Discrimination in the U. S. and Japan — From a Legal Viewpoint — (アメリカと日本における差別 — 法の立場から —)

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SUMMARY IN JAPANESE: 近年，政治家の軽率な発言，海外における日系企業の雇用差別，更に国内で急激に数が増大しつつある外国人に対する住宅や雇用における差別などにより，日本における人種差別，性差別があらためて国際問題とされるようになってきた。

日本人は他の国民と比べて特に差別的なのだろうか？日本人は，外国人と同じことをやっていても特別に批判されることがある，これはなぜだろうか？このような批判は日本叩きの一貫であろうか？

日本における差別と他の（特に西洋の）国々における差別とは本質的にそう変わらない。どこの国でも偏見に満ちた差別的な人がいると共に，同様にまったく偏見のない人もいるのが実際である。むしろわが国における人種差別は，白人の有色人種に対する偏見をそのまま受け継いでいる面がある。

しかし他方，わが国における差別の現象を具体的に検討すると，公的機関や大企業などまでが悪意がないにも拘らず，かなり不注意で，余りにも無思慮に差別を行っていることが明らかになる。これは何故なのであろうか？その原因は，おそらくある程度閉鎖的とされるわが国社会の歴史，文化，伝統と関わりがあるかもしれない。しかし，外国人の出入国管理制度を検討してみると，わが国の現行制度は西欧諸国の制度と比べ，特に閉鎖的とはいいがたい。

法制度に関するかぎり，一つの決定的な差は差別に関する法制度，特に法の平等原則の強制力，強制の実態の顕著な差にあると思われる。つまり，わが国では公然と差別を受けた被害者が行政機関や裁判所に救済を受ける可能性が著しく限定

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されている。このため差別化の加害者はその差別行為に対する報復としてはせいぜいメディアの批判を受ける位で，その是正のために損害賠償や，是正措置の実行を強制されることがほとんどない。

本稿はこの法制度の際をやや立ち入って検討した結果，今後経済の国際化の進展する中で，わが国は国際的批判を受けないためには，雇用，住宅差別に対する法制度を強化することにより，企業などが極めて無思慮に差別を行わないような行動原理を確立していく必要があると結論する。

Japanese racism attacked by American media

Several high-ranking Japanese politicians, including present Minister of Foreign Affairs Michio Watanabe, former Prime Minister Yasuhiro Nakasone, and former Minister of Justice Seiroku Kajiyama have in recent years made a series of wisecracks implying that the high crime rate and low efficiency of the American society is caused by the existence of its ethnic minorities. These careless utterances of unsophisticated politicians were picked up and reported by foreign correspondents stationed in Japan. Some of the American correspondents also made a big issue out of the popularity of a children's book called "Little Black Sambo", as well as black dolls and other goods or advertisements using blacks in Japan as showing Japanese prejudice against minorities. These reproaches against Japanese racism have been partly caused by anti-Japan sentiments in the U. S. and at the same time have contributed to their intensification.

These recent incidents provide two rather interesting theoretical points. First, in the cases of both the comments of politicians and the sale of goods or books held to be stereotypical, the Japanese only came to realize the possibility of such practices constituting racial discrimination after it was pointed out by foreign media. Second, such remarks and goods both have their origin in America, or more generally in Western prejudice against black people. The first point is related to the Japanese naivety towards racial problems, which is one of the vital

concerns of this paper. The second point leads to another issue of interest, whether or not the Japanese are particularly racist.

Are Japanese particularly racist ?

The Japanese media have rather delightedly reported the comments last May of newly-appointed French Prime Minister Edith Cresson, who has called the Japanese "aggressors", "little yellow men", "rats" and "antlike workers out to conquer Europe economically like a hunter stalking prey". If such harsh characterizations are regarded as racist, Mme Cresson could also be regarded as sexist because of another remark about homosexuality being characteristic of Englishmen, Germans and Americans — but not Frenchmen. Such a strong prejudice turned out to be characteristic not only of this peculiar woman of venom when the following month former French Prime Minister Jacques Chirac depicted immigrants as noisy and smelly. He said that the French worker is angry at living in a low-income flat next to "a father, his four wives and a score of children" with more than three times the income in welfare than the worker receives in wages. "And if you add to that the noise and the smell, well the French worker ... goes crazy". He said in a television interview he was simply reporting what ordinary French people were saying and experiencing.[1] Japanese politicians accused of racial prejudice might equally have wondered why they should be criticized for saying what many white Americans are saying all the time in private.

The incident of "Little Black Sambo" is also worth examining to see how much the Japanese practice is a reflection of Western racism. To begin with the original, "The Story of Little Black Sambo" was written and published in England in 1899 by Helen Bannerman, a Scotch woman who lived in India. In the U. S. the book has been printed quite widely and at least 47 editions were published during the period of 1900–1989. It has been pointed out that some of the American editions are more discriminatory in sentences and illustrations than the original English editions by using American black dialect and caricatured stereotypes of black figures. The criticism of the book as being discrimi-

natory emerged during the late 1940s in the U. S. and as late as the 1970s in England. In both countries opinions are divided over the discriminatory nature of the book and it is still printed and sold, although it has been attacked quite vehemently on certain occasions. In Japan the story of "Little Black Sambo" has been one of the most popular nursery stories ever since it was translated and published as early as in 1907. Since World War II the Iwanami-edition, published in 1953, sold over 120 million copies until the publisher ceased production because of the then emerging criticism. Besides the Iwanami-edition, as many as 52 different editions have been published by 23 other publishers.[2] It is very symbolic that the attack against the book in Japanese society was triggered by the criticism of an American correspondent. Margaret Shapiro, a correspondent stationed in Tokyo from the *Washington Post*, wrote "Old Black Stereotypes Find New Lives in Japan" in the *Washington Post*,(Jul. 22, 1988). This article attacked "Sambo" dolls and other goods sold in Japan that show a caricatured discriminatory black image as a typical example of insular Japanese racism. A Japanese family stimulated by this charge started to protest by sending letters to those enterprises producing or selling such "discriminatory" goods. Some of those enterprises, including a major producer of goods, abandoned production and sales in response to such the attacks and media criticism. The family also attacked the book "Little Black Sambo" without understanding the distinction between the discriminatory "Sambo" image in the U. S. in general and "Sambo" in the particular book, which has an Indian origin quite different from the American negative black image of "Sambo", originally typical of traditional minstrel shows. They sent letters to 11 publishers producing the book and all these publishers decided to halt publication by January 1989, although an individual who did not agree with the condemnation of the book has printed and has been selling an amended edition since then.[3]

The whole incident of "Little Black Sambo" in Japan is a typical example of Japanese discrimination, in that it is mostly the mere result of a naive acceptance of the prejudice and discrimination prevailing among Western whites. It is also an example of Japanese naivety or insensitivity to the issue of discrimination in that no publisher has ever

come to question the discriminatory nature of the book and all the publishers accepted the charge without questioning its reasonableness. One of the reasons for the indiscriminate acceptance of the criticism, particularly when it came from the Western world, is the Japanese inferiority complex vis-á-vis Westerners, a different form of racial prejudice. However, the immediate acceptance of the criticism was also in line with the fact that many forms of discriminatory practices in Japan are never recognized as discrimination unless pointed out by foreigners. In another words, discrimination in Japan is often practiced out of ignorance and without any malice. In the incident of "Little Black Sambo" not only the publishers failed to realize the discriminatory nature of the book but also the readers, who are mostly innocent children but also include adults who enjoyed the book in their childhood are loved the character "Sambo" as cute and charming.

