THE UNIVERSITY OF CHICAGO

BEYOND POSTWAR, BEYOND NATION: "HUMAN RIGHTS" AND THE "HISTORY PROBLEM" IN MODERN JAPAN AND ASIA

A DISSERTATION SUBMITTED TO

THE FACULTY OF THE DIVISION OF THE SOCIAL SCIENCES

IN CANDIDACY FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

DEPARTMENT OF HISTORY

BY

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CHICAGO, ILLINOIS

JUNE 2021

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Acknowledgement

First and foremost, I am indebted to my committee members, without whose support I would have never completed this dissertation. My mentor Susan Burns has advised me since my undergraduate years on my research on Japan. She remained the voice of reason and kept me on track in addition to always believing in the value of my research. Jacob Eyferth, who taught the first seminar of my graduate career, transformed my understanding of Chinese history and the history of knowledge production. Mark Bradley introduced me to the field of the history of human rights and significantly broadened my intellectual horizon. I must thank them for their help with not only my dissertation but also my job search and other aspects of academic and personal life as evidenced by the over sixty recommendation letters they wrote for me in a "relatively bad" job market. Truly, I appreciate everything they have done for me and I would not have made it without them.

A note of thanks is also in order to numerous other faculty, staff, and students at the University of Chicago. Edward Shaughnessy, Michael Bourdaghs, Junko Yamazaki (now at University of California, Los Angeles), Toyosawa Nobuko (Oriental Institute of the Czech Academy of Sciences), Tadashi Ishikawa (University of Central Florida, Orlando), and Peng Xu (University of Hawai‘i at Mānoa) made my smooth transition into graduate school possible. Hoyt Long, Kenneth Pomeranz, Bruce Cumings, Tom Ginsburg, Constantin Fasolt, and other scholars shaped my intellectual life at UChicago. Yoko Katagiri, Harumi Lory, Misa Miyachi, Noto Hiroyoshi, Jieun Kim, and So Hye Kim endowed me with the language skills that made the research for this dissertation possible. I am also indebted to Jessa Dahl, Erin Newton, Robert Burgos, Jiakai Sheng, Sandra Park, Eilin Rafael Pérez, Usama Rafi, Dan Knorr, Jun Hee Lee, Alex Jania, Carl Kubler, Matthew Lowenstein, Yujie Li, Ian Cipperly, Spencer Stewart, Yuan

Tian, Yueling Ji, Naixi Feng, Yin Cai, and many others for a supportive and collegiate community of graduate students in the Department of History and the Department of East Asian Languages and Civilizations. I also want to thank Sonja Rusnak and David Goodwine at the Department of History for supporting me with the logistics of the completion of this dissertation (honestly, I would have missed all the deadlines for filing without their help), Ayako Yoshimura at the UChicago Library for helping me find appropriate sources, Jeffrey Tharsen at the UChicago Digital Studies Program for supporting my digital methodology development, and Kathrin Kranz, Courtney Wiersema, Celeste Cruz-Carandang, Michael O'Toole and others at UChicagoGRAD for helping me position my research to a broader audience.

In addition to funding from the Center for East Asian Studies at UChicago (and I must thank Abbey Newman, Walter Bourdaghs, and others for coordinating the logistics), the Department of History at UChicago, and the Foreign Language and Area Studies Fellowships Program, the dissertation is also made possible by my research in Japan during AY 2018-2019 funded by the Japan Foundation. Hayashi Hirofumi (Kanto Gakuin University) generously shared his contacts of scholars and activists with me in addition to advising my research. He was also kind enough to drive me around the entire main island of Okinawa to make my research there possible. Utsumi Aiko (Osaka University of Economics and Law) showered me with kindness and support in addition to connecting me with her wide activist and academic network. Lawyer Ichinose Keiicho, one of the first contacts I made in Japan, stayed in touch me for over seven years and shared with me his expertise and contacts in law and activism. Yang-Nagayama Satoko, Atsuda Keiko, and others at FemiZemi extended their friendship to me and introduced me to the world of activism on feminism and historical justice in Japan. Naito Shota generously shared with me his contacts at the Meiji Gakuin University, where Takahara Takao, Katsumata

Makoto, and Akiyama Michihiro (now at Okinawa International University) among others provided valuable feedback and support for my research. A special thank-you is due to the Women's Active Museum of War and Peace (Watanabe Mina, Yamashita Fumiko, Ikeda Eriko, and other staff and members), which allowed me to use its archive and even office space for my research. I am also indebted to Wang Xuan, Shibasaki Haruko, Takagi Yoshitaka, Imamura Tsuguo, Ri Yongmi, the Kibotane Foundation (Yang Chinja, Kawada Fumiko, and others), Nashinoki Peace Academy (Hata Yumiko and others), POW Research Network Japan (Takada Mine and others), The History Museum of J-Koreans, Chukiren Peace Museum (Matsuyama Eiji, Serizawa Nobuo, Matsumura Takao and others), The National Hansen's Disease Museum (Kim Kwiboon), Cultural Center Arirang (Jeong Gangheon), Research Center for Cooperative Civil Societies at Rikkyo University (Hirano Izumi), Asia-Japan Women's Resource Center (Hamada Sumire), Okinawa Prefectural Archives and other public institutions in Okinawa (Shimizu Fumihiko, Hiranaka Airi, Seto Takahiro and others), Himeyuri Peace Museum (Koga Noriko), and many, many, many others I had the honor and fortune to have met in Japan.

Chelsea Szendi Schieder, Franziska Seraphim, Thomas Jolyon, Theodore Jun Yoo, Igarashi Yoshikuni, Laura Hein, Fumi Inoue, Lee Seok-Won, Fumi Inoue, Li Lin, and many others also provided generous assistance and feedback for my research. I feel incredibly privileged to have the support of such a wonderful community of scholars.

Finally, I want to thank my partner Yiwei "Charlie" Cheng for her jubilant affection and companionship (both virtual and physical), and last but not least, my parents Chunhua Zhu and Zhiheng Pan for their boundless support and understanding. I am who I am today because of them.

I dedicate this dissertation to those who have passed away, and thus I regretfully did not spend enough time with or have the fortune to meet, during the course of my research, such as Oda Miwa (devout activist for historical justice and the late wife of lawyer Ichinose Keiichiro), Yi Hanne (the leader of the Doshinkai Association for the Reparation for former Class BC War Criminals of Korean Origins), and many other activists concerned with the justice for and survivors of the atrocities of the Japanese empire. May they rest in power and may we carry on their work.

Introduction

> "The preamble to our Constitution includes the following sentence: "We recognize that all peoples of the world have the right to live in peace, free from fear and want." The Constitution treats the issue of peace as one that concerns the individual human rights (*jinken*) of all people of the world. It proclaims that there are no human rights without peace, that peace is the necessary condition for human rights. Article 13 of the Constitution also decrees that "All of the people shall be respected as individuals." The state is created to guarantee, for both its citizens and foreigners, a life with the human dignity. This is the universal human truth since the French Revolution."[1]

The time was August 11, 2018, and Imamura Tsuguo was giving the opening speech to the annual convention of Candle Movement Committee, a group established to protest the enshrinement of Korean and Taiwanese soldiers in Yasukuni Shrine. Imamura is a lawyer who played a crucial role in the 1990s reparation movement in Asia. In this massive movement, victims[2] of wartime atrocities committed by the Japanese empire, most famously the comfort women system and the Nanjing massacre, sued the Japanese government for compensation and apology with the help of Japanese lawyers, activists, and scholars, who successfully framed these historical controversies in the language of *jinken,* literally "human rights" in English, and pushed them onto the international forums such as the United Nations Commission on Human Rights. Even the U.S. House of Representatives passed a resolution to urge Japan to apologize to former comfort women in order to uphold its commitment to "human rights and democratic institutions."[3] For Japanese participants in the movement like Imamura too, the problem with

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[1] 「平和の灯を！ヤスクニの闇へキャンドル行動」『『明治１５０年』とヤスクニ、そして改憲』（キャンドル行動実行委員会, 2018）p.2.

[2] There have been debates in various related movements on whether the such people should be referred as "victims" or "survivors," especially in the case of the former "comfort women." I use the term "victim" here to emphasize the legal aspect of their subjectivity, although I remain mindful of the agency-granting politics behind denoting those who went through atrocities like the military sexual slavery system of the Japanese military.

[3] House - Foreign Affairs,110th Congress (2007-2008), *H.Res.121 - A resolution expressing the sense of the House of Representatives that the Government of Japan should formally acknowledge, apologize, and accept historical responsibility in a clear and unequivocal manner for its Imperial Armed Forces' coercion of young women into sexual slavery, known to the world as "comfort women", during its colonial and wartime occupation of Asia and the*

Japan's "historical responsibility" was also no doubt a *jinken* problem, and the postwar Constitution and international human rights laws are frequently cited as evidence for this framing. While taken for granted today, the framing of the "historical controversies" of Japan in terms of *jinken* or human rights in the international arena was by no means natural. A condition taken for granted by left-leaning activists nowadays, the convergence of human rights and war responsibility and compensation problems was a relatively recent event, a phase in Japan's long struggle to emerge from the ruins of the war as a renewed sovereign state and close off the "long postwar," to transform from the vanquished empire into a new nation state, one increasingly under pressure to engage and integrate with its former colonies and belligerents, and to define and redefine the relationship between the state and its citizens as well as non-citizens.

This dissertation examines the history of the concept of (what would translate in English as) "human rights" in modern Japanese history. Specifically, it traces how the term *jinken*[4] (lit. "human rights" today) has become a term that is able to articulate Japanese wartime and colonial atrocities in Asia in 1990s since its invention in the early Meiji period to translate western legal and political concepts. By looking at how the term was used by lawyers, activists, and other actors during key historical processes, the dissertation explores how the concept of *jinken*, through a series of translations and creative usages in social discourse and movements, transformed from a nationalist-constitutionalist concept about the relationship between the national citizen and the state to a conglomerate discourse encompassing a degree of transnational potential that enabled the critique on Japan's negative historical legacies and created the

Pacific Islands from the 1930s through the duration of World War II. Sponsored by Rep. Honda, Michael M. [D-CA-15]. Washington, D.C. 07/30/2007 https://www.congress.gov/bill/110th-congress/house-resolution/121/text (accessed Nov 6, 2020)

[4] The term consists of the Chinese characters (*kanji*) 人 and 権, respectively "human" and "right." As chapter 1 will explore, the term was probably used to translate continental European rights language, most notably the French term *droits de l'homme* (rights of man).

possibility of reparation and justice for its past victims. The dissertation illustrates this long historical development by examining the formation of the sphere of legal professionals and the discourse on citizenship and constitution in prewar Japan, the Allied Occupation that sought to use democracy and rights-discourse to remake Japan, the legal and bureaucrat-directed activism on Japanese war criminals, the changing conceptualization of problems in Okinawa under American military occupation, the leftist debate on *zainichi* Korean's status and rights in Japan, and the postwar activist attempts to use the language of rights to construct a holistic critique on Japan's place in the geopolitical space of "Asia."

The dissertation is situated at the intersection of the field of the history of human rights and the transnational history of modern Japan. It builds on the trend in the field of human rights history that studies the malleability and believability of concepts that came under the name of "human rights." While relatively young compared to other fields, the history of human rights has advanced significantly in the past twenty years. Moving beyond the long durée rise-and-rise narrative[5] and the debate between distant and recent origin theories,[6] scholars have come to focus on specific usage and believability of concepts about the relationship between state, groups, and individuals that came under the name of "human rights" as a result of political contestation and their manifestation and implications in different contexts.[7] For example, Mark Bradley's *The*

[5] An example is Paul Lauren, *The Evolution of International Human Rights: Visions Seen.* Philadelphia, University of Pennsylvania Press, 1998.
[6] Lynn Hunt, *Inventing Human Rights: A History*. New York: W. W. Norton & Company, 2007 is the representative of the "deep history" school and Samuel Moyn, *The Last Utopia: Human Rights in History* Cambridge, MA: Belknap Press/Harvard University Press, 2010 is the representative of the "recent history" school.
[7] Mark Bradley. *The World Reimagined: Americans and Human Rights in the Twentieth Century.* Cambridge University Press, 2016. Edited volumes that include human rights in local contexts include Mark Bradley, and Patrice Petro. *Truth Claims: Representation and Human Rights*. Rutgers University Press, 2002; Hoffmann, Stefan-Ludwig. *Human Rights in the Twentieth Century*. Cambridge University Press, 2011; Akira Iriye, Petra Goedde, William I. Hitchcock, eds., *The Human Rights Revolution: An International History.* New York: Oxford University Press, 2012. For the European context, examples include: Lora Wildenthal, *The Language of Human Rights in West Germany* Philadelphia: University of Pennsylvania Press, 2013; Paul Betts, "Socialism, Social Rights, and Human Rights: The Case of East Germany," Humanity 3, no. 3 (Winter 2012): 407-26; Marco Duranti. *The Conservative*

World Reimagined: Americans and Human Rights in the Twentieth Century seeks to overcome the origin debate in the field by focusing on how "human rights" as a concept became believable and articulated in America and enabled Americans to reimagine themselves and the world in the 40s and 70s.[8] Marco Duranti's *The Conservative Human Rights Revolution: European Identity, Transnational Politics, and the Origins of the European Convention* also demonstrates how thoughts like romantic Europeanism, corporatism (even with fascist links), anti-welfare state conservatism and Catholic parental rights found expression in "human rights" that prompted the creation of the European Convention on Human Rights (ECHR).[9] Perhaps most pertinent to this dissertation, Tsuitsui Kiyoteru's *Rights Make Might: Global Human Rights and Minority Social Movements in Japan* has analyzed how different minority groups in Japan used the language and instruments of international human rights to improve their status in Japan.[10] Most recently and very much relevant to the topics of this dissertation too, much scholarly attention in the field has been devoted to the relationship between decolonization and global human rights, and this has produced a large body of granular case studies utilizing both "the archives of imperial powers and Western NGOs" and "material that reflects African, Asian, and indigenous perspectives."[11]

Human Rights Revolution European Identity, Transnational Politics, and the Origins of the European Convention. Oxford University Press, 2017. In the book, Duranti also deals with different conceptualization of rights vis-à-vis the state. On this theme, works on the conceptualization of nation and the international include: Glenda Sluga, *Internationalism in the Age of Nationalism*. Philadelphia: University of Pennsylvania Press, 2013. Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* Princeton: Princeton University Press, 2013.

[8] Bradley, 2016.

[9] Duranti, 2017.

[10] Tsutsui Kiyoteru. *Rights Make Might: Global Human Rights and Minority Social Movements in Japan*. New York, NY: Oxford University Press, 2018. This dissertation builds on and differs from this work in terms of its engagement of the process of translation and the relationship between rights-talk and the issue of the "postwar" in Japan. These will be discussed in the following paragraphs.

[11] A. Dirk Moses, Marco Duranti, and Roland Burke, eds., *Decolonization, Self-Determination, and the Rise of Global Human Rights*, Human Rights in History (Cambridge ; New York, NY: Cambridge University Press, 2020), p.23. See also: Zachary Elkins; Tom Ginsburg; Beth Simmons, "Getting to Rights: Treaty Ratification, Constitutional Convergence, and Human Rights Practice," *Harvard International Law Journal* 54, no. 1 (Winter 2013): 61-96

These studies also focus on the intersection and comingling of different rights languages in order to shed light on how "human rights" (as we know conceptualize or translate it) takes form or finds form in contexts beyond the Atlantic world. Along the way, such studies have also revealed how other forms of claims, such as anti-colonial nationalism and self-determination, marginalized, appropriated, or complemented the language of human rights, and through such studies of colonial and postcolonial contexts, shed light on the historical intertwinement of imperialism (in its different forms), humanitarianism, popular sovereignty, and human rights.[12] The dissertation will incorporate all these old and new concerns of the field. For example, chapter 1 explores both the history of local rights traditions and languages since the nineteenth century in Japan, corresponding to the field's attention to the deeper roots of human rights and other emancipatory claims, and the remaking (and persistence) of such traditions through the Allied Occupation of Japan, corresponding to the concern for the global late 1940s, when ground-breaking documents such as the Universal Declaration of Human Rights (UDHR) were produced. The chapters on *zainichi* Koreans and Okinawa also echo the field's new exploration on the relationships among neo-imperialism, self-determination, anti-colonial nationalism, and human rights languages outside the western context. Finally, chapter 5 also adds to and complicates literature on the "breakthrough" of human rights in the 1970s Atlantic world by examining how Japanese activists used the human rights languages to deal with historical and neo-imperialism in Asia. The epilogue also reflects on the field's new concern about how humanitarianism and rights language enabled imperialism by examining the competition between the language of *jindō* (lit. "humanitarian") and *jinken* in late twentieth century discourse about historical justice in Japan. In sum, the dissertation builds on and contribute to the trend of

[12] Ibid. p.19-23. The local history of concepts that translates as "humanitarianism" will be discussed in the epilogue.

granular studies on local manifestation and intertwinements of rights language and other emancipatory claims by focusing on both the local and global history of *jinken* in Japan and beyond.

Following the examples of the recent literature, my dissertation also treats what is called "human rights" as a malleable and contested category that can manifest in and create different kinds of politics, and it takes a step further to tackle the issue of translation in the global expansion of "rights-talk."[13] Although the literature has come to focus on the local manifestation and operations of rights-talk, the historicity of translations of European (most often English) concepts related to rights, if not these very translations themselves, is often taken for granted and seldom explored. My dissertation argues that while the Japanese term *jinken* is most frequently translated as "human rights" today, such has not been the case for at least half of the term's history, and it came to be translated as "human rights" (and vice versa) through a fraught historical process that deserves in-depth analysis. The dissertation does not argue that there is one "correct" translation for *jinken* in English, even if one were to pinpoint a specific usage in a particular context. As scholars such as Lydia H. Liu would argue, in attempting to tackle the issue of translation that produced and sustained the discourse of *jinken,* this study "enters," rather than "sits above," this very process of "translingual practice" that it seeks to examine.[14] As such, when this dissertation deals with the issue of translation (or uses the very word "translate"), it

[13] ." In the dissertation, I use the term "rights-talk," which is being popularized in the field of the history of human rights, to broadly denote claims made with the concept of rights (and sometimes freedom), including but not limited to concepts like "human rights" and "civil liberties." For the definition and connotations of rights (as a claim-making instrument), one can refer to Joel Feinberg, *Rights, justice, and the bounds of Liberty*, Priceton University Press, Priceton, 1980,

[14] Lydia He Liu, *Translingual Practice: Literature, National Culture, and Translated Modernity--China, 1900-1937* Stanford, Calif: Stanford University Press, 1995, p.20. For studies on "words" with similar concerns in this regard to this study, see Carol Gluck and Anna Lowenhaupt Tsing, eds., *Words in Motion: Toward a Global Lexicon* Durham: Duke University Press, 2009.

does not intend to convey the ("correct" or "incorrect") dictionary equivalences between words across languages or the unidirectional expansion of the concept of rights into Japan (and local resistance to it). Rather, by focusing on the specific sites of such "confrontations" and "complementarity" of languages,[15] the dissertation seeks to demonstrate what Liu calls "the possibility that a non-European host language may violate, displace, and usurp the authority of the guest language in the process of translation as well as be transformed by it or be in complicity with it,"[16] the discursive history of which (in this case, that of *jinken*) is in danger of falling victim to amnesia because the equivalence of *jinken* and human rights today is so taken-for-granted. In other words and more specifically, by closely analyzing the Japanese, Chinese, and Korean historical usages that are conventionally translated as "rights" and "human rights" today, I examine the complicated history of the localization of rights-talk in East Asia and how it became the language through which people in the region understand wartime and colonial trauma, how they used such languages to call for justice and reparation for such trauma, and how such discourse fed back into international discourse on human rights and redress for crimes against humanity.

Just like Tsuitsui's work, this dissertation seeks to both situate Japan in the global culture of human rights and highlight the unique developments of ideas about rights, citizenship, and nationhood. Such a framing inevitably comes with the danger of essentialization, especially of what may be termed "western" or "Euro-American" ideas or activism about rights or the "United Nations human rights talk." Indeed, the dissertation makes use of such terms occasionally, but it by no means intend to omit the fact that such rights-talk in the "west" (itself a fraught category)

[15] Ibid. p.15, 31.
[16] Ibid. p.27.

is also a product of contestations and exchanges of a multitude of intellectual and activist currents. As such, it is important to clarify the meanings of these terms here. One concept that appears across chapters is "UN human rights talk," which refers to the discourse about human rights in the United Nations that produced documents like the UDHR and other human rights covenants and documents since the late 1940s. The 1940s has been treated as a key decade in the history of human rights and copious volumes have been written on the making and implications of the UDHR and Euro-American nations' roles in and reactions to this human rights current.[17] As scholars like Elizabeth Borgwardt, Mark Mazower, and Sam Moyn have shown, the production of these UN documents and such discourse was by no means limited by the institutional boundaries of the UN, and nor were they uncontested. However, one could argue that direction and end products of such contestations entail a sense of aspirational internationalism (if not transnationalism) and universalism, and they were also intricately related to international legal discourse on war crimes and (increasingly) reparations for such crimes. The dissertation thus sometimes uses terms like "UN human rights discourse" to contrast genres of *jinken* talk in Japan that were more nationalist and/or connoted a different vision for Japanese war criminals. The dissertation also sometimes employs terms like "European rights tradition" or "western ideas about rights" not to essentialize such categories but to convey the impressions of Japanese and other Asian historic actors' monolithic view, which served as an instrument for them to envision and articulate rights in their local contexts. In sum, these seemingly broad and problematic terms are used in the dissertation expediently and instrumentally, instead of literally.

[17] For example, Elisabeth Borgwardt, *A New Deal for the World: America's Vision for Human Rights*. Cambridge, MA: Harvard University Press, 2007; Mazower, 2013.

In turn, for the field Japan studies, my project tackles the seemingly irresolvable "history controversy" in Asia (the accusation against Japan for not addressing atrocities during its imperial expansions) by historicizing key concepts frequently used on this topic, such as "human rights" vis-à-vis state and imperialist atrocities. Beginning in the late 1980s, victims (mostly non-Japanese) of Japan's wartime and colonial atrocities began to launch state compensation lawsuits against the Japanese government with the help of a transnational network of activists, scholars, and lawyers. This reparation movement, as well as other major political shifts in Asia such as the end of the Cold War and the burst of the economic bubble in Japan, prompted the scholarly debate on whether Japan's postwar had ended,[18] and if not, how Japan should deal with its "history controversies" that has been shackling Japan to this political time. Namely, if Japan has not addressed its colonial and wartime atrocities against not only its own citizens but also other nationals, could one really say that the country has progressed beyond the "postwar?" In this way, the very existence of the reparation movement, along with the lack of closure and its resolutions (most of the lawsuits were dismissed and thus there was no official state response to them), seems to attest that Japan is still in the "postwar." In other words, the problematic of the "postwar" of Japan encompasses all such contemporary political questions such as whether Japan should address its colonial and wartime atrocities with apologies or reparations, which is why discourse of the "postwar" persists in public discourse, activism, and academia. Since the original debate in the early 1990s, the "postwar" of Japan has been established as a legitimate field of historical study, as evidenced by the work of scholars like Fransiska Seraphim and

[18] For example, see the edited volume Andrew Gordon --, et al. *Postwar Japan As History*. Berkeley: University of California Press, 1993. More recent scholarship on the topic includes: Laura Elizabeth Hein and Mark. Selden. *Censoring History: Citizenship and Memory in Japan, Germany, and the United States*. Asia and the Pacific Armonk, N.Y.: M.E. Sharpe, 2000; Laura Elizabeth. Hein and Mark. Selden, *Living with the Bomb: American and Japanese Cultural Conflicts in the Nuclear Age* (Armonk, NY: M.E. Sharpe, 1997), ; Sheila Miyoshi Jager and Rana Mitter. *Ruptured Histories: War, Memory, and the Post-Cold War in Asia*. Cambridge, Mass.: Harvard University Press, 2007.

Igarashi Yoshikuni that built on this initial debate.[19] This dissertation also revisits and engages with this field of debate by noting that not only does the "postwar" call for historicization, regardless of whether it has "ended" or not because this very debate has always been about the contemporaneity of history;[20] this process of history production, prompted by and manifested in the reparation movement,[21] also invites historical study. I argue that at this moment when the "postwar" still seems to drag on indefinitely, more than two decades after the end of Cold War at which the (renewed) proposal that the "postwar" had ended was raised, one is now able to examine this intense history and memory making in the 1990s historically too and assess its place in the longer history of Japan's (and Asia's) "postwar." Historical or anthropological studies of the reparation movement are by no means new.[22] Building on this literature, this dissertation upends, instead of focuses on, the reparation movement in terms of the historical

[19] Franziska Seraphim. *War Memory and Social Politics in Japan, 1945-2005*. Cambridge, Mass.: Harvard University Asia Center, 2006; Igarashi Yoshikuni. *Homecomings: The Belated Return of Japan's Lost Soldiers*. La Vergne: Columbia University Press, 2016. Other examples include: Laura Elizabeth Hein. *Post-Fascist Japan: Political Culture in Kamakura After the Second World War*. London: Bloomsbury Academic, an imprint of Bloomsbury Publishing Plc, 2018; Igarashi Yoshikuni. *Bodies of Memory: Narratives of War in Postwar Japanese Culture, 1945-1970*. Princeton, N.J.: Princeton University Press, 2000.

[20] Regarding this point, Igarashi has warned against the danger of reducing history to merely a "lesson" for contemporary politics, highlighting the constantly transforming (instead of fossilized) nature of history in order for it to have any social meaning. Igarashi, 2016. p.10-16.

[21] The reparation movement itself has produced a plethora of research on Japan's past atrocities, especially in the Japanese academia. Some notable works include: 吉見義明・林博史『日本軍慰安婦――共同研究』（大月書店, 1995 年）; 林博史『華僑虐殺――日本軍支配下のマレー半島』（すずさわ書店, 1992 年）; 笠原十九司『南京難民区の百日――虐殺を見た外国人』（岩波書店, 1995 年）; 吉見義明・伊香俊哉『七三一部隊と天皇・陸軍中央』（岩波書店［岩波ブックレット］, 1995 年）

[22] English literature on the reparation movement and related historical and political issues includes Lisa Yoneyama. *Cold War Ruins: Transpacific Critique of American Justice and Japanese War Crimes*. Durham: Duke University Press, 2016; Tai Eika. *Comfort Women Activism: Critical Voices from the Perpetrator State*. Hong Kong: Hong Kong University Press, 2020; Alexis Dudden. *Troubled Apologies Among Japan, Korea, and the United States*. New York: Columbia University Press, 2008; Koga Yukiko. *Inheritance of Loss: China, Japan, and the Political Economy of Redemption After Empire*. Chicago: The University of Chicago Press, 2016; Chunghee Sarah Soh. *The Comfort Women: Sexual Violence and Postcolonial Memory in Korea and Japan*. Chicago: University of Chicago Press, 2008; Tomiyama Taeko, Laura Elizabeth Hein, and Rebecca Jennison. *Imagination Without Borders: Feminist Artist Tomiyama Taeko and Social Responsibility*. Ann Arbor: Center for Japanese Studies, the University of Michigan, 2010. Saito Hiro. *The History Problem: The Politics of War Commemoration in East Asia*. University of Hawai'i Press, 2017. Li Lin, "Remembering Japanese Military Sexual Slavery: Gender, Trauma, and Nationalism," Ph.D. dissertation, (University of Wisconsin-Madison, 2020)

roots of the language of rights in the movement. In other words, the dissertation treats the reparation movement as the end point and interrogates the historicity concept of *jinken,* a cornerstone of the legal and political claims made by atrocity victims that is nonetheless seen as transhistorical and thus taken for granted, in order to illuminate the root of the legal and activist approaches and languages that enabled and limited the movement.

Several directions have been developed in the field to address this problematic of the "postwar." For example, since the turn of the century, there has been an increasing scholarly attention on the start, instead of the end, of the postwar, namely the Allied Occupation of Japan and its consequences for the "postwar."[23] Often relying on newly available primary sources, these granular studies have helped to subvert the traditional narrative about the mission of the Occupation to dismantle what they saw as "militarism" or "State Shinto" of pre-defeat Japan and remake Japan into a "peaceful" and "democratic" nation. Highlighting the continuities that spanned the war divide that have been heretofore understudied, these works often contribute to a more nuanced and historical understanding of key concepts employed during this transformative period, such as "peace," "democracy" or "religious freedom." Building on this body of literature, this dissertation also similarly interrogates the term *jinken*, with heightened emphasis on the issues of translation discussed above. The dissertation also draws from and builds on the scholarship on the long arc of postwar Japanese progressive social movement,[24] which is another

[23] Examples include: John W Dower. *Embracing Defeat: Japan in the Wake of World War II*. New York: W.W. Norton & Co., 1999; Lori Watt. *When Empire Comes Home: Repatriation and Reintegration in Postwar Japan*. Cambridge, Mass.: Harvard University Asia Center: Distributed by Harvard University Press, 2009; Jolyon Baraka Thomas. *Faking Liberties: Religious Freedom in American-occupied Japan*. Chicago: The University of Chicago Press, 2019; Jennifer M Miller. *Cold War Democracy: The United States and Japan*. Cambridge, Massachusetts: Harvard University Press, 2019

[24] Examples include: Simon Andrew Avenell. *Making Japanese Citizens: Civil Society and the Mythology of the Shimin in Postwar Japan*. Berkeley, Calif. ; London: University of California Press, 2010; Shigematsu Setsu. *Scream From the Shadows: The Women's Liberation Movement in Japan*. University of Minnesota Press, 2012. Nick Kapur. *Japan At the Crossroads: Conflict and Compromise After Anpo.* Cambridge, Massachusetts: Harvard University Press, 2018; Chelsea Szendi Schieder. *Co-ed Revolution: The Female Student in the Japanese New Left*.

direction the literature has been approaching the problem of the "postwar." It adds to this body of scholarship that has produced copious studies on the activism and discourse by leftists, feminists, environmentalists, and other progressives by rendering the heretofore understudied legal activism of lawyers visible by examining their use of the language of *jinken* and how they came to play crucial roles in the reparation movement, which mainly took the form of litigation. Although the subject and "agent" of this dissertation is *jinken,* lawyers and other legal professionals are the main characters in most of the chapters. While the legal claims made with concepts like "human rights" often entail a transhistorical stance (as was sometimes the case in the reparation movement), this dissertation seeks to historicize such legal activism and the contribution of legal professionals to the historical development of concepts like *jinken* as well as larger discourse about citizenship, nationhood, and constitutionalism. In this way, a large part of the dissertation can also be seen as a legal history, on both legal concepts and legal professional actors, of Japan and Asia. The reparation movement, along with newly available archival sources (discussed in more details in chapter 2), also renewed the field of Japanese war crime studies, in the field of which many works seek to interrogate the historicity of categories such as war crimes and international law in Asia.[25] The dissertation also draws from approaches in the new generation of war crime studies that historicizes categories like war crimes and international laws and puts emphasis on the role of translation in the localization of such categories in Asia. For example, this field of scholarship has examined the translation of the legal concept of

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Durham: Duke University Press, 2021. Pertinent to this dissertation, Susan L Burns. *Kingdom of the Sick: A History of Leprosy and Japan.* Honolulu: University of Hawai'i Press, 2019 talks about how leprosy patients used the language of *jinken* to demand reparation for prewar and wartime state policies on them.

[25] Examples include: Totani, Yuma. *Justice in Asia and the Pacific Region, 1945-1952: Allied War Crimes Prosecutions*. New York, NY: Cambridge University Press, 2015; Barak Kushner. *Men to Devils, Devils to Men: Japanese War Crimes and Chinese Justice*. Cambridge, Massachusetts: Harvard University Press, 2015.Japanese scholarship include 林博史『戦犯裁判の研究――戦犯裁判政策の形成から東京裁判・BC 級裁判まで』（勉誠出版、2010 年）.

"conspiracy" into Japanese and how it might have caused different local assessment of Japan's war crimes. Similarly, this dissertation also probes concepts like *jinken* in this manner to parse out the consequences of such translations.

Since the dissertation upends the reparation movement, it is not intended to be a comprehensive history of social movements and discourse that used *jinken* in modern Japan. As one would notice, this dissertation does not engage some prominent usages of *jinken*, such as those on the plight of the *burakumin* or the "outcaste" people and the biopolitical rights of groups like the leprosy patients and the *hibakusha* (those exposed to the atomic bombing and radiation). This is because the dissertation seeks to delineate how the discourse of *jinken* developed into a language that was able to articulate claims in the reparation movement, and thus inevitably selects only episodes that clarify, instead of complicate and obfuscate, this development. This is not to say that the usages omitted in the dissertation was irrelevant to this development; rather, *jinken* language users explored here frequently engaged in activism and discourse on these omitted topics too. The scope of the dissertation does not intend to imply a sense of relative historical importance of topics articulated in *jinken.* It simply serves the purpose of clarifying what led to the usage of *jinken* in the reparation movement and the place of this usage in the long "postwar" of Japan.

Part of this dissertation also uses digital humanities techniques, especially network visualization and network analysis to examine the relationship among the actors, both human and non-human, in this history of *jinken.* While the survey of a myriad of activists, lawyers, bureaucrats, and other human actors naturally calls for methodologies associated with Social Network Analysis (SNA), as evidenced by graphing techniques used in chapter 2, the dissertation as a whole leans more towards Foucauldian poststructuralism or Actor-Network

Theories (ANT) in its larger framing.[26] When presenting an overview of this study at a seminar in Japan,[27] I was asked what the "subject (*shutai*)" of this research is as it discusses such a wide variety of human actors. My answer was that the *shutai* is not human but the discourse of *jinken* itself. While the answer may smack of disingenuity for "empiricist (*jisshō shugi*)" historians, it does reflect some of the central assumptions of the dissertation regarding networks and agency. For example, following key theories in ANT, the dissertation assumes radical symmetry in terms of the agency of human and non-human actors (such as the very vocabulary of rights). Furthermore, it also conceptualizes actors as networks and vice versa, in order to capture the agency of both discourses such as *jinken* in producing relationships and politics and of such relationships and politics among human actors (and entities consisted of human actors such as groups) in enabling discourses such as *jinken.* On top of such foundational theoretical assumptions, the dissertation then uses network analysis to render legible part of the multitude of human actors and their networks (which was probably the true concern in that question about *shutai*). It should be emphasized that such techniques used in the dissertation are not in their fully developed form but only serve as a stepping stone towards a larger theoretical and methodological framework that more organically combine ANT and SNA and contribute to the field of the history of science and technology[28] when the dissertation transforms into a

[26] Lilla Vicsek, Gábor Király and Hanna Kónya, "Networks in the Social Sciences: Comparing Actor-Network Theory and Social Network Analysis," *Corvinus Journal of Sociology & Social Policy* 7, no 2 (2016): p.77-102.
[27] 「「人権」の戦後 戦争責任問題はなぜ「人権」問題になったか? −40 年代~70 年代を中心に」 ("The Postwar of Jinken—How Did the Problem of War Responsibility Became a Human Rights Problem? A Case Study, 1940s~1970s") 日本現代史研(旧「南京研」「沖縄研」合同研究会) 第 120 回研究会 (Japanese Modern History Study Group, Session 120), at Waseda University, April 2019.
[28] Studies on which the future monograph can build on include Hans-Jörg Rheinberger. *Toward a History of Epistemic Things: Synthesizing Proteins in the Test Tube*. Stanford, Calif.: Stanford University Press, 1997; Martha Lampland and Susan Leigh Star. *Standards and Their Stories: How Quantifying, Classifying, and Formalizing Practices Shape Everyday Life*. Ithaca: Cornell University Press, 2009; Franco Moretti. *Distant Reading*. London: Verso, 2013.

monograph. Until then, techniques used here should be conceived as instruments to open up and expediate examinations of networks and agency in the dissertation, rather than to shoulder a comprehensive framework about such topics.

A word should also be said about the archives and sources this dissertation uses and the risks of such usages. The sources of the dissertation can be roughly categorized into three groups: materials produced or collected by occupying regimes (mainly the Allied Occupation of Japan and the United States Civil Administration of the Ryukyu Islands), those by organs of the Japanese state (such as bureaucratic documents and Diet debate transcripts), and those by actors in the civic sphere (such as publications by activist individuals or groups). Exceptions and nuances abound, but the first group is mainly in English and the latter two in Japanese. The very production and existence of these sources entail the politics that enabled these processes. For example, as discussed in chapter 2, the very existence of sources on war crime trials and war criminals-related issues collected in the National Archive of Japan reflect the political goals of certain cliques within the bureaucracy. Publications by activists also often served political goals in addition to intellectual ones, and the arguments they made in such materials should also be understood as such. The collections, instead of the production, of these materials also contains their own logic. For example, the Modern Japanese Political History Materials Room at the National Diet Library that collects all the materials by the Allied Occupation from the United States serves the function of building a comprehensive record collection (as understood by the librarians) of a key stage of Japanese political history. The library attached to the History Museum of J-Koreans, while bipartisan in its collection principle, is affiliated with the Embassy of the Republic of Korea in Tokyo (and even housed in the same building), and thus its collection also reflects the nature and extent of its connections with the *zainichi* Korean

community in Japan (who donated most of its collections). The Okinawa Prefectural Archives as an institution has also been intertwined with the production of local history (especially wartime history) that serves as a critique of the mainland government, and its collection likely also reflects this orientation. Finally, collections at civic museums and institutions such as Women's Active Museum on War and Peace also reflect how their activist-archivists privilege certain causes and actors over others.

Cognizant of such characteristics of its sources, I understand the archives of the objects of the dissertation have been integral in the political and contested nature of such objects. The dissertation thus does not pretend to be politically impartial and its arguments will also likely have political effects, especially for the "history controversy" in Asia. If the language of the dissertation reads neutral and bland, it is because in terms of methodology, I try to be descriptive before I can be prescriptive. In reading and using these equally political sources, I do propose closely examining languages and categories taken for granted by the collectors and producers of these sources, especially those about *jinken* and other rights-talk. Such attention to the historically constructed nature of the sources and language they are consisted of is an integral part of my politics. It is on this attention to the issues of translation and historicity in the broader sense discussed earlier that I ground the source-reading and arguments of this dissertation. In other words, on top of the usual critique in the field of the history of human rights that the language of rights and humanitarianism sometimes enable aggression and imperialism, and that in the field of Japan's "postwar" history that the country can never progress beyond this periodization without adequately addressing its past atrocities, I also argue that using the (presumedly transhistorical) language of rights to make historical arguments in reparation litigations and other activism, while sometimes capable of empowering silenced victims, comes

with its own danger. I hope it is clear that by the very act of conducting a historical study of *jinken,* this politics of mine is clear to the readers.

The dissertation consists of five main body chapters in addition to an introduction and an epilogue. The chapters are organized thematically and move roughly chronologically from 1880s to 1990s. The first chapter traces the origin of the term *jinken* in the Meiji period, its prewar usage by the Japanese political thinkers and lawyers, and its remaking during the Allied Occupation of Japan. After early Meiji political thinkers invented the term *jinken* to translate the continental European political concept about rights in order to conceptualize a new relationship between the individual national citizen (*kokumin*) and the state, the term was later used by popular rights activists and lawyers to articulate their vision of a constitutionalist Japan that would limit state power over the *kokumin* (but would expand its national power outward). This nationalist but liberal ideal continued to survive even into the war years. After Japan's defeat in WWII, the Allied Occupation employed the Japanese liberal legal professionals to work with their American advisors to construct a new *jinken* discourse and even a *jinken* bureaucratic system. Although the new *jinken* still centered around its old nationalist-constitutionalist core, the addition of the theories related to "human rights" that was being devised at the UN and their translation into the umbrella concept of *jinken* injected a degree of universalist and transnational potential into *jinken* that would prove crucial to its later evolutions.

Chapter 2 examines how the Japanese lawyers and bureaucrats used *jinken*, the very instrument they built under the direction of the Allied Occupation, to rebel against other Occupation period policies and the verdicts of the war crime trials. Even before the lawyers were recruited by the Occupation to construct the new *jinken* system, they were employed by bureaucrats with military backgrounds to defend the Japanese war criminals in the Allied war

crime trials all over Asia, during which many lawyers developed sympathy for their clients and doubts towards the due process of the trials. Accompanying the restoration of independence of Japan in 1952, these same bureaucrats, which had formed a network covering the spheres of politics, civil society, and bureaucracy thanks to their military connections, launched a "civic" popular movement calling for the amnesty of Japanese war criminals. The lawyers as a professional sphere also actively supported the movement, using legal instruments and arguments related to *jinken* to launch several lawsuits to push for the end of the incarceration of war criminals. These *jinken* usages on the issues of war crime and war criminals were also acquired by the bureaucrats in this movement, and they were surprised to learn later in the 1960s and 1970s that in the UN, (what they understood as) *jinken* was discussed in relation to the further prosecution of and reparation from war criminals (instead of their amnesty and freedom). Their further research on the topic spurred by this surprise might have prepared the Japanese bureaucracy for the 1990s reparation movement for Japan's past war crimes.

Chapter 3 explores how problems related to the American military rule of Okinawa were articulated in the language of *jinken.* The U.S. military administrated Okinawa until 1972 (and retained considerable military presence there afterwards) due to the strategic geographical location of the islands. The rule gave rise to numerous problems for the locals, such as forced or unreasonable land appropriations, the crimes of the American soldiers and the lack of local jurisdiction over them, and the restriction of travel between the islands and mainland Japan. As a reaction, mainland Japanese lawyers and activists and their Okinawan counterparts used the concept of *jinken* to advocate for the reversion and demilitarization of the islands. Such efforts were also supported by American activists like Roger Nash Baldwin, the founder of the ACLU. However, this nationalist-constitutionalist usage of *jinken* was not understood by Baldwin and

the American occupiers, who translated it as the UN-centered universalist "human rights." Ultimately, this usage probably did little to change the American occupiers' military priorities but acted as an important stage in the development of *jinken* discourse towards its usage on Japan's "state responsibility" towards wartime sufferings.

Japanese leftist thinkers' and lawyers' articulation of the plight of the *zainichi* Korean in the language of *jinken* is the topic of the fourth chapter. Leftist Japanese lawyers had a solid prewar tradition of "courtroom struggle," a form of class struggle through litigation and legal aid, and it was frequently employed, along with the language of *jinken* sometimes, to aid prosecuted laborers and Korean independent and leftist activists. After Japan's defeat in WWII, leftist lawyers revived the tradition and further combined it with the new discourse of *jinken.* The plight of the *zainichi* (lit. "residing in Japan") Koreans, who lost their Japanese nationality and became "undocumented" after 1952, thus became a theoretical frontier for the Japanese leftist lawyers and legal theorists to conceptualize the *jinken* for non-*kokumin* and the Japanese state's present and historical responsibilities towards them. Building on earlier scholarship on how the *zainichi* community mobilized the language of international human rights to improve their status in Japan since the 1970s, this chapter examines the pre-history of this usage and argues that it was the case of the *zainichi* that enabled leftist Japanese lawyers to develop the universalist potential in the new postwar *jinken* concept and go beyond the old nationalist-constitutionalist framework even before the age of the international human rights in 1970s.

The last main body chapter uses the activist careers of Matsui Yayori and those in her network to explore the multitude of issues articulated in *jinken* from 1960s to 1980s and illustrate that the breakthrough of the *jinken* discourse since the 1970s went hand in hand with the surge of discourse on "Asia (*Ajia*)," a concept created to produce a holistic critique on Japan's place in

the Cold War world. Working on the issues of pollution (*kōgai*), biopolitical rights, gender, labor, global inequality, and Japan's negative historical legacies, activists like Matsui sought to devise a holistic activist approach to these issues using the concept of *jinken* and "Asia," which was a political space in which Japan was perceived to be the hegemon and, based on this perception, a heuristic device for the activists to critique Japan's past and present encroachment on the self-determination and independent developments of these areas. This approach was epitomized by the movement against Japanese men's sex tourism in "Asia" and the establishment of the group Asian Women's Association (*Ajia no onna tachi no kai*). These laid the foundation for the transnational activism on the issue of the "comfort women" and the reparation movement on Japan's past atrocities in general.

The epilogue briefly surveys how, on top of the transformation of *jinken* explored in the previous chapters, the activist-victim-scholar-lawyers complex (formed in the activism explored in the last chapter) employed the language of *jinken* and the instrument of state compensation lawsuit to conduct the 1990s reparation movement. After a century of translations and creative usages of the concept, *jinken* became a paradigm capable of articulating the demands for reparation and justice vis-à-vis the Japanese state by its (often non-*kokumin*) past victims or survivors. More than a subset of the international human rights culture, *jinken* is a unique concept in the modern Japanese history. The exploration of its history, which includes both transnational exchanges and translations and distinctively local developments and usages, is key to the understanding of what historical justice should constitute for Japan and Asia.

Chapter 1 Confused Occupiers and Contented Translators: The Birth of *Jinken* Discourse and Its Rebirth in the Allied Occupation

The time was October, 1945. A certain Lt. Col. P.F. McLamb stationed in Yokohama with the Allied Occupation forces was exhausting his resources trying to find a certain "Baroness Ishimoto" in Tokyo on behalf of Roger Nash Baldwin, the founder of the American Civil Liberties Union (ACLU). Baldwin wanted to reconnect with his old friend, who was actually not a Baroness anymore and changed her name to Katō Shidzue,[1] to discuss the "chance of developing what would correspond to the Civil Liberties Union in Japan."[2] It turned out, however, that the Allied Occupation was already scouting Baldwin for similar task before he enacted this plan of his. In January 1947, the then War Department of the U.S. was "requested by General MacArthur's Headquarters in Japan," to invite Baldwin to "consult…on civil liberties [in Japan]."[3] The invitation letter outlines Baldwin's tasks as the following:

> Specifically, your services are desired to survey, evaluate and recommend improvements in matters relating to Japanese and Korean consciousness of and protection of the basic civil liberties; to confer with Japanese and Korean groups and individuals on methods of promoting awareness of **civil liberties** [emphasis added] and safeguarding them from interference by anyone; and to give addresses and hold press conferences to stimulate interest in civil liberties.[4]

The internal release of the ACLU of Baldwin's appointment phrases the task as this:

> Baldwin… has been invited to put at the disposal [sic] of the American authorities in Japan and Korea his experience in the field of civil liberty… He is, however, going independently

[1] Katō Shidzue was a famous women's rights and labor rights activist both before and after the defeat. She married prominent unionist Katō Kanjū and laid low during wartime in fear of persecution and would become an even more prominent activist and politician with the support of GHQ in postwar Japan. Baldwin came to know her when she toured United States, where she also came to know Margaret Sanger.
[2] *The papers of Roger Nash Baldwin, 1885-1981 from the Seeley G. Mudd Manscript Library, Princeton University, the American Civil Liberties Union and International Affairs, 1885-1981*, Reel 8 Folder 11, National Diet Library of Japan Modern Japanese Political History Materials Room (Kensei-shiryôshitsu), Tokyo, Japan. https://id.ndl.go.jp/bib/028544628
[3] Ibid.
[4] Ibid.

> in order to represent certain international agencies with which he is connected in establishing contacts related to the work of the United Nations in the field of **human rights** [emphasis added]. Obviously such work could not be properly undertaken as an employe [sic] of the War Department.[5]

Did the staff of ACLU and the War Department conceptualize Baldwin's task completely differently, or were they just using terms like "civil liberties" and "human rights" interchangeably? As the chapter will show, the distinctions here actually did not matter for the Japanese legal professionals aiding GHQ's legal and political reforms. All these terms would be translated into the Japanese word *jinken,* which already had a long and rich local history in Japan before it was made even more complex by Occupation-period reforms centering on the concept. As part of the analysis on how the language of *jinken* became a framework capable of articulating these issues today, this chapter focuses on how the foundation of the postwar discourse of *jinken* was laid in the Occupation period (1945-1952) on top of its unique evolution in Japan since the late nineteenth century. By looking at how Japanese and Allied Occupation actors (respectively mainly the liberal Japanese lawyers and Occupation legal advisors and staff) used and exchanged ideas about rights-talk, this chapter examines how *jinken,* originally a constitutionalist concept with nationalist undertones, became imbued with a degree of universalism that paved the way for later progressive usages of the term.

Prologue: The Confused Right-talk during the Allied Occupation

Although Baldwin's visit to Japan (and also briefly Korea) was high-profile and warmly welcomed by the GHQ, his stay was quite short. If he was busy with meetings, interviews, and speeches, those were about as much as he did. Others expert in "civil liberties" or "human rights"

[5] Ibid.

hired by the Occupation were able to stay longer and participated in this "great experiment" more deeply. Among them was Alfred Oppler. Born German Jew in 1893, Oppler was able to attain position as high as associate justice of the Supreme Administrative Court and vice president of the Supreme Disciplinary Court at the ages of thirty-eight and thirty-nine, but was persecuted as Hitler came to power and had to escape to America. There, he worked in various positions teaching German and German affairs, and ended up in the Foreign Economic Administration, a federal agency, in 1944 where he assisted in research on Germany and France in preparation the foreseeable Allied occupations. After V-J Day, the agency was dissolved and Oppler was transferred to the Department of State, which offered him the opportunity to work on legal reform for MacArthur's GHQ. Oppler was taken aback at first because although he had a background in Continental legal system, he knew nothing about Japan—neither its language nor its legal system. His recruiter's response to that surprised him: "if you knew too much about Japan, you might be prejudiced. We do not like old Japan hands!" Oppler later came to realize that "from the point of view of the military occupant, the democratizing program required reformers eager to build up something new. The old Japan hand, familiar with and often fond of the nation's past and tradition, was inherently more conservative and, to some extent, skeptical toward the reforming zeal of the occupation officials."[6]

Oppler arrived at the GHQ on February 23, 1946, just missing the drafting phase of the new Constitution of Japan. Assigned to the Government Section of the GHQ (where he later rose to be the chief of the Courts and Law Division), he was asked to offer some comments and suggestions on the draft, but that seemed to be his "only contribution to the remarkable

[6] Alfred Christian Oppler. *Legal Reform in Occupied Japan: A Participant Looks Back.* Princeton, N.J.: Princeton University Press, 1976. p.12.

instrument of guidance" for postwar Japan.[7] Oppler participated in and oversaw numerous legal and judicial reforms during his tenure, most famously chairing the 1948 spring committee to revise the Code of Criminal Procedure that held "daily meetings for three weeks."[8] While only four members from the GHQ were present, participants from Japanese ministerial and legal world numbered over thirty. Apart from top officials at the then Attorney General, public procurator's offices, and judges of the Supreme Court, the bar was also prominently represented "for the first time in Japan's history," with representatives from the two Tokyo Bar Associations and the Japanese Civil Liberties Union (JCLU) newly established with the help of Baldwin.[9] While the Japanese participants greatly outnumbered those from the Occupation, according to Oppler, the very presence of and active participation by GHQ members in the revisions of laws was relatively rare. Oppler opined later that GHQ took a more active role in this particular reform because of "the significance of this legislation from the standpoint of **fundamental human rights** [emphasis added]."[10]

As a legal scholar and practitioner himself, how did Oppler approach such concepts as "civil liberties" and "fundamental human rights?" In a speech entitled "Tomorrow's Civil Liberties Problems in Japan" given at the Sendai convention of the Japan Federation of Bar Association (JLBA) on October 19, 1951, Oppler expounded on his understanding of the constitution, civil liberties, and human rights. The speech was publicized in a press release by the Public Information Office of the GHQ:

> "Constitutions of democracies of all countries guarantee fundamental human rights such as freedom of thought, religion, speech, press, and assembly," he [Oppler] continued, "and still

[7] Oppler ,1976. 20.
[8] Alfred C. Oppler, "The Reform of Japan's Legal and Judicial System under Allied Occupation," *Washington Law Review and State Bar Journal* 24, no. 3 (August 1949):290-324. p.303
[9] Ibid.
[10] Oppler, 1949. 304

> these constitutions, including yours, remain national documents, being valid only within dominion of specific countries. A momentous step toward the realization that fundamental human rights belong to mankind was made in December, 1948, when the General Assembly of the United Nation adopted the Universal Declaration of Human Rights. This document, agreed upon by 58 nations of the world, is designed to serve as a moral guide for the establishment of generally recognized safeguards for the protection of the individual."[11]

Can constitutions guarantee fundamental human rights? Are not the things a constitution can guarantee more aptly called "civil liberties," as the title of Oppler's speech suggests, instead of "human rights," a term only freshly canonized in UN documents, the process of which already produced much dispute on the content of the concept? This could be a complicated legal question, but the GHQ staff (mainly in the Legal Section and Civil Information and Education Section) apparently had no problem juxtaposing the new Constitution of Japan and the Universal Declaration of Human Rights (UDHR), especially after the promulgation of the latter which they forcefully promote in PR campaigns until the very end of the Occupation. One of the materials the Civil Information and Education Section (CIE) used is a film strip created by the staff of the Tochigi prefectural government (and translated by CIE staff into English).

Opening with the grandiose words of Fukuzawa Yukichi that "Heaven creates man neither above man nor below man," the narrator of the film strip laments that "our right to live, that is human rights," are thought of as "something new." Following the opening, twenty kinds of behaviors that were deemed violation of human rights, from police brutality to sale of children to village ostracization (*murahachibu*), are listed.[12] At the end of the strip are two sections:

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[11] *Human Rights (文書名:GHQ/SCAP Records, Civil Information and Education Section = 連合国最高司令官総司令部民間情報教育局文書) (課係名等:Chugoku-Kure-Hokkaido Region Office) (シリーズ名:Region File, 1951-Jan. 1952) (ボックス番号:5956；フォルダ番号:6)*, CIE(A) 08758-08762, National Diet Library of Japan Modern Japanese Political History Materials Room (Kensei-shiryôshitsu), Tokyo, Japan. https://id.ndl.go.jp/bib/000006769273

[12] Ibid. The complete list of violations (translated into English) is: "over time work outside of set time and unlawful labor," "sale of girls and children," "forced marriage," "mother-in-law mistreating daughter-in-law," "unequal treatment between men and women teachers," "forced contribution [to local associations]," "brutality or torture by police," "unjust suspicion or threat [by police]," "gangster and xx gumi," "gorotsuki newspaper [for-profit slanders and extortioners]," "murahachibu [village ostracization]," "search and attachment without warrant," "forced

"Universal Declaration of Human Rights and Japanese Constitution" and "Japanese Constitution and Respect of Human Rights." The former section states that on December 10 1948, the UDHR "was announced to the entire world for the purpose of disseminating the respect and promoting the safe-guard of human rights," and cites Article 1 of the UDHR ('all men [sic] are born free and are equal in dignity"). It then declares, "regarding these matters our Constitution follows absolutely upon the very same spirit," citing the article 13 and 14 of the Constitution, "which state, 'all people are respected as individuals, and are equal under the law.'" The latter section follows up on these points:

> As has been said, our Constitution is one of the most superior ones in the world. With regards to human rights it states in Article 11, "The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights." As long as the basic human rights guaranteed by the Constitution to the people are given to the people of present and the future as everlasting rights that cannot be violated, we must all continue to protect and safe-guard and keep it.[13]

Quoted in full here is the Article 11 of the new Constitution of Japan. Taken out of context, the term "people" here may smack of universalist undertone to readers unfamiliar with the language of constitutions. However, the Japanese version of the article (translated from the original English version written by MacArthur's team) reads: "**国民**はすべての**基本的人権**の享有を妨げられない" or "The **people (*kokumin*)** shall not be prevented from enjoying any of the **fundamental human rights (*kihonteki jinken*)** [emphasis added]."

What is the difference between "*kokumin*" and "people," and between "*jinken*" and "human rights?" If there was (and is) any, would the Japanese and English versions of the film

confession by the police," "borrowing money by sending child to hard labor," "the right to ask for arrest warrant to be shown," "intimidation and disturbance of business by bosses," "working child harshly," "working wife harshly," "period of detention," "unjust discharge violating legal contract."

[13] Ibid.

strips convey fundamentally different things? In her *MacArthur's Japanese Constitution,* Kyoko Inoue points out that while the American occupiers took great pain to ensure their concept of "popular sovereignty" was written into the new Constitution, they did not pay enough attention to how the Japanese translate the word "people," a concept they took for granted.[14] In fact, the Diet debated extensively on whether *kokumin* (or *jinmin*) should be the correct translation of the word "people." The term *jinmin,* which carries Marxist and anti-establishment undertones, was rejected in the end, and Inoue argues that American advisors like Charles Louis Kades were willing overlook the fact that the conservatives were able to use the term *kokumin,* which harbors mytho-nationalistic connotations, to insinuate that somehow the Meiji constitutional tradition (or more specifically, the relationship between the Emperor and the Japanese people) persisted. What Inoue does not dwell on is that fact that with the same sleight of hand, the term *kokumin* was then paired with the term *jinken* in multiple articles in the new Constitution. This pairing and such translations eventually trickled into common usage as demonstrated by the film strip analyzed above, which shows that *jinken* was later used to translate the term "human rights" in UDHR and other international documents.

If the term *kokumin* that is so often paired with *jinken* is itself a dubious translation of "people," namely that *kokumin* carries with it meanings in excess to (or even different from) the English term "people," can we be certain that the term *jinken* really corresponded to "human rights," especially when the meaning of the English term itself was in flux in the 1940s? Is *jinken,* like *kokumin,* under its surface-level meaning, also a discourse in and of itself? If we are not really sure about these, then how shall we appraise the interaction between the GHQ and the

[14] Kyōko Inoue. *MacArthur's Japanese Constitution: A Linguistic and Cultural Study of Its Making*. Chicago: University of Chicago Press, 1991. p.184-89.

Japanese sides with regards to legal reforms and rights talk? Before we venture into how people like Baldwin and Oppler dealt with (or did not deal with) the issue of translation and exchanged with their Japanese collaborators, we have to approach the problem from the Japanese side and trace the history of the term *jinken* and how it came to translate the English term "human rights."

I. The Japanese Enlightenment

Some time in 1951, famous legal scholars and practitioners Hirano Yoshitarō, Uzawa Fusaaki, Fuse Tatsuji, Nakamura Akira, and Isono Seiiji convened for a roundtable on the work and activism of their teachers in the Meiji era.[15] The talk later appeared as an article in the law journal *Review of Law and Political Science* (*Hōgaku Shirin*) titled "The legal professionals outside the bureaucracy (*zaiya hōsō*[16]) and the Safeguard of *jinken* (*jinken yōgō*) in Mid-Meiji." The discussion revolved around the figures Ume Kenjirō and Isobe Shirō, their associates and disciples, and their work outside of the prewar governmental judicial system (i.e. *zaiya*). Ume and Isobe were the first-generation legal scholars of Meiji who studied law and obtained degrees in France. Ume obtained a Doctorat degree with extinction from the University of Lyon and was a crucial figure in the making of Japan's first modern civil code. Isobe worked with Ume in the legal reforms in the 1890s and later served as one of the lawyers for famous anarchist thinker Kōtoku Shūsui when the latter was charged with treason. According to the group, the first generation of legal scholars of Meiji who studied in France and were influenced by the theory of

[15] 平野 義太郎 他 「明治中期における人権擁護と在野法曹(座談会)」『 法學志林』 49(1) 1951.08 p.105 ～ 119.

[16] This term refers to legal professionals (such as lawyers) who works independently, and contrasts 在朝法曹 which refers to judges and prosecutors (i.e. legal professionals who work for the judicial branch of the government). The politics among them will be further explored later in the chapter.

natural laws were more interested in the idea of, in the group's words, "*kihon-teki jinken.*" They also tended to be more active outside of the judicial branch, namely being *zaiya*, serving as lawyers and legal scholars and often fighting lawsuits on what they deem *jinken jūrin* (lit. "ravage of *jinken"* or violation of *jinken*). Their action stood in contrasts to those who studied German law, who tended to end up as judicial bureaucrats such as judges and prosecutors (or namely, *zaichō,* or "in the government") and were more authoritarian and less liberal in their political outlook. *Zaiya hōsō* like Ume and Isobe fought to introduce French liberal natural law theories into the criminal and civil code reforms in mid-Meiji, organized liberal law study groups, and actively participated in *jinken* related activities of the lawyers' associations. Regarding the last kind of activities, Uzawa states that

> In Japan, the lawyer's association organized by *zaiya hōsō* never ceased to advocate things like freedom (*jiyū*) and *jinken*, passing resolutions and sending the Ministry of Justice (*Shihō-shō*) memoranda [on these issues]… Whenever cases of *jinken jūrin* appeared, the associations would organize investigation committees to investigate these cases and try to right these wrongs.[17]

The legal scholars at the round table were not being anachronistic and putting terms of their time into the mouths of their teachers. Although they used such terms quite liberally (for example, they used *jinken* and *minken* interchangeably), terms like *jinken*, *jinken yōgo*, and *jinken jūrin* were indeed widely used in the legal circle since mid-Meiji, and Usawa's description of the activism of the pre-war lawyer's association also perfectly captured terminology at the time.

As historian Douglas R. Howland explains, in early Meiji, in 1870s, Meiji luminaries converged to use the Chinese character *ken* translate the continental European concepts of *regt* (Dutch), *droit* (French), and *Recht* (German), which could mean both power and right ("rightful

[17] 平野, 1951.

use of the power of law and hence law and right as a just use of force" as phrased by Howland).[18] This translation probably came from the Chinese translation of Henry Wheaton's *Elements of International Law* in 1867, and based on this translation a whole new array of terms such as *kenri* ("right"), *kokken* (*ken* of the nation or "national rights"), *shukken* ("sovereignty"), *minken* (*ken* of the people or "people's rights" and "popular rights"), and *jinken* (*ken* of the person/human) were developed in the first two decades of Meiji. Among them, *jinken* became widely used from late 1870s when the Popular Rights Movement and the accompanying *minken* discourse came after government censorship.[19] In the 1880s intellectual circle, the theory *tenpu jinken ron*, i.e. the theory of natural rights of the French tradition, most frequently attributed to the natural rights theories of Jean-Jacques Rousseau, was vigorously debated. In 1882, Katō Hiroyuki, formerly a liberal constitutionalist, published *Jinken shinsetsu* (after terminating the publication of his earlier more liberal works), in which he argues that *tenpu jinken ron* is nothing but an absurd fantasy judging from (or his understanding of) the theory of evolution and natural selection. This triggered a plethora of publications on *tenpu jinken ron* against Katō. In this debate, it was generally accepted that *jinken* was the direct translation of the French *droits de l'homme*, which translates as "right of man" in contemporary English. [20] As in the original French context for *droits de l'homme*, the debate on *tenpu jinken ron* centered around the relationship between the state and the people (in this sense, as a replacement for or extension of the *minken* discourse, which was consistent with the legal scholars' usage in the 1951 roundtable) rather than the specific content of *jinken.* Namely, in this debate, *jinken* was disputed

[18] Douglas Howland. *Translating the West: Language and Political Reason in Nineteenth-century Japan*. Honolulu: University of Hawai'i Press, 2002. p124-125
[19] Howland, 2002. 129.
[20] Kimura Ki, and Meiji Bunka Kenkyūkai. *Meiji Bunka Zenshū*. dai 2-kan Jiyū minken hen. Shinban. Tōkyō: Nihon Hyōronsha, 1967. p.357

as a political theory rather than a legal practicality. However, during the same time, the term *jinken* was also widely used in the legal circle, especially among the lawyers. Usawa himself penned several essays about *jinken* in late Meiji.[21] In 1890s newspapers coverage of the civil code reform, part of the new civil code was also referred to as *jinken no bu,* literally "the part that concerns the right of/among people" as opposed to *bukken no bu* or "the part that concerns the rights related to things," and this usage of *jinken* dated back to the 1870s.[22]

This is not to say that the usage of *jinken* in the legal circle differed entirely from that in the political sphere. In fact, the use of the term proliferated among lawyers around the turn of the century and took on a political undertone unique to the self-identity of lawyers or *zaiya hōsō*. In May 1898, legal scholar and practitioner Nagashima Washitarō penned an essay for the Journal for the Lawyers' Association of Japan (*nihon bengoshi kyōkai rokuji*) titled "The Criminal Code Reform and the Problems with *Jinken,*" in which he put forth his own allegorical theory on the origin of the term *jinken* and calls for the abolition (or at least the modification) of the criminalization of slander against bureaucrats since, according to him, the charge violates the freedom of speech (*genron no jiyū*).[23] Nagashima claims that "if one asks what the greatest problem the *kokumin* face right now, it is the problem of *jinken* that concerns the rights and freedom of the *kokumin* (*kokumin no kenri to jiyū ni kansuru jinken mondai naru mono*)." Nagashima then offers a narrative on what appears to be the Popular Rights Movement and the Meiji government's reaction to it:

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[21] See: Uzawa, F., 鵜澤總明, *Shunjū ronshū*. 春秋論集 Tōkyō: Shunjūsha.1916.

