizens' movements tend to avoid entanglements with parties for fear of being co-opted or manipulated; the parties themselves have disavowed more radical forms of protest; and even those citizens' movement activists who have transferred their electoral allegiance to the parties of the left quite often do not want the

left to take national power—rather, their aim is to keep the LDP honest, and many make no bones about their willingness to back the LDP again if it mends its ways (McKean, 1981).

Not only has the growth of popular protest not led directly to the growth of the opposition parties, but in some instances it has had a deleterious effect on this growth. Most noteworthy in this regard is the divisive effects on local Socialist-Communist coalitions of these parties' competitive involvement with the burakumin movement. In 1975, Governor Minobe of Tokyo temporarily withdrew his candidacy for reelection as the result of rivalry between the Socialists and Communists over the issue of whose client organization in the burakumin movement was going to oversee the dispersal of public funds for buraku development. The two parties eventually patched up their quarrel, but at least one observer has suggested that this conflict contributed to the fading of the early 1970s' mood of opposition invincibility on the local level (Rohlen, 1976).

Party-protester relations have also had adverse consequences for the protest movements themselves on occasion, suggesting that the avoidance of such relations by citizens' movements may have contributed to their many successes. The anti-nuclear movement, fragmented as it is between Communist- and Socialist-sponsored organizations, has never really moved beyond the realm of rhetoric. The buraku liberation movement, too, to the extent that it has succeeded in obtaining funds from government, has become a source of potential political power and thus the victim of ideological conflict within the left wing. The split in the Socialist-Communist coalition in Tokyo has been mentioned; in some places, the Socialists have even allied with the LDP against the Communists in support of burakumin groups; government funds have been withdrawn from Buraku Liberation League control in some cities; and the Socialist Party has even dropped its support for the BLL in Tokyo (Rohlen, 1976).

To the extent, then, that political protest has led to change among Japanese political parties, it appears that it has done so primarily by making life much more complicated for them without commensurate benefit, and that party attempts to link up with non-institutional protest movements have as often proved damaging to the movement as they have been beneficial.

## Corporations

Like the government, Japanese corporations have been, if not brought to heel, at least put on notice by the citizenry that the day of popular deference to authority, fate, or economic growth goals has passed. Japan has enacted some of the world's most stringent restrictions on industrial and automotive pollution. These have largely resulted from popular protest and have led to major changes in corporate behavior.

One such change, of course, is simply the cessation of wholesale pollution of the environment, but it is nonmanufacturing corporate behavior in which we are more interested here. Whether or not company executives have become more truly respectful of the values of the citizenry at large, their far more flexible, responsive, and open manner in the face of public requests or demands for negotiation marks a sharp change from the past. Attempts to win over the residents of areas where new facilities are planned are intense. When instances of pollution do arise, companies are much less haughty toward the plaintiffs and much less likely to appeal an adverse verdict, in full knowledge of the draconian recompense exacted from companies like Chisso Chemical, which failed to bow to the court's will and chose instead to continue to deny culpability and to pursue legal appeals (Reich, 1982). Protest against corporate transgressions, at least in the area of pollution, has been successful in terms of the now-accepted right of pollution victims to compensation, in terms of the absolute magnitude of compensation paid, and in terms of the accommodation made to preventive demand. The proliferation throughout Japanese cities of buildings with slanted roofs (the better to provide neighboring residences with their legally entitled quota of daily sunlight) is only the most visible manifestation of this change.

### THE PROTESTERS

Whether or not a protest movement succeeds in promoting change in its context, it will surely entail change in its members. The socializing effects of protest in contemporary Japan are best documented in three areas: leftist radical protest, environmental protest, and burakumin protest.

Leftist protest that does not attain the level of outright, deliberate illegality and violence appears to have a long-range effect on at least some of its participants (Krauss, 1974). Those who are only intermittently or moderately active in such movements tend to lose interest after they withdraw from contexts in which protest is a popular activity—usually through graduation from college. They may continue to vote for parties of the left, but they tend to blend with their less active peers. Fewer than

half of them remain politically active. Those who are quite active in leftist protest activities, however—contrary to the popular Japanese assumption that they also ultimately “sell out” to the system—appear to “keep the faith”: they tend toward academic or professional careers where political leeway is greater in one’s personal and occupational life, keep their leftist political identity, and continue to participate in protest activities.

When leftist protest does verge on planned illegality and violence, again there seems to be a consequent change in some participants (Steinhoff, 1978, 1980). As protest mounts in intensity, public agencies attempt to contain it by labeling it as unacceptably extremist. To the extent that they are successful, the public at large and the mass media tend to lose sympathy with the protesters, giving the police license to escalate their pressure on the groups involved. Simultaneously, many participants who value their career prospects or fear serious criminal prosecution drop out. The alternative change is further radicalization: some protesters are simply steeled in their beliefs by persecution, and become increasingly extreme tactically as they face what they see to be the growing oppression of the capitalist state.

Environmental protest, springing as it does from less apocalyptic sources, seldom has dramatically radicalizing effects on its participants. Indeed, its major effects appear to be a firming of the social base of democracy in Japan, a growing (but by no means necessarily incompatible) political cynicism, and increasing partisan openness. The firming of the basis of democracy is illustrated by the activist’s assertion that “We are developing the nerve to complain and demand what we want” (McKean, 1981, p. 169). Learning to pursue common goals in socioeconomically heterogeneous, egalitarian groups; developing more issue-based and less personalistic political views; acquiring a greater sense of personal political efficacy; and building horizontal coalitions all contribute to a more pluralistic, knowledgeable, and participant society (McKean, 1981, pp. 228 ff.).

Such experiences do, of course, exact their price; in Japan this seems to be diminishing trust in the goodwill and honesty of corporations, parties, and politicians. Having been ignored, lied to, arbitrarily overridden, patronized, and occasionally poisoned by self-righteous and arrogant authorities, the Japanese people are developing a highly realistic appraisal of the actual operation of the capitalistic political economy in general and the potentially corrupting influence of both public and private power on its holders in particular. Such cynicism—some might prefer to call it realism—is by no means all bad for a democratic system; it may be one of the best safeguards against autocratic rule. It is offset by what appears to be a deepening commitment to democratic institutions and

processes in general and to the constitution of Japan and many other of its specific agencies. This system as a whole appears to be in no danger from the cynicism of environmental protesters (see also White, 1981).

Partisan openness has been promoted by protest primarily because the Liberal Democratic Party is in most instances the Establishment against which environmentalists must protest, and the protest experience has disillusioned many LDP supporters sufficiently that they have switched their party allegiance (McKean, 1981, Chapter 6). Of the environmental activists studied by Margaret McKean, half of those who began as LDP supporters eventually became supporters of parties of the left, and one might surmise that even those who stuck with the LDP emerged with a shaken party identification. Of the switchers, however, as noted already, many were not now die-hard opposition backers; their partisan orientation had simply become more open, and reversion to LDP support is not out of the question. Such openness will put pressure on all of the parties to devise platforms concretely appealing to the people. The vote appears to be less and less something the parties can take for granted.

For the burakumin, protest has often meant greater pride, a more positive self-image, and greater social mobility (Donoghue, 1977, p. vii). The very success of the movement, however, has had its drawbacks: more public aid has sometimes simply meant more for would-be representatives of the burakumin to fight over (Rohlen, 1976); and as individual burakumin convert collective benefits into personal upward mobility (often accompanied by movement out of the burakumin community), the basis of community solidarity can become weaker (Donoghue, 1977, pp. 41, 87, 109). Some individuals are unchanged by success, but continue to accept their position in Japanese society. They prefer to maintain burakumin identity, collect government aid on the basis of that identity, and ultimately raise the entire burakumin population into a state of equality with mainstream Japanese society. Others would rather make use of expanded opportunities and resources on an individual basis and "pass" into majority society, thus (consciously or unconsciously) aiming toward the same goal of assimilation. Both paths bear some promise, but in light of the obduracy of majority Japanese political culture in the face of minority culture, one suspects that individual passage may ultimately hold the greater.

## Cultural Resistance and Change

The growth of protest in Japanese society during the past generation has inevitably affected Japanese culture, apart from its influence on institutions and policies. With a few exceptions, however, protest appears to have less effect on cultural attitudes than elsewhere, and in some respects culture is exceedingly resistant even to the determined efforts of protesters to transform it.

Some cultural changes have already been alluded to: the growing cynicism, efficacy, and participant orientation of the Japanese people have raised the potential for popular mobilization, even though most specific protest movements, once their focal problems are resolved, disappear. Elite political culture has also changed: greater respect for the public will and for public needs, and a greater sense of responsibility have emerged in both government and corporate offices. The norms of organizational behavior have also changed, as widespread experience with citizens' movements has influenced thousands of Japanese—especially the sorts of already-established community leaders who tend to gravitate to the top of such movements (McKean, 1981, pp. 208 ff.). Such persons now accept more inclusive criteria of group membership, greater independence from higher social and political authorities, greater informality, egalitarianism, and democratic process, and less partisan coloration in their organizational lives (Krauss and Simcock in Steiner *et al.*, 1980: 215ff.).

But specific incidents of protest have far less impact on political culture than do such long-term waves of change. The year 1960 witnessed perhaps the greatest outpouring of protest that Japan had ever seen, including the Security Treaty riots and the Miike Colliery strike; but late in the year, the ruling LDP again swept to victory in both local and national elections (Steiner *et al.*, 1980, p. 327). This is not to say that protest has had no effect, but rather, as noted above, that for protest to influence popular opinion it must be truly massive, and even then its effect is likely to be short-term at best: most respondents to a series of opinion polls during 1960 felt that the Security Treaty was good, necessary, or at least unavoidable both before and after the riots; it was only during the wave of demonstrations that negative attitudes were modal (Kubota, 1972).

Probably the area of greatest cultural change, unsurprisingly, involves attitudes about protest itself. Open conflict has become much more accepted in Japanese political and social life, and it has probably become more effective as a means of pressing political demand than previously, although this suspicion is speculative. Competition between

local and central governments and between pro- and anti-development groups within communities has grown in legitimacy; toleration of dissent, agreement to disagree, and the ability to compromise have come along in their train (McKean in Steiner et al., 1980). It is now acceptable for local interests to challenge national interests and for self-interest to challenge collective interest; and techniques of negotiation, a more pluralist distribution of power, and rules governing political conflict have developed concomitantly. The gradual evolution of tacit rules governing the rights of "intense minorities" in the Diet—the functional equivalents of the American filibuster and the Congressional committee system—is one example of this development, as are the almost ritualistic rules adhered to by both police and demonstrators in their confrontations (Steinhoff, 1976, pp. 831–832).

Not everyone welcomes these changes. The breakdown of cohesive communities under the pressure of spreading norms of conflict is cause for regret among those who recognize the human value of *gemeinschaft* (Smith, 1978). But the facts that many Japanese have been perfectly willing to sacrifice this value to more libertarian and individualistic ends and that many chose explicitly to move to cities precisely to escape the more stultifying aspects of *gemeinschaftlich* life (White, 1983) go far to explain why this aspect of Japanese culture in particular was relatively susceptible to alteration. Another contributory factor in this susceptibility, to return to a point made earlier, is the fact that Japan has long been in fact (though not in ideal) a highly conflictual society (Aoki, 1981; Najita and Koschmann, 1982; Fukaya, 1978; Yokoyama, 1977). Thus, although the post-war cultural change was dramatic, it did not involve alteration in both ideal and actual cultural elements (see Levy, 1966).

The same cannot be said of other cultural changes which have recently been the goals of protest, specifically changes in attitudes toward women and minorities. In this instance the ideal changed drastically after the war as Japan adopted a new institutional system based on full equality and freedom for all. Cultural actuality, however, has adamantly resisted change. Overt expression of bias against burakumin may have become unacceptable, but hostility remains. And in the case of women (who, like burakumin, have been protesting their second-class political status for all of this century), blatant discrimination is still often the rule, and the pressures of matrimonial and maternal norms drive the great majority of politically active women out of politics during their twenties (Pharr, 1981, 1982).

This is not to say that protest is useless. Material gains have been made, and as Japanese affluence puts the luxury of concern for higher-order values such as self-esteem and personal status within the reach of

more and more Japanese, status-oriented conflict is sure to increase relative to conflict over material goals (Inglehart, 1977; Pharr, 1982; Tsurutani, 1977). And it is doubtful that the gains made by both women and minorities in the post-war period have been solely the result of compulsory institutional changes in the face of unbending cultural factors. On the other hand, the American experience with conflict-ridden social issues suggests that cultural change will be very, very slow relative to the ease with which arithmetically-divisible economic issues are susceptible to resolution. One can legislate budget allocations much more easily than one can legislate respect.

### **Between Protest and Change: The Success and Failure of Protest**

The instances of protest we have viewed thus far suggest that certain types of protest have been effective in bringing about change in Japanese society and polity. The effect is not general—we have also noted some failures (there are even more in the area of elitist protest, for reasons which will become clear)—and even where success appears to follow, the relationship between the protest itself and specific governmental reforms can seldom be definitely shown (Tarrow, 1981a, 1981b). Nevertheless, in the post-war period governmental reforms have followed protest in ways that one would hardly have expected on the basis of prior governmental behavior, and thus *post hoc, ergo propter hoc* reasoning is not without value.<sup>8</sup> There are, however, specific aspects of protest movements which have been shown in general to be related to success or failure, and I shall sketch out a few of them here: the scope of protest, its tactics, the sanctions imposed on protest from without, protesters' relations with outside groups, and the organizational basis of protest.

#### **Scope**

Research on protest in the U.S. suggests that limited goals, a single-goal focus, and nonradical goals are associated with successful<sup>9</sup> protest (Gurr, 1980, pp. 258–259; Gamson, 1975), and the experience of the Japanese environmental movement in general and the materialist aspects of the burakumin movement in particular indicate a Japanese parallel. The parallel is suggested also by the failure of more apocalyptic protest movements, and by the limited success of the culturally-directed actions of both burakumin and women, whose goals are limited in a constitutional

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<sup>8</sup> I shall, in fact, be a bit more demanding than Gamson (1975), who defined success as the realization of the goals of the protesters through whatever agency, whether the protesters themselves contributed directly to the outcome or not.

<sup>9</sup> In terms of either acceptance or material gain.

sense—they ask only for what the constitution requires—but in fact imply substantial changes in cultural actuality. Indeed, one of the reasons the Japanese government has not been forced to enact a comprehensive environmental impact statement policy—a seemingly crucial element in the regulation of pollution, which has been pushed unsuccessfully by the Environmental Protection Agency since 1975—may be that it is too broad to mobilize the support of protest groups which are interested in cleaning up their respective doorsteps and in little else. Citizen demand-making can be quite successful in Japan (White, 1983), but the farther the goal is from home and the more clearly and extremely the protest contravenes culture or national policy (as with the Tokyo Airport), the less its chances appear to be.

### Tactics

Tactical considerations underline the above: extremist tactics in protest appear to be of limited value in attaining goals. The evidence from abroad is ambiguous: some studies have shown that violence contributes to success, some that it is a hindrance (Gurr, 1980, pp. 243–268). Gamson's (1975) sweeping historical study of protest in America suggests that although violent and nonviolent but disruptive means in the pursuit of limited goals can be productive,<sup>10</sup> protest whose goals include the elimination of its opponents is among the least successful. The impression is that there is room for disruption and forcible bringing of the authorities' attention to a problem (as in the case of BLL confrontation tactics and pollution victims' sit-ins at corporate headquarters). But even such tactics can be counterproductive on occasion (as the BLL's have been) and illegal violence will usually fail (as the radical left in Japan has clearly shown).

Some studies of the environmentalist and burakumin movements suggest that direct action is counterproductive (McKean, 1981; Hah and Lapp, 1978), but the fact remains that the government has paid more attention to the burakumin during the past, protest-ridden generation than during all of previous Japanese history (Brameld, 1968, p. 126; Hane, 1982, pp. 160 ff.). Overall, in regard to militance, the impression one gets is that success in terms of material benefit is probably promoted by moderate tactics such as litigation and lobbying. Indeed, the Buraku Liberation League's greatest surge in policy victories came during the 1960s, after the advent of a more moderate and pragmatic leadership under Asada Zennosuke (Hah and Lapp, 1978, pp. 493 ff.).

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<sup>10</sup> But even this payoff is sometimes simply of the "fire-brigade" sort: a quick, conciliatory response which falls off after the protest fades.

But the Japanese government appears to prefer payoffs over acceptance. Neither the Meiji Constitution nor the establishment of universal male suffrage implied full acceptance of a democratically broad range of dissent. Both were hedged about with restrictions on participation, and the post-war foot-dragging of the government in regard to educational attempts to eliminate discrimination against burakumin (much less women) is in sharp contrast to the material largesse dispensed for burakumin services and facilities. Thus, full acceptance and non-material success may require continued confrontation. As Gamson (1975), Piven and Cloward (1979), and Reich (in this volume) all suggest, militant political action may be the key to extracting anything more than money. Indeed, it has been suggested that even material benefits may be, even if only an attempt at appeasement, largely the result of the ultimate threat of direct action (Nieburg, 1962), and cultural change certainly requires a stronger stimulus.

### Sanctions

Considering the sanctions available to local and national Establishments, the success of post-war Japanese protest is striking. To be sure, protesters have at their disposal the resources of the constitution, the courts, and an elected officialdom which cannot indefinitely ignore popular wishes. But against these are arrayed still-strong cultural ideals of harmony, female domesticity, and burakumin inferiority; a bias against public litigation; conformist community pressures in the countryside; the vulnerability of Koreans as aliens; and a police organization of singular efficiency. In some cases, protest may thrive in the face of adversity, or at least persevere, but as has been shown elsewhere, over the long run, sanctions can work (Tilly et al., 1975). The American study cited above (Gurr, 1980, pp. 258-259) indicates that among the least successful protest movements are those whose members invite arrest by blatantly illegal or threateningly violent behavior, and the experience of Japanese radicals also indicates that running afoul of the police bodes no good for a movement's success.

But one of the major reasons behind the success of police sanctions in Japan is the government's prior invocation of cultural sanctions in defining certain radical groups as deviant. Impressionistically the situation seems to resemble that of the U.S.: in the 1960s, it appeared to become generally accepted that the Black Panthers were an extremist group, whereupon police departments across the nation seemed to declare open season on them. Successful labeling of protesters as deviant, in addition to scaring off possible sympathizers, makes more intense sanctions acceptable to the public (Steinhoff, 1978).

The same sort of cultural sanction is visible in the case of women and minorities. In the case of minorities, the major sanctions are obliviousness and hostility. The great majority of Japanese seem to ignore the burakumin completely; since they are considered by many to constitute no more than one percent of Japanese society, nonrecognition of their problems makes them almost a complete non-issue. And the hostility which surfaces when mainstream Japanese encounter—or run the risk of encountering through matrimony or employment—burakumin is sufficient to keep many “in their place” individually despite the magnitude of organized protest carried out.

With women the cultural norms are so strong that most women have themselves been unable to confront them (Pharr, 1981, Chapter 6). The role strain attendant upon active political participation of any kind, in contravention of the ideal role of wife and mother, necessitates a variety of defense techniques, but the Pharr study cited suggests that unless female activists remain single or marry male activists, it is nearly impossible to remain active throughout the marrying and childbearing twenties. Many women revive their political activities after their children are older (although even then much of their participation is electoral or otherwise conventional rather than protesting), but the effectiveness of cultural norms is as clearly visible in the self-subordination of Japanese women today as it was in the case of American blacks before the civil rights movement. One suspects that the constitutional ideal will ultimately prevail, but much protest will probably be essential along the way, as will allies from outside the protest group who are themselves members of mainstream Japanese society and culture.

### **Outside Allies**

One of the commoner observations about protest, and even revolutionary, movements is that support from outside groups, especially those located within the social or political elite, is a valuable resource (Tarrow, 1981b; Skocpol, 1979; inter al.). In Japan, however, the picture is mixed.

On the one hand, environmentalist movements have skillfully drawn support from the parties of the left without being co-opted by them. Minorities have also drawn upon large union constituencies, upon the organizational skills of leftist parties, and upon the professional skills of left-wing lawyers who often represent burakumin litigants. Additionally, as Tsurushima (in this volume) suggests, groups of Japanese citizens who support their cause have been crucial allies in Koreans' protests of their disadvantaged position, since they themselves are largely devoid of citizen rights and constantly subject to the threat of deportation. And finally, in

any instance where a protest group can enlist the support or even the attention of the mass media, a powerful ally (at least as concerns getting their interests onto the public agenda) has been gained.

But in many cases, as implied above, the Japanese people are on their own: the governing LDP tries to domesticate client groups' demand-making, while the weakness, fragmentation, and irresponsibility of the opposition both necessitate protest and weaken it. Protest behavior and electoral support for protest parties can be alternate channels for the expression of demands in democratic societies (Powell, 1982a). If the Japanese opposition posed a more credible threat, perhaps protest would be less frequent but more effective, given the fact that the opposition supports protest movements of most types.

Outside support *per se* can sometimes hinder protest movements: environmentalists want to promote an image of local autonomy, partisan neutrality (the better to mobilize the entire community), and unity in the face of the authorities. Alliance with a variety of (mutually fractitious) outside forces detracts from this image. And when this support is divided, as between pro-LDP and pro-left burakumin organizations or pro-Socialist and pro-Communist environmentalist organizations recommending different targets, tactics, goals, and ideologies, collective action can become thoroughly paralyzed (Reich, 1982, pp. 38–39; Brameld, 1968 pp. 92 ff.). Outside agencies (especially on the left) are eager to support protest groups, and the resources they bring in cannot be ignored, but they usually come with strings and factional baggage attached.

### **Protest Organization**

The Japanese experience to date suggests that the consequences of protest organization for the success of protest may be different than is the case abroad. American data (Gurr, 1980, pp. 258–59) suggest that successful protest organizations tend to be bigger, more centralized and bureaucratic in structure, and less subject to internal factionalization than less successful ones. Our brief overview of Japanese protest is consistent with the size and factionalism arguments, at least in the eyes of the protesters: in almost every instance, unity is emphasized, even at the expense of breadth of coalition. Other things being equal, however, protest groups (with the exception of leftist radicals to whom ideological purity is a consideration) do appear to try to maximize their size. To these considerations one might add that in Japan relatively successful protest movements are those which are able to build on groups—ordinarily community organizations—which already exist within the natural constituency of the protest activity (McKean, 1981). In the case of the Tokyo Airport in particular, the most concerted resistance to

the project appears to have come from older villages in the area which possessed a rich infrastructure of kinship, religious, peer group, and voluntary organizations (Koschmann, 1978, pp. 272 ff.).

On the other hand, Japanese experience indicates that bureaucratization and centralization may not be essential to success. In the environmentalist movement, these tendencies are consciously avoided; and even the most successful movements, such as some of the major lawsuits, the Mishima petrochemical complex case, and the anti-nuclear power movement, evince little central coordination, being localized and occasionally even working at cross-purposes. The fragmentation of the burakumin movement has not prevented substantive successes, although what the movement might be without this fragmentation is open to speculation. The same may be said of organized labor, which uses protest for both political and economic ends and has gained a level of affluence equal to that found in other industrial societies, but which is seriously limited in many confrontations with management and government by its fragmentation (Pempel, 1982, Chapter 3).

The difference between Japan and the U.S. might lie in the inherent conservatism of organization. Because of the recency of its appearance and its determinedly anti-bureaucratic attitudes, the environmental movement has not become an institutionalized vehicle for demand-making. The continued non-acceptance of the burakumin has prevented full institutionalization of their protest, too, although individual burakumin organizations are both centralized and bureaucratic. The experience of organized labor suggests that bureaucratization and centralization will become increasingly essential to the success of groups as their protest becomes absorbed into routine Japanese political processes. At present, many Japanese protests still take the form of political guerrilla warfare; but to the extent that one of their consequences is the opening of institutionalized channels for articulation of demand, one may expect that protest activity will yield to more conventional forms of articulation, and that as this process continues, the resources necessary for success in the conventional realm, such as organizational sophistication, will come increasingly to characterize protest organizations as well.

This is not to say that the overall level of protest in Japan will decline. Extensive study of other industrial democracies suggests nothing of the sort (Barnes and Kaase, 1979; Hibbs, 1973, 1976; Powell, 1982b). Indeed, if journalistic perceptions are accurate that the LDP became less responsive to popular pressure as a consequence of its renewed margin of strength over the opposition parties during the early 1980s, then we may expect that even greater protest activities will be necessary to elicit concessions from the government during periods of similar one-party

dominance. It is perhaps not a coincidence that the LDP has been most responsive to protest in the 1960s and 1970s when its strength was in decline (Piven and Cloward, 1979, p. 31). Moreover, in a period of slower economic growth, quick material payoffs to protest movements will be a less attractive option for government.

It is possible that the sort of materialistic protest we have looked at here will attenuate over time because its narrowness and instrumentalism make its demands relatively easy to fulfill if a flexible government will grant the modest social changes sought. The nonmaterialistic movements we have seen—with more homogeneous memberships, broader goals of unchanging salience (due to cultural resistance), and a relatively strong emphasis on resocializing their members as well as on achieving exogenous goals—will continue to be active (Steiner et al., 1980, p. 224), and new and different protest movements—most likely in pursuit of higher-order values—will appear, so that the ultimate threat of conflict will remain as a leaven in the Japanese polity, a factor contributing to the potential for future social change.

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## IV

# Human Rights Issues and the Status of the Burakumin and Koreans in Japan

Setsure Tsurushima

### **Introduction: Legal and Legislative Amelioration and Minority Militancy**

There are two large minority groups in Japan subject to severe discrimination: the burakumin, descendants of a caste declared “new citizens” in 1872, who now number over two million; and Koreans, mostly the descendants of unskilled laborers brought to Japan during the pre-war colonial period, who now number over 700,000.

In the first part of this chapter, I shall discuss how Japanese post-war laws related to alien status have attempted to deal with problems of the Korean minority—a legacy of the pre-war period. Increasingly this minority is testing before the courts the meaning of “human rights” and the intricacies of laws of citizenship and alien residence.

In the second part of the chapter, I shall describe what has been happening to the burakumin most recently. After years of vigorous confrontation and protest, the plight of this invisible minority (DeVos and Wagatsuma, 1966) was officially recognized in ameliorative legislation that supplied funds in many fields, which will be described later. It is a story of the relative success of open protest under the assurance of non-interference by the police. While legislative and judicial advances have been made, social discrimination continues in areas not as easily reached by governmental regulation.

Both these groups have established large, powerful, and active organizations to safeguard and protect their interests. Of principal force are the buraku Kaiho Domei (“Kaiho Domei” or Kaido, the League for buraku Liberation), the Chaeilbon Chosonin Ch’ongryonhaphoe

("Ch'ongnyon," the General Federation of Korean Residents in Japan), and another Korean organization, the Mindan (the Korean Residents' Association in Japan).

### **Protest and Politics in Korean Organizations**

The need for two separate Korean organizations reflects the policies of the two antagonistic governments of present-day Korea. Although Koreans who originally came from southern areas were predominant among the migrants to Japan, the pro-Pyongyang organization, Ch'ongnyon, is presently larger and far more active than the pro-Seoul Mindan. Both Kaido and Ch'ongnyon have staged ultramilitant protest campaigns, drawing huge numbers of their members into action. In Japanese society, which generally lacks uncompromising, militant anti-establishment movements, Kaido and Ch'ongnyon stand out in their militancy. But during the last two decades, these two militant movements have experienced quite a different development. Kaido has experienced a tremendous growth in both branches and sections and in overall membership. It has also succeeded in putting pressure on both central and local governments to implement special measures for mitigating social and economic inequality. Discrimination against burakumin has changed remarkably, particularly since the Law on Special Measures for Dowa (integration) Projects (1962-1982).

On the contrary, the pro-Pyongyang Korean organization has remained more or less quiescent since Ch'ongnyon was founded as a successor to Choryon in 1955 (Lee and DeVos, 1981, Chapter 6). Ch'ongnyon has not been as visibly militant as far as the Japanese public is concerned. It was founded on the principle that allegiance should be directed toward the North Korean fatherland, and that its overriding political objective should be the unification of mainland Korea by peaceful means and the training of youthful Koreans in Japan to that allegiance. These objectives have remained paramount, rather than the objective of helping Korean residents adapt better to Japanese society. Recently, the legal status of Koreans has been slightly improved, not so much from the result of Korean organizational efforts, but through the Japanese ratification of the International Covenants on Human Rights, the Treaty on Refugees, and other international treaties concerned with human rights.

The contrast in recent trends between Kaido and Ch'ongnyon is due to various factors. In the first place, the discrimination against burakumin and Koreans is different. Discrimination against burakumin has historical and social roots, while discrimination against Koreans has an ethnic base, although DeVos would claim that both forms of discrimination are equally

“racist” in feeling (DeVos and Wagatsuma, 1966; Lee and DeVos, 1981). Legally, burakumin are guaranteed the same rights as the majority of the population, while Koreans are regarded as alien residents and therefore are not accorded the rights of full citizens. Secondly, the policies of the two organizations in regard to protest movements differ. Kaido is confident in its cause—to protect equity, guaranteed by the Constitution—and is ready to rise in retaliation against overt discrimination which is incurred by any of its members. It insists that it is important for an individual or group to join in activities for the democratization of society. Its militant campaigns are very much so directed. It feels that the central and local governments should also direct policies to this end.

On the other hand, Ch’ongnyon, in its keenness to support and stage campaigns on behalf of North Korea, insists that any intervention into another country’s affairs should be avoided. Sometimes, however, it has to protest to the Japanese authorities to ask for an improvement in their treatment of Koreans. But the protest usually comes after moves for improvement have already been started or when Ch’ongnyon is sufficiently provoked by some specific action.

Thirdly, the attitude and response of the majority of the population differs. It is not so difficult to win support from political parties, trade unions, other groups, or even local government officials when the issue is equality for all citizens. It is not easy for a government to completely neglect its responsibility to act in equity. Kaido’s united front activities have forced the government to implement various measures for integration projects under the Law on Special Measures for Dowa Projects. It was through concerted burakumin campaigns of public protest together with the support of liberal groups that this law was eventually passed. Kaido’s extensive membership carries considerable weight in pushing specific candidates for a governorship or a local election.

Koreans, on the other hand, in large part technically not citizens, find it difficult to win support of Japanese groups, especially when issues concern better treatment by the Japanese authorities. Putting pressure on significant authorities is impossible without the support of sympathetic Japanese groups. Koreans are powerless to press for demands while insisting on alien citizenship.

All Koreans, even those born in Japan, were disenfranchised in December 1945. This was to become an effective means of continuing to incapacitate Koreans by preventing them from participating in political action as an ethnic voting bloc in post-war Japan. According to Japanese law, aliens are barred from taking part in any anti-establishment movements in Japan, either with or without the backing of Japanese anti-

establishment groups (Lee and DeVos, 1981, Chapter 7).

Ch'ongnyon, following its own principles, is reluctant to intervene in Japanese politics. It tends to work alone, rather than seeking the cooperation of Japanese organizations for bettering Korean legal status or living conditions. Japanese, given their tradition of ethnic exclusiveness and isolation, are unlikely to cooperate with resident aliens, whatever the cause. They are far more likely to join international solidarity movements in the name of democracy or international brotherhood than to welcome consideration for foreigners on their own doorstep.

A comparative study of these two minority groups, taking into account recent differing tendencies within their organizations, may suggest ways for a minority group to get response from the majority of the population. Such a comparison may also point out how important it is for a minority to be familiar with all the facts of the situation it faces.

In what follows, I concentrate first on the discrimination against Koreans in Japan from the viewpoint of human rights and minority status. Later I shall describe the remarkable improvement in the burakumin situation through the effects of the special law passed in 1969. I shall explain how minority status protests have succeeded in forcing the law through, how the government has implemented the special measures, and what new problems have emerged through these protest movements. I shall attempt to bring into view how discrimination against Koreans continues to be based on law ordinances and on governmental administration. I shall also point out how Koreans are not only deprived of many rights that Japanese residents enjoy, but also how Korean sentiment, colored by Japanese contempt for them, has increased their reluctance to protest more loudly against their treatment and how such reluctance makes it difficult for them to seek outside support.

#### A SHORT HISTORY OF KOREAN MIGRATION

A mass migration of Korean peasants out of Korea proper started at the end of the last century as a result of a serious continuing famine that began about 1870, and as a result of the Korean government's loosening of its closed border with China in 1880. Migration increased further after Japan's invasion and subsequent colonization of Korea. Migration was first toward regions accessible by land, especially the Kando areas of Manchuria and Sikhote Alin on the Russian-controlled Siberian Pacific coast. Even before the opening of the border, exit was comparatively easy, as the northern border had not been tightly policed. There were estimated to be 100,000 Koreans in the Kando area by 1903. The number of immigrants entering the Kando area was increased during the fifteen-year period following the annexation of Korea by Japan in 1910. About 200,000 moved into the area.

Korean immigrants to Siberia were initially welcomed by the Russian authorities. About 32,000 had entered Sikhote Alin by 1902. Russians coming to live and work in Siberia were faced with the problem of finding fresh food, especially a supply of vegetables, which the Korean peasants were able to provide by cultivation. The Russian authorities adopted a policy whereby naturalized Korean peasants could obtain land and would therefore be encouraged to come and settle. The number of Korean immigrants increased rapidly, reaching about 100,000 by the time of the Japanese annexation in 1910. Peasants who had lost their land, as well as political refugees, continued to stream across the border. By 1931, the number had reached about 200,000.

Korean immigrants to Kando had been initially welcomed by the Chinese. Before 1881, when the Chinese government began to encourage the expansion of cultivation on the northeast side of the Tumen, it found many Korean peasants already there occupying and cultivating the land. Koreans who entered the area did not pay taxes, although the land on the northeast side of the Tumen was more fertile than the southwest area from which they had migrated. Acting on a report from the provincial governor of Kirin, the Peking government put forward a proposal that Korean peasants be treated in the same way as the Chinese. As a result, a survey of Koreans was initiated for the purpose of census registration and taxation. At the same time, the Chinese government informed the Korean government of its actions in Kirin. Thus, the debate on the border between China and Korea began and was to continue until 1909, when the Chientao (Kando) Treaty recognized the area as a part of China.

Discriminatory treatment of Koreans by the Chinese authorities had started during the debate. For example, Koreans were not recognized as rightful owners of the land unless they were naturalized. Chinese farmers entitled with the right to own land benefited from having Koreans as tenants. Moreover, since the northern Chinese had no tradition of wet-land or paddy cultivation, Korean peasants with such experience were welcomed. By 1933, when Manchukuo was established by the Japanese, the number of Koreans in Kando exceeded 400,000 (Ishii, 1937). Enormous numbers of Koreans from their more northern provinces had migrated to Kando and Siberia before 1920, when the mass migration to Japan started (Harada, 1928). This explains why it was the equally impoverished Koreans from the south that seized the opportunity to leave for Japan.

In the census of 1904, Koreans in Japan, most of whom were students or pro-Japanese leaders, numbered only 229. The annexation of Korea caused their status to be changed and their number increased rapidly, as shown in Table 1. The first stage of rapid increase occurred

after annexation. During the years following, the numbers increased fifteenfold. A second stage of increase is apparent around 1920, when a new agricultural policy in Korea caused much hardship. Also, the new emergence of Japanese capitalism after the First World War, with its development of heavy industry, drew a new labor force from Korea. A third stage occurred around 1935, when Japan launched its war against China. Koreans were forced to come to Japan to supplement the drain of manpower into the armed forces. Before this forced immigration was over, approximately ten percent of the entire Korean population had been moved into Japanese industry in Japan. The processes at work show very clearly that the Korean residents in Japan were people who not only became victims of Japanese colonial rule, being forced to come to Japan through circumstances beyond their control, but they had become indispensable labor necessary for the expansion of Japanese capitalism and the furtherance of the war in Asia.

Table 1  
The Korean Population of Japan

|      |         |      |           |
|------|---------|------|-----------|
| 1904 | 229     | 1938 | 799,865   |
| 1915 | 3,989   | 1939 | 961,591   |
| 1920 | 30,175  | 1940 | 1,190,444 |
| 1923 | 80,617  | 1941 | 1,469,230 |
| 1924 | 120,238 | 1942 | 1,625,054 |
| 1930 | 298,091 | 1943 | 1,936,843 |
| 1931 | 318,212 | 1944 | 1,936,843 |
| 1935 | 625,678 | 1945 | 2,365,263 |

SOURCE: Ozawa Yusaku, *Zainichi Chosenjin Kyoiku Ron* [The Theory of Education for Koreans in Japan], Tokyo: Aki Shobo, 1973, p. 33.

#### THE LEGAL STATUS OF KOREANS IN JAPAN BEFORE THE END OF WORLD WAR II

After the nationwide independence demonstration of March 1, 1919, an imperial rescript for reform of governance was issued. In it the Koreans were promised equality with the Japanese. This promise was never fulfilled (Lee and DeVos, 1981, Chapter 2). The Japanese in general felt that the Koreans were too dangerous and potentially disloyal. They thought that full equality for Koreans would serve to strengthen dissident elements and that if Koreans in Japan were given all the privileges of full Japanese citizenship, it would be difficult for the government to maintain its differential policy in Korea itself. Nevertheless, when the Suffrage Act was passed in 1925, it became possible for Korean males in Japan to vote in Japanese elections. Special voter qualifications made it unlikely, however, that the vast proportion of

Koreans would receive any vote. Anyone receiving relief or government support could not vote. There was a residence requirement of one year. Until the middle of the 1930s, such practices denied most Koreans voting privileges.

Koreans were initially excluded from any form of combat service. Koreans who migrated to Japan experienced both legal gains and losses compared to Koreans remaining in Korea. In a number of ways, Koreans who migrated to Japan were more favorably treated than those remaining. Punishment for violating administrative ordinances was not as severe as in Korea, where the legal codes were kept stringent to intimidate a restive population. In Korea, legal cases might be handled by summary police jurisdiction, which was not true in Japan itself. The only advantage of a person residing in Korea was that there was some slight modification in the laws related to Korean customs, and he might be tried before a Korean judge. It was apparent to all Koreans that they were to remain subjected to discriminatory treatment and selective law enforcement.

But the most important economic handicap in the legal status afforded Koreans was that neither Koreans nor Japanese were permitted to transfer their legal domicile (*koseki* 'family register') from their native land. Koreans could do so only when adopted by a Japanese family, a restriction that put Koreans in Japan under a number of severe handicaps in the commercial codes.

#### THE LEGAL STATUS OF KOREANS IN JAPAN AFTER WORLD WAR II<sup>1</sup>

In the early days of the U.S. occupation of Japan, the Supreme Command for the Allied Powers (SCAP) made no clarification regarding the legal status of Koreans in Japan (Lee and DeVos, 1981, Chapter 4). The U.S. Joint Chiefs of Staff had sent a directive to General MacArthur that Koreans were to be treated as "liberated nationals" if military security was not concerned. However, the directive suggested that the Koreans were to be treated as enemies if a security situation arose. Koreans were not even mentioned as citizens of "nations whose status has changed as a result of the war." When supplementary rations were distributed to foreign nationals who had been residing in Japan, Koreans were not included. The SCAP directive on rationing specifically stated that nothing in the directive could be construed to change the food ration for Korean nationals who had elected to stay in Japan. They were to receive the same rations as Japanese nationals.

Finally, in November 1946, SCAP made it clear to the public through a press release that Koreans who elected to remain in Japan

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<sup>1</sup> For further discussion of the post-war legal status of Koreans in Japan, see Lee and DeVos, 1981, Part Two.

would be considered Japanese nationals until they were recognized as Korean nationals by the lawfully established government of Korea. Therefore, legal jurisdiction over Koreans would continue to be exercised by Japanese authorities. Koreans immediately protested, demanding legal treatment different from that accorded to "defeated nationals." The protest prompted SCAP to declare, the following month, that it had "no intention of interfering in any way with the fundamental rights of any person of any nationality in regard to the retention, relinquishment, or choice of citizenship."

SCAP was concerned that to exempt Koreans from the observance of Japanese laws might create a form of extraterritoriality that was against the occupation policy. The Japanese government had suspended the suffrage of Korean residents on December 17, 1945, with the passage of the Amendment to the Election Law of the House of Representatives. In 1947, the Japanese government, with the tacit agreement of SCAP, enacted the Alien Registration Law, by which Koreans were legally classified as aliens. The Japanese Ministry of Justice, however, held that Koreans in Japan would continue to retain Japanese nationality until the peace treaty with the United States became effective in 1952. Thus, the Japanese government's policy was contradictory. Recognizing Koreans' retention of Japanese nationality in principle, it banned ethnic education in Korean schools and ordered Korean children to go to Japanese schools. On the other hand, in treating Koreans as aliens, the government restricted their legal rights in the areas of public housing, social welfare, business, etc.

The emergence of two mutually antagonistic Korean regimes added to the legal confusion over nationality. In accordance with the Alien Registration Law of 1947, every alien was required to identify his or her nationality in the column provided on the registration form. Koreans in Japan simply noted their nationality as "Chosen," or Korean, as no legal government was yet established in Korea under the occupation armies. But when it was necessary for aliens to renew their registration during the Korean War, the Mindan, the voluntary organization formed by Koreans in Japan in support of the South Korean government, demanded a change from "Chosen" to "Hanguk," as "Hanguk" was used by the legitimate government already established and recognized by the United Nations.

