

"EMBEDDED RACISM" IN JAPAN'S OFFICIAL REGISTRY SYSTEMS: TOWARDS A JAPANESE CRITICAL RACE THEORY

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ABSTRACT

Critical Race Theory (CRT), grounded in American legal theories of power and dominance, has been increasingly applied to other countries to analyse racialised power relationships between social groups. Applying CRT to Japanese society, where "racism" is officially denied as a factor in the systemic differentiation of peoples into a dominant majority and disenfranchised minorities, nevertheless reveals racialised paradigms behind deciding who is a "member" of society (as in a citizen) and who is not (as in, a non-citizen), systematically allocating privilege to people with "Japanese blood." This research focuses on recent changes to Japan's official registry systems vis-à-vis non-citizens. Historically, the Family Registry (koseki) and the Resident Registry (jūmin kihon daichō) have employed biological conceits to give systemic advantages (in terms of citizenship, employment, access to social welfare and official recognition as residents and family members) to "Wajin" (Japan's dominant social group with "Japanese blood") over "Non-Wajin." Although the Resident Registry system was amended in July 2012 to allow equal registry of non-citizens, this research finds under CRT methodology that the dominant Wajin majority did not further enfranchise or cede power to the disenfranchised non-citizen minority. The reforms were merely cosmetic changes to a segregating system that remains largely intact in scope and enforcement.

Keywords: Critical Race Theory, racism, Japan, nationality law, Wajin, Whiteness studies

INTRODUCTION

On 9 July 2012, Japan formally abolished its Postwar Alien Registration System (*gaikokujin tōroku seido*), instituted in 1952 at the close of the Allied Occupation (1945–1952) to keep track of non-citizens within its borders. Doing so not only involved the abolition of the Alien Registration Law (*gaikokujin tōroku hō*), but also involved a fundamental reform of its Resident Registry (*jūmin kihon daichō*) system, designed to keep official track of the addresses and family members within domiciles in Japan. The Resident Registry hitherto did not allow non-citizens to be listed on Residency Certificates (*jūminhyō*) with Japanese family members as residents or official members of the family unit. Now this is possible. Although a step towards granting more official recognition of non-citizens as equal members of Japanese society, this research will explore whether these changes occurred for the officially-stated reasons—e.g., for the sake of the officially-stated altruism of giving foreigners more "convenience" through streamlined bureaucratic procedures¹—or whether, as per the racially-grounded methodology of Critical Race Theory (CRT), there was an "interest convergence" prompting the dominant majority within Japanese society to cede a degree of its power to a disenfranchised minority.

METHODOLOGY

CRT sees racism as a study of power relations within a society, particularly in terms of how people are rendered into hierarchical categories of power, social dominance and wealth acquisition.² Fundamental theories synthesising economic and postcolonial arguments have a long history, going back to DuBois.³ DuBois at the beginning of the twentieth century linked the abolition of American slavery with the convergence of White economic and postcolonial interests, as opposed to the narrative of American society being convinced by "moral good" and "just society" arguments. CRT first appeared in American academic legal studies in the 1970s, in response to perceived shortcomings within the American Civil Rights Movement, grounded in minority frustrations at being underrepresented within American public discourse and academia.⁴ Incorporating various criticisms from Ethnic Studies, Women's Studies, Cultural Nationalism, Critical Legal Studies, Marxism and Neo-Marxism, and Internal Colonial models,⁵ CRT has expanded out of deconstructing legal and judicial processes and into other fields, including deconstructions

of education, public discourse, gender, ethnicity, class and poverty, globalisation, immigration and international labour migration, hate speech, the meritocracy and identity politics. CRT has also been expanded beyond America's borders to examine postcolonialism and power structures in other societies, including Great Britain, Israel and Europe.⁶ This article will similarly expand CRT into Japanese Studies.

In terms of analysing the racialised structural relationships of social power, CRT may not only be applied to Japan, but also to any society. CRT starts from the fundamental standpoints⁷ that, *inter alia*: 1) "race" is purely a social construct without inherent physiological or biological meaning, so it is open to the same perceptual distortions and manipulations as any other social convention or ideology; 2) the prejudicial discourses about human categorisation and treatment are so hegemonic that they become part of the "normal" in society, i.e., that is to say, so embedded in the everyday workings of society that they give rise to discriminatory actions (both conscious and unconscious), resulting in discriminatory public policies and laws regardless of policymaker intentions; 3) such illusory perceptions of "race" are in fact the central, endemic and permanent driving force behind organising the scaffolding of human interaction, categorisation and regulation, both at the individual and more poignantly the legislative level; 4) "race" thus fundamentally influences, even grounds, the formation, enforcement and amendment process of a society's laws; 5) those who best understand this dynamic and its effects are the people disadvantaged within the racialised structure of power and privilege, and thus are necessarily excluded from the discourse regarding the organisation of society; and, consequently 6) one must also recognise the power of minority narratives as a means to allow more minority voices and alternative insights into the discussion, to expose the realities present for the unprivileged and underprivileged.⁸

The dynamic of racism under CRT is one of power and self-perpetuation of the status quo. Racism, as a process of differentiating, "othering," and subordinating a majority group over a minority group in a society or a nation-state,⁹ is seen as necessarily existing to advance and promote, both materially and psychologically, the interests and privileges of members within the dominant power structure. In America's case, CRT helped foster "Whiteness Studies" to examine the power and preference (e.g., material wealth, prestige, privilege, opportunity, etc.) that both naturally and not-so-naturally accrues to the White majority or elite. Due to the "normalisation" of this dynamic, it becomes embedded and self-perpetuating, where even the most well-intentioned members of the elite will have little awareness or incentive to eliminate this system (due in part

to "structural determinism,"¹⁰ i.e., the milieu in which people have been raised and live their lives necessarily makes them blind to the viewpoints and needs of people who have not). Under CRT, the only time power may be ceded to non-dominant peoples is when there is "interest convergence," i.e., when the dominant majority and minorities both stand to gain from a policy shift; then current racial paradigms will be discarded and shifted instead to disfavour another weakened, easily-targeted disenfranchised minority.¹¹ In this sense of being the root of social power relationships, racisms and racialisms will shift over time, but they will nevertheless continue to exist and remain a fundamental ordering force within a society.¹²

THE INSIGHTS OF CRT AND "EMBEDDED RACISM"

To enhance its analytical power, this research has been influenced by CRT to propose a new framework for examining discrimination in Japan: "Embedded Racism" (ER). Both CRT and ER shift the focus away from class and socioeconomic status (viewed more as a consequence of racialised social processes than an effect) and onto "race" as the primary social organiser and differentiator in political enactments and legislative processes.¹³ Both CRT and ER incorporate Postcolonial and Postmodernist schools of thought regarding deconstruction of national narratives and socially-constructed realities. They also go beyond Marxist analytical paradigms that tend to focus more on class due to economic status, less on the social construction and effects of racialised phenotypes in a society.¹⁴ The CRT framework enables the scholar to understand contexts grounded in "political events, personal histories, societal norms, and laws and policies that affect the primary setting."¹⁵ However, ER's contribution of knowledge to the field is that it advocates a universal application of methodology, avoiding "culturally-based" explanations of behaviour and policy outcomes (e.g., "Japanese do this because they are Japanese"). That is to say, by putting contexts in a mysterious "culture box," one tends to ignore universal paradigms of the racialisation process in favour of treating Japan's racism as "exceptional" or "unique" (therefore exempt from analysis under universal concepts of human rights). ER in particular synthesises the structural inequalities reinforced under Essed's concept of "everyday racism"¹⁶ with Sue's unconscious social "othering" of "microaggressions,"¹⁷ and underscores how both the law and the practice of law in a society reflect both conscious and unconscious bias in the past, present and future. CRT and ER view racialisation processes worldwide as

the "central, endemic and permanent" ordering force in terms of power relationships behind the construction of any society¹⁸—particularly how the process of differentiation, othering and subordination of peoples is expressed, normalised, and embedded in law and order.