Such Japanese naivety is certainly not to be found when it comes to discrimination in housing and employment.

Discrimination in housing

During the first half of 1991 many letters from foreign readers were published in *Readers in Council* in *The Japan Times* concerning discrimination in housing in Japan. Many of them complained of difficulties in renting housing facilities in Japan. However, some of the letters from both Japanese and foreigners defended Japanese practices, pointing out the unacceptable behavior of some foreign tenants in their life styles, such as having big parties, making noise late at night, ignoring the customary methods of garbage disposal, the possibility of "skipping on their bills before leaving the country", and so on. However, a few letters from American readers pointed out that racial discrimination in housing in the U. S. is as much as a fact as in Japan, if not worse. Reading the exchange of letters of Americans arguing whether the U. S. or Japan is the more discriminatory, it is hard to draw a conclusion, but there is no doubt that there exist fairly extended practices of discrimination against foreigners, particularly non-whites, in both countries in the field of housing. The difference, is at least not

a matter of quality but of degree, although one may be inclined to say that the Japanese practice is more discriminatory.[4]

To begin with, it is not very fruitful to discuss which nation is more discriminatory since discrimination and prejudice exist everywhere, although there might be some difference in the degree of discrimination. One can probably say that racial and sexual discrimination might be more conspicuous in Japan than in the U.S. and thus Japanese are more racist and sexist than Americans. However, such an assertion sounds more or less dogmatic since it is only based on impressions and anecdotic experience and observation, and has hardly any scientific ground. There is no doubt that in any country there are both prejudiced and unprejudiced people. Does this mean that except in the matter of degree there is no difference in discriminatory practices in Japan and other countries ?

The difference between American and Japanese discrimination

There is one important difference between Japan and other advanced democratic countries, particularly the United States. As already stated, discrimination exists everywhere but at the same time in all advanced countries equality is recognized as one of the most basic legal principles. The Japanese Constitution of 1946 also provides the principle of equality under the law regardless of race, creed, sex, social status or family origin. This is more or less equivalent to the prohibition of discrimination because of race, color, religion, sex or national origin under Title VII of the Civil Rights Act of 1964. However, the similarity between Japan and the U.S. goes only this far. Except for formal recognition of the principle of equality, there is a grave difference between the legal systems regarding discrimination in both countries, namely the difference in the actual function of the legal principle of equality in both societies. This is related to the different roles of the law based on the different legal cultures of the two countries. This point requires a rather meticulous analysis of the legal system regarding discrimination in both countries. Before undertaking this, a typical example of what might happen when one looks for housing as a

foreigner might help to show the nature of this fairly specialized theoretical issue. As we have already observed, there is no doubt that discrimination exists in housing in both the U. S. and Japan. However, in Japan there is definitely no legal remedy whatsoever even if one is plainly refused a room simply because he or she is foreigner. As some of the readers of *The Japan Times* mentioned in their letters, some landlords and even realtors openly mention this,[5] and any reasonable lawyer will not advice the victims to sue against such bigoted practices simply because no legal remedies are available in Japanese courts. In the U. S. one has a good chance to be granted not only injunctive relief but also damages if prevented from buying or renting a home simply because one is not white.[6] In practice, even in the U. S., the likelihood of winning a case is not very high because proving of refusal simply on account of one's race is not easy since the landlord may be able to give other excuses for refusal than racially discriminatory ones. And particularly under the Reagan-Bush regime this state of affairs has been getting worse by the watering down of legislation, new instructions to agencies responsible for enforcing the civil rights law and the U. S. Supreme Court's recent decisions repealing earlier precedents in favor of defendants in discrimination cases.[7]

This point will be examined in detail in regard to discrimination in employment, where the difference in both countries' legal structures is more conspicuous.

Discrimination in employment in the U. S. and Japan

As mentioned above, the Constitution of Japan and Title VII of the Civil Rights Act are, in a basic sense, identical in the scope of prohibited discrimination. Both cover all kinds of discrimination based on race (color), creed (religion), sex, social status and family (national) origin. In the U.S. the coverage of prohibited discrimination has been substantially extended since the enactment of the law in 1964 through legislation, administrative enforcement and case law. Age, handicap and pregnancy are now protected against discrimination by specific legislations. The notion of sex (gender) discrimination has been quite

extesively expanded either through administrative enforcement such as guidelines of other administrative actions taken by the Equal Employment Opportunity Commission (EEOC), of by case law to cover discrimination based on marital status (married, divorced, widow of widower), sexual inclination (homosexual, lesbian etc.), and sexual harassment. The definition of handicap has also been extended to cover alcoholism, drug addiction and AIDS partients.

In Japan the constitutional gurantee of equality has had almost no practical application in the field of employment. The reasons for this total lack of emforcement of the legal principle of equality in Japan are menifold. However, the most fundamental reason is the absence of any substantial statute legislated to implement the principle of equality of the Constitution. The Special Measure for Assimilation Act (SML) of 1969 and its series of amendments were enacted to promote the welfare of *burakumin* (a Japanese minority who are not of different race but have been treated as belonging to a very low class simply because of their traditional jobs, such as slaughtering animals and grave digging.) But "as is the case with much Japanese legislation, especially with programatic goals, the SML gives broad authority for governmental action while mandating virtually nothing". "It creates no legal dutied on the part of government agencies and no new legal rights for individuals."[8]

Another statute which is regarded as a major anti-discrimination law in Japan, the Equal Employment Opportunity Act (EEOA) of 1985, covers only sex discrimination by employers. Thus there exist no statutes to cover discrimination other than sex discrimination except a provison prohibiting discrimination in working conditions because of nationality, creed or social status in the Labor Standards Act. This law is interpreted as applying only to working conditions and not to hiring itself. Thus other than sex discrimination such as that of race, color, creed, family or national origin etc. is prohibited by law in an abstruct sense but in fact there is no legal remedies available for discrimination in hiring. As already suggested, Japanese courts do not provide any remedy to foreigners who have been refused contracts because of their race or nationality. The same is also true in cases of refusal because of the applicant's gender or creed. This attitude of the courts is based on

the legal principle of freedom of contract which is, the courts believe, the most basic principle of a free society. Individuals should enjoy perfect freedom to make a contract or to refuse to do so whatever the reason. Thus even if an employer refuses to employ a person because of his or her gender, race, or creed, the courts maintain that such a refusal is not a violation of the principle of equality and no remedy is granted in such a case. The Supreme Court, in a leading case of refusal to employ a former student movement leader, pointed out that refusal does not constitute a violation of public order as violating equality under the law regardless of creed (which includes not only religion but also thought) or[9] freedom of thought guaranteed by the Constitution.