The Japanese Ministry of Justice responded that filling the space in the registration form had no legally binding effect upon the determination of one's nationality and that the legal question of nationality would be settled after the conclusion of the peace treaty. But persistent demands by the Mindan forced the Japanese government to accept the name change upon the presentation of a certificate duly registered by the government of

the Republic of Korea (ROK). Thus, the alien registration system intensified the polarization of Koreans in Japan by giving rise to questions of nationality and of allegiance to one or the other of the two regimes in Korea.

#### THE SAN FRANCISCO TREATY AND THE NATIONALITY OF KOREANS IN JAPAN

The San Francisco Treaty became effective on April 28, 1952. The treaty contained no clause on nationality. On April 19 of the same year, the Ministry of Justice had made it clear that it would treat Koreans as aliens who had lost Japanese nationality from the day the treaty became effective.

It is a generally accepted principle among nations that each state is free to decide who shall be its nationals, under what conditions nationality shall be conferred, and who shall be deprived of such status and in what manner. The Japanese government failed to provide even a minimum standard of justice for Koreans remaining in Japan, by failing to offer them the freedom to select citizenship that is customary upon the transfer of sovereignty. The discriminatory treatment of Koreans with regard to nationality is clear if we compare the treatment of Koreans at the time of the annexation of Korea with the treatment of natives in Taiwan in 1895 and in Sakhalin in 1905. Freedom to select their nationality was given to the populations in Taiwan and Sakhalin, while the same freedom was not given to Koreans in Korea.

Very recently, the *Mainichi Daily News*, in analyzing declassified documents of the Japanese Foreign Ministry and the U.S. State Department, disclosed the process whereby the paragraph on the nationality of Koreans was eliminated from the Peace Treaty. I shall elaborate on this matter later in this chapter.

#### THE IMMIGRATION CONTROL LAW

The present-day law controlling alien residents in Japan was first published just before the San Francisco Treaty came into effect. It consisted of the Immigration Control Law of November 1951, followed by the amended Alien Registration Law of April 1952. This law has been amended more than a dozen times since then.

Immediately after the law first went into effect, Koreans were required to establish their eligibility for continued residence and to designate the length of time they intended to stay in Japan. Article 4, Paragraph 1 stated that: "No one is permitted to land in Japan without having registered in his passport a specific category of legal status." The conditions of admission and the length of stay permitted in Japan vary according to the category under which an alien is admitted.

Most Koreans, however, had already established residence in Japan without having been issued passports. The Japanese government had to

classify Koreans under stipulated categories so as to control and restrict their activities as aliens. It enacted a supplementary Law No. 126 of 1952 on April 28, 1952, the day when the peace treaty went into effect. The law specified that Koreans who entered Japan before September 1, 1945, and their descendants born from that date until the peace treaty went into effect on April 28, 1952, were exempt from the applicability of the law. It further stipulated that Koreans who established their residence during the period mentioned would be given special consideration for "humanitarian" reasons to maintain their residence in Japan until their legal status could be determined by further legislation. Since this privilege was granted by Law No. 126, Article 2, Paragraph 6, Koreans falling under this provision were usually referred to by the Ministry of Justice as 126-2-6 aliens. But a 126-2-6 alien is subject to deportation on the grounds specified in Article 24 of the law, and a considerable number of Koreans have actually been deported in accordance with this law. The 126-2-6 alien status is granted only to those who have maintained their residence continuously in Japan since the Second World War. Anyone who has at any time and for any duration returned to Korea and then rejoined his or her family in Japan is not entitled to this status, but becomes a "4-1-16-3." A child born after April 28, 1952, to parents with a 126-2-6 alien status is required to obtain legal determination of his or her permitted period of residence in Japan. As this type of case is covered by Article 4, Paragraph 1, Item 16(2) of the law, the alien is generally referred to as a "4-1-16-2" alien. The child's alien status is acquired at the time of birth registration within thirty days after birth. The period of his or her stay in Japan is contingent upon a renewal of registration every three years and is subject to approval by the Ministry of Justice.

Once an alien juvenile reaches the age of fourteen, he or she is required by law to appear in person to renew the alien registration. Any alien who violates the Alien Registration Law is subject to a maximum punishment of 30,000 yen in fines or a one-year imprisonment. It should be noted that the Japanese Civil and Criminal Codes normally exempt those with juvenile status from criminal prosecution. This is not so for Korean aliens above fourteen years of age, who are required by law to carry their alien registration card at all times. Failure to carry the card makes one subject to arrest and subsequent indictment for prosecution and results in a criminal record.

The 4-1-16-2 alien status is granted only to children of 126-2-6 aliens, and their stay in Japan is limited to three years and subject to renewal thereafter. If a 126-2-6 alien loses his status as a result of criminal conviction or any action punishable by deportation, his child is no longer entitled to retain 4-1-16-2 status. Instead the child is reclassified as

a 4-1-16-3 alien, as are all grandchildren of 126-2-6 aliens. The period of stay for the 4-1-16-3 alien ranges from thirty days to three years, with the possibility of remaining longer if one is granted special approval by the Ministry of Justice.

#### THE ROK-JAPAN AGREEMENT ON THE LEGAL STATUS OF KOREANS IN JAPAN

The ROK-Japan Normalization Treaty was signed on June 22, 1965, and went into effect on December 18, 1965. The agreement accompanying the treaty covered the legal status of Koreans in Japan. Most important of all, the agreement defined the legal status and rights of Koreans in Japan and the subsequent treatment to be provided by the Japanese government. The significant factor is that the legal status of Koreans in Japan was determined by an international treaty, even though Japan as a sovereign nation had exclusive jurisdiction over aliens. The agreement on the legal status of Koreans in Japan consisted of three major parts: eligibility to apply for permanent residence, grounds for deportation, and subsequent legal treatment.

*Korean Eligibility for Permanent Residence.* Until the ROK-Japan Normalization Treaty, Korean residents in Japan had been generally classified into three categories: 126-2-6, 4-1-16-2, and 4-1-16-3 status aliens. As stated in the preamble to the treaty, the Japanese government officially recognized the length of time Korean residents had been in Japan. But the eligibility of Koreans to apply for permanent residence was to be limited to:

1. Those who had been resident continuously in Japan since August 15, 1945, up to the time of their application for permanent residence.
2. Those who were born in Japan after August 16, 1945, as lineal descendants of persons in category 1 and who applied for permanent residence within five years of the effective date of the agreement.
3. Children born after January 16, 1971, of parents who had received permanent residence status under categories 1 or 2, provided that application for the children's permanent residence was filed within sixty days from their day of birth.

The important factor to note here is that the agreement makes no mention of any future generations born to parents of category 3. But under Article 2, Japan agreed, if requested by South Korea, to hold consultations regarding the matter after a lapse of twenty-five years. The Japanese government was reluctant to grant permanent residence to successive generations of Koreans in Japan, lest their privileged alien status be perpetuated forever.

The agreement also stipulated that continuous residence in Japan was a condition for permanent residence. If anyone left Japan, however briefly, after the war, he or she was not eligible to apply for permanent

residence. Moreover, the applicant was required to produce a record of evidence to prove continued residence in Japan. Those who had lived through one of the most chaotic eras of Japan's history might be faced with an insurmountable task in attempting to produce a satisfactory record of some twenty years of continued residence.

In addition to proving continuous residence, the applicant was required to present proof of nationality as a citizen of the Republic of Korea. Those who failed to acquire acceptance of nationality by the South Korean government were not eligible for permanent residence in Japan. Many Japanese jurists were critical of this legal point on the grounds that the agreement left no alternative for Koreans in Japan except to take the nationality of the South. It was a provision that could be construed as a denial of freedom of choice, which would contradict the principle of Article 22 of the Japanese Constitution.

Another important provision in the agreement was that permanent residence was to be granted only if the applicants filed their requests within five years from the date of the agreement. This meant that the Japanese government was prepared to grant permanent residence to Koreans not as a matter of right but as a privilege, regardless of their long years of residence in Japan.

Up to the deadline for application, January 16, 1971, there were 371,262 Koreans who filed application for permanent residence. Of these, by 1974, 342,366 Koreans were granted permanent residence by treaty. The Koreans who obtained legal status by this means were called "permanent resident aliens by treaty."

*Grounds for Deportation.* The permanent resident alien status does not necessarily assure Koreans of permanent residence in Japan. They are subject to deportation to their country of origin if they fall into one of the following categories:

1. Persons who are sentenced to imprisonment for a crime against the head of a foreign state, or a diplomatic envoy, which may be prejudicial to the interest of Japan.
2. Persons who are sentenced to imprisonment for more than three years for violation of narcotics control laws, or who are charged with crimes more than three times, or who are sentenced to more than seven years imprisonment for the violation of any Japanese law.

*Treatment of Koreans.* The treatment of Koreans in Japan, subsequent to the determination of their legal status, is spelled out in Article 4 of the agreement, which states: "The Government of Japan shall pay due consideration to...the matters concerning education, livelihood protection, and national health insurance in Japan" for those granted permanent residence.

Originally, the National Health Insurance Law did not specify that nationality was to be a determining factor for eligibility in obtaining insurance benefits. However, according to the administration rule established by the Welfare Ministry to implement the Health Insurance Law, a family head who did not hold Japanese nationality and his family were all ineligible for the insurance unless eligibility was granted by an ordinance of his city, county, or village government.

The Livelihood Protection Law of 1950 provides that "all people who suffer from destitution are entitled to protection by the state." Later the Ministry of Welfare gave the interpretation that "all people" meant only Japanese citizens, that the law was not intended to provide protection for aliens residing in Japan, and that the law could be extended to aliens only for public safety or for humanitarian reasons, but as a privilege bestowed upon them by the Japanese government. The Ministry of Welfare implied that Koreans had no right to file a motion of formal complaint if they were aggrieved by any irregularity in the benefits or aid below the standard remuneration.

Because of this capricious administrative interpretation, Koreans were excluded from other social welfare benefits, such as Child Welfare, Old Age Assistance, Aid to Handicapped Children, etc.

Koreans were excluded from the benefits of the Public Housing Law of 1951, which provided housing for low-income families. In 1954, it was clearly stated by the Director of Public Housing that no alien had the right to demand such benefits, regardless of the amount of taxes he or she paid in Japan. Koreans were excluded even from receiving a public loan for housing.

The only provisions for Koreans enumerated in the agreement were the Livelihood Protection and the National Health Insurance programs, which amounted to no more than a mere fraction of the social welfare benefits. In fact, neither of these provisions constituted additional benefits for Koreans, but simply affirmed what already existed.

*Deletion of Some Categories Subject to Deportation.* Of the categories subject to deportation as specified in Article 24, Paragraph 4 of the Immigration Control Law, the following categories have been deleted:

1. Leprous patients, under the law to protect against leprosy.
2. Mental handicaps, under the law of mental insanity.
3. The poor, vagabonds, or handicapped whose life depends on government or local entity assistance.

And one category has been added: persons who are sentenced and found guilty for violation of the narcotic control laws.

The third category was deleted because aliens have become eligible for social welfare. However, there are some cases in which a person

eligible for social welfare has become the subject of deportation. In one such case, a Korean woman with a 4-1-16-3 status returned from Korea after a very short stay after the war. She was divorced and had six children to support, so she applied for livelihood protection benefits. The Fukuoka Immigration Control Office denied her renewal of residence status on the grounds that she was so poor that she had to apply for livelihood protection. She withdrew her application for livelihood protection and reapplied for the renewal of her residence status, but the immigration authorities made moves to have her deported. She and the six children were imprisoned at Omura Camp to await deportation.

Another case concerns a Malaysian student. He was hospitalized with liver trouble, and, as his parents had stopped sending money, he applied for medical assistance. The immigration office rejected his application for renewal of status because he had applied for medical care assistance. They deported him to Malaysia in September 1975.

Concerning the designated country of deportation, a paragraph has been added in the law which states that except where the Ministry of Justice recognizes anything that might be considered prejudicial to the interests or public safety of Japan, the countries where deportees are sent should not include countries like those specified in Article 33, Paragraph 1 of the Treaty on Refugees. The ROK-Japan Agreement on the Legal Status of Koreans in Japan enables the Japanese government to deport any Koreans to South Korea, including those who claim their nationality to be North Korean. The law was obviously influenced by the Japanese ratification of the Treaty of Refugees. But in the absence of a clear definition of what is prejudicial to the interests or public security of Japan, there is a danger of arbitrary application of this provision.

#### PROTEST MOVEMENTS

The Immigration Control and Refugee Approval Law, which replaced the old Immigration Control Law on June 12, 1982, and amendments of the Alien Registration Law, have not solved many of the problems of alien residents.

While more and more Koreans and other aliens are protesting against strictures in their legal status and against their treatment under the law, supported by Korean and Japanese individuals and organizations, most of the cases are not the outcome of any systematic movement. Rather, they are cases in which an individual has ventured for various reasons to protest or sue for a particular injustice, and in so doing has won the support of people who are concerned with human rights and resent the manifestly discriminatory aspects of the case. Some of these cases will be considered later.

Systematic protest movements organized on a national scale with the purpose of publicizing general discrimination against Koreans have been staged only by Ch'ongnyon. This is in spite of the fact that Ch'ongnyon has long been reluctant to raise protest against the Japanese authorities, its major attention having been directed toward the recognition of North Korea and Japanese support for the Pyongyang government. An article entitled "Basic Human Rights of Korean Nationals in Japan and International Law" by Kim Gyusun (1982) explains Ch'ongnyon's policy for the human rights of Koreans in Japan.

The important rights that Koreans in Japan should struggle for, Kim insists, are:

1. Freedom of political activities.
2. The right to be a citizen of North Korea.
3. The right to repatriate to North Korea.
4. The right to visit North Korea and come back to Japan.
5. The right of ethnic education.
6. The right of residence in Japan.
7. The right to work and receive social welfare benefits.

The most important thing for Koreans in Japan, in Kim's opinion, is that they should be conscious of being nationals of the Democratic People's Republic of Korea (DPRK), and their pride in being such should never be hurt. It is the duty of nationals of the DPRK to join in the struggle to support the DPRK government and to participate in campaigns organized along the lines of the DPRK's policy. It is natural that these nationals should repatriate to the DPRK; therefore the rights of political activities and of repatriation should be secured before anything else. Those who are unable to return to the fatherland for various reasons, and are obliged to remain in Japan, should have the right to visit North Korea and return to work and obtain social welfare benefits in Japan.

Kim's article (1982), written in line with Ch'ongnyon's policy, does not reflect actual current protests against the treatment of Koreans, which are more directed toward improving the day-to-day situations faced by Koreans. Nevertheless, the article is useful in helping us to draw some systematic conclusions about the nature of protests that occurred sporadically without any systematic overall plan.

Of the many protests against the treatment of Koreans, I should like to draw attention to some special cases that have gained some publicity in the mass media and have resulted in some concerted direction for future campaigns.

## THE REPATRIATION OF KOREANS IN SAKHALIN

According to the *Mainichi Daily News* of October 19, 1982, a lawsuit has been going on at the Tokyo District Court to achieve the repatriation to Japan of Koreans from Sakhalin, now part of the Soviet Union.

The Koreans remaining in Sakhalin are the descendants of those who were forcibly moved to "Karafuto" (Sakhalin) during the colonial period. There were about 43,000 Koreans in Sakhalin at the end of the Second World War. When the San Francisco Treaty came into effect, the Japanese government made it public that these Koreans had lost their nationality as Japanese citizens. Most of the Koreans in the Soviet region have since obtained citizenship of the Soviet Union or have taken citizenship of the Democratic People's Republic of Korea although they have remained in the Soviet Union. But it is said that even today, as many as 3,000 Koreans are seeking to be repatriated to South Korea, and in some cases to join relatives in Japan. The great majority of the people seeking repatriation have maintained their status as stateless persons under Soviet law, despite various disadvantages in their daily life.

The focus of the trial concerning their repatriation is whether or not the Japanese government has any responsibility for their repatriation. The Japanese government refuses to repatriate them on the grounds that they lost their nationality as Japanese citizens under the peace treaty, while some Koreans argue that it is the Japanese government that forced Koreans to take Japanese nationality at the time of annexation, and deprived them of it at the San Francisco Peace Treaty by failing to stipulate anything in the treaty concerning the nationality of Koreans.

The *Mainichi Daily News* disclosed that special U.S. State Department advisor John Foster Dulles and the Japanese Prime Minister at that time, Shigeru Yoshida, discussed the Koreans' status, and Dulles ultimately acceded to Yoshida's pressure to leave mention of the Koreans out of the treaty. The newspaper reported:

The copy of an important government statement, which affected the fate of Koreans in Sakhalin, was found in the secret documents declassified by the Foreign Ministry. The statement reads in part: "The Japanese Government will not persist in its opposition to Korea being made a signatory of the Peace Treaty, if it is definitely assured that by the said treaty, Korean residents in Japan will not acquire the status of Allied Forces nationals." The Japanese government handed the supplementary statement on (1) repatriation to the Philippines and (2) Koreans and the Peace Treaty to Dulles on April 23rd, 1951.

Why was the Japanese government so concerned about the Koreans in Japan that it would oppose Korea's inclusion among the treaty's signatories if they were to be given the status and benefits of nationals of the Allied Forces?

The newspaper explained by quoting a U.S. State Department document released earlier. The declassified State Department document reveals everything that Yoshida and Dulles discussed on this matter at their April 23 meeting:

Ambassador Dulles said that he understood that the Japanese government objected to Korea being a signatory of the treaty. Mr. Yoshida replied that this was so and presented a paper containing his government's views. Ambassador Dulles said that he could see the viewpoint of the Japanese government in that it did not want Korean nationals in Japan, being mostly communist, to be able to obtain property benefits under the treaty. He suggested that this might be taken care of by limiting these benefits to the Allies. His initial reaction, however, in the light of world events and the desire of the U.S. to build up the prestige of the Korean government, was that Korea should be included in the treaty negotiations. If the only practical objection the Japanese government had to Korea's participation was the one just discussed, then this could and should be taken care of. If the Japanese had any other practical objections, the U.S. would be glad to study them.

Prime Minister Yoshida said that his government would like to send almost all the Koreans in Japan back home. The government had long been concerned over their illegal activities. He had raised the matter with General MacArthur, who had opposed their enforced repatriation, partly on the grounds that they were mostly North Koreans and would have their heads cut off by the ROK.

As a result, the Yoshida-Dulles meeting caused a complete turnaround in the U.S. attitude towards the nationality problems of Koreans in Japan.

Although the Foreign Ministry started preparations to conclude a peace treaty with the Allied Forces soon after Japan's defeat in the war, top ministry officials became very interested in the nationality problem of aliens, which would be brought about by territorial disposition.

In preparing the draft of the peace treaty, the Japanese government maintained that: "Based on the general principle of international law, (1) those wishing to obtain Japanese nationality will be given a choice, Japanese or another; (2) the property of people who relinquished their Japanese nationality will be completely respected and they can leave Japan freely; those wishing to have Japanese citizenship will be able to remain in the country."

In the last stage of completing the draft treaty, however, a paragraph on nationality problems was eliminated, probably in the light of American military strategy in the Far East. There is therefore no reference to such problems in the treaty.

The Japanese Federation of the Bar Association is preparing to file a petition at the United Nations for the repatriation of the Koreans in

Sakhalin.

#### THE REGISTRATION OF FINGERPRINTS

On October 7, 1982, at a meeting of the Audit Committee of the House of Councillors, Socialist Senator Shoji Motooka from Hyogo Prefecture raised questions about fingerprint registration required for alien residents in Japan to the Minister of Justice, Michita Sakata (*Mainichi Daily News*, October 8, 1982).

Answering his questions, Hiroshi Otaka, director general of the Immigration Bureau of the Justice Ministry, explained that the number of alien residents refusing to have their fingerprints taken by the Japanese authorities was on the increase. The incidence of such cases has risen to twenty-seven in various parts of the country, including Sapporo, Tokyo, Kanagawa, Shizuoka, Kyoto, Osaka, and Kita Kyushu. Of the twenty-seven persons who refused, two are currently undergoing trial, seventeen others are in the process of being persuaded by officials to change their minds and obey the law, and most of the remaining eight have been reported to the police by the local ward offices. According to the Alien Registration Law, ward offices are required to report any infringement of the law to the police. The exceptions to date have been Kokura Ward in Kita Kyushu and Ikuno Ward in Osaka.

In Ikuno Ward in Osaka, where 38,898 of the population of 194,552 are Koreans, some aliens are refusing to have their fingerprints taken, and the ward office is trying persuasion rather than lodging a complaint with the police. The headman of the ward explained during the hearing at the Diet in the course of the deliberation on the revision of the Alien Registration Law in April 1981 that most of the Koreans have been living in the ward for two or three generations. They were born and grew up there. They speak Japanese and go to Japanese schools. Considering the historical background, the actual lives of Koreans, and the sentiment of other (Japanese) residents, he thought that the procedures of alien registration, particularly fingerprinting registration, are far from reasonable.

Senator Motooka said that aliens refusing to have their fingerprints taken included not only Koreans, but some American and West German citizens. He insisted that the Japanese government ought to reconsider the Alien Registration Law if Japan plans to maintain its status in the international community. The Justice Minister replied that some thought should be given to dealing with the issue, but added that he could not alter the principle of the law because it is the only way the aliens in Japan can certify their status and claim their rights.

Senator Motooka raised his question in the House of Councillors in coordination with a campaign conducted by local civil servant unionists in

Nishinomiya city, Hyogo Prefecture, against fingerprint registration. The Nishinomiya branch of the All-Japan Autonomous Entity Civil Servants Union proposed a nationwide campaign for the abrogation of fingerprint registration under the Alien Registration Law. The proposal explained that there are some alien residents refusing to have their fingerprints taken in order to appeal to the public that the principle of fingerprint registration is a violation of human rights and should be abrogated.

In September 1982, the Nishinomiya section of Ch'ongnyon and Nishinomiya Church of Korean Christians in Japan filed petitions for abrogation of fingerprint registration.

#### RECENT AMENDMENTS OF THE IMMIGRATION CONTROL LAW AND THE ALIEN REGISTRATION LAW

Because the acquisition of South Korean nationality was an absolute condition for granting permanent resident status and many refused to apply, Japanese government officials reiterated that only minimum social welfare benefits could be extended to needy persons on humanitarian grounds, regardless of their legal status. As far as legal treatment was concerned, therefore, in actuality there was only a slight difference between a person who had acquired the status of a permanent resident alien and one who had not. The only real difference was that it was more difficult to deport permanent resident aliens than those who were not so classified.

Influenced by the Japanese ratification of the International Covenant on Human Rights and the Treaty on the Status of Refugees, the Japanese government made certain amendments of the Immigration Control Law and the Alien Registration law.

*Establishment of Exceptional Permanent Resident Status.* The most critical amendment of the Immigration Control Law has been the establishment of "the exceptional permanent resident alien." Those who are eligible to apply for exceptional permanent resident alien status are (1) 126-2-6 aliens, (2) lineal descendants of 126-2-6 aliens who were born between the time the peace treaty came into effect and the last day for application, having lived continuously in Japan up to the date of application, and (3) children of 126-2-6 aliens who were born after the last day for application. Categories (1) and (2) will be granted the right of permanent residence unconditionally if they apply by December 31, 1986, and category (3) aliens are unconditionally granted permanent residence if their application is made within thirty days of birth. Those whose status has changed from 126 to 4-1-16-3 because they committed some crime are ineligible to apply for the exceptional permanent resident status.

The establishment of the exceptional permanent resident status has simplified the diversity of status problems among Koreans in Japan and is

a step forward to securing a right of stable residence for them. But there are still some problems remaining regarding the special permanent resident status. It has been pointed out by the government that those who are sentenced to deportation are ineligible for exceptional permanent resident status. Grandchildren of 126-2-6 aliens, born after the deadline for application, are also ineligible.

The most serious drawback of the exceptional permanent residence is that its holders are subject to deportation. Although special permanent resident aliens (permanent resident aliens by treaty) are not subject to deportation unless they are sentenced to more than seven years of imprisonment, the exceptional permanent resident aliens are subject to deportation if their sentence extends to more than one year in prison. Reflecting the discriminative treatment of the exceptional permanent resident Koreans compared with the special permanent resident Koreans (by the ROK-Japan Treaty), the Japanese government expressed its contention in the Diet that it was reasonable that the treatment of nationals of a country with diplomatic relations with Japan (ROK) should be different from that of nationals of a country without them (DPRK).

Previously, two points for eligibility for permanent resident status were stipulated: (1) good behavior, and (2) possession of property or a skill making it possible to earn enough to maintain an independent life according to Article 22 of the Immigration Control Law. By amendment of the law, naturalized Japanese nationals—persons who are entitled to the right of permanent residence and wives or children of 126-2-6 aliens—have become free from these restrictions.

Grandchildren or great-grandchildren of 126-2-6 aliens born after the period of application for exceptional permanent resident status, special permanent resident aliens who were formerly of Japanese nationality, and illegal immigrants are eligible for permanent resident status if they have wives, husbands, or parents who are entitled to the right of permanent residence. But such permission is not granted unconditionally—only if the Ministry of Justice considers that the permanent residence of the individual is in the best interests of Japan.

From the viewpoint of Ch'ongnyon, the exceptional permanent resident status specified in the new law is a result of its campaign against the enforcement of the previous law, forcing Koreans to apply for special permanent resident status under the ROK-Japan Treaty. The applicant for special permanent resident status under the treaty was required to present proof of nationality as a citizen of the Republic of Korea. According to pro-Pyongyang Koreans, whenever Koreans came to the authorities for the purpose of registering their company's name or seal, the Japanese used the opportunity to try to persuade them to apply for permanent

residence under the treaty. These Koreans therefore organized a group with the purpose of recognizing their nationality as citizens of the DPRK. This issue is not yet resolved.

*Reentry.* As Koreans in Japan do not possess an ordinary passport, they continue to face difficulty in leaving and reentering Japan. The Japanese government issued a paper (pass) to a Korean going abroad so that he or she could reenter by presenting it at immigration. With the newer amendment of the Immigration Control Law, the government now issues a paper effective for multiple reentry, so that the holder can leave and reenter Japan without having to apply each time, as long as the paper remains valid. However, the longest period allowed for a multiple reentry visa is one year. If the holder is unable to return to Japan by the time the paper expires, and if the Japanese authorities consider his excuse reasonable, he can apply at any Japanese embassy or legation for an extension of his stay abroad for another year.

#### THE PRESENT KOREAN DILEMMA

There are other causes for protest against the treatment of Koreans which arouse Koreans or gain them the support of interested Japanese (Lee and DeVos, 1981, Chapter 1). The cases I have illustrated cover some protests that have been well publicized or have a certain potential for continuance. All these cases have some feature in common.

(1) They are supported by sympathetic Japanese. With such support, it is easier for Korean protests to gain publicity. For the same reasons, it is also easier to put more pressure on Japanese authorities to improve their treatment of Korean residents. More and more Japanese are becoming aware of the legal status of their alien residents in general and the treatment of Korean residents in particular, as they become concerned with the Japanese ratification of the International Covenant on Human Rights and other treaties on human rights. A campaign conducted by the buraku Keiho Domei against the discrimination of Koreans has helped public protest.

(2) Except for the special case of the repatriation of Koreans from Sakhalin to South Korea or Japan, most issues raised are applicable to other aliens in Japan. As other aliens, particularly those from Europe or the U.S., come to be more concerned with permanent residence, they are becoming increasingly conscious of limitations on their rights. Because the proportion of non-Korean aliens in the total population of alien residents is increasing, protests may also increase. This does not necessarily imply that more non-Korean aliens are now protesting about their treatment or winning Japanese support, but treatment of aliens in general is being discussed more openly and loudly, which will encourage more individual Koreans to stand up and protest and attempt to win

Japanese support.

The cases I have mentioned suggest that if the Korean organizations Ch'ongnyon or Mindan, together or separately, were to stage a nationwide campaign for the improvement of the legal status and the treatment of their people, then they could win increasing support from the Japanese as well as other alien residents in Japan.

But any campaign large enough to draw public attention and strong enough to put pressure on the Japanese government brings out a necessary consideration of the fact that political activities by aliens under the Immigration Law are as yet severely restricted, and it is the Japanese authorities who decide what is to be considered "political activity." The danger of abrupt deportation is apparent. As Kim states in the article cited above, the right to be concerned with political activities is important to safeguard the rights of all aliens in Japan.

### **The Effects of Legal Policy on Burakumin Life**

For a considerable period after the war, it was government policy to pretend that the outcaste problem in Japan had disappeared (Totten and Wagatsuma, 1966). The major newspapers and all public media refused to print any reference to this shameful continuity into the modern age of discrimination based on the social degradation of the hereditary pariahs of traditional Japan. By the late 1960s, however, the veil of secrecy was lifted and the government passed an ameliorative act openly acknowledging the need for social assistance and recompense for those bearing the burden of discrimination for many generations. The newspapers began printing news about buraku protests, as Reich describes the process in Chapter 6; a "private" malaise became a public issue. Buraku issues at that time became part of a political interplay wider than the buraku communities themselves.

The improvement of buraku communities and the assurance of fair treatment under the Law of Special Measures for Integration Projects have been most significant in several respects.

#### **INCREASE IN BUDGETS**

The Japanese government, after years of neglect, determined to make an all-out effort to improve housing and job opportunities available to those living in the buraku communities. Under the special law, governments—both central and local—have implemented numerous projects aimed at social integration. The government's budgetary allotment for all such projects from 1953 to 1968, before the enactment of the special law, was 17.8 billion yen, while in the ten years after the enactment it rose to 688.7 billion yen. In the budgets of prefectures with large buraku communities, such as Osaka, Hyogo, Okayama, Kyoto, Mie,

Nara, Wakayama, and Nagano, budgets increased from 19.7 billion yen before 1950 to 725.4 billion yen in the ten years following the enactment.

#### IMPROVEMENTS IN HOUSING AND LIVING CONDITIONS

The most obvious changes in buraku communities under the law have been in the visible improvement of housing and the living environment, which has utilized a high percentage of the total budget allotted for special measures. For example, of 90.6 billion yen allotted for special measures in fiscal year 1974 in all prefectures, 36.5 billion yen, or 40.3 percent of the total amount, were spent for improved housing and living conditions. Of the 265.5 billion yen allotted by all cities, towns, and villages, 174.1 billion yen, or 65.5 percent, were spent on housing and improved spacial environment. Half of the budget allocated for improvement of housing and living space actually went into buildings.

Residential units constructed between 1969 and 1975 numbered 22,275 private dwellings and 34,596 public units in 173 larger communities, as well as 6,460 private dwellings constructed in 260 smaller communities, for a total of 63,331 houses in all. Projects attempting to improve the environments during this period included creating parks; laying sewerage pipes; building roads, bridges, and public bathhouses; installing water supplies and fire-fighting facilities; and providing sanitary slaughterhouses.

In urban buraku, old houses were demolished to make way for blocks of high-rise apartments complete with community centers, day-care centers, and facilities for the aged. In some communities, new medical clinics and well-appointed public bathhouses were constructed. To illustrate, we can compare housing figures over the last ten years in Kyoto and Kobe with those of the previous sixteen to seventeen years. Over the past ten years 2,094 new dwellings were built in Kyoto and 3,981 in Kobe. During the previous seventeen post-war years, only 1,125 and 1,155 were built in the two cities, respectively. Thus, in Kobe about half the households of buraku communities have moved into new public housing. In Kyoto the percentage has reached over 70 percent, a notable change from the conditions documented in the 1960s (DeVos and Wagatsuma, 1966).

Formerly, many households had to live in temporary sheds or makeshift barracks as squatters on others' land. Many lived in rented tenements or rented rooms. The number of households now living under such destitute conditions has dramatically decreased. Housing for burakumin no longer differs from that available to most ordinary Japanese. The Koreans in Japan, however, still are constrained to live in hovels and makeshift shelters. In some instances, they have moved into dwellings abandoned by burakumin.

## IMPROVEMENTS IN EMPLOYMENT

One of the most significant improvements under the special law has been in the provisions for employment. One of the chief motivations behind the recommendations set forth by the Integration Policy Deliberation Committee (the recommendations the committee delivered to the government) was the mobilization of burakumin manpower, particularly young laborers, bringing them into the labor market to meet what had been a need for increasing manpower during the high economic growth of the late 1960s. The budget for special measures related to labor issues increased from 31 million yen in 1969 to 2.9 billion yen in 1980 (more than ninety times). Campaigns against job discrimination have been successful to a limited extent. Employees no longer have to present their *koseki* (family register) at the time of seeking employment. The *koseki* could be used to discriminate against burakumin, since it contains the specific address of the *ie* (house, home), as well as the births, deaths, and other additions and deletions to the family.

In the old *koseki*, there was also a notation indicating the social status of the family—namely, whether they were nobility (*kazoku*), samurai (*shizoku*), retainers (*shotsuzoku*), or common people (*heimin*). Burakumin were registered as commoners, but in addition it was noted in some *koseki* that they were “new” commoners or “shinheimin.” Since these vital statistics were considered a matter of public record, they were open for anyone’s inspection. With such easy accessibility, an investigator had little difficulty in ascertaining the family heritage of a given person.

With the revision of the Civil Code just after World War II, patriarchal rule was legally abolished and a new *koseki* system was established in which each nuclear family was registered separately. However, the old *koseki* was not destroyed, and the previous records were still open to investigators.

Because of the burakumin lineage and the *koseki* as an official source of identification, thousands of marriages and job opportunities have been negated and lives have even been destroyed. In 1968, Kaido launched a vigorous protest to the Justice Ministry regarding the family register system. Consequently, the *koseki* is no longer available to the public except with the permission of the family whose records are involved or in rare cases with the permission of the Minister of Justice. Various kinds of “buraku Lists” (buraku Chimei Sokan) have been published since the official restriction on accessibility to the *koseki*.

A buraku list is usually a book-length compilation of names, locations, numbers of households, and main occupations of some 5,300 buraku throughout Japan, grouped according to prefecture. The existence of such buraku lists first became known in 1975, when an employee of an

Osaka company informed Kaido about it. One pamphlet containing lists of buraku clearly illustrates how such lists are used for discriminatory employment. The author warned that there was a possibility that a bill for the revision of the koseki act would soon come up in the Diet, and that the public would then no longer have access to family records. To promote its sales, the pamphlet made the pitch that companies should buy the book immediately so that personnel directors would know who were burakumin and who were not. It is obvious that covert discrimination still exists in private companies. In the public sector, however, there is vigilant monitoring by buraku organizations to watch for evidence of discrimination.

#### SOCIAL WELFARE FACILITIES

In burakumin communities, the community center plays an important role. The nearby burakumin go there often to have community meetings to discuss forthcoming activities and the budget. Usually there is an office of Kaido in the community house.

Under the law, 866 new community centers were built by 1979, with offices, assembly halls, and small rooms furnished with bedding so that relatives or guests of members can stay overnight. The facilities are also used to hold various lecture courses, like those concerned with human rights, as well as cultural classes on tea ceremony, flower arrangement, and handicrafts, short courses in Japanese dressmaking, Western-style dressmaking, and knitting. Usually the facilities are open to people outside the community in the hope that social interchange can be expanded and intensified between those inside and outside the community through mutual participation in various events and activities.

Five hundred six day-care centers were built between 1970 and 1978. Most of them are for children between the ages of three and six. Day-care centers for small infants and children up to the age of six are also on the increase. A day-care center in the community is important, Kaido insists, because (1) it enables mothers to work, (2) it can supply an adequate meal to children whose mother may be both working and unable to afford nutritious food, and (3) it can give children a basic infant education. Day-care centers within buraku communities are open from early morning to late at night, in contrast to those outside, which are usually open for three or four hours a day at the most. A day-care center in the buraku community supplies a full lunch, in contrast to ordinary centers that expect children to bring their own lunch if they remain through the afternoon. Child education is a buraku priority, and this emphasis requires a larger budget and more personnel than are usual in non-buraku areas.

## GENERAL COMMENTS ON THE IMPROVEMENT OF NEGLECTED COMMUNITIES IN JAPANESE SOCIETY

Until the ameliorative efforts of the 1970s, members of buraku communities lived in abject circumstances (DeVos and Wagatsuma, 1966, Chapter 5). Today one can observe significant improvements in the environment, job availability, and educational opportunities in these communities in Osaka, Kobe, and Kyoto. The effort at improvement has progressed to such an extent that there have now arisen complaints of reverse discrimination in Japanese communities. The Communist party has conducted a campaign around the contention that buraku communities have been disproportionately well treated, so much so that adjacent areas of majority Japanese are neglected. In some instances, the relatively impoverished majority Japanese have expressed resentment at the special treatment now given burakumin.

### THE BURAKUMIN REACH OUT TO THEIR MAJORITY NEIGHBORS

People of a discriminated minority usually seek means to improve their lot and change their destiny. It is seldom, however, that they consciously seek to improve the lot of those with whom they have no special ethnic or minority identity. However, it is a characteristic of growing democratic awareness that the problems of one's own group are inextricably related to those faced by others. The more democratic a society, the more its members are concerned with general development. Traditions of discrimination, on the other hand, prevent the sharing of common goals even between groups facing similar forms of discrimination. This has been an unresolved issue in the relationship between the burakumin and the Koreans.

The shortage of labor in the late 1960s encouraged the burakumin to join the general labor market in larger numbers. The campaign for finding ordinary jobs for buraku labor was consciously directed to the general modernization of buraku communities. As a special interest group, the Kaiho Domei has played an important role. It has been reaching out consciously toward improvements not only for the burakumin, but for Japanese society in general. To date it has been the only large organization that has staged public campaigns for the ratification of the International Covenant on Human Rights and other treaties on human rights. This has been an indirect way of supporting the Korean cause in Japan. Kaido has led the way for the abolition of all forms of social discrimination in modern Japan, not only those traditionally practiced against its own people, but the forms of discrimination directed against Koreans and, interesting to note, against the physically and mentally handicapped. Under its initiative, there have been a number of campaigns directed toward the amelioration of discrimination against specific groups.

The outreach toward Koreans is particularly notable. Illustratively, wedding ceremonies in which the couple may be both Korean or one Korean and the other Japanese are often held in buraku community centers or at the buraku anti-discrimination centers. The more usual form of wedding at some fashionable hotel or restaurant is avoided not only for reasons of economy, but because the managers and others in charge of such facilities often make excuses when they presume that Koreans are applying for a wedding date.

The burakumin also realize that there are prejudicial forms of avoidance in Japanese society in respect to the handicapped. It is a moving scene to witness groups of handicapped, buraku, or Korean children joining together in a meeting in one of the buraku community buildings. All the participants are obviously enjoying themselves, and it is one of the few occasions when they can feel very much at home. One cannot describe the feeling aroused in such circumstances as pity, since the happiness and joyful atmosphere are contagious to the observer.

The development of the buraku Liberation Movement has been a stimulus for the Japanese in general to consider the meaning of human rights (Wagatsuma, 1966). Since the Meiji Restoration, with the rise of Japanese nationalism in opposition to the pressure of Western imperialism at the turn of the century, Japan has concentrated its efforts on developing its own economy, technology, and military force, paying scant attention to such issues as general human rights. In the post-war era, new perceptions are in order.

Under the slogan "abolish various other forms of discrimination," Kaido and its supporters have staged numerous campaigns on behalf of Koreans, and more recently for the handicapped and for women's rights. Since the earlier foundation of the Suiheisha in the 1920s, the buraku protest movements have endorsed the idea and ideal that discrimination cannot be eliminated without a concerted struggle on their own behalf by those who are discriminated against. Kaido has therefore encouraged concerted protest efforts by others facing discrimination. It has been dedicated to the idea that self-help and mutual organization is necessary. It is notable how groups of the handicapped have now organized themselves into a consolidated movement aimed at bettering their special conditions and causing awareness of their special needs and problems among the general public.

#### THE JAPANESE CONCEPT OF DEMOCRACY IS CHANGING

With their new post-war Constitution, the Japanese ventured seriously onto the path of democratization of their society. In the beginning, efforts by the government were instigated under pressures of the American occupation. There were also at that time small groups of

enlightened Japanese who sought to educate the people toward an understanding of the meaning of democracy. The burakumin movement after the war developed under this new atmosphere and culminated in official recognition accorded the burakumin in the Law on Special Measures. In some instances, the law caused problems when certain communities were publicly recognized as special communities. In effect, people had to openly declare themselves as burakumin to benefit from the new law. Naturally, many burakumin chose not to go public, but most did. The population of publicly acknowledged buraku communities increased, according to government statistics, from 1,113,000 individuals living in 4,160 communities in 1962 to 1,119,000 living in 4,374 communities in 1975. Obviously, there has been an evaporation of individual burakumin, but also a public acknowledgment and acceptance of traditional ghetto areas which have been hidden.

