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The Japanese Model of Immigration and Citizenship?

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Abstract This article provides knowledge to examine the ‘challenge to the nation-state’ debate in terms of citizenship, focusing on Japanese experiences outside the Western sphere. While some scholars emphasise human rights and insist that post-national form is a ‘normal’ type of citizenship, other scholars argue that national citizenship is still powerful and that post-national citizenship is only a ‘deviant’ model. Both sides come to an impasse, partly because they only consider Western countries. The Japanese experiences afford an opportunity to reconsider the debate. Since Japan opened herself to foreigners in the middle of the nineteenth century, she has kept *jus sanguinis* as a principle of attribution and transmission of citizenship. Just after World War II, the reference community in Japan changed from *empire* into *nation-state* very harshly. During the postwar period, since Japan, under international pressure, began to face human rights claims, she transforms the claims into a matter of nationality based on *nation-state* in the context of bilateral international reciprocity, the historical legacy of the War and legal consistencies. For Japan, post-national citizenship can be only a ‘deviant’ form even at the turn of the century.

KEYWORDS: the ‘challenge to the nation-state’ debate; post-national citizenship; the reference community; *jus sanguinis*; Japan

1 Introduction

Since the end of twentieth century, there has been a debate among scholars of macro-orientated immigration studies as to whether immigration is a challenge to the nation-state or not. This challenge is composed of two aspects: one is the challenge to state sovereignty, and the other is the challenge to national citizenship. When the challenge to national citizenship is focused on, theorists of post-national citizenship describe ways in which new and ‘normal’ forms of rights and belonging are displacing national citizenship, particularly in the European Union countries. On the other hand, their opponents argue that post-national form will undermine the actions and the solidarity upon which political community depends. They normatively argue that nation-state should be defended and post-national citizenship is only a ‘deviant’ form (see Joppke 1998). These two opposing theories have come to an impasse for several reasons. One of these is that the situation governing post-national citizenship has not been clarified (Tambil 2001). However, one of the most crucial reasons is that most of the theorists make reference to Western countries only, not enough to understand the difference of two sides in principle.¹

To explore the ‘challenge to the citizenship’ debate, this article extends the analysis to an emerging nation-state outside the traditional Western sphere through a discussion of citizenship in Japan. Most of the world’s nations aspire to democracy and citizenship, yet the historical conditions underlying the development of democratic ideas and practices

vary widely (see Castles and Davidson 2000).

Japan has a smaller foreign and immigrant population (1.2 percent of the total population at the end of 1999) than other developed countries even around the turn of the century. However, Japan is now one of the favourite destinations for migrants from South Korea, North Korea, China, Brazil, the Philippines, Thailand etc. The myth of an immigrant-free country and an ethnically homogeneous society has been exposed.

Is post-national citizenship a stable alternative to, or temporary deviation from, national citizenship? In this article, I will start with a brief discussion of the concept of citizenship, and then, to explore the 'challenge to the citizenship' debate, focusing on two main areas: changes in immigration policy towards foreigners at national government level in Japan, and the political situation concerning the citizenship of immigrants and foreigners at the turn of the century.

2 The concept of citizenship

Before beginning to look at Japanese experiences, some theoretical terms pertaining to citizenship should be examined. As T.H. Marshall (1963: 87,96) defines intensionally, citizenship is 'a status bestowed on those who are full member[s] of a community' and 'requires a bond of a different kind, a direct sense of community membership based on loyalty to a civilisation which is a common possession'. While the first part of the definition refers to a social contract aspect of citizenship concerning equality within the members of a community, the second part suggests an emotional aspect which involves the identity of the members.

As an extensional definition, citizenship is composed of rights and duties of the members. The rights can be further subdivided: civil rights, political rights and social rights. The civil element is composed of the

rights necessary for individual freedom. The political element is the right to participate in the exercise of political power. The social element encompasses everything from the right to a modicum of economic welfare and security, to the right to share fully in a social heritage and live a civilised life according to the standards of the society (Marshall 1963: 73-4).

Marshall's definition suggests an important point in examination of citizenship: the term 'community' is left undefined in his intensional definition of citizenship. Defining the term 'community' has a bearing on who has access to those rights and duties. A 'reference community' will be defined as a people's concept of community which is used as reference when citizenship is provided for members (Tarumoto 1997: 275-7).

During the post-war era the global standard of reference community has been *nation-state*. This type of citizenship is called national citizenship in the debate. In addition to principles such as *egalitarian*, *democratic*, *unique*, *social consequential*, *sacred* and *congruence of polity and cultural body* (Brubaker 1989: 3-4), *nation-state* accompanies principles of attribution and transmission of citizenship: *jus soli* and/or *jus sanguinis*. That is, birthplace and parentage can be used as indices to judge if people should be granted citizenship or not.

In the prewar world, some societies adopted *empire* as the reference community. People were tied directly to an emperor or a king as subjects, and as such were accorded citizenship.