Like CRT, ER also forces introspection on the part of the scholar. As Chapman (157) writes, CRT "allows scholars to interrogate social, educational and political issues by prioritising the voices of participants and respecting the multiple roles *held by scholars of colour* when conducting research" (emphasis mine)—in the case of this dissertation, the role(s) a Caucasian (i.e., the author) in Japan's "Japanese"-dominated society. In every human society, nobody escapes racialisation (i.e., all people, including scholars, fall into a racial category), which means that the racial category the researcher her or himself falls into will inevitably influence the data set: How the researcher sees the subject, and how the subject sees the researcher, may change not only the answer to a question but also how the question is asked—or even if the question is asked at all. Under CRT, questions of objectivity in social science are suitably raised, problematised and attempted to be accounted for properly under race-based paradigms. As Pillow notes,¹⁹ inquiry through race-based methodologies "push the boundaries of what is acceptable to do and talk about in research;" they "repeatedly challenge the belief that our scientific practices and theories are somehow neutral, and lay a foundation for examining the epistemological foundations of research and developing alternative epistemological frameworks" (186). In short, critical theory models such as CRT have been created "because existing theoretical models and methodological discussions are insufficient to explain the complexity of racialised histories, lives and communities" (ibid).

CRT has been applied primarily to American society and racialised hierarchies within. Nevertheless, this research argues that under ER, the same racialising dynamics can be seen in Japan after substituting group "White" with "Japanese."²⁰ That said, when transposed upon the Japanese context, the terminology on "race" and "racism" in the discussion is not an exact match: For example, "Japanese" as a term is confusing, as it can mean both "a Japanese citizen" (a legal status which can include people of different races and ethnic backgrounds), and "a Japanese by blood" (a racialised paradigm which can include people who do not have Japanese citizenship). The term also overlooks those who are "Japanese" (such as the Burakumin) who have citizenship, physical appearance, and full acculturation and phenotype as "Japanese," yet suffer from discrimination by descent and social origin when further background checks are conducted. So for the purposes of this research, a new term is necessary to

enhance the contours of power relations within Japan's social groupings: "Wajin."

"WAJIN": THE DOMINANT MAJORITY GROUP IN JAPAN

Wajin is a term used in contemporary scholarship on Hokkaidō's indigenous people, the Ainu, to differentiate them from their nineteenth-century Japanese colonisers and present-day "Japanese."²¹ *Wajin* has also been used by the Japanese government as a self-identifier,²² a racialised term to divide "Japanese" into two putative races, "Ainu" and "Wajin," even though according to Wetherall, Okinawans and "most naturalised Japanese... would probably not choose to classify themselves as 'Wajin'."²³ It is a word based upon birth, not legal status.

This article will use the term *Wajin* for two reasons: 1) it is a legitimate, non-pejorative word in modern Japanese language long used to describe Japanese people, even before Japan as a nation-state (or proto-state) began colonising others; 2) it enables the author to define its meaning under new and flexible paradigms. Just as the term "White" can be made useful as both an indicator of social status and as a visual identifier/enforcer of those who have that social status (and allow for flexibility of "shades of White" as people attempt to "pass" as "White" in order to gain power or privilege), *Wajin* will also underscore the performative aspect of the process of differentiation, a) allowing for visual differentiation between people who "look Japanese" and "do not look Japanese"; and b) allowing for "shades" as people "pass" or "do not pass" as "Japanese," finding their status, privileges and immunities affected when they are suddenly revealed as "Non-*Wajin*."

Let us now turn to Japan's official registry systems and the systemic exclusion of non-citizens.

JAPAN'S FAMILY REGISTRY SYSTEM²⁴

With the exception of Japan's royal family, all Japanese citizens are required to have a Family Registry (*koseki*) registered with the Japanese government (GOJ) in order to be acknowledged as citizens, according to the Family Registration Law (*koseki hō*) Articles Six and Seven. Additionally, according to the same law's articles and other articles *passim*, only Japanese citizens may be fully registered on *koseki*. Although registry systems exist in other countries (including the *hukou* in China and Taiwan,

the *ho khau* in Vietnam, the *hoju* in North Korea,²⁵ the *familienbuch* in Germany, the *livret de famille* in France, the *libro de familia* in Spain, etc.), Bryant²⁶ notes that Japan's system is grounded in paradigms not found in other societies. Many countries effectively compile "dossiers" on their citizens (and non-citizens), but they are dossiers on individuals. However, only Japan in the world (and Taiwan, which received the system under Japanese colonisation) has a system predicated upon the notion of *the citizen as a member of a family unit*. This is different from Occidental notions of state power; according to Levin,²⁷ Anglo-European state/society relations are based on the historical notion of a social contract between and individual serf and his lord; Japan's nation-state, however, is based on the notion of a contract between a familial head of household and their lord, putting potentially more intrusive means of social control at the disposal of lower levels of society. Thus, the Japanese State intrinsically has an interest not only in "upright" individuals, but also in "upright" families.²⁸ The further systematic exclusion of non-citizens (already selected by racialised *jus sanguinis* paradigms) from the Japanese family unit in terms of registry therefore creates and further reifies the Wajin/Non-Wajin dichotomy.

Let us use a practical example to illustrate.²⁹ As can be seen in documents available for public view below, between 1989 and 2000 an American named David Aldwinckle was married to a Japanese citizen named Sugawara Ayako as a foreigner. They have two daughters, automatically granted Japanese citizenship through blood ties with their Japanese mother under the Nationality Law. Here is how the Aldwinckle/Sugawara family was rendered on a copy of her Family Register, or *koseki tōhon*, dated 20 September 1999 (Figure 1):

In terms of power relationships under CRT, Bryant (ibid) describes several ways in which Japan's *koseki* system creates superior/subordinate hierarchies and disenfranchises minority voices in Japan. For example, the system subordinates adopted and illegitimate children, maintains Burakumin historical inequalities, excludes *Zainichi* and enfranchises patriarchal systems that subordinate women's identities. Reflecting the historical values and conceits of upper-class Japanese familial relations, the *koseki* system ultimately embeds "value-laden hierarch[ical]" relations throughout Japanese society, including employer-employee, teacher-student, government-governed, male-female and even greater or lesser economic opportunity based upon historical/familial background." It fosters an institutionalisation of a meme of "the stability of the family equals the stability of the country," moreover constructs a majoritarian version of reality that categorises and labels people positively (if they are part of the dominant majority) and negatively if they are part of the minority or in support of minority views. Given how constant and systematic these negative labels become through time, repetition and precedent, Bryant argues that "[many people] have internalized the predominant view that negative labels reflect real distinctions intrinsic to subordinate groups rather than social constructions of reality" (159–160), to the point where many people inured to this system cannot imagine things any other way; moreover, many assume that similar things happen in other societies. This system also makes it difficult for the disenfranchised minority to garner public support against the system, or even claim discrimination under it—for there is no intentional discriminator—therefore disenfranchisement must be due to unintended consequences (161).

However, three issues that Bryant's analysis of the *koseki* system overlooks are: 1) divorce and child abduction/parental alienation; 2) registration of non-citizens in general (covered above); and 3) how the *koseki* system influences other forms of official registry of non-citizens, such as the *jūminhyō* Residency Certificate. Issue 1 is outside the scope of this article, so let us now focus on issue 3, the Residency Registration system.

JAPAN'S JŪMINHYŌ RESIDENCY REGISTRATION SYSTEM (1947–2012)

Japan's residents (*jūmin*) are formally listed on the Basic Residency Register (*jūmin kihon daichō*) under the Basic Residency Register Law (*jūmin kihon daichō hō*) Article 1. This is separate from the Family

Register, under the jurisdiction of the Ministry of Home Affairs (now Ministry of Internal Affairs and Communications [*Jichishō/Sōmushō*]). The contents of the Residency Register are based upon information found in the *koseki*, which is administered by the Regional Legal Affairs Bureau (*Hōmukyoku*) under the jurisdiction of the Ministry of Justice. In other words, one document is an official family lineage record grounded in spatial location (*honseki*), the other is an individual place of residence record, both maintained by local governments but administered by separate ministries.³⁰ According to Basic Residency Register Law Articles 22 and 24, when residents of Japan move house and change address, they are required to update their previous and current local government offices of their current whereabouts on a public register (they may of course move their *koseki* and *jūmin* registries to the same government office, but this can be a cumbersome process). According to Articles Six, 30 and 34 of the same law, a document called the Residency Certificate (*jūminhyō*) is issued as official certification of individual's whereabouts and household's composition. The *jūminhyō*, along with the *koseki tōhon*, is among the documents required as personal identification by employers, banks, credit agencies, taxation bureaus, law enforcement agencies and other government offices as clearance for official matters, meaning access to employment opportunities, bank accounts, lines of credit, welfare and other social benefits. Thus, registration within and access to these official documents is fundamental for life in Japan.³¹

NON-CITIZENS OFFICIALLY RENDERED AS "INVISIBLE RESIDENTS"