[22] For example, see: *〔ボアソナード〕再閲民法草案　財産編，物権之部人権之部（一）*, National Diet Library of Japan. Tokyo, Japan. https://id.ndl.go.jp/digimeta/1367386

[23] 長島鷲太郎「刑法改正ト人權問題」『日本弁護士協会録事』 (10) 1898-05-28. p.39～47. https://id.ndl.go.jp/digimeta/11029508

> Around the fourteenth year of Meiji [1881], concepts that came from direct translated such as freedom (*jiyū*) and rights (*kenri*) were injected into the brains of our *kokumin*… like starved wolves that are suddenly given food, our *kokumin* were greatly agitated by these novel conjectures and flooded the gate of the Grand Council of the State (*dajōkan*), shouting slogans like "Give us freedom! Give us rights!" However, due to the influence of thoughts from the age of *kirisute gomen* (samurai's privilege of slaying commoners in the Edo period), those in the government had stubborn brains. Instead of properly responding to these requests that were suddenly thrown at them, they had reactional thoughts welling up in their brains and issued draconian laws [to suppress the people].[24]

Nagashima concedes that such laws restricting assembly, reportage, and publication was to some extent understandable because the people (*kokumin*) was overly excited (*kyōnetsu*) about these new concepts, but now that the *kokumin*'s thoughts are cooled down and their understanding of freedom and rights have truly deepened (*shinkoku jiyū kenri no kannen hattatsu no keikō wo arawashi*), such laws designed to suppress people's freedom of speech should be abolished, or the state should at least allow people to defend such freedoms in court if they are charged using these laws. However, Nagashima also seems pessimistic about the possibility of change as he laments in the article that people are too indifferent towards "the problem of *jinken* that has the greatest bearing on the freedom of speech [*genron no jiyū ni saidai kankei wo yusuru jinken mondai*]."[25]

Nagashima's article was the first one in the journal that contains the term *jinken,* and from it we can get a sense of how the term was deduced. As the 1951 roundtable suggests, the term *jinken* was indeed associated with the Popular Rights Movement and at least in the same complex as terms like *minken*, *jiyū*, and more broadly, *kenri.* What exactly is the relationship among these concepts then? Nagashima offers his own understanding in his article. His narrative goes like this: as the newly imported western concepts of freedom and rights prompted the

[24] Ibid. 39-40.
[25] Ibid. 47.

Popular Rights Movement, the Meiji bureaucrats (*seifu tōkyoku no mono*) suppressed the movement because of their feudal attitude (*kiri sute gomen jidai no shisō wo motte*). This language is not uniquely Nagashima's: as we will see, this kind of "backward" suppression by the state (not the nation) against the *kokumin*, either through draconian laws or police violence, was the very definition of *jinken jūrin.* In other words, *jinken* was more than a mere stand-in for the term *minken*, but was negatively defined by the suppression of the *jiyū* of *kokumin*, most exemplified by what happened to the Popular Rights Movement. In short, "feudal," uncivilized, and thus backward state oppression that violated and suppressed the fledging of the *jiyū* of *kokumin* (a crucial part of national progress) came to be seen as *jinken jūrin*, and this definition in turn set the course for the usage of *jinken* for legal professionals. In this sense, the concept of *jinken* is a form of modernization and nation-building discourse that was grasped negatively (when *jinken* was violated by something that hindered the progress of the nation) instead of positively (such as numerating what *jinken* consisted, which was sometimes the case for *minken*).

This then leads to another of *jinken*'s connection to the Popular Rights Movement, which is its coupling with the concept of *kokumin*, a term that played a great role in the movement. As cited above, Inoue Kyōko points out that the term *kokumin* was slipped into the new postwar Japanese Constitution to translate the American concept of "people" by conservative politicians in order to maintain the sense that Japan's "national body (*kokutai*)" had not changed. Inoue treats *kokumin* as a conservative and nationalist concept, and she is indeed correct for the context of the early postwar. However, during the Popular Rights Movement, the term *kokumin* was much more fraught and complex. Historian Hyōdō Hiromi argues that, in the 1870s, *kokumin* was mobilized by liberal thinkers to counter the term *shinmin* ("subject" vis-à-vis the emperor) put forth by the new Meiji state (and pro-state, usually German-school affiliated thinkers). It was

a discourse of anti-authoritarian constitutionalism that emphasized individual rights and freedom vis-à-vis the state.[26] However, being anti-state did not make proponents of *kokumin* in the movement anti-nationalist. According to Hyōdō, "the establishment of people's rights" (*minken no kakuritu*) and "the expansion of national rights" (*kokken no shinchō*) were two sides of the same coin for the Popular Rights Movement, and the frustration with the failure of the former goal did channel many movement participants' energy from engaging in individualist rights-talk and fighting the political elites for popular rights to celebrating the abolition of unequal treaties and later cheering for Japan's military victories in the Sino- and Russo-Japanese wars.[27] The term *kokumin,* as well as its dialectic relationship with the "state" (not the "nation"), captures the duality of the demands of the Popular Rights Movement: on one hand, it grounded itself in a liberal modernization theory that pits itself against the authoritarian and thus backward state and the privileged bureaucratic class (never referred to as *kuni* and rarely *kokka,* but usually as *kokusei-sha* or *kanken,* in other words the "bureaucracy"); on the other hand, it also firmly presupposed an imagined community, namely the Japanese nation under the Japanese emperor (the national-politic epitomized by the Meiji constitution[28]) that contained these struggles between the *kokumin* and the *kanken*. It was then from these struggles that the right-talks such as the *minken* and *jinken* emerged. This paradigm of the Popular Rights Movement further consolidated into what Kuga Katsunan termed *kokumin shugi* (lit. *kokumin*-ism) from the second decade of Meiji when journals *Nihon, Nihon-jin, Kokumin no Tomo* in this time period popularized this political theory of the Japanese *kokumin* and their relationships with both the

[26] Hyōdō Hiromi. *Enjirareta Kindai: "kokumin" No Shintai to Pafōmansu*. Tōkyō: Iwanami Shoten, 2005. p84
[27] Ibid. 151
[28] As Hyōdō points out, even the most leftist and radical privately drafted constitution by figure like Ueki Emori (whose version resembles the American Constitution) was firmly rooted in constitutional monarchy tradition and hails the Emperor as head of the nation. Ibid. 80.

state and the nation.[29] Through this process, the term *jinken* took on contradictory connotations. On one hand, it was derived from the French tradition of natural rights theory, which at least to some extent predicated on the concept of universalist humanity, but on the other hand (like its French origin), it was invented to articulate the relationship between the people and the state that is contained by a pre-supposed national community. In actual usage, as we will see soon, the latter connotation almost always prevailed. In this regard, the *jinken* discourse often served as an advocacy for constitutional nationalism and national progress, the ideal of which manifested in the Meiji Constitution. Under the pretext of such an advocacy, *jinken*, along with *kokumin* and the Meiji Constitution that were connected to it, was also used by the *zaiya* lawyers to criticize the backward abuse of power by the *zaichō* jurists.

So what were seen as problems of *jinken*? As illustrated in Nagashima's article, draconian laws or conducts of the state (especially the judiciary branch, which was filled with "German-style" harsh legal bureaucrats) against the individual *kokumin* were often deemed *jinken jūrin* and *jinken mondai* ("problems of *jinken*") by the *zaiya* legal professionals. More specific examples of *jinken mondai* or *jinken jūrin* were also abundantly recorded in journals of the legal circle. For example, in the May 1903 issue of the *Journal for the Lawyers' Association of Japan* (*nihon bengoshi kyōkai rokuji*), two articles dealt with court practices that were deemed *jinken jūrin.* The first one discusses the case that Urayasu local court had been prohibiting visits to detained suspects awaiting trial, which, as the author points out, is plainly illegal and a problem of *jinken jūrin* (*jinken jūrin mondai*). The second article deals with a new legislation that would put a limit on the time window for appealing a sentence to the Supreme Court (*Daishin-in*). The author states that this "completely ignores the spirit of the Law of Criminal

[29] Ibid. 118-122.

Procedure and ravages the *jinken* (*jinken wo jūrin suru*).” The Lawyer’s Association was gravely concerned by the case and later submitted memorandums to both of the houses in the Diet. However, attesting to the relatively powerlessness of the *zaiya* lawyers, these were ignored and the time limit rule was legislated in the end.[30] In sum, lawyers since late Meiji had often deemed problems regarding individual rights of the *kokumin* under the law vis-à-vis the judicial state apparatus (usually the courts, which were seen as a branch of the executive bureaucracy) as *jinken* problems, and frequently called for measures to reign in the state’s power. Before the end of WWII, this usage of the term *jinken*, and the accompanying call for legal reform, surprisingly continued until 1942, when lawyers were still able to evaluate new legislation using the concept of *jinken*.[31]

Police brutality also constituted a big percentage of what were deemed *jinken jūrin* cases. For example, the July 1903 issue of the *Journal for the Lawyers’ Association of Japan* carried an investigation report of a case of *jinken jūrin* in the Kyoto district. A man named Takeda Hikoichi was allegedly randomly targeted by the police and arrested twice for vagrancy despite having papers to prove his residence and occupation. When arrested for the first time, Takeda contested the allegation of vagrancy and requested a formal trial. Upon being bailed out, the police followed him and arrested him again, this time denying him bail and his request for a trial, sentencing him directly to ten days in jail.[32] For this incident, the Association sent a team of lawyers to investigate the factual details, based on which this investigation report was written.

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[30] 「大審院刑事部告示より生する人權蹂躙の實例頻々」『日本弁護士協会録事』(65) 1903-05-28. 78 ~ 79. p.79. https://id.ndl.go.jp/digimeta/11029566

[31] 松田眞男「最近法制の動向と人權問題」『法曹公論』46(5)(494);5 月號 [44]. 1942-05-01 .2〜7 https://id.ndl.go.jp/digimeta/11029994

[32] 「京都警察人權蹂躙問題調査報告書」『日本弁護士協会録事』 (67) 1903-07-28109 ~ 116. https://id.ndl.go.jp/digimeta/11029568

Curiously, the report contains only the factual details of the incident without any legal comments, indicating that the lawyers might have thought that the *jinken jūrin* nature of such police brutality involving illegal detainment and denial of fair trial was self-evident. This is but one case of the Association's investigation into the *jinken jūrin* by the police. Before the end of WWII, the journal regularly carried such reports, with the last one appearing as late as 1941.[33]

While *jinken* started out as a translation for western concepts, as we have seen above, it gradually acquired its unique local connotations in the Japanese legal and political circle. How did this discourse of *jinken* translate in the English language then? In 1917, lawyer Miyaoka Tsunejirō travelled to the United States and Canada to give speeches (in English) for the annual conventions of the American Bar Association and Canadian Bar Association. In Japanese records, the title of Miyaoka's speech was "the safeguard of *jinken* (*jinken no yōgō*)." Recorded in a booklet published by the Carnegie Endowment, the English title of the speech was "The Safeguard of Civil Liberties in Japan."[34] The English translation of *jinken* that persisted into the postwar years, the term "civil liberties" in the title also illuminates the orientation of the content of the speech and the connotation of the Japanese term *jinken.* In the speech, Miyaoka introduces the structure of Japanese legal system with a focus on the functioning of Japan's constitutional monarchy (in a positive light), and lists the various kinds of "liberties" and "freedom" that the Meiji Constitution and various laws guaranteed. Among these were "personal liberty," "freedom from domiciliary visit," "privacy of correspondence," "liberty of conscience (mainly about

[33] 「千葉縣銚子署人權事件」『法曹公論』(5)(483);5 月號 . 1941-05-01 .90～91

[34] The Japanese records says 1917. See: Nihon Bengoshi Rengōkai. *Nihon bengoshi enkakushi*. Tōkyō: Nihon Bengoshi Rengōkai. 1959. p.109. However, the English record says 1918. See: Miyaoka, Tsunejiro. *Growth of liberalism in Japan: two addresses delivered by Tsunejiro Miyaoka : I, before the American Bar Association at Cleveland, Ohio, on August 29, 1918. II, before the Canadian Bar Association at Montreal on September 5, 1918.* Washington, D.C: Carnegie Endowment for International Peace. Division of Intercourse and Education. 1918. p1.

religious rights)," "right of property," "safeguard against inequitable taxation," "liberty of speech, writing and publication," and "liberty of associations and of public meetings" guaranteed by laws in Japan. Among them, "personal liberty" was discussed most extensively. This emphasis reflects the priority in and the definition of *jinken* discourse in Japan at the time: at the beginning of the section, Miyaoka states that "as the most important of civil liberties, let us take up first of all the question of protection accorded to persons, that is to say the question of arrest, detention, trial and punishment." Here, we can see that the problem with the police and court was what grounded Miyaoka's (and other Japanese lawyers') understanding of *jinken*.

The conclusion of Miyaoka's speech is intriguing and reflects the nature of the *jinken* discourse in the 1910s. Here, Miyaoka shifts the discussion towards the ongoing WWI and defends Japan's legal system to dispel the myth that "Japan is misplaced in this war because it is a war of democracy against monarchy." "The more you see of us and the more you hear us speak, the more you will be convinced that we do things in Japan much in the same way as you do in this country" proclaims Miyaoka. He further points out that "when President Wilson declared that this was a war of democracy *versus* autocracy, manifestly he did not mean that this is a war of republicanism *versus* monarchism." Miyaoka then praises the United States, which would never "deny to another people the right to choose that form of government which the latter thinks is best adapted to itself," in contrast to Germany, which denies "some of the unfortunate people under her sway of the right to choose their own sovereignty." Warning against German propaganda that sought to drive a wedge between the US and Japan, Miyaoka reminds his audience the "punctilious observance of the rules of civilized warfare" by which Japan fought its two wars with Qing and Russia and "the manner in which we safeguard the civil liberty of our people at home." Although phrases like "vindication of human rights" (which Miyaoka attributes

as the reason for the American intervention in WWI) and "rights of humanity" are also used in the speech, we can see from the speech that for Miyaoka, "civil liberty" is fundamentally about the relationship between the people and the state contained by a national community the people (in his mind, the *kokumin*) determined for themselves, just like the *jinken* talk at home.

The discourse of *jinken* among the legal circle of Japan, one that builds itself on the critique of judicial and police state violence against *kokumin* and on a modernization theory of national development, continued into the 1920s. Even as Japan was sliding into the wartime regime in the 30s, articulation of *jinken* was still possible. In the judicial reform of 1934, Prosecutor-General Hayashi Raizarō pronounced that one of the goals of the reform is to "eradicate *jinken jūrin* and improve [people's] trust in the judicial branch."[35] Regarding this, the lawyers' associations (both Japan Lawyers' Association and Imperial Lawyers' Association) expressed approval in their respective statements on the judicial reform. In the "reasons" section for the *jinken* related suggestions (mainly on procedures for trial and arrest) in its statement, the Japan Lawyers' Association again reiterated its understanding of the relationship among *jinken*, constitutionalism, and (judicial and police) state power:

> When constitutionalism (*kensei*) flourishes *jinken* prospers, and when *jinken* weakens constitutionalism becomes empty. The core of constitutional rule of law lies in promoting *jinken* and lifting people's morale (*minshin*). This is the crucial factor for national progress (*koku-un yakushin*). Using state power to oppress people (*kanken kenryoku wo yō-suru minjin wo iatsu-shi*), ignoring the law, and violating *jinken*, shall not be tolerated, and it goes without saying that these runs counter to the appreciation of constitutionalism (*kokken*) and the respect of the glorious imperial edict.
>
> However, the use of criminal justice has been greatly criticized for ignoring laws, and incidents of *jinken jūrin* happened one after another. This sullies our constitutionalism (*ri-kenpō chikoku*) and shames our gracious imperial rule.[36]

[35] Nihon Bengoshi Rengōkai, 1959. 189.
[36] Ibid. 194.

The statement goes on to argue that *jinken jūrin* happened because police and judicial organs, eager for success and led astray by emotions, spare no means to force out confessions and sentences when processing suspects. The statement points out that if left unaddressed, this would make the "judicial branch lose its authority and *kokumin* with nowhere to rely on, disturbing people's life and morale." It is for this reason that the Association studied the cause of *jinken jūrin* and made specific suggestions for the judicial reform.[37] Like Miyaoka's speech abroad, the statement places great faith in Japan's constitutional monarchy system as something that, if enforced, could eradicate the problems of *jinken jūrin*.[38]

Another usage of *jinken* in prewar Japan that was relatively ephemeral but had an impact strong enough that it was able to make a great comeback in the postwar era was its application to labor and tenancy disputes by leftist lawyers. As socialist, communist and anarchist thoughts spread in the 1910s Japan and the economic downturn from the end of WWI in Japan further strained the labor and tenancy condition, organized strikes and protests significantly increased towards the end of 1910s. As the police heavily suppressed them, accusations of *jinken jūrin* soon proliferated and left-leaning lawyers formed investigation groups to scrutinize police and court conducts and helped arrested protestors fight their criminal charges. One of these cases was what was later called the Kawasaki-Mitsubishi Shipyard Dispute that transpired in Kobe in the summer of 1921. In the massive protest ensuing the dispute prompted by decreased pay, mounted

[37] Ibid.

[38] As shown here, as in many other prewar statements and articles and also the 1951 roundtable, more specific than the somewhat abstract tension of state versus people in the discourse of *jinken* was also a tension between the lawyers (namely the *zaiya* legal professionals) and judicial branch of the state (namely the *zaichō* legal professionals and the police) articulated in the constant critique by the former against the latter. This stemmed from the lack of independence of the lawyers vis-à-vis the Ministry of Justice, under the jurisdiction of which every aspect of the lawyer profession fell before the end of the war, and the lawyers' struggle to push for the integration of the whole profession by making experience as a lawyer a prerequisite for becoming a jurist (the so-called *hōsō ichigen-ka*) since the 20s. This tension would come back in the reform of Lawyer's Law in 1947.

police stabbed and killed one of the protestors, prompting public outrage. In the legal circle, this was expectedly labeled an egregious *jinken jūrin* case.[39] It also prompted the Tokyo Lawyers' Association to send a group of lawyers to Kobe to work with the local lawyers and labor groups to investigate the incident and pressure the judicial branch to bring the offending officer to law. This event turned out to be a great networking opportunity for the lawyers, not only with labor groups for which they held lectures and meetings, but also among left-leaning lawyers themselves. For instance, the Kobe incident directly prompted the establishment of Japan Lawyers Association for Freedom (JLAF, *Jiyū Hōsō-dan*), whose founders include Fuse Tatsuji (who also participated in the aforementioned 1951 roundtable). Such left-leaning lawyers groups remained active until the 1930s, investigating *jinken jūrin* cases in labor and tenancy disputes and defending charged protestors, and even fighting cases for prosecuted Koreans and calling for investigation into the massacre of Koreans and dissidents after the Great Kantō Earthquake. However, as the state suppression of the leftists became increasingly high-handed, such groups ceased activities from 1933 when many of their members, including Fuse, were disbarred.[40] As will be explored in later chapters, this leftist tradition of *jinken* activism would be revived after the war and constitute the mainstay of the postwar *jinken* discourse in Japan.

Despite the high political pressure on leftists, the rest of the bar was still able to make arguments with *jinken* surprisingly late into the war. When the National Mobilization Law was passed in 1938, the Japan Lawyer's Association issued a long statement listing how the law was unconstitutional as it infringes on *kokumin*'s individual rights.[41] When the 1941 Law of the

[39] 三輪壽壯「神戸の人權蹂躙問題」『中央法律新報』第 1 年(14) 中央法律新報社, 1921-09 . 21～22. https://id.ndl.go.jp/digimeta/1484072
[40] Jiyū Hōsōdan. *Jiyū hōsōdan monogatari*. Tōkyō: Nihonhyōronsha. 1976.p.12-42
[41] Nihon Bengoshi Rengōkai, 1959. 204

Preservation of Public Peace for National Defense passed, both the Imperial Lawyers' Association and Japan Lawyers' Association issued statements voicing their concerns for its implication for *jinken.* The Imperial Lawyer's Association sent its memorandum to every member of the committee of judicial reform in the Lower House and everyone in the Upper House. The memorandum points out the new law "effectively gives the judges the power of detention and interrogation, which would result in the loss of propriety in the working of prosecution and inspection, prompting *jinken jūrin.*"[42] The associations also issued similar memorandum criticizing and making suggestions for the 1942 Special Law for Wartime Criminal Procedures and Law of Organization of Courts. The Imperial Lawyers' Association and the Tokyo No.1 Lawyers' Association jointly issued a memorandum in which they warn that these new laws "would result in the loosened [discipline] of the judges, the abuse of prosecution and *jinken jūrin,* damaging people's trust in the justice system and people's morale (*minshin*), and thus going against the original intention [of the laws]."[43] Although the lawyer's circle kept protesting what they saw as *jinken jūrin* and investigating such cases well into the 1940s, the worsening war situation and tightening state control gradually chipped away their ability to articulate these concerns and even to continue their daily operation.

As we can see from these examples, the concept of *jinken* had been crucial to the identity of the lawyers as a profession. For the lawyers, *jinken* is more than an abstract concept of natural right theory. While this origin of the term had often be cited, the actual usage of *jinken*, especially with its coupling of the concept of *kokumin,* diverged from the talk of natural rights, not to mention the universalism vested in such concept. *Jinken* was also more specific than a

[42] Ibid. 221
[43] Ibid. 231

discourse about the people and the state, although it had usually been framed as such. Instead of "human rights," which had not become a popular term before 1945, *jinken* translated into English as "civil liberty," attesting to its usage in the Japanese language and its connection to constitutional nationalism in Japan. In addition to being a discourse, *jinken* was also something the lawyers practiced, and such practices against what they see as *jinken jūrin* constituted their mission in the national community and their autonomy vis-à-vis the judicial branch of the government, under the jurisdiction of which the registration and regulation of the lawyers fell before the end of the war. The relationship between the *zaiya* and *zaichō* legal professionals would change drastically in the postwar reforms directed by the Occupation, and we will see that the lawyers' attachment to and identification with *jinken* played a great role in the reforms. As will be shown in the next section, legal professionals' concern for the concept was especially crucial in the formation of the *Jinken* Protection Bureau in the Ministry of Justice that Oppler and his colleagues oversaw and the formation of various lawyer's groups such as the JCLU that Baldwin assisted in.

II. The Foundation of Postwar *Jinken*

After the defeat of Japan in WWII and the beginning of the Occupation period, *jinken* became the new buzzword when the liberal and leftist law practitioners, who were previously marginalized or even jailed during the war, came into the positions of influence. These people, with their evolving understanding of *jinken,* were crucial in assisting the Occupation staffs like Oppler and advisors like Baldwin in legal and bureaucratic reforms. While retaining its coupling with the term *kokumin,* the term *kihonteki jinken,* now a translation for the English term

"fundamental human rights," featured centrally in the new Constitution, which was later the principle and reference point all the legal reforms led by Oppler and his associates. How did the connotation and usage of *jinken* change in the immediate postwar? Where did the new prominence of the English term "human rights" come from, and how did it add to the *jinken* discourse in Japan? To examine these questions, we have to go back to examine the work of Baldwin and Oppler as well as their Japanese cooperators.

One of the first reforms Oppler oversaw was the overhaul of the judicial branch of the government. As aforementioned, the judiciary was part of the executive branch under the Meiji Constitution. With the April 1947 new Court Organization Law, the new Supreme Court (*Saiko Saibanjo*), an independent judicial branch of the state (as opposed to the old *Daishin-in*) was created. This, along with the new Public Procurators Office Law enacted at the same time, separated judges from procurators, who became strictly administrative officials of the Ministry of Justice. In December of the same year, the Law of Establishing the Attorney General's Office further diminished the role of the old Ministry of Justice (*Shihō-shō*), which was abolished next year in 1948. The Ministry of Justice here should be distinguished from the current Japanese Ministry of Justice or *Hōmu-shō,* which evolved from the Attorney General's Office, *Hōmu-chō,* and later *Hōmu-fu,* established in late 1940s. According to Oppler, these reforms, along with the abolition of the Home Ministry and decentralization of the police force, served to achieve the "high political concern" that is the dismantling of what he saw as the "police state" before the end of the war. In his memoir, Oppler states that

> The emphasis in the law on civil liberties gives expression to the idea that the state, besides controlling its citizens, has the obligation to protect their rights. Awareness of this obligation was shown by the initiative of the first attorney general, Suzuki Yoshiō, in establishing a

> Civil Liberties Bureau within his office. This bureau works in the field through civil liberties commissioners.[44]

Oppler remembers that when he told Suzuki of the civil liberties unit in the attorney general's office in the United States, Suzuki "enthusiastically adopted the idea and established such a bureau in his ministry." Oppler sees this as "a milestone in Japan's history of human freedom" and "emphasized…the obligation of a free democratic government to not only refrain from infringing on the people's rights, but affirmatively to safeguard and promote them."[45]

The bureau Oppler refers to here is the *Jinken Yōgo-kyoku*, or the Bureau for Safeguarding *Jinken* (hereafter *Jinken* Bureau) established in 1948. In one way, the establishment of such a bureau represented the victory of *zaiya hōsō* against their former bureaucratic counterparts in the state. With the gutting of the former judicial system and the establishment of the new Attorney General's Office, many former lawyers, including Suzuki Yoshiō himself and many founding members of the *Jinken* Bureau, came into power in such new agencies. This prompted a new framing of the state's role in the *jinken* discourse along the lines of Oppler's opinion cited above. In the first issue of the official bulletin of the *Jinken* Bureau (which is simply called *Jinken*) on September 1, 1948, Ōmuro Ryōichi, a former lawyer and the first chief of the bureau, penned an article about the role of this new bureau. Ōmuro starts the article by acknowledging that since the end of war, the effort of civil society (*minkan*) to safeguard *jinken*, evidenced by the establishment of groups like JCLU, had been impressive. However, Ōmuro notes that "in civilized modern nations, it is not enough that the freedom (*jiyū*) and *jinken* of *kokumin* are safeguarded by *minkan* vis-à-vis the state (*kokka*); the state should also safeguard them with its own hands." Citing the precedent of the civil liberties unit in the

[44] Oppler, 1976. 107.
[45] Oppler, 1976. 177.

Attorney General's office in the United States and quoting president Harry Truman's speech before NAACP on June 29 1947 that "the extension of civil rights today means, not protection of the people against the Government, but protection of the people by the Government," Ōmuro argues that this is the trend for advanced democracies (*demokurashi no senshin koku*). Japan, therefore, shall also strive for this goal, and such is the mission of the *Jinken* Bureau. Ōmuro notes that this mission is bound to be difficult given Japan's current situation, and thus the help from *minkan* (*minkan-gawa no kyōryoku*) is necessary. This assistance, Ōmuro argues, should come in the form of the *jinken yōgō* committee system, which will be discussed later.[46]

While the founders of the *Jinken* Bureau reformulated the relationship among the people, the state, and *jinken*, they retained, and even strengthened *jinken*'s coupling of *kokumin* and the constitutionalism in the discourse. This is the most reasonable as the new Constitution was also something the Occupation and the reworked Japanese government wanted to promote among the *kokumin*. The preface of the first issue of *Jinken* declares that "The *Jinken* Safeguard Bureau in the Attorney General's Office aims at promoting the value of freedom and *jinken* (*jiyū jinken*)[47] that is exalted in our new Constitution," identifying the promotion of *jinken* as a constitutionalist project. It goes on to argue that "to truly integrate the ideas of *jiyū jinken* and *kihon-teki jinken* into our thoughts and daily lives, to truly make them our own, is the historical mission (*rekishi-teki shimei*) of the Japanese *kokumin* living in this era. As long as we are alive, we shall strive for this goal." The then prime minister Ashida Hitoshi also penned an article in the issue, pointing

[46] "人権第 1 号" *人権 [1 号(1948 年 9 月)-8 号(1949 年 7-9 月)]*, National Diet Library of Japan, Modern Japanese Political History Materials Room (Kensei-shiryôshitsu), Tokyo, Japan. https://id.ndl.go.jp/bib/000007119459

[47] In this era, both the term *jiyū jinken* and *jinken* alone came to translate the English term "civil liberty," although the former term was the more exact translation However, the juxtaposition *jiyū to jinken* (namely "freedom and *jinken*") was also often used, making it hard to distinguish whether the phrase *jiyū jinken* stood for one term or a juxtaposition even given the context. This adds to, as I argue, the confusion created by the translation of *jinken* and various English terms into *jinken*-related phrases.

out that comparing to the "old Constitution," the new one guarantees much more rights and freedoms, so much more that what the present economic situation of the country permits at the moment actually lags behind these high ideals. However, Ashida is optimistic because "democratic politics (*minshū seiji*) is a universal principle of mankind" and thus will eventually be achieved in Japan, and "I [Ashida], standing side by side with you the *kokumin* (*kokumin no kaku-i*), … will strive to establish the democratic politics that guarantees freedom and *jinken.*" Attorney General Suzuki Yoshiō also penned the essay "The New Constitution and *Jinken*" for this issue. Intriguingly, Suzuki argues that "while the Meiji Constitution, as a document, also guaranteed many *kihon-teki jinken,* the mechanism to actually enforce them was lacking. With regards to this, the new Constitution represents a progress on this route and makes sufficient provisions about *jinken.*" Here, Suzuki makes a redeemingly positive assessment of the Meiji Constitution rare in this era, somewhat reminding the readers that despite the Occupation narrative that the new Constitution was a clean break from the past, the tradition of constitutionalism and *jinken* discourse was not completely lacking in Japan. Suzuki continues that "since *jinken* is the possession of every *kokumin* after all, every *kokumin* should not just sleep on it but truly treat it as one's own and strive to protect one's *jinken.*" Suzuki hopes that the *kokumin* should organize their own groups of *jinken yōgō* like their counterparts in western nations. Although JCLU was established, Japan requires more due to its special circumstances. This is why, Suzuki argues, the *Jinken* Bureau was established.[48]

In such a way, at the discursive level, the *Jinken* Bureau somewhat represents a continuation of the tradition of constitutionalism which linked concepts of *kokumin* and *jinken* in

[48] 人権第 1 号. https://id.ndl.go.jp/bib/000007119459

the prewar period. As a governmental organ, it did upset the original *zaiya* and *zaichō* antagonism vested in the term *jinken* (especially when evoked by lawyers). In addition, while prewar lawyers largely theorized and practiced *jinken* within their circle, the Bureau actively sought to speak to the *kokumin* and propagate the idea. How did they plan to reach such an audience? And what exactly were the tasks of the Bureau? In a roundtable twenty years later, the founders of the Bureau admitted that in the beginning, they had no idea what to do with this completely new organ.[49] However, in the first issue of *Jinken* the staff was still able to put together a decent structure and work plan for the bureau. The Bureau consisted of three sections (*ka*). The first section was responsible for planning and executing of *jinken* promotion projects and assisting the civilian (*minkan*) *jinken* movements. The second section focused on investigating *jinken shingai* ("*jinken* violations," a more modern term for *jinken jūrin*) cases, echoing similar functions in the lawyers' associations. The third section concerned court cases and focused on *jinken* protection of the suspects, legal aid for the poor, and court-appointed lawyers (*kokusen bengo-nin*).[50] The sources from this period indicate that the first function of the Bureau seemed to have made up the bulk of its work, with the second one trailing it and the third one coming into shape much later. From the organization of the Bureau, one can sense that apart from the mission to promote *jinken* to a broader audience, the traditional concern for *jinken,* namely that with the court and police conducts, persisted into this postwar Bureau.

An example of the promotion work conducted by the Bureau was its first essay contest held in September 1948, from which one can gauge the reach of the Bureau when it first came into existence. Named "Attorney General Essay Prize," the competition had two prompts: "our

[49] 法務省人権擁護局『人権擁護の二十年』1968. p.134-172

[50] 人権第 1 号. https://id.ndl.go.jp/bib/000007119459

national character (*waga kokumin-sei*) and the thoughts of *jiyū jinken*" and "the mission and strategy of the *jiyū jinken* movement." The prompts reflected the central concerns of the Bureau to, as illustrated in the articles above, make the presumably foreign and unfamiliar idea *jinken* truly part of Japan's national character. The Bureau was also not short of financial resources: the winner of the first prize would be awarded twenty thousand yen, second prize ten thousand each for two, and third prize five thousand for three.[51] In one month, the Bureau received 367 submissions, which included 249 for the first prompt, 9 for the second one, and 19 that are on neither the prompts.[52] The winners of the awards were all from the educated stratum: they were professors, teachers, lawyers, college students, and government workers. In addition, of all the contestants, 355 were male and only 9 were female, which the writer of the report ascribes to "the lack of concern by women (*joshi*) [of the *jinken* issue]" instead of structural gender inequality. Although the outreach of the Bureau does not seem large in the period, the Bureau would gradually expand its promotion programs, such as *jinken* consultancy stands in department stores, regular essay contests for grade school students, and publications in newspapers and magazines, radio talk shows.[53]

Perhaps more representative of the ambition of this government-led *jinken* system was the establishment of the *Jinken Yōgo* Commission system (*jinken yōgo iinkai*) in 1948. Designed to cooperate with and complement the Bureau's outreach and investigation work, the system was first envisioned by the founders of the Bureau. Ōmuro Ryōichi, the aforementioned head of the

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[51] These amounts would worth roughly ten times in today's yen value. Estimates taken from 日本銀行「昭和 40 年の 1 万円を、今のお金に換算するとどの位になりますか？」
https://www.boj.or.jp/announcements/education/oshiete/history/j12.htm/

[52] The numbers do not add up to a hundred percent but these were what the bulletin records. There were also people who submitted for more than one prompt

[53] "人権第 4 号" *人権 [1 号(1948 年 9 月)-8 号(1949 年 7-9 月)]*, National Diet Library of Japan, Modern Japanese Political History Materials Room (Kensei-shiryôshitsu), Tokyo, Japan. https://id.ndl.go.jp/bib/000007119459

Bureau, Seki Izuru, head of the first section of the Bureau, and Satō Tōsuke, the Public Procurator-General drafted the government ordinance (*seirei*) about the system when they realized the lack of personnel and subordinate institution of the Bureau. According to the ordinance, the *jinken yōgo* commissioners were to be elected or recommended by local assemblies and then commissioned directly by the Attorney General (later the Minister of Justice). The commissioners would form local committees, which would constitute a national committee, and offer *jinken* consultancy, investigate *jinken* violation cases, and promote the idea of *jinken* among their constituencies. The commissioners were (and still are) not government workers and work without pay. To kickstart the system, the founders of the Bureau asked the local chairs of lawyers' associations to become the first generation of commissioners, forming an initial national committee with 150 members. Given this initial success, the founders wrote the governmental order into law, which was enacted in 1948. A "*jinken* section" (*jinken ka*) was also put into each local branch of the Attorney General's Office (*hōmu kyoku*) to assist the work of the Bureau and the Commissioner system. Together, these three organs constituted the governmental system of the *jinken yōgo.*

The GHQ was heavily invested in this system too. The Civil Information & Education (CIE) section of the GHQ closely monitored the working of the system in local contexts, requesting the local branch officials and commissioners to file reports to local CIE offices regularly and laboriously translating news and events related to them into English. This brings us back to the film strip analyzed in the first section of the chapter, which was among the products of CIE's direction and monitoring of the system. This process also revealed the problem we saw in Oppler's speech to the Bar Association with all the dazzling terms in English: fundamental human rights, civil liberties, civil rights… Indeed, we can notice the same kind of confusion in a

speech by an unnamed but probably high-profile GHQ staff to the gathering of *jinken* commissioners at an event commemorating the anniversary of the passage of Universal Declaration of Human Rights (UDHR). In the speech, the speaker claims that "[UDHR] proves that the concept of Civil Liberties is no longer the sole possession of any nation or group of nations but has, as the title of the document indicates, becomes universal." To congratulate the triumph of "Civil Liberties" as manifested in the establishment of the commissioner system, the speaker also cites the Truman tenet that now civil liberties should not only be protected *against* the government but also *by* the government. The speaker then claims that "[the drafters of UDHR] subscribes to this enlarged meaning of Civil Rights," the protection of which is "the duty of the Civil Liberties Commissioners of Japan."[54] While the original English version seems dizzying in its word choices, this probably did not trouble the Japanese interpreter that much: after translation or interpretation, all these terms would be rendered as *jinken.* It was the reverse, namely the translation from Japanese to English, that really puzzled the CIE staffs.

In fact, it is quite evident from its documents that CIE did not even develop official translations for the *Jinken* Bureaus and Committees, let alone the concept *jinken* itself. The term was translated simultaneously as "civil liberties," (most common), "human liberties," "civil rights," "human rights," etc. The translation of *jinken* related information was also riddled with revisions, often with one translation being crossed out and substituted with another. For example, in a translation of an event report of the Osaka Legal Affairs Bureau (*hōmu kyoku*), the *jinken* section (*jinken ka*) was originally translated as "Human Liberties Section," which was then

[54] *Civil Liberties Bureau (文書名:GHQ/SCAP Records, Legal Section = 連合国最高司令官総司令部法務局文書) (課係名等:Legislation and Justice Division) (シリーズ名:Miscellaneous File, 1945-52) (ボックス番号:1527；フォルダ番号:6)*. LS 10512-10514. National Diet Library of Japan, Modern Japanese Political History Materials Room (Kensei-shiryôshitsu), Tokyo, Japan. https://id.ndl.go.jp/bib/000006684954

crossed out to be replaced by "Human Rights Section."[55] In another report, the subject title "Re information activity of civil liberties" was added with "/human rights."[56] In a translation of an *Osaka Shimbun* article on Aug. 30 1950, the *Jinken yōgo* Commissioner system was translated as "Human Liberties Service" but then "Service" was crossed out and replaced by "Council."[57] Sometimes even the English to Japanese translation of these concepts confused the staffs too. For example, when a CIE plan paper for promotion campaign titled "Plan for Civil Information Activities on Civil Liberties" was translated into Japanese, "civil liberties" was not translated as *jinken* but "*kōmin no jiyū ken*," literally "the right to freedom of citizens." Although *kihon teki jinken* as phrased in the Constitution is cited in this translation, what pairs up with *kokumin* becomes *minken*, although *jinken* is also sometimes used synonymously. All these translations indicate that even within CIE, which was just one section of the Occupation system, there was no uniform understanding of what *jinken* should correspond to in English, neither were all these English terms used to translate *jinken* familiar to both the Allied national and Japanese staff. What caused this situation?

Evidently, the end of war and advent of the Occupation, the agenda of which required the mediation of translations, opened up concept of *jinken*, creating a discourse in flux. However, the ideology behind the governmental *jinken* system did draw from prewar *jinken* discourse (despite

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[55] *Human Rights - Information Material (文書名:GHQ/SCAP Records, Civil Affairs Section = 連合国最高司令官総司令部民事局文書) (課係名等:Kinki Civil Affairs Region) (シリーズ名:Civil Affairs Subject File, 1945-51) (ボックス番号:2955；フォルダ番号:10).* CAS(A) 10747-10751. National Diet Library of Japan, Modern Japanese Political History Materials Room (Kensei-shiryôshitsu), Tokyo, Japan. https://id.ndl.go.jp/bib/000006716212. For the annotations of term usage, see page 40-52 and page 120-131 in the digital file of NDL.

[56] Ibid.

[57] *Human Rights (文書名:GHQ/SCAP Records, Civil Affairs Section = 連合国最高司令官総司令部民事局文書) (課係名等:Kinki Civil Affairs Region) (シリーズ名:Civil Affairs Subject File, 1945-51) (ボックス番号:2955；フォルダ番号:9).* CAS(A) 10747. National Diet Library of Japan, Modern Japanese Political History Materials Room (Kensei-shiryôshitsu), Tokyo, Japan. https://id.ndl.go.jp/bib/000006716211

its reformulation of the state-*kokumin* relations in *jinken*), and we shall first explore such continuities. For one thing, with the strong intent of the GHQ to "remake" Japan, the dimension of nation-building and modernization theory in the *jinken* discourse was heightened, although the narrative of modernization was rewritten. As we saw above, the early postwar *jinken* talks were usually accompanied by the promotion of the new Constitution, the explanation of which hinged on a rewriting of the history of *jinken* as an American tradition of individualist liberal democracy. For example, the aforementioned speech by the GHQ staff at the *jinken* commissioner gathering opened with Alexis de Tocqueville's assessment of America's democracy and the nation's emphasis on individual freedom, with which the speaker argues that now these same principles were being transferred to Japan and thus "no longer the sole possession of any nation or group of nations."[58] *Jinken* Bureau founders also repeatedly referred to what they saw as the American principle of *jinken* protection, namely the Truman speech about protecting *jinken* by the government (and not just against the government). In all these instances, the premise was that Japan lacked or lagged behind in terms of *jinken*, and it must now learn from traditions more advanced in this respect, such as that of America, in order to become a new member of the free world (namely, Pax Americana).

What demonstrates this feature of the new *jinken* talk most comprehensibly was a pamphlet by lawyer Furuno Shūzō commissioned by the Osaka city government to "promote the movement of *jiyū jinken.*" The pamphlet is titled "The Idea of *Jiyū Jinken*—The Dignity of Individuals (*jiyū jinken shiō—kojin no songen*)" and includes a manifesto of the Osaka branch of JCLU, of which Furuno was a member. The main body of the pamphlet starts by asking the

[58] Furuno Shūzō 古野周藏. *Jiyū jinken shisō.*自由人権思想 Hyōgo-ken Nishinomiya-shi: Tomodachi Bunkosha. 1948.

reader why the old Ministry of Interiors (*naimu-shō*) and Ministry of Justice were abolished and Ministry of Cultures was to be radically restructured. This is, the pamphlet explains, because "with the new Constitution, the idea of *jiyū jinken* will become the backbone (*hone gumi*) of Japan (*nihon-koku*)." Next in the pamphlet are multiple sections with *jiyū jinken* in their titles. However, instead of analyzing the idea, the contents of these sections consist mainly of a retelling of the American history. Without any transition or context, a section titled "The Structure and History of *Jiyū Jinken* Thoughts" starts with the sentence "to understand the thoughts of America, one must understand the idea of natural law." Throughout these sections, the pamphlet introduces the Declaration of Independence, the American Constitution, Lincoln's Gettysburg Address, the debate between Thomas Jefferson and Alexander Hamilton about human nature, and the idea of Four Freedoms by Franklin D. Roosevelt. Using America as a reference point, Furuno paints a picture of what Japan should (and is to) become under the new Constitution, which holds up the individual as the sovereign of the nation. Like his Meiji predecessors, Furuno also describes *jinken* as something "endowed by heaven" ("*jiyū jinken to ha tenpu no jinken no koto de aru*") to all human-beings (*jinrui*), pairs this talk of natural rights theory with discussion of constitutionalism: "the idea of *jiyū jinken* stems from [the idea of] natural law. The American and Japanese constitutions offer constitutional protections of the rights from natural law." Similar to the prewar narrative of *jinken* as a manifestation of national progress, the *jinken* theory here is also a teleological narrative of the realization of the natural law of *jinken* first in America and then now in Japan. In this way, *jinken* promotion is in fact a modernization project, one that transplants the advanced and more realized idea of *jinken* from America to Japan.[59]

[59] Ibid.

Furuno also uses the prewar struggle of between the *zaiya* and *zaichō* legal professional inherent in the lawyers' *jinken* activism to compose a fable in the pamphlet of a fictional conversation between a judge and a lawyer. While before the defeat, Japanese lawyers were under control of the Ministry of Justice and fought for autonomy and greater role in civil life by promoting *jinken* discourse and practicing *jinken* activism, this fable flips this struggle on its head (which reflects what actually transpired in Occupation reforms): in this fable, the lawyer, equipped with knowledge of the new Constitution about individual freedom and *jinken,* is the one educating the judge, whose mindset is still dwelling in the prewar years and has not progressed into the new era. In the dialogue, the lawyer schools the judge on the latter's own job, namely on proper treatment of the charged (innocent until proven guilty), neutrality in hearing cases and balanced admittance of evidences, the various rights of the charged, witnesses, and lawyers under the new Constitution, and numerous specific reformed court laws. Echoing the main body of the pamphlet, American history and American legal principles are often cited in the dialogue. In the end, although the judge still harbors doubt about Japan's ability to absorb "American laws," he wishes make these new reforms take their desired effects (*kōka wo ageru koto ni shitai*).[60] This almost reads like a story of vindication of the *zaiya* lawyers against the *zaichō* judges, the power dynamic between which greatly changed in the new era. For Furuno, such a vindication takes the form of a narrative of modernization, in which the lawyer becomes the teacher equipped with "new" knowledge about *jinken* (from the more advanced America) and educates the supposedly backward judge (a stand-in for the past Japan) who is stuck in the old era and needs to be dragged into the new epoch of *jinken* under the new Constitution.

[60] Ibid.

In addition to retaining and reconfiguring some traditional elements, the early postwar *jinken* discourse also acquired new dimensions brought about by the Occupation and new international development. One of them (and perhaps the most important one) was the UN-centered international human rights talk, which the Occupation also forcibly promoted. While the Occupation reforms, including the establishment of the governmental *jinken* system, were under way in Japan, representatives from across the globe were also making the to-be ground breaking document, the Universal Declaration of Human Rights (UDHR), at the newly established United Nations. When the UDHR was announced, the *jinken* system was already established, presumably without the direct influence of the new UN international human rights discourse. However, UN human rights talk was quickly incorporated into the *jinken* discourse in Japan and the English term "human rights" was directly translated as *jinken*. Such a translation was taken for granted, and not without good reasons: the term *jinken* literally transliterate as "human" and "rights," and in this way, the UN human rights talk, which was in fact an entirely different discourse,[61] was understood as the same thing as the *jinken* discourse in Japan. Seki Izuru, the first head of the *Jinken* Bureau, remembered that when the UDHR was announced, he felt that "[the UDHR] gave *Jinken* Bureau irreplaceable spiritual foundation (*seishin teki kiso*). At the time, when I read the Declaration, I thought to myself that the Bureau had found its basis (*kiban*) in there. I felt tremendously reassured and elated."[62]

[61] For UN human rights talk in the 1940s, see: Samuel Moyn, *The Last Utopia: Human Rights in History* Cambridge, MA: Belknap Press/Harvard University Press, 2010. Glenda Sluga, *Internationalism in the Age of Nationalism.* Philadelphia: University of Pennsylvania Press, 2013. Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* Princeton: Princeton University Press, 2013.

[62] 関之「人権擁護局創設当時の思い出(三)」『人権通信 : 全国人権擁護委員連合会機関誌』 1(5)(5) 全国人権擁護委員連合会 [編]. p36〜40. https://id.ndl.go.jp/digimeta/1402938

Seki did not mean that the *jinken* reform they were carrying out with the Occupation and the UN human rights talk were merely comparable or in the same vein. Rather, as we will see in other sources, UN human rights talk was literally taken to be the same thing as *jinken*, or in other words, the new "human rights" was, and was believed to have always been, *jinken* all along. This identification of human rights as *jinken* probably stemmed from the fact that the UN human rights talk also constructed the teleological linear narrative about "human rights" as continuously emerging throughout history and manifesting itself in different (predominantly western) legal and political breakthroughs. In such a paradigm, what Japan had at the time, which was *jinken*, was naturally taken to be a local manifestation of such a transhistorical and universal concept. However, in reality, this identification and translation did exactly the opposite: in Japanese, such a treatment subsumed the new UN human rights talk into the preexisting discourse of *jinken*, making the paradigm even more fraught and complicated.

III. Traits of Early Postwar *Jinken*

This trait of the early postwar *jinken* discourse can be seen, again, in the film strip analyzed above. In terms of the general structure, the film strip frequently juxtaposes the UDHR and the new Constitution, evidenced by sections like "Universal Declaration of Human Rights and Japanese Constitution" and "Japanese Constitution and Respect of Human Rights." Despite the new incorporation of UDHR by this juxtaposition, however, the form of argumentation of this *jinken* talk did not change much from its prewar iteration. Namely, *kokumin* still function as the subject and carrier of *jinken*, and furthermore, *kokumin* also became the primary target of such *jinken* propaganda. As cited above, after talking about Articles 1, 23, 25, and 26 of the UDHR, the subjects of which are "all men," "everyone," and "all people," the film strip goes on

to cite Article 13 and 14 of the new Constitution, which carry "same spirit" as the UDHR according to the strip, but the subjects of them, although translated as "people" in the English version (and thus made perfect sense to the CIE staff), are *kokumin.* At the end of the strip, the narrator reminds the audience to turn to the *jinken* protection system by the government if they have related problems, closing with the preamble passage of the Constitution that "government is the sacred trust of the *kokumin,* the authority for which is derived from the *kokumin*—the benefits of which are enjoyed by the *kokumin.*"[63] Similar to prewar *jinken* discourse, universalism to humanity, although always cited, is not really discussed, and *kokumin* is still the key and target in this material. However, by juxtaposing UDHR and the Constitution, the universalism in UN human rights talk aspect is at least promoted as an important aspect with the new *jinken* concept, and this alone, as we shall see later, opened up new possibility of using the term *jinken.*

Another feature of this new *jinken* discourse enabled by this juxtaposition is the making of *jinken* into an inventory. As we have seen in the prewar discourse, although *jinken* was widely discussed and employed in the legal circle, it was more frequently used as a principle than coupled with some specific legal clauses.[64] The juxtaposition of UDHR and the new Constitution changed this feature. Now, what constituted as *jinken shingai* or *jinken jūrin* could be clearly listed and made to correspond to specific articles in the UDHR or the Constitution. The main body of the film strip take the form of this kind of listing. In an attempt to advertise its *jinken yōgo* system by defining (by listing) *jinken,* the film strip encourages the audience to consult the

[63] *Human Rights (文書名:GHQ/SCAP Records, Civil Information and Education Section = 連合国最高司令官総司令部民間情報教育局文書) (課係名等:Chugoku-Kure-Hokkaido Region Office) (シリーズ名:Region File, 1951-Jan. 1952) (ボックス番号:5956；フォルダ番号:6).* CIE(A) 08758-08762. National Diet Library of Japan, Modern Japanese Political History Materials Room (Kensei-shiryôshitsu), Tokyo, Japan. https://id.ndl.go.jp/bib/000006769273

[64] In this way, it was actually more similar to the 1970s grassroot international human rights discourse on issues such as torture. See: Samuel Moyn, *The Last Utopia: Human Rights in History* Cambridge, MA: Belknap Press/Harvard University Press, 2010.

local *jinken* commissioner if they encounter such problems as: forced overtime labor, trafficking of women (for prostitution), forced marriage, bullying by in-laws (of women), forced donation (to local community associations), unequal pay between sexes, police brutality and torture, unfounded suspicion by police, gang violence and extortion, slander, village ostracization (*mura hachibun*), searches without warrants (by police), forced confession (by police), use of children as collaterals for loans, intimidation and harassment form bosses (*oyabun* in businesses), child labor, abuse of women in domestic labor, unlawful detention (by police), and unlawful discharge against contract. Here, we can see that the concern with police conducts, a legacy of the old *jinken* discourse, carried over into the new one. What is more obvious is the correspondences to some articles of UDHR and the new Constitution such as those concerning labor rights, equality of the two sexes, and individualism (aiming at breaking the perceived "feudal collectivism" of traditional family and community). In this way, *jinken* becomes a tool to articulate the reform agenda of the Occupation and the liberal Japanese state actors aiding it.

This remaking of the *jinken shingai,* the negative usage of *jinken,* into an inventory corresponds to the listing of positively defined *jinken.* The film strip demonstrates this when it juxtaposes specific articles of the UDHR and the new Constitution and makes claims about the equivalence of the *jinken* or "freedoms" guaranteed in the two documents. This technique of illustrating *jinken* was already used in the pamphlet by the *Jinken* Bureau discussed above. The last section of the pamphlet is literally a side-by-side comparison of UDHR and the new Constitution. The pages were separated into two sides with the upper side being UDHR and the lower side the new Constitution. Blanks were inserted in-between articles of the Constitution in order for the articles of the two documents to correspond to each other in terms of contents. However, the comparison there was treated as if self-evidentiary and the equivalence of the

jinken in the two documents taken for granted, and no commentary accompanies the two documents in that section.[65] This kind of juxtaposition is more fleshed-out in another document, a guiding information material issued by the Kinki region CIE around 1951 that took this format reads like a collage of different sources on *jinken* and was probably intended for internal use rather than promotion to the *kokumin*.[66]

This information material sheet can be seen as the convergence of all the features of this new *jinken* discourse discussed above. The file starts with a section named "basic knowledge regarding *jinken*," which cites the preamble of the UDHR, that of the new Constitution, and parts of Roosevelt's Four Freedoms speech and the Atlantic Charter. As with other materials by CIE and the *jinken* system, quotations consist of the majority of the text here, and the equivalence of *jinken* within these documents is taken for granted. The part ends with a description of the voting process of the UDHR, noting that the Soviet bloc, Saudi Arabia, and South Africa abstained. A document intended for CIE and governmental staff and thus probably allowed to be more candid and nuanced, the file goes on in the second section "the expression of the UDHR and the Constitution of Japan (*jinken sengen narabini nihon-koku kenpo no hyōgen*)" to admit that the connotation of *jinken* is more complicated than it seems. Quoting a UN pamphlet introducing the UDHR, the info material notes that the adoption of UDHR was not a simple matter but the result of painstakingly long discussions among representatives from different nations and cultures who

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[65] *Civil Liberties Bureau (文書名:GHQ/SCAP Records, Legal Section = 連合国最高司令官総司令部法務局文書) (課係名等:Legislation and Justice Division) (シリーズ名:Miscellaneous File, 1945-52) (ボックス番号:1527；フォルダ番号:7).* LS 10514-10516. National Diet Library of Japan, Modern Japanese Political History Materials Room (Kensei-shiryôshitsu), Tokyo, Japan. https://id.ndl.go.jp/bib/000006684955

[66] *Human Rights - Information Material (文書名:GHQ/SCAP Records, Civil Affairs Section = 連合国最高司令官総司令部民事局文書) (課係名等:Kinki Civil Affairs Region) (シリーズ名:Civil Affairs Subject File, 1945-51) (ボックス番号:2955；フォルダ番号:10).* CAS(A) 10747-10751. National Diet Library of Japan, Modern Japanese Political History Materials Room (Kensei-shiryôshitsu), Tokyo, Japan. https://id.ndl.go.jp/bib/000006716212

had to make many compromises with each other, and who held "different opinions regarding what the word *jinken* means." Nonetheless, the purpose of mentioning these issues is not to nuance the document or the concept of *jinken* but simply to show how the UDHR represented "a great progress in the history of humanity and should be call a blueprint for a brand-new social order."[67] The file then turns to Japan, where "one can also find difficulties of understanding and expressing *jinken*." Citing an article by Kurt Steiner, Oppler's colleague who shared a similar background (German Jewish legal scholar who fled to the US during the 1930s and recruited by GHQ), the file claims that even the term "right (*kenri*)" had been relatively new and only entered Japanese dictum in the late 1850s and "has not been used very long since it acquired clear definition amongst the general populace." [68] Therefore, regarding *jinken,* an even newer concept, even "many leaders of the movements of *jinken*" hold erroneous understanding of *jinken* and could not tell between "incidents of *jinken shingai* from incidents of violations of civil and criminal code, which have nothing to do with *jinken.*" As a result, the *jinken* system of the government shoulders the responsibility to interpret the new Constitution in order to properly define *jinken* in its work.[69]

This file seeks to tackle exactly this problem: it aims at providing a comprehensive definition of *jinken* by listing everything that falls under the concept's umbrella. After talking about the importance of *jinken* and *jinken* education and promotion, the file goes on to list twenty-five items considered to be *jinken.* Even more interesting than this inventorization of *jinken* is the structure of each section on this list. For example, the section on discrimination (*sabetsu taigū*) consisted of four parts. The first part of quotes article 2 of the UDHR, and the

[67] Ibid.
[68] Kurt Steiner. "The Revision of the Civil Code of Japan: Provisions Affecting the Family." *The Far Eastern Quarterly* 9, no. 2 (1950): 169-84. Accessed December 18, 2020. doi:10.2307/2049713.
[69] *Human Rights - Information Material.* https://id.ndl.go.jp/bib/000006716212

second article 14 of chapter 3 of the Constitution. Like in other cases, the section juxtaposes the different subjects of these clauses, namely "everyone (*hito ha subete*)" in UDHR versus "every *kokumin* (*subete no kokumin*)," but treats the *jinken* in both clauses as the same thing. What is more interesting is what follows these two parts: the third part in the section, titled "discrimination in Japan," consists of a report from the fieldwork of a *jinken* commissioner about an incident of discrimination against former *eta* people (who would be called *burakumin* in postwar era) in Gunma prefecture. The fourth part cites the apartheid system in South Africa and recent hunger strikes against it, and the fifth part, titled "prosecution of Jewish people in Communist states" cites a 1951 report of American Jewish Committee on the internment of Jewish people in the Soviet bloc "solely because of [the interned] being Jewish."

The content structure of these sections in this document perfectly epitomizes the traits of the *jinken* discourse as envisioned by the Occupation and its collaborators. First, there is the juxtaposition of UDHR and the new Constitution to demonstrate the equivalence of *jinken* in them even though the subject of *jinken* in these documents apparently differ. Through the Constitution, the emphasis on *kokumin* is still evoked here. Then, there is the inherent modernization theory, in which Japan is seen as lacking in terms of *jinken* but therefore has space for improvement, and America is here to provide positive example and lead aid its transformation. This also manifests in the parts on the *jinken shingai* of other countries less advanced in *jinken*, as seen in the example of apartheid above. On top of these, the *jinken* discourse sometimes also included the Cold War agenda of anti-communism as demonstrated in the example of Soviet prosecution of Jews above. Parts on the *jinken shingai* of communist bloc countries (and thus demonstrating that *jinken* is not compatible with communism) appears in almost every section in the information material above, even when the parts on Japan's and other

Third-world countries' *jinken* backwardness are absent. This rhetoric of anti-communism in *jinken* talk appeared quite frequently, in almost every source since 1950 cited here. Both the pamphlet by Furuno and that on the UDHR by the *Jinken* Bureau talk about the incompatibility of *jinken* with communism. In fact, the anti-communist agenda of the Occupation since the "reverse course" created a great schism in the *jinken* circle, which influenced the landscape of *jinken* discourse post-Occupation. We will return to this later.

These traits of the new early postwar *jinken* discourse created by the Occupation and its collaborators both laid the foundation of later *jinken* discourse and opened up some possibilities in using *jinken* in creative ways not intended by reformers. On one hand, the specification of *jinken* by exhaustive listing cemented the paradigm of talking about *jinken.* The format of listing not only made *jinken* something specific, concrete, and expandable, it also included the logic of order and priority in terms of *jinken* related issues. A list can always be enriched with new items, and the orders can always change too. On the other hand, the obfuscation of the bearer or the subject of *jinken,* resulted by the simultaneous retention of the *jinken-kokumin* prewar coupling and the addition of UN human rights talk dimension into the discourse, opened up different paths of possible development of the new *jinken* discourse as the latter upset the former coupling but did not eliminate it. In other words, it was still natural to assume that the subject matter was *kokumin* when *jinken* was evoked, which was the standard usage in the governmental *jinken* system in this period, but it also became theoretically possible to articulate the *jinken* of non-*kokumin,* which was still rare in this period by would become much more frequent later.

In this way, *jinken* became something both specific and unclear, rigid but full with possibilities. With this delineated form but openness to interpretation, it could also be mass marketed and even tested. In 1950, the *Jinken* Bureau commissioned a survey to test the

awareness of the concept of *jinken* as well as the existence of the governmental *jinken* system and published the results in 1951. The survey was conducted in the Kantō area with 900 respondents, half from metropole (Tokyo) area and half from rural area. Of the respondents from Tokyo, 42% had heard of the term *jinken.* For rural area the number is 17%, which makes the average 29%. Regarding the content of *jinken,* the survey asked an open-ended question about the respondents' personal experience or view on what constitutes *jinken* violation. The results are sorted into seven greater categories under which they are further categorized into three or four items.[70] Reflecting the legacy of the prewar *jinken* discourse, of all the answers by Tokyo respondents, 24% responded that "investigation of police and prosecutors" came to mind when *jinken* was evoked, and 11% the "attitude of police." These are the top two categories, and all other sub-categories account for only single digit percentages. The distribution of answers from the rural area is more even, with "those just mentioning bosses (*oyabun*)" being the top at 7%. The survey even has a test on the *jinken* consciousness (*jinken ishiki*) for the respondents, for which the Tokyo respondents scored an average of 8.5 and a median of 9 out of 12, and rural respondents 6 and 5.7. Again reflecting the prewar *jinken* talk, both groups scored highest in the section about *kanken* ("bureaucrats"). Despite the low awareness of the governmental *jinken* system (at less than 10% of all respondents), the results seem quite satisfactory for the *jinken* system staff given that in prewar years *jinken* was mainly used by law practitioners and that

[70] The categories are: those regarding state power(speech and thoughts, rights of survival and property); those related to state officials (*kanken*) (the investigation of police and prosecutors, the attitude of police, the attitude of tax officials, others); those related to the power of bosses (*bosu*) (those just mentioning bosses, landlords of farmland, landlords of housing, other social powerful such as rich people); those related to work environment (intense labor *rōdō kyōka*, pay, discrimination, others); those related to family (between husbands and wives, between parents and children, between wives and in-laws, selling children, others); those related to special social environments (military, school, others); others about abstract concepts or those related to neighbors (respect of freedom of speech, equality of males and females, between neighbors, others).
From: 国立世論調査所 編「人権擁護に関する世論調査 (世論調査報告書 ; 調査番号 A 第 26)」 国立世論調査所, 1951. https://id.ndl.go.jp/bib/000000909285

Japan had just gone through a long war and far from recovered. As we can see, in early 1950s, the old *jinken* paradigm still held sway, but people were also beginning to register new categories of *jinken* promoted by the governmental *jinken* system and the Occupation.

Such was the landscape of *jinken* discourse promoted by GHQ and the Japanese government towards the end of the Occupation period. To summarize such a landscape *jinken,* a pamphlet by the Osaka branch of the JCLU claims that "As such, in the government there is the *Jinken* Protection Bureau, and in the civil society there is this association. With both carrying the flag of *jinken* protection, we can expect the perfection of respecting *jinken* (*jinken sonchō*) in the newly born Japan."[71] Indeed, with what the work of people like Baldwin and Oppler jump-started and countless Japanese legal practitioners continued, the *jinken* landscape towards the end of the Occupation seemed quite rosy. With the end of the Occupation, however, the discourse and activism related to *jinken* underwent a huge shift. As conservative politicians rolled back some of the Occupation era reforms, many legal practitioners and activists also began to use *jinken* in ways not permissible under the Occupation. This can best be seen in an "incident" involving Eleanor Roosevelt recorded by Oppler.

In June 1952, after the signature of the Treaty of San Francisco, which marked the end of the Occupation, Eleanor Roosevelt went on an intellectual exchange mission to Japan. Seizing the chance, the JCLU and the *Jinken* Bureau organized a roundtable conference with Roosevelt, to which Oppler, still in Japan at the time, was also invited. At the time, Oppler was hesitant because his "contact with them [JCLU] grew less frequent" due to the change in political

[71] Human Rights (文書名:GHQ/SCAP Records, Civil Affairs Section = 連合国最高司令官総司令部民事局文書) (課係名等:Kinki Civil Affairs Region) (シリーズ名:Civil Affairs Subject File, 1945-51) (ボックス番号:2955 ; フォルダ番号:11), 国立国会図書館, 請求記号: CAS(A) 10751-10753.

climate, but "if the widow of a president of the United States was willing to honor the Japan Union with her presence, I [Oppler] should accept the invitation."[72] Oppler's worries materialized: after Roosevelt "gave a gracious little lecture," she was "bombarded afterwards with embarrassing questions" about McCarthyism in the United States, crimes of GIs during the Occupation and their reparation, and the dropping of atomic bombs during the war. The Japanese attendants pressed Roosevelt on how she could reconcile these with the alleged respect for *jinken* that America was known for.[73] In his memoir, Oppler praises Baldwin's effort in establishing the JCLU, which he helped set up too, but laments that the Union became "more politicized" in terms of its adherence to "pacifism and opposition to nuclear testing and rearmament" and its sympathy towards communists by the end of Occupation. The "reverse course" policies of pushing Japan for rearmament, cracking down on leftists, and reinserting purged rightists back into politics, disappointed and alienated the JCLU and gave it "an anti-American flavor," which is why he drifted away from it. Oppler thus fully expected the embarrassment at Roosevelt's roundtable, which was full of people he found similar to the "young militants" of Students for a Democratic Society in America.[74]

From the accounts of JCLU members, it seems that they had no intention to embarrass Roosevelt. Instead, JCLU apparently deemed the roundtable greatly important, devoting almost a whole issue of its bulletin to transcribe its content. However, Unno Shinkichi, chair of JCLU at the time, does admit in an article in the issue that the roundtable "could not be said to be a great success" because due to Roosevelt's position, she was not able to directly respond to some of the

[72] Oppler, 1976. 181.
[73] Oppler, 1976. See also: Jiyū Jinken Kyōkai (Japan). *Jinken shinbun shukusatsuban: sōritsu 40-shūnen kinen = 40th anniversary of Japan Civil Liberties Union.* Tōkyō: Nihon Hyōronsha. 1987. p.47-48 (22 号)
[74] Oppler,1976. 181.

questions from the Japanese side. Due to the constraint of time, there were also some lingering disagreements, especially on anti-communism in the "reverse course." Unno was especially taken aback when Roosevelt casually advised the Japanese at the roundtable to be "cautious," citing the fact that even Baldwin's work was sometimes misunderstood in America because ACLU's name smacked of communist ties. Unno states in the article that although he understands Roosevelt's advice was out of her kindness, it bespoke the horrific state of McCarthyism in America. He could not help but laments that:

> People in Europe and America went through Renaissance and realized the concept of individuality, succeeded at the Reformation and Glorious Revolution, created the Declaration of Independence and UDHR, and finally obtained freedom (*jiyū*) and *kihon-teki jinken.* In contrast, not only did the Japanese never have such experiences, even after it overcame feudalism (*hōken seido*), it became mired in ultranationalism (*chō-kokka shugi*). When Japan began to finally wake up after losing the war, it fell to the "reverse course." It is very difficult to promote this movement [of *jinken*] in Japan. I tried my best to convince Mrs. Roosevelt that the action to avoid misunderstanding [of being associated to communism] itself bears the danger of being engulfed by the "reverse course," but unfortunately, I was not able to get her attention on this point.[75]

It seems like Unno, and the other Japanese lawyers present at the roundtable who gave Roosevelt a hard time, took the project of *jinken* even more seriously than the GHQ staff, and the "reverse course" towards the end of the Occupation gave them a sense of betrayal and disappointment towards America, which, in their eyes, now lost the moral high ground on *jinken.* Now that the constraints imposed by the Occupation was gone, people like Unno, as well as people harboring opposite political agenda, were free to expand the discourse of *jinken* even more in different directions, thanks to the co-existing nationalistic and open-ended elements the Occupation era added into the discourse.