Another type of citizenship mentioned in the debate is post-national citizenship which can be defined as the type of citizenship 'confers upon every *person* the right and duty of participation in the authority structures and public life of a policy, regardless of their historical or cultural ties to that community' (Soysal 1994: 3). The reference community of post-national citizenship is considered as person, because it is considered that

various rights can be claimed based on human rights, and human rights should attribute the characteristics of human being in itself. *Person* accompanies the principle of attribution and transmission of citizenship as ‘being a person’.

One more type of citizenship should be referred to here: denizenship. Denizenship can be defined as the type of citizenship follows granting rights and duties to foreign citizens with a legal and permanent resident status (Hammar 1990: 15). The reference community of denizenship is *residents*, because in the idea of denizenship, people should be granted citizenship based on their residence or domicile (Hammar 1990). Denizenship is not of primary concern in this article, but it should be noted that immigrants and foreigners could enjoy various rights as *residents*, and that *residents* is a different type of reference community from *nation-state* and *person* in principle (Tarumoto 2001).

Is post-national citizenship a stable alternative to, or temporary deviation from, national citizenship in Japan? This question ties in with another: whether the reference community in Japan has become *person* based on human rights or not.

3 The origin of citizenship in Japan: prior to World War II

3.1 Immigration process and immigration policies

After a policy of seclusion lasting for more than two hundred years during the Tokugawa era (1603–1867), Japan concluded commercial treaties with the United States, the Netherlands, Russia, Britain and France (1858), and opened some ports to allow trade with them. Foreign settlements were established in designated areas of these newly opened ports where foreign merchants could settle and engage in trade.

Since this opening to foreign countries, the reference community of citizenship in prewar Japan had been *empire*. If the evolution of Japan's immigration policy for foreigners prior to World War II is summarized briefly, it can be divided into three periods (Yamawaki 2000: 39).

The first period was from 1859 to 1899, when settlements where foreigners were restricted were established. Since a friendship and commercial treaty with China in 1871 and Korea in 1876, Chinese and Koreans were officially allowed to reside in these settlements. In 1894, the Japanese government finally revised the unequal treaties with the Western powers, and in exchange for obtaining jurisdiction over these foreigners, agreed to allow them to live and work throughout Japan from 1899 (Yamawaki 2000: 41).

The second period was from 1899 to 1939. In 1899, Imperial Ordinance No. 352 was enforced. This allowed foreigners to reside, move freely, and engage in trade and other activities outside the foreign settlements. This, however, excluded labourers who still required permission from the authorities in order to reside or work outside their settlement. The ordinance did not explicitly mention the Chinese, but it had the practical effect of regulating their work (Yamawaki 2000: 41-3).

Compared to the Chinese, Koreans were hardly mentioned in the debate on *naichi-zakkyo* (mixed residence outside the foreign settlements) throughout the 1880s. Koreans were exempted from the application of Imperial Ordinance No. 352, and were free to live and work in Japan both before and after 1899 (Yamawaki 2000: 42-3).

In the second period, after the annexation of Taiwan in 1895 and Korea in 1910, the first legal regulation in the history of modern Japan, regarding the entry of foreigners was put into effect: Ministerial Ordinance No. 1 on the Entry of Foreigners (1918). The ordinance listed categories of foreigner, such as the poor and the mentally incompetent,

who were to be prohibited from entering Japan (Yamawaki 2000: 43-4).

The third period ran from 1939 to 1945. In 1939, the Japanese government allowed Japanese companies to initiate large-scale recruitment of Koreans in Korea and Japan. Thus began the wartime mobilization of Korean workers. Chinese workers from northern China were also drafted from 1941 onwards.

Subsequently, there were three major groups of foreigners in prewar Japan. First, there were Westerners who were employed as traders and *oyatoi* (professionals) by the Japanese government, universities or private companies. Second, there were Chinese, who remained the biggest foreign group until the years following the annexation of Korea in 1910. Third, there were Koreans, who overtook the Chinese to become the biggest group around 1917 (Yamawaki 2000: 39). The Chinese and the Koreans who arrived and settled in Japan prior to World War II, along with their descendants, are called 'Oldcomers'.

3.2 Empire based on *jus sanguinis*

The reference community in prewar Japan, including the majority of Oldcomers, was *empire*. This is because people, who were tied to the emperor, were considered 'subjects', and because Koreans in particular were not legally foreigners after Japan's annexation of Korea in 1910. Koreans were rarely included the *naichi-zakkyo* debate, although they were treated legally as *gaichijin* (people in periphery of the territory) different from *naichijin* (people in inland Japan). The *empire*, which included different legal statuses, was based on *jus sanguinis* as the principle of attribution and transmission of citizenship.

The *jus sanguinis* system in Japan was established between the first and second periods. Kashiwazaki (1998: 282-4) insists that Japan displayed several characteristics that may have supported *jus soli* in citizen-

ship criteria.