However, under the Basic Residency Registry Law Article 39, only people with Japanese nationality (i.e., listed within a *koseki*) were allowed to be listed on a *jūminhyō*. Non-citizens until July 2012 were required to be listed on a separate system in the local government offices under the Foreign Registry Law (*gaikokujin tōroku hō*) Article Four Section Three. For identification purposes, non-citizens were issued with a special document called the "Certificate of Completed Foreigner Registration" (*gaikokujin tōroku zumi shōmeisho* or *tōroku genpyō kisai jikō shōmeisho*), issued by the Immigration Bureau under the jurisdiction of the Ministry of Justice. The Certificate served the same function as a *jūminhyō*, but listed non-citizens as individuals without ties to their Japanese households. This official invisibility due to extranationality becomes clearer when one looks at an actual *jūminhyō* from an international marriage (Figure 2):

この写しは、世帯全員の住民票の原本と相違ないことを証明する。

平成 9年 9月26日

札幌市南区长 藤田 辰志

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氏名	スガワラ アヤコ アルドウィンクル 文子 菅原 文子	生年月日		性別	女	続柄	本人	市民となった日	
札幌市		住所を定め た日		世帯主		世帯主			
前住所								改製年月日	
本籍						筆 頭 者	アルドウィンクル 文子 菅原 文子		
正 氏名・主・戸籍表示									
事実上の世帯主 アルドウィンクル・デビッド									

Figure 2: Sugawara Ayako's *jūminhyō*, dated 26 September 1997, issued by Sapporo Nishi-ku Ward Office. Redacted and annotated by Debito Arudou and used with permission.

The top line of this *jūminhyō* denotes that this document is proof of all members of the household. However, tables within (redacted) list members of the household: Sugawara Ayako, Ami and Anna. However, not listed is the non-citizen father of the household, David Aldwinckle. In fact, the father, in order to be listed at all, had to make a special request of the Ward Office that he be listed in the only way possible for non-citizens—as "Actual Head of Household" (*jijitsujō no setai nushi*). Importantly, in terms of bureaucratic extralegal powers, this was permitted not because of a law passed by Diet legislators, but because of an "ordinance" (*seirei* 292) issued by the Ministry of Justice in 1967 as a form of official "guidance" (*shidō*) to local governments regarding the enforcement of Article 39. With a copy of this ordinance in hand, non-citizens were able to have their name officially included as part of their household certificate, handwritten by a local bureaucrat as a "remark" (*bikō*) (see arrow in Figure 2) on Sugawara's *jūminhyō*.

The point is that non-citizens in Japan, although resident in Japan and paying Residency Tax (*jūminzei*), until July 2012 were officially invisible, i.e., not listed as "residents" because Japan required Japanese citizenship for residency. Non-citizens were also not counted by some local governments as part of Japan's "population" (*jinkō*). For example, in Tōkyō Nerima-ku (see Figure 3):

● 練馬区の世帯と人口（町丁目別）

平成20年10月1日現在（住民基本台帳による）

CSV（カンマ区切りのテキスト）データも提供しています。

※総数には、外国人登録数を含んでいません。

町丁目	世帯数	人口（男）	人口（女）	計
総数(※)	329,007	341,333	347,419	688,752
旭丘	4,294	3,568	3,480	7,048
1丁目	2,980	2,401	2,278	4,679
2丁目	1,314	1,167	1,202	2,369
小竹町	4,515	3,767	4,040	7,807
1丁目	2,612	2,218	2,227	4,445
2丁目	1,903	1,549	1,813	3,362
栄町	2,138	1,738	1,777	3,515
羽沢	3,402	3,159	3,205	6,364
1丁目	824	629	682	1,311
2丁目	1,653	1,596	1,633	3,229
3丁目	925	934	890	1,824
豊玉上	3,497	2,706	2,849	5,555
1丁目	1,200	975	922	1,897

Figure 3: Screen capture excerpt of official tally of "Households and Population, as per the Basic Resident Register," as of 1 October 2008. Courtesy of Tōkyō Nerima-ku Ward Office online (www.city.nerima.tokyo.jp/shiryō/jinko/data/area/200810.html, accessed 23 July 2012).

Note that the asterisked sentence above the chart in Figure 3 explicitly states that non-citizens are not included in the tally.³² This exclusionary process is standardised and normalised: A Google search using the term "人口 総数には、外国人登録数を含んでいません" reveals that other local governments did not officially count "non-citizens" as "residents" in terms of households or population.

CONSEQUENCES OF OFFICIAL STATISTICAL INVISIBILITY FOR NON-CITIZENS: PROBLEMATIC DEMOGRAPHIC SCIENCE

This procedure of rendering non-citizens into "invisible residents" also affects Japan's demographic science. For example, the *Yomiuri Shimbun*³³ reported that a population rise in Japan in 2008 was solely due to the "rise in the number of repatriates and newly naturalised citizens," glibly noting, "The figure was based on resident registrations at municipal government offices and does not include foreign residents." Another example was found in a 2 June 2009³⁴ talk given by Takahashi Shigesato, Deputy Director of Japan's National Institute for Population and Social Security Research (*Kokuritsu Shakai Hoshō Jinkō Mondai Kenkyūjo, fuku shochō*), offered his prediction that "Japanese will be extinct by the year 3000." However, he explicitly omitted population inflows, i.e., immigration, meaning that people exclusive of naturalised Japanese citizens—Wajin—were the ones being referred to as "extinct." When asked the reasoning behind this methodology during question time, Takahashi replied, "Immigration is not an option for our country. Inflows must be strictly controlled for fear of overpopulation." Thus, despite a country in demographic decrease, a sudden theoretical "overpopulation problem" was due to an overabundance of Non-Wajin in Japan. That is to argue, in essence, "more 'foreigners' means less Japan"—a political, not scientific, conceit.

Finally, when the GOJ does survey the citizen and non-citizen population, for example every five years in the form of the National Census (*kokusei chōsa*), demographic science along the Wajin/Non-Wajin dichotomy is still observed. The National Census does not survey for ethnicity (*minzoku*), only for nationality (*kokuseki*), meaning that participants can only choose one option for their social origin.³⁵ In practice, this means that abovementioned naturalised citizen Debito Arudou, an American-Japanese, can only indicate "Japanese" (*nihonjin*) on the form despite his Non-Wajin roots. His children face the same situation, where their Wajin roots officially mask their ethnic American origins. Thus, this officially-surveyed invisibility ignores the existence of Wajin from international marriages with "multiethnic" origins. Of course, this multinational situation, as the Nationality Law (Articles 14 to 16), must be legally reconciled by the age of twenty with the official choice of one nationality (therefore, officially, one ethnicity). In sum, Japan's officially-observed and legally-enforced invisibility of both extranationality and multiethnicity maintains the official national narrative of monoethnicity.

NON-TAXPAYING ANIMALS AND FICTIONAL CHARACTERS LISTED AS "HONORARY RESIDENTS"³⁶

In contrast to how non-citizens are registered, there have been cases of local governments "honouring" non-humans with "Honorary Residency Certificates" (*kari jūminhyō*) as publicity stunts. The most famous case was "Tama-chan," a sea lion found upriver at Yokohama's Tamagawa River, which was granted "honorary residency" in 2003 by the Nishi-ku Ward Office reportedly for his inspiration of hope to Yokohama residents. This occasioned protest by non-citizens, some of whom dressed up as sea lions and asked for their own *jūminhyō* in a public protest (their request was denied; Nishi-ku officials stated that the register was a national-level system and they could not themselves amend it to allow in non-citizens). Other municipalities also granted not only animals but also fictional characters "honorary residency," including Saitama's Niiza City (2003) to anime character "Mighty Atom" (*tetsuwan atomu*); Saitama's Kusukabe City (2004) to anime character "Crayon Shin-chan;" Aichi's Seiyo City (2008) to three local blue-eyed dolls; Hokkaido's Kushiro City (2009) to sea otter "Kū-chan" (2009); Tōkyō's Itabashi-ku (2010) to local household dogs; and Aichi's Handa City (2011) to fictional character "Gonkichi-kun."