Democratization is noticeable in the government's approach to community betterment. In numerous instances, the improvement of housing or roads was first discussed among community leaders, rather than simply put into effect by outside specialists. Negotiations with the people involved helped to prevent dislocation as families were moved from tiny hovels into multistory buildings. A great deal of thought was given prior to the initiation of such activities. Families were even consulted about the number of stories desirable in such structures, and, once they were built, about their preferences for particular floors.

buraku students were given special scholarships. The allotment of these scholarships to encourage education was controlled from within the community by militant organizations. In many instances, the Kaido decided that an application should go through its offices to check whether or not the applicant was really a burakumin. This was done in some cases so that the burakumin receiving such a scholarship would use his opportunity eventually to aid the buraku movement. As a principle, every burakumin is required to join some buraku activity organized by Kaido. Through such community control, the Kaido organizations have expanded in a number of instances.

Traditionally, burakumin concerned with discrimination have used what is termed *kyūdan* (denunciation tactics) to cause embarrassment and draw public attention to acts or words of discrimination. Such tactics have been a form of public protest. They have continued, and with the coming in of the Special Law, individuals have been constrained to join such movements in order to benefit (Wagatsuma, 1966).

It is not surprising to find that the buraku movements were easily influenced by other mass protests that swept Europe and the United States in the late 1960s and early 1970s. Today democracy is no longer

considered something that is given, but it is actualized by joining a group activity. Such mass activities of burakumin have intimidated local politicians so much that in many cases they readily agree to what the burakumin demand. Sometimes these activities have lacked judicious consideration, and some proposed projects have been patently overambitious or lacking in feasibility. Some resistance is setting in, given the spiraling economic costs and the increased burdens placed on local budgets. These are issues that will have to be better resolved.

Traditional Japanese reluctance to see the value of confrontation has brought the issue of the Kaido continuing to use kyūdan tactics into question. Some mayors and governors have again begun to insist that policies ensuring better integration of burakumin should attempt to become independent of immediate Kaido pressures. The communist theory of reverse discrimination is one example of increasing resistance. It will be interesting to observe the course taken in the future. While we note how the Kaido public pressure has brought housing projects into being, changing the appearance of buraku communities, what will be the resultant activity to upgrade the city generally? What overarching democracy will be achieved in urban areas? How will the example of the burakumin movements influence future political participation? Has it been merely a phase of development, or will mass protest continue to be a method for change in Japanese democracy?

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# Troubles, Issues, and Politics in Japan: The Case of Kanemi Yushō<sup>1</sup>

Michael R. Reich

## Introduction

Human suffering involves both material and symbolic dimensions. How people deal with those two dimensions depends on their perceptions of the suffering as well as the character of the injury. As Schopenhauer put it: "Suffering which falls to our lot in the course of nature, or by chance, or fate, does not seem so painful as suffering which is inflicted on us by the arbitrary will of another" (Allport, 1958, p. 138).

This chapter uses a case study to explore both material and symbolic themes about the politics of human suffering in Japan. The case is the chemical disaster of Kanemi Yushō, in which a toxic chemical contaminated cooking oil and poisoned more than 1,600 people.

The main focus of the analysis is on how victims obtain redress—the *process* of redress—especially the transformation of private troubles into public and political issues. The Kanemi Yushō case followed three phases of an issue in the victims' effort to obtain redress. The problem first appeared as a non-issue and a private trouble, as individual victims confronted their private problem and the dilemma of going public.

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It then became a public issue and the victims' struggle, as groups of victims struggled with their common problem and the dilemma of group action. It finally developed into a political issue and the society's conflict, as victims became involved with various organizations and the dilemma of political alliance. These three phases represent an increasing scope of the issue, which critically affected the attention given by public and private organizations to the problem at hand: the redress of the victims. This transformation of the issue from private to public to political occurs for chemical disasters in other countries (Reich, 1981), and for other kinds of social problems as well.

This analysis depends first on a distinction between a trouble and an issue. C. Wright Mills defined a trouble as a private matter, and an issue as a public matter (Mills, 1959, p. 8). I follow that distinction, viewing a private trouble as a problem perceived as involving an individual or a family, and a public issue as a problem perceived as involving a larger group of people and institutions. In making that distinction, Mills emphasized that individual anxiety often does not become clearly defined as a private trouble, and that a trouble often is not clearly formulated as a public issue (Mills, 1959, pp. 11–12).

The analysis also depends on the notion that relatively powerless groups in society seek to expand the scope of an issue, from private to political, in order to influence policy (Schattschneider, 1960). Roger W. Cobb and Charles D. Elder (1972, p. 182) defined an issue as a "conflict between two or more identifiable groups over procedural matters relating to the distribution of positions or resources." In my analysis, an issue moves from the public to the political sphere when it expands its scope to involve many organizations, which posture on the issue, jockey for positions of power and advantage, and confront each other in the political arena over the issue's causes and solutions. A political issue is not restricted to the victims' struggle, but concerns broader social conflict.

This distinction between private, public, and political helps to illustrate two themes about relatively powerless groups in society. The first theme is a paradox confronted by such groups: To influence social institutions, those groups need to expand the scope of an issue. But that process of expansion creates new problems and costs for the groups and individuals, in taking their private troubles to a public forum, in creating groups to appeal their grievances, and in forming alliances with established social organizations. Second, in the process of expanding an issue, relatively powerless groups encounter conflicts that reflect the structure of political competition in society. How a group's demands fit with the structure of political competition will influence the group's strategy and success. These themes are illustrated in this chapter for the Kanemi

Yushō disaster. But they also apply to other pollution cases and to other social problems in Japan, as suggested in other chapters of this book.

This chapter first reviews the history of the Kanemi Yushō case over a ten-year period, from the origins of the poisoning in 1968 to the court decisions and settlements in the late 1970s. The chapter then analyzes the process of redress, the efforts by victims as individuals and in groups to obtain care, compensation, and cleanup from public and private institutions. In that process, the social problem of Kanemi Yushō was transformed from non-issue to public issue to political issue. The chapter then considers the substance of redress, what the Kanemi Yushō victims were demanding in care, compensation, and cleanup. The conclusion relates the Kanemi Yushō disaster to broader themes about Japanese society and social problems.

### **The Kanemi Yushō Incident**

On October 10, 1968, the western edition of the *Asahi* newspaper reported the outbreak of a “strange disease” (*kibyō*) around Fukuoka city on Kyushu. According to the article, people suffered from symptoms that included severe acne-like boils, extreme fatigue, excessive eye secretions, and discolored fingernails. The article noted that the probable source was a cooking oil refined from rice bran, but did not identify the producer (see Reich, 1981, pp. 140–201). Only the next day did *Asahi* name the suspected company: the Kanemi Warehouse Company (Kanemi Sōko K.K.). Within one month of that announcement, university scientists had identified the poisonous agent as polychlorinated biphenyls—PCB—which Kanemi had used as a heat-transfer agent in producing the cooking oil. Thus, the poisoning became known as the Kanemi *Yushō* or the Kanemi “oil disease.”

The immediate technological cause of the oil contamination was faulty stainless steel pipes used to circulate PCB in the heat-transfer system in producing cooking oil from rice bran. The pipes leaked the toxic chemicals into the rice bran oil mixture when the oil was heated to a high temperature (210 to 230 degrees C) during the deodorization process. The contamination occurred in February 1968 in the Kanemi factory in the city of Kitakyushu.

Kanemi was involved in another contamination problem as well. In February and March 1968, over 400,000 chickens died throughout western Japan, and more than two million fell sick. The symptoms of the chickens resembled those of chick edema disease, an illness discovered in the late 1950s in the United States and shown in the 1960s to be caused by chlorinated hydrocarbons (Kimbrough, 1972). Japan’s Ministry of Agriculture and Forestry (MAF) investigated the disease and by mid-

March determined that the birds' feed contained a poison. The study traced the substance to a feed additive known as "dark oil"—a by-product made by the Kanemi Company. By the end of April, all feed products with dark oil were recalled, and damage to chickens ceased. In May, it was officially confirmed within MAF that Kanemi's dark oil was indeed responsible. But the Ministry did not identify the specific causative agent, did not investigate the process of the oil's manufacture, and did not inform the Ministry of Health and Welfare (MHW) that a poisonous product had been produced by a factory also manufacturing cooking oil for human consumption. The MAF adhered to a strict definition of its sphere of responsibility of managing the health of animals while the MHW oversaw the health of humans.

The responses of the Kanemi Company and government agencies to the chicken poisoning thus obstructed and delayed public discovery of the human poisoning. Executives in the Kanemi Company persistently denied all questions about the dark oil and made no effort to test the cooking oil for toxicity, continuing to sell the cooking oil with business as usual. Government officials responded to the feed problem in an incomplete way and did not connect feed contamination with possible food contamination.

During those nine months of silence, from February to October 1968, most individual victims were isolated from each other and lacked the means to link their strange symptoms to a specific disease. In the summer of 1968, victims went from doctor to doctor in search of diagnosis and treatment, without success. But victims also wanted to hide their strange illness and symptoms from society (Kamino, 1972). Most medical doctors lacked training to identify the symptoms as caused by chemical poisoning, and some doctors who suspected food poisoning did not notify public officials. Earlier, in the spring of 1968, media reporters wrote about the chicken poisoning as a routine problem and did not investigate the matter further (*Asahi*, April 11, 1968). In these ways, the responses of individual victims, medical doctors, and media organizations also contributed to the nine months of silence (Reich, 1981).

But not all victims were isolated in those nine months. Indeed, public disclosure of the poisoning resulted from one persistent victim, a cluster of victims, serendipitous circumstances, and a news-sensitive reporter. An *Asahi* reporter's wife, by chance, learned of the illness and its probable link to Kanemi cooking oil from the student of the mother of a victim (Nishimura, 1972). That victim, Tadashi Kunitake, a low-ranking employee of the Kyushu Electric Power Company, had pieced together the mystery by talking with other afflicted families employed by the same company and living in the same apartment complex. He focused on a common food product—cooking oil the families had purchased

together—that seemed to be the cause. On October 4, he brought a sample of the Kanemi oil to a public health center for testing. On October 8, the *Asahi* reporter learned of Kunitake's actions and alerted other *Asahi* reporters, leading to the newspaper's scoop and national disclosure of the disease on October 10. That article transformed the disease from a private trouble and non-issue to the victims' struggle and a public issue (see the next chapter).

The media announcement of the "strange disease" due to cooking oil produced a huge impact, especially on the afflicted. As one victim put it: "The strange disease was not just our family. Other identical patients existed. It was not hereditary and not contagious. Once the cause became known, I thought, Japan's advanced medicine would soon cure us. It was a great relief" (Kamino, 1972, p. 18). The family felt they now had companions, fellow sufferers. "We knew there was someone else with the same pain. Some light shone in the family—just for that night."<sup>2</sup> Victims no longer viewed their illness as an individual affliction with unknown private causes, but recognized their disease as a group problem with identifiable social causes.

Sufferers of the strange disease responded to their new identity as victims of food poisoning in several ways: forming groups of victims; appealing for direct negotiations with company officials; organizing and filing civil damage suits; and appealing for support to the public and to political organizations. Those activities began shortly after the disease became publicly reported, and they continued for years.

The first victims' group was formed in Fukuoka city on October 14, only four days after the *Asahi* disclosure. The founders were Kyushu Electric Power Company employees, who lived in the same apartment complex. Shortly thereafter, groups formed in two other areas of Fukuoka prefecture, Tagawa and Kitakyushu. But in other areas, such as the island village of Tama no Ura, victims' groups were not formed for one year or more. These groups became the basis for victims' appeals for redress, which they initially sought to obtain through direct negotiations with Kanemi Company officials. When the company refused in late 1968 to provide what victims considered adequate redress or to continue in direct negotiations, the Fukuoka city victims' group decided to file a civil damage suit against the Kanemi Company and its president and against Kanegafuchi Chemical Co. (Kanegafuchi Kagaku K.K.), the producer of the PCB that contaminated the cooking oil. Their lawyer filed that suit in February 1969. Victims in other cities filed separate suits in November 1970 and after, and added to the defendants the city administration of

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<sup>2</sup> Interview with Ryūzō Kamino, Yushō victim, September 16, 1979.

Kitakyushu and the central government. Those suits eventually became consolidated into a mammoth trial in Kitakyushu with 729 plaintiffs (*Noguchi v. Kanemi Sōko K.K.*, 1978) and became coordinated with a movement of victims and supporters, while the trial in Fukuoka city remained small with 44 plaintiffs (*Kubota v. Kanemi Soko K.K.*, 1977) and confined to the courtroom. The Kitakyushu and Fukuoka suits thus represented two strikingly different legal and political strategies in victims' efforts to obtain redress.

The government responded to public disclosure of the cooking oil poisoning with measures to identify the victims (as well as efforts to identify the poison). It organized the Yushō Research Group, based at Kyushu University, which in late October 1968 set criteria for deciding whether a person suffered from Kanemi oil poisoning. Each prefecture then used the criteria in the fall of 1968 to screen about 14,000 potential victims of the poisoning. Those criteria, even though they were decided upon before final identification of the poison as PCB, remained in force for four years, until protests by patients and supporters pushed the government to revise its criteria. With regard to assistance for victims, the government defined the Kanemi Yushō case as a private problem to be resolved between the victims and the victimizers. Especially after the filing in November 1970 of the Kitakyushu case, which included the national government as defendant, government officials maintained that any intervention to assist Kanemi victims might be interpreted in court as recognition of guilt or responsibility for causing the poisoning.

The Kanemi Company initially responded to public disclosure of the poisoning by denying all responsibility, then by seeking to contain its economic liability and maintain its public legitimacy, and finally seeking to transfer or delay payments for damages. Even in early November 1968, Kanemi's president denied responsibility for the poisoning (*Asahi*, November 5, 1968). When the contaminant was identified with certainty as PCB, the company president agreed, under pressure, to meet directly with representatives of victims' groups, at which time he apologized repeatedly (*Asahi*, November 22, 1968). The company president subsequently resisted any more meetings with victims, but promised to compensate victims once the company started production again.<sup>3</sup> The company's strategy then stressed out-of-court settlements with victims willing to accept low compensation for damages, avoidance of all public

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<sup>3</sup> Kitakyushu city health officials closed the Kanemi factory on October 15, 1968, and allowed it to resume production on May 31, 1969, after the company made changes in the deodorization process, replaced PCB with another heat-transfer agent, and provided more sophisticated and regular safety checks for the oil. Yoshiyuki Hazama, 1969, p. 55.

meetings with victims, private apologies to individual families, and efforts in court to shift responsibility to Kanegafuchi for not adequately informing the oil company about the dangers of PCB.

Kanegafuchi Chemical sought to maintain as much distance as possible from the poisoning case. The chemical company made no apologies to victims, publicly or privately, and denied any responsibility for the contaminated cooking oil. Kanegafuchi alleged that it had provided adequate information to the oil company about the toxicity of PCB and that the accident resulted from sloppy production processes at the Kanemi Company. Until the early 1970s, Kanegafuchi managed to keep out of the public controversy of the Yushō case. But beginning in 1971, widespread PCB contamination was discovered throughout Japan, and the PCB poisoning of some consumers in the Yushō case became connected with the possible PCB poisoning of many more consumers in Japanese society.<sup>4</sup> As various outside groups gave support to Yushō victims and as more groups of Yushō victims formed, Kanegafuchi became a target for protests by Yushō victims and by consumer and other organizations.

Four years after the poisoning, victims still had received no significant compensation for their injuries, although the Kanemi Company was paying for some medical expenses. In September 1972, one leader in the Liaison Council of Victims Groups began a sit-in outside the Kanemi factory in Kitakyushu—a protest that lasted much longer than anyone expected: nearly four years. That victim, Ryūzō Kamino, stated that he had previously resigned as the director of the Victims Liaison Council because the organization stressed the trial too much, paid no attention to patients' individual problems, and neglected direct action against the company and the government (*Asahi*, December 17, 1972). He also criticized the intervention of political parties into the victims' movement, especially the competition between Socialists and Communists. "It developed into a political movement, separate from the victims themselves."<sup>5</sup> Socialists and Communists, in turn, viewed Kamino's actions as destructive of the movement and as influenced by the new left.<sup>6</sup> Kamino denied both charges.

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<sup>4</sup> For more on PCB pollution in Japan, see Naohide Isono, 1975. On the Great Fish Panic of 1973, see Norie Huddle and Michael Reich, 1975, pp. 169–193.

<sup>5</sup> Interview with Kamino.

<sup>6</sup> These opinions were gathered in an interview with Kazuyoshi Uejima, Fukuoka Prefecture Assembly member, Japanese Socialist party, September 6, 1979, and in another interview with Katsuyuki Tsukauchi, Kitakyushu City Council member, Japanese Communist party, September 6, 1979.

During the sit-in, which attracted supporters from all over Japan, Kamino verbally attacked the company. He demanded morality from the company president and from individual employees, sometimes reading the Bible through a megaphone, expressing his religious feelings, his Christian beliefs. "I want the company and the government to have humanness. I want a conscience that believes a sin is a sin" (*Asahi*, December 28, 1972). Kamino stressed that rights contained in one's own flesh could not be sold to anyone. To make his point, he withdrew from the trial and refused any compensation.<sup>7</sup>

About ten years after Yushō broke out, three long-awaited court decisions finally arrived. Two civil decisions, one handed down in Fukuoka city in October 1977, the other in Kitakyushu city in early March 1978, found both Kanemi and Kanegafuchi guilty of negligence and ordered them to pay damages to the plaintiffs: for 44 Fukuoka plaintiffs, 680 million yen (\$2.9 million); and for 729 Kitakyushu plaintiffs, 6.08 billion yen (\$26.2 million). The criminal proceedings, filed in March 1970, reached a decision in late March 1978 (*Japan v. Katō*, 1978), finding Kanemi factory director Morimoto guilty of injury due to professional negligence and finding company president Kato innocent.

All three decisions supported the claims of the victims. The two civil trials agreed that both Kanemi and Kanegafuchi could have foreseen the accident (based on their knowledge or access to knowledge of PCB corrosiveness and toxicity) and that both companies were negligent. On negligence, the judges in effect accepted Kanemi's argument that the chemical company had not provided sufficient information about the dangers of PCB, and they also accepted Kanegafuchi's argument that the cooking oil company had been sloppy in its production procedures. The civil decisions thus extended liability from the corporate user of PCB (Kanemi) to the corporate producer of PCB (Kanegafuchi), a precedent that worried the chemical industry. In the Kitakyushu case, however, the judges refused to find the local or central governments legally at fault, arguing that these public authorities could not have foreseen the contamination and were not negligent in a strict legal sense.<sup>8</sup>

These decisions, however, did not end the litigation. Although Kanemi accepted the verdicts, Kanegafuchi appealed both civil decisions. The chemical company publicly denied any responsibility for the Yushō incident in pamphlets published by the company, by the company labor union, and by an industry-related research group. Also, Kanegafuchi

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<sup>7</sup> Interview with Kamino.

<sup>8</sup> For further discussion of the legal arguments, see various articles in a special issue on "Kanemi Yushō Saiban," *Hōritsu Jihō*, 49 (April 1977).

quickly sought and obtained an injunction to halt payments during the appeal process. But after the Kitakyushu decision, victims and supporters launched direct protests at the chemical company's factory and its headquarters. Negotiations followed in which the company agreed to pay a large part of the compensation plus other expenses (Andō, 1978, pp. 589–590). The Kitakyushu decision was also appealed by the plaintiffs, who hoped to demonstrate the liability of the city and central governments and of Kanemi's president, and to raise the payments awarded at least to the level of payments in the Fukuoka decision (Andō, 1978, p. 590). Finally, a third civil suit (filed in Kitakyushu in 1976, finally with 342 plaintiffs) was decided in March 1982, along the same lines as the previous two civil cases.<sup>9</sup>

Following the Fukuoka decision in October 1977, the Kanemi Yushō Incident National Liaison Conference (an organization formed in 1975) began to seek assistance for patients not involved in any trial. After the second decision in March 1978, Liaison Conference leaders provided a concrete proposal to the two companies, through Ministry of Health and Welfare officials serving as mediators. Some conflict arose between the team of lawyers and Kanegafuchi, causing tension in the Liaison Conference and in the negotiations. But in July 1978, the parties reached an agreement whereby Kanemi paid each nontrial patient 220,000 yen (about \$1,000) and Kanegafuchi paid 1.3 million yen (about \$6,000). The agreement stipulated that if Kanegafuchi lost the final decision, payments would be brought up to the same levels as awards to plaintiffs, and if the company won, no adjustments would occur.

Evaluations of the agreement varied. Opponents of the agreement called it a compromise settlement engineered by Socialist party activists to compete with the Communist party-oriented trial. Supporters called it an honest effort to fairly assist all Yushō patients, including the approximately 600 nontrial patients. Some of the 1,000 patients who had struggled for years in trial proceedings, providing funds for lawyers and traveling to demonstrations and meetings, resented the agreement. They felt that the nontrial patients were taking a free ride, jumping on the bandwagon that they, the trial patients, had pushed and pulled for eight long years. Even at the end of the 1970s, then, conflicts and bitterness

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<sup>9</sup> The court awarded a total of about 2.5 billion yen (\$1.1 million) to the plaintiffs, found Kanemi, Kanegafuchi, and Kanemi president Katō guilty of negligence, and found the national government and Kitakyushu city government innocent. See *Asahi*, March 29, 1982, evening edition.

persisted in the Kanemi Yushō case.

### **The Process of Redress**

Obtaining what the victims consider adequate redress is not an automatic process, but depends on social and political processes. Existing institutions are often unwilling or unable to provide adequate redress. Much of the burden of obtaining redress therefore depends on the victims themselves, on their collective mobilization, and on their alliances with other groups. Those social and political processes affect how the problem of redress is defined, especially the scope of the issue. In some cases, like Kanemi Yushō, the problem must be transformed not only from a non-issue into a public issue, but also into a political issue before the victims can obtain adequate redress.

This analysis proposes three phases of an issue. The first phase (private trouble) requires discovery and definition of the social problem. The second phase (victims' struggle) requires formation of a group and assertion of grievances as a public issue. The third phase (society's conflict) requires expansion of the issue to other groups and the creation of pressure on private and public institutions as a political issue. The three phases of the scope of conflict (private trouble—victims' struggle—society's conflict) correspond to an increasing scope of political issue (non-issue—public issue—political issue).

#### **NON-ISSUE**

Chemical disasters begin with the individual. A person suffers injury from some outside source, but experiences the problem as a personal, private trouble. The victims often do not realize they are victims, rarely know what has harmed them. As individuals, they confront the complex problems of toxic contamination, and confront the obstacles created by social institutions. From a position of relative powerlessness, victims wrestle with the dilemma of going public: wanting to protect their private lives, but also wanting to search for the problem's cause, which often requires going public. That phase of private trouble—when the problem is a non-issue—lasts until the toxic agent becomes publicly identified.

Even a chemical disaster, then, can be perceived as private trouble or a non-issue, when in fact an individual's anxiety reflects a group's plight deeply rooted in the organization of society (Mills, 1959, p. 8). Some political scientists have argued that such gaps between perception as non-issue and actuality as social problem occur because "the number of potential public issues far exceeds the capabilities of decision-making institutions to process them" (Cobb et al., 1976), requiring the development of filters or gatekeepers to determine which troubles become issues (Easton, 1965). Peter Bachrach and Morton S. Baratz (1975)

argued that those mechanisms are not accidental, but are designed to inhibit the creation of issues that would threaten the existing social order. According to this perspective, the evaluation of a political system must ask: Which issues are kept private—as non-issues—and with what consequences (Crenson, 1971, p. 194)? It must ask: Which groups benefit when a social problem is perceived only as a private trouble? And which groups suffer?

In the Yushō case, various groups—the victims, their doctors, private and public organizations, and the mass media—responded in ways that delayed the transition from private trouble to public issue, and thus delayed redress to victims. That delay resulted most importantly from how the groups perceived their interests and reacted to suspicions of toxic contamination. The delay also resulted from cognitive barriers in confronting a new problem: the lack of experience and of systems to identify and handle toxic contamination. The victims experienced a contradictory reaction around the dilemma of going public: wanting to keep the problem private to avoid social stigma and its costs, but also wanting to seek a social explanation to find an external cause for their illness. They confronted various obstacles to understanding the social basis of their private trouble, including obstacles due to the nature of toxic contamination. In this initial phase, the Kanemi Company responded evasively, while government agencies responded ineffectively. Some doctors made efforts to understand the strange symptoms of individual patients, but did little to deal with the problem as a public health issue. The mass media contributed to public disregard of the contamination problem, but later played a central role in promoting the problem's new definition as a public issue (see Chapter 6).

Understanding these processes that prolong the phase of private trouble for toxic contamination is important, because going public during that period can lead to changes that drastically reduce or prevent further damages. Time plays a critical role, since the consequences of toxic contamination worsen as the delay of effective countermeasures drags on (larger exposures, wider contaminated areas, more victims). Also, the problem's definition as a private trouble constrains the choice of private and public remedies to largely ineffective and inappropriate measures, thereby worsening the consequences. The longer a chemical disaster remains a non-issue, the more victims suffer.

#### PUBLIC ISSUE

The public disclosure of toxic contamination by the mass media transforms the perception of the problem from private trouble to public issue. As an issue, the problem of toxic contamination becomes publicly defined as affecting not just isolated individuals but a group of victims and

various social institutions. Often, until a private trouble is defined as a public issue, the problem does not receive necessary official attention.<sup>10</sup> In conflict over the public issue, victims seek to expand the issue's scope, while institutions seek to contain that scope. In this phase, victims confront the dilemma of group action: they need group action because of the responses of social institutions and because of their lack of power as individuals, but group action creates additional conflicts and problems from organization and protest.

A trouble becomes an issue by two basic patterns: one in which an issue arises outside government and then is expanded to gain public recognition followed by official recognition (the outside initiative model); and another in which an issue arises within government and receives official recognition and then is expanded to gain public support (the inside initiative model) (Cobb et al., 1976, pp. 127–128; Hecló, 1974). The Yushō case, like most chemical disasters, followed the outside initiative model.

Social institutions used a range of protective responses to contain the issue: from withdrawal and denial, to definition of issue, legitimation of policy, and administrative action. The Kanemi company president, for example, first denied responsibility for the poisoning, next defined the issue of redress as depending on company production, then rejected direct negotiations with victims, and then, this failing, finally sought to conclude out-of-court mediated settlements with various victims. Public institutions responded in mixed ways, partly defensive and partly offensive, attempting to contain the issue as a solvable problem, but also to expand the issue for organizational benefit.

The victims used two main forms of group action—organization and protest—to expand the issue's scope and to obtain redress. They created organizations of victims as the problem became a public issue, new groups to deal with private and public institutions on the problem of contamination. These organizations used various activities, especially negotiation and litigation, to seek redress. The victims also used protest to increase the victims' power, but they also carried limitations and imposed new social costs on the victims, thereby structuring the dilemma of group action. Those social costs included the time and money

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<sup>10</sup> Sickle-cell anemia, a congenital disease affecting one of five hundred black Americans, exemplifies the lack of official attention until a problem becomes an issue. One study concluded that seventy years passed after the disease was first documented before it became recognized as a public issue in 1969. "[I]t seems clear from historical experience that problems of minority groups in this country are never fully dealt with until they somehow encroach upon or accentuate problems of the majority." Seth Lawrence Matarasso, 1980, pp. 650–655.

committed to organization and to protest, the conflicts among different victims' groups, and the psychic costs of a long public struggle.

Among the groups involved in the public issue, the victims began with the greatest disadvantage. They usually lacked organization, yet had to confront well-established social institutions. The victims' struggle for influence over the issue expressed a struggle to reassert control over their own lives and environment. That struggle exists in all cases of chemical disasters, but takes different forms, affected by factors of social structure and culture. Those factors can explain how long the phase of the victims' struggle lasts and how it affects the victims' ability to obtain redress.

A major point of the victims' struggle focused on the definition of the public issue. As E. E. Schattschneider (1960, p. 8) put it: "Political conflict is not like an intercollegiate debate in which the opponents agree in advance on a definition of the issues. As a matter of fact, the definition of alternatives is a supreme instrument of power." And more powerful institutions began with significant advantages in establishing the definition of the issue.

Conflict over definition of the issue became a conflict of symbols and power. According to Peter L. Berger and Thomas Luckmann (1966, p. 109): "The confrontation of alternative symbolic universes implies a problem of power—which of the conflicting definitions of reality will be 'made to stick' in the society." In their struggle for influence on questions of care, compensation, and cleanup, victims attempted to expand their definitions of the issue to other groups in society, while private and public institutions sought to contain the symbols and the power of victims. For the victims discovered that they needed allies in their struggle to obtain redress, that victims' groups alone could not bring sufficient pressure on social institutions.

#### POLITICAL ISSUE

As the victims organize and protest, the scope of the issue expands. Various organizations—governments, companies, political groups, the media—adopt and adapt the problem into their public repertoire of issues. Those differing perspectives produce a crescendo of controversy that transforms the victims' struggle into a social conflict, and the public issue into a political issue. In this way, the struggle over the victims' issue comes to reflect the structure of political competition in society.

In responding to a political issue, private and public institutions seek to protect themselves from conflict and to reintegrate conflict into normal social processes. Those social institutions use a mix of three main strategies for conflict: dissociation, confrontation, and institutionalization. In the Yushō case, the stress by some victims on personal responsibility reduced the ability of Japanese company officials to retreat from public

controversy, to dissociate themselves and their company from political conflict. The government's insistence on the private, not public, nature of the Yushō problem deflected most social conflict away from public agencies and toward private companies.

The Yushō case showed some typical forms of the confrontation strategy, used by both private companies and public agencies to delegitimize their critics. These organizations, when caught in conflict, sought to blame other participants and to portray their own organization as a victim of irresponsible social forces. To confront conflict, they used the tactics of blaming-the-politicians, blaming-the-victims, blaming-the-media, and blaming-the-private-company.

Social organizations also adopted a strategy of institutionalization, using other institutions to contain the conflict or to become the focus of conflict. In a good example of that strategy, the public administration used the Yushō Research Group at Kyushu University as a buffer between victims and government, to maintain the appearance of scientific legitimacy but also to retain an approach to policy that supported government positions. That strategy combined scientific legitimacy and political cooperation, in a way that diverted social conflict to the Yushō Research Group instead of government agencies.

For the victims, expanding the conflict in society and expanding the issue in politics offer the promise of increased influence. But that strategy also creates the possibility of renewed powerlessness. For the process produces dependencies on supporter organizations, which carry their own baggage of controversies, ideologies, and strategies. And some alliances create conflict among victims as well as within the target institutions. Victims thus confront the dilemma of political alliance, the dilemma that they gain influence only through a sacrifice of autonomy.

In the Yushō case, as in other chemical disasters, the victims did not want politics or political resolutions to their problems. They wanted redress and justice, because they had been harmed. As the victims realized they needed allies to achieve their goals, they scanned the horizon to see whether they could build a coalition, with what elements, and at what costs. They began with other victims and then extended outward, looking for allies in the mass media, in social movements, and in political parties. That decision to join a coalition involved costs—giving up some redress or reward, some equity or justice—but the decision was not a purely economic calculation. The decision to join resulted also from outrage at the victimizers, outrage at the compromises imposed by social bargaining. For some, the drive to get redress and justice overcame the costs of alliance that others would tolerate.

The Yushō case also illustrated how social class affected the victims' ability to search for allies, in the same way it influenced their ability to organize and protest. As noted earlier in this chapter, the resources for all those activities are distributed in Japanese society (as in other societies) away from the poorer and more marginal classes—such as the fishermen in the Goto Archipelago. People at the margins of society thus suffered an added burden when struck by disaster. The less able they were to cope with the normal pressures of modern society, the more they suffered from the additional trauma of disaster.<sup>11</sup> As a political issue, conflict among the victims' allies in a chemical disaster generally follows the structure of political competition in the society. Differences in strategy—protest versus litigation versus settlement—become embodied in competing organizations and competing alliances of victims and supporters. In the Yushō case, support groups affiliated with the Communist party focused on litigation and the courtroom struggle; support groups affiliated with the Socialist party stressed negotiation with government and company officials for settlement; and support groups affiliated with an independent citizens' movement and the new left stressed direct confrontation and direct negotiation with public and private officials.

The split in the strategies of the Communist and Socialist parties is explained by the organizational structure and resources of the two parties. The Japanese Communist party has diligently and successfully recruited specialists, especially lawyers and doctors, into its ranks,<sup>12</sup> while the Japanese Socialist party has been much less successful in enrolling specialists and remains bound to its labor union base in Sōhyō (Stockwin, 1975, p. 153). When Yushō victims began to consider litigation, the Communists could offer support while the Socialists waffled. Similarly, in other pollution tragedies in Japan, lawyers affiliated with the Communist party have provided assistance in litigation to the victims (Huddle and

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<sup>11</sup> Piven and Cloward argued that people who react to “ruptures in social life” by protesting are not necessarily “those who suffer the sharpest personal disorientation and alienation. To the contrary, it may well be those whose lives are rooted in some institutional context, who are in regular relationships with others in similar straits, who are best able to redefine their travails as the fault of their rulers and not of themselves, and are best able to join together in collective protest.” Frances Fox Piven and Richard A. Cloward, 1979, p. 19. The same point applies to the Yushō victims' search for allies.

<sup>12</sup> Since the mid-1960s, the Japanese Communist party has followed a program of expanding its organizational strength and its electoral support, in a process of deradicalization. See Hong N. Kim, 1966, pp. 273–299. That program has involved organizing experts to meet the short-term material demands of floating groups in the Japanese electorate, including farmers, small businessmen, and city residents. See George O. Totten, 1973, pp. 193–217 and 384–406. Another group that has received organizational attention from the party has been pollution victims.

Reich, 1973, pp. 125–126, 281).

The competition between Socialists and Communists in the Yushō case also reflected a standard pattern of competition between the two parties in Japanese social movements. The same pattern can be found in the anti-pollution, anti-atomic bomb, anti-discrimination, and labor movements.<sup>13</sup> The competition between these two parties in the Yushō case was especially acute in Kitakyushu, an area with a long history of bitter Socialist-Communist antagonisms, and much less prominent in Nagasaki prefecture, an area with a significantly weaker Communist party presence. Finally, competition among supporters produces conflict among victims—as the issue becomes an arena for normal political competition. In the Yushō case, victims' groups became embroiled in debates over the appropriate role of political parties in the victims' struggle, especially regarding litigation, and over the choice of which political support to accept. Some support organizations were torn apart by hostility between old left and new left activists, or by competition between Socialist and Communist activists. Victims were forced to choose which alignment to follow, with real consequences in the strategy pursued and the reward received.

Victims thus confronted the dilemma of political alliance, in that alliances promised support and power but also produced dissension and weakness. Divisions among victims diluted the victims' efforts at using alliances to gain their demands for redress in care, compensation, and cleanup. The divergence between the interests of the supporters and the interests of the victims produced conflicts within the alliance, leading to fragmentation and weakening. The victims thus paid twice: first, in the toxic poisoning and its associated physical and emotional pains; and second, in the political processes necessary to resolve the toxic problems and achieve redress. Individual victims dealt in different ways with the three dilemmas of going public, group action, and political alliance. But some victims had to be willing to pay more than others—to struggle through the three dilemmas—in order to compel social institutions to provide adequate redress.

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<sup>13</sup> For a discussion of Socialist-Communist competition in the anti-pollution movement, see Huddle and Reich, 1975, pp. 275–282. For the anti-bomb movement, see George O. Totten and Tamio Kawakami, 1964, pp. 833–841. For the anti discrimination movement, see Thomas P. Rohlen, 1976, pp. 682–699. For one trade union, the Japan Teacher's Union, see Donald Thurston, 1973.

## The Substance of Redress

Yushō victims demanded redress along three dimensions: care, compensation, and cleanup. Along each of these dimensions, victims encountered resistance by public and private institutions. That resistance became a major motivation driving the process of redress, encouraging victims to form their own groups and to seek allies in other organizations. The victims' demands for care, compensation, and cleanup sought a redistribution of resources from both public and private organizations, and thereby raised basic political questions.

### CARE

The first problem Yushō victims confronted was the problem of care. Even before victims knew the cause or diagnosis of their illness, they faced the problem of care, of getting effective medical treatment and other assistance for their illness. After the poisoning became a public issue, victims faced additional questions, especially who received care, who gave care, and who paid.

Most of the treatment that victims received in the phase of the private trouble, as an unexplained strange disease, did not even relieve the symptoms. The first essential element needed for good care, then, was a correct diagnosis of the problem as chemical poisoning. But that process of diagnosis, for Yushō and for other chemical diseases, is often difficult and slow, because of institutional obstacle and conflicts (inadequate detection systems, understanding of the problem, internal communication, and external coordination), and because of the nature of toxic contamination (the nonspecificity of most toxic symptoms, the scientific problems of chemical identification, and the nonvisibility of most toxic agents). Victims needed to transform their private trouble into a public issue to obtain a correct understanding of their problem as a social problem and not simply as an individual trouble.

Once the diagnosis was established, victims confronted the critical question of who receives care. In Yushō, as often occurs for chemical disease, the disease syndrome was ambiguous and not well studied. As a result, diagnosis depended on an interaction of scientific uncertainty and organizational interests. Criteria for identifying victims of Yushō disease became set in October 1968 for the worst symptoms and the most obvious victims. The criteria became frozen in bureaucratic procedures, making the criteria difficult to revise as new knowledge accumulated. The private corporation that caused the disease and the government agency that administered the care both acted in their own interests to restrict the criteria and limit the number of official victims.

Another question is who gives care. Relations between Yushō victims and doctors in the Yushō Research Group became so conflict-ridden that most victims stopped going to the group's weekly clinic session at Kyushu University. Part of the tension resulted from the ineffective treatment for the PCB poisoning, but other factors also contributed to the gap between victims and doctors: the fragmentation of treatment into different specialties, with little coordination among the schedules or the treatments; and the conflicting roles that doctors assumed as researchers to study the disease, physicians to provide treatment, and judges to decide who should be certified as a Yushō victim (Reich, 1981, p. 172). Patients sensed that the university doctors considered writing their research papers more important than caring for sick Yushō victims. The victims resented the feeling that they were part of an experiment and were being treated as guinea pigs (*Asahi*, October 16, 1968), a resentment found in other chemical disasters and social problems. The Yushō case thus illustrates the problems of medical treatment in providing care to poisoning victims. The question of who gives care also became a point of conflict because of its important economic implications for the parties involved—for the doctors who receive payment and for those who must pay for care.

Three main sources of payment for care exist in a chemical disaster: the victims themselves, the companies responsible, and the government. The distribution of the costs of care was not a predetermined decision in the Yushō case, but depended on political and social circumstances, especially the responses of the government agencies and private corporations involved. The costs of care for Yushō victims were shared and shifted as the disaster progressed into a social issue. For example, when Yushō was a private trouble, victims bore many costs of care. Even if an insurance plan paid for some medical expenses, victims still bore the costs of time lost from work, expenses for transportation to doctors, and other fees not covered by insurance. Once the problem became a public issue, after the cause of the poisoning was shown to be Kanemi's cooking oil, the company slowly began providing partial reimbursement for medical expenses and related costs of care. The Japanese government, however, sought to keep its expenses at a minimum and to force the private company to pay for care. As the problem became a public issue, gradually increasing public and political pressure encouraged the government and the company to allocate more funds for the care of Yushō victims.

#### COMPENSATION

The problem of compensation for damages represents the second substantive problem confronted by Yushō victims. Like the problem of care, compensation involves a complex set of subproblems and conflicts.

The victims must face the unpleasant but necessary tasks of transforming their injuries into money and of pressuring someone to pay that money. Problems of compensation included who should be compensated, how much, and who would pay.

One must first decide who should be compensated. As with the problem of care, a set of criteria must be established to certify “official” victims for compensation. In the Yushō case, a combination of government bureaucratic inertia and private corporate interests worked to restrict the number of victims eligible for compensation. The worst cases, with the most obvious relation of cause and effect, became the standard for compensation. Including other victims in the group for compensation required more scientific knowledge, with persistent public protest, to expand the scope of the issue.

Deciding which victims to compensate created conflict among victims. Through a process of “line-drawing,” public administrations in the Yushō case decided which members of a group would receive benefits and which would not. Each line-drawing process created peripheral victims, persons who believed they were harmed but were being unjustly excluded from receiving benefits. When those peripheral victims were excluded from compensation and from the assistance of a victims’ group, they looked elsewhere for support—to redefine the issue and alter administrative policies, to change the institutional context. Peripheral victims often aligned themselves with individuals and groups outside the main political currents, with people seeking dissatisfied minorities as potential political issues.

A related problem is how much to compensate victims. How should physical, social, and psychological injuries be translated into money? How does one determine, for example, the costs to a young woman who could not marry and have children because of Yushō? This debate over the cost of a human life has a long history in economics (Mishan, 1971) with no agreement on the answer. In the Yushō case, the debate over compensation raised basic questions of social justice. Some victims argued that all victims should receive a single-level compensation. Other victims argued that payment should be based on the severity of disease. Still others argued that the amount should reflect not only the severity of disease but also activities in the movement to obtain compensation—in other words, that free-riders should not be compensated as much as movement activists. The basis for calculating compensation thus became a point of considerable conflict among victims, between victims and the companies, and also between victims and their lawyers.