[75] Jiyū Jinken Kyōkai (Japan), 1987. 47.

Conclusion

On the surface, the advent of people like Baldwin and Oppler in Japan just seems like a stage of the teleological narrative of the expansion of the so-called global human rights regime. However, if one looks closely at the languages employed in their work in Japan, one will find the gap between the Japanese local rights-talk and the one the Occupation sought to impose and promote under the context of the late 1940s boom of UN-centered human rights. Digging deeper, one will realize the Japanese concept of *jinken* had its unique pre-war history of being employed by political theorists and lawyers as a discourse on constitutionalism and the relationship between the national citizen and the state inside the national community. It was linked to the concept of *kokumin,* the national people, and used by the lawyers to criticize the bureaucratic state (but not the nation, nor the emperor) that oppressed the national people, especially through police brutality, draconian laws, and unjust prosecution. It was this discourse that came to absorb both the American legal individualism (or at least what was packaged as it) and the UN-centered human rights talk during the Occupation. The new elements the GHQ staff and reform-minded Japanese legal practitioners injected into the new *jinken* discourse did not purge its mytho-nationalistic undertone and connection with constitutionalism and *kokumin.* At the same time, the supposed universalism in the UN human rights tradition also obfuscated the bearer or subject of *jinken,* opening the discourse up for new kinds of usage and appropriation in postwar Japan. Subsequent chapters will examine the wide array of issues *jinken* came to encompass, and how these issues also expanded the framework of *jinken* and enabled it to play a crucial role in the 1990s transnational reparation movement against Japan's colonial and wartime atrocities.

Chapter 2 The Rights-talk of the "Parastatal Complex:" War Criminals' *Jinken* and Human Rights Talk in the United Nations

In June 1966, Suzuki Saizō, the third head of the *Jinken* Protection Bureau, penned a memoir piece for the new journal of the Bureau, *Jinken Tsushin*, for its serial articles about the founding of the Bureau. Suzuki dedicated this essay to Toda Masanao, the second head of the Bureau who had passed away. Even before the establishment of the Bureau, Suzuki wrote, he and Toda came to know each other in a quite unusual situation. This was in the January of 1946, when the Ministry of the Navy had become the Second Ministry (later Bureau) of Demobilization (usually shorthanded as *Ni-fuku*), which handled the demobilization and repatriation of navy soldiers. One of the few lawyers in Tokyo at the time, Suzuki was commissioned by the Second Bureau to defend navy soldiers charged with war crimes in Guam. He took up the case, and was flown there by a plane chartered by the American military. Suzuki remembers clearly how he sweated profusely when he got off the plane because he was wearing winter clothing when he boarded. What surprised him more was his accommodation. At the first dawn of his arrival in Guam, Suzuki was shocked to realize that where he was staying at was nothing more than a stockade constructed on a plot of recently reclaimed land from (what seemed to him as) a coconut jungle. All of the Japanese involved in the war crime cases, including the charged, the witnesses, and even the lawyers were staying in the stockade. "Even for a people [the Japanese] that was just defeated, to intern even the lawyers in such condition is such an outrage!" Suzuki thought to himself at the time.[1]

[1] 鈴木才蔵「【回顧談】思い出雑記」『人権通信 : 全国人権擁護委員連合会機関誌』1(2)(2), 1966.06. p.37～43 https://id.ndl.go.jp/digimeta/1402935

Upon hearing his complaint, Toda, who was another commissioned Japanese lawyer at Gaum, told Suzuki that the stockade was actually an upgrade from the tents he was staying at, which were constantly flooded during rainy season and made another Japanese lawyer so ill that he needed to be repatriated before finishing his job. When Suzuki arrived in Guam, Toda was already on his way home. Although the two did not spend much time together, they bonded quickly, being among the few Japanese lawyers on this island that they saw as a primitive land. After returning to Tokyo, Suzuki heard that Toda became the head of the new *Jinken* Bureau, but he admits in the essay that he had no idea what the Bureau was. Then, suddenly in 1956, Suzuki's teacher, lawyer Shimada Takeo, contacted Suzuki with a special offer. It turned out that the No.1 Bar Association of Tokyo (*Tōkyō dai ichi bengoshi-kai*) had decided to recommend Suzuki as the successor to Toda as the head of the *Jinken* Bureau, and asked (but virtually ordered) him to accept the nomination. Suzuki was confused and reluctant: as a lawyer (i.e., being *zaiya hōsō*), he has no intention of becoming a bureaucrat (*zaichō*). However, Shimada told Suzuki that this post was different from others in the state bureaucracy, and that the head of the *Jinken* Bureau had always been nominated by fellow lawyers and selected from and by lawyers instead of career bureaucrats. Suzuki was convinced and took up the post.[2]

To the contemporary reader, the fact that lawyers such as Suzuki who played a great role in laying the foundation of the postwar *jinken* system (chapter 1) also helped defending Japanese war criminals and, as will be discussed, greatly sympathized with them, probably appears quite odd. Even more surprising, however, is the fact that the lawyers as a profession actually used the *jinken* discourse and apparatus built in the Occupation period to advocate for the amnesty of war criminals in the 1950s. This chapter examines the use of *jinken* on the issues of war crimes and

[2] Ibid

war criminals, especially the roles of lawyers and conservative bureaucrats in this field of discourse and activism. Picking up where the last chapter left off, this chapter explores how the lawyers used the instruments the Occupation made them build, namely those related to *jinken,* to rebel against Occupation period sanctions on Japan, such as the verdicts of the war crime trials, and how bureaucrats with military backgrounds created a "parastatal complex,"[3] a network that spans both the traditionally understood sphere of the "state" and the "society," out of their prewar connections, aided the lawyers' activism on war criminals, absorbed the knowledge of *jinken* from the lawyers, and used this foundation to learn about the UN discourse of human rights and war crimes later in the 1960s and 1970s. While this lineage of *jinken* usage gradually faded away and its legacy could hardly be found in today's *jinken* discourse in Japan, it was an important link in the development of the discourse, bridging the Occupation era remaking of *jinken* (as the anecdote above suggests) and later *jinken* usage hinging on the constitutionalist *kokumin-jinken* coupling, such as those in the Okinawa case (next chapter). Furthermore, as will be discussed at the end of the chapter, this *jinken* usage also gave the conservative bureaucrats a foundation to understand international discourse on war crimes and human rights in the UN and even possibly enabled them to anticipate the 1990s transnational reparation movement for Japan's colonial and wartime atrocities.

I. The "Parastatal Complex" of Former Military Bureaucrats: Historical Background of the Articulation of War Criminals-related Issues in *Jinken,* 1950s

[3] See: Keyao Pan. "Networking for War Criminal Amnesty: The Establishment of Japan's War Convicted Benefit Society." *Asia-Pacific Journal: Japan Focus* 18, no. 7 (April 2020): N.PAG. https://search-ebscohost-com.proxy.uchicago.edu/login.aspx?direct=true&db=poh&AN=142689651&site=eds-live&scope=site. The definition of the term will be discussed later in the chapter.

From 1999 to 2000, the Ministry of Justice transferred a large cache of documents to the National Archive of Japan. This collection, now named "Materials Related to War Crime Trials" (*sensō hanzai saiban kankei shiryō*) heralded a boom for war crime research. As the name suggests, the collection of over 6,000 booklets (many numbering hundreds of pages) contains a myriad of records of war crime trials, both Class A and Class BC.[4] However, while the collection has been widely used as a cache of primary source for studies of the trials, the specific reason and process by which such a massive number of records were collected by an organ in the government, namely the Judiciary and Legal Affairs Investigation Unit (*shihō hōsei chōsa-ka*). remains understudied.[5] The few studies on this process have all traced it back to Toyoda Kumao, a former Japanese Navy officer who was a key member of the Unit and whose 1986 memoir supplies a relatively detailed account of his work in the Unit. Before the end of the war, Toyoda was an official in the Imperial Japanese Navy and steadily rose to the rank of colonel (*taisa*). No record indicates that he served in active combat. With knowledge of foreign languages and some international law, Toyoda served in the foreign affairs organs in the Navy. When the war ended, Toyoda was an official in the Ministry of Navy, which quickly became the Second Ministry of Demobilization.[6]

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[4] For the war crime trials on the Japanese empire, Class A war crimes, or "crimes against peace," denote the crime of joint conspiracy to start and wage war. Japanese wartime leaders tried were often charged with Class A war crimes. Class B war crimes are "conventional war crimes," namely the violations of conventional international laws and customs of war. Class C war crimes, or "crimes against humanity," include things like murder, enslavement, and other inhumane act against civilians. For details, see Totani Yuma. *Justice in Asia and the Pacific Region, 1945-1952: Allied War Crimes Prosecutions*. New York: Cambridge University Press, 2015.

[5] 大江洋代, 金田敏昌「国立公文書館所蔵「戦争犯罪裁判関係資料」の形成過程と BC 級戦争裁判研究の可能性 = The Records of War Crimes Trials in the National Archives of Japan : The Formation Process of the Depository and Its Potential as a Source on BC Class War Crimes Trials」『歴史学研究 = The journal of historical studies』 (930), 19-33,39, 青木書店. 2015-04. https://ci.nii.ac.jp/naid/40020408702 For a list of Japanese literature in the recent decade that utilized the collection, see footnote 1 to 7 of the article.

[6] 豊田隈雄『戦争裁判余録』泰生社, 1986.8. The Investigation Unit (discussed later in this chapter) also conducted an oral history interview with Toyoda in 1965. See 法務省大臣官房司法法制調査部「昭和４０年１

Apart from the already hectic and cumbersome tasks of demobilizing Japanese soldiers and repatriating them back home with the help of the Allied nations who had just defeated them, the First and Second Ministries Demobilization (formerly the Ministry of Army and Ministry of Navy) also had to handle the legal defense of their soldiers charged with war crimes, both at home and abroad. Anticipating such a task, the Ministry of Army established the Committee for Investigation of POW-related Matters (*Furyo kankei chōsa iinkai*) in September of 1945 and the Seventh Section of End of War Matters Committee of the Navy (*Kaigun shūsen iinkai dainana bunkakai*) at the Ministry of Navy handled similar issues. These two organs, despite many name changes, survived the name and function change of the two ministries, the merger of the ministries into the new Agency of Demobilization (*fukuin chō*) in 1946 (when they belonged respectively to No.1 and No.2 Bureau of Demobilization, the former Army and Navy functions), and the abolition of the Agency in late 1946 and the transfer of the organs into the Ministry of Health and Welfare, where they belonged under the functions concerning repatriation affairs. This means that apart from dealing with the veterans, the two organs now had access to the affairs of civilians too. They merged in 1954 to become the Legal Affairs Investigation Office under the Bureau of Repatriation and Welfare in the Ministry of Health and Welfare, and the former army and navy officers who worked in concert on war crime issues finally got to work officially in the same organ, consolidating the resources and materials they had accumulated. This organ was finally renamed the Judiciary and Legal Affairs Investigation Unit (*shihō hōsei*

１月２５日戦争裁判法的研究・元終戦戦犯事務室長兼戦犯調査室長より裁判初期における政府の戦犯諸対策ＧＨＱとの連絡等について聴取・フィルムＮＯ．Ａ２８(録音テープ)」平１１法務 07403100, 国立公文書館. https://www.digital.archives.go.jp/file/1478873.

chōsa-ka) and transferred to the Ministry of Justice in 1955, where it continued to function until the mid-80s.[7]

The tasks of these governmental organs were by no means easy. The war crime trials meant that some soldiers (and others related to or employed by the military) would not be able to come home for a while, and thus required material assistance. In addition to that, those suspected of and charged with war crimes would need lawyers, witnesses to testify in court (many of them would also be soldiers), and interpreters, all of which required cumbersome logistics to arrange and cost money. To add to the Unit's burden, GHQ put a limit on how much the Japanese government could pay for the charged war criminals' defense, so at least officially, the defendants themselves were to pay for most of the fees related to hiring lawyers and interpreters.[8] The former army and navy officials in the ministries were not going to allow this to happen, as most of the charged, especially those with Class BC crimes (which meant that they were more likely lower level soldiers), had no means of paying for such expenses. In an inter-ministerial memo, it was decided that although the government should pay for the defense, this GHQ decree meant that, the task of "lessening the sentence and freeing as many as these pitiful people became the mission of us the *kokumin* so that the world would not know the Japanese *kokumin* as a cruel people [as described by the war crime charges]."[9]

As such, it was decided that the bulk of the legal expense for the charged war criminals was to be raised from the general populace, from the *kokumin.* But how? A fund-raising plan was described in a memo produced in May 25 1946 by the Investigation Unit in the soon to be

[7] 大江洋代, 金田敏昌, 2015. p.20.
[8] 法務省大臣官房司法法制調査部「戦争犯罪裁判弁護費用募集要領の件仰裁, 弁護経費の募金及び戦争裁判世話人会関係」平１１法務 05830100, 国立公文書館. https://www.digital.archives.go.jp/file/3320209.
[9] Ibid.

Second Bureau of Demobilization. According to the memo, by that time, the work of establishing Benefactor Societies (*sewanin-kai*) by prefecture had already begun by the local branches of the demobilization bureaus. Although the local offices were to "mediate" (*assen*) the establishment of such groups according to the memo, the members of the groups were to be capable civilians who organized willingly, and government officials currently in service were to avoid joining them. Local offices should reach out to prominent local figures who would harbor sympathy for soldiers charged with war crimes and who would be able to raise money starting from the friends and former workplaces of the charged to local businesses with connections to the military. The benefactors should have wide social connections for fund-raising, but advertising in newspaper or other media should be avoided due to "worries of possible misunderstanding." The money raised should be addressed to the benefactors (instead of the actual soldiers charged), and the locally raised fund should be saved by the local Societies at the moment, awaiting the establishment of a Central Benefactor Society (*chuō sewanin-kai*) that would collect and handle the transfer of the funds. In an endnote, the memo stressed that this fund-raising campaign should avoid as much as possible "misunderstanding," especially by the Allied force, that the government (*kanchō*) was directly interfering (*kainyū*).[10]

Such a plan was not singlehandedly designed by the Investigation Unit but was the result of a long inter-ministerial negotiation. Initially, fund-raising memos and private letters were sent within the Second Ministry of Demobilization system to collect donations from former Navy men. Seniors in the Navy like Okada Keisuke, Nomura Kichisaburō, and Yonai Mitsumasa (all

[10] 「戦犯容疑者裁判の弁護費寄付金蒐集要領に付き地方人事部との連絡に関する件」平１１法務 05830100, 国立公文書館. https://www.digital.archives.go.jp/item/1474520. Around June 1946 the two demobilization ministries were merged into the Agency of Demobilization (*Fukuin chō*), which contained the First Bureau of Demobilization (army functions) and Second Bureau of Demobilization (navy functions).

of whom also held top ministerial posts prewar) also sent out letters to raise funds. The former Army system conducted the same fund-raising campaigns. Seeing that these would not be enough, former military men in places like the Investigation Unit reached out to each other as well as other ministries like the Ministry of Finance and started negotiating a plan with wider outreach. In a May 10 1946 memo between the First and Second Ministries of Demobilization, the establishment of prefectural Benefactor Societies was proposed, for which the Ministry of Finance was able to assist with the transfer of funds. Using the prefecture as a unit was not a random choice. The memo explicitly reasoned that establishing organizations by branches of the former Navy and Army system would result in overlap in outreach and thus competition in fund-raising. Furthermore, it was already known that the Ministries of Demobilization would be abolished and absorbed into other ministries in the end, and the local branches of both the systems would become units in local governments. Managing the Societies at prefectural level was thus a long-term plan, and indeed with long term impact.[11]

This system of fund-raising and local organization not only funded the legal fees for the defense of war criminals; later, it also came to support the families of the executed or incarcerated war criminals, which later formed the popular base of this "movement for love." As early as 1949, families of the convicted war criminals had started to form local "family societies" (*Kazoku kai*) across Japan as mutual aid organization, as a lot of these families and bereft lost their bread-earners and were now subject to discrimination due to the denigration that came with being associated with war criminals. Such groups were supported by the Japanese Red Cross Society, the journal of which *Ai no Hikari* ("light of love") documented the establishment of the

[11] 「戦犯容疑者裁判の弁護費寄付金蒐集要領に付き地方人事部との連絡に関する件」. https://www.digital.archives.go.jp/item/1474520.

Tokyo Family Society.[12] In fact, the Japanese Red Cross Society had been involved with the issue of war criminals since 1946, when the Investigation Unit was devising the system to support the legal defense of soldiers charged with war crimes. As the 1946 memo of the Investigation Unit cited above laid out, funds raised by local Benefactor Society were to be funneled into a Central Benefactor Society. The establishment of such a Central Benefactor Society was entrusted to Tokugawa Yoshitomo, who began working in the Japanese Red Cross Society from 1945 and had since became an important name in the world of charity.[13] Tokugawa came from the old aristocratic family of Owari Tokugawa, one of the *gosanke* in the Edo period. His father, Tokugawa Yoshichika was a political elite and had served as the military advisor for Japanese army's successful Malaysian campaign and then for the colonial government in Malaysia. Yoshimoto assisted his father in Malaysia and worked in POW management before the defeat. After his father was purged in 1946, Yoshimoto, already having moved into the world of charity, took over the family foundation Tokugawa Reimei-kai and became an influential philanthropist. Through the issue of war criminals and people like Tokugawa Yoshimoto, whose family was connected to the old military network, the Japanese Red Cross and government bureaus like the Investigation Unit connected to form the infrastructure of the 50s popular movement.

Such robust popular base and local organizing by this "parastatal complex" paved the way for the "movement for love," a purportedly "civilian" movement pushing for the amnesty of

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[12] 中立悠紀「愛の運動戦犯受刑者助命減刑内還嘆願署名運動 : 戦犯釈放運動の実態についての一考察 = Ai no Undo : The Campaign to Petition for Clemency, Commutation, and Repatriation for Convicted War Criminals : A Study of the Movement to Release War Criminals」『同時代史研究 = The Japanese journal of contemporary history』 (8), 35-51, 2015. https://ci.nii.ac.jp/naid/40020796179.

[13] 「(募金に関連する諸問題)戦犯関係弁護費等の寄附金の受入れに関する件」平１１法務 05830100, 国立公文書館. https://www.digital.archives.go.jp/item/1474524.

war criminals after the end of the Occupation. As scholars such as Nakadate Yūki point out, it could even be said that the whole movement was organized by personnel of the Investigation Unit and the Section of Reparation and Welfare (*Hikiage engo chō*), the organ in the Ministry of Health and Welfare that came to house the Investigation Unit in the 50s. Bureaucrats in the Unit like Inoue Tadao, who was a former army man, frequently participated in the meetings of the local Family Societies, and the first headquarter of the Council for the Movement of Love (*Ai no undō kyōgi-kai*), the nominally civilian umbrella council that coordinated different organization participating in the 1950s movement, was even housed inside the Section of Reparation and Welfare building.[14] The Investigation Unit also served as the central node that brought religious organizations into the movement: demobilization agencies were tasked not only with the legal defense of the war criminals, but also with the recruitment and transportation of a large number of Japanese chaplains (*kyōkaishi*), usually Buddhist (and in a minority of cases, Christian) priests to provide pastoral care for the war criminals. The chaplains, like the lawyers, also came to sympathize with the war criminals. Due to their influence, groups like the YMCA, YWCA, Japan Buddhist Federation (*Bukkyō renmei*), and Japanese Association of Religious Organizations (*Shūkyō renmei*) were then also represented in the movement.[15] Under the umbrella of the Council, these groups, along with many other charitable and women's association (*fujin-kai*), launched the "movement for love" in 1952 that focused on raising funds to repatriate and improve the living condition of incarcerated war criminals and leveraging political pressure for the amnesty of the war criminals. The Investigation Unit, and this "parastatal complex" it created, not only organized the civic activist side of the movement.

[14] 中立, 2015.
[15] Ibid.

Perhaps more crucially, it enabled the establishment of political groups, such as the War Convicted Benefit Society (*Sensō jukei-sha sewa-kai*), that influenced not only war criminals-related legislation and diplomacy, but also political alliances in the Liberal Democratic Party and its general attitudes towards the issues of wartime history and war crimes.[16] As demonstrated by Figure 2-1 and Figure 2-2, it was the military connections that enabled the Investigation Unit's postwar networking, along with the common experiences of the war crime trials and purges, that created the Benefit Society, another integral part of this "parastatal complex."[17]

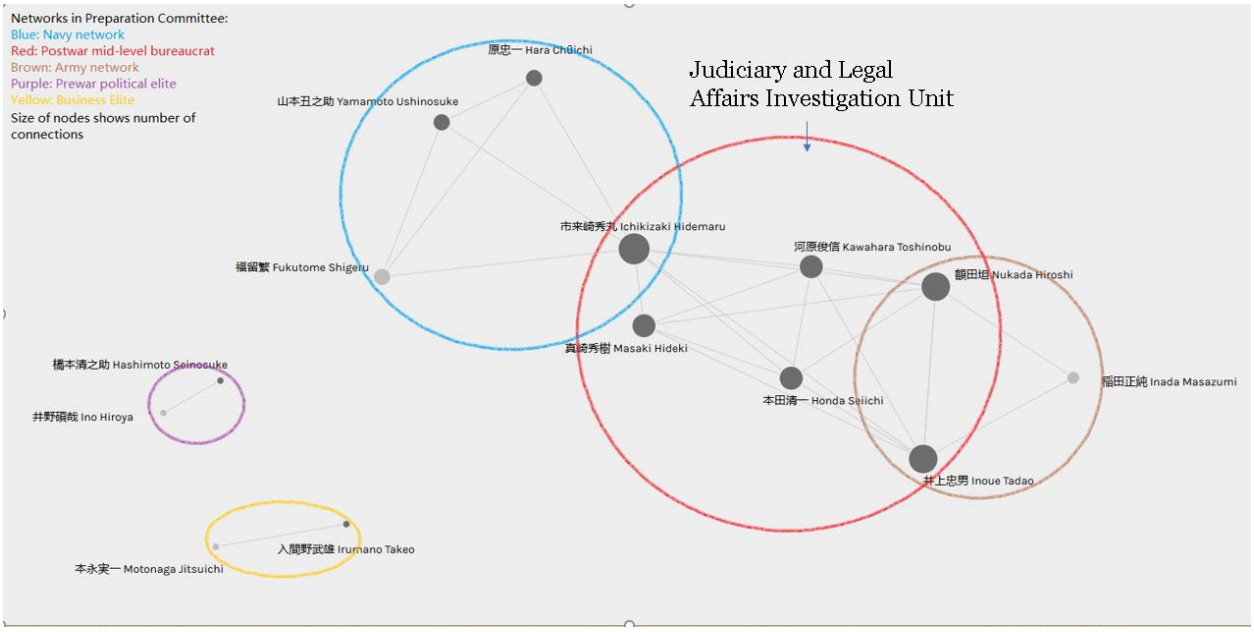

Figure 2-1: Networks in the Preparation Committee for the War Convicted Benefit Society. (As shown, the Investigation Unit played a crucial part in the establishment of the Benefit Society, using its military connections to hold the members together).

The Occupation did not entirely ignore these operations. On November 9, 1946, the local branch of the Second Bureau of Demobilization at Ibaraki prefecture sent back a report to the central office on a recent incidence with the local Occupation office. Noticing the fund-raising of

[16] Pan, 2020. See also 中立悠紀「戦争犯罪者に関する援護立法の成立 圧力団体・戦争受刑者世話会の活動を中心に」『同時代史研究』第 13 号（2020 年）p.55-74.
[17] Pan, 2020.

the prefectural Benefactor Society, the commander of the Occupation administration in Ibaraki demanded the Society show permission from GHQ for these activities. A meeting of the Occupation commander, the head of the local Society, and the chief official of the Second Bureau branch resulted from this inquiry. Official Yamagotsu explained to commander Major Lindhall (from Japanese *katagana*) that although they could not show any documents, this kind of fund-raising did receive oral approval form the GHQ. In May 1946, Official Ōta at the Central Liaison Office (*shūsen renraku chūō jimu-kyoku*) asked Major Reinhardt at the Legal Section of the GHQ whether "voluntary donation from friends and families or sympathizers" could be used to supplement the legal defense costs of charged. Major Reinhardt approved, and said that no documents needed to be produced. The Second Bureau had a similar inquiry with the Occupation and got the same reply. Major Lindhall accepted the explanation, telling the two that if such was the case then the matter "does not concern his functions directly." In the end, the major also did not issue any documents to the Society or the *ni-fuku* branch in Ibaraki.[18] This kind of seemingly sloppy treatment actually betrays the Occupation's craftiness in handling such sensitive issues: while cautious about not producing any documents that would make themselves look sympathetic the charged with war crimes, the Occupation did allow the former military functions to sidestep some official regulations in order to better prepare for the war crime trials, which should at least look just and fair. As mentioned above, this breathing space eventually allowed the former military bureaucrats to build a robust structure to support the amnesty movement for war criminals in 1950s that enabled lawyers and others to articulate the case of Japanese war

[18] 「(募金に関連する諸問題)戦犯関係弁護費等の寄附金の受入れに関する件」 https://www.digital.archives.go.jp/item/1474524.

criminals in the language of *jinken.*

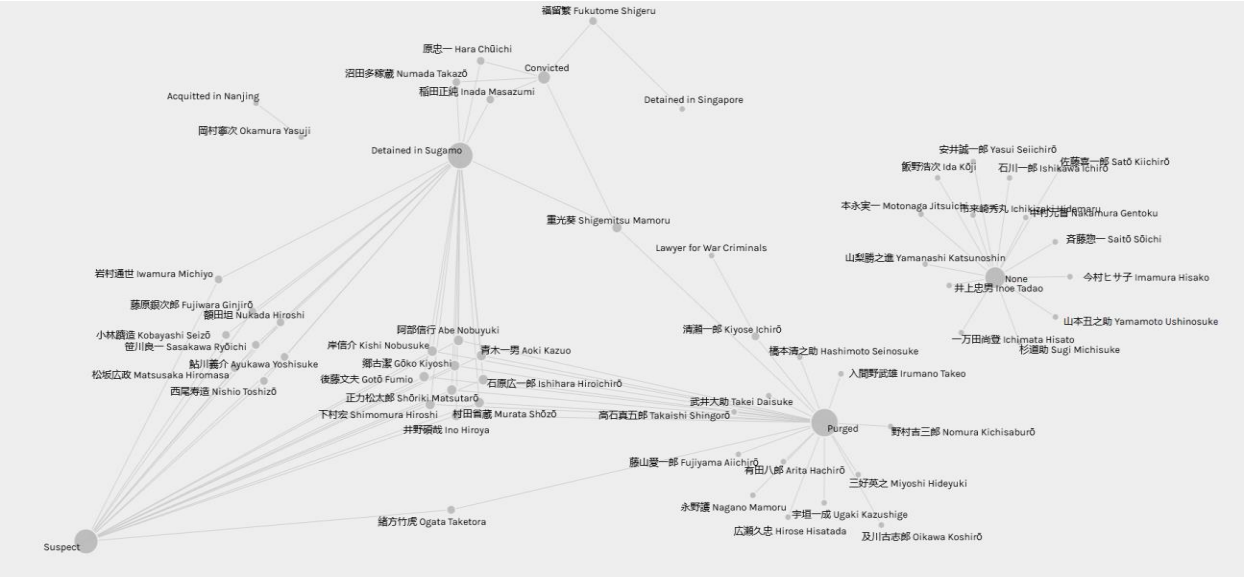

Figure 2-2: War Crimes-related Experiences of Members of the War Convicted Benefit Society (On top of the military connections, common experiences with what they saw as Occupation period "persecutions," such as being detained in the Sugamo Prison for war crime charges or being purged from public office, also bound the members of the Society together).

II. The Lawyers and the War Criminals

When Major Lindhall asked Kameyama, the head of the Ibaraki Benefactor Society, why he decided to organize the group, Kameyama responded that he always felt that "defendants of the war crime trials, especially those charged with Class C war crimes, had been sacrificed for the sake of the *kokumin* [*kokumin no tame ni gisei ni natta*]." He felt that he ought to do something for them "as a *kokumin.*"[19] Kameyama was not among alone in thinking this way. Although publicly, the term "war criminal" (*senpan*) was more associated with people charged with Class A war crimes and who were responsible for plunging Japan into war and defeat, such Class A war criminals were greatly outnumbered by Class BC war criminals who were seen by

[19] Ibid.

many as unlucky soldiers who had just followed orders. Furthermore, as Kameyama's remarks demonstrate and the inter-ministerial memo above resonates, the sense that these people went on trial as a sacrifice for the *kokumin*, the Japanese national people, were also quite strong, especially among people who were associated with the military, who numbered greatly at the time and who must have had wondered, as order-following soldiers and law-abiding *kokumin* themselves, if the same fate could have happened to them had they been not so lucky. Many of the lawyers commissioned to defend those charged with Class BC war crimes certainly harbored sympathy for them. With fund raised from local societies and businesses as well as individuals with means, the two Ministries of Demobilization also began to coordinate with the GHQ to commission lawyers for those charged with war crimes. This brings us back to our vignette in the beginning, in which lawyers like Toda and Suzuki were employed by the military bureaucracy to defend their soldiers as their first truly "postwar" task even before many of them were recruited by the Occupation to construct the new *jinken* system.

Such legal defense produced a vast number of reports filed by these lawyers to the Investigation Unit after they returned to Japan. Many were simply legalistic notes that explained the rules and processes of the different kinds of tribunals, but others take the form of diaries and journals that recorded much more personal opinions. The report by Toda and his partner lawyer Itō Noriō, mainly written by the latter, took the form of a journal. On August 19, 1946, Toda and Itō finished their paperwork at the Demobilization Bureau, the War Crimes Affairs Office at the Ministry of Foreign Affairs, and the GHQ (with the same Major Reinhardt above) and departed Japan by a cargo carrier from the Atsuki Military Base. "Looking from above at the landscape of defeat: the mountains, the rivers, the cities, the villages, the crashing waves at the shore… I could not help but viscerally feel the pain of our panting fatherland," wrote Itō. Toda and Itō

were commissioned to defend Japanese navy soldiers in Guam who were charged with mistreating and illegally executing American POWs (assault, murder, and negligence) and cannibalizing their organs (obstruction of proper burial) due to the lack of food and possibly as a morale-boosting act ordered by some officers. Itō records professionally and meticulously the legal aspects of the case, including the tribunal proceedings and how it differed from court rules in Japan, personnel involved in the case (the prosecutors, the defendants, the interpreters, and the witnesses from both sides), the content of each session and each day, the way they prepared for and defended the defendants, and even a layout of the courtroom (with a graph). He also included many anecdotes and personal opinions in this journal-style report. For example, seeing prosecutor's witnesses included several Korean soldiers, Itō writes that he had heard the rumor that most war crime trial defendants were charged because of the snitching (*mikkoku*) of Korean soldiers. However, he had no qualm entrusting his belongings and laundry to the Korean soldiers, who were responsible for menial tasks like washing clothing for court-related Japanese personnel during the trial.[20]

On August 25, 1946, Itō and Toda met with the defendant at the stockade to prepare for the defense. The pair talked to Lieutenant Hayashi Minoru, aged 24 at the time, and Lieutenant Masutani Shinichi, aged 28 then. According to the report, both were later found guilty of murder (illegal execution of Allied POWs) and sentenced to fifteen years in prison. Hayashi was "a young man with pale complexion," and Masutani seemed "earnest" to Itō. Listening to their "unfortunate (*fukō*)" stories under the coconut trees, Itō laments and wonders "why should actions of simply following orders be counted as war crimes." Itō writes that the two young man

[20] 「4、戸田、伊藤両弁護人復命書」平１１法務 06184100, 国立公文書館. https://www.digital.archives.go.jp/item/2816222.

remind him of his son, who was of similar age and was also awaiting demobilization at the time. Itō also finds the closing statement of Captain Ōkubo, who served as prosecutor's witness, on the conducts of Lieutenant Matsushita Kanehisa, charged with obstruction of proper burial because he was ordered to take out the organs of an executed POW, worthy of quotation in full in the report:

> Although I [Ōkubo] stand as a witness for the prosecutor and I testified that the actions by Matsushita recorded in the indictment are true, I could not help but feel sympathetic and sorry for him. It was certainly a cruel jest by fate that Matsushita, who is kind and pure as a child, was ordered by the despotic Commander Kurazaki to carry out what he had done, which got him charged in this court. May God bless him.[21]

The statement tightened the air in the courtroom according to Itō. To add to such an unusual statement from the prosecutor's witnesses, a navy soldier of Korean descent, who was the prosecutor's witness too, also felt the need to mention in the end that Matsushita was one of the few Japanese soldiers who were kind to the Koreans (despite also confirming the factualness of what Matsuhita was indicted of). Sending off the soldiers who had finished their task as witnesses for the trial and were to be repatriated on September 28, Itō was touched by their sense of relief and elation. Itō felt that all of them must have known that the boundary of being charged as a war criminal and serving as a witness was but "paper thin" (*kamihitoe*).[22]

Itō and Toda also diligently prepared their legal defense on why the defendants were not guilty. Itō writes in the report that because the Nuremberg principles and "SCAP rules" put forth since the end of the war (which stipulated that individuals who acted pursuant to superior order could not be absolved of responsibility under international law) had not been made into international laws, the charged should not be found guilty because of the principles of *nullum*

[21] Ibid.
[22] Ibid.

crimen sine lege (no punishment without law) and non-retroactivity. Itō also points out that Japan actually did not sign (but only rectified) the Hague and Geneva Conventions and thus the soldiers' conducts vis-à-vis the POWs could not be deemed illegal.[23] Itō certainly did not prepare these arguments cynically, as they must have seen perfectly legally cogent at the time. However, contrary to the effort and sympathy of Toda and Itō, 17 of the 18 navy soldiers at Guam charged with war crimes were found guilty of at least one charge. Four of them received death by hanging, four life sentences, and most others received jail time of over ten years. Despite this result, Itō definitely did not think of these navy soldiers as the "war criminals (*senpan*)" later portrayed by Japanese media during the high-profile Class A trials and thus almost became a slur. By including his personal feelings about the charged and statements by others to buttress them in the report, Itō certainly did not shy away from expressing his sympathy for the soldiers he defended. To Itō, what they did was simply part of the tragedy of being a soldier who had to follow orders in the context of war and deprivation, and then were tried in an international legal paradigm completely alien to them (and Itō himself too). What they were convicted of certainly did not reflect their character to Itō.

The lack of clarity in terms of what actually happened due to the contradictory stories told by witnesses, the defendant, and the indictments made by the prosecution also denied the lawyers clear moral judgements or opinions on their defendants. For example, when lawyer Hirakawa Chiaki, commissioned to defend Japanese military police officers stationed in Hong Kong, read the indictment by the prosecution, he thought that he could not do much for his defendants: the indictment, citing multiple witnesses, states that his defendants gruesomely tortured multiple Chinese suspected of espionage and collusion against the Japanese military for

[23] Ibid.

days, resulting in their deaths. These were clearly murder cases, and Hirakawa thought all his defendants would almost certainly be sentenced to death. However, when he actually talked to the defendants, all of them plainly denied most of the charges of torture in the indictment. In his report, Hirakawa implied that he decided to trust his defendants, especially after he found a lot of contradictions when cross-examining the prosecutor's witnesses. In the end, with Hirakawa's effort, although all of the four defendants were found guilty of torturing civilians, two received jail time and two received death sentences. Hirakawa laments in the report that while he was able to help two of them, he feels "sorry" (*ikan*) and truly "sympathetic" (*makoto ni kinodoku*) for the other two who would be executed. Hirakawa also notes that compared to "normal trials," the war crime trials had its very own logic. For example, he was appalled to find that that even statements by anonymous witnesses can be admitted as evidence for the prosecuting side.[24]

Itō and Hirakawa were not among the minority when they openly lament the fate of the charged soldiers in their reports. Many lawyers shared the same sentiment. This is not to say that these lawyers viewed the verdicts of the war crime trials as unjust, unfair, or illegal. Quite on the contrary, many lawyers conclude in their reports that they find the verdicts quite fair given the condition of the time. However, this also did not prevent them from commiserating with their defendants, whom they viewed as simply having been at the wrong place at the wrong time or just following orders without any knowledge of the (changing) international laws. For example, Sōmiya Shinji, the lawyer commissioned to defend navy soldiers charged with mistreating Australian and Dutch POWs at Ambon Island (present day part of Indonesia), does not shy away in his published booklet recording his defense from expressing his satisfaction with the fairness

[24]「英、香港裁判報告書」平１１法務 06023100, 国立公文書館. https://www.digital.archives.go.jp/item/2821527.

of the trial. Of the 91 defendants, only 56 were found guilty in the end. With the death count of POWs numbering over 400 and the domestic popular pressure from Australia, one can only call the trial fair, concluded Sōmiya. However, he also admits that although "as a whole, the verdicts of that trial was apt (*zentai kara miteha, shitō no hanketsu de aru*)," for each of the individuals found guilty in the trial, he could not help but feel sincerely sorry (*makotoni kinodoku*) because "they became the scapegoats/sacrifice of the case (*jiken no gisei ni natta*). This is because, as he argues throughout the booklet, that in collective and thus structural incidents like this one, some individuals inevitably are viewed as responsible and culpable beyond their actual agency. He also found that atrocities stemming from structural problems within the Japanese military or purely external factors, such as the lack of education on international laws regarding POWs, the excessive use of corporeal punishment by military superiors (which the soldiers took as normal disciplining and applied on the POWs), and the dearth of food and medical supply were understood by the indictments as their personal malice and depravity, which Sōmiya found none among in his defendants. These make Sōya conclude that his defendants who were found guilty "scarified" for the nation, which was really responsible, and thus the nation should compensate them in order to realize its newly proclaimed commitment to peace and morality.[25]

As such, a great portion of the Japanese legal professionals gained a complicated experience with the Class BC war crime trials. Some of them (and especially the elites in the profession) also participated in the Class A trials. In contrast to the individual and personal manner in which the defense of the Class BC war criminals was conducted, where lawyers focused on "saving" the individual defendants by trying to exculpate them or lessening their

[25] 「バタビヤ・アンボン・モロタイ・クーパン蘭戦争裁判参考資料弁護人報告及び通信 7」平１１法務 05999100, 国立公文書館. https://www.digital.archives.go.jp/item/2817020.

sentences (especially commuting death sentences to jail time), the Class A war crimes defense was carried out by a different logic, although the demobilization agencies, especially the Second Ministry of Demobilization (*Nifuku*), were also similarly heavily involved. During the Tokyo Trial, which lasted from April 29, 1946 to November 18, 1948, the Second Ministry held frequent meetings with the lawyers of the defendants from April 13, 1946 to September 11, 1947. While the frequency of their contact dropped to once or twice a month in the end, probably indicating the supporting work that could be done by *Nifuku* gradually dwindled, *Nifuku* contacted the lawyers for briefings and meetings almost every two days in 1946. According to the notes of the first meeting between *Nifuku* officers (including Toyoda), all identified by their rank in the notes, and the lawyers, *Nifuku* was responsible for coordinating with other government ministries (especially the Ministry of Foreign Affairs and First Ministry of Demobilization) to arrange logistics of the trials such as booking rooms and housing for meetings and research camps (*gasshuku*) of lawyers and officers, retaining contact with the detained defendants, reaching out to potential witnesses, and collecting materials of references produced by other war crime trials. The officers would also familiarize the lawyers of the "traditions and customs of the Japanese navy" to help them better prepare the defense of the charged navy generals. At the meeting, all agreed that the basic principle (*kihon hōshin*) of the defense was to "put the country (*kokka*) first and the individuals second."[26]

Although perhaps *kokka* is a euphemism for the emperor here, this principle also indicates that both *Nifuku* and the lawyers saw the nature of the Class A trial quite differently, and that the individual defendants there not at the center of the trial. While Class BC trials

[26]「二十一年四月分」『弁護人との連絡打合せその１・昭和２１年４月~同１０月』平１１法務05909100, 国立公文書館. https://www.digital.archives.go.jp/item/1489287.

elicited sympathy and the lawyers' urge to "save" the defendants, the Class A trial here was more about the more abstract notion that Japan the nation fought a war of self-defense and thus had done no wrong. In the end, although the lawyers and defendants successfully managed to not implicate emperor Hirohito, the defense at the Tokyo Trial that Japan was engaging in a war of self-defense largely failed. Similarly, the lawyers of the Class BC war crime trials, regardless of how they viewed the fairness of these trials, also were generally not able to "save" their clients, whom they often sympathized with, from becoming the "sacrifice" for the country's defeat and conducts during the war. In this way, the difference in objectives of the lawyers for the Class A trial and those for the Class BC trials did not prevent the sphere of *zaiya* legal professionals (save a minority of leftist ones), a large portion of whom, were commissioned to defend against the war crime charges, from being burdened with a sense of powerlessness in the face of a clear-cut verdict imposed by the Allied side that allowed no room for nuances that they abundantly witnessed during the trials. In other words, a common sentiment for the convicted war criminals and against the verdicts of the trials now united them. After the trials, the *zaiya* legal professionals were quickly recruited by the Occupation into another busy project: building the *jinken* system of the new postwar Japan, and action upon such sentiment was thus postponed, but not forgotten. Indeed, this postponement only added to the repertoire of the lawyers to voice this issue: after the Occupation, when the lawyers could finally advocate such issues without censorship, and when the military bureaucrats could also kick the network they built into full gear to launch the "movement for love," a "popular" movement calling for the amnesty of war criminals, these issues were articulated in none other than the language of *jinken,* as will be discussed in the next section.

III. What about the *Jinken* of War Criminals?

In 2018, Kent Sidney Gilbert, an American- born star among the Japanese right-wingers, published a book titled *The Real Nature of Japan Federation of Bar Association: Exposed by An American Lawyer* (*Beikokujin bengoshidakara minuketa Nichibenren no shōtai*).[27] This "exposé" "reveals" that the Japan Federation of Bar Association (JFBA or *Nichibenren*) has always been a "leftist" and "anti-Japan" (*hannichi*) organization created by the GHQ to suppress Japan's true patriotism with "erroneous" historical narratives, especially those about Japan's colonial and wartime conducts. Gilbert's characterization would probably seem reasonable in the eyes of Japanese historical denialist because ever since the 80s, JFBA has indeed been very vocal about Japan's past atrocities, frequently calling for the government to take responsibility for its negative wartime and colonial legacies. In this regard, contemporary Japanese would definitely put JFBA in the left-hand side of the political spectrum. This is why people like Gilbert would probably drop their jaws if they knew that this "anti-Japan" organization that was also at the forefront of the popular movement for the amnesty of Japanese war criminals in the 1950s. What made the JFBA, an exemplary product of Occupation period reform, contest the verdicts and sentences of the war crime trials, another crucial part of the Allied Occupation, right after Japan regained its "independence" in 1952?

On June 21, 1952, less than two months after the San Francisco Peace Treaty took effect (which marked the official end of the Occupation period), the JLBA issued a memorandum titled "Memorandum Regarding the Recommendation of Amnesty according to Article 11 of the Peace Treaty." Citing the spirit of practicing "tolerance and live together in peace with one another as

[27] ケント・ギルバート『米国人弁護士だから見抜けた日弁連の正体』育鵬社, 2018.11.

good neighbors" in the Preamble to the Charter of the United Nations, JLBA argues in the memorandum that "it is a principle of suing for peace (*kōwa*), and especially reconciliation (*wakai*) that as soon as peace treaties take effect, all the war criminals (*sensō hanzai nin*) shall be released." Stepping back a bit from such a strong statement, JLBA concedes that it understands the necessity of "respecting a concerned nation's interest and its people's (*kokumin*) feelings," and acknowledges the fact that the Peace Treaty Japan signed stipulates in Article 11 that Japan accepts the verdicts of the war crime trials, and that the amnesty, commutation, and parole of war criminals are subject to the decisions to Allied nations with jurisdiction over them based on the recommendation (*kankoku*) by the Japanese government. However, JLBA contended that the core of such an article is amnesty instead of the continued incarceration, and if the Japanese government hesitated in exercising its right of recommendation, it stood against the principle of the Peace Treaty, and also violatee the spirit of Article 98 of the new Constitution (on obliging with international treaties and laws Japan signed). Therefore, JLBA called for the Japanese government to swiftly exercise the right of recommendation in order to prompt the amnesty of the 981 war criminals that were still detained.[28]

This memorandum by JLBA was but a small vignette from the large Japanese popular movement calling for the amnesty of war criminals that started even before the Occupation ended. Echoing this popular movement, the Diet passed four resolutions from 1952 to 1955 calling for government actions to prompt the amnesty of war criminals. While the first two encountered some resistance from leftist parties on the grounds that such calls would go against the Potsdam Declaration and run the risk of remilitarizing Japan, the third one was jointly

[28] 「平和条約第 11 条による赦免の勧告に関する意見書」『自由と正義』 3(7) 1952.07 p.巻頭 1. https://id.ndl.go.jp/digimeta/2724224.

introduced by the Socialist Party, and the fourth one passed with unanimous votes, even from the Communist Party. Even the term used to refer to the incarcerated war criminals in the resolutions reflected the social acceptance of such a movement and the reversed public image of the war criminals. While in the first resolution they were simply referred to as "incarcerated war criminals (*senpan zaisho-sha*), the second one (passed in December 1952, only half a year after the first one) used the term "those incarcerated due to war crimes (*sensō hanzai ni yoru jyukei-sha*). The third one passed in August 1953 uses the same term, and the fourth one in July 1955 uses "those incarcerated due to the war" (*sensō jyukei-sha*). Gradually, war criminals ceased to be war criminals, and their condition of being detained came to be understood as collateral damage due to the war, or in the words of the lawyers who defended them, as "sacrifices."[29]

It was in this context and in association with all these other organizations and government organs that the JLBA issued the memorandum urging the government's action for the amnesty of war criminals. In fact, even before JLBA as an organization officially took up the mission of aiding the war criminals, individual lawyers had resorted to lawsuits and even mobilized the language of *jinken* to push for their amnesty or release. For example, Onimaru Gisai, a lawyer and also a member of the Upper House, raised the question of the continued incarceration of war criminals towards Prime Minister Yoshida Shigeru, Minister of Justice Inukai Takeru, and Minister of Foreign Affairs Okazaki Katsuo in the Diet as early as February 2nd, 1952 when the issue of constitution amendment and rearmament was being discussed

[29] See:「第 13 回国会　参議院　本会議　第 49 号　昭和 27 年 6 月 9 日」国会議事録 http://kokkai.ndl.go.jp/SENTAKU/sangiin/013/0512/01306090512049c.html ;「第 15 回国会　衆議院　本会議　第 11 号　昭和 27 年 12 月 9 日」http://kokkai.ndl.go.jp/SENTAKU/syugiin/015/0512/01512090512011c.html ;「第 16 回国会　衆議院　本会議　第 35 号　昭和 28 年 8 月 3 日」http://kokkai.ndl.go.jp/SENTAKU/syugiin/016/0512/01608030512035c.html ;「第 22 回国会　衆議院　本会議　第 43 号　昭和 30 年 7 月 19 日」http://kokkai.ndl.go.jp/SENTAKU/syugiin/022/0512/02207190512043c.html.

(another sign of change of time that came with the end of Occupation). Onimaru opened this part of his speech by proclaiming that the "war criminals (*senpan*)" were but following the orders to serve their country, and if the outcome of the war had been different, they would be treated as hero. In this sense, they were definitely not criminals according to Japanese laws.[30] While Japan had to obey orders by the Allied nations, Japan had now regained independence. As long as Japan operated under the current Constitution which established citizens' (*kokumin*) rights and obligations (*kenri gimu*), Onimaru contended, the retraining of liberty (*jiyū wo kōsoku suru*) by state power of someone who did not commit a crime under the nation's law (*kokuhō*) can be only interpreted as a violation of the clause of *jiyū jinken*[31] in Ariticle 31 of the Constitution. Onimaru then asked PM Yoshida Shigeru: did the continued incarceration of war criminals not constitute "the violation of fundamental *jiyū jinken* of individual *kokumin* (*kojin taru kokumin no kihonteki jiyū jinken wo shingai suru mono deha nakarōka*)?" Yoshida did not answer the thorny question on Constitution and the war criminals' *jinken*. Minister of Justice Inukai took it up but evaded the core issue by contending that the verdicts on the war criminals and Japan's obligation to carry them out were determined by a past "super-constitutional legal order (*chō-kenpo teki na hō-chitsujo*), and as long as this order was still in place, there was nothing unconstitutional about the continued incarceration.[32]

[30] That the war criminals were not criminals under Japanese law had already become the official view of the Ministry of Justice after the end of the Occupation. See 野田佳彦「「戦犯」に対する認識と内閣総理大臣の靖国神社参拝に関する質問主意書」平成十七年十月十七日提出 質問第二一号 https://www.shugiin.go.jp/internet/itdb_shitsumon.nsf/html/shitsumon/a163021.htm.

[31] The term can be translated as either "civil liberties" or "freedom and human/civil rights." The next chapter deals with this issue in more detail.

[32] 「第 15 回国会　参議院　本会議　第 20 号　昭和 28 年 2 月 2 日」国会議事録 https://kokkai.ndl.go.jp/#/detail?minId=101515254X02019530202

As such, this question of war criminals' *jiyū jinken* was not answered at the Diet, and Onimaru, a lawyer himself, decided to find out another way. Simultaneously when Onimaru raised these issues at the Diet, he filed a petition at the Tokyo District Court against Honda Seiichi, the warden of the Sugamo Prison (and who thus represented the institution). Onimaru's reasoning in the petition largely follows that in his Diet speech. He argues that the postwar Constitution is based on the principle of *nulla poena sine lege* or no punishment without law (*zaikei hōtei shugi*), and since the war criminals were not sentenced for crimes under Japanese laws, their detainment at Sugamo Prison constituted the incarceration of Japanese citizen (*nihon kokumin*) who did not commit crimes. This violated the right to fair trial of the Japanese *kokumin* guaranteed by the Constitution. Thus, the detainment of the war criminals did not follow correct legal procedures (*hōritsu-jō seitō na tetsudsuki ni yoranai mono*), and Onimaru demanded the immediate release of the war criminals as stipulated by the Habeas Corpus Act (*Jinshin hogo hō*).[33]

There was a double irony in this lawsuit: beyond the fact that one of the greatest achievements of Occupation by staffs like Oppler, namely the Habeas Corpus Act and the attached *jinken* mentality, were used to argue against the verdicts and sentences of the war crime trials, another Occupation era hallmark, Honda, the warden of Sugamo, was also actually among the bureaucrats most committed to pushing the amnesty and parole of war criminals, just like Toyoda and Inoue in the Investigation Unit.[34] However, he had no choice but to officially commission a lawyer, Nagano Kiyoshi, to defend the case for the Sugamo Prison. However, Honda was not going into a prolonged legal battle either: after Nagano submitted on Sugamo

[33] 「人身保護請求事件書類・巣鴨刑務所」平１１法務 01674100, 国立公文書館. https://www.digital.archives.go.jp/file/3285991.

[34] Honda later became a member of the War Convicted Benefit Society. See Pan, 2020 and 中立, 2015.

Prison's behalf some fact-related documents, such as the name list of the incarcerated war criminals, demanded by the court, the court dismissed (*kikyaku*) the petition very shortly. In the dismissal verdict, the court concurs with Onimaru, the petitioner, that granting all the war criminals amnesty after the signature of a peace treaty is "a principle of international law." However, both the Potsdam Declaration, which Japan accepted (*judaku*) and the Article 11 San Francisco Peace Treaty, which Japan signed, already clearly stipulated the treatment war criminals and that Japan would accept and cooperate with such procedures. As far as the Constitution is concerned, the court then cites the preamble[35] and Article 98[36] of the Constitution which stipulate that Japan should not be "responsible to itself alone" and has to "faithfully observe" the treaties it concluded. As a result, the court argues, it is the amnesty the war criminals, not the continued incarceration of them, that would violate the Constitution, and dismissed the case.[37]

Onimaru was not satisfied with the result and appealed to the Supreme Court (*Saikō saibanjo*). In his appeal, Onimaru spelled out what he saw as the core issue with the continued incarceration of Japanese war criminals, namely that of the *jinken* of Japanese *kokumin* guaranteed by the constitution vis-à-vis externally imposed treaties. While the Tokyo District Court verdict stresses Japan's (constitutional and international legal) obligation to abide by the treaties it concluded and the general principle of being a respectful and cooperative member of the new international order, Onimaru points out in his appeal that the while Japan did conclude

[35] The original text in the preamble is: "We believe that no nation is responsible to itself alone, but that laws of political morality are universal; and that obedience to such laws is incumbent upon all nations who would sustain their own sovereignty and justify their sovereign relationship with other nations." See 「日本国憲法 The Constitution of Japan」http://www.japaneselawtranslation.go.jp/law/detail_main?id=174.

[36] "The treaties concluded by Japan and established laws of nations shall be faithfully observed." Ibid.

[37] 「人身保護請求事件書類・巣鴨刑務所」平１１法務 01674100, 国立公文書館. https://www.digital.archives.go.jp/file/3285991.

some treaties, the force of the treaties should not be directly applicable against Japanese *kokumin* to limit their fundamental *jinken* (*kihon teki jinken*) guaranteed in the Constitution. Clause 1 of Article 98 of the Constitution also implies the principle that, Onimaru continues, the force of treaties should not supersede that of the Constitution. While the Peace Treaty stipulates that Japan would continue to carry out the verdicts war crime trials conducted by Allied nations, this should not imply that the force of the Treaty should fall directly onto individual Japanese *kokumin.* This is because treaties, despite being concluded by the cabinet and approved by the Diet, cannot change the fact that the Allied war crime trials did not satisfy the principle of *nulla poena sine lege* or no punishment without law (*zaikei hōtei shugi*), which is the constitutional principle individual Japanese *kokumin* is entitled to.

The Supreme Court dismissed Onimaru's appeal in May 1953. While its verdict does not touch on the problem of individual *kokumin*'s *jinken* vis-à-vis the treaties Japan concluded, it does provide a range of opinions (by different judges for the case) on the constitutionality of the continued incarceration of war criminals. The final verdict, namely the majority opinion for this case, consists of a convoluted reasoning for dismissing the case. It admits that the Habeas Corpus Act "follows the constitutional spirit of championing fundamental *jinken,* and… [is intended to] swiftly recover the personal freedom of *kokumin* deprived unlawfully (*futō ni ubawareteiru*)." However, article 4 of the Rules of the Habeas Corpus Act also stipulates that the Act could only be used when "it is salient (*kencho*) that the detainment or the verdict of incarceration conspicuously (*ichijirushiku*) has no authority (*kengen*) or violates legal procedures." In this case, the warden Sugamo Prison is obeying the laws resulted from the treaties Japan concluded. Therefore, this case does not satisfy the clause quoted above that the detainment saliently has no authority or violates legal procedures. While the petitioner, Onimaru, demanded a verdict on the

constitutionality of the continued incarceration of the war criminals, the majority opinion argued that this case does not even qualify as a petition using the Habeas Corpus Act, so the court does not even have to pass down a verdict on constitutionality (*iken no shuchō ni taisuru handan wo ataeru made mo naku*) and should dismiss the case as groundless right away.

Two minority opinions from judge Mano Tsuyoshi and Fujita Hachirō (out of fifteen judges) were also included in the verdict. Judge Mano agrees with the final verdict (the dismissal) for the case, but opined that by passing down such a majority opinion, the Supreme Court essentially evaded its responsibility to judge the constitutionality of cases reaching it. For him, it is clear that the continued incarceration of war criminal does not violate the Constitution, and he was dismayed that the court did not pass down a clear-cut judgment and fulfill its duty but "uses the Article 4 of Rules of the Habeas Corpus Act as a shield to hide behind." Judge Fujita Hachirō, who provided another minority opinion, concurs that the Supreme Court should be able to pass down a verdict about the constitutionality of the case, and offered his own theory on the relationship between the treaties in question and the Constitution. Like Mano, Fujita opines that if the Supreme Court could dismiss petitions based on the Habeas Corpus Act just by arguing that the detention and the abuse of authority in question is not "salient" or "conspicuous" enough, then the Habeas Corpus Act would be simply meaningless because then no one can make petitions for illegal but not necessarily "saliently" illegal detainments. However, Fujita did not think the continued incarceration of war criminals was illegal or unconstitutional. He contended that the current Constitution was drafted after Japan's acceptance of Potsdam Declaration, and thus the Constitution could not interfere with Potsdam Declaration and other terms of surrender for Japan. In other words, the international order that Japan accepted as terms of surrender, which also included the Peace Treaty signed later, was something "outside the force

of the Japanese Constitution (*kenpō no kōryoku no soto ni aru mono*)." As a result, Onimaru's argument that the enforcement of such treaties was unconstitutional was misguided (*kentō chigai*), and the Supreme Court was right in dismissing the appeal.

In the end, Onimaru's argument that the continued incarceration of war criminals constituted a violation of their *jinken* and denial of their constitutional rights remained unanswered by the verdict. As indicated by the ambivalent ruling, most of the judges did not want to take the risk (certainly both legal and political) to definitely confront the question of whether the detained war criminals were victims of *jinken shingai.* Yet, the tenuous issue of war criminals' *jinken* vis-à-vis Japan's obligation to carry out sentences of Allied war crime trials remained a difficult issue, one that some, such as Supreme Court judges and bureaucrats (like Honda) avoided but others, mainly lawyers like Onimaru, kept trying to articulate. While Onimaru fought his case largely as an individual lawyer, the JLBA as an organization also took up a similar endeavor to free the war criminals with the paradigm of *jinken.* In 1952, the Special Committee for the Release of War criminals (*Senpan shakuhō tokubetsu iinkai*) formed inside the JLBA, which commenced its first meeting on June 6, 1952, where the memorandum cited above was produced.[38] The committee was led by Hayashi Itsurō, who also chaired the Committee for the Protection of *Jinken* (*Jinken yōgo iinkai*) in the JLBA at that time and served as the lawyer for Class A war criminals in the Tokyo Trial. From 1952 to 1958, the issues of war criminals would become one of the central issues that both of these committees engaged with. Like Onimaru, lawyers in these two committees also fought a lawsuit based on the Habeas Corpus Act up to the Supreme Court. Unlike Onimaru who petitioned on behalf of all the war criminals in Sugamo Prison, the committee lawyers targeted a specific population within the war

[38] 中立, 2015. Footnote 33.

criminals, the so-called "third nationals (*dai-sankoku jin*)" war criminals, namely those of Korean and Taiwanese ethnic origins.

Throughout their detainment at Sugamo, the so-called "third-nationals (*daisankoku jin*)," a term (a derogatory slur today) used then to refer to former colonial subjects of Japan such as those of Korean and Taiwanese ethnic origins,[39] were one of the most difficult group for bureaucrats like Honda to deal with despite their efforts to have them released as soon as possible. For one thing, many of these prisoners staged sit-in protests, refusing to leave when they were scheduled to be released from Sugamo Prison. This was because unlike Japanese war criminals, who would be incorporated into the veteran pension and benefit system reinstated after 1952, they could not receive such governmental benefits because had "lost" their Japanese "nationality" after the conclusion of the Peace Treaty, which had officially separated former colonies of Japan such as Korea and Taiwan from Japan's territory. With this, Attorney General's Office (*hōmu fu*, later the Ministry of Justice *hōmu shō*), issued orders, which later became laws, that "all Koreans and Taiwanese, including those living in the interior territory (*naichi*), lose their Japanese nationality (*kokuseki*) with the conclusion of the Treaty."[40] All the laws that reinstated the veteran benefit system came with nationality clauses, which excluded anyone without Japanese nationalities. This means that when released, war criminals of Korean and Taiwanese origins would have to completely fend for themselves in a society that provided them no support system despite their wartime service to the empire. Many of them had actually never set foot on the Japanese archipelago before their incarceration, and being branded as war

[39] The "first nationals" referred to Japanese (with "interior" or *naichi* household registry), and the "second nationals" those from the Allied nations. See 内海愛子「「第三国人」ということば」『朝鮮研究』 (104), 15-21, 1971-04. 日本朝鮮研究所.
[40] 内海愛子『朝鮮人 BC 級戦犯の記録』勁草書房, 1982.6. p.228.

criminals meant that most would not be able to return to and live normally in their countries of origin.[41] Many of these early releasees were indeed driven to homelessness and even suicide as they could not find a livelihood in postwar Japan. Facing this dire prospect, the "third-nationals" frequently staged protest to press for governmental solutions to their plight.

Ironically, this problem with their nationality was picked up as the central issue around which the JLBA committee lawyers managed to build a lawsuit. When Onimaru was fighting his lawsuit, lawyers Katō Tadahisa, Takikawa Masajirō and Matsushita Masatoshi also filed a petition based on the Habeas Corpus Act on June 19, 1952 on behalf of the thirty war criminals of Korean and Taiwanese origins detained at Sugamo. Both Katō and Takikawa served as lawyers for those charged with Class A war crimes in the Tokyo Trial and were among the most vocal proponents, along with Hayashi Itsurō (chair of both committees in JLBA mentioned above in 1952) and Kiyose Ichirō (vice leader of the defense team in the Tokyo Trial), of the view that war crime trials were no more than victors' justice. Takikawa and Matsushita also both served as legal bureaucrats on the Asian continent before the defeat. In the petition, the lawyers single out a specific sentence in Article 11of the Peace Treaty on Japan's obligations towards the war criminals: "[Japan] will carry out the sentence imposed thereby upon the Japanese nationals imprisoned in Japan." According to the lawyers, this sentence meant that war criminals of Taiwanese and Korean origins, who would lose their Japanese nationality with the conclusion of the Treaty, were not included among the war criminals whose sentence Japan was obliged to carry out. The lawyers add in the petition that if the Treaty intended to have Japan continue the incarceration of everyone sentenced as Japanese, then it would have stated so clearly, replacing

[41] Many feared discrimination and prosecution if they return, and the devastation of the Korean War made the matter even harder. Ibid.

the term “Japanese nationals” with something like “persons who had Japanese nationality at the time of judgment.” Therefore, with the conclusion of the Peace Treaty, the Japanese state had neither the obligation nor the right or power to continue the imprisonment of the “third national” war criminals.[42]

Furthermore, to continue the incarceration of these war criminals would constitute a violation of the sovereignty not of Japan but of Korea (referred to as *Chōsen* in the petition although the lawyers do note that there were two governments on the peninsular) and the Republic of China (Taiwan). With the conclusion of the Peace Treaty, the lawyers argue, Japan resumed its sovereignty as a member of the international community and thus must abide by international laws and legal principles. At the same time, the conclusion of the Treaty also separated Korean and Taiwan, former colonies of the Japanese empire, from Japan’s territory, which meant that they too became sovereign nations. Under international legal principles, Japan’s sovereignty only extends to Japanese nationals, and thus even though the Treaty stipulated its obligation to carry out the sentence of war criminals, it could only do so to its own nationals. Over the nationals of Korea and Taiwan, neither of which were signatories of the Peace Treaty, Japan has no sovereignty and thus holds no power to imprison them unless they have violated Japanese domestic laws, which, the lawyer argues, is not the case here, because the war crimes they committed were simply “carrying out superior order to enforce the law or conduct normal business then.” As a result, if Japans were to continue the incarceration of Korean and Taiwanese war criminals, it would be infringing on the sovereignty of Korea and the

[42] 「朝鮮人、台湾人訴訟に関する書類綴」平１１法務 01673100, 国立公文書館. https://www.digital.archives.go.jp/file/3285990.

Republic of China, violating Article 2 of the Peace Treaty, which stipulates Japan's obligation of respecting the sovereignty of other nations.[43]

While this lawsuit shared the same goal as Onimaru's, namely to poke holes in the legal standing of the continued incarceration of war criminals using the *jinken* instruments developed during the Occupation, the lawsuit for the "third national" war criminals was in fact much more fraught and complex, both legally and politically. Onimaru grounded his petition on the constitutional and nationalistic aspect of the *jinken* discourse, namely the coupling of *jinken* and *kokumin* that persisted through the Occupation period. In his argument, the war criminals should be released because the continued incarceration, which was not decided by "fair trials" (at least according to Japanese domestic laws), infringed upon their *jinken* as Japanese *kokumin,* and thus was unconstitutional. However, the lawyers for the "third national" case could not make the same argument. This is because their entire petition hinged on the argument that these people were not Japanese *kokumin* anymore, and because of that, the Peace Treaty that stipulated the continued incarceration of "Japanese nationals" should not apply to them. In fact, if one to follow this reasoning, even the use of Habeas Corpus Act in this petition became problematic: Article 1 of the Act clearly states that "following the spirit of the protection of *kihon teki jinken* of the Constitution of Japan, the purpose of this law is to…restore the unlawful deprivation of physical liberty (*jinshin no jiyū*) of *kokumin* (*kokumin wo shite*) …" As such, the Act itself falls into the category of *jinken* instrument within the framework of the *jinken-kokumin* coupling, and its use on the "third-national" war criminals was dubious at best and a potential easy target for judges who would want to dismiss the case.[44]

[43] Ibid.
[44] 「人身保護法（昭和二十三年法律第百九十九号）」e-GOV 法令検索 https://elaws.e-gov.go.jp/document?lawid=323AC1000000199.