First, in the Meiji Restoration (1868), against the threat of Western colonial expansion, the Meiji government sought to imbue people in the territory with a Japanese identity that transcended regional, or *han* (domains) identities.

Secondly, through the use of the Emperor as a symbol of unity and Japanese ‘subjectship’ as common, nationwide membership was multi-ethnic in its character, even though there were minority groups such as Okinawans and Ainu.

Thirdly, to fulfill a requirement by Western countries for revising the unequal treaties, one of legal experts, a French jurist, introduced French law into the drafting of the first Japanese Civil Code. Although the Code itself was abolished, some stipulations based on *jus soli* remained in the nationality bill.

Fourth, outside the government, the People’s Rights (*Minken*) movement in the early Meiji years (1881) prepared ‘private’ constitutional drafts which included a couple of examples in which *jus soli* was primarily employed as the criterion for citizenship.

However, according to Kashiwazaki (1998: 284–8), two other factors pulled the country toward a relatively strict *jus sanguinis* system.

First of all, Japan operated a family registration system, imported from China around the sixth century AD. This system provided successive Japanese rulers with a model for defining and controlling their ‘subjects’ using the family unit. Those who had drafted the bill learned from its failure in the Civil Code that the Nationality Act should be compatible with the existing family registration system.

Second, concerns for having ‘modern’ codes encouraged the government to choose *jus sanguinis*. In addition to consulting with foreign legal advisors, jurists in service studied the nationality acts of around thirty

countries, and found that the principle of *jus sanguinis* was more widely adopted internationally than *jus soli*. In addition, within the debates surrounding the Nationality Act in the late 1890s, immigrants and immigration were not politicised in relation to nationality criteria. At the beginning of modern Japan, *jus sanguinis* was not associated with ethnic nationalism or an ethnocultural understanding of the nation (Kashiwazaki 1998: 290–2). Thus, the adoption of *jus sanguinis* satisfied two major requirements: compatibility with the family registration system and the compilation of modern legal codes under international pressure.

Since the Nationality Act was enforced on 16 March 1900, the reference community in Japan has been based on *jus sanguinis*. It is worth noting that *jus sanguinis* remains a very powerful principle and that Japan changes policy concerning immigration and foreigners, only as long as she fends off international pressure and if these changes are compatible with the domestic legal framework.

4 Changing into nation-state: from 1945 to the oil crisis

4.1 The 1952 Regime

Just after World War II, the reference community in Japan was changed into *nation-state* very rapidly and very ruthlessly. *Nation-state* based on *jus sanguinis* was established by three legal actions in 1952: the Nationality Act, the Immigration Control Order, and the Foreigner Registration Act. The combination of these three legal actions is called ‘the 1952 regime’ (Komai 2000: 313, Ōnuma 1993: 326–33).

The Japanese Nationality Act was revised in 1950. This act defines the acquisition and loss of nationality in such a way as to determine the limits of nation, so called ‘people’. In the Nationality Act, under the influence of the Meiji Civil Code and the family registration system,

adopted the principle of *jus sanguinis* through the paternal line. Eventually, neither maternal descent, at this point of time, nor *jus soli* guaranteed Japanese nationality. The status of Koreans and Taiwanese was not referred to in the act since they were already regarded as holding Japanese nationality.

The 1951 Immigration Control Order was enacted when Japan regained its independence with the signing of the San Francisco Peace Treaty. By rights the order should only have covered those entering and leaving the country, not those who had settled in Japan, but the government considered Oldcomers as foreigners based on the family registration system, and declared that they should be subject to the Immigration Control Order. A circular from the Director General of the Civil Affairs Bureau in the Ministry of Justice decreed that, in accordance with the order 'All Koreans and Taiwanese, including those residing in Japan, are henceforth no longer Japanese citizens' (Komai 2000: 313). To fill the gap between the Order and the Oldcomers' reality, the government passed law No. 126 by which Oldcomers could live in Japan without formal resident status. This law may have been a temporary measure, but had actually been effective for over three decades (Ōnuma 1993: 152-4).

Aimed at controlling foreign *residents*, the 1952 Foreigner Registration Act, which revised the Foreigner Registration Ordinance, required foreigners to carry an alien registration certificate to be presented on demand, and established a fingerprint system.² All foreigners staying for one year or more were required to register as aliens within 90 days of entering the country, and children had to be registered within 60 days of their birth in Japan. The alien registration certificate contained information such as occupation, name and address of workplace. Offenders were liable to punishment, including imprisonment. People of age 14 or more who had stayed in Japan for at least one year, were required to have

their fingerprints taken at the time of registration and to reapply for a new certificate every three years. Those failing to comply with these requirement could be imprisoned for up to one year or fined up to 200,000 yen (about 1100 pounds as of March 2003) (Komai 2000: 313; Ōnuma 1993: 279). In addition, a system of re-entry permits was introduced for resident Oldcomers. The Ministry of Justice, by exercising its right to accept or reject applications, could effectively prevent Oldcomers from leaving and re-entering Japan. Refusal of re-entry permits was sometimes used as a sanction against those who refused to have their fingerprints taken (Komai 2000: 313).