How one calculates compensation depends at least in part on who does the calculating, for different interests promote different calculations

of damages. In the Yushō case, the companies calculated the damages to minimize costs to the company, but also, when enough public pressure existed, to maintain the company's image as a legitimate member of society. Some victims calculated the damages to maximize payment to themselves or their groups. Other victims and supporters calculated the damages to maintain a coalition of diverse victims within the same organization. Still other victims, like Ryūzō Kamino, rejected the concept of transforming damages into money and instead demanded moral, not monetary, retribution. Other victims accepted a less than maximum calculation of damages in a settlement out of court, to protect their private lives and avoid a public conflict with the companies. A resolution of these conflicting calculations required various spheres of social bargaining, in private mediated negotiations, in public direct negotiations, and in court decisions. The combination used in the Yushō case depended on the balance of social forces among the various parties—as occurs in other chemical disasters as well.

Finally, compensation depends on who pays. A large corporation clearly responsible for causing a chemical disaster may be more willing to compensate victims than to engage in social conflict—as occurred in the Seveso disaster in Italy with the Givaudan Corporation (Reich, 1981). A small-to-medium sized corporation might not be financially able to compensate victims without ceasing operations—facing a choice between survival of the company and payment to the victims. In the Yushō case, the Kanemi Company chose survival of the company, delay of payment, and shifting some costs to Kanegafuchi. Kanegafuchi initially denied payment, and when forced to pay after civil court decisions in 1977 and 1978, the company sought to shift some payments to the government. As with the amount of compensation paid, the decision about who pays compensation was worked out through social bargaining, with both legal and political decisions. The decision about who pays can also determine how much is paid. Indeed, Kanegafuchi Chemical argued that judges extended the concept of liability from chemical user to chemical producer precisely because Kanemi as user could not alone cover the costs of compensation, while Kanegafuchi as producer could pay those costs.

#### CLEANUP

The third major problem confronted by Yushō victims was the problem of cleanup: getting rid of the contamination of property. This problem included questions about what gets cleaned up, what constitutes cleanup, and who pays for cleanup.

The Yushō case, in this regard, represents a somewhat unusual chemical disaster. The chemical remained mostly in bottles of cooking oil or in bodies of people. Cleanup did not become a public or political issue

as in other cases of toxic contamination. The Kanemi Company and the government presumably collected all known bottles of contaminated oil. For the Yushō victims, then, cleanup of toxic chemicals from their environment meant simply collecting bottles of Kanemi cooking oil. And other groups did not become publicly concerned about the subsequent disposal of the PCB-contaminated cooking oil. Although it is not clear how disposal of that oil occurred, the problem did not become an issue. Similarly, the chickens contaminated in the dark oil incident were disposed of privately and in a way that may not have been safe, but the problem did not become an issue. In the Yushō case, then, what gets cleaned up and what constitutes cleanup both were narrowly defined, allowing the Kanemi Company to carry out and pay for a private cleanup with few questions or obstacles.

PCB contamination of the general environment in Japan, especially the Great Fish Panic of 1973, raised broader controversies around cleanup. In late May 1973, scientists announced the discovery of new outbreaks of Minamata disease, caused by consumption of mercury-contaminated fish; and in early June, a government agency announced widespread PCB contamination of coastal fish, at levels exceeding the standard of three parts per million. Government measures for cleanup then focused on fish. One measure recommended that consumers decrease their weekly consumption of different types of fish. Another policy provided nets across the mouths of ports with high levels of PCB or mercury in water and bottom sediment. A final measure paid fishermen to catch contaminated fish, which were then disposed of in concrete containers for burial. These approaches defined cleanup in ways that provided protesting fishermen with a form of compensation, but did not tackle the extremely expensive task of decontaminating bottom sediment in waterways.

Government policy in Japan also required the manufacturers of PCB to collect used and unused PCB for disposal. Kanegafuchi collected and stored the toxic chemical for several years while waiting for a decision about how to carry out disposal. The company ran into typical conflicts found in siting controversies: the "not in my backyard" phenomenon, and the "if it's so safe, put it in the city" response. The conflicts raised real questions about the safety of storing PCB in large tanks, about possible air pollution from the burning of PCB, and about possible leaks to underground water supplies from the burial of PCB. The final political solution proposed burning the PCB at sea on a special high-temperature incinerator ship for chemical disposal. These conflicts over cleanup are common in chemical disasters in which victims confront contamination of their bodies as well as contamination of their living environment. In a

chemical disaster in the United States, for example, the final political solution was to take the carcasses of animals contaminated by a toxic chemical and export them out of the state (Michigan) to a special burial site for radioactive wastes at Death Valley, Nevada. That solution exported the problem to someone else's (already dead) backyard (Reich, 1983a).

### **Kanemi Yushō and Japanese Society**

Using one chemical disaster to explore general themes about institutions for change in Japanese society runs the normal risks of case studies: problems of representativeness, limited sample size, and others. These limitations require that the discussion below not be considered "proof" of any sort. Instead, the case study provides material for reflection on and illustration of general social themes. To this admittedly qualitative and subjective process, comparative analysis can provide critical points of reference, suggesting themes prominent in Japanese society and found in various societies. Comparative analysis can also help point out the limited explanatory value of some common social myths about Japan.

This discussion relates the Kanemi Yushō case to general themes about social problems in Japan. The case shows that Japan's alleged aversion to litigation is not so strong and that litigation can play an important role in larger political movements. Responsibility and apology nonetheless remain key concepts in resolving disputes around social problems. The case also illustrates that the stress on Japan's consensus obscures the essential role of conflict and protest in dealing with social problems in Japan. The case reminds us that victims of a social problem perceive themselves as a minority, in Japan as well as in the United States. Finally, the Yushō case shows that new groups do not form automatically, but depend on their own organizational resources and possible allies—both of which are unevenly distributed in society.

#### **AVERSION TO LITIGATION**

One theme found in the writings on Japanese society is the reluctance to litigate. That aversion to litigation is often tied to the desire to mediate a dispute rather than engage in head-on conflict, a pattern connected to the consensus-oriented attitude discussed below.<sup>14</sup> Legal scholar Takeyoshi Kawashima, for example, argued that Japanese culture discourages involvement in litigation (Kawashima, 1963, p. 42).

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<sup>14</sup> For a "sampling of sources" that discuss the notion of the Japanese as peculiarly nonlitigious, see John O. Haley, 1978, pp. 359–360, note 1.

Yet, in the Yushō case, Fukuoka city victims went to court shortly after public disclosure and on several occasions. In December 1968, that victims' group filed criminal charges against the Kanemi Company president. In February 1969, the group filed with the Fukuoka Justice Department a complaint against doctors in the Yushō Research Group, charging the doctors with irresponsible treatment of victims and violation of the victims' rights. Also in February 1969, the group filed its suit for civil damages against the two companies. In other areas of Japan, victims filed civil damage suits much later, beginning in December 1970. The Japanese cultural discouragement of litigation, then, did not impede the move to litigation; nor can it explain why groups resorted to litigation at different times. Other factors considered below for group consciousness, especially organizational expertise of the victims, played more important roles than general cultural orientation. For ironically, the victims' group in Fukuoka city showed that strong group consciousness of an existing community can facilitate the move to litigation, as occurred with the village of Isotsu in the Yokkaichi case of air pollution. The Isotsu villagers, however, were also importantly assisted by the proximity of organizational and technical expertise in the city of Yokkaichi and in the nearby University of Nagoya (Huddle and Reich, 1975).

The Fukuoka city victims' group moved to litigation as a result of the victims' greater organizational expertise as well as two other factors. The lawyer who took the case was an old friend of one victim. The social network of the Fukuoka city victims thus included a lawyer willing and able to handle the complex court case. Victims in rural areas and occupations, with more restricted social networks, had less access to skilled lawyers and to old-friend lawyers. The subculture of Japan's anti-pollution movement also assisted the move to litigation in the Yushō case, as in subsequent environmental disputes. Conflict over Minamata disease, the infamous case of mercury poisoning in southwestern Kyushu, set the symbolic stage on which Kanemi Yushō played. At least some Yushō victims, living on the same island of Kyushu, learned models of organization and litigation from the precedent of Minamata disease.

For the other Yushō civil trials, an important factor that promoted litigation was a group of activist lawyers, many affiliated with the Japanese Communist party. That group actively recruited Yushō victims in different areas to join in local civil damage suits. Those local suits eventually became consolidated in the mammoth Kitakyushu trial. Certainly, the lawyers who organized these trials felt no cultural aversion to litigation. And for many victims involved in the Kitakyushu trial, in striking contrast to victims involved in the Fukuoka trial, litigation became a means of expanding the conflict to obtain redress and became

part of a larger political movement.

This analysis of the Yushō case supports a critical examination of the myth that Japanese feel a particular reluctance to litigate. As John Haley argued, Japanese do not feel a special aversion to litigation, but do confront significant institutional obstacles to litigation, especially a lack of lawyers and judges, overcrowded courts, and long delays in completing a trial. Haley showed how Japanese governmental policy has restricted the number of lawyers and judges, and thereby restricted the use of courts.<sup>15</sup> He also noted that most commentators who discuss the myth of the reluctant litigant in Japan “ignore the distaste for litigation and preference for informal dispute resolution common to most societies” (Haley, 1978, p. 389). The Yushō case confirms a critical view of this myth, and demonstrates that some Japanese have greater access to lawyers and are more able and willing to litigate. The Yushō case and the Big Four Pollution Suits may also have contributed to encouraging litigation in Japan as a way to achieve redress and to settle disputes in the environmental and consumer arenas.

It is important to note that in some cases Japanese do not litigate because the victims do not need to sue to obtain redress. The most typical case would be an airline crash—for example, when a Japan Air Lines DC-8 skidded into Tokyo Bay and killed twenty-four people, due to pilot error and a pilot with a history of “psychosomatic disorders.” Within a few days, the company president began a round of apologies to victims’ families, and the company then began to negotiate settlements—in part, no doubt, because causation was clear and because the identities of the victims were clear. The victims did not need to go to court to force the company to accept moral and financial responsibility for the tragedy. Yet, a *New York Times* reporter explained the company’s and the victims’ responses by describing Japan as a “nonadversarial, nonlitigious society” that values “the harmony of community” (*New York Times*, March 10, 1982). In a letter to the editor, a Yale professor then justly criticized the reporter’s decision “to recycle an old cultural stereotype” and provided an alternative explanation: the structural obstacles to litigation in Japan

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<sup>15</sup> Haley demonstrated that litigation was more frequent from 1890 to 1937 than in post-war Japan, according to the total number of civil cases, and even more strikingly on a per capita basis. See Haley, 1978, p. 368. In a subsequent article, Haley specified other structural obstacles to “prompt and efficient justice in Japan.” In addition to the shortage of judges, lawyers, and procurators, he found the use of courts restricted by “the continental system of disconnected hearings, trials *de novo* upon first appeal, the appeals of right to the Supreme Court rather than by court discretion, filing fees, bond posting requirements, stringent requirements of evidentiary proof, the unwillingness of judges to discipline lawyers for unnecessary delays.” See Haley, 1982, p. 274.

(Kelly, 1982). But even he missed a more basic point: When companies act morally and responsibly, the victims can obtain redress without litigation, and society gets by with fewer lawsuits.

#### RESPONSIBILITY AND APOLOGY

As noted above, the personal negotiation of responsibility remains an important process to resolve disputes in Japan. That process often includes an emphasis on apology, both public and private. In the Yushō case, for example, some victims persistently demanded to negotiate directly with a specific person, the company president of Kanemi. That demand resembled similar demands by victims in other Japanese pollution cases. Victims rejected the idea of a private and faceless corporation and called for public and face-to-face negotiations with company executives.

The Yushō case illustrates a range of strategies that use both litigation and negotiation to obtain redress. The Fukuoka trial represented a conventional civil damage suit, with no direct connection to political or movement activities outside the courtroom. The Kitakyushu trial, on the other hand, maintained ties with both political and movement activities outside the courtroom, so that litigation did not replace negotiation but became a means to obtain both material benefits (compensation) and symbolic benefits (responsibility and apology). Moreover, some groups of victims did not participate in litigation, but used public or private demands for negotiation to obtain the material and symbolic benefits. These combinations of litigation and negotiation show how litigation is used as a legal struggle in the courtroom, but also how it is used as part of a moral and political struggle for social problems in Japan.

The demand by Yushō victims for someone to take personal responsibility for an organizational crime follows a longstanding Japanese cultural pattern. That demand for taking personal responsibility can sometimes be expressed in an extreme way, as a form of suicide, to “apologize by dying” (Lifton, Kato, and Reich, 1979, p. 282). Taking responsibility thus includes an apology in Japan. As Frank Gibney noted about Japan: “The rite of apology is almost as important in the late twentieth century as it was in the early twelfth” (1975, p. 92). But while a public apology serves the victims as a form of public coercion and symbolic reassurance, it also serves the speaker as an effort to close the incident and return to business as usual.

Demands to take responsibility and to give apology illustrate how cultural context can help explain patterns of conflict. In the Yushō case, the stress by some victims on personal responsibility and personal negotiations reduced the ability of company officials to hide behind the corporate veil and outside the political spotlight, reduced their ability to dissociate the company from public and political controversy. The most

striking example of this moral demand to take personal responsibility was Kamino's four-year sit-in at the gates of the Kanemi Company. Kamino's personal protest came partly from the cultural orientation in Japan that stresses symbolic and actual forms of taking personal responsibility for social wrongs and partly from his profound faith in Christianity.

The Kanemi Yushō case stands in sharp contrast to the pressures on corporate officials in American and Italian companies involved in chemical disasters. For in the latter cases, corporate officials never had to answer directly and publicly to the victims. The Japanese stress on public responsibility and public apology demonstrates divergences in the strategies of victims and in the cultural contexts of protest. The sufferers of contamination in the American and Italian cases did not demand direct and public negotiations with corporate officials, did not demand public admissions of responsibility and public apologies (Reich, 1981).

But why does Japan continue to stress the public apology? Haley argued that Japan represents a general principle in which the lack of formal sanctions in the legal system to compel certain behavior "is likely to produce extralegal substitutes and to reinforce the viability of preexisting means of coercing behavior" (Haley, 1982, p. 276). But the lack of effective formal sanctions could result in either ineffective or effective informal sanctions. Haley is not clear about how or why the lack of formal sanctions produces informal measures in Japan, or why formal sanctions are not enacted in Japan. Moreover, while he notes that a public apology serves as a form of social control, he understates the nonvoluntary nature of a public apology, the enormous pressure applied to the individual to give an apology. A public apology thus becomes a nearly institutionalized "informal" sanction. Finally, as the Yushō case demonstrates, the demand for apology does not substitute for formal legal proceedings, but is pursued in parallel.

#### CONSENSUS<sup>16</sup>

A common myth about Japan portrays that country as having a "consensus-oriented culture" (Lundqvist, 1978). That perspective appears in many writings about Japanese society. Chie Nakane, for example, stated that in Japan "any decision should be made on the basis of a consensus which includes those located in the hierarchy . . . ; it should leave no one frustrated or dissatisfied" (1970, p. 67). The theme of consensus in Japanese decision-making runs throughout a volume of essays on Japanese organizations (Vogel, 1975). In addition, commentators expand the idea to include a Japanese cultural avoidance of

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<sup>16</sup> This section draws on Reich, 1983b, pp. 191–198 and 199–207.

open conflict and preference for social harmony (Ward, 1967). This stress on consensus sometimes obscures the importance of conflict in Japanese society.

In his book on the political culture of Japan, Bradley M. Richardson (1974, p. 98) commented in a footnote on the myth of consensus: "The idea that harmony and consensus are a major goal of social behavior in Japan has been so widely discussed that further comment is perhaps unnecessary." Yet, he then went on to describe his own "field experience" in which "action was frequently taken on behalf of the interests of a smaller collectivity (hamlet or local district) which had the consequence of disrupting the harmony of a larger collectivity (administrative unit). Similar patterns can be observed at the national level" (1974, pp. 98-99). But Richardson did not reconcile that contradiction between the myth of consensus and the actuality of conflict.

Similarly, Robert E. Ward did not reconcile the notion of consensus with the fact that "aggrieved minorities" will engage in open conflict when their interests are ignored. He instead stated that minorities use public protest to appeal "to the traditional Japanese doctrine of decision by consensus" (Ward, 1976, p. 49). Ward did not consider the possibility that protesters are appealing not to a value of social consensus but to a vision of social justice, as argued in the work of James C. Scott (1976) on the "moral economy" of peasants in Southeast Asia.

While the demand for social consensus in Japan may exist in the ideology of the elite, as it does in most countries, conflict occurs at many levels in society. The anti-pollution movement in Japan and the Kanemi Yushō case demonstrate the deep roots and the pervasive reach of social conflict in Japan. The Yushō case illustrates: conflict over leadership positions, political alignments, and group strategies to obtain redress; conflict among supporters, especially among Socialist party, Communist party, and independent left groups; and conflict between victims and government officials. These conflicts are by no means unique to Japan, but represent forms of conflict found in other societies as well: conflict among competing organizations to gain broader constituencies; and conflict created by less powerful groups to expand the scope of an issue and gain attention for their problems.

The point here is not simply the trivial observation that conflict exists in Japan, but that conflict has influenced policy in important ways and that conflict often is necessary to change official policy. Social conflict thus provides a means for relatively powerless groups in society to challenge the government-promoted consensus and to present Japanese society with an alternative vision. Environmental policy provides numerous examples of how social conflict in the streets, in the courts, and

in public and private offices compelled social organizations to change their policies (Reich, 1983b). In the Yushō case, social conflict was a necessary condition to changing policy on criteria for certifying victims, criteria for admitting victims to medical exams, and negotiations between victims and corporate officials—in sum, policies of redress for victims. I do not mean to imply here that all social conflict produces changes in policy or that all changes in policy result from social conflict. But some policies, especially those grounded in strong interests of public or private organizations, require social conflict as a necessary condition for change.

#### HOMOGENEITY

The notion of homogeneity recurs constantly in writings on Japan. That famed homogeneity serves as the source for various social myths, such as the ability of Japanese to understand each other without speaking, to speak with “the art of the stomach” or *haragei*. Pointing out the problems with that mythic stomach-to-stomach technique is best left to another essay. Here I would like to question the proposal that pollution victims in Japan sought to hide from society because of social homogeneity, as if a similar phenomenon does not occur in other countries.

Yushō victims, for example, sought to isolate themselves from society, especially when their problem was an unknown strange disease, but also after the disease became publicly recognized as poisoning. As one victim explained, the illness transformed the family’s relationship with society: “People looked at us as if we were monsters, not human, like something other than human. If we went to buy things, the owner of the store hated it, because other people would not come.” To visit the doctor, the family traveled by taxi, so that other people would not notice. They made every effort to stay inside their house and to hide from society, leaving only to buy food and visit different doctors.<sup>17</sup>

But one does not need to invoke Japan’s homogeneity to explain the victims’ efforts to hide. In the United States, a similar pattern has been recorded for other diseases that mark and taint the individual: for mental illness (Szasz, 1970), for tuberculosis and cancer (Sontag, 1977), and for handicapped persons in general (Goffman, 1963). The sick person comes to represent incurable disease and physical deterioration, a symbol of death and decay for individual and collectivity. In such situations of social stigma, sufferers feel an urge to keep their problem private, out of a desire to protect self and family from becoming a symbol of disease, a symbol of “undesired differentness” (Goffman, 1963) with its negative

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<sup>17</sup> Interview with Kamino.

social consequences. Feeling tainted by chemical disease and seeking to contain the costs of that tainting thus represents a common human response in chemical disasters.<sup>18</sup>

Could Japan's homogeneity have enhanced the sense of undesired differentness and the desire to hide from society? Possibly for some Yushō victims. But even this argument is not convincing—for isolation was not the sole response. Victims who tried to hide from society also searched for the cause of their illness.<sup>19</sup> And some victims actively worked to identify the cause of their suffering, to reverse the tainting due to the strange disease. That urge to explain one's suffering represents a common human response found in survivors of a traumatic event, a psychological need to find meaning or significance in that event and thereby in life (Lifton, 1979, p. 176). Even Japan's alleged homogeneity could not suppress that search for explanation.

While Japan's homogeneity in culture and race is higher than in a conglomerate society like the United States or the Soviet Union, the implications of that statement must be drawn carefully. For some social responses, such as efforts to hide undesired differentness, can be explained by more general human traits. And other social responses, such as the search for explanation by those branded as different, exist in Japan despite the social homogeneity.

#### GROUP CONSCIOUSNESS

Another favorite description about the Japanese is their "strong group consciousness," especially compared to Americans, who are supposedly "individualistic." About Americans at least, Tocqueville felt otherwise: "Americans of all ages, all stations in life, and all types of dispositions are forever forming associations" (1969, p. 513). This confusion about whether Americans are more individualistic or group conscious suggests problems in such broad cultural statements about a society. Similar difficulties exist for the touted group consciousness in Japan.

The Yushō case shows conflicting evidence about the role of group consciousness in Japan. While victims in Fukuoka city quickly formed an organization, victims in some other areas did not become organized formally for one year or more after public disclosure. The cultural (and political) promotion of a strong group consciousness in Japan cannot account for differences in group formation in the Yushō case. Group

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<sup>18</sup> In the United States, sufferers from the chemical disaster at Love Canal, a chemical dump in Niagara Falls, New York, have similarly complained about being marked by social stigma with devastating psychological pain. See *Boston Globe*, October 7, 1980.

<sup>19</sup> Interview with Kamino.

consciousness cannot explain why groups formed quickly in some parts of Japan and not in others. Even if the elusive group consciousness is present, group formation is not an automatic process in Japan. Other factors, such as existing social ties and organizational expertise, are more important in determining the process of group formation. Victims in Fukuoka city were aided in their rapid formation of a group by existing social ties, through a single company, through a single apartment complex, through friendship. When a problem overlaps an existing social network, the process of group formation can be greatly facilitated, in Japan as elsewhere. But that facilitation did not always occur in the Yushō case. In the villages of the Goto Archipelago poisoned by Kanemi oil, victims' groups were greatly delayed in formation, despite the overlap between the existing community and the new community of victims. Physical proximity and existing ties were not enough to promote the rapid formation of victims' groups.

Organizational skill, like most political and economic resources, is not evenly distributed in society (Cloward and Piven, 1975, p. 74). Rich people tend to have more than poor people, and urban residents often have more organizational experience than rural residents. In the Yushō case, the skewed distribution of organizational skill and experience helps to explain different degrees of delay in forming a victims' group. The organizationally skilled victims in Fukuoka city rapidly formed a group on their own initiative. They were, according to another victim, "organization people," who worked for a large company, included some persons in the company union, and "knew how to make groups."<sup>20</sup> Once the Fukuoka city group had been formed, it served as a model for other nearby victims to follow, especially in Tagawa and Kitakyushu, where victims overcame the lack of existing social ties and organized groups faster than they might otherwise have done.

The differing organizational responses of Yushō victims, then, can be explained more persuasively by the gap in organizational expertise than by the existence of a group consciousness. The urban workers of Kitakyushu and Fukuoka cities in 1968 lived worlds apart from the rural fishermen in the Goto Archipelago to the west of Kyushu. In the town of Naru in that Archipelago, for example, people had little experience with the large organizations of modern urban society.<sup>21</sup> Goto fishermen required an education in modern organization to overcome their disadvantages, to understand the complex conflicts and organizations that invaded their lives. Although the victims gained that education through

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<sup>20</sup> Interview with Kamino.

<sup>21</sup> Interview with Tomoyuki Kuroiwa, Yushō victim, Naru, September 21, 1979.

their struggle, the initial lack of organizational expertise contributed to the delays in recognizing their collective problems and in acting on those problems. Forming an organization, for them, depended more on the assistance of outsiders than on a Japanese sense of group consciousness.

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## VI

# Crisis and Routine: Pollution Reporting by the Japanese Press<sup>1</sup>

Michael R. Reich

### Introduction

The mass media have long been recognized as a key institution for promoting social change. But the media have also the potential for supporting the status quo. The media can determine whether a problem receives public or official attention, and what form a public issue takes. In other words, the mass media help decide what gets on the public agenda and how it appears on that agenda (Cobb and Elder, 1972; Lipsky, 1978). The media play a central role in selecting which “private troubles” become “public issues” (Mills, 1959). More broadly, as one commentator put it: “The media specialize in orchestrating everyday consciousness, by virtue of their pervasiveness, their accessibility, their centralized symbolic capacity. They name the world’s parts, they certify reality *as* reality” (Gitlin, 1979, p. 12).

Understanding how the media make the news, then, is critical for understanding the media as an institution for social change. By now, most observers agree that the media do not simply report “the facts,” but create “the news” through processes of selection, exclusion, and emphasis. These media processes of making the news are not abstractions, but are embedded in media organizations, in the people of those organizations, and in their relationships with outside sources and organizations, especially in government.

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<sup>1</sup> Much of the material in this chapter is based on my personal interviews with newspaper reporters and government bureaucrats involved directly in the incidents described.

The notion that “the structure of media organizations affects the content that emerges” (Pool, 1976) should come as no surprise. Indeed, in the 1920s, Walter Lippmann (1965) analyzed how the news was shaped by organizational factors, especially the structure of the news staff, economics, and time constraints. More recently, Leon V. Sigal (1973) has stressed that reporters live in two different social networks, one network that connects people within the news company, another that connects company people to news sources outside the company. The two networks sometimes place conflicting demands on the reporter, sometimes mutually supportive demands. How the reporter and the organization juggle those two sets of demands determines what becomes news. Organizational routines, both within the news company and between reporters and sources, thus shape the events that are portrayed as social crises.

This chapter examines how one newspaper in Japan approached the reporting of environmental problems and the creating of public issues. It studies Japan’s major opinion-forming newspaper, *Asahi Shinbun*, over a ten-year period, and the paper’s use of different organizational structures to report environmental problems. For the study, I interviewed reporters and officials during stays in Japan in 1977 and 1979. I selected five cases of environmental problems: the Kanemi Yusho case of PCB poisoning in the late 1960s (see Chapter 5); a major anti-pollution campaign by *Asahi* in the early 1970s; a specific campaign in 1973 for the third Minamata disease; the situation of environmental news in 1977; and the reporting of nuclear power in the late 1970s. These cases represent a broad range of *Asahi*’s pollution reporting. They provide important insights into how one Japanese newspaper makes news and creates issues. That analysis illustrates the political role of limited opposition that the press takes in Japan, and the basic patterns of organizational structure and news creation of the Japanese press, patterns which are remarkably similar to those within the American press.

### **Kanemi Yusho Incident**

On October 10, 1968, the western Japan edition of the *Asahi* newspaper reported the outbreak of a “strange disease” (*kibyō*) around Fukuoka city on Kyushu. The headline stated that the disease resembled Minamata disease caused by organic mercury poisoning. According to the article, people suffered from symptoms that included severe acne-like boils, extreme fatigue, excessive eye secretions, and discolored fingernails. The article noted that the probable source of the poisoning was a cooking oil refined from rice bran, but did not identify the producer (*Asahi*, October 10, 1968). Only the next day did *Asahi* name the suspected company: the Kanemi Oil Company. Within one month of that

announcement, university scientists had identified the poisonous agent as polychlorinated biphenyls—PCB—which had been used as a heat-transfer agent in producing the cooking oil. The contamination occurred in February 1968 in the Kanemi factory in the city of Kitakyushu.

As I detailed in the previous chapter, Kanemi was involved in another contamination problem as well. In February and March 1968, more than two million chickens fell sick and over 400,000 of them died throughout western Japan. Japan's Ministry of Agriculture and Forestry (MAF) investigated the disease and determined by mid-March that the birds' feed contained a poison. The study traced the substance to a feed additive known as "dark oil"—a by-product made by the Kanemi Oil Company. By the end of April, all feed products with dark oil were recalled, and damage to chickens ceased. In May, it was officially confirmed with the MAF that Kanemi's dark oil was indeed responsible. But neither the private companies nor the public agencies involved in the chicken poisoning related the dark oil incident to possible human poisoning until after the *Asahi* article appeared in October.

The responses of the Kanemi Company and the government agencies, as described in Chapter 5, obstructed and delayed public discovery of Kanemi's contaminated cooking oil and the human illness. But the nine months of silence also resulted from the hesitant responses of individual victims, medical doctors, and media organizations. Most individual victims were isolated from each other and lacked the means to link their symptoms to a specific disease. Most medical doctors lacked training to identify the symptoms as caused by chemical poisoning, and some doctors who suspected food poisoning did not notify public health officials. But of most importance in the context of this chapter, media reporters wrote about the chicken poisoning as a routine problem and did not investigate the matter further.

*Asahi's* involvement in the Kanemi case illustrates two important lessons about the media: how the media can create a public issue, and how the media can maintain a non-issue.

The nationwide scoop by *Asahi* illustrates how the mass media can transform private troubles into public issues, how they report, shape, and create incidents. The *Asahi* report of October 10, 1968, marked the beginning of public awareness of people poisoned by Kanemi rice oil. The case illustrates the need to distinguish between (1) the appearance of physical symptoms in people (existence of a problem as a private trouble), (2) the sick people's identification of themselves as poisoned victims (group diagnosis of a common problem), and (3) the public recognition of the case as a pollution disease (social acceptance of the diagnosis as a public issue). The media *reflected* the self-identity of sick persons as

victims, but also *created* a public definition and public images with which other victims could identify.

The process by which *Asahi* discovered the Kanemi oil poisoning illustrates how the media usually find stories and create public issues. The story resulted from a combination of serendipitous circumstances and a news-sensitive reporter. As is often true in the media, the story sought the reporter more than the reporter sought the story (Gans, 1979). By chance, an *Asahi* reporter's wife learned of the disease and its probable link to Kanemi cooking oil from a student of the mother of a victim (Nishimura, 1972). That victim, Tadashi Kunitake, a low-ranking employee of the Kyushu Electric Power Company, had pieced together the mystery by talking with other afflicted families to find a common food product that seemed to be the cause. On October 4, he brought a sample of the Kanemi oil to a public health center for testing. On October 8, the *Asahi* newspaper reporter learned of Kunitake's actions and alerted other *Asahi* reporters, leading to the newspaper's scoop and national disclosure of the disease on October 10. That article transformed the disease from a private trouble to a public issue.

The Kanemi case also demonstrates how the media can maintain a problem as a non-issue. Several newspaper articles appeared in April and May 1968 on the chicken poisoning in western Japan. One article in April reported the probable cause of the chicken deaths as dark oil added to the feed (*Asahi*, April 11, 1968). Another article, in May, identified the source of the dark oil as the "K-Company" located in Kitakyushu. But no reporter investigated the scope of the contamination. No one pursued the possibility that if the by-product (dark oil for animal feed) were contaminated, the main product (cooking oil for human consumption) might also be contaminated. The media treated the problem as a routine matter, of concern to chicken farmers but not to general consumers. The press reported the chicken deaths, but did not understand or investigate their broader meanings.

The kind of coverage given the chicken problem depended on the source of information (probably the chicken farmers or feed producers) and on the journalist's interpretation of that information for the expected audience. Those two factors represent general patterns in the operation of the media in Japan and the United States (Gans, 1979, pp. 80-81). First, the source of the information shaped the form of the news. Both chicken farmers and feed manufacturers perceived their interests in maintaining the chicken deaths as a private problem. Otherwise they might have encountered difficulties in selling their chickens or their feed. Second, newspaper reporters did not perceive the chicken deaths as an important public issue. An *Asahi* reporter stationed in Kyushu in 1968 explained:

“It is not news if chickens die. The chicken story appeared in local papers, but in small articles. It was not a big incident and occurred entirely in the countryside. To attract attention, the event must reach a certain threshold and must be dramatic. These are the structural limitations of newspapers and reporters. Events do not become a big problem until they affect people.”<sup>2</sup> Those interpretations contributed to maintaining the contamination of cooking oil as a non-issue and to delaying the discovery of human victims of the Kanemi oil poisoning.

### **Asahi’s Anti-pollution Campaign**

In 1970, *Asahi* formed a *kōgai han*, or a pollution team of reporters, including persons from the newspaper’s political, city news (*shakaibu*), economic, and photography sections. For one year and a half, this team produced articles for each section of the paper and also wrote a series of stories for a special page titled “*kankyō o mamoru*” (to defend the environment). *Asahi* created this team of pollution reporters after major pollution incidents hit Tokyo—especially a lead pollution health problem due to automobile exhaust, and a photochemical smog attack in July 1970 in which scores of high school students keeled over and were rushed to hospitals. The pollution team thus emerged partly as a response to objective conditions, to obvious environmental disasters or crises in Japan, especially in media-conscious Tokyo.

*Asahi*’s team of pollution reporters also emerged in response to increasing public and official attention on environmental problems. A leading environmental bureaucrat called 1970 the turning point from polluter’s heaven to polluter’s hell in Japan. In 1970, Japan’s elite were officially recognizing the need to attend to environmental degradation. For example, in December of that year, the government introduced fourteen bills on the environment, and the national parliament quickly passed them all—in a special session known as the “Pollution Diet” (McKean, 1977). Then, in July 1971, the central government established Japan’s Environment Agency, an additional indication that pollution problems had achieved an important place on the official agenda.

But *Asahi*’s pollution team also represented a response to the concern of some government officials that public attention should be drawn to environmental problems to which the the officials had been assigned. The team wrote articles that supported actions by bureaucrats, especially bureaucrats in the Environment Agency during its early years of existence. One *Asahi* reporter commented: “Bureaucrats want to appear in the press, especially on policy problems, to show that they are doing

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<sup>2</sup> Interview with Mikio Nishimura, August 17, 1979.

something. They want coverage, even if it is somewhat critical." The same reporter noted "a kind of interdependency" between reporters and officials, a form of "give-and-take." Those reporters and officials shared similar social values, especially in believing in the need for more effective environmental controls. Those common social values provided a basis for news articles.

The relationship of mutual dependence between a news reporter and a governmental agency news source represents a general relationship of social exchange, of give-and-take, which occurs in the media of the United States and other countries as well. The reporter provides public recognition for the perspective of the news source, and often personal publicity as well, while the source provides the reporter with information, often exclusive, for news articles. News articles thus serve more personal career goals and broader organizational goals for the reporter and the source, and for their respective institutions. One media commentator has called the relationship between reporter and source in the U.S. a form of "transactional bargaining" (Griffith, 1981, p. 80). This phrase is appropriate to the extent that there is implicit bargaining involved in their scratching each other's back. "Much is made—in movies, books and preening editorials—about the press's 'adversary relationship' with government and arm's length distance from sources. But a surprising amount of the news... comes from deals cut between consenting adults" (Griffith, 1981, p. 80).

Leon Sigal (1973, p. 181) analyzed the relationship between reporters and officials as a form of organizational politics between the media company and the bureaucratic agency. He proposed this metaphor for the interaction of reporters and officials: "[It is] as if two ballgames were played on adjacent fields with the two sets of players bumping into each other and affecting the outcomes of both games." Sigal's study of the United States showed that officials depend on the press for strategies of individual career advancement, policy innovation, and influence over other elites (1973, p. 143).

In Japan, the mutual dependence between reporters and sources is most commonly and colorfully described for politicians. Nathaniel B. Thayer (1975, p. 294), for example, wrote: "When a politician returns home after an important day, he will find reporters in his sitting room, drinking his whiskey, and eating his supper. He is expected to talk with them. Every few minutes a reporter will leave the sitting room and phone the writer, both to pass on the politician's remarks and to receive reports on other politicians' statements. A hydra-headed press conference is in progress." And: "A reporter may spend years developing a promising politician so that when the politician reaches a position of authority, the

reporter may tap him” (1975, p. 294). Thayer’s description, however, overlooks the give-and-take in the relationship between politician and reporter. Not only is the reporter developing the politician to “tap,” but the politician is developing the reporter to “tap.” In addition, the reporters’ night sessions at politicians’ homes are not a unique phenomenon, but represent a Japanese version of the reporters’ group invasion of the politicians’ private life found in other countries. An example in the United States is the phenomenon during political campaigns of the “boys on the bus” (Crouse, 1972). Even more general is the give-and-take relationship between politician and reporter.

A celebrated example in the United States of the relationship between news reporter and political source was the magazine article written in 1981 by William Greider about U.S. Budget Director David Stockman. Greider wrote about their relationship: “A cynic familiar with how Washington works would understand that the arrangement had obvious symbiotic value. As an assistant managing editor at the *Washington Post*, I benefited from an informed view of policy discussions of the new administration; Stockman, a student of history, was contributing to history’s record and perhaps influencing its conclusions. For him, our meetings were another channel—among many he used—to the press. The older generation of Republicans distrusted the press; Stockman was one of the younger ‘new’ conservatives who cultivated contacts with columnists and reporters, who saw the news media as another useful tool in political combat” (Greider, 1981, p. 32).

Lyndon Johnson recognized in his political wisdom how reporters work and how to bargain with reporters, to obtain support in the media for himself and his policies. Johnson explained: “Reporters are puppets... They simply respond to the pull of the most powerful strings. Every reporter has a constituency in mind when he writes his stories. Sometimes it is simply his editor or his publisher, but often it is some political group he wants to please or some intellectual society he wants to court. The point is, there is always someone. Every story is always slanted to win the favor of someone who sits somewhere higher up. There is no such thing as an objective news story. There is always a private story behind the public story. And if you don’t control the strings to that private story, you’ll never get good coverage no matter how many great things you do for the masses of the people. There is only one sure way of getting favorable stories from reporters and that is to keep their daily bread—the information, the stories, the plans, and the details they need for their work—in your own hands, so that you can give it out when and to whom you want. Even then nothing’s guaranteed, but at least you’ve got the chance to bargain” (Kearns, 1976, pp. 258–259).

A second major lesson from *Asahi's* pollution team is the common organizational pattern of group reporting in Japanese newspapers. Teams of reporters in Japan often work on particular issues, such as the security treaty conflict in 1970 and the Lockheed scandal in the mid-1970s. *Asahi's* pollution team was unusual, however, in its continuous operation over a considerable period of time.

These special teams of reporters reflect the more normal groups of reporters that work on stories in Japan. Thayer, for example, noted that except for articles by overseas correspondents, news articles "are usually the product of group reporting" and therefore are not signed. "Space in a Japanese newspaper is scarce; reporters are many. Several reporters, therefore, are supposed to work on each story" (Thayer, 1975, p. 294).

But one must not exaggerate the degree of group reporting in Japan or understate its common occurrence in the United States. American newspapers also form teams of reporters to work on specific problems or to work as a general investigative team, like the *Boston Globe's* Spotlight Team. The smaller reporting staff of American newspapers, however, makes it more difficult to divert resources to reporting teams than in Japan. But even when such formal groups of reporters do not exist, reporters do not work alone. As Leon V. Sigal stressed: "The era of individualism in reporting in Washington and elsewhere is long past, and the image of the lone reporter doggedly 'nosing out the news' obscures the extent to which newsmen, like most people they cover, are organization men.... On the beat, as in the newsroom, reporters do not work alone, but in groups, and in the course of events, the group subtly molds individual values into group judgment" (Sigal, 1973, pp. 3 and 39).

The formation of a special reporters' team reflects *Asahi's* judgment that a problem is a national issue and deserves both public and official attention. *Asahi's* huge reporting staff of about three thousand persons allows the company to commit a group of reporters to a special team. But this commitment of important resources—staff and page space—requires that the problem be perceived as reaching a threshold of importance. According to one reporter, the decision occurs on a case-by-case basis, involving the "objective news value" of the problem, the "social circumstances" around the problem, and the balance of forces within the company. The reporting of problems is thus affected by internal competition within the company for key resources, but also by external competition between companies for influence, advertising, and readers.

Thus the creation of a special reporters' team can reflect a judgment that a problem *should be* an important public issue, but it also transforms the problem into an important public issue. The formation of such a team, then, represents a self-fulfilling prophecy. The existence of *Asahi's*

pollution team, for example, guaranteed that articles on environmental problems would not disappear from *Asahi's* pages. The team became an organizational pressure within the company to report and define new public issues for the public and government.

The case of the pollution team demonstrates the mixture between reporting news and creating issues. The organizational forms that a newspaper uses to gather and write news reflect a judgment about how important a problem is and should be. The more resources a media organization invests in reporting a problem, the more response the organization expects from society, and the more response the organization pushes society to make. Newspapers not only report issues in society, they also transform problems into issues through news reporting.

### **Asahi's Third Minamata Disease**

On May 22, 1973, in a front-page banner headline, *Asahi* announced a third outbreak of the devastating Minamata disease due to mercury poisoning through environmental pollution. *Asahi* based its scoop on research findings of Kumamoto University medical investigators, showing victims in areas unrelated to Chisso, the company that poisoned Minamata fishermen. Other newspapers picked up the story and soon reported nationwide mercury poisoning, identifying suspected sufferers of what were called the fourth, fifth, and sixth incidents of Minamata disease.

This specter of spreading mercury contamination and poisoning, combined with the announcement in early June of serious PCB pollution of fish, produced the Great Fish Panic of 1973 (Huddle and Reich, 1975, pp. 169–193). Fish consumption dropped sharply, while protests by fishermen and consumers spread throughout the nation. By late July, however, newspaper coverage of fish contamination had markedly declined; and by the end of the summer, the “panic” was over. Then, in the fall, a special government commission investigating the new incidents of mercury poisoning concluded that the Kumamoto University medical report had erred. No “third” Minamata disease ever existed.