JAPAN'S REGISTRY SYSTEMS AND THE POTENTIAL EXCLUSION OF MIXED-BLOOD CITIZENS

Japan's Nationality Law Articles 14 to 16 do not permit multiple nationalities for Japanese citizens; children of international couples registered in Japan have until the age of twenty to formally choose Japanese citizenship. However, registry systems in Japan have also presented a barrier to children being listed on a *koseki*, therefore ineligible for Japanese citizenship. Until 1985, citizenship could only pass through a Japanese-citizen father, not a Japanese-citizen mother, which disqualified all children from relationships between non-citizen men and Japanese-citizen women. After 1985, the Nationality Law was amended to allow any children born to Japanese-citizen mothers to have Japanese citizenship automatically conferred. For Japanese-citizen fathers, however, getting official recognition of paternity continued to be an issue, as illegitimate children (*hi chakushutsu shi*) born out of wedlock to non-citizen mothers either had to have Japanese paternity formally acknowledged by registry at a government office before birth, or within 14 days of birth³⁷ as per Article

49 of the Family Registry Law.³⁸ If not, the child would not be recognised as a Japanese citizen. Modern methods independent of the State used to establish paternity, such as DNA testing, are still not officially recognised.³⁹ Further complicating matters is Article 12 of the Nationality Law, which states that a Japanese national born in a foreign country acquiring foreign nationality by birth shall be denied Japanese nationality, unless properly registered at a GOJ registry office within three months of birth as per Family Registration Law Article 49. Thus, bureaucratic registry convenience is legally given priority over biological fact, with a special hurdle for mixed-blood Wajin children—for if both parents giving birth overseas were only Japanese citizens, Article 12 would not apply.⁴⁰

"NATIONALITY CLAUSES" AND "KOKUMIN CONCEITS": KOKUMIN-BASED EXCLUSIONS FROM SOCIAL WELFARE BENEFITS

Within Japan laws, national policies and public policy papers, the words *wagakuni* ("our country"), *wareware nipponjin* ("we Japanese") and *kokumin* ("people of the nation," i.e., Japanese nationals) are commonly embedded as part of the discourse. Semantically, reasonable substitutes are available in the Japanese language, including *shimin* ("people of the city" or citizen), *juumin* ("residents"), *hitobito* ("people" in general), and *ningen* ("human beings"); these words would include all people, if not resident taxpayers, regardless of nationality. However, both the choice of the word *kokumin*, etc., and the subsequent application of the dichotomous *kokumin/gaikokujin* paradigm in laws and social systems, enforce differentiations between citizen and non-citizen taxpayers. This in practice has excluded non-citizens from equal access to social benefits.

The most famous example of the *kokumin* dichotomy is within the Japanese Constitution itself: Article 14, the very article that forbids discrimination by race and social origin. The original English version writes, "All of the *people* are equal under the law" [*emphasis added*], while in the Japanese translation (the version with legal force in Japan) the word "people" is rendered as *kokumin*. Although legal precedent has established that human rights protections in civil court will technically apply equally to citizens and non-citizens,⁴¹ differences in application by nationality become apparent through the application of what Dower⁴² unequivocally calls the "blatantly racist... linguistic subterfuge" endemic to Japan's postwar Constitutional history. Dower labels it the product of "language games" in

translations, deliberately chosen to eliminate equal civil rights and protections under the law for resident non-citizens.

For example, the basic National Health Insurance plan is indicatively titled *Kokumin Kenkō Hoken* (*emphasis mine*). Despite health insurance being mandatory for all workers in Japan (*rōdōsha*) regardless of nationality (under the Labor Standards Law [*rōdō kijun hō*] and Health Insurance Law [*kenkō hoken hō*]),⁴³ foreigners were excluded from *Kokumin Kenkō Hoken* entirely until 1982.⁴⁴ Even after reforms to remove the requirement of nationality, the Shizuoka Prefectural Government, for one, continued to exclude all foreigners (including its comparatively large and then-growing *Nikkei* South American workforce) from coverage until the late 1990s.⁴⁵ More recently, Ōita Prefecture denied welfare benefits in 2008 to an 79-year-old *Zainichi* Chinese woman by claiming that Japanese nationality was required for social welfare; this was affirmed in 2010 by the Ōita District and High Courts, which ruled that welfare was not a "charity" for non-citizens. These rulings were finally overturned by the Fukuoka High Court in 2011, citing treaty obligations governing refugees (*sic*) guaranteeing treatment on par with citizens.⁴⁶ Thus, the "conceit of *kokumin*" embedded within the legislative process exposes non-citizens to unequal treatment under Japan's law.

In terms of public policy, the Japanese government not only excludes, but overtly targets and disempowers non-citizens for unequal treatment specifically because they lack Japanese citizenship. For example, let us consider other explicit exclusions of "foreigners" from equal treatment under Japanese laws. One example is employment involving the dispensation of public authority.

THE "NATIONALITY CLAUSE" I: KOKUMIN-BASED EXCLUSIONS FROM PUBLIC-SECTOR EMPLOYMENT

Some employment in Japan explicitly requires Japanese nationality as a qualification. The "Nationality Clause" (*kokuseki jōkō*) is found in public-sector job descriptions with embedded clauses such as "*nihon kokumin*" and "*kokuseki o yū suru hito*." It was promulgated from 1953 by the Cabinet Legislative Bureau as an "unwritten government decree" to bar non-citizens from having authority "making decisions that affect the [Japanese] public," or "which have a bearing on the formulation of national intention."⁴⁷ This mandate has been interpreted broadly: As of this writing, job positions that require Japanese nationality include foreign-service bureaucrats, elected politicians and sometimes their staff, Self-Defense Forces, notary publics,

judges and jurors, members of boards of education, public safety officials, public election staff, public welfare staff, public prosecutors, Human Rights Bureau staff, tax collectors and firefighters.⁴⁸ Non-citizens have been hired for other public-sector employment both at the national- and local-government level, but then they face a different barrier by being forbidden to take examinations for promotion to higher-level administrative positions (*kanrishoku*); in effect, non-citizens remained as full-time workers (generally on a renewable-contract basis), but never could rise to managers over citizens. However, by 1993, Kawasaki became the first major city to open up public-sector administrative posts to non-citizens (when Kochi Prefecture and Osaka City attempted to follow suit, the Home Affairs Ministry, according to the Yomiuri Shimbun pressured them to desist).⁴⁹ By 1996, the national government relented, stating that local governments may decide for themselves whether they would enforce a Nationality Clause,⁵⁰ and subsequently locales both large and small, including Ōsaka City, Kōchi Prefecture, Niigata's Jōetsu City and Minami Uonuma City,⁵¹ have opened up their hiring practices.⁵²

Nevertheless, some municipalities, notably Tōkyō-to, have remained closed to non-citizens, illustrated famously by the case of second-generation *Zainichi* Korean nurse Chong Hyang Gyun. In 1994, Chong sued the Tōkyō Metropolitan Government for the right to take the promotion exam to become a section chief of hygiene (*eisei kachō*). She lost in the Supreme Court more than a decade later, setting the first precedent legitimising employment discrimination by nationality.⁵³ Moreover, despite a high foreign population by percentage in some areas of Japan, many important positions that might effectively use minority voices and insights when dealing with minority issues, such as law enforcement, have been denied. Despite some further movements towards openness,⁵⁴ Japanese authorities continue to demonstrate a latent distrust of non-citizens in "sensitive positions of trust involving public power" by enforcing exclusionary clauses embedded within bureaucratic rules. By design, this disenfranchises non-citizens from being better represented in public policy formation and enforcement.⁵⁵

THE "NATIONALITY CLAUSE" II: KOKUMIN-BASED EXCLUSIONS FROM PRIVATE-SECTOR EMPLOYMENT

Further, through the power of example and precedent, there has been a policy creep from the public sector into the private, similarly denying non-citizens equal employment opportunities. For example, one non-sensitive

non-policing sector—education—has systematically denied non-citizens non-term-limited contracted employment (i.e., academic tenure) through perpetual *gaikokujin kyōshi*, *gaikokujin kyōin* and *tokubetsu shokutaku* positions in Japan's National and Public Universities (*kokuritsu* and *kōritsu daigaku*). These precedents set in influential universities were then similarly applied to create contract-only employment of non-citizen educators in Japan's private-sector universities (*shiritsu daigaku*).⁵⁶ There are also cases of employment agencies (such as "Hello Work," Japan's official job-finding unemployment office) and other private-sector job-placement companies permitting employers to specify "no foreigners" in their job advertisements.⁵⁷ The practice of explicit Nationality Clauses within the private sector is so normalised that even the Japan Times permits advertisements for "Japanese only" jobs.⁵⁸ This is in violation of Japan's Labor Standards Law (*rōdō kijun hō*), Article Three, which states: "An employer shall not engage in discriminatory treatment with respect to wages, working hours or other working conditions by the reason of the nationality, creed or social status of any worker." This is unenforced due to a Catch-22, i.e., the law does not apply until the person is hired—until then, he or she is technically not yet a "worker" protected by labour law.⁵⁹

In sum, thanks to informal national policy created by the "Nationality Clause" to exclude non-citizens for public-sector work nationwide, precedent was set so that the private-sector could similarly offer non-*kokumin* unequal employment opportunities merely by dint of extranationality. Coupled with a lax enforcement of labour standards law banning discrimination by nationality, and a judiciary that has further legitimised explicit discrimination by nationality, overt job advertisements for "Japanese only" positions further normalise "Japanese only" practices, creating unstable,⁶⁰ limited-term work for non-citizens in many limited employment sectors, and reinforcing a lack of precedent for non-citizen opportunities in untested job markets in Japan.