What exactly was the status of the "third-nationals" (and not just those who were war criminals) in postwar Japan then? What was their relationship to the concept of *jinken*? In fact, the lawyers themselves did not seem to have a comprehensive answer to these questions. Instead, it was apparent that they still retained some old ideas smacking of a colonial mindset about their clients and their homelands. In the petition, when the lawyers contend that the two Korean governments and the Republic of China were not signatories and thus not bound by the Peace Treaty, they also lament that "the interests (*keneki*) that Japan studiously built over the years in Korea and China were lost in just one day [with the conclusion of the Treaty]. While no amount of paper and ink can articulate this huge loss, confronted by the stern reality of defeat, one has no choice but to let it go peacefully." This kind of colonial sentiment also extended to their feelings towards their clients, whom they argue "should be given special treatment and released before others according to the international principles (*kokusai dōgi*)." This is because "they were conscripted in Korea and Taiwan by the Japanese military, fought with their lives for the sake of Japan, barely survived sweltering barbarian lands, but in return had to shoulder the stigma of being 'war criminals' and spend over seven years imprisoned in a foreign land, swallowing thousands of cups' worth of tears." Facing these "third-nationals" with such wretched fate, "we the Japanese could not contain the pain in our hearts." The condescending sympathy of the lawyers was more apparent when Yi Hanne (Japanese pronunciation: Ri Karai; Japanese name: Hiromura Karai), a war criminal of Korean origin, met lawyer Matsushita to talk about the lawsuit. To explain his willingness to help them, Matsushita revealed that he had been a bureaucrat (*minsei chōkan*) in colonial Taiwan and toured Korea officially because the two places were like "brothers" administratively. While many thought Japan extracted from Korea, Matsushita argued, he thought Japan did many goods for the peninsular, building dams and

leprosy sanitariums and doubling its population during the colonial period. “If Korea was left alone, its culture and population probably would not have grown.” In addition, Matsushita continued, because the two Korean secretaries who served him loyally before the defeat supported him even after he was suspected of war crimes during the Occupation, he really liked Korea, and thus decided to try his best to help the “third-national” war criminals. These words appalled Yi, who wrote in his diary that he regretted not protesting to such colonial condescension on the spot for fear of jeopardizing the lawsuit.[45]

Indeed, it is hard to parse whether the three lawyers for the “third national” war criminal lawsuit actually believed their clients deserved *jinken* as guaranteed by the postwar Constitution. Indeed, while Onimaru at least made arguments about the war criminals’ *jinken,* the whole lawsuit for the “third nationals,” while using the same legal instrument that was based on the *jinken-kokumin* discourse, seemed to have solely elided such a point. Namely, since the lawyers were essentially arguing that their clients were not *kokumin,* they also did not mention anything about their clients’ *jinken*, possibly indicating that the lawyers still considered *jinken,* at least in domestic laws, was the possession of *kokumin* and *kokumin* only. In Onimaru’s case, the Supreme Court at least felt the pressure to adjudicate on the constitutionality of the continued incarceration and whether this violated the *jinken* of war criminals (although it successfully evades making that decision), but in the “third national” case, the point of contention was solely the interpretation of Article 11 of the Peace Treaty, or more specifically, whether and when the “third nationals” counted as “Japanese nationals.” As mentioned, although the court would have been able to make the argument that the use of Habeas Corpus Act was improper for the case because, as the petitioners argued, their clients were not *kokumin* anymore, the court did not use

[45] 内海, 1982. p. 233-234.

this line of argument because they could not follow the petition's logic and admit that the "third-nationals" were not *kokumin.* Instead, the judges had to argue that these war criminals did count as *kokumin* at least for the purpose of the Peace Treaty.

Unlike Onimaru's case, this lawsuit of the "third nationals" seemed to have truly pointed out a sensitive issue regarding the interpretation of the Peace Treaty. This called for some unusual reactions from the justice system. While the three lawyers originally submitted the petition to the Tokyo District Court, the Supreme Court used its power to order the Tokyo District Court to submit the case to it directly, making the lawsuit skipping a whole level of jurisdiction. However, the Supreme Court again dismissed the case without passing judgment on the issue of constitutionality, this time with an even shorter judgment and fewer minority opinions. The majority opinion of the verdict (passed down on July 30, 1952) simply states that according to the Peace Treaty, Japan has the obligation to carry out the sentences of war criminals when: 1. the conviction of the war crimes were made by war crime trials set up by the Allied nations and passed onto Japanese nationals (*nihon kokumin*) (meaning that the convicted were Japanese nationals at the time of the trials, at least according to the interpretation of the court), and 2. the convicted were serving their sentence within Japan before the Peace Treaty took effect. The majority opinion finds the petitioners in this case all satisfied these two conditions, and thus rules that the incarceration of them were legal and done according to proper procedures.[46]

This verdict apparently did not have much substance beyond the fact that the majority of the judges differed with the lawyers regarding the interpretation of the phrase "Japanese

[46] 「朝鮮人、台湾人訴訟に関する書類綴」平１１法務 01673100, 国立公文書館. https://www.digital.archives.go.jp/file/3285990.

nationals" in the Peace Treaty. Perhaps even the judges felt similarly, and included a minority opinion by judge Kuriyama Shigeru and an elliptical justification of their decision that indicated their caution and even resignation towards this sensitive case. Judge Kuriyama agrees with the verdict to dismiss the case, but suggests that the lawyers might be able to take the case elsewhere. In the end, Japan was only responsible for carrying out the sentence of the war criminals, but the true power and jurisdiction to incarcerate them remained with the Allied nations who convicted them. If ambiguity arises regarding who falls under such power and jurisdiction, the petitioners should take such matters to the Allied nations, not to courts in Japan, which is ultimately powerless in such matters. Japan as a nation was not the only powerless party here: despite emphasizing that the judges did find the continued incarceration of "third national" war criminals legal (thus justifying the dismissal), the majority opinion also argued in the conclusion that matters regarding Japan's international obligation could only be resolved by diplomacy, and judgments by domestic courts carry authority only domestically. Therefore, it would be "inappropriate" for the Supreme Court to pass its own judgment (*dokuji no handan*) on the interpretation of treaties, and thus the court finds it appropriate to respect the executive branch's (*nihon seifu*) interpretation of the Peace Treaty.[47]

It would be reasonable for one to surmise that such a verdict was influenced by external pressure. In fact, the Japanese government initially agreed with the lawyers' interpretation of Article 11 of the Treaty, but reversed its position after being pressured by Occupation officials before the Treaty took effect.[48] In a way, the matter was indeed handled not like a lawsuit but a predetermined diplomatic matter, and this infuriated the three lawyers, who issued a statement on

[47] Ibid.
[48] 内海, 1982. p. 218-246.

August 9, 1952 to the Supreme Court (*jōshinsho*) after the verdict. In the statement, the lawyers expressed disappointment with the lack of substantial judgment on matters related to the Treaty's effect (or lack thereof) on the "third nationals," and the definition of "Japanese national" in the treaty, which were the crux of the lawsuits. The lawyers reveal that when the case was sent directly to the Supreme Court, they placed great hope on it, but were eventually frustrated by such a perfunctory verdict. As a result, they are despondent with the Supreme Court, which was supposed to be "the highest legal guard of *jinken* protection (*jinken yōgo no saikō hōei*)." The lawyer insists that if the Supreme Court truly understood the importance of independence of judicial powers and its mission as the highest temple (*dendō*) of justice, it would have disregarded external political pressure and passed down a just verdict, namely approving the petition, just like what judge Kojima Korekata did in response to the Konan Incident (Otsu Incident) in 1881.[49] Regarding this "crisis of judicial independence," the JLBA also issued statements (*yōbosho*) urging the Supreme Court to reflect (*hansei*) on this verdict, and the three lawyers stated that they had already submitted request for a retrial.[50]

The request for retrial was turned down, and as such the ways to achieve early release or amnesty of war criminals (be them of Japanese or "third national" origin) through legal aid and *jinken* instrument and argumentation were thus effectively exhausted. Even so, the movement for the amnesty of war criminals continued: governmental bureaus such as the Investigation Unit supported civilian and semi-civilian groups (as a "parastatal complex" together) to continue to pressure the Diet to pass laws favorable to war criminals and the executive branch to negotiate

[49] The incident was a failed assassination attempt on Nicholas Alexandrovich, Tsesarevich of Russia (later Emperor Nicholas II of Russia) in 1891. It was hailed as the prime example of the independence of the judiciary in Japan because the perpetrator was sentenced to life (which was seen as a more legally just sentence) against executive and diplomatic pressure for death sentence.

[50] 「朝鮮人、台湾人訴訟に関する書類綴」平１１法務 01673100, 国立公文書館. https://www.digital.archives.go.jp/file/3285990.

with Allied nations for reduced sentences and paroles, in addition to raising funds and public awareness of the "plight" of war criminals. The movement continued until 1958, when all war criminals were paroled or released. Compared to other forms of activism, the legal aid provided by individual lawyers and the JLBA seemed quite unsubstantial in this movement, especially when they were thwarted very early on. However, with the lawyers' participation in the movement, the concept of *jinken*, which was already intricately connected to the bittersweet transition into the "postwar," became intertwined with the issues of war criminals, another controversial core issue with the "postwar." Granted, the concept definitely did not become a slogan (like it did for movements in Okinawa or in relation to issues like that of *zainichi* or war reparation), and its discussion was rather limited, even inside the movement, to the legal professionals, politicians, and bureaucrats. The legal activism in the movement also only employed part of the new *jinken* discourse, namely its nationalistic import, and while these lawsuits used Habeas Corpus Act to push for the release of war criminals, *jinken* was used primarily to advance the arguments about independence and sovereignty of Japan instead of individual rights and dignity of war criminals. However, one could hardly miss the uncanny similarity of the form of this movement to that of the "human rights" revolution in the 70s led by organizations such as Amnesty International to free "prisoners of conscience:" while the argumentation and contents of the two greatly differed, both were popular movements, led by activists and legal professionals that successfully mobilized the public through grassroot campaigns, who in turn pressured politicians to respond to their cause in diplomatic actions and legislations. More strikingly, both of them also used "human rights" languages (*jinken* in Japan's case, although humanitarianism *jindō* featured more often on the popular and especially religious side of the movement) to free what were seen as political prisoners of unjust persecution.

Perhaps this just demonstrates the elasticity of the concept of *jinken.* Certainly, it is hard to argue that this usage of *jinken* laid the foundation or influenced 70s movements in Japan related to and similar to the international "human rights" movement in the west (discussed in chapter 5). It also bears little similarity to its contemporary leftist usage in "courtroom struggles" for labor rights and rights of the *zainichi* (discussed in chapter 3). However, *jinken* was indeed used very similarly for its constitutional and nationalistic import in the reversion and anti-military base movement in Okinawa (chapter 4), although its application to the issues of war criminal amnesty would probably shock anti-base activists nowadays, who are usually left-leaning in the Japanese political spectrum and are involved in or associate with advocacy for reparation and apology by the Japanese government for its past war crimes and colonial atrocities, such as the "comfort women" system. But just as these activists (many of them lawyers too) would be shocked to learn about this usage of *jinken,* legal professionals and bureaucrats involved in this 50s movement were equally shocked, and worried, when they learnt about the UN-centered international usage of (what they thought of as) *jinken,* especially its relationship to the advocacy for reparation for victims of war crimes and holding perpetrators of these war crimes accountable.

IV. The Encounter with UN Human Rights and War Crime Discourse

On June 5th, 1965, eight years after the war criminal problems had been "resolved" when all were released or paroled in 1958, the permanent vice minister (*jimu jikan*) of the Ministry of Foreign Affairs sent a request to the permanent vice minister of the Ministry of Justice, asking for "materials related to the punishment for war criminals (*sensō hanzai nin*) and persons who have committed crimes against humanity (*jindō ni taisuru tsumi wo okasita mono*)." This inquiry

was prompted by a request made by the Secretary-General of the UN to the government of Japan for such materials on May 19th of the same year. According to the UN request, the 884th meeting of the United Nations Commission on Human Rights (UNCHR, the predecessor of the United Nations Human Rights Committee today) adopted the resolution 3(XXI) "Question of Punishment of War Criminals and of Persons Who Have Committed Crimes Against Humanity" on April 9th, which requests the Secretary-General to "undertake a study of the problem raised in international law by war crimes and crimes against humanity, and by priority a study of legal procedure to ensure that no period of limitation shall apply to such crimes." The resolution also states that such problems will be discussed at the next regular session of the UNCHR "as a matter of priority." The Secretary-General was thus asking for relevant research from member states, including Japan, to submit materials regarding the issues like the punishment, statute of limitation, and extradition related to such crimes before August 31st, 1965, so that they could be used in the twenty-second session of the UNCHR.[51]

This discussion about the punishment of war criminals in the UNCHR were started by a working group led by Poland, which proposed the initial draft resolution calling for UNCHR to foreclose the legal means by which war criminals could escape punishment. At the time, many nations (especially European nations like the Federal Republic of Germany namely West Germany) had statuary limit for criminal prosecution. Especially for West Germany, the time limit was twenty years according to its 1871 penal code, and 1965 happened to be twenty years from 1945, presumably when the last batch of Nazi-era war crimes and crimes against humanity

[51] 「国連における戦犯問題（国際刑事法典草案ほかの）審議関係資料（その１）・昭和３４年」平１１法務 06743100, 国立公文書館. https://www.digital.archives.go.jp/file/3795587; 「国連における「戦争犯罪及び人道に対する罪」関係綴（その２）・昭和４１年１１月」平１１法務 06744100, 国立公文書館. https://www.digital.archives.go.jp/file/3795939.

were committed. Poland, one of the countries that suffered the most from such crimes, hoped that passing a resolution in UNCHR that removes the statuary limit of prosecution of such crimes would most efficiently close this legal loophole for most countries. This is because by having the General Assembly adopt such a resolution, countries that ratify it would have to immediately amend domestic laws to comply. Although the language of the resolution seems to encompass war crimes and crimes against humanity in general, discussion leading up to it frequently paraphrase these terms with words such as "Hitlerite crimes" and refer exclusively to crimes of the Nazis. In a word, the initial intent for the drafting of this resolution was to make sure no Nazi crimes escape punishment and did not concern war crimes by imperial Japan that much, if at all.

However, this issue was in fact much more sensitive for Japanese politicians and bureaucrats. While the inter-ministerial communication from the Ministry of Foreign Affairs to the Ministry of Justice requesting relevant studies and materials contain but the plainest language, bureaucrats on both sides were crystal clear about the implication and political sensitivity of the issue: if the resolution passes and Japan has to ratify it in the end, it would open up the possibility to prosecute additional Japanese war crimes and crimes against humanity, a dreadful prospect for many political and business elites in postwar Japan, who barely escaped prosecution due to changes in Occupation policies and had since regained power. Perhaps most terrifyingly, even the emperor could be prosecuted. On the other hand, if the resolution passes but Japan refuses to ratify, Japan would then be seen as condoning Nazi crimes, and other diplomatic consequences might ensue. In a word, a resolution that originally had little to do with Japan suddenly became a grave political and diplomatic concern for it.[52]

[52] 「国際連合関係綴（人権委員会等関係その１）・昭和４０年６月から昭和４３年２月まで」平１１法務 06757100, 国立公文書館. https://www.digital.archives.go.jp/file/3354921.

Fortunately for the Ministry of Justice, the ministry did have an organ that almost exclusively studied issues related to war crimes and war criminals: the task of supplying a response to the Ministry of Foreign Affairs befell on none other than the Judiciary and Legal Affairs Investigation Unit, which, among other things, assisted with the legal defense of both Class A and Class BC war criminals and provided bureaucratic support for the popular movement and legal aid for the amnesty of Class BC war criminals. On June 23, 1946, after procuring most relevant UN documents and news article from organs in the Ministry of Foreign Affairs, the Investigation Unit convened a meeting on whether it should advise Japanese representative to ratify not only this possibly upcoming convention based on the resolution on time limit and the 1946 Convention on the Prevention and Punishment of the Crime of Genocide, on which this new resolution was partly based and which Japan was also considering to ratify.[53]

The staff in the Investigation Unit apparently held many meetings on such issues that produced a number of notes and commentaries. They generally agreed that Japan should ratify the genocide convention as they supported the "gist (*shushi*)" of it, but also immediately spotted several problems given their experiences with war crime trials. First, the phrase "conspiracy to commit genocide" in Article III that stipulates acts punishable concerned them, since the concept of "conspiracy (*kyōbō*)," a concept they did not quite legally agree with, was the central legal concept used to indict many Class A war criminals. The staffs also took note of the reservation of Philippines when ratifying the Convention which states that it cannot "sanction any situation which would subject its Head of State, who is not a ruler, to conditions less favorable than those accorded other Heads of State, whether constitutionally responsible rulers or not." Investigation

[53] 「国連における戦犯問題（国際刑事法典草案ほかの）審議関係資料（その１）・昭和３４年」平１１法務 06743100, 国立公文書館. https://www.digital.archives.go.jp/file/3795587

Unit staffs immediately sensed the implication here and jotting down notes such as "[what if a country says] 'extradite us the Emperor!' or 'extradite us [U.S. president] Truman!'? Would these be possible?" Among other international legal problems, the staffs also wondered why countries like America and the U.K. had not ratified the Convention yet and suspected Cold War politics was also at play. The staffs concluded that "more research would be required to compare the pros and cons of ratifying the Convention or not."[54]

The Investigation Unit staffs were much more troubled by the new UNCHR resolution. From the outset, they questioned the very definition of the so-called "war crimes and crimes against humanity" by UNCHR, whose draft documents used such terms without providing any "meaning or scope." They also questioned the whether it would be possible to enforce the resolution given that "evidence [of past war crimes] has vanished [with the passage of time] and thus fair trials have become impossible." Additionally, if the resolution becomes a convention, it may also contradict the principle of *nulla poena sine lege* or no punishment without law (*zaikei hōtei shugi*) in the current Japanese legal system. On top of these, what worried the staffs the most was the prospect of future prosecution implied by the resolution. The staffs jotted down notes like "what if [a certain country] demands Japan to extradite [a person to be trialed as war criminal]?" and concluded that "this would be actually detrimental to peace among mankind!" Apart from these concerns, other interesting theories also arose at the meeting. For example, the staff suspected that this resolution might be a ploy by the Soviet bloc, and Japan should take caution. Some staff even raised the question whether Japan could indict Americans for the atomic bombings since they were clearly against international laws and conventions too.[55]

[54] Ibid.
[55] Ibid.

Coming out of the first meeting without any clear conclusion with the UNCHR resolution, staff of the Investigation Unit turned to consultation with experts. Fortunately, the Investigation Unit had already retained a long relationship with an expert on international criminal law, Emoto Jūji, who was a legal bureaucrat at the Ground Staff Office (*rikujyō bakuryō kanbu*) in the Ministry of Defense in the 1960s. Emoto had held several posts in the Ministry of Navy and taught international law at the Naval University (*kaigun daigakkō*) before the defeat. He was purged during the Occupation period, but because of his connections with other navy officers turned bureaucrats like Toyoda, Emoto was frequently consulted on matters related to war crimes. During the regular lawyers' meeting before and during the Tokyo Trial held by the Investigation Unit, Emoto was frequently present, working with the lawyers on legal defense for Class A war criminals.[56]

On July 6th, 1965, Investigation Unit staff held a meeting with Emoto, who would become a regular consultant for them regarding this matter in the next seven years. Emoto took the chance to air his discontent against the war crime trials in general when commenting the UNCHR resolution. He argued that two conditions must be satisfied for such a resolution to become an executable convention: that "domestic as well as international laws clearly defining war crimes must exist", and that "punishments [against war criminals] could be fairly passed down regardless of [whether the country of the punished had] won or lost the war. Emoto also argued that statuary limit should apply to war criminals because "from the standpoints of both Japan's legal system and Japan's *kokumin*, returning to peace as soon as possible (*narubeku hayaku heiwa ni fukki suru*) is of upmost importance, and the same shall hold for the

[56] 「二十一年四月分」『弁護人との連絡打合せその１・昭和２１年４月~同１０月』平１１法務05909100, 国立公文書館. https://www.digital.archives.go.jp/item/1489287.

international community." Even if such war crime trials were to be conducted, they should preferably be done by "the country of origin of the perpetrator with notification (*tsūchi*) to the country of the victims, and preferably with means of appealing (*nishin*)." Extradition of war criminals for trials also seemed inappropriate for Emoto. Regarding the genocide convention, Emoto saw little concern for Japan to ratify it because "it appears quite unimaginable that [genocide] would occur within Japan (*nihon kokunai*) but other countries may commit [genocide] against Japan. Since "[genocide] is indeed a bad thing (*tashikani warui koto dearu kara*)," there is no reason for Japan to not ratify.[57]

These meetings and study sessions did not produce much of substance for the Ministry of Foreign Affairs to reply to the UN. The final reply to the Secretary General on May 19, 1965, which was almost identical to an earlier inter-ministerial reply from the Ministry of Justice drafted by staffs at the Investigation Unit, related that Japan had "no judicial precedents" concerning the punishment and extradition of war crimes and crimes against humanity, although they are "punishable under the provisions of the general criminal laws of Japan." The reply then listed a number of the international agreements to which Japan was a signatory (mainly clauses in the Geneva Conventions) that could be relevant before stressing that "Japanese laws have no provisions specifically applicable" and that "from the standpoint of [Japanese] domestic laws there exist no special circumstances calling for the abolition of, or provision of exceptions to, application of the [statuary] prescription system." The reply concedes that to prevent "atrocious" crimes like genocide, exceptions should be made to the statuary limit of prosecution, but it also argues that "it would be prerequisite to clearly define the nature and scope of these crimes," and

[57]「国連における戦犯問題（国際刑事法典草案ほかの）審議関係資料（その１）・昭和３４年」平１１法務 06743100, 国立公文書館. https://www.digital.archives.go.jp/file/3795587.

"it would be inappropriate to discuss the advisability of exclusion…with regards to such unclear terms as 'war crimes' or 'crimes against humanity.'" The reply reflected the gist of the concerns and opinions of Investigation Unit staffs and consultants, but their more strong-worded opinions were apparently toned down here. Investigation staffs reserved these for the appendix to the draft reply, such as their opposition to the elimination of time limit because "to sweep away the dregs of war (*sensō no zanshi*) … [i.e., the matters of war criminals] is the universal desire of mankind," but these were omitted in the finalized reply to the Ministry of Foreign Affairs by upper-level bureaucrats of the Ministry of Justice.[58]

Both these meetings and the inter-ministerial communications are quite revealing of the attitude and knowledge of Japanese bureaucrats, even those with expertise in international law, towards the new UN-centered system of international criminal laws framed in the new language of human rights. From the meeting notes, one can learn that the Investigation Unit had to request a large number of UN documents from the Ministry of Foreign Affairs in order for them to learn about the context of the UNCHR resolution, and even then, they were quite unclear not only on how UN functioned but also on the definition of concepts and terms that appeared quite established in UN human rights talks. It is even fair to say that staff and consultants for the Investigation Unit, to which the Ministry of Justice entrusted this matter because of their perceived "expertise" in this field, harbored assumptions about war crimes and *jinken* (the term they used to translate "human rights") that were quite different from the UN discourse on these matters, and their knowledge and attitude did not evolve much since the 50s movement for war criminals' amnesty or even since the 40s war crime trials. For example, staff repeatedly aired their concern that the Nuremberg Principle could become the basis of international criminal laws,

[58] Ibid.

only to find out that it has already become such basis in the 1940s after reading UN materials from this period translated by staff of the Ministry of Foreign Affairs.

Although the initial resolution passed at the UNCHR, the issue of the statuary limit of the prosecution of war criminals evolved and dragged on for several years in the UN. As the Soviet bloc countries teamed up to criticize West Germany's perceived leniency towards its war criminals, the issue was quickly subsumed into Cold War politics, and disagreements began to emerge regarding how the resolution would become a convention. Countries like Poland, Czechoslovakia, and Yugoslavia tried to push for a convention that categorically eliminates the statuary limit of prosecuting war criminals, while countries like the U.S. and the U.K., while agreeing with the spirit of such a potential convention, raised concerns about such a convention becoming an *ex post facto* retrospective international law that would run counter to the principle of *nulla poena sine lege*, or no punishment without law. Japanese representatives treaded the issue carefully, avoiding to commit too much to either side and relaying the UN situation in increasing details and in more direct channels to Investigation Unit staffs. As they learned more about UN human rights talk, Investigation Unit staffs came to question this the UN usage of human rights even more, rather than amending their own understanding of *jinken* vis-à-vis the issues of war crimes. Their worry grew larger as the resolution inched towards becoming an actual convention.

On October 31, 1967, Japanese ambassador to the UN Tsuruoka Senjin sent a telegraph addressed to the Minister of Foreign Affairs requesting immediate reply regarding the UNCHR resolution. Tsuruoka notes that although representatives still disagreed on details, the resolution was inching towards becoming a convention in the United Nations General Assembly Third Committee, which usually deals with matters related to human rights and humanitarianism. What

worried Tsuruoka was that despite originally targeted at Nazi war criminals, the draft convention being pushed by the Soviet bloc countries in the Working Group had strong sense of making no compromise or exception for all past war crimes. Tsuruoka thus requests direction regarding whether Japan should join the working group in order to steer the direction of the drafting, and if an unfavorable draft was produced, whether Japan could vote abstain or reject. Two days after the Ministry of Foreign Affairs received the telegram, a certain official Saiki came to directly meet with the Investigation Unit staffs to discuss these issues. Toyoda and others began to realize the gravity of the issue, but they also saw this as an opportunity to promote their own view of *jinken* vis-à-vis Japanese war criminals to the UN through the Ministry of Foreign Affairs. In the meeting, Toyoda told Saiki that the Investigation Unit was mainly responsible for compiling materials related to war crime trials, and although it assumed responsibility for advising on this UNCHR issue, the staff possessed no expertise on international laws, and thus they could only voice their "personal opinions" regarding issues as "sensitive" as whether to join the Third Committee Working Group. That said, Toyoda opined that regardless of whether Japan were to join the Working Group, it should "clearly distance itself from German war criminals," and if Japan were to join, it should "broadcast at the UN the reality (*jitsujyō*) of Japanese war criminals," and this, if achieved, would be the most ideal outcome. However, Toyoda stressed again that he was no expert and he left the issue to the discretion of the MFA.[59]

The next day, Saiki told Toyoda that MFW advised Tsuruoka to not join the Working Group. This did not dampen Toyoda's hope in the issue's potential, and he drafted an orientation document on how to advise the MFA on this issue. The "fundamental principles (*konpon*

[59] 「国連における「戦争犯罪及び人道に対する罪」の討議関係綴（その３）・昭和４２年４月」平１１法務 06745100, 国立公文書館. https://www.digital.archives.go.jp/file/3771716.

hōshin)" of handling this matter should be first, "to deepen the understanding of the war crime trials imposed on Japanese nationals (*Nippon kokumin*) among UN member countries;" second, "to promote genuine world peace (*shin no sekai heiwa*));" and third, "categorically draw a line against German war criminals and the content of their crimes and to avoid misunderstanding that [Japan] is aiding German war criminals." Toyoda believed that although Japanese war crimes were prosecuted according to standards set by that of war crime trials on Germans, the former "differed greatly in nature and scale" to the latter. However, he also believed that despite this, Japan and Germany should work together to study and deal with these issues. Regarding the statuary limit of war crime prosecution, Toyoda also worried that, although matters related to all the war crime trials involving Japan were believed to have been resolved, "there is no guarantee that a change in the international situation would not beget unforeseeable circumstances," and there was especially no guarantee how countries like the Soviet Union and "Communist China (*chūkyō*)" would use this matter.

It is fair to say that Toyoda and other Investigation Unit staffs were quite prescient: over the years, this issue definitely moved in a direction that increasingly realized this worry of theirs. This is not to say that these bureaucrats managed to grasp and internalize the paradigm of UN human rights talk; rather, despite their increased knowledge of this language, they were still confused by (or antagonistic to) the very fact that this matter was framed in terms of human rights (*jinken* in their understanding) and handled by human rights apparatuses at the UN. On November 15, 1967, Japanese delegate at the UN Kume Ai, who was a renowned women's rights lawyer in Japan and who had also consulted at length with the Investigation Unit, delivered a statement at the Third Committee regarding the draft convention. Kume first opines that the transition from a resolution in UNCHR to a draft convention currently in the General

Assembly was too rushed, and suggests the draft be returned to UNCHR for more careful consideration. The discussion of this issue, "a purely legal problem involving various delicate and complex legal issues," should be "carried out purely from the legal point of view," and delegates "should try to avoid any emotional or political element in our deliberation." This is because "prescription has been established for a very long time in every part of the world with a view to the protection of human rights." After praising the modern legal invention of statuary limit and raising concerns about *ex post facto* application of the law, Kume reiterates that "this is a problem which clearly affects the human rights of criminal suspects," and thus delegates have to be "very careful and prudent," going as far as stating that "the draft convention not only contradicts this fundamental principle of human rights [in Article 15 of the International Covenant on Civil and Political Rights], but also is contrary to the fundamental principles of international law as well as of domestic laws" and even questioning the legality of Nuremberg Tribunal.[60]

Kume employed the language of human rights to turn the issue around, but privately, she was apparently not convinced of the very framing of this issue in terms of human rights at the UN. In private meetings with Investigation Unit and MFA staffs from February 1 to 2, 1968, Kume spoke more frankly about her impression on and observations at the Third Committee. For this series of meetings, the Investigation Unit staff prepared a list of questions to ask Kume, and the first one was "why is the question of 'statuary limit' not raised in the International Law Commission (ILC) but in the UNCHR?" Despite becoming increasingly more acquainted with UN human rights talk, Investigation Unit staffs who were accustomed to the *jinken* discourse on war criminals made in the 50s still seemed confused by the very adoption of this issue by UN

[60] Ibid.

human rights organs. What is more revealing is that Kume seemed to harbor the same doubt as she also questioned the appropriateness and even the competence of the Third Committee and UNCHR in handling this issue. According to Kume, the Third Committee that handled matters of "human rights (*jinken*), culture, and social problems" consisted of delegates "selected from the civil sphere (*minkan senshutsu*), and female (or women's rights, *fujin*) delegates who are usually not legal experts (*hi hōritsu ka*)." "Therefore (*shitagatte*), the handling of purely legal matters (*jyun hōritsu jikō*) like the 'Draft Convention…' was from the beginning unreasonable (*muri ga aru*) due to the very composition of the Committee (*iinkai kōsei jitai*)." In her discussion with the Investigation Unit staffs, Kume repeatedly lamented how this "purely legal matters" was handled in a "political" and "emotional" manner by mainly communist bloc countries, and how the remarks by "non-legal expert" delegates such as "general female delegates (*ippan fujin daihyō*) and diplomats" were simply "irrelevant (*tonchinkan*)." Interestingly, Kume also stated in the meeting that although she had been handling the issue as a "purely legal matter" per the direction of the MFA, if the convention draft passes and when Japan were to certainly refrain from signing or ratifying it, "[Japan] would have to supply a cogent legal argument explaining why Japan would not sign nor ratify the convention," which indicates that despite their desire to handle the issue in a "purely legal" manner, such a legal argument had not yet been prepared.[61]

Despite their discontent with what was happening at the UN, the prediction and worry of people like Toyoda was becoming a reality. Despite all the deliberation and Cold War politics in the UNCHR and General Assembly, the draft convention was adopted (formally becoming the "Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes

[61] Ibid.

Against Humanity"[62]) and opened for signature, ratification and accession on November 26, 1968. Japan as well as other Western nations such as the U.S., the U.K., and France have never ratified the convention.[63] However, this issue was far from over. On March 6, 1969, another resolution drafted by Poland and USSR passed in the UNCHR, again calling for the Secretary General to request member states to submit legal studies relevant to the statuary limit of war crime prosecution. This time, materials to be requested would further include "criteria for determining compensation to the victims of such crimes," the issue of which also became the "priority" of the draft convention in addition to old matters such as arrest, detection, extradition, and punishment of war crimes and crimes against humanity. Toyoda's worry about Soviet Union and "Communist China" using the Convention to further trouble Japan was materializing before his eyes.[64]

On May 1, 1969, Investigation Unit staffs met again with MFA bureaucrats to discuss this matter. Official Saiki from MFA introduced to the Investigation Unit staffs how the above resolution passed with a narrow vote. Beyond the usual complaints that the issue was not handled as a "purely legal matter" that should not even be the business of UNCHR and was used

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[62] "Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity - Main Page." https://legal.un.org/avl/ha/cnslwcch/cnslwcch.html

[63] At the time of the archival research for this dissertation, materials regarding Japan's final voting deliberation are still under review and not open to public. Some of them had been opened since late 2020, and as per the applications of the author, all of them should be open in the recent future. A collection that was opened recently is 「国連における「戦争犯罪及び人道に対する罪に時効不適用条約」審議関係綴（その４）・自昭和４３年４月至昭和４３年１１月」平１１法務 06746100, 国立公文書館. https://www.digital.archives.go.jp/file/4672064. An example of the materials not yet open by the time of the writing of this dissertation is 「「人類の平和及び安全に対する犯罪に関する法典草案」に関する件（３４．１．２８条規）、国連における侵略の定義に関する問題（３５．１．１４条規）」平１１法務 06738100, 国立公文書館. https://www.digital.archives.go.jp/file/3332068.
One can also approach this topic using archival materials produced by the UN. For example, the procedural history of the convention discussed here can be found at "Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity - Main Page." https://legal.un.org/avl/ha/cnslwcch/cnslwcch.html

[64] 「国連における戦争犯罪及び人道に対する罪に関する討議関係（その５）・昭和４４年４月～昭和４４年１０月」平１１法務 06747100, 国立公文書館. https://www.digital.archives.go.jp/file/3771938.

"politically" by the Soviet bloc, the bureaucrats took special notes on a new development, namely that the delegate of Philippine hinted at Japan elliptically when discussing the issue of compensation of war crimes and crimes against humanity by stating that Philippine suffered great damage from "a certain country in Asia." While the delegate of Philippine had apparently gone to great length to not explicitly implicate Japan in this issue, this still greatly rattled bureaucrats like Toyoda, who began to compile studies and materials to prepare in case Japan would be asked to offer compensation for its war crimes.

Just like they were confused with the framing of statuary limit issue in the language of human rights (*jinken* in their minds) in the beginning, the bureaucrats started out bewildered by the idea of compensating victims of war crimes and crimes against humanity. Across the meetings of these few months, the bureaucrats puzzled over different possible scenarios which would allow compensation to be carried out. First of all, would individuals (war criminals) or the state (from which the war criminals come) be the subject to pay the compensation? The former would be "extremely difficult," especially when considerable length of time had passed since the trials. The fact that many (Japanese) war criminals simply followed superior orders would also complicate the issue. Even if such compensation were to be carried out, the bureaucrats could not imagine anything other than a verdict of financial penalty (*bakkin-kei*), which was also quite difficult to picture for them.[65] In a note, Toyoda opines that "it is not appropriate for individuals to shoulder the obligation for compensation for this kind of unavoidable (*fukahi*) crimes during wars, which are not illegal internationally" and thus states would be the more appropriate object for these compensation claims. However, according to Toyoda, who suddenly did not push the "purely legal" line here, "for the sake of the quick resumption of peace, state compensation is

[65] Ibid.

usually carried out lump sum as a political measure (*seiji teki ni ikkatsu shori suru*)." In other words, claims by individual victims after this state-to-state political act (such as a peace settlement or treaty, *kōwa*) would be difficult to fulfill. Even in these situations, it would be paramount to deal with the "crimes of the victor fairly" and make the winner of the war pay due compensation too, which was lamented as rare if not nonexistent by Toyoda.[66]

In sum, Investigation Unit and MFA bureaucrats found it hard to envision how compensation for victims of war crimes would be carried out. However, as they dug deeper into precedent international laws and even actual cases, they gradually realized that despite their inability to "imagine" it, such a prospect was by no means improbable. Soon, they found out that Japan had actually paid compensation outside of the usual peace treaty stipulations to individuals or legal persons in Netherlands, Singapore, and Malaysia (summarized as "had precedents of taking similar measures [to compensation to individual victims]" in a memo), and "treaties with some Allied nations (especially Soviet Union and Communist China) had never clarified the obligation [of Japan] on this kind of compensation. Therefore, cautions must be taken against potential problems." The bureaucrats even found a case in which a foreign individual successfully sued the Japanese government to pay back a wartime loan. In 1972, Xu Xueying, who loaned the Japanese government 878,000 US dollars in 1940s, reached a settlement with the Japanese government for 300,000,000 JPY. According to an Asahi article the bureaucrats clipped, although the Japanese government tried to use arguments like "lack of evidence" and

[66] Ibid.

"the passage of statuary limit" to fight the case, it was apparently losing (in Japanese court) and had to make a settlement.[67]

The clippings of relevant precedent cases and news were among the last batch of materials the Investigation Unit complied on this subject. Over the 70s, due to the aging and retirement of its original members, the Investigation Unit itself gradually went defunct, and there is no way to know how much the research it provided had informed diplomatic decisions of these issues. In contrast to the hope of these bureaucrats, the international criminal legal system became increasingly intertwined with the international human rights discourse, and as people like Toyoda expected, the discourse was indeed used to demand reparation and compensation for Japan's colonial and wartime atrocities. Since the late 80s, victims of these atrocities, among them the famous "comfort women" system, had been able to sue the Japanese government for apology and reparation or compensation[68] with the help of Japanese activists, scholars, and lawyers, who argued their cases with the concept of *jinken* and citing both the Japanese constitution and international laws and declarations on human rights.

V. Conclusion

Many have written on the importance of this reparation movement, and most of them justly focused on the victims and the Japanese activists who helped them. The defendant of these cases, often referred abstractly as the "Japanese government/state," usually remained quite

[67] Ibid. See also 「国連における戦争犯罪及び人道に対する罪に関する討議関係（その６）・昭和４４年１１月～昭和４７年１２月」平１１法務 06748100, 国立公文書館. https://www.digital.archives.go.jp/file/3771877.

[68] Respectively *baishō* and *hoshō*. Usually, people who sued because they were unjustly excluded from Japan's benefit system for veterans or other wartime state workers, usually because of their nationality, would use *hoshō*, while those who suffered damage done by the Japanese pre-defeat state would use *baishō*.

obfuscated due to the lack of sources on how exactly it operated. Critics of the "state," which won most of these lawsuits despite its seemingly lethargic and passive legal and political response, usually accused it of lacking "a sense of *jinken* (*jinken teki kangaku*)" and lagging behind the international human rights culture, but the truth is, at least a sizable and reasonably influential part of the conservative elements in the bureaucratic system actually had much richer experience dealing with both the international human rights discourse and its framing of war crimes, as well as the domestic vocalization of the problems of war crimes and war criminals in terms of *jinken.* As early as 1946, former military bureaucrats who came into civil bureaucratic service had started to build both a new discourse to argue against Allied war crime trial verdicts that employed the very language enabled by the Allied Occupation (especially with the help of lawyers who had first hand experiences defending the war criminals), including *jinken,* and a new network to support this discourse consisting of bureaucrats, lawyers, politicians, business tycoons, and civil activists. At the center was the Investigation Unit, which also had the privilege of being among the first groups in Japan to learn about the international usage of human rights language and apparatus on the issues of war crimes, thanks to the expertise and influence it built through the 1950s popular and legal aid movement for war criminal amnesty. Probably disgruntled with this very different framing of the issue of war criminals in terms of *jinken* (in their understanding) until the very end of its existence, the Investigation Unit and its associates nonetheless did conduct serious research on this issue and expanded their understanding of *jinken* vis-à-vis war crimes, and diligently produced plans and instructions on how Japan should respond when such issues were brought up in international forums, including when countries like "Soviet Union" and "Communist China" were to demand compensation for individual victims of Japanese war crimes.

We may never know to what extent the work of the Investigation Unit and its associates had prepared the Japanese bureaucracy for the 1990s reparation movement until new archival materials become available, but as this chapter has shown, the "state" was definitely not devoid of "sense of *jinken.*" Instead, bureaucrats who specialized in these issues developed their own sense of *jinken* in relation to the war criminal issues of Japan, and had long been aware of the discrepancy between their sense of *jinken* and the international human rights talk on this issue much earlier than Japanese and international activists framed the reparation for victims of Japan's past atrocities in terms of *jinken.* It was actually the lawyer activists and JLBA, who largely supported the reparation movement as a professional community, who became unaware (willfully or not) of their predecessors' very different framing of the issue back in the 1950s. To better understand how the reparation movement fared, especially the seemingly lack of action by the Japanese "state" as well as the lack victories of these lawsuits for compensation, one should not overlook this forgotten history of the relationship between *jinken* and the issues of war crimes in the conservative circle of Japan, which demonstrates that while the 1990s activists thought they were one step ahead of the "state" in understanding and using *jinken,* they might actually be three steps behind.

Chapter 3 *Jinken* and the "Okinawa Problem:" From Reversion to "State Responsibility"

It was April, 1955. In Sugamo Prison, a group of Class BC criminals were raising money and collecting material donations from their cellmates. The group of seven consisted of Japanese, Koreans, and Taiwanese, and they were collecting the donations not for themselves, but for people in Iejima, Okinawa, which would become one of the focal points in the 1956 Shimagurumi Movement protesting unfair and forced land requisition by the American military. On May 13, the war criminals sent out the care packages of pencils, soaps, toothpaste, and tobacco with a letter addressed to "our compatriots (*dōhō*) in Okinawa." Explaining their reason for this donation to the Iejima residents, the group claims in the letter that

> Exactly because we are still chained behind bars and isolated from society ten years after the end of the nightmarish wars, we could not help but feel a pang of sympathy and righteous indignation (*issō no dōjō to gifun*) at your helplessness from being separated from the fatherland Japan by the American military administration.[1]

The group then wishes the people in Okinawa to "be liberated from the military administration by a foreign country (*ikoku no gunsei*) and return to the fatherland as soon as possible."[2] The package was delivered to Iejima through the Japan Association for Social Justice and Human Rights KYUENKAI (*nihon kokumin kyūenkai*) in June. Interviewed by Okinawan journalists on the donations, the group said that they felt "tremendously surprised, happy, and encouraged" when they received letters of support from Okinawa earlier, and decided to return the good will. Group member Senma Sadaō said that he understood "the pain of the Okinawan people as if [he] felt it [himself]," and Itō Takeō concurred that he could empathize with the plight of Okinawans

[1] 「沖縄の同胞の皆様へ」新聞切り抜き（掲載紙不詳 1953.5.13）在日韓人史料館所蔵.
[2] Ibid.

when he read the news because of his "deeply painful personal experiences between the end of war and the coming into effect of the Peace Treaty."[3]

Two weeks later, the Japan Federation of Bar Association (JFBA, *nichibenren*), the same lawyers association that was pushing to end the incarceration of Japanese war criminals, issued a statement regarding the "Okinawa problem." Determining that the problem was one that concerned *jinken,* the association declared in the statement that "the JFBA cannot ignore the *jinken* problem (*jinken mondai*) in Okinawa," and it urged the governments of United States and Japan to work out a solution to the dire land situation.[4] In the next two decades, the framing of the problems related to the American military administration of Okinawa, such as land appropriations, GI crimes (and the lack of local jurisdiction over them), travel restrictions, and so on, as *jinken* problems would continue to puzzle the United States Civil Administration of the Ryukyu Islands (USCAR).[5] By what reasoning did the incarcerated war criminals commiserate with the plight to the Okinawan people? Why did the *jinken* protection committee (*jinken yōgo iinkai*) in the JFBA handle both the war criminal issues and the Okinawa problem as *jinken*

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[3] 『沖縄タイムス』 1955.6.1 第 2047 号「巣鴨の戦犯達が沖縄を激励」

[4] 『朝日新聞』1955 年(昭和 30 年) 6 月 16 日 朝刊 7 頁 東京 9 段「米大統領へも要望書　日本弁護士連合会の結論__沖縄問題」

[5] After the end of WWII, the U.S. military took over the control of Okinawa due to its strategic geographical location and continued to administrate it until 1972. The presence of the U.S. military on the islands has been and still is a thorny political issue both within Okinawa and for Japan in general. For details, see Laura Hein and Mark Selden --, et al. *Islands of Discontent: Okinawan Responses to Japanese and American Power*. Lanham, Md.: Rowman & Littlefield, 2003; Gavan McCormack, and Satoko Oka Norimatsu. *Resistant Islands: Okinawa Confronts Japan and the United States*. Lanham, Md.: Rowman & Littlefield, 2012; Glenn D. Hook and Richard Siddle --, et al. *Japan and Okinawa: Structure and Subjectivity*. London; New York: RoutledgeCurzon, 2003. For more contemporary issues, see Tanji Miyume and Daniel Broudy. *Okinawa Under Occupation: McDonaldization and Resistance to Neoliberal Propaganda*. [Singapore]: Palgrave Macmillan, 2017. "Reversion-Era Proposals for Okinawan Regional Autonomy." In *Beyond American Occupation: Race and Agency in Okinawa*, 1945–2015, 59-79. Edited by Hiroko Matsuda and Pedro Iacobelli. Lanham, MD: Lexington Books, Rowman & Littlefield, 2017. Recent Japanese scholarship include 秋山道宏『基地社会・沖縄と「島ぐるみ」の運動: B52 撤去運動から県益擁護運動へ』八朔社 2019 年 3 月. For the most recent scholarship on the topic, see Fumi Inoue, "The Politics of Extraterritoriality in Post-Occupation Japan and U.S.-Occupied Okinawa, 1952-1972," Ph.D. dissertation, (Boston College, 2021).

incidents? These are the questions that USCAR, or even Roger Nash Baldwin, who greatly aided Japanese lawyers' effort to resolve these *jinken* problems in Okinawa, probably did not understand, just like they probably never deciphered what activists and legal professionals from Okinawa and mainland Japan were truly demanding with the language of *jinken*. This chapter will tackle these questions and examine why the problems in USCAR ruled Okinawa were framed in the language of *jinken,* how this framing was produced and received among Japanese mainland activists (especially lawyers), Okinawan residents, USCAR staff, and American activists like Baldwin. The chapter will also examine how this framing later influenced the *jinken* discourse across Japan, especially after the reversion of Okinawa.

I. The Beginning of the *Jinken* Problem of Okinawa

The "news" about Okinawa Itō and other war criminals read in Sugamo came from the wave of Japanese mainland media attention to Okinawa that began with an *Asahi Shimbun* article in January 13, 1955 titled "Scrutinizing the American Military's 'Civilian Governance in Okinawa.'"[6] The article consisted of a summary of the first investigation report on Okinawa's various problems stemming from American military occupation carried out by the Japan Union of Civil Liberties (JCLU) and several short opinion essays by legal scholars and politicians from both mainland Japan and Okinawa. The article highlighted the problem of forced land requisition and the staggeringly low rent prices paid by the US military with the bold subtitle "the rent is not even enough for tobacco money." It also highlighted other problems such as the unequal pay by race (for American, Pilipino, and Okinawan employees in the occupation force) and suppression

[6] 『朝日新聞』1955 年昭和 30 年 1 月 13 日 朝刊 7 頁 東京 1 段「米軍の「沖縄民政」を衝く」

of political activities (categorized under the title "other *jinken* problem"). Reflecting on these issues, the JCLU concluded its investigation by stating in the report that Okinawa had problems "hard to ignore from the standpoint of *jinken* protection (*jinken yōgo no tachiba kara*)."

The article also pointed out that these issues were "heretofore unheard of in the U.S." and only discussed internally in the Department of Army, and famous legal scholar Yokota Kisaburō also pointed to the importance of arousing public opinion in America in the editorial accompanying the news article. It was true that Okinawa factored little in the American public mind, but the whole JCLU investigation was in fact kickstarted by an American, Roger Nash Baldwin, the head of the ACLU, the civil advisor to Douglas MacArthur in GHQ, and (as JCLU often admits) the "father" of JCLU itself. The article features forefront Baldwin's March 2, 1954 letter to Unno Shinkichi, the head of JCLU, in which he states that he "just had a report based on some disputes in an American periodical that U.S. authorities in Okinawa are mistreating native land-owners by forcing sales of land at very low prices." Admitting that he had no correspondents in Okinawa, Baldwin asks Unno to investigate the issue and send him the reports so that "we can take it up with American authorities."[7] This report Baldwin referred to was in turn an article by Otis W Bell, an American missionary living in Okinawa, that as published in *The Christian Century.*[8] So the flow of information came full circle: JCLU dispatched in investigation group to Okinawa that spent ten months there and published its result in the Asahi article.[9]

[7] Ibid.
[8] 仲本和彦「ロジャー・N・ボールドウィンと島ぐるみ闘争」『沖縄県公文書館研究紀要』第 16 号 2014 年 3 月. p.37-54. p.38 and note 5.
[9] Ibid.

What consisted the "Okinawa problem," or more specifically, its problem of *jinken* (*jinken mondai*) for people in mainland Japan? This first JCLU report in 1955 listed a variety of issues: the land requisition and rent dispute, travel restrictions between Okinawa and mainland, the unequal wage by race among employments by the American military, the freedom of press and speech, crimes by the American military men and the lack of local jurisdiction over them, and the suppression of leftist political activities.[10] These would constitute the foundational categories of countless reports on Okinawa's *jinken mondai* that groups like the JCLU and JFBA would to publish in the coming decades. Still, the categories themselves cannot explain their framing as issues concerning *jinken.* In the report, JCLU points out that due to the legal arrangement in Okinawa, USCAR effectively controlled the legislative, judiciary, and executive power in Okinawa: "on a whim, they can in effect dissolve the legislative house or refuse to enact laws passed by it. As a result, under the name of military necessity, the *kihonteki jinken* of the Okinawan people are frequently limited or violated."[11] What does it mean to say that because of the unchecked nature of the USCAR vis-à-vis the local people, the *kihonteki jinken* of the latter is violated? In a roundtable the transcript of which was published in the same issue of Legal News (*hōritsu jihō*) this JCLU report summary was published, this line of logic was elaborated in more details. Titled "The Legal Problem Surrounding Okinawa," the roundtable was consisted of JCLU luminaries Unno Shinkichi and Morikawa Kinju, and famous legal scholars Yokota Kisaburō and Nakamura Akira. Instead of cutting straight to their *jinken*

[10] 自由人権協会「沖縄における人権問題」『法律時報』27(3)(298), 1955.3. p.316-319
[11] Ibid. p.317.

framing, the legal professionals started the talk with the discussion around another term that is (still) often paired with *jinken:* sovereignty, or *shuken.*[12]

The group of four agreed that the state of *shuken* in Okinawa was confusing: if the US held all legislative, judiciary, and executive powers in Okinawa, namely all three branches of governments there, was one still able to say Japan held any *shuken* over the islands? After all, neither the Cairo Declaration nor the Potsdam Declaration stipulated anything about Japan's obligation regarding Okinawa, which made the agreement that Japan held "residual sovereignty (*zanyo shuken*)" over Okinawa in the San Francisco Peace Treaty even more puzzling. On this conundrum, Yokota proposed that outside of the three powers, a nation's sovereignty or *shuken* also includes the power with regards to its territories (*ryōdo no shobun ken*). However, the group also agreed that this only applies under international law, and the *shuken* under domestic law and that under international law require different legal explanation. This launched the group into a discussion of what constitutes the "title" or "origin of right/power" (*kengen*) of a nation over lands or people, and then deeper into what constitutes a nation (*kokka*). Digressing from the legal perspective, Unno asked whether one can take a more "sociological perspective" on *kokka.* Obviously, people in Okinawa were "a collective with shared history, language, and custom," but the Americans did not share this collective life, despite controlling all branches of the government. As a result, the thinking or will (*ishi*) of the two sides were often misaligned. Unno then asked, under these circumstances, if this collective (the Okinawan people) instead shared the form of life with the people who possessed the final power over the land they live on (namely the Japanese mainland people who held "residual sovereignty" over Okinawa), would any new

[12] 中村哲, 横田喜三郎, 海野晋吉, 森川金寿「沖縄をめぐる法律問題」『法律時報』27(3)(298), 1955.3. p.201-215.

relations of right (*kenri kankei*) emerge among them? This was quickly dismissed by Yokota, who stated that "sociological perspective" held no weight on such purely legal problems and even went as far as citing Japan's "legal" colonization of Taiwan as a counterexample.[13] Unno quickly countered that the colonization of Taiwan and Korea, while "legal," certainly led to difficult issues. He argued that if the Okinawan people happily surrendered to American rule by their will, then of course Japan's "residual sovereignty" meant nothing. However, "if the residents there do not share common customs, lifestyles, mindsets, and formation process of their society with the people executing administrative authorities (*shisei ken*), would they be afforded the same legal protection afforded to nationals (*kokumin*) of the country with the administrative power, or protection according to the laws of the country with the territorial right (*ryōdo ken*)?[14]

With regards to this contention, Nakamura brokered a middle ground. Referring to their previous discussion, he brought up the idea of "title" or *kengen* again and recapped that this translation seemed to have confused Japanese scholars of international law. "However," he argued, "as a problem of domestic law, it is unexpectedly easy to think through." Reintroducing famous legal scholar Minobe Tatsukichi's argument that sovereignty or *shuken* under international law usually consisted of the sovereign power (*tōchiken*), which differs from *shuken* under domestic law, Nakamura pointed out that it was quite natural for scholars of domestic law to conceptualize *tōchiken* as above *shuken* (as it is above the domestic level); on the other hand, domestically, the right to rule (*shihaiken*) originates from *shuken*. This domestic *shuken* is popular sovereignty (*kokumin shuken*) as per the Constitution, and it is de facto executed by institutions like the Diet, the Cabinet, and Supreme Court. This is not to say that the *kokumin* are

[13] Yokota also cites Japan's extraterritorial rights over Liaodong peninsula in China in early 20th century to illustrate the concept of "residual sovereignty" *zanyo shuken* (of China over the peninsula in this case), again implying that such colonial practices were completely "legal." Ibid. p.202
[14] Ibid. p.205-206

vested with *shihaiken,* but that the *shuken* vested in *kokumin* is the *kengen* (origin of power) of the *shihaiken* of these institutions. Under this framework, Nakamura proposed that even when the *tōchiken* of Okinawa was held by America, there was still some form of *shuken* left with Japan (as a form of "residual sovereignty" beyond merely the final right to the land) like Unno proposed.[15]

A key assumption made but not spelled out here by Nakamura was that, like Unno's proposal of "sociological perspective," the people in Okinawa are *kokumin* of Japan, an idea shared by all the discussants. In the discussion on how to appeal to the American public for support, Unno stressed the necessity to develop a clear message because "over there it is not entirely clear whether [residents of Okinawa] are Japanese *kokumin,* Okinawans, or some kind of special Americans." Yokota also cautioned that the Japanese idea of compatriot or "*dōhō*" did not feature in the American mind, nor in international law, and thus the Japanese lawyers needed to approach the problem purely legally.[16] Unno then summarized the group's consensus on the plight of the Okinawa people: the residents there were Japanese *kokumin,* but they came under the rule of America without being afforded the civil rights (*shiminken*) protected by American laws. As a result, they faced all kinds of oppression and disadvantages. Unno compared this situation to that of second-generation Japanese (*nissei*): according to Unno, while *nissei* were still Japanese *kokumin* and simultaneously enjoy the *shiminken* of America, Okinawa residents did not have such *shimiken* and legal protection afforded by American laws; furthermore, the *tōchiken* over them was entirely held by America, which controlled all three branches of

[15] Ibid. p.306
[16] Ibid. p.310

governments there while Japan had no *tōchiken* over the islands. This was why, Unno argued, "the protection [of Okinawa people] is lacking."[17]

After this discussion about the idea of *shuken* in Okinawa, the topic suddenly changed to the *kihonteki jinken* in Okinawa. While this may seem abrupt to the contemporary reader, the group had actually been talking about the *jinken* problem all along. For legal professionals in mainland Japan (with Tokyo as the center) advocating for the *jinken* problem in Okinawa, the issue of *jinken* there was inextricably tied to the idea of *shuken* and *kokumin.* As Unno pointed out, the reason why *jinken* problems emerged there was because the residents there were under the absolute control of America but did not have *shiminken* under the American law. In other words, the abnormality of the *shuken* situation in Okinawa entailed its *jinken* problem. In this paradigm, the term *jinken* used by Japanese legal scholars and professionals in this 1950s case was not "human rights," but was closer to "civil liberties" in English. In these usages, *jinken* had less to do with the human rights apparatuses being developed at the UN contemporarily, but more to do with the traditional discourse of constitutional nationalism and civil rights in Japan dating back to 1890s (chapter 1). In fact, *jinken* here, which caused great trouble in translation during the Occupation period (chapter 1), was the abbreviation of the official translation of "civil liberties," which was *jiyū jinken.* JCLU's very name reflects this translation: unbeknownst to many, its Japanese name, *Jiyū jinken kyōkai,* does not mean "the association of freedom and human rights (i.e., *jiyū* AND *jinken*)" but, as its official English name suggest, "the association of civil liberties."

[17] Ibid. p.311

This means that in terms of its discursive affinity, the *jinken* talk by Japanese legal professionals like those in JCLU or JFBA was closer to the discourse of constitutionalism and the idea of reversion than international human rights. In fact, one only needs to look a few years earlier to see this kind of usage. In 1953, local activists in Amami islands, then still under the American military administration (the same situation as in Okinawa), formed a group to advocate for local residents' benefit under the American military administration. The group successfully applied to become a branch of JCLU. The official bulletin of JCLU, *Jinken News* (*jinken shimbun*) reported on this event, and the subtitle of the article could not have made the connotation of *jinken* in this case clearer: "to accelerate the reversion to Japan, a branch of Japan's *jinken kyōkai* was established."[18] The local organization joined the JCLU because "the sovereignty (*shuken*) of the island belongs to Japan and the residents are of Japanese nationality (*kokuseki*), and the islands are Japanese territory (*ryōdo*); therefore, making a brand new organization may hurt the reversion movement."[19] It is thus clear that JCLU's *jinken* activism in Japanese territories under U.S. administration was inextricably tied to the idea of reversion, the outlook of which prompted the activists to adopt a "domestic" or "national" standpoint from which they saw the lack of "national" control of such territories as a problem, or more specifically, a *jinken* problem.

Over the years, this stance and *jinken* framing of JCLU (and other mainland Japanese legal professionals) grew increasingly clear. In 1958, JCLU lawyers were denied entry into Okinawa for their plan to defend local leftist politicians prosecuted by USCAR. What infuriated them was the reason that they were denied entry their categorization by USCAR as "foreign"

[18]「米軍政下　奄美大島に本協会支部設立さる」『人権新聞』第 18・19 合併号, 自由人権協会, 1953.4.20.
[19] Ibid.

legal professionals. USCAR denied them entry because, as it reasoned, the entry of "foreign" lawyers would only be approved if knowledge of "foreign" laws became necessary. For this, Unno wrote a long essay in the JCLU bulletin to reiterate the point that Okinawa was Japanese territory, and the nationality (*kokuseki*) of local residents were Japanese, and even the newly passed education law in Okinawa started with the sentence "we the Japanese *kokumin.*"[20] Another article in the same issue also illustrates the same point. The article opens with the sentences that "over the years, we have examined problems of Okinawa from the perspective of *jinken.* It is widely said that 'all problems of Okinawa are *jinken* problems.'"[21] The article goes on to detail the problems of GI crimes in the islands, the *jinken* framing of which would continue to confuse USCAR into the 70s. According to this framing, because GI crimes and the lack of Japanese jurisdiction over the criminals stemmed from the total control of USCAR over the Japanese territory of Okinawa, these are *jinken* problems of Japanese *kokumin,* who were oppressed by a foreign despotic government and lacked constitutional protection from their motherland. This line of reasoning that defined the *jinken* framing of Okinawa's problem also explains the war criminals' empathy with Okinawan residents (and the *jinken* framing of both these issues by the legal professionals). To the war criminals, the Okinawans were also under the arbitrary treatment imposed by Allied nations despite the fact that the war had long since ended, and the Okinawans who sent letters to the war criminals also probably felt the same empathy. The Japanese lawyers also agreed with this sentiment: the restoration of "independence" in Japan in 1952 prompted them to turn the apparatus of *jinken* against what they saw as unjust treatment

[20] 海野晋吉「なぜ沖縄へ行けぬ　依頼受けた本土弁護士」『人権新聞』第 46 号, 自由人権協, 1958.9.1.
[21] 「救済のない人権　いくつかの事例から　沖縄」Ibid.

against Japan by former Allied nations such as America, and both the issues of Japanese war criminals and the rule of Okinawa thus came under the *jinken* paradigm.

Despite the fact the *jinken* discourse utilized by lawyers was inextricably related to the reversion, the explicit advocacy for reversion could sometimes hinder their activism. As a result, JCLU did its best to articulate their *jinken* advocacy for Okinawa issues in legalistic (instead of overtly politically reversionist) languages. For example, introducing a new report on Okinawa published in the *Sekai* magazine in May, 1959 by JCLU members Ushiomi Toshitaka and Ono Masao, the JCLU bulletin summarizes the *jinken* problem faced by Okinawans as such:

> There is no freedom in Okinawa, nor are rights protected there. The residents do not enjoy the democratic principle of government made by the people and for the people. Their fundamental political and judicial rights vis-à-vis their ruler, the American military, are not guaranteed. The modern principle of equality for all also does not exist in today's Okinawa. Vis-à-vis the American military, the rights of Okinawans are conspicuously limited and violated.[22]

Framed in legalistic languages of rights (*kenri*) and freedom (*jiyū*) and the idea about a democratic government, the passage illustrates the constitutionalist side of the *jinken* paradigm. It also seemingly suggests a legal solution, namely that as long as the good laws are made, the problem will be resolved. However, this characterization of the *jinken* issue of Okinawa implies something quite political: the Okinawa problem was not simply one of rights, but rights vis-à-vis the American rulers, and this was what made the problem one concerning *jinken.*

[22] 「沖縄　法の支配の真空地帯　レポートを公表」『人権新聞』第 54 号, 自由人権協会, 1959.5.1

II. The Okinawa Problem and Roger Nash Baldwin's Perspective: The Mistranslation[23] of *Jinken*

In fact, even the conceptualization of the Okinawa problem by Roger Nash Baldwin was quite similar to that of JCLU and other Japanese legal professionals in this regard, although it came from a distinctly different standpoint. From 1954, Baldwin had been actively raising the issue of Okinawa with the U.S. Department of State, Department of Defense, and other branches of the American government or military. Because of his prestige as the founder of ACLU in both the U.S. and Japan, the U.S. government and military diligently responded to his inquiries and demands (despite rarely instituting substantial changes). As the head of both ACLU and the International League for the Rights of Man (ILRM, later International League for Human Rights, ILHR, after 1976), Baldwin was meticulous in positioning himself in the advocacy for Okinawa. When Unno first responded to Baldwin's letter about investigation of the Okinawa problem in 1954, he addressed it to Baldwin as the chair of the ILRM. Baldwin replied saying that the land problem in Okinawa was not the concern of the UN, but that of America, so it should be under the umbrella of ACLU instead of ILRM. Baldwin then replied to Unno on the Okinawa issues in a separate letter as the chair of ACLU.[24]

Baldwin's word choices when he talked to the U.S. military and government and the Japanese legal professionals were equally interesting. From the very beginning, the key terms

[23] I do not suggest here that there is a "correct" translation of *jinken* even in specific contexts. I use this term only to highlight the fact that the *jinken* discourse used by the mainland Japanese and Okinawan activists and the rights language by USCAR and Americans like Baldwin produced a more specific kind of "translingual practice" due to the equivalence of words they assumed and took for granted. See the discussion of translation in the Introduction and Lydia He Liu, *Translingual Practice: Literature, National Culture, and Translated Modernity--China, 1900-1937* Stanford, Calif: Stanford University Press, 1995.

[24] 「沖縄の土地問題及び原水爆の問題を国連に訴える　日本自由人権協会より 国際人権連盟へ」『人権新聞』第 27 号, 自由人権協会, 1954.7.1; 「沖縄の土地問題及び原水爆の問題について」『人権新聞』第 28 号, 自由人権協会, 1953.8.1.