To explain how *Asahi* made such an error in reporting, one must understand how the scoop evolved. According to a reporter for another newspaper, *Asahi* began preparations for its extensive coverage long before May 1973. Through informants at the university, *Asahi* reporters knew months in advance that the Kumamoto University researchers would find new cases of mercury poisoning. Then, on the night before the researchers publicly announced their report, as an *Asahi* reporter later confided, the scoop had already been prepared for release. *Asahi* had also cooperated with reporters from the *Kyōdō Tsūshin* wire service to prepare distribution of the scoop. A team of reporters had articles ready not only

about the research but also about the reactions of the victims, government, fishermen, and industry. *Asahi* correspondents in Kumamoto checked the offices of competing newspapers (*Yomiuri* and *Mainichi*) to be sure that the lights were out and that the competitors remained unaware of *Asahi's* intentions. No other papers even approached *Asahi's* scoop coverage—the banner headline plus several full pages of articles. *Asahi's* elaborate scoop thus resulted from prior close and secret cooperation with the researchers, illustrating the type of alliance that can arise between reporters and their sources.

The case of the third Minamata disease also raises ethical tensions in the relationship between reporter and source. An Environment Agency bureaucrat, for example, questioned the ethical behavior of the scientists who had their research presented with a banner headline on *Asahi's* front page. He doubted that the manner used was the best way to communicate uncertain data to the public. He believed that both the newspapers and the scholars acted improperly, with sensationalism, taking advantage of the “crisis atmosphere” on pollution problems that existed in 1973, especially after the court decision for the Minamata disease trial in March of that year.

An involved reporter, however, did not believe the press went too far in reporting the third Minamata disease. “Usually we do not publicize scholars’ research in this way,” explained the reporter. “But usually no second Minamata disease occurs. And the third time was outrageous. The reporting was not sensational, but was based on news value.” He rejected accusations that the press had caused the fish “panic” in the summer of 1973. “The social problems were not due to newspapers, but due to the actuality of the third Minamata disease. We pushed the government to make policies. We reported not to create panic but to make the government change.” He also stated that when *Asahi* reported the outbreak of the third case of mercury poisoning, no scholars disagreed. The criticisms, he asserted, only came much later. Even a reporter from a competitor defended *Asahi's* coverage, saying he did not consider it sensational. “If there were actually a third Minamata disease, then it would have been terrible criticism of the government. It would have shown no change from before.”

The case illustrates the power of the press not only to shape the news and to create public issues, but also to induce governmental action. Even a false alarm can have significant social consequences. The government quickly set standards for mercury contamination of food—standards that had been promised long before but not decided upon or implemented. In addition, the government published a nationwide survey of mercury contamination. Media coverage of protests by

fishermen and consumers also helped speed up legislation for water pollution control in the Seto Inland Sea, for assistance to victims of pollution-related disease, and for control of chemical substances. The Diet passed these three laws in the fall of 1973. As a leading bureaucrat in the Environment Agency commented: "Because of public clamor, we are able to make controls and laws."

This case illustrates conflicting perspectives on the social responsibilities of bureaucrats and reporters. One bureaucrat believed that reporters and scientists had not fulfilled their social responsibilities of properly and accurately presenting information to the public. But even as the bureaucrat criticized the "crusade" form of reporting, he also recognized the agency's need for public attention to justify measures opposed by other governmental sectors. Reporters, on the other hand, believed that bureaucrats had not fulfilled their social responsibilities of implementing environmental controls. In the reporter's view, the failures of official action justified a form of advocacy journalism to push governmental action, even if the report later turned out to be exaggerated.

The third Minamata disease case raises the disturbing question of whether the reporters could have better checked the "facts." Efforts to verify the report, however, might have threatened the confidentiality of the sources. And *Asahi* reporters and editors believed they had sufficient evidence, in the scientists' report, to justify front-page, banner-headline coverage. These conflicts between certainty and secrecy and competitive journalistic scoops represent general problems of reporting. Edward Jay Epstein, for example, noted that the "inherent pressures of daily journalism severely reduce the possibility of verifying a leak or disclosure in advance of publication" (1975, pp. 11-12). Uncertainty, then, is a basic ongoing problem of news reporting, given the time constraints, the competition, and the pressures to get the story out. As one reporter put it: "If you wait for certainty, you can't write articles."

### **Environmental News in 1977**

After the oil shock in Japan in the autumn of 1973, environmental issues receded somewhat from public view. Air pollution levels decreased slightly, partly as a result of economic slowdown and partly, enforcement of environmental controls. By 1977, articles on pollution appeared less frequently in the press—the *Asahi* included. In addition, articles tended to report policy questions and not pollution episodes. One reporter explained that there was "no longer a need for articles for the [anti-pollution] movement to continue," that the government "had already made [environmental] policies and laws," and that the main problems had become long-term effects. Nevertheless, some articles continued to

appear, since another important factor contributing to the appearance of policy-oriented news articles was the continuing desire of bureaucrats to have their work appear in press coverage.

The environmental news of 1977 illustrates two themes of reporting: the ways officials need and use episodic crises, and the tendency of the press to establish and follow routine procedures for news gathering from expected sources.

A bureaucratic need for crises to credit agency activities was illustrated in 1977 mainly by the very absence of any dramatic environmental crisis. One environmental agency bureaucrat overtly complained to me about the lack of "dramatic" episodes and news articles. In the past, he recalled, in arguments with other governmental agencies and ministries for support, he and his colleagues had used the existence and number of pollution victims as evidence of the need for stricter environmental controls. "To overcome resistant elements of the governmental bureaucracy, we needed the images of girl students falling down from photochemical smog and the images of Minamata victims—even if those images were not always based on scientific fact." The lack of pollution episodes made environmental administration more difficult. He even feared that the Environment Agency might disappear in Prime Minister Fukuda's threatened "administrative reform" in 1977.

Another environmental bureaucrat believed that the administration had made good use of past episodes in instituting controls. Partly as a result, extreme pollution cases like Yokkaichi air pollution probably would not occur again. In an ironic way, he suggested, success in controlling pollution could undermine the support of environmental administration. This official also expressed a need for crises and dramatic episodes communicated through the mass media that could be handled and solved by his agency.

The need and desire of some bureaucrats for a controllable but dramatic crisis that can be used to produce change occurs in other countries and for other social problems as well. Problems perceived as minor receive only minor responses. An episodic crisis often is necessary to produce a significant response from public agencies (Krier and Ursin, 1977, pp. 251–277). That process of creating an appropriate crisis can be helped along by an official who leaks key information to a reporter. Officials, then, do not only want to suppress information. They want to suppress information that appears damaging to their interests and to disclose information that is likely to further their interests. In sum, they seek to transform information into power—in Japan as in the United States.

A prevailing pattern in news gathering is illustrated by how the shift from dramatic episodes of pollution to concern with environmental polices was routinized. As environmental institutions arose in the Japanese government, sources of official information grew. By sitting in the press club at the Environment Agency, for example, reporters could gather whatever environmental news appeared that day—most likely about policy. One Japanese newsman described the press club as simplifying communication among newsmen and also between reporters and officials. In effect, the Japanese press club institutionalizes the routines of group reporting and promotes cooperation over competition. This is not to say that tension is absent in the press club, as one reporter explained by the proverb: “Bitter enemies on the same boat” (*goetsu dōshū*).

Such routines of group reporting exist in the United States as well. Although Thayer (1975 pp. 291–300) asserted that Japanese press clubs are a “unique” institution, he provided no comparative data or analysis to explain that claim. While the forms taken by the press clubs may be specific to Japan, the functions of regulating contacts among reporters of different papers and between reporters and officials are common to many countries. Sigal’s description of the routine processes of news gathering in Washington applies also to the “bitter enemies on the same boat” in Japan: “Adherence to routine channels allows newsmen to cope with the uncertain world of journalism. Newsmen cluster around these channels, each gathering much the same information as his colleagues. Uncertainty loves company: the similarity of their stories provides some reassurance that newsmen understand what is going on in their world. For men who do not and cannot know what the ‘real’ is, the routines of newsgathering produce ‘certified news’—information that seems valid insofar as it is common knowledge among newsmen and their sources” (Sigal, 1973, p. 130).

The routine processes for gathering environmental news in 1977 in Japan thus illustrate a common pattern of reporting found also in the United States. Anthony Lewis, a columnist for the *New York Times*, decided to live in Boston to escape what he called the “pack journalism” of Washington. Lewis did not “want to be the captive of ‘received understanding’ in Washington, D.C. There is a terrible tendency for journalists to run with the pack. Also, it is true that it is easier to be very critical of officials if you do not see them on a social basis all the time” (Swartz, 1981). The myth of the struggling individual reporter lives on in the United States, while the reality is closer to the press club reporter of Japan.

## Asahi's Reporting of Nuclear Power

In the late 1970s, controversy over nuclear power occurred not only in Japanese society but also within the news organizations, such as *Asahi*. The science section at *Asahi* took a position supporting nuclear power, saying essentially that reactors are "scientifically" safe. Reporters in other sections, especially the city news section, opposed nuclear power and maintained the right of local residents to protest. A similar split previously had occurred on pollution issues generally. At least one reporter active on pollution problems was transferred out of the science section, in a small purge of dissidents. The split at *Asahi* headquarters affected what news appeared in the Tokyo edition. In one case, a city news reporter in a local office outside Tokyo wrote about problems of a nuclear reactor, but the Tokyo editor refused to print the article. In another case, a report on an atomic power plant demonstration in Germany was not printed, after a makeup editor consulted with the science section. The science section thus exerted influence not only over its own page but also over articles written for other sections of the newspaper, if the contents dealt with technical issues—in this case, nuclear power.

In 1979, the nuclear power controversy within *Asahi* came into the open. In September, an internal company newsletter stamped "secret" was leaked to a popular weekly magazine. An article in the newsletter reported that in August *Asahi*'s editors held a three-day "study session" for reporters, urging them to follow the paper's editorial policy of "Yes, but..." on nuclear power—meaning a conditional support for nuclear power. At the meeting, editors advised reporters to keep the "Yes, but..." policy in mind while researching and writing their news stories. One editor explained: "*Asahi Shinbun* is not the individual reporters. *Asahi* must have a single consensus. Each reporter has a fundamental freedom to oppose nuclear power, but when that idea is put into an article, the article must be signed [which is not common practice for news stories in Japan]. In that case, the editorial department has the power to scrap the article" (*Enpitsu*, 1979).

In September, a citizens' group opposing nuclear power sent *Asahi* a letter posing questions about the newspaper's study session. The company's reply was written by the head of the science section, because the editorial department refused to respond to any public questions regarding internal company matters such as the study session or the newsletter. The science writer's curt letter stated that anyone who wanted to know about *Asahi*'s policies on nuclear power "could read the

newspaper's editorials printed on the subject since 1946—without reading the company's internal newsletter." The note concluded by asserting that *Asahi* would continue its policy of "neutrality" on nuclear power, stressing neither support nor opposition, and only "reporting truth" (*Genpatsu Moratoriumu*, 1979).

*Asahi's* reporting of nuclear power illustrates the two central themes about how the news is made: first, the processes of bargaining, conflict, and competition *within* the news company; and second, the influence of sources *outside* the company on reporters and editors and on stories. The conflict over nuclear power within *Asahi* disclosed the divergence existing within the media organization. The example also illustrates the bargaining that occurs to get stories placed and printed. A reporter with a potentially controversial story may wait until a like-minded editor is working at the "desk"—the gatekeeper to the printed page—before submitting the article. Similarly, a reporter working at one of the regional offices may contact a friend in the Tokyo office to help get a story printed in the Tokyo edition—the way to bring a problem to the national elite's attention. Finally, if internal bargaining cannot get an article printed in the newspaper, a reporter may publish the piece in a magazine or journal, sometimes under a pseudonym. The intense conflict over nuclear power within *Asahi* also illustrates that news companies in Japan, as elsewhere, are not monolithic organizations, that "consensus" can be elusive and controversial in Japan.

More broadly, this reporting of nuclear power demonstrates again that what gets printed as news depends on the organization of the news company. Walter Lippmann wrote: "Every newspaper when it reaches the reader is the result of a whole series of selections as to what items shall be printed, in what position they shall be printed, how much space each shall occupy, what emphasis each shall have. There are no objective standards here. There are conventions" (Lippmann, 1965, p. 223). And, I might add, those conventions become embedded in the organization of the news company.

The nuclear power controversy on the *Asahi's* pages and within the company also indicates the influence of outside sources on media organizations. Japan has a major investment in nuclear power, and both political and economic elites intend to increase that investment, justified in part by the national goal of energy independence. One reporter noted that both power companies and banks exerted some pressure on higher *Asahi* officials to take a more positive stance on nuclear power. Perhaps not by chance, *Asahi* has tended to emphasize its "yes" more than its "but." For *Asahi* reporters known as nuclear critics, the atmosphere in the company remains somewhat uncomfortable.

*Asahi's* reporting on nuclear power demonstrates that the newspaper does not take a simple anti-government position or a simple establishment position. Neither does the reporting of news merely reflect the "facts" of a social situation, especially when that situation is complex, ambiguous, and entwined in key social values. Social actors influence what newspapers report through persuasion with information they provide and through pressure with economic and political resources they command. A newspaper like *Asahi*, which seeks to appeal to a mass audience and to maintain its legitimacy among the elite, is especially vulnerable to external persuasion and pressure from the elite. Consequently, the opposition that *Asahi* proclaims is a limited opposition.

### **Concluding Remarks**

This survey of *Asahi's* pollution reporting during the 1970s argues that what gets printed in the press involves an interaction between bargaining within the news company and bargaining outside the news company. Within the company, reporters work with each other on stories, negotiate with their editors, and contact the central office in Tokyo to get stories placed. When reporters form a special team for a press campaign, they achieve a critical mass that demands more story coverage and more page space. Outside the company, both sides of a controversy seek to develop allies and advocates within the news company to represent their views. In what is sometimes called a symbiotic relationship, outsiders and insiders seek to use each other while helping themselves or their own causes. These processes for making the news in Japan are fundamentally the same as those for making the news in the United States.

Newspaper coverage for an event—how the news is made—thus depends on the relationship between reporter and source. The source of information, and how a reporter chooses sources, often determines the form and content of a story. Government officials, for example, may leak information to a favored reporter, to create an episodic crisis useful to the official in bureaucratic infighting. In this way, stories often seek reporters more than reporters seek stories.

The relationship between source and reporter also tends to become fixed in routines for exchanging information. Those routines, exemplified by bureaucratic press releases, simplify a reporter's work and reduce the uncertainty of reporting the day's events. Reporters working on the same story for different papers similarly tend more to collaborate than to compete, thereby reducing possible uncertainty about the news value of a story.

Finally, coverage depends on the reporter's interpretation of the source's information. Some reporters may be more sensitive than others

to the news value of a bit of information, more capable of negotiating that information into a news article. In effect, the decision by a newspaper to report an event as an important public issue is a self-fulfilling prophecy, since a front-page article transforms an event into an important public issue. Such an issue may have far-reaching effects on legislation and court litigation—and help make the news media into institutions for change.

All these processes by which news companies make the news point to a basic uniformity about the press, expressed by Walter Lippmann, “that news and truth are not the same thing, and must be clearly distinguished. The function of news is to signalize an event, the function of truth is to bring to light the hidden facts, to set them into relation with each other, and make a picture of reality on which men can act. Only at those points, where social conditions take recognizable and measurable shape, do the body of truth and the body of news coincide” (Lippmann, 1965, p. 226). But in our world today, as in the world of Walter Lippmann sixty years ago, the news is often interpreted as the truth, by the reporter, by the source, by the reader. Understanding the processes by which the press makes the news helps us to appreciate the gaps between news and truth. It also illustrates the complex manner in which social change is influenced by the organizational processes of the mass media.

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## VII

# Protest and Social Change: A Commentary

Ellis S. Krauss

The foregoing chapters, touching on social protest movements, are important contributions to the literature on social problems and social change in post-war Japan. They are important because they deal with protest in significantly different ways from the usual treatment. All the chapters on protest—White's, Reich's and Tsurushima's—share this characteristic, and I would like to first underline these significant commonalities to place them into proper perspective before turning to some of the more critical questions I have about them.

First, all the chapters take us beyond the usual treatment of protest because they go beyond the standard interest in why protest originates. Implicitly or explicitly, most work on protest in post-war Japan adheres to a model that treats protest as the (dependent) variable to be explained, while searching for the "independent" variables that "cause" the protest in social change and/or the dissatisfactions of the social groups from which the protestors emerged. Further, many studies of protest do not attain even this level of sophistication, but content themselves with mere description of specific issues and events involved in the protest. These chapters focus instead on the *process* and *consequences* of protest. They look at protest as the beginning, not the end, of what is to be explained, attempt to understand the dynamics of protest, and, most importantly, see change (of individuals, society, and politics) as the potential consequence of protest, not just its cause.

Second, all treat protest seriously and as an important phenomenon to be understood. In a polity and society seemingly as stable as Japan's, the more minor chords of tension, conflict, and change have often received short shrift from Japan specialists. When events or aspects of social life that contradict the basic stereotype of order and evolutionary change have been taken up, they have been treated as epiphenomenal. As White points out in his chapter, many have treated protest in Japan as

primarily a cathartic experience for a small minority that has left undisturbed the basic traditional Japanese patterns of harmony and order. These chapters see protest differently, as a major cause of change in Japan, and they take it seriously, as a topic worthy of analysis because it performs important political functions (see White's chapter), reflects underlying social processes (see Reich's chapters), or results in significant change (see Tsurushima's chapter). In this sense, these articles represent part of a growing recent movement among some Japan scholars to reevaluate earlier models of harmony and hierarchical order in post-war Japan, perhaps to arrive at more realistic models that give proper due to conflict and tension as important aspects of social processes in Japan.<sup>1</sup>

Third, and along similar lines, all (intentionally or not) help to break the powerful stereotypes of Japan that have been developing in the West over the last few years. Tsurushima reminds us that not all Japanese are polite, deferential, and consensus-loving. As the formerly "invisible race"<sup>2</sup> has become more visible, status relationships are no longer assumed, taken for granted, and accepted, but rather are challenged through sometimes militant and very seemingly "un-Japanese" tactics, tactics that surprisingly have actually been rather effective in bringing about marked change in the material environment of burakumin communities. Reich explicitly looks at five familiar themes and stereotypes of Japan (psychological homogeneity, strong group consciousness, aversion to litigation, consensus, and concepts of responsibility and apology) and finds in his study of the Kanemi Yusho poisoning incident that these stereotypes do not hold, or are not uniquely Japanese, or have been vastly overrated. White tells us that protest is necessary particularly in Japan because Japanese political authority tends to be either unresponsive or non-accountable, and that protest tends to be effective. When one adds the evidence presented in this volume to the data from mass public opinion surveys that show more youthful and political alienation in Japan than in the United States,<sup>3</sup> we have a very

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<sup>1</sup> For example, see Ellis S. Krauss, Thomas P. Rohlen, and Patricia G. Steinhoff, *Conflict in Japan* (Honolulu: University of Hawaii Press, 1984).

<sup>2</sup> George A. DeVos and Hiroshi Wagatsuma, *Japan's Invisible Race* (Berkeley: University of California Press, 1966).

<sup>3</sup> See Scott C. Flanagan and Bradley Richardson, "Political Disaffection and Political Stability: A Comparison of Japanese and Western Findings," in *Comparative Social Research* (Greenwich, Conn.: JAI Press, 1980), Vol. III; Miyake Ichiro, "Trust in Government and Political Cleavages: A Cross-National Comparison" (Unpublished paper; Kyoto: Doshisha University, n.d.); and the surveys cited in Susan J. Pharr and Ellis S. Krauss, "State and Opposition: Is There Something Machiavelli Could Learn From Japan?" (Paper presented to the International Political Science Association's Tri-Annual Meeting, Rio de Janeiro, Brazil, August 1982).

different picture—or perhaps one should say a more balanced picture—of post-war Japan than one usually finds these days. Japan may be “Number One” in many ways and have solved many of its problems better and more effectively than some Western countries,<sup>4</sup> but there is another side to those achievements too. The stereotype of almost all Japanese working happily on the assembly line next to their robots and under completely enlightened and respected authorities while only a few dewy-eyed, ineffectual, lonely deviants criticize the system is just as unrealistic as any model of Japan that would posit it on the verge of revolution.

Having put the common accomplishments of these chapters into perspective, let me now turn to them individually, pointing out also some critical questions I have about them.

White's contentions are the most ambitious. He attempts to integrate the findings about all types of protest movements, a feat rarely attempted in the literature. Also, he tries to link protest directly to its impact, to its capacity to bring about change. He succeeds admirably in giving us both an excellent overview of recent protest in Japan and in redressing the past neglect and trivialization of protest's importance as an agent of change.

I wonder, however, if in attempting to bring our perspective on protest into balance, he has not perhaps gone too far in the other direction. Despite mentioning the obstacles some movements have faced, the impression he leaves is of very positive and sweeping impacts and of effective and successful movements. Yet, when we look concretely at the specific movements he mentions, we see a rather different picture. The student movement is dismissed because much of it tends to be extremist and therefore *ipso facto* ineffective. The women's movement is admitted to have not been able to change the culture greatly as far as sex roles and attitudes are concerned. And the burakumin movement may have brought about material changes (as described, for example, in Tsurushima's chapter), but is conceded not to have produced great transformations in prejudicial attitudes, and thus the most effective path for this minority may be to try to “individually pass” and assimilate, hardly a recommendation likely to bring about *cultural change*.

When one looks carefully at the examples of truly “successful” protest usually given, one finds that almost invariably they involve the citizens' movements against pollution during the 1960s and 1970s. By contrast, protest concerning inequality issues seems to have had a particularly difficult time in post-war Japan because of the many obstacles

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<sup>4</sup> Ezra Vogel, *Japan As Number One: Lessons for America* (Cambridge: Harvard University Press, 1979).

to such protest in a culture and social structure lacking the more equalitarian ideologies and status relations, and the longer traditions of political responsiveness, found in some other countries. Certainly, protest over equality issues may have been somewhat successful in post-war Japan if we compare its accomplishments to conditions found in the past; but the effectiveness of such protest in Japan pales in comparison, for example, to the ability of American equality protest movements (civil rights; women) to build a widespread, ongoing movement capable of changing culture and policy in dramatic ways.

This relative lack of impact may be because of the inherent obstacles such movements face in gaining support, or it may be because the culture provides Japanese authorities with many advantages and resources to contain and isolate such protest movements.<sup>5</sup> In any case, if anti-pollution protest becomes the one admittedly effective protest movement in recent Japanese history, then I would turn the emphasis in the White chapter around and ask, not how effective protest in Japan has been, but why citizens' movements against pollution have been the exception to at best a mediocre history of successful protest in the post-war period.

A second and related problem stems, I think, from the need to be far more precise in defining what one means by "successful" and "having an impact." Do we mean "successful" from the point of view of the participants or from the longer-range view of more objective observers and "history"? Should we perhaps balance the accomplishing of some of the movement's goals (one definition of success) against what it "cost" the participants, as Reich does in the Kanemi case? What about protests that don't seem to reach their main goal(s) at all or have any impact, but in fact produce rather unintentional positive consequences in the long run? I am thinking here of the Narita Airport protest, which appeared to be a complete failure if we measure it by what the participants wanted to happen; but in fact that protest may very well have ensured that land confiscation procedures and residents' rights where public projects are concerned are never treated so cavalierly again by a Japanese government.

Similarly, how do we know whether it is protest that actually brought about a change rather than that it was a change that would have occurred anyway, even if there had never been a protest? This problem of being able to trace a particular impact back to one particular cause is a thorny methodological issue that cannot be taken for granted. For example, perhaps we can say that protest helps to bring about a greater acceptance of conflict and libertarian values; however, the same changes may actually occur in all advanced industrial societies, and not only because of protest.

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<sup>5</sup> See Pharr and Krauss, "State and Opposition."

In fact, both greater acceptance of such values and protest may be due to some common third “cause,” and the relationship may be spurious.

Indeed, I have great doubt that any model that tries to attribute a particular political or social change to a single factor like a protest movement is ever really completely realistic or accurate. Protest rarely brings about change all by itself. To illustrate this, let us take the example of Japan’s having established the world’s most comprehensive system for compensating pollution victims, a program often attributed directly to the anti-pollution protest movement. Maybe. But the United States also had a major environmental protest movement, and we never adopted that system. Conversely, our environmental protest movement may have helped establish environmental impact statements as part of the law, but the Japanese still don’t have such environmental administration procedures despite their protest movements. Many other factors and actors intervene between the protest demands and the authorities’ responses to protest. To ascertain *which* response and *why* that particular response, we have to look not only at protest but at protest in the context of particular political environments, decision-making procedures, power balance among important actors, etc. In sum, I think we are better off seeing protest often as a “prime mover” of change, but we also have to look at other factors to answer the questions “what kind of change?” and “why that change, and not another?”

Finally, I would take issue with White’s too ready dismissal of “anti-system,” “violent,” and “extreme” protest and his too implicit distinction between these forms of protest and “moderate” forms. Where do we draw the line between “extremist” and “moderate” and “anti-system” and more “democratic” protest groups? Students seem to be categorized as extremist and anti-system, but women and burakumin as moderate and not anti-system. Yet, in the latter two movements’ desire to fundamentally change the distribution of status in the society—i.e., the entire culture and political culture—one can find a rather radical “anti-system” goal. And some of the people involved in these movements also used tactics that can be defined in some ways as “violent.” Witness the *kyūdan* techniques of the burakumin or the incident at Yōka High School where teachers were tortured and beaten. I think this categorization can be justified, but this justification has to be made clear and not assumed or left implicit.

Once we do get our movements categorized into extremist or violent and moderate, I would also argue that we cannot just dismiss the former so readily as being ineffective and irrelevant. Violent or extreme action can sometimes be very functional in protest, especially in the very early stages of a protest, when getting attention to the problem and the

movement is difficult. And, if nothing else, extremist protest plays one very important role: it legitimizes and helps to define the protest that appears to be "moderate." In other words, let us not forget that for Martin Luther King, Jr., to appear "moderate" to many of his fellow citizens, there had to be a Stokely Carmichael and a Black Power movement. Similarly, for citizens' movements or the Communist party in Japan to appear "moderate," there has to be a Trotskyite wing of the student movement throwing Molotov cocktails for comparison.

Turning to the chapters by Reich and Tsurushima, I find two excellent case studies of particular protest movements. Reich's focuses on the dynamics of protest—how a particular protest conflict escalates—and asks the crucial question of how it becomes politicized. I especially liked his fine division of the protest's development into particular stages. Tsurushima concentrates more on the consequences of a protest movement to show us how a law that protest helped to bring about has produced changes in the status of the burakumin minority in Japan.

One lack in both chapters, I felt, was the need for more attention to the social psychological dimensions of the actors involved. For example, in Reich's chapter, how were the victims motivated to collective action to overcome the enormous psychological, social, and material costs of political activism? Japanese culture presents tremendous obstacles to certain types of political activism for certain social groups,<sup>6</sup> and it would have been interesting to see how these functioned in the Kanemi case. Also, Tsurushima similarly could have told us more on how the burakumin themselves perceive and have reacted to the material changes brought about by the legal changes. How do they perceive the benefits and costs of protest in retrospect?

In some ways, I thought that the Reich and Tsurushima chapters each had opposite strengths and weaknesses. Reich's is an insightful study of process, but he considers only one aspect of the consequences of protest—namely, its impact on individual victims. What about the *social* aspect of social change? Did the Kanemi case bring about changes important to people besides the victims themselves? Did it result in new procedures for handling food production, distribution, and testing? Did it have an impact on greater consumer consciousness and regulation? If not, why not? Conversely, I thought Tsurushima's study concentrated too much on impact and not enough on the *process* by which the

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<sup>6</sup> See, for example, Susan J. Pharr, *Political Women in Japan* (Berkeley: University of California Press, 1981); and the articles by Margaret McKean and by Ellis Krauss and Bradford Simcock in Kurt Steiner et al., *Political Opposition and Local Politics in Japan* (Princeton: Princeton University Press, 1980).

burakumin law was established and, equally important, implemented. Thus, did all burakumin participate in deciding how housing was to be allocated, where it was to be built, and the kind of housing it was to be? How did the leadership of the protest movement carry over and become the leadership of the burakumin communities after the law was established? Did they participate in the implementation of the new policy, as well as in the protest to get it established, or did the two tasks tend to require and produce different leadership groups?

Lastly, let me call attention to one weak point that is common to all the chapters here, but in which they are like almost every other study of protest in post-war Japan<sup>7</sup>—the lack of attention to the role of the mass media in protest. [Reich's Chapter 6 was added subsequent to the conference—Ed.] The media are the crucial "silent partner" and third-party ally<sup>8</sup> of protest in democracies. Without the media to transmit the facts that a "problem" exists, that some people are dissatisfied enough to protest, and that the authorities are or are not handling the protest a certain way, there is literally no protest movement to speak of and certainly no impact to speak of. Like the proverbial tree falling in the primordial forest with no one around to hear it, without the media, protest doesn't exist. Much more could be done, not only in these chapters, but in the field in general, on the role that the media play in political opposition in Japan.

To make these comments is only to say that these chapters do not deal with all aspects of protest in ways that may satisfy or persuade everyone—which is to say that they, like all other human endeavors, are not perfect. They are, however, among the most enlightening and significant insights into the world of alienated and activist men and women in Japan, and how these people have affected their society, that we have in the field.

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<sup>7</sup> One significant exception is George R. Packard III, *Protest in Tokyo* (Princeton: Princeton University Press, 1966), in which the role of the press in protest is given its proper, if descriptive, due.

<sup>8</sup> Michael Lipsky, "Protest as a Political Resource," *American Political Science Review*, 62(1968), 1144–1158.

## Part Two

# Introduction: The Police as an Institution for Change

George A. DeVos

Institutions central to the operation of any modern state are its agencies of law enforcement and internal security. Such agencies in concert with official courts comprise a sanctioning system common to complex societies no longer organized on the basis of kinship. The modern state hopes to develop special, supposedly impartial, professions dealing with deviants to protect the general public from their actions and possibly to rehabilitate offenders so that their behavior becomes subsequently more conforming. In the police institutions of a modern society, custodial operations by and large have been emphasized over rehabilitative ones. Other professions such as social work, psychology, and psychiatry have specialized more in rehabilitation. How these rehabilitative, therapeutic institutions operate in modern Japan is a topic not to be considered in the context of this volume. We are looking at the Japanese police agencies as an institution related to social sanctioning within the democratic ideology of post-war Japan to ascertain how it functions to implement or impede the goal of equal treatment before the law.

To carry out surveillance and arrest functions, police are accorded the necessary ability to coerce and deter. They are sanctioned to impose force as a measure ensuring public security. In a complex stratified society, this police power can readily be used selectively by dominant segments of the society to reinforce the will and purposes of the politically dominant. In a society ideologically committed to social democracy, however, the manner in which law enforcement is exercised becomes a measure of the degree to which democracy can function. A so-called police state, for example, is by definition a social system in which *political* deviancy can be treated as a criminal offense. Police action may become discriminatory in situations of social unrest. In a society lacking sufficient economic democracy, certain segments of the population may become alienated and forms of crime occur that reflect social alienation, social and/or economic deprivation. Crime, therefore, becomes an index of

overall social alienation reflected by high incidence rates in given segments of the population. This is evident in the United States in given minorities.

The relative number of individuals in a given society that are subjected to direct incarceration, exile, or some form of continual surveillance is therefore some measure of the use of direct physical control over the lives of ordinary citizens and therefore an index of the relatively adequate operation of political and economic democracy. In what follows, we shall look in brief at some of the indices of crime and delinquency and what they reflect about post-war Japan.

Contrary to what Hobbes believed, a society continues to function not only because formal coercion and informal controls of community sanctions are continually exercised, but, as Durkheim well delineated, because there are internalized constraints operative within the individual.

The centrifugal tendencies of particular groups or particular individuals are kept in check by police action; but in most communities, informal sanctions as well as self-constraints are almost sufficient. The vast majority of any well-functioning community need seldom be sanctioned through direct police action. Perhaps traffic arrests, since the enormous increase in vehicular traffic, have become the single most probable occasion in which ordinary citizens have had "trouble with the law."

We have chosen in what follows to discuss crime and police functioning as a means of examining how Japanese society continues to function, first from the standpoint of social conformity and deviancy, and second from the standpoint of how post-war police training and police organization reflect the operation of democratic versus authoritarian or totalitarian principles in preventing or sanctioning crime, delinquency, or deviant behavior generally.

In addition to the presentations of David Bayley and Kanehiro Hoshino, who present chapters on post-war law enforcement, we shall utilize a comparative approach, examining the Japanese police system in comparison with that operative in the United States. To do so, we shall include chapters by two American specialists, Jerry Enomoto and Cy Shain. In addition to their own intensive knowledge of the American law enforcement system, they have gained sufficient comparative perspective through direct or indirect contact with Japan to afford us valuable generalizations. As editor, in a final chapter I shall draw upon the more general discussions of other participants in the conference, as well as upon some descriptive material from my own research on delinquency in Japan over the past twenty years.

Not all topics possible have been examined sufficiently. For example, we do not describe in any detail how informal community sanctions and formal police operations are intertwined in urban neighborhoods as well as rural settings; such a topic deserves more direct attention than we were able to allow in the present context.

## VIII

# Police, Crime, and the Community in Japan

David H. Bayley

### Crime and the Criminal Justice System

By world standards, Japan does not have a crime *problem*, and its criminal justice system is performing with remarkable efficiency. In the post-war period, crime peaked in 1948–49 and declined steadily until 1974. There were actually fewer Penal Code offenses, excluding violations related to motor vehicles, committed in 1980 than in 1950, despite the fact that the population had grown. The decline has stopped, however, and since 1974 there has been a small increase almost every year (see Figure 1). In 1980, 1,357,461 nontraffic offenses were known by the police, as opposed to 1,211,000 in 1974. The incidence of violent crime per capita in 1977 was about one-third the rate in 1960. In contrast, the rate for violent crime in the United States quadrupled during the same years. Similarly, the incidence of property crime per capita fell slightly during these years in Japan (National Police Agency, 1981, p. 13), but increased almost threefold in the United States (National Police Agency, 1978). Japan's low crime rate is unique among modern, industrialized countries not only because it has declined since the Second World War, but because it is often orders of magnitude less than others (Evans, 1977, p. 488).<sup>1</sup> This is dramatically the case in relation to the United States. In recent years, the murder rate in the U.S. has been about five times higher than in Japan, the rape rate eight times higher, and the theft rate sixteen times higher.<sup>2</sup> The difference in robbery rates is even more startling,

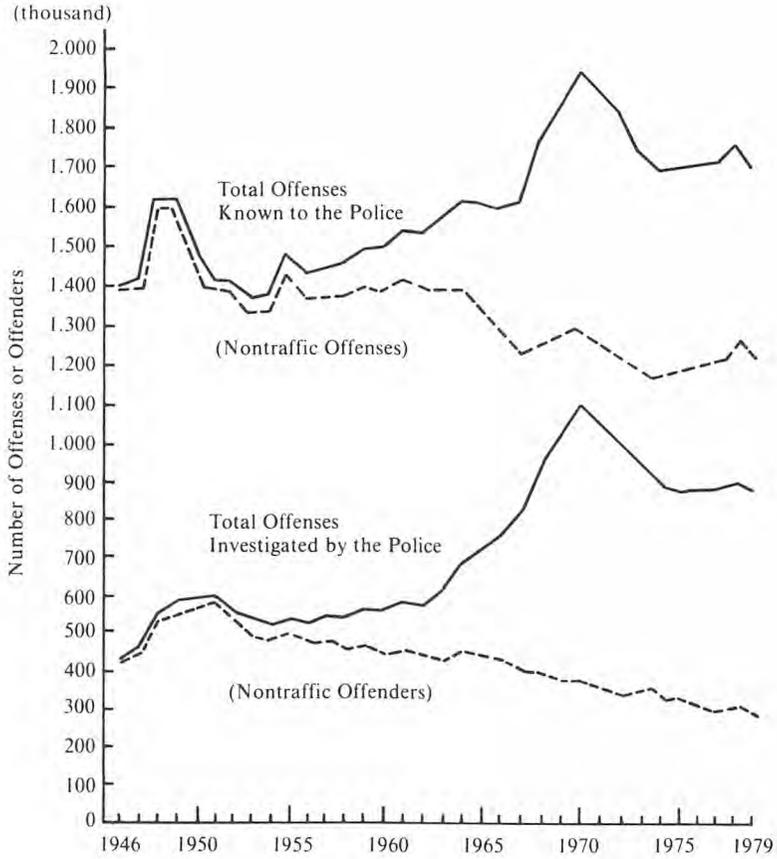
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<sup>1</sup> Evans's figures are for the period 1960–1970.

<sup>2</sup> For example, in 1978 the respective murder rates were 9.0 versus 1.65 per 100,000; rape, 30.8 versus 3.97; theft, 2,743.9 versus 168.8. Ministry of Justice, 1980; and U.S. Department of Justice, 1980.

Figure 1

Trends in Penal Code Offenses and Offenders



SOURCE: Ministry of Justice, *Summary of the White Paper on Crime*, 1980, p. 2.

being over one hundred times higher in the U.S. than in Japan. The comparison, however, is spurious. Japanese criminal law carefully distinguishes extortion from robbery: robbery is the taking of property under the threat of violence; extortion is the relinquishing of property under the threat of violence. Both of these would be classified as robbery in the United States.<sup>3</sup> However, even when robbery and extortion figures are added together in Japan, the American robbery rate is still twenty times larger than the combined Japanese rate (Ministry of Justice, 1980, pp. 4–5).<sup>4</sup> As American and European visitors quickly learn in Japan, cities are habitable places where one may move about freely at all times of the day and night without feeling anxious and taking extraordinary precautions.

Recognizing the tremendous unreliability in criminal statistics worldwide, one is compelled to ask whether the Japanese figures can be trusted. The answer is that they can indeed. As in the United States, victimization surveys in Japan show that many crimes, especially minor ones, are not reported to the police. According to surveys done by the National Police Agency in 1969 and 1972, the victimization rate is about twice the reported rate (National Statement of Japan, 1980, p. 2).<sup>5</sup> American victimization rates, computed twice yearly since the early 1970s by the U.S. Government, show the same margin of error in reported rates as in Japan (U.S. Department of Justice, 1981, pp. 232–234). However, while reported crime rates have risen in the U.S. during the 1970s, victimization rates have remained steady. This is very puzzling to American criminologists, since it suggests that the much publicized crime wave may be artificial. For our purposes it is enough to note that since victimization surveys show that the proportion of underreporting is about the same in both Japan and the United States, the magnitude of difference in crime shown by official statistics on reported crime can be accepted at face value.

When crimes have been committed, the Japanese criminal justice system appears to respond more efficiently than the American. The Japanese police, for example, solve a much higher proportion of crimes overall than do American police—approximately 57 percent in Japan as

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<sup>3</sup> I am indebted to Mr. Y. Suzuki, Public Prosecutor and former Director of UNAFEI (United Nations and Far East Institute for the Prevention of Crime and the Treatment of Offenders), for bringing this to my attention.

<sup>4</sup> Robbery of all sorts in Japan was 1,748; extortion, 9,399. Respective rates were 9.7 versus 191.3 per 100,000.

<sup>5</sup> This statement was prepared for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The 1969 victimization rate was 1.005 times higher than the reported rate; the 1972 victimization rate was 0.69 times higher.