Discrimination other than in hiring, namely in promotion or job assignment, is also regarded as a field in which no appropriate remedy is provided unless there is a specific statute which provides the court with a certain authority to issue injunctions or orders of specific performance. The only field where the courts effectively provide legal remedies in this regard is that of dismissal. Here the courts simply declare dismissal as null and void whenever they find it discriminatory. The reasoning of the court in such a case is that dismissal because of race, gender, creed etc. constitutes a violation of the principle of equality, is therefore illegal and simply null and void. The result of such legal reasoning is that there is a big difference between hiring and dismissal. The courts maintain that there must be specific authorization by a statutory provision for the courts to be able to issue an order of specific performance, such as employment of a certain person, or to issue an injunction to stop discriminating against race or gender in hiring. This is exactly what Title VII has done in the U. S. and much more was done by the introduction of the system of affirmative action and affirmative program to be ordered by both the law courts and the EEOC based on Title VII and Executive Order No. 11246.

The Japanese EEOA, even within the limited field of sex discrimination, neither provides authority to the courts to enforce any obligation nor establishes any effective enforcement agency such as the EEOC in the U. S., although the EEOA prohibits certain types of sex discrimination and provides obligations to employers to "endeavor" not to discriminate in certain respects.

Five years of the EEOA

The EEOA has been in force for five years, up to April 1991. It was generally agreed that it has not been effective in abolishing discrimination in employment in general and in hiring and promotion in particular. According to a survey by the Ministry of Labor in 1989, after three years of implementation of the EEOA 26 percent of enterprises surveyed were still hiring only male university graduates for clerical and managerial jobs while as many as 50 percent of them were hiring only male graduates for engineering jobs. The same survey showed that the percentage of women among those in the position of *kakarichō* (head of a unit) was 5 percent, those in that of *kachō* (section chief) was 2.1 percent and those in that of *buchō* (department chief) was only 1.2 percent.[10] It is quite obvious that the law has not been effective in abolishing the discriminatory hiring practices of Japanese companies since a substantial number of them still discriminate against women in hiring and promotion.

This is partly a natural result of the insufficient legal effect of the EEOA which prohibits sex discrimination only in education, training, welfare, retirement and dismissal. In hiring, job assignment and promotion it does not prohibit discrimination but requires employers to endeavor not to discriminate against women because of their sex. This notion of obligation to endeavor (*doryoku gimu* in Japanese) was much criticized as having no legal effect and being practically meaningless. In other words, employers are not forced to refrain from discriminating against women in hiring, job assignment and promotion by the courts, and the EEOA did not introduce any administrative agency to enforce its povisions, including those prohibiting discrimination.

Such a notion as *doryoku gimu* obligation without the legal effect of enforcement may sound peculiar to Westerners and lead them to wonder at the meaning of such an obligation introduced by law. However, in a Japanese context this does not necessarily mean that it is not enforced at all. The notion of *doryoku gimu* assumes that the obligation is enforced through administrative guidance.

The role of administration in the implementation of law

The EEOA presumes that the law is to be enforced not through court procedures or adjudicative procedures at an administrative agency but through administrative guidance. The prohibition of certain types of discrimination and the *doryoku gimu* obligations are supposed to be implemented by the "advice, guidance and recommendation" of the regional Women's and Minors Offices in accordance with the guidelines to be established by the Women's Bureau of the Labor Ministry (Art. 12 of the EEOA). The EEOA also established Equal Opportunity Mediation Committees in each prefecture whose task is strictly to mediate the conflicts between an employer and female employees only with both parties' consent.

One of the American experts in Japanese law predicted at the early stage of the implementation of the EEOA as follows : "Ministry bureaucrats will take the rhetoric of the Article 7 and 8 (provisions set forth *doryoku gimu*) seriously, and the administrative guidance that they issue under Article 12 will influence employment practices in the future despite their legally nonbinding nature. What those guidelines will look like depend on a variety of legal, social, and political factors, one of which, however, will certainly be the course of sex discrimination litigation."[11]

After five years of implementation of the law, the Administration Inspection Bureau (*Gyōsei Kansatu Kyoku*) of the Management and Coordination Agency (*Sōmu Chō*) issued a report of administrative inspection on labor administration in the field of female labor in June of 1991.[12] Its conclusion is rather shocking and even ominous from the standpoint of equality. This government agency, specializing in self-assessment of the efficiency of government operations, concluded that administrative activity in the field of female labor is "insufficient" and needs "much improvement". The agency found that only 1 percent of all establishments covered by the Labor Standards Law had appointed "promoters" responsible for the implementation of the EEOA whom the Women's Bureau had been encouraging employers to appoint at every establishment in order to facilitate the implementation of the law by employers. Forty-four percent of the surveyed establishments did not

even know of the existence of this system of self-implementation which is one of the major measures taken by the Women's Bureau to facilitate the implementation of this law which has no legally binding force.

The failure of administrative guidance is even more serious if we consider the fact that there has been no single case of mediation at the newly established Mediation Committees in any prefecture during the entire five years since the implementation of the law. This means that Japanese working women expect nothing from the committees, which have no power to force employers even to report to them, let alone enforce their awards.

Along with such ineffective administration of the law the Women's Bureau has committed a big mistake in drafting the Guidelines. The Guidelines of Jan. 27, 1986, which set forth measures that "should be taken by employers", encourage employers *not to exclude women* because of their sex from recruitment, hiring, job assignment and promotion for certain jobs.[13] This means, according to the official interpretation, that the administration does not care if employers recruit, hire, assign or promote only women for a certain job. As a result the EEOA has had almost no impact on the traditional employment policy of Japanese companies to employ male graduates for managerial careers (often called *sōgō shoku*) and female ones for lower clerical jobs (*ippan shoku*), except that after the implementation of the law some companies started to employ limited numbers of female graduates for managerial jobs too. According to a Labor Ministry survey on personnel management based on the so-called two-track system, a separate career system for managerial positions and clerical jobs, in 1987 women made up only 0.9 percent of those employed in managerial career.[14]

The above mentioned male dominance in higher positions such as section and department chiefs has been almost entirely unaffected by the passage of the EEOA.