Thus the July 2012 reforms to Japan's registry systems offered an elemental paradigm shift to the racialised systems of differentiation, "othering," and subordination of minorities and non-citizens in Japan. What kind of an impact will they have?

THE REVISIONS OF 9 JULY 2012: PLUS ÇA CHANGE?⁶¹

Japan's structural changes to its registry systems were twofold: 1) The old Alien Registration System (*gaikokujin tōroku seido*) was abolished, replaced with a "Residency Management System" (*rairyū kanri seido*)

centralised under the Ministry of Internal Affairs and Communication. Instead of local government offices, a national-level authority replaced the old wallet-sized Alien Registration Cards with new computer-chipped wallet-sized *Zairyū* Cards with remotely-readable RFID technology; 2) The Alien Registration Law (*gaikokujin tōroku hō*) was formally abolished, and the Basic Resident Registration Act was modified to permit non-nationals to register on the Basic Resident Register, the same as Japanese nationals. After sixty years of the abovementioned unequal and undignified treatment, Non-Wajin were no longer officially invisible in Japanese families and local population tallies.⁶²

However, how much has changed in practice? Limitations to livelihood remain through "Nationality Clauses" in public- and private-sector employment, and visa statuses remain as restrictive as ever, even if for a potentially longer duration (moreover at the discretion of issuing authorities, with no system of appeal).⁶³ Non-citizens are still not allowed to register on Family Registries with their families, meaning that the concept of "family" and "Japanese nationality" remain intertwined. Non-citizens (and non-citizens only) are still required to carry a form of personal identification on their person at all times (*jōji keitai*) or face criminal procedures with possible arrest and fines. Also, by centralising the issuance of *Zairyū* Cards into a national agency, local and municipal governments (as the previous issuer of Alien Registration Cards) have lost the discretionary power to issue refugees and visa overstayers with temporary identification cards for work and welfare benefits, in effect tightening control over non-citizens even further.⁶⁴ Regarding "convenience for foreigners," amendments and changes in status and address can no longer be made at local government offices; now applicants must visit regional immigration bureaus (occasioning long trips and missed work for non-citizens in rural areas), in a shorter window of time (fourteen calendar days), with harsher fines (up to 200,000 yen).⁶⁵

However, one dramatic legal change in 2012 that could have potentially ceded a degree of power to non-citizens was the abolition of the Alien Registration Law. Section 13 Clause Two of that law had enabled and encouraged the random stopping and questioning of "aliens" by police officers and other officials of the Ministry of Justice (in practice, as determined by sight: i.e., racial profiling).⁶⁶ For citizens, however, this procedure was not permitted without probable cause (*sōtō na riyū*), under the Police Execution of Duties Act (*keisatsukan shokumu shikkō hō*) Section Two Clause Two. By default, non-citizens should now in effect be covered by this Act, but the Immigration Control and Refugee Recognition Act (*shutsunyūkoku kanri oyobi nanmin nintei hō*) Section 23 now contains

the same embedded legal writ institutionalising spot identification checks for "foreigners" only, thus encouraging official racial profiling; the author has also heard recent reports of police subjecting Non-Wajin to random street identification checks to confirm legal visa status. Thus once a racialised legal practice becomes embedded, it remains embedded unless a conscious effort is made to counteract it in legal writ. This did not happen even after the abolition of the Alien Registration Law.

CONCLUSION

It is unclear that the July 2012 revisions constitute any substantive reform. Measures that were officially reported as liberalisations in the name of "convenience" for foreigners (e.g., updated identification cards, centralised bureaucratic procedures, equal registration as residents, abolished Re-Entry Permits, longer visa validity periods) have been offset by tighter bureaucratic controls, harsher penalties for violators and continued means for racial profiling of Non-Wajin. Aside from some cosmetic changes to enforcement, it is unclear in this instance, under CRT's theory of "interest convergence," that any measure of power has been ceded to the non-citizen minority.

However, as viewed through CRT this result is unsurprising, given the degree of Wajin dominance over Japanese society: The non-citizen minority in Japan (and in application, the Non-Wajin who cannot "pass" as Japanese) has long been disenfranchised *to the point of legal invisibility*; this invisibility in terms of the Family Registry system has still not changed. Influenced by CRT, this research argues that this gross inequality continues to exist in Japan, despite constitutional provisions explicitly forbidding discrimination by race, because of the legal and procedural normalisation of an "embedded racism" within Japanese society. This begins elementally with Japan's bloodline-based Nationality Law, extends into daily life through its official registry systems, and is institutionalised through enforcement of laws and even public- and private-sector hiring practices. This normalisation of differentiation, "othering," and subordination has created hegemonic discourses of Japan's homogeneity by making non-citizens and minorities officially disappear. Thus the reform of one segregating system (the Resident Registry) is insufficient when the embedded walls between Wajin and Non-Wajin in the family/citizenship system remain embedded and intact.

This issue goes beyond laws and regulations concerning the control of "immigrants and refugees" (which are aimed at "foreigners" in Japan)

and into issues of protecting people, including *citizens who look foreign* (i.e., the Non-Wajin), from racialised discrimination. The legalisation of a racialised discourse of segregation has made Japan unable to create a specific law in its civil or criminal code outlawing and punishing racialised discrimination—despite Japan's effecting of the United Nations Convention on the Elimination of Racial Discrimination in 1996. Consequently, many people who happen to be Non-Wajin Japanese citizens, particularly naturalised citizens and children of international marriages, are also potentially exposed to the normalised discrimination towards non-citizens. It is unclear when, or even if, an "interest convergence" between Wajin and Non-Wajin will ever occur to compel Wajin to cede some degree of privilege for the sake of Non-Wajin Japanese citizens.⁶⁷

However, the current situation is probably not sustainable, due in part to demographics. Japan's aging society needs people regardless of blood status to keep Japan's economy vital and solvent.⁶⁸ Although CRT dictates that racism is "the usual way society does business," what makes a society "work,"⁶⁹ in Japan's case, Embedded Racism will be what makes Japanese society "not work." It is only a matter of time before the situation reaches a tipping point, as Japan's economy continues to shrink, and its Asian neighbours with their younger and more dynamic economies increasingly outcompete Japan in its traditional export markets. Nevertheless, it is unclear when "interest convergence" will happen, and if it will happen in time to pull Japan up from a potential economic tailspin. In sum, Japan's Embedded Racism that perpetually disenfranchises "the Other" will mean that the unconstitutional lack of legal protections for Japan's minorities, regardless of nationality, will continue for the foreseeable future.

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¹ See for example, "First New Residency Cards for Foreign Nationals Issued at Haneda," *Mainichi Shimbun*, 9 July 2012; "Alien System Ends; Foreigners to be Issued Resident Cards," *Yomiuri Shimbun*, 10 July 2012; "Foreigners Flock for New Residence IDs," *Japan Times*, 10 July 2012; Chapman, D., "No More 'Aliens':