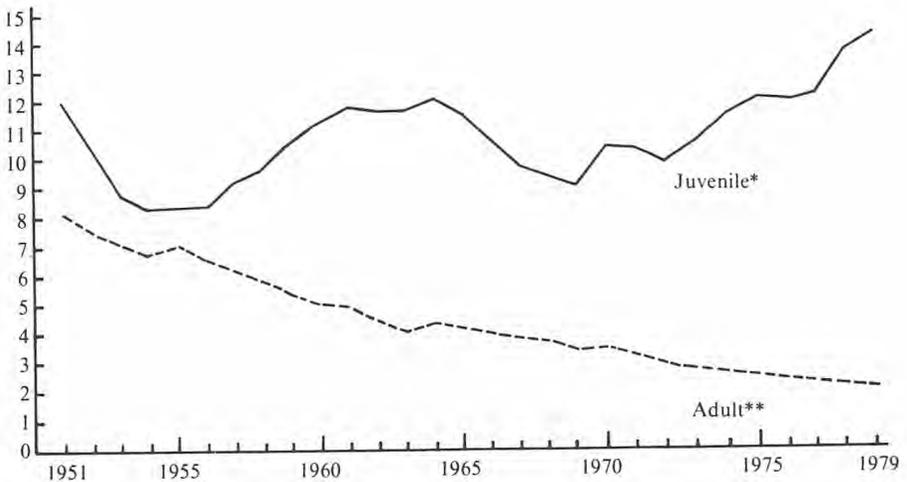
opposed to 20 percent in the United States (Kanemoto, 1978; and U.S. Department of Justice, 1981, p. 368). Moreover, Japanese performance has steadily improved over the last twenty-five years. As one would expect, clearance rates in both countries vary according to crime. The clearance rate for violent crimes against persons is 92 percent in Japan and 43.7 percent in the U.S.; for property crime, 54.7 percent in Japan and 17.1 percent in the U.S. (U.S. Department of Justice, 1981, p. 368). Comparison of clearance rates reveals another fascinating difference in the way the two criminal justice systems function. A crime is considered "cleared" in the United States when an arrest has been made; a crime is considered "cleared" in Japan when the police have identified a suspect and submitted the person for prosecution, regardless of whether an arrest has been made or not. In Japan only a small proportion of suspects are actually arrested and held in jail. The proportion has been about 20 percent in recent years (various *Japanese White Papers on Crime*). In other words, the vast majority of Japanese criminals appear in court voluntarily; they are prosecuted on an "at home" basis, as the Japanese say, without the restraint even of bail. This is true not just for minor offenses but for serious crimes like murder, where only 51.9 percent of suspects were jailed in 1979, and rape, where only 61.6 percent were jailed (Ministry of Justice, 1980, p. 31). In effect, almost all suspects are jailed in the United States, at least briefly, while in Japan very few are. Interestingly, a comparison of nontraffic Penal Code offenses of all kinds in Japan and the seven categories of most serious crimes in the U.S. shows that both countries clear *by arrest* almost exactly the same proportion: 19.6 percent in Japan and 19.8 percent in the United States. The Japanese, however, submit another 37 percent of all known cases for prosecution on the "at home" basis (U.S. Department of Justice, 1981, p. 370). In 1979, 73.4 percent of homicides were cleared by arrest in the United States compared with 51.9 percent cleared with arrest in Japan, but the Japanese solved a total of 96.4 percent; for rape, 47.8 percent were cleared by arrest in the U.S. compared with 61.6 percent in Japan, but the total solved in Japan was 91.7 percent; and for robbery, 24.9 percent were cleared by arrest in the U.S. compared with 65.7 percent in Japan, but 80.6 percent were solved in Japan (U.S. Department of Justice, 1981, p. 370; Ministry of Justice, 1980, p. 31).

Typically about 18 percent of persons identified as suspects in nontraffic Penal Code offenses are juveniles. The proportion has been rising slowly since 1955 and is a source of grave concern to the Japanese (see Figure 2). Juvenile offenders are referred to Family Courts. With respect to adult offenders apprehended, approximately 66 percent are prosecuted, 26 percent have prosecution suspended, and 9 percent have

the charges dismissed for lack of evidence, legal defects in the case, or withdrawal of complaints. Suspension of prosecution is an unusual feature of Japanese criminal justice. Although public prosecutors in most criminal justice systems have considerable latitude in deciding when to prosecute, Japanese law specifically authorizes prosecutors to consider particular features of the crime and criminal, including the criminal's character, age, and economic circumstances, to determine whether criminal prosecution is

Figure 2

Trends in Nontraffic Major Penal Code Offenders Investigated by the Police: Juvenile and Adult (1951-1979)



\* Rate per 1,000 population 14-19 years of age.

Juvenile at the time of commission of offense.

\*\* Rate per 1,000 population twenty years of age and over.

SOURCE: Ministry of Justice, *Summary of the White Paper on Crime*, 1980, p. 54.

likely to help or hinder rehabilitation (Code of Criminal Procedure, Article 248). In effect, Japanese prosecutors are explicitly enjoined to act like judges in their own right, making determinations of substance according to their reading of the moral character of the suspect.

Over 99 percent of cases submitted for prosecution in Japan consistently result in conviction (National Police Agency, 1981, p. 34). This miraculous record is due to two factors: prosecutorial discretion that allows weak cases to be dismissed or suspended, and suspects who acquiesce in their own prosecution. In relation to American suspects, certainly, Japanese criminals are notably more repentant and cooperative. For example, a much larger proportion of Japanese suspects confess to their crimes, not as a result of a plea bargain, which is prohibited under Japanese law, but as a genuine act of contrition (Bayley, 1976, Chapter 7). It is important to add that it is difficult to make comparisons between Japan and the United States regarding procedural practices and the outcomes of trial because of the lack of national data in the U.S. Figures are only available in the U.S. for prosecutions in some states. Japan, on the other hand, has a unified criminal justice system and a common set of laws for the whole country. As a result, aggregate statistics are readily available.

Contrary to what Americans tend to think, Japan's low crime rate cannot be attributed to stiff sentences. Compared with the U.S., in fact, Japan's sentences are lighter in every category of crime, with one exception: Japan does provide capital punishment for homicide (Penal Code, Articles 199 and 200). On the average, three people have been executed each year recently, wholly without publicity or public protest. The vast majority of suspects convicted (84 percent) are given fines, 6 percent are jailed, and 9 percent have their sentences suspended.<sup>6</sup> In recent years, about 48 percent of the jail sentences have been for one year's duration or less compared with only 4 percent of prison sentences awarded by state and federal courts in the United States (U.S. Department of Justice, 1981, p. 474).<sup>7</sup> Counting persons awaiting trial as well as convicted persons, about fifty thousand people are in jail at any time in Japan compared with approximately four hundred and sixty-five thousand in the United States (Ministry of Justice, 1980; U.S. Department of Justice, 1981). There are then, approximately 43 persons per 100,000

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<sup>6</sup> From Ministry of Justice data supplied in an unpublished paper by Y. Suzuki, now director of the Japanese correctional system.

<sup>7</sup> The comparison underestimates the number of low sentences in the U.S. because it does not take into account court decisions under municipal laws and ordinances. These, presumably, would involve more trivial offenses.

population in jail in Japan and 216 per 100,000 in the U.S. The ratio for people who are serving jail sentences as a result of conviction is 36 per hundred thousand in Japan and 185 per hundred thousand in the U.S. Among industrialized countries today, only the Netherlands has a lower incarceration rate: 24 per hundred thousand (National Statement of Japan, 1980, p. 7). By world standards, Japan has a very small proportion of its population behind bars.<sup>8</sup>

The most important test of the efficiency of a criminal justice system is the proportion of people who commit further crimes after having been punished in some way. This is known as the recidivism rate. The Ministry of Justice in Japan has made extensive studies of it. Unfortunately, meaningful international comparisons are difficult to make, especially for the United States, where aggregate national data are lacking.<sup>9</sup> Moreover, every system allows suspects to leave its processes at different points (for example, the prosecution in Japan), and the sanctions finally applied, even when they are of the same sort, may vary in severity. In relation to what, then, should recidivism be calculated? My impression of Japan, for instance, is that the criminals who are sent to jail are more incorrigible than the prison population in the United States. In other words, incarceration is a more common fate for criminals of all sorts in the United States than it is in Japan. Both countries, therefore, could have similar recidivism rates, calculated for paroled offenders, but Japan could be having more success in deterring potential repeaters through suspension of prosecution, fines, and suspended sentences. All in all, the methodological adjustments needed to make recidivism comparisons useful are beyond the scope of this paper.

What are the reasons for Japan's notable success in ensuring the safety of its population from crime? The Japanese themselves point to their island location, the homogeneity of the population, the excellence of their police, prosecutors, and judges, the strict controls on firearms, and high levels of employment and economic well-being. Foreigners,

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<sup>8</sup> Data provided by Andrew Rutherford, a British criminologist, in a speech, May 1982, Minneapolis, Minn. Sweden's rate is 52; the United Kingdom's, 85. There is enormous variation among states in the U.S.: 18 in North Dakota, 23 in Minnesota, 165 in Georgia, and 208 in the District of Columbia. U.S. Department of Justice, 1981, p. 461.

<sup>9</sup> See Silberman, 1980, for an authoritative treatment of the problem. Silberman throws up his hands finally and doesn't reproduce the results of the many studies that have been done. Impressionistically, however, American experts tend to think that the majority of serious crimes, homicide excluded, are committed by repeaters, maybe as much as 80 percent. Wilson, 1977, p. 181 and Chapter 10. The Japanese Ministry of Justice has estimated that 29.3 percent of crime is committed by repeaters. Information supplied by Mr. Tsuchiya, Deputy Director, UNAFEI, October 1979.

however, have tended to focus on another set of factors—namely, those having to do with Japanese culture (Vogel, 1979; Ames, 1981; and Clifford, 1976). The low levels of crime are attributed, in this view, to the vitality of informal social controls in Japanese life, the customary respect for authority, and the sharing of responsibility between citizens and government for maintaining safe communities. Having made this argument elsewhere myself, I won't examine here the dynamics of Japanese culture as it bears on social control (Bayley, Summer 1976, pp. 55–68). But I do want to call attention to what seems to be a change in the evaluation of such arguments by the Japanese themselves. Until the late 1970s, Japanese experts and involved practitioners never mentioned cultural factors at all. Their arguments for Japanese success in dealing with crime were almost entirely structural, relating to economic, demographic, legal, and administrative variables. In the last three or four years, however, they too have begun to talk about group consciousness, connectedness within families, schools, and workplaces, and “wet skin relations.” The Japanese, it appears, have discovered the seminality of their own culture in crime control.

If my observation is correct, why have Japanese explanations for their low crime rate changed so significantly? To some extent, it is part of a reevaluation of the United States. Until a decade or so ago, America was a model for what the Japanese wanted to achieve in the world. Being American raised the status of almost anything, from material goods to political practices. By the mid-1970s, however, the bloom was off the rose. The Japanese generally were prepared to be critical of what the United States did and what it stood for. With respect to crime and law enforcement specifically, the United States had become a horror story. Magazines were full of accounts of lawlessness in the United States; Japanese tourists were warned to take heroic precautions in American cities. Since the U.S. was so similar to Japan in structural variables of a socioeconomic sort—industrialization, modernity, urbanization, mobility, media—the obvious conclusion was that something peculiarly Japanese must lie at the heart of its success in criminal justice. Either that or Japan was about to reap the whirlwind, a prospect that still terrified the Japanese and has been the subject of a great deal of anguished speculation.

In addition to reappraisal of the United States, there was another factor, I think, that caused the Japanese to discover themselves. Americans, paradoxically, had begun to tell the Japanese that their culture was useful, not anachronistic, in the modern world. Ezra Vogel's best-selling *Japan As Number One* was an example of this. Japanese culture ceased to be seen as an embarrassing remnant of feudalism; instead, it was praised as being adaptive to the requirements of a humane modern

society. It is hard to tell whether foreigners actually revealed something to the Japanese that they hadn't seen for themselves or whether the foreigners simply encouraged the Japanese to be more forthright in claiming credit for themselves. Either way, intellectual Japanese seem to have realized that their country had another export for world society, namely, its pattern of regulating human relationships, and it was unexpectedly as important in criminal justice as in industrial management.

Among Japanese as well as foreign students of criminal justice, reflection on the Japanese experience began to produce an important new formulation in criminological theory. Most criminological studies have tended to be mono-cultural, carried out in single countries. The effect of this has been to obscure cultural variations in crime causation, notwithstanding a great deal of writing about "subcultures." These subcultures, however, were themselves seen as the result of structural differentiation. Study of Japan helped to reveal that congeries of value and meaning quite unassociated with economic or demographic variables were important in themselves. At the same time, it became apparent that culture was not the only explanation. While culture might explain some of the difference in criminality between, for example, Japan and the United States, it could not account for fluctuations within each country. Therefore, it is still important to study the impact on crime of industrial development, the creation of new towns, and changes in the labor market. The Research and Training Institute of the Ministry of Justice has carried out extensive studies of this sort and has found modest confirmation for the importance of a few structural variables (Research and Training Institute, 1975, pp. 12-18). So culture as well as social structure are now seen as comprising independent sets of variables in criminological theory, with such structural factors nestling inside, as it were, the patterning of Japanese culture.

With respect to Japanese culture, a very important criticism has been made of the hypothesis that group consciousness and loyalty contribute to low levels of criminality.<sup>10</sup> It is that the orientation toward groups may produce crime as well as order. This culturally imparted orientation produces lawful behavior only as long as the objectives of the group are lawful. If they become unlawful, then this orientation can produce unreflective, unabashed criminality. This can be seen quite clearly in Japanese gangsters (*boryokudan*), radical student groups, motorcycle gangs (*bosozoku*), and white-collar criminals. The implication is that the "tribal" organization of Japanese society, as Gregory Clark calls it, facilitates the

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<sup>10</sup> For example, by Mr. Y. Suzuki, Ministry of Justice, in "Japanese Criminal Law from the International Perspective," in a collection of essays published by the Ministry of Justice.

achievement of any collective goals, but it does not impose a moral view on what those objectives should be.<sup>11</sup> The reinforcement that Japanese culture supplies to today's lawful social order is fortuitous, and could perhaps change abruptly if other goals were substituted.

Japan teaches another lesson about crime control that Americans, I believe, are about to discover—namely, that crime is related to the kind of moral order people exercise in daily life. Everyone who goes to Japan comments on the people's politeness, civility, and orderliness in public places. They rarely cross streets in the middle of the block, they wait for traffic lights to turn green before crossing, they form queues automatically, they don't smoke in subway trains, and they studiously avoid staring. Public telephones are numerous and in working order; telephone books are not chained to walls, and coin boxes have not been pried open; vandalism of public property is very rare; and even graffiti is exceptional and restrained. Commercial goods are trustingly displayed on counters and racks in front of shops in the busiest thoroughfares or passages. The absence of litter is hard to believe. A British businessman was so astonished by this that he made his own empirical study in the labyrinthine underground passages of the Ginza-Yurakucho subway complex. In twelve hundred yards of passageways at rush hour, he found discarded on the floor exactly nineteen cigarette ends, twenty-eight match sticks, eleven candy wrappers, and four pieces of discarded paper.<sup>12</sup> All these examples of orderliness could be seen as manifestations, like the crime rate, of an extraordinarily disciplined society. Radical individualists, which Americans are in relation to Japanese, might even feel oppressed by it. Recently, however, some criminologists and social psychologists have begun to speculate about whether the maintenance of civility in small ways is not a causative factor in criminality rather than simply a reflection of criminality. In other words, the reason Japanese don't litter isn't because they are law-abiding; rather, Japanese are law-abiding because they don't litter.<sup>13</sup> Serious criminality is more likely to take place where moral boundaries to behavior do not seem to exist. Where anything goes, the conscience of even law-abiding people is likely to become slack. The implication for Americans is that the police should consider enforcing order in public places, after decades of decriminalization, in order to demonstrate that a moral order exists and society cares about it. This

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<sup>11</sup> A phantom manuscript that Clark is still working on.

<sup>12</sup> Peter Hazelhurst, former Tokyo correspondent for the *Times* (London), private conversation, 1980.

<sup>13</sup> The evidence for this and its implications for law enforcement are discussed by Wilson and Kelling, 1982, pp. 29–38.

would involve regulating such behavior as littering, sleeping, playing loud music, skateboarding, and drinking. Conscience, the argument is, grows through prompting, even when these cues may seem to involve trifles.

One story from Japan makes the point beautifully. A burglar was caught by the police because he stopped to put his shoes back on after crossing a tatami floor to pick up a wallet on the other side of a room.<sup>14</sup>

The general point is that the amount of crime is related to the messages a community sends to its people, especially its impressionable youth, about the boundaries of proper behavior. Japan takes pains to send a great many messages about the importance of conforming behavior; Americans send many fewer. Television, as most people recognize, quite literally sends messages about morality, which explains why so many studies of its content have been done in both Japan and the United States. With respect to violence on television, the differences between the two countries are instructive. Research has shown that the number of violent acts in comparable time slots is the same. However, the violence is portrayed very differently. A much larger proportion of American television violence is perpetrated by the central character and is shown to be useful in achieving goals. In other words, viewers see violence as being helpful to protagonists they identify with. In Japan, by contrast, violence is more often tragic, harming the protagonist, or innocent people, or the violent person himself. Violence is shown to have evil consequences rather than useful ones. Moreover, Japan TV violence takes place more often than American in contexts that are quite fictitious, unrealistic, or uncontemporary, as in the numberless samurai dramas. Violence is not shown as a part of the viewer's everyday world.<sup>15</sup>

Although Japan seems a paradise with respect to crime, the Japanese are not complacent. They worry a lot about several growing problems: juvenile delinquency, especially the motorcycle gangs and stimulant drugs. Boso-zoku are gangs of young people, generally seventeen to eighteen years of age, who ride motorcycles and unmuffled sports cars at high speeds in urban areas. As of November 1980, police estimated that there were 754 groups with approximately 39,000 members. In addition to flouting the traffic laws, the boso-zoku attack people, rampage through shopping areas, ransack shops, besiege police posts, and wound and even kill police officers sent to restrain them (Ministry of Justice, 1980). Newspapers are filled with accounts of their activities, which have spread

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<sup>14</sup> The source of this story is Robert Trumbell, correspondent for the *New York Times* in Japan.

<sup>15</sup> Professor George Comstock, professor of mass communications, Syracuse University, from a speech on May 12, 1982, Minneapolis, Minn.

from western Japan, where they originated about a decade ago, to the Kansai and Kanto regions. Police mobilize hundreds of officers against the bosozoku in dragnet operations reminiscent of the elaborate operations undertaken against rioting students in the past. Extensive analyses have been made of the social background of the bosozoku, the structure of the gangs, their school achievement, and the relation between gang membership and participation in nontraffic criminal activity.

With respect to drugs, the government has been alarmed by a sharp growth in the use of stimulant drugs (amphetamines), glue and thinner sniffing, and to a lesser extent, smoking of marijuana (see Table 1). The increase is especially troubling because it is not confined to pockets of the Japanese population, like musicians and entertainers, as it was during the previous peak in the mid-1950s. These drugs are now being used by white-collar workers, housewives, and juveniles, which is being interpreted as "a reflection of the constant quest for pleasure in Japanese life today" (National Police Agency, 1981, p. 10).

It is easy for Americans to dismiss these trends as hardly worth noticing. Not only are the number of cases negligible by American standards, but hard-drug use continues to decline. Moreover, Japan is one of the few countries that has a record of success in stemming drug abuse. In the mid-1950s, the Japanese flattened the drug wave almost overnight through new laws, strict enforcement, and a concerted campaign of public education designed to portray drug use as antisocial and un-Japanese. The bosozoku, too, while undoubtedly a disturbing anarchic element, are marginal to Japanese social life, easily identifiable, susceptible to focused law enforcement, and not sympathetically regarded by the public at large. Reaction, then, to the rise in amphetamine use and the violence of the bosozoku seems exaggerated to Americans, as does the great concern shown in recent years for the "generation gap." To the outsider, what is traditional about Japanese youth is far more obvious than what is threateningly different. The point to recognize, however, is that the importance of such trends lies in the eye of the beholder, which is to say it depends on the benchmark used for comparison. Make no mistake, government agencies—especially the police, the Prime Minister's office, and the ministries of justice and education—are moving concertedly to mobilize resources, legal and human, in order to reverse these trends. Precisely because Japan has been so orderly, small amounts of new deviance constitute serious threats. To refer to an earlier metaphor, they constitute messages that the society reads and the government dares not ignore. The Japanese authorities are not overreacting; they are acting in terms of sensibilities shared with the general population, sensibilities that must be gauged on a Japanese rather than an American scale. It seems to

Table 1  
 Number of Drug Offenders Received by Public Prosecutor's Office  
 and of Juveniles Counseled by Juvenile Police  
 because of Thinner and Glue Sniffing\*

| Year | Offenses                                |                                 |                             |                                     |                     |
|------|---|---------------------------------|-----------------------------|-------------------------------------|---------------------|
|      | Stimulant<br>Drugs Con-<br>trol Law (1) | Narcotics<br>Control<br>Law (2) | Opium<br>Law (3)<br>Law (4) | Cannabis<br>Control<br>Sniffing (5) | Thinner<br>and Glue |
| 1951 | 9,841                                   | 2,383                           | ...                         | 26                                  | ...                 |
| 1952 | 18,359                                  | 1,869                           | ...                         | 64                                  | ...                 |
| 1953 | 35,115                                  | 1,693                           | ...                         | 18                                  | ...                 |
| 1954 | 52,820                                  | 2,317                           | 39                          | 19                                  | ...                 |
| 1955 | 30,935                                  | 2,047                           | 187                         | 58                                  | ...                 |
| 1956 | 5,607                                   | 1,662                           | 154                         | 30                                  | ...                 |
| 1957 | 866                                     | 1,758                           | 184                         | 40                                  | ...                 |
| 1958 | 265                                     | 2,327                           | 92                          | 12                                  | ...                 |
| 1959 | 361                                     | 2,036                           | 177                         | 32                                  | ...                 |
| 1960 | 496                                     | 2,561                           | 447                         | 14                                  | ...                 |
| 1961 | 512                                     | 2,664                           | 206                         | 25                                  | ...                 |
| 1962 | 621                                     | 3,093                           | 348                         | 46                                  | ...                 |
| 1963 | 1,141                                   | 3,084                           | 457                         | 136                                 | ...                 |
| 1964 | 1,013                                   | 1,070                           | 560                         | 182                                 | ...                 |
| 1965 | 781                                     | 1,141                           | 917                         | 258                                 | ...                 |
| 1966 | 818                                     | 992                             | 995                         | 171                                 | ...                 |
| 1967 | 753                                     | 664                             | 631                         | 290                                 | ...                 |
| 1968 | 921                                     | 360                             | 967                         | 398                                 | 20,812              |
| 1969 | 825                                     | 263                             | 331                         | 456                                 | 31,028              |
| 1970 | 1,905                                   | 257                             | 211                         | 771                                 | 40,045              |
| 1971 | 3,176                                   | 249                             | 172                         | 797                                 | 49,587              |
| 1972 | 6,184                                   | 379                             | 207                         | 765                                 | 36,054              |
| 1973 | 11,030                                  | 469                             | 264                         | 776                                 | 16,220              |
| 1974 | 7,635                                   | 450                             | 134                         | 713                                 | 21,137              |
| 1975 | 13,288                                  | 290                             | 114                         | 992                                 | 36,968              |
| 1976 | 17,354                                  | 207                             | 152                         | 1,059                               | 37,046              |
| 1977 | 23,711                                  | 199                             | 163                         | 1,318                               | 32,578              |
| 1978 | 28,187                                  | 191                             | 124                         | 1,658                               | 39,615              |
| 1979 | 26,629                                  | 146                             | 163                         | 1,495                               | 40,433              |

\*DATA: Annual Report on Prosecutorial Statistics; Report of National Police Agency.

(1)-(4): Drug offenders received by public prosecutor's office.

(5): Juveniles counseled by juvenile police because of thinner and glue sniffing.

SOURCE: Ministry of Justice, *Summary of the White Paper on Crime*, 1980, p. 9.

me that countries become accustomed to different levels of social disorder and crime, and that this, in turn, shapes the timing, nature, and intensity of official corrective action. To refashion an old cliché, an ounce of early correction may be worth a pound of later cure. “Anarchy” and “generation gap” are relative. In order to preserve current civility and order, the Japanese must employ a scale of evaluation that is much more sensitive and discriminating than what Americans use.

### **The Police and the Community**

Relations between the police and the populace changed in a revolutionary way in Japan after the Pacific War. Indeed, this redirection was the sharpest and most dramatic that I know of in the history of world policing. In essence, police operations were made responsive to the needs of the public individually rather than to the state. Disaggregate demands of the public determined from then on the actions the police took. This was democratization, to use the favorite word of the 1945–1952 era. The Allied occupation authorities tried to accomplish this reorientation primarily through a radical decentralization of the police system, so that each municipality would have its own police force. This was too much for the Japanese. As soon as the Occupation ended, recentralization occurred, although not to the same extent as before the war. Instead of the Occupation’s nearly two thousand police forces, each prefecture was allowed to organize a single police force; while at the center, the National Police Agency was created to plan, coordinate, and supervise. The National Police Agency does not, however, direct operations except in stated emergencies. Its own facilities and personnel are involved exclusively with training, communications, data gathering, and forensic analysis. So, while the structure of the Japanese police today is a compromise between tradition and Occupation directives, democratization occurred nonetheless, if by that is meant responsiveness to the community and a scrupulous regard for the law.

Evidence for a sharp change in the character of Japanese policing is impressionistic. Older Japanese testify to the fear that the pre-war police engendered. Some still remember with dread the metallic clanging sound their swords made as they patrolled the streets. People did not seek out the police voluntarily, except as impelled by stern notions of duty. Today, of course, police assistance is sought for a host of matters not related to crime, such as finding hotel accommodations late at night, counseling about domestic problems, obtaining the loan of money for public transportation, and advice on dealing with other government authorities. Table 2 gives a breakdown of emergency calls to the police in Tokyo for 1980. Note that only 11.9 percent involve clearly criminal matters.

Table 2  
Emergency Telephone Reports Received  
Through the Dial "110 System" in 1980

| Classification of Reports                 |                            | Number of Reports | Percentage |
|---|----------------------------|-------------------|------------|
| Traffic Affairs                           | Traffic Accidents          | 83,486            | 14.9%      |
|   | Traffic Violations         | 51,536            | 9.2%       |
|   | Other Traffic Information  | 23,391            | 4.2%       |
|   | Total                      | 158,413           | 28.3%      |
| Criminal Affairs                          | Murder                     | 74                | 0.2%       |
|   | Robbery                    | 425               |            |
|   | Arson                      | 536               |            |
|   | Rape                       | 151               |            |
|   | Assault and Bodily Injury  | 7,484             | 1.5%       |
|   | Intimidation and Extortion | 1,030             |            |
|   | Theft                      | 34,553            | 6.2%       |
|   | Other Criminal Affairs     | 22,143            | 4.0%       |
|   | Total                      | 66,396            | 11.9%      |
| Drunken persons                           |                            | 39,141            | 7.0%       |
| Fights and Quarrels                       |                            | 30,707            | 5.5%       |
| Complaints and Requests (Pollution, etc.) |                            | 30,140            | 5.4%       |
| Lost Children and Runaways                |                            | 28,795            | 5.2%       |
| Sick or Wounded Persons                   |                            | 9,441             | 1.7%       |
| Suspicious Persons                        |                            | 8,953             | 1.6%       |
| Others                                    |                            | 186,607           | 33.4%      |
| Grand Total                               |                            | 558,593           | 100.0%     |

SOURCE: Tokyo Metropolitan Police, *Keishicho*, 1981, p. 11.

Comparable figures from the pre-war period are not available. There is some indication that police were involved in noncriminal matters even then. For instance, a family counseling office was established in the Tokyo Metropolitan Police in 1919. Nonetheless, all accounts agree that people now come to the police largely because they want to and not because they feel they have to. Furthermore, even people who tend to have a skeptical attitude toward the police, such as students, civil liberties attorneys, and newspaper reporters, admit that abuses of power by the police are minimal. They have a hard time thinking of incidents, not excluding riots, when police overstepped the bounds of propriety. The success of the police in changing their image was dramatically demonstrated during the turbulent years of student unrest from 1967 to 1972. Despite repeated clashes between the police and riotous students, it wasn't the radicals who were perceived as beleaguered and victimized. It was the police. Police patience in the face of riots, firebomb attacks on *koban* (police boxes), the Asama-Sanso hostage incident, and letter bombs sent to police personnel turned public sympathy against the radicals. The police capitalized on this by inviting the public to inform them of suspicious young persons living in their neighborhoods. The police actually advertised their need through signs hung on the front of police stations. Rather than these signs being provocative, drawing more hostility, the public responded with an outpouring of information that, say the police, isolated radical leaders, causing many of them to flee Japan altogether. As many people joked at the time, Japan now had three exports: cars, TV's, and radical students.

It is worth underscoring that this sea change in police orientation after World War II occurred without affecting the customary mode of deployment of the Japanese police. Both before and after the war, police were spread throughout Japanese communities in *koban* and *chuzai*sho. By the early 1970s, there was considerable pressure to use patrol cars as the basis for routine police operations within communities. But senior administrators perceived the unpopularity of this, as well as the danger of losing touch with local people. In effect, a deployment modality that had been viewed as a tool of repression before the war was now seen as a responsive vehicle for improving police-public relations. In both periods, the police thought the *koban* were valuable in improving their ability to function at the grass roots; but in the post-war period, the character of contact taking place changed significantly, a fact that was perceived by the public. The point, then, is that formal structures of police activity—whether the national organization of police command or the mode of police deployment—are not critical in determining the character of police operations. While Americans tend to place great faith in

structural reform, Japanese experience shows that similar structures are compatible with entirely different kinds of policing. The philosophies activating bureaucratic institutions are much more important than the forms of their organization.

Although the relations between the police and the public changed substantially after the Pacific War, the conception of the police as a critical instrument in the development of Japanese society did not. During the Occupation, just as in the early years of the Meiji Restoration, the statesmen guiding Japan used the police explicitly to teach larger political lessons. They recognized, as leaders in few other countries have, that the police embody what government is. Police are the leading edge of government, pervasively and subtly in contact with the public at large. So, although the political visions of the 1870s and the late 1940s differed profoundly, the use of the police as agents of socialization did not. Today as well, the Japanese police feel obligated to tutor the community in civility and morality. They view themselves as more than technicians in law enforcement; they see themselves as being teachers of the streets, as it were, in national values. The police constantly exhort one another to demonstrate the proper "spirit" and to set an example for the community at large. They frequently lecture citizens on what is proper or appropriate, not simply what is legal. The police of Japan are truly righteous, a trait shared with their Meiji predecessors, even though the morality they embody now is very different.

One wonders whether this view of the police as crucial agents of socialization is peculiarly oriental. Is it a trait that is more congenial, perhaps even natural, to group-oriented societies like China, Korea, and Japan? Certainly, the Anglo-Saxon tradition in policing gives little attention to it. There the emphasis is on the minimization of social impact, apart from narrow enforcement of law. This line of speculation is prompted in part by the fact that Singapore, which is predominantly Chinese, is currently engaged in borrowing the koban system from Japan in order to create more coherent, closely knit residential neighborhoods. Koban are part of the scheme to create a new "Singapore man." Other elements of it are a renewed emphasis on Confucianism in the schools, resettlement of village populations in high-rise public housing, insistence on English as the common language, dropping of all Chinese dialects apart from Mandarin, and mixing the three major races residentially. Following Prime Minister Lee Kwan Yew's injunction to "learn from Japan," Singapore has sought Japan's help in establishing, initially on a pilot basis, what will be called neighborhood police posts. In 1981, a delegation headed by the Home Minister visited Japan to examine policing. Since then, police personnel from both countries have exchanged visits. In the

summer of 1982, several officers from the National Police Agency and Tokyo Metropolitan Police Force went to Singapore to train junior and senior officers in koban management. The Japanese police have translated a great deal of material into English for the Singaporeans. Plainly, this is a significant venture for Japan, being the first time, to my knowledge, that a mechanism of Japanese government has been exported on request to a foreign country. That it involves policing adds to the risk. In effect, the Japanese are engaged in a demonstration of the utility of their hallowed koban system in another country. Since Singapore is English-speaking and a member of the Commonwealth, Japanese policing could become more visible internationally than has been the case until now.

Japan's own strategic decisions about the character of policing, while recognized as being fateful to social development, are arrived at more by instinct than science. The Japanese police are extremely sophisticated in the collection of information about police operations. Their annual *White Paper on the Police*, like the Ministry of Justice's *White Paper on Crime*, is packed with everything one wants to know about the police. In addition, the National Research Institute of Political Science, a satellite of the National Police Agency, does intensive research on police matters, primarily those related to forensic techniques and criminal investigation. The Japanese police have not, however, undertaken evaluations of the social impact of their police strategies, as the British and Americans have done in the past decade. They can demonstrate the system's efficiency but not its efficacy. For example, the usefulness of the koban system has never been studied empirically, even though the creation of new posts in recent years, primarily in "new towns," provided an opportunity for before-and-after analysis. When the police pulled back from further motorization of patrol operations in the early 1970s, they did so largely because it just didn't feel right, not because they had research information on harmful consequences. They *sensed* that patrol cars separated police personnel from the public. But the utility of koban remains an article of faith—supported, to be sure, by an enviable record of both public safety and public confidence in the police. While the Japanese are always willing to study foreign experience, they do not slavishly copy, despite what some people say. They trust their instincts, which means preserving what they consider essential and distinctively Japanese in what they do. So far, they have been superbly right.

Actually, the Japanese system of deployment in small fixed police posts may be the wave of the future in policing. Several studies evaluating the utility of traditional practices in Britain and the United States strongly suggest that what the Japanese have been doing is right for urban societies even where cultural context is very different.

First, evaluation research in Britain and the United States shows that motorized patrolling on a random basis is not as effective a deterrent against crime as is commonly thought (Kelling, 1974; Morris and Heal, 1981, Chapter 5). Varying the intensity of motorized patrols seems to have no effect on crime and arrest rates or on the public's fear of crime. Yet, not only is motorized deployment standard in most countries of the world, it is considered a mark of progressiveness. This research suggests, therefore, a reconsideration of the advisability of assigning patrol officers primarily, often exclusively, to patrol cars.

Second, while random motorized patrolling may not be as useful as expected, foot patrolling, on the other hand, does appear to make a significant difference. Many older police officers have long recognized that motorization has separated the police from the people, loosening the bonds of knowledge, trust, and friendship. A recent study in Newark, New Jersey, a very depressed, congested city, shows scientifically that when foot patrols are introduced, the public's fear of crime declines, its awareness of a police presence increases, and its evaluation of the quality of police service in general rises. Foot patrols may not prevent more crime, but they substantially improve the public's sense of security, thus reducing the distortions in everyday behavior produced by fear of crime (Police Foundation, 1981).

Third, motorized patrols were created in part to decrease the time it took for police to reach the scene of emergencies. It is not clear, however, that motorized patrols actually have an advantage over officers assigned to neighborhood posts. In densely populated areas, foot patrols may actually arrive faster than motor vehicles. This is frequently true in Japan, where many streets are not named and houses are numbered in the order in which they were built. Moreover, the speed with which police respond may not be a crucial factor in crime suppression, apprehension of criminals, or even in citizen satisfaction. Research in the United States shows that victims of crime in general delay from twenty to forty minutes before notifying the police. Even in violent, confrontational crimes, they wait from four to five and a half minutes (Kelling and Lewis, 1979). This research also shows that the likelihood of the police making an arrest falls to about 10 percent if even one minute elapses from commission of an offense to the arrival of the police. It follows, therefore, that emphasis on rapidity of police response may be misplaced. A recent study by the National Police Agency found that reducing response time to 110 calls from five minutes to under three improved the arrest rate from 27 percent to 30 percent. On this basis, the NPA has argued that response time is a crucial variable to reduce. On the same evidence, I conclude exactly the opposite. The amount of resources required to reduce response time from

five to three minutes does not justify the marginal gain of three percent in the arrest rate. The American research shows that citizens are satisfied with what the police have done so long as they arrive when promised and not simply if they arrive swiftly. Predictability seems to be more important than speed. Therefore, the establishment of neighborhood police posts may actually improve response time in some areas and is unlikely to decrease the effectiveness of police in crime suppression even on the occasions when it is slower.

Fourth, the critical element in apprehending and prosecuting criminals is the cooperative assistance of the public rather than investigations by specialized detectives. Recent research has confirmed what experienced officers have known intuitively all along—namely, that identification of suspects by witnesses and victims and their testimony in court are the essential ingredients in catching and convicting people who commit crimes like robbery, housebreaking, theft, rape, and murder (Morris and Heal, 1981; Greenwood, 1975). In a trenchant phrase, the public is now being referred to by some experts as “co-producers” of criminal justice along with police, prosecutors, and judges. Therefore, specialized detectives who arrive at scenes of crimes long after the criminals have left may be less important in solving crimes than patrol personnel who respond immediately and discuss the crime sympathetically with victims and witnesses. Patrol personnel from police posts who have gained the trust of people in a neighborhood can play a critical investigatory role, possibly actually raising clearance rates over current levels. This is a possibility that the Japanese have not yet exploited. Koban patrol officers do little more at crime scenes than preserve order until mobile crime-investigators arrive. Development of their skills in enlisting information from witnesses and victims might be a much better investment of police attention than improving the speed of their response.

In terms of its basic operation, the Japanese police system seems to have anticipated what may be required of urban policing everywhere. It is attuned to local needs, decentralized in command, functions on a team basis, and stresses informal involvement with the community. The Japanese police are in the same fortunate position as the French gentleman who, upon finding out what “prose” meant, discovered that he had been speaking it all along. Democratization after World War II plus characteristic patterns of community involvement by the police have done for Japan exactly what the problems of modernity require. The new element, which grew throughout the 1970s, is not only an awareness of what they are doing in world perspective but a willingness to show it to the world.

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# IX

## Post-War Law Enforcement: Its Social Impact

Kanehiro Hoshino

### Introduction

In my chapter, to give some general background to the nature of crime and delinquency in post-war Japan, I shall first outline some recent trends revealed in police statistics. I shall then comment upon recent changes in law enforcement policies and practices. I shall also refer briefly to some research measuring the import of these trends in law enforcement on public attitudes, prosecution of white-collar delicts, and women's crimes; and I shall comment upon some general questions of human rights. Finally, I shall discuss some issues related to crime and delinquency prevention and the containment of organized crime. What follows is in effect a reflection of the utilization of social science research methods conducted at the National Research Institute of Police Science in Tokyo.

### Recent Trends in Penal Code Offenses

After the immediate post-war period, in which there was considerable social disruption, including black market activities, the overall trend in adult crime, excluding traffic offenses, has decreased. The total offenses known to the police peaked in 1948 with 1,603,000 offenses reported in the police statistics. By 1952, this number had decreased to 1,395,000 offenses, and with minor fluctuations remained fairly stable with some diminution noticeable from the middle 1960s until 1978. In 1980, the total number of offenses was listed at 1,357,000. The clearance rate of police activities on these offenses throughout this period of time has fluctuated in the range between 55 and 65 percent. The statistics on the number of total offenders in the adult area peaked in 1950 with a total of 616,723 offenders investigated by the police (see Table 1).

Table 1  
Post-war Trends in Penal Code Offenders Investigated by Police

| Year | Total offenders | Female offenders | Percentage of female offenders | Juvenile offenders | Percentage of juvenile offenders |
|------|-----------------|------------------|--------------------------------|--------------------|----------------------------------|
| 1946 | 445,484         | 33,977           | 7.6                            | 99,398             | 22.3                             |
| 1948 | 550,540         | 44,961           | 8.2                            | 113,763            | 20.7                             |
| 1950 | 616,723         | 54,371           | 8.8                            | 128,809            | 20.9                             |
| 1952 | 575,852         | 47,034           | 8.2                            | 114,381            | 19.9                             |
| 1954 | 539,789         | 41,254           | 7.6                            | 94,342             | 17.5                             |
| 1956 | 527,950         | 32,243           | 6.1                            | 100,758            | 19.1                             |
| 1958 | 545,272         | 32,408           | 5.9                            | 124,379            | 22.8                             |
| 1960 | 561,464         | 34,699           | 6.2                            | 147,899            | 26.3                             |
| 1962 | 430,153         | 43,558           | 10.1                           | 135,583            | 31.5                             |
| 1964 | 449,842         | 54,993           | 12.2                           | 151,083            | 33.6                             |
| 1966 | 433,545         | 46,471           | 10.7                           | 148,249            | 34.2                             |
| 1968 | 393,831         | 45,573           | 11.6                           | 117,125            | 29.7                             |
| 1970 | 380,850         | 47,509           | 12.5                           | 113,295            | 29.7                             |
| 1972 | 348,788         | 47,408           | 13.6                           | 100,851            | 28.9                             |
| 1974 | 363,309         | 58,261           | 16.0                           | 115,453            | 31.8                             |
| 1976 | 359,360         | 67,276           | 18.7                           | 115,628            | 32.2                             |
| 1978 | 381,742         | 72,986           | 19.1                           | 136,801            | 35.8                             |
| 1980 | 392,113         | 74,225           | 18.9                           | 166,073            | 42.4                             |

SOURCE: National Research Institute of Police Science (Tokyo).

At that time, juvenile offenders approximated 20 percent of the total, and female offenders 9 percent. Since 1950, there has been a steady diminution of adult crime and since 1968 only minor fluctuations, remaining under 400,000 offenders. In effect, this is a diminution, given the slow population growth in the post-war period. We note, however, that during this period starting with the 1960s there has been a steady increase in the relative number of juvenile offenders, and although there was from 1968 to 1976 a diminution in actual numbers, this trend is now increasing. We note since 1978 a somewhat accelerated rate of increase in the number of juvenile offenders. By 1980, the rate of juvenile offenders to total offenders had reached 42 percent (see Table 1).

Since 1970, there has been an increase in the proportionate rate and actual rate of female offenders, so that by 1978 we have a rate of 19 percent female offenders. In effect, the post-war female rate has gone from a low of approximately 6 per 100 offenders over fourteen years of age to a rate now close to 20 percent. In this increase the trends reflect a

considerable increase in female juvenile offenders (see Table 2).