The 1952 regime changed reference community from *empire* to *nation-state* quickly and severely at the expense of foreigners' rights. Oldcomers such as Taiwanese and Koreans were deprived of their 'subjectship' just seven years after the end of World War II, even if they were settled in Japan. Above all, the 1952 regime included a strict surveillance system for resident foreigners with little concern for their rights, and was premised on a coercive assimilation policy with expulsion as the ultimate penalty for non-compliance.

In 1965, the Japan-South Korea Treaty was concluded whereby first and second generation South Korean *residents* could be granted the status of *Kyōtei eijyū* (treaty permanent residence) as a more stable legal status. However, the strict surveillance system remained after the treaty and North Korean *residents* were excluded from applying for this status (Ōnuma 1993: 154, 266-7).

4.2 No influx of immigrants

Japan was a 'negative case' of migration before the late 1970s. Despite the existence of permissive factors which acted as a precondition to cross-border migration, international labour flows to Japan remained

minimal even during the most extraordinary periods of high economic growth rates, in the late 1960s and early 1970s, when other countries had experienced significant inflow of foreigners and immigrants.³

A number of factors may account for this (see Bartram 2000; Weiner 2000: 58-9). First of all, Japan's rapid growth in labour demand was largely satisfied by a domestic labour reserve stocked through annual increases in school graduates, intersectoral labour transfers (agriculture and self-employed to industry and service), and internal migration (rural to urban). Behind this lay the fact that low-level work was not stigmatised in Japan and that during this period Japan experienced rapid growth in the field of automation and robotics.

Secondly, the migration and the settlement of Oldcomers in the prewar period made Japan's insular culture to inhibit from importing foreign workers, and served as a reminder to the bureaucrats and the employers of the unforeseen consequences of labour importation.

Thirdly, the availability of alternative migrant destinations, coupled with the pre-1985 Plaza Accord dollar-yen exchange rate and high transportation costs, reduced the attractiveness of Japan as a destination for migrant workers.

Fourthly, Japan had no networks or links with potential immigrant-sending countries that could have facilitated the formation of international migration flows.

However, the most powerful factor remained: state policy. Bartram (2000) insists that this 'negative case' cannot be explained by development gaps between (potential) sending and receiving countries, economic demands, or domestic labour reserve. The existence of immigration and nationality acts, which carefully regulated the entry and residence of foreigners, seemed to provide an effective barrier to the employment of unskilled foreign labour. Thus, the 1952 regime seems to have success-

fully curbed the influx of foreigners and immigrant workers into Japan until the late 1970s. However, the turning point of migration was soon to come.

5 Turning point of migration: late 1970s to 1980s

5.1 'Boat people' and the 1982 regime

There were three crucial turning points in migration policy during the late 1970s. The first was the phenomenon of the 'boat people' which pushed Japan into establishing 'the 1982 regime'. During this period, several factors forced the Japanese government towards a reconsideration of the reference community (Ōnuma 1993: 267-70). In the MacLean case, the plaintiff, who was refused to renew a period to stay because of his involvement in the anti-Vietnam War movement, was defeated, but nevertheless the Supreme Court admitted that foreigners could enjoy the freedom of some political activities as the fundamental human rights stipulated in the constitution as long as they observed the rules of the foreigner residential system. Since Japan was experiencing a low growth rate in the economy, the administration of immigration control was suggested for organisational reform. Movements by foreign residents and their supporters changed their characteristics based on ideology to ones based on commonsense as residents. Many younger generation Koreans assimilated themselves into Japanese society. However, the most influential factor was international pressure.

The arrival of the 'boat people' threw Japan, who had just become a Summit member, into an 'international human rights regime'. When North Vietnam annexed South Vietnam in July 1976, 'boat people' or Indochinese refugees, began a mass exodus. In the beginning, Japan received refugees as temporary stayers, and was reluctant to sign either

the 1951 Convention Relating to the Status of Refugees, or the 1967 Protocol to the Convention. However, the Japanese government permitted some refugees to settle in 1978, and made the decision in 1979 to receive 500 refugees per year as settlers (Nakano 1993: 71-2). In the same year, an international conference on Indochinese refugees was held, and bowing to pressure from international public opinion, the Japanese government eventually signed the Convention in 1982 (Komai 2000: 314).

To deal with the refugee problem, the 1951 Immigration Control Order was revised and became the Immigration Control and Refugee Recognition Act, coming into force on 1 January 1982. However, the number of refugees welcomed by Japan was smaller number by comparison. When the numbers of refugee settlers and the ratio of their population to the whole population in advanced countries from 1975 to 1987 are looked at, the former West Germany received 71,348 settlers (one settler per 855 population) and Spain, which had relatively small number among advanced societies, accepted 30,571 settlers (one settler per 1,276 population). On the other hand, during the same period, Japan received only 6,424 settlers (one settler per 18,913 population) (Nakano 1993: 73). Officially Japan accepted the 'international human rights regime', but in practice was resisting it even under international pressure.