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- Managing the Familiar and the Unfamiliar in Japan," *The Asia Pacific Review* 10, no. 3 (2012): 1–13.
- ² Cf. Delgado, R. and Stefancic, J., *Critical Race Theory: An Introduction*, 1st ed. (New York: New York University Press, 2001); Crenshaw, K. et al., *Critical Race Theory: The Key Writings that Formed the Movement* (New York: The New Press, 1995); et al.
- ³ DuBois, W. E. B., *The Negro* (New York: Holt, 1915), esp. 233–234.
- ⁴ Crenshaw, *Key Writings*, *ibid*, xxii–xxvii.
- ⁵ Solorzano, D. G. and Yosso, T. J., "Critical Race and LatCrit Theory and Method: Counter-storytelling," *Qualitative Studies in Education* 14, no. 4 (2001): 471–495 esp. 474.
- ⁶ Cf. Delgado, R. and Stefancic, J., *Critical Race Theory: An Introduction*, 2nd ed. (New York: New York University Press, 2012); Möschel, M., "Race in Mainland European Legal Analysis: Towards a European Critical Race Theory," *Ethnic and Racial Studies* 34, no. 10 (2011): 1648–1664; Sakata, F., "A Critique of Critical Race Theory: A Textual Analysis of the 'Mr. Gaijin' Mask." (Master's thesis, Queens University, Kingston, Ontario, Canada, 2012); et al.
- ⁷ Cf. Delgado and Stefancic, *Critical Race Theory*; Matsuda, M., "Looking to the Bottom: Critical Legal Studies and Reparations," *Harvard Civil Rights - Civil Liberties Law Review* 22 (1987): 323–399; et al.
- ⁸ There are, naturally, other tenets in CRT's very broad spectrum of disciplines, but the above are the tenets germane to this article. Given its roots in dissent and diversity, CRT as a multidisciplinary umbrella theory is flexible enough in its application within academic disciplines to allow for a selection of approaches.
- ⁹ Miles, R., *Racism after "Race Relations"* (New York: Routledge, 1993), esp. Ch. 5, 136 onwards.
- ¹⁰ Mone, M. A., "Structural Determinism," in *International Encyclopedia of Organization Studies*, ed. Clegg, S. R. and Bailey, J. R. (New York: Sage Publications, 2008).
- ¹¹ Bell, D. A., "*Brown v. Board of Education* and the Interest Convergence Dilemma." *Harvard Law Review* 93, no. 3 (1980): 518–533.
- ¹² Miles, *ibid*, esp. 135, 153–154.
- ¹³ Chapman, T., "Looking from Points of Strength: Using Portraiture and Critical Race Theory in Educational Research." *Educational Researcher* 36, no. 3 (2007): 156–162.
- ¹⁴ Wodak, R. and Meyer, M. (eds.), *Methods for Critical Discourse Analysis* (London: Sage, 2009), 8.
- ¹⁵ Chapman, *ibid*, 157.
- ¹⁶ Essed, P., *Understanding Everyday Racism: An Interdisciplinary Theory* (University of Amsterdam: Sage, 1991).
- ¹⁷ Sue, D. W. and Rivera, D., "Racial Microaggressions in Everyday Life," *Psychology Today*, 5 October 2010.
- ¹⁸ Solorzano and Yosso, *ibid*, 472.
- ¹⁹ Pillow, W., "Race-based Methodologies: Multicultural Methods or Epistemological Shifts?" In *Interrogating Racism in Qualitative Research Methodology*, ed. Lopez, G. R. and Parker, L. (New York: Peter Lang, 2003), 181–202.
- ²⁰ Levin, M., "The Wajin's Whiteness: Law and Race and Privilege in Japan." *Hōritsu Jihō* 80, no. 2 (2008): 14–21.

- ²¹ Cf. Kramer, E. M., ed., *The Emerging Monoculture: Assimilation and the "Model Minority"* (Westport, CT: Praeger Publishers, 1993); Sjöberg, K., *Return of the Ainu: Cultural Mobilization and the Practice of Ethnicity in Japan* (Amsterdam: Harwood Academic Publishers, 1993); Siddle, R. M., *Race, Resistance, and the Ainu of Japan* (Abingdon, UK: Routledge, 1996); Hardacre, H. and Kern, A. (eds). *New Directions in the Study of Meiji Japan* (Boston: Brill Academic Publishers, 1997); Kayano S., Iijima S. and Suzuki, D. T., *The Ainu: A Story of Japan's Original People* (Hong Kong: Periplus Editions, 2003); Weiner, M. (ed.), *Japan's Minorities: The Illusion of Homogeneity*, 2nd ed. (Sheffield: Routledge, 2009).
- ²² Ministry of Foreign Affairs, "Japan's First and Second Periodical Report on Human Rights," submitted to the International Convention on Racial Discrimination, Geneva, Switzerland (1999).
- ²³ Wetherall, W., "The Racialization of Japan," in *Transcultural Japan: At the Borderlands of Race, Gender and Identity*, ed. Willis D. B. and Murphy-Shigematsu, S. (London: Routledge, 2008), 264–281, esp. 272.
- ²⁴ Sources for this section include: Interview with Jeremy D., Morley JD, International Law Office, on the *koseki* system and international divorce, *Canadian Broadcasting Corporation*, 31 March 2006; "New Law Takes on Patriarchal Family System." *Korean Women's Development Institute*, 7 June 2007; "Schizophrenic Constitution Leaves Foreigners' Rights Mired in Confusion," *Japan Times*, 1 November 2011.
- ²⁵ NB: South Korea abolished their *hoju* system in 2008.
- ²⁶ Bryant, T. B., "For the Sake of the Country, for the Sake of the Family: The Oppressive Impact of Family Registration on Women and Minorities in Japan," *UCLA Law Review* 39 (1991): 109–168.
- ²⁷ Lecture, 11 April 2012, University of Hawaii at Mānoa School of Law.
- ²⁸ See also Miyamoto, Y., Ninomiya, S. and Shin, K. Y., "The Family, Koseki, and the Individual: Japanese and Korean Experiences," *Asia-Pacific Journal* 9, no. 36 (2011): 5.
- ²⁹ NB: Permission has been granted by David Aldwinckle/Debito Arudou to use his information in this research.
- ³⁰ Correspondence with Saga City Hall, February 2003. Thanks to Edward Crandall, reporter, Saga Shimbun, for helping to untangle this complicated system of jurisdictions.
- ³¹ See *inter alia*, "Living Off the Record," *Japan Times*, 20 January 2002; An example of official documents required to open an account at Mitsubishi-UFJ Bank, including *koseki* and/or *jūminhyō*, may be found at www.bk.mufg.jp/ippan/law/kakunin.html (Japanese; accessed 22 July 2013).
- ³² The shortcomings of a system making a section of Japan's population invisible became clearer during a scandal in 2010, when it came to light that long-dead citizens were still being counted as alive, due to bureaucratic errors and lack of registry notification by the next of kin. There are also cases of people being registered as deceased for nefarious purposes. See *inter alia*, "Tokyo's Oldest Listed Person, Age 113, is Missing," *Associated Press*, 3 August 2010; "Man, 63, Declared Dead by Kin in 1995 Arrested in Burglary," *Kyodo News*, 6 August 2010.
- ³³ "Population Rises First Time in 3 Years," *Yomiuri Shimbun*, 1 August 2008.
- ³⁴ Speech, "Demographic Changes in Japan: Economic Globalization and Changes in Family Formation," paper presented at international symposium, "Imploding

Populations: Global and Local Challenges of Demographic Change," 2–4 June 2009, sponsored by the German Institute of Japanese Studies, Tōkyō. See information site at http://www.dijtokyo.org/?page=event_detail.php&p_id=565 (accessed 1 January 2013). Interestingly, all Wajin scientists presenting at this symposium omitted immigration as a phenomenon from their presentations, eliminating a fundamental scientific phenomenon from their demographic science (i.e., births, deaths, outflows and inflows). See "Demography vs. Demagoguery: When Politics, Science Collide," *Japan Times*, 3 November 2009.

³⁵ See *inter alia*, "Census Blind to Japan's True Diversity," *Japan Times*, 5 October 2010. The official multilingual 2010 National Census website may be found at <http://www.stat.go.jp/data/kokusei/2010/special/index.htm> (accessed 1 January 2013).

³⁶ Sources include: "Jūminhyō to gaikokujin" (Foreigners and Residency Certificates), *Saga Shimbun*, 12 February 2003; "Watashitachi ni mo jūminhyō o" (Give Us also a Residency Certificate), *Asahi Shimbun*, 22 February 2003; "Zainichi Gaikokujin wa Tamachan ika?" (Are Zainichi Foreigners Lower than Tamachan?), *Newsweek Japan*, 5 March 2003; "Sealing the Deal on Public Meetings," *Japan Times*, 4 March 2003; "Tetsuwan Atomu wa jūminhyō o" (Tetsuwan Atomu Gets a Residency Certificate), *Kyodo News*, 19 March 2003; "Tamachan yūjinkai no minasama" (To all Friends of Tamachan), Yokohama Nishi-ku Ward Office, 31 March 2003; "Jūminhyō anime ni kōfu, gaikokujin ni wa?" (If Animated Characters are Issued a Residency Certificate, How About Foreigners?), *Asahi Shimbun Watashi no Shiten* column, 8 November 2003; "If Cartoon Kids Have it, Why Not Foreigners?" *Asahi Shimbun "Point of View" column*, 29 December 2003; "Aoi me no ningyō ni shiminken" (Blue-eyed Dolls Get City Citizen Rights), *Sankei Shimbun*, 17 March 2008; "Popular Sea Otter Receives Special Residency Status," *Mainichi Daily News*, 3 May 2009; "Itabashi-ku ga inu no tōroku ritsu appu mezashi, jūminhyō hakkō e" (Itabashi-ku Aims to Increase Registry Rates for Dogs, Heads towards Issuing them Residency Certificates), *Sankei Shimbun*, 20 January 2010; "Inu no Jūminhyō" (Dogs Also Get Residency Certificates), from Itabashi-ku's official rabies awareness-raising campaign, dated 20 January 2010; "Himago 'Gonkichi-kun' uke toru." (Fictional Character Gonkichi-kun Gets a Residency Certificate), *Yomiuri Shimbun*, 3 October 2011.