The implication of the failure of the EEOA in an international context

Readers may wonder why I have dealt so much with an evaluation of the effects of the EEOA. However, since the EEOA is almost the only substantial anti-discrimination statute, evaluation of its actual effect is crucial to understanding the reality of discrimination in Japan. The very low degree of attention paid by Japanese employers to the law does adequately demonstrate the very nature of discrimination in Japan. In the U. S. also so many employers neglect and violate Title VII that several tens of thousands of civil rights litigation cases are brought to the courts each year. However, American employers are well aware of the strong possibility of litigation being brought against the EEOC by victims. This is not the place to examine whether the Japanese reluctance to sue is a myth or truth or whether it is attributable to the traditional preference for informal, mediated settlements of disputes and an aversion to the formal mechanisms of judicial adjudication.[15] But the small number of discrimination cases in Japan (the total number of cases of sex discrimination in employment at the courts was until today some 60 after the pioneering *Sumitomo Cement Case* in 1966, and in addition there are a very few cases of racial discrimination) and the large number of civil rights litigation cases in the U. S. make a sharp contrast. Despite American's rather controversial litigiousness as opposed to Japanese non-litigiousness, in the U. S. there exist some favorable systems for those seeking legal remedies, such as legal aid or legal services provided by the EEOC, including the committee's own litigation in cases of "pattern or practice" of discrimination, which are totally unknown in Japan.

American employers also know that they could be ordered to take various steps, including affirmative actions, setting up affirmative programs, and often to pay great sums in damages. Million dollar suits are not unusual particularly when the litigation is based on U. S. Code §1981 instead of Title VII which permits punitive damages and could also enable trial by jury, which could mean a strong possibility of employers losing the case.

As for recruitment and hiring, the EEOC issued detailed guidelines

and the legal precedents set forth the standards for equal treatment. Thus American employers are generally conscious of such rules concerning what is permitted and what is prohibited; for instance, the nature of the permissible test, documents they cannot ask to be submitted, questions to be avoided during interviews with job applicants, and so on. As a result, American employers are very much concerned with the law in order to avoid trouble while Japanese employers, pay hardly any attention to the law. Thus the differences between the American and Japanese legal systems, such as in scope of prohibition, degree of possibility of litigation, and degree of effective remedies available, create different attitudes among the parties concerned.

Any decent American employer will avoid taking risks and try to be law abiding, but Japanese employers often commit discrimination because of carelessness. If this is the case even in the field of sex discrimination in employment, where at least an anti-discrimination statute does exist despite its negligible effect, it is obvious that in other fields the legal principle of equality has no practical meaning and people tend to engage in discriminatory acts simply out of carelessness.

Probably in the U. S. very few local community or state agencies commit discrimination simply because of carelessness. As recently as in June of 1991 a newspaper reported an incident in which Hachioji city govornment in Greater Tokyo turned down a job application by an Asian woman of British nationality and was accused in Hachioji city assembly of having committed discrimination against a non-white. The city introduced a recruitment plan in July 1990 for a Job whose duties included assisting officials in receiving foreign visitors, proof reading English versions of city government pamphlets, providing advice for internationalizing the city and providing counseling for foreign residents. When the allegation was raised at the assembly that the rejection was because of the applicant's being non-white, the city official responsible for the matter replied that he had assumed a foreigner whose mother tougue is English would be a Westerner. The post in question was later filled when the division hired an Australian woman.[16]

The incident is symbolic in a number of points of the nature of discrimination in Japanses society. To begin with, the city authority had

the good intention of employing a foreigner whose mother tougue is English in order to help in "internationalizing" the city administration. In spite of the intention to internationalize, those involved were so naive that they presumed only whites to be English-speaking and felt embarrasssed to find a non-white showing up. The documents prepared for screening applicants stated that applicants should meet all the following conditions— a "Western person who is good at the Japanese language and whose mother tongue is English", a "woman", and a person who "lives in Hachioji or adjunct municipalities". They certainly never realized that the first two conditions undoubtedly contradict the principle of equality in employment. In the U. S. every decent employer must be well aware of the strict prohibition against advertizing for employers specifying sex, race or national origin. In Japan all these are permitted. Even specifying sex is allowed by the official guidelines of the Minsitry of Labor under the very EEOA which is supposed to promote equality. Finally, the applicant was turned down because of her color. The city committed at least three or four kinds of discrimination and for the victim there was no legal remedy under Japanese law. The incident became an issue only when a member of the city assembly raised it. The whole incident suggests that the naivety of Japanese employers will increasingly cause problems in an international context both inside and outside of Japan.

Foreign labor in Japan

One of the reasons for the naivety of Japanese employers in regard to discrimination is the small number of foreign workers in Japan.

Since 1987 a great number of opinions, suggestions or proposals have been published on the issue of foreign labor by various committees, councils attached to government agencies and private organizations, including business organizations or trade unions. The issue has indeed been one of the favorite topics in the mass media for the past few years. Some opinions are based on the assumption that the present immigration policy of the Japanese government is very closed, "uninternational" and discriminatory. A lot of proposals to change the present

policy have been published. One such proposal made by a business organization says that "the question of accepting foreign workers should be examined on the basis of two viewpoints; to *open up Japanese society internationally* on the one hand and to cope with a labor shortage in quality and quantity on the other". "Accepting both human and material resources from the rest of the world into Japan contributes to the harmonious development of the world economy and at the same time it is *an important responsibility of the state as a member of international society*. Particularly, it is required to respond to the demands of other, inter alia, Asian countries to open the door in connection with human resources which are strictly regulated at the moment".[17]

One opinion of *Sohyō* (General Council of Trade Unions in Japan) is that "In order to become an advanced country, it is necessary for Japan *to reform itself because it is regarded as being by nature a "closed society"*, to broaden its views and to create the conditions *to become a multi-racial state* in the distant future".[18]

Both of the above-quoted documents represent one of the most popular trends in public opinion frequently found among those appearing in newspaper editorials or elsewhere: namely that Japanese society is closed and "uninternational" and it should be "internationalized" and opened up. There are so many publications by individuals advocating such a viewpoint that it is needless to quote them here. Such opinions often regard the U. S. as one of the most "international" and "open" societies in the world and therefore the ideal model to be followed by Japan.

The U. S. as a state was originally established as a result of immigration by Westerners of various national origins and hence naturally as a multi-racial state, while Japan has been more or less uni-racial throughout its history. There are some arguments against the assumption that Japan is uni-racial, which point out the existence of minorities such as Koreans, Chinese and others in Japan. As of the end of 1989 the number of people who were registered as "(legal) foreigners" In Japan stood at 984,455, accounting for 0.8 percent of all persons living in the country. Out of this nearly 1 million foreigners, 681,838 (69.3 percent) were Koreans, and 137,499(14.0 percent) were Chinese, includ-

ing Taiwanese and those from Hong Kong. By visa status, those with the status of "permanent resident" numbered 646,889 (65.7 percent). They have no restrictions on their activities in Japan in terms of working, since most of them have been in Japan since the prewar period, or their family members have. The number of foreigners with other kinds of visa status granting work permits was 49,384. Foreigners with the status of "students (of universities and colleges)" numbering 36,839. There is another category of students at vocational and language schools called "*shūgakusei*", numbered 44,097. Both types students are allowed to work for limited number of hours (4 per day). The Number of foreigners with trainee status stood at 10,817. Another group of foreigners who are permitted to work is that of Japanese immigrants to Latin American countries, particularly to Brazil, and descendants who come back to Japan looking for jobs. Their number has been growing very rapidly these past few years because of the economic crisis in these countries and is estimated now at some 150,000.