During this period, North Koreans and second generation South Koreans could be granted the status of *Ippan eijyū* (general permanent residence) depending on few conditions. They no longer needed to renew their period of stay (Ōnuma 1993: 155-6, 270). In the Foreigner Registration Act which was re-drafted many times in the 1980s, only foreigners who had reached the age of 16 or more were required to have their fingerprints taken, whereas previously this had applied to those over 14 years of age. Their certificate needed to be renewed every five years, as opposed to every three years previously (Ōnuma 1993: 270).

As an element of the 1982 regime, the Nationality Act was revised in 1984 before the ratification of the Convention on the Elimination of All Forms of Discrimination against Women. As a result, descent through the maternal line would now guarantee Japanese nationality. Subsequently, children with a foreign father and Japanese mother could now acquire Japanese nationality (Ōnuma 1993: 271). At the time of naturalisation, however, the phrase ‘Japanese names only’ in the administrative guidance remained even after this revision (Kondo 2001: 13).

The 1982 regime which was established under ‘international human rights regime’ had some unintended consequence on the range of social rights that foreign residents could enjoy because the Convention imposed equal treatment for foreigners and Japanese with regard to social rights (Komai 2000: 314). The government abolished restrictions on non-nationals’ eligibility for public housing, public financing, national pension scheme, and child and family allowance.⁴ Foreigners who were not covered by health insurance in their workplace were permitted to join the National Health Service of their local governments.⁵

5.2 Newcomers and illegal workers

The second turning point in migration was the arrival of ‘Newcomers’. Although the Japanese economy had not yet recovered from a recession caused by the oil crisis of the early 1970s, there was an unexpected influx of foreigners between the late 1970s and the early 1980s. This was the start of an inflow of Newcomers who fell into four categories (Komai 2000: 314).

The first group, as mentioned before, consisted of refugees from the three Indochinese countries of Vietnam, Cambodia, and Laos, whose influx triggered the signing of the Convention Relating to the Status of Refugees.

The second was women working in the sex and entertainment industry during the late 1970s, of which the largest group were Filipinos, later followed by women from Korea, Taiwan, and Thailand.

The third type of Newcomers was the second and third generation returnees from China, so called *Zanryu Koji* (left-behind orphans). A considerable number of Japanese, who went to, or were born in, Manchuria when it was a Japanese colony, were stranded there after World War II.

The fourth category consisted of businessmen from Western Europe and North America.

The third turning point of migration was the influx of illegal workers. The period from the late 1980s to the early 1990s was marked by an increasing demand for cheap labour caused by an economic boom, or 'bubble economy'. The primary source of cheap labour during the period of expansion were foreigners either working illegally without a work permit or those whose visa had expired. By the time of the collapse of the 'bubble economy' in the early 1990s, the number of illegal workers had reached about 300,000 (Komai 2000: 315).

6 Turning point in immigration control

6.1 The 1990 revision of Immigration Control Act

In response to the aforementioned turning points in migration, the Japanese government proposed and revised the Immigration Control and Refugee Recognition Act at the end of 1980s. This was the turning point of immigration control in Japan.

The new revision introduced three new measures (Komai 2000: 315-6. Yamanaka 1993: 75-6). Firstly, the revision added ten new residence categories (mostly professional) to the old act, bringing the total number

of categories under which foreigners could enter and remain in Japan legally to twenty-eight.

Secondly, this new revision simplified visa application procedures, which enabled the Immigration Bureau to better handle the growing number of foreigners entering Japan, and to tighten the visa requirements of nationals from the primary sources of illegal workers such as Bangladesh, Pakistan and Iran.

Thirdly, the revision instituted criminal penalties for the recruitment and hiring of illegal, unskilled foreign workers: three years imprisonment or a maximum fine of two million yen (about 10,000 pounds as of March 2003). The revision went so far as to impose a penalty on both employers and employment brokers.

As a result, the 1990 revision prompted the introduction of several kinds of 'disguised cheap labour' into Japan: illegal workers, *Kenshusei* (company trainees), *Shugakusei* (students), *Nikkeijin* (Japanese descendants).

Kenshusei (Company trainees) were established to promote the international transfer of skills and technology, but practically almost all of them engaged in manual labour as part of their training programs. *Shugakusei* (Students) were mainly those enrolled in Japanese language schools outside the institutions of higher education specified in the School Education Act. They were permitted to work for twenty-eight hours per week. *Nikkeijin* (Japanese descendants) from Latin American countries have legal permission to work at all skill levels for a period of up to three years.

6.2 Market demand or human rights?

Did the revision satisfy human rights claims for foreigners? Many scholars argue that the 1990 revision was a product of compromise

between state sovereignty and the economic market. On the one hand, the Japanese government was urged to control the influx of illegal immigrants. On the other hand, the business world wanted to import unskilled labour from developing countries to supplement Japan's shortage of labour. As a result, the scholars insist that the 1990 revision invented 'back door' and 'side door' routes through which Japan could import 'disguised cheap labour'.