³⁷ Acknowledgment of Japanese paternity after birth is a relatively new development, for until 2008, Japanese fathers of illegitimate children with non-citizen mothers could only register their children as their own if they acknowledged paternity before birth. A Supreme Court judgment on 4 June 2008 declared that this was an unconstitutional violation of their human rights. The Nationality Law was amended accordingly later that year. That said, the window was extended to only fourteen days after birth, with further disqualifications placed upon children with non-Japanese citizenships added through a 2012 court decision, ostensibly due to a "false paternity" media scare in policy circles during 2008. See "Citizenship for Kids Still Tall Order," *Japan Times*, 5 November 2008; "Steps Mullied for Preventing False Paternity," *Yomiuri Shimbun*, 26 November 2008; and "Nationality Law Tweak Lacks DNA Test: Critics," *Japan Times*, 27 November 2008.

³⁸ The procedures for this are the Japanese citizen father must take a signed and translated acknowledgment of paternity from the non-citizen mother to a Ward Office and submit a form for "Recognition of an Unborn Child" (*taiji ninchi*). The Ward

Office will issue a "Certificate of Acceptance of the Recognition of an Unborn Child" (*ninchi todoke juri shōmeisho*). Once the baby is born, the father must take the birth certificate (translated if from overseas) and get an official registered Japanese birth certificate (*shussei todoke*). See *inter alia*, Higuchi, A. and Arudou, D., *Handbook for Newcomers, Migrants, and Immigrants to Japan*, 1st ed. (Tōkyō: Akashi Shoten, 2008), 270–273.

³⁹ Japan's Civil Code Article 772 establishes that any child born within 300 days of a legal divorce is still legally considered as fathered by the ex-husband (regardless of nationality), without regard to actual paternity, meaning mothers must settle the often complicated process of divorce before starting families anew. See "New Divorcees Push for DNA Testing to be Allowed to Prove Paternity of Newborn Children," *Mainichi Daily News*, 8 January 2007; also "Nationality Law Tweak Lacks DNA Test: Critics," *Japan Times*, 27 November 2008. For more information on divorce proceedings in Japan, see Higuchi and Arudou (*ibid*, 256–271), and Fuess, H., *Divorce in Japan: Family, Gender and the State 1600–2000* (Palo Alto, CA: Stanford University Press, 2004).

⁴⁰ Several children with one Japanese parent claimed in Tokyo District Court that Article 12 of the Nationality Law was unconstitutional if their parents had been unaware of this requirement. On 23 March 2012, the court declared Article 12 constitutional. This put a boundary on the abovementioned 2008 Supreme Court decision ruling the denial of Japanese citizenship was a violation of the human rights of Japanese citizens. See "Court Rules Nationality Law on Foreign Country-born Children Legal," *Asahi Shimbun*, 25 March 2012.

⁴¹ Interviews, lawyer Itoh Hideko, 2001–2002.

⁴² Dower, J. W., *Embracing Defeat: Japan in the Wake of World War II* (New York: W. W. Norton, 1999), 393–394.

⁴³ All full-time (*jōkin*) workers (i.e., working more than 30 hours per week) in Japan must be enrolled in some form of health insurance by their employer. People working part-time (*hijōkin*) are required by law to enroll in the National Health Insurance program and pay full premium costs by themselves. However, every worker in Japan must be in some form of health insurance regardless of nationality. See Higuchi and Arudou (2008), *ibid*, 90–95.

⁴⁴ This was legalised at the time under Public Pension Law Article 7. See Iwasawa, Y., *International Law, Human Rights, and Japanese Law: The Impact of International Law on Japanese Law* (Oxford: Clarendon Press, 1998), 301.

⁴⁵ See Bortz, A., "Brazilians that Were Victims of Discrimination in Japan," Press Conference at the Foreign Correspondents Club of Japan, 1 October 1998 (Note 2, Item 4).

⁴⁶ See "Foreigners Have No Right to Welfare Payments, Rules Oita District Court," *Mainichi Shimbun*, 18 October 2010; "Court Rules Noncitizens Eligible for Welfare," *Yomiuri Shimbun*, 17 November 2011; and "Kim to 'flyjin,' a top 10 for 2012," *Japan Times*, 3 January 2012, no. 6: "What caused the confusion was that in 1981, the Diet [Parliament] decided that revising the public welfare law to eliminate nationality requirements was unnecessary, since practical application already provided non-Japanese with benefits. Three decades later, Oita Prefecture still hadn't gotten the memo."

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- ⁴⁷ See "Government Permits Hiring of Foreigners," *Yomiuri Shimbun*, 23 November 1996; "Kochi Defies Tokyo and Will Hire Foreigners," *Asahi Evening News*, 21 February 1996; "Supreme Court Scraps Japanese Nationality Requirement for Legal Training," *Asahi Shimbun*, 29 October 2009.
- ⁴⁸ Although it is not desirable to cite Wikipedia under any circumstances, its substantiating section of footnotes under *kokuseki jōkō*, containing the exact text, chapter and verse of certain public-sector job descriptions, is excellent. For brevity's sake and to avoid listing dozens of sources, please see <http://ja.wikipedia.org/wiki/国籍条項#.E8.84.9A.E6.B3.A8> (Japanese, accessed 1 January 2013).
- ⁴⁹ See "Government Permits Hiring of Foreigners," *Yomiuri Shimbun*, 23 November 1996.
- ⁵⁰ Ibid. This turnaround was front-page news at the time because, the article notes: "Kochi Prefecture and Osaka city also planned to hire foreigners for government positions in the current fiscal year, but later dropped these plans, apparently in the face of pressure from the Home Affairs Ministry and prefectural and municipal assemblies... The Cabinet Legislative Bureau announced the policy in 1953 on grounds that foreigners should not hold positions involving the formulation of policies. The Home Affairs Ministry confirmed that stance in 1993 by telling local governments it did not approve of hiring non-Japanese for administrative positions." The Nationality Clause is thus enforced by the central government as an instrument of public policy to actively keep "foreigners" out of secure public-sector jobs.
- ⁵¹ Ibid. See also "*Jōetsu-shi ga kokuseki jōkō kanzen haishi e*," *Niigata Nippō*, 28 March 2007.
- ⁵² "According to a survey by the All Japan Prefectural and Municipal Workers' Union, 354 small cities, towns and villages—about 30% of the 1,195 around the nation—had either done away with that requirement or never had one. Despite this, and in the absence of any legal stipulation, the Home Affairs Ministry continues to insist on rigidly apply the nationality requirement to all prefectural governments and municipal governments of major cities." *Asahi Shimbun*, 21 February 1996, *ibid.*
- ⁵³ Chong's precedent-setting case took more than ten years, from 1994 to 2005, where the Tōkyō District Court ruled her exclusion from examination was constitutional in 1996, which the Tōkyō High Court later that year reversed as it violated constitutional freedoms to choose one's occupation. The Supreme Court in January 2005 ultimately reversed the High Court's decision and confirmed the constitutionality of Chong's exclusion. According to the Japan Times, "The majority of the justices said that some local government-level civil servants are entrusted with tasks that involve the exercise of public authority, and that in doing so their actions greatly affect the lives of residents. 'Based on the (constitutional) principle of national sovereignty and in view of the fact that the people should in the end be responsible for how the central and local governments govern, (the Constitution) should be viewed as presuming that Japanese nationals in principle will assume local civil service positions' that require the exercise of public authority, they stated." See *inter alia*, "Tokyo Court Rejects Ethnic Korean's Promotion Bid," *Asahi Evening News*, 17 May 1996; "I Just Want to Make Japan a Better Place to Live," Chong's interview in *Japan Focus*, 4 February 2005; "Promotion Just for Japanese: Supreme Court," *Japan*

Times, 27 January 2005; "Korean Worker Who Sued Tokyo Government Retires," *Yomiuri Shimbun*, 3 April 2012.