Baldwin employed to describe the problem of Okinawa were always “civil liberties” or “civil rights,” and almost never “human rights.” In his March 24, 1955 letter to Major General William Marquat at the Department of Defense, one of the first letters he addressed to the U.S. government for the Okinawa problem after the Asahi article, Baldwin states that ACLU received “voluminous complaints” for problems of Okinawa rested on “those grounds of civil liberties appropriate for our attention.”[25] Six months later, on September 21, 1955, Baldwin wrote to Maxwell Rabb, legal advisor for the White House, to convey that the ACLU “is interested in the problems of civil rights of the natives in Okinawa.” Baldwin further clarifies that “grievances as to land seisures[sic] and wages is not primarily the concern of the Civil Liberties Union. Our concern is primarily with civil and political liberties.”[26] In his April 4, 1959 letter to General Donald P. Booth, then the High Commissioner of Ryukyus at USCAR, Baldwin states as the representative of ACLU that “we have been concerned as an organization for some time with the problems of democracy in Okinawa in the light of adjustment of political liberties to military security,” before making suggestions about government structure change in Okinawa.[27] Baldwin’s language to JCLU was consistent to how he talked to the U.S. government. In an April, 1955 letter to Unno Shinkichi, Baldwin cautions JCLU to distance itself from what he saw as a “‘Communist-front’ organization,” the International Association of Democratic Lawyers, which JCLU originally planned to invite to Okinawa to investigate the problems there. Baldwin

[25] 「General Records of the Department of State, Central File, 1955-59　Box No.3978 Folder No.5」資料コード 0000112824 記録アドレス 2111a173, 沖縄県立公文書館. p.19
[26] 「(00029-001) Roger Baldwin, Sep 1955-Apr 1961.」資料コード 0000106052　319-00060-00029-001, 沖縄県立公文書館. p.415.
[27] Ibid. p. 398.

states in the letter, “the conflict over civil rights and self-government in Okinawa would be compromised by any association with partisan agencies.”[28]

Baldwin’s framing of the Okinawa problem as one that concerned “civil liberties” and “civil rights,” along with his insistence to handle the issue through ACLU instead of ILRM, appear to be quite odd given that after all, Okinawans were not American citizens. This stance of his would be clarified in detail when Baldwin visited Okinawa in person. In summer 1959, Baldwin traveled around the world to twenty-one countries as an ILRM advisor. His last stop was Japan, where he stayed from August 18 to September 4.[29] Baldwin visited Okinawa before the mainland, arriving in Naha on August 18. His visit was welcomed by USCAR, which arranged for his paperwork, housing, and local contacts among other logistics. Confident in the “improvements” in local governance, High Commissioner Donald Booth’s advisors were certain that USCAR would be “getting quite a bit of good out of a visit from him [Baldwin],” and thus “under no circumstances should we intimate that he would not be welcome.”[30] Baldwin stayed in Okinawa for four days, during which the USCAR arranged for him multiple meetings with officials, local political leaders, and activists. USCAR also arranged for him a number of press conferences and lectures.[31]

[28] 「General Records of the Department of State, Central File, 1955-59　Box No.3978 Folder No.5」資料コード 0000112824 記録アドレス 2111a173, 沖縄県立公文書館. p.44
[29] 仲本和彦, 2014. p.52
[30] 「(00029-001) Roger Baldwin, Sep 1955-Apr 1961.」資料コード 0000106052　319-00060-00029-001, 沖縄県立公文書館. p.431
[31] Ibid. p.221-222

Officially, Baldwin was travelling as a member of ILRM on a "quasi-official status for the UN."[32] However, he conceptualized his mission to Okinawa quite differently. During the press conference he held on August 21, Baldwin expounded on his status:

> I wear two hats—one of them is in association with the United Nations, with international organizations, and the other is with the American Civil Liberties Union, which concerns itself only with American jurisdiction, and since these islands are under the American jurisdiction, we've been concerned for a long time with the principles of our Bill of Rights as they apply here. We make no exceptions to the Bill of Rights anywhere where the American flag flies.[33]

Furthermore, Baldwin also applied this stance to his previous advisor position in the Occupation regime in Japan in 1948:

> And, therefore, I spent three months at the invitation of General Douglas MacArthur in Japan as a private citizen—not an employee of the Government—in trying to help my Japanese friends protect their own civil rights and to get the occupation there to observe our Bill of Rights; and didn't have much trouble with that. Did the same thing in Germany, so wherever the United States is, we think it's our duty to attempt to apply our principles, and, since Okinawa, particularly since 1952 when the peace treaty was adopted, is part of the American jurisdiction, we have constantly in touch in Washington with the Civil Affairs Division of the War Department, said Defense Department, and with the State Department in relation to policies here.[34]

For Baldwin, the *jinken* problem in Okinawa was not only a "civil right" or "civil liberties" problem instead of a "human right" one (which he associated with his work at the UN and ILRM, which he was not conducting in Okinawa), but an *American* "civil right" or "civil liberties" problem. He insisted on handling the issue through ACLU and by talking to U.S. government agencies (instead of the UN) because he believed the problem was a "domestic" one that concerned the American jurisdiction in which the Bill of Rights, instead of the UDHR, was more applicable. In this sense, Baldwin's understanding of Okinawa's problem was both similar to and diagonally opposite to that of JCLU and other Japanese activists: both parties saw the

[32] Ibid. p.377
[33] Ibid. p.239
[34] Ibid.

problem as concerning "civil liberties" and in some sense "domestic" or "national," but the nation whose jurisdiction (or the lack of which) they emphasized was different.

Despite this public position, Baldwin did not make his Okinawa trip entirely irrelevant to his understanding and stance on his work related to "human rights." The day before the press conference, Baldwin delivered a lecture at the OTA Hall (*kyōiku kaikan*) of Naha titled "Prospects of Human Rights." Delivered in English, the lecture was interpreted into Japanese in real time. Baldwin explained his mission to Okinawa as such:

> I…have a special interest of my own in the field of human rights in which I have been working most of my life. Human rights are defined in the Universal Declaration adopted by the UN. Included in them are self-government or independence, the right against discrimination because of race, religion, nationality, or sex, the right to a job, to social security, minimum wages and the like. They also include freedom of speech, press, association and fair trials. I have been examining the status of these rights in each country I visited. I could not escape calling at Okinawa because I am interested in it as an American and because of my familiarity with Okinawa and with Okinawans I met in the U.S.[35]

Baldwin never elaborated on the idea of "human rights" further after this. Instead, he turned to his position "as a private citizen in relation to government," who could only "get the facts and make recommendations to the authorities on the liberty and rights of the people." He then pointed out the "special problem" in Okinawa was also quite universal, namely that of a tradeoff between "security and liberty," "a very important problem in every country where communism is faced." "The communist idea is a Russian idea," Baldwin claimed, and it worked "in the interest of Soviet Union, a foreign country which does not permit the exercise of human rights." Baldwin then admonished the audience that "it is not worth sacrificing liberty or freedom just to have a job," because "bread and liberty [emphasis original]" were attainable. Despite the anti-communist stance, Baldwin also warned against excessively repressing communism as it would

[35] Ibid. p.228-229

become “more dangerous.”[36] The second part of the speech was on the UN and Baldwin’s vision for it. Baldwin argued that the UN was going to represent the majority of the global population as decolonization went on, that it encouraged “richer countries to put their wealth at the disposal of poorer countries,” that it drove “equality” in terms of race, religion, and sex, and that it promoted “political freedom, human rights and civil liberties.” With the development of UN, Baldwin believed that “young people can look forward to a world of law instead of a world of war.”[37]

Baldwin’s position and mission in Okinawa were certainly complicated. While his speech was ostensibly about “human rights,” Baldwin did not intend to truly frame the problems of Okinawa as a “human right” one. It is quite obvious the superficial inclusion of “human rights” in this very speech only served as the fodder for Baldwin to criticize the Communist bloc for not having “human rights” and to admonish Okinawan audiences to not become leftists and rebel against USCAR but to patiently await the positive changes the new world order represented by the UN could bring about. Indeed, as he later explained to Maxwell Rabb the White House legal advisor, Baldwin’s trip to Okinawa and Japan was partly an anti-communist campaign:

> Aside from the concern of the ACLU with civil and political liberties on principle, we are also concerned to diminish the Communist propaganda throughout the world which represents the US as imperialist power [sic] holding Okinawa indefinitely for its own purposes without regard to native rights.[38]

Baldwin made his anti-communist stance clear not just in Okinawa but in mainland Japan too. In an interview in Tokyo on September 4, 1959, Baldwin summarized his trip as such:

> While staying in Japan, I was deeply impressed with the excellent provisions in Japanese law for the protection of citizens' rights, the abuse of those rights by elements on the extreme

[36] Ibid. p.229
[37] Ibid. p.229-231
[38] Ibid. p.415

> left, and the deep concern for the civil rights of the Okinawans under American military rule.[39]

Here, Baldwin was referring to the various protests carried out by the Japan Teacher's Union (*nihon kyōshokuin kumiai,* or *nikkyōso*), for which he did not hold back his criticisms. His anti-communist stance was likely partly why Baldwin insisted on handling the Okinawa problem through ACLU as an American domestic problem and always framed the issue in terms of "civil" rights or liberties instead of "human rights." If the problem of Okinawa ended up in the UN human rights apparatuses, it would probably become an easy target for the Communist bloc, the influence of which Baldwin had been striving to diminish in Okinawa and Japan. Probably due to such concerns, Baldwin tried his best to not apply "human rights" to problems in Okinawa, despite being concerned about and even willing to help with what he saw as the "civil liberties" issues there.

On the surface, Baldwin's involvement in Okinawa was welcomed by both the American military government and the Japanese legal professionals and activists. Especially, the Japanese always thanked him profusely for his help with talking to the U.S. government. USCAR as well as other U.S. government branches also saw value in his anti-communist stance. This also means, however, both sides harbored discontent with his in-between position. For example, Baldwin's critique on USCAR often irked the American staff, but his anti-reversionist stance also sometimes rattled the Japanese lawyers. Baldwin's understanding of the sovereign status of Okinawa was firmly in line with the Japanese. In the press release of August 25, 1959 Baldwin made in Tokyo, he stressed that

> Any discussion of conditions on Okinawa must recognize that they are not permanent, not natural and not desirable. Nobody, either among Americans or Okinawans, both placed in

[39] Ibid. p.349.

> such an artificial relation, like a military occupation [sic]. Neither do the Japanese people, of whom the Okinawans are a part.[40]

This acknowledgement of the situation as "not desirable," and that Okinawans are Japanese people was determined "extremely unhelpful" in a telegram to Department of State from the U.S. embassy in Tokyo.[41] However, in the same statement, Baldwin also indicates that the occupation "will evidently last until the cold war ends," and he "sympathize with the universal desire of Okinawans for return to their motherland, but it is clearly not within present possibilities." Urging Japanese to acknowledge this status quo, Baldwin argues that "while the American military is in control, much can be done to extend greater liberties to the Okinawan people."[42] In other words, Baldwin simply did not support the reversion movement at that point and located the solution to the Okinawa problem in improving American rule.

Other than his stance on reversion, Baldwin's attitude and knowledge on Okinawa also probably raised a few eyebrows among Japanese activists concerned with Okinawa. In Tokyo, Baldwin participated in a number of roundtables and interviews with legal professionals and activists concerned with Okinawa. All of them, while definitely marked by civility and the expression of gratitude from the Japanese side, were also fraught with differences and confusion. For example, in his interview with poet and journalist Fujishima Udai, when the latter were discussing with him the land problem, Baldwin asked why the Okinawans did not reclaim lands in northern Okinawa if the American military were taking too much land. When Fujishima

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[40] Ibid. 314.

[41] Ibid. 309. In an inner memo of USCAR regarding this press release and Baldwin's suggestions, the author also acknowledges the "residual sovereignty" of Japan in Okinawa but states that "[h]owever, there can be no question of sharing governmental responsibility with Japan; on contrary[sic], any Japanese Government tendency to expand its influence in the Ryukyus must be resisted, lest little by little American control be eroded." This indicates that different from Baldwin's suggestion of gradually leveling the governmental and legal structure in Okinawa with the mainland to prepare for its eventual reversion, USCAR had always planned for prolonged control of Okinawa and saw its grip of the islands as a zero-sum game vis-à-vis the Japanese government. Ibid. p.276.

[42] Ibid. p.314

explained that those were mountainous areas unfit for cropping, Baldwin even tried to make a joke that "I believe Japanese peasants can do it!" and suggested more seriously that the locals could turn to "forestry" to make a living when Fujishima did not take the joke.[43] Similarly betraying his lack of knowledge of the islands, in a roundtable with legal scholar Ushiomi Toshitaka and lawyer Otake Takeshichirō organized by Legal News (*hōritsu jihō*), Baldwin evaded over half of the questions by saying the he never heard of such and such issue or had not researched enough on such and such topic.[44]

However, what disappointed and even puzzled the Japanese activists more was probably Baldwin's (perceived) different understanding of *jinken* from theirs, or even his denial of the existence of *jinken* problem in Okinawa sometimes. In the roundtable organized by Legal News, Ushiomi repeatedly pushed Baldwin to talk about the *jinken mondai* in Okinawa, but the answers of the latter, which was interpreted into Japanese, apparently took him by surprise. Ushiomi opened with a direct and simple question: "Mr. Baldwin you have travelled to Okinawa and observed the situation there. From the standpoint of *jinken,* do you think the *jinken* of the Okinawan residents are protected, or not?" Baldwin started his answer with the acknowledgement that Okinawans are Japanese although they were under American military administration, the rules of which were laid out by the 1957 Executive Order 10713 Providing for the Administration of the Ryukyu Islands. The Executive Order, according to Baldwin, "requests [the military administration] to establish democratic governance for the Okinawan people and protect their *jinken.*" What Baldwin said next, or what was translated into Japanese, probably took Ushiomi and Otake aback: "at present I have not heard any discontent from

[43] 「沖縄の人権をどうみるか(対談)」『中央公論』74(14)(861), 1959.10. p.74-84.

[44] 「沖縄・自由・人権(座談会)」『法律時報』31(11)(355), 1959.10. p.24-28

Okinawans that their *jinken* was denied, although I heard a lot of discontent that regarding self-government (*jichi*)." This was because, according to Baldwin, rights like freedom of speech, freedom of press, and freedom of assembly were basically protected. Baldwin then proceeded to talk about the problem of self-government in Okinawa, and repeated that this was a dilemma of security versus liberty, and that reversion was not possible in the foreseeable future.[45]

Unsatisfied with the answer, Ushiomi pressed further:

> I am here today not for political problems (*seiji teki na mondai*) but instead want to center the discussion around *jinken* and freedom (*jiyū*). Just now, you said you have not heard any complaints about *jinken* in Okinawa. However, according to the materials collected by JCLU, there were many incidents of *jinken shingai*.[46]

Baldwin then asked what incidents there were, and Ushiomi raised the issue of the right to receive fair trial, which was "very limited for Okinawan residents." Baldwin's answer (translated into Japanese), probably confused Ushiomi and Otake even more:

> When I said *jiyū jinken,* I was referring to the freedoms of speech, of press, and of assembly stipulated in the Executive Order. The trial as stipulated by the Executive Order would probably be different from [common] rules of court.[47]

Ushiomi further pursued Baldwin, citing the repression of the assembly of laborers for unionization as a violation of the Executive Order. Baldwin simply responded that he did not know about such incidents. Returning to this point later, Ushiomi further argued that "*jinken* of laborers (*rōdosha no jinken*)," including the right to organize (*danketsu ken*) and unions' right to collective bargaining (*dantai kōshō ken*), was part of fundamental *jinken* (*kihonteki jinken*). However, in Okinawa, unions not recognized by the license system did not hold bargaining rights. Regarding this, Ushiomi argued that:

[45] Ibid. p.24-25
[46] Ibid. p.25
[47] Ibid.

> This is strange even from the standpoint of laborers' rights as established in the Japanese Constitution, and it seems quite irrelevant to the security concerns of the America. Since laborers' rights are fundamental to the principles of democracy (*minshu shugi*), is it not strange in terms of legality (*hōsei jō*) for the Executive Order that ostensibly advocates democracy to limit the right to organize and right to collective bargaining of labor unions?[48]

To this, Baldwin simply responded that "rules in the Constitution of Japan do not apply to Okinawa," and although he agreed with gradually leveling the legal system of Okinawa with mainland Japan, he did not think Ushiomi's mention of Constitution carried any weight.

Apparently, this roundtable was carried out bilingually with interpreters, with Baldwin (who did not speak any Japanese) speaking English and the Japanese legal professionals speaking Japanese. Although only the Japanese edited transcript is published in Legal News, the gap between the two sides as illustrated above can shed some lights on the original languages the participants used. As shown earlier, Baldwin tried his best to avoid using "human rights" when talking about Okinawa due to concerns for Cold War politics, and had always used terms like "civil liberties" or "civil rights." Baldwin's use of "*jiyū jinken*" in the roundtable, which was probably originally "civil liberties," further supports this. Therefore, when Baldwin said he did not hear any complaints about *jinken* in Okinawa, his original English statement was probably that he did not hear any complaints about "human rights." This means that when Ushiomi argued that there was a *jinken* problem in Okinawa, the term *jinken* was probably translated into "human rights" in English. As shown, although JCLU sometimes did refer to the UDHR and its itemized rights categories when talking about the *jinken* problem in Okinawa, the use of this term here connected more closely with the discourse of nationalistic constitutionalism (the *kokumin-jinken* complex discussed in chapter 1) than with the UN-centered international human rights discourse.

[48] Ibid. p.27

The glaring gap in this roundtable discussion, with Baldwin seemingly denying that *jinken* problems in Okinawa existed, was a result of this mistranslation.

This mistranslation also stemmed from the fact that the English term "human rights" had become the standard and vernacular translation for the Japanese term *jinken.* As demonstrated in chapter 1, the Occupation period greatly popularized the English term "human rights" in the circle of Japanese legal professionals, despite the fact that the term *jinken* remained a mixed concept that did not directly translate into "human rights." This popularity of the term "human rights" was probably the reason why it became the standard translation of *jinken* when groups like JLBA and JCLU translate their Japanese reports and resolutions on Okinawa into English. As early as in 1955, the public letters (in English) sent to John Foster Dulles and Dwight D. Eisenhower by Onishi Kōzō, president of the JLBA, used the term "Human Rights Problem of the Okinawa," despite the fact that the official translation of the *jinken yōgō iinkai* was still "Civil Liberties Committee."[49] In the same way, the title of the English translation of the 1961 Okinawa report by JCLU was also "Report on the Human Rights Problem in Okinawa, Nov.29, 1961."[50] Despite this translation, the argument of the report leans heavily towards the nationalistic constitutionalist side of the discourse of *jinken.* Pointing out the fact that USCAR controlled everything in Okinawa, the report argues that despite stipulations about rights in the Executive Order, "something that can be called democratic organic law (*minshu teki kihon hō*) that guarantees the *jinken of* the residents does not exist." After listing problems in addition to the legal system, such as the trial system, the labor problem, freedom of speech and press, limit

[49] 「General Records of the Department of State, Central File, 1955-59　Box No.3978 Folder No.5」資料コード 0000112824 記録アドレス 2111a173, 沖縄県立公文書館. p.94

[50] Jiyū Jinken Kyōkai (Japan). 1961. *Report on the human rights probl[e]m in Okinawa, Nov. 29, 1961*. [Tokyo]: Japan Civil Liberties Union. http://www.worldcat.org/oclc/17514.

of free passage, land requisition and compensation, and social security, the report makes a bold conclusion. Quoting "a certain OLDP [Okinawa Liberal Democratic Party] member," the reports argues that all these problems in Okinawa along with the constant "anxiety" of the Okinawans stemmed from the fact that they were "separated from the mainland and put under the rule by an alien race (*iminzoku ni yoru shihai*)." The nature of the Okinawa *jinken mondai,* the report argues, is this very "rule by an alien race," and therefore, "the return of administrative right (*shisei ken*) [of Okinawa] to Japan is not only a political issue, but the ultimate solution to the *jinken mondai* [in Okinawa]."[51] The almost anti-colonial term "rule by an alien race" and "democratic organic law" (which basically refers to the exclusion of Okinawa from the new postwar Constitution) would be featured in most reports by Japanese legal professionals' *jinken* report on Okinawa in the 1960s. They also demonstrate that despite the translation of *jinken* into "human rights" in these letters and reports, the term in the Okinawa context had little to do with 40s and 50s UN-centered human rights discourse but more with the local constitutional nationalist tradition and, later, even the nascent international anti-colonial movement.

III. USCAR's Reaction to the *Jinken* Critique

How did USCAR deal with the critique on their administration framed in this fraught language of *jinken*? As just like the Allied Occupation staff in Japan from 1945 to 1952, few American military administrators of USCAR spoke any Japanese, and they relied on in-house translation (by hired locals or bi-lingual U.S. soldiers) of Japanese mainland and Okinawan press

[51] 「守られない人権　人権協会沖縄調査報告書完成　問題の最終解決は日本復帰」『人権新聞』第 79, 80 合併号, 自由人権協会, 昭和 36 年 12 月 1 日.

and civil activism materials to gauge their public image in the Japanese's eyes. With these translations, along with the complaints and resolutions sent to them by groups like JCLU that were already translated in English, USCAR realized very early on that the critique on it in terms of *jinken* was severely damaging its image and even hindering the administration of the islands. As early as in June 24, 1955, the Civil Administrator's office requested the Government & Legal Department to prepare a study on why USCAR was criticized in terms of "human rights." The study, titled "Human Rights Problems in the Ryukyus," was finished in August 12, 1955. In a memo, Richard A. Davies, Director of the Government & Legal Department introduces the memorandum as "a study pointing out background thinking and a general definition of those Human Rights which are believed to be causing the USCAR the greatest problem." Davies also "strongly recommend" that USCAR not to seek outside guidance on this matter.[52]

The study starts with a "Statement of the Problem," which is "the meaning of the term 'Human Rights' as it is used by groups critical of the United States Administration of the Ryukyu Islands." More than just a practical manual for how to deal with criticism, the study actually goes quite in-depth in analyzing the content and history of "human rights." Quite insightfully, the study contends at the very beginning that "'human rights' is a term which by itself has no specific metes or bounds and for which there consequently can be no single and simple definition." Therefore, "the listing of human rights is a dynamic process and they are subject to public opinion as well as to formal statutory amendments." In line with this quite historical logic, the study notes that although the term appeared to be only recently popularized by the UN, "consideration should likewise be given to the numerous attempts which have

[52] 「Human Rights (文書名:USCAR Records, The Liaison Department = 琉球列島米国民政府渉外局文書) (課係名等:Records of the Government and Legal Department) (シリーズ名:Miscellaneous Files, 1947-1957) (ボックス番号:306 ; フォルダ番号:2) 」USCAR 10536-10537, 国立国会図書館. https://id.ndl.go.jp/bib/000006903426

previously been made in various areas under the name of civil liberties, rights of man, bill of rights, declaration of rights, fundamental freedoms, and the like." The study then proceeds to review and list the American, British, and French traditions of rights, as well as the rights and freedoms supposedly guaranteed by the Executive Order for the "people of Ryukyus." Concluding that "people of the Ryukyus have been granted by law rights similar to those found in the United States 'Bill of Rights,'" the study nonetheless cautions that

> It must here be emphasized that the criticism being voiced in Japan against the United States administration of the Ryukyu Islands is primarily based upon those objectives which have been set forth in the Charter of the United Nations and amplified by the Universal Declaration of Human Rights, the latter being the present, ultimate, universal objective to be supported by all nations.[53]

This was technically not wrong. Critiques on USCAR by groups like JCLU and JLBA frequently referenced the UDHR and the UN Charter, albeit only in passing in most cases. However, this study shows that USCAR apparently took such citations literally and assumed that it was criticized because it was perceived to have violated these documents.

Based on this assumption, the study proceeds to engage the UDHR philosophically in order to device ways to argue against such criticisms. Despite admitting the authority of these two documents, the study also recognizes that UDHR was but "a common standard of achievement for all peoples and all nations" by which nations "strive by…progressive measures [to] secure their universal and effective recognition." In light of the aspirational nature of the UDHR, the study argues that "in the administration of the Ryukyu Islands the United States is following the broad principles as outlined by these terms." Therefore, "as long as advancement and progress in this field continues, which it has, criticism of the nature leveled against the United States administration of the Ryukyus can only be considered as unjust." In other words,

[53] Ibid.

the study actually argues that because the UDHR is but a set of aspirational goals, criticism citing the UDHR can only be valid if the criticized regime makes "no attempt" on improving or "purposefully and arbitrarily remove[s]" rights prescribed in the document.[54] Again, the study was not technically wrong to assert that UDHR is an aspirational document, and there is even some validity in this argument of "as long as there is progress" since UDHR itself does not prescribe any timeline or extent of urgency of its implementation. However, the author of the study was also apparently not convinced that this line of reasoning could be a valid public argument, as the study proceeds to delve deeper into the analysis of specific articles and their application to the criticisms on USCAR. Before going into specific articles, the study already recognized,

> The objection raised by both organizations against the responsibility which the United States must assume over the Ryukyus would appear to be directed more against the Treaty of Peace with Japan which has separated these islands form Japan's administration rather than against human rights as such. Naturally, under the broad terms of the Declaration the administration of one country over the territory of another, when the inhabitants of the administered area are not treated with full and complete equality of those of the administration, can be a foundation for the claim of violating human rights.[55]

Here, the author of the study admits his confusion over his assumption that JCLU and JLBA used UDHR as the basis for their *jinken* criticism. He actually correctly recognized the fact that the Japanese legal professionals located the *jinken* problem in the Peace Treaty that granted U.S. total administrative power over Okinawa, not the UDHR, as the analysis of this chapter has shown. However, because *jinken* was translated as "human rights" in USCAR, and the lawyers did cite UDHR occasionally, the author of the study did not question this assumption despite the confusion. Instead, as shown here, he started to theorize on how the Japanese lawyers *could have*

[54] Ibid.
[55] Ibid.

used the UDHR to criticize USCAR, as the argument of equality based on UDHR principle cited here only "can be," not was, used.

This is just the beginning of the author's anticipation of possible "human rights" arguments (instead of analysis on actual criticism from Japanese lawyers, which often raised issues relevant to the article but seldom cite the articles as their main evidence). Regarding the land problem, the study states that "Article 17 is of primary interest in this respect although neither of the complainants have attempted to tie this in directly with their position." A lengthy discussion of Article 17, which states that everyone has the right to own property, ensues. With regards to the second paragraph of the article, which states, "no one shall be arbitrarily deprived of his property," the study points out again that "it is not specifically stated by either the Japan Civil Liberties Union or the Japan Bar Association." Despite this, the study still proceeds to provide a lengthy argument that as long as USCAR is not depriving Okinawan's land "arbitrarily" but for the "public necessity" and with "suitable compensation," criticism based on this article (which was nonexistent) would be unfair.[56]

This kind of article analysis with anticipated arguments proceeds for six pages. Finally, the study stumbles upon an issue that it has difficulty connecting to a specific UDHR article. The study notes that "both the Japan Federation of Bar Association and the Japan Civil Liberties Union cite murder, traffic accidents, rape, and violence as violation against human rights in their respective reports." Again, the author admits that "no positive comparison is made with a specific portion of the Declaration," and he himself also apparently has difficulty citing a specific article, although he surmised that Article 3 (right to life) and Article 7 (equality before

[56] Ibid.

the law) might be relevant. However, due to this lack of a perfect match to an article, the study declares that "criminal action of one individual against the other are believed erroneously placed under the category of human rights" unless the crime is state-abetted and the judgement arbitrary. The author then (correctly) suspects that such framing was to "point up the variance in jurisdiction of courts in Ryukyus" and to promote the idea of Japanese administration. He then concludes that:

> Again it must be emphasized that to include as violations of human rights criminal actions which are neither approved nor supported by law, nor independently sanctioned by the authorities in power is considered erroneous. The sole desire on the part of the Japan Bar Association and the Civil Liberties Union in using such information in a Human Rights Petition is apparently to cast criticism upon the United States Forces in the Ryukyu Islands and to support the desire of again establishing Japanese administration over the area.[57]

It is interesting how the study is both accurate and misconstrued. It is accurate in its identification of the JLBA and JCLU's support of reversion in their *jinken* activism for Okinawa, and yet is misled by the translation of *jinken* as "human rights" and thus misses the actual arguments the lawyers made. Following such an accurate yet misconstrued position, the study concludes that "the criticism emanating from such sources as the Japan Civil Liberties Union and Japan Federation of Bar Association appears less concerned with human rights than with return of the Ryukyu Islands to Japanese administration." In the end, the study recommends USCAR to continue to "safeguard" and "expand" rights under its administration, to "develop equitable solutions for differences in basic opinion held by the local people and the administration," and to "guard against creating dangerous political tensions and the idea of class conflict and reinforce human rights by continued development toward solution of economic, political and social problems."[58]

[57] Ibid.
[58] Ibid.

Apart from this accurate but misconstrued understanding of the *jinken* critique by Japanese lawyers arisen from the mistranslation of the term as "human rights," the study's disparaging remarks about Okinawans are equally interesting. When talking about what constitutes "arbitrary" confiscation of property, the study claims that

> In a responsible free democratic society the conscience of the people will determine when a legal act becomes an abuse of power. However, under a system as is existent in the Ryukyus responsibility is lacking in the people and instead by treaty has been placed upon the United States.[59]

The study reiterates this point in the conclusion section:

> In the United States, people are imbued with the concept of human rights and have by Constitution been guaranteed a great number of freedom. Other areas are still seeking these rights while still others have recently acquired these rights with which they are unfamiliar and have consequently not acquired their full understanding. The Ryukyus are considered an area in the latter category where responsibility which [sic] accompanies human rights must likewise be accepted.[60]

Despite the irony that the military men themselves needed a study to understand what "human rights" meant and why they were criticized with this language, the author argues that Okinawans were not mature enough to shoulder the "responsibility" associated with rights (whatever this means) to enjoy "human rights," and thus required the chaperoning of USCAR in order to properly enjoy the rights bestowed upon them.

IV. Okinawan *Jinken* Activism and *Jinken* Discourse on Okinawa in the 1960s

How did the Okinawans themselves conceptualize *jinken* and the *jinken* problems faced by them? While the USCAR study above only talked about criticism from mainland groups like JCLU and JLBA, Okinawan residents also frequently used the framing of *jinken* to voice their

[59] Ibid.
[60] Ibid.

discontent at the USCAR administration. Apart from the land problem, what shocked and angered Okinawans the most were the crimes of the American soldiers and the lack of local jurisdiction over the suspects. Among them, the rapes and murders of local school girls outraged the Okinawans the most. In the August, 1955 "Yumiko-chan Incident," an American soldier raped and killed a local six-year-old girl. A similar incident, the rape of a primary school girl, occurred in September of the same year. These incidents prompted the formation of "associations for protecting the children (*kodomo wo mamoru kai*)" in every locale. The associations organized numerous "residents' meeting for protecting *jinken* (*jinken yōgo jūmin daikai*)" and these produced numerous resolutions condemning the crimes and demanding USCAR to hold fair and open trials for the perpetrators and to even transfer the judiciary authorities from the U.S. military tribunal to try them to Okinawan civil courts (from military tribunals).[61] In light of these incidents and reactions, Roger Nash Baldwin advised local politicians, lawyers, and activists to form an organization like the mainland JCLU when he visited Okinawa in 1959. Seasoned in these local movements and indispensable in receiving the mainland lawyers and assisting them to carry out *jinken mondai* research for their reports, Okinawan activists were poised to establish the Okinawa Civil Liberties Union (OCLU, *Okinawa jinken kyōkai*) in 1961.

Interestingly, the *jinken* philosophy of OCLU was strikingly similar to that during the (mainland) Occupation period promoted by GHQ. The prospectus (*setsuritsu shuisho*) of the OCLU reads like a flashback to classical Occupation period *jinken* discourse. It starts with the universalistic interpretation of *jinken:*

Individuals are born free and equal with unalienable dignity that is inviolable by any power.

[61] Ibid.

> This thinking is the true foundation of democracy since the French Revolution and American Declaration of Independence, and is further articulated in the UDHR.
>
> This is the fundamental value of the popular sovereignty (*shuken zaimin*), and it entails that our freedom of life (*seimei*), survival (*seizon*), pursuit of happiness, speech, religion, and thought and activities related to these must be guaranteed.[62]

Even in this opening passage that is ostensibly about universalism, the constitutionalist aspect of *jinken* is already implied to be the mainstay mission of the OCLU. The prospectus proceeds to recount that in Okinawa, Meiji luminaries like Jahana Noboru was already promoting *jinken* (*jinken no shinchō*) in the 1890s Freedom and People's Rights Movement (*Jiyū Minken Undō*). Despite this, after WWII, Okinawa's *jinken* condition entered the era of "darkness." This was because

> Although the postwar Constitution of Japan clearly states that the *kihonteki jinken* "shall be conferred upon the people of this and future generations as eternal and inviolate rights," unfortunately the administrative authority of Okinawa continues to be held by the occupation force, and thus the Constitution is not applicable here.
>
> As a result, Okinawa lacks laws and institutions to protect *jinken,* and ideas of *jinken* (*jinken shisō*) remains uncultivated.[63]

The prospectus then recounts the history of OCLU's establishment in 1961 per the advice of Baldwin in 1959, and professes that it seeks to build on the work off the *Jinken* Protection Division (*jinken yōgo gakari*) in the Legal Bureau of the Government of Ryukyus and the *Jinken* Protection Committee (*jinken yōgo iinkai*) of the Ryukyu Bar Association to "fulfill the mission of building a democratic society."[64] Like the (mainland) Occupation period *jinken* materials, the prospectus of OCLU starts with universalism but loops back to the principle of democracy and constitution (in this case the lack thereof), which are the root of the *jinken* problem in Okinawa according to OCLU.

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[62] 沖縄人権協会『人権擁護の歩み』1966 年 12 月. p.1
[63] Ibid.
[64] Ibid.

In its bylaw, the founders of OCLU also included a list of what they considered *jinken shinpan* incidents. The list is also reminiscent of the late 1940s definition used by the *Jinken* Protection Bureau and other groups created in the Occupation period. Listed in the beginning is the "violations by state officials (*kōmuin ni yoru shinpan*)," such as those by the police and prosecutors. Following this are human trafficking (*jinshin baibai*), and then "exploitation and abuse (*kokushi to gyakudai*)" such as those of children and patients, "violation of personal freedom" like illegal detention, "village ostracization (*murahachibu*)," "lynching," and "discrimination." Then come violations of different rights often cited as *jinken* such as that of suffrage, fame, speech, assembly, religion, education, labor, and safe residence. Like the 1940s materials in mainland, the list also includes "oppression" including those from "feudalistic customs (*hōkenteki kankō*)."[65] This broad list reflected OCLU's actual work that was also similar to mainland *jinken* groups and institutions at their establishments. For example, in the first year after its establishment, OCLU provided legal aid to forty-four incidents. Of these, seven concerned passage to and from Okinawa, six concerned abandonment of local wives by American soldiers, five abuse of power by public workers, three violent incidents, five unequal pay for women, four thought policing by CIC (intelligence organ) of USCAR, two labor law, three domestic affairs, and other miscellaneous incidents.[66]

The similarity of the local *jinken* landscape in Okinawa to that of mainland was no accident. Ever since the 1955, mainland legal professional groups like the JCLU had been actively reaching out to Okinawan politicians, lawyers, and activists to inform them of their *jinken* ideology and activism. Fukuchi Hiroaki, one of the founders of the OCLU, reminisced

[65] Ibid. p.4-5
[66] Ibid. p.124

that JCLU frequently sent him its journal *Jinken News* to inform him of JCLU's activities. He also received numerous *jinken*-related materials from Miyazato Matsushō, an Okinawan lawyer based in Tokyo who was a JCLU member and who became the first Vice Governor of Okinawa after its reversion in 1972. These, along with the visit of Baldwin in 1959, convinced Fukuchi that "it was necessary to establish a civilian organization (*shimin soshiki*) in Okinawa for the protection of *jinken* (*jinken yōgo*), and [I] started the preparation for establishing such group."[67] Despite the strong mainland influence, Fukuchi also pointed out that the timing of the establishment of the OCLU also stemmed from local context. According to him, the turn of the 1960s was a period during which high profile *jinken shingai* cases of various kinds skyrocketed. In 1959, the new penal code announced in the islands prescribed more severe punishment for speech and organizing deemed harmful for the military mission of America, and locals also perceived that sanctions on personnel affiliated with leftist (usually considered anti-American) groups such as refusal of passage to mainland and denial of publication or public speech, had grown more egregious. From 1959 to 1961, crimes of American soldiers against locals that resulted in casualties (by gunshots or car accidents) also drastically increased.[68] Fukuchi and others ascribed such developments in Okinawa to the escalation of the Vietnam War and the accompanied increasing militarization of Okinawa.

Partly as a result, the *jinken* framing of Okinawa's problems also evolved to reflect these developments. While mainland and Okinawa legal professional activists were still amassing basic information about the situation in Okinawa and assembling the list of what would be framed as *jinken* problems there in the 1950s, such categorizations matured and formalized in the 1960s. The

[67] 福地曠昭『沖縄史を駆け抜けた男：福地曠昭の半生』同時代社, 2000.10. p.69
[68] Ibid. p.72

main activist groups in Okinawa also formed at the beginning of 1960s: other than the OCLU in 1961, the Okinawa Reversion Association (*Okinawa Sokoku Fukki Kyōgikai*) also formed in 1960. These developments in the *jinken* discourse and activism in Okinawa can be seen in the 1967 JLBA all-encompassing report on Okinawa. Like JCLU, the JLBA, whose membership covers every lawyer in Japan (as required by law) and thus reflects the will of the profession to some extent, had a long history of activism for the Okinawa issue. As early as 1955, JLBA established its "Committee for Resolution of the *Jinken* Problems in Okinawa (*Okinawa Jinken Mondai Taisho Iinkai*)" and carried out its first investigation trip to Okinawa in 1958 and a second one in 1960. Its Okinawa-related activities went dormant for a few years after the publication of a major report on the Okinawan judicial system and the subsequent dissolution of Okinawa-related committees in 1961 but resumed in 1966 with incidents of court cases being forcibly transferred from the Ryukyu Civil Court to the USCAR Court on the ground of American interest despite the organization's previous protests and advices on judicial independence in Okinawa.[69] Already disappointed at the perceived lack of progress in the reversion of administrative and judicial authorities in Okinawa despite Prime Minister Sato Eisaku's high profile visit to the islands in 1965, legal professionals were furious at these incidents, which they perceived as regression instead of progress of *jinken* in Okinawa. In a statement regarding this matter, president Nakamatsu Kannosuke of JLBA protests this deprivation of "the right to trial by one's own *kokumin* (*jikokumin ni yoru saiban wo ukeru kenri*) of the Okinawan residents," and stresses that such *kihonteki jinken* of the Okinawans who were Japanese *kokumin* should be unconditionally protected.[70] These

[69] 寺嶋芳一郎「沖縄問題調査報告書の概要」『自由と正義』19(1) 1968.01. p.32-36 p.32
[70] 日本弁護士連合会「沖縄における裁判移送に関する声明」
https://www.nichibenren.or.jp/document/statement/year/1966/1966_1.html

incidents also prompted JLBA to send a large group of fifty-six members to Okinawa for a comprehensive investigation of *jinken* problems in 1967.

A member of the investigation group, lawyer Terajima Yoshiichirō explains later in a report that the group "divided up the *jinken mondai* of Okinawa as a phenomenon as well as all of its direct and indirect causes in order to investigate them separately." The group leader Okuyama Hachirō (who unfortunately passed away shortly after the investigation) also states that the group went beyond both the judicial and political problems such that "as long as a problem is related to *jinken,* [we] investigated it." The group was divided into six divisions: judicial system (division one), free passage (two), *jinken* around military bases (three), military acquisition of land (four), labor, education, and social security (five), and finally (international) legal status (of Okinawa), system of rule (of the military administration), military base, economy, and reversion movement (six). Despite the wide focus, the conclusion of the report did not differ substantially from the JCLU report in 1961: that all these *jinken* issues stemmed from the "rule by an alien race" in Okinawa, and they could be remedied only when the islands are reverted back to Japan. However, compared to the JCLU report, the JLBA report devotes much more space—around half of the report—to the issues stemming from military bases, such as crimes by American soldiers and the difficulties involved in trying them in local courts and securing proper compensation for their victims. The usual "land problem (*tochi mondai*)" category in previous similar reports is also rephrased as "military land use problems (*gunyōchi mondai*)" in this JLBA report.[71] In terms of its critique, the report also ascribes a variety of *jinken* problems to the

[71] 寺嶋芳一郎「沖縄問題調査報告書の概要」 p.32-33.

aggrandizing military bases due to the escalating Vietnam War, which begot issues like crimes by soldiers with high turn-over and land grabs.

The visual impact of the militarization of the islands on the investigation group likely predetermined their focus on base-related issues. For example, the group leader Okuyama later related in a roundtable on the investigation that

> My very first impression of the island was that…the entire Okinawa had become a military stronghold (*yōsai*). [The Americans] built a strong fortress using the island. Seeing this, we felt that the Americans simply did not plan to return the islands [to Japan,] and making them do so would not be an easy thing. Even if the administrative authority is returned, it would surely be difficult to make [Americans give up] the lands and bases.[72]

The prescience of Okuyama might have contributed to the heightened attention to the military bases as the lawyers realized that administrative power was not the only root of the *jinken* problem in Okinawa. Group member Kudō Yūji concurred that he shared this impression, and it even started before he arrived in the islands. Kudō took note that the plane he took to Okinawa was filled with American soldiers going to the bases. Before the plane landed, Kudō looked down from the window, and military planes, ships, and vehicles dominated the landscape. The view after Kudō landed was not much different as the very highways the investigation group had to use were constructed by the American military and geared towards base use. Kudō could not help but lament that the name "military base Okinawa (*kichi Okinawa*)" was well deserved.[73]

This attention to the military bases on top of the idea of "rule by alien race" in framing the *jinken* problem of Okinawa can be best summarized by the JLBA's characterization of the Okinawan problem in its 1967 *Jinken* Whitepaper (*Jinken Hakusho*):

> As widely known, Okinawa is under the rule of an "alien race (*iminzoku*)," and this rule is based on the agenda of "priority of military objectives (*gunji mokuteki yūsen*)." Most

[72] 奥山 八郎 他「沖縄現地の視察を終えて(座談会)」『自由と正義』18(4):1967.4. p.2-28. p.3.
[73] Ibid, p.11.

> saliently, this manifests in the issues of "administrative power (*shisei ken*)" and "military base (*kichi*)," but the characteristics of the *jinken* violation (*jinken shinpan*), while closely connected with these two issues, also directly and strongly affect every aspects of the daily life of Okinawa residents (*kenmin*). There, the political institution (*seido*) itself is in essence *jinken shinpan,* and among individual acts of *jinken shinpan,* the majority would not have happened if not for the existence of military bases.[74]

Here, the issue of military base is added to the argument of "rule by an alien race" as another pillar of the root of *jinken* problems in Okinawa. In addition, the Whitepaper also states the anti-colonial aspect in the framing of "rule by an alien race," which had been always implied by not usually spelled out, more clearly and emphatically. Arguing that "rule by an alien race" is humiliating for the ruled race (*minzoku*), the Whitepaper cites the UN General Assembly resolution adopted for the 1968 International Year of Human Rights that calls for the abolition of colonialism to further emphasize the continued American occupation of Okinawa was structurally unjust and shall be internationally condemned.[75]

V. USCAR's Response to *Jinken* Problems Towards the End of Its Rule

The timing of the JLBA investigation and the publication of these materials were certainly meticulously planned. As the Whitepaper cites, 1968 was the International Year of Human Rights. It was also the Human Rights Year in the U.S. declared by president Lyndon Johnson, and the year of the first direct popular election for the Chief Executive of the Government of the Ryukyu Islands (*gyōsei shuseki*) in Okinawa. Anticipating intensified criticism on the ground of "human rights" as they understood it, USCAR staff again started to prepare plans and studies on "human rights." This time, the initiative was taken by the Public

[74] 日本弁護士連合会『人権白書 昭和 43 年度版』1968. p.185.
[75] Ibid. p.187.

Affairs Department as opposed to the Legal Affairs Department. On August 14, 1968, Joseph S. Evans Jr., the director of the Public Affairs Department, sent a plan for a "comprehensive public relations program, utilizing all media" to "convince Ryukyuans that their "Human Rights" are respected and protected under U.S. administration" to the office of the High Commissioner. The plan notes the significance of the year 1968 for "human rights" and the local election, and concludes that groups like JCLU and JLBA would definitely take the chance to criticize USCAR on "human rights" violations. While various issues had been framed in terms of "human rights," the plan asserts that "however, the essence of the so-called human rights issue was—and is—crimes by, and sole U.S. jurisdiction over, U.S. servicemen," and thus "this paper is addressed solely to that aspect of the human rights issue." The plan proceeds to list detailed measures such as clear orientation for new recruits, stricter disciplines, strengthened communication with local hospitality and taxi business circle, public relations campaigns, and more transparent information on USCAR court procedures.[76]

At the first glance, the plan was quite cynical: despite correctly identifying the gist of the *jinken* critiques by Japanese legal professionals in the late 60s (although *jinken* was still treated as the transparent translation of "human rights"), USCAR decided that the best response was merely a public relations campaign to "convince" Okinawans that their rights are protected instead of actually improving their rights. However, the plan was actually a product of compromise, confusion, and resignation within USCAR and the military. In 1967, USCAR had already noticed an uptick of criticism on them on the ground of "human rights" from both mainland lawyers and local activists and media due to the increased GI crimes and the issues of

[76] 「Human Rights. Original file no.: 204-58 (文書名:USCAR Records, The Legal Department = 琉球列島米国民政府法務局文書) (課係名等: The Legal Division) (シリーズ名: Administrative Files, 1950-1972) (ボックス番号: 3 ; フォルダー番号: 3) 」USCAR 27177, 国立国会図書館. https://id.ndl.go.jp/bib/027635384.

jurisdiction. Regarding an inquiry on "the validity of charges of human rights violations" in an editorial in Okinawa Times[77] that essentially replicates the JLBA report's argument, Irving Eisenstein, the Acting Director of the Legal Affairs Department of USCAR, gave a contradictory opinion that indicated the lack of progress of USCAR's understanding of why issues in Okinawa were framed in terms of *jinken*:

> The short answer is that the charges are essentially invalid. They stem from a general dislike of domination by the U.S., a foreign power, which is referred to in the article as a superiority complex. This of course is not a human rights matter at all but rather a basic political basis for the reversion movement.[78]

However, in the same response, Eisenstein immediately contradicts himself by pointing out that "the article touches on several matters that can be regarded as human rights problems, matters on which we have not provided persuasive answers." These include the restrictions of travel to and from Japan mainland, labor rights issues, and transparency of court martials of GIs charged with crimes against Okinawans. Despite the firm conclusion he puts forth at the beginning, Eisenstein actually suggests USCAR to take these issues seriously and genuinely improve them even just for appeasing the outraged locals. Especially on the last issue, he suggests the military "publish periodic reports on the results of prosecutions for offenses against Ryukyuans and on the payment of foreign claims."[79]

Eisenstein's opinion was representative of the complex stance of USCAR in response to the criticism of *jinken* against them in late 1960s. On one hand, as in the 1950s, the military administrators actually understood what Japanese lawyers were demanding and the reasons

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[77] 「Human Rights (文書名:USCAR Records, The Liaison Department = 琉球列島米国民政府渉外局文書) (シリーズ名:Miscellaneous Files, 1970) (ボックス番号:262 ; フォルダ番号:7)」USCAR 10009 , 国立国会図書館. https://id.ndl.go.jp/bib/000006903070. The clipping is from an editorial published in *The Okinawa Times* on June 24, 1967.
[78] Ibid.
[79] Ibid.

behind such demands. On the other hand, they still (not entirely but fatefully erroneously) identified the theoretical basis of such criticism as "human rights" as the UN and western countries promoted it. For example, Judge Advocate General's Corps' office (JAGC), which advised American military on legal issues, was also consulted on the grounds of such "human rights" problems. After studying the whole UDHR, JAGC concluded on April 23, 1968,

> An examination of the United Nation "Universal Declaration of Human Rights," fails to disclose that the "Human Rights" of inhabitants of the Ryukyu Islands are interfered with or withheld or denied because U.S. members of the Armed Forces cannot be tried for off-duty crimes by GRI [Government of Ryukyu Islands] courts.[80]

The legal organs of American military, unable to look past the translation "human rights," decided (not erroneously) that the issue was not actually related to "human rights" and thus should not be in their jurisdiction. This was likely the background of the eventual handling of this matter by the Public Affairs department. Like Eisenstein who proposed substantial changes despite the ostensive hardline statement, Evans, the Director of the Public Affairs Department, initially also suggested bold changes to counter the *jinken* criticism. As early as on April 23, 1968, Evans already wrote a memo on which the later PR plan would be based. However, this memo proposes some substantial changes:

> The granting of jurisdiction over certain off-duty crimes by U.S. Forces personnel to Ryukyuan courts would result in relieving great pressure from leftists and the so-called intellectuals on the human rights question. It would serve to elevate the U.S. image, with the advantage thus gained far outweighing the disadvantages created.[81]

In this memo, Evans quite accurately summarizes the "human rights" criticism USCAR had been receiving, including the 1967 JLBA report, and concludes that although groundless, "they do

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[80] 「Reference Paper Files, 1970: Human Rights. 401-07 (文書名:USCAR Records, The Public Affairs Department = 琉球列島米国民政府広報局文書) (課係名等:The Director's Office) (シリーズ名:Administrative Files, 1965-1972) (ボックス番号:33 ; フォルダー番号:1) 」USCAR 41829-41832, 国立国会図書館. https://id.ndl.go.jp/bib/000007756634.

[81] Ibid.

reflect the emotional desire of the people for reversion to Japan and the elimination of foreign rule," which, if continued to be "exploited," could cause USCAR more damage. Evans argues that as the government of Japan may seek a Status of Force Agreement that would address this issue later this year, USCAR should respond positively and hand over the jurisdiction over GIs who committed crimes against locals. Evans suggests setting up a committee consisted of all the legal and public affairs-related organs in the American military and USCAR to discuss the specifics of this transition.[82]

Evans' bold proposal speaks to the extent of damage the *jinken* criticism by Japanese activists had caused for USCAR even though the military men continued to dismiss such framing of "human rights" as erroneous. If they were not entirely cynical, people like Evans and Eisenstein probably noted the unreasonable, if not unjust and illegitimate, aspects of the USCAR rule and believed that only drastic structural changes could remedy them. However, Evans' proposal was apparently denied, as his August, 1968 draft of PR plan included the "assumption" that "no HICOM [High Commissioner] Ordinance will be promulgated as a type of Status of Forces Agreement for the Ryukyus." Not only that, many of the substantial reform proposals, such as publicizing memoranda with local police over jurisdiction, were also deleted from a July draft. The end product in August consisted mainly of recommendations of better disciplining soldiers and informing local businesses of the boundaries of USCAR's jurisdiction without any substantial change to this jurisdiction over American soldiers.[83]

Despite the rollbacks, the PR plan was developed into a much more full-fledged instruction booklets around September 6. Widely distributed to commanders, the "Plan for U.S.

[82] Ibid.
[83] Ibid.

Image on Okinawa" not only prescribed PR and disciplining measures to be carried out in five phases from September to December leading up to the fist popular election of the Chief Executive in November and the beginning of his term in December;[84] it also introduces in detail the political situation, including major parties and their platforms (especially stances on reversion), and the USCAR's stake in ensuring the victory of the "moderates," namely the Okinawa Liberal Democratic Party (OLDP) instead of the opposition coalition. "In this delicate situation," the Plan notes, "it is clear that our behavior as American becomes a political issue. Unsavory incidents involving Americans…embarrass moderates both in the opposition coalition and in the conservative party."[85] While the core objective of minimizing GI crimes and disputes with the locals remained the same, analysis of "human rights" no longer appears in the report, neither does the discussion of transferring jurisdiction of GI crimes to local courts. This likely marked USCAR's pivot away from attempting to engage with the (perceived) "human rights" criticism: unable to decipher the connotation of the *jinken* frame Japanese lawyers used, USCAR military men likely decided that further analysis was useless and took the more pragmatic approach in the form of an "Image Plan."

The PR campaign was deemed a great success. A Department of Army inner memo on December, 4, 1968 notes that since the implementation of the plan in September 4, it had "resulted in a marked improvement of the U.S. Image." Therefore, this Image Plan "will be continued indefinitely." This includes continuing to disseminate information beneficial for U.S. image, taking prompt and appropriate action for offenders, providing "Courtesy Patrols," and ensuring this program "receives the unequivocal support of commanders at all levels."[86]

[84] The booklet also notes that the Chief Executive election also coincided with the election of legislature and later the Naha mayoral election, making the situation even more delicate.
[85] Ibid.
[86] Ibid.

Contrary to the jingoist tone, the memo makes no mention of the result of the election, which was definitely not a desirable one for the U.S. military. Yara Chōbyō, the opposition coalition candidate who was considered a radical leftist by USCAR and whose platform called for unconditional and immediate reversion to Japan, won the election and became the first popular elected Chief Executive in Okinawa. The larger American strategy in Asia also appeared to be shifting: Richard Nixon, whose platform promised the withdrawal of American troops from Vietnam, was elected president in 1968. Immediately next year, diplomatic talks between Japan and American produced the "Joint Statement of Japanese Prime Minister Eisaku Sato and U.S. President Richard Nixon," which essentially finalized the reversion of Okinawa in 1972 as the American involvement in the Vietnam War was coming to an end. Also despite the rosy picture the memo paints, American GI crimes and other base-related incidents continued to transpire and irate Okinawans, and the preservation of American military bases in Okinawa agreed upon by the two governments only exacerbated this anger. On December, 1970, discontent with a series of incidents that involved drunk driving American soldiers killing locals and the ensued unsatisfactory tribunals erupted into large scale riots in Koza city, indicating that the relationship between locals and American military rule had reached a breaking point.

VI. Okinawa's *Jinken* Problems after Reversion

It was against this background of dissatisfaction with the U.S.-Japan agreements and the intensified dismay and anger at American military bases that Okinawa finally reverted to Japan on May 15, 1972. Still, the reversion should have marked the elimination of the root cause of the *jinken* violation in Okinawa as the "rule by an alien race" with military objectives as its priority had come to an end. However, 1972 was by no means the year when the *jinken* framing of

Okinawa's plight faded away: instead, the discourse just evolved to encompass and articulate the new situation and the legal professionals' new perception of Okinawa's problems. In the OCLU booklet *The Advance of* Jinken *Protection No. 6:* Jinken *A Year and A Half after "Reversion"* (*Jinken Yōgo no Ayumi Dai roku-gō: "Fukki" Ichinen-han no Jinken*), OCLU secretariat Kinjō Chikashi (who was also the head of the Okinawa Bar Association) explains the sentiment in Okinawa on "the nature of the *jinken* problems a year and half after the 'reversion'" as such:

> The "reversion" on May 15, 1972 was not the "reversion to the fatherland (*sokoku fukki*)" the Okinawa people (*kenmin*) had been rallying around to achieve, but merely a form of "the return of administrative authority (*shiseiken henkan*) with the preservation and even the reinforcement of military bases at its core; namely, it was just a new method of rule of Okinawa by the American and Japanese government. This structure manifests in the condition of *jinken* in the past a year and a half after the "reversion."[87]

In these few sentences, Kinjō appears to have overturned the traditional *jinken* framing of the Okinawa problem. He continues:

> Because the American military bases in Okinawa that take pride in being the largest complex of bases in the Far East remain here after the return of administrative authority, the *jinken* problems stemming from American bases continues to transpire. The saying that the military bases are the root of all evils including *jinken* problems still holds true today. In this regard, the condition of *jinken* now is not fundamentally different from before the "reversion."[88]

Taken as a whole, Kinjō's reasoning was in fact not a break from the traditional *jinken* framing on Okinawa's woes but another phase in the arc of the development of this discourse. In the 50s, Japanese lawyers identified the root of the *jinken* problem as the lack of national administrative power, and the phrase "rule by an alien race" gradually settled on top of this argument. However, witnessing the increase of GI crimes and base-related pollution incidents over the years, the lawyers realized that the American military bases were also the source of *jinken* problems in

[87] 沖縄人権協会『人権擁護の歩み　第六号：特集　「復帰」一年半の人権』1974. p.1
[88] Ibid.

Okinawa, and prescient ones like Okuyama already realized in the 60s that even if the problem of administrative authority is resolved, the *jinken* problems caused by bases would continue to exist. This thus changed their framing to "rule with military objectives as priority" on top of "rule by an alien race" in their framing. Kinjō simply confirmed and spelled out this worry: the "reversion" of 1972 was simply not the true reversion Okinawans fought for because Okinawa's place in the U.S.-Japan security regime in Asia remained unchanged. As a result, the military bases continued to exist, and so did the *jinken shingai* stemming from them.

Furthermore, Kinjō also points out that "new situations involving *jinken* emerged as Okinawa 'reverted' to the mainland." These include problems of pollution (*kōgai*[89]) as mainland capitals flooded into Okinawa and problems of self-rule (*jichiken*) as the local political institutions became absorbed into the national bureaucracy. "These [problems] stem from the influx of capital and state power (*kokka kenryoku*) as a result of the wearing down of the wall of administrative power," Kinjō argues. Indeed, the "reversion" in 1972 disappointed many Okinawans, who felt like the mainland Japanese government not only betrayed them but also created for them more problems. Writing for the special issue on the reversion of *Freedom and Justice* (*jiyū to seigi*), the official journal of JLBA, scholar and activist Nakano Yoshiō argues that, as military bases remained in Okinawa despite the "reversion,"

> After May 15th, the Okinawa residents (*kenmin*) have to fight to remove the bases like before on the one hand, and against the voracious mainland capital (which, without saying, is intertwined with the conservative mainland government) on the other hand. It is indeed ironic that they fell into this plight of being attacked from both sides.[90]

[89] *Kōgai,* much like *jinken*, is actually fraught concept that is hard to translate into English. Usually it translates to "pollution" but it literally means "harm to the public good." It became popularized in the 1960s, in which Japanese lawyers invented the term *kichi kōgai* (public harm created by military bases) to describe the *jinken* problem of bases. This concept will be further elaborated in the last chapter.

[90] 中野好夫「五月十五日以後--管見(特集・帰ってくる沖縄)」『自由と正義』23(4) 1972.04. p55-58. p.58.

Utterly disappointed by the mainland government, Nakano laments "how could we tell the Okinawan compatriots to trust the mainland government in light of its continued desecration (*okashitsuduketa*) of Okinawa since the Battle of Okinawa in 1945?"[91]

As Nakano's remarks demonstrate, this sentiment of betrayal and disappointment prompted the Okinawan and Japanese mainland activists to rethink the very history of Okinawa's relations with the mainland central government: most of them came to the conclusion that 1972 was not a deviation but the norm of how the central government treated Okinawa. The Okinawan lawyers certainly felt this way. For the same special issue Nakano wrote for, JLBA representatives went all the way to Naha, Okinawa and held a roundtable with representatives of the Okinawa Bar Association in which the latter reported on the theme of "Okinawa・*Jinken*・Constitution."[92] Regarding the mainland government and the application of the Constitution in Okinawa, Okinawan lawyer Miyanaga Kansai framed this betrayal by the mainland as a *jinken* issue:

> When the 1952 Peace Treaty was concluded [which ceded the administrative power of Okinawa], the will of the Okinawa residents (*kenmin*) was entirely ignored. Then, when the Agreement regarding the reversion was being concluded this time, it also went in the direction that contrasts the residents' wishes. This, in my opinion, is a grave institutional violation of fundamental *jinken* (*seidoteki na kihonteki jinken shingai*).[93]

This perspective reframed the historical narrative of Okinawa vis-à-vis the mainland as it also transformed the *jinken* framing of the perceived (old and new) Okinawa problem. In the roundtable, most of Okinawan lawyers' review of the islands' history of *jinken* problems, such as the lack of administrative authority and military base issues, would sound quite familiar to the

[91] Ibid.
[92] 牧野 博嗣 他「沖縄・人権・憲法(特集・帰ってくる沖縄)」『自由と正義』 23(4) 1972.04.00 p.59-90.
[93] Ibid. p.71

mainland lawyers. However, how they started this review section "Aspects of *Jinken* Problems" was entirely unconventional: instead of the American military rule, the Okinawan lawyers started with and spent quite some time reviewing what they saw as *jinken* problems stemming from the damage and chaos caused by the Battle of Okinawa. These included the tremendous number of casualties (*jinshin no songai*), the hardship of life after the war, and the loss of land and difficulty in determining land ownership due to the change of terrain and loss of public records during the battle. The last point was elaborated in great details: the Okinawan lawyers pointed out that it was on top of this confusion of land ownership (and thus de facto loss of land and livelihood of the locals) that the later "land problem" caused by American military expropriations transpired. All these problems of land ownership or damage due to military operations (and GI crimes) were still calling for remedies and compensations. Although executive actions might risk being undemocratic in these cases, "because these problems stemmed from thing like the war, the occupation, and the separation of administrative power, they are ultimately the responsibility of the state (*kuni no sekinin*), and the state should handle them," argues Okinawan lawyer Yoshizawa Hiroaki.[94]

The change in perspective of the Okinawan lawyers belies a shift in the *jinken* paradigm both on the issues of Okinawa and broadly vis-à-vis the Japanese state in the 1970s. While protest against American military bases went on and was still articulated in *jinken,* Okinawa and mainland activists and lawyers began to introduce the concept of state responsibility (*kuni no sekinin* or *kokka sekinin*) in the *jinken* discourse as they tried to hold the state that they perceived as constantly betraying the people's hope responsible for its actions. This concept differs both from the traditional thinking of protecting the *jinken* of *kokumin* against state violation, which

[94] Ibid. p.77.

can be traced back to the prewar era, and the idea of the protection of *kokumin'*s *jinken* by the state raised in the Occupation period reform. It is distinctly expo facto and thus retroactive or historical as it presupposes damage (usually by the state) already done in the past and stresses holding the state responsible for redressing and compensating for such damages. Among such historical damages, the cardinal sin of the state the Okinawan and mainland activists intended to hold the state responsible was *the* "war," the source of all the other wrongs to come. Intertwined with this new articulation of *jinken* vis-à-vis Okinawa was the rise of interest in the history of the Battle of Okinawa and Okinawan local history. While the trauma of the battle always lurked in the local subconsciousness, it was the "reversion," and the sense of being betrayed (again) by the mainland that kickstarted the surge of history-(re)making in Okinawa that secured its place in the national war narrative and commemoration, and along with this came the new linkage of *jinken* to the concept of "state responsibility" vis-à-vis the war that fed back into the national *jinken* discourse.

Conclusion

As explained in chapter 1, the *jinken* discourse in postwar Japan transformed through the Allied Occupation period reforms into a fraught conglomerate, with the traditional national-constitutionalist *kokumin-jinken* pairing as its mainstay while also vested with universalistic potential. The usage of the term on problems in occupied Okinawa by the mainland Japanese and Okinawan lawyers and activists, as this chapter has demonstrated, leaned heavily on the traditional meaning of *jinken* and was strongly connected to the political goal of reversion (and the purge of American military bases). This is quite clear if one analyzes the language used by mainland Japanese and Okinawans, but it becomes even more lucid if one compares it with the

perspective of Roger Nash Baldwin, who played a great role in assisting with the *jinken* activism on Okinawa but had his own very different understanding of the problem, the translation of which caused great confusions when he visited Japan in 1959. Unfortunately (or not?), this *jinken* critique was not grasped by the USCAR administration, which mistranslated the term into "human rights" and responded accordingly. Perhaps it is a stretch to say that this mistranslation misguided USCAR's policies or made it miss some opportunities in ameliorating its relationship with the locals—after all, as this chapter demonstrates, USCAR was likely not able to either negotiate the military and geopolitical objectives it had to serve or overcome its own colonial condescension. Such attitudes and orientations of USCAR manifested in the increased GI crimes in Okinawa, which prompted the mainland Japanese and Okinawan lawyers to gradually shift their *jinken* critique from emphasizing the problem of "rule by an alien race" to the very existence of military bases. As a result, even after the disappointing "reversion" of 1972, the *jinken* critique on Okinawa's problems did not fade away, as the military bases continued to exist on and cause problems for the islands. Instead, this disappointment and the sense of betrayal expanded the *jinken* framing on Okinawa even further to encompass the critique of Japanese government's own "state responsibility" vis-à-vis the Battle of Okinawa and its past colonial and wartime undertakings in general.

This innovation in the *jinken* discourse was not prompted only by the development of the problems related to the reversion of Okinawa. For one thing, pacifist movement at the national level such as the anti-Vietnam War movement and the anti-security agreement (*anpō*) movements, along with the rethinking of wartime history (manifested in, most famously, the long-standing lawsuit by Ienaga Saburō on history textbook), certainly also contributed to this new *jinken* framing. Issues of *kōgai* caused by industrial and military base pollutions, and the

issue of social security and other reinterpretation of the Constitution regarding *jinken* (as seen in famous lawsuits like the Asahi Lawsuit), both of which the Okinawan lawyers talked about in the roundtable, also fed into this discourse. The human capital foundation of all such changes in the *jinken* discourse was the growth of the community of progressive (*kakushin-ha*) lawyers who worked on a myriad of fronts (in addition to Okinawa) to push the boundary of the *jinken* paradigm. The next chapter will examine such effort to innovate the *jinken* discourse as a whole by this progressive lawyers' network through the case study of how plight faced by the *zainichi* Koreans were articulated with the language of *jinken* over time.

Chapter 4 *Zainichi* and the Breakthrough of *Jinken* Discourse: Going Beyond the Constitutionalist Model

On March 2nd, 1953, the leaders of the Aichi branch of the Democratic Front for Unification of Koreans in Japan (*Zainichi chōsen tōitsu minshu sensen,* or *Minsen*), a *zainichi*[1] organization associated with the Japanese Communist Party before being succeeded by the famous General Association of Korean Residents in Japan (*Chōsen sōren* or *Chongryon* in Korean and *Sōren* in Japanese), handed the governor of Aichi a resolution passed in its commemorative event for the 30th anniversary of the March 1st Revolution and requested the governor's formal reply. The resolution opens with a call for the *jinken* of the *zainichi* people:

> Thanks to the liberation [of Korean people] on August 15, 1945, the myriad of rights of the *zainichi* as a national people (*minzokuteki sho kenri*) and our *kihonteki jinken* as human beings (*ningen toshite no kihonteki jinken*) deprived from us for such a long time have been restored for the time being.[2]

However, the resolution continues, in the past seven years, multiple Occupation and government policies, including the forced deportations of *zainichi* from Japan, the shutdowns of Korean schools, and direct or indirect participation in the Korean War by Japan, again threatened these rights. Leaders of the Aichi *Minsen* thus felt the necessity to press the governor of Aichi to respond to their following demands:

1. Oppose the deprivation of Korean people's compulsory education (*minzokuteki gimu kyōiku*)! Implement the *minzoku* education with Japanese government expenditure!

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[1] *Zainichi,* or *zainichi* Korean is a people with origin in the Korean peninsula residing in Japan. The term *zainichi* literally means "residing in Japan" and is an abbreviation of *zainichi chōsenjin* (with *chōsenjin* literally meaning "Korean"; this term used to be a general term for all the *zainichi* but increasingly referred to those affiliated with the North Korean government), *zainichi kankokujin* (referring to those affiliated with the South Korean government), and *zainichi korian* (a relatively new term used to refer to the whole population). As will be discussed later in the chapter, the population is discriminated against in Japan. For an overview of the history of social movements by the *zainichi* (especially those using the language of rights), see chapter 3 of Tsutsui Kiyoteru. *Rights Make Might: Global Human Rights and Minority Social Movements in Japan*. New York, NY: Oxford University Press, 2018.