The 1990 revision can be partly considered as a product of compromise between state and market. First, let us focus on those illegal workers who enter through the 'back door'. Although the 1990 revision included stiff sanctions against employers of illegal foreigners and employment brokers, enforcing these sanctions is another matter. Roughly 700 Japanese employers were penalised for violations of the revision. Far more illegal foreign workers appear to have returned home voluntarily, in anticipation of the implementation of employer sanctions, than have been detected and deported as a result of workplace inspections (Cornelius 1994: 391). No more than a token effort has been made to enforce the employment sanctions included in the revision. The 'back door' is being kept open to satisfy both market demand and state sovereignty.

When the 'side door' is focused on, it could be suggested that the 1990 revision created two types of 'side doors'. The first type, through which *Kenshusei* (company trainees) and *Shugakusei* (students) came to work, can be viewed as a deliberate invention of the policy makers to satisfy economic demand. To prevent *Kenshusei* and *Shugakusei* from settling and to keep them working as unskilled labour, the policy makers conceived residence categories for them. This intended 'side door' satisfied both needs of the market and the state considerably.

However, it is doubtful whether the other 'side door' was conceived

out of compromise between state sovereignty and the economic market. Through this ‘side door’, *Nikkeijin* (Japanese descendants) arrived from Latin American countries to work. However, the bureaucrats drafting the revision did not expect *Nikkeijin* to enter and work as unskilled labour. Kajita (1999: 144–53) argues that bureaucrats in those days considered the legal status of third generation Koreans under the bilateral treaty between Japan and South Korea. They were urged to improve Korean legal status by 1991 and sought a legal parallel between the statuses of the third generation Koreans and of the *Nikkeijin* under the terms of *nation-state* based on *jus sanguinis*. As an unintended consequence, the 1990 revision put aside the barrier to entry and work for *Nikkeijin* and accelerated an influx of them. So, this unintentional ‘side door’ was opened due to international pressure and legal consistency.

Finally, there is a positive evidence that human rights claims were not a prime factor in the 1990 revision. Although the 1990 revision was very similar to the 1986 Immigration Reform and Control Act in the United States, and, as an ex-bureaucrat admitted, the bureaucrats were guided by the U.S. Act, one important factor was missing. While the U.S. Act contained legalisation or amnesty as a main provision, the Japanese revision did not (Koido 2000). In the end, making no space for human rights, the 1990 revision was contrived against the background of a shortage of unskilled labour, state sovereignty, bilateral international relations and legal consistency.

7 Around the turn of the century

7.1 Signs of change?

In late 1991, only one year after the enforcement of the 1990 revision, the ‘bubble economy’, which enthusiastically attracted Newcomers collapsed,

and ushered in a long period of economic recession. After introduction of some new measures, the rights of Oldcomers were secured: introducing signature instead of fingerprinting at the time of foreigner registration, decreasing the number of deportees, and *Tokubetsu eijyu* (special permanent residence) granted for all descendants of North and South Koreans. In spite of the regressive nature of Japanese national policy, efforts on behalf of the progressive local governments and contributions from NGOs have yielded good results for foreigners. The local governments are opening the door for employment to foreign residents. The naturalisation rate in Japan is increasing (0.6% in 1991; 0.8% in 1993; 1.0% in 1995), although it is still relatively low compared with other advanced countries (Kondo 2001: 13). Inter-marriage between foreigners and Japanese is also on the increase.

In the 21st century, will Japan get close to the reference community as *person*? Let us consider five political events which took place around the turn of the century.

7.2 Embedded nationalism: ‘Sangokujin’ speech

As Komai (2000: 317–22) has argued, there is no hostile relationship between ethnic communities and Japanese host society at present. But this does not necessarily mean that the Japanese reference community is getting close to *person*.

Shintaro Ishihara is a well-known novelist-turned-politician and the Tokyo Metropolitan Governor. On 9 April 2000, he made a speech at a Ground Self-Defence Force (GSDF) ceremony in Tokyo. He had called on the GSDF to be ready to control possible rioting by foreigners in the event of a major earthquake hitting the capital, saying ‘Atrocious crimes have been committed again and again by “Sangokujin” and foreigners who have illegally entered Japan. We can expect them to riot in the

event of a major disaster.’ (*Japan Times*, 17 April; 30 May 2000) Ishihara connected the concepts of ‘Sangokujin’, illegality and crime which originally have no relation to each other.

The term ‘Sangokujin’ literally means ‘people from third countries’, but is usually used to refer to Oldcomers from the former colonies of Taiwan and the Korean Peninsula, from where a large number of forced labour had been drafted to help the Japanese war effort. The term is widely considered to be derogatory.