Thus, foreigners who can legally work, with the exception of permanent residents, amount at most to a few hundred thousand. However, even the Ministry of Justice, which is in charge of immigration, estimates that there are more than 100,000 illegal foreign workers, although in 1990 the number actually detected as working without work permits or after their visas had expired was 29,884. Some experts estimated that there might be more than double that number of foreigners estimated by the Ministry working illegally. Nevertheless, no matter how great the number of illegal workers, foreign workers in Japan probably do not account for even 1 percent of the total Japanese labor force, which was 60 million in 1988.

The weight of foreign workers in Japan is definitely far less than in most of the advanced countries in Europe, where each country often has from a couple of hundred thousand to more than a million foreign workers, accounting for several percent of the total labor force. This is even more conspicuous if we compare Japan with America, where a couple of hundred thousand immigrants are accepted every year (601,500 in 1987) and the foreign-born population makes up several percent of the total population. Furthermore, illegal immigrants in the

U. S. are estimated at 2.1 million.[19] If we take into consideration that the U. S labor force is only about twice that of Japan, the number of foreign workers in Japan is almost negligible.

Rather popular opinions in Japan, based on such small number of foreign workers in Japan regard Western countries as more open than Japan, which is closed and slow in its "internationalization". The mass media often urge the government to change the present "closed" system and accept foreign workers more openly. However, such opinions urging "internationalization" misunderstand the immigration policy of most Western countries which is much more "closed" than they assume and even more closed than the Japanese system in some countries.

The popular view in the present Japanese media regards the Japanese immigration system as restrictive and "closed". Under the Immigration-Control and Refugee-Recognition Act of 1952, before the 1989 Amendment, visas with work permits were classified as follows: (1) business managers, (2) professors, (3) entertainers, (4) engineers, (5) skilled labor which is not available in Japan, (6) other employment and language teachers with the special permission of the Justice Minister. The 1989 Amendment added the following 10 types of work permit: (1) legal service and accounting, (2) medical services, (3) research, (4) education, (5) humanity-knowledge-related and international business, (6) In-company (or company group) overseas rotation, (7) culture-related activities, (8) studying, (9) marriage with a permanent resident, (10) settled residents. Those who criticize the system as being restrictive point out its refusal to accept foreign workers who intend to work in unskilled manual jobs not covered by the above-mentioned categories.

However, this criticism neglects the fact that there is no major country which has a less restrictive policy towards unskilled foreign labor. European countries such as Germany and France once used to extensively accept a great number of unskilled foreign workers during the period of rapid economic growth and labor shortage following the 1960s but reverted to restrictive policies after the oil crisis. Since 1973 Germany has been almost entirely closed to foreign workers, including even skilled ones, from outside EC countries, except the spouses and children of foreigners and refugees already settled there. France has also

been refusing to accept labor from outside EC countries since 1974, except professors, reseachers of specified institutes, higher executives and refugees. Britain accepts only foreigners between the ages of 35 and 54 and with English language ability and within the following categories : those with certain official professional qualifications, managers or executives, high technicians with special experience, and those with high or rare qualifications in jobs requiring specific professional knowledge or technology.[20]

The policy of the U. S., a major immigrant country, is different from those non-immigrant European countries as far as immigrants are concerned. As for non-immigrants the basic principle is identical to other Western countries in admitting only temporarily either those with distinguished merit or ability, or those performing skills unavailable in America. The U. S. legal regime governing foreign nationals reflects deeply conflicting attitudes towards immigration although the U. S. tends always to be regarded as a country of general assimilation. The historical fact is that only until the early twentieth century did the U. S. place no controls on the number of immigrants who could enter and reside permanently. The policy changed dramatically after the 1st World War as a result of the shrinking economic opportunities and the growth of nativism, a hostility towards and fear of foreigners which combined an emerging nationalism with the strong strands of racial prejudice in American culture.[21] The first restrictions in 1875 prohibited the entry of prostitutes and convicts. In 1982, Congress suspended the immigration of Chinese laborers and added idiots, lunatics, and persons likely to become public charges to the list of "excludables". By 1917, the list included persons with tuberculosis, polygamists, political radicals, and practically all persons in Asia. Congress enacted a series of laws in the 1920s designed to preserve the ethnic makeup of the U. S. population. This is the origin of the national-origins quota system. Under this system the proportion of visas allocated to any particular country was the same as the proportion of persons of that national origin in the U. S. population. The result is quite obvious. Countries in northwestern Europe such as Britain and Germany were allocated a greater number of visas while such countries as Italy and Russia were allocated a smaller number.

After the 2nd World War the national-origins quota system was reaffirmed by the Immigration and Nationality Act of 1952. However, the 1965 amendments to this law, which are the key statutes in regulating the process of legal immigration today together with subsequent revisions through the 1980s, abolished the discriminatory national-origins quota system. The amendments permit the entry of 270,000 persons per year with no more than 20,000 immigrants originating from any one country. The abolition of the quota system is the result of the promotion of principles of racial equality and anti-discrimination associated with the civil rights movement and more concern with human rights during the mid-60s. The legislation also institutionalized the humanitarian goal of family reunification. The preference system requires that 80 percent of the 270,000 visas go to "close" relatives of U. S. citizens or residents. The remaining 20 percent of visas are allocated to persons on the basis of their skills.[22]

Since the 1965 revisions in the law, there have been dramatic changes in the volume and composition of immigration to the U. S. The most important change is the shift in ethnic composition from the preponderance of Europeans to that of Asians and Latin Americans. Three developments have contributed to this change : the 1965 Amendments to the INA which abolished the national-origins system and raised overall immigration cellings ; changes in refugee policy and the collapse of U. S.-supported goverments in Cuba and Indochina ; and the increase in undocumented immigration to the U. S., a phenomenon that was part of the worldwide emergence during the 1960s of labor migration from less developed to more deveolped countries. As the number of immigrants has risen and as their national origins have shifted to Third World countries, the attention of both the public and of policy makers has increasingly focused on the costs rather than the benefits associated with the arrival of newcomers.[23] In accordance with this line a comprehensive immigration reform bill (S 358) No. 29 was passed at the end of 1990. The new law provides that job-based immigration will increase from the past 54,000 annually to 140,000 a year, with special emphasis on highly skilled workers. A White House fact sheet explains that the increase is designed to "help relieve labor shortage in key technical areas and improve the competitiveness of our

workforce."[24]

The history of U. S. immigration policy shows that this country of "the great assimilating people"[25] has been formulating immigration policy by giving priority to the interests of the "natives" in exactly the same way as other nonimmigrant countries. The only difference is that, as in other immigrant countries such as Canada and Australia, here "natives" means whites who have conquered the indigenous natives. The interests of the "natives" led to the acceptance of new immigrants only within the economic and social safety limit. Those from the same countries as the "natives" were given preference under the national-origins quota system. Even the family reunion principle was admitted under the obvious presumption that this might not drastically change the established pattern of the national-origins preference of the population. Also, those with skills and ability required by the national economy has been accepted with a certain priority.