[2] 「重要文書綴」E26-5, 愛知県公文書館. https://www.i-repository.net/il/meta_pub/G0000606bunsho2bos_E000769000

2. Oppose the so-called Law of Compulsory Education School Employee!
3. Oppose the forced deportation and segregation of *zainichi* people! Protect our right of residency (*kyojūken*)!
4. Do not collaborate with the conscription and corvée drafting of *zainichi* people!
5. Protect *zainichi* people's access to discrimination-free employment and financing!
6. Oppose the base-ification (*kichika*) of Aichi prefecture!
7. Oppose the dispatchment of Japanese soldiers (*nihon kokumin*) into Korea![3]

The Aichi prefectural government (actually quite surprisingly) responded to this resolution one day after it was submitted. However, the reply only consisted of one sentence: "[the prefectural government] knows nothing about the conscription or drafting of *zainichi* Koreans."

This little vignette perfectly summed up Japanese government's relationship with the *zainichi* throughout the postwar period and even until today. This list by *minsen* nearly encompassed all of the subsequent issues *zainichi* had to fight for (except for the factually incorrect information about the drafting of *zainichi,* which the Aichi prefectural government was quick to point out), and Aichi government's response also epitomize the Japanese state's cautious and yet blasé (if not hostile) attitude towards them. In contemporary Japan, the problems faced by *zainichi* are a crucial component of the *jinken* discourse. What popularized this framing was the activism of the *zainichi* community since the 70s, which actively utilized the language of *jinken* both domestically and internationally. Scholars like Tsutsui Kiyoteru have given detailed accounts of this lineage of activism, most famously the popular movement against the coerced fingerprinting policy, and correctly noted that it was after the 70s global human rights turn that the *zainichi* community, despite its inner political schism, more or less uniformly started to utilize the language of *jinken.*

However, the coupling of the discourse on *zainichi* and that on *jinken* in Japan had a much longer postwar history, not as an instrument to addresses the plight of the whole community as it

[3] Ibid.

did after the 70s, but as a part of the leftist critique on Japan's past imperialism and present place in the postwar and Cold War global paradigm, and not by the *zainichi* themselves but by Japanese leftist and progressive lawyers and activists. On the surface, the Aichi *minsen* leaders' use of *jinken* did directly target the problems faced by the *zainichi* community in general. However, as will be shown in this chapter, this usage differed from the *jinken* discourse that became able to articulate demands of the *zainichi* community's left and right after the 70s. This chapter traces the pre-history of *zainichi* community's embrace of *jinken* by examining how leftist Japanese employed the issue of *zainichi* to complicate their own *jinken* paradigm, enrich their unique tradition of "courtroom struggle (*hōtei tōsō*)," and broaden the interpretation of the constitution and the very meaning of *jinken* in postwar Japan.

I. The Leftist Japanese Lawyers and the Growing Tradition of "Courtroom Struggle"

Leftism (different stripes of communism, socialism, and anarchism) had long been a uniting ideology for radically minded Japanese and *zainichi* Koreans, not only in the postwar era where left-leaning *zainichi* had a long-standing relationship with Japanese Communist Party, but also in the golden age of socialism and anarchism in the Taisho period before the government crackdown on leftism. Most exemplary of this solidarity was the legendary anarchist couple, Park Yeol (*Bag-Yeol* or Boku Retsu in Japanese) and Kaneko Fumiko, both of whom were convicted of "high treason (*daigyaku-zai*)" for plotting to assassinate imperial household members in 1923, which they confessed willingly when detained for other minor suspicions, presumably in order to become martyrs of their causes. Defending them in court were Yamazaki Kesaya, Kamimura Susumu, Nakamura Takaichi, and perhaps most famously, Fuse Tatsuji, who

were all founders of the Japan Lawyers Association for Freedom (JLAF, *Jiyū hōsō dan*), one of the leftist lawyers' groups most vocal in promoting *jinken* in both the prewar and postwar eras.[4] JLAF was the product of the Kawasaki-Mitsubishi Shipyard Dispute in Kobe in the summer of 1921. During the massive protest prompted by this labor dispute, mounted police killed one protestor and thus incurred public outrage. The concerned Tokyo Lawyers' Association sent a group of lawyers to Kobe to work with the local lawyers and labor groups to investigate the incident as an egregious case of *jinken jūrin*. The lawyers and activists, including Fuse and Uemura, went above and beyond this mission and started to organize public lectures to disseminate leftist thoughts in addition to knowledge of labor and civil liberty laws. They also networked widely with other leftist legal professionals and organizers, and this network later served as the foundation for the establishment of JLAF.[5]

Before defending Park and Kaneko, leftist lawyers like Fuse already had ample experiences defending what they labeled *jinken jūrin* cases involving Koreans, not only in mainland Japan but also on the Korean peninsula. As early as 1923, Fuse and some other leftist lawyers had travelled to Korea to hold lectures at the invitation of *Hokusei-kai,* a leftist group organized by Korean students studying in Japan, and to serve as the defense lawyer of Kim Sihyun, a participant of the Giretsudan Incident, in which Korean independent activists plotted to bomb Japanese state facilities across the empire. Since then, leftist lawyers like Fuse frequently shuttled between Japan and Korea to defend charged leftist or independence activists and hold

[4] 金一勉「在日朝鮮人と「自由法曹団」-上-忘れえぬ人権擁護の日本法曹人たち」『コリア評論』民族問題研究所 [編] 10(12) 1968.12.00 p.19-31. p25

[5] 三輪壽壯「神戸の人權蹂躙問題」『中央法律新報』1921（1）（14）. p21-22; 自由法曹団 編『自由法曹団物語　戦前篇』日本評論社, 1976. p.12-42.

lectures and networking events. After several such court appearances in Korea in 1927,[6] Fuse organized a general meeting of JLAF in Tokyo, in which he pushed for the passage of a resolution to urge the Japanese state to "justly and swiftly prosecute the torture by police [of the suspects in these cases] because it is *jinken jūrin* and unforgivable crimes in the sense of humanitarianism (*jindō jō*)."[7] Whether lawyers like Fuse directly linked the issue of Korea's colonization of Japan to the concept of *jinken,* or whether they referred to the persecuted Koreans here as *kokumin* (the standard bearer of *jinken* in the *jinken* discourse of their days) remains unclear.[8] While Fuse defined the *act* of torture of the Korean communist suspects by the police as *jinken jūrin* both in front of his Japanese colleagues and in his public statements in Korea (presumably for Korean audiences),[9] the leftist lawyers framed the persecution of Korean communists and independent activists, and more broadly the colonization and imperial oppression of Korea by Japan in a mixed language of class struggle and legalism, and less in terms of *jinken*. However, this tradition of "courtroom struggle (*hōtei tōsō* or *kōhan tōsō*)," for (especially leftist and working class) Koreans, would become crucial for such framing in the postwar era.

Terms like *hōtei tōsō* or *kōhan tōsō* that roughly translate to "courtroom struggle" were widely used in leftist circles as early as in the 20s, especially with regards to labor movements. In fact, Fuse himself wrote several instruction pamphlets for workers on how to conduct such

[6] Respectively in the Shin-Gishū Incident, a document leak incident that resulted in the arrests of Korean communists, and the 6.10 Banzai Incident, a funeral proceeding-turned unrest allegedly plotted by independent activists.

[7] 川口祥子「布施辰治と朝鮮共産党事件東アジア研究」『東アジア研究』（大阪経済法科大学アジア研究所）第 59 号，2013 年，p.17−33.

[8] I was not able to find such usage by Japanese thinkers or lawyers in this era, although the editorials and articles in Tonga Ilbo had been using the term *ingwon*, written in the same Chinese character as *jinken,* as early as in 1922, on issues of police brutality and state oppression. This is similar to contemporary discourse in Japan, although the Chinese characters that would correspond to *kokomin* were not coupled with this usage (as in Japan).

[9] 川口祥子, 2013. p.27; note 34.

"courtroom struggles."[10] Economist Hayakawa Seiichirō defines "courtroom struggle" as the struggle "using different levels of the court to assert the legitimacy of one's right or claims *ipso jure*." From the viewpoint of class analysis, "although the nature of a capitalist state lies in the rule of the bourgeoisie class, due to the relative independence of the judicial system to the state, struggle in the courtroom is possible,"[11] or in Fuse's own words, "bind them [the bourgeoisie] with the very laws they made."[12] Fuse's reflection on the Korean Communist Party Incident case he defended distilled the intellectual underpinning of this methodology. In the essay "Reflecting on the Korean Communist Party Incident" published in 1928 in the journal *hōritsu sensen* ("Frontline of Law") he himself edited, the name of which already indicated the stance of "courtroom struggle," Fuse expounds on his understanding of what constitutes a true "trial (*saiban*)" and how proletariat should struggle for it. For Fuse, a "true trial (*shin no saiban*)" consists not of the "arbitrary decision made by a judge." If the mass opinion (*jinshin*) towards an event is such that [the defendant] shall be punished, then [the judge] should follow it and convict [the defendant]; if [the mass determines that the defendant] shall not be punished, then the judge should not convict [the defendant]. Such is the one and only 'true trial' (*yuitsu no shin no saiban*)." Fuse was not advocating populism here. Rather, he used this seemingly vacuous concept to introduce his class analysis of the case he defended:

> Together with the tortured defendants of this case, we the proletariat, as the people oppressed by the cruel imperialist ruler, have to claim our right to fight against (*kore wo kōgi suru kenri wo shuchō*) such oppression for the sake of the "true trial."
>
> …

[10] See 布施辰治『電灯・ガスにたいする法律戦術 (不況対策法律叢書 ; 第 4 篇)』浅野書店, 昭和 7. https://id.ndl.go.jp/bib/000000607596.
[11] 「法廷闘争」『日本大百科全書(ニッポニカ) 』小学館 1984 ~ 1994. Accessed from 「法廷闘争」コトバンク https://kotobank.jp/word/%E6%B3%95%E5%BB%B7%E9%97%98%E4%BA%89-628268
[12] 金一勉, 1968. p.30.

> The problems of Korea are not special problems limited to Korea. We the proletariat and we only, along with the Korean people (*zen chosen minshū*), have to right to our opinions (*hihan wo nashiemasu*) that whether the defendants should be punished or not, but I want to point out that the bourgeoisie class who gave this case "special treatments" [referring to the closed-door trials and suppression of public opinion about the case] has no right to comment on nor try this case (*hihan no kōhei mo saiban no kengen mon nai*).[13]

As historian Kawaguchi Sachiko has pointed out, with such remarks, Fuse, along with other leftist lawyers who harbored similar ideology, surpassed the stance of a mere lawyer who acts according to the law.[14] Indeed, the leftist lawyers' activism extended far beyond what the professional sphere considered as *jinken jūrin* cases. From Japanese and Korean laborers and tenant farmers to Korean victims of massacres in the Great Kantō earthquake, leftist lawyer groups like the JLAF provided legal and political aid to a wide range of social groups they considered oppressed proletariats. However, with the tightening crackdown on leftist activism from the late 20s, their activities gradually ground to a halt as Japan escalated its colonial and military expansion in the 30s. The lawyer license of Fuse himself was revoked in 1932 due to his activism, and most of his associates also had to cease their activities.

II. The Formation of a Postwar Progressive Lawyers' Circle with the Plight of *Zainichi* as a Rallying Point

After Japan's defeat and the start of the Occupation in 1945, leftist lawyers like Fuse were able to regain their license and resume their activism. As reported by *Asahi Shimbun* in October 10 1945, "the JLAF known for its 'courtroom struggles (*koban tōsō*)' for the proletariat" was rebuilt,[15] and although it never received official sponsorship from GHQ like other lawyers'

[13] Ibid.
[14] Ibid, p.31, note 51
[15] 『朝日新聞』1945 年 10 月 10 日東京朝刊 2Ｐ「自由法曹団活動開始」

group such as the JCLU, despite similarly professing the protection of *jinken*, it was able to expand its base beyond the leftists and develop beyond its prewar scale. On November 10, 1945, the JLAF held its reestablishment convention in Tokyo. When planning for the convention, core members decided to invite not only leftist lawyers but also any legal professionals who "agree with the protection and promotion of *jinken*." In the end, 150 legal professionals including liberal legal scholars like Minobe Tatsukichi (the author of the theory of the "Emperor as an organ of government" in the 20s) and Makino Eiichi attended the convention. In July 1946, the JLAF finalized its first postwar bylaw, which stipulates the mission of the group as "to realize the promotion and protection of *jinken* and the complete revival of the rule of law that are the foundation for building a pacifist and democratic nation." JLAF began to exert itself in aiding the nascent labor union movements at the time, and grew to over a hundred members from branches in all over Japan in 1949.[16]

JLAF also continued to provide legal aid and political support for Koreans in Japan. Despite their nebulous status in Japan brought about by the end of the war, Koreans in Japan, especially those who for one reason or another remained in (or returned to) the archipelago after the massive wave of repatriation, enjoyed a brief sense of liberation and increased freedom. However, the illusion of liberation and self-determination did not last long as both the GHQ and the Japanese government started to crack down on the association and even daily activities of the *zainichi* Koreans (as they came to be called). First came the attempt to forcibly close Korean language schools. In January 1948, the Ministry of Culture issued an official notice that effectively disqualified Korean language schools as primary and secondary educational institutions, and ordered the matriculation of all *zainichi* students into Japanese schools. Built by

[16] 自由法曹団 編『自由法曹団物語　戦後編』日本評論社, 1976. p.3-13.

zainichi communities to provide ethnic education, including Korean language, culture, and history in addition to common school subjects, for their children, the Korean language schools were deemed essential to the community's cultural identity. The forced closure and even forced entry and seizures of these institutions triggered massive waves of protest in places like Kobe, Osaka, and Tokyo where the *zainichi* populated was located, and these sometimes escalated into clashes with the police that produced multiple casualties. Protesting (and sometimes getting arrested) with the *zainichi* were members of the JLAF and other leftist lawyers, who also provided legal defense for protestors arrested in these incidents. In these struggles, lawyers like Fuse started to refer to Korean language education as *zainichi*'s "rights as a *minzoku* (*minzoku teki kenri*)." For example, the defendants' side of the Kobe Incident, in which *zainichi* and Japanese protestors were charged in military tribunals of the GHQ, proclaimed that their protest sought merely to "protect the fundamental rights (*kihon teki kenri*) of the [Korean] *minzoku* of enjoying their *minzoku* culture and independent education."[17] After the crackdown on the language schools came the forced dissolution of the Association of Koreans in Japan (*Zai nihon chōsenjin renmei* or *Chōren*) and League of Democratic Youth of Koreans in Japan (*zainichi chosen minshu seinen dōmei* or *Minsei*), two leftist *zainichi* groups, and the forced seizures of their properties in 1950. As the Korean War erupted and the Cold War intensified, the crackdown on leftist activities (the so-called "red purge"), and especially the oppression of left-leaning *zainichi,* also escalated. The leftist lawyers saw such treatments of the *zainichi*, a sizable portion of whom had ties to the JCP and thus garnered great sympathy from leftist lawyers, as the manifestation the shadow of imperial Japan they were striving to exorcize, and rallied around them to engage in *jinken*-inspired "courtroom struggles."

[17] Ibid. p.44-50.

The plight of the *zainichi* was further exacerbated when the *zainichi* gradually became "undocumented" in Japan after they lost their Japanese "nationality" in 1952 and as their status in Japan became increasingly complicated. As early as 1946, the Occupation had noticed that despite the mass repatriations, Koreans, especially those repatriated to the peninsula earlier, entered Japan as "stowaways," largely due to the austere restrictions on luggage and personal properties when they repatriated and thus the difficulty of livelihood in Korea. The situation worsened as tensions rose on the peninsula and the Korean broke out. The GHQ responded with stringent border control policies, gradually closing down the borders between Japan and Korea completely, and Japan cooperated, passing the Alien Registration Ordinance that requires all foreigners (except for occupation forces members) to carry identity cards in 1947. After Japan regained independence in 1952 by signing the San Francisco Peace Treaty, the Japanese government took a step further by unilaterally revoking the Japanese nationality (*kokuseki*) of its former colonial subjects residing in Japan, (technically those holding "outer land" or *gaichi* household registry, or *koseki*, who were mainly Korean and Taiwanese). In the meantime, both North and South Korea also adopted stringent border policies, sometimes even blocking the deported Koreans from Japan and made them return. In this way, *zainichi*, especially those who did not want to register as South Korean, became essentially stateless in Japan, and even those who did register as South Korean but decided to remain in Japan were left without clearly-defined residence status or rights. Although those who lived in Japan since colonial times were allowed to stay until their status could be clarified, many others who were deemed "illegal" immigrants faced deportation and detention in immigration detention centers, among them the

infamous Omura Migrant Detention Center, which was viewed from the 50s as a site of grave *jinken* violations.[18]

Even the politicians who supported the deportation of all "illegal" Koreans saw these problems caused by the nationality and status of *zainichi* such as Omura as liabilities and even agreed with the *jinken* framing of these issues sometimes. Koizumi Junya, the father of the later prime minister Koizumi Junichirō, made lengthy complaints about the problems created by the *zainichi* Koreans in the legal committee of the House of Representatives on June 18, 1955. Defending the Hatoyama cabinet's effort to address the problems of *zainichi* against Kamichika Ichiko's (Socialist Party)'s criticism that it created humanitarian crises, Koizumi complained that illegal Koreans entered Japan recklessly, risking their and their children's lives, and that "not a single one of the six hundred thousand Koreans in Japan wants to go back to their home country." These, Koizumi argued, resulted in the overload of the capacity of the Omura Detention Center, wasting the "precious tax money of the Japanese people (*kokumin no ketsuzei*)," and if the detainees were not treated "properly (*konsetsu teinei*), problems serious enough to be called the ravaging of *jinken* (*jinken jūrin*) would entail."[19] Koizumi might have been sarcastic here, but his remarks demonstrate that in the 50s, even politicians who saw the *zainichi* as merely problems to be solved admitted that problems of *jinken* were happening at places like Omura and in the handling of *zainichi* in general.

While Koizumi might be simply referring to the poor and dangerous living condition at Omura caused by mistreatments by Japanese staff, inadequate living space and facilities, and the

[18] Tessa Morris-Suzuki. "Invisible Immigrants: Undocumented Migration and Border Controls in Early Postwar Japan." *Journal of Japanese Studies* 32, no. 1 (January 1, 2006): 119–53. https://search-ebscohost-com.proxy.uchicago.edu/login.aspx?direct=true&db=edsjsr&AN=edsjsr.25064610&site=eds-live&scope=site.
[19] 「第 22 回国会　衆議院　法務委員会　第 23 号　昭和 30 年 6 月 18 日」国会議事録. https://kokkai.ndl.go.jp/#/detail?minId=102205206X02319550618

infighting (sometimes resulting in murders) between factions of *zainichi* supporting the North and the South,[20] leftist and progressive who sympathized with the North-affiliated *zainichi* who experienced ruthless crackdown in late 40s and early 50s had more concerns, and this goes back to Hirano's framing of forced nationality selection as a *jinken* problem. Lawyers like Ueda Seikichi, who later became the chair of the JLAF, visited the Omura Detention Center along with politicians of JSP and JCP to investigate its condition several times in the first half of 1950. What concerned them were not only the living condition within, but also the fact that the *zainichi* affiliated with the North were forcibly being deported to the South, where they could be denied entry (sometimes even sent back) and, even worse, persecuted for engaging in communist activities. Ueda had to personally see off several such people at the Tokyo station in 1950 and 1951, and later received their letters calling for help because they were sentenced to death for being communist.[21]

Closely related to their activism around what they saw as *jinken* problems at the Omura Detention Center, lawyers like Ueda also assisted lawsuits related to the crackdown on left-leaning *zainichi,* among them a state compensation suit for the confiscation of *chōren*'s property in 1952. As mentioned above *chōren* and other left-leaning *zainichi* groups were forcibly disbanded according to the government ordinance Organization Rules and Regulations passed down in 1949 and had their properties confiscated. After the end of Occupation, a group of *zainichi* filed a lawsuit against the government for compensation for a confiscated community center at theYaesu entrance of Tokyo station, on the grounds that under the international law,

[20] Ri Yongmi, "Politics of Immigration Control and Detention in Post-war Japan: The Mobility Experiences of Koreans". University of Santo Toma s, UNITAS, No89.vol.2, p.153-188.

[21]『在日朝鮮人の人権を守る会二〇年の歩み』 東京・在日朝鮮人の人権を守る会, 1983.10. 在日韓人史料館所蔵. p.30-31.

properties confiscated under the Occupation should be returned after the resumption of independence. This was perhaps the first postwar state compensation lawsuit that both concerned the *zainichi* and the principle of international law. The legal team of the plaintiffs consisted mainly of members of the JLAF including not only Ueda but also even the cofounders of JLAF back in the 20s, Uemura Susumu and Aoyagi Morio. Because the lawsuit concerned unprecedented problems under the international law (since, obviously it was the first time Japan experienced Occupation), many famous legal scholars were invited to submit expert opinions (*kantei*). This included Yasui Kaoru, who later came to promote the *chuche* thoughts of North Korea, Takayanagi Kenzō, who was a defense lawyer in the Tokyo Trial and later advised various conservative cabinets on constitution amendment, and Ukai Nobushige, who was served as a pastor at the United Church of Christ in Japan. All of them opined that the transfer of properties to the Occupation should be returned after the resumption of peace and independence because the Occupation had no power to order the "final transfer of private property (*shiyū zaisan no saishūteki iten*)." The suit surprisingly won the first hearing but lost the second one, and was appealed to the Supreme Court. Due to the extraordinary nature of the suit, it attracted more and more unexpected and diverse allies. Ueda later recounted that when they appealed to the Supreme Court, a lawyer working for an old military personnel association whose properties were also confiscated by the GHQ offered to help. The lawyer had a background in diplomacy in the pre-defeat era and spoke both German and Italian. He had used his network to collect German and Italian documents on the same issues in the two states under American occupation, and offered to provide these dcouments and even translate them for Ueda and his legal team.[22] Although the *zainichi* plaintiffs lost the appeal in the end in 1965, it became another platform for

[22] Ibid. p.32-35.

leftist lawyers to come together and acquire experience in using the international legal principles to argue for the rights of *zainichi* in Japan.

The issue of the *zainichi* was not the only rallying point for leftist lawyers. While the leftist circle in postwar Japan has always been marked by factional infighting (mainly due to the schism between the Socialist Party and the Communist Party before the 60s), throughout the late 40s and 50s, leftist and progressive lawyers managed to rise above this schism and coalesced to further develop the tradition of "courtroom struggle," both discursively and organizationally, and the concept of *jinken*, a concept networked to both the postwar constitutionalism and all the new international declarations and laws, played a crucial role in this movement. At the beginning of the 1950s, the "red purge" by the GHQ had semi-outlawed the JCP and decimated communist-affiliated groups like the JLAF. JLAF almost self-disbanded in 1950, and had to have all its JCP party members resign from its leadership to avoid GHQ crackdown.[23] In the meantime, different factions of unionism also fought with each other for control of the movement, and by the time the "1955 system"[24] set in, it was quite obvious that the JCP was losing the grip of the mainstream labor movement, which was taken over by the more JSP-leaning General Council of Trade Unions of Japan (*Nihon rōdō kumiai sōhyō gikai*, or *Sōhyō*), which evolved from the anti-communist socialist Democratization Confederation (*Minshuka dōmei*). In early 1950s, communist-affiliated groups like the JLAF even had difficulty practicing laws in the socialist-dominated labor disputes, which should have been its expertise.[25]

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[23] 『自由法曹団物語　戦後編』. p.97-111.

[24] The "1955 system" refers to an arrangement of party politics in the Diet (a two-party system in which the Liberal Democratic Party and the Japan Socialist Party shared seats in the Diet) formed in 1955. For details, see Franziska Seraphim. *War Memory and Social Politics in Japan, 1945-2005*. Cambridge, Mass.: Harvard University Asia Center, 2006.

[25] 『自由法曹団物語　戦後編』. p.162-163.

Against such schisms, several events and the lawsuits that ensued catalyzed the formation of a progressive (including leftist and liberal) coalition among legal professionals throughout the 1950s. When the plight of the *zainichi* Koreans was becoming increasingly dire from the late 40s and in the 50s, the raging labor union movement clashed with the GHQ and the later conservative-dominated Japanese government and produced a series of lawsuits. In 1949, three sabotage and murder incidents (respectively the Matsukawa, Mitaka, and Shimoyama Incidents) related to the trains and personnel of the Japanese National Railways (JNR) alarmed and puzzled the public, and soon laborers associated with Communist Party-affiliated unions engaging in labor dispute and protests with the JNR and other related companies were arrested and accused of the crimes. The bizarreness of the incidents, the lack of evidence against the accused, and the dubious manner in which the police extracted (often conflicting) confessions convinced many that the accused were framed as part of GHQ's "red purge" that sought to suppress communist activities. The swift verdict in 1950 that sentenced some accused in the Matsukawa Incident to death further outraged the general public. Despite the factionalism, liberal and different stripes of leftist lawyers and legal professionals flocked to the defense of the accused. For example, for the defense of the accused in the Matsukawa Incident, the JLAF reached out widely to strengthen the legal team, absorbing members of the JCLU and the Sendai Lawyers' Association. The legal team eventually numbered 173 lawyers, ranging from "the [affiliates of] Communist Party to the Liberal Democratic Party, and from Christians to atheists."[26] The Matsukawa lawsuit dragged on for over a decade but in the end all of the originally accused were acquitted and even won a class suit later against the state for compensation. Lawsuits like the JNR incidents, which were framed as conspiracies by the conservative state and red-purging Occupation on individual

[26] Ibid. p.140.

laborers, allowed the lawyers to build a much wider network and engage in broader political and legal discourse on the relationship between state and individuals.

Along with such high-profile lawsuits, the unfolding labor union movement also created growing demand for lawyers to deal with labor lawsuits and advise on the legal aspects of labor disputes. Responding to this demand, associations of progressive lawyers and legal professionals and scholars began to proliferate, driven by the establishment of "legal departments" (*hōritsu taisaku bu*) in the unions. In 1954, Japan Young Lawyers Association (*seinen hōritsukas kyōkai*, JYLA) was formed, and both the Japan Lawyers International Solidarity Association (*kokusai hōritsukas kyōkai*) and the General Council of Trade Unions of Japan Lawyers Group (*sōhyō bengo dan*) were established in 1957. While *Sōhyō* originally intended to build an anti-communist "Democratization Confederation Lawyers Group" and tried to exclude members of JLAF in early 50s, it eventually abandoned this direction and made its lawyers' group more diverse, not only embracing JLAF members but also having Unno Shinkichi, one of the founders of JCLU, as its first chairman.[27] By the second half of the 1950s, membership of these progressive lawyer groups often overlapped, resulting in a broader social network of left-leaning lawyers and common language of rights-talk, pacifism, and constitutionalism among them. Indeed, labor related lawsuits and legal disputes were not the only arena where these progressive lawyers were able to practice "courtroom struggle." The labor union movement built for organization like the *Sōhyō* developed strong organizational power that enabled it to participate in and even initiate "popular movements (*kokumin undō*)" built on issues beyond labor unionism. For example, *Sōhyō* helped organize and supported various anti-military base activities in the 50s

[27] 清水明「警職法闘争と安保闘争--総評運動と歴史的大闘争」『労働法律旬報』 (通号 1471・1472) 2000.01.25. p.25-27. p.25

(most famously the Sunagawa Struggle that opposed the expansion of the Tachikawa military base) that paved the way for its leadership in the Anti- Police Official Duties Execution Act Movement in 1958 and the popular movement against the Japan-U.S. Security Treaty in 1960. Such protests and struggles often resulted in clashes with the law enforcement and arrests, and progressive and leftist lawyers were thus called upon to defend the *jinken* of accused vis-à-vis the state and the American military. This network of progressive lawyers built in the leftist social movements throughout the 50s served as the foundation for the discourse and activism on the *jinken* of the *zainichi* in the 50s and 60s.

III. The *Jinken* of the *Zainichi* as Theorized by Leftist Japanese Lawyers

Against this backdrop of the postwar formation of this coalition of leftist and progressive lawyers, how was this the issue of the *zainichi*, which greatly contributed to this solidarity, discussed and theorized in relation to the concept of *jinken*? We can start to approach this problem from the writing of Hirano Yoshitarō, a famous leftist legal scholar who was closely connected to groups like JLFA. Hirano wrote extensively in 1951 on the new measures of oppression against the *zainichi* as a part of his new theory on the liberation of Asia from western imperialism. Like many other leftist lawyers and thinkers, Hirano identified the oppression against *zainichi* as one against the Korean *minzoku,* and such oppression, while being egregious in itself, also harbored the risk of plunging Japan back into the dark alley of militarism and imperialism. In his *Problems Related to Minzoku Liberation* published in 1951, Hirano professed in the preface that "the *minzoku* that deprives other *minzoku* of their freedom could not possibly attain freedom. Therefore, under the Japanese government that represses the *zainichi* Korean's

jinken and *minzoku* education, the Japanese people are also deprived of freedom."[28] Hirano argues that the nostalgia for the grand Japanese empire that once ruled over Korea is at the heart of Japanese people's discrimination against *zainichi* and thus the acquiescence to the oppression on them. This is why "although the Cairo Declaration and the Potsdam Declaration stipulate that 'mindful of the enslavement of the people of Korea, are determined that in due course Korea shall become free and independent,'" the Japanese people are still indifferent to "the ravage (*jūrin*) of the fundamental *jinken* (*kihonteki jinken*) of the *zainichi* people."[29]

How does this theory of *zainichi*'s *jinken* fit into the *jinken* discourse at the end of the Occupation period? In the more mainstream liberal *jinken* discourse, prewar usage that binds *jinken* and *kokumin* carried over into the postwar period (chapter 1). However, such usages apparently could not be applied to the *zainichi,* who are not considered *kokumin* or Japanese national people. In fact, from 1945 to 1952, the *zainichi* Koreans' status in Japan was even more nebulous than after 1952, when Japan unilaterally revoked their Japanese "citizenship (*kokuseki*)." Hirano also took note of this plight of the *zainichi,* and identified it as yet another source of oppression on the ethnic group. He summarized the situation as the following:

> The fallacy at the root of the ravage by the Japanese state (*kanken*) towards the *zainichi* is that, on the law, until the signing of the peace treaty (although after the signing, the oppression will escalate), *zainichi* were treated like Japanese, and thus as long as they were in Japan, they had to abide by all the laws and have their *minzoku* peculiarities (*minzokusei*) disregarded; despite this, they were not granted civil rights (*minken*) the Japanese people enjoy, but were instead subject to more disciplining than Japanese were, and their *kihonteki jinken* were ravaged more egregiously than for Japanese.[30]

[28] 平野義太郎『平野義太郎新著作集 : 民族解放の理論的諸問題 第 4 巻 (アジアの民族解放)』理論社, 1954. p.5
[29] Ibid. p.344.
[30] Ibid. p.353.

Jinken was not simply a buzzword Hirano used superficially to describe the oppression on the *zainichi* people. Because of the special status of the *zainichi* in Japan, Japanese leftist lawyers looked beyond the liberal constitutionalist connotation of *jinken,* and towards international documents and foreign precedents on the matter. Hirano also grounded his *jinken* theory for *zainichi* in the Cairo Declaration, the Potsdam Declaration, the Universal Declaration of Human Rights (UDHR) and other international laws. In his analysis, Hirano repeatedly quotes the clause "enslavement of the people of Korea" in the 1943 Cairo Declaration. He identifies the forced dissolution of groups like *Chōren* and *Minsei* and the confiscation of their properties as well as the forced closing of Korean schools as the same "fascist and totalitarian" measures reeking of imperialist prejudice that ravaged Japan and Korea before the defeat and were resurfacing to once again "put Korean people in the state of enslavement devoid of *jinken*."[31] For Hirano, the oppression of *zainichi* was a *jinken* problem because Japan was violating the Cairo and Potsdam Declaration it ratified by once again "enslaving" the Korean people.

In addition to the two declarations, Hirano also cites the newly minted UDHR to support his case and to expose the hypocrisy of the GHQ and Japanese government, which were also forcefully promoting the document. Citing General MacArthur's own words to government officials in the ceremony of "UN's Day" on October 24, 1949 that "I recommend to you all the UDHR," Hirano points out that the Japanese government (*kanken*) instead violated multiple clauses of the UDHR. For example, regarding the dissolution and confiscation of properties of *Chongryon* and its affiliated groups and schools, Hirano argued that

> Despite Article 18 (sic), which stipulates that "no one shall be arbitrarily deprived of his property," the property of *Chongryon* was arbitrarily confiscated. The arbitrary dissolution of *Chongryon*…based on the unilateral order of the authority is a violation of fundamental

[31] Ibid. p.351

> *jinken* (*kihon-teki jinken wo shingai suru mono*). Despite that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him" from Article 9 (sic), the Order of Regulation of Organizations (*Dantai-tou Kisei-rei)* closes this path for the prosecuted. This stripped away the fundamental *jinken* not only from Koreans but also from Japanese people. Against the two people, [the Japanese government] violated the UDHR.[32]

When discussing the "right to nationality of the *zainichi* Koreans and the principle of non-coercion regarding the freedom to acquire and change nationality," Hirano also cites Article 16 (sic) of the UDHR that (1) Everyone has the right to a nationality and (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. Therefore,

> They [the *zainichi* Koreans] have the freedom to either acquire Korean nationality or Japanese nationality by naturalization (*kika*), and the Japanese government has no authority over matters regarding their acquisition of nationality and the nationality laws enacted by the two Korean governments. This is the principle of non-coercion regarding nationality, and it is also the principle established by the convention of modern international law as well as UDHR.[33]

Here, Hirano is referring to the new Alien Registration Law that went into effect in November 1951. According to the law, all aliens, the *zainichi* Koreans who planned to continue to live in Japan included, must register with the Immigration Bureau, and must provide proof of their nationality ("Korean (*chōsenjin*)" for the *zainichi*). However, only organs of the Republic of Korea (ROK or South Korea) were present in Japan at the time to supply such proof, so the *zainichi* affiliated with the Democratic People's Republic of Korea (DPRK, or North Korea) also had to register as nationals of the ROK. Hirano points out that this was against the UDHR and thus violated the *jinken* of these North-leaning *zainichi* Koreans. To illustrate this point, Hirano again refers to the Cairo and Potsdam Declaration, which should have already led to "the liberation of Korea (*chōsen*) from the Japanese empire as an independent nation, and therefore

[32] Ibid. p.352-353.
[33] Ibid. p.354.

Koreans (*chōsenjin*) had effectively severed themselves from (*ridatsu*) Japanese nationality and become the *kokumin* of the independent nation Korea." Hirano argues that although there were two governments on the Korean peninsula, "the change of governments does not necessarily entail the change of the state of independence of the nation," and Japan had no authority over forcing the *zainichi* to comply with either governments' laws on nationalities.[34]

Hirano's citation of international law may seem intuitive for contemporary readers. After all, citing international documents and laws to argue for the human rights of a stateless minority has become standard practice in international human rights culture. However, the application of the term *jinken* to the *zainichi* population by Hirano (and other leftist Japanese legal professionals or leftist *zainichi* themselves) was in fact quite radical considering the common *jinken* discourse in late 40s. Before the end of the war, the use of the term *jinken* by legal professionals and politicians in Japan was always coupled with the subject of *kokumin*: among liberal and even leftist lawyers, it was always used to articulate the relationship between *kokumin* and the state, especially with regards to the state's power and violence over *kokumin* (such as in the issue of police brutality). This tradition carried over into the Occupation period reforms centered on the term *jinken*: even when international (and ostensibly universalistic) documents like the UDHR were introduced and incorporated into this new *jinken* discourse, *kokumin* was still assumed to be the (only) bearer of *jinken,* especially given the hype of the new Constitution, which states quite literally that it guarantees the *kihonteki jinken* of *kokumin.* In GHQ documents regarding the *jinken* (and its various English translations) reforms as well as the liberal lawyers' *jinken* discussions during the Occupation, the *zainichi* never appeared. Within such a context, to go beyond the fold of *kokumin* and articulate that the *zainichi*, a non-Japanese *minzoku,* were

[34] Ibid.

also the bearer of *jinken* as established in international documents held up by the GHQ, was a radical act. In this way, Japanese leftists like Hirano quite literally opened up the *jinken* discourse, paving the way for more radical usage of the term and even a reinterpretation of the postwar constitution in the 50s and 60s.

IV. The Establishment of the Association for Protecting the *Jinken* of *Zainichi* Koreans

It was against the background of unity of the leftist and progressive lawyers created by the labor movement and activism for left-leaning *zainichi* as well as the increased articulation of *zainichi*-related issues in the language of *jinken* that the serial incidents of violent crimes against *zainichi* high school students (mostly by Japanese high schoolers) shocked the left and the sympathetic public in the early 1960s. In the most egregious incident that transpired on May 3, 1963, four *zainichi* high school students (who commuted to Korean language schools) were stabbed by over 20 Japanese high school students in front of hundreds of witnesses in the Tokyu Department Store near Shibuya station.[35] These incidents rightly incited public outrage and soon the Investigation Group for Incidents of *Jinken* Violation against Zainichi Korean Middle-High School Students (*zainichi chōsen chū-kōkyū sei ni taisuru jinken shinpan jiken chōsadan*) was organized. The promoters (*hokkinin*) of the group consisted of activists from a wide range of spheres, including college professors, teachers, actors, union activists, and religious and women's rights groups. Even the famous writer Oe Kenzaburō also joined the group. Despite the diversity, the group still consisted mostly of leftist and progressive lawyers, with lawyers from

[35] 『朝日新聞』1963 年 5 月 3 日東京朝刊 15 P「デパートで高校生乱闘」

JCLU and JLAF (including Ueda) making up the majority of a team of 28 lawyers who carried out the investigation of this series of incidents.[36] Less than 3 months later, on August 10, 1963, the team published their 103-page investigation report of over ten incidents of violence against *zainichi* students and provided extensive commentary on why they were problems concerning the *jinken* of the *zainichi* community.[37]

The majority of the investigation report focused on unpacking the details of the dozens of individual cases and analyzing the commonalities among them, after which the lawyers addressed the *jinken* violations of the *zainichi* community in the summary section. While a decade had passed since Hirano wrote about the *jinken* problems of *zainichi'*s status in Japan and "on the international law," the lawyers of the investigation group used mostly identical reasoning to frame this problem. The lawyers opened the commentary part of the summary section by recounting the history of colonization of Korea by Japan. According to the lawyers, this negative colonial legacy carried over into the postwar and manifested itself in the Alien Registration Law, which essentially allowed Japanese police to randomly target the *zainichi* for deportation, detention, and searching without warrant. This constitutes the "violation of *jinken* of the *zainichi* Korean as a result of the abuse of Japanese state (*kanken*) power." Therefore, the *zainichi* community not only faced "ethnic (*minzoku-teki*) discrimination and oppression;" they were also deprived of freedom to choose their nationality and to travel to and from their home country, actions that were "guaranteed as fundamental rights in not only the international law and the Japanese constitution," with the result that they "fell into a state of rightlessness."[38]

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[36] 『在日朝鮮人の人権を守る会二〇年の歩み』p.14-15

[37] 『在日朝鮮中高生に対する人権侵犯事件調査報告書』在日朝鮮中・高級生に対する人権侵犯事件調査団, 1963. https://dl.ndl.go.jp/info:ndljp/pid/3000682

[38] Ibid. p.74-75.

Like Hirano, the lawyers located the problems not in discriminatory individuals but in structural injustice. Instead of focusing on the specific perpetrators of the incidents (or framing the incidents as hate crimes), investigation group lawyers dwelled much more on the Japanese state's responsibility in enabling such crimes, arguing that one of the commonalities in these incidents was the "*jinken* violation by the state (*kanken no jinken shingai kōi*)." The lawyers singled out the police to demonstrate the state's *jinken* violation against the *zainichi* in the section "On the Attitude of *Jinken* Violation of the Police (*keisatsu no jinken shingai-teki taido ni tuite*)," the longest section in the summary. The section begins with a paragraph full with quotes from the UDHR:

> "Everyone has the right to life, liberty and security of person" (Article 3), and "disregard and contempt for human rights…resulted in barbarous acts which have outraged the conscience of mankind" shall be condemned because "human rights should be protected by the rule of law" (Preamble); furthermore, "no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs" (Article 2). These are solemnly stipulated by the UDHR, and hold great significance with regards to the *jinken* problems faced by *zainichi* Koreans living in Japan.

Holding up the UDHR as the legal and moral foundation for their accusations, the lawyers then turn to demonstrate why they consider the state's (*kanken*) treatment of the *zainichi* in these incidents constitute *jinken shingai*:

> In other words, when the violation of [one's] life or bodily safety (*seimei, shintai jō no anzen*) transpires, the Japanese state (*nihon kanken*) has the indiscriminate obligation (*musabetsu ni gimudukerarete iru*) to protect the legitimate legal interest of the victim and justly sanction or punish the perpetrator, regardless of whether either party is [*zainichi*] ethnic Korean (*chōsenjin*). Rightly punishing the perpetrator and justly protecting the victim is the prima facie mandate (*daiichigi-teki na yōsei*) of *jinken* protection (*jinken hoshō*). If one is able to find that the authority (*kanken*) is partial in handling [such incidents] just because [one of the parties] is Korean, then it should be condemned as "the *jinken* violation by the state (*kanken ni yoru jinken shingai kōi*)."

Citing the Police Law, the lawyers also point out that the police had the obligation to protect the "life, body and property of individuals" impartially, and "not in any way abuse their authority,

such as interfering with the rights and freedoms of individuals guaranteed by the Constitution of Japan." As such, the lawyers established the case that "if the authority (*kanken*) is found to engage in discriminatory investigation work just because [one of the parties involved] is ethnic Korean, then such act should be condemned as both 'freedom (*jinken*)[sic] violation by the state (*kanken ni yoru jiyū (jinken) no shingai kōi*)" and "abuse of power by the state (*kanken ni yoru shokken ranyō kōi*)." Unfortunately, the lawyers conclude, based on such criteria, they have found from their investigation that the incidents did indicate "*jinken* violation" and "abuse of power" by the state. The lawyers then use the rest of the section to enumerate all the instances in which the police discriminated against the *zainichi* victims in the incidents, such as favoring the testimonies of Japanese perpetrator or even not taking the *zainichi*'s testimonies at all and investigating the victims like suspects.[39]

The lawyers then performed similar critiques (and sometimes commendations) on the schools and mass media involved in the incidents, before arriving at the final section, "Responsibility of the Japanese People." Summing up, the lawyers argue that the incidents were "not merely cases of *jinken* violations against individual students; they also reflected a deep-rooted problem for which the Japanese government authorities and public institutions must take responsibility, and for which each Japanese person must be aware of his or her responsibility." To reflect on this problem, the average Japanese needs to acquire a "historical perspective" and understand that the Japanese state (*nihon seifu*) had "failed to protect ethnic Koreans' rights as aliens and violated their dignity as human beings." Again citing the UDHR preamble that "the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world," the lawyers echo Hirano's argument a

[39] Ibid. p.77.

decade earlier and contend in the end that to protect the *jinken* of the *zainichi* is to protect the *jinken* of the Japanese people too because the oppression of the *zainichi* by the "state power (*kokka kenryoku*)" will inevitably lead to the oppression of Japanese people too if not thwarted.[40]

After producing the investigation report, the investigation group held a convention at the Chiyoda Public Hall on August 13, 1963 to publicize the results. The convention attracted over a thousand attendees and was deemed a great success, and proposals of making the investigation group a permanent organization that focused specifically on the *jinken* of *zainichi* was made. This was in response to the ongoing negotiation of Japan-ROK Basic Relations Treaty brokered by America at the time, which the leftist and progressive lawyers predicted would further worsen the treatment of left-leaning *zainichi* in Japan. As the lawyers included in the pamphlet distributed to the audiences at the report gathering,

> In particular, the background to the recent concentration of incidents is the progression of the "Japan-ROK talks" and the repression of the movement for free passage to the DPRK. [Under such circumstances] there exists a force to sabotage the friendship between Japan and Korea (*chōsen*) by exploiting and abetting the discrimination [of *zainichi*].[41]

Since the Treaty would likely recognize South Korea as the only legitimate government in the peninsular, *zainichi* affiliated with North Korea would have even greater difficulty claiming their preferred nationality or travelling to North Korea, two problems long framed as the violation of *jinken* of the *zainichi* by the leftist lawyers.

Against this historical backdrop, lawyers and activists of the investigation group, including lawyers from JCLU, JLAF, the Japan Young Lawyers' Association (*seinen hōritsuka kyōkai*), Japan Democratic Lawyers' Association (*nihon minshu hōritsuka kyōkai*), and scholars

[40] Ibid. p.103-104.
[41] 『在日朝鮮人の人権を守る会二〇年の歩み』. p.19-20.

and activists from research institutes (such as the Japan-Korea Association *nicchō kyōkai*), trade unions, and women's groups (such as the Japan Mother's Convention *nihon hahaoya taikai*) formed the Association for Protecting the *Jinken* of *Zainichi* Koreans (*zainichi chōsenjin no jinken wo mamoru kai*, hereafter *mamoru kai*) in September 22, 1963. The Tokyo-based association was soon joined by similar groups in other locales such as Kanagawa, Nagasaki, and Osaka who came to affiliate with it as local chapters. Like the Tokyo "headquarter," these local groups usually started off as legal aid or legal defense team for *zainichi* victimized in hate crimes, police brutality, or forced deportation. For example, the Kanagawa chapter was established after incidents of police brutality against *zainichi* high school students in 1963, and the Hokkaido chapter formed in response to forced deportation targeting left-leaning *zainichi* from 1965 to 1967. There are also chapters that differed in composition. For instance, the Nagasaki chapter was headed by the priest and pacifist activist Oka Masaharu and its local activities consisted mostly of speaking up for the often-neglected *zainichi* victims of the atomic bomb. In 1983, the Association grew to encompass thirteen chapters across Japan.

Anticipating the impact of the new Japan-ROK treaty on the *zainichi* community (especially the left-leaning part) and looking back at the legal activism they carried out for the community, the lawyers of the Association embarked on their first project: producing a series of comprehensive legal studies on the *jinken* and legal status of *zainichi* and the threats to them. Right after its establishment, the Association started to hold regular study groups to compile and produce legal studies on these subjects. After a year of countless study sessions (which sometimes took the form of group stay-ins at hotels over summer holidays), the Association published its first single volume (*tankōpon*) book-length legal study, *The Legal Status of the* Zainichi *Koreans in Japan: The Reality of Deprived Fundamental* Jinken (*Zainichi chōsenjin no*

hōteki chii -hakudatsu sareta kihonteki jinken no jittai) on December 1, 1964. The Association published 3,000 copies for the first edition, 10,000 for the second, and another 3,000 for the third. Reviewed by over twenty media, *The Legal Status* was nominated by the Japan Library Association for essential holding in public libraries (*sentei tosho*). Tashiro Hiroyuki, the lawyer who led the committee for the research of the book, later argued that *Legal Status* "systemized, both practically and theoretically, over one year of research and investigation activities of the Association, and exposed the nature of the 'Japan-ROK negotiation.' It also established the authority of the Association [in terms of legal expertise on *zainichi*'s status and rights]." Published at the juncture of the famous Eniwa Incident[42] that greatly intensified networking of leftist activists and lawyers, *Legal Studies* became quite famous in the leftist and pacifist circles. The famous leftist activist Hatada Shigeo praised the book as "the fruition of the conscience of Japanese *kokumin*." Building on the success of *Legal Studies,* the Association turned *The Reality of Deprived Fundamental* Jinken into a trilogy series, publishing *The* Jinken *of* Zainichi *Koreans and the 'Japan-ROK Treaty'* and *The Democratic* Minzoku *Education of the* Zainichi *Koreans.*[43]

In the trilogy, the lawyers provided a more comprehensive theoretical framework of the *jinken* problem of the *zainichi* in Japan, especially in the second installment, the Jinken *of* Zainichi *Koreans and the 'Japan-ROK Treaty.'* The book has five chapters, with the first one summarizing the wide range of discriminations and oppressions faced by *zainichi* in Japan, and the third and fourth explaining the potential dangers (especially to left-leaning *zainichi*) of the Treaty on Fundamental Relations Between Japan and ROK and the Agreement between Japan

[42] The incident referred to the legal battle that ensued when two farmers who sabotaged facilities of a nearby Japan Self Defense Force (JSDF) base that negatively influenced their farm at Eniwa, Hokkaido, were arrested and charged in 1962. Convinced by the pacifist interpretation of the postwar constitution by the legal defense team, the final verdict not only found them not guilty but also found the existence of JSDF itself as unconstitutional.
[43] 『在日朝鮮人の人権を守る会二〇年の歩み』. p.24-26.

and the Republic of Korea Concerning the Legal Status and Treatment of Nationals of the Republic of Korea Residing in Japan that came with the Treaty, which stipulated that Japan would recognize *zainichi* as nationals of the ROK only. Interlaced between them, the lawyers laid out their theoretical framework in chapter two, "What Should Be the Basic Principles of Fair Treatment for *Zainichi* Koreans," and conclusion chapter provides a simple guideline for why and how the Japanese people could help to alleviate the oppression of (especially left-leaning) *zainichi*.[44]

In chapter 2, the lawyers argue that the "two foundations of the treatment problem [of *zainichi*]" are, respectively, "the fact that the *zainichi* Koreans are aliens who should be duly protected under international laws," and "the special historical circumstance that rendered the *zainichi* Koreans as victims of Japanese imperialism." Regarding the first point, the lawyers point out that "many Japanese do not realize that the *zainichi* Koreans are aliens (*gaikokujin*)," namely that they were no long colonial subjects but foreigners, like Americans and British, who hold "inalienable fundamental *jinken* (*kihonteki jinken*)" under international laws. To illustrate this point, the lawyers turn to the UDHR again, devoting nearly a page to cite the preamble and all relevant articles of the documents in full length, and argue that "our Constitution of Japan also includes such contents from the Declaration almost verbatim, and guarantees the fundamental *jinken*." Therefore,

> *Zainichi* Koreans hold fundamental *jinken* firmly guaranteed by the UDHR and other international laws and customs as well as the Constitution of Japan, and are citizens (*kokumin*) of an independent nation (*dokuritsu kokka*) and aliens who have the right to be treated fairly even if they are in countries other than their homeland.

[44] 『在日朝鮮人の人権と≪日韓条約≫』在日朝鮮人の人権を守る会, 1965.

As such, the Japanese state (*nihon kokka*) has the obligation (*gimu*) to protect these rights, just like how it protects American and British citizens. For the second point, the lawyers recounted the history of the colonization of Korea by the Japanese empire, the forced conscription and migration of Korean workers to Japanese industrial zones, and the massacre of *zainichi* during the Great Kanto Earthquake. In light of this "heavy historical sin (*rekishiteki zaika*) shouldered by Japan and the Japanese people," the lawyers conclude that on top of their status as foreigners whose rights Japan is obligated to protect, the Japanese state should also "give special consideration—namely the same treatment as Japanese (full national treatment (*naikokumin taigū*) or even guarantee of civil rights and interests (*shiminteki keneki*)) to the *zainichi*." Building on these "two foundations," the lawyers also propose "nine principles" for the fair treatment of *zainichi* that cover most of the aspects of their rightless plight in Japan (such as guaranteeing their rights of residence, freedom from employment discrimination, and rights to ethnic or *minozku* education), in addition to the abolition of "[political] oppression (*danatsu to torishimari*) under the pretext of Alien Registration Act and the Immigration Control Order" and "anti-North Korea propaganda."[45]

This partisan nature of the Association, which had been quite apparent and undisguised ever since its investigation group days, was most clearly articulated in the conclusion section in the book. Echoing Hirano's argument fifteen years ago, the lawyers subtitled the conclusion section "The *Minzoku* that Oppresses Other *Minzoku* Can Never Attain Freedom." The lawyers ask: "why should *we Japanese* oppose the 'Japan-ROK Treaty' under the current circumstances [when then *zainichi* are oppressed and made rightless in Japan]?" They argue that "we the Japanese" should not only help the *zainichi* out of sympathy, but also of the realization that

[45] Ibid. p.28-32.

"leaving *zainichi* in their state of deprivation of life and rights is identical to exposing the life and rights of Japanese to the same kind of danger that they are facing." For example, when *zainichi*'s right to their ethnic *minzoku* education can be denied by the Japanese state, many do not realize that in Ogasawara islands and Okinawa, "the glorious culture and tradition of the Japanese *minzoku* are being replaced by decadent American culture." When the *zainichi* are harassed and brutalized by right-wing gangs and the police, leftist progressive Japanese figures, such as JSP politician Asanuma Inejirō,[46] were also being threatened and even assassinated by right-wing terrorists. This is what lies at the "foundation for the joint struggle by the people of Japan and Korea (*nicchō ryō kokumin*)," and upon this foundation, the "Japanese people (*nihonjin*) from spheres across society who gathered at the Association will strive to… protect the rights of *zainichi* and the rights of the Japanese themselves." In this way,

> With the solid actions and struggles of the Japanese people calling for peace and independence, the South Korean (*minami chōsen*) people calling for national independence (*minzokuteki jishu to dokuritsu*) and peaceful reunification, the Democratic People's Republic of Korea representing the interests of the Korean nation, and the people of the world seeking peace, …the realization of the "Japan-Korea Treaty" will be prevented without fail.[47]

In *Rights Make Might,* Kiyoteru Tsutsui devotes a third of the book to recounting how since the 70s, a new generation of *zainichi* were able to go beyond the political schism inside the community and unite under the concept of *jinken* and even the international human rights apparatuses in the UN to pressure the Japanese government to guarantee their social rights and abolish draconian practices targeted at them such as forced fingerprinting.[48] While under the same banner of *jinken*, the leftist discourse of *jinken* and legal activism for the (mostly North

[46] Asanuma was the chairman of the Japan Socialist Party and was assassinated by rightist extremist in 1960.
[47] 『在日朝鮮人の人権と≪日韓条約≫』 p.69-72
[48] Tsuitsui, 2018.

Korea affiliated) *zainichi* by Japanese lawyers we have recounted in this chapter, from Hirano to the Association, differ from this new generation of *jinken* activism by the *zainichi* themselves that would come later in significant ways. For one thing, the legal activism of the leftist lawyers was partisan in nature. While they shared most of the concerns (such as social rights and residency status) with later *zainichi* bipartisan activism, the leftist lawyers were mostly concerned with the political oppression against North Korea-affiliated *zainichi,* using *jinken* to frame issues especially affecting this demographic such as the right to register as *chōsen* instead of *kankoku* nationals and the freedom to travel to and from North Korea. As the above block quote demonstrates, the leftist lawyers recognized North Korea as the only legitimate government on the peninsular and thus opposed the "normalization" of national relations between Japan and South Korea, which they deemed detrimental to the status of North-affiliated *zainichi* (and evidently devoted a whole book to theorize such detriments). According to the theory of "courtroom struggle," the leftist lawyers' use of the argument of *jinken* and frequent quotation of international human rights documents such as the UDHR were acts of "bind[ing] them [the bourgeoise] with the very laws they made,"[49] namely using the legal argument of *jinken* as weapons for their political struggle.

V. The "Courtroom Struggle" of the Association for Protecting the *Jinken* of *Zainichi* Koreans

However, just because the leftist lawyers and the new generation of *zainichi* used the term *jinken* differently in different eras does not mean that the two forces of activism are

[49] 金一勉, 1968. p.30.

unrelated genealogically. As demonstrated, the leftist circle quite literally opened up and fundamentally transformed the *jinken* discourse in postwar Japan by articulating that the *zainichi*, as individuals or as a *minzoku* who are definitely not Japanese *kokumin*, is also the bearer of *jinken.* In addition, just like in their contemporary high-profile lawsuits, such as the Asahi Lawsuit[50] and Eniwa Lawsuit, which showcased the progressive reinterpretation of the postwar Constitution in terms of *jinken*, the leftist activism on *jinken* of the *zainichi* went beyond theories and became realized in the "courtroom struggles." For example, the lawyers of the Association fought countless lawsuits for the (mainly leftist) *zainichi* who received deportation orders (*taikyo kyōsei rei*). In August 1958, only four years after its establishment, the Association published a compilation of the documents from nineteen lawsuits its lawyers fought for *zainichi* who were ordered to be deported or arrested for not carrying alien registration cards.[51] In the preface, the representative of the Association and JSP Diet member Inaba Seiichi states the mission of the book as such:

> This book consists mainly of raw material from the courtroom struggle on how [we have] fought against such oppression and repression [created by Entry and Exit Ordinance and Alien Registration Law]…As this is also a book for carrying out movements (*undō no sho*), I hope [the readers] can use the book to dirty your hands [by engaging in activism].
>
> I hope this book can help you, the readers to accomplish more in theorizing and putting into practice your litigation struggle (*kōhan tōsō*).[52]

[50] The Asahi Lawsuit refers to an administrative lawsuit filed by Shigeru Asahi in 1957 against the Minister of Health and Welfare. The lawsuit centered around "right to a healthy and cultured minimum standard of living" (right to life) and the content of the Welfare Law, as stipulated in Article 25 of the Constitution of Japan. The plaintiff argued in the lawsuit that the meager livelihood and medical assistance payment he received from the state (a mere 600 yen a month) failed to guarantee his right to life and such treatment of disabled people like him was thus unconstitutional. Although the lawsuit was dismissed after the plaintiff died in 1964, it greatly influenced the welfare legislations afterwards. See 「NPO 朝日訴訟の会 ホームページ」http://asahisosho.or.jp/.

[51] 『在日朝鮮人の在留権をめぐる裁判例集』在日朝鮮人の人権を守る会, 1968.

[52] Ibid. preface.

In fact, the book itself is a summary of how the lawyers had to "dirty their hands" in applying their *jinken* theory on the *zainichi* in actual "courtroom struggle" against the state.

The first case the book introduces is a won lawsuit on behalf of Yu Chongyol (*ryu chinretsu* in Japanese), a *zainichi* living in Hokkaido who was detained by the immigration authority and received a deportation order in March, 1967 because he assisted his brother, who enrolled in the Hokkaido University, to enter Japan without documentation, although he himself was residing in Japan legally (according to a 1952 law stipulating that *zainichi* who had been residing in Japan before the defeat could stay legally indefinitely). The lawyers note that this was the first case in which a legally residing *zainichi* was ordered to be deported despite the fact that assisting relatives to enter Japan was common practice among the *zainichi* community. Because Yu was a member of the North-affiliated *chongryon,* the lawyers also suspect that this incident was in fact an act of political oppression by the state on leftist *zainichi.* The lawyers from both the Tokyo main branch and the Hokkaido branch of the Association launched an administrative litigation (*gyōsei soshō*) on behalf of Yu against the Minister of Justice and the Immigration Bureau in Sapporo.

Although the lawyers used most of the appeal to recount Ryu's family history in Japan and put forth the legal argument that the deportation order against him was illegal and consisted an abuse of power by the Ministry of Justice, the last one third of the appeal was on how the deportation violated the *jinken* of Yu as an alien established by international conventions and laws as well as the Japanese constitution. The lawyers argue in the appeal that "whether an alien can continue to live in the country of his or her current residence or should be expelled, is, in all cases, a question of *kihonteki jinken.*" To support this, the lawyers again cite the UDHR, the article 9 of which states that "No one shall be subjected to arbitrary arrest, detention or exile."

The lawyers also imply that the Japanese state has the obligation to honor the UDHR because the San Francisco Peace Treaty Japan signed in 1952 states in its preamble that Japan is to "strive to realize the objectives of the Universal Declaration of Human Rights" as a member of the United Nations and the new postwar international order.[53]

In addition to the frequently cited UDHR, the lawyers also cite the International Covenant on Civil and Political Rights newly approved by the UN General Assembly in 1966. Although Japan had yet to ratify the Covenant at the time, the lawyers still cite it as the evidence of what they saw as the new trend of international custom regarding the relationship between nation states and *jinken.* Quoting Article 13 of the Covenant that "An alien lawfully in the territory of a State…may be expelled therefrom only in pursuance of a decision reached in accordance with law... where compelling reasons of national security otherwise require," the lawyers argue that this article established a new convention limiting states' power of deporting aliens, which had been viewed as nation states' unrestricted right and freedom. In this regard, the Covenant is groundbreaking because "the guarantee of *jinken* is no longer a matter of domestic jurisdiction (*kokunai kankatsu*). States (*kuni*) now have an obligation under international law to guarantee the *jinken* of persons residing in their territory." This statement not only represents the argument of the leftist lawyers but also betrays the new connotations of *jinken* in 1960s Japan. During the Occupation period, GHQ *jinken* reformers and the liberal lawyers aiding them frequently quote Harry Truman's speech before NAACP on June 29 1947 that "the extension of civil rights today means, not protection of the people against the Government, but protection of the people by the Government" in order to justify the establishment of state (and GHQ) sponsored *jinken* institutions despite the term's traditional usage in framing *kokumin*'s fight

[53] Ibid. p.43.

against the state (*kanken*) violence. The statement by the leftist lawyers here, which implies that *jinken* had been a matter of domestic matter, is clearly gesturing towards this old *jinken* paradigm established during the Occupation period. Against this old framework, the lawyers profess in the appeal that they seek to go beyond it by introducing new international documents to support the claim that aliens, namely those who are not Japanese *kokumin,* are also the bearer of *jinken,* and the state is also obligated to protect their *jinken.*[54]

In the conclusion section of the appeal, the lawyers also attempt to reinterpret the postwar constitution along the lines of this argument of *jinken.* They point out that the deportation order would result in "significant, and even fatal damages to the plaintiff." This is because, first, Yu had lived in Japan for over thirty years and had no basis of life in Korea, and thus the deportation order, if carried out, would endanger the very survival of his family; second, Yu's wife is Japanese, and forcing her to choose between going to Korea with Yu or staying in Japan but never seeing Yu violates her rights to residence (*kyojyūken*). Building on these two points, the lawyers put forth a reinterpretation of the postwar constitution:

> The *kihonteki jinken* of the *kokumin,* as set forth in our Constitution, define the limits of executive power (*gyōseiken*). The validity of the Immigration Order has its basis in the fundamental principles of the Constitution, and its application cannot violate the *kihonteki jinken* set forth in the Constitution. [Based on this principle] Not only shall the rights of aliens in our country not be infringed upon, but the right to life [as a principle], one of the *kihonteki jinken* under the Constitution, must not be unjustly violated. Especially for aliens with special backgrounds like [Yu, whose family settled in Japan because of the country's colonial past], [the state] should guarantee that their status is equivalent to the Japanese (*nihonjin ni jyunjita chii wo hoshō subeki*).[55]

In this way, although they were aware that the literal bearer of *kihonteki jinken* in the Constitution is *kokumin,* the lawyers attempted to reinterpret *kihonteki jinken* as a constitutional

[54] Ibid.
[55] Ibid. p.45.

principle that should encompass aliens, especially the *zainichi* whose history should secure them status "equivalent to Japanese."

These arguments of *jinken* of the *zainichi* based on established international documents, the core values of which Japan as a state could not deny, sometimes forced state authorities to respond, albeit unsubstantially. The written response (*tōbensho*) by the Immigration Bureau of Sapporo states that it "acknowledges the existence of articles in the International Covenant on Civil and Political Rights cited by the plaintiff but contests the plaintiff's claims that such articles carry legal effect (*hōteki kōryoku*) and the plaintiff's theory on international customs and international judicial precedents on deportation of aliens." After the Sapporo District Court ruled that the detention and deportation of Yu received lacked legal validity and thus that the execution of the deportation order be suspended, the Immigration Bureau launched an immediate appeal to the Sapporo Superior Court. In the appeal, the Bureau insists that the deportation order does not constitute an abuse of discretionary power by the Minister of Justice and that "the principles (*shushi*) vested in documents such as the UDHR, the preamble to the San Francisco Peace Treaty, and the International Covenant on Civil and Political Rights do not prohibit such deportations carried out according to the law." The Sapporo Superior Court dismissed the appeal and upheld the district court's judgment that the deportation and detention of Yu went beyond the discretionary power of the Minister of Justice and, although without using the term *jinken* (like the district court), unnecessarily endangered the livelihood of the plaintiff without any merit to national security or public welfare.[56]

[56] Ibid. p.52, 58.