The Japanese media criticised his imprudent remarks, and less than two months after the ‘Sangokujin’ speech Ishihara has softened his stance on immigrants, saying that Japan must open its doors to foreigners to counter a growing labour shortage (*Japan Times*, 30 May 2000). But neighbouring countries such as Taiwan continued to criticise Ishihara’s nationalistic stance.

The governor Ishihara did not only speak monologically, but spoke for many silent Japanese, exposing that there is embedded nationalism in Japanese society even at the turn of the century.

7.3 Overstayers visiting the immigration office

On 1 September 1999, twenty-one people from Bangladesh, Iran and Myanmar visited the Immigration Office to request *Zairyu Tokubetu Kyoka* (special residence permits) by state discretion or, if possible, amnesty based on human rights, thus giving Japan an opportunity to display a new attitude to human rights claims.

The visitors consisted of two single men and five families, among whom eight were minors. Most of them are supposed to have arrived in Japan during the ‘bubble economy’ period and stayed on after their visas expired. The children whose parents visited the office, were either born or raised in Japan, attended regular Japanese schools and were used to

life there, but for as long as they overstay, the opportunities for higher education and secure work are limited.

Zairyu Tokubetu Kyoka (Special residence permit) is a permit to stay which is granted to foreigners at the discretion of the Minister of Justice. When a foreigner retains *eiiju kyoka* or used to be a Japanese national, or has a special reason to stay in Japan, he or she may be able to receive the permit from the Minister.

To grant a special permit, the immigration office dealt with visitors' cases individually, but has never given amnesty. In 2000, special permits were given to four families with children going to primary school, secondary school and grammar school in Japan. The criteria to be used for the judgement have not been published. What needs to be emphasised is that human rights has not been adopted as a criterion, although 'the right of the children' may have played a part (*Asahi shinbun* 1999. 9. 2, 2000. 2. 3; *Japan Times*, 3 September 1999; Komai, Watado and Yamawaki 2000).

7.4 Foreigner suffrage bill for local elections

The third event is the implementation of a foreigner suffrage bill for local elections, to which many scholars tend to look for some evidence of the development of post-national citizenship and/or denizenship.

When they formed a coalition government in October 1999, Liberal Democratic Party, New Kōmeitō and Liberal Party agreed to introduce legislation granting voting rights in prefectural and municipal elections to non-national permanent residents, many of whom are Japanese-born Koreans (*Japan Times*, 24 November 1999). In January 2000, the first day of the new ordinary Diet session, New Kōmeitō and the Liberal Party planned the joint submission of a bill to grant permanent foreign residents the right to vote, moving ahead of the proportionately larger party, the LDP (*Japan Times*, 14 January 2000; 20 January 2000). Kōmeitō and

Liberal Party jointly, and Democratic Party independently submitted the new bills in July 2000. Also, the Communist Party brought in the new one in October 2000. But the bill was put forward largely because of some opposition factions within the LDP which concerns some influence the results of elections for specific local governments. As of March 2003, no bill has not been passed.

Why are the foreigner suffrage bills advancing? Certainly, foreign residents have been claiming for voting rights as basic human rights. But, the main reason is that the South Korean government has for a long time been pressing Japan to grant the right to vote to permanent South Korean residents. The bill of January 2000 also excludes members of the pro-Pyongyang General Association of Korean residents, literally because the right will be granted to 'permanent residents who have the name of country in the alien registration', in reality because no diplomatic relationship exists with North Korea and because some members of the LDP have antipathy towards North Korea (*Japan Times*, 16 March 2000). The latest bills of July 2000 and October 2000 deals with all permanent residents, but the South Korean government's pressure cannot dismissed for advancing the foreigner suffrage bills.

In addition, a portion of Japanese officials argue that, after more than fifty years, the 'Korean problem' of the War has not yet been 'solved', and until it has been 'solved' it is pointless to consider importing large number of foreigners with other nationalities (Cornelius 1994: 381-2).

Thus it follows that the foreigner suffrage bill should be regarded in the context of bilateral international relations based on *nation-state*, and the historical legacy of the War, leaving neither space for human rights nor simple residence.

7.5 Voting right for Japanese living abroad

While foreign residents were arguing for suffrage, Japanese overseas were also calling for the right to vote in national elections. Although a bill failed once, it passed successfully on 24 April 1998.

The revised Public Offices Election Act allows Japanese nationals living abroad to cast their votes overseas for proportional representation seats in the Lower and Upper House elections of the Diet to be held after May 2000, although they cannot vote for regional representation seats. (*Sankei Shinbun*, 24 April 1998; *Japan Times*, 29 December 1999).

In June 2000, the government began accepting ballots for the June 25 Lower House election from Japanese living abroad. Japanese adults who have resided in the same location overseas for three months or more are eligible to cast their vote at Japanese embassies and consulates, by mail in an absentee ballot, or by voting directly at the election committee in Japan when they register. An estimated 590,000 people are entitled to vote, but only 57,407 people, or 9.7 percent, have so far registered as overseas voters (<http://www.mha.go.jp/senkyos.html#zaigai>; *Japan Times*, June 14, 2000).