- ⁵⁴ See "Supreme Court Scraps Japanese Nationality Requirement for Legal Training," *Asahi Shimbun*, 29 October 2009, where the highest court determined that non-citizens may also receive legal training for careers as lawyers in Japan. However, since many openings have been based upon specific challenges to the procuracy, the system remains a patchwork of regulations. Colin Jones, C., "Schizophrenic Constitution Leaves Foreigners Rights Mired in Confusion," *Japan Times*, 1 November 2011. As Jones reports on the arbitrary enforcement of the Nationality Clause: "Foreigners are not helped by the mishmash of other rules and rulings on the subject of their constitutional privileges... Which of the following vocations are open to non-Japanese? 1) national university professor (yes); 2) family court mediator (no); 3) non-managerial local government bureaucrat (yes); 4) managerial local government bureaucrat (no); 5) member of a national government panel advising on national policy (yes); 6) trainee at the Supreme Court's legal research and training institute (until 2009, officially no, but actually maybe; since 2009, yes); and 7) MP's secretary (yes). Though the official line is that only Japanese nationals may participate in the exercise of state power, it is hard to find any real logic in the answers."
- ⁵⁵ For example, a *Nikkei* Brazilian was denied employment as a probation officer in Shizuoka in 2007. According to the *Yomiuri Shimbun* of 8 July 2007, "[W]hen the probation office contacted the Justice Ministry's Rehabilitation Bureau to get approval for Kodama's appointment, the [Justice] ministry rejected the idea, saying it would be problematic to offer the post of probation officer to a foreigner because the exercising of public authority would be involved in cases such as when a probation officer informs the chief of the probation office if a youth breaks a promise with a probation officer, which could result in the chief applying for parole to be canceled. According to the ministry's Rehabilitation Bureau, it provided the opinion based on the opinion of the Cabinet Legislation Bureau in which Japanese citizenship is required for public servants who exercise public authority and make decisions that affect the public. In January 2005, the Supreme Court gave a similar viewpoint in a lawsuit filed over the Tokyo metropolitan government's refusal to let a foreigner take management position tests."
- ⁵⁶ A full discussion of the term-limited-contract (*ninkisei*) employment issue is too complicated to do justice to within this research, given that "optional" (*sentaku*) *ninkisei* as of 1997 (cf. *Dai 4-ki Daigaku Shingikai Tōshin Hōkoku Shū*, [Assembled reports and answers from the fourth University Deliberation Council] November 1997, page 9, item 6) has also been instituted for Japanese-citizen educators (although in practice not on the same scale as it has been implemented for non-citizens). In the interests of brevity, see an online archive of referential materials, academic publications, and primary sources at <http://www.debito.org/activistspage.html#ninkisei>. See also Hall, I., *Cartels of the Mind: Japan's Intellectual Closed Shop* (New York: W. W. Norton, 1998), esp. Ch. 3.
- ⁵⁷ Interview, Zeus Enterprise Inc., found through "Hello Work," October 2010. Archive and "Japanese only" screen capture at <http://www.debito.org/?p=7661> (accessed 1 January 2013); Interview, job placement agency Workers K. K. Takadanobaba, Tōkyō, 20 October 2008. Archive and "Japanese only" sign at

- <http://www.debito.org/?p=1949> (accessed 1 January 2013). Both archives contain comments from readers corroborating their experiences with "Hello Work" turning a blind eye to "Japanese only" job restrictions. Sources used with permission.
- ⁵⁸ See three "Japanese only" advertisements within the *Japan Times* Classified Ads of 9 March 2009, for example. The Japan Times' explicit policy regarding Classified Ads is, "We will not accept ads that solicit companionship, etc., or that are, or may easily be construed as illegal, misleading, fraudulent, indecent, suggestive or offensive." Although "discriminatory" is not listed as a disqualifier, "illegal" under Labor Standards Law Article 3 should technically apply. When one of Japan's premier English-language newspapers permits ads of this nature, it is indicative of how standard and normalised these exclusionary practices are in Japan. Archive at <http://www.debito.org/?p=2645>, used with permission.
- ⁵⁹ Interview, Sapporo Labor Standards Bureau, July 1992. This lack of *a priori* enforcement mechanism would have to be tested in civil court with a non-citizen plaintiff, who would probably be unwilling to work at defendant's workplace anyway after winning against them in court.
- ⁶⁰ Regarding non-citizen lack of job stability through contract work: As Terrie's Take, an economic newsletter notes regarding Japan's economic downturn from 2007, "So, given that there are at least 755,000 foreigners (as of 2006) working here in Japan, and probably another 350,000 or so working illegally, you can bet that this group will be another at-risk segment to lose their jobs. The AP article says that the government "Hello Work" centres used to get about 700 foreigners looking for jobs each month, but in August due to the massive layoffs by auto manufacturers, the numbers of foreign newly jobless people doubled to 1,500 a month. Local officials note that the number of Japanese applicants has not changed appreciably (yet)—so clearly Toyota, Honda, and Yamaha are dumping on their Brazilian-Japanese and Chinese workers first." See *Terrie's Take* No. 492, 2 November 2008; and "Foreigners Laid Off in Japanese Downturn," *Associated Press*, 22 October 2008.
- ⁶¹ See Chapman, D., "No More 'Aliens'" and "Changes to the Basic Resident Law," Ministry of Internal Affairs and Communication, 2011, at http://www.soumu.go.jp/main_sosiki/jichi_gyousei/c-gyousei/zairyu_english.html (accessed 1 January 2013).
- ⁶² Other reforms included the extension of maximum duration of visas from three years to five, and the near-abolition of Re-Entry Permits (*sainyūkoku kyōka*). The second reform is arguable more significant (as it remains unclear how many people will actually receive five-year visas), because Re-Entry Permits have long been derided as a "foreigner tax" on non-citizen residents leaving Japan temporarily. The allusion is not inaccurate. When reforms to the Immigration law that were promulgated in 2009 revealed the abolition of the Re-Entry Permits, *Eurobiz Magazine* ("Your New Alien Registration Card," August 2010) reported, "Without re-entry permit income, currently ¥6,000 for multiple re-entry, the changes are likely to lighten the government's coffers. 'This is a huge reduction in our revenue,' said [Matsuno Hiroaki, a deputy director at the Ministry of Justice]. 'The Ministry of Finance is angry.'"
- ⁶³ See *inter alia*, "Arbitrary Rulings Equal Bad PR," *Japan Times*, 27 May 2008. See also current official qualifications for permanent residency and the lack of appeal

mechanism at <http://www.immi-moj.go.jp/english/tetuduki/kanri/shyorui/05.html> (accessed 1 January 2013).

- ⁶⁴ "Illegal immigrants could lose basic social services under new resident system," *Asahi Shimbun*, 9 July 2012.
- ⁶⁵ Immigration Bureau website, "New System of Residence Management," 2010. http://www.immi-moj.go.jp/english/newimmiact/q_a_details1_english.html (accessed 1 January 2013).
- ⁶⁶ See for example, "Know the Law: As Terror Fears Cause Crackdown, Foreign Residents Should Know their Legal Rights," *Japan Times*, 27 July 2004. I am also indebted to Dr. Colin P. A. Jones, Attorney and Professor of Law at Dōshisha University, in correspondences dated 17 July 2012 and 6 January 2013.
- ⁶⁷ The most effective tool has been international pressure, known as *gaiatsu*, where international public shame has occasioned many a domestic law (albeit mostly without enforcement mechanisms therein, cf. the Equal Employment Opportunities Law of 1985, which has no criminal penalties). See Peek, J. M., "Japan and the International Bill of Rights," *Journal of Northeast Asian Studies* 10, no. 3 (1991): 3–16; also Peek, J. M., "Japan, The United Nations, and Human Rights," *Asian Survey* 32, no. 3 (1992): 217–229. Moreover, debate about Japan's aging society and demographic crisis, where there are too few young people to pay taxes and support of an elderly society, have happened for more than a decade in Japan, with no perceptible shift towards favouring immigration. See "Demography vs. Demagoguery," *Japan Times*, 3 November 2009.
- ⁶⁸ Sakanaka H., *A New Framework for Japan's Immigration Policies* (Tōkyo: Japan Immigration Policy Institute, 2007).
- ⁶⁹ Delgado and Stefancic, *ibid*, 7.