In a Japanese context, the lesson from U.S. immigration history is that Japan should also establish a policy based on the interests of "natives" with human consideration such as principles of family reunion and preferential acceptance of refugees. But there is no reason to accept unskilled persons without qualifications only from humanitarian and so-called "international" considerations.

Japanese enterprises in the U. S.

The issue of discrimination has become a matter of serious concern as Japanese direct investment, particularly large-scale production in the U. S., started to grow dramatically in the 1980s. Even as recently as 1991 a number of Japanese subsidiaries were accused of racial, sexual and age discrimination. This trend was highlighted by the series of public hearings on alleged employment discrimination by Japanese-owned companies operating in the U. S. held by the Employment and Housing Subcommittee of the Government Operations Committee of the U. S. House of Representatives. In these hearings held in Washington D. C. on July 23, in San Francisco on August 8, and again in Washington D. C. on Sept. 24, 1991, American former employees of

Japanese firms operating in the U. S. reported they had been subjected to widespread systemic discrimination on the job, including different hiring, promotion, and benefits standards from those of Japanese employees. In particular, they emphasized that the higher positions in the companies are monopolized by among the Japanese employees sent from the headquarters of the parent companies on a rotating basis and as a result local employees are deprived of the opportunities to be promoted to higher jobs. The government officials responsible for enforcing U. S. anti-discrimination laws such as Evan Kemp, Chairman of the EEOC and Leonard Biermann, Deputy Director of the OFCC (Office of Federal Contract Compliance), testified that although the statistical evidence gathered thus far is limited, it shows little difference between the equal employment opportunity records of Japanese companies and their American counterparts. Kemp stated that the EEOC believes that making generalizations, based on its limited data, could be misleading and cause undue criticism of Japanese hiring and employment practices. Bierman stated that the relative use of minorities and women does not seem to be significantly influenced by corporate ownership being foreign or domestic.[26]

In spite of such reservations expressed by government officials Chairman of the Subcommittee Tom Lantos (D-CA) made a very aggressive opening statement at the next hearing in San Francisco. He said "Japanese cultural attitudes towards women and the second class treatment of women in Japan get carried over to their employment practices in the United States. .... at American companies discrimination and sexism is an individual act practiced by particular managers and supervisors, whereas in Japanese companies it is institutionalized in nature." He announced his intention to ask the General Accounting Office, the investigative arm of Congress, to conduct an extensive study of foreign-owned companies in the U.S. and their compliance with American equal employment opportunity and non-discrimination laws.[27]

In the latter half of the 1970s and during the 1980s, Japanese direct investment in the U. S. and more recently in Europe has not only developed in amount but also in its significance for the economy and industrial relations of the host countries. In the U. S. and Europe, the

impact of Japanese business activities on its industrial relations has attracted much attention and been evaluated rather positively in general, although some negative aspects have also been observed. In a number of empirical studies on Japanese enterprises doing business in Europe and the U. S., it has been generally pointed out that the Japanese ventures showed higher productivity and efficiency, lower absence and turnover rate, and fewer conflicts in comparison with the domestic as well as other foreign enterprises doing business in the same industry in the same country. Thus much attention has been paid by the experts, both scholars and practitioners in human resource management and industrial relations, to the following "unique" characteristics of employment practices more or less common to the Japanese enterprises, which were pointed out by a number of studies :

1. Higher percentage of expatriates sent from parent companies,
2. They include not only high-ranking but also middle-class managers
3. Higher management positions are occupied by rotating expatriates and local staff are excluded from such positions
4. "Pervasive presence" of managers at working place and in workers' lives
5. Presence of working supervisers
6. Closer relationship between management and labor
7. Abolition of separate facilities for management and labor such as cafeteria, parking space, toilet etc. (so-called "petit irritant")
8. Job flexibility, fewer job classifications
9. Cross-training
10. Flexible work rules
11. Participation in various forms including joint committees such as Q. C., Q. W. L. etc.
12. Information sharing
13. Different degree of job security and avoidance of layoffs.[28]

Most of these unique features of Japanese management in the U. S. more or less contradict the basic assumptions of the traditional Amer-

ican industrial relations system. Out of these characteristics No. 4 - No. 7 have contributed to create a closer relationship between management and labor through better understanding and cooperation. Closely related to these characteristics are those of No. 11 and 12., namely a greater degree of worker participation and information sharing, which also emphasizes cooperation instead of confrontation and thus provides an unfamiliar approach to traditional American trade unionism. Acceptance of these different basic sets of practices in the U. S. required a basic change in the attitudes of related actors. Acceptance by the unions was benchmarked first by the UAW (United Automobile Workers Union) at NUMMI (New United Motor Manufacturing Inc., GM-Toyota Joint Venture) in Fremont, California, in 1983 and later followed in other auto makers and other industries including steel. The characteristics No. 8 - 10., the job flexibility and flexible work rules, are also challenges to the long-established American industrial relations practice where the strict observation of a detailed job description is the most basic requirement to protect workers from the unreasonable burden of too broad a scope of responsibility and at the same time is the very heart of the modern mass-production system based on assignment of jobs as simple as possible. Workers are expected to repeat simple tasks without thinking. Thus, fewer and flexible job classification, participation of workers in decision-making and information sharing with workers, all caused a drastic transformation in the basic assumption of American labor-management practices. Nevertheless, they were accepted.

In contrast to such acceptance of most of the Japanese characteristics, the first three characteristics have been criticized, and become targets of charges of discrimination at the EEOC and in courts ever since some of the trading companies, such as Sumitomo Shoji America and C. Itoh Inc., were sued in the late 1970s and early 1980s for allegedly discriminating against domestic, particularly female, employees by keeping them out of higher positions, which were monopolized by rotating expatriates sent from headquarters in Japan.[29] The above-mentioned hearings of the Employment and Housing Subcommittee took place as a sort of culmination of such accusations.