This matter reflects the citizenship strategy of Japan very well. While a foreign suffrage bill is discussed in the political arena under the pressure of a bilateral international relationship, the Japanese government seeks legal consistency between the statuses of permanent foreign residents and of Japanese overseas. Japan is enforcing the reference community as *nation-state* based on *jus sanguinis* even beyond its territory.

7.6 Would-be change of nationality system

The neo-national trend will be also found in the case of discussion on changing the nationality system. The ruling coalition of LDP, Kōmeitō

and Hoshutō set up a panel to revise the Nationality Act in mid-January 2000. The panel made a plan of the bill of ‘Special Nationality Act’ in which special permanent residents, largely Oldcomers from Korean Peninsula and Taiwan, can be granted nationality to if they only register. The panel mentioned the reason why the screening process should be shortened, saying that the history of producing special permanent residents ‘should be considered politically’ (*Japan Times*, Feb. 9, 2001, *Mainichi Shinbun*, Feb. 8, 2001, *Sankei Shinbun*, May 9, 2001).

The bill has not been submitted as of March 2003. After the passing, Oldcomers could acquire Japanese nationality much more easily. However, it should be noted that this change of nationality system is neither based on human rights nor on simple residence. Rather, politicians try to solve the wartime problems, through change of nationality system. Moreover, this change would enforce the reference community of *nation-state*, because the right-receiving foreigners, who have adopted Japanese culture considerably up to the present, would turn into right-receiving nationals. The set of right-receivers would be fitting with the reference community of *nation-state*.

8 Conclusion: the Japanese model?

Is post-national citizenship a stable alternative, or temporary deviation from, national citizenship? The Japanese experiences suggest that post-national citizenship is close to only a temporary deviation.

Since the end of seclusion policies and ‘opening for other countries’, prewar Japan has defined the reference community as *empire* based on *jus sanguinis* to fulfill two requirements: international pressure and legal consistency. However, just after World War II, Japan, who was defeated in the War, changed the reference community from *empire* into *nation-*

state extremely severely. As a result, Oldcomers such as Koreans and Taiwanese were deprived of the citizenship that they should have enjoyed by settling in Japan.

The reference community as *nation-state* was stable until the years following the oil crisis. From the end of the 1970s to the beginning of the 1980s, an 'international human rights regime' along with the 'boat people' affected the reference community, and, as an unintentional consequence, foreign residents in one of the Summit countries, or in Japan, were granted social rights, even though they did not have Japanese nationality. But the government resists to human rights claims.

After Newcomers began to arrive, the Japanese government established policies, in particular the 1990 revision of Immigration Control and Refugee Recognition Act, not based on human rights, but based on market demand, state sovereignty, legal consistency, and bilateral international relations. This trend of 'neglecting' human rights and maintaining the reference community as *nation-state* has remained and endures even at the turn of the century.

From the Japanese experiences of preserving the reference community as *nation-state* and resisting the acceptance of *person*, the Japanese model of migration and citizenship which other countries could adopt as a universal strategy can be abstracted. Even if Japan faces human rights claims, she translates the claims into national matters along the following lines. First, Japan makes moves to secure foreigners' rights only under international pressure. Second, when Japan is forced to move, she tries to preserve the reference community as *nation-state* based on *jus sanguinis* as the main principle of action. Third, Japan seeks legal consistencies within the domestic legal framework, particularly between nationals (and descendants) and non-nationals thus ensuring that the former would not be inferior to the latter in legal terms. Fourth, Japan

places foreigners' claims for rights within the historical legacy of the War and the bilateral reciprocity between two countries based on nationality.

The objection will no doubt be raised that Japan is only an exception because, for example, it has relatively few foreigners or that Japanese experiences are too commonplace and universal to be used as reconsideration of the debate. However, before falling into an easy exceptionalism or an unthoughtful universalism, the 'challenge to the nation-state' debate should head for including cases in non-Western countries.

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Notes

- 1 A precious exception is Amy Gurowitz (1999) who takes up Japanese case to

describe the relation between international human rights norms and citizenship for foreigners. But she neither goes back to Meiji era nor surveys events at the turn of the century for her exploration.

- 2 After the war in 1947, the Foreigner Registration Ordinance was enforced. However, strictly speaking, the ordinance did not belong to the 1952 regime, but to legal action in prewar Japan, since the ordinance was an 'imperial' ordinance imposed under occupation by the Allied Powers.
- 3 Two notable exceptions were stowaways from the Korean peninsula and foreign workers employed as company trainees (Komai 2000: 313-4).
- 4 There still remains a problem with the national pension scheme. If foreigners were 35 years or older at the time of the 1981 revision of the National Pension Act, they cannot receive an old-age pension because they have not earned enough contributory premiums (Kondo 2001: 17).
- 5 As a civil right, for example, a national and public university professorship was opened to foreigners in 1982.

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