The case of Yu was not the only lawsuit in which the lawyers of the Association put forth their theory of *jinken* of the *zainichi.* In fact, all of the appeals of lawsuits compiled in this volume contained sections theorizing the *jinken* of the *zainichi,* both as aliens whose *jinken* were guaranteed by international laws (which the Japanese state must obey) and as the product of the country's colonial past that it must address. In several other lawsuits (whose subjects are unnamed and only referred to as A, B, etc.), the passages on UDHR and International Covenant and on the colonial past of Japan are recycled almost verbatim.[57] This does not mean that the lawyers were regurgitating the same arguments. On the contrary, their theory of *zainichi*'s *jinken* became increasingly developed and ambitious over time. For example, for the lawsuit for A, who received the same treatment as Yu after he was involved in a traffic accident for which he was charged with negligent homicide, the lawyers cite the resolution on uniting separated families (*risan kazoku*) due to wars and other political conflicts passed on the International Red Cross Conference in Dehli in 1957, and argue that "the prevention of family separation is now customary international law (*kokusai kanshū hō*)."[58] The lawyers also recycled this citation throughout a lot of cases, citing the fact that the Japan Red Cross was an active contributor at the conference and that even the Japanese government highly commended the resolution. By using this document, the lawyers framed their *zainichi* clients as would-be separated families if deported, who, according to the remarks of the representatives of Japan Red Cross at the conference, held *kihonteki jinken,* and therefore the deportation of them violated their *jinken* and are against international customs.[59] In some later cases, the lawyers also began to categorize their clients (who were affiliated with the North Korea leaning *Chonryon*) as political asylees or

[57] For example, see Ibid. p.70.
[58] Ibid. p.75.
[59] Ibid. p.29-30.

refugees using the definition of the 1951 Convention Relating to the Status of Refugees because if they were to be deported to South Korea, they might face political persecution.[60]

In addition to gradually adding more international documents to their arsenal, the lawyers also became ambitious in their reinterpretation of the Constitution. For the lawsuit for B, who, like Yu and A, was detained and ordered to be deported when charged with a crime despite having legal residence status in Japan, the lawyers plainly argue that "article 22 of the Constitution also applies to aliens like the plaintiff." This is because "In today's international society, provisions regarding the *kihonteki jinken* should be understood as applicable to the aliens too according to article 98 item 2 of the Constitution [which stipulates that "the treaties concluded by Japan and established laws of nations shall be faithfully observed."]." The lawyers also point out that unlike in the preamble and some other articles, in which the subject of *jinken* is *kokumin,* in some articles like article 22, the subject is *nanibito,* which literally translates to "every person." This argument is followed by a summary of the legal debate on the subject or bearer of *jinken* in the postwar Constitution, for which there were three main positions according to the lawyers. Scholars like Sasaki Sōichi had argued that the sole bearer of *jinken* in the Constitution is Japanese *kokumin* only, and whether some or all of these principles apply to aliens should be determined by additional legislation. Other scholars like Inada Masatsugu argue that articles where the stated subject is *kokumin* apply to *kokumin* only, and articles where the subject is *nanibito* or any person apply to aliens as well. Yet others like Miyazawa Toshiyoshi opine that while rights guaranteed by the Constitution are by nature enjoyed only by *kokumin,* the *kihonteki jinken* of aliens should also be protected as much as possible as a principle. The lawyers argue that while the third theory is the mainstream in legal circles, the Supreme Court

[60] Ibid.

had apparently been more progressive than this and passed down a precedent judgement favoring the second position on June 19, 1967, in addition to a judgment favoring the third theory on December 28, 1950. Therefore, "whether restrictions to aliens' rights in excess to those enjoyed by Japanese *kokumin* should apply boils down to whether such measures are supported by necessity (*gōriteki na riyū*)," and the lawyers argue that such is not the case for B.[61]

The lawyers' argument regarding the special status on *zainichi* in Japan also indicates that their conception of *kokumin* was different from the older conservative mytho-nationalist model but closer to what would be neutrally translated as "citizenship" or "nationality" in English. To explain B's status, the lawyers claim that "the plaintiff was born as a Japanese *kokumin* (*nihon kokumin toshite umare*) and raised in Japan, and became an 'alien (*gaikokujin*)' as a result of the liberation of Korea (*chōsen*) from the state of colonialism." Elsewhere when introducing B's family background, the lawyers state that B was "born in Osaka…in 1939…and according to the Treaty on the Annexation of Korea…he acquired the status of '*kokumin* of the Empire of Japan (*dai nippon teikoku kokumin*),' and had no doubt been (*tōzen*) Japanese *kokumin* before the San Francisco Treaty took effect." While what the lawyers profess here had been legally true before the end of the war, the term *kokumin,* and thus the term *jinken,* rarely applied to colonial subjects such as Koreans in Japanese legal and political discourse, even by leftist Japanese lawyers supporting Korean independent movement. This shift in the usage of the term *kokumin* indicated that the leftist lawyers in 60s were truly reforming the language of the old *kokumin-jinken* complex, making such terms increasingly resemble what would translate as "human rights" and "nationality" today.[62]

[61] Ibid. p.82, 104.
[62] Ibid. p.81, 83, 181.

Despite the novel theories on the *jinken* of the *zainichi* and aliens in general raised by the lawyers of the Association in these lawsuits, the response by the Immigration bureaus revealed that the bureaucrats generally did not share the leftist lawyers' conception and interpretation of *jinken.* For example, for the case of D, who was charged with violent crimes and received deportation order and was detained in Omura Detention Center until he was coerced to apply for permanent residency as an ROK citizen, the lawyers introduced the theories of the state's responsibility to shelter refugee in addition to citing UDHR and other documents. They argued that according to the 1951 Convention Relating to the Status of Refugees, people who were forcibly moved to or made to stay in a region during WWII and became residents of the region shall be granted legal residency status in that region, and states that ratified the convention cannot deport such persons unless national securities or public orders are threatened. *Zainichi* like D in this case, the lawyers contend, obviously fit this definition of refugee (*nanmin*) because many were forcibly moved to Japan as a result of colonial policies, and persons like D should not be deported.[63]

The written opinion submitted by the Tokyo Immigration Bureau plainly challenges this argument with a completely different legal theory. The Immigration Bureau first concedes that the Convention does state that countries should not drive out refugees or political asylum seekers whose lives would be threatened if deported. It also did not contest that *zainichi* could be seen as refugees. However, the written opinion immediately counters, "it is doubtful that the state's obligation to protect refugees is established under international laws." The Bureau argues that countries of origin of the refugees usually contend that repatriation is the true and final solution, and different international agencies also have different approaches to refugees. The Convention

[63] Ibid. p.140-142

also only stipulates the obligation of states to protect and settle refugees only when other means are exhausted. Even if such obligations are established under international laws, the Bureau argues, this does not mean "refugees have the right to request protection from other states as individuals." This is because "it is still debatable whether individuals can be subjects (*shutaisei wo yūshiuru*) under international laws." Citing legal scholar Tabata Shigejirō, the Bureau argues that traditionally, individuals are not seen as subjects under international laws, and the opposite position is relatively new. Even in theories that affirm individuals' status as subjects under international laws, this status does not immediately translate into right-claiming power against states. Using such legal theories, the Bureau side argues that despite the content of the conventions and international documents cited by the Association lawyers, Japan has no obligation to protect and not deport the *zainichi* plaintiff. These two opposing legal theories on refugees vis-à-vis the states were recycled respectively by both sides in half of the lawsuits compiled in the volume.[64]

Such arguments by the Bureau side may seem quite bizarre to the contemporary readers. The Bureau neither contested the categorization of *zainichi* plaintiffs (who, in almost all these cases, were North-affiliated and fear political prosecution if deported to the South) as refugees or political asylees, nor did it stress the fact that Japan had not signed the 1951 Convention Relating to the Status of Refugees. Instead, it countered the leftist lawyers' point by arguing that individuals are not right-claiming subjects under international laws. This can be explained when examined together with the fact that the written opinions by the Bureau side never engage with the leftist lawyers' use of the term *jinken* to frame their *zainichi* plaintiff's problem. As shown, the Association lawyers' use of the term *jinken* already approaches what would be translated as

[64] Ibid. For examples, see p.140-142, 148-150. 160-162, 168-174.

"human rights," and this usage enabled them to reconfigure the meaning of *jinken* in the Constitution and reinterpret who the bearer of *jinken* in the Constitution should be. The underlying assumption by the lawyers that enabled these innovations was that individuals, who need not to be citizens or *kokumin* of a nation, holds *jinken* under international laws, which obliges nations to protect such *jinken.* The Bureau side, on the other hand, contested this very assumption and the lawyers' basic interpretation of the term *jinken.* Denying the very subject position of individuals outside of national or constitutional contexts, the Bureau side essentially argued that only citizens of a nation, or *kokumin*, can be right-bearing, or *jinken*-bearing subjects. In other words, the Bureau side was still deeply steeped in the old *jinken-kokumin* paradigm, and thus fundamentally disagreed with the novel, more internationally-minded *jinken* arguments and interpretations by the Association lawyers.

While the bureaucratic side understandably always took the opposite legal position against the lawyers' on the issue of *jinken,* the justice system did not always side with the state and passed down a number of judgements that partly or completely acknowledge the Association lawyers' theory of *jinken* of the *zainichi* or aliens in general. For example, some verdicts acknowledge the theory of "the right to live in peace (*heiwateki seizonken*)" (as a *kihonteki jinken* guaranteed by the postwar Constitution for both *kokumin* and aliens) often cited by the Association lawyers. First popularized by legal scholar Hoshino Yasusaburō in 1962, the theory of "the right to live in peace" was deducted from the passage in the preamble to the Constitution "we recognize that all peoples of the world have the right to live in peace," which is seen as the basis of the Article 9 (renunciation of war) and Article 13 (right to pursue happiness). It became widely used in leftist and pacifist circle and also in various anti-military base lawsuits such as the

Naganuma Incident.[65] The Association lawyers used this argument of *jinken* for M, who received deportation order after overstaying his visa. M was a Taiwanese (and not the only Taiwanese the lawyers helped) who lived in Japan before the end of the war. After the defeat and when former Japanese colonial subjects were deprived of Japanese nationality, M happened to be in Taiwan and thus got stranded. To reunite with his families in Japan, M entered the country with a sightseeing visa and overstayed. The lawyers used the theory of "the right to live in peace" because M merely sought to resume his normal life in Japan. The Tokyo District Court concurred with this argument and stopped the execution of the deportation order. Of the two main points of the Summary of the Judgment (*hanketsu yōshi*), one is dedicated to "the right to live in peace" and states that

> If it is clear that the deportation of persons currently living peacefully in Japan threatens their immediate survival, it is reasonable to interpret the declaration in the preamble of the Constitution as not permitting the deportation of such persons, even if their stay is unlawful.[66]

Going as far as acknowledging that M's overstay was illegal, the Tokyo District Court further supports this bold position later in the verdict by reinterpreting the Constitution in more details:

> However, the second sentence of the Preamble of our Constitution, which declares that everyone has the right to live in peace, free from fear and want, should naturally be considered to apply to foreigners residing in our country as well.[67]

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[65] Naganuma Incident (or the Naganuma Nike Incident) was an administrative lawsuit on the constitutionality of the Japan Self-Defense Force. Protesting the construction of Nike surface-to-air missile base of the Air Self-Defense Force in Naganuma-cho, Hokkaido at the expense of previously designated national safety forest (*hōan rin*), the local residents launched an administrative lawsuit arguing that the Self-Defense Forces are unconstitutional, and the removal of security forests is illegal. Based on the concept of the "right to live in peace," the Sapporo District Court ruled in favor of the plaintiffs, although the judgement was overturned later. See 「臨時総会・平賀・福島裁判官に対する訴追委員会決定に関する決議」日本弁護士連合会. https://www.nichibenren.or.jp/document/assembly_resolution/year/1970/1970_1.html.

[66] 『在日朝鮮人の在留権をめぐる裁判例集』 p.282.

[67] Ibid. p.287.

This verdict by the Tokyo District Court likely reflected the progressive trend of the reinterpretation of the Constitution in the 60s mentioned above. However, this progressive attitude towards *jinken* was not necessarily shared across the justice system: the Tokyo High Court overturned this verdict later and reinstated the deportation order, insisting on the more nationalist position that "unless there is a special treaty from customary international law, the entry and stay of foreigners is at the discretion of the state."[68]

It is unclear how deeply the ideology and language of *jinken* employed by the Association infiltrated into the *zainichi* community. However, in the legal circle, their understanding of *jinken* was definitely not in the minority. As mentioned, the founding members of the Association already came from established progressive lawyer groups such as the JCLU and JLAF, which were strengthened and united by the 50s trade union movements and 60s pacifist and anti-Anpo movements. In the 60s, memberships of these lawyer groups often overlapped, and the groups frequently issued joined statements and publications on the issue of *zainichi*, immigration laws, and Japan-Korea relations. For example, regarding the Japan-ROK Accord signed in 1965, the Association issued a joint statement with seven other lawyer groups[69] to call for attention to the nationality registration of the *zainichi* and to condemn the perceived forced registration of *zainichi* as *kankoku* instead of *chōsen* nationality.[70] Throughout the 60s and 70s, the Association produced one or two publications every year jointly with these lawyers groups as well as groups like Japan-Korea Association (*Nicchō kyōkai*) and other ad hoc

[68] Ibid. p.290.
[69] The other seven groups were: Japan Young Lawyers Association (*seinen hōritsukas kyōkai, JYLA*), the Japan Lawyers International Solidarity Association (*kokusai hōritsukas kyōkai*), the General Council of Trade Unions of Japan Lawyers Group (*sōhyō bengo dan*), Lawyers Group for Safeguarding the Constitution (*goken bengo dan*), Japan Democratic Lawyers' Association (*nihon minshu hōritsuka kyōkai*), JCLU, and JLAF. Ibid.
[70] 『在日朝鮮人の人権と≪日韓条約≫』在日朝鮮人の人権を守る会, 1965. p.79.

investigation groups focusing on hate crimes or discrimination against the *zainichi.*[71] In a word, in the leftist and progressive legal and activist circle, the Association was well networked if not well known, and its understanding of *jinken* likely stemmed from a common ground of a new interpretation of the term (as well as the Constitution itself) from the 60s.

Conclusion

The wide association of the progressive lawyers' groups in the 60s and into the 70s reflected the changing social movement scene at the time in Japan. In short,[72] the rapid economic growth and its consequences as well as the increased integration of Japan into Cold War Pax Americana gave rise to new form of social movements detached from the political party (mainly JSP and JCP)-led union and pacifist movements. Reflecting their ad hoc and individual-oriented nature, these movements, such as the redress movement for Minamata disease and the anti-Vietnam War movement, would later be termed "residents' movements (*jūmin undo*)" and "citizens' movement (*shimin undo*)." Towards the end of the decade, the student movement associated with the new left also considerably changed the scene. The 1960s was also the decade in which, as scholar Kiyoteru Tsutsui argues, the social movements of the *zainichi* transitioned from a deeply politically divided "citizenship rights" paradigm to a "human rights" one as Japan became more integrated into the international human rights legal system and as a new generation of *zainichi* came onto the scene.[73] The scene of lawyers' activism also reflected this backdrop of

[71] For a list of publications by the Association, see『在日朝鮮人の人権を守る会二十年の歩み』 p.136-141.

[72] Many had written on the change of social movement scene in Japan in the 1960s. For a brief narrative, see 荒川章二「日本における「1968」社会運動の歴史的特徴」人民の歴史学 220 号 2019 年 6 月 p.1-14;

[73] See chapter 3 of Tsuitsui, 2018.

the disassociation of mainstream social movements with establishment leftist political parties. As mentioned, leftist lawyer groups originally opposed to each other due to different party allegiance came to work together, creating the condition for birth of groups like the Association whose members came from a wide range of backgrounds. While the ideology of the Association, which apparently harbored strong allegiance with North Korea-affiliated *zainichi,* was steeped in the older generation of postwar leftism and pacifism, the group toned down its political affiliation over time and, apart from its legal activism on the immigration law-related lawsuits, focused increasingly on investigating the colonial history of the *zainichi* community and working with other "citizens' movements" like those supporting the democratization of South Korea.[74]

However, while the activism of the *zainichi* before the 70s was indeed marked by political schism due to the split allegiances to different Korean regimes (and thus "citizenships"), the term "citizenship rights" definitely could not capture the totality of the rights discourse in the community. This was even truer in the Japanese leftist and progressive circle, in which the issue of the *zainichi* was used to broaden the paradigm of *jinken.* Ever since the 1900s, leftist Japanese intellectuals, especially in the legal circle, had incorporated the colonization of Korea and the oppression of Korean working class and activists into their class theory on Japanese state's oppression and colonialism that violated the *jinken* of its *kokumin.* While even the most radical lawyers like Fuse who founded the JLAF did not directly imply that Koreans were *kokumin,* the bearer of *jinken,* the issues with Koreans were firmly integrated into their *jinken* theory and activism, and fighting lawsuits for persecuted Koreans against the police and other colonial state apparatus enriched their tradition of "courtroom struggle," which, along with the language of *jinken,* was rekindled after WWII despite being clamped down during wartime. The growing

[74] 『在日朝鮮人の人権を守る会二十年の歩み』p.142-156.

trade union labor movement in 40s and 50s and pacifist movements that grew out of it initially created schisms among leftist lawyers affiliated with different parties, but their changing inner dynamics soon allowed the circle to unite and enabled them to work together on the issues of the leftist *zainichi* who were mainly only associated with the JCP but not the JSP. The issues of *zainichi* were the rare instances in which they could make legal arguments about *jinken* away from the concept of *kokumin,* and theorize what the *jinken* of non-*kokumin* aliens were. Into the 60s, problems of hate crimes, nationality selection, and residence status of the *zainichi* became more salient, and the leftist lawyers, with the strong network and experiences they acquired through the "courtroom struggle" for labor and pacifist movements, were able to center their legal activism towards these issues around the very idea of *jinken,* and their legal activism manifested in the establishment of the group Association for Protecting the *Jinken* of *Zainichi* Koreans. Riding on the wave of the radical reinterpretation of the Constitution in the 60s, lawyers of the Association pushed the boundary of the paradigm of *jinken* even further, developing a comprehensive theory of the *jinken* of aliens through their "courtroom struggle."

Tsutsui argues that the advent of the "era of human rights" in Japan marked by Japan's ratification of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights in 1979 fundamentally changed *zainichi* activism as the community began to unite around and utilize these international human rights instruments to improve their status in Japan. This is indeed true, but as this chapter has shown, the concept of *jinken* had long been tied to the issues of *zainichi* in the leftist circle, and their unique plight had enabled leftist lawyers to reconceptualize *jinken* and free the concept from the old *jinken-kokumin* paradigm. Tsutsui is still right that the 70s marks a watershed in the *jinken* discourse and activism in Japan. With the rise of new forms of popular movements since the late

60s that were increasingly free from the control of traditional leftist parties, the leftist and progressive lawyer groups also had to adapt to this new scene and further reconfigure their *jinken* legal and political activism. For example, even the Association, which consisted mainly of traditional leftist lawyers, began to transition into the broader movement supporting democratization of South Korea and history activism on colonial negative legacy. Later chapters will examine this larger trend in *jinken*-related social movements and trace how the concept of *jinken* became able to articulate problems related to Japan's wartime and colonial past.

Chapter 5 The *Jinken* Problems of "Asia:" Towards a Holistic Critique of Japan's Past and Present

On December 8, 2000, the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery, prepared by Japanese, Korean, and other Asian civilian groups collaborating transnationally, officially commenced. After four days of intense testimony sessions by victims of the military slavery system of the Imperial Japanese Military during WWII (commonly known as the former "comfort women"), the tribunal adjourned on December 8. Almost a year later, on December 4, 2001, the groups published the final verdict of the tribunal, most famously finding the late emperor Hirohito, among other wartime Japanese leaders, guilty and ultimately responsible for the military sexual slavery system as the leader of the country.[1] On the goal of the tribunal, Matsui Yayori, one of the tribunal's main organizer and a seasoned journalist and activist, commented that

> I want as many women as possible to do their utmost to hold a "court" that responds to the voices of victimized women. We believe that this will contribute to the establishment of women's *jinken*, enable true reconciliation with the people of Asia, and contribute to a violence-free 21st century.[2]

Matsui passed away in December 2002, making the historical tribunal her final activist work, but the tribunal was not the end but the beginning and the foundation for a new landscape of transnational feminism, Pan-Asianism, and *jinken* activism in Asia that we are still trying to make sense of.

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[1] 「日本軍性奴隷制を裁く 2000 年女性国際戦犯法廷」VAWW RAC. http://vawwrac.org/war_crimes_tribunal . For a comprehensive review of the Tribunal, see Lisa Yoneyama. *Cold War Ruins: Transpacific Critique of American Justice and Japanese War Crimes*. Durham: Duke University Press, 2016.

[2] 松井やより「「法廷」と現代の武力紛争下の性暴力」VAWW RAC. http://vawwrac.org/war_crimes_tribunal/wct01_01_01

As previous chapters have demonstrated, the *jinken* discourse reached another key juncture in the 1970s: issues like the "Okinawa problem" prompted lawyers and activists to use the term to rethink "state responsibility" and "history problem," the plight faced by *zainichi* continued to expand the boundary of the subject of *jinken* and challenge its coupling with the concept of *kokumin,* and along with these development, international human rights discourse in the UN, such as the term's application to the issues of war crime victim reparation, also began to trickle into Japan. This chapter examines the immediate pre-history (from 1960s to 1980s) to how the *jinken* discourse in Japan became a paradigm capable of articulating Japanese wartime and colonial atrocities, such as the "comfort women" issue tried in the Tribunal. Namely, the chapter will survey how *jinken* found usage in numerous popular movements and discourse about history, nationhood, environment, global inequality, citizenship, gender, and most notably "Asia" (*Ajia*) in and outside of Japan. While this process was multifaceted, one woman's activist career happened to span this wide social landscape. That was none other than Matsui Yayori, who arrived at the issue of "comfort women" through activism and journalism on a variety of issues from the 1960s to 2000s. This chapter uses the career of Matsui Yayori and other activists in her network, most notably those affiliated with the Asian Women's Association (*Ajia no onna tachi no kai*) to explore this colorful and multi-dimensional recent history of *jinken,*[3] and argues that the breakthrough of the *jinken* discourse since the 70s went hand in hand with the surge of discourse on "Asia (*Ajia*)," a concept created to encompass the multiple strains of activism in order to produce a holistic critique on Japan's place in the Cold War world. While the latter

[3] The chapter is not and does not intend to be an activist biography of Matsui Yayori but simply uses her experiences and networks (on which the sources are relatively abundant) as a heuristic device to understand the *jinken* activism leading up to the 90s reparation movement. The author wants to take this chance to acknowledge the potential problem in comfort women-related activism of overemphasizing the contributions of certain individual, which sometimes fails to do justice to the fact that this field of (leader-less and decentralized) activism has been the result of the collective effort of unnamed (often half-time and amateur but dedicated) activists. See Eika Tai. *Comfort Women Activism: Critical Voices from the Perpetrator State*. Hong Kong University Press, 2020.

notion vanished like a flash in the pan with the fundamental shift of geo-politics in Asia in the late 80s, its legacy still lived on in the *jinken* discourse into the new century.

I. Strands of *Jinken* Activism in the 1960s: As Seen Through Matsui Yayori's Career

In 1934, Matsui (born Hirayama Yayori) was born to Hirayama Teruji and (née Imai) Akiko. Both of her parents were Christian pastors, and Matsui attended Christian middle and high schools before enrolling in Tokyo University of Foreign Studies. After graduating, Matrsui found a job at the *Asahi Shimbun* as a journalist in 1960. That year, Matsui had just returned from a long trip abroad where she finished her college and graduate education across America and Europe (mainly France) and toured the Middle East and Asia on her way back. When she worked at the public relations (*Shimbun bu*) of the student group Voices from the Sea (*Wadatsumi Kai*) when she was a college, Matsui always felt that her ambition for a career in journalism did not fit well with the gendered expectation in her living environment. She thus jumped at the opportunity for an exchange program with the University of Minnesota, which she thought would grant her a greater degree of freedom as a young woman.[4] In 1957, Matsui travelled to America as a junior college student, first attending orientation at Harvard University for two months, and then for a year of studies of International Relations at Minnesota. Matsui also decided to tour the Jim Crow era American South alone, learning about the history of racism in the country despite her good impression with the perceived more freedom for women in the

[4] 『松井やより　全仕事　第 2 回特別展カタログ』アクティブ・ミュージアム「女たちの戦争と平和資料館」(wam), 2005. p.14

country—a photo of her posing in front of a sign that says "LADIES: WHITE ONLY" perfectly captured this American experience of her.[5]

Matsui arrived in Paris after America and decided to stay for further education again. Working as a babysitter to support herself, Matsui learned French and enrolled in Sorbonne University. Her experience in France was quite similar to that in America: while the different culture and greater breathing space for women excited her, Matsui also experienced racism on a daily basis, and "came to realize the limit of the French *jinken* thoughts. '*Jinken*' was apparently a privilege exclusive for the white men."[6] After a year in France, Matsui decided to return to Japan as "there are things [she] must do as a Japanese."[7] On the way back, she had the chance to make port calls in the Arabian Peninsula, India, Sri Lanka, Singapore, Vietnam, Philippines, Hong Kong, before finally arriving at Kobe. This trip was her first experience of the "*Ajia*" that she would later frequently invoke.

No one can deny that importance of the year 1960 for the history of social movements in postwar Japan: long-standing and wide-spread protests against the conclusion of Treaty of Mutual Cooperation and Security between the United States and Japan (or *Anpo* for short) rocked the country and essentially created the foundation for later popular movements that grew increasingly detached from the establishment left. It was also a personally eventful year for Matsui Yayori, who passed the recruitment entrance exam of *Asahi Shimbun* as a one of the very few female journalists in the fall of 1960. While she just "missed" the *Anpo* movement due to her trip abroad, Matsui was always attentive to activism and the social problems exposed in movements and tried to give voice to activists through her journalistic work. For example, one of

[5] Ibid.
[6] Ibid.
[7] Ibid.

the Matsui's first journalistic work was her contributions to the column People (*hito*), for which she continued to write even into the 1990s right before she retired. Most of the seventy people Matsui chose to profile throughout three decades were activists, lawyers, NGO workers, or local government staff working on welfare or social issues. For example, some of her first contributions to the column from 1961 to 1964 were on people like Ono Gijirō, Sakata Shōichi, Maki Kenichi, and Shimogōbe Miyo, who all worked in different branches in the Tokyo government on improvements in city planning or welfare.[8] While their occupations were seemingly unrelated, they all belonged to what historian Simon Avenell calls the "pragmatic activism," the practitioner of which sought to incur change in politics by directly participating in or advising local governance, that grew out of the Anpo movement.[9] Avenell argues that it was through strands of activism like this that the activist subjects of *shimin* ("citizen" or lit. "city dweller") or *jūmin* (lit. "resident"), sometimes vis-à-vis the more conventional *kokumin*, were fleshed out in since the 1960s. In other words, these genres of activism privileged local community or individuality, which came at the expense of nationalist sentiments (and even manifested in the form of the critique on nationalism, which was seen as connected to Japan's wartime and colonial atrocities).[10] These strands of activism also created new usage of the concept of *jinken*, which was later absorbed as an instrument to voice Matsui's own activism.

Matsui certainly harbored a strong interest in the "pragmatic activism" born out of the Anpo movement, as she moved from profiling local government workers and advisors to activists working on issues such as consumers' rights, children's welfare, and anti-pollution

[8] 『全仕事』 p.1.

[9] Simon Andrew Avenell. *Making Japanese Citizens: Civil Society and the Mythology of the Shimin in Postwar Japan*. Berkeley, Calif. ; London: University of California Press, 2010.

[10] Ibid.

movements, which Avenell argues were direct offshoots of the earlier government-centered "pragmatic activism."[11] For example, in the second half of 1960s, Matsui profiled Matsushima Masanori, the chair of the National Association of Foster Institution for Children (*zenkoku jidō yōgo shisetsu kyōgikai*, or *zenyōkyō*), Suzuki Takeo, the chair of the Committee for Atmospheric Carbon-monoxide Level (*issankatanso kankyō kijun senmon iinkai*), and Hirayama Munehiro, leader of the governmental team to diagnose and treat children born with rubella in Okinawa.[12] Outside of the People column, Matsui also closely followed the consumers' rights movements, specifically the activism around the safety of the addition of the so-called "petro-protein" (*sekiyu tanpaku*) into foods and around residual agricultural chemicals in dairy products. As a member of the journalist club (*kisha kurabu*) of the Ministry of Health and Welfare (MHW, *kōseishō*), Matsui enjoyed early access to developments related to environmental and public health issues. In August 1969, Matsui penned a piece demanding the MHW to "wait a minute" before approving additive "petro-protein" without sufficient safety tests, and did a follow-up piece in 1972.[13] Matsui also criticized MHW for negligence in surveilling residuals of the pesticide BHC, which was found to exceed the WHO standard hundreds of times in some dairy products, in a report issued in 1969.[14]

Matsui invested even more energy into reporting on the anti-pollution movement, especially the lawsuits of the famous Minamata disease in Kumamoto and Niigata prefectures. After suffering decades of deadly ailments caused by pollution from chemical factories own by Chisso (in Kumamoto) and Showa Denko (in Niigata) without knowing where the "disease"

[11] Ibid.
[12] 『全仕事』　p.1
[13] Ibid. p.17.
[14] Ibid.

came from, local residents finally pinpointed the cause of this "disease" and began their long struggle of suing the two companies and local governments for compensations from late 1960s. Matsui joined the Asahi team to investigate the lives of plaintiffs and victims, many of whom were disabled by the disease, and their fight for justice and compensation when the first wave of verdicts of these lawsuits were about to come out in 1971 and 1973. In January 1973, Matsui stayed for nine days in the home of Sakamoto Shinobu, one of the plaintiffs who was disabled by the disease and who travelled to Stockholm for the 1972 United Nations Conference on the Human Environment to speak about Minamata disease (when she was only sixteen), to learn about her daily struggle and the meaning of the lawsuits for plaintiffs like her.[15]

It was also through her activism on such causes that Matsui reported that the term *jinken* found new usages and articulations in the late 60s and truly popularized outside of the lawyers' circle for the first time. After the famous Asahi Lawsuit, in which the disabled plaintiff Asahi Shigeru sued the Minister of Health and Welfare for failing to guarantee his right to life (*senzonken*),[16] popularized the issue of biopolitical rights and welfare in the 1960s,[17] issues like pollution (*kōgai*) and especially the right to be free from it, children's rights and especially their rights to healthy growth, and consumers' rights and especially the right to safe and healthy food products, came to be articulated in the language of *jinken* by the public. For example, Matsushima Masanori, the chair of *zenyōkyō,* who Matsui profiled for the People column, stressed throughout the interview, the necessity to convince the public to "protect children's *jinken* (*kodomo no jinken wo mamoro*)" as he had been witnessing countless violation of such

[15] Ibid. p.18
[16] Defined as "right to maintain the minimum standards of wholesome and cultured living." in article 25 of the Constitution of Japan. As in most articles, the subject of such right is *kokumin.*
[17] The lawsuit started in 1957 and became famous in the 1960s to the extent that school textbooks used it to illustrate the respect for *kihonteki jinken.* The lawsuit was discussed in the last chapter.

jinken in the postwar society despite Japan's growing economic affluence at the time. In his forty-year experience, Matsushima supported countless orphans whose parents died in the war. He wanted to show the public "to what extent these children's *jinken* were ignored before they were institutionalized." Even after they came into fostering institutions, Matsushima felt that the state-sponsored care to orphans and fostered children was still far from enough, as these institutions were usually under-funded and ill-equipped to deal with the physical and mental disabilities the children often had. To raise awareness to such issues, Matsushima directed *zenyōkyō* to put great efforts into public awareness campaigns, such as mass producing and distributing the organization's brochure "In Order to Protect Children's *Jinken* (*kodomo no jinken wo mamoru tame ni*)."[18]

Even more prominent than *jinken*'s articulation of issues with children's welfare and rights was the term's linkage to the problem of *kōgai,* usually translated as "pollution" but literally means "harm to the public." Against the backdrop of Japan's rapid economic development in the 60s and the environmental and public health problems such growth entailed, *kōgai* emerged as a paradigm to encapsulate problems of not only of pollution, most famously the "big four" *kōgai* incidents (the Minamata disease in Kumamoto and Niigata, the Yokkaichi asthma, and the *itai itai* disease, all caused pollutions), but also food and product safety (with connection to consumers' activism), and even military bases. As activism around *kōgai* grew in scale and intensity, exemplified by the wave of lawsuits against corporations and local governments (most notably those by the victims of the "big four"), demand for legal service, and most of all legal theorization on *kōgai* issues grew, and with all the bio-political and welfare

[18] 『朝日新聞』 1968 年(昭和 43 年) 12 月 14 日 朝刊 5 頁 東京 5 段 記事 「松島正儀　子どもの人権を守ろうと訴える全養協会長」

issues popularized, Japanese lawyers promptly linked *kōgai* to *jinken*. In 1972, the National Network for *Kōgai* Lawsuit Lawyers' Groups (*zengoku kōgai bengodan renraku kaigi*) formed around lawyers hired by plaintiffs of the "big four" lawsuits with the mission to "restore the *jinken* of victims of *kōgai* (*kōgai higaisha no jinken no kaifuku no tameni*)."[19] Further developing what constitutes *jinken* or right to life (*seikatsuken*) vis-à-vis the problem of *kōgai*, Japanese lawyers went as far as to invent new categories of rights and crimes. For example, the 1971 symposium of the *jinken* committee of JLBA Kinki region branch focused on the novel right of "right to sunlight (*nisshōken*)," namely the right to live with access to sunlight unobstructed by skyscrapers and high-rise condominiums, invented by legal scholar Igarashi Takayoshi, and "crimes related to *kōgai* (*kōgai zai*)."[20] The articulation of *kōgai* problems in the language of *jinken* was even applied to the problem of Okinawa, and American military bases in Japan in general. More specifically, as Japanese lawyers increasingly localized the crux of *jinken* problems in Okinawa in American military bases (see chapter 3), they invented the concept of "base *kōgai* (*kichi kōgai*)" to capture problems of pollutants and the GI crimes that emanated from bases. In 1970, JLBA published a report titled "The Military Base *Kōgai* in Okinawa and *Jinken* Problems" to develop the theory of this new concept and its relationship to *jinken.*[21]

Matsui spent a great portion of her career reporting on *kogai* issues such as pollution and food safety, and she later reminisced that her time with Sakamoto Shinobu was one of the "most treasured memory" of her life.[22] It was also on top of the issue of *kōgai*, which was indeed a

[19] 豊田誠「全国公害弁護団連絡会議--公害根絶を目指す弁護団の共闘組織」『自由と正義』 32(8) 1981.08 p.44-46.
[20] 「日照権・公害罪(近弁連人権大会シンポジューム)」『自由と正義』 22(3) 1971.03.00 p.38-53.
[21] 『沖縄の基地公害と人権問題 : 日本弁護士連合会報告』南方同胞援護会, 1970. https://id.ndl.go.jp/bib/000001204164
[22] 『全仕事』 p.18.

cornerstone for her journalistic career, that she developed her philosophy on the gendered experience and violence in Japanese society and beyond. As mentioned, Matsui "escaped" Japan for America and Europe in college due to what she saw as the suffocating misogynistic environment in Japan, and came back to "do what a Japanese has to do." Central to her self-defined mission was bettering the status of women in Japan (and as she increasingly believes, in "Asia"). Matsui's journalism had always reflected her attentiveness to the issue of gender and the unique plight of women in society. For example, her piece on Sakamoto Shinobu not only addressed her legal struggle against Chisso and her life as a disabled person; the majority of the article was on the coming of age of Sakamoto as a young woman in her school of special education and the unique challenges the Minamata disease posed for her growth as a teen girl with her other schoolgirl friends (also with Minamata disease).[23] In fact, Matsui's very first single-authored serialized reportage, the series "Rice: The Record of a Certain Farm Family," was also on the unique tension between wife and mother-in-law of small landed farmer families in countryside against the backdrop of rapid economic growth in late 1960s. For this reportage, Matsui also found a willing farmer family that hosted her and let her live and even help with farm work in the field.[24] Matsui also participated in the nascent women's liberation movement (WLM) in Japan in late 1960s. In 1967, Matsui co-founded the Wolfe's Society (*wurufu no kai*) together with other prominent women's liberation activists such as Enoki Misako to translate western feminist works and information on the WLM overseas. Touring Europe and America to report on environmental issues and environmentalism from 1970 to 1971, Matsui became inspired even more by WLM theories there, which "entirely changed my [Matsui's] view of

[23] 『朝日新聞』1973 年(昭和 48 年) 3 月 7 日 朝刊 19 頁 東京 1 段 記事 「つぐ なえぬ少女の心」
[24] 『全仕事』p.16.

women (*joseikan*)" and caused in her "a fundamental revolution of consciousness and thought (*konpontekina ishiki kamumei, shisō kakumei*)."[25] It was also around this period that Matsui began to report even more on the issues of women, especially the discussion women's rights in Japan and in the UN, and also started to use the term *jinken* to articulate these issues.

II. The Movement Against Sex Tourism: Nascent *Jinken* Feminism

The reportage on and activism in the issues of *kogai,* women, and various strains of *shimin* and *jūmin* movements (all of which heavily employed the language of *jinken*) on top of her frequent travels overseas where she absorbed western theories on rights and feminism enabled Matsui to develop a wide activist network and an intersectional critical perspective on what was wrong with Japan and its place in the Cold War world. These networks and concerns of hers was epitomized in her participation in the movement against sex tourism by Japanese men in South Korea (*kisen kankō,* with *kisen* being the Korean equivalent of *geisha* in Japanese but was used as euphemism for prostitute here). With the rapid economic growth of Japan, sex tourism by Japanese businessmen in relatively poorer Asian countries also increased, and Korea was the first popular destination for this "fad" (followed by Southeast Asian countries later). Matsui first learned about this issue in *Kirisuto Shimbum* ("Christian News"), and felt "shocked as if stabbed by a blade." Matsui thought that such sex tourism was "the very definition of sexual invasion (*sei shinryaku*) and a repetition of [Japan's] colonial rule (*shokuminchi shihai*) [over Korea]."[26] She then penned the first reportage on this issue in *Asahi Shimbun,* published in September 1973, and started following the issue ever since. How Matsui was informed of and

[25] Ibid. p.20.
[26] Ibid. p.21.

became involved in this issue belies her unique network of gender-issue related activism, which was neither purely through circles constituting the WLM in Japan (like those by Tanaka Mitsu or Enoki Misako) nor the older generation of socialist- or communist-affiliated women's activism (and their rebellious spinoffs like groups led by Ijima Aiko), nor the surge of fields like women's study in academia (led by scholars like Ueno Chizuko and Kanō Mikiyo). Instead, Matsui learned about the issue, which would play a crucial role in the democratization of South Korea later.

Taking note of the movement by Korean feminist and Christian groups against Japanese tourism, the National Christian Council in Japan (*nihon kirisutokyō kyōgikai*, NCCJ) was the first organization to report on and protest against sex tourism in Japan, issuing an official statement on September 21, 1973 condemning such sexual exploitation, and Matsui promptly reported on the statement in Asahi on the next day.[27] How (female) Christians in Japan was informed of the issue was quite fortuitous according to Yamaguchi Akiko, who worked for NCCJ. In July 1973, the NCC in Japan and in South Korea held of conference in Seoul, to which NCCJ sent fourteen representatives, but only one of them was female (and it was not Yamaguchi). After her superior, identified as N in Yamaguchi's writing, returned from the conference, he handed Yamaguchi a pamphlet distributed by feminist groups and female members of NCCK, who asked Japanese representatives to show these pamphlets to female members of NCCJ. The pamphlet, written in broken English (which Yamaguchi lamented because she was actually learning Korean at the time) was about the exploitive Japanese sex tourism in Korea. N told Yamaguchi that because the attendants of the conference were mostly male, the issue was not even originally on the agenda, and it was the feminists who came uninvited to the conference to distribute these

[27]『朝日新聞』1973 年(昭和 48 年) 9 月 22 日 夕刊 11 頁 東京 1 段 記事「韓国で男性天国許さぬ」

pamphlets that made him learn of the issue. Unable to ignore the call for solidarity from Korean women, Yamaguchi decided to raise awareness of the issue in Japan, starting with the Christian community.[28]

In November, 1973, after prompting the NCCJ to issue the September statement on sexual tourism that Matsui reported, Yamaguchi traveled to Korea with T (likely Takahashi Kikue, head of *Kyōfūkai*), a member of the Japan Christian Women's Organization (*Kyōfukai*, which has a long history of campaigning against prostitution from both conservative and progressive standpoints going back to 1900s), to investigate the issue. Meeting with Korean Christian women activists (belonging to the "Korean Christian Women's Federation" *Kankoku kyōkai josei rengōkai* in Japanese), Yamaguchi and T visited travel agencies and unions and tourist associations like the Korea Association of Travel Agents (KATA) and Japan Association of Travel Agents (JATA) to collect information on and protest sex tourism by Japanese men. Yamaguchi and T also attended a conference organized by NCCK during their visit. In Yamaguchi's words, the conference was a "*jinken* conference (*jinken kyōgikai*)," during which a declaration of *jinken* (*jinken sengen*) was adopted, whose first article deals with "*jinken* of women (*josei no jinken*)." The article calls for "an immediate end to the *kisen* tourism in the name of the promotion of the travel industry."[29]

Returning to Japan, Yamaguchi and other women in the Japanese Christian community concerned about the issue started to organize movements around it to coordinate and show solidarity with their counterparts in Korea. With Matsui Yayori's reportage, the issue started to gain attention in public discourse, especially in feminist circles, and the movement attracted

[28] 山口明子「「キーセン観光」反対の歩み」『新日本文学』31(3)(343) 1976 p.52-56
[29] Ibid. p.54-55.

members from groups like Asian Women's Conference against Discrimination and Invasion (*shinryaku=sabetsu to tatakau ajia fujin kaigi*) and Women's Democratic Club (*fujin minshu kurabu*).[30] A new group, Women's Group against *Kiseng* Tourism (*kisen kankō ni hantai suru onna tachi no kai*) formed after these activists organized a protest at the Haneda airport against (mainly male and grouped) Japanese tourists going to and coming back from Korea in December, 1973. While the first call to action for the Haneda demonstration attracted fewer than five people, the group's influence gradually grew, and it was eventually able to amass fifty demonstrators for the first Haneda protest in December, 1973 and 150 protestors in front of the Diet building the next February.[31]

The movement against Japanese sexual tourism abroad was simultaneously marginal and crucial in the scene of Japanese social movements in the early 70s. On one hand, it started out as largely unconnected with most of the more influential movement circles from the late 1960s. Its members were mostly a bit older than the so-called All-Campus Joint Struggle League (*zenkyōtō,* short for *zengaku kyōtō kaigi*) generation, namely the college student protestors from around 1968, as well as the more famous WLM feminists active around 1970. Although like all the "civic movement (*shimin undō*)" after late 1960, its way of organization reflected the legacy of the *Beheiren* (*betonamu ni heiwa wo! Shimin rengō*, or "Citizens United for Peace in Vietnam") and other 1960s new social movements, its cause diverged from them and its personal networks also did not overlap with these more mainstream movements. Apart from its distance from the New Left, it also did not have establishment leftist ties, although some groups it attracted were

[30] Both of the groups consisted mainly of activists with more traditional leftist ties (broken with rebellion or maintained) and of generations older than the typical WLM feminists (who were college students' age during the 1968 protests), although they also played crucial roles in the WLM in Japan.

[31]『キーセン観光性侵略を告発する』キーセン観光に反対する女たちの会, 1974.4. p.54-57.

spinoffs from JSP- or JCP-affiliated groups. The Christian community in Japan was also far from the limelight in the sphere of social movements. However, despite, or precisely because of this ostensive distance from the multiple cores of mainstream social movements, the group became a nucleus around which activists with vastly different backgrounds (and who were often not so central in the aforementioned more famous movements) began to aggregate. The group was also transnational from the very beginning, to the extent that one could say it was mainly inspired by feminism and rights-discourse (and the coming-together of the two) in Korea, and the feminist, international, and universalist perspectives became the foundation of the network it helped to forge and on which activists like Matsui's later activism grew.

The movement also derived the usage of *jinken* language, which was going through a transformation due to all such international activist movements, from the struggle of the democratization of South Korea. Protest against the Park Chung-hee regime, which adopted a heavy-handed approach against Korean democratization activists, gained attention in Japan's intellectual and activists circle in late 1960s and early 1970s, especially after key high-profile events like the kidnapping of Kim Dae Jung, then the opposition leader in Korea, on August 8, 1973. In addition to the *zainichi* community, the Christian community played a major role in communicating Korea's situation to the Japanese public. In fact, the movement against Japanese sex tourism in Korea can even been seen as a byproduct of the communication between the Christian communities in Japan and Korea over the movement for democratization in Korea and possible role Japanese activists and public could play in it. Due to this larger framework of Japan's role in Korea's democratization through which the issue of sex tourism was disseminated in Japan, most of the activists in the anti-sex tourism movement were also deeply concerned about and supportive of the democratization movement in Korea, in which the language of *jinken*

was widely used, both in the Japanese discourse on solidarity with Korean activists and in the Japanese translation of Korean discourse. For example, Shōji Tsutomu, who later became the leader of NCCJ and who enthusiastically participated in the movement for solidarity with Korean democratization, interrogated the implication of Japanese activists who used the slogan of protecting the *jinken* of Suh brothers (Suh Sung and Suh Joon-sik, who were *zainichi* studying in Korea but arrested for espionage) in an article in 1973.[32] Although Japanese activists like him used the slogan of *jinken* as a slogan and to communicate with Korean activists, Shōji states, he was worried that the Korean activists would see them as hypocritical because Japan as a country was also complicit in supporting authoritarianism in South Korea.[33]

When translating international discourse on the Korean democratization movement, Japanese Christian activists took the liberty to use terms such as *jinken* and *kihonteki jinken* to render Korean, American, German, and other critique on the Park regime.[34] Such translation was natural for Japanese activists because the 1970s global boom of "human rights" culture,[35] heralded by the exponential growth of new-generation international groups like Amnesty International (AI) that transformed the usage and discourse of the term "human rights," also reached Japan. Shōji and other Christian activists frequently referred to the attention of AI on the jailed Korean activists, who were seen by the group as prisoners of conscience (*ryōshin no shūjin*), a concept (and its coupling with "human rights") that AI was popularizing around the world. Indeed, supporting the Korean democratization movement was the main tasks of the Japanese chapter of AI. The first chapter of AI in East Asia, AI Japan was established in 1970.

[32] 東海林勤「徐君救援運動の中考える」『福音と世界』 28(4) 1973.4 p.63-67. p.65.
[33] Ibid. p.63.
[34] 「韓国からの声」『福音と世界』29(8) 1974.8 p.54-57.
[35] This is discussed in the Introduction, especially in the footnotes.

The chapter was chaired by lawyer and (retied) JSP assemblyman Inomata Kōzō and managed by legal scholars like Nakamura Akira, Ishida Takeshi, and Miyazaki Hideki,[36] who were all active in other *jinken* themed movements such as those related to the plight of Okinawa and *zainichi.* Touring Washington D.C. as a member of JSP study group in 1969, Inomata learned about the existence of AI for the first time from a Taiwan independence activist, who introduced AI American chapter members to him. Concerned about "Japan's unfair treatment of foreigners," Inomata decided to establish a Japanese chapter of AI after his planned retirement in 1970.[37] This "unfair treatment" refers to Japan's deportation of Taiwanese and Korean political asylees back to their countries of origin for trials, an act condemned by Inomata as Japanese government's "disregard of *jinken* of foreigners (*gaikokujin no jinken wo mushi shita koi*)."[38] AI Japan was thus established to not only "protect *jinken,* especially those oppressed because of their thoughts, beliefs, or faiths" by pushing for asylum legislation in Japan and supporting Korean and Taiwanese political dissidents, but also to take advantage of the international structure that made using *jinken* to critique a foreign government easier than to critique one's own government."[39] As such, AI Japan, whose organizers were generally older activists already with personal connections to progressive parties, groups, and activists, helped bake the language of *jinken* into the young Japanese solidarity movement with Korean democratization. After leftist and progressive lawyers gradually uncoupled the concept of *jinken* and *kokumin* using issues such as the plight of *zainichi* throughout the 1960s (last chapter), AI Japan was able to build on this renewed discourse of *jinken* and internationalize Japan's *jinken* culture by bridging it with the

[36] 「アムネスティ日本支部発足す」『台湾青年』(111) 1970 p.43-44.
[37] 「報道 自由のために--動き始めたアムネスティ日本支部」『台湾青年』(117) 1970 p29-31.
[38] Ibid. p.30.
[39] Ibid.

global human rights boom in 1970s through supporting "prisoners of conscience" of Taiwanese and Korean origins.

As such, the Japanese term *jinken,* now endowed with new discursive potentials, was also used to translate the Korean term *ingwon* used in the democratization movement. As mentioned above, the Japan-Korea NCC conference produced what Yamaguchi translated as a declaration of *jinken* (*jinken sengen*), which specifically articulated the women's *jinken.* This framing of the problem of sex tourism, prevalent in the intellectual and Christian community in Korea, was a subset of (what would be translated in Japanese as) the *jinken* critique on the Park Chung-hee regime as part of the democratization movement. For example, a news article by Choe I-sun published in The Dong-a Ilbo on December 10, 1973 and translated by Yamaguchi for the booklet *Exposing the Sexual Invasion of Kiseng Tourism*, points out that "women's *jinken*" were ignored at the expense of tourism policies. Choe, a university professor, argues that the acquiescence of such sex industry was nothing but an example of the violation of *jinken* (*jinken jyūrin*) by the Korean state that put the economy above everything else.[40] Contrary to its appearance, this language of *ingwon* (lit. "human rights" in Korean) did not necessarily contain a gendered perspective in this period. As scholar Yamashita Yon'e points out, the mainstream usage of the Korean term *ingwon* in 1970s South Korea was embedded in the context of the democratization struggle, a politics between the oppressive state vis-à-vis individual rights. Even when the term was used on issues involving gendered violence and sexual exploitation, it did not automatically constitute a specifically gendered critique on such violence (such as the later epithet "women's rights are human rights"). Rather, such usages sometimes simply conveyed

[40] 『キーセン観光性侵略を告発する』p.69.

protest against the abuse of state power, or even lamentation towards the loss of chastity ("dignity") of (Korean) women (to Japanese men).[41]

Against this discursive background of the use of *jinken* related to the democratization movement, the Japanese feminists concerned about the issue of sex tourism strived to provide a gendered perspective when they introduced the movements and issues in Korea to the Japanese audience. While at this point, they had not yet developed a comprehensive theory for the use of *jinken* on such issues, they at least had the motivation to accentuate what they viewed as the (gendered) contribution of Korean female *jinken* fighters in the democratization movement. For example, for the special issue on solidarity with Korea's democratization movement of the Christian journal *Evangelion and the World* (*fukuin to sekai*), Yamaguchi penned the article specifically introducing Korean women activists like Lee So-seon, female laborers and union activists, and mothers and wives who carried on the activism of their arrested sons or husbands.[42] Instead of covering the overall (male-dominated) democratization movement, Matsui Yayori also specifically reported on the *zainichi* and Japanese women's activism in Tokyo supporting the Korean democratization movement.[43]

It was also through this movement that participants first disseminated knowledge on the so-called "comfort women" to the wider feminist circle in Japan and connected the issue with Japan's economic expansion and exploitation in "Asia." In 1973, writer Senda Kakō published her groundbreaking investigative non-fiction book *Comfort Women* (*Jūgun Ianfu*), the first book

[41] 山下英愛『ナショナリズムの狭間から—「慰安婦」問題へのもう一つの視座』明石書店, 2008.7. p.188-189.
[42] 山口明子「苦難の中に生きる女性たち——韓国民主化闘争に参与する女性」『福音と世界』33(3) 1978.3 p.40-44
[43] 『朝日新聞』1976 年(昭和 51 年) 11 月 13 日 夕刊 8 頁 東京 1 段 記事「編む手に連帯感　韓国政治犯へ"勝利ショール"　日本女性も協力＿救援活動」

in postwar Japan that exclusively and unequivocally dealt with the history of the "comfort women," who were mainly women and girls forced into a system of sexual slavery run by the Japanese military during the colonial and wartime era. Participants of the movement against Japanese sexual tourism immediately linked this history with what they were protesting, which they saw as a reiteration of Japan's (sexual) invasion of "Asia." For the first booklet published by the Women's Group against *Kiseng* Tourism in 1974, *Exposing the Sexual Invasion of Kiseng Tourism*, which included the group's investigation of Japanese sex tourism and the history of the movement, writer activist Kaji Etsuko contributed a review of Senda's book. Stressing that "comfort women" was by no means a mere historical issue, Kaji argues that

> The problem of "comfort women" was not something that could be swept under the rug that is history as an abnormality; nor could it be understood as a product of the aberrant wartime psyche. Instead, even today, men mobilized by the banner of Japanese imperialism differ only in appearance [from their wartime predecessors], and are still scheming about the invasion of Asia and discriminating Korean women, trying to turn them into the new "comfort women."[44]

For the same booklet, activist Gotō Akiko, who later worked as the secretary of the prominent JSP politician and party leader Doi Takako, even interviewed members of the Association of Returnees from China (*chūgoku kikansha renrakukai* or *Chūkiren*), who were war criminals tried, reformed, and repatriated by the PRC government, on their personal knowledge of the comfort women system. Like Kaji, Gotō also linked sexual tourism to the sexual slavery system of "comfort women," lamenting that "bullets were simply turned into Japanese yen."[45]

III. The Notion of *Ajia* ("Asia") for Japanese Activists and International *Jinken*

[44] 『キーセン観光性侵略を告発する』 p.80.

[45] Ibid. p.83.

The movement against sex tourism was also a manifestation of the growing activist discourse on "Asia" (*Ajia*) as Japanese capital started to enter less developed Asian countries from late 1960s in the form of aid as well as big corporation advancement. Historians often attribute the popularization of the discourse around "Asia" to the activism of *Beheiren,* which, unlike earlier pacifist movements, actively reflected on Japan's culpability, or as "victimizer (*kagaisha*)" instead of "victim (*higaisha*)," in the suffering of Asian countries such as Vietnam.[46] Such culpability extends to not only the postwar suffering of countries literally burned by America's "Cold" War strategies, in which the support of Japan played a crucial part—activists also began to reflect on the damage done by Japan to its former colonies and occupied territories before its defeat in 1945. On top of this new mindset, Japan's rapid economic growth and the advancement of Japanese capital overseas also started to cause anti-Japanese sentiments from late 1960s due to problems of environment and labor rights it caused, which resurrected local painful colonial and wartime memories. News of such sentiments, manifested in local protests and demonstrations, weighed on the conscience of Japanese activists, who began to reflect on how they should perceive and aid this "Asia" that was encroached by Japan (as they saw it) *again.* In this way, the concept of "Asia" in Japan did not actually entirely overlap with the geographical Asia. For example, this notion of "Asia" rarely refers to spaces like the Middle East, Central Asia, and South Asia and only includes parts of East Asia and Southeast Asia, namely spaces Japan used to occupy and was advancing into economically and politically in the 1960s. "Asia" used by Japanese activists and intellectuals in the 1960s was thus a political space in which Japan was perceived to be the hegemon and, based on this perception, a heuristic device

[46] Avenell, 2010.

for the activists to critique Japan's past and present encroachment on the self-determination and independent developments of these areas.

The movement against sex tourism that activists like Matsui were engaging in definitely belonged to this genre of problematizing Japan's culpability in the plights of "Asia" established by the *Beheiren* activists, who also continued to develop this genre of activism into the 1970s. For example, all the international cooperation and outreach by *Beheiren* activists like Oda Makoto and Tsurumi Shunsuke led to the first Conference of Asians (*Ajia-jin Kaigi*) held in June 1974. The call for participation declares that "We are holding a Conference of Asians—not a 'Conference of Asia,' but 'Conference of Asians,' namely, a conference for people who are born in Asia, living in Asia, and fighting in Asia."[47] The conference attracted over forty participants from six countries (Indonesia, Malaysia, Philippine, Singapore, South Korea, and Thailand) and over 180 Japanese activists. Centering around the issue of Japan's "economic invasion (*keizaiteki shinryaku*)" of "Asia," the conference covered a wide range of issues such as the repression of democratization in "Asian" countries and Japan's support of these authoritarian governments, environmental and labor rights problems caused by Japanese corporations in "Asian" countries, and even the "moral pollution (*dōtokuteki kōgai*)" of "Asian" people (*jinmin*) caused by the influx of Japanese capital, which was exemplified by sex tourism.[48] It also brought together Japanese activists working on a wide variety of issues, such as the solidarity with Korean democratization, the protest against the construction of the later Narita airport in Sanrizuka, the plight of the *zainichi,* and pollution (*kōgai*) problems in Japan.[49] Regardless of

[47] 「「アジア人会議」の全記録--人びとのくらしを奪い返す闘い」『潮』 / 潮出版社 [編] (通号 182) 1974.08.00 p.124-179. p.124.
[48] 武藤 一羊「「入れ子」的構造が問われて」『世界』 (349) 雑誌 岩波書店, 1974-12 p.272-280.
[49] Ibid.

how much the conference accomplished in addressing these issues, many participants apparently went through a transformation of consciousness. According to the famous activist Mutō Ichiyō, the conference made the participants truly identify as "Asian" or "*Ajia-jin* (*jinmin*)" in Mutō's words. This was because, Mutō argues, the conference made the participants see through the division (*bundan*) among the people (*jinmin*) of Asia created by the new Japanese "imperialism" as well as the oppressors Japan supported in "Asian" countries. Participants realized through the conference that they were not fighting separate battles in different countries but a holistic one, namely the (perceived) Japanese hegemony in Asia under America's Cold War world strategy.[50]

The Declaration and Call for Commitment adopted at the end of the conference best summarized the discursively unifying effect of the conference. The declaration opens with the powerful line that "we, who congregated at this Conference of Asians, are simply people (*hitobito*). We are not those with power (*kenryokusha*) nor those who rule (*shihaisha*)." Those with power and those who rule, argues the declaration, were trying to control (*shihai*) the countries "we" live in as well as "Asia" and had always been destroying "our health, security, life as humans (*ningen toshite no ariyō*), and us ourself (*watashitachi sono mono*)." This was simply because "they want to retain power and money and lust for more power and money." "They," the declaration continues, "wove a net of power and money that encompasses the entire Asia. At the center of this net are Japan and America." The declaration proceeds to call out that "under such circumstances, we realize that we can no longer live as humans (*ningen*). We want to live as humans," and urges the participants to recognize their connectedness in such dire

[50] Ibid. Participants took note of many discursive innovations of this kind created through the conference. For example, Tsurumi Shunsuke and many others notes that although participants used English to communicate, it was not the standard English imposed by western imperialism but broken, casual but effective and intelligible English re-created by the "Asian" participants. See 鶴見俊輔「善意への警策」『世界』(349) 雑誌 岩波書店, 1974-12 p.266-271.

situation and "fight (*tatakau*)" for the final victory.[51]. In contrast to the Declaration, the Call for Commitment put forth more specific analysis of "Asia's" political situation as well as actions to be taken. After condemning several Japanese companies causing issues abroad, the Call for Commitment summarizes that "Japanese government and big corporations" were carrying out "economic invasion" and "politically and financially supporting governments against its people (*han-jinmin teki na seiken*)" in "Asian countries (*Ajia shokoku*)." Against such atrocities, Japanese people and other "Asians" must fight in solidarity.[52] Perhaps cognizant of the issue of translation at the conference, the declaration and other documents made use of only plain and simple lexicon and did not include grand and abstract concepts like *jinken* or even *kenri*. However, its connection to the 1970s international human rights discourse, which foregrounded the supranational individual human being (for the first time as argued by some[53]) could not be more obvious

Matsui and other (mainly female) activists involved in the movement against sex tourism were also deeply involved in this discourse about "Asia" vis-à-vis Japan's place in (or rather towards) it. Many of them even went abroad to truly live in "Asia" in order to learn about Japan's new niche in the region. Matsui, for example, participated in a group study tour, "Walking Southeast Asia by Foot: A Seminar (*ashi de aruku tōnan ajia semina*)," visiting several Southeast Asian countries in 1974, before attending the "Conference of Asians" after returning to Japan. Matsui admits that she "learned a lot" about "Asia" at this "massive conference that brought together hundreds of intellectuals and labor activists from around Asia,"

[51] 「「アジア人会議」の全記録--人びとのくらしを奪い返す闘い」『潮』 / 潮出版社 [編] (通号 182) 1974.08.00 p.124-179. p.178.
[52] Ibid.
[53] Samuel Moyn. *The Last Utopia: Human Rights in History*. Cambridge, Mass.: Belknap Press of Harvard University Press, 2010.

but was a bit disappointed that gender-related issues, such as Japanese sex tourism in "Asia," received little spotlight.[54] Matsui then started organizing her separate seminar series with other female activists at the conference who shared her discontent, building on her network forged in the anti-sex tourism activism. The issue of gender was not the only focus by Matsui. For example, Matsui had a different kind of discontent with the World Conference on Women held in Mexico City, Mexico in 1975. As the Asahi journalist covering the conference, Matsui, who was certainly inspired by the conference's focus on gender equality and the articulated connections made between gendered issues and human rights, was also troubled by the "North-South Problem" manifested by the confrontations between attendants from wealthy western countries like the United States and developing countries like Mexico, who accused the former of hypocrisy because their feminist activism ignored the oppression of women in Global South as a result of the exploitation of Global South by the Global North. Matsui reflects that

> Until then, I had been looking at the relations between Japan and Asia as one of unequal invasion (*fubyōdōna shinraku-teki kankei*), but I learned in Mexico that this relation was but a condensation of the global North-South problem and had to be viewed as a global problem.[55]

Accruing such international experiences, activists like Matsui gradually added more layers to their conceptualization of "Asia" and its relation to Japan, which came to include discourse about Japan's historical baggage, labor and exploitation, environment, gender, democracy, and *jinken.*

Sometimes, such international experiences could also disillusion the activists, especially when they came face to face with the "utopias" they imagined as alternatives to Japan's place in the capitalist Pax Americana. From 1975 to 1976, Matsui took a leave from *Asahi Shimbun* and lived in Beijing, China for a year with her husband who was assigned a temporary post there.

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[54] 松井やより『愛と怒り闘う勇気 : 女性ジャーナリストいのちの記録』岩波書店, 2003.4. p.89.
[55] Ibid. p.91.

Matsui wrote in her memoir that "I heard a lot about China when my father told me about the war [during which Matsui's father was conscripted and sent to China], and was also deeply impressed by its revolutionary ideology when I read the work of Agnes Smedley [an American journalist who wrote a lot about the Chinese Communist Party], so I had a fondness (*omoiire*) for the nation."[56] In China, Matsui attended Chinese lessons with wives and families of diplomats from around the world, participated in factory workshops (for foreigners to learn about China's labor ideology and productions system), and travelled around the country (to cities where foreigners were allowed).

Matsui's "fondness" for China was soon dashed by her observations of the everyday life there. She was first and foremost shocked by what she could only described as "class discrimination (*kaikyū sabetsu*)" when she encountered on a daily basis the manifestation of the privileges of CCP cadres vis-à-vis the common people, who were often treated egregiously by state officials and soldiers. "Is this what the Chinese Revolution brought about?" Matsui frequently reflected. What she saw as the totalitarian control of speech and even thought by the Chinese government also greatly "horrified" and dismayed Matsui. But what truly disappointed Matsui was the social status of women in China. Before her trip to China, Matsui was convinced of the Mao-era slogan "women hold up half the sky" and believed that Chinese women enjoyed a much greater degree of gender equality compared to Japanese women. In China, however, Matsui gradually realized that while women were indeed given more opportunities to work and participate in local politics, most of them still had to shoulder traditional domestic and reproductive labor in addition to enduring the "abuses" from their husbands, and thus were in fact simply given more burdens. Matsui's stay completely soured her imagination of a

[56] Ibid.

revolutionary socialist China, and her assessment for China slipped even lowered when the country "opened up" in the 1980s and became what she saw as a state fixated on economic development at the expense of "human life and *jinken*."[57]

Matsui was not alone in her disillusionment in the leftist utopianism. Historian Samuel Moyn would argue that activists like Matsui were experiencing a "last utopia" moment in late 60s and early 70s, when the hope for a leftist utopia was dashed by the failure of new-left social movements and the exposé of the stark reality of regimes like China and the Soviet Union. According to Moyn, as their old utopia crumbled, activists flocked to "the last utopia," namely the global human rights politics.[58] This analytic framework is not totally untrue for Japan, although the activist landscape there, as we explored above, was more complicated, and *jinken,* while gaining traction and approaching the meaning of "human rights" in mainstream 1970s western world, was certainly not the last utopia, although perhaps the penultimate one. China was certainly a sobering experience for Matsui: it was clear to her now that the socialist "utopian" China was but an illusion and she must build something new to address the multi-faceted problems with Japan vis-à-vis "Asia" and the world by herself.

IV. The Establishment of Asian Women's Association: Towards a Holistic (Self)Critique of Japan's Pace in "Asia" with *Jinken*

Returning from China, Matsui and other female activists, most of whom worked with her in the movement against sex tourism, founded the Asian Women's Association (*Ajia no onna*

[57] Ibid. p.97
[58] Moyn, 2010.

tachi no kai, AWA) on March 1,1977. The founding date was intentionally chosen to coincide with the anniversary of the March First Movement, one of the earliest Korean resistance movement against Japanese colonial rule. The diversity of AWA members at its foundation reflects the phenomenon of convergence typical with the "last utopia" thesis proposed by Moyn. The seven activists who signed the declaration of AWA came from interconnected but drastically different activist backgrounds. The eldest of them, Tomiyama Taeko, grew up in Manchuria and began to create artworks reflecting on the democratization movement in Korea and Japan's colonial responsibility in it in the late 1970s. Yamaguchi Akiko, as introduced above, worked in the Christian circle in Japan and played a major role in the movement against Japanese sex tourism through translation and advocacy. Kachi Etsuko was also a translator (mainly of overseas WLM works) in addition to associating closely with Beheiren activists and later running the Pacific Asia Resource Center (PARC), another group focusing on the issues of "Asia." Antō Misako worked for *Mainichi Shimbun* as a journalist and attended the World Conference on Women, 1975 in Mexico as well as the Conference for Asians together with Matsui. Yuasa Rei ran (a faction of) the Women's Democratic Club (*fujin minshu kurabu*), a women's rights advocacy group associated with the JCP as well as the New Left (and was thus plagued by the leftist in-fighting and underwent several fissions and fusions). Gotō Akiko worked as a secretary for Doi Takako, who later became the first female party leader of JSP and tried to reform the party (unsuccessfully as many would argue) into a social democratic party

with the power of *shimin*. Thanks to Gotō's connection and Doi's approval of the group's ideal, Doi's office also essentially became the base for AWA's activities.[59]

With such diverse backgrounds and connections of its founding members, AWA became a place for activists like Matsui to assemble the medley of lineages of activism and theories they experienced, such as WLM, democratization, critique on the North-South problems, and *jinken* talks popularized by both a new generation of international organizations like the AI and the UN-centered conferences Japanese grassroot activists began to attend, in order to develop a holistic theory of "Asia." At AWA's foundation were the advocacy against sex tourism in Korea and later other Asian countries and the solidarity for the Korean democratization movement. On top of this preexistent network and knowledge about "Asia," activists of the AWA organized regular events known as "college for women (*onna daigaku*)," inviting scholars and other activists to educate the members on the history, politics, and economics of "Asia." AWA also published the Japanese journal "Asia and Women's Liberation (*Ajia to josei kaihō*)" and even an English journal "Asian Women's Liberation." In today's language, AWA may be described as an attempt to establish a genre of "intersectional" activism. This definitely does not refer to the identities of its members—all of them were Japanese women (and one would have difficulty finding a *zainichi* active member, not to mention those from other ethnic groups in Japan). Rather, the group was an attempt to not only complement what its members saw as the male-centered "Asia" activism (observed by activists like Matsui in the Conference of Asians); it was also an endeavor to combine a variety of issues scattered in multiple strains of activism and develop a holistic

[59] 『全仕事』 p.38; アジアの女たちの会「アジアと女性解放私たちの宣言」『新編日本のフェミニズム 9 (グローバリゼーション) 』岩波書店, 2011.1. Details from Meeting of Former Members of Asian Women's Association, audited by the author, 2019.9.11 at 梨の木舎.

critical framework to analyze the problematics of Japan's place in the world (especially vis-à-vis its Asian neighbors) under Pax Americana.