However, here we must remember that such characteristics as the

heavy weight of expatriates and exclusion of local staff from higher positions are not necessarily unique to Japanese enterprises but to some extent common to all multinational companies regardless of their national origin, as some of the U. S. government officials responsible for the enforcement of Title VII pointed out in the hearings of the Employment and Housing Subcommittee. In the early period of investment multinational companies were criticized because of such employment practices regardless of their national origin and location of host countries. Thus during the 1970s when criticism of multinational companies, specifically American ones, emerged one of their "evils" was central decision-making and neglect of local interests of the host countries. Exclusion of local staff from higher positions was one of the important factors in such neglect of local interests. Thus the OECD Guidelines of 1976 established rules of conduct for multinationals and provided that enterprises should "utilize, train and prepare for upgrading members of the local labor force" as one of the steps towards decentralization and localization in their decision-making.[30] However, the general tendency in the history of multinationals in recent years is to send more of expatriates to important management positions in the earlier period of investment and then gradually start to nationalize the local entities by appointing local staff to higher positions.[31]

Japanese enterprises doing business in the U. S. are, comparatively speaking, still in the early stage of their investment in comparison with their European counterparts in America. Thus in the future, we can reasonably expect Japanese companies to follow the general pattern of the localization process. Nevertheless, at least today the heavier weight of expatriates in Japanese companies is more or less a reality and it reflects to some extent the common mentality of Japanese businessmen in emphasizing the uniqueness of Japanese business practices, connected with what they see as a "unique" Japanese culture including Japanese language. Such a trend in Japanese business was rather dramatically demonstrated when "familiarity with not only the language of Japan, but also the culture, customs, and business practices of that country" could be a reason of BFOQ or business necessity defense became an issue in the above-cited *Sumitomo Shoji America* case.

Furthermore, the discriminatory employment practices of Japanese

enterprises in the U. S. are not limited to exclusion of local employees from managerial jobs. A study of employment pattern of Japanese auto firms indicates that in Japanese firms the ratio of blacks in the total labor force is much lower than in their American counterparts.[32] However, in order to establish the general discrimination pattern of Japanese companies from this observation one has to take into consideration the site location of Japanese investment, which so far is mostly inclined to more rural and suburban areas with smaller portion of black populations. However, according to the authors of the report of this study, Japanese managers voice racist sentiments more candidly than American managers but this "should not necessarily be interpreted to mean that they are more racist than American managers." For instance, "by telling state officials that they don't want sites near minority areas, *the Japanese might simply be telling white American state officials what they think these officials would like to hear.*"[33]

Their findings also demonstrate the characteristics of Japanese discrimination which reflect the bias of white Americans. The more candid expression of such a bias by Japanese managers is more evidence of Japanese naivety in the matter of discrimination. Thus the authors' point is very pertinent when they say of Japanese managers "many have yet to learn the American taboos with regard to talking about race."[34]

Whatever the outcome of the present criticism of Japanese enterprises' employment practices in the U. S. in the present political climate, it is interesting to observe that the incident in the U. S. Congress has again raised exactly the same theoretical points common to the issue of discrimination in the U. S.-Japan relationship which has been examined in this article. First of all, the criticism of Japanese discrimination is more of less motivated at least partly by anti-Japan feeling in the U. S. and particularly among American politicians. The Japan-accusers ignored the calmer and objective observations of specialists, such as the officers of the EEOC or OFCC, which pointed out that there is no evidence of Japanese companies being particularly discrimination. Here also the accusers tend to relate individual discriminatory practices to the supposed uniqueness of Japanese companies in general and more fundamentally to Japanese culture. Some of the congressmen in the subcommittee specifically raised questions concerning this point and also took

the position that discrimination by Japanese companies is institutional while that of American companies is caused by individual managers.[35] It is also significant that one of them specifically asked whether there exists any law such as Title VII in Japan.[36]

The whole incident provides a special message to the Japanese business world that American law is much more strictly enforced through far more effective legal procedures and with much more effective legal remedies than can be expected in Japan, which has ineffective laws and in effective legal remedies.

Conclusion

In recent years Japan has been criticized from outside as being racist and sexist mostly because of the careless utterances of some politicians and the discriminatory employment practices of Japanese enterprises abroad. At the same time foreigners seeking employment and those already living in Japan complain of discriminatory treatment in employment and housing in Japan.

"Are Japanese more biased and discriminatory than other nations?" "Why are Japanese criticized so much by foreigners?" "Is such criticism a part of Japan-bashing?" These are questions I have tried to answer in this paper. One of the hypotheses is that the degree of discrimination in Japanese society might be more serious than in other civilized nations. But the difference of degree is not so great as often believed. Western whites are also as biased against colored people and women as Japanese. And often Japanese bias is only a mirror of that of Western whites, as we have seen in the cases of careless utterances of politicians, "Little Black Sambo" or employment discrimination by Japanese enterprises in the U. S. In each of those cases of alleged Japanese discrimination examined in this paper the issue was raised by foreigners first and only thereafter did Japanese who committed discrimination realize the controversial nature of their behavior. This shows their naivety and ignorance of the matter of discrimination and its seriousness.

Japanese naivety and ignorance in this field might be partly attributable to traditional Japanese culture, isolated from and closed to the

world, and the insular nature of Japanese society. However, traditional cultural factors are not almighty in explaining the closedness and bias of Japanese if, as we have seen, Western whites are also biased and commit discrimination too. With the growing number of foreigners coming to Japan looking for employment opportunities criticism both inside and outside Japan of the "closed" immigration policy of Japanese government has emerged in recent years. However, here also we have seen that the present Japanese immigration system is not particularly restrictive in comparison with other major countries, including that of the United States. Compared with American immigration policy, the Japanese policy is not particularly discriminatory against foreigners in the sense that in both countries the interests of natives are given the primary consideration in policy making.

Thus in most of the aspects of recent issues of Japanese discrimination we have examined in this paper there is no evidence that Japanese are particularly more discriminatory than other nations. The only crucial difference that makes Japan unique is the total lack of legal remedies for discrimination in Japan. Here, the failure of the EEOA in enforcement of the principle sexual equality is fatal. The lack of legal remedies is one of the most important reasons for the naivety and ignorance of Japanese in general and particularly Japanese employers in matters of equality. Because of this ignorance Japanese enterprises abroad and Japanese in general within Japan may encounter more and more trouble in the future because of the growing importance of international business and the greater involvement of the Japanese economy in the global economy. It is easy to argue that Westerners criticizing Japan are also biased and discriminatory and that their criticism is not fair or is even a type of discrimination against Japan. Certainly the Japanese can not solve the problems of discrimination within Western society. However, Japanese, particularly Japanese enterprises doing business in Western society, should not aggravate the evils of the host countries but rather should contribute to the good as good corporate citizens. Within Japan we need to strengthen enforcement of the EEOA and also extend its scope to cover racial discrimination and its prohibition to cover all personal treatments including hiring, recruitment, job assignment and promotion.

Notes

1 *Japan Times*, 1991, June 22.

2 Komichi Shobo (ed.), *"Chibikuro Sambo" Zeppan wo Kangaeru* (Examining the issue of "LittLe Black Sambo") (Tokyo : Komichi Shobo, 1990) provides quite rich and comprehensive information of the history of the book in England and the U. S., and the controversy over the decisions of many Japanese publishers not to print the book in response to the charges of discrimination in 1988.