Table 2  
Trends in Juvenile Delinquency\*

| Year | Total offenders | Female offenders | Feloni-ous offenders | Violent offenders | Theft   |
|------|-----------------|------------------|----------------------|-------------------|---------|
| 1971 | 107,107         | 11,692 (10.9)    | 3,338                | 23,181            | 73,024  |
| 1972 | 100,851         | 12,184 (12.1)    | 2,848                | 19,488            | 71,806  |
| 1973 | 108,211         | 13,789 (12.7)    | 2,404                | 20,052            | 78,148  |
| 1974 | 115,453         | 17,286 (15.0)    | 2,361                | 20,403            | 85,068  |
| 1975 | 116,782         | 19,052 (16.3)    | 2,250                | 20,411            | 85,855  |
| 1976 | 115,628         | 22,391 (19.4)    | 1,801                | 17,720            | 87,295  |
| 1977 | 119,199         | 23,527 (19.7)    | 1,646                | 18,186            | 89,314  |
| 1978 | 136,801         | 27,170 (19.9)    | 1,656                | 17,965            | 104,980 |
| 1979 | 143,158         | 26,127 (18.3)    | 1,718                | 17,352            | 110,215 |
| 1980 | 166,073         | 31,426 (18.9)    | 1,930                | 21,434            | 126,254 |

SOURCE: National Research Institute of Police Science (Tokyo).

\*Juvenile delinquency is limited to penal code offenses committed by juveniles. The numbers in parentheses denote the percentage of female juvenile offenders among the total juvenile offenders.

Until the end of World War II, social norms were more rigidly enforced and sanctions more severely applied to women than to men. Habitual drinking, for example, was tolerated in males but forbidden to females. When a woman committed a minor offense, she was often forced to divorce or was excluded from marriage, although receiving no official court sanction. A man who was fined would meet no subsequent societal reactions. Since World War II, differential norms applied to women are less evident. Female offenders, who were often dismissed by discretionary police action or through suspension before indictment, are more liable to be processed in a fashion similar to that conducted for males. The greater involvement in public affairs and outside activities by women perhaps contributes to the fact that they are at present more likely also to commit crimes. Today, with some increase in economic independence, women feel less sanctioned irrevocably by getting into trouble with the law. The more equitable enforcement policies of the police toward women are an indirect reflection of social attitudes generally. With increasing awareness of the actuality of female crime, the public does not consider such criminal behavior so unusual, and a female offender is not labeled as extremely deviant. The most characteristic offenses for women are infanticide and shoplifting. Eighty-nine percent of all infanticide and 63.5 percent of all shoplifting was committed by women

in 1975 as a representative year. In cases of infanticide, more than 90 percent of the offenders are given a suspended sentence; and even in cases of shoplifting, 90 percent of the shoplifters have their indictments suspended or are not prosecuted. There is a high rate of dismissal because in infanticide it is most unusual for a woman to have any prior record, and the shoplifting offenses are usually of a trifling nature and cause no severe loss to a store. Lenient punishment may at this time be a causal factor in the increase of female crime.

What has been increasing inordinately among both male and female juveniles since 1978 are incidents of theft, notably shoplifting and bicycle theft. Contrary to periodic journalistic reports, there has not been a notable increase in violent offenses among juveniles since 1971. As represented in Table 3, felonious offenses, such as homicide, robbery, arson, forcible rape, etc., and violent offenses, such as use of dangerous weapons, assault, aggravated assault, intimidation, extortion, etc., have been steadily decreasing since 1958.

Table 3  
Post-war Trends in Felonious Offenses,  
Violent Offenses, and White Collar Crime\*

| Year | Felonious offenses | Female offenders | White-collar crime |
|------|--------------------|------------------|--------------------|
| 1946 | 12,219 (80)        | 56,025 (98)      | 10,438             |
| 1948 | 16,225 (81)        | 20,559 (98)      | 19,162             |
| 1950 | 16,176 (88)        | 101,612 (99)     | 27,958             |
| 1952 | 14,543 (90)        | 96,886 (99)      | 18,154             |
| 1954 | 14,884 (90)        | 117,816 (99)     | 16,968             |
| 1956 | 13,258 (89)        | 137,839 (98)     | 11,917             |
| 1958 | 15,833 (90)        | 166,554 (97)     | 9,911              |
| 1960 | 15,931 (90)        | 160,331 (95)     | 8,845              |
| 1962 | 14,182 (90)        | 158,195 (95)     | 8,454              |
| 1964 | 14,746 (91)        | 156,269 (95)     | 9,257              |
| 1966 | 13,760 (91)        | 133,428 (93)     | 7,601              |
| 1968 | 12,734 (89)        | 117,578 (91)     | 6,400              |
| 1970 | 11,423 (89)        | 105,714 (90)     | 5,036              |
| 1972 | 9,806 (90)         | 89,235 (91)      | 4,353              |
| 1974 | 8,652 (89)         | 78,616 (91)      | 3,326              |
| 1976 | 8,363 (90)         | 67,015 (92)      | 3,516              |
| 1978 | 7,678 (88)         | 59,055 (93)      | 3,316              |
| 1980 | 7,397 (87)         | 52,307 (92)      | 2,887              |

SOURCE: National Police Agency (Tokyo), *Criminal Statistics, 1946-1980*.

\*White-collar crime includes corruption, embezzlement in the conduct of business, and breach of trust. The numbers in parentheses denote the clearance rate of each offense.

Also to be noted on Table 3 is that there has been a significant diminution of police action in reference to white-collar crime, from a high in 1950 of close to 28,000 reported police actions to less than 3,000 in 1980, approximately 10 percent of the post-war high. It is doubtful that the decrease in criminal statistics attests to an actual decrease in offenses of this type. Almost all known white-collar crimes are cleared, a rate higher than that for other known forms of crime. This suggests that those incidents of white-collar crime that are known are investigated, but it is quite possible to assume that there are many hidden and unrecorded offenses, and that these comprise a considerable proportion of incidents of corruption, embezzlement, or breach of trust, which come under the penal code.

White-collar crime is less likely to be disclosed or known to the police. It depends upon informers being motivated to give evidence to the police. When apprehended, the individual who has committed a white-collar crime usually has no prior record. Therefore, 90 percent are given suspended sentences. This leniency in cases where politicians are involved gives the impression that politicians have some immunity from the law. This creates a certain cynicism among the public in regard to white-collar crime and police enforcement.

There are some people who think that the police are linked with particular political parties. Fujiwara (1980) reported a newspaper survey of 1,000 citizens concerning the possible political utilization of the police. Thirty percent of the respondents noted that the police were neutral, not political; 27 percent indicated that their political involvement was not beyond the average; while 38 percent felt that the police were politically involved. Many of these people felt that the police are politicized because the police contribute to maintaining the political power of the presently incumbent Liberal Democratic party through strictly controlling illegal leftist movements. These people also thought that politicians have immunity from laws to some extent, because they are less likely to face arrest even though newspapers sometimes report they are suspected of corruption. While most continued their faith in the fairness of policing against most penal code offenses, considerable numbers of the public do have some doubts on the fairness of police investigation in problems of political corruption. It is noteworthy that in some instances the public prosecutor investigates and discloses political corruption, rather than this being at the initiative of the police. This was true in the recent Lockheed scandal. People believe that the public prosecutor is less politicized or less possibly dominated by political motivation. The faith of the people in the criminal justice system generally seems to be maintained by the activities of the public prosecutor, which are in some senses complementary to that

of police investigation. To date, there has been very little evidence of corruption in the police force. Some people nevertheless believe that political corruption is less likely to be investigated because there is no way the police can gather evidence. A majority of policemen have not had a college or university education.

A nationwide survey on crime (National Police Agency, 1970) was carried out by the National Police Agency in 1970. Respondents were asked if they had been personally victimized and if they had reported or complained of their victimization to the police. Of those respondents, 79.8 percent of those who were victims of embezzlement and 41.4 percent of those who were victims of assault or aggravated assault had *not* reported their victimization to the police. Another survey, carried out by the Tokyo metropolitan district in 1974 (National Police Agency, 1974, pp. 35–37), showed that only 11.4 percent of the total number of assault or aggravated assault cases had not been known to the police. Embezzlement was not dealt with in this survey. Overall, the statistics on white-collar crime denote the level of police investigation rather than the actual incidence of such crime. The fact that there has been an actual decrease in violent offenses and the fact that most of these offenses are known and investigated by the police tend to make people feel relatively free of fear of bodily victimization, but a decreasing trend in reported cases of white-collar crime perhaps makes them feel that they are not receiving sufficient protection in this area.

### **Trends in Organized Crime**

All societies have some form of organized or professional criminal activity. Such activity in Japan has a continuity dating back to the premodern period. The so-called *yakuza* are organized criminal gangs that form syndicates. The nature of the recent police statistics suggests that smaller groups are slowly being replaced by larger ones that are more efficiently organized. The nature of the offenses reported and investigated by the police has changed markedly. One notes, for example, that from 1960 on, there have been progressively fewer violent crimes committed by gangs, ranging from rape, robbery, and homicide to assault, intimidation, and extortion (see Table 4). The ratio of felonious and violent offenses to all police investigation has declined over the past two decades. Offenses related to gambling, bookmaking, prostitution, smuggling, the sale of drugs, and the illegal sale of pornographic books and pictures have increased. These offenses fall under the category of victimless crimes since they are catering to illegal activities on the part of the public. The decrease in violence also attests to the gangs' more efficient organization, fewer jurisdictional disputes among them, and less need to have recourse to violence to guard their profit-making illegal activities.

Table 4  
Arrest Patterns in Organized Crime

| Year   | 1960   | 1965   | 1970   | 1975   | 1980   |
|--|--------|--------|--------|--------|--------|
| Offenders investigated                           | 56,780 | 56,704 | 42,815 | 53,058 | 52,247 |
| Offenses investigated                            | 70,996 | 68,316 | 49,937 | 62,145 | 63,017 |
| Felonious offenses (a)                           |        |        |        |        |        |
| Homicide   | 540    | 391    | 294    | 396    | 275    |
| Robbery  | 909    | 548    | 259    | 254    | 237    |
| Arson  | 48     | 28     | 16     | 39     | 66     |
| Forcible rape                                    | 1,254  | 916    | 592    | 526    | 290    |
| Violent offenses (b)                             |        |        |        |        |        |
| Unlawful assembly with dangerous weapon          | 91     | 77     | 97     | 72     | 68     |
| Assault  | 9,383  | 7,066  | 5,609  | 5,807  | 3,889  |
| Aggravated assault                               | 15,770 | 11,280 | 8,147  | 8,769  | 7,218  |
| Intimidation                                     | 2,011  | 1,129  | 1,521  | 1,078  | 758    |
| Extortion  | 15,882 | 10,499 | 5,637  | 5,423  | 3,225  |
| (a) + (b)  | 45,888 | 31,934 | 22,172 | 22,364 | 16,026 |
| Ratio of felonious and violent offenses to total | 0.646  | 0.467  | 0.444  | 0.360  | 0.254  |

SOURCE: National Research Institute of Police Science (Tokyo).

Japanese criminal organizations recruit heavily from among the poor and disadvantaged. The members come from homes in which there has been relatively little education. [According to some informal estimates, up to 70 percent of the members of some yakuza groups are drawn specifically from burakumin and Korean youth.—Ed.] By and large, members of organized criminal gangs consist of people who have only the compulsory ninth grade education. Generally their school records are poor. It is notable, when they are compared with juvenile delinquents generally, that persons who become professional criminals in organized gangs come from lower-status families and show poorer records in school (see Table 5). The modal occupation reported for their fathers was that of unskilled worker. Members of organized criminal gangs know well, given their school records and low social status in society, that they will not have access to legitimate means of attaining some form of career or life pattern. They therefore seek out a compensatory route and find the gang world a different avenue through which to achieve some form of social status.

More than 90 percent of the members of organized criminal gangs have some form of criminal record, including numerous repetitions (Hoshino, 1980). The lesser amount of violence and the tighter organization of gangs in recent years have lowered police arrests. In effect, one might say that this lowering of police arrests is due partially to

**Table 5**  
**Social Background of Yakuza Gang Members\***

| Economic class of origin |                 |                      | Educational career                                 |                 | Achievement in junior high |                 |                      |
|--------------------------|-----------------|----------------------|--|-----------------|----------------------------|-----------------|----------------------|
| Class                    | Yakuza under 25 | Juvenile delinquents | Career   | Yakuza under 25 | Results                    | Yakuza under 25 | Juvenile delinquents |
| upper middle             | 3.8%            | 2.8%                 | junior high school dropout from senior high school | 52.8%           | excellent fair             | 2.1%            | 6.8%                 |
| lower-middle             | 64.0%           | 82.8%                | senior high school college or university           | 37.5%           | poor                       | 33.0%           | 45.3%                |
| lower                    | 29.5%           | 11.2%                |  | 8.6%            |                            | 64.9%           | 47.9%                |
| Number                   | 2.7%            | 3.2%                 | Number   | 1.1%            | 339                        | 339             | 653                  |

\*Data were collected in 1980 by K. Hoshino

their vigorous prosecution of violence in the past, but it is also due to the fact that the gangs have moved into activities in which there are fewer victims: gambling, prostitution, and drug distribution. In effect, what is supplied by organized crime is supported by demands of a segment of the population, and criminal gangs survive through supplying these demands. To a large degree, they have moved out of rackets that would bring about complaints against them. Since victims of organized crime are very often involved with gangsters because of certain illicit demands, they are less likely to report their victimization to the police. This allows racketeers to extort money without fear of being reported. Unless individuals suffer such damage that it is no longer tolerable, they seldom complain to the police. The police make every effort to persuade victims to report to them, but such activities are not, by and large, very effective.

The police maintain surveillance of the activities of the most powerful organized gangs and sometimes gather evidence of what seems to be some type of victimization. However, the victims themselves in these situations often insist that they have made voluntary donations; by so doing they hope to avoid reprisal from the gangs at a future date.

### **Trends in Social Status Related to Delinquency**

One of the trends to be noted in the statistics on juvenile delinquency is the trend toward middle-class background. One may question whether or not juvenile delinquents from the middle class have taken on working-class values and behavior patterns. Certainly, they are oriented toward the attainment of more immediate forms of gratification. These statistics, therefore, may reflect a weakening of middle-class attitudes about deferred gratification. Or they may result from the fact that these are the children of socially mobile families whose economic well-being has increased, so that they are now accorded middle-class status

in the official statistics. According to a follow-up study of a cohort born in 1950 (Mugishima, 1973), a delinquency rate of 8.4 percent during a six-year period from age fourteen to age twenty was reported for those whose fathers were blue-collar in occupation. This compared with a rate of 3.2 percent among those with a father in a white-collar occupation. Also reported (Mugishima, 1973) were the results of a study of a cohort born in 1942 that demonstrated a significant number of juvenile delinquents with poor grades in school and evidence of parental neglect during childhood. Mugishima (1973) compared the 1942 with the 1950 cohort and found that with the increasing availability and utilization of more education, the delinquency rate among those with lesser education was proportionately higher (see Table 6). In the 1942 cohort sample, 33 percent quit after finishing the compulsory junior high school years and another 33 percent quit after senior high school, while 33 percent went on to the university. In the 1950 cohort, eight years later, only 14 percent quit after junior high school, 40 percent finished senior high school, and 45 percent went on to some form of higher education. The delinquency rate among those in the 1942 cohort who quit after compulsory education was 12.3 percent, compared with an 18.5 delinquency rate among those who quit after junior high school in the 1950 cohort. The delinquency rate among those in senior high school, college, and university levels remained approximately the same. What this study demonstrates is that those with lesser education in today's Japan are more significantly disadvantaged and are a more select group than previously.

Table 6  
Delinquency Rate as Related to Educational Achievement

| Educational level      | 1942 birth cohort |                        |                    | 1950 birth cohort |                        |                    |
|------------------------|-------------------|------------------------|--------------------|-------------------|------------------------|--------------------|
|                        | Number            | Percent leaving school | Percent delinquent | Number            | Percent leaving school | Percent delinquent |
| Junior high school     | 1,779             | 33.5                   | 12.3               | 688               | 14.3                   | 18.5               |
| Senior high school     | 1,780             | 30.0                   | 5.9                | 1,927             | 60.1                   | 6.4                |
| College or university* | 1,757             | 33.1                   | 2.2                | 2,194             | 45.6                   | 1.7                |
| Unknown                | 856               |                        | 6.1                | 950               |                        | 6.1                |
| Total                  | 6,172             |                        | 6.7                | 5,759             |                        | 6.0                |

\*Figures for college or university indicate students *entering* those schools.

SOURCE: Fumio Mugishima, "An Analysis of Delinquent Differentiation related to Boys' Social Origin and Educational Attainment," *Reports of the National Research Institute of Police Science* (Tokyo), 14:1 (1973).

This trend toward emphasis on education has increased in Japan. Education is the main institutionalized channel of upward mobility. Youngsters with only compulsory education, or those who drop out of high school, have the least access to legitimate channels of job attainment

and are more apt to evidence feelings of deprivation or frustration. Unable to gain goals by lawful means, they may be under more pressure to resort to crime. [It must be noted, compared with the American situation, that many fewer Japanese are in a disadvantaged minority status, and the overall indices of delinquency reflect the relative homogeneity of Japanese society compared with the ethnic heterogeneity of the contemporary United States.--Ed.]

Not only are youth with little education disadvantaged, they are also subject to being labeled as deviant in today's Japan. Being branded as deviant has important consequences for one's future social participation and self-image (Becker, 1963). Labeling youth as deviant produces subsequent deviance, thanks to the interactional effect between self-image and public identity.

### **Recent Legislative Changes in Law Enforcement**

Overall, the Japanese penal code has had little change since the end of World War II. However, some special legislation passed between 1945 and 1980 is worthy of consideration as it effected changes in law enforcement.

A stringent stimulant drug control law was enacted in 1951, and amended in 1954, 1955, and 1973 to make punitive provisions increasingly more severe. There was a large increase in arrests of stimulant drug offenders in 1954. This increase resulted partially from the establishment of the quasi-national police system in this year, followed by more efficient forms of criminal investigation in this area. The stiffening of the punitive provisions appeared to exert a notable deterrent effect. Part of this effect was due to more severe legislation controlling the manufacture of these drugs by pharmaceutical concerns. From a high of 55,664 offenders investigated in 1954, the total number dropped to 781 in 1957. Note (in Table 7) that since 1970 there has been a serious year-by-year increase in drug offenders investigated. By 1980, the total was close to 20,000. Legislation in 1973 does not seem to have had any permanent effect in decreasing the number concerned. The use of stimulant drugs in recent years is spreading into new segments of the population, including white-collar employees, housewives, and juveniles. This spread appears to be a reflection of a quest for pleasure and excitement. It must be noted, in making comparisons with the United States, that drug offenses in Japan relate to the use of stimulants, as distinct from the type of narcotic offenses very common in the United States.

Juveniles are particularly prone to using organic solvents, such as glue, paint thinners, etc. From 20,812 such cases investigated in 1968, we

find a continually high rate throughout the 1970s. There was an attempt at deterrence when the legislature passed a more stringent Poisonous and Hazardous Substance Control Law in 1972. This amendment seemed temporarily to decrease juvenile offenses in 1972 and 1973, but the long-term effects of this law seem minimal. The government is now preparing some further amendments, attempting to find some further means of deterrence of this activity among younger juveniles.

Table 7  
Post-war Trends in Drug Cases  
Investigated under the Stimulant Drug Control Laws

| Year | Number of offenders | Year | Number of offenders |
|------|---------------------|------|---------------------|
| 1951 | 17,528              | 1966 | 694                 |
| 1952 | 18,521              | 1967 | 675                 |
| 1953 | 21,898              | 1968 | 775                 |
| 1954 | 55,664              | 1969 | 704                 |
| 1955 | 33,140              | 1970 | 1,618               |
| 1956 | 5,047               | 1971 | 2,634               |
| 1957 | 781                 | 1972 | 4,709               |
| 1958 | 271                 | 1973 | 8,301               |
| 1959 | 372                 | 1974 | 5,919               |
| 1960 | 476                 | 1975 | 8,218               |
| 1961 | 477                 | 1976 | 10,678              |
| 1962 | 546                 | 1977 | 14,447              |
| 1963 | 971                 | 1978 | 17,740              |
| 1964 | 860                 | 1979 | 18,297              |
| 1965 | 735                 | 1980 | 19,921              |

SOURCE: National Police Agency (Tokyo), *Criminal Statistics*, 1951-1980.

Table 8  
Trends in the Number of Juvenile Delinquents  
Investigated on Suspicion of Glue Sniffing

| Year | Number of Delinquents | Year | Number of Delinquents |
|------|-----------------------|------|-----------------------|
| 1968 | 20,812                | 1975 | 36,968                |
| 1969 | 31,028                | 1976 | 37,046                |
| 1970 | 40,045                | 1977 | 32,578                |
| 1971 | 49,587                | 1978 | 39,615                |
| 1972 | 36,054                | 1979 | 40,433                |
| 1973 | 16,220                | 1980 | 40,433                |
| 1974 | 21,137                |      |                       |

SOURCE: National Police Agency (Tokyo), *Criminal Statistics*, 1968-1980.

Another group activity that has drawn dramatic attention are the so-called hot-rodgers (*bosozoku*) that have been on the increase. Some severe traffic laws were passed in 1978 with more punitive provisions against "road hogging" or weaving, running of traffic signals, etc. Again, although there was a temporary decrease in such traffic violations in 1979, we note a further increase in the more recent statistics.

In general, the stiffening of punitive provisions seems to have a temporary effect upon suppression; but after two or three years, the offenses seem to increase again in number if there are social reasons producing these forms of deviant behavior. It is notable that control of the manufacturing of drugs had a more permanent effect in the 1950s, whereas the use of organic solvents is not so readily prohibited by law.

A disturbing new influence in the increased use of drugs is that criminal gangs are now entering into the distribution and selling of such drugs. Stimulant drugs are now being smuggled in from abroad, particularly from Korea and Taiwan, and distributed domestically by organized gangs. This has become a very large source of income for these organizations.

### **Recent Changes in Law Enforcement Policies**

Changes in law enforcement bring about changes in the reporting of criminal trends without statutory revisions. Law enforcement in Japan has been noticeably less attentive recently to so-called victimless crime. The major notable changes in law enforcement have resulted from substantial decriminalization or depenalization. Minor offenses, such as prostitution, indecent exposure, abortion, etc., have *de facto* been substantially decriminalized since 1945. The number of such offenses recorded in the criminal statistics has annually decreased. This decriminalization is due to several factors.

1. The police place a low priority on using their manpower facilities to exert any strict control over minor offenses.
2. It is very difficult to produce evidence to verify offenses of this nature.
3. The offenders are in many instances dealt with leniently in the court should they be sent to trial.
4. The police attempt to avoid losing the generally supportive attitude of citizens by controlling such offenses strictly against their will. Prostitution was legally permissible in Japan until prohibited by the strict anti-prostitution law of 1958. The public is not insistent, generally, on police intervention in this area. There have been changes in the social acceptability of sexually explicit materials, so

that prosecution for obscenity or forms of sexual deviancy finds little public pressure toward enforcement. The Minor Offense Law has seldom been applied to the acts which technically fall under its provisions. Citizens generally perceive the application of this law as unfair.

5. Abortion is permitted generally by the Eugenic Protection Act, which permits abortion for economic reasons, thus decreasing the number of cases that can be prosecuted. There is no public pressure against abortion in Japan resembling that present in the United States.

Once the control of such offenses becomes increasingly lenient and the offense substantially decriminalized, any attempt to prohibit the acts subsequently by reapplying the law brings about a serious conflict of values among citizens and between citizens and the law enforcement agencies. Therefore, decriminalization tends to become progressive.

Such decriminalization caused by changes in law enforcement or lenient law enforcement not only decreases the reported statistics of crime but exerts other influences upon the citizens as well. When a citizen commits a decriminalized act, he is not apt to have any sense of guilt, since the behavior is not sanctioned even informally. Wealthy individuals can have an abortion for no justifiable economic reason without compunction. Sexually explicit materials are sought after without a sense of fear of the authorities. The further effect is that even informal sanctions that existed previously become deemphasized because of the knowledge that such behavior will not be prosecuted by law enforcement agencies.

This trend is sometimes resented by citizens who desire that some forms of minor offenses that are considered social nuisances receive greater police attention. For example, there may be a local wish that police investigate a Peeping Tom or arrest individuals who feel free to urinate by the roadside or against a wall. Individuals who themselves witness such offenses are not apt to apply informal sanctions but rather seek some form of police enforcement. Whereas lenient law enforcement in the case of abortion and other crimes is consonant with the demands of the ordinary citizen, lenient law enforcement in respect to what is considered troublesome or nuisance behavior brings about some minor resentment toward police policy.

### **Recent Attitudes of Citizens about Law Enforcement**

By and large, present-day law enforcement finds little discrepancy between policy and social attitudes. The criminal code and its policing receive a general consensus, and those who are labeled offenders or

deviants tend to reflect a general consensus as well. Some of our empirical research on the enforcement of the criminal code and the reportability of offenses reveals that there is little variation between the general attitudes toward the criminal code among the police and among the general public. For example, delinquent acts are almost equally perceived as such by the police and the public, whether the behavior is technically so defined or not.

From 1977 to 1978, Iwai, Tokoro, and Hoshino (1979) carried out a survey on the attitude of citizens toward police control of various crimes. We asked 1,800 respondents/households to indicate (1) to what extent they think offenders who commit various types of offenses respectively should be punishable; (2) how they would regard or label each offender; (3) what their reaction is to each offender and what they consider the societal reaction is to him; (4) what they have reported to the police among offenses that they have witnessed; and (5) what recourse they have to law, morality, the conscience of the actor, etc. in order to control such offenses. According to our survey, most citizens want depenalization of abortion, prostitution, indecency, and victimless minor offenses, but they do not demand decriminalization of such acts through an official revision of legal provisions. They think that legal enforcement of the law is appropriate, and that even dead provisions should be maintained and invoked whenever they are actually required. The public's attitude toward the control of minor offenses is consistent with the attitudes of the law enforcement agencies, so one finds that these issues hardly bring about any conflict between police and citizens.

In Kobe city, minor offenses increased in some districts in 1974, and the inhabitants in those districts became so troubled by minor offenses that they demanded more stringent police control. As a result of stricter enforcement of the Minor Offense Law, the number of minor offenses in Kobe showed an increase of 1,038 in 1975 over 1974 and therefore increased the total number of minor offenses in the national criminal statistics. One can see, therefore, that statistics do not indicate an increase in occurrence as much as an increase in police activity, sometimes at the behest of the public.

The uniformity in attitudes is a product of the Japanese educational system, which induces homogeneous social attitudes more than the development of individuality. Japanese generally are required to learn common manners and a common perspective on life from infancy on. As part of this, they learn common reactions to law enforcement agencies and consider these policies as standards. It is not surprising, therefore, to find general satisfaction with police enforcement. We found no difference between samples collected in 1972 and 1979 in the friendliness toward the

local police in the *koban* (police box). Of those reporting in 1972, 40 percent indicated that they were "friendly" and 45 percent were "somewhat friendly." In 1979, the figures were similar: 39.4 percent were "friendly" and 43.2 were "somewhat friendly." "Not friendly" in each instance was approximately 7 percent, and "don't know" about 10 percent. It is not surprising, therefore, that at the same time over 50 percent of the citizens sampled indicated that they would take the initiative in reporting to the police, and another 29 percent in 1972 indicated that they would report in answer to a police request. In 1979, there were 35 percent in this category. "No's" were 1 percent in 1972 and 2 percent in 1979, with "don't know's" 16 percent in 1972 and 11 percent in 1979. These figures are vastly different from what would be found in the American social setting.

If there is a trend to be noted among the public, it is to have some increased police activity in regulating minor social delicts such as littering, breaking into queues, crank phone calls, and occasional Peeping Toms who make a nuisance of themselves. Such minor antisocial acts are no longer informally sanctioned in urban communities, and therefore people do not directly intervene themselves to express their dislike for such behavior. They expect the police, therefore, to intervene on the behalf of the majority.

A recent opinion poll (Prime Minister's Office, 1972, p. 4 and 1979, p. 4) discloses that there is almost no concern among citizens that the police may infringe upon human rights. Even when traffic offenses are included, in 1972 only 11 percent saw police action as too strict; 51 percent saw it as appropriate; and 34 percent saw it as too lenient. In 1979, 12 percent saw police action as too strict; 54 percent saw it as appropriate; and 30 percent saw it as too lenient. The only segment of the population concerned with possible infringement of human rights is lawyers. In some instances, it is obvious that the general abiding faith of the people in law enforcement may bring about some indifference to infringement problems when they occur. One can generalize, however, by saying that at present there is no critical attitude on the part of the public about human rights issues.

### **The Sense of Public Security as Related to Police Intervention**

The quasi-national organization of the police as an integrated system and the system of *koban* on a residential basis are two remarkable features of law enforcement as institutionalized in Japan. These institutions receive general public support because it is recognized that they produce a very high clearance rate for reported crime. Since the war, there have been some attempts to change these institutions. Immediately after the

war, under the American occupation there was an attempt to decentralize the police. Before the war, the police had been seen as an institution of public oppression. The Allied authorities, in attempting to assist the democratization of Japan, thought that a more decentralized police force would be more in line with democratic principles. However, it was quickly determined that a more integrated police system was more efficient. There were notable differences in the clearance rate immediately after the reestablishment of the quasi-national police system in 1954. Differences between cities were evened out, and the fact that there was a uniform police system throughout Japan made the citizenry feel that they could move anywhere without any concern for their safety in a new environment. This differs from the fact that Americans are currently concerned with the very high crime rates in given cities. There is currently no expressed dissatisfaction in Japan with the fact that the country has an integrated national police system in which information is readily exchanged and the pursuit of criminals is coordinated.

During the past ten years, there have been attempts to shift from the koban system toward the greater use of patrol cars. Such a policy was thought to reflect the supposed needs of a more highly urbanized population. It was quickly found, however, that this newly instituted use of patrol cars made it impossible for people to make contact with the policemen as soon as the occasions demanded, and that the former, more intimate relationships with police became impossible. There was an increase in public dissatisfaction and a notable increase in the fear of crime in local neighborhoods. The remaining koban were considered to be too far away, and the response time to telephone calls was considered by many to be too long. In response to this dissatisfaction, the police began to reestablish more *koban*, and the present number of koban exceeds the number previously in existence. A survey of policing proved that the *koban*, the effectiveness of patrolmen, and the increased frequency of foot, motorized, and bicycle patrols all contribute to reducing the extent of the fear of crime (Hoshino, 1981, pp. 593-595). An increase in *koban*, accompanied by an increased frequency foot and bicycle patrols, has contributed to a sense of safety in local neighborhoods. I examined the satisfaction point of people concerning police activities in 1976 (Hoshino, 1981, pp. 598-600) and obtained the opinions of 112 experts in the fields of criminology, sociology, psychology, education, law enforcement and police science, and traffic and urban engineering. According to this survey, most of the experts believe that people are now generally satisfied with the present level of public safety and with the efficiency of police activities, and they predict no changes in this sense of satisfaction. It is apparent that the fact that 40 percent of the total police

force is occupied on patrol activities has contributed to a very high clearance rate of between 55 and 60 percent. The recent increase in koban and patrolling seems to have contributed to this increased rate of clearance.

The fear of crime is one of the measuring rods of a sense of public safety. The average level of the fear of crime in a community, I have found, is not so highly correlated with the actual crime rate of the community. The fear of crime is not affected only by the incidence of crime or the crime rate. This is understandable, since a considerable number of homicides, for example, are infanticides or murders among relatives. These offenses do not usually make others fear attack. The fear of homicide does not correlate with the frequency of homicide.

Similarly, the level of fear of crime seems to be independent of the fear of other social events. In my research, I assume that the level of fear changes in proportion to the change in real or symbolic conditions of threat. For example, when such natural resources as coal or oil are in short supply, the level of fear of material want is raised higher generally; and at such times, the fear of crime will become less salient and may even show reduction, although the crime rate remains constant or even increases. On the contrary, when sensitivity to such problems as inadequate housing, economic crisis, environmental pollution, or unemployment remains unchanged, the level of fear of crime may change in proportion to some change in the incidence or seriousness of criminal events, police activities, and other protective measures.

However, the level of the fear of crime is not much influenced by the fear of other social events, and the fear of crime remains independent of other fears. That is to say, the level of the fear of crime is explained by variables that relate to the possibility of victimization. Therefore, the level of the fear of crime is affected greatly by what is perceived to be the level and efficiency of law enforcement. This explains why the increase in the number of koban mentioned above, accompanied by the increased frequency of foot and bicycle patrols, contributed to a sense of public safety in local neighborhoods. An intimate direct relationship between the public and police is an effective factor in reducing a general fear of crime. The Japanese people are accustomed to patrolmen in local areas seeking to know as much as possible about each resident. They are also accustomed to the fact that the patrolmen give other community services. As already mentioned, in their bi-yearly contact with each residence they gather information about the neighborhood, and also learn directly from their constituents what the latter consider to be their needs in regard to crime prevention. Patrolmen can be particularly alert when people are absent from a house. Knowing their area well, they can watch for individuals

who appear out of place or seem to be moving about furtively. Householders feel free to ask police for such surveillance.

The koban are in communication with one another concerning methods of crime prevention. Each month, for example, they circulate single mimeographed sheets filled with admonitions, information, and even hand-drawn cartoons considered useful to teach lessons about crime prevention. The policemen and policewomen working in a particular koban prepare selected lists of old people who are known to live alone. They sometimes telephone them to demonstrate that they are not forgotten, and some special visits can be made to the old to make sure that they are meeting with no special difficulties. Such community services by the koban not only generate trust and faith in the policing activities carried out with attention to personal relations, but they exert various effects upon the inhabitants. For example, police are more able to get information about the police district and residents because the residents are more apt to answer positively any inquiries conducted to gain special information. Familiarity with the policemen makes for greater readiness to give sought-for information. The police clear up criminal occurrences in proportionately higher rates because they are able to take advantage of a readiness for cooperation.

One notable characteristic of policing in Japan is that the police rarely arrest a person erroneously. This carefulness to establish guilt before making a formal arrest gains public confidence in police enforcement. The rate of those who are acquitted is less than 1 percent among suspects arrested by the police. These are not only persons found innocent, but those who are found to have no capacity to bear the responsibility for their crime on account of mental disorder. This high conviction rate makes it possible for Japanese newspapers to readily label a person a criminal after he has been arrested by the police. People tend to take it for granted that he is indeed guilty. This contrasts with the newspapers in Western countries, which do not openly consider an individual guilty until he is convicted and sentenced. When a person is found innocent, the newspapers in Japan criticize the police rather vigorously for false arrest. The fact that they can do so suggests that such occurrences are fairly rare. As indicated, a public opinion poll disclosed that there is almost no concern that the police are infringing in any way upon the human rights of individuals.

### **Law Enforcement, Social Solidarity, and Minority Status**

Japanese society is highly cohesive and has a strong sense of collectivity and commitment. The Japanese derive a great sense of their

Table 9  
Rate of Criminal Events Cleared  
by the Cooperation of Citizens (Including Victims)

| Type of Offense      | Rate* |
|----------------------|-------|
| Robbery              | 0.536 |
| Assault              | 0.665 |
| Aggravated assault   | 0.718 |
| Extortion            | 0.508 |
| Larceny and burglary | 0.343 |
| Gambling             | 0.381 |
| Indecency            | 0.455 |

SOURCE: National Research Institute of Police Science (Tokyo).

\*The numbers are the average rates of 1965, 1970, 1975, and 1980.

identity from the specific groups to which they belong, be they related specifically to family or occupation (Cohen, 1981, p. 3). Identity with a collectivity is reflected in a sense of loyalty and devotion to work. Such attitudes obviously relate to patterns of social control and contribute to the low incidence of crime in Japan. This dependency on collectivities makes the individual sensitive to social sanctioning. The more independent an individual is and the easier it is for him to move from one group to another, the less responsive he will be to social control exercised by the collectivity, and indeed the less he will be motivated to attempt to exercise control over others (Cohen, 1981, p. 4). One finds in Japan an extremely low incidence of crime among members of respected families, those graduating from highly evaluated universities or working for large or well-known corporations.

A sense of commitment is a rational component of conformity. It is interesting to note that most offenders in Japanese society are characterized by their apartness and their avoidance of any form of alliance with conventional members of the society. They lack a sense of attachment to or affection for significant people such as parents or teachers and have a low sensitivity to their opinions. They neither involve themselves in conventional activities nor show any commitment to conventional norms or institutions. Outside the professional criminal organizations, they show a lack of achievement, low standards of living, and little education. The ordinary Japanese has a big aversion to being considered a deviant, since he has put a big investment into remaining part of a group and maintaining a reputation for virtue as defined within the norms of the group.

In Japan, stringent yardsticks measure one's social status in respect to education, professional career, and economic position. There is a generally low evaluation of unskilled workers with little education. They quickly become part of a disparaged minority group. It is in this group that one finds a very high crime rate. Members of this group lack any strong identification with a collectivity and are not concerned with acquiring or maintaining a reputation. The degree to which the police exercise their discretion unfairly towards specific members of a disparaged minority has not been studied to any degree. It is noticeable, however, that juvenile delinquency cases are decided according to the seriousness of the delinquency, without regard for the father's social status and the educational career of the delinquent (Mugishima and Tamura, 1977). People generally, however, do not believe that a high crime rate among persons of a minority status results from the discretion of law enforcement agencies, but rather is attributable to fair law enforcement. Their faith in the accuracy of law enforcement leads the general public to believe that persons in a minority status are indeed more likely to commit offenses. Hence, the public is fairly quick to label such individuals as antisocial. As I have already indicated, the most important consequence of such labeling may be a drastic interaction that helps to shape the individual's own self-identity (Becker, 1963, pp. 31-32). In addition to the social disparagement directed toward nonskilled workers, burakumin and Koreans are groups that have met with various forms of social discrimination. There is evidence, however, that there is a higher incidence of delinquent behavior in these two social groups (DeVos and Wagatsuma, 1966; Lee and DeVos, 1982). There have been campaigns for equalization in the treatment these groups are given by police authorities, and when any form of discrimination appears, there is apt to be press coverage dramatizing it (Lee and DeVos, pp. 252 ff.).

### **Public Attitudes Toward Law Enforcement and Recidivism**

There is some tension between the police and the courts over the supposed leniency of the latter. Many law enforcement officials believe that the efficiency of police arrests has no noticeable effect on offenders because they have been given overly lenient decisions in liberal courts. The police believe that they have to investigate crimes committed by the same individuals after they have received a fine or suspended sentence. Such attitudes among the police are particularly common in respect to the arrest of juveniles and members of organized criminal gangs. Among the 180,000 juvenile penal code offenders investigated in 1980, 50,400, or 28 percent, were recidivists. Out of these 50,400, 30 percent had either been committed to juvenile training schools or placed under probationary

supervision when they were referred to the juvenile court for the last offense. Thirty-five thousand (70 percent) of the 50,400 were dismissed without a hearing or after an initial hearing. As the annual rate of juveniles dismissed is around 80 percent, the rate of recidivists among them is lower (25 percent) than that among those who were committed to reformatory school or placed under probation (40 percent). This does not mean, however, that lenient dispositions have more effect on the prevention of subsequent offenses. Those dismissed tend to be less serious and show less confirmed patterns of delinquency than those committed to a reformatory or placed under probation.

The unresolved problem is that one-fourth of delinquents who are dismissed repeat offenses, and it is now known among delinquents that the possibility of being dismissed when referred to the juvenile court is quite high. When juveniles commit various types of offenses, they foresee the probability of being committed to reformatory school or placed under probation as follows: auto theft, approximately 40 percent; minor shoplifting, 32 percent; more serious shoplifting, 40 percent; embezzlement of lost property, 25 percent; burglary, 57 percent; aggravated assault, 68 percent. They foresee, therefore, that there is a high probability of punishment only when they commit burglary or aggravated assault (Takahashi, 1977). Some observers believe that this foreknowledge tends to lessen resistance to crime. Recently, relatively minor offenses such as shoplifting and bicycle theft have become increasingly frequent among juveniles. This in turn has increased the likelihood of dismissal. Such trends and their disposition appear to contribute partially to the increase of minor offenses.

Finally, one must note that there has been a disturbing increase in acts of violence, both at school and at home. There has been a reluctance to report such acts to the police. Therefore, these delicts are less likely to be known to them. Some observers believe that the deterrent effect of law enforcement on the prevention of juvenile delinquency is diminished by lenient dispositions, and that the leniency in turn leads to increased delinquency, bringing about some confusion in social norms and increasing conflict of values among given segments of the population. Generally, the Japanese people want more severe punishment of juveniles. One survey (Iwai, Tokoro, and Hoshino, 1979, p. 141), found that more than 80 percent of the public insist that juvenile shoplifters should be processed into the juvenile justice system without dismissal. Although they continue to believe in the accuracy, fairness, and adequacy of police enforcement, they have become distrustful of the juvenile courts.

## **Police Involvement in the Prevention of Juvenile Delinquency**

The interaction with citizens is very noticeable in the police programs to prevent juvenile delinquency. In 1981, the police throughout Japan nominated 52,605 volunteers. These volunteers are usually referred to a caseworker in charge of juvenile guidance. They join the police in patrolling the streets and in acts of minor guidance of juveniles. This guidance sometimes consists of giving advice to the parents of juveniles who seem to be getting into trouble. They form a preliminary step before any police intervention and make it possible to avoid any labeling of a child or juvenile as delinquent. If the police themselves pick up an individual and take him or her to the police station, he or she is more liable to be quickly labeled as delinquent and to suffer some derogatory public identification. The volunteers, through their informal contacts with the parents or directly with those committing delinquent acts, meet with less resistance, since their contacts are not seen as official police actions.