As the name of the group suggested, AWA activists chose "Asia" and "women" as the two main pillars to support and develop this holistic analytic framework. For Matsui and many other Japanese activists having a moment of disillusionment of leftism in 1970s, what were seen as leftist or socialist political alternatives to the Pax Americana proved less and less defensible as a future vision for "Asia" as knowledge about the reality of these regimes trickled in, especially towards the end of 1970s. For an alternative "utopia," Japanese activists thus had to instead look closely into their imaginary of "Asia," a political space that was mapped and defined by the Japanese-American capitalist hegemony but which possibly also encompassed the grassroot potential to subvert this hegemony. Furthermore, knowledge about "Asia" and Japan's economic and political intrusions in this space also served to complicate the Marxist theories and vocabulary on which many of these activists had built their original ideology, and in such a process, they came to view "Asia" as the more comprehensive analytic and paradigm. In one of the "college for women" lectures, AWA founder Kachi Etsuko related that in a PARC lecture, the term "proletariat (*musan kaikyū*)" was brought up. Attendants then raised the question that, despite the translation of the term as "class without properties," was there not in Japan a laborer's class (*rōdō kaikyū*) with property? Kachi argued that this seemingly paradoxical "class" was due to Japan's intertwinement with "Asia":

> One attendant raised the point that even the lowest-paid Japanese laborer lives on the profit (*agari*) exploited out of the Asian laborers. If one cannot grasp this relation, then one cannot do anything but babble about abstract concepts like "class of laborer (*rōdōsha kaikyū*)."[60]

[60] 松井やより, 加地永都子「性侵略－この現実　マレーシア・ペナン「アジア女性フォーラム」参加して」『アジアと女性解放』1977.10 No.2. p.20-24. p.24. wam 所蔵

To illustrate this, Kachi uses the example of fishery: while Japanese companies fish voraciously in Filipino waters and seemingly stimulated the fishing industries in Philippine, the fish were never going into the mouths of Filipinos directly. Instead, they would be shipped to Japan and processed into canned food and sold back to Filipinos as imports. In this way, Japanese laborers lived on the profits that Japanese companies fleeced out of the Filipinos. Kachi argued that

> As Japanese, we have to break down this contradiction (*mujun*). In order to do this, we have to provide for our own food inside Japan to some extent, and we have to incur a revolution of consciousness [about everyday consumption] … If we fail to do this, then we cannot do anything about constantly being called "sex animals (*sekusu animaru*)," "economic animals (*ekonomiku animaru*)," or just plainly jerks (*iyana yatsu*) and will be ruined (*dame ni naru*) without being able to even understand this anger [behind the name-calling by people in "Asia"].[61]

In this way, Kachi, along with other activists and scholars, put what might have been the Marxist class analysis of economic imperialism on its head: instead of applying the language of class analysis to the problems of "Asia," the activists instead found such a language lacking, and proposed that it was the paradigm of "Asia" that could surpass traditional class analysis.

AWA activists also theorized extensively on the new terminology of "women (*onna*)," especially "Asian women (*ajia no onna*)." Consistent with the WLM influences they received, AWA activists also adopted the politicized term "*onna*," which used to be a slightly derogatory and impolite way to refer to "women" but was politicized in late 1960s to connote new possibilities for womanhood and women's activism, especially vis-à-vis the older term "*fujin*," which also means "women" but were used by the establishment left to denote a subset in their supposedly more comprehensive class action or activism.[62] On top of this revolutionary category for "women," AWA activists further developed their theory of Japanese men vis-à-vis and

[61] Ibid.
[62] Shigematsu Setsu. *Scream From the Shadows: The Women's Liberation Movement in Japan*. Minneapolis: University of Minnesota Press, 2012.

Japanese women as/in relations to "Asian women" they first conceived in the movement against sex tourism. This can be best summarized by the "Our Declaration—The Declaration of the Liberation for Asia and Women" produced at the founding of AWA. Building on the "victimizer consciousness (*kagaisha ishiki*)" towards "Asia" developed in movements spearheaded by groups like the *Beheiren,* AWA activists made a more specific argument that tackle the issue of gender in the Declaration:

> The "modernization" of Japan since the Meiji Restoration was the history of invasion against Asia, and the [Japanese] women who have lived in the past one hundred years are victimizers complicit in such invasion—This is what we finally had learnt from fighting alongside women in Asia.[63]

The Declaration continues to grapple with Japanese women's complicated position: before the defeat, while Japanese women were exploited, oppressed, and discriminated against, they also played important roles in the Homefront efforts during Japan's war and colonial endeavors. In other words, they were both the victims of and victimizers for the empire's invasions of "Asia." After the defeat and under the Pax Americana, Japan's economic grew exponentially, and it was true that Japanese women's status improved, and they no longer had to aid Japan's war efforts. However, the economic gains were "at the expense of bloodshed in Korea and Vietnam," and AWA activist apparently thought that this was not fundamentally different from Japanese women's life before the defeat. "How are the lives of us who live in such an era different from those of our mothers and grandmothers?" asked the AWA activists. While Japanese women continued to struggle with discrimination and oppression, they were also still complicit in Japan's "economic invasion" of "Asia." In this way, Japanese women were still living an "essentially (*honshistu-teki*)" identical life vis-à-vis "Asia" as their prewar predecessors.

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[63] 『全仕事』p..38.

Despite this stagnant and seemingly hopeless plight for the Japanese women, however, AWA activists found inspiration in the women of "Asia" and the "Third World." "The women from Third World countries like Southeast Asian ones and Korea" had shown AWA activists that "the liberation of *minzoku* and the liberation of women" are inseparable, and that the plight of these "most discriminated against women," namely "the mothers who could not afford bread, education, and healthcare for their children," was caused by the monopolies from advanced industrial countries like Japan. Facing this dire situation, AWA activists declared,

> In the past, it was our flesh and blood, friends, and lovers who were the vanguard of the invasions that burned, killed, robbed and raped women in China, Korea and other Asian countries. Now, we refuse to continue to be the women who send our husbands and lovers out to be the vanguard of economic and sexual invasion. Without this resolve, our own liberation will never be a reality. We declare here and now to express our deepest apologies to our Asian sisters and to set out with renewed determination to learn from their struggles and to build a Japanese women's struggle in solidarity.[64]

With this declaration, AWA activists theorized the stance a Japanese woman should take vis-à-vis not only the "Asian" women but also Japanese men. Under this framework, Japanese men, emboldened by state power and capital, are the source of problems in "Asia" past and present, but Japanese women, while oppressed and exploited by Japanese men, are not innocent either because of their complicity in enabling Japanese men's invasions. The only way for Japanese women to self-liberate, both as a gender and as a *minzoku,* is to prevent Japanese men from exploiting the "Asian" women. It is fair to say that in this Declaration that distilled a medley of activist causes the AWA members participated in, a theoretical basis and gendered consciousness for the later redress and reparation movement for Asian victims of Japanese colonial and wartime violence (especially the "comfort women" issue) already took form.

[64] Ibid.

It was into this discursive space and heuristic device "Asia" and "women" (and the problematic of Japanese men vis-à-vis "Asian women") that the vocabulary of *jinken* was gradually woven. Since the founding of AWA, the issue of sex tourism, the cause that first assembled most of the founding members of AWA, saw increasing articulation in terms of "women's *jinken*" on top of Japan's economic and "sex invasion" of not only Korea but the entire "Asia." As Japan's economic advancement extended from Korea to Southeast Asia, so did the sex tourism industry. Activists of AWA thus gradually retired the term "*Kiseng* tourism" in exchange for the more general "sex tourism (*baishun kankō*)," with an emphasis on "buying" instead of "selling" sex (the Japanese pronunciation for both terms is *baishun* but they differ in Chinese characters). This discourse of the Japanese men's exploitation and "sex invasion (*sei shinryaku*)"[65] of "Asian women (*Ajia no jyosei*) came to be articulated in the language of *jinken* by the AWA activists through two avenues. One of them was the growing body of UN human rights laws and documents, especially those on minorities and women. One such document, which the AWA activists often cited, was the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted by the UN general assembly on December 18, 1979. For AWA activists, the majority of whom increasingly saw the UN and international laws as the most useful instruments to instigate social change in Japan (and Japan vis-à-vis "Asia"), CEDAW represented a new international standard that "condemns sexual discrimination and prostitution."[66] Article 1 of CEDAW defines "discrimination against women" as a problem "of human rights and fundamental freedoms" and Article 6 states that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and

[65] Ibid. p.21. AWA activists claimed they invented this concept during their activism around 1972
[66]「女性の人権を踏みにじる買春観光を許すな！」『アジアと女性解放』1980.6 No.8. p.2-3.

exploitation of prostitution of women."[67] Drawing from the popular movements in late 1970s that pushed for Japan's ratification of these new UN conventions on human rights (organized groups like the AI Japan and participated by many AWA activists), AWA activists actively used UN human rights talk and documents as evidence for what they saw as the international bar for *jinken* that the Japanese government as well as the public should strive to meet.

Another avenue through which the relationship between Japanese women (the AWA activists themselves) and the "Asian women" was articulated in *jinken* was the language of "humanity (*ningensei*)," which was reminiscent of early humanist Marxist critique of capitalism. Although AWA activists rarely used explicitly class analysis or Marxist terms like alienation from one's humanity, they did vehemently critique Japanese capital's advancement in "Asia," which they saw as the cause for the "Asian women's" plight. This "distorted" political economy of "Asia," in which authoritarian governments of "Asian" countries allowed Japanese capital and state power to exploit "Asian women" as cheap (and in many cases sexual) labor in exchange for foreign reserve, "deprives Asian women of their bodies and minds (*shinshin wo shūdatsu shi*) and violates their *jinken*."[68] This was especially true for the "Asian women" forced into the sexual tourism industry under this political economy of "Asia," whose "humanity (*ningensei*) was gradually deprived every day." AWA activists thus call on the Japanese women to see through the division (*bundan*) of women into wives, prostitutes, and laborers for exploitation by this political economic structure: instead of acting only as wives who condemn the supposedly morally degraded prostitutes who "corrupted" their husbands and ignore the supposedly lowly laborers who produced their daily products, Japanese women have to "realize the power and

[67] Ibid. See also "Convention on the Elimination of All Forms of Discrimination against Women," Ministry of Foreign Affairs of Japan. https://www.mofa.go.jp/policy/human/conv_women/conv_women.html
[68] 「女性の人権を踏みにじる買春観光を許すな！」『アジアと女性解放』1980.6 No.8. p.2-3.

institutions [that created this political economy of "Asia"] were the real culprits." [69] Facing this deprivation of "humanity" of the "Asian women," Japanese women should not continue to be the "understanding wives, lovers, and daughters" of Japanese men.[70] As AWA activist Takasato Suzuyo, who later built her political and activist career in Okinawa, pointed out, "protecting the *jinken* and dignity (*songen*) of the Asian women is deeply connected to the restoration of our humanity (*ningensei wo kaifuku suru koto*) as Japanese women."[71]

In this framework, the responsibility that fell on the shoulders of Japanese women was not just individual: to restore their own "humanity" damaged by exploitation as well as complicity, it was not enough for the Japanese women to stop their male associates from oppressing the "Asian" women. As AWA activists had learnt, "the liberation of *minzoku* and the liberation of women" are inseparable, so to liberate themselves as women they also had to liberate themselves as Japanese, and for the AWA activists, this meant shouldering the Japanese state's responsibility, especially its historical responsibility or colonial and war responsibility, towards the "Asian" countries. The fifth issue of the AWA journal *Asia and Women's Liberation* published in December 1978, "Thinking about War Responsibility Now—From the Women's Side (*ima sensō sekinin wo kangaeru—onna no gawa kara*)" was a special issue dedicated to these problems. The special issue was a response to what the AWA activists saw as a worrying trend in Japan at that moment. "Lately, there have been a number of developments reminiscent of the nightmare of war," the Forward of the special issue cautions. Listing the controversies surrounding the Yasukuni Shrine inside Japan (not yet internationalized), the discourse around giving more power to the Self-Defense Forces, and the issues surrounding

[69] Ibid.
[70] Ibid.
[71]「私たちの運動から　特集: アジアの闘う女たち」『アジアと女性解放』1979.6 No.6. p.28-32. p.30.

compulsive singing of the national anthem in schools, AWA activists felt that Japan in the late 1970s was approaching the Japan in early 1930s and was thus they were compelled to raise awareness about Japan's painful experience with the war as well as the pain it caused for "Asia."[72] As Japanese people "did not have the chance to try those responsible for the war with their own hands or to reflect on their complicity in the war and lived through the postwar without even trying to listen to the accusations of the Asian people," AWA activists decided that they should become "neither the victims nor the perpetrators of war" again and learned from the "painful experiences" of their (female) predecessors who experienced it (*senpai tachi*).[73] Learning from the Japanese women who experienced the war through home front, namely their "predecessor (*senpai*)," and scholars who studied the women's wartime history, especially their complicity in the war effort, AWA activists declare as Japanese women through the special issue not to repeat such history.

While the AWA activists pledged to learn from the "Asian" people, this special issue mainly consisted of oral history and studies on the home front experience of Japanese women and their postwar anti-war activism. However, throughout the years, as AWA activists gained experiences and knowledge of "Asia" through travelling and studying, they fulfilled their promise of learning from their fellow "Asian," especially "Asian" women, about Japan's historical responsibility towards the region. A few years later in January 1983, AWA published another special issue of *Asia and Women's Liberation,* "8.15 and Asia."[74] Highlighting the recently internationalized controversies surrounding Japan's history textbooks, many of which softened the language with regards to Japan's invasion of Asian countries, AWA activists called

[72] 「特集: いま戦争責任を考える――女の側から――」『アジアと女性解放』1978.12 No.5. p.2.
[73] Ibid.
[74] 「特集: 8・15 とアジア」『アジアと女性解放』1983.1 No.13.

for the readers of the journal to learn about how such histories were told in "Asian" countries. This time, AWA activists showcased their knowledge about "Asia" by not only including the submissions from and interviews of activists from countries like Philippines about their historical perspective but also translating excerpts of history textbooks from countries like China, Singapore, and Korea to provide side-by-side comparisons with those in Japan.[75] By translating "Asian" history textbooks and oral histories of "Asian" activists, AWA members demonstrated that it was not the "Asian" countries who were too "sensitive" about these issues and "overreaching" into Japanese domestic affairs; it was rather the Japanese society that was isolated to the historical perspectives of "Asia" and unconcerned with its "historical responsibility" towards "Asia."

The contrapuntal special issues of *Asia and Women's Liberation* that focused on different aspects of the reflection on wartime and colonial history by the AWA activists reflect the rapidly changing landscape of memory politics with regards to these issues in late 1970s and early 1980s Japan. This engagement with what is now called the "history controversies" between Japan and its Asian neighbors by the AWA in the late 1970s and early 1980s, along with the Korean feminist activism against sexual tourism that AWA members had worked with, already foreshadowed the explosion of the issue of the so-called "comfort women" in early 1990s in and beyond Asia. However, the holistic activism of AWA also drew from yet other strands of activism that paved the way for the articulation of the later issues "comfort women" and "history controversies" in the language of *jinken.* Already mentioned above, these strands included the popular movements pushing for more progressive nationality laws, which were linked with the *jinken* legal activism and discourse around the plight of the *zainichi* people and Japanese female

[75] Ibid.

activists' growing participation in UN-centered conferences and human rights discourse, especially those around women, minorities, and North-South problems.

Japanese social movements vis-à-vis the country's nationality legal system gained traction around mid-1960s. At the time, such movements were still called "the struggles against the immigration system (*nyūkan tōsō*)" and were closely linked to *zainichi* Korean and Chinese communities. With the conclusion of the Japan-ROK Basic Relations Treaty in 1965 that established formal diplomatic relations between Japan and South Korea, Japan started the process of formalizing the heretofore nebulous status of the *zainichi* Koreans regardless of their governmental identification and affiliation. As bills on reforming laws regarding the foreign language schools and the immigration system were introduced in the Diet and the project to prompt the *zainichi* to acquire their "permanent residency by special agreement (*kyōtei eijuken*)" officially started from mid-1960s, left-leaning *zainichi* and the Japanese activists supporting them began to protest these legislative trends as they saw this burgeoning "immigration legal system (*nyūkan taisei*)" as forcing the *zainichi* identifying with North Korea to adopt South Korean nationality (as discussed in the last chapter). The movement was joined by left-leaning Chinese in Japan and other Japanese activist groups such as *Beiheiren* in some occasions.

Tanaka Hiroshi, a seasoned activist in such movements, recounts this history in his article analyzing the problematic "immigration system—nationality (*nyūkan-kokuseiki*)" in the special issue "Women and Nationality" for *Asia and Women's Liberation* published in October 1979. AWA took up the issue of nationality as they saw the patriarchal nationality and immigration laws of Japan as fundamentally misogynist. On the cover of this special issue, AWA editors highlighted clauses in the (then) nationality stating that for a child to hold Japanese nationality

jus sanguine, the father must hold Japanese nationality.[76] The special issue criticized this patrilineal and patriarchal nationality legal system, which was closely connected to the legal tradition of the household registry system (*koseki*) in Japan that also privileges the male household head and, as a result, implies the subservient and dependent legal standing of females vis-à-vis the males, and Tanaka's essay on the activist history related to these issues serves to set the background for this critique.

AWA activists also brought this critique of the Japanese nationality legal system (and their understanding of its relations to women's *jinken*) beyond Japan and into UN-centered international activist discourse. Having gained experience from the 1975 World Conference on Women in Mexico, more Japanese female activists, including many AWA members, attended the Second World Conference on Women held between 14 and 30 July 1980 in Copenhagen, Denmark.[77] The conference was significant for Japan in that the signing ceremony of the Convention on the Elimination of All Forms of Discrimination against Women was held during it, and the Japanese national delegate signed the Convention, an event celebrated by AWA activists who noted that they must carry on with their activism until Japan fully ratified it. Seizing the opportunity of international exchange as the Conference brought activists from across the world, NGOs participating in the Conference also held an independent ten-day NGO Forum that allowed for more participation and input from civilian activist attendants of the Conference. AWA activists held two workshops during the Forum, one on nationality law and

[76] 田中宏「"入管・国籍"をめぐるこの 10 年」『アジアと女性解放』1979.10 No.7. p.21-26. The same did not hold true for children who only had Japanese mothers. The law was changed in 1984 to allow for the acquisition of nationality *jus sanguine* through both parental bloodlines.

[77] See Shegimatsu, 2012. Many Japanese feminists encountered difficulty speaking up in the 1975 conference due to lack of preparation and English skills. AWA activists learned the lessons and thus were well prepared for the Copenhagen conference. See 「コペンハーゲン女性会議――私たちの視点から――　特集・第三世界の女と私たち」『アジアと女性解放』1980.12 No.10. p.20-27.

another on sex tourism, representing two of the main activist concerns of AWA in the early 1980s.

In the first half of the Forum, AWA member Okuda Yuki helped organized three sessions of the workshop on nationality law, attracting about forty attendants for each session. AWA activists introduced the patrilineal and patriarchal nationality laws of Japan, the critique of which resonated with Italian participants, who were fighting similar nationality laws at home, namely to "reform the nationality law that ignores the *kihonteki jinken* of women." Lawmakers and activists from Denmark and the Republic of Mauritius, who recently participated in the legal reforms of their nationality laws, offered their experience and advice on how to carry out such reforms. Okuda was greatly satisfied with the workshop, which forged a network of "mutual assistance" among international attendants. During the second half of the Forum, AWA member Oishi Mayumi and others also cooperated with American feminists and scholars to organize the workshop on sex tourism. Introducing Japanese sex tourism in "Asia" to workshop attendants and journalists, AWA members stressed that Japanese sex tourism "was not simply the problem of Japanese men; it also consisted of issues like the acquiescence of Japanese women, the deeply-rooted contempt by Japanese people to "Asia," and the North-South problem." They also received constructive criticism from the international attendants on the danger of ignoring the safety and livelihood of sex workers when advocating against sex tourism. Even the case of the former "comfort women" was raised, and not only by the AWA members but by American scholars, indicating some level of knowledge of the issue in the international feminist circle as early as the early 1980s.[78]

[78] 「NGO フォーラムで　特集・第三世界の女と私たち」『アジアと女性解放』1980.12 No.10. p.25-26.

The activities of AWA gradually decreased into the 1990s, not because its members abandoned the cause but because they took up new ventures in the 1990s transnational reparation movement for Japan's colonial and wartime atrocities, which will be surveyed in the epilogue. Absorbing the *jinken* discourse and theories from earlier activism on issues like gender, pollution (*kōgai*), democratization, and global inequality, AWA activists applied this language in their critique on Japan's "invasion" towards "Asia." As the older leftist activist framework dwindled, this new attempt at critiquing Japan's place in the Cold War world with this holistic framework of "Asia" and the language of *jinken* took its place. Such advocacy on "Asia" also prompted AWA activists to reflect on Japan's past colonial and wartime violence in this geo-political space and thus to theorize on Japan's "historical responsibility," which converged with the domestic surge of popular history and memory on wartime life. Inspired by WLM ideologies and their experience in the movement against Japanese sex tourism, AWA activists also adopted a feminist perspective to these issues of "Asia," theorizing on the *jinken* specifically of women (*josei no jinken*) to articulate their stance against sexual exploitation and gendered violence by Japanese men on "Asian" women. This was also partly the result of AWA members' attentiveness to UN-centered international discourse on human rights and women's rights, in which they also participated and made international connections and through which they acquired new analytic frameworks such as the North-South perspective and the critical and comparative stance towards nationality laws and their gendered bias. On such a rich basis, AWA members began to associate widely and weave together a network of politicians, scholars, lawyers, and grassroot as well as transnational activists that were concerned with aspects or whole of such a complex of problematics related to *jinken*, "Asia," gender, and history. This network, and along with it the *jinken* language that it frequently used to articulate the issues of gendered violence and Japan

vis-à-vis “Asia” (past and present) produced the famous Women's International War Crimes Tribunal in 2000, which is seen by many as the pinnacle of the 1990s transnational reparation movement for Japan’s colonial and wartime atrocities.

Conclusion

Enough books to fill several bookshelves have been written on the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery.[79] Commenting on the lack of enforceability of the verdict reached by the tribunal, Lisa Yoneyama contends that, while it “surely represented the international juridicial consensus on the women’s human rights violation committed by Japan’s military comfort system,” “precisely by virtue of its imaginary status, it offered a connection between justice and social transformation in ways the actually existing legal system or other state apparatuses could not dare to propose.”[80] While there is no denying that the significance of the Tribunal lies in its aspirational and future-oriented nature, it was also a serious attempt to invoke the supposedly enforceable (and enforced, as many Japanese activists and lawyers believed—just not in Japan) international standard of *jinken* to highlight its lack thereof in Japan, partly evidenced by the dismissal of most of the state compensation lawsuits in the reparation movement. In other words, the Tribunal was not a critique on the international legal system from which the activist-scholar-lawyer-victim complex absorbed new usage of rights-talk and to which it contributed new materials; it was instead a critique on the lack of such international standard on rights (which the activists truly believed in) in Japan. Matsui Yayori,

[79] See Yoneyama, 2016. p.121-129.
[80] Ibid. p.127

who spearheaded the organization of the Tribunal, was one such believer. On the initial conceptualization of the Tribunal, she wrote that

> During an international seminar in Tokyo last year [1997], I learned that internationally, "punishment (*shobatsu*)" for wartime sexual violence had already been initiated. A report during the Sub-Commission on the Promotion and Protection of Human Rights in UNCHR…argued that "there are three key necessities for [the remedy of] grave human rights violations by war crimes and crimes against humanity." … The first one is "the right to know the truth." … The second one is "the rights to be reparation." … The third one is the prosecution and punishment of the perpetrators. From the standpoint of the victims, this is "the right to restore justice."[81]

Matsui then argues that the activist and scholarly endeavors surrounding the comfort women had achieved the first right, and the lawsuits on their behalf, even when they were not won, had at least articulated and demonstrated the use of the second right. As a result, the only issue left, Matsui felt, was the prosecution and punishment of the perpetrator of the comfort system. It was from this perception that Matsui started organizing for a people's tribunal.[82]

In this light, the Tribunal, while revolutionary and historical in nature, was also another point in the long arc of how the *jinken* discourse evolved in postwar Japan, especially in terms of how the paradigm became capable of articulating the redress of country's wartime and colonial atrocities. This part of the arc can be seen in Matsui's own career trajectory. Going beyond the dwindling influences of the Old and New Left, Matsui, like many other activists of her generation, turned to the paradigm of "Asia," a framework that combined their concerns for issues like environmentalism, neo-liberal capitalistic expansion, North-South problem, gendered exploitation and violence, and Japan's unresolved "historical responsibility." As all these issues were already more or less articulated in the language of *jinken* especially in the domestic context, *jinken* became an integral part to this holistic paradigm. To articulate their critique on Japan's

[81] 松井やより『愛と怒り闘う勇気―女性ジャーナリストいのちの記録』p.196.
[82] Ibid. p.196-197.

place in this geo-political space of "Asia," Matsui and like-minded activists launched groups like the AWA, which tried to not only reflect on all these issues to create a vision for a more ethical way of life (especially for a Japanese woman) but also to combine the power of different strands of activism to achieve this ideal. Such endeavor was somewhat outpaced by both the acquisition of knowledge, especially on new forms of rights-talk, by the activists and the geo-political shift in Asia, which increasingly foregrounded Japan's unresolved "historical responsibility." However, the discourse of *jinken* as well as the transnational network built by endeavors like the AWA became crucial in the formation of the activist-scholar-lawyer-victim complex that became the protagonist of the 1990s transnational reparation movement, in which this complex used cutting-edge theory of *jinken* to demand Japanese government to apologize and compensate for its past victims. The Tribunal, which sought to use cutting-edge (and supposedly "true") international standard on what the Japanese activists understood as *jinken* to indict the perpetrators of the comfort system, became the symbolic climax (and finale as seen by many, although many lawsuits were still ongoing) of the movement, which both represented and incurred a total remake of the *jinken* discourse in Japan and beyond. Building on this chapter, the Epilogue will examine in more details the use of *jinken* in this transnational movement.

Epilogue *Jinken* and the Reparation Movement

The previous chapters have traced the development of the idea of *jinken* from the Meiji period to the late 1970s, when activist trends represented by groups like the Asian Women's Association (AWA) created the foundation on which the 1990s transnational reparation movement for Japan's colonial and wartime atrocities took off. The epilogue will pick up where the last chapter left off and recount how the reparation movement, which heavily employed the language of *jinken*, began and developed, with a few concluding remarks about the influence of and reactions to the movement in the end.

Along with the rapid economic growth of the 1970s, war history writing focusing on civilians and the home front proliferated. Influenced by the anti-Vietnam War movements (especially those against the U.S. air raids on Vietnam, which greatly reminded the Japanese activists of their own wartime experiences) and the "residents' movements" focusing on issues such as pollution aforementioned, local civilian groups and self-governing bodies (*jichitai*) also started to compile local war histories, especially those related to air raid casualties and home front efforts by women.[1] One of the most famous movements among these were those seeking to record the suffering of Allied air raids of Japan. Spearheaded by activists like Saotome Katsumoto, these local groups across Japan built on the anti-Vietnam War air raids sentiments and sought to record the lives of the people (*shomin*) during the war, in direct contrast to the

[1] 吉田裕『日本人の戦争観 : 戦後史のなかの変容』岩波書店, 1995.7. p.172 Product of other international developments such as the reversion of Okinawa also contributed to this trend of people's memory and history of the war. As previous chapters discuss, accompanying the reversion of Okinawa was a local sense of being betrayed by the central government—again. This set off a new trend of excavating local Okinawa history that, in direct opposition to previous trends under American occupation, stressed local cultural uniqueness and local suffering as a result of mainland betrayal or forced assimilation. The publication of the newly complied *Okinawa Prefectural History* (*Okinawa kenshi*) anthology distilled these sentiments, especially with its parts on the Battle of Okinawa, which highlighted local sufferings and even mistreatment of local at the hands of mainland Japanese soldiers, a direct rebuff to traditional writings on the battle that lionized mainland soldiers' bravery and sacrifices. As previous chapters discuss, these trends also came into the new *jinken* discourse in Okinawa that fed into that in the mainland.

heretofore war history that focused on (and to a great extent lionized) the experience of the soldiers and military officers. As women made up a significant percentage of this trend of local activism, the historical perspective of women, mainly on the home front effort and the civilian sufferings during the war, received much more attention in these new productions of memories and histories.

Accompanying this trend of popular memory politics about the war was the awareness that Japan's "historical responsibility" was also by not merely a domestic issue but an international one as well. Even before Japan's economic and political ties deepened with "Asia," as evidenced by its establishment of formal diplomatic relationship with the People's Republic of China in 1972 and its business and aid advancement first into South Korea and then Southeast Asia throughout 1970s, incidents like the demonstrations that greeted the Shōwa emperor when he visited Europe in 1971 also reminded the Japanese public that even in countries like the Netherlands and the U.K., the country's colonial and wartime atrocities (especially its maltreatments of Allied POWs) had not been forgotten. Protests fueled by similar sentiments in "Asia" across the 1970s, most famously the Jakarta Riot in 1974 (which partly protested the perceived collusion between the Indonesian state elites and Japanese corporations to exploit the working people) during Prime Minister Tanaka Kakuei's visit to Indonesia, only served to further prove this point. But what really surprised the Japanese public of how closely the "Asian" countries were watching the discourse of history in Japan was the backlash from the Chinese and Korean government after *Asahi Shimbun* reported in 1982 that the Ministry of Education had demanded textbooks to soften its vocabulary in describing Japan's colonial and war efforts.[2]

[2] 吉田裕, 1995. p.186. According to the initial reportage, the high school textbooks were demanded to change "invade (*shinryaku*)" to "advance (*shinshutsu*)" in describing Japan's war efforts in northern China and define the March 10 Movement in Korea as a "riot (*bōdō*)." It was later proven that the northern China case was a false report,

While the long-running "textbook lawsuit" by Ienaga Saburō against the Ministry of Education for this kind of changes (and its constitutionality) had been well reported domestically, the Japanese public was genuinely shocked not only by the swift and severe diplomatic backlash from China and Korea against the "textbook controversy" (and later the Yasukuni controversies) but also the fact that even Nakasone cabinet, which was perceived as hawkish and nationalist, actually "caved" to the diplomatic pressure and scaled back its denialist and revisionist languages with regards to these problematic histories.[3]

History and memory became not just controversies of rhetoric in the 1970s and 1980s Japan: for many groups that finally mustered enough resources and courage to speak up, these issues were financial as well as legal and political. One of these groups was comprised of Taiwanese (including both Han Chinese and indigenous people) who were conscripted by the Japanese military and fought for Japan in WWII but who, unlike their Japanese peers, never received benefits after the war (as they had "lost" their Japanese nationality) despite their military service. Discourse around this problem was triggered by the 1974 "discovery" of Nakamura Teruo (Ami: Suminuo; Chinese: Li Guanghui), who "held out" in the jungle of Indonesia for nearly twenty years without knowing the war has ended (allegedly). Using his scant old military connections, Nakamura began to call for the Japanese public's attention to the plight of Taiwanese like him who had fought in the Japanese military after he was "repatriated"

although the demand for similar changes of terms existed for passages about invasions of Southeast Asia in some textbooks.

[3] Ibid. p.188-192. Yoshida argues that both the Nakasone cabinet and the Japanese business circle compromised in order to preserve and stabilize the perceived "leadership" status of Japan in "Asia." I argue in this chapter that this seemingly arrogant assumption by the conservatives was simply the other side of the same coin of Japanese progressives' concern with "Asia," which was exactly this imagined political economic space in which Japan was at the top. In other words, both the conservatives and the progressives built their theories and actions on the same assumption of Japan's niche in (or more precisely, vis-à-vis) "Asia."

to Taiwan.[4] Legal scholar and seasoned *jinken* activist Miyazaki Shigeki, who also played important roles in the *jinken* discourse and activism on the "Okinawa problem" and the establishment of Amnesty International Japan, picked up the issue. Miyazaki successfully mobilized JCLU, for which he served on the board of directors (*riji*), to take up the issue as a "legal aid case (*shien jiken*)" in 1976.[5] The next year, JCLU filed a lawsuit for state compensation on behalf of the Taiwanese veterans and fought it until 1992, when the Supreme Court dismissed the case. While the *jinken* legal activists took up the issue of state compensation for wartime and colonial injustices as early as the 1970s, this case of Taiwanese former Japanese soldiers was curiously not articulated in the language of *jinken.* The announcement of JCLU's official involvement in the case in its journal states that JCLU intervened "not on the ground of politics but on the ground of humanitarianism (*jindō-teki tachiba*)" and because the case's close connection to its concern for the "relationship between nationality and international and domestic laws."[6] Even Miyazaki himself, writing in 1982, only used languages like "humanitarianism (*jindō*)," "morality (*dōgi*)," and at most, quoting the press release written by the lawyers for the lawsuit, "a problem of faithfulness (*shingi*) and a problem of rights (*kenri*)," but not *jinken.*[7] *Jindō,* which translates to "humanitarianism" today, is a term with a similar history to that of jinken as it also went through a process of translation to become what it is today.[8] while the

[4] 宮崎繁樹「台湾人元日本兵士の補償問題について」『現代の眼』23(6)[149] 1982 p.198-203.

[5] 「台湾人元兵士補償問題　当協会も支援へ　八月十三日理事会決定」『人権新聞』197 号昭和 51 年 9 月 17 日.

[6] Ibid.

[7] 宮崎繁樹, 1982. p.203.

[8] The difference would be that the Japanese term (translated from Chinese sources originally) had a much longer local history in Confucian and Neo-Confucian thoughts and philanthropic as well as political practices in Japan and East Asia in general. For the transformation of the term in modern times, see: Konishi Sho. "The Emergence of an International Humanitarian Organization in Japan: The Tokugawa Origins of the Japanese Red Cross." *American Historical Review* 119, no. 4 (October 1, 2014): 1129–53. https://search-ebscohost-com.proxy.uchicago.edu/login.aspx?direct=true&db=bas&AN=BAS878004&site=eds-live&scope=site.

concept *jindō* enabled the state and activists to mobilize resources and public sympathy to aid these victims, it fundamentally evades the self-reflection in terms of the responsibility to the crisis on the part of the aiding party (the Japanese state and people in this case). On the other hand, *jinken* usually carries a more critical edge and is more affirming in terms of the victims' claims to reparation and justice.[9] Although legal activists were already accruing experiences they would utilize for the 1990s reparation movement in these lawsuits, the articulation of the war and colonial compensation problem in the language of *jinken* was still ahead of them, and it was the activism of people like the AWA members in the UN-centered international arena that bridged this link in the discourse of Japan's "historical responsibility."

One of the first reparation endeavors that built on this new activist foundation was the movement to repatriate Koreans stranded in Sakhalin (Karafuto in Japanese). Before 1945, the Japanese empire mobilized over forty thousand Koreans to settle in Sakhalin; while Japanese government gradually repatriated the three hundred thousand Japanese residents in the Soviet-controlled island after the war, it had done nothing to the Koreans left behind there. As the issue of compensation for the Japanese empire's former colonial subjects (who "lost" their Japanese nationality after the defeat) mobilized for its colonial and war effort begin to gain activists' and the public's attention from the late 1970s thanks to the movement by Taiwanese former Japanese soldiers calling for state compensation, Japanese activists started to identify more and more such groups towards which, in their view, the Japanese government bore "history responsibility," and specifically not only "war responsibility (*sensō sekinin*)" but "postwar responsibility (*sengō sekinin*)." The movement calling for Japanese government's assistance in repatriating Sakhalin

[9] There is a rich literature on the global history of humanitarianism and the similarity and differences between humanitarianism and human rights. For example, see Michael N Barnett. *Empire of Humanity: A History of Humanitarianism*. Ithaca, N.Y.: Cornell University Press, 2011.

Koreans was one that centered around this new concept of "postwar responsibility" that built on the intersectional concerns groups like AWA represented and brought together different social spheres. On August 12, 1984, the international symposium "Thinking about the Repatriation of Koreans Left Behind in Sakhalin" was held in Tokyo by a new activist group The Forum on Japan's Post-war Responsibilities toward Asian Peoples (*Ajia ni taisuru sengō sekinin wo kangaeru kai*). The symposium convened activists, lawyers, scholars, and politicians from both Japan and Korea to report on the current conditions of Koreans in Sakhalin and strategies to prompt the Japanese government to help repatriate them. Among the organizers were AWA members Utsumi Aiko and Ishida Reiko. Utsumi participated in the 1960s students' movements, taught Japanese in Indonesia (and shared her experiences in AWA lectures), went into academia for Korean and *zainichi* studies, and later played crucial roles in the reparation activism and lawsuits for *zainichi* and Korean former soldiers and war criminals sentenced as Japanese. Ishida, like many other AWA members, specialized in translation (especially for WLM related matters) and published multiple essays introducing WLM in Europe. The fact that female activists (instead of the heretofore predominantly male lawyers) now spearheaded such movements reflected the contribution of groups like AWA to the later reparation movement. Politicians like Doi Takako, the unofficial patron of AWA, and Abe Shintarō, LDP secretary (*kanji*) and the father of the later PM Abe Shinzō, also participated in the symposium, as did lawyers like Akimoto Hideo, the leader of the legal team for the class suit by Taiwanese former Japanese soldiers. The symposium also benefited from the support of famous activists like Tsurumi Shunsuke, *zainichi* lawyers and activists (including Kim Kyengtuk, who fought lawsuits

to become the first non-Japanese judicial apprentice and lawyer), Christian pastors and activists, and various other scholars and activists.[10]

This advocacy for the left-behind Koreans in Sakhalin directly built on the network and activist experiences accrued in the movement for compensation for the Taiwanese former Japanese soldiers. Although the language calling for action by the Japanese government became stronger with this case (with the framing of "postwar responsibility"), advocates still predominantly used terms like "humanitarianism (*jindō*)" instead of *jinken,* conceptualizing the movement as one for justice but also in the form of relief (*kyūsai*).[11] This language was especially predominant in some politicians' framing of the issue, which gained inter-partisan (including both LDP and JSP) support. In the issue of the newsletter of the Diet Working Group for the Problem of Left-behind Koreans in Sakhalin (*Saharin zanryu kankoku chōsenjin mondai giin kondankai*), a group formed by the over a hundred Diet members concerned with the issue, the chairman of the group Hara Bunbe'e, who later also headed the controversial Asian Women's Fund established to compensate the former comfort women, argued that

> The desire (*kokoro*) to be reunited with the country where we were born and raised, and with our immediate family members who live there is a very natural human cry (*ningen no sakebi*) that transcends race, ethnicity, and national borders (*jinshu, minzoku, kokkyō*). I am convinced that this is a truly humanitarian (*jindō*) issue that should be resolved from a standpoint that transcends ideology.[12]

Echoing this language, Abe Shintarō also calls for a "humanitarian resolution (*jindōteki kaiketsu*)." However, not all politicians in the working group embraced this framing. Doi

[10] アジアに対する戦争責任を考える「国際シンポジウム」実行委員会 主催「いま、サハリン残留韓国人の帰還問題を考える　国際シンポジウム」1984 年 8 月 12 日　13 日.

[11] The history of this term (especially its premodern usage) is also intertwined with that of *jindō.* See Konishi, 2014.

[12] 原文兵衛「サハリン残留韓国・朝鮮人問題議員懇飛躍の二年目に向けて」『サハリン残留韓国・朝鮮人問題議員懇談会ニュース』第 1 号 昭和 63 年 4 月 26 日

Takako, for example, directly criticizes articulating the issue as one of *jindō* in the same newsletter:

> The sacrifices produced by politics must be resolved by politics. The bystander mindset (*daisansha-teki hassō*) that "war produces tragedy, so we should try to provide relief (*kyūsai*) for it from a humanitarian (*jindō*) standpoint" is a fallacy. If we do not address why they [tragedies such as that of the left-behind Koreans] happened and do not try to resolve them from the standpoint of taking full responsibility (*sekinin wo mattousuru*) for it, we will repeat the same tragedy.
>
> I have been striving to improve the status of the *zainichi* Korean (*zainichi kankoku/chōsen jin*) people in Japan, to achieve the internationalization (*kokusaika*) that Japan can be proud of, and to achieve peace in Asia (*Ajia no heiwa*). After becoming the chairman of the JSP, I have been making efforts for peace and human rights (*jinken*) through extensive international exchanges, although to a small extent.
>
> In this sense, the resolution of this problem of left-behind Koreans (*kankoku/chōsen jin*) in Sakhalin would fulfill all of the consciousness of problematics (*mondai ishiki*) mentioned above, and is thus an important historical task (*rekishiki-teki nimo jyūdai na kadai*).[13]

Here, Doi basically argues that to frame the issue of left-behind Koreans as an issue of *jindō* is tantamount to the evasion of the "historical responsibility" the Japanese people should shoulder: the plight of such Koreans was not simply a "tragedy" in a historical vacuum caused by the seemingly helpless and neutral catastrophe that was the "war." Rather, their hardship was caused by the Japanese state, and thus the Japanese state should address it. Obliquely, Doi contends here that the issue was one of *jinken,* which is about justice, rather than one of *jindō*, which implies relief (*kyūsai*) for human agency-free disasters out of sympathy.

Doi's view represents the popularization of the *jinken* (vis-à-vis *jindō*) articulation of Japan's negative historical legacies in the progressive segment of the society. Aside from the popularization of *jinken* language, the surfacing of more and more such cases and the accompanied further categorization of them also prompted activists and intellectuals to look

[13] 土井たか子「一日も早く解決を」『サハリン残留韓国・朝鮮人問題議員懇談会ニュース』第 1 号 昭和 63 年 4 月 26 日

closer at the languages used to describe them. For example, when the case of the Taiwanese former Japanese soldiers surfaced, some Japanese activists and politicians tried to mobilize the pension and benefit system for Japanese veterans rebuilt in postwar Japan to address the issue. The problem to be resolved, therefore, was the nationality clauses in relevant laws that limited government payouts to holders of Japanese nationality, which the Taiwanese "lost" after the defeat. The case was thus framed as a problem of compensation (*hoshō*), namely that the Taiwanese were not equitably compensated compared to their Japanese former colleagues for their service to the empire. As a result, support for such groups was sometimes framed in the language of *jindō*, even when prolonged state compensation legal battles were fought (as evidenced by the case of Taiwanese former Japanese soldiers): this was because the compensation for the service to the Japanese empire by these plaintiffs were not considered a legal right, it was thus not framed as an issue of *jinken.* However, as the activists supporting such endeavors pushed their analysis of historical politics with such cases, and as they learned about new perspectives of rights and new cases of people of "Asia" speaking up, not only as unfairly treated past employees but as victims (*higaisha*) of the atrocities by the empire, the language surrounding such cases shifted dramatically.

In fact, just as the activist circle was making *jinken* as an integral part of their paradigm of "Asia," for which historical reflectiveness was always crucial, the legal professional circle was also applying the concept of *jinken* to historical reflection on wartime atrocities. As previous chapters discussed, the sense of betrayal accompanying the reversion of Okinawa prompted the locals to review their history, especially that of wartime suffering caused by, as they newly perceived, the mainland government. Amidst this new outpouring of memory of history, Okinawan lawyers began to extend the usage of *jinken* from issues caused by the American

military bases in their current time to the damages of the Battle of Okinawa in the past, essentially arguing that suffering brought by the war was a *jinken* issue.[14] By the mid-1980s, this usage has already extended to mainland lawyers thanks to not only the introduction of Okinawan lawyers but also the burgeoning of popular history and memory of the war on the home front and air raids in the1970s and 1980s. On the twenty-sixth symposium of the *jinken* protection convention of JLBA (*nihon bengoshi rengōkai jinken yōgo daikai*) held in Kanazawa city in October 1983, one subcommittee (*bunkagai*) was devoted to "Peace and *Jinken*: What We Legal Professionals (*hōritsu ka*) Did for Them and What We Could Do Now." The subcommittee was held in response to a recent JLBA petition to abolish nuclear weapons submitted to the second UN Conference on Disarmament Issues held in June 1982. The subcommittee sought to evaluate Japanese legal professional's mission of "protecting *jinken* and achieving social justice," which is enshrined in the Lawyer's Law, and to revisit and reflect on lawyers' experiences (*taigen*) in peace and *jinken* activism in the postwar era. In the subcommittee, the lawyers summarized JLBA's *jinken* protection committee's activities with regards to pacifism related movements, such as multiple resolutions on nuclear weapons, American military bases (especially those in Okinawa), and state benefits for *hibakusha* (victims of the atomic bombs) and veterans. It also did not shy away from JLBA's own history of strong advocacy for Japanese war criminals' amnesty in 1950s. On top of this retrospection, the subcommittee sought to reflect on "the *jinken* violation caused by war (*sensō ni yoru jinken shingai*)." "War is the gravest violation of *jinken*," declared the lawyers at the subcommittee.[15]

[14] 牧野博嗣「沖縄・人権・憲法　座談会(特集・帰ってくる沖縄)」『自由と正義』1972 23(4) p59-90.
[15] 「日本弁護士連合会第 26 回人権擁護大会・シンポジウム第 1 分科会--基調報告書 平和と人権--われわれ法律家は,何をなしてきたか,また何をなしえるか」『自由と正義』34(8) 1983.08 p.88-110. p.90.

Judging from the language used in the subcommittee, the lawyers derived this conclusion from the traditional framework of *kokumin*'s *jinken* through the example of what they perceived as the Japanese state's responsibility to provide for the *hibakusha,* who are mainly Japanese *kokumin.* The lawyers argued that part of the reason the *kokumin* of Japan was unable to prevent the country from descending into the escalating war was how the Meiji Constitution stipulated the *jinken* (or the lack thereof) of *kokumin* and their relationship vis-à-vis the emperor. Building on this painful lesson, the postwar Constitution, the lawyers argued, thus ensured the sovereignty of the *kokumin* and their *jinken.* The end of the war also heralded progress in another front: a new legal understanding on the state's responsibility towards its *kokumin* when it engages in war. The recent push for legislation of state compensation and aid (*hoshō naishi engo*) for *hibakusha* and other victims of urban air raids (*toshi sensai higaisha*) as well as for the reparation (*baishō*) for victims (*giseisha*) of the prewar Maintenance of the Public Order Act (which enabled the political persecution of dissidents), the lawyers argued, demonstrated this new idea of state responsibility, especially with some court victories achieved by these movements. However, the lawyers held a more nuanced attitude towards the non-*kokumin* victims of Japan's war:

> The issue of providing aid (*engo*) to foreign *hibakusha* and the problem of the repatriation of Koreans (*kankoku-chōsen jin*) in Sakhalin are tragedies brought about by the war. Because they are not Japanese *kokumin*, these people face different difficulties in their relations with the Japanese government compared to the Japanese war victims' demand for state compensation (*hoshō*) or aid. The responsibility and right (*sekinin to kenri*) to protect the *jinken* of these people should belong primarily to the government to which their nationality belongs (*kokuseki ga shozoku suru seifu*). However, it could be said that it was the Japanese government that caused these people to suffer or continue to live in precarious conditions. If so, [the Japanese government] would be liable under international law for such damage. It would be necessary to fulfill its responsibility for restitution (*genjō kaifuku*) or reparation (*baishō*) for the victims, either through their [the foreign victims'] own government or directly according to their own demands.[16]

[16] Ibid. p.94.

This theorization of the *jinken* of foreign victim of Japan's war epitomizes the duality of the postwar Japanese *jinken* discourse. Primarily, the constitutionalist mindset, especially among legal professionals, made them assume that *jinken* still fundamentally emanates from the relationship between the state and its *kokumin* mediated by the constitution. Therefore, the protection of *jinken* of such foreign victims should primarily be the responsibility of "the government to which their nationality belongs." However, the Japanese lawyers were also influenced by new postwar usages of *jinken* brought about by trends such as legal claim-making with the plight of *zainichi* that made use of *jinken* and the "Asianist" advocacy by activists like the members of AWA that supported democratization efforts overseas and reflected on Japan's historical responsibility in the region. Building on the fruit of such *jinken* activism and discourse, the lawyers contended that even when the governments of such foreigners do not protect or restore their *jinken* for them, they themselves as individuals should be able to make claims against the Japanese government on the international law. For evidence, the Japanese lawyers turned to international human rights laws and conventions: after the more abstract argumentation above, the lawyers summarized relevant international instruments, such as the UDHR, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) Japan just ratified in 1979 with reservations, the Hague Conventions, the Convention Relating to the Status of Refugees, and the individual complaint mechanism in UN-related organs, in order to discuss the possibility of reparation for these non-*kokumin* victims.[17]

At the end of the sub-committee, the lawyers resolved to strengthen their relationship with the sphere of civic activism (*shimin katsudō*) and deepen their knowledge of these

[17] Ibid. p.105-108.

international laws.[18] The political and activist climate of the 80s indeed made it hard for them to forget this commitment: the official visit by PM Nakasone Yasuhiro to the Yasukuni Shrine on August 15, 1985 that sparked international outrage further intensified the domestic discourse about Japan's historical responsibility for people in "Asia." The group "The Gathering for Carving the Remembrance and Commemoration of the War Victims of the Asia-Pacific Region in Our Hearts (*Ajia taiheiyō chiiki no sensō giseisha ni omoi wo hase, kokoro ni kizamu shūkai*)" formed in 1985 in response to Nakasone's Yasukuni visit and held a symposium in Osaka the next year, inviting Singaporean, Korean, Chinese, and Filipino war victims to give their testimonies (*shōgen*) about the war.[19] The symposium was deemed a success and became a yearly event that prompted numerous advocacy groups, many focusing on specific populations of foreign victims, to burgeon in late 1980s and 1990s, kick starting the international redress/reparation movement for Japan's past atrocities (*sensō* or *sengō hoshō* or *baishō* depending on how it is framed). This form of activism was both a break and a continuation with earlier advocacy related to pacifism and Japan's historical responsibility. On one hand, it built on both the "Asianist" advocacy that groups like AWA have created by communicating and collaborating with activists from countries like Korea and Philippine where Japan's economic and political expansion loomed large both historically and contemporarily. This foundation forged the networks and knowledge that enabled Japanese activists to readily reach out to and invite "Asian" war victims to come and testify. The advocacy's focus on testimony also drew from the popular turn of the war memory culture in 1970s and 1980s, when former soldiers and home front commoners began to testify (*shōgen*). On the other hand, the Gathering heralded a

[18] Ibid. p.107-110.
[19] 「「アジア・太平洋地域の戦争犠牲者に思いを馳せ、心に刻む集会」のあゆみ」心に刻む会のブログ https://kizamu.exblog.jp/134746/

new age when the "Asian" victims of Japan's war and colonialism, instead of Japanese domestic activists or war survivors, took the limelight and gave their own testimony, and the Japanese activists were to merely take the (supposedly) supporting role in their articulation. This was seen as an epoch-breaking watershed in the popularizing "testimony activism (*shōgen katsudō*)" about wartime and colonial experiences.

To be clear, Japanese activists only created the foundation on which the "Asian" victims could articulate and to some extent amplify their voice in Japan and on the international stage. For them to come out, similar discursive foundations were created in their home countries for them to speak out before they were invited to Japan. This is most apparent in the case for the Korean former comfort women. Contemporary Korean and Japanese activists often treat August 14, 1991, when Kim Hak-sun first spoke at a broadcasted press conference about her experience as a former comfort woman and shocked the world, as the origin of the comfort women activism in the past three decades.[20] In fact, the infrastructure that enabled Kim to tell her own story to the international audience can be traced further back to the transnational movement against Japanese sex tourism in Asia. As mentioned in last chapter, it was in this movement that the AWA Japanese activists first deepened their understanding about the issue of the comfort women and linked this historical issue with their contemporary framing of the sex tourism as a violation of women's *jinken.* In Korea too, this movement also contributed to the domestic feminist consciousness that gradually carved out the niche discourse of *ingwon* (lit. "human rights" in Korean) specifically of women (not as a subset of the democratization discourse of state oppression of individual rights). It was also during an international conference about sex tourism

[20] In the feminist discourse in recent years (2017~), some activists revisited this event and pointed out that it can be viewed as the start of the "me too" movement in Asia. See 「日本軍「慰安婦」メモリアル・デーin 東京 金学順さんから始まった #MeToo 」UPLAN 2018.08.12. https://www.youtube.com/watch?v=tMNd9_lYFYo&t=695s

organized by Korean Christian Women's United (KCWU) in 1988 that activist scholars like Yun Chung-OK first made the public speech about her research on comfort women, which became the keystone of the Korean Council for the Women Drafted for Military Sexual Slavery by Japan (Japanese: *Kankoku teishintai mondai taisaku kyōgikai,* or *teitaikyō*) organized by thirty-seven feminist groups in 1990. The next year, Kim contacted the Council's hotline and came out as a former comfort woman.[21]

Kim's coming-out illustrated the formation of the activist-scholar-victim (or survivor as they are later called) complex that became part of the foundation of the reparation movement: the transnational activists etched out the social discursive niche for such articulation by advocacy, the scholars assisted this process with their empirical research, and on this foundation, the victim could finally speak up. However, this advocacy complex was not the form the movement took—or rather, it was not yet completed. In Japan, legal professionals, building on their years of *jinken* activism and especially its recent discourse on war vis-à-vis *jinken,* were ready to channel the energy of such advocacy into concrete actions, namely litigations against the Japanese state or corporations. In November, 1988, the same year Yun made her impactful presentation about comfort women, Japanese lawyers revisited the problem of the *jinken* of foreign victims of Japan's war under international law in another subcommittee of the JLBA's annual *jinken* protection convention. The theme for this subcommittee is "1. The International Protection of *Jinken,* 2. The Domestic Implementation of the International Conventions on Human Rights (1. *Jinken no kokusai teki hoshō* 2. *Kokusai jinken kiyaku no kokunai ni okeru jisshi jyōkyō*)." While it covered a wide range of subjects (mostly about rights stipulated in the ICESCR and ICCPR), a

[21] "History of the Movement – 정의기억연대," accessed May 3, 2021, https://womenandwar.net/kr/history-of-the-movement/.

sizable portion was devoted to the problem of "unresolved issues of the postwar (*mikaiketsu no sengō shori mondai*)," especially the plight of the foreigners in Japan (especially the *zainichi*) and the left-behind Koreans in Sakhalin, who was facing, in the lawyers' language, "grave *jinken* violations:"

> These *jinken* violations are in no way unrelated to the historical disrespect or contempt of the Japanese state and people for Asia. When one looks at the similarities between the pre-war hunting of laborers and comfort women in Korea and the current transfer of Asian laborers into Japan, one has to acknowledge the homogeneity (*dōshitsusei*) of the *jinken* violations [then and now].[22]

As indicated by this passage here, many lawyers in Japan were ready to take action for the *jinken* of the foreign victims of war and colonial violence by Japan: they saw the issue as both historical and contemporary and at the heart of their mission of protecting *jinken* and creating a more just society. As soon as such victims began to speak up (as represented by Kim) in the late 1980s and early 1990s, the lawyers immediately linked up with the activist-scholar-victim complex and started to put into practice their commitment for reparation and restitution of Japanese state's violation of *jinken.* This transpired quite seamlessly because, as mentioned, the lawyers were already fighting lawsuits for groups like the Taiwanese former Japanese soldiers and had developed networks with activists and scholars interested in historical justice. What changed was that throughout the 1980s, as illustrated above, *jinken*, this time supported by the deepened knowledge about the development of international law, prevailed as the paradigm (rather than *jindō*) to articulate these problems of the "postwar."

This learning process by the Japanese lawyers continued: in December 1992, JLBA held an international seminar titled "War and *Jinken*: Legal Examination of the Issues of the Postwar

[22] 「第 1 分科会 1.人権の国際的保障 2.国際人権規約の国内における実施状況(基調報告書レジュメ) (日本弁護士連合会第 31 回人権擁護大会<シンポジウム>)」『自由と正義』39(9) 1988.09 p.72-96. p.89.

[*Sensō to jinken, sengō shori no hōteki kentō*]." The seminar, held on December 10, was part of a two-day event to accompany a public hearing held a day before by activists and scholars' groups that invited former comfort women from six countries to provide their testimonies to the Japanese public. The seminar was international in another regard: it invited "world renowned [legal] scholars to present on the grave *jinken* violation from the standpoint of legality, and [thus] represented the highest academic standard on these issues."[23] This is not an understatement: the presenters of the seminar included John Humphrey, one of the original drafters of the UDHR, and Theo van Boven, the former director of the United Nations' Division for Human Rights, among other legal scholars and professionals, most of whom served in international organizations such as the UN.[24] Building on the consensus that "international law has also made it clear that the issue of state-to-state reparations and compensation and post-war compensation to individuals who have suffered *jinken* violations are completely different and separate in nature,"[25] the seminar aimed at deepening the Japanese lawyers' understanding of "the latest development of the UN's response to violations of international laws and *jinken*."[26] It is noteworthy that such statement already presupposed the common understanding among Japanese (and international) legal professionals that Japan's wartime and colonial violence constituted *jinken* violations, and thus, on top of this assumption, the seminar simply sought to discuss the international legal instruments available for remedying the damage and restoring the justice for the victims. The Japanese lawyers indeed learned what they were looking for: during the one-day event, international legal experts introduced multiple topics the Japanese lawyers were eager to

[23] 日本弁護士連合会 編『世界に問われる日本の戦後処理 2 (戦争と人権、その法的検討)』東方出版, 1993.10 p.2
[24] Ibid. Content table.
[25] Ibid. p.11.
[26] Ibid. p.9.

learn about, such as the international standard for "reparation for grave human rights violation," "international [state] responsibility under international law," and even topics more specific to Japan such as "the possibility to prosecute and punish Japan's war crimes and crimes against humanity."[27]

As such, thanks to Japanese and other "Asian" activists, scholars, legal professionals, and victims who finally spoke up, the problem of Japan's "historical responsibility" fully internationalized and gained attention especially in the circle of UN-centered international legal professionals who were rethinking the concept of human rights, especially for victims of war crimes and crimes against humanity and of gendered violence in light of other global developments such as the Yugoslav Wars. In turn, these multinational legal professionals also transmitted these latest developments in international laws and UN-centered human rights discourse to their Japanese colleagues, equipping them with cutting-edge legal theories and rights-talk for their legal battles, which were soon to grow in number at an explosive rate. Over the course of 1990s and 2000s, almost a hundred transnational lawsuits on behalf of victims of Japan's colonial and wartime atrocities in China, Korea, Philippine, and many other locales were launched with the help of the activist-scholar-lawyer-victim complex formed during this period.[28]

This activist-scholar-lawyer-victim complex also became increasingly active on the international stage. During the 1993 World Conference on Human Rights held in Vienna, representatives from JLBA and other Japanese activist groups raised the issue of comfort women and significantly contributed to the Vienna Declaration and Programme of Action's inclusion of

[27] Ibid. Content table.
[28] "日本戦後補償裁判総覧," accessed May 3, 2021, http://justice.skr.jp/souran-jp-intro.html.

a call for an end to sexual slavery, which was deemed an abuse of human rights of women.[29] The issue of comfort women, now internationally framed as a violation of women's human rights, was also at the center of the 1995 Fourth World Conference on Women held in Beijing, in which Japanese activists like Matsui Yayori played a great role. The multitude of state compensation lawsuits and the increasing internationalization of Japan's "historical problems," on one hand publicized by Japanese activists and "Asian" past victims on the international stage as a discourse of women's rights and human rights, and on the other hand, intensified by nations eager to employ the issue as diplomatic bargaining power, paved the way for the epochal happening that was the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery discussed at the beginning and end of the last chapter.

The Tribunal by no means marked the end of the reparation movement and the *jinken* usage related to Japan's colonial and wartime atrocities. Even after most of the lawsuits in the movement were dismissed and the plaintiffs are gradually passing away due to old age, the activist-scholar-lawyer-victim complex is still carrying out their fight for historical justice and reparation. The most recent development in this activist current was Seoul Central District Court's dismissal of a lawsuit brought by the former "comfort women" against the Japanese government on April 21, 2021. Although the same court originally ruled in favor of the plaintiffs on January 8 (as consistent with a series of legal victories at the South Korean Supreme Court since 2018 that ordered Japanese companies to compensate for wartime forced labor), a different panel of judges reversed the ruling, citing the argument of sovereign immunity, a concept that was also frequently used by the defendant (representatives of the Japanese state) during court

[29] "従軍慰安婦問題への政府の対応に関する声明," accessed May 3, 2021, https://www.nichibenren.or.jp/document/statement/year/1995/1995_15.html

battles in Japan.[30] As such, even when the legal battleground of the movement had moved beyond Japan, the validity of an individual's claim vis-à-vis a sovereign nation, frequently articulated in languages like *jinken,* is still at the core of the movement, as well as the whole condition of Japan's long "postwar" at large.

This dissertation has examined how the concept of *jinken* has come to play such a role in these discourse and activism since the late nineteenth century. Originally translated from multilingual sources, the term *jinken* was used by political and legal intellectuals to conceptualize the relationship between individual citizens (*kokumin*) and the nation (as opposed to the state, the power of which should be limited) as mediated through the constitutional monarchy. Japanese lawyers also used the language of *jinken* to construct their legal activism and etch out their niche in the national public life. This constitutionalist-nationalist core of *jinken* survived the war, and became the foundation on which the Allied Occupation built a new *jinken* system. Working with liberal Japanese lawyers, the Occupation staff and advisors oversaw the construction of this discourse that now encompassed a degree of transnational universalism introduced by the human rights discourse occurring at the UN (again through translation) and a new landscape with new lawyer groups and state apparatuses that practiced *jinken.* However, after the Occupation, the same lawyers used this reformed language of *jinken* to rebel against what they saw as Occupation-era impositions on Japan, among them the verdicts of the war crime trials. This usage of *jinken* infiltrated into the bureaucracy, especially among bureaucrats with military backgrounds, who also participated in how Japan responded to discourse about war crimes, reparation, and human rights in the UN. The same gist of constitutionalist-nationalism

[30] "South Korean court dismisses lawsuit by former 'comfort women' against Japan" accessed May 3, 2021, https://www.japantimes.co.jp/news/2021/04/21/national/comfort-women-lawsuit-dismissed/

was also the mainstay in the articulation of Okinawa's problems under American military rule in the language of *jinken.* However, this connotation was not understood by American occupiers and activists, who (mist)translated such critiques as on the grounds of "human rights," resulting in a gap between the two sides. Despite its early nationalist sentiments, this usage of *jinken* morphed into a discourse that critiqued not only America but also the Japanese state for its wartime atrocities after Okinawa's reversion. The framing of *zainichi*'s plight in the language of *jinken* by leftist Japanese lawyers in their "courtroom struggles" also encompassed this angle of critique, and it was through this strand of activism that the *jinken* discourse gradually moved beyond its *kokumin* confines and towards a sense of universalism not only beyond but also against the Japanese state and its past atrocities. All these created the fertile grounds for new styles of activisms in the 1970s and forward, during which activists like Matsui Yayori used the language of *jinken* to combine issues such as gendered violence, global inequality, pollution, and historical justice to forge a holistic critique on Japan's place in "Asia," an imagined geopolitical space that made salient Japan's past and present problems. It was on the foundation of such activisms that the reparation movement that centered on the concept of *jinken* took hold and unfolded since the late 1980s.

The dissertation has demonstrated that *jinken* was, and still is, beyond a literal translation of the English term "human rights," which is itself a fraught concept. At the very beginning, *jinken* translated more conventionally into the English term "right of man" or "civil liberties" due to its constitutionalist-nationalist connotations. This conventional translation lasted until the Occupation period, during which it was also used to translate the new buzzword "human rights" due to the fact that it transliterates as "human" and "right." Despite this problematic equalization to "human rights," *jinken* still retained its constitutionalist-nationalist core, although the new

"human rights" discourse brought some possibilities of transnational universalism into the discourse (albeit only rhetorically at the beginning). This duality of *jinken* enabled its different usages in the postwar, such as the more nationalist articulations on war criminals' amnesty and Okinawan reversion, and the more transnational and self-critical ones such as those on the *zainichi* and Japan's place in "Asia." While one would incline to think that the reparation movement since the late 1980s is a manifestation of the latter usage, the constitutionalist side of *jinken* is still very strong even today. This is most apparent when lawyers in the reparation movement used *jinken* by citing the Constitution and made arguments that the *jinken* clauses within it should apply to foreigners in principle too in addition to citing international human rights laws.[31] As such, *jinken* still retained its duality and translatability as a both a uniquely local discourse and an integral part of the diverse and constantly changing global human rights culture. By focusing on the process of translation that enabled the unique local development of *jinken*, this dissertation has sought to open up a new direction for the studies of global human rights as well as Japan's long "postwar."

[31] For example, see 「下関判決 判決文」釜山従軍慰安婦・女子勤労挺身隊公式謝罪等請求訴訟 山口地方裁判所下関支所 1998.4.27http://kanpusaiban.bit.ph/ p.30-31.

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