3 Komichi Shobo, *op. cit.*, p. 59, lllff.

4 It was reported that there are many realtors in Japan who put up signs saying "foreigners are not accepted" and a Chinese student from Makao was refused by 64 realtors within 2 weeks until he was finally able to find a room through the 65th realtor he visited (*Asahi Shimbun*, Jul. 16, 1991).

5 For example, "The voice of rental experience" (*The Japan Times*, Jul. 24, 1991). states that at "my local real estate agency " one can see "the apartment ads that hang noncharantly in the window", a couple of which read "no pets, no *mizu shobai* (bar girls), no foreigners".

6 Derrick A. Bell, *Race, Racism and American Law* (Boston : Little Brown and Co., 1973), pp. 607ff.

7 For the controversial development of U. S. Supreme Court cases in 1989 which contributed to shifting the burden of proof back to plaintiffs in the discrimination cases, see *Havard Law Review* Vol. 103, No. 1, pp. 310-361 (1989). The Civil Rights Act of 1991 reversed parts of these supreme court decisions.

8 Frand Upham, *Law and Social Change in Postwar Japan* (Harvard University Press : Cambridge, 1987), p. 86.

9 The Supreme Court decision on *Takano v Mitsubishi Jyushi Co.* of December 12, 1973.

10 Ministry of Labor, *Heisei Gannen Joshi Koyō Kanri Kihon Chosa* (Basic Survey on Management of Female Employment, 1989) (Tokyo : Ministry of Labor, 1990).

11 Upham, *op. cit.*, p. 156.

12 Sōmu Chō Gyōsei Kansatu Kyoku, *Fujin Syūgyo Taisaku tō ni kansuru Gyōsei Kansatu Kekka Hōkoku* (Agency of General Affairs, Administrative Inspection Bureau, *Report of the Result of Administrative Inspection on Labor Administration in Female Labor*) (Tokyo : Sōmu Chō, 1991)

13 Ryoko Akamatu, *Danzyo Koyo Kikai Kintō Hō oyobi Kaisei Rodō Kizyun Hō* (EEOA and Amended Labor Standards (Tokyo :Nihon Rōdō Kyōukai, 1985), p. 265.

14 Rōdōhsyō Fuzinkyoku, *Kōsubtsu Koyō Kanri ni kansuru Kenkyukai Hōkoku ni tsuite* (Report of the Study Committee on Separate Career System) (Tokyo : Labor Ministry, 1990).

15 For a discussion of Japanese litigiousness, see John O Hailey, "The Myth of the Reluctant Litigant", *Journal of Japanese Studies*, 4(1978), 359 and also Upham, *op. cit.,* pp. 16ff.

16 "Foreigner recruitment called biased by Hachioji lawmakers", *The Japan Times,* June 19, 1991.

17 Nizzyuiseiki Keizai Kiban Kaihatu Kokumin Kaigi, *Gaikokuzin Rōdōsha Ukeire no Teigen* (A Proposal for Accepting Foreign Workers), 1988, emphasis added by the author.

18 The Sōhyō, *Gaijin Rōdōsya Mondai ni kansuru Tōmen no Kenkai* (A Tentative Opinion in regard to the Issue of Foreign Workers), 1988, emphasis added by the author.

19 Robert Warren and Jeffrey S. Passel, "A Count of Uncountable : Estimates of Undocumented Aliens Counted in the 1980 United States Census," *Demography* 24 (August 1987) ; 375-93.

20 For the policies of the major European countries, see Eric-Jean Thomas, *Immigrant Workers in Europe : their Legal Status-a Comparative Study* (Paris : the Unesco Press, 1982).

21 The most persuasive literature in this regard is John Higham, *Strangers in the Land* : Patterns of American Nativism, 1860-1925 (New York : Atheneum, 1963), pp. 22ff.

22 The most thorough history of American immigration policy is contained in E. P. Hutchinson, *Legislative History of American Immigration Policy*, 1798-1965 (Philadelphia : University of Pennsylvania Press, 1981).

23 Deborah Anker, "The Legal Position of Foreigners : United States Immigration and Alienage Law", International Association of Legal Science, Belgrade, Yugoslavia, August 23-27, 1989, pp. 4ff.

24 "Bush Signs Immigration Reform Bill, Increasing Employment-Base Admission", *BNA's Employee Relations Weekly*, Vol. 8, 1471.

25 An expression by one leading nineteenth century political figure quoted in J. Higham, *op. cit.,* p. 21.

26 Congress of the United States, House of Representatives, Employment and Housing Subcommitee of the Commitee on Government Oprations, *Hearing on Discrimination by Japanese Companies in the United States*, Tuseday, July 23, 1991 (mimeograph).

27 *Ibid,* August 8, 1991.

28 Brown, R., *Labor Law Issues facing Japanese Companies doing Business in the U. S. and U. S. Companies doing "Japanese-Style" Business in the U. S.,* Conference Background Materials, University of Hawaii, Labor Law Conference, March 13-14, 1986, Greer & Shearer, "Do Foreign-Owned U. S. Firms Practice Unconventional Labor Relations," 104 *Monthly Lab.Rev.* 44, 45(1981), Kujawa, D., "Technology Strategy and Industrial Relations : Case Studies of Japanese Multinationals in the United States," XIV J. of *Int'l Bus. Studies* 9-22 (No. 3, Winter, 1983), Torrence,

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29 *Sumitomo Shoji America Inc. v. Avagliano* (457 U. S. 176, 189 n. 19(1982)), *Spiess v. C. Itoh & Co.* (America) (469 F. Supp. 1(S. D. Te. 1979) and *Shiseido Cosmetics (America) Ltd. v. State Human Rights Appeal Board* (421 N. Y. S. 2d 589 (1979).

30 Roger Blanpain, *The OECD Guidelines for Multinationals - Labour Relations Experience and Review,* 1976-1979 (Deventer : Kluwer, 1979, pp. 53ff.).

31 R. Blanpain, "Multinationals' Impact on Host Country Industrial Relations," in Banks and Stieber(ed.), *Multinationals, Unions and Labour Relations in Industrialized Countries,* Cornell Industrial and Labor Relations Report, No. 9, 1977, pp. 120-134.

32 Cole & Deskins, Jr. "Racial Factors in the Employment Patterns of Japanese Auto Firms in America", 31 *Cal. Mgmt. Rev.* (1988), 9-22.

33 *Ibit,* P. 20.

34 *Ibit.*

35 U. S. Congress, *Hearing...,* July 23, 1991, *Supra* note 26, 30-1 ff., Opening Statement, Chairman Tom Lantos, Employment and Housing Subcommitte, Aug. 8, 1991 (memeograph), p. 2.

36 U. S. Congress, *op. cit.,* 77-3.