Municipal authorities also maintain juvenile guidance centers to which the police send personnel. There have been 596 such centers established throughout Japan since 1980. Members affiliated with these centers patrol the streets looking for suspicious behavior, give counseling, make attempts to improve the environment of the community, and make surveys of what in the community may be inducing delinquent activity. They give guidance to juveniles in their leisure time activities, set up publicity about preventing delinquency, and instigate other forms of community organization for delinquency prevention. These centers, in addition to the official counselors and assigned police personnel, have a large number of civilian volunteers.

Such organizations on a community basis, especially in communities that have high delinquency rates, draw upon the energy and concern of members of the community itself in planning a program for delinquency prevention. There are community committees, which consist of representatives of schools, juvenile guidance centers, the police, the juvenile court, probation and parole officers, and interested citizens. Such committees become voluntary agencies through which programs are conducted. Community activity through such concerted citizen involvement helps to modify the attitudes and behavior of the adult participants and in this way becomes important in directing attention to effecting change in the behavior of juveniles. Concerted adult action brings together more communication in the community. A modification of adult attitudes through greater knowledge of recent thought about delinquency prevention becomes itself a part of the general community influence on the juveniles. Such delinquency prevention projects, acting

within a community, aim at changing attitudes generally, and through such involvement seek to reduce the rate of delinquency.

The setting up of recreational programs, baseball leagues, athletic meetings, shrine festivals, and the like brings members of the community together and eliminates anonymity. Such activities establish a network of familiar relationships involving both adults and juveniles. Some of these movements set up educational programs to help adults better understand the problems and issues faced by their youth in a changing society. Committees are set up to show educational films, sponsor lectures, organize round-table discussions, and the like. Such programs help community vigilance and guide juveniles toward more acceptable forms of leisure time activity.

A fourth benefit from some of these programs is that they actually set up forms of clinical counseling and casework, both with parents and with children who are manifesting difficulties. Such operations are conducted by specially trained individuals who already reside or work in the community rather than being drawn from outside. Some of these social service activities are developed by juveniles themselves, and are consciously directed at cultivating moral character.

To date, there is no objective evidence that such projects have actually reduced the delinquency rate in areas where they have been instituted. However, such activities do in fact save many juveniles from being officially labeled as delinquent and from being formally processed through the courts. Thus, even though one cannot readily gain statistics on prevention, one must consider that there has been some effect. The fact that there is a nationwide increase in the number of people who participate in such projects suggests that there is indeed hope that there will be some modification in the attitudes and behavior of adult participants in each community. Naturally, it is specifically the parents of most delinquents who do not participate in such projects, and indeed delinquency is most often produced in homes indifferent to such forms of community behavior.

## **Conclusions**

The post-war police system has been careful to monitor its policies in accordance with the public consensus. The police have been extremely careful to avoid false arrests and to cooperate with the public prosecutors as much as possible. These policies have engendered a basic trust in law enforcement up to the present time. The police have made continual efforts to keep face-to-face relationships with citizens generally, to render community services, and, by keeping a high clearance rate and

maintaining of visibility in the neighborhoods, to create a sense of public security, reducing the fear of crime.

While there is little evidence that projects developed jointly by police and citizens have actually reduced either organized crime or juvenile delinquency, such activities have nevertheless also reinforced among the general public a sense of trust and a willingness to cooperate with the police. It is to be noted in the post-war period that both organized criminals and juvenile delinquents tend to modify their offenses somewhat in accordance with changes in law enforcement and the relative leniency of the courts in the disposal of their cases. This is perhaps the most controversial subject in the whole area of law enforcement. There are many differences of opinion about the lenient policies of the courts. The police and the public generally tend to look for more severe punitive dispositions than those that are forthcoming from the family courts or from those involved in juvenile corrections. General discontent with leniency in the areas of organized crime and juvenile delinquency is an increasing part of public awareness. Since more than half of the criminal events recorded in present-day Japan are committed either by *yakuza* or by juveniles, there is a greater public concern with these two groups in observing law enforcement than with the isolated adult criminal. It should be noted that isolated acts of adult criminal behavior have diminished notably in the post-war period.

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# X

## Recent Trends in Japanese Criminality: Some Comparative Perspectives

I. J. "Cy" Shain

Several years ago, in reviewing William Clifford's *Crime Control in Japan* for the *Journal of Criminal Law and Criminology*, I commented that Japan's remarkable achievement in reducing the incidence of crime in the preceding decade, 1964–1974, was a social miracle that had gone by largely unheralded in the Western world. What made the achievement even more noteworthy was that, in that ten-year period, Japan had experienced significant urban growth and industrialization, which normally are associated with increased alienation, anomie, social breakdown, and crime.

For those of us who reside in America's urban communities, prudence and caution suggest that we avoid certain neighborhoods at night. To be able to walk Japan's streets and narrow alleys at night without a moment's concern for one's personal safety or security is a reassuring and refreshingly novel experience indeed. Not having to experience the cold chill of gnawing fear on hearing footsteps behind you on an unpopulated street or alley while wending your way home is eloquent testimony to the success of Japan's formal and informal crime control systems and the high level of personal safety and security the country affords its citizens and visitors alike.

Having actively participated as an official in California's judicial and criminal justice system for several decades, and having studied and observed courts and criminal justice agencies in other American states as well as in Asia and Europe, I have a reasonable awareness of Japanese achievements as well as shortcomings and operating problems. To observe a highly developed industrial nation with a criminal justice system that is working well is a rare and unusual experience. But as I read the more recent Japanese Ministry of Justice annual reports, titled *White Paper on Crime*, I note with some dismay that a few dark clouds are

beginning to appear that are causing concern and consternation among Japan's citizens and its criminal justice officials.

What is responsible for this increased apprehensiveness are increases in the incidence of Penal Code offenses, and more particularly sizable jumps in juvenile delinquent acts in the past few years. Coming on the heels of declining rates and numbers of crime for the past decade, this dramatic shift in crime trends has generated understandable anxiety, if not controlled alarm.

Let me be a bit more specific. The number of Penal Code offenses committed by juveniles increased 37 percent between 1979 and 1981, while adult crime rose about 4 percent in the same period. Indeed, according to the *White Paper* report, juveniles under the age of twenty were responsible for 52 percent of these offenses. In actual numbers, juveniles were reported to have committed 252,808 Penal Code offenses, compared to 233,260 adult-committed offenses (*White Paper on Crime*, 1982, advance report).

Between 1976 and 1980, the last year for which figures for offenders by specific crime category were available, the incidence of theft rose 23 percent and the number of offenders investigated for embezzlement increased from 9,900 to 20,600, or more than 100 percent.

When examined by age groups, the growth in the number of youthful offenders becomes even more alarming. Between 1976 and 1981, the rate of fourteen- and fifteen-year-old offenders per 1,000 population in that age group rose from 15.4 to 28.5, or 85 percent, while the growth in rate per 1,000 population among sixteen- and seventeen-year-olds was 35 percent in the same time interval.

There have also been increases in the number of offenders referred to the public prosecutor for violation of drug offenses, mainly stimulant drugs and glue sniffing. Approximately 31,500 persons were referred for violating stimulant drug control laws in 1980, representing an 81 percent increase since 1976, while the incidence of glue sniffing and paint thinner violations among juveniles jumped from 37,000 to more than 45,000, about 22 percent.

Three other recent trends have caused alarm to both the general public and juvenile justice agencies. In 1981, some 2,085 cases of assault in middle and high schools were reported, involving 10,468 perpetrators and 4,444 victims. More than nine hundred teachers, mostly of middle schools, were victimized. These figures represent a significant increase over the number reported in 1979. In addition, police report that there has been a sizable growth in the number of juveniles arrested for seriously assaulting their parents.

Lastly, the number of juvenile female offenders has jumped significantly in Japan. In 1980, females accounted for one-fifth of all juvenile offenders, and they increased in number 20 percent over the previous year.

Lest this recitation of adverse trends in juvenile criminality lead one to the conclusion that widespread social breakdown is apparent in Japan, a few counterbalancing facts brighten the picture somewhat.

Because Japan's criminal laws do not provide for a breakdown between misdemeanors and felonies, it is sometimes difficult to distinguish serious offenses from the more minor ones. Accordingly, the reported category "theft" actually includes a preponderance of such minor offenses as petty theft, shoplifting, bicycle thefts, and similar less serious property crimes.

Thefts account for three-fourths of the juvenile offenses and consist mostly of shoplifting (42.5 percent), motorcycle thefts (16.5 percent), and bicycle thefts (13.5 percent).

As youngsters get older, the rate of offenders in their age group declines dramatically. Compared to a 28.5 per 1,000 rate for fourteen- to fifteen-year-olds, the rate for young adults between the ages of twenty and twenty-five was only 5.4 per 1,000 population in 1981, less than one-fifth as high.

Furthermore, the incidence of robbery in Japan is minuscule when compared to its occurrence in the United States. In 1980, only 2,064 robbery cases were reported in all of Japan, a fraction of the number occurring in California, with about one-fifth of Japan's population.

Before turning to an exploration of the social factors responsible for the increase in juvenile and, to a lesser extent, adult crime in Japan, it might be worth analyzing why there is such a relatively low crime rate in Japan.

In my opinion, aside from the obvious fact that Japan's law enforcement and criminal justice agencies are highly professional and efficient—the rate of clearances of crimes by arrest is exceptionally high, about 60 percent in 1980, and the police-community relationship built around the *koban* (police box) system is one of mutual trust. In addition, there is a very able nationalized system of courts, prosecutors, and correctional and rehabilitative services. A large part of the explanation for Japan's success in holding down the incidence of serious crime lies with that society's ability to maintain effective small-group interaction despite its population's predominantly urban concentration.

In a relatively homogeneous, socially cohesive society, the combination of social obligation and dependence appears to exert significant external and internal social pressures on the individual to avoid

deviant behavior. These obligations, if you will, are reinforced by that society's ability to maintain effective small groupings—family, friends, fellow workers—that establish and reinforce acceptable behavioral standards, the transgressions of which bring serious and painful informal sanctions upon the individual—namely, the loss of group support, privileges, and social benefits.

In a real sense, virtually all Japanese derive their self-images from their place in the hierarchical social structure that evokes predetermined expectations and reactions from above and below, and they are motivated by the requirements of their position in the society, place of work, neighborhoods, and family. In fact, each member of Japanese society is under a kind of group surveillance to make sure that he or she will measure up to required standards. This can be illustrated by the Japanese word *makoto* ("sincerity"), which is not used in the sense of a person's genuineness, but rather in the sense of the zeal with which a person behaves in living up to the requirements of his position in society.

Experienced observers are also well aware of how in Japan *haji*, or shame, is one of the effective weapons used to maintain high standards of morality, implementing an internalized sense of duty and respect for human relationships. Literally, the individual in Japan is caught up in a web of expectations to conform and not bring shame to his family, friends, and/or his associates at work.

Finally, Japan has been able to maintain a high rate of employment, which is usually correlated negatively with the rate of crime in most countries, and in addition has been able to perpetuate a strong family system despite the sizable migration to urban centers of people from rural outposts. One Japanese commentator puts great weight on the society's ability to provide lifelong reinforcement of high standards of morality, starting in early childhood and continuing throughout one's life (Teruo Matsushita, "Crime in Japan—a Search for the Causes of Low and Decreasing Criminality," *UNAFEI Resource Series* [Tokyo], no. 12 [Oct. 1976], p. 45).

With all these powerful social control forces operating, why has there been a change in the crime trends and particularly an outbreak of delinquency among the early-teen youth? For the outside observer it is difficult, if not impossible, to provide definitive answers to this question, and consequently we have turned to several of Japan's leading criminal justice officials, whose judgments in the past have proven valid, for possible explanations.

Yoshio Suzuki, who is currently the Director-General of the Corrections Bureau, attributes the sharp increase in the number of juvenile offenses to a "widening extent of permissiveness in society and a

corresponding decrease in the strict upbringing of children in the family and school, as well as to enlarged opportunities for stealing.”<sup>1</sup> This should sound familiar to American audiences; it is a theme we have heard before.

More comprehensive explanations were offered by Zen Tokoi, the former Director-General of the Japanese Rehabilitation Bureau, who served with distinction for several years as the Director of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, and who is currently head of the Ministry of Justice’s Research and Training Institute. Tokoi attributes increased criminality to changes taking place in Japan’s social and family structure which are weakening informal controls and rehabilitative efforts (see Tokoi, “Japanese Rehabilitative Services and Community Involvement,” *UNAFEI Resource Series*, no. 14 [March 1978], pp. 86–87).

Extensive urban migration has taken place, he observes, which is haphazard and unplanned and which has weakened the authority of the extended lineal family with its vertical hierarchy based upon the elder-youth relationship. Nuclear families in the city, in increasing numbers, lack the stability and experience of older family members to guide them in their child-rearing practices. Many new parents seem to be confused and less than effective. Tokoi notes that they must rely on fragmentary information acquired through the mass media for parental guidance rather than on the wisdom of grandparents, and the results are less than desirable.

There is more of a tendency to overprotect children these days, especially in well-to-do, middle-class families, which also tend to overemphasize intellectual training so that their children can gain entrance into the prestigious schools. Tokoi feels that many parents currently are not providing sufficient emphasis, in their upbringing of children, on morality and appropriate social behavior.

With an increasing number of mothers working to supplement family incomes, there has been a growth in the number of “key children”—children who have no parents at home when they return from school—among whom the incidence of delinquency has been increasing.

With the growth of prosperity, many Japanese observers note an increase in pleasure-seeking and a trend towards self-centeredness that have weakened the stabilizing influence of leading citizens in the community and have disrupted traditional values.

Because of the growing apprehension among residents about the disruption of traditional community values, movements have been launched to restore the community, such as “Constructing the Pleasant

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<sup>1</sup> Letter to author, November 10, 1982.

Village,” “Creating a Home-Town for Our Mind,” and others.

Finally, Japanese officials are alarmed by changes in thought patterns brought about by the information explosion and the spread of mass media in the society. What concerns them are changes in value-orientations and a shift from a logical way of thinking based on the printed word to “a way of thinking based upon sensory images obtained through radio and especially TV, . . . where people tend to respond automatically to information given by others” (Tokoi, 1978, p. 88).

Whether or not the preceding explanations account for the recent increases in crime and delinquency is still a subject for debate. To put the problem into perspective, it should be noted that the crime rate in Japan, especially when compared with that of Western nations and developing Asian countries, is still exceedingly low. Adult criminality has not made any quantum leaps in recent years; delinquent behavior consists largely of minor rather than major transgressions of the law; and delinquency, for the most part, appears to be a transitory experience for the majority of Japan’s youthful offenders.

While there is a growing concern about the changes taking place in parent-child-family relationships and the drifting away from traditional values to self-gratifying materialism, to the outside observer these shifts in social and family structure appear relatively slight. The bedrock of centuries of Japanese tradition is not that easily displaced by generational changes, restless youth, greater appetites for material goods, or increasing quests for personal gratification. Change may be taking place in Japanese society, but Japan is a country that is still able to make its better traditions work for it.

# XI

## The Police: Structural and Cultural Considerations in Comparing Japan and the United States

Jerry Enomoto

In my own field of corrections, the management of prisons, the intervention of the courts has had a significant influence in setting trends during the past decade. As a member of a minority group in the United States who suffered incarceration some forty years ago because of my Japanese ancestry, the issue of human rights protected by an adequate court system and police behavior has been a longtime interest.

As a prison official who was involved in dialogue with student dissenters in the sixties, the phenomenon of protest was not an academic matter to me.

As a second-generation Japanese-American, I have often been asked, "How come there are so few of us in jail?" I usually have given an uncomfortable answer about how we were brought up, alluding to our "culture." A related question has been, "How come there is so little crime in Japan?" In attempting some answers, I found the chapters by professors Hoshino and Bayley particularly informative.

I would like further to preface my remarks with the thought that one must do more than try to explain certain phenomena with a word like *culture*, implying some unique, mysterious, and undefinable force. Culture is operative in specific behavior in individual and group action. Whether one talks in terms of overall structure as a sociologist or of culture patterns as an anthropologist, the very concrete and observable factors reported in these chapters point to certain positive features operative in Japanese society that are much less evident in the contemporary United States. One of the most salient differences is the relative sense of security in Japan compared with the United States.

Dr. Hoshino examined for us the impact of efficient law enforcement on the public *fear of crime*. He traced how vulnerability to being victimized greatly affects a general level of fear and how the perceived level of efficiency of law enforcement can increase or reduce that fear.

In the United States, a sense of vulnerability and a fear of crime are always among the most salient concerns of the public. They are concerns that politicians frequently use in campaigns, which may be won or lost depending on how this issue is handled. As an example, in my home community an incumbent sheriff was turned out of office. Part of the reason may have been his opponents' skillful attacks upon the effectiveness of his law enforcement.

Increasing the use of such devices as "police boxes" (*koban*), foot patrols, community surveys, etc., could be effective in reducing public fear. For example, in California it was found that the shift to patrol cars reduced communication, in some cases even increased the response time taken by police, and thus increased the general fear of victimization.

The Japanese experience, discussed in the previous chapters, has shown that continual close contact between the police and the people is effective in reducing such fear. However, patrolmen checking houses and their residents at least twice a year would be a practice likely to meet with dubious enthusiasm here. It is noteworthy how serious efforts are made in Japan to know when residents are away, to circulate handouts containing crime prevention advice, and to check on the well-being of the elderly. It is through such efforts, not practiced in the United States, that *trust* in the police is established and maintained in Japan.

In respect to the maintenance of trust, we see the exact opposite occurring in the United States. Although efforts at improved police training and some pilot projects have addressed some of these problems, there is generally little communication established between local police and residents, and even less trust, particularly in high-crime areas. In many inner-city areas, it is not an overdramatization to say that police are viewed as nuisances at best and hostile invaders at worst.

A recent American film portrays the extreme of this reality well. Titled *Fort Apache—the Bronx*, it depicts a New York police precinct in a state of siege from the resident "hostiles."

Positive attempts at ameliorating general situations of fear and alienation in the American city by using informal methods are unfortunately too infrequent. One such attempt with which I am familiar occurred in San Francisco, where volunteers, led by an ex-inmate, escorted elderly Japanese from their homes to stores, various services, etc., and back.

Another consideration raised by Dr. Hoshino is the general consensus about police as "fair" in law enforcement. He reports that there is a good consensus among Japanese concerning the law and how it should be and is enforced by the police. This is hardly the case here, where dissension, not consensus, is most evident, especially among the minorities residing in high-crime areas.

Dr. Hoshino has noted that most Japanese want *depenalization* of minor and/or victimless crimes through lenient enforcement rather than changes in the law. I would ask the question, does this not push the police into very difficult positions? In the United States, it has usually been difficult to convince the public that such discretionary action regarding even minor offenses is acceptable. Indeed, the focus has consistently been upon more and stiffer formal sanctions.

Education in Japan stresses homogeneity, not individuality. People thus grow up accepting respect for the law as an unquestioned principle. Of course, education in the United States tends to stress individuality and questioning, rather than strict conformity.

In Japan, arrests made in error are a rarity, and people therefore tend to assume that those arrested are guilty. Such an assumption here would be disastrous. A surprising Japanese statistic is that less than 1 percent of those brought to trial are acquitted. Infringement of citizens' rights by the police seems to be a rare concern. Such general attitudes reduce fear of crime and, most importantly, fear of the police.

The high rate of crime clearance also reduces the fear of crime. Since the advent of a coordinated quasi-national police force, there has been more consistent law enforcement in all cities, and Japanese people are not fearful of their safety on city streets. Here, people are erecting steel barriers across their windows, installing more and more alarm systems, and buying handguns. It should be noted that local autonomy is stressed in this country, and any hint of a national police force would be seen as "un-American" and a totalitarian threat.

With respect to organized crime and law enforcement, Dr. Hoshino points out that organized gangs and members are decreasing, but their activities are not. Syndicates have formed and the characteristics of crime have changed toward "professionalizing" so-called victimless offenses that cater to the demands of the public, e.g., more profit. One can point out similar patterns in the United States, where professional, organized crime hides behind the cloak of legitimate business. Repeat offenses have increased in Japan because of the reduced likelihood of apprehension and the increased likelihood of a lenient disposition of the case. The confinement rate dropped from 53.7 percent to 31.1 percent from 1964 to 1970, and the average time served by gangsters was one year and six

months.

Japanese are concerned about their gradual increase in juvenile delinquency, although the rise has been largely in theft and not in violence or felonious acts. I shall not comment on our presently horrendous delinquency rate, especially among black and Hispanic youth, showing high rates of violent behavior.

As an American, I am encouraged by community organization efforts in Japan, in which volunteers play a large part, working closely with police. There is a genuine effort to avoid applying the label of official delinquency. Parenthetically, I would ask the question, how are these volunteers trained?

In this connection, DeVos has commented on how guidance centers, established throughout Japan by municipal authorities, utilize volunteers who patrol streets, counsel juveniles, make environmental improvements, and generally work to prevent delinquency. Community committees, comprised of school representatives, police, probation and parole staff, and volunteers, all share the goal of reducing a given community's delinquency rate. An important by-product can be the modification of adult attitudes toward juveniles, leading to a better understanding between the generations.

Although there may be no objective evidence that delinquency is being reduced overall by these methods, the increase in adults participating in community efforts encourages the hope that the understanding essential to reducing delinquency may be increasing. Certainly, one would hope that a similar kind of emphasis could be made here in the United States, where there is, to date, little effective use of volunteers or concerted community organization involving police, teachers, and the public. Indeed, there is at present a sad lack of commitment to delinquency prevention.

I would like to note many points of agreement between the chapters by professors Hoshino and Bayley that suggest some unique features in Japanese social structure or culture.

Professor Bayley points out that Japan, as a modern industrialized nation, does not have a serious crime problem, a truly amazing fact. Given the benefits of Japan's centralized quasi-national police system, with its more reliable data gathering capability, the comparative statistics in important areas are very revealing. In every instance, the United States suffers in comparison. Japanese police solve a much higher proportion of crimes, and the clearance rate is much higher. It is interesting to note that crime is cleared in Japan when a person is submitted for prosecution, whereas here it is cleared upon arrest, a much less reliable disposition. Since we are most concerned with violent crime in the United States, I

note that 97 percent of such crimes are cleared in Japan as compared to 43.7 percent here.

Another significant item is that only a very small proportion of those arrested in Japan are held in jail. Most offenders appear in court voluntarily and without jail or bail sanctions. Of further interest is that about 66 percent of those adults apprehended in Japan are prosecuted, 26 percent have prosecution suspended, and 9 percent have charges dismissed. Suspension of prosecution is an unusual feature that gives the prosecutor unusual discretion in looking at individual aspects of a case and deciding not to prosecute, thus performing a quasi-judicial function. I would question the public acceptability of this in the United States, but it apparently works in Japan.

Another remarkable finding is that over 99 percent of cases submitted for prosecution in Japan result in conviction. This is mainly due to the prosecutorial discretion that leads to weak cases being dropped, as well as to the fact that suspects agree to their prosecution. Professor Bayley has reported that more Japanese suspects confess, and plea bargaining is prohibited.

I was most interested in Professor Bayley's comments regarding Japanese confinement rates. He points out that Japan's low crime rates cannot be traced to stiff sentences, because Japan's sentences are lighter on all offenses. Convictions result in 84 percent given fines, 6 percent jailed, and 9 percent given suspended sentences. Note that 48 percent of the jail terms are for less than one year, compared to 4 percent of the state and federal terms in the United States being for that length of time.

Court convictions with jail sentences among the general populace number 16 per 100,000 in Japan and 186 per 100,000 in the United States. Here, almost all convicted offenders are jailed for some period at some point, but in Japan the rate is low.

Professor Bayley states that those confined in Japan are likely to be more incorrigible than prisoners in the United States, because we lock people up more indiscriminately. This is a major social problem in the United States, and is one that requires resolution if human and fiscal disaster are to be averted.

Finally, in discussing structural as opposed to cultural variables as an explanation for Japan's low crime rates, it would seem to me that both need examination because both are involved in criminality as well as in law enforcement.

Professor Bayley has said that, culturally, Japanese group consciousness and loyalty contributed to low levels of crime. However, he has also pointed out that when the objectives of a group cease to be lawful, its behavior can just as well become criminal as conforming.

Japan's radical student organizations and motorcycle gangs are examples.

Professor Bayley made the interesting and compelling cultural point that crime is related to the kind of moral order that people experience in daily life. In Japan, the ordinary is ordered, and people are relatively polite, civil, and orderly in public places. Litter, disorder, and disregard for small regulations do not occur in any frequency in Japan. Professor Bayley has postulated that crime becomes a serious problem when moral boundaries to ordinary behavior are not observed. When there is an atmosphere of "anything goes," even normally law-abiding people become slack. The "do your own thing" philosophy can be destructive as well as creative.

Professor Bayley made the general point that the amount of crime in a society is related to the messages that a community sends to its people, especially its youth, about proper behavior. Japan sends many; such implicit messages constraining toward conformity are few in the United States. In this regard, Professor Bayley made a comment about television in Japan. Violence there is always depicted as a negative factor. Here, not only is it depicted often, but it is displayed by central characters as legitimate. It strikes me that police characters on American television have gotten more human and honest, but few television episodes ever show central characters remaining nonviolent.

Professor Bayley adds one very interesting observation. The Japanese use the police to teach political lessons and as the cutting edge of legitimate government. The police practice some professional restraint because they feel obliged to teach morality and civility to the people. They try to act as role models, and it might be said that they try to be truly righteous. Such a perception of the police as moral and political exemplars is totally foreign to the United States.

## XII

# The Post-War Police: Discussions, Conclusions and Comparative Implications

George DeVos

It is difficult to summarize and draw inferences from a rather free discussion by lawyers, political scientists, sociologists, criminologists, and anthropologists who comprised our conference. I shall try to reorder the very rich number of comments made and organize our necessarily brief conclusions around a few dynamic themes germane to our central concern, that is, the interrelationship between social change and the functioning of the police. Here, in summarizing Part Two of this volume, I shall not repeat what was discussed in Part One, namely the functioning of the courts and protest movements. Suffice it to say that the police are an intermediate agency. They are used on the one hand to keep protest within legally prescribed limits. On the other hand, police are the agents who contact or arrest those in criminal, if not in civil, litigation who subsequently come in contact with the courts.

### **Professional Detachment in Police Behavior**

It is interesting to note that during this conference there was no concern with the present use of the police for political harassment. No participant raised the issue of any alleged act of police brutality or improper arrest, either in examining the history of protest movements post-war or in the general handling of deviant if not criminal Japanese. It is inconceivable that a like gathering of American social scientists discussing the contemporary function of the American police would remain equally unconcerned with this topic. Indeed, working with burakumin and Koreans in Japan has made me aware of certain instances of discrimination in police officers that occurred in respect to Korean and *buraku* children and adults, but these instances have generally to do with derogation, never with violence or brutality. There can be no doubt that

in general the police are highly trained professionally. That is to say, their behavior remains focused on acting only in accordance with the definitions delimiting their expected roles. Their behavior is not allowed to express personal proclivities or private social attitudes. The single area of criticism voiced by some of our participants was that police in some instances have not adequately pursued white-collar crime or questionable practices by some political figures, generally right-wing in their leanings. In our conference we did not pursue in any detail the contemporary issue of white-collar crime. It is certainly a topic worthy of fuller consideration.

In comparing pre-war and post-war police organization, Chalmers Johnson, Yasuhei Taniguchi, Robert Ozaki, and Setsure Tsurushima in various ways raised cautionary concerns about police surveillance and its pre-war use. An institutional use of police surveillance dates back to the pre-Meiji Tokugawa period. Police spies and observers were a well-utilized instrumentality of the Tokugawa regime. In the 1930s police surveillance became concerned with thought control, and political arrests became frequent during the military period leading to World War II. Robert Ozaki emphasized that although there was immediate post-war decentralization, the same pre-war institutional apparatus, now modified by a democratic ideology, was nevertheless gradually reestablished. A change of political regime would have available to it the institutionalized experience quickly to ferret out specific political dissidents should it be put to such purposes.

Johnson emphasized that the shadow of the pre-war Naimusho (Ministry of the Interior) is still cast over certain administrative functions. Both Ozaki and Johnson were concerned with what kind of preventive measures, legal or otherwise, have been prepared to ensure against such possible reoccurrence. Can restraint be left solely to the professional conscience of the police organization?

Professor Taniguchi gave a specific instance of some ambivalence about present-day police surveillance. He cited the case of his daughter, who was protected from sex offenders when the police immediately investigated reported molestation or possible molestation of children on their way to school. During the course of this investigation, the police contacted the households of his neighborhood. What Professor Taniguchi remarked was that while the police were helping to prevent crime they were at the same time conducting a surveillance of the constitution and activities of his household.

The question was raised whether it was illegal for individuals not to cooperate with the bi-yearly personal contact of police officers with neighborhood residents. The point was made that it was legally possible to refuse cooperation but that informal social pressure would be against

such refusal. Tsurushima emphasized that the question of sanctioning in Japan involves the coerciveness of customary expectations rather than the enforcement of actual laws. Taniguchi admitted that such objections about police visits are probably more to be found among intellectuals than among ordinary householders. Cy Shain pointed out that what was being discussed concretely was that attitudes about police surveillance depend upon whether one emphasizes the security afforded by informal and formal social controls and the attendant lack of privacy or whether one wishes to emphasize the value of individual privacy at the expense of greater degrees of public security.

### **Comparative Differences in Institutional Structures and Cultural Traditions**

In discussing cultural differences between the United States and Japan related to the functioning of police, John Kitsuse raised two issues, first, the differential types of mobility found in the two societies and second, the degree and nature of face-to-face interaction sought or permitted in the United States and Japan. The very pattern of living in Japan, the constantly high number of individuals on the local streets, maximizes social interaction. Without such forms of intense social interaction one cannot find one's way, literally, within Japanese society. There is a different density of social space in Japan and the United States. There is a tolerance for closeness in Japan that cannot be found anywhere in the American scene, including our inner cities.

Kitsuse also emphasized that the American society has a very high rate of geographic mobility. There is a rapidity of changed residence that would make the type of personal knowledge of neighborhoods less possible in the American setting by any police organization.

In this context Hoshino distinguished between types of police boxes depending upon the nature of the residential district covered. In rural areas there are actually residential police stations, whereas in the city areas police serve a particular *koban* (police box) in shifts. Nevertheless, in each instance the police do depend upon the knowledge that neighbors have of one another, which in turn depends upon not having too rapid a mobility rate and having a pattern of social interaction that prevents privacy and anonymity in urban areas as well as in traditional rural settings. In effect, while the traditional rural settings no longer exist, many of these patterns have been transposed to the city. There was no discussion of whether the trends toward larger and larger apartment house dwellings will break down the degree of social interaction so traditional for Japan. Some evidence indicates that this is indeed happening and that apartment house dwellers in certain types of so-called *danchi* or *manshun*

have reduced interpersonal contact. Voluntary associations tend to be exclusively women's groups. The men are involved in non-neighborhood organizations related to company or profession as is true for occupational groups in the U.S., where many professional organizations are dispersed rather than local in nature.

Another difference emphasized between the present American police organization and that of Japan is that the Japanese police are becoming increasingly better trained with higher levels of education. The previous educational disparity in Japan between members of the national police and municipal police forces is narrowing; the municipal police are recruiting more and more college graduates, so one finds fewer apparent status differences between the two levels of the Japanese police system. For this reason the municipal police agencies are developing greater confidence in their relationship with the centralized police.

With respect to the independence from political pressure, Mr. Hoshino pointed out that the police agencies are not readily controlled by the Diet, but have a certain amount of autonomy in the administration of justice. Like many other administrative bureaucratic units in Japan, they are not quickly amenable to legislative pressure.

### **Informal Patterns of Neighborhood Control Related to Formal Police Functioning**

Certain unique Japanese features of informal sanctioning were discussed by the several participants. These features are discussed elsewhere by Wagatsuma and myself (Wagatsuma and DeVos, *Heritage of Endurance*, 1984). As we found in Arakawa ward in northeast Tokyo, many neighborhoods in the urban setting, traditional and modern, just as in rural settings in the past, have intricate networks of "voluntary" organizations for implementing various economic and social purposes, including organizations dealing with the prevention of crime and delinquency. These neighborhood organizations can become highly evolved and draw a great deal on the willing involvement of community leaders and individuals of relatively high social status in ongoing community affairs. There are a number of local groups termed *bōhan kyokai* (crime prevention associations). There are throughout Tokyo and other localities voluntary probation officers known as *hogoshi* who help supervise two or three delinquents or those considered potentially delinquent. These voluntary institutions are directly integrated with police functions although staffed by volunteers. Participants are not paid, but they are reimbursed out of the national government budget for expenses incurred in connection with their activities.

There are also informal types of cooperation by local PTA groups in assisting the police in patrolling areas that might be conducive to delinquent behavior. There is also an informal monitoring system working out of the *koban* where citizens' complaints or opinions are filed. These comments are gathered and discussed. They are considered a valuable source of information.

Such activities are condoned by the community since the participants in surveillance are often well-placed community leaders. For example, in looking at the social background and occupation of *hogoshi*, Wagatsuma and I found that one would be considered for such a voluntary role only if one had a well-established community position. When one looks sociologically into the motivation for individuals joining such voluntary organizations, one quickly comes to understand that it is a form of status validation. Just as in the United States community service validates the status of the upper middle class, in Japan such voluntary service becomes almost a requirement when one reaches a certain level of community prestige. It is not considered amiss for voluntary organizations to intermesh with police activities. Such interaction in the United States would quickly become suspicious.

Robert Cushman noted that in discussing the probation system with some Japanese, questions were raised about the professional competence of voluntary probation officers, who were considered not professionally equipped to handle personality problems. It is interesting to note that recently the Japanese have developed some ambivalence about the necessity of having people professionalized rather than depending upon their intuitive knowledge of a community acquired through long membership.

### **The Koban as an Exportable Institution**

In responding to comments after the presentation of his chapter, David Bayley discussed at some length how the Singapore police are now being reorganized in line with the Japanese *koban* system. This raised the issue about the exportability of specific police institutions into another society with different cultural traditions. Was it feasible to consider? Chalmers Johnson, arguing from the point of view of unique features of the Japanese tradition, questioned whether the *koban* system, meaning the positioning of police in fixed areas within residential units, could be considered without effective household registration, continual household surveillance and a gathering of accurate information about the occupants of the area. Bayley admitted that this was not being considered in the Singapore *koban* system. Bayley affirmed also, however, that institutions have to be considered in their totality, and that any particular police

institution has implicit values attached to it and, in turn, that these institutions have social consequences.

The issue was raised with some suspicion whether President Lee in importing the koban system to Singapore was as concerned with the establishment of a Japanese-type surveillance system as he was with the efficiency of the police in regard to strictly criminal behavior.

The institution of the koban system depends upon a high degree of consensus and informal control being exercised within neighborhoods. Such consensus is part of the totality of Japanese culture, and its force constrains those who would be personally unwilling to conform to the pattern. Mr. Hoshino also forwarded the view that it is not simply a question of instituting a koban system in another society: that the koban system depends upon both formal and informal training and social attitudes of the police as well as the formal facilities that are maintained by the police. One cannot consider a koban system without considering the nature of police recruitment and police training. The police are recruited from certain segments of the Japanese society and receive a characteristic Japanese training in becoming professional. Hoshino stressed that it is the quality and cultural background of the policemen, their skill, their education, the degree to which the police system tolerates or does not tolerate corruption, the extent to which there is job stability within the political system, and other factors of this nature that will determine whether or not a koban system can be exported or transplanted within another social system.

There was some consensus that American police would be somewhat resistive to the koban system. Robert Cushman stressed that American cultural attitudes, including those about the organization of police, are biased in terms of technological superiority. The police do not question that the police car is superior to the policeman on foot. Police also tend to consider the speed of a police car, or are concerned with the amount of time taken for investigations, and the like. Overall, the American police attitude is that crime is a problem to be solved rather than a condition to be managed.

Cushman further commented that some areas of the United States with greater homogeneity might find a koban-type approach to police work more congenial. Minnesota, for example, has a fairly homogeneous population and a very low incarceration rate, so that one might consider Minneapolis more amenable to setting up of koban than Los Angeles. Cushman also commented, agreeing with Hoshino, that if the police subculture does not accept the koban, it is not going to work.

Urban police, in effect, feel besieged rather than part of a community. Cushman sees a highly defensive esprit de corps among

American police and wonders whether or not the Japanese police would become similarly defensive under certain circumstances. In the United States an internal esprit de corps often is a result of alienation rather than professional pride. Cushman believes that, if some sort of koban experiment occurs in the United States emphasizing team policing, it will develop with modifications and localizations suitable to other American social institutions and will in effect be quite different from the Japanese process.

### **Some Comparative Conclusions Concerning Community-Police Interaction**

Part of the interaction process in the Japanese community between police and residents depends on police sensitivity and police knowledge of community definitions of crime. The arrest patterns and types of intervention conducted by Japanese police are tuned to the expectations of the community and are not formalistically applied counter to community expectations as is often the case in the United States.

In the instance of white-collar or corporate crime as defined by the legal system, one commentator pointed out that there is no reporting to the police of corporate crime, and the police are dependent upon the reporting of outsiders to them in order to instigate action. The police are subject to customary norms and are somewhat constrained to overlook types of behavior that go beyond legal definitions should they be tolerated by the community affected.

This interdependency on norms and expectations in police or public action reflects the type of discussion in part one of this volume by Reich and Taniguchi, looking at the processes that turn private difficulties in pollution cases into public consciousness. Reich's point was that the official consciousness of the government was forced into certain kinds of response once there was sufficient public arousal. In contrast, as pointed out by Taniguchi, the courts and the police by avoiding concern with practices of abortion are reflecting a pattern of change allowing for a lower birthrate in Japan.

One can generalize that the Japanese police, given the homogeneous nature of the Japanese society, are more fine-tuned in their discretionary powers to social norms than can be the case in a heterogeneous, often conflict-ridden, multi-ethnic American social scene. The police in the United States cannot fine-tune in the same way since they are subject to criticism from groups that ascribe to different normative patterns. For example, the ethnically Irish police have not been able to operate in a black community when their own norms are in conflict with the social expectations of that community. This type of community-police alienation

is particularly evident in rapidly changing neighborhoods in American inner cities.

In looking at the nature of movement and mobility within Arakawa ward, it was evident that there is no comparison possible between the mobility found in American cities and that characteristic for Japan. Although Arakawa was a ward noted for relatively high mobility rates in Japan, we found on closer inspection that people became quickly interactive and the face-to-face relationships incorporated new members rather quickly. In effect, the mobility rate in any particular Japanese neighborhood was not very high, compared with American patterns, and people would live many years in the same house even when constrained to rent rather than own.

Robert Cushman raised the issue that one cannot look at a direct, immediate relationship between migration and incidence of crime. In immigration patterns, for example, it is not the immigrants themselves that present an issue from a crime or delinquency standpoint, but it is the children of migrants or immigrants that are often affected. This point is precisely the one that we found operative in Europe (Klineberg and DeVos, 1973). The children have the more difficult alienating experiences in adjusting to a new setting. Majority Japanese remain part of a majority group when they migrate into a city. Problems of alienation related to minority status are not part of the experience of urbanizing Japanese (Wagatsuma and DeVos, *Heritage of Endurance*, 1984, chapter 6).

In summarizing other topics of discussion, I found an issue that is fundamental to the functioning of the police in a democratic institution: the structuring of accountability, and how this structuring is related to the distribution of power in the society. From what we can ascertain, the post-war police in Japan have functioned fairly, professionally, and despite having easily abusable powers of surveillance as well as other forms of potential coercion, have not injudiciously exercised these allocated powers. Rather, the trend has been toward a greater and greater professionalization within the Japanese police, an esprit de corps based on pride and sense of professional competence rather than on any defensiveness isolating them from the public they are to serve as agents of law and public order. This direction toward efficient and detached professionalism is yet to become manifest in police institutions as now constituted within the urban United States.

It is obvious that the police in Japan have, in effect, an easier task in that they consider themselves members of a fairly homogeneous society that has implicit values shared by all, whereas in the American situation there are points of great tension, not only on a class basis but in terms of

ethnic diversity, and continuing problems of severe economic dislocation, disadvantaging minority segments of the population, especially minority youth. Depending upon who is interviewed, one could get a strong feeling in the United States that the police are instruments of illiberal exercise of power in many communities. No such sentiment is forthcoming in Japan to any degree, although specific instances of animosity to police have been reported among the Japanese minorities. All in all, to summarize, at the present time one sees in operation in Japan a police institution that through an emphasis on professional competence and impartiality has managed to function in the post-war period in a direction of strengthening Japanese democracy rather than undermining it while exercising a concern for public security. This differs greatly from the pre-war period where there were implacable fears of political subversion from the left.

In the post-war Japanese democracy there has been no setting up of political parties as illegal or the persecution of political minorities. Given the cautionary concern with the surveillance functions of the police being available for inducing political conformity, we must conclude that up to the present the police have been an institution for democratization in post-war Japan.

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